

THE STATE OF NEW HAMPSHIRE
6TH CIRCUIT - PROBATE DIVISION - CONCORD

MERRIMACK, SS

CASE NO. 317-1910-TU-00001

TRUST OF MARY BAKER EDDY (CLAUSE VI & VIII)

**RESPONSE TO THE REPORT
OF THE DIRECTOR OF CHARITABLE TRUSTS
CONCERNING 400 BEACON STREET**

NOW COMES the Second Church of Christ, Scientist, Melbourne, by and through its attorneys, Fernald, Taft, Falby & Little, P.A., and says as follows concerning the Report of the Director of Charitable Trusts Concerning 400 Beacon Street, which Report was filed with the Court on March 5, 2020:

1. Second Church of Christ, Scientist, Melbourne has argued that the proceeds realized from the sale of Mrs. Eddy's house at 400 Beacon Street in Chestnut Hill, Massachusetts (the "400 Beacon Street Property") should be part of the annual accountings of the Trust established under Clause VIII of Mrs. Eddy's Will, which Trust is overseen by this Court.
2. The Director of Charitable Trusts, in his report to the Court dated March 5, 2020, and in the accompanying letter dated March 3, 2020, makes several statements that require further discussion:
 - A. The Trust created by Mrs. Eddy that owned 400 Beacon Street Property could have been probated in New Hampshire as part of Mrs. Eddy's personal property estate;
 - B. The 400 Beacon Street Property was subject to ancillary probate administration in Massachusetts;
 - C. The proceeds from the sale of the 400 Beacon Street Property are being administered separately in Massachusetts "in accordance with the requirements of Clause VIII;" and
 - D. The proceeds from the sale of the 400 Beacon Street Property are an "institutional fund" and therefore are not in Trust at all.

Each of these statements is contrary to the facts. We will consider each of these misstatements below.

3. On March 6, 1907, Mary Baker G. Eddy signed a Trust Agreement with Henry M. Baker, Archibald McClellen, and Josiah E. Fernald (the “1907 Trust”). At that time, she transferred into the Trust several parcels of real estate.
4. On May 6, 1908, Mrs. Eddy signed a Supplementary Trust Deed, making reference to the 1907 Trust. At the same time, Mrs. Eddy transferred to the Trustees of the 1907 Trust the 400 Beacon Street Property. The Supplementary Trust Deed states that the transfer of the Property to the Trustees was “in Trust, nevertheless, for the purposes and upon the conditions set forth in Articles First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth in my Trust Deed dated March 6, A.D. 1907.”
5. Article Fourth of the 1907 Trust says as follows: “At the termination of my earthly life, this trust shall terminate and all the personal estate then held by my said Trustees shall pass to the Executor of my last Will and the Codicil thereto to be disposed of in accordance with the provisions thereof.”
6. Mrs. Eddy died on December 3, 1910. Her Will dated September 13, 1901, along with two Codicils, was probated in this Court. Clause VIII of that Will states in pertinent part:

I give, bequeath and devise all the rest, residue and remainder of my estate, of every kind and description, to the Mother Church - The First Church of Christ, Scientist, in Boston, Massachusetts, in Trust for the following general purposes;

I desire that such portion of the income of my residuary estate as may be necessary shall be used for the purpose of keeping in repair the church building and my former house at #385 Commonwealth Avenue in said Boston . . . and I desire that the balance of said income, and such portion of the principal as may be deemed wise, shall be devoted and used by said residuary legatee for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me.

7. The 400 Beacon Street Property was never subject to probate administration in Massachusetts. In the early 1900's, as in the present day, property that is in a Trust does not go through probate. Indeed, a primary motivation for the creation of a trust is so that the property in the trust avoids the probate process. For the same reason, the 1907 Trust, as amended in 1908, could not have been probated in New Hampshire as part of Mrs. Eddy's estate as a “personal property estate assets” because the Trust, and all the assets in the Trust, were not held in the name of Mrs. Eddy, and therefore were not subject to probate court jurisdiction, neither in New Hampshire, nor in Massachusetts.
8. On March 4, 1913, the Massachusetts Supreme Judicial Court ordered Adam H.

Dickey, Archibald McClellen, and Josiah E. Fernald, the then Trustees of the 1907 Trust, as amended, to transfer the Beacon Street Property to The First Church of Christ, Scientist, of Boston, Massachusetts “to be held by the said The First Church of Christ, Scientist, under said Chapter 115 of the Acts of 1913, and as part of the Trust Fund under the provisions of the Will of the said Mary Baker G. Eddy upon the Trusts set forth in the residuary clause of said Will.”

