

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

GALE L. SANTORO, JOSEPH J. :
SANTORO, and JAIME LYN :
SANTORO as Beneficiaries of The :
Amended and Restated Declaration of :
Trust of Joseph A. Santoro – 2009, :
Petitioners, :

v. :

C.A. No. PC-2022-06623

GUIDO R. SALVADORE as Trustee of :
The Amended and Restated Declaration :
of Trust of Joseph Santoro – 2009, :
Respondent. :

DECISION

STERN, J. After a four-day bench trial, the Court now issues its decision on Petitioners, Gale L. Santoro (Gale¹), Joseph J. Santoro (Joey), and Jaime Lyn Santoro’s (Jaime Lyn) (collectively, Petitioners) request to remove Guido R. Salvatore (Trustee) as Trustee of The Amended and Restated Declaration of Trust of Joseph Santoro – 2009 (the Trust). Jurisdiction is pursuant to Rule 52 of the Superior Court Rules of Civil Procedure.

I

Preliminary Facts²

Joseph A. (Joseph) and Martha (Martha) Santoro formed Santoro Oil Company, Inc. (Santoro Oil) on November 9, 1973, for the purpose of selling home heating oil. The business

¹ The Court refers to Petitioners by their first names for ease of reference given they all share the same last name. No disrespect is intended.

² This Preliminary Facts section is largely derived from facts presented to the Court during Petitioners’ Motion for Summary Judgment. The Court intends for this section to set the scene for the testimony the Court heard at trial.

initially served Rhode Island and has since expanded its operations to Virginia, Massachusetts, North Carolina, and Connecticut.

The Santoro family's relationship with Attorney Salvadore, the current Trustee, dates back to 2000. Trustee admits that he has served as legal counsel to the following Santoro-brother owned entities: Corliss Street, LLC; Domestic NC, LLC; Domestic VA, LLC; Glow, LLC; Millbury Associates, LLC; Petrolex II, LLC; Providence Realty Associates, LLC; Sanoco, Inc.; Santo Crescent, LLC; Santo Harlow, LLC; Total Energy Capital Corporation; and Total Energy, LLC (collectively, the Entities). Trustee also drafted cross-purchase agreements for each of the Santoro Entities. The agreements allow for a member to be bought out of their interest after their death, pursuant to their corresponding shares.

In 2009, Joseph created a Trust for the benefit of his wife and children. (Pet. ¶ 8; Ans. ¶ 8 (admitting the same)). Shortly thereafter, he became ill, and Gale became his caregiver. (Pet'rs' Mot. for Summ. J. Ex. D, ¶ 4.) While sick, Joseph assigned many of his business ownership interests to the Trust. He amended the Trust in 2018, which is now controlling. Joseph passed away on November 21, 2021, with his wife, Gale, and his two children, Joey and Jaime Lyn, surviving him. After Joseph's passing, Attorney Salvadore succeeded Joseph as Trustee. (Pet. ¶ 20; Ans. ¶ 20 (admitting the same)). The Trust required the assets within it to be divided into a marital trust for Gale and a family trust for Gale and the children.

On November 21, 2022, Petitioners commenced this action by filing a petition for removal of Trustee. The Petition alleged five counts: (1) breach of Trustee's fiduciary duty to properly administer the Trust; (2) breach of Trustee's fiduciary duty for Trustee's failure to account and furnish information; (3) breach of Trustee's duty of loyalty; (4) a request to remove Trustee; and

(5) a request for instructions from the Court to order the successor trustee to provide an accounting and investigate and prosecute all claims belonging to the Trust. *See generally* Pet.

Trustee filed his motion for summary judgment on March 31, 2023, which the Court denied on May 25, 2023. (Docket). After further discovery, Petitioners filed their own motion for summary judgment on October 17, 2023. *Id.* After briefing and argument, the Court denied on December 21, 2023 most of that motion, holding that trial was needed to resolve factual disputes. On April 9-12, 2024, the Court—sitting without a jury—held a trial with witness testimony to determine whether Trustee should be removed. The Court now issues its decision.

II

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure provides that “[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon[.]” Super. R. Civ. P. 52(a). This means that the trial justice “weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.” *Id.* (internal quotations omitted). *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984)).

