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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

**IN THE MATTER OF: CHARGES AGAINST ALEXANDER
SEROTA, CA, A MEMBER OF THE
INSTITUTE, BEFORE THE DISCIPLINE
COMMITTEE**

SETTLEMENT AGREEMENT

***made pursuant to Bylaw 510 (7.1) of the Bylaws of the
Institute of Chartered Accountants of Ontario***

Introduction

1. The Professional Conduct Committee ("PCC"), at their meeting of June 3, 2009, approved a charge against Alexander Serota, CA ("Serota") (Tab 1).
2. The charge pertained to professional work done by Serota with respect to the Estate of the late Harry Louis K ("the Estate") who died June 8, 1994. Mr. K had been a client of Mr. Serota's for many years.
3. Serota was named in the Will as a co-executor and took on the role as accountant for the Estate. As time passed Serota had sole control of the Estate as the co-executor became ill and could not act.
4. The documents referred to in this agreement are found in the Document Brief attached.
5. The PCC and Serota agree with the facts and conclusions set out in this settlement agreement for the purpose of this proceeding only, and further agree that this agreement of facts and conclusions is without prejudice to Serota in any other proceedings of any kind, including, but without limiting the generality of the foregoing,

any civil or other proceedings which may be brought by any other person, corporation, regulatory body or agency.

Background

6. Serota obtained his CPA designation in 1952 and CA designation in 1962. He has been in his current office location since 1960.
7. Serota's services are primarily personal income tax work and compilation engagements for real estate and construction clients. This has been the only Estate matter and he has not billed for time worked on it.
8. Mr. Gerald Lipson, CA joined Serota as a Partner in 1967. They did not have any staff until the early 1980's when Mr. Serota's son joined the firm. Serota's son has some accounting background but is not a CA. In the past two years two employees who are not CAs joined the firm. They bring some accounting background to assist with clients and work under supervision.
9. Serota and his staff attend professional development courses (11 courses of three hours per course) held by AJAG Management each year. AJAG is a provider of professional development training for accountants in the financial services sector. Courses offered include tax updates, accounting refresher and professional practice updates.

The Charge

10. Serota and David Buckstein were appointed as Executors and Trustees of the Estate of Harry K according to the Last Will and Testament of Harry K dated 10 April, 1994. Mr. K passed away on 8 June, 1994.
11. In addition to acting as executor, Serota acted as the accountant for the Estate and assumed responsibility for completing the Estate in a timely fashion and with due care. Throughout the relevant period of time Serota, in his capacity as the Chartered Accountant for the Estate, communicated with third parties dealing with the Estate on the letterhead of his firm, Alexander Serota & Company.

12. The value of Mr. K's Estate at the time he passed away was calculated by Serota at that time as \$2,096,475 (Tab 2). In May of 2008 Serota revised the value of the estate at passing to \$1,629,316 (Tab 3). A comparison prepared by the investigator is shown at (Tab 4).
13. From the schedules prepared by Serota it is clear that a significant portion of the Estate was distributed soon after Mr. K's death but by July 2008 approximately \$150,000 remained to be distributed (Tab 5).
14. In August 2007, three beneficiaries, Deborah, Randi and Marni retained a lawyer to inquire into the status of the Estate. A formal complaint was made to the Institute in a letter dated January 3, 2008.

Charge 1(i) – Serota failed to complete a proper accounting of the Estate in a timely fashion

15. At the time the investigator for the PCC (the "investigator") attended on Serota in June of 2008 there was no proper accounting of the Estate. There was no system of recording and tracking of Estate transactions. The books and records were not maintained in an organized fashion. No summary report of the net position of the Estate had been prepared.
16. Documents such as bank statements, dividend slips, legal correspondence and tax information were kept in paper file folders in no particular order.
17. A reorganization, reconciliation and accounting exercise was required to be undertaken by the investigator to approximate the Estate's financial position and to determine if there was any residue available for distribution to the beneficiaries. The investigator's overview of the asset flows from the Estate up to May 2009 based on the documents in Serota's possession is shown at (Tab 5).
18. Serota set up an Estate Trust bank account at RBC in 1994. He planned to consolidate the balances from Mr. K's various bank accounts into this account.

