



FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Dec 17 2021 11:32AM
Clerk Review: Dec 17 2021 11:32AM
Filing ID: 67174905
Case Number: 16-0176-CV
N/A

**IN THE SUPERIOR COURT FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

THE ESTATE OF)	CIVIL CASE NO. 16-0176
)	
FERNANDO CEPEDA BENAVENTE,)	
)	
Deceased.)	ORDER DENYING THE CREDITOR
)	CLAIM OF THE NMI SETTLEMENT
)	FUND AGAINST THE ESTATE AS SUCH
)	CLAIM, BEING BROUGHT TWO YEARS
)	AFTER THE 60-DAY DEADLINE, IS
)	TIME-BARRED BY 8 CMC SECTION
)	2924(a)(1) AND RULE 11 OF THE NMI
)	RULES OF PROBATE
)	
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I. INTRODUCTION

THIS MATTER came before the Court on October 8, 2020 and July 13, 2021 for an evidentiary hearing on the claim filed by the Northern Mariana Islands Settlement Fund (the “NMI Settlement Fund”) against the Estate of Fernando Cepeda Benavente (the “Estate of Benavente”)¹. John Albert Benavente, the Administrator for the Estate of Benavente, was present and represented by Attorney Charity Hodson. Claimant, the NMI Settlement Fund, was represented by Attorney Nicole M. Torres-Ripple.

¹ The NMI Settlement Fund filed its Notice of Claim by Creditor Northern Mariana Islands Settlement Fund on September 7, 2018. The NMI Settlement Fund filed its Claimant’s Opening Brief on May 1, 2020. The Estate of Benavente filed its Petitioner’s Opposition Brief on May 29, 2020. The Settlement Fund filed its Claimant’s Reply Brief on July 16, 2020.

By order of the Court, Associate Judge Joseph N. Canacho

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1 The Court heard the testimony of the following individuals: (1) Annie S. Benavente, NMI
2 Settlement Fund Member Services Manager; (2) John Albert Benavente, Administrator for the
3 Estate of Benavente; and (3) Lorna A. Benavente, the spouse of the Decedent.

4 The following exhibits were admitted into evidence: (1) Declaration of Publication with
5 attachments dated September 15, 2016; (2) Notice of Claim by Creditor NMI Settlement Fund
6 dated September 7, 2018; (3) Adverse Decision Letter from NMI Settlement Fund to Lorna A.
7 Benavente, dated September 6, 2018; (4) Correspondence from the NMI Retirement Fund²
8 concerning an Application for Retirement Annuity, dated January 13, 1992; (5) NMI Retirement
9 Fund Application and Authorization to Make or Discontinue Allotment from Pay of
10 Employees/Retirees, received on June 22, 2011; (6) Correspondence from the NMI Retirement
11 Fund concerning Overpayment and Adjustment of Benefits, dated May 7, 2012; (7) NMI
12 Retirement Fund Application and Authorization to Make or Discontinue Allotment from Pay of
13 Employees/Retirees, received June 18, 2012; (8) Correspondence from the NMI Retirement Fund
14 concerning Notice of Temporary Stay of Adjustment of Benefits, dated June 21, 2012; (9) NMI
15 Retirement Fund Annuity Recipient Information Update, received April 9, 2013; (10) Durable
16 Power of Attorney, dated July 17, 2013; (11) NMI Settlement Fund Annuity Recipient
17 Information Update, received May 1, 2014; (12) IRS Form W-4P Withholding Certificate for
18 Pension or Annuity Payments, received October 14, 2014; (13) Correspondence from the NMI
19 Settlement Fund concerning Recoupment of Overtime/Comp-time Payments, received October
20 14, 2014; (14) NMI Settlement Fund Annuity Recipient Information Update, received August 17,

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² The NMI Settlement Fund was formerly known as the NMI Retirement Fund, and the exhibits are described based
24 on whether the document in question refers to the NMI Settlement Fund or the NMI Retirement Fund. However,
both names refer to the same entity.

