Game Changers / Dealing with Dementia

Unraveling Minds

Dementia is not only robbing the elderly of their mental capacity, it's putting financial advisers in a bind

By **Mason Braswell** — November 3, 2014

In January, Michael Kotin, a financial adviser at Wells Fargo & Co., faced a dilemma. Two longtime clients, Eugene and Cecilia Ratner — a couple who had been married for around 60 years and who were both well into their 80s — were accusing each other of being mentally incapacitated and unfit to make decisions involving a jointly owned trust.
Mr. Kotin, a nearly 30-year veteran of the advice industry, did what most financial advisers would probably do under the circumstances: He froze the couple's $700,000 account until the mess could be sorted out.

As vast numbers of the population ages and become susceptible to various forms of dementia, including Alzheimer's, financial advisers like Mr. Kotin and their firms are increasingly finding themselves being asked to make crucial decisions affecting the financial affairs of their elderly clients. Sometimes, as with the Ratners, these cases involve feuding spouses or other family members. In other cases, financial advisers suspect that their clients are being taken advantage of by con artists.

Given little guidance or help by the courts, regulators or legislators, advisers and their firms often are left adrift to navigate these cases by themselves and are susceptible to legal action by aggrieved clients or their families who believe they've been wronged. In some instances, advisers are so worried about potential liability, they are dropping clients at the first hint of cognitive impairment.

“These financial institutions are caught between a rock and a hard place,” said Elizabeth Loewy, who served as the chief of the elder abuse unit in the Manhattan District Attorney's Office for almost three decades. “They don't have psychiatrists on staff ... I feel badly for them.”

More than five million Americans have Alzheimer's, the most well-known form of dementia, which mostly affects older people. But that number is expected to grow as the population ages. By 2050, nearly 16 million Americans could be living with Alzheimer's if no cure is found, according to health officials.

An **InvestmentNews survey of 200 advisers** showed that about two-thirds already work with a household where a client is suffering from, or showing signs of, cognitive decline, yet only half of the respondents feel prepared to help those clients.

Dealing with dementia: helping clients in cognitive decline

"We're going to have a dementia boom," said Amy Florian, an adviser who works with clients who have dementia at her practice, Corgenius Inc. "And we're just not prepared."

Dementia and Alzheimer's are slow-moving and can be hard to diagnose. That was a factor in the case of the Ratners after each accused the other of cognitive impairment. In support of Mrs. Ratner, a doctor's note was produced, saying her husband was unable to make informed medical and financial decisions. Mr. Ratner, a dentist, obtained a second evaluation from a doctor who said he had the capacity to make his own financial decisions. In court documents, Mr. Ratner charged that his wife had been diagnosed with "probably mild Alzheimer's" and was being manipulated by his daughters.

The Ratners, Eugene and Cecilia

Mr. Kotin and Wells Fargo quickly realized that the battle between the Ratners was more than a typical family squabble, and that the last place it wanted to be was in a position of having to decide the mental competence of clients. So, it asked the courts to weigh in.

"The conflicting documents ... and statements made to Wells Fargo Advisors has made it impossible for the firm to evaluate who is competent and who should have authority over the Ratner accounts," lawyers for the firm wrote in legal documents. "Wells Fargo would like guidance from this court."

Even when it's clear that clients have some form of dementia that is clouding their judgment, it can be hard for advisers to protect them.

Consider a case involving an elderly client at Edward Jones. The client, a woman in her late 70s who had no living relatives, wired tens of thousands of dollars out of a bank account to a phony sweepstakes firm to access a promised $10 million in winnings, said John Ellis, a principal in the firm's compliance department.

The adviser reported the concerns to supervisors and Mr. Ellis took the matter to authorities, but a few months later the woman, who had yet to receive any of the purported winnings, called again wanting to send $100,000 or more from her brokerage accounts to the same scam artists.

“She liked them, and they made her feel good,” said Mr. Ellis. “She trusts them even though we've explicitly told her [not to].”