9. Chapter 115 of the Acts of the Massachusetts Legislature of 1913 stated, in pertinent part, that “The First Church of Christ, Scientist, in Boston, is hereby authorized to take and hold the real and personal estate devised and bequeathed to it by the Will duly admitted to probate, of its founder, Mary Baker G. Eddy, late of Concord, New Hampshire, deceased; to be held and administered by its Board of Directors subject to the Trusts created by said Will.”
10. On March 25, 1913, Adam H. Dickey, Archibald McClellen, and Josiah E. Fernald, as Trustees under the 1907 Trust, transferred to The First Church of Christ, Scientist, in Boston the 400 Beacon Street Property “as a part of the Trust Fund under the provisions of the Will of the said Mary Baker G. Eddy, upon the Trust set forth in the residuary clause of said Will.”
11. On November 18, 1913, this Court appointed Archibald McClellen, Allison V. Stewart, John V. Dittimore, Adam H. Dickey, James A. Neil, and Josiah E. Fernald as Trustees of the Clause VIII Trust. The first five of those named were also at that time the Board of Directors of The First Church of Christ, Scientist, in Boston (“The Mother Church”). Over the years, as the membership of the Board of Directors of the Mother Church changed, the Trustees of the Clause VIII Church also changed. Effectively, the Trustees of the Clause VIII Trust were the Mother Church and Josiah E. Fernald. Josiah E. Fernald ceased being a Trustee upon his death in 1949. He was not replaced as Trustee, and thereafter the Directors of the Mother Church and the Trustees of the Clause VIII Trust were for the most part identical, with only minor exceptions, such as when a new director joined the Board of the Mother Church, but had not yet been approved as trustee by this Court.
12. On June 16, 1981, “The First Church of Christ, Scientist, in Boston, as *Trustee under the Will of the Mary Baker G. Eddy*” (emphasis added), deeded the 400 Beacon Street Property to the Trustees of The Church Historical Trust, a Trust created by The Mother Church. The purpose of The Church Historical Trust was “the preservation of records of the earthly life of Mary Baker Eddy, and . . . to operate and maintain for the public certain houses and other properties relating to the life of Mary Baker Eddy.”
13. In 2006, The Church Historical Trust sold the 400 Beacon Street Property. From _____ until 2008, the Church Historical Trust filed annual reports with the Office of the Attorney General of Massachusetts, Non-Profit Organizations/Public

Charities Division (the "Massachusetts Public Charities Division"). The report for the year ending April 30, 2007 shows the receipt of \$13,037,368 upon the sale of the 400 Beacon Street Property. That report also shows the transfer of \$13,182,809 to The First Church of Christ, Scientist. The report also states that "The Trust has no temporarily or permanently restricted net assets." In other words, the Mother Church considered the proceeds from the sale of the 400 Beacon Street Property to be unrestricted funds.

14. The Director of Charitable Trusts states that the proceeds realized upon the sale of the 400 Beacon Street Property "are separately administered in Massachusetts in accordance with the requirements of Clause VIII." This is untrue. The undersigned has contacted the Massachusetts Public Charities Division and they report they have no record of any reports for any Trust under Mrs. Eddy's Will.
15. In short, the Mother Church acknowledged that it held the 400 Beacon Street Property in Trust under Mrs. Eddy's Will when it deeded the Property to The Church Historical Trust in 1981. At all times, the Mother Church was in full control of The Church Historical Trust. When the 400 Beacon Street Property was sold in 2006 for over \$13,000,000, the entire proceeds were paid to the Mother Church. The Mother Church has never accounted for the proceeds from the sale of the 400 Beacon Street Property to this Court, to the Director of Charitable Trusts, or to the Massachusetts Public Charities Division.
16. In his letter of March 3, 2020 (included as part of his Report filed with the Court on March 5, 2020), the Director of Charitable Trusts suggests that the proceeds from the sale of the 400 Beacon Street Property is an "institutional fund," and that the oversight of that institutional fund is the responsibility of the Massachusetts Attorney General. The undersigned spoke with the Director of Charitable Trusts on March 26, 2020. During that conversation, Mr. Donovan stated that the word "Trust" in the 1913 deed transferring the 400 Beacon Street Property was a "term of art" that did not actually create a Trust, but instead created an "institutional fund" - in other words, a gift subject to restrictions, but no express Trust. This conclusion by the Director of the Charitable Trusts is in direct conflict with:
 - A. The express language of Mrs. Eddy's Will;
 - B. Chapter 115 of the Acts of 1913 of the Massachusetts legislature;
 - C. The Order of the Supreme Judicial Court of Massachusetts dated March 4, 1913; and
 - D. The deed from the Trustees of the 1907 Trust to The First Church of Christ, Scientist, in Boston dated March 25, 1913.

Each of these documents speak to the Trust or Trust Fund created by the residuary

clause (Clause VIII) of Mrs. Eddy's Will. The conclusion by the Director of Charitable Trusts that the proceeds from the sale of the 400 Beacon Street Property is not a trust, but simply an institutional fund, is unsupported by the record.