1 2015; (15) Certificate of Death of Fernando Cepeda Benavente, dated September 4, 2015; and
2 (16) Notice of Claim by Creditor NMI Settlement Fund, dated September 7, 2018.

3 Following the October 8, 2020 evidentiary hearing the Court ordered supplemental briefs
4 on two questions: (i) the interpretation of 1 CMC Section 8390(a), particularly the use of the word
5 “or” in referring to overpayment collection methods³; and (ii) whether 1 CMC Section 8390
6 violates the procedural due process owed to the survivor⁴. The Court held a hearing on July 13,
7 2021.

8 Based on the admitted evidence and testimony at the evidentiary hearing, the arguments of
9 the parties, and the applicable law, the Court makes the following Order.

11 II. FINDINGS OF FACT

12 1. Fernando Cepeda Benavente (“Benavente”) retired from CNMI government service
13 as an employee of the CNMI Fire Department on December 15, 1991, and received
14 retirement benefits.

15 2. On May 7, 2012, the NMI Settlement Fund—which was at the time the NMI
16 Retirement Fund—sent an adverse decision letter to Benavente notifying him that an
17 audit of his NMI Settlement Fund account revealed that he had improperly received
18 an overpayment of benefits. This overpayment of benefits totaled \$23,433.52 and was

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20 ³ The question of whether the word “or” makes these two means of collection mutually exclusive. In 1 CMC Section
21 8390, the provision of the Commonwealth Code addressing how the NMI Settlement Fund may recover overpayment
22 of benefits, the use of the word “or” indicates that there is a possible limit placed on recovery. The relevant part of
that provision reads: “proper adjustment or recovery shall be made by appropriate adjustments to future payments to
the member or any survivors, *or* from the estate of any recipient of benefits.” 1 CMC § 8390(a) (emphasis added).
However, the issue before the Court at this time is whether the NMI Settlement Fund, as a creditor claimant, can
recover pension overpayments from the Estate of Benavente, thus this issue is not (yet) before the Court.

23 ⁴ The NMI Settlement Fund filed its Supplemental Opening Brief on May 14, 2021. The Estate of Benavente filed
its Supplemental Opposition Brief on June 14, 2021. The NMI Settlement Fund filed a Supplemental Reply Brief on
24 June 28, 2021. The Estate of Benavente filed its Supplemental Sur reply on July 12, 2021.

1 due to an error including overtime and compensatory time in the computation of
2 benefits as service credit instead of vesting service credit. The letter states that under
3 1 CMC Section 8390(a), the NMI Settlement Fund is entitled to recover the overpaid
4 amounts through an appropriate adjustment to future payments until the overpaid
5 amount is fully settled, while 1 CMC Section 8390(b) limits recovery from future
6 payments to a maximum deduction of 50 percent of Benavente's pension. The letter
7 further states that the Settlement Fund would deduct 50% of Benavente's semi-
8 monthly pension, beginning the June 15, 2012 pay period and continuing until the
9 overpayment was fully paid.

- 10 3. The NMI Settlement Fund advised Benavente that he had the right to appeal this
11 adverse decision within thirty days of the date of the NMI Settlement Fund's May 7,
12 2012 letter. Benavente did not appeal this adverse decision.
- 13 4. About a month later, on June 21, 2012, the NMI Settlement Fund sent a second letter
14 to Benavente, notifying him of a temporary stay of the adjustment of his benefits, as
15 many other retirees affected by the same audit had requested a stay pending appeal.
16 This second letter further stated that the NMI Settlement Fund would keep him advised
17 of proceedings.
- 18 5. The NMI Settlement Fund sent out this same letter to all members who had received
19 the May 7, 2012 adverse decision letter, regardless of whether those members had
20 filed an appeal or not.
- 21 6. The NMI Settlement Fund was aware that Benavente had not filed an appeal, and that
22 the stay should have only applied to members who had filed appeals of their adverse
23 decisions.