However, only one account was transferred in 1994 while the other accounts did not get transferred to the Trust account until 2000.

19. One account with the Toronto Dominion Bank ("TD Bank") was not transferred at all and the amount left in the account, \$8,853.68, was sent to the Bank of Canada as an unclaimed balance in 2003. Serota, after the appointment of the investigator, took the steps necessary to have this money returned to the Estate.

The Statement of Capital

20. The Statement of Capital prepared by Serota at the date of death in June 1994 (Tab 2) was significantly different to the one prepared in May 2009 (Tab 3). There were several reasons for the differences set out below.
21. Serota had not factored in numerous liabilities including a large tax liability of approximately \$200,000 in the earlier Statement of Capital.
22. The stocks shown on the Statement of Capital prepared by Serota for the Estate (Tab 2) were not complete. All of the stocks in Mr. K's safety deposit box as recorded by Serota on the safety deposit box inventory (Tab 6) were not shown.
23. Some dividend cheques for stocks were not shown on the Statement of Capital or safety deposit inventory. Many dividend cheques were not deposited by Serota in a timely manner and the cheques had to be returned to the payors for re-issue.
24. In addition the completeness and accuracy of stocks shown in the Statement of Capital in Serota's file were questionable for the following further reasons:
 - There are at least three different versions of the stocks listing in Serota's documentation;
 - There is correspondence in Serota's file to the respective share registrars of companies declaring lost certificates and requesting replacements;
 - The number of shares held for some of the companies on the Statement of Capital (Tab 2) did not match the number of shares on the inventory list of items in Mr. K's safety deposit box (Tab 6) prepared by Serota, and;

- There were a large number of mining stocks on the inventory list of items in Mr. K's safety deposit box prepared by Serota (Tab 6) which he did not include in the Statement of Capital (Tab 2).

Charge 1(ii) – Serota failed to distribute stocks and cash of the Estate in a proper and timely fashion

25. Notwithstanding the lack of accounting work done by Serota, approximately \$1.8 million of the estimated \$2.1 million Estate was distributed within three years of Mr. K's death in June 1994. Serota, however, failed to distribute the balance of the Estate, consisting of stocks and cash, in a proper and timely fashion.
26. As at May 2009, there was an estimated Estate balance comprising of stocks and cash of approximately \$150,263 (Tab 5).

Cash Legacies

27. The Will stipulated cash legacies of \$25,000 plus accumulated interest be paid to Mr. K's seven great-grandchildren. These amounts were to be set aside in a separate trust account for each great-grandchild and distributed upon the great-grandchild's 21st birthday.
28. Serota had no working paper tracking the ages of the great-grandchildren and when the legacies were due. He did not set up a separate trust bank account as stipulated by the will and issued \$25,000 payments to all the great-grandchildren, irrespective of their age, in February 2007.
29. Serota did not distribute these legacies in a timely or proper fashion in accordance with the terms of the Will since payments should have been made to grandchildren who turned 21 in 2004 and then again in 2008 along with the accumulated interest.
30. By June 2008 the interest payable on the grandchildren's bequests had not been calculated.

Gifts to Charities

31. The testator made specific bequests to three charities totaling \$15,000. Serota did not make the payments to these charities in a timely way. He finally sent cheques to each of the charities in October 2009.

Stocks

32. As at July 2008, when the investigator interviewed Serota, he was attempting to locate stock information to enable disposal of the stocks held by the Estate. Although the Will had left the timing of sale of stocks to the Executors' discretion until July 2008 Serota had not sold any stocks.
33. Serota prepared an updated listing of stocks held by the Estate of Mr. K as at July 2008. Stockholdings changed over the years due to various company structural changes including mergers and acquisitions. Serota's stock list showed a market value of stocks totaling approximately \$49,000 based on the TSX prices as at June 30, 2008. A comparison of the stock holdings lists prepared by Serota was prepared by the investigator (Tab 7)

Bonds

34. The Statement of Capital prepared June 1994 (Tab 2) indicated that the testator held State of Israel Bonds totaling \$33,900. The safety deposit box contained certificates for \$5,000 (Tab 6). The other certificates were held in other locations.
35. Serota was unable to provide supporting documentation or point to entries in the Trust account bank book to show when the bonds held outside of the deposit box were cashed because the Trust account bank book was missing entries. After the appointment of the investigator Serota determined that the bonds were cashed and paid into the Estate's account in January 2002.

