

DISTRICT COURT ARAPAHOE COUNTY, STATE OF COLORADO Arapahoe County Justice Center 7325 South Potomac Street Centennial, Colorado 80112	FILED Document CO Arapahoe County District Court 18th JD Filing Date: Dec 1 2009 3:56PM MST Filing ID: 28290529 Review Clerk: N/A Court Use Only
Plaintiff: STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL v. Defendants: COLORADO HUMANE SOCIETY & S.P.C.A., INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual	<hr/> Case No. 08CV2659 Courtroom: 404
ORDER RE: CUSTODIAN’S EIGHTH REPORT	

THIS MATTER comes before the Court on Waverton Group, LLC, as Custodian for the Colorado Humane Society & SPCA’s (hereinafter “Custodian”)’s Eighth Report. The Court being fully advised in the premises finds and orders as follows:

I. Statement of the Case

The Custodian filed its Eighth Report which begins by alleging that the Financial Statements are incomplete this month because accounting systems can only have two years open at one time. The Custodian has had to run a parallel system for 2009 while the reconstruction of the previous years’ books are completed. The Custodian states it will amend the 2009 Balance sheet over the next two months, but the balance sheet will not contain all of the information until the update is performed. The Custodian also states that it has been unable to resolve the federal income tax issue, but it will continue to work on the matter. It also updates the Court regarding the Pinnacol Assurance matter in that Pinnacol has responded by filing a claim, which the court can adjudicate. Additionally, the Rocky Ford property sale was closed for \$99,000. The Custodian then states that it

will seek the prospect of a judicial sale rather than attempting to seat a new board of directors. The Informational Report notes that Mary Warren's cross-claims against Colorado Humane Society (CHS), despite her contention, necessarily are a cross-claim against the Custodian. Additionally, claims against the Custodianship Estate should be brought using the Custodian-prepared Claim Form. Finally, the Custodian states its intention to possibly pursue a Complaint against the Individual Defendants for contribution since they were in the management positions at the times the events in the cross-claims arose.

Mary Warren objects to the Eighth Report on the grounds that the Report cannot give an accurate financial picture of CHS, since the Custodian admits it is not including all of the CHS assets. Additionally, Mary Warren is concerned with the financial negotiations surrounding the sale of the Rocky Ford property since the \$99,000 appraisal did not include the property's two shares in New Dale-Grand Valley Water, but only included the value of the physical land. Furthermore, Mary Warren is distressed over the Custodian's notation that the Rocky Ford sale resulted in a \$285,000 loss to CHS. She seeks further clarification on the sale. Finally, Mary Warren objects to the Custodian seeking a judicial sale since the Court has yet to even receive a formal request or conduct a hearing concerning the propriety of such an action.

II. Findings and Order

The Court objects to the form of this Report. Most of the Report sounds like a "motion to conduct a judicial sale," including a lengthy argument as to why the Custodian is entitled to conduct such a sale. Such an argument is improper in the Report, since the purpose of the Custodian's Report is to make a "report of the condition of the Custodianship Estate," only. The Custodian spends much of its Report setting forth argument as to why a judicial sale is warranted and has scant evidence as to the current financial condition of the Custodianship Estate.

However, Mary Warren's argument that Custodian's intention to seek a judicial sale is improper since the Custodian has not sought a judicial sale nor has the Court held a hearing on the propriety of such a sale, has been rendered moot by subsequent events. The Custodian did submit a formal request for a judicial sale on September 25, 2009. Additionally, the Court heard arguments on November 13, 2009 concerning the need to conduct a judicial sale. Finally, the Custodian, in its Report, is not trying to sell CHS without permission, it is merely stating its intention to begin to seek potential buyers in case the Court should grant the Judicial Sale request.

The Court, like Mary Warren, objects to the lack of financial information included in the Eighth Report. While the Court is mindful of the software limitations involved in trying to run three years of accounting systems concurrently, the Report lacks the financial information to give the Court a clear understanding of the condition of the Custodianship Estate. The Custodian states that it will continue to update the financial information over the next two months as it continues to update the third accounting system on the parallel program. However, the Custodian never filed the updated balance sheets with the Court once the update was completed.


Mary Warren also objects to the Custodian's notation that the Rocky Ford property sale resulted in a \$285,000 loss to CHS. According to the incomplete Income Statement, \$285,000 of the \$384,000 expenses incurred by CHS resulted from the "Rocky Ford Sale-Loss on Prop." Neither the Income Statement nor the Report filed with the Court explains why such a large expenditure was incurred. The Court was able to glean, through examination of the Custodian's Second Report that the Rocky Ford property had a book value on the CHS accounting system of \$390,000. Presumably, the \$285,000 "expense" could stem from the difference in the book value and sale value of the property. However, this belief is mere conjecture on the Court's part without any evidentiary support from the Custodian. Thus, the Court will grant Mary Warren's request and require an explanation as to the \$285,000 loss to CHS in the Rocky Ford sale.

Finally, the Informational Report is meant to "allow the custodian to Report litigation matters with conclusions of law and editorial content...without submitting the Informational Report to the Court for approval," and also "asks the Court to adopt the findings of fact from the custodian." *See* Report at ¶ 19. One point of the Informational Report to note is that the proposed Order to Present and File Claims was granted on July 7, 2009. Thus, the "procedure" the Custodian requests the Court to "fix" has since been granted. Additionally, the Custodian, in its prayer, makes clear that it is only requesting the Court approve Sections I (The Custodianship Estate), II (The Financial Report), and III (Other Matters), and not requesting approval of Section IV (Informational Report). The Custodian claims that the Informational Report is "included in this Report for informational purposes only." Since this Court finds the assertions that the Custodian is seeking to make "conclusions of law" and "findings of fact" troubling, especially since such assertions could invade the province of this Court, the Court will not approve Section IV of the Eighth Report.

Therefore, the Custodian's Eighth Report is denied. The Court requests the Custodian submit a Report that "reports the condition of the Custodianship Estate," and does not appear to be a disguised motion to conduct a judicial sale. Moreover, the Court requests the updated and complete balance sheets for the period the Eighth Report – i.e. June 20 through July 20, 2009. Additionally, the Court requests that the new Eighth Report also contain an explanation of the \$285,000 loss to CHS from the Rocky Ford property sale.

SO ORDERED THIS 1st DAY OF DECEMBER 2009.

BY THE COURT:



Charles M. Pratt
District Court Judge