

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXX

Docket No. 01 – 16

Share Insurance Appeal
Lynrocten 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 Regulations¹ as an appeal of the determination made by the Agent for the Liquidating Agent (“ALA”) for Lynrocten Federal Credit Union (“Lynrocten”). The determination involves the actual balance at liquidation in account number XXXX, which was maintained jointly by XXXX and XXXX at Lynrocten.²

Background and Initial Determination

The Board ordered Lynrocten closed due to its insolvency on May 3, 2013, and appointed itself Liquidating Agent. Located in Lynchburg, Virginia with assets of approximately \$13.8 million, Lynrocten had been victimized by fraud perpetrated by its manager, Sue Newcomb, and its teller, Teresa Humphries, who embezzled a substantial sum of money over several years. Both women are presently incarcerated. There was no conservatorship in this case; instead, Lynrocten was placed immediately into liquidation.

The account in question was held jointly by XXXX and XXXX, but XXXX was the primary user of the account. According to Lynrocten’s records, the balance in the account at liquidation was \$1,737.08, comprising regular shares and a share draft account, with balances of \$5.87 and \$1,731.21, respectively. Lynrocten’s records also showed two separate loan balances owed by XXXX, in the amounts of \$21,827 and \$15,574, respectively. All of these amounts were described in an account statement attachment to a cover letter sent to XXXX and signed by the ALA on May 7, 2013. The letter directed XXXX to either challenge or confirm the identified balances using a “Members Confirmation and Affidavit Form,” a copy of which was also enclosed with the letter. The letter advised XXXX that he must use the form of affidavit to contest the amounts shown on the account statement and to claim any balance alleged to be owed to him on the share account.

¹ 12 C.F.R. §745.202

² XXXX died in February 2015, before the ALA reached her final determination regarding the account balance.

XXXX, ostensibly thinking the \$1,737.08 was simply the balance in his regular share account, indicated in the affidavit he returned to the ALA on May 24, 2013, that he agreed with this balance. He included a notation on the account statement, however, to the effect that he believed he should have had at least \$35,000 in his checking account. He also denied having any outstanding loans with Lynrocten. The ALA sent a letter to the XXXXs on October 4, 2013, acknowledging the dispute concerning the balance. The October 4th letter included copies of member account statements between 2007 and 2013 and directed the XXXXs to identify specifically those transactions with which they had a dispute.

In response, XXXX provided the ALA with an affidavit dated October 29, 2013, in which he characterized the balance identified by the ALA in the October 4th letter as “absolutely incorrect.”³ (Attachment 4). XXXX’s affidavit averred that several large deposits dating to 2007 and earlier had been made, and he questioned whether Lynrocten had properly credited these deposits to the account. He admitted, however, that he did not have any documentation to support the deposits.

By letter of November 5, 2013, XXXX provided a copy of a letter, on Lynrocten letterhead and addressed “to whom it may concern,” dated September 9, 2011 and signed by Teresa Humphries. (Attachment 5). The letter stated that the balance in the account at that time was \$7,343.26. However, there was a yellow sticky note in what XXXX asserted was Ms. Humphries’ handwriting affixed to the letter. On the note, someone had written “9000.00 Savings CD” and “36679.14 ck.” XXXX asserted in her November 5th letter that the sum of these two numbers is a correct reflection of the balance in the account at that time. She also asserted that Ms. Humphries deliberately misstated the balance in the text of the letter, and provided the notation on the sticky note to indicate the actual balance.⁴ XXXX also noted in her November 5th letter that XXXX had received “two or three inheritances” from his family and that he had told her that he had deposited them into Lynrocten. This corresponds to the deposits referenced in XXXX’s October 29th affidavit. XXXX implies that Ms. Humphries may have diverted these deposits and that they may not have been properly credited to the account. On February 25, 2014, XXXX called the ALA and shared more specific information about six separate deposits to the account for which she questioned whether proper credit had been given.

On December 9, 2014, the ALA notified the XXXXs that she had completed an account reconstruction. In the December 9th letter, the ALA indicated that no record could be located concerning the \$14,000 deposit that had previously been described in the February 25th telephone conversation with XXXX. The December 9th letter included a summary of all of the transactions affecting the account since January 2007, and the letter also had an attachment listing all unverified cash deposits and withdrawals from the account. The letter requested that the XXXXs review the reconstruction to identify any transactions they perceived to be illegitimate, with a particular focus on the cash transactions. In response, XXXX initially challenged all of cash transactions, but indicated she needed additional time to review them. The ALA granted an extension until January 31, 2015. Ultimately, XXXX disputed all of the cash transactions.

