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2011

Probate and Family Court Case

Book 2B

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PROBATE AND FAMILY COURT CASE

Book 2B

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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

Norfolk Division

Docket No. 07 E - 0092 - GC1

The Woodward School for Girls, Inc.,
Plaintiff

v.

**City of Quincy, as Trustee of the Adams Temple and School Fund and the Charles
Francis Adams Fund,**
Defendant

and

**Martha Coakley, As She Is The Attorney General of the Commonwealth of
Massachusetts,**
An Interested Party

FINDINGS OF FACT

(On: The Woodward School for Girls, Inc.'s Complaint in Equity,
filed September 13, 2007)

The within matter came before the Court (Langlois, J.) over eleven (11) days of trial on: September 13 and 17, 2010; November 15, 18 and 19, 2010; December 13, 14 and 16, 2010; and January 3, 14 and 21, 2011.¹ The Court heard from eleven (11) witnesses and two hundred and fifty-three (253) exhibits were admitted into evidence. The Woodward School for Girls, Inc. was represented by Attorneys Sarah Kim, Josephine Deang and Alison Eggers; the City of Quincy was represented by Attorneys John Leonard, Richard Binder and Paul Hines.

After careful review of all relevant law, and upon thorough consideration of all evidence presented during the eleven (11) days of trial, including all inferences that could reasonably be drawn therefrom, and after further consideration of the arguments, representations, and submissions of counsel, this Court enters the Findings of Fact set forth below.

¹ The Office of the Attorney General, named and served as an "Interested Party," filed an Answer but otherwise did not participate in the trial of this action.

Historical Background (1822-1953)

1. John Adams served as the second President of the United States from 1797 until 1801. Upon completion of his term, he returned to his home in Quincy, Massachusetts where he primarily resided until his death on July 4, 1826.

2. Approximately four years before his death, President Adams conveyed a portion of his real estate holdings into a trust. Said deed of trust, dated 29 June 1822, (hereafter "Deed A") read, in part:

"...I, John Adams, of Quincy, in the County of Norfolk, Esquire, in consideration of the veneration I feel for the residence of my ancestors and the place of my nativity, and of the habitual affection I bear to the inhabitants with whom I have so happily lived for more than eighty six years, - and the instruction of their posterity in religion, morality, and all useful arts and sciences, by contributing all in my power for these purposes, do hereby give, grant, convey and confirm to the town of Quincy and their successors, forever, the two following tracts of land, viz. my Rocky Pasture commonly known by the name of the Red Cedar Pasture...containing twenty five acres more or less; - another tract of land, containing fifty four acres more or less, commonly known by the name of the Mount Ararat Pasture.... To Have and to hold to the said town of Quincy and their successors forever, - upon the conditions and provisos following.... That the rent of the herbage of these pastures, together with the profits arising from the sale of wood, fuel of any kind, timber and stone, be strictly applied to the following purpose, viz. - To be placed at interest in some solid public fund, either of the Commonwealth, or of the United States, and the interest again placed at interest, as it arises, until the amount shall be sufficient with what the town may grant, other individuals subscribe, or the probable sale of pewes produce, to raise a fund for the completing and furnishing of a Temple to be built of stone, to be taken from the premises, for the Public Worship of God, and the public instruction in religion and morality, for the use of the Congregational Society in said town; and next after the completion of said Temple, that all future rents, profits, and emoluments, arising from said land, be applied to the support of a School for the teaching of the Greek and Latin languages, arts and sciences, which a majority of the ministers, magistrates, lawyers, and physicians, inhabiting in the said town, may advise. Provided... That if there should be any gross corruption or mismanagement in the care of this interest; or any notorious negligence, or any waste knowingly permitted, or connived at by the said Town...the right to the property hereby conveyed shall be forfeited, and shall revert to the oldest male person, at the time living among my posterity." (See Exhibit 3)

3. By a subsequent deed, dated 27 July 1822, President Adams made a further conveyance into the trust, with said deed (hereafter "Deed B") reading, in part:

"...I, John Adams, of Quincy, in the County of Norfolk, Esquire, in consideration of the kindness with which my former conveyance, dated the twenty fifth of June 1822, has been accepted, and in further consideration of all

the motives enumerated in that instrument... do hereby give, grant and convey to the inhabitants of the town of Quincy, in their corporate capacity, and their successors forever, the following parcels of land, to wit: First, six acres of Cedar Swamp, in the town of Braintree, in the tract called Hubbard Swamp.... Secondly, my Pasture, situated partly in Braintree and partly in Quincy, containing seventeen acres and a half,... Thirdly, two pieces of Cedar Swamp...which, when I bought them, I understood where in Quincy, but which, I now am informed, are in Braintree. These are all which I know or suspect to belong to me, but if any other morsel should be found to belong to me in that town, I give it to the town of Quincy. Fourthly, my pasture in Quincy, formerly known by the name of Babel Pasture, containing fifty one acres, more or less.... Fifthly, eight acres of land in the town of Quincy, near the meeting house.... To have and to hold all the foregoing tracts and parcels of land to the inhabitants of the town of Quincy, and their successors forever, in their corporate capacities, upon the conditions following.... Provided that these lands shall be managed and conducted upon the same principles, under the same conditions, restrictions, limitations, forfeiture, and supervisors, and the profits applied to the same ends and purposes, with those in the former deed.... Provided that when the objects, mentioned in the former deed, are obtained, a stone School House shall be erected over the cellar which was under the house, anciently built by the Rev. Mr. John Hancock, the father of John Hancock, that great, generous disinterested, bountiful benefactor of his country, once President of Congress, and afterwards Governor of this State, to whose great exertions and unlimited sacrifices this nation is so deeply indebted for her independence and present prosperity, who was born in this house; and which house was afterwards purchased and inhabited by the reverend, learned, ingenious, and eloquent Lemuel Bryant, Pastor of this congregation; which house was afterwards purchased by the inhabited by an honorable friend of my younger years, Col. Josiah Quincy, and also inhabited by his son, Josiah Quincy Junior a friend of my riper years, a brother barrister at law, with whom I have been engaged in many arduous contests at the Bar, who was as ardent a patriot as any of his age, and, next to James Otis, the greatest orator. Fourthly, That as soon as the funds will be sufficient, a school master should be procured, learned in the Greek and Roman languages, and, if thought advisable, the Hebrew, not to make learned Hebricians, but to teach such young men as choose to learn it, the Hebrew Alphabet, the rudiments of the Hebrew Grammar, and the use of the Hebrew Grammar and lexicon; that in after life they may pursue the study to what extent they please; But I hope the future masters will not think me too presumptuous if I advise them to begin their lessons in Greek and Hebrew, by compelling their pupils to take their pens and write over and over again copies of the Greek and Hebrew Alphabets, in all their variety of characters, over and over again, until they are perfect masters of their alphabet and characters. This will be as good an exercise in chirography as any they can use, and will stamp those alphabets and characters upon their tender minds and vigorous memories so deeply that the impression will never wear out, and will enable them at any period of their future lives to study those languages to any extent with great ease." (See Exhibit 4)

4. Therefore, by said two deeds, as of July 27, 1822, President John Adams had conveyed into a trust, which trust was thereafter referred to as the "Adams Fund", and later the "Adams Temple and School Fund", one hundred and sixty-one and a half acres of land, plus two additional parcels of land of unknown acreage, in Quincy and Braintree.

5. By August 8, 1822, the inhabitants of the Town of Quincy had voted to accept the gifts contained in Deed A and Deed B. [Compl. ¶ 15; Tr. Answer ¶¶ 13-15]

6. In 1827, in the year following the death of President John Adams, President John Quincy Adams commissioned the construction of a crypt to hold the remains of President John Adams and his wife, Abigail (the "Adams Crypt") on a parcel of land under what would later be the location of the stone temple contemplated in Deed A. The Adams Crypt is not part of the Adams Fund. [Compl. ¶ 22; Tr. Answer ¶¶ 20-26]

7. In the Acts and Resolves of 1827, the General Court appointed the Treasurer of the Town of Quincy as the Treasurer of the Adams Fund and incorporated the Board of Supervisors. (1827 Acts, c. LIX ("1827 Act")). [Comp ¶¶ 16, 17, 19, Exh. D; Tr. Answer ¶¶ 16-19] Said Act further provided that the Board of Supervisors, along with the Selectmen of Quincy, had the authority to carry out John Adams' intentions as contained in Deeds A and B and to receive and manage gifts from others for the purposes contained in Deeds A and B. Said Act also provided that the Treasurer of the Town of Quincy shall be the Treasurer of the Adams Temple and School Fund.

8. In 1828, the stone temple (which subsequently became known as the "First Parish Church") contemplated in Deed A was completed using income from the Adams Fund. [Compl. ¶ 21; Tr. Answer ¶¶ 21-26]

9. In 1854, Charles Francis Adams commissioned the construction of a tomb to hold the remains of President John Quincy Adams and his wife in the Adams Crypt. [Compl. ¶ 22; Tr. Answer 21-26]

10. In 1870, the stone School House contemplated in Deeds A and B, was completed. The building housed the Adams Academy, a school for boys, (hereafter the "Adams Academy") which opened in 1872. [Compl.¶ 24; Tr. Answer ¶¶ 21-26]

11. In 1886, by the will of Charles Francis Adams, a bequest of \$10,000 was made to support the Adams Academy in any manner that would best advance the objects of President Adams as expressed in Deed A. This bequest is known as the Charles Francis Adams Fund. [Compl. ¶ 20; Tr. Answer ¶¶ 20-26]

12. By 1894, pursuant to the terms of his will, Dr. Ebenezer Woodward (President John Adams' cousin) left property in trust to the City of Quincy in what was known as the "Woodward Fund and Property", to generate income to establish and operate a school for girls which became known as the Woodward School for Girls

(hereafter the "Woodward School"). As a result of the income in the Woodward Fund and Property, the Woodward School opened in 1894 in Quincy, Massachusetts. The Woodward Fund and Property was a separate fund from the Adams Temple and School Fund and the Charles Francis Adams Fund. The City of Quincy, as Trustee of the Woodward Fund and Property and its appointed Board of Supervisors, had separate meetings from the Adams Temple & School Fund Board meetings and the Charles Francis Adams Fund Board Meetings. The Woodward Fund and Property was not the subject of, nor was it subject to, the within litigation.

13. As of 1898, by Chapter. 102 of the Acts and Resolves of the General Court, the Trustee of Adams Temple and School Fund and the Charles Francis Adams Fund was empowered to sell and convey the real property holdings of the Adams Temple and School Fund and the proceeds to be reinvested in real estate or securities and "held by [the Trustee] subject always to the trust specified in [Deeds A and B] (1898 Acts. c. 102) [Compl. ¶ 27, Exh. F; Tr. Answer ¶¶ 27]

14. Approximately thirty-five years after the Adams Academy opened, the income from the Adams Temple and School Fund and the Charles Francis Adams Fund became inadequate to continue operating the Adams Academy, and the Academy closed in 1907. [Compl. ¶ 30; Tr. Answer ¶¶ 28-38]

15. After the Adams Academy closed, the City of Quincy (as Trustee of the Adams Temple and School Fund) designated its high school department and its public library as the beneficiary of the Adams Temple and School Fund and the beneficiaries remained such until the 1953 Supreme Judicial Court decree designating the Woodward School for Girls as the income beneficiary. In said regard, in 1918, eleven years after the Adams Academy had closed, and pursuant to an order of the Supreme Judicial Court in a matter brought by the Trustee seeking to apply the *cy pres* doctrine, it was ordered that the income of the Adams Temple and School Fund be used to support the Quincy public high school and the Quincy public library. [Compl. ¶¶ 33, 34; Tr. Answer ¶ 28-38]

16. A Board of Managers Adams Temple and School Fund was established by the City of Quincy. The Board of Managers was comprised of the Mayor of the City of Quincy, the President of the City Council, the Treasurer and Collector, and two members elected annually by the City Council. [Compl. ¶¶ 25-26, Exh. E; Tr. Answer ¶¶ 20-26] See also Exh. 1 ¶ 7.