Amy Florian: Warning Signs

As authorities tried futilely to track down the fraudsters at the other end of the line, securities laws ultimately left Edward Jones helpless. The firm was required to follow the client's instructions, even if it knew it was not in her best interest.

“We'd like to have some safe harbors around a firewall to hold up the transfer of funds for a day or two to better work with a client or reach out to an authorized third party,” Mr. Ellis said. “When the money leaves the account, it's gone almost immediately, and there's no way to get it back.”

The case cited by Mr. Ellis is not isolated. State and federal regulators are seeing a dramatic pickup in the number of elderly individuals who have become victims of bogus lotteries, telemarketing scams, investment fraud, identity theft and unscrupulous lending practices.

1 in 8 people over age 65 suffer from Alzheimer's in the U.S.

The 5 states with the highest proportion of sufferers per resident over age 65:

North Dakota1 in 5.4

South Dakota1 in 6.1

Rhode Island1 in 6.3

Iowa1 in 6.6

Nebraska1 in 6.7

Source: U.S. Census Bureau, Alzheimer's Association

In fact, the elderly are being scammed to the tune of $2.9 billion a year, according to a 2010 survey from the Metropolitan Life Insurance Co. But that figure, which is based on publicly reported cases, is actually much higher, according to experts.

It also doesn't include money lost because clients mishandle their own finances, whether by failing to understand the risks of their investments or spending irresponsibly.

In an effort to extricate themselves from potential accusations that they were complicit in financial fraud involving the elderly, a growing number of advisers and their firms are simply dropping clients at the first sign of cognitive impairment.

“One of the things that spooks the industry to its core is the liability associated with all this stuff,” said Tom West, a financial adviser who specializes in working with clients who have dementia and other cognitive issues at his firm, Signature Estate & Investment Advisors.

“I know other firms that are batting around the idea [as to] what point in a scammer scenario does the brokerage firm just want to cut ties and beat it,” he said. “That's an option that gets exercised — that clients just get booted because of liability.”

Some firms are taking action to get ahead of the coming wave of cognitively impaired clients.

Wells Fargo Advisors, for example, recently established its own elder abuse unit and assigned the head of its legal department, Ron Long, to oversee that effort.

"The concern is that you'll have to double or triple the size of the legal department because these cases are going to grow." — Ron Long

Mr. Long said that the firm has received nearly 200 calls a month from advisers this year about a client's mental capacity. That's up from around 100 calls a month in years' past.

“At some point, the firm has to make a decision whether to execute these orders or put a stop on it and go to court and ask the judge to make a decision, and that is an additional cost,” Mr. Long said. “The concern is that you'll have to double or triple the size of the legal department because these cases are going to grow.”

Most other large brokerage firms, such as Edward Jones and Bank of America Merrill Lynch, are undertaking similar efforts and reaching out to advisers with some additional training. Others are considering more drastic steps, such as requiring elderly clients to undergo an annual screening from a medical professional to prove they are fit to handle their finances, experts said.

Through what he calls a “**diminishing capacity letter,**” Mr. West asks clients to give him permission to notify a trusted family member who could act as a fiduciary in cases where there are questions about a cognitive issue. He promises that he will never reach out to anyone on the list without talking to the client first.

Thomas West: Dementia for Retention?

“The differentiator is the ability to communicate with families,” Mr. West said.

But reaching out — even to family members — risks being in violation of privacy laws.

While at least one state, Washington, has passed legislation that affords advisers more leniency in making referrals or refusing to execute a suspicious transaction, there are no universal guidelines, said Andrea Seidt, the Ohio securities commissioner and president of the National Association of State Securities Administrators.

“It's early to know what best practices will emerge,” she said. “We in Ohio are very interested in such legislation, but are hoping [NASAA] could develop a uniform approach for all states.”

One of the biggest problems is that advisers wait until it's too late to prepare documentation about who to call or what to do in the event the client shows signs of decline, according to Ms. Florian.