³ XXXX erroneously interpreted the October 4th letter as identifying a different statement balance (\$8,110.34) than the balance that was initially provided by the ALA.

⁴ XXXX requested the balance letter so she could respond to an inquiry about her financial resources that had been made by a rehabilitation facility where XXXX was receiving treatment. According to XXXX, Teresa Humphries deliberately understated the balance because both she and XXXX thought that the rehabilitation facility had no business asking for it.

On February 19, 2015, the ALA issued a preliminary findings letter in which all of the disputed cash transactions were reversed. A comprehensive account reconstruction, dating to January 2007 through the date of liquidation, was attached. This letter specified the cumulative balance in all accounts owned by the XXXXs to be \$38,744.17 as of the date of liquidation. In response, XXXX telephoned the ALA in March 2015 and identified several transactions conducted by check during 2010 that she characterized as fraudulent or otherwise illegitimate. The ALA conducted additional research into these allegations and concluded that personnel at Lynrocten had inappropriate, unauthorized access to checks against this account, and that the insiders forged checks to cover overdrafts in the account that were caused by their theft of funds from the account. In some cases, funds were diverted from the account by check to make fraudulent loan payments. The ALA reversed all of these illegitimate transactions, and also determined to go back another year in conducting the reconstruction, so that the beginning balance would be as of January 2006. As a result of these adjustments, the ALA revised her calculation of the actual liquidation balance in the account and, by letter of March 20, 2015, conveyed the revised determination, in the amount of \$54,849.08, to XXXX.⁵ The account reconstruction showed that credit had been properly given to each of the deposits that XXXX had previously questioned, except for two for which no record or documentation could be found.

Efforts to reach XXXX by telephone to discuss the matter were unsuccessful. The ALA sent a follow up letter on September 29, 2015, asking that XXXX respond to the revised account reconstruction and identify any particular transactions with which she may have had a question or concern. Receiving no response or acknowledgment, the ALA issued a final determination letter, confirming the \$54,849.08 figure, on October 30, 2015. XXXX filed her appeal of this determination with the Board Secretary by letter of December 26, 2015, which she supplemented with a follow up letter dated December 29, 2015.⁶

Discussion and Analysis.

In her appeal, XXXX essentially adopts the view that there must have been more money in the account. She notes that the checking account, although jointly owned, was under the primary control of XXXX whom, she implies, did not necessarily keep her fully apprised of either the activity or the balance in the account. She notes that XXXX earned a good salary during his long working career, and she asserts that he was a very frugal man, not given to lavish expenditures. She states that her disagreement with the ALA's calculation is partially based on doubts about the validity of the investigation done concerning the crimes committed by the former manager of Lynrocten, whom she characterized as "a liar and a thief." She states her belief that the former manager's plea deal with prosecutors was based on lies, and she implies that the ALA's calculation of her account balance is necessarily unreliable for that reason. She admits, however, that she does not have written records to support her views. Instead, she notes that she is relying on her "55 years of experience" with XXXX.

⁵ This balance reflected three share drafts that had cleared the account in the period immediately following the liquidation.

⁶ Although these letters were addressed to AMAC President Mike Barton, they were sent to the Board Secretary at NCUA's Alexandria address, which had been provided to XXXX as the correct address to file her appeal. In Board Secretary Poliquin's acknowledgement letter, he advised XXXX that NCUA would treat her two December 2015 letters, collectively, as her appeal of the ALA's determination.

XXXX attached to her December 26th letter copies of four transaction receipts purporting to document withdrawals from the account by XXXX. With respect to each of these transactions, totaling withdrawals in cash of \$3,000, XXXX has disputed the validity of the signature by XXXX.⁷ XXXX also attached documentation that purports to show a check in the amount of \$7,575.48 that was given to XXXX by a family member who was acting as executor for the estate of another relative. The funds represent a bequest from the estate to XXXX. Evidently, XXXX is asserting that XXXX deposited this check into his account at Lynrocten, but that the credit union did not provide the proper credit for it. In fact, however, the ALA did locate and account for this deposit in the account reconstruction.