17. By decree of the Supreme Judicial Court dated October 11, 1944, the Adams Temple and School Fund was "authorized and instructed" to expend up to \$15,000 from the "securities and investments" of the fund "...for the purpose of making necessary repairs to said tomb [housing the remains of Presidents John Adams and John Quincy Adams] and the approaches thereto." This Court concludes, and so finds,

that, as of 1953, all such repairs has been completed and paid for as no evidence was presented that the Adams Temple and School Fund had paid for any such repairs since the date when the Woodward School for Girls became the income beneficiary of the Adams Temple and School Fund on February 11, 1953.

18. In the early 1950s, the Woodward Fund and Property lacked sufficient funds to continue to support and sustain the Woodward School for Girls, so, in 1952, the Board of Supervisors, the Board of Managers and the City of Quincy petitioned the Supreme Judicial Court, pursuant to the doctrine of *cy pres*, to allow the Woodward School to benefit from, and receive income from the Adams Temple and School Fund and the Charles Francis Adams Fund.

19. On February 11, 1953, in a matter brought by the City of Quincy (Trustee), the Board of Managers and the Board of Supervisors seeking to apply the *cy pres* doctrine, the Supreme Judicial Court decreed that "the *net income* from the funds held under the trusts established by the deeds of the late John Adams and bequest of the late Charles Francis Adams and exclusive of the income from a fund established by a bequest from the late Robert Charles Billings *shall* be paid to and expended by the City of Quincy in its capacity as trustee of the Woodward Fund and Property for the conduct, operation, maintenance, management and advancement of the Woodward School for Girls." (emphasis supplied) [Compl. ¶¶ 38-39; Tr. Answer ¶¶ 28-38; 39]. See also Exhibit 19. As a result, the Woodward School was determined to be the sole income beneficiary of both the Adams Temple and School Fund and the Charles Francis Adams Fund. The decree did not, however, provide a requirement for any annual, quarterly, or even periodic, income payments from the Adams Temple and School Fund to the Woodward School.

20. By 1953, the seven tracts of land, consisting of more than one hundred and sixty-one and a half (161 ½) acres, which President John Adams had deeded/gifted into trust in 1822, had been reduced, presumably as a result of various sales by the Trustee of, portions of the land deeded by President John Adams in 1822, to seventeen parcels/lots, several of which were not subject to being built upon. Those remaining parcels were as follows:

(1) Triangular piece of land of Packard's Lane, abutting Lot 5

This lot is a triangular parcel of land containing a total of approximately 1,400 square feet.

(2) Lot 5

This lot contains 207,728 square feet of land and is situated on Quarry Street in Quincy.

(3) Lot 30

This lot represented road frontage of Churchill Road in Quincy and contained a total of 69,460 square feet of land.

(4) Lot 31

This lot contained frontage on Mount Ararat Road in Quincy and contained 32,400 square feet of land.

(5) Lot 32

This lot was a triangular parcel of land, containing a total of 2,540 square feet of land, representing road frontage on Churchill Road in Quincy.

(6) Lot 33

This lot contained 3,800 square feet with road frontage on Churchill Road in Quincy; lot frontage was 195 feet with a radius of 23 feet at the corner of Mount Ararat Road.

(7) Plot 15

This lot contained 7,500 square feet and was located on Parker Street in Quincy.

(8-11) Lots 8, 9, 10, & 57 These four lots were, ultimately, part of a single transaction and represented a total of 48,614 square feet of land located just off of Granite Street in Quincy. The access entrance to these lots was from Parker Street.

(12) Plot 18

This property consists of 21,780 square feet of land on Parker Street in Quincy.

(13) Lot/Plot 20

This property is located on the south side of Parker Street and contained 13,426 square feet of land.

(14) Plot 20

This plot contained 211,466 square feet of land on Quarry Street in Quincy.

(15) "MBTA Land" - bordered by Dimmock St. in Quincy (Ex. 239). This narrow, small strip of land was subsequently (post-1953) the subject of a taking by the MBTA and was otherwise not addressed during the course of this litigation.

(16) A 2,699 square feet parcel of land fronting on Dimmock Street, Quincy. (This parcel is later referred to as the so-called "Vigoda" parcel.)

(17) 8 Adams Street, Quincy

This property consists of approximately 62,000 square feet, plus or minus, of level land near an MBTA stop and Quincy Center. There is a building on the site, which formerly housed the Adams Academy. There is also a parking area/lot, which can accommodate 45-50 parking spaces, on the rear portion of the property.

Initial Period of Woodward School's Involvement (1953 - 1973)

21. From 1953 until 1958, and explicitly in the years noted in the parentheses, the Board of Supervisors of the Adams Temple and School Fund was comprised of the following individuals: Charles F. Adams (1954-1954), Charles Francis Adams, Jr. (1955-1958), Thomas S. Burgin (1953-1958), William C. Edwards (1953-1958), Robert M. Faxon (1953-1958) and N. Gorham Nickerson (1953-1958). During 1962, the Board of Supervisors was comprised of the following individuals: Charles Francis Adams, Thomas S. Burgin, William C. Edwards, Robert M. Faxon and Dr. Morgan Sargent. During 1967, the Board of Supervisors was comprised of the following individuals: Charles Francis Adams, Thomas S. Burgin, William C. Edwards, Robert M. Faxon, Dr. Morgan Sargent. See Exhibit 247. It was the responsibility of the Board of Supervisors to manage the assets and investments and oversee disbursements from the Adams Temple and School Fund and the Charles Francis Adams Fund.²

22. From 1953 to 1958, and explicitly in the years noted in the parentheses, the Board of Managers of the Adams Temple and School Fund was comprised of the following individuals: William J. Deegan (1953-1954), David S. McIntosh (1953), Mildred L. Tyler (1953-1954), William C. Edwards (1953-1958), George w. Arbuckle (1953-1956), Amelio Della Chiesa (1954-1958), Donald H. Blatt (1955), Frederick A. Mooney (1954-1958), Edward T. Lewis (1956-1957) and Douglas A. Randall (1957-1958). It was the responsibility of the Board of Managers to attend to the management of the Adams Academy - a task which ceased to be relevant as of the date of the Woodward School's incorporation. During 1962, the Board of Managers was comprised of Amelio Della Chiesa, Thomas J. Sheerin, William C. Edwards, Melvin Thorner and Charles L. Shea. During 1967, the Board of Managers was comprised of James R. McIntyre, William C. Edwards, Melvin Thorner, George G. Burke and David R. Houston. See Exhibit 247.

23. The Treasurers for the City of Quincy for the years 1953 to 1967 were the following individuals: Mildred Tyler (1953), Frederic A. Mooney (1954-1960), Thomas J. Sheerin (1961-1965) and David R. Houston (1966 - July 9, 1971). See Exhibit 247.

24. From 1953 to the present, the Woodward School has never had an officer or employee serve on the Board of Managers or the Board of Supervisors of the Adams Temple and School Fund or the Charles Francis Adams Fund. In addition, the Managers/ Supervisors have never, at any time, informed the Woodward School, or any of its representatives, of any action it was taking or of any action it was contemplating. See Exhibit 247.

25. From 1953 to 1958, the Board of Supervisors and the Board of Managers always met in joint session. The Court further finds that the Boards thereafter continued, at all times to meet in joint session.

² Per stipulation of counsel.

26. From the time that the Woodward School became the beneficiary of the Adams Temple and School Fund in 1953, both the members of the Board of Supervisors and the Board of Managers desired to sell the real property which, as of 1953, remained in the fund.

27. As of the end of 1952, the City of Quincy Annual Report lists the assets of the Adams Temple and School Fund as being comprised of \$4,474.00 in cash, \$253,723.02 in investments, and \$102,325 (assessed value) in real estate.

28. As of the end of 1952, the City of Quincy Annual Report lists the assets of the Charles Francis Adams Fund as being comprised of \$1,453.07 in cash and \$21,975.00 in investments.

29. The Charles Francis Adams Fund, which had contained \$23,428.07 as of the end of 1952, contained only \$21,975 as of 1984 and, as of 2005, it continued to contain only \$19,982.

30. John Gillis, who was called as a witness by the City of Quincy, was employed by the City of Quincy as its Assistant City Clerk (1957 - 1959) and then as the City Clerk (1959 - 1989). In his capacity as City Clerk, he would have been responsible for the City of Quincy's records and record retention policy and procedures. He also served on the Board of Managers of the Woodward Fund and Property until it ceased to be involved in the management of the Woodward School in 1992. The Woodward Fund and Property was an entity that was wholly separate from the Adams Temple and School Fund and the Charles Francis Adams Fund. While on the Board of Managers of the Woodward Fund and Property, Mr. Gillis had regular interactions with Katherine Bacon, the Headmistress of the Woodward School.

31. In the early 1960s, Ms. Bacon, according to Mr. Gillis, "...was interested in getting money for the Woodward School" and "...wanted the Adams Temple and School Fund to sell its real estate so "...they would give part of the receipts to the Woodward School..." After parcels were sold in the 1950s and 1960s, Ms. Bacon, again according to Mr. Gillis, "...was hoping that they would get more money..." In particular, "... when Duane bought the quarry area, it was quite a discussion. And we [the Board of Managers of the Woodward Fund of the Adams Temple and School Fund] thought Duane got a bargain on the land. He paid very, very little for it." (See also findings below concerning sales of real estate.)

32. In 1968, the Board of Supervisors of the Adams Temple and School Fund requested a legal opinion from a retired judge, then engaged in the private practice of law, in Quincy, James Mulhall Esq., on several issues, to wit:

"1. May the Adams Academy building and land be sold to the Quincy Historical Society for a price less than its fair market value?"

"2. May the Adams Academy building and land be leased to the Quincy Historical Society for a term of ninety-nine (99) years at a rent of \$1.00 per year?"

"3. May the Adams Academy building and land be leased to the Quincy Historical Society for a term less than ninety-nine (99) years for a nominal rent per year?"

33. By letter dated April 22, 1968 (Exhibit 244), (ret.) Judge Mulhall gave the Board of Supervisors, *inter alia*, his opinion(s) which, in pertinent part, are set forth below.

a. " In March 1898 the General Court enacted Chapter 102. A copy of this Act is as follows:

"An Act to Authorize the City of Quincy to sell certain real estate. Be it enacted, etc. as follows: Section 1. The City of Quincy, acting in concert with the supervisors of the Adams Temple and School Fund, may sell at public or private sale and convey in fee or otherwise any and all parcels of land conveyed to the inhabitants of the town of Quincy by John Adams, his two deeds dated respectively the twenty-fifth day of June in the year eighteen hundred and twenty-two and the twenty-fifth day of July in the same year in trust for certain purposes therein specified, and any other property, real, personal or mixed, held by said city subject to the same trust.

Section 2. The proceeds of such sales shall be invested and re-invested from time to time by said city, in concert with said supervisors, real estate or in such securities as trustees are authorized to hold in this Commonwealth, and shall be held by said city subject always to the trust specified in said deeds. in

Approved March, 1, 1898".

b. Judge Mulhall went on to state:

"In the sale or other disposition of property of the trust, the trustee are obliged to use sound judgment and a wise discretion and act as men of prudence and intelligence would act in their own affairs. If the trustees sell property or make other disposition of it, and the court finds that by reasonable diligence on their part a larger price could have been obtained, they are liable for the loss, (Exchange Trust Co. vs. Doudera 270 Mass. 227, 229)."

c. In addition, Judge Mulhall informed the Board of Supervisors as follows:

"The City and the Supervisors are obliged under the law to obtain the highest sale price or lease price for the property; therefore, I answer questions 1 and 2 in the negative."

d. In his summation, Judge Mulhall stated:

"Chapter 102 of the Acts of 1898 (page 5) authorized the City of Quincy, acting in concert with the Supervisors of the Adams Temple and School Fund in Quincy to sell and convey any and all parcels of land conveyed to the inhabitants of the town of Quincy by his two deeds before referred to. This authority pertains to all of the land including the Academy Land and building." (underlining in original) and,

"If the Adams Academy land and building or other real estate of the Fund is leased,....The property sold or leased must be for an adequate and full

consideration unless the Supreme Judicial Court for Norfolk County authorizes a sale or lease of the property for less than an adequate and full consideration."