- 1 7. Two years later, on July 9, 2015, the NMI Settlement Fund sent a third letter to
2 Benavente, notifying him that a stay of enforcement was still in effect pending the
3 appointment of a hearing officer.
- 4 8. The NMI Settlement Fund sent the three letters to Benavente using his mailing address
5 on file.
- 6 9. On October 14, 2014, the NMI Settlement Fund accepted an Internal Revenue Service
7 W40 form and a Power of Attorney from Benavente's wife, Mrs. Lorna S. Benavente
8 ("Mrs. Benavente").
- 9 10. Fernando Cepeda Benavente died on September 2, 2015.
- 10 11. Shortly after Benavente died, Mrs. Benavente went in person to the NMI Settlement
11 Fund and submitted her application for survivor's annuity, including a copy of
12 Benavente's death certificate. The NMI Settlement Fund approved her application and
13 began issuing payments to her.
- 14 12. Mrs. Benavente was unaware of any overpayment or payment adjustment. Mrs.
15 Benavente testified that she and Benavente discussed their financial affairs together
16 prior to his death. In addition, in the last years of Benavente's life when he was not in
17 good health, Mrs. Benavente collected and took care of his mail. While Mrs.
18 Benavente was aware of communication from the NMI Settlement Fund to Benavente,
19 she was not aware of any overpayment issue. Furthermore, Mrs. Benavente was not
20 advised or informed of any overpayment issue when she went in person to submit her
21 application, or when her application for survivor's annuity was approved.

1 13. On August 23, 2016, the Decedent's son, John Albert Benavente, filed a petition to
2 probate the Estate of Fernando Cepeda Benavente. John Albert Benavente was
3 appointed the Administrator on October 3, 2016.

4 14. John Albert Benavente (the "Estate Administrator") published the Notice to Creditors
5 of the 60-day deadline to file claims on September 1, 2016, and again on September
6 8, 2016, in the Saipan Tribune.

7 15. The Estate Administrator did not send a notice regarding the probate to the NMI
8 Settlement Fund.

9 16. The Estate Administrator did notify the Bank of Guam, as a known creditor of the
10 Estate of Benavente.

11 17. The Estate Administrator conferred with his mother, Mrs. Benavente, and gathered
12 information about the Estate of Benavente and reviewed any mail involving
13 Benavente. The Estate Administrator did not receive any information from Mrs.
14 Benavente or any correspondence from the NMI Settlement Fund during this time
15 regarding overpayment or any indication that the NMI Settlement Fund was a creditor
16 of the Estate of Benavente.

17 18. Two years later after the Notice to Creditors was published, on September 6, 2018, the
18 NMI Settlement Fund sent an adverse decision letter to Mrs. Benavente, informing her
19 that the NMI Settlement Fund had audited her husband's file and had discovered an
20 overpayment of survivor's annuity benefits to Mrs. Benavente in the amount of
21 \$2,279.34 for the period of September 1, 2015 through August 31, 2018 and sought to
22 recover that amount from her in accordance with 1 CMC Section 8390(a). This adverse
23 decision letter explained that the benefits of her husband, Benavente, "were
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1 improperly adjusted to include accumulated overtime/compensatory (OT/CT) hours
2 as service credit contrary to 1 CMC [Section] 8333,” and while the statute was
3 repealed by P.L. 13-60 on December 5, 2003, Section 8333 was applicable at the time
4 Benavente retired. This adverse decision letter further stated that 1 CMC Section
5 8390(a) requires the NMI Settlement Fund to recover overpaid amounts, but the letter
6 does not specify how this overpaid amount will be collected. Mrs. Benavente appealed
7 this adverse decision. As of the issuance of this Court Order, Mrs. Benavente’s appeal
8 is still pending before the NMI Settlement Fund and a final decision has yet to be
9 issued. In any case, Mrs. Benavente continued to receive monthly payments from the
10 Settlement Fund as of the date of her testimony at the evidentiary hearing.

11 19. On September 7, 2018, the NMI Settlement Fund filed its claim in the Estate of
12 Benavente to recover overpayment of retirement benefits in the amount of \$11,561.59,
13 namely the amount of overpayment for the last six years preceding the date it filed its
14 claim.

