

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; INDIANAPOLIS)
HUMANE SOCIETY, TRUSTEE)

AMENDED COMPLAINT FOR BREACH OF FIDUCIARY DUTY;
OBJECTION TO BORROWING AGAINST CORPUS
OF PUBLIC BENEVOLENT TRUST;
REQUEST FOR REMOVAL OF CO-TRUSTEES

Come now Spay-Neuter Services of Indiana, Inc.; Alliance for Responsible Pet Ownership, Inc.; Home for Friendless Animals, Inc.; Southside Animal Shelter, Inc.; and Move to ACT, and bring their amended complaint against the Humane Society of Indianapolis, Inc. (“H.S.I.”) and National City Bank of Indiana, N.A. (“Nat City”) for breach of their fiduciary duties as a result of mismanagement and commingling of trust assets, failure to account, self-dealing, and conflicts of interest.

Further, the complainants state their objection to H.S.I.’s – whether as the trustee or as the income beneficiary – seeking to borrow money and pledging the corpus of the above-captioned public benevolent trust. No beneficiary should be allowed to pledge the assets of a public benevolent trust, particularly when the beneficiary has proved that it is a spendthrift and is not likely to pay back the loan.

Complainants seek the removal of H.S.I. and Nat City as trustees of the Trust, for restrictions to be placed on H.S.I., as beneficiary, to prevent future conflicts of interest and to prevent access to Trust principal unless proper security and protections are provided in return to the Trust, and appointment of a single corporate trustee with power to hire an investment advisor upon court approval, which investment advisor could be an affiliate of the corporate trustee, and all other relief just and proper in the premises.

In support thereof, the complainants state:

FINANCIAL CRISIS AT H.S.I.

1. H.S.I. states in its Petition to Allow Pledging of Charitable Trust Assets, filed May 26, 2004 (“Request to Borrow”) that H.S.I. “does not have sufficient funds from donations and interest on investments to continue daily operations.” Request to Borrow, Par. 8.
2. In 1981, H.S.I. created its own Charitable Trust, with National City Bank as the trustee. The purpose of that Charitable Trust was to receive donations from the general public with the income to be distributed to H.S.I. at least quarterly; withdrawals of principal only upon Court order to be used for building, operational and educational expenses.
3. Less than three years ago the H.S.I. Charitable Trust was worth more than \$ 4,000,000.
4. H.S.I. has confirmed publicly that it has completely depleted the H.S.I. Charitable Trust; having gone through \$4,000,000 in just 3 years.
5. In September, 2003, H.S.I. obtained modification of another trust, the Julia Stokes Trust, to pledge that trust’s assets for a line of credit of \$700,000 (the “Stokes loan”). The Stokes trust is not a public benevolent trust.
6. That Stokes loan line of credit was recently increased to \$900,000 according to public reports from H.S.I. Indeed, ex-president of H.S.I. board, Monty Korte, stated at the most recent annual meeting in May, 2004 that H.S.I. has collateralized the Stokes Trust “to its limits.”
7. H.S.I. has also publicly stated that it is still operating at a negative cash flow of between \$50,000 to \$100,000 per month despite the recent cash infusion from the Stokes loan.
8. In its Request to Borrow, H.S.I. indicates that if it does not receive yet another loan – this one up to \$1,700,000 – by pledging the Crume Trust assets, it may have to cease operations. Request to Borrow, Par. 12.
9. Thus, H.S.I. is on the verge of bankruptcy and could close its doors or significantly and drastically cut its services in a matter of days, not months.
10. Yet the only plan H.S.I. has set forth for correcting its financial position is to borrow more money, on an unsecured basis, from this public benevolent Crume Trust.
11. And yet H.S.I. will not disclose its financial statements or strategic plan to this Court or even the public it serves to determine whether H.S.I. is credit-worthy or already is too far gone to

bail out; how much money it has withdrawn from or borrowed against the other two trusts of which it is the sole beneficiary; or how it proposes to meet its current financial needs in addition to servicing the debt on the Stokes loan, the proposed loan involving the Crume Trust as well as other outstanding debt or lease obligations.

12. H.S.I. has depleted its own Charitable Trust created in 1981, which four years ago was worth \$4,200,000. Further, it is the complainants' understanding that H.S.I. has borrowed at least \$700,000 against a second testamentary trust, the "Stokes Trust," which is supposed to be a restricted fund.
13. Now H.S.I. seeks to put at risk the third and final trust, this one a public benevolent trust established more than 70 years ago by Mary Powell Crume for the limited and specific purposes of distributing income for the relief of Central Indiana's homeless or surrendered animals.
14. H.S.I. is willing to pledge 90% of the Crume Trust's value (\$3,060,000) in order to receive a loan equal to \$1,700,000, or one-half of the Crume Trust's value.
15. Thus, H.S.I. is the consummate spendthrift beneficiary: it continues to spend more money than it has, and seeks to borrow against and put at risk assets belonging to a third and final trust without risking its own property.

