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May __, 2024 - *VIA EMAIL ONLY: E-Mail: southernmail@ncua.gov*

Southern Region
National Credit Union Administration
4807 Spicewood Springs Road, Suite 5200
Austin, Texas 78759-8490

**RE: Butler Heritage Federal Credit Union
Member Dispute Regarding Bylaws & Transition Plan**

Dear Sir/Madam:

The letter Attorney Paskan has written to NCUA mandated this response, and this detail, so that the full facts and circumstances are known to NCUA, and to help with transition pursuant to the recent election.

As you may recall, I sent an email on May 6, 2024, to all concerned herein, stating and requesting:

“As we work on the additional and responsive information to NCUA, and so that we are fully responding to what needs answered, and to whom, can I ask counsel or NCUA to provide to us: 1) any prior direct contacts between NCUA and the prior Board/President/Counsel (who) for the referenced communications; and 2) a copy of the April 25, 2024, letter referenced in the first paragraph of Mr. Paskan's May 2, 2024, letter. Thank you, and the sooner we can get that information the sooner we can provide a fully substantive response so that everything that merits addressing is addressed.”

To date I have not received a response from anyone. Since time is a factor, and instead of continuing to wait, we will do my best herein to respond to Attorney Paskan's letter and request without the requested information, which we hope to still receive soon.

1. Regarding who is being represented to be on the Board:

Roger Knabel *cannot be a Board Member or Director* at BHFCU. He was allegedly appointed to fill Robert Fraley's (deceased) Board seat at some previous unknown time. But if he was to continue as a director, he was required to be nominated and run for Fraley's unexpired term at the annual meeting, per the existing/pre-existing Charter/Bylaws. According to the election notice most recently provided, Mr. Knabel was one of three directors who *appointed themselves to the nominating committee*, which failed to nominate Mr. Knabel. According to both sets of Bylaws, whichever is legally in effect, the failure to nominate Mr. Knabel, *which required nominations for ALL vacancies*, allowed nominations from the floor.

In summary, Mr. Knabel was never and not nominated nor elected at any meeting, which is required by both sets of Bylaws. Therefore, if he was validly appointed to fill a vacant seat, he is no longer a director as of the expiration of that seat at the next actual annual meeting, which was April 18, 2024.

In addition, on August 11, 2023, Attorney Paskan notified the Butler County Common Pleas Court where the lawsuit is pending of Robert Fraley's death. Yet, all quarterly Credit Union Profiles (Form 4501A) filed with NCUA by BHFCU including the most recent Profile dated March 31, 2024, continue to list Robert Fraley as a Director, and does not list Roger Knabel as a Director. Nor do those forms list who is the current VP, other than deceased Fraley.

2. Regarding the existing Bylaws, and which is actually in effect:

In one of several efforts to cause the Directors to conduct business according to the actual Charter and Bylaws and Ohio and Federal law, without NCUA or court involvement, on March 21, 2024, about a month before the next noticed annual meeting, the undersigned sent an email to Attorney Paskan, detailing the problems with the alleged December 8, 2023, Bylaw amendments that Attorney Paskan sent to us. I suggested that someone knowledgeable address the issues with the BHFCU Directors concerning the overall Bylaws and specifically how they related to the nomination, election and annual meeting processes.

This counsel also has asked at least three times for legally authenticated copies of what they were claiming were the amended (and claimed to be implemented) new Bylaws, *but received nothing*, except the alleged new but unsigned, unverified, and on its face unapproved bylaw document, hand-dated December 8, 2023, and a third party claiming they were adopted, but with no evidence they ever were, at least not according to how the preexisting Charter and Bylaws direct that amendments be done.

In other words, other than the pre-existing Board just bypassing all legal requirements to amend the prior Bylaws, there is no evidence the claimed December 8, 2023, dated document has any legal or binding effect.