34. For a number of years prior to 1968, the Adams Academy building has been rented for civic and historical purposes. The yard behind the Academy has been rented to the City of Quincy for the parking of automobiles. The rent received from the building and yard did not meet the costs of maintenance. In 1964, the City of Quincy employed Waldo A. Fraser, a recognized qualified appraiser, to make an appraisal of the Adams Academy land and building. Mr. Fraser valued the land at \$124,000 and the building at \$28,000, and he advised that the building was outmoded and could not be economically modernized. In view of Mr. Fraser's report, Attorney Mulhall opined that the City and the supervisors would not be justified in making expenditures in an attempt to modernize the Academy.
(See Ex. 244)

35. In 1965, an offer to purchase the Adams Academy property for \$140,000 was received by the Trustee from Hayes-Bickford Lunch Systems, inc. The offer was discussed at the joint meeting of the Boards at a March 19, 1965 meeting. After some discussion, it was voted "Not to sell the Adams Academy Site for Commercial purposes...." (See Minutes of March 19, 1965, Exhibit 20.) Thereafter, over the next seven years, the joint Boards discussed disposing, and methods of disposing, of the Adams Academy. (See also Exhibit 244, letter from James Mulhall, Esq. To Trustee and joint Boards.)

36. In 1972, in a petition/complaint filed with the Supreme Judicial Court seeking to lease the Adams Academy to the Quincy Historical Society, James Mulhall on behalf of the City of Quincy, the joint Boards and Charles Francis Adams, the oldest living male descendant of John Adams, stated, in part, as follows:

"8...from February 11, 1965 to date, the income of the Adams Temple and School Funds has been expended as directed by decree of Court entered in the case...numbered 808."

"10. he income produced from the rentals and automobile parking is not sufficient to properly maintain the Adams Academy building and the building is of a type that it could not be economically altered to a commercial use."³

"12. This historic site should not be sold but should be maintained for the use and benefit of the present and future citizens of Quincy, this Commonwealth, and our United States,"

37. The members of the Woodward Fund and Property, all of whom were appointees of the City of Quincy, were, along with the Attorney General of the Commonwealth, the defendants in the 1972 petition, although the "Woodward Fund and Property" was never mentioned either in the caption or in the body of the complaint. The "Woodward School" was, itself similarly, never mentioned in the complaint.

³ But, see finding numbered "35."

38. A decree was issued on said petition by the Supreme Judicial Court on April 25, 1972, authorizing and approving the leasing of the "Adams Academy land and building to the Quincy Historical Society". The Woodward School was never given formal notice of the Trustee's petition, nor was any evidence offered to indicate that the school had been made aware of said petition or of the Trustee's intention to lease the property.

39. On July 14, 1972, the Trustee with the assent of "The Supervisors of Adams Temple and School Funds in Quincy" leased the building and grounds of the Adams Academy to the Quincy Historical Society for fifty (50) years, with said lease to commence on September 1, 1972 and to terminate as of August 31, 2021. The lease also contains the following provision: "This lease may be extended for a period of time on terms satisfactory to the Lessor and the Lessee." The rent for the property was, and to the present time remains, \$100 per month. The Court does not believe that, in recent years, the amount of rent being received reflects the fair market rent for the Adams Academy. The Court did not, however, receive evidence as to what the present fair market rent would be, were the property capable of being re-rented at this time. In view of its questions referenced in a 1968 letter of (ret.) Judge Mulhall, and in view of the offer received relating to the possible sale of the land (see findings "200." *et seq.* below), this Court finds that the 1972 petition to the Supreme Judicial Court was not prompted by, nor in the furtherance of, the best interest of the beneficiary of the Adams Temple and School Fund. The petition did, however, benefit the City of Quincy's (apparent) intention to preserve an arguably historic site in its city.

40. The Court is not herein passing on, nor determining the merits of, the issue of whether or not the Adams Academy should be sold to a public or private entity. The Court is, however, concerned, and so finds, that the City of Quincy, Trustee breached its duty of loyalty to the Woodward School when, *inter alia*, it sought to lease the site for, essentially, nominal rent for an extended period of time. As with many of its other actions (e.g., the sale of real estate for less than fair market value and with restrictions) when confronted with conflicting obligations, the City of Quincy put its municipal needs and desires ahead of the interests of the Woodward School.

41. The Special Master questioned the amount of \$128,507.89 listed by the Trustee as expenses for the (Adams Academy) property for the (approximately) 20 years from 1953 to mid 1972⁴, and suggested that the amount or extent of said expenses were unjustified. The Trustee was, however, required to maintain the property and since the Trustee received and accounted for rents received therefrom, the Court does not consider an annual average expenditure of approximately \$6,430 for such purposes (even considering that the costs associated with property maintenance in 1953 would have been considerably less than in 1972) to have been unreasonable or excessive. The Court notes that, by 1968, the Trustees were seeking to rid the trust of the financial burden of maintaining the property. (See letter of April 22, 1968 from [ret.]

⁴ Date that the Adams Academy was leased to Quincy Historical Society was July 14, 1972.

Judge Mulhall. Ex 244.) Given such, the Court considers such expenses to be allowable, even in the absence of documentation which should have been available, and provided, to the Special Master.

Investment Decisions and Determinations (1971 - 1973)

42. Given the Trustee's actions from 1953 as detailed below with regard to its investment of time frame (also detailed below), the Court has concerns about the investment actions of the Trustee City of Quincy during the period from 1953 to 1973 with regard to the fungible portion of the Adams Temple and School Fund portfolio. The Court did, however, not receive any direct evidence as to what the Trustee's investment approach or strategy (if any) was during the two decades from 1953 to 1973 following the Woodward School's designation as the income beneficiary of the Adams Temple and School Fund. As a result of the absence of such evidence, while harboring serious reservations and concerns as to the investment approach employed by the Trustee during those years⁵, the Court can not, and therefore does not, find that the Trustee City of Quincy, during the years from 1953 to 1973, breached its fiduciary duty to the Adams Temple and School Fund and/or the Charles Francis Adams Fund by employing inappropriate investment strategies or by ignoring competent, professional, advice concerning the trusts' investments. As of April 11, 1973, however, those circumstances changed.

43. As of April 11, 1973, and apparently for a considerable period of time prior thereto, the South Shore Bank had been the repository bank for the City of Quincy's municipal general fund and municipal operating account.

44. A joint meeting of the Board of Supervisors and Board of Managers of the Adams Temple and School Fund and the Charles Francis Adams Fund was held on April 11, 1973. At that joint meeting, the members of the Boards received and considered competent, professional, investment advice, which they had previously requested, from representatives of the investment advisory department of the South Shore National Bank. The investment advisor's recommendations were set forth in a letter dated March 29, 1973 (Ex. 220). The Boards considered and unanimously adopted:

- a. an Investment Advisory Agency Agreement which designated the South Shore National Bank as the investment advisor for the Adams Temple and School Fund, with the Board(s) reserving to it/themselves final approval of all investment decisions (Exhibit 217); and,

⁵ The fund's investment portfolio had increased in value from \$253,723.02 in 1953 to only \$321,932.43 as of 1973, all during 20 years of very robust economic growth in the Quincy area and, despite the fact that \$70,926.07 of that increase would have been attributable to the sale of the trust's real estate during the 1953-1973 period. (See Report of Special Master incorporating Newburg report Exhibit 3.)

b. a portfolio diversification which called for a 60/40 split between securities/equities and fixed income assets as follows:

**"Savings 5%...
Fixed Income 35%...
Equity Security 60%..."**
(emphasis supplied)

45. In its March 29, 1973 letter, the Adams Temple and School Fund investment advisor recommended that the equities/securities which it suggested purchasing be "... equity - type securities yielding up to 5%...". Had the Trustees done so, it is reasonable to assume that the investments, in addition to realizing appreciation (see below), would have returned approximately a 5% annual return. (See Ex. 220, pg. 2.)

46. As of the time of the April 11, 1973 meeting, the investment portfolio for the Adams Temple and School Fund consisted of:

Fixed Income - **90%**; Equity Securities - **10%**.
(emphasis again supplied)

47. No evidence was presented by the City of Quincy that the Trustee of the Adams Temple and School Fund ever followed the directive set forth in the vote of April 11, 1973 concerning the diversification of the Adams Temple and School Fund investment account. The Trustee thereafter (i.e., after the April 11, 1973 meeting and vote) proceeded to ignore the professional investment advice which it had sought and received and which it had agreed with, approved, and authorized. In fact, over the next 17 years, the Trustee decreased, rather than increasing, the fund's holdings in equities/securities. The Court, thus, concludes and finds that the City of Quincy, Trustee of the Adams Temple and School Fund, ignored the terms of its own April 11, 1973 vote, and the competent, professional, advice contained therein, to the considerable detriment of the Adams Temple and School Fund.

48. In fact, between 1973 and 1990, the percentage of funds in the Adams Temple and School Fund's portfolio invested in fixed income assets actually increased to the point where, in 1990, nearly 100% of the funds were in fixed income investments.

49. According to Robert Foy, III, a member of the joint Boards at all relevant times, the Trustee, even after the 1973 vote, continued to invest (albeit minimally) in securities until Charles Francis Adams⁶ suggested to the Trustee that they not do so. Mr. Foy had no recollection of when Charles Francis Adams, who was the chairman of the Board of Supervisors for more than 40 years, made such a statement. The Court concludes and find that is more likely than not that Mr. Adams' comments occurred

⁶ Charles Francis Adams was the "great-great-great grandson" of President John Adams. See minutes of March 19, 1965, Exhibit 20. No evidence was presented, however, as to Charles Francis Adams' education, background or areas (if any) of expertise.

prior to the Board of Supervisor's vote of April 11, 1973 as Charles Francis Adams was in attendance at the meeting of April 11, 1973 and voted (the vote was unanimous) to have sixty (60%) percent of the Adams Temple and School Fund investments placed into, and held in, equities/securities. Following receipt of competent legal⁷ and investment advice, the Board of Supervisors voted on April 11, 1973 to invest the majority of the Adams Temple and School Fund monies in securities; no evidence was presented that the Board of Supervisors ever voted to rescind or modify its vote of April 11, 1973.

50. The Trustee has asserted that its actions in investing all of the trust assets in governmental securities was authorized and directed under the June 29, 1822 deed of John Adams and that said actions were not only proper but were, in fact, mandated.

The Court does not accept the Trustee's argument for the following reasons:

(1) The relevant portion of the deed in issue reads as follows:

"To have and to hold to the said town of Quincy and their successors forever, - upon the conditions and provisos following....That the rent of the herbage of these pastures, together with the profits arising from the sale of wood, fuel of any kind, timber and stone, be strictly applied to the following purpose, viz. - To be placed at interest in some solid public fund, either of the Commonwealth, or of the United States, and the interest again placed at interest, as it arise, until the amount shall be sufficient with what the town may grant, other individuals subscribe, or the probable sale of pews produce, to raise a fund or the completing and furnishing of a Temple to be built of stone, to be taken from the premises, for the Public Worship of God, and the public instruction in religion and morality, for the use of the Congregational Society in said town; and next after the completion of said Temple, that all future rents, profits, and emoluments, arising from said land, be applied to the support of a School...."

(2) The Adams Temple and School Fund had, for many years been investing the fungible portion of the trust corpus in corporate bonds as well as in equities/securities.

(3) Chapter 102 of the Acts and Resolves of 1892 should have resolved any uncertainty as it read, in part:

"Section 2. The proceeds of such sales shall be invested and re-invested from time to time by said city, in concert with said supervisors, in real estate or in such securities as trustees are authorized to hold in this Commonwealth, and shall be held by said city subject always to the trust specified in said deed."

(4) Long after the Trustee had been investing the Adams Temple and School Fund assets in securities, the joint Boards voted on April 11, 1973 as follows:

⁷ See letter from (ret.) Judge James Mulhall dated April 22, 1968 (Ex. 244).