LEGAL STANDING OF COMPLAINANTS

16. Southside Animal Shelter, Inc. ("Southside") is a non-profit corporation formed in Indiana in 1994 as a no-kill shelter and adoption facility providing a loving refuge for stray and abandoned dogs and cats. Currently SOUTHSIDE houses and provides medical and daily care for over 200 adoptable dogs and cats from primarily Marion County. While it has no on-site medical facility, it works through community veterinarians to ensure that all dogs and cats in its care are neutered or spayed and receive all their required vaccinations.
17. Because it provides services similar to H.S.I., Southside might be a potential beneficiary of the Crume Trust under the *cy pres* doctrine if H.S.I. goes bankrupt and ceases to exist.

18. Furthermore, as a substitute beneficiary under the *cy pres* doctrine, Southside will be severely and adversely affected if up to 90% of the Crume Trust corpus were collateralized and then lost as a result of H.S.I.'s subsequent financial failure.
19. Home for Friendless Animals, Inc. ("HFA") is a non-profit corporation formed in Indiana in 1943 as a no-kill shelter and adoption facility providing a loving refuge for stray and abandoned dogs and cats. Currently HFA houses and provides medical and daily care for over 400 adoptable dogs and cats; at least 75% of these animals come to HFA from Marion and Hamilton counties.
20. HFA also provides foster care and financial assistance to individuals whose pets have medical needs beyond the owner's financial abilities.
21. While it has no on-site medical facility, it works through community veterinarians to ensure that all dogs and cats in its care are neutered or spayed and receive all their required vaccinations.
22. HFA provides many of the same services as H.S.I., so if H.S.I. were to go bankrupt and cease to exist, HFA would be faced with a significant influx of animals needing its care and services.
23. Furthermore, because it is a charitable organization that provides many of the same services as H.S.I., HFA is a potential substitute beneficiary of the Crume Trust under the *cy pres* doctrine if H.S.I. were to go bankrupt and cease to operate. As a substitute beneficiary under the *cy pres* doctrine, HFA has a present interest in seeing that the Crume Trust corpus not be put in jeopardy by the beneficiary's pledging it for a loan, and ensuring that the full Trust corpus remains intact to provide income to future Crume Trust beneficiaries.
24. Spay-Neuter Services of Indiana, Inc. is a non-profit corporation formed in Indiana in 1977 to provide low-cost spay and neuter services to pets and to stray or surrendered animals of Central Indiana. It works closely with many animal shelters around Central Indiana.
25. After much pressure, H.S.I. has now created a much-needed on-site spay-neuter surgical center, and H.S.I. requires that all of its adopted animals (5,200 in 2003) be spayed or neutered prior to adoption. Thus, if H.S.I. were to go bankrupt and cease to exist, Spay-Neuter would be severely impacted because it would be forced to accommodate spay-neuter services to many of the animals that H.S.I. would not then be able to serve. Moreover, thousands more animals will

be on the streets in Central Indiana, exacerbating the current animal overpopulation problem; thus, Spay-Neuter would be faced with thousands more animals in need of its services.

26. Further, because it provides services similar to H.S.I., Spay-Neuter might be a potential beneficiary of the Crume Trust under the *cy pres* doctrine if H.S.I. goes bankrupt and ceases to exist. As a substitute beneficiary under the *cy pres* doctrine, Spay-Neuter will be severely and adversely affected if 90% of the Crume Trust corpus were collateralized and then lost as a result of H.S.I.'s subsequent financial failure.
27. Alliance for Responsible Pet Ownership, Inc. ("ARPO") is a non-profit corporation formed in Indiana in 1998 to provide to stray animals and surrendered pets that come under its custody (i) foster care, (ii) adoption services, (iii) routine vaccinations, (iv) medical treatment, (v) surgical treatment for illnesses and injuries, and (vi) spay-neuter services.
28. ARPO would be severely impacted if H.S.I. were to go bankrupt and cease to exist because several thousand more animals (many of which will go unaltered) will be on the streets in Central Indiana, thereby increasing the population of homeless animals; thus, ARPO would be faced with thousands more animals in need of its services.
29. Because it provides some services similar to H.S.I., ARPO might be a potential beneficiary of the Crume Trust under the *cy pres* doctrine if H.S.I. goes bankrupt and ceases to exist. As a substitute beneficiary under the *cy pres* doctrine, ARPO will be severely and adversely affected if 90% of the Crume Trust corpus were collateralized and then lost as a result of H.S.I.'s subsequent financial failure.
30. Move to ACT is an organization whose members are individuals and animal advocacy organizations that protect and promote the rights of animals who cannot speak for themselves and the rights of unknown human potential adopters who could lose significant services if H.S.I. were to go bankrupt and cease to exist. The burdens on those animals and on the numerous member organizations that provide shelter, foster or adoptive services to stray or surrendered animals if H.S.I. were to go bankrupt would be devastating.