As a result, we dispute the legality of even claiming the "new" document has any import, under Ohio law (governing these entities, and mandating compliance with pre-existing governing documents). If they were never validly adopted, under both Ohio and Federal law, the only valid bylaws are those that pre-existed.

It is true, a clarification is needed, and that is a pending issue in a lawsuit pending in Ohio courts. I don't see that NCUA has authority to just "declare" bylaws, or by-pass the pre-existing charters. That is also a legal determination subject to the pending court case. We agree, that a submission can be made to NCUA to approve amendments (and in fact, that is a precondition to adoption – but not the only precondition), and then they can go through the Chartered amendment process. But we know of no authority that the approval process, NCUA review and approval of which is only part of that process, can just be ignored, essentially voiding the existing Charter and Ohio law governing this organization.

Further, and according to Martha J. Ninichuk, NCUAs Director of Credit Union Resources and Expansion (CURE), and Shameka L. Sutton the NCUA Ombudsman, as explained herein, we believe NCUA should neither clarify nor address BHFCU bylaws and the Boards' understanding that NCUA "recognizes" that the December 8, 2023 bylaws are in place. The alleged new bylaws *do not* adhere to NCUA Appendix A to Part 701. Our request would be that NCUA "clarify" that it is not up to NCUA to declare a set of bylaws are valid, and the actual valid bylaws are a matter of State law. It is also appropriate for NCUA to "clarify" only the part of the approval process that someone with authority at NCUA approved the draft, and then it was processed through the pre-existing amendment procedures. That is necessary to facilitate authentic compliance, an orderly transition, and settlement of existing disputes.

3. Additional reasons why the "12/8/2023" document is not valid, and NCUA should not declare otherwise.

During the lawsuit over the merger process attempted at BHFCU, the State Court found it had the authority to interpret the bylaws and violations thereof, and issued an injunction against the BHFCU and its Board of Directors to stop that illegal merger. This counsel received a letter from NCUAs Director of Credit Union Resources and Expansion (CURE), June 15, 2023, by Director Martha J. Ninichuk, which was in the midst of the BHFCU Directors failing to disclose, or at least overlooking or omitting, the several bylaw violations of the BHFCU Board of Directors in order to justify and obtain approval of the merger. That letter on behalf of NCUA confirmed the court's authority over that, and over bylaws disputes:

"Bylaws function as a contract between a credit union and its members and NCUA has a long-standing policy to not become involved in internal federal credit union disputes unless they involve a violation of law or regulation or there are safety and soundness concerns. In general, credit union bylaws should be interpreted and enforced according to state law. As such, we defer to local courts to settle these matters."

The alleged 12/8/2023 bylaws state at Article XVI, General Section 1. "Compliance with law and regulation," that the "members, directors, officers, and employees of this credit union must exercise all power, authority, duties, and functions according to the provisions of these bylaws *in strict conformity with the provisions of applicable law and regulations, and the credit union's charter and bylaws.*" In addition, BHFCU's Charter and *pre-existing* bylaws state at Article XX, Section 1: "No amendment to these bylaws or to the charter shall become effective, however, until approved *in writing* by the Director, Bureau of Federal Credit Unions." (Now known as NCUA).

More than two months after the 12/8/2023 document was allegedly put into effect; the undersigned received two emails, February 13, 2024, from the Shameka L. Sutton the NCUA Ombudsman which stated:

"Pursuant to Appendix A Part 701 (as referenced in the email below), the federal credit union must submit an applicable request to the Office of Credit Union Resources and Expansion (CURE) and CURE will consult with the Office of General Counsel (OGC), if necessary, regarding approval. Both offices confirmed there was no request or subsequent approval of amendments to bylaws by Butler Heritage FCU. If there were amendments to the bylaws, they were covered by permissible options, and NCUA approval is not required."

And:

“To clarify, there is no request or subsequent approval of amendments to bylaws from Butler Heritage Federal FCU.”