"Upon motion duly made and seconded, it was unanimously: VOTED: To approve the program as presented, and that Thomas S. Burgin, representing the Board of Supervisors, and Robert E. Foy, III, representing the Board of Managers, are hereby authorized and directed to act jointly for both Boards in making investments and changes of investments in said Funds substantially within the outline as presented by said document dated March 29, 1973. The Clerk is directed to file with the record of this meeting a copy of the document "Structuring of Adams Portfolios".

(5) The Court was unable to locate anywhere in the minutes of the joint Boards any action which, in any manner, repudiated or amended the action/vote taken on April 11, 1973.

(6) Mr. Foy indicated that (regardless of when the conversation or discussion may have taken place) Charles Francis Adams, at some point, believed that the Adams Temple and School Fund should be in government bonds, but:

-Mr. Adams, unilaterally, had no authority to implement such a determination; and,

-such action would, in any event have ignored, to the detriment of the trust, the foregoing, 1892 act of the legislature.

Thus, by 1898, the Adams Temple and School Fund was authorized to invest and reinvest "...in real estate or in such securities as trustees are authorized to hold in this Commonwealth, and shall be held...subject always to the trust specified...." Such real estate and securities must, therefore, be held for the benefit of the income beneficiary which, at that time, was the then-operational Adams Academy (for boys). To adopt the reading of the statute proposed by the City of Quincy would cause the terms "...in such securities as trustees..." to be gutted from the Act, such a reading would have been contrary to the express intention of the legislature. See: Acts and Resolves of 1898, Exhibit 248; see also Shamban v. Nasidlover. Mass. 50 (1999).

51. The Woodward School called Scott Winslow, as an expert witness, to testify concerning the value of the Adams Temple and School Funds fungible assets (i.e., its investment account). Mr. Winslow is an investment counselor and is both the managing director and chief operating officer of Peddock Capital Advisors. He received an undergraduate degree in 1978 in business administration and a law degree in 1986. Both before attending, and while in, law school, he worked in the financial services industry, initially starting as a trust officer in 1979. Following his graduation from law school, he worked for Boston Safe Deposit & Trust Co. handling, and advising, private and institutional clients and charitable trusts on various financial issues. He described his work with charitable trusts, which currently represents 20% - 25% of his clientele, as "... very interactive service." He provides "... advice as to specifics of the portfolio" and recommends adjustments "...in light of market conditions or concerns about income needs". The Court found him competent to testify with regard to, and to give opinion on, the value(s) of the projected trust corpus based upon certain hypothetical assumptions.⁸

⁸ Based principally upon the recommendation received and approved by the Trustee on April 11, 1973.

52. According to Mr. Winslow,
- a "trustee must avoid self-dealing"; and,
 - a "trustee must change his portfolio in reaction to changing economic and market conditions".

This Court agrees with the foregoing statements and finds that it is imprudent for a trustee to engage in self-dealing or to be passive with regard to management of trust assets. (The Court does not find that a change in investment strategy is invariably necessary, but the Court does find that reasonably active consideration of such to be prudent.)

53. Mr. Winslow opined that, had the Trustee actually employed the professional investment advice which, in 1973, it had sought and received, and which it had approved to govern the management and diversification of the financial assets in the Adams Temple and School Fund, and based upon the growth in the equity market which occurred during the thirty-five years in question, the fund, which was valued at \$321,932.43 as of 1973, would have had a value of \$1,457,426 as of the end of 2008.

54. The Court agrees with, and credits, Mr. Winslow's analysis and his opinion as set forth in the foregoing paragraph. It was imprudent for the Trustee to ignore the professional advice which it had received in the Spring of 1973. It was imprudent for the Trustee to ignore its own vote approving and adopting the professional advice which it received and, thus, it was imprudent for the Trustee not to have diversified its portfolio to reflect a distribution of (or at least approximating): 60% in equities/stocks; 40% in fixed income/cash.

55. It was, moreover, imprudent for the Trustees to permit, by 1990, the fund to consist of essentially 100% fixed income/cash assets. The Court was not provided with any evidence that the Trustee had sought or received, after April of 1973, any competent, professional, advice concerning an investment strategy which indicated or suggested a different (i.e., from that which was received in 1973) strategy or asset allocation.

56. As a result of the Trustee's failure to act prudently as aforesaid, the Adams Temple and School Fund was significantly harmed. The value of the financial (non-realty) assets in the fund as of 2008 was only \$321,932.43. Had the Trustee acted prudently and followed the professional advice which it had received, and which it had voted to follow, the fund could reasonably have been expected to have had a value of \$1,457,426 as of the end of 2008. The Adams Temple and School Fund has thus, over the thirty-five years involved, sustained a loss of \$1,135,494 of value in the trust corpus resulting from the Trustee's failure to act prudently. This amount has not considered the loss of income which would have resulted from, or been spun off from, the generally increasing value, which averages out to \$31,542 per year for the thirty-five years from 1974 through 2008, inclusive, of the fund's investments.

57. The Trustee called, as its expert witness, Gregory Gullickson. Mr Gullickson has, for many years, served as a professional trustee. He and his firm provide investment and management advice to approximately 360 accounts. Mr. Gullickson, who has no formal legal training but is a 1983 recipient of a Masters degree from the London School of Economics, is a chartered financial analyst. He individually serves as a trustee on four trusts which, in total, have a market value of approximately \$175,000,000. Mr. Gullickson was asked by the City of Quincy: to review the performing analysis of Scott Winslow, the Woodward School's witness; to comment on the procedures and processes employed by the Trustee of the Adams Temple and School Fund; and to analyze the investments and returns of the Adams Temple and School Fund over the period. The Court found him competent to testify concerning, and to give opinion on, whether or not certain actions of trustees were appropriate and what standards should govern and/or control a trustee's actions.

58. According to Mr. Gullickson, the Prudent Act Rule, codified in 1998, "...differs from the Prudent Man Rule in the fact that the legislature now requires that individual portfolio holdings be considered within the context of the entire portfolio rather than each holding standing on its own." [Tr. Page 184, lines 13-18, January 14, 2011]

59. According to Mr. Gullickson, the Adams Temple and School Fund had an appropriate process (meeting minutes, communication with South Shore National Bank) in place to manage the trust. The Court agrees that the process was in place, but, as noted elsewhere in these findings, completely disagrees that the Trustee's management of the trust was done in a prudent manner.

60. Mr Gullickson further testified that:

"Prudence is a process where you take account of all of the factors that effect your decision. But if your decision is to make no changes, there is no changes, there is no reason that decision *per se* is imprudent." [Tr. page 67, lines 16-20, January 21, 2011]

The Court agrees with Mr. Gullickson's statement, as a general proposition. In the within matter, however, the Trustee, on April 11, 1973, make a decision to effectuate changes to the trust portfolio but subsequently, and inexplicably, ignored its decision without any rationale therefore, other than inattention and/or neglect.

61. He (Mr. Gullickson) further stated that:

"[S]ince prudence is a standards based criteria, I believe it can only be applied to the actions that a trustee undertakes." [Tr. page 83, lines 15-18 January 21, 2011].

The Court, however, disagrees. A Trustee can be deemed to be acting imprudently when it takes no action when a prudent man would act. Inaction is indeed

an act.⁹ In any event, in this matter the Trustee clearly undertook to act - and voted to adopt an investment strategy - which it then immediately ignored. In fact, it thereafter, again, inexplicably and without evidence of any justification, undertook a course of action that was completely contrary to the course of action which in had, appropriately in view of the professional advice which it had received, directed itself to take.

62. Mr. Gullickson noted that in the course of his review of the facts of this case, he "...did not make any assumptions about asset allocation" but only looked "... at what happened in the account." [Tr. page 71, lines 16-18, January 21, 2011']

63. Mr. Gullickson, who began managing trusts in 1981, believes that he still maintains his records with regard to said trusts in a vault.

Special Master's Appointment

64. On September 8, 2008, the Court (Langlois, J.) entered an Order Appointing Special Master James H. McLaughlin, Esq. (hereinafter referred to as "the Special Master") of Natick, Massachusetts. (Exhibit 213.) In said Order, the Court (Langlois, J.) provided, *inter alia*, that the Special Master shall be compensated by the City of Quincy at a rate of \$275 per hour "to oversee the preparation of an accounting and prepare a report and to attend any court-ordered hearings." Further,

a. "[t]he Special Master shall proceed with all reasonable diligence to search for and gather documents in the possession, custody or control (including the Board of Managers created pursuant to Quincy City Ordinance 2.114.020) concerning any real property held by the Adams Temple & School Fund and the Charles Francis Adams Fund . . . at any time during the period from January 1, 1953 to the present time.

b. The Special Master shall proceed with all reasonable diligence to search for and gather documents in the possession, custody or control (including the Board of Managers created pursuant to Quincy City Ordinance 2.114.020) concerning any non-real property assets held by the Funds [Adams Temple & School Fund and the Charles Francis Adams Fund] at any time during the period from January 1, 1953 to the present time.

c. The Special Master shall proceed with all reasonable diligence to search for and gather documents maintained by third-parties, including without limitation financial institutions and the Norfolk County Registry of Deeds, concerning any assets held by the Funds at any time during the period 1953 to 2008. The City shall cooperate with the Special Master to request records from any third-party financial institutions or other entities.

⁹ See: Jupin v. Sharonkask, 447 Mass. 141, 147 n. 6 (2006). The word 'actor' is used in the Restatement...to describe the person whose conduct is in question as a basis for liability....In includes, therefore, one whose conduct consists of failure to act as well as one who does act." Restatement (Second) Torts s. 314 comment b (1965).

d. The Special Master shall thereafter promptly undertake to prepare an accounting (including but not limited to an inventory of the Funds' historic real estate and non-real estate holdings) within ninety (90) days or such additional time as the Court may set upon request, which comports with the requirements of M.G.L. c. 206 § 2, the Massachusetts Probate Court Rules and Probate Court Uniform Practices, concerning the Funds for each year during the period 1953 to 2008, inclusive.

e. To the extent that the Special Master reasonably believes that it is necessary to retain additional professionals to assist with any of the duties provided for herein, the Special Master shall submit a written request to the Court, with copy to Woodward and the City, stating the identity of the professional to be retained, the purpose of the retention, and the hourly rate of the professional. If no written objection is served and filed with the Court and delivered to the Special Master within ten (10) days of the request's submission, the request shall be deemed approved and not subject to future objection.

f. When preparing the accounting, to the extent that the Special Master is unable to locate documents or information concerning the acquisition, year-end market value, investment, use or disposition of any of the assets, income, expenses and/or payments made by or on behalf of the funds, the Special Master shall identify all such instances in the accounting.

g. Within thirty (30) days after completing the accounting or such additional times as the Court may set upon request, pursuant to Probate Court Rule 24, the Special Master shall submit to Woodward and the City a draft report.

h. When preparing his report and accounting, to the extent that the Special Master is unable to identify documents or information bearing upon the acquisition, value, use, management, and/or disposition of assets, expenses, income, and/or payments concerning the Funds, the Special Master shall make any necessary inferences concerning such assets, expenses, income, and/or payments in the light most favorable to Woodward and adverse to the City.

i. Pursuant to Probate Court Rule 24, the Special Master shall notify Woodward and the City of a reasonable time and date (not to exceed thirty [30] days) from mailing the draft report and place where they may attend and suggest alterations to the draft report as they may think proper. Within ten (10) days after receipt of Woodward's and the City's comments to the draft report, the Special Master shall submit to Woodward and the City his final report and accounting.

j. Pursuant to Probate Court Rule 24, Woodward and the City shall submit to the Special Master written objections to the report and accounting within ten (10) days after submission of the final report. Thereafter, within five (5) days, the Special Master shall promptly file his/her final report, accounting and any timely written objections.

k. Woodward and the City shall promptly, or within ten (10) days from entry of this order appointing the Special Master, produce to the Special Master all documents that pertain to the Funds in their immediate possession, custody or control. Woodward and the City and their officers, directors, employees, and agents shall cooperate with the Special Master in connection with the Special Master's assumption and performance of the Special Master's duties described herein.

