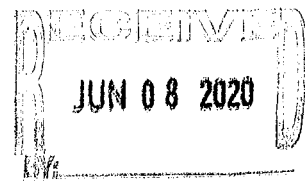


**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**



6th Circuit - Probate Division - Concord
2 Charles Doe Drive, Suite 1
Concord NH 03301

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NOTICE OF DECISION

**MARK D. FERNALD, ESQ
FERNALD TAFT FALBY & LITTLE PA
14 GROVE STREET
PO BOX 270
PETERBOROUGH NH 03458**

Case Name: **Trust of Mary Baker Eddy (Clause VI & VIII)**
Case Number: **317-1910-TU-00001**

On June 04, 2020, Judge Elizabeth M. Leonard issued orders relative to:

Motion for Leave to File an Amicus Curiae Response to Report Filed by the Director of Charitable Trust. (The First Response)
Motion and Response is DENIED IN PART AND GRANTED IN PART. Denied as 2nd Church has no standing. Granted as the submissions will be allowed and marked as READ AND NOTED. See enclosed order.

Second Motion for Leave and Associated Replies.
Motion and Replies are DENIED IN PART AND GRANTED IN PART. Denied as 2nd Church has no standing and granted as to submissions are allowed and will be marked as READ AND NOTED. See enclosed order.

Any Motion for Reconsideration must be filed with this court by June 14, 2020. Any appeals to the Supreme Court must be filed by July 04, 2020.

June 04, 2020

Sharon A. Richardson
Clerk of Court

C: James F. Raymond, ESQ; Thomas J. Donovan, ESQ; Richard D. Judkins, ESQ; Theodore E. Dinsmoor, ESQ; Russell F. Hilliard, ESQ; Michael P. Courtney, ESQ

THE STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY

TRUST DOCKET
6TH CIRCUIT COURT
PROBATE DIVISION

TRUST OF MARY BAKER EDDY (CLAUSE VI & VIII)

317-1910-TU-00001

ORDER

Presently before the Court is a *Motion for Leave to File an Amicus Curiae Response to the Report Filed by the Director of Charitable Trust*, see Index #404 (the "First Motion for Leave"), and *Response to the Report of the Director of Charitable Trusts Concerning 400 Beacon Street*, see Index #405 (the "First Response"), submitted by the Second Church of Christ, Scientist, Melbourne (Australia) (the "Second Church"), on April 9, 2020, seeking to respond to a report filed by the Director of Charitable Trusts (the "DCT"), on March 5, 2020, and marked "Read and Noted," by this Court on March 20, 2020. See Index #398. The DCT has filed an *Objection*, see Index #406, as has the Trustees of the Trust of Mary Baker Eddy (Clause VI)(the "Clause VI Trust") and of the Trust of Mary Baker Eddy (Clause VIII)(the "Clause VIII Trust")(collectively the "Trustee" and the "Eddy Trusts"). See Index 407. These responses, in turn, generated a *Motion for Leave to File an Amicus Curiae Reply to the Objection of the Director of Charitable Trusts and Amicus Curiae Reply to the Objection of the Trustees Under the Will of Mary Baker Eddy*, see Index #408 (the "Second Motion for Leave"), and associated *Repl(ies)* from the Second Church, see Index ##409-10

(collectively the "*Replies*"), to the objections from the DCT and the Trustees. For the reasons that follow, the *First Motion for Leave* and *Second Motion for Leave* are both GRANTED IN PART and DENIED IN PART. The Court will allow both the Responses and Replies to be submitted into the Court record, and it marks them "Read and Noted." It is not persuaded, however, that any further action need be taken on the Report filed by the DCT, and accordingly, to the extent the Second Church requests that further hearing be held, they are DENIED, as the Second Church lacks standing to seek relief. See In re: Trust of Mary Baker Eddy, 172 N.H. 266, 283 (2019).