15 **III. LEGAL STANDARD**

16 At issue is whether the claim of the NMI Settlement Fund against the Estate of Benavente
17 is time-barred.

18 The NMI Settlement Fund, the Claimant, argues that the Estate of Benavente failed to
19 provide actual notice to the NMI Settlement Fund as a known or reasonably ascertainable creditor
20 in accordance with Rule 11 of the NMI Rules of Probate; and therefore, its claim is not time-
21 barred.

22 The Estate of Benavente argues that the NMI Settlement Fund is not a known or reasonably
23 ascertainable creditor, and therefore its claim is forever barred because it was brought long after
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1 the 60-day time limit provided under 8 CMC Section 2924(a)(1) and under Rule 11 of the NMI
2 Rules of Probate had elapsed.

3 **A. Retirement Fund: Overpayment or Underpayment of Benefits**

4 The Commonwealth Code makes provision for how the NMI Retirement Fund—now the
5 NMI Settlement Fund—may address the overpayment of benefits, in relevant part, as follows:

- 6 (a) Whenever the [NMI Settlement Fund] administrator finds that more or less than
7 the correct amount of benefits have been paid with respect to any individual,
8 proper adjustment or recovery shall be made by appropriate adjustments to
9 future payments to the member or any survivors, or from the estate of any
10 recipient of benefits.
11 (b) Unless fraud, misrepresentations or concealment of material information was
12 involved in connection with an overpayment, an amount of no more than 50
13 percent of any benefit to be paid in any benefit period may be withheld and
14 offset against previous overpayments. In his discretion, the [NMI Settlement
15 Fund] administrator may authorize a lesser percent of annuity to be withheld,
16 taking into consideration the financial condition of the annuitant, provided that
17 such overpayment can be recovered within two years.

18 1 CMC § 8390. Thus, this provision states that the NMI Settlement Fund may recover overpayment
19 of benefits by adjustments to future payments to the member or any survivors, or from the estate
20 of any recipient of benefits.

21 **B. Notice Requirements for Creditors and Time Limitations for Creditor Claims in
22 Probate Proceedings**

23 **(i) Unknown Creditors**

24 Title 8, Section 2924(a) of the Commonwealth Code states, in relevant part:

- (a) All claims against a decedent's estate which arose before the death of the
decedent, including claims of the Commonwealth of the Northern Mariana Islands
and any of its subdivisions, whether due or to become due, absolute or contingent,
liquidated or unliquidated, founded on contract, tort, or other legal basis, if not
barred earlier by other statute of limitations, are barred against the estate, the
personal representative, and the heirs and devisees of the decedent, unless presented
as follows:

- (1) Within 60 days after the date of the first publication of notice to creditors
if notice is given in compliance with the Commonwealth Trial Court Rules
of Probate Procedure; provided, claims barred by the nonclaim statute at
the decedent's domicile before the first publication for claims in the

1 Commonwealth of the Northern Mariana Islands are also barred in the
2 Commonwealth.
3 8 CMC § 2924(a). Thus, an unknown creditor must make a claim against the estate within 60 days
4 after the date of first publication of notice.

4 **(ii) Known or Reasonably Ascertainable Creditors**

5 Pursuant to Rule 6(3) of the Northern Mariana Islands Probate Rules (the “NMI Probate
6 Rules”), the notice of the hearing on the probate petition must be “published in a newspaper
7 published in the Commonwealth at least once, said publication to be at least five days before the
8 hearing.” NMI R. PROB. 6(3).

9 Rule 11 then provides further requirements for known creditor claims, requiring that “[t]he
10 personally delivered or mailed notice shall advise the creditor that claims must be filed no later
11 than 60 days after the date of first publication [...] and that any claims not presented within such
12 times shall be forever barred.” NMI R. Prob. 11. Under Rule 11, notice must be given to “each
13 creditor for whom the whereabouts or last known address is known [...] as well as any other
14 creditor of the deceased whose identity, whereabouts, and address is known or reasonably
15 ascertainable by the executor at that time.” *Id.*

16 Under *In re Estate of Roberto*, actual notice must contain language to:

- 17 (1) inform interested parties that there is a deadline for filing claims against the
18 estate, (2) specify the date of that deadline, (3) explicitly warn interested parties
19 that failure to meet the deadline will result in claims being permanently barred, and
20 (4) announce the court in which the estate is pending.