I. The Special Master's clerk or assistant may communicate *ex parte* with Woodward or the City only for the purposes of scheduling an in person or telephonic conference with the parties, including but not limited to an initial conference with the parties that the Special Master may wish to conduct. Any other oral communications between the Special Master, on the one hand, and Woodward or the City, on the other, will only occur after notice to the other party and an opportunity to participate in such communications. Any other written communications between the Special Master, on the one hand, and Woodward or the City, on the other, will be copied to the other party."

65. The Special Master filed his initial report with the Court on January 21, 2010 and an updated, supplemental, report (considering additional information provided by the Trustee) on December 15, 2010.

66. The Court notes that the Trustee did not always comply with the terms of paragraph "j." (timely submissions to Special Master of objections to his report and/or accounting) above, but, in no instance has the Court precluded the Trustee from contesting any finding(s) of the Special Master nor has any finding been made herein against the Trustee as a result of, or based upon, its failure to file, with regard to either report of the Special Master, an objection in an untimely manner.

67. The Special Master made numerous findings and conclusions. The findings of the Special Master are to be given presumptive weight. Mass. R. Civ.P. 53 (h)(i) "in an action to be tried without a jury, the Court shall accept the Master's subsidiary findings of fact unless they are clearly erroneous, mutually inconsistent, unwarranted by the evidence before the Master as a matter of law or are otherwise tainted by error of law." See also In the matter of Robert B. Antonelli, 429 Mass. 644 (1999).

68. The Special Master, in the furtherance of his activity, employed, pursuant to paragraph "e." of the order of his appointment, a forensic accountant, Howard Newburg. Mr. Newburg, a Certified Public Accountant for thirty (30) years, was employed by the Special Master to assist in recreating the books and records of the Adams Temple and School Fund as well as the Charles Francis Adams Fund.

69. During the course of their activity, Newburg and the Special Master recommended that the parties hire real estate appraisers, but the parties chose not to do so until the Court indicated, following the Trustee's objection to those portions of the Special Master's/Newburg's report that addressed real estate values/issues. The Court indicated to the parties, upon hearing the Trustee's objection that, the Court would, necessarily, have to find that he (Newburg, a Certified Public Accountant) was not competent to opine on such (real property values) issues and that the Court would, as a result, not credit his opinions or conclusions relating to real property issues/values. The parties then proceeded to employ appraisers, several of whom testified during the course of the trial.

70. Newburg testified that he was not certain that he had all of the Trustee's investments records and/or when he reviewed the Trust's portfolio.

Charles Francis Adams Fund

71. The Charles Francis Adams Fund was established in 1886 by a testamentary grant of \$10,000 to be used for the support of the Adams Academy in any manner which in the estimation of the Supervisors would best contribute to the objects of the John Adams grant of June 1822. See Exhibit 5.

72. By a Final Decree of February 11, 1953, the Supreme Judicial Court ordered, in pertinent part, that "...the net income from the funds held under the...bequest of the late Charles Francis Adams...shall be paid to and expended by the City of Quincy in its capacity as trustee of the Woodward Fund and Property for the conduct, operation, maintenance, management, and advancement of the Woodward School for Girls." (Exhibit 19).

73. Records for the Charles Francis Adams Fund for only 41 of the 56 years (1953-2008) under review were available to the Special Master.

74. In 1953, the Charles Francis Adams Fund was valued at \$23,428, which amount represented \$1,453 in cash (bank account) and \$21,975 in securities (of which \$1,000 was in a US Treasury note and the balance in corporate bonds). The trust did not invest in equities/securities. The value of the fund increased marginally until 1962 when it had a value of \$24,323. The Trustee has no records for 1963 or 1964. In 1965, the value remained unchanged (from its 1962 value) at \$24,323. No records were available for 1966 through 1969. In 1970, the value of the fund had dropped to \$23,980. It appeared to remain unchanged from 1971 through 1973 but increased, again marginally, in 1974 to \$24,851. No records were available for 1975 or 1976 but, by 1977, the value of the corpus of the trust had dropped by 21% to \$19,542. It then increased marginally through 1984 to \$20,321, thereafter declining steadily over the next four years.

75. By the end of 2005, the fund was valued at \$19,982 of which \$2,530 was in cash and \$17,452 was in investments. No information was made available to the Special Master (or to Howard Newburg) concerning the three years from 2006-2008, inclusive. No credible explanation was provided with regard to the reason why the corpus of the trust had declined by approximately 14.7% during the fifty-two years noted.

76. Although no explanation was provided as to the reason why the value of the fund declined during the 53 years in issue (1953-2005), nor was there any explanation given for the variances between net income and payments to the Woodward School, during those years, it does appear that the Trustee was making a modest effort to pay

income of this relatively basic trust over to the Woodward School.¹⁰ As a result, the Court will not speculate as to what "shortfall", if any, the Woodward School may have experienced during the period from 1953-2005¹¹

77. Transfers of funds from the Charles Francis Adams Fund to the Woodward School were made during the 1953 - 2005 period but said transfers were only occasionally related to the net income that the trust had received during any given year. On occasion, despite realizing net income, the Trustee would transfer nothing to the school. On other occasions, the transfers would be for only a portion of the net income received, or sometimes exceed the net income realized, in any given year.

78. In 1986, an equity action was brought in this Court (See Ex. 164), pursuant to G. L. c. 216, sec. 6, (docket number: 86E-0140-G1) by the City of Quincy, Trustee, and the Board of Supervisors of the Woodward Fund and Property (the majority of the members of which were officials of the City of Quincy) against the Board of Supervisors of the Woodward School, the Attorney General of the Commonwealth of Massachusetts and the Trustees of Dartmouth College. The Court has taken judicial notice of the filings and pleadings in said action. The Villages Development Co., Inc. v. Sec'y of the Executive Office of Environmental Affairs, 410 Mass. 100, 109 n. 5 (1991), citing Flynn v. Brassard, 1 Mass. App. Ct. 678, 681 (1974). In its Complaint, the Plaintiff (City of Quincy Trustee) sought instructions as to its duties as trustee under the Will of Ebenezer Woodward and a declaratory judgment as to a controversy between the plaintiff Trustee (City of Quincy) and defendant Board of Supervisors of the Woodward School. Defendant Board of Supervisors counterclaimed against the City of Quincy, Trustee, alleging/seeking breach of fiduciary duty and requested damages as a result, in part, of "... numerous instances of self-dealing on the part of the trustee. There will be proof of loans of trust funds by the trustee to itself. There will be proof of land transfers of valuable trust land from the trustee to itself. . . .")¹². There was not, however, any request, or prayer, for an accounting referenced in the complaint.

a. The plaintiff in the above-referenced litigation was the Woodward School's Woodward Board of Managers of the Woodward Fund and Property whose members, as noted above, were appointed by the City. The Board of Supervisors, the defendant (and plaintiff-in-counterclaim), oversaw the day-to-day operations of the school.

79. The 1986 action settled in September of 1991 by a mutual release signed by the Board of Supervisors of the Woodward School and Board of Supervisors Under the Will of Ebenezer Woodward, Inc. and by the City of Quincy, individually and as

¹⁰ Indeed, given the history apparent from the records, particularly the periodic "overpayments" to the Woodward School, such overpayment may (or may not) explain the diminution in the value of the trust over the 53 years from 1953-2005.

¹¹ See Judgment requiring an accounting for years 2005-2008, inclusive.

¹² See: Motion of Defendant Woodward School for Separation of Trial filed in the subject case on August 30, 1988.

Trustee Under the Will of Ebenezer Woodward and the Board of Managers. The release was in consideration of the payment by the City of Quincy to the defendant-in-counterclaim of \$400,000 (and possibly other considerations.) See Ex. 167.

80. Neither the Adams Temple and School Fund nor the Charles Francis Adams Fund were involved, in any manner, in the aforesaid 1986-1991 litigation.

81. By 1992, the City of Quincy no longer managed (via the Woodward Fund and Property) the Woodward School as the school had incorporated and thereafter began managing its own fiscal and academic affairs. The Woodward School continued, however, to have no control over its receipts of any funds from either the Adams Temple and School Fund or the Charles Francis Adams Fund.

82. The City of Quincy has, in the within litigation, alleged (but has failed to submit any competent evidence sufficient for the Court to find) that, as a result of the 1986-1991 litigation, the Woodward School knew or should have known of the City of Quincy's inappropriate and/or inadequate practices. The Court does not find that the Woodward School had reason to suspect that there were any accounting and/or management problems with the Adams Temple and School Fund or the Charles Francis Adams Fund. The Woodward School did not have any actual knowledge of such.

83. The City of Quincy, in asserting, its claims regarding the statute of limitations and the doctrine of laches, has suggested that the current state of affairs has resulted because the Woodward School knew or should have known of its (the City of Quincy's) general fiduciary mismanagement and inadequate accountings. The Court, as noted above, does not find that the Woodward School had actual knowledge of such with regard to the Adams Temple and School Fund and/or the Charles Francis Adams Fund. The City of Quincy should, however, in view of the 1986 - 1991 litigation, been put on notice of its *own* fiduciary inadequacies and it should have addressed, and corrected, its practices. To the detriment of the Adams Temple and School Fund and the Charles Francis Adams Fund - and, ultimately, to its own detriment - the City of Quincy did nothing.

84. In his report, the Special Master addressed some of the issues set forth in the foregoing paragraphs.

"In this matter the Defendant City has pleaded the Statute of Limitations as a defense therefore the burden is placed on the Plaintiff to prove that the facts of the case take this matter outside the impact of the Statute". Shadzade v. Gregory, 930 F. Supp. 673 (D. Mass. 1996); O'Connor v. Redstone, 452 Mass. 537 (2008).

In cases where a beneficiary has pursued a claim against a trustee directly for breach of fiduciary duty, it has been held that the Statute of Limitations does not commence "until the beneficiary has actual knowledge of the fiduciary's breach. Constructive knowledge is insufficient". Lattuca v. Robsham, 442 Mass.205, 213 (2004). This "actual knowledge" rule "recognized the dependant status of the

beneficiary vis-a-vis the fiduciary and protects the beneficiary's legitimate expectation that the fiduciary will act with the utmost probity in all matters concerning the relationship." O'Connor, 452 Mass. at 552. Delay which might otherwise be found to be unreasonable does not constitute laches so long as there has been no repudiation of the trust with knowledge of the beneficiary. Akin v. Warner, 318 Mass. 669, 676 (1945). "Mere suspicion or mere knowledge that the fiduciary has acted improperly does not amount to actual knowledge that the Plaintiff has suffered harm. Only when the beneficiary's harm at the fiduciary's hands has 'come home' to the beneficiary, does the limitations clock begin to run. "Doe v. Harbor Schs., Inc. 446 Mass. 245, 255-56 (2006). See Report of Special Master (Exhibit 214 at pages 19-20)

85. The Special Master went on to state that:

"..in this [the 1986 - 1991] litigation, it was settled that the City would step down as Trustee of the Fund because of mismanagement, lack of accounting, and self-serving practices on the party of the City. Common sense would dictate that if Woodward knew the City was mismanaging the Woodward Fund and not keeping adequate enough records to make regular accountings, they were engaging in the same practices with regards to the Adams Fund. However, common sense and constructive notice are not the standards here, no evidence has been proffered that Woodward has actual knowledge or notice that the City was mismanaging the Adams Fund and not maintaining adequate enough records to perform an accounting until 2007." See Report of Special Master (Exhibit. 214 at page 23)

86. Moreover, as noted in other findings, the Trustee of the Adams Temple and School Fund and the Charles Francis Adams Fund never informed the Woodward School of anything. The Woodward School could not have been on notice of any inappropriate actions of either trust. It was not until 2005, that the Woodward School may have had reason to question the Trustee's activity with regard to the two trusts presently in issue.