These statements of fact from the Ombudsman in February of 2024 confirm that no request was made or approvals were given for any non-permissible amendments of the bylaws.

There are many *non-permissible* bylaw amendments pertaining to all aspects governing BHFCU which require NCUA approval and that the current Directors assert to be effective and are governing. Article IX Supervisory Committee is only one example of what the Board has failed to submit or request of NCUA for approval, which are required for the nomination, election, and annual meeting processes.

The attempt at adopting the amendments included permissive and non-permissive sections – but that is also an issue for the court. The above positions stated by CURE confirms that bylaws should be interpreted and enforced according to *state law*, in court, and not by NCUA as requested by Attorney Paskan. Therefore, to facilitate the accurate process required, NCUAs response and involvement concerning the clarification and interpretation of the bylaws should *only be* to confirm if NCUA *did or did not approve* the non-permissive amendments requiring NCUA approval of the 12/8/2023 proposed amendments; or, if NCUA approved (erroneously or otherwise) the entirety of those amendments, as mandated by the original bylaws at Article XX section 1; and did so in writing; and when. The State court can handle it from there, as NCUA stated is the correct policy.

If though the above quoted officials were wrong, and unknown to them and undocumented to us so far, some approval was given by NCUA, for any non-permissible amendments, NCUA can facilitate the process that it has required in writing, by confirming *and producing* the if-and-when it received requests for amendment approvals, which specific amendment approvals were given, when and how; which is part of the state court determinations.

That is a determination that is going to be made. These facts are in the substance of the court case pending (specifically, No. CV 2024-04-0781, pending in Butler County, Ohio, of which Attorney Paskan sent you a copy), which necessarily will include the court addressing the BHFCU bylaws, the authenticity of, or non-compliance with, one set or the other, and based on all the facts, not just the arguments of the parties or their attorneys. The state court case is entirely justified as the appropriate method for making that determination, and NCUA recognized, and based on the repeated failure of BHFCU to prove any proper adoption or amendment, the NCUA statement affirming no request was even made, or approved, and the rest being a legal determination and interpretation of what are permissive and non-permissive sections – even though *that doesn't matter because the pre-existing Charter requires NCUA approval regardless of whether NCUA requires approval.*

4. The status and import of the pending litigation.

As the NCUA is aware, the new lawsuit is not the first member dispute regarding bylaws that has arisen between the parties to the above matter. The earlier case, No. CV 2023-05-0927, members of BHFCU filed a lawsuit over the construction and application of State law and the pre-existing 1956 Charter and Bylaws, initially (but not entirely) as it related to an intended merger at that time (but also including more than that – and the general mismanagement of the BHFCU by its officers and directors up to that point, beyond the mere allegations of the illegal merger). The court agreed, after a full hearing, and determination by a magistrate and a judge, that the merger was illegal and should not proceed, and restrained it from doing so.

In the process, the state court also denied the Board's claims of lack of sufficient allegations to justify that injunction, and denied the Board's claims of lack of state court jurisdiction and state court authority over the Credit Union and its Directors and Bylaws. In their Motions, the Board asserted that the NCUA has discretion to enforce 12 C.F.R. 708b *et seq. essentially however it wanted, with no State law application*, which was denied by the court. Again, this is the type of bylaw dispute that is to be addressed by the courts, not by NCUA. The administrative actions permitted to NCUA are subject to application of state law. "Administrative" actions do not include legal rulings or interpretation of legal documents.

The Board claims to have previously provided notice to the NCUA that the Board would like to step down and allow a new Board of Directors to take its place. Although that may be the ultimate goal and negotiated or litigated result, while that is going on, the credit union members (those in the lawsuits, and those not) are entitled to and continue to exercise their rights under State and Federal law and their "contract" (NCUA's words) in the pre-existing Bylaws – a "contract" that no one, including NCUA, can just void like they don't exist – to conduct business. This includes exercising their rights at a called annual regular meeting, to conduct routine business, which by law includes calling for nominations and conducting elections – the heart of credit union self-determination – that the pre-existing Board and Officers attempt to prevent and abort, for their own protection. The election fully complied with the pre-existing rights and Charter. The pre-existing Board failed to comply with either the December 8, 2023, documents, or the 1956 Bylaws.