“When a case is tried without a jury, ‘the task of determining credibility of witnesses is peculiarly the function of the trial justice[.]’” *Jotorok Group, Inc. v. Computer Enterprises, Inc.*, No. PC01-3237, 2005 WL 2981658, at *4 (R.I. Super. Nov. 4, 2005) (quoting *State v. Sparks*, 667 A.2d 1250, 1251 (R.I. 1995) (further citation omitted)). The factual determinations and credibility assessments of a trial justice traditionally are accorded a great deference because it is “the judicial officer who . . . actually observe[s] the human drama that is part and parcel of every trial and who has had an opportunity to appraise witness demeanor and to take into account other realities that

cannot be grasped from a reading of a cold record.” *In re Dissolution of Anderson, Zangari & Bossian*, 888 A.2d 973, 975 (R.I. 2006).

Our Supreme Court has recognized that a trial justice’s analysis of the evidence and findings in the bench trial setting “need not be exhaustive,” stating that, “if the decision reasonably indicates that [the trial justice] exercised [his or her] independent judgment in passing on the weight of the testimony and the credibility of the witnesses[,] it will not be disturbed on appeal unless it is clearly wrong or otherwise incorrect as a matter of law.” *Notarantonio v. Notarantonio*, 941 A.2d 138, 144-45 (R.I. 2008) (quoting *McBurney v. Roszkowski*, 875 A.2d 428, 436 (R.I. 2005)). “Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.” *Hilley v. Lawrence*, 972 A.2d 643, 651 (R.I. 2009) (quoting *Donnelly v. Cowsill*, 716 A.2d 742, 747 (R.I. 1998) (internal citation omitted)).

III

Trial³

At trial, the Court heard from just two witnesses: Trustee and Gale. Trustee testified both as a witness for Petitioners and in his own defense as Respondent. Testimony spanned three days, and the parties entered hundreds of exhibits for the Court’s consideration. Each side made a closing argument on the fourth and final day of the trial.

Petitioners first called Trustee to testify about his administration of the Trust. Trustee was generally responsive to questions. The Court mostly found the Trustee to be credible, with—at

³ The transcripts in this matter were not ordered. To the extent the Court refers to the trial transcripts, all references are to the unofficial, rough draft transcript provided by the Court Stenographer. Thus, any citations and quotations incorporated in this Decision are subject to change, either in substance or to line and page references.

times—glaring admissions of maladministration and an overall lack of understanding for the needs and interests of Petitioners. Trustee testified about his extensive and impressive legal career, including his longstanding relationship with the Santoro family. Unique to this dispute, Trustee’s testimony displayed his inexact memory, failure to effectively communicate with Petitioners, and neglect to comprehend his obligations as Trustee.

Trustee’s testimony began with a discussion of his role and awareness of his duty to disclose conflicts of interest, his duty not to self-deal, and his supposed familiarity (or lack thereof) with the rules of professional conduct. Trustee testified that his prior experience as a Trustee was extremely limited and involved serving for a now-concluded real estate trust and his own personal trust. Trustee’s testimony then explored his role overseeing the Trust while he remained counsel to the Santoro brothers and Santoro Entities. The Court found this preliminary testimony credible.

Trustee testified that he was counsel to the Santoro Entities while also serving as a member of those Entities in his capacity as Trustee before the cross-purchase agreements were executed. In addition, Trustee testified to his advice to the Santoro Entities and admitted that he counseled the Entities on how to end the agreement with Gale that provided her with continuing fringe benefits. Trustee also testified that he filed estate tax returns for the Trust, charging \$20,000, but admitted later in testimony that the tax filing remains incomplete and inaccurate two-and-a-half years after Joseph’s death. Setting aside the Court’s substantive concerns of Trustee’s testimony, the Court found these statements credible.

Further, Trustee admitted that he did not monitor the monthly statement activity for the Trust, did not recognize the statements from the various banks where funds were maintained, and was unaware that for months he kept—at times—\$11 million in non-interest bearing accounts. Trustee also testified that he did not review whether timely payments were made to Gale from the

Marital Trust, explaining that it was not his duty but the responsibility of the investment manager, Hall Capital, to provide those payments. While jarring at times, the Court found Trustee's testimony to be credible as to his administration.

Trustee testified that the accountings were prepared by the CPA, and he did not check or even look at them. During the discussion of the accounting, Trustee expressed that he did not have to provide notice of the fees he charged the Trust because the Trust document did not require it. When testifying to specific aspects of administering the Trust, Trustee stated—in contravention of his deposition—that he did not recall any meetings with Gale where she was upset. The Court found this testimony to be—while also concerning—credible. Specifically, the Court subscribes to the notion that Trustee could not recall Gale becoming emotional, but attributes this to Trustee's failure to adhere to his duties as Trustee.