In her follow-up letter of December 29, 2015, XXXX reiterates that XXXX earned a good salary during his working years and was “very determined in saving his money in the credit union.” She notes that, even after his retirement, XXXX was able to find work as a driver and that he continued his habit of saving money. She notes that he inherited significant amounts following the deaths of his mother and his sister (a total of \$80,000, including \$11,000 in cash) which, she asserts, he deposited into the credit union. She expresses incredulity that the final balance in the account would have been only \$54,849.08, barely more than two-thirds of his inheritance. She implies that Ms. Humphries, the convicted former teller, knows more than she has let on so far about the balance in this account.

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.⁸ 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 we know that fraud and embezzlement occurred, and we also know that the account records were manipulated to disguise that illicit activity, reliance on the nominal account records would be misplaced.

Instead, the ALA conducted an exhaustive reconstruction of the account, using as reference points Lynrocten’s bank statements, copies of checks, deposit activity, and teller transaction details. The ALA created a database with this information that was used to populate a spread sheet, and all transactions having any impact on XXXX’s account were evaluated and analyzed. The ALA concluded that the manager and the teller did make unauthorized withdrawals from the account, beginning in July 2006. Bogus cash deposits were posted to the account to prevent it from being overdrawn. In 2009, the manager and the teller ordered checks with a different number series for the account, unbeknownst to the XXXXs. They used the checks to access funds directly from the account, then used a kiting scheme to mask the withdrawals. Checks drawn on the account were routinely re-deposited to avoid overdrawing the account. The kiting scheme ended after about a month, when funds were advanced to the account from a fictitious loan and from cash on hand to cover a kited check drawn a few days earlier. Thereafter, illicit activity in the account consisted of cash deposits made as necessary to cover legitimate withdrawals, with the occasional diversion of funds from the account after a significant balance had begun to accumulate.

⁷ As noted above, in conducting her account reconstruction, the ALA discounted and reversed all of the cash transactions involving the account, including these four withdrawals disputed by XXXX.

⁸ 12 C.F.R. §745.200(a).

As documented in the attachment to the March 20, 2015 letter to XXXX, the ALA provided XXXX with a reconstruction of the share account that shows how the actual balance in the account at liquidation was calculated. Specifically, starting with the record balance as of January 1, 2006 (since no unusual transactions appeared in the account before that time), the ALA traced the deposit and withdrawal activity of the account up through the date of liquidation. Broadly speaking, the methodology followed by the ALA was as follows:

- All cash withdrawals from the account were reversed and credited back to the account, including all of the transactions disputed by XXXX. These totaled \$79,488.
- All deposits made in cash were reversed (in fact, XXXX did not identify or claim that cash deposits had been made to the account). Total: \$25,629.
- With respect to “teller corrections” affecting this account, these were companion, fictitious deposits and withdrawals that were done on a same-day basis to disguise the theft of funds from the account and to generate teller receipts given to the member at the time of a legitimate, in person transaction. Typically, these transactions netted to zero, and thus did not require adjustments to the account.
- Transfers from the account to XXXX’s separate, personal account were not reversed, since she received the benefit of these transactions. Similarly, transfers into the account from XXXX’s separate account were also not reversed.
- Transactions involving the check kiting scheme, both deposits and withdrawals, were reversed. This resulted in a net adjustment of \$6,219 being added to the balance.
- The bogus loan advance was also reversed. All dividend accruals posted to the account were viewed as legitimate and credited.

The net effect of these adjustments relative to the account balance shown on Lynrocten’s records as of the date of liquidation was that the liquidation balance was \$54,849.08 (which includes three legitimate drafts that cleared the account after the date of liquidation. As noted above, an offer to settle the account in this amount was made to XXXX under cover of the ALA’s October 30, 2015 letter.

XXXX disputes these adjustments. As discussed above, in her affidavit dated October 29, 2013, as supplemented in her letter of November 5, 2013 and telephone call to the ALA in February 2014, and again in her letters of December 2015 making the appeal to the Board, XXXX questions whether Lynrocten had properly credited several large deposits to the account. She also relies on the handwritten notation on the September 9, 2011 letter signed by Teresa Humphries as support for her view that the revised liquidation share balance is understated. Each of these arguments is discussed below.

Missing deposits. XXXX identified or described six different deposits by check to the account for which, she asserts, insufficient credit may have been provided by Lynrocten. Of these, the ALA was able to locate and confirm four as having been properly credited to the account. The ALA’s account reconstruction includes credit for each of them. The other two, in the amounts of \$14,000 and \$11,000 and allegedly occurring around the 2008 time frame, could not be located.

