

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 )

**OBJECTION TO 23<sup>RD</sup> STATEMENT OF ACCOUNTS FOR**

**(1) MISLEADING OMISSION OF \$1,700,000 LIEN ON TRUST ASSETS;**

**(2) FAILURE TO RECAPITULATE DISTRIBUTABLE NET INCOME;**

**(3) TRANSFER OF FUNDS FOR ROOF LEAK NOT APPROVED;**

**AND REQUEST FOR REMOVAL OF HUMANE SOCIETY AND NATIONAL CITY BANK AS TRUSTEES AND THE APPOINTMENT OF INDEPENDENT TRUSTEES**

Come now Norma Jean Balcom, Alliance for Responsible Pet Ownership, Inc., Home for Friendless Animals, Inc., Southside Animal Shelter, Inc., Move to ACT, and Spay-Neuter Services of Indiana, Inc. (“Petitioners”), by counsel, and file their Objection to the Humane Society’s 23<sup>rd</sup> Statement of Accounts because it is misleading, fails to provide meaningful explanation of distributions and transfers to the Humane Society, itself, as “net income” recipient, and objects to transfer of a large sum for roof repairs that were not approved in advance; and in support thereof, state as follows:

1. The Humane Society of Indianapolis, Inc. (“Humane Society”) is both the trustee of the Trust and the designated income recipient of the Trust.
2. On August 31, 2004, the Trial Court entered an interlocutory order dismissing Petitioners’ objection to the trustee’s 22<sup>nd</sup> Statement of Accounts and complaint for breach of fiduciary duty/objection to collateralization of public charitable trust for lack of legal standing to sue.
3. The Petitioners have appealed that dismissal; the appeal has now been fully briefed and oral argument on such appeal is set for May 24, 2005 at the Indiana Court of Appeals.

4. On October 15, 2004, over the Petitioners' objection and following the Attorney General's withdrawal of his Objection to collateralization of this public charitable trust, this Court approved the Humane Society's petition to collateralize this public benevolent trust as security for a loan made directly to the Humane Society, in its non-fiduciary capacity as a non-profit corporation.
5. National City Bank, which is the "depository trustee" of this Trust, is the entity which had loaned the Humane Society up to \$1,700,000; National City Bank, as the secured lender, stands to receive Trust assets in the event of the Humane Society's default on the \$1,700,000 loan from National City Bank.
6. The collateralization of Trust assets as security for the Humane Society's personal loan exceeds 50% of the Trust principal (see beginning Trust balance of \$3,057,274.02.
7. The Humane Society, as trustee, and National City Bank, as depository trustee and lender, have failed to state in this public accounting that **more than 50% of the Trust is collateralized** and have failed to set forth to the public **under what interest and other terms and conditions (and, thus, possibilities for default) the assets of this public charitable trust are subject as collateral for the loan.**
8. Omission of this collateralization of more than 50% of the Trust principal is misleading, as it does not inform the public or this Court or other creditors or benefactors of the significant encumbrance on this Trust.
9. The Humane Society (trustee/income recipient/borrower) and National City Bank (trustee/secured lender) have intentionally omitted this important information so as to avoid the appearance of the significant financial distress in which the Humane Society finds itself and the level of financial risk to which this Trust has been subjected.
10. Furthermore, Mary Powell 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) 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.
11. However, there is no recapitulation of the determination of the net income from this Trust that may be distributed to the Humane Society.

12. Rather, the 23<sup>rd</sup> Statements of Accounts merely states how much the Humane Society withdrew (a total of \$120,000.00) in monthly installments in 2004<sup>1</sup> without explaining how it was determined that the Humane Society was entitled to make withdraws of such amounts. **See “Schedule M” pages 45-47.**
13. Indeed, according to the 22<sup>nd</sup> Statement of Accounts, the 2003 gross income of \$109,617.24 less ordinary expenses of administration of \$4,890.68 and \$3,437.70 results in distributable net income of only \$101,288.96.
14. Therefore, it appears the Humane Society **withdrew \$18,711.04 more cash than it was entitled to** under the specific terms of the Trust. Without further explanation, this is a breach of trust.
15. Finally, Mrs. Crume further directed that the Humane Society, as trustee, “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 the Humane Society 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.
16. However, Schedule M, page 45, states that on October 26, 2004, the Humane Society withdrew an additional \$40,434.00 from the Trust “for a major facility project repair on a leaking flat roof.”
17. The roof repair withdrawal is clearly not a distribution of net income; rather it is a withdrawal of principal or income for building repair. Therefore, without court approval, this is an unauthorized withdrawal.
18. The Humane Society made no filing in the Trust docket requesting authority to make such withdrawal; there was no consent by the Attorney General; there has been no Order from this Court approving the extra withdrawal.
19. Even more confounding is that the Humane Society made this unauthorized \$40,304.00 withdrawal from the Crume Trust principal ten days after it had received approval for a separate \$1,700,000.00 loan, which is more than adequate for making such repair.

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<sup>1</sup> (01/02/04) \$8,599.98 + (02/02/04) \$8,599.98 + (02/15/05) \$2,800.04 + ten months of \$10,000.00 = \$120,000.00.

20. Therefore, the Humane Society could not argue that it (a) had the authority to make such a withdrawal, nor (b) that it needed the Trust to pay for such repair because it had no other source.
21. If this Court were to appoint *independent* trustees, then it would be less likely that the errors and breaches that have occurred in this and other Trust accountings (and distributions) would continue; and such independence of the fiduciaries over the Trust assets and income would remove all conflicts of interest that are likely the source for such errors and breaches.

WHEREFORE, the Petitioners state their multiple objections to the trustees' 23<sup>rd</sup> Statement of Accounts and pray for (A) an Order directing the trustees to restate the accounting to (1) reflect all outstanding liens and encumbrances on Trust assets, and (2) recapitulate with specificity the calculation of distributable net income; (B) that the Court further Order that the Humane Society must return to the Trust all income or principal that was withdrawn in excess of the Trust's "net income" (or alternatively to cause a charge against 2005 distributions for a similar amount), including the \$40,304.00 plus interest for the unauthorized withdrawal; and (C) an Order removing the trustees in order to prevent further breaches and to remove all conflicts of interest, and appointing an independent corporate trustee in their place, 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 \_\_\_\_\_ day of May, 2005, a true and complete copy of the foregoing was made by fax transmission and by depositing same in the United States Mail in an envelope properly addressed and with sufficient postage affixed thereto to the following:

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