**I. OBJECTION TO H.S.I. BORROWING AGAINST ASSETS OF
A PUBLIC BENEVOLENT TRUST**

31. The complainants incorporate by reference herein rhetorical paragraphs 1 through 30.
32. As H.S.I. admits in its Request to Borrow, the Mary Powell Crume Trust “exists for a public purpose, namely, for the purpose of providing relief for animals in Indianapolis.”
33. Thus, the true beneficiaries of the Crume Trust are the homeless animals of Central Indiana; the Humane Society was named as the organization that would serve as the custodian and caregiver of those animals with the use of income distributions from the Crume Trust.
34. Pursuant to the terms of Mary Powell Crume’s will, the corpus of the public benevolent trust was to be invested in order to produce a perpetual income stream to H.S.I. expressly for H.S.I. to use in the care, treatment and relief of the animals in its custody.
35. Specifically, Mrs. Crume devised the original sum to H.S.I., as trustee: “to have and hold the same perpetually in trust *for the sole purpose of using the net income therefrom* for relief of animals which come under its care.” (emphasis added)
36. Contrary to statements made in H.S.I.’s Request to Borrow (see Request to Borrow Paragraph 12), Mrs. Crume did not intend for H.S.I. to be able to pledge the Trust’s assets in order to bail out H.S.I. Rather, she specifically intended that the trust corpus was only to be invested and reinvested to produce a perpetual income stream that would be used directly for the relief and care of animals in H.S.I.’s custody. Hence, the only portion of the Crume Trust to which H.S.I. is entitled is the net income; and it is only entitled to such net income for specific purposes.
37. Mrs. Crume further directed that the trustee (H.S.I.) “shall have *no power or authority to use either the principal or income* of said trust estate and property to pay for buildings, equipment, salaries or any expenses *other than relief of said animals.*” (emphasis added) Thus, Mrs. Crume specifically excluded any power in H.S.I., as trustee, to invade the corpus of the Crume Trust; and certainly not for any reason other than expenses directly related to the relief of animals in its custody.
38. Over the past five decades, this Court and the Attorney General of the State of Indiana have allowed limited invasions of principal that were deemed to have a direct correlation to the relief of the animals, such as building a facility at the former Indianapolis Zoo location in 1962-1963;

acquiring real estate that had been used as an animal shelter and then improving that land in 1967. See Exhibit 1 attached hereto for history of Trust Docket involving invasions of Crume Trust principal.

39. However, in each instance in which this Court has allowed an invasion of Crume Trust principal, that invasion was limited in amount (no more than 20% of the Trust's principal value was withdrawn) and in scope or purpose, and for limited time.
40. In addition, the most recent invasion of principal in 1967 was intended to be the last: See Entry on Petition to Approve Purchase of Real Estate (5/25/1967), page 4, stating the Court contemplated that the invasions of principal under the 1967 order would be sufficient for H.S.I.'s future operational needs "***without future necessity of invading further the corpus of the Mary Powell Crume Trust***" (emphasis added).
41. Further, each withdrawal of Crume Trust corpus gave the Trust something in return for its future protection. For example, the Crume Trust is considered the owner of the parcel of land on which H.S.I.'s facility sits and H.S.I. only leases that land. Further, after allowing invasion of corpus for H.S.I. to build improvements on that land, the Crume Trust, as lessor and as the de facto guarantor of that financing, was given a reversionary interest in the buildings and improvements on that leased land.
42. Thus, throughout the history of the Crume Trust, in exchange for withdrawals from the Crume Trust principal the Crume Trust always has been provided some interest or right that provides security back to the Trust in the event that the lessee (H.S.I.) fails.
43. However, in its Request to Borrow, H.S.I. provides no security back to the Trust and no right or interest of any value that would make the Trust whole if H.S.I. were to default.
44. While it is true that some portion of salaries and other overhead can be shown to be directly related to the relief of the animals, there are numerous other expenses for which Mrs. Crume's devise should not have been allowed to be diverted, such as severance payments to former employees, advertising, insurance, legal fees, interest owed on other loans, opulent fund-raising events, consulting services for fending off bad publicity caused by its own actions and mismanagement, and other activities and expenditures.
45. However, H.S.I. seeks a cash infusion to its general operating funds to allow it to continue "daily operations." (See Request to Borrow, Paragraph 8).

