

Woman's Bank Account Cleaned Out

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An Española woman could be awarded up to \$1.29 million after a jury found, Dec. 2, that the Zia Credit Union violated the state's Unfair Practices Act.

After the five-day trial in Santa Fe, the jury decided that the Credit Union unfairly took \$110,000 from Stella Vigil's account in 2012 to pay down her daughter, Cassandra Trujillo's, debt to the institution. The trial started on Nov. 28.

The jury decided against the credit union on all nine counts Santa Fe attorneys Ben Allison and Justin Miller brought when they filed the lawsuit Jan. 17, 2013.

At issue was Trujillo's name as a joint account holder with Vigil, 65. Trujillo took out a \$145,000 loan with the Credit

Union, while she was an employee there in 2008, to cover other debts. She used her land and single-wide trailer as collateral.

When the collateral wasn't enough to pay down the debt, Trujillo filed for bankruptcy. The Credit Union froze Vigil's account and then later took the \$110,000 she had in two certificates of deposit, which was her inheritance from her deceased husband.

Trujillo never deposited any money into the account, making the money the sole property of Vigil.

Allison said the Credit Union used an appraiser who inflated his estimates to support loans larger than what the collateral was worth. In Trujillo's case, the appraiser, later censured for his behavior, estimated her trailer and land to be worth three times

its actual value. That meant when the Credit Union took possession of the land and trailer, following Vigil's bankruptcy, it still had a significant amount of uncleared debt.

"They knew they were making inflated appraisals," Miller said. "The problem was, they made the bad loan to begin with. Sometimes loans go bad and mistakes are made (but) they tried to cover by taking Stella's money, even though she had nothing to do with the loan."

Allison said, based on testimony given during the trial, up to 40-percent of the Credit Union's loans were appraised too high, meaning up to a third of their loan portfolio is larger than it should be.

"They're making a lot of money (that they) maybe

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shouldn't be making," Allison said.

Credit Union CEO and President David Woodruff said there was no official finding about the errant appraiser, and the issue was only brought up by Trujillo.

When Credit Union officials took Vigil's money, they were conducting a set-off, a Supreme Court-approved way for creditors to recover money they are owed.

A proper set-off would be for Credit Union officials to take money Trujillo had in an account with them, to pay off her outstanding loan.

Instead, they took the money from Vigil's account, operating under the theory that they could, because Trujillo was a joint account holder.

However, the jury found that none of the money in the account was Trujillo's, because she never contributed to it. Rather, she was on the account in case of Vigil's crippling sickness or death.

"The jury concluded it's not appropriate," Allison said.

Woodruff said it was unfortunate that the jury found against him, but the Credit Union officials felt they were operating according to state law and their own agreements with members.

"We were looking out for the

interests (of our) full membership," he said.

Credit Union officials did not intend to inflict any harm.

No notification

Allison and Miller disputed Woodruff's claim because Vigil never received notification that her account was at risk of having its funds taken, never received notification that the account was frozen and only learned her money had been seized after she got her monthly statement.

The jury also found that they violated their own policies, which stated they needed to notify Vigil if her account was at risk for seizure for debts she or Trujillo had incurred.

Vigil only found out her account had been frozen after she tried to take out some money to pay for her propane in December 2012.

The Credit Union never notified the federal bankruptcy court that it was going to seize Vigil's money, or that it had frozen her account.

In addition, Vigil previously signed off on Trujillo using the joint bank account as collateral for two loans of \$1,500 and \$900. When the Credit Union seized the \$110,000, it was for a debt that Vigil never signed for.

Damages

The jury awarded Vigil \$430,035 in compensatory damages. Because they also found that the Credit Union officials' behavior was in willful violation of the Unfair Practices Act, First Judicial District Judge Jennifer Attrep can triple the amount of damages as a deterrent to future bad behavior by the Credit Union and other businesses. The tripled damages are referred to as "treble damages" in court jargon.

"The Court has already ruled that Ms. Vigil presented evidence sufficient to support an award of punitive damages, which is the same evidence that supports trebling damages under the (Unfair Practices Act)," Allison and Miller wrote in a motion for judgment.

The Credit Union opposes that motion on the theory that Attrep already found that emotional distress damages cannot be recovered under the Unfair Practices Act.

"Thus, trebling (tripling) anything other than Plaintiff's economic damages which are \$110,035.26 is not appropriate," the Credit Union's response to Vigil's motion for damages states.

No hearing has yet been set on the motion for judgment, although it is ready for Attrep to rule on.