21 2002 MP 23 ¶ 24 n.16. Actual notice is required for known creditors of the estate. NMI R. PROB.
22 11.

23 The “State undeniably has a legitimate interest in the expeditious resolution of probate
24 proceedings.” *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 489, 108 S. Ct.
1340, 1347 (1988). Although actual notice must be afforded to “known or reasonably ascertainable

1 creditors,” the United States Supreme Court has “disavowed any intent to require ‘impracticable
2 and extended searches . . . in the name of due process.’” *Id.* at 490 (quoting *Mullane v. Central*
3 *Hanover Bank & Trust Co.*, 339 U.S. 306, 319, 317-18, 70 S. Ct. 652, 658-59 (1950). The Supreme
4 Court, in *Tulsa*, held that the fact that an executrix was aware that her husband had “endured a
5 long stay at” a hospital did not mean that the executrix was aware of the hospital’s claim against
6 the estate. 485 U.S. at 491. “Whether or not a creditor is ‘reasonably ascertainable’ depends in turn
7 upon whether that creditor’s identity would be uncovered with ‘reasonably diligent efforts’ on the
8 administrator’s part.” *Interinsurance Exchange v. Narula*, 33 Cal.App.4th 1140, 1145 (Cal. App.
9 4th 1995) (quoting *Tulsa*, 485 U.S. at 491). The question of whether a creditor is “reasonably
10 ascertainable” is a question of fact dependent upon the circumstances of each individual case. See
11 *Singer Asset Fin. Co. v. Estate of Rutherford*, 34 So.3d 1253, 1259 (Ala. Civ. App. 2007) (stating
12 that the question of “whether a creditor is ‘reasonably ascertainable’ and whether a personal
13 representative has exercised ‘reasonably diligent efforts’ to uncover a potential creditor are
14 questions of fact dependent upon the circumstances of each individual case”).

15 In the case *In re Estate of Hofschneider*, the Court denied the claims of the NMI Settlement
16 Fund as a creditor of the Estate of Hofschneider because the NMI Settlement Fund had not
17 informed Mr. Hofschneider of the pension overpayment prior to his death and the NMI Settlement
18 Fund failed to submit its claims before the 60-day deadline provided in Rule 11 of the NMI Rules
19 of Probate and in 8 CMC Section 2924(a) had elapsed. *In re Estate of Hofschneider*, Civ. No. 16-
20 0122 (NMI Super. Ct., Nov. 28, 2018) (“Order Denying Creditor Claims Pursuant to 8 CMC §
21 2924(a) and NMI R. Prob. 11 as the Settlement Fund Did Not Inform Decedent of Pension
22 Overpayment Before His Death, and Failed to Submit Claims Before the 60-Days Deadline”).⁵

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24 ⁵ Grammatical error in the original title of the Order.

1 Furthermore, the NMI Settlement Fund was found not to be a known or reasonably ascertainable
2 creditor because the NMI Settlement Fund did not consider itself a creditor of Mr. Hofschneider
3 until it conducted an audit after his death and after the Administratrix had contacted the NMI
4 Settlement Fund by letter to inquire if it possessed any account receivable/payable belonging to
5 the deceased. *Id.* at 4-5.

6 **IV. DISCUSSION**

7 **A. The Due Process Rights of Mrs. Benavente Are Separate and Distinct from the 8 Estate and Are Not (Yet) Before the Court**

9 **1. The Question of Mrs. Benavente's Due Process Rights is Beyond the Scope of the 10 Present Inquiry**

11 Mrs. Benavente's property interest in her survivor's annuity is her own separate property
12 which does not concern the Estate of Benavente. For this reason, it is beyond the scope of the
13 Court's decision in the claim by the NMI Settlement Fund against the Estate of Benavente and the
14 Court need not rule on Mrs. Benavente's survivor's annuity to resolve the NMI Settlement Fund's
15 creditor claims against the Estate of Benavente⁶.

