

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 3:54PM MST Filing ID: 28290416 Review Clerk: N/A <b>Court Use Only</b>
<b>Plaintiff:</b> STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL  v.  <b>Defendants:</b> 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
<b>ORDER RE: CUSTODIAN'S SIXTH REPORT</b>	

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

**I. Statement of the Case**

The Custodian filed its Sixth Report which again stresses its inability to locate all of the financial information. The Report also sates that the Internal Revenue Service (IRS) has assessed a \$26,477.12 penalty against Colorado Humane Society (CHS) for failure to include a Schedule B in its Form 990 filing. The Custodian details how it is seeking to remove the assessment, but is having trouble locating the proper authority within the IRS to resolve the matter in order to "wind down the Custodianship Estate." The Custodian also states that CHS is experiencing a cash shortage coupled with the fact that local governments are not committing until a new management is in place, grant sources are waiting to see how CHS is ultimately resolved before committing, and a general decline in operating revenues which necessitated transfers from other shelters in order to

supplement revenues and resulted in a canine distemper outbreak. Additionally, the Custodian notes that Pinnacol Assurance was paid approximately \$26,000 for worker's compensations for one year when the Custodian estimates the amount should have been \$6,000. Therefore, the Custodian has made a demand for Pinnacol to return \$20,000. The Custodian also reiterates the Request for Proposal which seeks to install a new Board of Directors. Finally, the Custodian attaches an "Informational Report," which had nothing to report.

Mary Warren objected to the Sixth Report. In her Objection, Mary Warren states that the Custodian was never granted the authority to install a permanent Board of Directors, yet it continues to spend money, time, and resources pursuing a Board of Directors. Mrs. Warren believes the Court should, thus, reject the Custodian's Request for Proposal and deny any application for compensation resulting from it. Mrs. Warren also objects to the Custodian's suggestion that it needs to "wind down" the custodianship since the Custodian does not have the authority to wind down or terminate CHS or its operations absent a court order. Additionally, Mary Warren is concerned about alleged anomalies and lack of clarity in the Custodian's expense reports – specifically, the lack of supporting documentation for at least \$12,000 in expenses and several missing entries on CHS Income Statement. Finally, Mary Warren repeats her concerns over the inclusion of an 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 Attorney General filed a Reply which stated that nothing in the Order prevents the Custodian from seeking to appoint a new Board of Directors or new management. Moreover, such an appointment seems necessary in light of the "wait and see" approaches that local governments and grants sources are taking in light of the uncertainty surrounding CHS. Finally, the Attorney General correctly points out that the Custodian is only attempting to "wind up" custodianship, not CHS.

## **II. Findings and Order**

Mary Warren's assertion that the Custodian is exceeding the scope of its authority in seeking to appoint a permanent Board of Directors has been rendered moot in light of the July 9, 2009, hearing. At that hearing, the Court held that it was necessary for the Custodian to install a new Board of Directors since CHS could not survive without the appointment of a new Board.

Mary Warren objects to certain discrepancies or anomalies in the expense reports provided by the Custodian. Namely, Mary Warren points out at \$58,000 discrepancy in the year-to-date expense amounts. In the Custodian's Fourth and Fifth Reports for the period ending on April 20, 2009, the Custodian reported a total year-to-date expenses of \$408,636.16. In the Sixth Report, which contains the expenses for the month of April 20-May 20, 2009, the expenses for that month are listed as \$41,652.46. Thus, the current year-to-date expenses in the Sixth Report, in theory, should be listed as \$450,288.62. However, the Custodian lists the year-to-date expenses as \$508,573.03 — a discrepancy of \$58,284.41. The Court agrees with Mary Warren and requests an explanation and supporting documentation in regards to the \$58,000 discrepancy in the year-to-date expenses between the Combined Fourth and Fifth Report and the Sixth Report.

Mary Warren also alleges \$12,648.22 in “expenses” that do not have supporting documentation in the Fourth and Fifth Reports without directing the Court specifically to which items in the expense reports lack supporting documentation. The Court is unable to discern in looking through the Fourth and Fifth Report balance sheets which expenses Mary Warren is alleging lack supporting documentation. Moreover, Mary Warren alleges there is a lack of clarification on what “Professional Fees,” like the \$4,620.00 incurred by Kim Fenimore, pertains to, meaning that Mary Warren does not know what the individuals were working on in order to permit the charge. Kim Fenimore and the Custodian have testified at length of her labor- and time-intensive job of recreating the books for CHS. Thus, these fees would tend to stem from her position in recreating the financial records of CHS.

Finally, Mary Warren's objections over the inclusion of the Informational Report are ineffective at this time since the Custodian has yet to include any information in the Informational Report section. 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. While the Court does find such assertions somewhat troubling, without the inclusion of specific “findings of fact” or “conclusions of law,” the Court is unable to determine whether this Section evades the Court's oversight authority. Mary Warren's argument is too abstract at this time without some concrete assertions by the Custodian in the Informational Report.

Therefore, for the reasons stated above, the Court conditionally approves the Custodian's Sixth Report and requests an explanation and supporting documentation concerning the \$58,000 discrepancy between the year-to-date expenses in the Combined Fourth and Fifth Reports and the Sixth Report. 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 1<sup>st</sup> DAY OF DECEMBER 2009.

BY THE COURT:



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Charles M. Pratt  
District Court Judge