Next, Petitioners called Gale to testify. Gale presented as a sympathetic witness who displayed authentic concern for her family. The Court found her testimony to be entirely credible. At times, Gale became emotional during her testimony about Trustee's treatment of her and her children. The Court believes Gale's emotion was genuine, and her testimony assisted the Court in understanding the breakdown in the relationship between Trustee and Petitioners. The Court also appreciated Gale's honesty about her knowledge—and lack thereof—concerning the assets and transactions underlying the Trust.

Gale began by discussing her interactions with Trustee. Gale testified that, when the Trust was established in 2009, she did not wish to serve as Trustee herself because she was unfamiliar with the various business responsibilities involving the Trust. Gale testified that Trustee offered to serve. Following her husband's death, Gale testified that she contacted Trustee about assisting her with filing life insurance claims and setting up payments to her from Hall Capital. Trustee testified

that he sent a letter on behalf of Gale to United of Omaha informing the company that he represented Gale after Joseph had recently passed. Gale stated that she had to follow up multiple times with Trustee on the status of the life insurance claims, was scolded by Trustee for doing so, and ultimately had to complete the filing of the life insurance claims herself.

During those early engagements, Gale expressed a desire to meet directly with Hall Capital. Following a meeting with Hall Capital, she testified that Trustee then yelled at and ridiculed her for doing so. Gale also testified that Trustee wrongfully informed her that she was not included as a beneficiary of the family Trust, leaving her upset and in tears at the possibility that she was neglected by her late husband. At a later point, Gale uncovered that Trustee had inaccurately filed paperwork with the cemetery where her late husband was interred and that instead of Gale, Trustee—in his individual name and capacity—was made beneficiary of the family plot. Gale also testified that Trustee either failed to fully investigate Trust assets that she informed the Trustee of or did not communicate with her whether Trustee's investigation was made into Trust assets.

In response to that testimony, Trustee claimed that some of the trust assets indicated by Gale, loans payable to her late husband, were repaid before his death or constituted assets that were never within the scope of the Trust. Trustee also testified that at some point prior to Joseph's death, he discussed with Joseph that Trustee represented the Santoro brothers in a transaction that would exclude Joseph from a Santoro entity, Ocean Associates.

IV

Conclusions of Law

A

Removal of Trustee

G.L. 1956 § 18-2-1 states that:

“whenever a trustee, either original or substituted . . . refuses to act or is incapable of acting as trustee, then any person interested under the trust . . . may apply to the superior court and the court may at that time, after due notice to the parties in interest, or to any of them that the court shall adjudge to be necessary parties, appoint some suitable person or persons to be trustee or trustees, or new trustee or trustees, as the case may be, under the trust.” Section 18-2-1.

“The primary jurisdiction for removal of a trustee . . . lies with the discretion of the Superior Court.” *Petition of Statter*, 108 R.I. 326, 337, 275 A.2d 272, 277 (1971) (citing *Garneau v. Garneau*, 63 R.I. 416, 9 A.2d 15 (1939)). “In deciding such cases[,] the court’s paramount duty is to see that the trust is properly executed and that the beneficiaries are protected.” *Petition of Statter*, 108 R.I. at 335, 275 A.2d at 277 (citing Bogert, *Trusts and Trustees* (2d ed.) s 527 at 378-79).

Former Chief Judge of the New York Court of Appeals and later Justice of the Supreme Court of the United States, Benjamin Cardozo, noted that a “trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate.” *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928).

In *Sinclair v. Industrial National Bank of Providence*, 89 R.I. 461, 153 A.2d 547 (1959) our Supreme Court determined that:

“[b]roadly speaking it is clearly established that a trustee must give undivided loyalty to the trust confided to his care and to its beneficiaries. It is [clearly] the policy of the law to see that in administering the trust he shall not be tempted in any way by conduct or circumstances to act otherwise than with complete

loyalty to the trust and its interest. He must at all times exercise a high standard of honor and avoid all situations and transactions that tend to call his good faith into question and to create in himself rights possibly conflicting with those of the beneficiaries.” *Sinclair*, 89 R.I. of 469, 153 A.2d at 552 (quoting *Dodge v. Stone*, 76 R.I. 318, 323, 69 A.2d 632, 634-635 (1949)).