87. The Special Master went on to state that:

"Woodward engaged in litigation in 1986 with the City as Trustee for the Ebenezer Woodward Fund regarding its mismanagement of the Fund and its overstepping the boundaries of the trusteeship. Many of the issues raised during the litigation also apply to the City's trusteeship of Adams Fund, so a res judicata claim has to be investigated. The three essential elements in res judicata are (1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties." See Report of Special Master (Exhibit 214 at page 23)

88. There was, however, no finding or decision made in the 1986 litigation as the matter was settled and resolved without a finding or decision concerning the City of Quincy's conduct. The case did not, therefore, result in a determination on the merits. Moreover, the parties involved were not the same as the parties involved in this case, nor were the issues the same as those with which the within litigation are concerned. Only the City of Quincy was a party to both that action and the within action, but in its fiduciary capacity as the Trustee of wholly separate trusts.

89. The Court, thus, declines to side with the City of Quincy on its defenses of statute of limitations, laches and/or res judicata.

Request for Accounting

90. In 2004, the Woodward School received \$10,000 from the Adams Temple and School Fund, although the school's Business Manager, Joanne McDaniel, had budgeted/anticipated that the school would receive \$15,000. Ms. McDaniel, following the receipt of said funds, called the City of Quincy Treasurer's office to discuss the amounts they might expect to receive in the following year. As a result, Ms. McDaniel (again) budgeted \$15,000 in trust fund receipts for the school's 2005 budget. The Woodward School, in fact, received only \$5,000 in 2005.

91. On October 28, 2005, the Chair of the Woodward School Board of Trustees requested an accounting of the Adams Temple and School Fund and the Charles Francis Adams Fund from the Trustee (City of Quincy). Shortly after its request, the Woodward School received \$10,000 from the Adams Temple and School Fund and \$2,000 from the Charles Francis Adams Fund.

92. On November 14, 2005, the Treasurer of the City of Quincy responded to the Woodward School's request for an accounting, noting that the Charles Francis Adams Fund and the Adams Temple and School Fund had earned less in recent years due to market conditions. The Treasurer did not provide an accounting.

93. On December 12, 2005, the City Treasurer sent a letter to the Headmaster of the Woodward School, informing the school of the current balances in the Adams Temple and School Fund and the Charles Francis Adams Fund.

94. On June 12, 2006, an alumna of the Woodward School, who had previously made an inquiry on behalf of the School, received a letter from the First Assistant City Solicitor for the City of Quincy concerning the fund balances. There was a spreadsheet, which set forth the Adams Temple and School Fund income, the expenditures and the balance for each fiscal year, attached to said letter.

95. On February 14, 2007, and again on April 3, 2007, the Woodward School sent letters, requesting that the Trustee (the City of Quincy) and the Board of Managers

of the Adams Temple and School Fund and the Charles Francis Adams Fund provide it with an accounting of the two funds.

96. On July 11, 2007, the Woodward School filed the within Complaint and Petition to Render an Accounting against the City of Quincy, as Trustee of the Adams Temple and School Fund and the Charles Francis Adams Fund in the Supreme Judicial Court. The Attorney General was named in said Complaint as an interested party because the Attorney General has supervisory powers over public charitable trusts, pursuant to G. L. c. 12, § 8, 8G. In said Complaint, the Woodward School noted that it was the beneficiary of two public charitable trusts, namely (1) the Adams Temple and School Fund, established by President John Adams by two deeds of gift in 1822, and (2) the Charles Francis Adams Fund, established by President Adams' grandson Charles Francis Adams in 1871. Since the Supreme Judicial Court's 1953 Order, the Woodward School has been the beneficiary of the Adams Temple and School Fund and the Charles Francis Adams Fund. In its Complaint, the Woodward School alleged that it had inquired of the City of Quincy regarding the assets, the yearly income and the expenditures in the Adams Temple and School Fund and the Charles Francis Adams Fund, but the school received little to no information from the City in response.

97. On August 29, 2007, the City of Quincy filed its Answer to the Woodward School's Complaint and Petition to Render an Accounting.

98. On September 4, 2007, the Attorney General filed her Answer to the Woodward School's Complaint and Petition to Render an Accounting. The Attorney General thereafter took no role in the Court proceedings.

99. On September 13, 2007, the Supreme Judicial Court entered an Order of Transfer, which provided, "[P]ursuant to the provisions of G. L. c. 211, s. 4A, that the above-entitled case [Woodward School for Girls, Inc. v. City of Quincy, as Trustee of the Adams Temple and School Fund and the Charles Francis Adams Fund and the Attorney General, as a nominal party] be transferred to the Norfolk Probate and Family Court for the County of Norfolk for disposition." Said Order of Transfer was docketed in the Norfolk Division of the Probate and Family Court on September 26, 2007.

100. On January 23, 2008, the Court (Langlois, J.) entered a Scheduling order providing the following: (1) a further status conference would be held on March 19, 2008; (2) the city of Quincy must file a separate accounting for each year for the period from 1953 to 2007, inclusive, by no later than May 2, 2008; (3) to the extent that there may be any objections to the accounting(s) so filed, such objections must be filed with the Court by no later than May 16, 2008; (4) should such objection(s) be filed, discovery with regard to said objections shall conclude by no later than July 3, 2008; (5) a pretrial conference would be held on July 18, 2008; and (6) the cost of the required accounting shall not be borne by the plaintiff [Woodward School] or assessed against any of the trust assets under the stewardship of the City of Quincy absent a specific order of the Court.

101. Also on January 23, 2008, the Woodward School and the City of Quincy, as Trustee, entered into a joint stipulation, pursuant to Standing Order 1-06. Said stipulation provided the procedural status of the case, noting that the Woodward School originally filed a petition for an accounting with the Supreme Judicial Court in July 2007 and the case was transferred to the Norfolk Division of the Probate and Family Court by Order entered in September 2007. Further, said stipulation included the Woodward School's proposed case management deadlines and the Trustee's proposed case management deadlines.

Additional, Relevant, Procedural History

102. On July 3, 2008, the Court (Langlois, J.) entered an Order After Hearing, providing, *inter alia*, that the City must, by August 1, 2008, file with the Court (and a copy to Plaintiff) an accounting for each year for the period of 1972 - 2007. Further, if the accounting for the years 1972 - 2007 is not submitted by August 1, 2008, the City will be fined \$250 per day (including weekends) until said accounting is submitted or further order of the Court. The City shall also file with the Court (and a copy to Plaintiff) an accounting for each year for the period of 1952 - 1972 by August 1, 2008. If the City is unable to do so, it shall, by August 1, 2008, provide the Plaintiff with any and all documentation or information it may have with regard to its stewardship of the Plaintiff's funds during said period. If the City fails to do so, the Court may appoint an outside accountant to come in, search the records and prepare the accounting. The Court may also enter an order that the City bear the cost of the outside accountant. The cost of such shall not come from the trust, but shall be paid by the trustees. A further hearing was scheduled for August 19, 2008.

103. On August 1, 2008, the City filed a Motion for Extension of Time to File Accounts for the period of 1972 to 2008. On the same day, the Court (Langlois, J.) allowed said Motion.

104. On August 19, 2008, the City filed a Motion to Waive Filing Fees required for the filing of the yearly accounts for the Adams Temple and School Fund and the Charles Francis Adams Fund. Said Motion was allowed on August 19, 2008.

105. On September 8, 2008, the Court (Langlois, J.) entered an Order Appointing a Special Master. See section "Special Master's Appointment" for details concerning said Order.

106. On September 11, 2008, the City filed thirty-seven Accounts as Trustee for the Adams Temple and School Fund, beginning with July 1, 1971 through June 30, 2008.

107. On October 30, 2008, the Special Master filed a Motion to Continue Status Conference scheduled for December 16, 2008. The Court (Langlois, J.) allowed said Motion and the status conference was rescheduled for February 5, 2009.

108. On November 25, 2008, the Special Master filed a Motion to Retain Accounting Firm of Newburg & Co., LLC. Attorneys Kevin Madden for the City and Sarah Kim for the Woodward School assented to said Motion. On November 25, 2008, the Court (Langlois, J.) allowed said Motion.

109. On August 18, 2009, the Court (Langlois, J.) entered a Scheduling Order providing for pretrial deadlines concerning Newburg & Co.'s interim and final reports, the Special Master's draft and final reports and the parties' objections to Newburg & Co.'s reports and the Special Master's reports. Further, said Order provided for deadlines concerning the parties' pretrial memoranda. The Special Master's Motion for Payment of Attorney's Fees and Costs from the City of Quincy, filed on August 3, 2009, was also allowed.

110. On March 29, 2010, the Court (Langlois, J.) entered a Scheduling Order for Trial Conference. At said hearing, scheduled for September 1, 2010, counsel are to present to the Court for consideration all motions in limine, motions to preclude, motions to sequester and any other such motions normally heard by the Court immediately prior to the commencement of trial. Counsel are also to present all agreed upon exhibits and all contested exhibits.

111. Also on March 29, 2010, the Court (Langlois, J.) entered a Scheduling Order, which provided that discovery was extended to June 25, 2010 and all responses to discovery and depositions were to be completed by July 30, 2010. Further, the Special Master was to supplement or amend his report by July 30, 2010 to the extent that he may deem such to be necessary or helpful. Trial was scheduled for September 13, 14 and 17, 2010.

112. On September 8, 2010, the Woodward School filed a Motion to Order the Depositions of Six Fact Witnesses Identified After the Close of Discovery and to Preclude their Testimony Until the Second Phase of Trial. On the same date, the Court (Langlois, J.) allowed said Motion "as to John Gillis as the City of Quincy has indicated that they do not, at this time, intend to call the other five individuals for any substantive testimony - all without prejudice."

113. On November 1, 2010, the Court (Langlois, J.) entered a Scheduling Order providing the following additional trial dates: November 15, 2010, November 16, 2010, November 18, 2010 and November 19, 2010.

114. On November 15, 2010, the City filed a Motion in Limine to Exclude Expert Testimony of Scott Winslow and a Motion in Limine to Exclude Purported Expert Testimony of Joanne McDaniel. On the same day, the Court (Langlois, J.), after hearing, denied both Motions "without prejudice to objections being asserted during testimony."

115. On January 14, 2011, the Court (Langlois, J.) entered a Scheduling Order providing, *inter alia*, that the last day of trial will be held on January 21, 2011.

Trustee's Record Keeping and Retention Practices

116. As noted elsewhere in these findings, John Gillis was employed by the City of Quincy as its Assistant City Clerk (1957 - 1959) and then as the City Clerk (1959 - 1989). In his capacity as City Clerk, he would have been responsible, *inter alia*, for the City of Quincy's records and record retention policy and procedures. The following is the recitation of questions posed to Mr. Gillis on direct examination by the City of Quincy together with his responses thereto:

Q.: "Did the City of Quincy have a records retention policy?"

A.: "Well, any of the board meetings that were in, let's say the health department, or the license board, any of those boards, we kept those records permanently. We bound them up. But like the Adams Temple and School Fund and The Woodward School, nobody really gave a darn what happened to those records."

Q.: "...it is also true that you didn't keep any as city clerk, you didn't keep any records of the Adams Temple and School Fund as part of your official city records; is that true as well?"

A.: "That's true."

Q.: "Have you ever seen any minutes from the Adams Temple and School Fund?"

A.: "Every so often the treasurer would show them to me."

Q.: "and do you recall stating during your deposition that you had never seen Adams Funds' meeting minutes?"

A.: "I really didn't see them the way you think. I saw them in the treasurer's office."

Q.: "And when you served as city clerk, if you wanted to destroy original documents, you had to get permission from the Secretary of the Commonwealth?"

A.: "Correct."

Q.: "To get that permission you had to file a petition listing what it was that you wanted to destroy?"

A.: "Correct."

Q.: "During your tenure as city clerk, the Secretary of the Commonwealth usually didn't grant permission, did he?"

A.: "Never."

Q.: "And if the Secretary didn't grant permission to destroy documents, you didn't destroy documents?"

A.: "You couldn't destroy them."