“That's where we really get caught,” she said. “If you wait until they're showing signs of diminished capacity, then that's too late. Then they can't be signing these things.”

Knowing whom to trust becomes even trickier when new friends, family members and caretakers enter the scene claiming power of attorney. An unknown figure who suddenly shows up at a meeting should be treated with suspicion, according to a memo Bank of America Merrill Lynch distributed to its nearly 14,000 brokers and investment advisers.

“Many times you wonder if it's the client speaking or someone else,” Mr. Long said.

Take the case involving another adviser at Edward Jones. In that instance, the adviser's client repeatedly called to transfer funds out of his account and into the account of a grandson. When the adviser raised doubts about one particular $20,000 transfer, the grandson could be overheard in the background telling the adviser to mind his own business, according to Mr. Ellis.

Advisers need to be careful not to accuse a client of being mentally incapacitated, said Mr. West, who estimates that about 15% of his clients are from households where a member is cognitively impaired.

The typical adviser has 3 clients experiencing cognitive decline

Source: **InvestmentNews Research Survey**

If a client is showing signs of forgetfulness, Mr. West often starts by suggesting a visit to the doctor. “Two of my clients came back with dehydration,” a sign of poor nutrition and self-care, Mr. West said

Handled correctly, most clients appreciate the demonstration of concern, said Mr. West. “I've found that almost all the time that I've had these conversations, they're happy I talked to them about it,” he added.

More basic planning tips can also be helpful. One suggestion is to have a caretaker obtain a debit card with limited spending capacity for the client. That can safeguard against redundant purchases.

Other items, such as requesting a trade confirmation in writing, which can be difficult for those who are impaired, are also being considered, but the legal framework to require something like that does not exist, Mr. West said.

Firms also need to make sure their brokers are prepared to have conversations with aging clients about planning for dementia. Most of today's advisers are current and former brokers entered in the industry in sales roles, Mr. West said. Mr. West himself started in the 1990s earning commissions from selling long-term-care insurance.

50% of advisers say their firm has offered no support or direction in dealing with clients suffering from cognitive decline

Source: ***InvestmentNews Research Survey***

“Most money managers want to talk about alpha or upside capture or thinks like that,” he said. “One of the biggest impediments is plain old discomfort in getting into discussions around long-term care and cognitive impairment.”

Typically, adult protective services agencies are the first place advisers and their firms go to in seeking help for clients whom they suspect of being cognitively impaired. But many of the agencies are underfunded and ill-equipped to deal with their existing caseload, said Kathleen Quinn, executive director of the National Adult Protective Services Association, a membership group for the agencies.

Funds are allocated to the states by block grants which go generally to social services and leaves adult protective services agencies competing with programs such as child welfare and programs for the homeless, she added.

“APS is really seriously underfunded in many, many places,” Ms. Quinn said. “I understand the financial institutions' frustrations.”

State rules and regulations also impede their ability to help, Ms. Quinn said.

In Tennessee, for example, the adult protective services agency can only investigate elder financial abuse cases that involve improper use of government funds, such as Social Security or Medicaid.

Regulators are starting to pay attention to the problem. The Securities and Exchange Commission, the Financial Industry Regulatory Authority Inc. and state securities regulators have put forth some ideas for best practices in dealing with elderly clients, such as increasing supervision of seniors' accounts, requiring the reporting of issues to management and watching for seniors who ask for unsuitable products.

In September, NASAA formed an advisory council to help develop an industry response and try to address how smaller broker-dealers or registered investment advisers without the legal department of a Wells Fargo should handle clients who have cognitive decline.

“It would have been nice if it could have started sooner,” Ms. Seidt said.

As for the Ratners, Dr. Ratner died of health complications in July, while the case was still pending. The case was stayed in September, according to an update on the website for the Supreme Court of the State of New York, County of the Bronx.

It likely will be dismissed without a plaintiff, according to Mrs. Ratner's attorney. The money could be disbursed to his wife, according to the trust, unless a judge or Adult Protective Services intervenes. ■