“Although the general rule is that trustees should remove themselves when a conflict of interest arises that may compromise their duty of loyalty to the beneficiaries of a trust, ‘[t]he most commonly recognized exception to application of the rule is that where the settlor has expressly or impliedly approved of [a] . . . conflict of interest position.’” *Cuzzone v. Plourde*, No. 03-0524, 2005 WL 2716749, at *2 (R.I. Super. Oct. 17, 2005) (quoting Bogert, *Law of Trusts and Trustees* § 543 (1993)). Rhode Island courts are generally more reluctant to remove trustees appointed by the settlor rather than a court or third party. *Cuzzone*, 2005 WL 2716749, at *2 (citing *Petition of Statter*, 108 R.I. at 338, 275 A.2d at 277). According to the Comment on Clause (a) subsection b of § 107 of Restatement (Second) of *Trusts*, grounds for removal of a trustee include, *inter alia*, “lack of capacity to administer the trust (see § 89); the commission of a serious breach of trust . . . [and] refusal to account[.]” Restatement (Second) *Trusts* § 107.

Because our Supreme Court has yet to expressly articulate the amount of proof needed to remove trustees, an examination of foreign law is helpful. *See Cuzzone*, 2005 WL 2716749, at *3. In *Cuzzone*, Judge Silverstein looked to Delaware law, as will this Court. *Id.* Both the Delaware Court of Chancery and the Delaware Supreme Court “note that because the removal of a trustee is such an extreme form of relief, [c]ourts should exercise their authority . . . only upon a showing that the trustee has failed to perform his duties through more than mere negligence.” *Id.* (citing *Capaldi v. Richards*, 870 A.2d 493, 496 (Del. 2005) (providing that a court “may only remove a trustee ‘who fails to perform his duties through more than mere negligence’”) (quoting *McNeil v. McNeil*, 798 A.2d 503, 513 (Del. 2002)).

Trustee Breached His Fiduciary Duties

“A fiduciary duty ‘is one of trust and confidence and imposes the duty on the fiduciary to act with the utmost good faith.’” *Poletti v. Glynn*, 234 A.3d 941, 945 (R.I. 2020) (quoting *Notarantonio*, 941 A.2d at 145). “[A] fiduciary relationship can arise either by virtue of a strong personal or familial relationship of trust or by formal relationships[.]” *Poletti*, 234 A.3d at 945 (quoting *In re Estate of Ross*, 131 A.3d 158, 167 (R.I. 2016)). A trustee owes a fiduciary duty to a beneficiary. *See Branson v. Louttit*, 213 A.3d 417, 435 (R.I. 2019).

“In general, the elements of a fiduciary duty claim consist of ‘(1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach.’” *Chain Store Maintenance, Inc. v. National Glass & Gate Service, Inc.*, No. Civ. A. PB 01-3522, 2004 WL 877599, at *13 (R.I. Super. Apr. 21, 2004) (quoting *Griffin v. Fowler*, 579 S.E. 2d 848, 850 (Ga. 2003) (*rev’d on other grounds*)).

It can hardly be disputed that a fiduciary relationship exists between Trustee and Petitioners. *See Poletti*, 234 A.3d at 945-46; *see also U.S. v. Jicarilla Apache Nation*, 564 U.S. 162, 172 (2011) (stating “the trustees had a fiduciary obligation to act in the beneficiaries’ interest when administering the trust”). Accordingly, Petitioners have established the first prong of the test for breach of a fiduciary duty. *See Chain Store Maintenance, Inc.*, 2004 WL 877599, at *13. Further, the Court heard competent evidence to support a finding that Trustee breached his fiduciary duties to Petitioners through more than mere negligence.

First, the Court finds that Trustee truthfully testified that he did not investigate or ensure that all Trust assets were collected into the Trust. This is encapsulated by Trustee’s lack of knowledge as to whether nearly \$2.6 million in Trust assets included a 401k and other assets and

how long it took for Gale to receive income from the same. Next, Trustee admitted that he never examined Gale's personal financial situation to determine if she would need access to the principal of the Trust. *See* Trust Section IV.c. At some point, Gale and Trustee agreed that Gale would receive \$15,000 of Trust income per month; she credibly testified that she only receives \$3,300 now after Trustee stopped paying her the full \$15,000 in August of 2022. Trustee has neglected to notice that Gale still does not receive the entire amount owed to her. The Court views this testimony from Trustee as credible, after all, given that he is essentially admitting to neglect and failure to understand basic Trust information.