This is again a legal determination according to state law, and not the province of NCUA to just declare, as NCUA itself has said, and is the heart of the new lawsuit.

5. Specifics of the Bylaw discrepancies for the "meeting" and election.

There are numerous facial contradictions or violations with both the old and new Bylaws, for the procedures the current Board implemented for nominations, and which the Defendants proposed to control of and conduct at the April 18, 2024, annual meeting and election. In short, that meeting and that process by the existing Board did not comply *with either set*, so the Board's effort to usurp the member self-determination processes and rights was a failure, either way, and were not held in the best interest of or consistent with the rights of BHFCU member/owners. The violations are outlined in detail in the provided Appendix A and B.

Further, and according to the BHFCU website announcement in March, 2024, there were no other nominees for offices *allowed*. The pre-existing Directors (Defendants) appointed

themselves to be the nominating committee and nominated two of themselves as directors to fill the board seats. Roger Knabel was appointed to fill a prior director's (Robert Fraley, who passed away) unexpired term, and it is also unknown if NCUA in its present supervisory role approved or even knew of Mr. Knabel's appointment. The Knabel appointment is a serious conflict of interest in that he is also on the nominating committee, and both the pre-existing Bylaws and the alleged new Bylaws require him to be elected for the balance of the deceased director's unexpired term, not appointed for that purpose, or indefinitely.

According to the December 8, 2023, document, if they are effective, the nominating committee establishes qualifications to become a nominee for the Board, and all nominees must meet these qualifications and submit a "bio" to be publicized for each nominee prior to an election. According to those "Bylaws," those qualifications have not been met or publicized for the two nominees of the nominating committee, nor for Mr. Knabel. Any actions in operations or management of BHFCU, but more specifically the nominations process and the annual meeting and election procedures, are invalid on their face as proposed by the existing Board, announcement, Newsletter, and website.

Most importantly: the existing bylaws adopted in 1956 and the alleged new bylaws with the date of 12/8/2023 *both require* a board member who has been appointed to fill a vacancy to be elected for the remaining term of the seat they were appointed to. The 12/8/2023 bylaws that the current directors are alleging to be in effect, specifically say, quoting from the new alleged bylaws, at Article V (which the Board apparently chose option A-4), and as the pre-existing Board announced in a newsletter sent to all member-owners: "There will be no nominations from the floor where there is at least one nominee for each position to be filled."

The nominating committee nominated two candidates, Vince Lovejoy and Jim Hall, but failed to nominate anyone for the temporary position that was being held by Roger Knable (filling deceased Board member Fraley's seat). This failure according even to the A-4 option in the alleged 12-8-2023 bylaws allowed *the membership* to make nominations from the floor at the annual meeting, since the pre-existing Board and defective nominating committee did not nominate anyone for that vacant seat. But, the original (believed to be in effect) bylaws from 1956 allow nominations from the floor *at any time*. Using *either set* of bylaws, the nomination and the election processes are invalid – a determination to be made by the State court.

In a court hearing held approximately one hour before the annual meeting, Attorney Paskan told the Judge on record, that the correct forum according to bylaws for members to address bylaw violations and other complaints is *at the annual meeting*. He further stated that *at the annual meeting* the member/owners had the ability to vote out or replace board or committee members. That is exactly what many of them attempted, only to have the attempt thwarted by the Board at that annual meeting). But now it is stated to the NCUA in his letter:

"While the credit union members involved in the aforementioned cases *attempted to hold an election* that is not recognized by the NCUA because it failed to adhere to the provisions of the December 8, 2023 Bylaws, as well as the 1956 Bylaws, the Board seeks the assistance of the NCUA etc."