Charge 1 (iii) - Serota failed to submit Estate tax returns in a timely fashion

36. Serota did not file tax returns for the Estate since 2003. Since 2003 the Estate continued to receive dividends and interest subject to tax. This Estate income ranged from approximately \$5,000 to \$6,000 per annum. This has resulted in Canada Revenue Agency penalties and interest due to late filing.
37. With regard to the tax returns that were filed up to 2003, there were tax penalties for late filing or late payments almost every year. Serota did not prepare the returns on time.

Charge 1 (iv) - Serota failed to deposit dividend cheques payable to the Estate in a timely fashion

38. Serota received dividend cheques from companies on behalf of the Estate.
39. Between 2001 and 2003 Serota did not deposit any of the dividend cheques received. As a result Serota was required to write to the respective share registrars of companies enclosing 40 cheques totaling \$1,136 to be re-issued because they were stale dated.
40. Subsequent to November 2003, Serota again did not deposit dividend cheques he received until 2006. Many cheques became stale dated and he had to write to the companies requesting replacement cheques. There were 44 stale dated cheques totaled approximately \$3,959 for the period 2004 to 2006.

Conclusion

41. In May 2009, with legal and accounting assistance paid for by himself, Serota provided a full reconciliation of the Estate from its opening to closing position as at March 31, 2009.
42. Serota has now completed and filed all of the Estate Tax Returns and has paid the penalties and interest himself. The Estate is now virtually complete.

Terms of Settlement

43. Serota and the Professional Conduct Committee agree to the following Terms of Settlement:

*Amended
on ADW
consent*

- a) A reprimand in writing by the Chair of the Discipline Committee;
- b) A payment by way of fine in the amount of \$3,000; *payable within 3 months of the Settlement Agreement being approved.*
- c) Full publicity in CheckMark Magazine of the terms of this Settlement;
- d) Notice to the Public Accountants' Council and to the CICA of the terms of this Settlement;

*Amended
on consent
ADW*

- e) Serota agrees to restrict his practice to exclude any professional work in connection with Estates;
- f) Serota will pay the costs of the investigation in the amount of \$5,000 *payable within 3 months of the Settlement Agreement being approved.*

44. Should the Discipline Committee accept this Settlement Agreement, Serota agrees to waive his right to a full hearing, judicial review or appeal of the matter subject to the settlement agreement. The charges approved by the Professional Conduct Committee and dated July 29, 2009 shall be forever stayed.

45. If, for any reason, this Settlement Agreement is not approved by the Discipline Committee, then;

- a) This Settlement Agreement and its terms, including all Settlement Negotiations between the Professional Conduct Committee and Serota leading up to its presentation to the Discipline Committee, shall be without prejudice to the Professional Conduct Committee and Serota;
- b) The Professional Conduct Committee and Serota shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations set out in the charges, or negotiating a new Settlement Agreement, unaffected by this Settlement Agreement or the Settlement Negotiations;

- c) The terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of the Professional Conduct Committee and Serota or as may be required by law.

Disclosure of Settlement Agreement

46. This Settlement Agreement and its terms will be treated as confidential by the Professional Conduct Committee and Serota, until approved by the Discipline Committee, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Discipline Committee, except with the written consent of the Professional Conduct Committee and Serota, or, as may be required by law.
47. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Discipline Committee.

All of which is agreed to for the purpose of this proceeding alone this 25th day of October 2009.



PAUL F. FARLEY
SENIOR COUNSEL,
PROFESSIONAL CONDUCT COMMITTEE
On behalf of the Committee


ALEXANDER SEROTA, CA
on his own behalf