Additionally, Trustee failed to keep informed of happenings involving Santoro entity, Domestic NC. Specifically, Trustee stated that he could not recall notifying Joey and Jaime Lyn of their ability to exercise a cross-purchase agreement for Domestic NC while Trustee assisted the Santoro brothers with their cross-purchase agreements of Domestic NC. According to Trustee's testimony, John and Anthony Santoro bought out Joseph's shares of Domestic NC in the cross-purchase transaction, even though Joey and Jaime Lyn were supposed to hold those shares. Trustee's failure to recall whether he informed Joey and Jaime Lyn of their rights leads to the reasonable inference that he neglected to do so.

Moreover, Trustee's actions surrounding the tax filings for the Trust and Joseph's estate trouble the Court. When filing the estate's return for year of death, Trustee acknowledged that he improperly recorded Joseph's date of death, causing the entire return to require refiling. Again, this acknowledgement is credible as it's an admission. Trustee testified that he had a conversation with Ollu Olapinyadi (Ollu) from the Rhode Island Division of Taxation, and Trustee "relied" on Ollu to correct Joseph's date of death. Trustee further stated that Ollu is "not pressuring him right now." Further, Trustee admitted on the stand that he has failed to respond to multiple requests by

the Division of Taxation and that nothing “has been disallowed.” The Court views Trustee’s testimony about the taxes as credibly establishing his neglect.

Likewise, in 2021, Trustee testified that he never consulted with Petitioners or brought to a vote any decisions or distributions involving LLCs in which the Trust had an interest. Instead, Trustee testified that none of the entities normally disbursed monthly profits to shareholders, opting to re-invest earnings. The Court finds this remark credible because of Trustee’s unique positioning as both Trustee and attorney for the various Entities. The Trust’s accountant offered in sworn testimony that the companies had previously distributed monthly profits to members. The Court finds that Trustee breached his duty to Petitioners by failing to ask Petitioners if they wanted to vote or receive profit distributions from the LLC or file a petition for instructions with the Court.

Of note, the Court heard a troubling and credible admission from Trustee that he has permitted—at times—over \$11 million in Trust assets to remain in a non-interest bearing checking account for the duration of his service as Trustee.

Trustee’s acknowledgment that he failed to invest a portion of the principal of the Trust was in direct contravention with the plain language of the Trust. In relevant part, the Trust provides the Trustee “shall have the power, without any court order or proceeding: . . . 2. [t]o invest and reinvest either in real estate or personal property” (Pet’rs’ Mot. for Summ. J. Ex. K, at 17.) Therefore, the Court finds that Trustee’s failure to create even minimal value for the Trust—an issue our Supreme Court has yet to weigh in on—amounts to a breach of Trustee’s fiduciary duty.

Albeit in different jurisdictions and in different contexts, courts have held that a fiduciary has a common law duty to make certain funds productive and that fiduciary may be liable to the estate if they fail to invest those funds. *In re Consupak, Inc.*, 87 B.R. 529, 539 (Bankr. N.D. Ill.

1988) (citing *Judge v. Pincus, Verlin, Hahn & Reich, P.C. (In re J&J Record Distributing Corporation)*, 80 B.R. 53, 55 (Bankr. E.D. Pa. 1987)).

Similarly, the Court is concerned by Trustee's revelation—a credible admission at that—that he holds the majority of Trust assets in single bank accounts that are well in excess of the Federal Deposit Insurance Corporation's (FDIC) standard maximum deposit insurance amount. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, 124 STAT. 1650. The Court views this as further evidence that the Trustee did not take his obligation to Petitioners seriously and jeopardized the Trust's corpus and interest.

Taking these various violations together, the Court determines that Trustee has breached his fiduciary duties owed to Petitioners and has, therefore, met prong two of the Court's breach inquiry. *See Chain Store Maintenance, Inc.*, 2004 WL 877599, at *13.