117. Mr. Gillis, having been a member of the Woodward Fund and Property (again, a separate entity), testified that the records of the Woodward Fund and Property were maintained at the Woodward School, but he was uncertain about where the records of the Adams Temple and School Fund, of which the City of Quincy was the Trustee, were housed.¹³

118. According to Mr. Gillis, the Board of Managers of the Woodward Fund and Property was never consulted or informed, nor was its opinion ever sought, about any of the real estate transactions involving the Adams Temple and School Fund from (at least) 1957 through 1992 when the School took over the management of its own affairs. After the sale(s) occurred, Headmistress Bacon would inform the Board of Managers of the Woodward Fund and Property that "[S]he was disappointed at the price that we were getting." or that "...Ms. Bacon would come over and tell us how we got cheated." (See also finding no. 31 above.)

119. Robert Foy, III, was the Treasurer of the City of Quincy from 1972 to 1982; he was also the City Auditor from 1972 through 1990. He also served on the Board of Managers of the Adams Temple and School Fund from 1972 up to and including, the present. In 2008, after the commencement of the within litigation, he was asked by the Mayor of the City of Quincy to "research payments to the Woodward School" from both the Adams Temple and School Fund and the Charles Francis Adams Fund. During the course of his subsequent activity, he reviewed old journals, records and checkbooks, but he was unable to locate all of the records that he had sought. He further testified that he understood that the purpose of his activity was to attempt to recreate the status of both funds.

120. Robert Foy, III stated that the Board of Managers and the Board of Supervisors of both funds had similar duties, i.e., to "...administer funds in trust". The Boards held joint meetings three to four times a year and minutes were kept of the meetings. During the time period involved in this matter (1953 to the present), the City of Quincy managed over twenty (20) funds, of which the Adams Temple and School Fund was, by a considerable amount, the largest in terms of its financial holdings.¹⁴

121. Under his heading "Duty to keep records and provide reports", the Special Master reported, and in pertinent part found, as follows:

"a. A trustee has a duty to maintain clear, complete, and accurate books and records the trust property and the administration of the trust, and, at reasonable intervals on request, to provide beneficiaries with reports or accountings." Restatement of Trusts 3D § 83. The City provided

¹³ Gillis: "I should think that they were kept at The Adams Temple, but —"; "At the Adams Temple and School."

¹⁴ As is noted elsewhere in these findings, however, only the Adams Temple and School Fund was charged with bank fees; no such fees were paid out of the funds of any of the other accounts under the City of Quincy's stewardship.

inadequate documentation on its past fifty-plus years of trusteeship to Newburg. By so doing, it can be inferred more adequate and complete documentation cannot be provided because it does not exist. This failure to keep accurate books and records regarding the trust property (such as the specific parcels of land sold in each transaction between 1955 - 1972) and the trust administration (income expenditures, etc.) is ...[a] serious breach of trustee duties committed by the City during the course of its trusteeship of the Funds.

b. The City breached its duty to account when it failed to provide any accountings to Woodward after the 1953 Supreme Judicial Court decision declaring Woodward the proper beneficiary of the Adams and Charles Francis Funds. The common law and statutory duty to account for all transactions entered into by the trustee exists in order to provide the beneficiary with information needed to evaluate the trustee's performance. Unif. Probate Code § 7-303. Furthermore, by rendering such accounts, the trustee releases itself from liability. The City failed to account for a period from 1953 through the present, and its failure to do so as required by law has resulted in incomplete information for both Woodward and the Special Master. Without this required information, accurate financial reporting cannot be completed by the Special Master to determine the full extent of the damages owed to Woodward for the aforementioned period of trusteeship. By its own failure to provide any sort of accounting until mandated by court order, and at that point rendering an incomplete accounting, the City has neglected to release itself from any liability for wrongdoing.

c. In maintaining trust records, it is not required that a trustee do anything other than simple, orderly forms of bookkeeping and record maintenance which will enable beneficiaries to ascertain if the trust is being properly administered. Based on the records provided, the City failed to keep even the customary, orderly records in the course of its trusteeship of the Funds after the 1953 decision naming Woodward as the charitable beneficiary. As a result of this failure to keep proper records, the City is liable for any loss or expenses stemming from said failure. Restatement of Trusts 3D § 83 comment a(1). Furthermore, all doubts are resolved against a trustee who does not keep accurate records. Id.; See Also Charles E. Rounds, Jr., Loring: A Trustee's Handbook § 6.1.5.2 (8th ed. 2006). See Report of Special Master (Exhibit 214 at page. 20)."

The Court adopts the foregoing findings of the Special Master.

122. Further, the Special Master also found as set forth below under the heading, "Duty of Furnish Information to Beneficiaries"

"a. Under Section 82 of the Restatement of Trusts 3rd, trustees have a duty to keep beneficiaries 'reasonably informed of changes involving the trusteeship and about other significant developments concernings of the trust and its administration, particularly material information needed by beneficiaries for the protection of their interest". In

this case, the City once again failed to properly undertake its duty as trustee by not informing Woodward of the 1972 Petition concerning the lease. By not alerting Woodward to the impending court decision the City removed Woodward's opportunity to make itself a party to the litigation to ensure its best interests were being considered. Once the court issued its order allowing the lease, Woodward has no further recourse in the matter and as a result may have incurred damages.

b. Section 82 further provides that the trustee has a duty to promptly respond to a request by the beneficiary for information concerning the trust and its administration. Restatement of Trustee 3D. When Woodward asked for an accounting in October of 2005, it received merely a written response with no information concerning the financial matters of the trust. Compl. ¶¶ 47, 56; Tr. Answer ¶¶ 46, 457. No financial information was provided by the City until June 2006, when a spreadsheet was provided which gave no accompanying explanation as to how the income and expenditure amounts had been reached. Compl. ¶ 62; Tr. Answer ¶ 62. The City breached its duty to promptly respond to beneficiary requests concerning the trust by failing to provide an actual accounting until court-ordered in 2008 and by failing to keep accurate records which would produce a complete and verified accounting of the trust happenings since 1953." See Report of Special Master (Exhibit 214 at p. 19)

The Court adopts the foregoing findings of the Special Master.

123. Prior to the onset of the within litigation, the City of Quincy, as noted in the findings of the Special Master set forth in the two prior sections, with which findings this Court as noted agrees, had never provided an accounting of its stewardship of either the Adams Temple and School Fund and/or the Charles Francis Adams Fund to the Woodward School. Despite the considerable efforts of Robert Foy, III, in attempting to develop such an accounting, his efforts were doomed to fail from the outset as the City of Quincy has, at least since 1953 (and, more likely than not, since 1822), failed to maintain any reasonable records of its activity in the management of the assets of these funds, particularly the Adams Temple and School Fund. The records that Mr. Foy was able to locate were from disparate sources and, in no respect, had any financial records of the trust(s) been maintained in a clear, complete, accurate manner. Indeed, such records as were located indicate that there had never been any effort on the part of the Trustee to segregate the records of the trusts in order that an accounting, were one ever to have been requested or required, would have been able to be prepared with even a modicum of completeness or accuracy.

Expenses of the Adams Temple and School Fund Trust

124. The Court agrees with the Special Master that the burden of proof to show that expenses of the Trust were reasonable lies with the Trustee. (See page. 13 of "Special Master's Report", Exhibit 214.)

Inappropriate/Disallowed Expenses

125. From 1953 to 1990, inclusive, a total of eighteen employees of the City of Quincy received payments ("stipends") from the Adams Temple and School Fund. No evidence was presented that any of the activity of any of these individuals took place at times other than during their regular work day. These individuals were being paid by the City of Quincy to do the City's work, which, necessarily included its (the City's) duties as trustee of the Adams Temple and School Fund. Even if there existed documentation (bill, invoice, or the like) detailing what work was done - and no such documentation has been shown to exist - these expenses would not be allowable. The Trustee never presented any evidence that it sought to be reimbursed for its services even if, arguably, it may have been entitled to such. The Court is, therefore, disallowing the deduction of \$68,500 expended during the years 1953 through 1990 for such inappropriate expenses. The Court has also, in said amount, disallowed the asserted expenditure of \$2,300 for attorney's fees as no documentation justifying the expenditure has been produced nor has any evidence been presented to assist in explaining the expenditures for attorney's fees in the years: 1973, 1975, 1977, 1982, 1983, and/or 1984.

126. In all of the activity reports provided by the Trustee to the Special Master on October 28, 2010, the line items entitled "City of Quincy" as noted below were payments of trust funds to the City Treasurer and line items entitled "Board of Supervisors" were payments to Robert Foy, III. The payments under these two categories in the Annual Reports were as follows:

	City of Quincy	Board of Supervisors
1990	\$ 900.00	\$ 900.00
1991	1,500.00	1,500.00
1992	1,200.00	1,200.00
1995	1,200.00	1,200.00
1996	1,200.00	1,200.00
1997	1,200.00	1,200.00
1998	900.00	900.00
1999	1,200.00	1,200.00
2000	1,200.00	1,200.00
2001	1,200.00	1,200.00
2002	800.00	900.00
2003	1,200.00	1,200.00
2004	900.00	900.00
2005	<u>900.00</u>	<u>900.00</u>
Total	\$15,500	\$15,600

127. In 2006, the only stipend paid was to Robert Foy, III, in the amount of \$900. Thus, the total paid to the "City of Quincy" and the "Board of Supervisors" during the period of 1990 to 2006, was \$32,000. No such further payments were made after 2006.

128. The Court does not, under the circumstances presented, accept the suggestion that the compensation which certain persons received from the City of Quincy for their work in their publicly-funded positions included both their salary from the

City and a stipend from the Adams Temple and School Fund or, indeed any private charitable trust.¹⁵ All such payments are, therefore, being considered as disallowed expenses.

129. Included in the disallowed expenses were funds paid, over seven years (at \$250 per year), to a custodian who may have worked at the Adams Academy building (which was then being leased to the Quincy Historical Society) or at the Woodward School. Any expenditure for either purpose would have been inappropriate; most of the disapproved expenses appear to be in the nature of gratuities, and, as such, represent inappropriate expenditures.

130. Although the 1944 decree of the Supreme Judicial Court authorized the expenditure of up to \$15,000 for repairs to the Adams Crypt from the funds in the Adams Temple and School Fund, the Court finds that said expenses from the Adams Temple and School Fund, if made, had been completed and paid for by 1953. Thus, subsequent expenses for such purposes, or for crypt insurance¹⁶, would not have been appropriate. Moreover, in any event, no records substantiating such expenses have been presented by the Trustee. From 1990 through 2005, such expenses, including items for "Adams Temple", "crypt insurance", and one "other"¹⁷ payment of \$1,000, as well as another unexplained \$1,000 payment in 1998, totaled \$15,496.97. (See pgs. 6 - 7 of Supplemental Special Master Report, Exhibit 249). All such expenses are disallowed.

131. In February, of 1962, the Trustee paid \$7.50 for "Gibson Road - water". Absent justifying documentation, said expense is also disallowed.

132. In May of 1970, approximately a year before the Trustee received an offer to purchase (see "Vigoda" below) certain land fronting on Dimmock Street, the Trustee expended \$3,929 for "demolition" with regard to the property. Although no documentation or evidence of any nature was presented in support of, or justifying said expense, given the shape and size of the parcel and the fact that one Murray Vigoda, only months later, made an offer to purchase the property for \$13,456, the Court will

¹⁵ The Court does note, but does not accept as justification, an unanimous vote of the joint Boards on February 9, 1973, authorizing that "...the annual salary of the Clerk of the Joint Boards, Mr. Burgin, be set in the amount of \$1,200.00, being the same amount as that of the Treasurer, Mr. Foy (Mr. Burgin abstained from voting.)" See also Minutes of Joint meetings of Boards dated December 13, 1972 and September 20, 1968. (Exhibit 20)

¹⁶ Insurance expenses were never authorized.

¹⁷ No explanation or justification was discernable.

infer that the demolition of something on the site served to improve the property and enhance its value, thus resulting in the Vigoda offer. The expense is, thus, being considered as allowable even in the absence of any documentation.

133. On July 31, 1998, a payment of \$1,100 was made to the Robert Billings Trust; no invoice was available for review nor was any explanation given by the Trustee justifying said expense. It must, therefore, be disallowed.

