

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

**XXXX**

Docket No. 04 – 14

Share Insurance Appeal  
Shiloh of Alexandria Federal Credit Union

**Decision and Order on Appeal**

**Decision**

This matter comes before the National Credit Union Administration Board (Board) pursuant to §745.202 of NCUA Regulations (12 C.F.R. §745.202), as an appeal of the determination made by the Agent for the Liquidating Agent (ALA) for Shiloh of Alexandria Federal Credit Union (Shiloh). The determination involves the account balance for purposes of calculating the amount of share insurance available to the share account maintained under member account number XXXX at Shiloh by XXXX.

**Background and Initial Determination**

The Board ordered Shiloh closed due to its insolvency on April 12, 2013, and appointed itself Liquidating Agent. Shiloh, located in Alexandria, Virginia with assets of approximately \$2.4 million, had been victimized by fraud perpetrated by its manager, John Dupree, Jr., who embezzled a substantial sum of money over several years. There was no conservatorship in this case; instead, Shiloh was placed immediately into liquidation.

According to Shiloh's records, the balance in XXXX's share account at liquidation was \$200,227.06. Shiloh's records also showed XXXX to be the obligor on one loan, with an outstanding balance as of the date of liquidation of \$12,701.70. After diligent tracing of the records of Shiloh and review of its account statements with BB&T Bank, the ALA was able to reconstruct XXXX's account. The ALA determined that the account had a balance of \$77,095.83 as of the date of liquidation.<sup>1</sup>

XXXX appealed this final determination to the Board. In support of his appeal, XXXX submitted three share certificates (representing a consolidation of several previously issued certificates) and an August 4, 2012 account statement, along with a cover letter signed by

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<sup>1</sup> The aforementioned loan was offset against this amount. The \$77,095.83 was paid out as follows: \$12,719.20 transferred to pay off the outstanding loan; \$500 initial payout amount after liquidation; \$49,605.96 summer 2013 payout based on preliminary research; \$11,270.67 payout after research completed; and \$3,000.00 additional payout after reconsideration request.

Shiloh's Chairman of the Board of Directors. Relying on these documents, XXXX claimed to have had an insured balance at liquidation of \$147,347.70, together with accrued dividends on that amount from August 2012 through the liquidation date. He asserted that he made no withdrawals from his regular shares and that he did not cash in or redeem any of his share certificates.

## **Appeal**

In accordance with applicable NCUA regulations, the Board is charged with determining "the amount of the insured account or accounts of each . . . accountholder" at an insured credit union in liquidation. 12 C.F.R. §745.200(a). Ordinarily, the Liquidating Agent can reasonably rely on the records of the institution in determining the amount the members have in their share accounts. In cases like this one, however, where fraud and embezzlement occurred, and the account records were manipulated to disguise that illicit activity, reliance on the account records would be misplaced.

In this case, the ALA was able to obtain an accurate understanding of the actual share account balances through an examination of the bank statements and other records obtained from BB&T Bank. Shiloh did not offer its members share draft accounts; instead, all accounts were non-transactional regular shares or share certificate accounts. Therefore, any member wishing to make a withdrawal from his or her account would have had to request a check from the manager, who would issue the check, usually directly to the member, drawn on Shiloh's own account at BB&T. The member name and account number would be shown in the memo line on the check. Similarly, any deposit made to a member's account would in turn be deposited into the BB&T account, with a notation on the deposit ticket indicating the member account to which credit for the deposit had been provided. There was a clear link between Shiloh member account activity and activity involving Shiloh's BB&T account.

The ALA reconstructed XXXX's share account, using the BB&T records, and determined the actual liquidation balance in the account at liquidation. Specifically, beginning with the opening of this share account (No. XXXX) with a \$10,000 share certificate purchase in March of 2008, the ALA traced the deposit and withdrawal activity of the account up through the date of liquidation. The methodology followed by the ALA was as follows:

- Withdrawals from the account that were not listed on the Shiloh member account statement but for which a check, payable to XXXX, was found in the BB&T records were posted to account XXXX as debits. These totaled \$15,125.
- Check withdrawals that were listed in the Shiloh member account statement but for which no check against the BB&T account was found were credited back to account XXXX. These totaled \$50,000.
- Deposits recorded on the Shiloh member account statement but which could not be verified in the BB&T records as deposits were reversed. These totaled \$201,029.
- Deposits not recorded on the Shiloh member account statement but for which valid records could be found were credited to account XXXX as deposits. These totaled \$31,597.47.