The Court sets forth the following procedural facts for background purposes only and incorporates by reference its findings in its Order dated March 18, 2018. See Index #314. This matter was transferred to the Trust Docket in 2016. See Index #240. The Eddy Trusts are testamentary trusts established by clauses in the Will of Mary Baker Eddy initially executed in 1904. See id. at 5-6. The New Hampshire Probate Court's unchallenged oversight of both trusts commenced over one hundred years ago when the New Hampshire Supreme Court directed Josiah Fernald, the administrator of Ms. Baker Eddy's estate, to "hold the property in his hands on the settlement of the final account until a trustee or trustees are appointed by the probate court." Fernald v. First Church of Christ, Scientist, in Boston, 77 N.H. 108, 110 (1912). In September 2015, the Second Church sought to review, and potentially object to, the annual accounting filed by the Trustees on September 30, 2015. See Index ##234, 237. That accounting had been approved by the Concord Probate Division on November 2, 2015. See Index ##229-230. The DCT assented to the Second Church's motion, however, the Trustees objected on the basis that the Second Church, as a "branch church," lacked standing to

sue. Although the Court scheduled a hearing to address standing, see Order dated March 24, 2016 (Index #241), the parties agreed at the hearing that the Second Church would withdraw its motions and the DCT, Second Church, and Trustees would cooperate to resolve concerns raised by the Second Church and DCT. See Order dated April 25, 2016 (Index #253).

The Second Church continued to take issue not only with various accountings, but also the composition and number, of the trustees of the Eddy Trusts, however, since the standing of the Second Church remained unresolved by agreement, it began submitting pleadings as *amicus curiae*. Although some pleadings submitted as *amicus curiae* were not allowed by the Court, it indicated that going forward it would “not be adverse to accept future *amicus curiae* submissions should it decide that in light of the questions before it,” that the additional submissions would be helpful. See Order dated March 18, 2018 at 10 (Index #314). Notably, however, the Second Church began to submit *amicus* pleadings seeking affirmative relief, and as such, the Court scheduled a hearing in November 2017, and accepted further pleadings through December 2017, to determine, inter alia, whether the Second Church had standing under the special interest doctrine to participate in this matter. See id. at 11-12. After thorough consideration, the Court determined that the Second Church lacked standing to participate independently of the DCT. Id. at 22. It found, among other factors, id. at 18-22, that

during the long history of these trusts, the quality and thoroughness of the DCT’s performance of his oversight duties has been mixed, and at times, arguably deficient. However, during the pendency of the present dispute, the DCT has been an active participant, importantly identifying the ‘embedded conflict’ due to the dual role of the Trustees

as Directors of the Mother Church and Trustees, and suggesting ways to mitigate the effect of that embedded conflict on the interests of potential distributees.

Id. at 20-21. The Court encouraged the Second Church “to share information with the DCT, and, should the present diligence diminish to the detriment of the Trusts, the Court could revisit the standing issue.” Id. at 21.

That decision was affirmed after appeal to the New Hampshire Supreme Court. See In re: Trust of Mary Baker Eddy, 172 N.H. at 268. In its decision, the Supreme Court upheld this Court’s application of the “Blasko Factors,” see Mary Grace Blasko, Curt S. Crossley, David Lloyd, Standing to Sue in the Charitable Sector, 28 U.S.F. L. Rev. 37, 61 (1993), to determine if the Second Church had standing to seek affirmative relief. See id. at 275. In its own analysis of this Court’s application of those factors, the Supreme Court reviewed the “Attorney General’s Availability and Effectiveness” factor. See In re: Trust of Mary Baker Eddy, 172 N.H. at 279-81. It observed that “the DCT is empowered to represent the public and potential beneficiaries of New Hampshire charitable trusts.” Id. at 279 citing RSA 564-B:4-405(c). As to whether the DCT had properly exercised his authority with respect to the Eddy Trusts, the Supreme Court stated:

[a]s the trial court noted, during the long history of the trusts, the DCT’s performance of his duties has been mixed and arguably deficient. However, the record also demonstrates that during the pendency of the present dispute, the DCT has been an active participant, has acknowledged the embedded conflict with the trustees, and suggested measures to mitigate the effect of that conflict.

Id. Further, it noted that when the DCT disagrees with the Second Church’s position, that does not mean that he is “not involved or is ineffective.” Id. at 281. The Supreme

Court also directed that “[w]e reiterate the trial court’s sentiment that Second Church is encouraged to share its perspective and concerns with the DCT, and, when appropriate, seek to file as *amicus curiae* with the trial court.” Id. at 284.

In June 2019, this Court addressed certain objections by the Second Church to the appointment of Richard Evans as trustee of both of the Eddy Trusts and its request that an additional “independent” trustee be appointed by the Court. See Order dated June 11, 2019 (Index #364). In a footnote to that Order, the Court briefly addressed an ancillary issue raised by the Second Church in a pleading concerning the sale of Mary Baker Eddy’s home at 400 Beacon Street in Boston Massachusetts (the “Beacon Street Property”). See id. at 2, n.1. The Court noted in that footnote that:

the DCT stated that he has been in communications with the Second Church and has considered the issues raised by it in its pleadings. The Court observes that it has no reason to question whether Attorney Donovan listens to, and follows up on, claims made by the Second Church, as he would any potential beneficiary, and if an action is warranted, the DCT will take appropriate measures.