46. Mary Powell Crume was very specific in her terms for the Trust, and those terms forbid the corpus of the Trust to be invaded, never mind to be pledged, assigned or alienated.
47. Indiana statutory and case law do not allow the corpus of, nor the income stream from, a public benevolent trust to be pledged, assigned or alienated by the charitable beneficiary for any reason.
48. To allow a beneficiary to borrow against the principal assets of a public charitable trust would be contrary to law and would set an absurd precedent.
49. H.S.I. has demonstrated, through numerous financial scandals, overspending and mismanagement that it is a spendthrift beneficiary.
50. Likewise, H.S.I.'s board is an irresponsible and incompetent steward of financial assets, having taken total assets of H.S.I. from \$15,000,000 in 1999 down to approximately \$3,000,000 today. H.S.I., as a trustee, has consistently refused to account for the money that it has distributed to itself from the Crume Trust.
51. Thus, it would be imprudent, inappropriate and contrary to the settlor's intent and to Indiana law to allow H.S.I. to borrow funds by collateralizing assets of a public charitable trust.

WHEREFORE, the undersigned respectfully pray for an Order rejecting in its entirety the Humane Society's request to borrow funds with assets from the Crume Trust being pledged to a third party lender, removing H.S.I. as trustee of the Crume Trust and for all other relief just and proper in the premises.

**II. BREACH OF FIDUCIARY DUTY AS RESULT OF MISMANAGEMENT
AND COMMINGLING OF ASSETS, SELF-DEALINGS AND CONFLICTS
OF INTEREST**

52. The undersigned incorporate by reference herein rhetorical paragraphs 1-51.
53. H.S.I. was designated as the sole income beneficiary of the Crume Trust as long ago as 1935.
54. H.S.I. has been allowed to simultaneously serve as the trustee of the same public benevolent trust of which it has a beneficial interest.
55. Nat City was appointed the "depository trustee" of the Crume Trust in 1979.

56. Both H.S.I. and Nat City have participated in the preparation of Trust accountings for the past 24 years.
57. As the trustees of the Crume Trust, each of H.S.I. and Nat City owe the trust – specifically the current and future beneficiaries – a fiduciary duty to preserve and prudently invest the assets of the Trust, account for its expenditures and decreases, its revenues and increases in value, and uphold the express intent of the settlor. I.C. 30-4-3-6; I.C. 30-4-3-11; I.C. 30-4-3.5; I.C. 30-4-5-12.
58. However, the trustees improperly invested the assets of the Crume Trust in more risky equity securities and not in safer, income-producing securities such as bonds, as directed by Mrs. Crume. As a result, the Crume Trust lost significant value during the market downturn beginning in late 1999.
59. It was unnecessary and imprudent for the trustees to leave the Crume Trust assets exposed to such steep losses, particularly when Mrs. Crume expressed her desire to have the Trust corpus invested in less volatile securities that produce interest and dividend income.
60. In addition, since 1979 both trustees have failed to account for real estate interests owned by the Crume Trust, namely, the 7929 N. Michigan Road parcel of land and the Trust's reversionary interest in the buildings and improvements thereon.
61. Such failure to account for Trust assets, for more than 24 years, is a significant breach of trust and calls for removal of both trustees.
62. Furthermore, by requesting to pledge the principal assets of the Crume Trust, H.S.I. – as trustee – is putting at significant risk the trust assets over which it is charged with such fiduciary duty, at the cost to future beneficiaries and contrary to the specific express intent of Mary Powell Crume, the Trust's grantor.
63. As trustee, H.S.I. also owes the Trust and beneficiaries a duty not to engage in self-dealing. I.C. 30-4-3-7.
64. By requesting to pledge the principal assets of the Crume Trust, H.S.I. – as trustee and also as the sole income beneficiary – is engaging in self-dealing.
65. Surely, H.S.I. has filed its Request to Borrow in its own capacity, as beneficiary.