A recording or transcript of the court hearing can be acquired and provided.

It seems impossible that the actual election of all new Board members at the April 18, 2024, meeting would not be recognized by the court, or by NCUA, at least because:

1. There were other members at the annual meeting who voted *besides the Plaintiffs* in the lawsuits. The newly elected directors and committee members were elected *unanimously* by all members present (with the exception of one write-in vote for an individual voting for himself). Those votes included members *who are not involved in any BHFCU lawsuits*.
2. According to CURE the Office of General Counsel (OGC), no one had approved the 12/8/23 “bylaws” as late as two months after they were allegedly in effect, and “approved” means including the portions of the bylaws that the BHFCU Board MUST apply for approval from NCUA, according to NCUA, and *although all amendments, permissive or not, must be approved by NCUA before they can be effective according to the pre-existing Charter*.
3. It is unlikely NCUA is fully aware of the specific bylaws the BHFCU Board of Directors has violated (detailed herein) before or after the annual meeting, nomination and election processes, all of which is before the courts.

Pertaining to the Annual meeting, the letter notices to members and posting on the BHFCU website stated:

“The purpose of the Annual Meeting is to discuss the current financials *and state of the credit union* and to *receive and act upon the reports of the officers* of the credit union, to announce the results of the election of directors, and *to transact such other business as may properly come before this meeting.*”

The order of business for an annual meeting are virtually the same in both sets of bylaws:

- a. Ascertain a quorum is present
- b. Reading and approval of or correction of the minutes of the last meeting
- c. Report of the directors
- d. Report of the treasurer
- e. Report of the credit committee
- f. Report of the supervisory committee
- g. Unfinished business
- h. Election of directors and committee members

At the annual meeting held on April 18, 2024, members in attendance asked if there was a sign in sheet because one had not been provided. A note book pad was eventually provided and members in attendance asked everyone to sign in and twenty member owners did so. The directors and the tellers did not sign. There was only limited seating provided for members in attendance. Most members had to stand or sit on the floor. The Directors of the Board in

attendance isolated themselves with two attorneys behind a partition away from the membership where they were not readily available to members.

John Terrill the President came out and started talking without establishing a quorum and declared that Vincent Lovejoy and Jim Hall were re-elected as “unopposed,” with no voting. A member called a point of order (as they are allowed to do under all common rules of order and conduct of meetings, including Roberts’ Rules of Order), with an objection, and Mr. Terrill responded to the effect of: “We are not going to answer questions tonight on the advice of our attorneys” (contrary to the meeting notice, and the bylaws). President Terrill repeated this numerous times even when members who were not involved in any lawsuit asked typical annual meeting questions pertaining to BHFCU “financials,” “state,” etc.

This was an annual meeting open to all Member/Owners wherein the Board of Directors was to follow the bylaw mandates for both the meeting and the election process. It was not a court hearing wherein the Directors can simply say they are not going to answer any questions on the advice of their attorneys. After many members attempted to ask questions, and President Terrill eventually declared “the meeting was adjourned,” and he joined other directors and attorneys on the other side of the petition dividing themselves from the members.

According to the applicable Rules of Order and the bylaws, the members appointed a member to continue with the meeting, following the bylaw outline of mandates, and without information provided by the pre-existing Board and manager. That member asked the current directors for input of basic information and received the reply they would not answer under advice of their attorney.

A quorum was established, in the order of business called for, nominations were made from the floor, ballots were distributed and including to the current directors (none of them voted, and they actually instructed employee tellers, who were also BHFCU members, not to vote, either). At no time, did any of the current directors, or their attorneys object to the meeting or election moving forward, even though they were present through the entire meeting. In the presence of all, votes were cast and counted and sealed in an envelope with the sign in sheet (for obvious reasons).

As previously stated, the disputes embodying all bylaw issues are the substance of the two lawsuits and should be addressed by the court, not NCUA, according to NCUA.