16 ⁶ Furthermore, the question of overpayment of Mrs. Benavente's survivor's annuity is not the same as the overpayment
17 of Benavente's pension during his lifetime. While both are based on the same error of calculation made by the NMI
18 Settlement Fund, Benavente's and Mrs. Benavente's issues are distinct and separate. The amount of Mrs. Benavente's
19 survivor's annuity is calculated based on the amount of Benavente's pension, but it raises the issue of a property
20 interest unique to her and entirely separate from the pension benefits of Benavente. The overpayment to Mrs.
21 Benavente began after Benavente's death in September 2015, when she registered for and began to receive her
22 survivor's annuity. From September 2015 through August 2018, the NMI Settlement Fund claims that it overpaid Mrs.
23 Benavente based on the miscalculation of the amount to which she was entitled. On September 6, 2018, the NMI
24 Settlement Fund sent an adverse decision letter to Mrs. Benavente to notify her of an overpayment discovered
following an audit of Benavente's file, and that the overpaid amount will be collected in accordance with 1 CMC
Section 8390(a), without specifying how it will be collected. Mrs. Benavente's survivor's annuity benefits and
overpayments, if any, are not (yet) before the Court. Any adjustment to future payments maybe subject to due process
protections: Mrs. Benavente has appealed this adverse decision letter and the administrative appeal process is still
ongoing. The Court therefore need not address the issue of whether, under 1 CMC Section 8390(a), the NMI
Settlement Fund is entitled to adjust future payments to Mrs. Benavente, a survivor, to collect this separate and distinct
overpayment to Mrs. Benavente's survivor's annuity during payments issued to her from 2015 to 2018.

1 **B. The NMI Settlement Fund is not a Known or Reasonably Ascertainable Creditor,**
2 **and its Claim is Therefore Time Barred Pursuant to 8 CMC Section 2924(a)(1)**
3 **and Rule 11 of the NMI Rules of Probate**

4 At issue is whether the claim of the NMI Settlement Fund against the Estate of Benavente
5 is time-barred. The key question to determine this issue is whether the NMI Settlement Fund was
6 a known or reasonably ascertainable creditor of the estate at the time that notice was published,
7 and thus whether actual notice was required to be provided to the NMI Settlement Fund.

8 “Whether or not a creditor is ‘reasonably ascertainable’ depends in turn upon whether that
9 creditor’s identity would be uncovered with ‘reasonably diligent efforts’ on the administrator’s
10 part.” *Interinsurance Exchange*, 33 Cal.App.4th at 1145 (quoting *Tulsa*, 485 U.S. at 491). The
11 question of whether a creditor is “reasonably ascertainable” and whether an administrator has
12 exercised “reasonably diligent efforts” to uncover a potential creditor are questions of fact
13 dependent upon the circumstances of each individual case. *Singer Asset Fin. Co.*, 34 So.3d at 1259.

14 The NMI Settlement Fund is a pension fund: it is not generally a creditor, nor is it a banking
15 institution. A review of Benavente’s monthly bank statements and records would indicate that he
16 received his full pension regularly. Since the 50% reduction of future payments was temporarily
17 stayed and that stay remained in effect for the remainder of Benavente’s lifetime, the Estate
18 Administrator would not be able to see any reduction in pension payments in Benavente’s monthly
19 bank statements, and Mrs. Benavente, when managing her husband’s finances, would not have
20 seen any difference in his pension. The first letter, dated May 7, 2012, indicated that adjustments
21 would automatically be made to Benavente’s pension payments unless he filed an appeal. A month
22 later, the second letter was a Notice of Temporary Stay, dated June 21, 2012, stated that any
23 adjustment to Benavente’s pension payments was temporarily stayed. And two years later, the
24 third letter from the NMI Settlement Fund, dated July 9, 2015, does not reference any claim against
Benavente, but instead refers to the Notice of Temporary Stay on the decision to adjust

1 Benavente’s benefits, dated June 21, 2012. The third letter of July 9, 2015, also assured Benavente
2 that a stay remained in effect. Taken as a whole a reasonably diligent estate administrator would
3 not identify the NMI Settlement Fund as a creditor of Benavente.