66. By doing so, H.S.I. is allowing itself, as the current beneficiary, to put at risk trust funds over which it, as trustee, is charged with the high fiduciary duties of preservation and prudent investment.
67. Moreover, H.S.I. and National City Bank, N.A. (as the depository co-trustee) have a duty to refrain from self-dealing and from conflicts of interest in dealing with the Trust property.
68. However, H.S.I. and National City Bank, N.A. have constructed multiple layers of conflict of interest:
69. First, the **(A)** beneficiary of a public benevolent trust is in dire need of cash; which its **(B)** discretionary trustee (ITSELF) is allowing it to borrow.
70. Second, the proposed lender from which the **(A)** beneficiary seeks financing is National City Bank, which is the **(C)** depository trustee of the very same Trust.
71. Third, National City Bank **(C)** also employs William Guthrie as its Vice President, who is the newest Treasurer of H.S.I., simultaneously making him a member of the **(C)** depository trustee, the **(B)** discretionary trustee, which is also the **(A)** beneficiary.
72. Thus, as the collateralized lender in this proposal, National City Bank stands to receive up to 90% of the assets of the very Crume Trust over which it is the depository trustee, and from which Trust it has received for decades thousands of dollars in fees annually for its services as such depository trustee. This is a direct conflict of interest that provides potential gain to the depository co-trustee at the expense of the current and future beneficiaries of the Crume Trust. Nat City should be removed as trustee of the Trust.
73. Finally, H.S.I., as trustee, owes the Trust a duty not to commingle Trust assets with its own assets. I.C. 30-4-3-6(a)(5).
74. As stated above, H.S.I. omitted from the Trust accountings for the past 24 years the Trust's interests in the real estate at 7929 N. Michigan Road, Indianapolis, IN 46268 (the "7929 parcel").
75. But H.S.I.'s breach of trust did not stop there. H.S.I. began carrying on its own financial statements the value of the 7929 parcel as if that real estate was its own, not Trust property.

76. Even more disturbing, as it sought ways in which to develop cash, H.S.I. attempted to pledge the 7929 parcel and its buildings and improvements as collateral to a third party bank (and also perhaps Nat City) for a loan of up to \$1.7million or more.
77. Thankfully, that attempt failed because the financing institutions determined that H.S.I. did not have the cash flow to service such debt.
78. But H.S.I. continued its attempts to pledge the 7929 parcel and improvements by striking a deal with the Attorney General of the State of Indiana to allow the collateralization of the Crume Trust so long as H.S.I. would pledge back to the Crume Trust its purported real estate and buildings and improvements, the majority of the value of which is derived from the 7929 parcel and its improvements (approximately \$3,200,000).
79. Had such arrangement gone through, H.S.I.'s pledging of Trust assets as if those assets were its own would have constituted conversion by H.S.I.
80. In the least, H.S.I. treating such assets as its own on its financial statements and in attempts to collateralize the assets constitutes commingling of Trust assets with its own assets; a clear breach of fiduciary duty.
81. Only when complainants explained to the Attorney General that the Crume Trust already owned that real estate and already had an interest in its buildings and improvements did that pledging arrangement fall through.
82. Thus, complainants not only have legal standing in this cause, they have provided an invaluable service to the Trust and the Indianapolis Community by preventing pledging of Trust assets back to itself as collateralization to the beneficiary.

WHEREFORE, Complainants pray this Court find that H.S.I. and Nat City both have mismanaged the investments of Crume Trust assets, have failed to account for an important Trust asset for more than 24 years, have engaged in self-dealing and multiple conflicts of interest and, therefore, have breached their fiduciary duties as trustee of the Crume Trust and are unsuitable as trustees; and that this Court find that H.S.I. has commingled Trust

assets with its own and, therefore, has breached its fiduciary duty to the Trust; and further pray for an Order removing both H.S.I. and Nat City as trustees of the Crume Trust; requiring H.S.I., as beneficiary, to annually account for its use and expenditure of the Crume Trust income distributed to it; requiring that restrictions and rules be placed to prevent future conflicts of interest and self dealing; appointing an independent corporate trustee to serve alone, with investment advisor to be appointed as approved by the Court, and for all other relief just and proper in the premises.

Respectfully submitted,

Spay-Neuter Services of Indiana, Inc., by: Verna Boggs, Treasurer

Alliance for Responsible Pet Ownership, Inc. by Kelley Hinkle, President as of July 1, 2004

Southside Animal Shelter, Inc. by Rosalyn Ellis, President

Home For Friendless Animals,
by: Hershel McLemore

Move to ACT, by Warren Patitz, its co-founder

Veronica L. Jarnagin, (#19419-49)
Attorney for Home for Friendless Animals, Inc., Spay-
Neuter Services of Indiana, Inc., Alliance for
Responsible Pet Ownership, Inc., Southside Animal
Shelter and Move to ACT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the _____ day of July, 2004, a true and complete copy of the foregoing was made by depositing same in the United States Mail in an envelope properly addressed and with sufficient postage affixed thereto to the following:

Mr. Peter Donahoe (#4794-49)
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