

You and Your Estate

Some stories from my experience at Raymond James

As a Chartered Investment Manager and financial advisor, I truly experience the stresses and successes of our families. With wealth comes responsibility, potential conflict and above all, estate management over time. Our team follows a process to ensure we understand any obligations or possible obligations when designing a financial plan. If you would like to review aspects of your estate that may affect your money, or portfolio work done for your family to help you achieve your objectives call me at 647 696 0140. The incident below is not uncommon. I experienced it twice in the last several years in my practice with two different families.

A case study from the website of The Ombudsman For Banking Services and Investments (OBSI) is reprinted below

- All actions taken by a person using a power of attorney document (POA) must be for the benefit of the person who granted the POA.
- A financial firm can refuse a transaction request made by a person using a POA if the firm has a reason to be concerned that the request is not being used for the benefit of an account holder.

Mr. D was a terminally ill senior. He had named his daughter, Ms. M, to be a substitute decision maker for him in a POA. In early 2018, she contacted his investment firm and told the firm that her father had requested that she sell his mutual funds. She entered an order to sell all of his holdings and transfer the balance to a joint account belonging to her and her father. When they received this trade request, the firm attempted to contact Mr. D. to confirm that he agreed with the instructions they had been given. However, due to his poor health, they were not able to reach him.



The firm denies the attorney's request

Even though Ms. M was acting as her father's attorney under the POA, the firm refused to redeem Mr. D's mutual funds as she requested. The firm did not agree that the POA could be used to transfer Mr. D's funds into a joint account.

The nature of the transfer and the amount, nearly \$500,000, caused the firm's compliance department to flag the request as suspicious. The day after the trade request was issued, Mr. D passed away. The firm was not informed of his passing for another month.

In the meantime, Ms. M contacted the firm. She tried to convince them to reverse their decision. She reminded the firm that they had allowed her to make smaller but similar transfers in the past. She argued that with the POA she had the authority to act on her father's behalf or do anything her father could do. She believed that her trade request should be honored.

The firm was unwilling to change their decision. The firm told Ms. M that their decision was based on the Powers of Attorney Act of Mr. D's province. This Act states that all actions of an attorney must be for the sole benefit of the grantor.

POA is disputed

The firm was eventually informed that Mr. D had passed. Once they were aware of this, they requested the documents they required to settle his accounts according to the instructions in his will, including probate documents. Ms. M argued that this was unnecessary. She wanted to have the funds transferred to the joint account without having to probate the will.

The firm refused. They told Ms. M that because her father had passed away, the POA was no longer effective. They could not make the transfer for her as they were obliged to deal only with the executor under his will which she was not.

Ms. M did not agree with the firm's decision to reject the initial request or their decision to require that she probate her father's will. She brought her complaint to *OBSI.

What did OBSI do?

OBSI reviewed the firm's policies and procedures regarding mutual fund trades and trade approvals, as well as how their compliance reviews are carried out. They reviewed Mr. D's POA documents and account agreements and interviewed Ms. M. She confirmed that the intent of her original transfer request was to avoid probate for her father's estate.

Recommendation

OBSI found that the investment firm's decision to deny Ms. M's transfer request was justified because her request to transfer the value of her father's investment account to the joint account was not made for his benefit. The effect of such a transfer would have been to change the ownership of Mr. D's assets so that they no longer belonged to him alone. When Mr. D passed away, all funds in the joint account would have belonged solely to Ms. M, rather than to his estate. Ms. M would have had no legal obligation to use these funds according to her father's wishes as expressed in his will.

The firm was not aware of Mr. D's poor health at the time of the initial trade request. Even so, OBSI found it was reasonable and fair for the investment firm to reject the trade and wait for Mr. D's confirmation. The firm had reason to be concerned that the trade requested by Ms. M was not in Mr. D's best interest, and they took appropriate steps to protect Mr. D's accounts.

OBSI concluded that it was reasonable and fair for the investment firm to request probate on their client's will before distributing funds of this amount from Mr. D's account.

Source

*Ombudsman For Banking Services and Investments.

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