Finally, the Court finds that Trustee's breaches have caused both Petitioners and the Trust to suffer damages. *See id.* Trustee has paid himself substantial fees of \$10,000 per month, a fee that is certain to be challenged in a later proceeding. *See Kumble v. Voccola*, Nos. PB-2012-3338, PB-2012-3476, 2017 WL 2159096, at *11 (R.I. Super. May 11, 2017) (finding it unreasonable “to use the percentage-based model as a starting point for the Trustees' fee for general trustee services”) *affirmed* 253 A.3d 1248. Even if our Supreme Court permitted Trustee to recover a percentage-based fee for his services, Trustee admitted that he has never submitted an invoice to the Trust showing his services rendered. Moreover, although our Supreme Court has not finally determined whether a Trustee can recover his attorneys' fees from the Trust in an action seeking his removal, it is fair for the Court to query whether the substantial funds expended by Trustee benefited the Trust and Petitioners. *See id.*

Not only did Trustee’s self-serving use of Trust funds prompt Petitioners to suffer damages, Trustee’s failure to properly administer the Trust caused Petitioners to incur more in lost monies. Specifically, Joey and Jaime Lyn could not exercise or weigh in on their cross-purchase rights with respect to the Domestic NC entity, Gale received less Trust income than she had originally sought, Trustee failed to properly file taxes, and Trustee allowed millions in assets to sit dormant in non-interest bearing accounts. Taken together, these breaches caused the Trust and Petitioners to incur substantial monetary losses, all of which are attributable to Trustee. Accordingly, the Court finds that the Petitioner has satisfied all three breach of fiduciary duty factors set forth in *Chain Store Maintenance, Inc.*, 2004 WL 877599, at *13.

2

Conflicts of Interest

The duty of loyalty to the beneficiaries is one of the most fundamental duties of a trustee and requires that “[a] trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.” G.L. 1956 § 18-15-5. A trustee’s loyalty must be “undivided.” *Dodge*, 76 R.I. at 323, 69 A.2d at 634. In *Sinclair*, the Rhode Island Supreme Court explained that:

“[b]roadly speaking it is clearly established that a trustee must give undivided loyalty to the trust confided to his care and to its beneficiaries . . . He must at all times exercise a high standard of honor and avoid all situations and transactions that tend to call his good faith into question and to create in himself rights possibly conflicting with those of the beneficiaries.” *Sinclair*, 89 R.I. at 469, 153 A.2d at 552 (quoting *Dodge*, 76 R.I. at 323, 69 A.2d at 634).

Like § 18-15-5, § 170 of Restatement (Second) of *Trusts* notes that “[t]he trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary.” Restatement (Second) *Trusts* § 170 (1). Importantly, Trustee is “not to be guided by the interest of any third person.” *Id.* at cmt. q.

As a preliminary matter, it should be noted that the express language of the Trust does not allow Trustee to engage in representation that would be averse to the Trust. Moreover, the Court heard no testimony suggesting that Joseph impliedly authorized the Trustee to assist Joseph's brothers or the Santoro Entities in transactions that may conflict with the interests of the Trust. Hence, there can be no argument that Trustee's conflicts are permitted under the Trust.

Here, Trustee's legal representation of John, Anthony, and the Santoro Entities conflicts with his obligations to Petitioners, and he has done little to alleviate these conflicts of interest. First, and in an action that also implicates Trustee's fiduciary duties, Trustee testified that he did not notify Joey or Jaime Lyn of their ability to exercise a cross-purchase agreement for Domestic NC, even though he assisted John and Anthony in their own cross-purchase transactions. This concerning revelation supports a finding that Trustee breached his duty of loyalty to the Trust by valuing his legal representation of the brothers over his duty to act in Petitioners' best interests.

Further, Trustee acknowledged that he represented Gale while he also advised John and the various Santoro Entities about fringe benefits—a program that allowed Gale to receive income from the Santoro Entities in certain circumstances after John's death—owed to Gale, a credible admission of an obvious conflict of interest. At the very least, Trustee should have disclosed this conflict to Gale to obtain her consent or declined to advise John and the Santoro Entities on this issue. Trustee also testified that the Santoro entities owed money to the Trust, all while Trustee advised John to distribute as little money as possible in fringe benefits to Gale through the Trust. This fact is disturbing given that a trustee's loyalty must be “undivided.” *See Dodge*, 76 R.I. at 323, 69 A.2d at 634.

