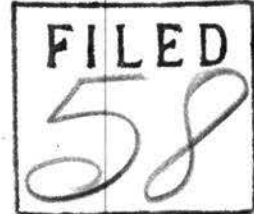


BUILDING AND LOAN:

Withdrawing shareholders are entitled to dividends.

May 29, 1940

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Honorable J. W. McCammon, Supervisor
Bureau of Building and Loan Supervision
Jefferson City, Missouri

Dear Mr. McCammon:

This department is in receipt of your request for an official opinion which reads as follows:

"On September 8, 1933, the Attorney General rendered an opinion which held that shareholders who have filed notice of withdrawal are not entitled to subsequent dividends or earnings. The opinion dealt with shareholders who have installment shares. We would like your opinion as to whether this ruling applies to a shareholder who is the owner of full paid shares."

As stated in your request, this department, on September 8, 1933, in an opinion addressed to Honorable Ira A. McBride, Supervisor of Building and Loan Supervision, held that withdrawing shareholders are not entitled to subsequent dividends or earnings. The writer of the opinion stated that he had "not been able to find any case in other jurisdictions in point on the subject matter stated in your letter. He then proceeded to quote the building and loan statutes applicable to the point involved and concluded that a withdrawing shareholder was not entitled to participate in the dividends for the following reasons: First, when one withdraws, his dues and obligations cease and he puts no more money in the association; second, he becomes preferred over non-withdrawing members as to the funds on hand for payment of withdrawal; third, he would be entitled to share in the profits made during the period required to accumulate a sufficient amount to retire his shares."

A reconsideration of the above opinion leads this department to the conclusion that the holding therein is not the law and should be overruled.

Section 5604, Laws of Missouri 1937, page 191, provides in part as follows:

"Any shareholder * * * wishing to withdraw * * *, shall, subject to the provisions of the by-laws, and his certificate of stock and the limitations hereinafter mentioned, have power to do so, upon giving one month's written notice of his intention so to do * * * or at such other time as the by-laws may provide. If given before a stated meeting, the time of such notice shall not be deemed to have commenced to run until the first stated meeting thereafter."

"The member so withdrawing, * * *, shall, if his stock be withdrawable according to * * * be entitled to receive the amount actually withdrawable at the time of making application for withdrawal etc."

"Such notice of withdrawal shall not, however, make such withdrawing shareholder a creditor of the association, but his status shall be and remain that of a shareholder."

Under the above statute the right of withdrawal is a privilege given to shareholders in building and loan associations and may be exercised absolutely until such right is changed by legislative enactment. State ex rel. Wagner v. Farm and Home Savings and Loan Association, 90 S. W. (2d) 93. As was said in 9 Corpus Juris 938, the right of withdrawal is an absolute one and cannot be arbitrarily withheld.

It will be noted that the statute provides that

"such notice of withdrawal shall not, however, make such withdrawing shareholder a creditor of the association, but his status shall be and remain that of a shareholder." It appears to be the intent of the Legislature that the person who has notice of withdrawal shall remain a shareholder and until paid shall be entitled to all benefits and subject to all liabilities of any other shareholder.

Since the rendition of the former opinion the question at issue has been passed on by two courts of other states and both have held that the withdrawing shareholder is entitled to dividends or earnings. In *Rocker v. Cardinal Building and Loan Association*, 179 Atl. Reporter 667, 13 N. J. Misc. 397, the court considered the reasons that have been assigned in the former opinion as to why a withdrawing shareholder is not entitled to dividends. The court said:

"* * * This rule, it seems to me, defeats equal participation in assets for it deprives a withdrawing member, unpaid perhaps for a long period, of dividends on his shares representing his proportionate share of earnings, the right to which is an incident of share ownership. The better rule is that membership continues after withdrawal and until payment or, at least, until the association breaches the membership contract by failing to obey the mandate of the statute as to payment of withdrawals. * * * * *"

In *Fredrick v. Mutual Building and Investment Company*, 128 Ohio St. 474, 191 N. E. 729, the Supreme Court of Ohio said:

"* * * * If the company complies promptly with the stockholder's request to terminate his membership and to withdraw his money, there can be no inequity in terminating his right to dividends. But if, in their discretion, the directors refuse to permit a member

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to withdraw from the company, or to have his money, his right to dividends persists as an incident to his continued ownership of stock."

The above rule seems to be more equitable and just than that which cuts off dividends from the withdrawing shareholder. One of the fundamental features of building and loan associations which distinguish them from other corporations is the right of a shareholder to withdraw his money. If through no fault of his own, the association is in such a condition that it cannot pay such shareholder, then why should he be penalized for something which is no fault of his. The association has his money and continues to use it and to receive returns upon it. While those members who continue to pay money into the association are supplying new capital with which the association may earn money with which to pay dividends, still such payments increase the shareholders' interests in the association and makes a larger sum on which he is entitled to dividends. Therefore, it would seem to us most unfair to refuse dividends to a shareholder who files notice of withdrawal when such amount to which he is entitled is not forthcoming.

In view of the above reasons it is the opinion of this department that the opinion of September 8, 1933, should be overruled and no longer considered the opinion of this department.

CONCLUSION.

It is, therefore, the opinion of this department that a shareholder who has filed notice of withdrawal is entitled to be paid dividends upon his shares of stock until his withdrawal request has been honored.

Respectfully submitted

APPROVED:

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