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Cemetery receiver files suit

Company managing Fairlawn funds targeted for \$1.05M for 'breach of trust.'

By John Green - The Hutchinson News - jgreen@hutchnews.com

The receiver appointed to sell Fairlawn Burial Park and recover funds embezzled by its former owner is suing a Manhattan trust company that contracted with the cemetery to manage its permanent trust funds.

The suit filed Monday against The Trust Company of Manhattan seeks more than \$1.05 million for breach of trust and asks the court to immediately remove the company as fund trustee.

A judge sentenced cemetery owner Sharon McDonough on Aug. 5 to nearly five years in prison after she entered a plea to multiple counts related to theft from Fairlawn's permanent maintenance and merchandise trust funds. The court also ordered her to pay more than \$600,000 in restitution.

The trust company has not yet filed a response to the suit.

Mark Knackendoffel, the company's president and senior trust officer, said he hadn't seen the suit and couldn't comment on it until he'd seen the documents.

"I know we had discussions about the possibility, but we've not received it yet," Knackendoffel said. "It's a fairly complicated matter. We believe we abided by the terms of the trust agreement we operated under. Other than that, I can't comment further."

The trust company was hired to manage the cemetery's trust funds - which are mandated by law to ensure perpetual maintenance of the cemetery and the furnishing of prearranged or prepaid cemetery merchandise - in October 1994.

Under its agreement, and state statutes, the trust company is required to keep strict accounts of the trust funds and to pay out only interest from them, never the principal, according to the lawsuit.

The suit, filed by Wichita attorney Coy Martin, who was contracted by the receiver, alleges the company allowed McDonough to take nearly \$350,000 in principal from the maintenance fund. It also contends almost \$347,000 was inappropriately withdrawn from the merchandise fund without requiring she provide copies of merchandise contracts or verified statements of purchases before the money was released.

The suit alleges the company would sometimes release money to McDonough simply through phone calls.

It also alleges McDonough misappropriated as income more than \$152,000 in deposits that should have gone into the two trust funds.

The suit alleges the company had "actual or constructive knowledge that (McDonough) was stealing or misappropriating funds" and it failed to notify authorities or terminate her activities.

"The Kansas Secretary of State's investigation further revealed that, as of December 31, 2008, the MTF (merchandise trust fund) and PMF (permanent maintenance fund) were deficient by over \$800,000," the suit states.

For its management from 2000 to the end of 2009 the company paid itself \$48,040 from the two funds.

"The foregoing pecuniary losses, misappropriation and expenses have driven Fairlawn into an insolvent condition and represent sums the plaintiff claims The Trust Company is legally responsible to pay as actual damages. The Trust company's acts and omissions are the legal and proximate causes of the damages alleged," the suit states.

Alleging the trust company's "breach of trust is so extreme as to constitute recklessness, gross negligence, bad faith, wantonness and/or malfeasance," the receiver is seeking damages equal to the money paid McDonough, as well as the "misappropriated deposits," alleged capital losses of \$157,000 from money not being invested and the \$48,000 the company paid itself.

"We believe it's a serious case, but our policy is not to comment on pending cases," Martin said.

Receiver Ed Nazar, meanwhile, said efforts to sell the cemetery and Heritage Funeral Home are continuing.