Additionally, the Court heard no evidence suggesting that Petitioners consented to Trustee's conflicted legal representations and even heard credible testimony from Gale that she

never consented to the same. While the Court is convinced that Trustee truly believed that his status as the “family attorney” granted him the unfettered right to continue all his representations, the Court is confident in concluding this belief was in error. At the least, Trustee was obligated to disclose his conflicts of interest and obtain consent from Petitioners.

Overall, Trustee admitted—and the Court found credible—that he continued to represent the Santoro family and Entities while he served as Trustee. He also acknowledged that Trustee never disclosed potential conflicts to Petitioners, and they did not sign a waiver form. Of most particular concern to the Court, Trustee served as counsel to the business Entities while ignoring and neglecting the potential needs of Petitioners. Long time connections and routine business do not allow a Trustee to escape conflicts of interest, even if the Trustee genuinely believed the opposite as his testimony would suggest. For all the reasons outlined in this section, the Court finds—by a preponderance of the evidence—that Trustee breached his duty of loyalty to Petitioners and did so through “more than mere negligence.” *See Cuzzone*, 2005 WL 2716749, at *3.

3

Trustee Failed to Keep Proper Accounting

Although the Court did not finally determine that Trustee failed to keep proper accounting in its summary judgment decision, the Court found that Trustee did not provide a detailed accounting when he was requested. (Decision, dated Dec. 21, 2023 at 9-11.) In the context of Trustee’s broad duty to keep accurate accounting, it bears repeating persuasive authority detailed in the summary judgment decision. *Id.* Section 172 of Restatement Second of Trusts declares: “[t]he trustee is under a duty to the beneficiary to keep and render clear and accurate accounts with respect to the administration of the trust.” Restatement (Second) *Trusts* § 172 (1952); *see also*

Bank of America, N.A. v. Neronha, No. PM-2022-0046, 2023 WL 6535268, at *1, 14-17, 20, 23 (R.I. Super. Oct. 2, 2023) (citing to Restatement (Second) *Trusts* § 172).

Likewise, § 83 of Restatement Third of *Trusts* states: “trustee has a duty to maintain clear, complete, and accurate books and records regarding the trust property and the administration of the trust” Restatement (Third) *Trusts* § 83. Comment (a) of the same professes: “[i]mplicit in the duty to provide information to beneficiaries (§ 82) is the duty stated in this Section requiring a trustee to maintain an adequate set of books and records.” *Id.* cmt. a.

In *Wood v. Honeyman*, 169 P.2d 131 (Or. 1946), the Oregon Supreme Court—when opining on Comment (a) and (a)(1) of Restatement (Third) *Trusts* § 83—stated:

“It must be apparent that when one becomes a trustee . . . , he must maintain records of his transactions so complete and accurate that he can show by them his faithfulness to his trust. It is not enough for him to know that he is honestly performing his duty. Since generally, the burden of proof rests upon him to prove his fidelity, he must be able to sustain his position by honest records. Bogart on *Trusts and Trustees*, § 962 says: ‘It is the duty of the trustee to keep full, accurate, and orderly records of the status of the trust administration and of all acts there under . . . The general rule of law applicable to a trustee burdens him with the duty of showing that the account which he renders and the expenditures which he claims to have made were correct, just and necessary . . . He is bound to keep clear and accurate accounts, and if he does not the presumptions are all against him, obscurities and doubts being resolved adversely to him’” *Wood*, 169 P.2d at 162.

Here, Petitioners established, by a preponderance of the evidence, that Trustee failed to keep accurate records as he was required, a finding that clearly goes beyond mere negligence. Trustee testified that he did not recognize files supplied to him as an official accounting of Trust assets, a credible admission by all accounts. He similarly could not identify Citizens and Webster Bank statements of Trust funds and investments. Finally, Trustee testified that he neither reviewed nor approved accounting records provided to the Court. The Court accepts this acknowledgment as credible.

When it comes to his own fees charged to the Trust, Trustee admitted that he did not keep any records of time he spent on Trust matters. Likewise, Trustee never submitted invoices to the Trust for his services, despite taking \$10,000 per month in fees.

