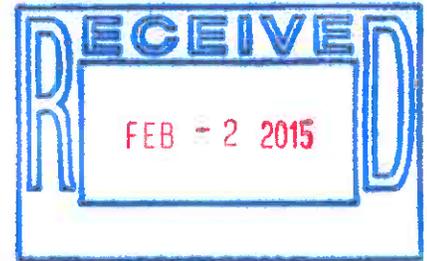


CEDAR RAPIDS CIVIL RIGHTS COMMISSION



BENITO TAPIA, )  
 )  
 Complainant, )  
 )  
 Vs. )  
 )  
 COLLINS COMMUNITY CREDIT UNION )  
 Respondent. )

CRCRC NO. 3288

PROPOSED DECISION

**PROPOSED ORDER**

**1. STATEMENT OF THE CASE**

1. The Complainant, Benito Tapia, is the Complainant in this matter. The Complainant filed a claim of Unfair Credit Practices on the basis of race as prohibited by Section 69.08 of the Cedar Rapids Municipal Code and by Section 216.10 of the Iowa Civil Rights Act.
2. A hearing was held in Cedar Rapids, Iowa, before the undersigned on September 29, 2014. The parties were given 30 days to submit briefs. The Complainant, Respondent and Commission each filed briefs.

**II. FINDINGS OF FACT**

1. Complainant's race is Native American, specifically Apache, and Hispanic.
2. Respondent is a credit union organized pursuant to Iowa Code Chapter 533.
3. On November 19, 2010, the Complainant visited a Marion branch of the Respondent for the purpose of opening a checking account. At the time, the Complainant met with a member consultant for the Respondent named Barbara Adams. Ms. Adams had worked for the Respondent since December of 2008.
4. Respondent's policies required Ms. Adams to view a customer's driver's license, obtain address, telephone number, date of birth and Social Security number.
5. The Complainant felt the credit score stated by Ms. Adams was not accurate and the Complainant ran his own credit score online and got an Equifax credit score of 563. Ms. Adams testified the credit score she got was 495. Mr. Tapia testified

that he was told 450 for a score. Mr. Tapia also testified that he was not asked his nationality or county of citizenship at any point during the meeting with Ms. Adams.

6. Respondent used the computer system called ChexSystems. ChexSystems is used by financial institutions on a national level and not limited to Respondent. ChexSystems is a computer- based system where specific qualifying criteria is entered and the system responds back as to whether the applicant is approved, declined, or review the account. It is based on a combination of the individual's QualiFile score and a credit report score. The decision to allow the account is based upon ChexSystems, not the Respondent.
7. Respondent uses the ChexSystems to make the decision of whether to allow a checking account or not.
8. ChexSystems reported a QualiFile score of 154 and a credit score of 495 on November 19, 2010.
9. A QualiFile score is based on information from a third party and not the Respondent.
10. As a result of the score Mr. Tapia contacted the Marion branch and spoke with Wayne Petersen, an Assistant Teller Manager/Member Service Representative for the Respondent. Mr. Tapia did not meet with Mr. Petersen.
11. Mr. Tapia believed that the manager from the main office of the Respondent would call him, but this never occurred.
12. In accordance with the policies and procedures, Ms. Adams provided to Mr. Tapia an adverse action letter. Mr. Tapia admitted that it was possible that he received the adverse action letter.
13. The Respondent admitted there is no direct supervision of member consultants such as Ms. Adams when they are declining requests for checking accounts such as the request made by Mr. Tapia.
14. Ms. Adams notified Mr. Tapia that he was declined a checking account product, but was offered a savings account based upon the ChexSystems score.
15. Ms. Adams testified that the only information that can be entered into the ChexSystems computer program is the name of the applicant, current address, Social Security number, date of birth, driver's license number and driver's license state.
16. Customers with similar scored have been declined credit by the Respondent in the past.

### III. ISSUE

#### To establish a prima facie case:

1. Whether Mr. Tapia is a member of a protected class under Iowa Code section 216.
2. Whether Mr. Tapia applied for credit.
3. Whether Mr. Tapia was qualified for credit.
4. And that Mr. Tapia failed to obtain credit.

If the prima facie case is established, a presumption arises that the creditor discriminated against the debtor. To rebut this presumption, the burden of proof shifts to the defendant “to articulate some legitimate, nondiscriminatory reason.” *Hamilton*, 436 N.W.2d at 338. If the Defendant is successful, the analysis continues to the third stage. At the third stage, the Plaintiff must prove by a preponderance of the evidence that the legitimate reason offered by the Defendant was not the defendant’s true reason but rather a pretext for discrimination.

### IV. ANALYSIS

In order to prove a discriminatory treatment with regard to credit practices under Iowa Code Section 216 Plaintiff has the burden of establishing by a preponderance of the evidence all elements. Cedar Rapids Municipal Code Section 69.08 governs these proceedings, provides in part that it shall be unfair or discriminatory practice for any:

(a) Creditor to refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of age, color, creed, disability, familial status, gender identity, marital status, national origin, race, religion, sex, or sexual orientation.

(b) Persons authorized or licensed to do business in this State pursuant to Chapter 524, 533, 534, 536, or 536A of the Code of Iowa to refuse to loan or extend credit or to impose terms or conditions more onerous than those regularly extended to persons of similar economic backgrounds because of age, color, creed, disability, familial status, gender identity, marital status, national origin, race, religion, sex, or sexual orientation. This subsection shall not be applied to limit Section 69.19(d) or any other provision.

1. The Court does find based upon the testimony given that Mr. Benito Tapia is a member of a protected class under Iowa Code section 216.

2. It is not disputed that Mr. Tapia applied for a checking account at Collins Community Credit Union and that Mr. Tapia was denied a checking account product, but was offered a savings account product.
3. The Court finds that the Commission and Mr. Tapia next were required to prove that Mr. Tapia was qualified for the checking account. No evidence was provided by Mr. Tapia or the Commission to prove that with either a score of 450 or 495 that he was qualified to open a checking account. However, the Respondent provided evidence that with the ChexSystems, checking accounts were not allowed for either score and thus were declined for those that applied for a checking account. The Respondent provided evidence at the hearing proving there was a legitimate, nondiscriminatory reason for denying Benito Tapia's request to open a checking account. Furthermore, neither the Commission nor Mr. Tapia have presented evidence that his race had anything to do with the decline to open a checking account.
4. Therefore, the Commission and Mr. Tapia have failed to prove that Mr. Tapia was qualified to open a checking account and the claim of discrimination fails under Iowa Code Section 216.
5. Furthermore, the Respondent provided a legitimate, nondiscriminatory reason for denying Complainant's request to open a checking account based up the ChexSystems.

**V. PROPOSED DECISION**

Based upon the evidence presented, neither the Commission nor Complainant has proven by a preponderance of the evidence that the Respondent engaged in discriminatory conduct toward the Complainant on the basis of race. Therefore, the Complaint against the Respondent is dismissed with costs to the Civil Rights Commission. Furthermore, since the Commission has failed to prove the Respondent engaged in discrimination the relief is denied.

DATED THIS 25<sup>th</sup> DAY OF January, 2015.

  
ROBIN L. O'BRIEN LICHT  
Administrative Law Judge

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