6. Moving forward

The election that occurred at the annual meeting *by the membership* included many member owners who were not plaintiffs in the lawsuit. President John Terrill and Ernest Howard remain on the Board (their terms were not up and so were not subject to being elected). NCUA should *not approve their resignation, leaving affairs in disarray*. The election of a credit union’s board of directors is intentionally staggered with only some director’s seats expiring in any one year – maintaining continuity: so the knowledge of the remaining directors as to the current processes of the business of the credit union can be passed on and the business can continue without interruption. If an entire board of directors exits at the same time, the direction and the operation

of the business is harmed – and a breach of state law fiduciary duties.

In this case, it is likely all Board current Directors want to exit quickly because it has become evident, to them, especially at the recent annual meeting, that they have responsibilities for which they are unable or unwilling to answer to Member/Owners about. That is no justification to resign. It is more reason, especially for President Terrill, to cooperate and stay to help transition and make the needed corrections at BHFCU which all parties including NCUA is well aware of. If and only if Mr. Howard has documented health issues, that prevent him from serving, the Board can legitimately appoint someone to his director's seat, or even leave Mr. Hall on in his place, who has contemporary experience and is an officer (Secretary).

Both sides agree, and State and Federal law requires, as Attorney Paskan stated in his letter: "both sides agree that protecting the rights of BHFCU members is paramount" Those "rights" include respect for self-determination, and the "contract" embodied in the pre-existing Charter and bylaws. We also agree that NCUA's involvement in the transition is essential, but that includes giving full transparency, including as to any requested or provided approvals of amended bylaws, including providing those to the newly elected Board of Directors and Supervisory Committee Members, and approving those members, too. Providing that information is paramount to many aspects of BHFCU and both court cases and the orderly operation of the Credit Union, as well as informed decision-making. With that information, a determination will also be made by the courts as to the authenticity of bylaws and which bylaws officially govern, and if they were complied with, as to the conduct of those Defendants but also the proper procedures and actual Board members after the recent election.

Protecting the rights of the BHFCU members is paramount, which is the primary reason member/owners felt it was necessary to file two lawsuits. It is the reason they conducted the annual meeting and election according to the mandates of the bylaws, after the current President and Board refused to do so. It is the reason the newly elected directors and supervisory committee called a Board meeting in the required 10 days after the annual meeting to elect officers and discuss business including the required applications required for NCUA approval. The pre-existing Board refused to attend and refused to allow the meeting to be held at the Butler Heritage building. Although required, the pre-existing Board did not offer to facilitate the mandatory applications to NCUA.

We welcome and urge NCUA's involvement in the transition, and to do so recommend the following:

1. By the end of May, the entire Board, being the two prior members whose terms did not expire, and the newly elected Board members, and the newly elected supervisory committee, should meet and conduct business according to the Bylaws and Charter.
2. Unless some other proof is given, or there is an intervening court decision, operations should be conducted on the assumption that the 1956 Bylaws are still in effect, and that the results of the election at the meeting are valid – unless and until a court of law says otherwise.
3. With NCUA's supervision, once that new Board has met and continuity is established, by

a majority vote of the Board, noting the transition is effective, can approve resignations of any Board member who no longer wishes to participate.

4. Supply to us the requested documents that have not yet been provided.
5. Provide us also with a direct NCUA contact, as the prior Board/Officers/Attorneys apparently had.
6. We are open to all other appropriate considerations.

Sincerely yours,

THOMAS G. EAGLE CO., L.P.A.

/s/ Thomas G. Eagle
Thomas G. Eagle

TGE/

Encl.: Appx. A and B
12/27/2023 Snider to NCUA et al
12/27/2023 Snider to Dir. Morton
Emails between attorneys 3/21/2024
BH Profile 3/31/2024
Emails with NCUA Omb.
NCUA to Snider 6/15/2023

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