4

Trustee’s Interactions with Gale Amounted to More than Mere Friction

“When friction between the trustee and beneficiary . . . impairs the proper administration of the trust or if future cooperation between the trustees is improbable or if the trustees’ continuing to act as such would be detrimental to the interest of the beneficiary, the trustee may be removed.” *Petition of Statter*, 108 R.I. at 335, 275 A.2d at 276. “When the ill feeling has reached the point that it interferes with the administration of the trust, the trustee may be removed even though the charges of his misconduct are either not made out or greatly exaggerated.” *Id.* (quoting *May v. May*, 167 U.S. 310, 320-21 (1897)). “Trustees exist for the benefit of those to whom the creator of the trust has given the trust estate.” *Petition of Statter*, 108 R.I. at 335-36, 275 A.2d at 276.) “Thus, when beneficiaries lose all confidence in the trustee and their relationship is broken beyond repair, the trustee should be removed.” *Chace IV v. Chace Jr.*, No. PC-2021-00953, 2024 WL 582095, at *13 (R.I. Super. Feb. 6, 2024) (citing *Lister v. Weeks*, 46 A. 558, 563 (N.J. Ch. 1900)).

Here, Gale credibly detailed the breakdown in the relationship between Petitioners and Trustee and that Trustee acted aggressively toward her. At trial, Gale attested to Trustee’s belittling behavior when Trustee addressed Gale. This culminated in a dispute at Trustee’s office that led Gale to leave in tears. Trustee vaguely recalled the incident and could not remember why Gale was upset, a fact that highlights the disconnect between Trustee and Gale. In further support of this and as noted *supra*, Trustee “did not think it was his business” to ask Gale about her financial needs. Trustee is mistaken in this belief.

Moreover, the Court even heard credible testimony that Trustee incorrectly informed Gale she was not a beneficiary of the family trust. Trustee also made himself the beneficiary of the family plot at the cemetery, and Gale had to take it upon herself to reinstate herself as beneficiary. The Court views Gale's version of events as more credible than Trustee's, who appeared out of touch with Gale's needs as a beneficiary of the Trusts.

The Court's decision to remove Trustee based on his relationship with Petitioners finds support in other courts' determinations that a trustee must be removed. *See, e.g. In re Nassar's Estate*, 356 A.2d 773, 776 (Pa. 1976) (trustee needed to be removed due to harassment discontent amongst both beneficiaries and trustee); *Wilbourn v. Wilbourn*, 106 So.3d 360, 376 (Miss. 2012) (removing a trustee for harshly treating beneficiaries and refusing to cooperate with them); *Symmons v. O'Keeffe*, 644 N.E.2d 631, 637 (Mass. 1995) (declining to remove a trustee because the beneficiaries created the hostility by filing the petition to remove the trustee) (emphasis added).

It is clear to the Court—by a preponderance of the evidence—that the relationship between Trustee and Gale has broken down beyond repair. This breakdown, taken together with Trustee's other derelictions of duty, is the straw that breaks the camel's back. Once again, Gale's testimony was more credible to illustrate this point than Trustee's. The Court is convinced this breakdown interferes with Trustee's administration of the Trust as he can hardly be said to understand Gale's needs. *See Petition of Statter*, 108 R.I. at 335, 275 A.2d at 276. Testimony before the Court established that Petitioners are not at fault for this friction.

B

Karen Delponte is Appointed Trustee

Generally, courts in this state are more reluctant to remove trustees named by the settlor versus those appointed by the court or named by a third party. *See Petition of Statter*, 108 R.I. at

338, 275 A.2d 272 at 277; *Curran v. Green*, 18 R.I. 329, 27 A. 596 (1893). However, the Trust provides that Karen Delponte is to serve as the alternate trustee. Here, the settlor's naming of Karen Delponte emboldens the Court to abide by Rhode Island precedent while effectuating Trustee's removal, a remedy that is in the best interests of Petitioners.

In sum, Trustee's conflicted representations, breach of fiduciary duty, and troubling relationship with Gale establishes—by a preponderance of the evidence—that Trustee must be removed from his role. Because Karen Delponte was named as the alternate trustee in the Trust, the Court names her trustee effective immediately.

V

Conclusion

Based on the foregoing, the Court finds that Trustee exhibited more than mere negligence in his administration of the Trust, and Petitioners have met their burden by a preponderance of the evidence that Trustee must be **REMOVED**. Karen G. Delponte, the alternate trustee named in the Trust, is hereby appointed as trustee. If Attorney Delponte declines, the Court will appoint a successor trustee in accordance with the statute. In line with Petitioners' request in the Petition, Attorney Delponte is permitted to provide an accounting to the Petitioners and investigate and prosecute all claims belonging to the Trust. Petitioners' counsel shall prepare the appropriate order for entry.