4 Furthermore, the NMI Settlement Fund approved Mrs. Benavente’s application to receive
5 survivor’s annuity and began issuing payments to her shortly after Benavente died in 2015, at a
6 time when the NMI Settlement Fund was already aware of the overpayment to Benavente. Mrs.
7 Benavente testified that the NMI Settlement Fund did not advise her of any overpayment issue
8 when she went in person to submit her application for survivor’s annuity, or when her application
9 was approved. Instead, Mrs. Benavente received an adverse decision letter from the NMI
10 Settlement Fund on September 6, 2018, three years later. Also, the Court notes that this letter to
11 Mrs. Benavente was sent two years after the publication of the Notice to Creditors on September
12 1, 2016 and on September 8, 2016. The Court finds that neither Mrs. Benavente nor the Estate
13 Administrator were aware of any overpayment issue at the time the probate case was opened, or
14 at the time the Notice to Creditors was published.

15 The facts in the present case are similar to the facts in *In re Estate of Hofschneider*, in that
16 the Estate Administrator would not be able to identify the NMI Settlement Fund as a creditor of
17 Benavente even if he reviewed Benavente’s bank statements to determine who were Benavente’s
18 creditors and other debts. See *In re Estate of Hofschneider*, Civ. No. 16-0122 (NMI Super. Ct.,
19 Nov. 28, 2018) (“Order Denying Creditor Claims Pursuant to 8 CMC § 2924(a) and NMI R. Prob.
20 11 as the Settlement Fund Did Not Inform Decedent of Pension Overpayment Before His Death,
21 and Failed to Submit Claims Before the 60-Days Deadline”).⁷ Any overpayment was to be
22 collected through a 50% reduction in Benavente’s pension payments during his lifetime—an action

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24 ⁷ Grammatical error in the original title of the Order.

1 that was stayed pending an administrative appeal by NMI Settlement Fund members. A review of
2 monthly bank statements would simply indicate that Benavente received his full pension from the
3 NMI Settlement Fund, without any 50% reduction.

4 The Estate Administrator conferred with his mother, Mrs. Benavente, to gather information
5 about the Estate of Benavente and reviewed any mail that came in Benavente's name. However,
6 Mrs. Benavente was not aware of any overpayment issue with respect to Benavente's pension, and
7 the Estate Administrator did not find any letters from the NMI Settlement Fund. Mrs. Benavente
8 had already applied for survivor's annuity from the NMI Settlement Fund, and had received no
9 notice of any overpayment issue, and she began receiving her survivor's annuity payments. The
10 Estate Administrator identified the Bank of Guam as a known creditor and provided notice
11 accordingly. However, as to the NMI Settlement Fund there was no indication or evidence that
12 identified the NMI Settlement Fund as a known or reasonably ascertainable creditor. Thus, the
13 Estate Administrator did not personally deliver or mailed notice to the NMI Settlement Fund.

14 For the above reasons, the Court finds that the NMI Settlement Fund was not a known or
15 reasonably ascertainable creditor for the purposes of the requirement of personal delivery or direct
16 mail notice under Rule 11 of the Rules of Probate. NMI R. PROB. 11. Reasonably diligent efforts
17 would not have unearthed the NMI Settlement Fund as a creditor as there was no reduction of 50%
18 in pension payments during Benavente's lifetime, or to Mrs. Benavente's survivor's annuity until
19 September 6, 2018, three years after Benavente's death and two years after the publication of
20 Notice to Creditors in September 2016. Benavente received his full pension from the NMI
21 Settlement Fund during his lifetime without deduction. Considering all the facts and evidence
22 presented, the Court finds that the NMI Settlement Fund was not a known or reasonably
23 ascertainable creditor.