17. To the knowledge of the Second Church of Christ, Scientist, Melbourne, the accounts filed by the Mother Church with this Court from 1913 until 2006 (when the 400 Beacon Street Property was sold), did not list the 400 Beacon Street Property as an asset. This does not mean, however, that the 400 Beacon Street Property was not part of the Clause VIII Trust. Second Church has been able to review the accounts in this case filed with this Court from 1951 - 1974. During that period, the accounts show that a total of \$1,459,535.76 was spent to maintain the 400 Beacon Street Property, and to pay for reception services at that property. The Director of Charitable Trusts states these expenditures are not evidence that the property was in the Clause VIII Trust because the property was being used as a museum of the life and works of Mrs. Eddy, and therefore the expenditures were consistent with "promoting and extending" Christian Science. While this argument may make sense with respect to reception services, costs incurred to maintain a property are the obligation of the owner of the property. The use of substantial funds from the Clause VIII Trust to maintain the 400 Beacon Street Property shows that the Trustees considered the property to be in the Trust.
18. The Director of Charitable Trusts has received from the Mother Church a "Report by the Trustees under the Will of Mary Baker Eddy on 400 Beacon Street" dated October 8, 2019. The report includes 70 pages of exhibits. That report and the exhibits clearly influenced the Director of Charitable Trusts, and should be made available to the Court as it considers how the proceeds from the sale of 400 Beacon Street should be accounted for. In the report, it states that the Mother Church is holding the proceeds from the sale of the 400 Beacon Street Property in a separate account for uses permitted under Clause VIII of Mrs. Eddy's Will. Despite the copious exhibits, there is no documentation showing that the proceeds are in a separate account. We do know that no accounting for those proceeds has been made to any Court in Massachusetts or in New Hampshire. It is worth mentioning that this "Report by the Trustees" indicates that not one penny of the proceeds from the sale of 400 Beacon Street has been spent "promoting and extending" Christian Science.
19. The goal of the Second Church of Christ, Scientist, Melbourne is not to throw stones or to place blame. The goal of the Second Church is that the intent of Mrs. Eddy be carried out.
20. The intent of Mrs. Eddy has been thoroughly explored in the past. The New Hampshire Supreme Court considered just that question in the case of Fernald v. First Church of Christ, 77 N.H. 108 (N.H. 1913). In that case, the Court stated: "The question of her intention was considered at length in Glover v. Baker, 76

N.H. 393, and it was held that she did not intend to give this property to the Church (p. 401), but to create a Public Trust for promoting and extending Christian Science as taught by her to all parts of the world (p.425).” In the Fernald case, the New Hampshire Supreme Court was considering the residue of Mrs. Eddy’s probate estate, but the reasoning applies equally strongly to the 400 Beacon Street Property, and the proceeds realized from the sale of the 400 Beacon Street Property.

21. It is clear from the facts recited above that Mrs. Eddy intended that the 400 Beacon Street Property was to be a part of the Clause VIII Trust. It is equally clear that the Massachusetts Supreme Judicial Court intended for the 400 Beacon Street Property to be part of the Trust Fund under the provisions of Mrs. Eddy’s Will. Finally, it is clear that the Trustees of the 1907 Trust, when they deeded the property to the Mother Church, intended the 400 Beacon Street Property to be held “upon the Trust set forth in the residuary clause of said Will.” There is no question that the proceeds from the sale of the 400 Beacon Street Property are part of a charitable trust. The question is how activity of that charitable trust is to be reported to the public, and how governmental oversight of that charitable trust is to be carried out. For the past 13 years, there has been no accounting of the funds and no oversight because the Mother Church has failed in its duty as Trustee.
22. The “Report by the Trustees under the Will of Mary Baker Eddy on 400 Beacon Street” dated October 8, 2019, states that the Mother Church should not be “compelled to turn the funds over to the New Hampshire trustees” and that the proceeds from the sale of the 400 Beacon Street Property are “still subject to the jurisdiction of the courts in Massachusetts, not in New Hampshire.” Neither of these conclusions hold up. The Directors of the Mother Church and the Trustees of the Clause VIII Trust are the same people. The request made by a Second Church is that the proceeds from the sale of the 400 Beacon Street Property be accounted for as part of the Clause VIII Trust. No funds would be “turned over.” Second, as noted above, the 400 Beacon Street Property, and the proceeds from the sale of that property, have not been administered by any court in Massachusetts at any time, and for thirteen years, the Mother Church has accounted to no one for the use of those proceeds.
23. In conclusion, the Mother Church acknowledged that it held the 400 Beacon Street Property as Trustee under Clause VIII of Mrs. Eddy’s Will. Mrs. Eddy created only one Trust under Clause VIII of her Will. That one Trust has been administered by this Court since 1913, and has not been administered by any other Court at any time. When the 400 Beacon Street Property was sold in 2006, and the proceeds paid to the Mother Church, those funds were still subject to the terms of the Clause VIII Trust. It would be illogical to ask a Massachusetts Court to administer the proceeds from the sale of the 400 Beacon Street Property, because there is just one Trust under Clause VIII and that Trust is administered here in New Hampshire. The proceeds from the sale of the 400 Beacon Street Property

must be accounted for to this Court as part of the annual accountings of the Clause VIII Trust.

WHEREFORE, the Second Church of Christ, Scientist, Melbourne prays that this Honorable Court schedule 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 Court allow the Second Church of Christ, Scientist, Melbourne to participate in that hearing as *Amicus Curiae*.

Respectfully submitted
Second Church of Christ, Scientist, Melbourne
by its attorneys,
Fernald, Taft, Falby & Little, P.A.

April _____, 2020

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed this day, postage prepaid, to the following parties:

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April _____, 2020

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