

STATE OF INDIANA) IN THE SUPERIOR COURT, PROBATE
)SS:
COUNTY OF MARION) TRUST DOCKET T-62, Page 11

IN THE MATTER OF THE PUBLIC BENEVOLENT TRUST)
U/W MARY POWELL CRUME, DECEASED)

**MOTION TO CORRECT ERRORS, TO REQUIRE EVIDENCE OF SUFFICIENCY OF
COLLATERAL BACK TO TRUST, GIVEN THAT
CRUME TRUST ALREADY OWNS REVERSION IN SAME COLLATERAL;**

**REQUEST FOR COURT TO APPOINT AMICUS OR GUARDIAN AD LITEM FOR
PURPOSE OF DETERMINING SAME; AND**

**MOTION TO REQUIRE BOND PENDING PROOF OF SUFFICIENCY OF
COLLATERAL TO PROTECT TRUST**

Come now Home for Friendless Animals, Inc., Southside Animal Shelter, Inc., Spay-Neuter Services of Indiana, Inc., by their counsel, and respectfully request that this Court correct its error in approving agreement reached between the Attorney General of the State of Indiana and the Humane Society of Indianapolis, Inc., simultaneously as the current trustee, income beneficiary and proposed borrower of the Crume Trust. Petitioners ask this court to require evidence for determination of same, to take judicial notice of this Court's 1967 Entry Approving Lease Agreement, and to hire an attorney and a financial actuary to review the specific issue of whether sufficient collateral has been offered to adequately protect the Crume Trust in the event of the borrower's default. Petitioners also request that this Court require the Humane Society, as borrower, to provide a security bond in the minimum amount of \$500,000 to protect the Crume Trust until such time as evidence on this specific issue can be heard and determined with input from professional financial and legal amicus/guardian ad litem on behalf of the Crume Trust. In support thereof, petitioners state:

1. At a hearing on the Humane Society's Petition to Pledge Crume Trust as Collateral on October 14, 2004, the Honorable Judge Dieter specifically asked the parties whether the buildings and improvements at 7929 N. Michigan Road, Indianapolis, Indiana – the Humane Society's collateral to the Crume Trust under the proposed agreement between the Attorney General and the Humane Society, as borrower – are otherwise encumbered.
2. Attorney for Humane Society, Alan J. Irvin, misled this Court when he replied that the buildings and improvements were not encumbered.

3. Almost in passing, Deputy Attorney General Duga, corrected that misrepresentation by stating to this Court that the Crume Trust owns a reversion interest in those same assets that are being offered as collateral back to the Crume Trust.
4. Despite this correction, the Court approved the proposed agreement without discussion or evidence as to whether, given such reversionary interest in the Crume Trust, the proposed collateral is sufficient to protect the public charitable Crume Trust.
5. The Petitioners ask this Court to take judicial notice of the original Lease Agreement, under its 1967 Entry; as well as a court-certified copy of any renewal of that Lease Agreement, presumably authorized in 1987.
6. The Humane Society has requested authority to pledge up to 90% of Crume Trust principal (exceeding \$3,300,000) in order for the Humane Society to obtain a loan to it directly.
7. This Court has received no evidence as to the law of Indiana or elsewhere in this country on the issue of whether a trustee of a public benevolent trust can pledge assets of that trust as collateral for its own personal loan.
8. This Court has received no evidence as to whether the purported collateral or security back to the Crume Trust from the Humane Society, as the trustee/borrower, is sufficient to protect the Crume Trust in the event of the default of the borrower.
9. This Court's "temporary limited consultant" did not review or report on same.
10. This Court has the authority to employ guardians ad litem or *amicus curiae* for the benefit of reviewing specific issues and framing those issues for its review.
11. Petitioners request that this Court employ Gregory S. Fehribach, or other suitable guardian ad litem or amicus attorney frequently engaged by this Court, who shall then review actuarial values of the Crume Trust's reversion interest in the buildings and improvements, and the corresponding value of the collateral being posted by the Humane Society for its right to pledge Crume Trust assets.
12. Given the Crume Trust's present reversion in those assets, the fact that (upon dissolution of the Humane Society) Indiana law requires that those assets would have to be given to charity, and that no other lending institution in the State of Indiana would issue a loan on the same collateral, the Petitioners strongly believe that such collateral is insufficient to protect the Crume Trust.
13. Petitioners ask this Court to require the Humane Society to issue a security bond in the amount of not less than \$500,000 until and unless it can be determined from evidence, from information of which this Court can take judicial notice, and review by professional legal and financial advisors to this Court, that the collateral is sufficient to protect the Crume Trust.
14. It was error, and it would be an abuse of discretion, by this Court to refuse to require evidence as to the sufficiency of collateral back to the public charitable trust where 90% of such public charitable trust is being jeopardized by the proposed transaction.

15. At this time, Petitioners are **not requesting a stay of this Court's order approving the transaction**; rather, the Petitioners request that a bond be required for the deficiency in collateral until such time as the Humane Society can prove that such collateral is adequate to protect 90% of the Crume Trust principal.

WHEREFORE, Petitioners respectfully pray for an Order by this Court (1) correcting its Order of October 14, 2004 such that the borrower, Humane Society, is required to post a bond of not less than \$500,000 until the sufficiency of the collateral can be determined by independent review of a court-appointed amicus (or guardian ad litem); (2) Ordering bond be posted by the borrower, Humane Society, within not less than ten days after the date of such Order; (3) Taking judicial notice of the 1967 Lease Agreement as pled to this Court and any other financial and other information that can be noticed pursuant to the Indiana Rules of Evidence 201; (4) Appointing an attorney to serve as amicus curiae (or guardian ad litem) to review (a) the 1967 Lease Agreement; (b) a court-certified copy of the 1987 renewal of such Lease Agreement; and (c) actuarial and financial information; (5) Ordering a hearing to hear all evidence thereon; and for all other relief just and proper in the premises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15^h day of October, 2004, a true and complete copy of the foregoing was made by depositing same in the U.S. First Class Mail with sufficient postage to:

Mr. Peter Donahoe (#4794-49)
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