Id. On March 5, 2020, the DCT submitted a *Report of the Director of Charitable Trusts Concerning 400 Beacon Street*. See Index #398. In that *Report*, the DCT stated:

[a]t the time of her death, 400 Beacon Street was owned by the so-called 1908 Trust.¹

Following her death, the property was conveyed to the [Mother Church]. . . . In 2006, 400 Beacon Street was sold for about \$13 million. The Mother Church received those proceeds and administers them in Massachusetts according to the terms of the Clause VIII Trust.” Id. The DCT represented to the Court that he had reviewed information received from both the Trustees of the Clause VIII Trust and the Second Church’s

¹ There was a “1907 Trust” that was subsequently amended by a “1908 Supplementary Deed.” For ease of reference, the Court will refer to both as the 1907/1908 Trust.

counsel. He reviewed all the documents, and determined that the proceeds of the sale of 400 Beacon Street are under the jurisdiction of Massachusetts and that should the Second Church have any concerns, they should be brought to the Attorney General of Massachusetts. Id. The Court reviewed the pleadings, and marked it “Read and Noted.” Id.

The Second Church then submitted its *First Motion for Leave*, see Index #404 (the “First Motion for Leave”), and *First Response*. See Index #405. In its *First Response*, the Second Church contended that the DCT’s belief that the Beacon Street Sale Proceeds fell under the jurisdiction of Massachusetts was erroneous. It argues that the terms of a 1907/1908 Trust which held the property, directed that upon her death, the 1907/1908 Trust terminates, and all of her personal estate should pass to the Executor of her Will. Id. ¶5. It therefore contends that the 400 Beacon Street property fell under the jurisdiction of the New Hampshire Probate Court, and but has never been subject to probate. It seeks a “hearing to consider whether the proceeds from the sale of the 400 Beacon Street Property should be accounted for in the annual accountings of the Clause VIII Trust,” and that the Second Church be allowed to participate. Id.

The DCT objected, see Index #406, contending that the Second Church lacks standing. Id. ¶2. The DCT noted that he had conducted an independent review of all the information provided by both parties and determined that this Court lacked jurisdiction over the proceeds from the sale of the 400 Beacon Street property. The Trustees filed a lengthy objection, asserting that the Second Church lacked standing to object to the DCT’s decision concerning jurisdiction over the proceeds from the sale of the property and disputing the Second Church’s interpretation of the trust documents,

deeds, and court rulings from 1907-1913. See Index #407. It contends that review of those documents from over one-hundred-years-ago reveals that the 400 Beacon Street property was properly never part of the Estate of Mary Baker Eddy subject to probate in New Hampshire. It therefore offers that the DCT's report, and his conclusion that no further action be taken in New Hampshire, is appropriate. Id. In response, the Second Church, although recognizing that "it does not have standing," see Reply to the DCT ¶1, submitted the *Second Motion for Leave*, see Index #408, and *Replie(s)*, see Index ##409-410, disputing the conclusions of both the DCT and Trustees, and effectively seeking an order directing that an accounting of the proceeds from the sale of the 400 Beacon Street Property be submitted by the Clause VIII Trustees to this Court. See Reply to the Trustees ¶8 (Index #410).

Although it may be true that certain trust documents and deeds from 1907 and 1908 may now be subject to varying interpretations, see Report of the Director of Charitable Trusts Concerning 400 Beacon Street (Index #398), the Court determines that the Second Church, although filing as an *amicus curiae*, seeks, again, affirmative relief in the form of a court-ordered accounting. There is no dispute that the DCT has thoroughly reviewed the same documents and historical record, consulted with both the Trustees and Second Church, and determined that such relief is not appropriate. As this Court noted in its March 18, 2018 Order, see Index #314, the DCT represents the interests of the charitable beneficiaries, and "[s]imply because a potential charitable beneficiary disagrees with the judgment of the DCT is not sufficient to justify standing." Id. at 19. Accordingly, although it GRANTS the Second Church's leave to file its *amicus* submissions, it DENIES its request for affirmative relief on the basis of standing.

SO ORDERED

Dated: June 4, 2020

A handwritten signature in black ink, appearing to read 'Elizabeth M. Leonard', written over a horizontal line.

Elizabeth M. Leonard, Judge
New Hampshire Circuit Court