As discussed above, the methodology followed by the ALA in reconstructing the account balance (including any alleged missing deposits) was the creation of a searchable database using Microsoft Access software, into which was loaded all available data from member statements and the Teller

Detail Report pertaining to the XXXX account. With respect to these deposits, a separate, specific search for items meeting or approximating the amounts identified by XXXX was fruitless. As a double check, another agency account officer directed a different researcher to conduct another search, using various date and amount ranges, which likewise came up with no hits. The ALA also approached the issue from the standpoint of Lynrocten's third-party check processor, to which all items submitted for deposit into member accounts were sent. On a daily basis, the total of the amounts credited to individual member accounts was compared to the total amount of deposits included in the cash letter sent by Lynrocten to its processor. Based on the ALA's research, these two totals were always in balance, which supports the view that Lynrocten's computer records were reliable. Furthermore, according to the ALA's research, the *modus operandi* followed by the Lynrocten embezzlers did not include diversion or conversion of incoming deposits by check without posting them to the account. Theft of the funds occurred only after the deposits were credited. This tends to show that all deposits actually made to the XXXX account were, in fact, credited.

The ALA has cited other reasons to discount the likelihood that XXXX's recollection of these items is correct. First, in XXXX's initial affidavit, he states that he believed he had "at least \$35,000" in his account. This figure is nowhere near the approximately \$80,000 balance that XXXX is now asserting. Second, XXXX has not produced any documentation to support the existence of the purportedly missing deposits. In the absence of any support, such as a deposit receipt, contemporaneous reference in a checkbook register, or affidavit from the purported drawer of the checks, the allegation stands alone and unsupported. Third, other deposits from around the same time frame were identified and credited, which suggests that these two items may have never existed. Finally, one of the missing deposits is alleged to have been an inheritance from XXXX's grandmother, who died in 1997. It is unlikely that this money would have been deposited with Lynrocten some eleven years later.

On balance, while proof of a negative is, ultimately, not possible, the Board finds the due diligence performed by the ALA to be sufficient to overcome what amounts to an unsubstantiated claim by XXXX that there should have been more money in the account. Accordingly, the Board concludes that the aspect of XXXX's challenge that is based on the ALA's having provided insufficient credit to legitimate deposits lacks merit and is rejected.

Handwritten statement. XXXX relies on the handwritten statement attached to the correspondence from Lynrocten dated September 9, 2011, as support for her view that the notation by Teresa Humphries is evidence that the balance in the account at that time was actually \$45,679.14. While this number is substantially greater than the \$7,343.26 balance ostensibly identified in the body of the letter, it is *less than* the reconstructed figure (\$62,240.98) the ALA calculated as the balance as of that date, following the adjustments discussed above. As such, the handwritten notation does nothing to support XXXX's argument that the ALA has not provided full credit for the account balance.

Furthermore, to the extent XXXX is relying on the handwritten notation as a correct indication of the balance, she undermines her argument concerning the two missing deposits. Both deposits were allegedly made before the handwritten note was given. If those deposits had actually been made, the balance in the account would have been \$25,000 greater than what was revealed in the handwritten notation. It is reasonable to expect that Mr. or XXXX would have registered a

complaint, or at least made an inquiry, if they actually thought their account balance was short by \$25,000. Finally, while the handwritten notation is also some evidence that Teresa Humphries was engaged in deceptive manipulation of Lynrocten's account records, that information is neither new nor probative of the question of whether the ALA has correctly arrived at a reconstructed insured account balance in this case.

Lynrocten was victimized by fraud and embezzlement committed by its manager and teller, who deliberately and deceitfully manipulated its records to cover up their crime. Through diligent review of those records, tracing of funds, reversal of questionable or unverifiable transactions, and reconciliation of accounts with Lynrocten's third-party check processor, the ALA was able to obtain a reasonably good understanding of the actual balance in XXXX's account. In doing so, the ALA conducted a reasonable search for evidence of two deposits alleged to have been made but for which no records were found. XXXX's unsupported assertion that the deposits were made is insufficient to set aside the ALA's reconstructed balance. Her reliance on the handwritten statement of Teresa Humphries concerning the balance in the account is similarly misplaced. If anything, it supports a balance figure that is lower than the reconstructed balance developed by the ALA.

Order

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

The appeal by XXXX, challenging the ALA's determination concerning the ending balance in account number xxxx at Lynrocten 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 Lynrocten'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 24th day of March, 2016, by the National Credit Union Administration Board.

_____/S/_____
Gerard Poliquin
Secretary of the Board