The net effect of these adjustments was that the account had a balance of \$77,095.83 as of the date of liquidation. It is noteworthy that some of the deposits appearing on the member account statement but for which there was no verification were in significant amounts (e.g., \$100,029 on April 1, 2013; \$98,000 on April 3, 2013). XXXX has been unable to document the source of these funds. Despite XXXX's representations to the ALA that he had additional records at his Washington, D.C., residence that could validate his assertion of the share balance, he has not produced anything in addition to that which was initially provided to him and relied upon by the ALA. These documents are not supported by the documented activity, as reflected in the BB&T account transaction records and do not conform with the account reconstruction by the ALA.

Seizing upon the August 2012 account statement and cover letter from Shiloh board chairman Joseph Smith, XXXX relies on the records of Shiloh as support for his appeal. Shiloh's records, verified in the BB&T records, do reflect that XXXX made various deposits to purchase share certificates. The funds used to make these purchases came from accounts maintained by XXXX at other financial institutions, and the ALA has provided credit for these sums. However, the share certificates that the credit union held for XXXX and the August 2012 account statement do not accurately represent the net amount maintained by him on deposit. Despite XXXX's claim that he had made no withdrawals on his share or certificate accounts, the ALA was able to verify \$15,125 in withdrawals made by XXXX that were not charged to his account. These unrecorded withdrawals were traced using checks payable to him drawn on Shiloh's BB&T account.

In effect, XXXX's argument is that NCUA should be bound by what Shiloh's records reflect as the proper balance for insurance purposes. See, for example, 12 C.F.R. §745.2(c), which provides that, for certain purposes in the share insurance context, "the account records of the insured credit union shall be conclusive." There is a line of cases standing for the proposition that the credit union's records are controlling, regardless of whether the credit union or the depositor intended to create a different arrangement. See, e.g., *Waukesha State Bank v. NCUA Board*, 968 F.2d 71 (D.C. Cir. 1992) (account records are controlling despite evidence of contrary subjective intent of the depositor); *In re Collins Securities Corp.*, 998 F.2d 551, 554-55 (8<sup>th</sup> Cir. 1993) (upholding FDIC's longstanding practice of looking primarily at the failed bank's deposit account records in determining insurance claims); *Nimon v. Resolution Trust Corp.*, 975 F.2d 240, 245-46 (5<sup>th</sup> Cir. 1992) (Court refused to look beyond the account records, despite the depositors' claim that the bank had configured their accounts without proper authorization, noting that "when the account records are clear and unambiguous, their statement of the capacity in which funds are owned is conclusive").

The Board concludes that this argument is not persuasive for two primary reasons. First, the regulatory provisions specifying that account records are "conclusive" concern the existence of capacities or relationships that might form the basis for additional insurance coverage, such as trustee or joint owner. The regulation requires that the existence of any such relationship or capacity be discernible from the records. That issue is not present in this case. XXXX is the sole owner of account XXXX, as to which there is no uncertainty or debate. The regulation does not speak to the issue of whether the records are presumptively conclusive as to the balance in the account. Second, there is a recognized exception to the general rule pertaining to the conclusiveness of account records, which is in the event of fraud. See, e.g., *McCloud v. FDIC*, 853 F.Supp. 556, 559-60 (D. Mass. 1994) (noting the "well-established principle that records that would otherwise be conclusive may be attacked as fraudulent") (internal citations omitted).

Where, as here, the records themselves are fraudulent, their probative value in establishing the proper balance for share insurance purposes is nonexistent.

### **Conclusion**

The members of this credit union were victimized by fraud and embezzlement committed by Shiloh's manager, who deliberately and deceitfully manipulated credit union records to cover up his crime. Through diligent review of those records, tracing of funds, and verification through reconciliation of Shiloh's bank account records, the ALA was able to establish the correct liquidation balance in XXXX's account. These calculations and conclusions were provided to XXXX. Despite being invited on several occasions to provide documentation or other materials in support of his position, XXXX has not produced any substantive evidence to indicate that the ALA's analysis and determination is incorrect.

### **Order**

For the reasons set forth above, it is ORDERED as follows:

The appeal by XXXX, challenging the ALA's determination concerning the insured balance in account number XXXX at Shiloh of Alexandria Federal Credit Union, is denied.

The Board's decision constitutes a final agency determination. Pursuant to 12 C.F.R. 745.203(c), this final determination is reviewable in accordance with the provisions of Chapter 7, Title 5, United States Code, by the United States District Court for the Federal judicial district where Shiloh's principal place of business was located. Such action must be filed within 60 days of the date of this final determination.

So **Ordered** this 1<sup>st</sup> day of August, 2014, by the National Credit Union Administration Board.

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Gerard Poliquin  
Secretary of the Board