

<p>DISTRICT COURT ARAPAHOE COUNTY, STATE OF COLORADO Arapahoe County Justice Center 7325 South Potomac Street Centennial, Colorado 80112</p>	<p>EFILED Document CO Arapahoe County District Court 18th JD Filing Date: Dec 1 2009 3:46PM MST Filing ID: 28289731 Review Clerk: N/A</p> <p style="text-align: center;">Court Use Only</p>
<p>Plaintiff: STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>v.</p> <p>Defendants: COLORADO HUMANE SOCIETY & S.P.C.A., INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual</p>	<p>Case No. 08CV2659</p> <p>Courtroom: 404</p>
<p>ORDER RE: CUSTODIAN’S SEVENTH REPORT</p>	

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

I. Statement of the Case

Custodian filed its Seventh Report in which it stated that the Custodianship Estate will now rely on the accounting system, rather than the Davis & Co. audit, to reconstruct the 2007 books and be able to file a Form 990 for the fiscal year ending June 30, 2009, in a timely manner. The Custodian also states that it is now working with the proper Internal Revenue Service (IRS) department regarding the \$26,000 penalty. Additionally, Pinnacol Assurance has yet to respond to the Custodian’s demand for \$20,000. The Custodian also reports that it has encountered an issue in closing the Rocky Ford property due to a lien to a company that is no longer in business, the servicing of which has been assigned to another company that denies having the lien. Custodian also intends to appeal Philadelphia Insurance denial of coverage for everyone including the Custodianship.

Additionally, the lack of operating capital at the new clinic has prevented the Custodian from being able to spay and neuter all animals adopted from it in a timely manner. Finally, the Custodian includes an “Informational Report” that says that Mary Warren’s alleged cross-claim against CHS but not the Custodian is an improper characterization of the law since any cross-claim against CHS is necessarily a claim against the Custodian. The Custodian also states in the Informational Report that all claims against the Custodianship Estate should be brought using the Claim Form prepared by the Custodian, and also highlights the fact the Court has not approved its proposed Order to Present and File Claims which would fix the procedure for bringing about such claims. Finally, the Custodian states its possible intention to file a Complaint against the Individual Defendants for contribution since they were the management at the time when the cross-claim events occurred.

Stephenie Gardner filed an Objection that incorporates all previous objections lodged by the Defendants either individually or jointly. Additionally, Stephenie Gardner states that the Informational Report attacks the defendants and purports to draw conclusions of law and findings of fact. Specifically, Stephenie Gardner also objects to the Custodian’s argument that the Individual Defendants cannot assert cross-claims for indemnification of defense costs, but must, instead, submit an extrajudicial claim for payment without any legal support for such an argument.

II. Findings and Order

The Seventh Report does not contain the items that the Individual Defendants’ have previously found objectionable, namely exceeding scope of authority appointing a new permanent Board of Directors. Nor does the Individual Defendants point to any alleged anomalies or discrepancies in any of the financial statements to renew those past objections by directing the Court to concrete examples. Thus, in the Court’s opinion, the only conceivable, previous objection that Stephenie Gardner seeks to incorporate would be objections to the “Informational Report.” Mary Warren, in both the Combined Fourth and Fifth Reports and Sixth Report, objected to the Informational Report, especially the assertion that the Custodian has the authority to make “findings of fact” or “conclusions of law” on the Court’s behalf and that the Custodian’s Reports have the effect of being Court Orders.

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), III (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 Seventh Report. Furthermore, since Stephenie Gardner does not seem to object to Sections I through III, nor does the Court find those Sections objectionable, Sections I, II, and III are approved. To the extent that the Court has issued a specific order contrary to anything in the approved reports, the Orders, whether written or oral, will control.

SO ORDERED THIS 1st DAY OF DECEMBER 2009.

BY THE COURT:



Charles M. Pratt
District Court Judge