

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXX

Docket No. 02 –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 \$19,432.58. Shiloh's records also showed XXXX to be the obligor on two loans, with outstanding balances as of the date of liquidation of \$29,792.66 and \$2,753.27, respectively. XXXX disputed both the share balance and the loan balances. She specifically challenged both loan balances and questioned whether proper credit had been given to her share account for payroll deduction amounts that she had been directing be deposited with Shiloh directly through automated clearing house (ACH) transfers. XXXX also asserted that she maintained a share certificate account with an initial balance of \$10,000 and a 5.5% interest rate, which she obtained in 2009. With regard to the loan balances, she acknowledged having obtained a car loan but asserted that only a few payments remained on that loan. She simply denied having any obligation on the other loan.¹

¹ According to the ALA, XXXX has since paid off the smaller loan. With regard to the larger loan, XXXX has repeatedly challenged her liability, asserting that she did not sign any loan documents or receive the benefit of any loan proceeds. While these assertions are questionable, in fact the Board does not have jurisdiction to determine loan amounts owed by members of failed credit unions. Such assertions are neither creditor claims nor insurance

The ALA obtained copies of Shiloh's bank account records from BB&T Bank in September 2013. Using these records, the ALA conducted a comprehensive review of XXXX's share account and determined that the reconstructed balance in the share account was actually negative \$75,041.96.

XXXX again challenged the share account balance calculation. She noted that she had already provided evidence of her ACH deposits, which she averred had not been properly accounted for by the ALA. She also indicated that she did not have any documents relating to her purchase of the \$10,000 share certificate, but that the ALA should have a record of it and that it should be paid out to her, with interest. She did not otherwise challenge or contradict the account reconciliation and reconstruction.

XXXX has appealed the ALA's final determination to the Board.

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. Shiloh operated from a church building and did not have a vault, so its cash transactions were minimal. In most cases, a 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 balance in the account at liquidation. Specifically, beginning with the opening of this share account (No. XXXX) in November 2007, 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:

claims, and neither the FCU Act nor NCUA regulations contain procedures by which the Board serves as an administrative arbiter of disputes in this area. Instead, the extent of XXXX's liability and the validity of her defenses are matters for resolution in court, to the extent that the ALA elects to pursue the matter.

- Withdrawals from the account that were not listed on the Shiloh member account statement but for which a check, payable to XXXX (or, in some cases, to her husband) was found in the BB&T records were posted to account XXXX as debits. These totaled \$17,600.
- 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 \$13,800.
- 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 \$111,374.57.
- Deposits not recorded on the Shiloh member account statement but for which a valid ACH record could be found were credited to account XXXX as deposits. These totaled \$21,000.

The net effect of these adjustments was that the account actually had a negative balance as of the date of liquidation. Even giving effect to actual deposit and withdrawal activity that was correctly reflected in Shiloh's member account statements, XXXX's account was overdrawn by \$75,041.96. It is noteworthy that many of the deposits appearing on the member account statement but for which there was no verification were in significant amounts (e.g., \$20,000 on October 1, 2009; \$22,420 on November 30, 2011). Nevertheless, XXXX was unable to document the source of these funds. Despite her several affidavits and letters, XXXX has simply made allegations in her opposition to the ALA's determination. Other than providing payroll records in support of her claim concerning the proper accounting for her ACH deposits, she did not produce any other records or documentation to support her claims.² Her focus has been on two aspects of her account relationship with Shiloh, each of which is discussed below.

ACH Deposits. XXXX repeatedly asserts that Shiloh failed to properly account for and credit her account with amounts she deposited into account XXXX directly from her paycheck. She asserts, for example, that Shiloh would routinely fail to provide the right amount of credit, such that she would only receive credit for \$150 when in fact she was depositing \$200. She also indicates that in other instances, Shiloh would fail altogether to capture and credit her account with the ACH deposits she was making. According to NCUA Fraud Specialist Elizabeth Martin, Shiloh did not routinely capture and account for all of the ACH payroll deposits made by XXXX. However, Ms. Martin has reviewed the payroll records provided by XXXX and has factored all of the ACH activity, in the correct amounts, involving XXXX's account in to her account reconstruction. As noted above, these deposits totaled \$21,000, all of which has been credited in arriving at the reconstructed balance in account XXXX. The additional materials provided by XXXX directly to the Special Counsel to the General Counsel did not contain any information that would alter or affect the ALA's determination. Accordingly, this aspect of XXXX's appeal lacks merit.

\$10,000 Share Certificate. Shiloh's records, verified in the BB&T records, do reflect that XXXX made a \$10,000 deposit in 2008 to purchase a share certificate. The funds used to make this purchase came from an account maintained by XXXX at another financial institution. The

² XXXX provided some additional materials directly to the Special Counsel to the General Counsel, which were received on July 3, 2014, and which have been considered by the Board in reaching its decision in this case.

records also reflect, however, that the share certificate had a one-year maturity and that the principal amount, plus interest, was folded back into the general balance of account XXXX after one year. Thus, upon maturity, the share certificate was no longer maintained in a separate sub-account or segregated from the general activity involving account XXXX. Full credit for the initial deposit was provided by Ms. XXXX in her account reconstruction and the amount is reflected in the negative balance ultimately arrived at by Ms. XXXX in her reconciliation.³ For share insurance purposes, moreover, upon the appointment of the Liquidating Agent, all deposit accounts are aggregated, regardless of what the character of the account had been during the time of the credit union's operation. Thus, a share certificate account, owned in an individual capacity, would be combined with other types of accounts owned in that same capacity, and the aggregate amount would be insured up to the statutory maximum. The share certificate category, in other words, is not a basis for separate insurance coverage. Accordingly, this aspect of the appeal also lacks merit.

Although XXXX did not make the argument, she could conceivably have asserted that NCUA should be bound by what Shiloh's records reflect as the proper balance for insurance purposes. In this case, that amount would be \$19,432.58. 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 (8th 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 (5th 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, as account XXXX is a single ownership account, 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).

³ The share certificate recites an interest rate of 5.75%; however, it appears from the records that Shiloh did not provide full credit at this rate. As calculated by AMAC, an additional \$334.98 should have been credited at maturity. Providing this credit now would effectively reduce the amount by which account XXXX was overdrawn, with the correct figure equal to \$74,706.98. AMAC has already advised XXXX that it will not pursue this claim.

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 her 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 1st day of August, 2014, by the National Credit Union Administration Board.

Gerard Poliquin
Secretary of the Board