134. On November 27, 1996 an unexplained payment of \$3,050.16 was made to the "Adams Temple"; on October 24, 1997, another payment, this time in the amount of \$1,000 was made to the "Adams Temple". Again, no invoice was available for review nor was any explanation given by the Trustee justifying said expense. Whereas it does not appear that either payment would have been a proper payment out of trust funds, both such payments must be considered as improper payments from the Adams Temple and School Fund.

135. In addition, two separate payments were made from the Adams Temple and School Fund to "Barry's Deli", a local delicatessen. One payment was made in 1994 in the amount of \$895 with the other having been made in November of 1992 in the amount of \$160. Both payments were under the heading of, and characterized as being, "Bank Charges". The Court is disallowing such expenditures.

136. The records of the Adams Temple and School Fund indicate the following fees were paid to various banks from 1975 to June 30, 2004.

1975	1,489.96
1976	1,060.89
1977	1,095.08
1978	1,063.31
1979	1,049.87
1980	967.83
1981	459.53
1982	879.42
1983	0
1984	0
1985 (So. Shore Bank)	2,761.60
1986-6/87 (18 mths)	1,021.70
Fiscal 1987-88	971.83
Fiscal 1988-89	140.48
Fiscal 1989-90 (So. Shore Bank)	2,552.79
(Quincy Savings Bank)	60.00
Fiscal 1990-91 (So. Shore Bank)	4,076.36
(Quincy Savings Bank)	60.00
Fiscal 1995-95 Bank of Boston ¹⁸	3,872.60
(Quincy Savings Bank)	60.00

¹⁸ Formerly South Shore Bank - presumed.

Fiscal 1995-96 (Citizens Bank ¹⁹)	60.00
(no other charges)	
Fiscal 1996-97 (Citizens Bank)	60.00
(no other charges)	
Fiscal 1997-98 (Citizens Bank)	60.00
1998-1999 (Citizens Bank)	70.00
Fiscal 1999-2000 (Citizens Bank)	70.00
Fiscal 2000-2001 No records	N/A
Fiscal 2001-02 (Investors Bank and Trust)	504.13
(Citizens Bank)	70.00
Fiscal 2002-03 (Investors Bank and Trust ²⁰)	595.79
(Citizens Bank)	110.00
Fiscal 2003-04	
(Investors Bank and Trust)	559.96
(Citizens Bank)	110.00

137. Although the Trustee may have been entitled to pay certain bank fees out of the Adams Temple and School Fund, the Trustee presented no documentation justifying such expenses. Since the City of Quincy managed a number of other trusts, all or most of which presumably involved bank accounts but none of which appeared to pay any bank charges, the Court must assume that any and all bank charges assessed against any other accounts (including, necessarily, the Charles Francis Adams Fund) were paid from the funds in the Adams Temple and School Fund account. Since the Court is unable to determine which charges were attributable solely to the Adams Temple and School Fund, all of the bank charges, a total of \$25,913.10²¹ by June 30, 2004, must be disallowed.

138. Although the City of Quincy never requested, or presented a bill for, payment for its services as Trustee of the Adams Temple and School Fund²², had proper bill been submitted, the City of Quincy would have been entitled to reasonable compensation for its services. The Court considers that the trustee fee schedule published by Newhall in 1986 to be reasonable and appropriate (notwithstanding its date

¹⁹ Formerly Quincy Savings Bank - presumed.

²⁰ 13 payments of \$45.83 made in said year are all presumed, by the Court to have been paid to Investors Bank Trust although three entries indicate "N/A" as vendor's name.

²¹ This amount does not include the \$1,055 of disallowed "Bank Charges" referenced in the Finding regarding payments to "Barry's Deli".

²² The Court does not, and has not, considered the payments to various individuals as representing payments to the Trustee, City of Quincy.

of publication) and, thus, herein applies same to the fees that, if timely charged by the City of Quincy, would have been allowable. Assuming an average yearly value of the non-realty investments trust to have been \$288,339²³, and an average annual return on investments of \$14,670²⁴, for the fifty-five years in question, the Trustee would have been entitled to a total of \$157,025 for the fifty-five years concluding at the end of 2008²⁵. An average annual fee for its services of \$2,855 or (Accountings for subsequent years will, in due course, be filed and address fees for subsequent years.) The Court will not assign any amount of interest to such unrequested, unpaid, fees.

139. Thus, as noted in the prior fourteen findings, the disallowed expenses totaling \$148,123. Offset against said amount would be the fees of \$157,025 which the City of Quincy could reasonably have been expected to receive as Trustee. (See finding no. 138). The City of Quincy would, as a result be due a credit against other funds owed to the Adams Temple and School Fund of \$8,902.

Missing Investment Funds/Gains

140. In 1979, the Adams Temple and School Fund had an account in the South Shore Savings Bank with a stated balance of \$49,831. (The account had been reported on the 1973 Annual Report but was omitted from the Annual Reports of 1974 - 1978.) Neither the account nor a transfer of monies from the account appeared in any subsequent reports. The Trustee provided no explanation as to what happened to the funds. Said funds must, therefore, be considered to have been part of, but missing from, the assets of the trust as of 1980 and thereafter. The unexplained absence of such funds may, in some part, explain although not, in any manner, justify, the significant shortfall noted in finding no. 195.

141. Mountain State Tel & Tel - maturity 2013

This bond was apparently purchased in 1973 and appeared in the records of the trust until it was sold, along with other securities in 1990 when the Adams Temple and School Fund appeared to unload its remaining securities in favor of the purchase of US Treasury notes with varying maturity dates. (See Newburg report incorporated into Special Master's Report, Exhibit 214, "Summary Investment Schedule 1990s"). The Court is satisfied that the value represented by this bond remained in the trust.

142. Mountain State Tel & Tel - maturity 1981

The Court was unable to verify from a review of the schedules in the portion of the Special Master's report that incorporates Howard Newburg's report, that any such bond had been purchased - or thereafter sold - by the Adams Temple and School Fund.

²³ This amount is not intended to be a certainty but does represent an approximate yearly average of the amounts reported by the Trustee from 1953 - (\$253,723) through 2008 (\$322,932). It does not take into account any adjustments for missing assets, retained earnings, etc.

²⁴ See Report of Special Master, p. 28.

²⁵ See Report of Special Master p. 14.

143. On October 28, 2010, more than three years after the litigation commenced and after trial had commenced, the Special Master, "... received correspondence informing me that the Trustee has located expense journals representing payment of Fund expenses from July 1, 1996 to 2005 and five (5) loose leaf notebooks entitled 'Adams Temple and School Fund, City of Quincy Official Report Book: of the Clerk of the Joint Boards (Supervisors and Managers)'" for the following periods:

Book No. 1 December 13, 1972 – October 2, 1973
Book No. 2 October 16, 1973 -January 31, 1975
Book No. 3 February 20, 1975-May 17, 1977
Book No. 4 May 17, 1977 - November 16, 1981
Book No. 5 May 14, 1982 - November 1983

These five notebooks contained documents and records relevant to the Administration of the Adams Temple and School Fund and contained information regarding the purchase and sale of stocks and securities. The above noted documents were not produced by the Trustee prior to October 28, 2010.

144. The Special Master (See Exhibit 214) also noted that between 1953 and 1975 five (5) stocks were apparently sold.

280 shs	National Shawmut Bank of Boston
922 1/4 shs	First National Bank of Boston
37 shs	Eastern Gas & Fuel Associates
30 shs	Granite Trust Company, Quincy
74 shs	Fireman's Fund Insurance

145. National Shawmut Bank of Boston ("National Shawmut")

The Adams Temple and School Fund held 200 shares of National Shawmut with a cost basis of \$5,700.00 according to the 1952 Annual Report. Correspondence within the official record book of the Clerk dated March 29, 1973 disclosed that the fund held an additional 80 shares in 1973 but maintained the original cost basis. Newburg assumed that the additional 80 shares resulted from a stock split and used the original costs basis in its calculation of gain. On August 20, 1975, 280 shares were sold at a price of \$8,678.55 (Newburg Exhibit 2) resulting in a gain of \$2,978.55. The Adams Temple and School Fund cash receipts journal did not report a cash deposit during August 1975 equal to the stock sales price of \$8,678.55. Dividend income was reported for this stock in the case receipts journal from July 1953 to January 1976 in the total amount of \$13,218.00 (Newburg Exhibit 3).

146. First National Bank of Boston ("FNB")

The Adams Temple and School Fund held 200 shares of FNB with a cost basis of \$10,807.00 according to the December 31, 1952 Annual Report. In 1973, the Adams Temple and School Fund listed 922 shares of FNB at a cost basis of \$10,807 (Newburg Exhibit 1). Correspondence within the official record book of the Clerk dated March 29, 1973 disclosed that the Fund held the additional 722 shares in 1973 but maintained the original cost basis. Newburg assumed the additional 722 shares resulted from stock splits and used the original cost basis in its calculation of gain. On August 20, 1975, the 922 shares of FNB were sold for \$23,094.24 (Newburg Exhibit 2) resulting in a gain of \$12,287.24. The Adams Temple School Fund cash receipts journal did not report a

cash deposit in August, 1975 equal to the FNB sales proceeds of \$23,094.24. Dividend income was reported for this stock from July 1953 through January 1976 in the total amount of \$23,676.70 (Newburg Exhibit 3)

147. Exhibit Gas & Fuel Associates ("EG & F")

The Adams Temple and School Fund 1957 - 1960 Annual Reports (Newburg Exhibit 5, pages 1-3) listed 37 shares of EG&F with a value of \$2,927.62. The Adams Temple School Fund 1961 Annual Report did not list the EG&F investment (Newburg Exhibit 5, page 4). Dividend income was reported for EG&F for the period July 1953 through April 1961 in the total amount of \$1,332.16 (Newburg Exhibit 3). It is assumed that the EG&F shares were sold in 1961 but no documents were found to evidence the sale. No gain or loss was noted nor was any evidence received concerning such.

148. Granite Trust Company, Quincy ("GTC")

The Adams Temple and School Fund held 6 shares GTC valued at \$41,570.00 according to the 1957 Annual Report (Newburg Exhibit 5, page 1). However, the 1958 Annual Report did not list the GTC stock but did list 30 shares of South Shore National Bank, Quincy ("SSNB") with a value of \$1,570.00 and SSNB was listed on the Annual Reports from 1958 - 1960 (Newburg Exhibit 5, pages 2-4). Dividends for GTC were reported from 1953 through April 1957 in the total amount of \$325.85 (Newburg Exhibit 3). No cash deposits were reported for GTC in 1957 nor were any cash deposits found for any SSNB sale in 1961. The Court has assumed that the GTC stock in some manner, "became" the SSNB stock. No gain or loss was reported.

149. Firemans Fund Insurance ("FFI")

75 shares of FFI first appeared in the Adams Temple and School Fund 1958 Annual Report with a value of \$3,768.75 and last appeared on the 1960 Annual Report (Newburg Exhibit 5, page 4). Dividend income was reported for the period 1959 through 1961 in the total amount of \$395.40 (Newburg Exhibit 3). No cash deposits were found in 1960 cash receipts journal approximately the value of the FFI share.

150. The Trustee in its response to the Draft Supplemental Report provided a rationale explaining that the gain on the FNB and National Shawmut stock were kept in the Trust account at South Shore Bank and reinvested in other investments. The explanation by the Trustee is supported by the South Shore Investment statements but appears in conflict with the annual reports for the years 1974 to 1978 where the stated investment balance showed no value change. Also, the gain from stock sales should have been reported in the cash receipts journal but no reported transactions appear.

151. Thus, while the value of trust accounts appeared to contain the original value of the stocks even after they were sold, the accounts, inexplicably, did not reflect the additional gains on the stocks that must have been received. Moreover, during trial, despite its assertions as set forth in the prior paragraph, the Trustee produced no credible evidence to support its contention that the proceeds of any such sales were kept in the accounts.

152. The Court is left with a conundrum. The sales of the stocks were not evidenced in the trust records/accounts but the value of the account did not diminish, despite the "removal", by sale, of assets. If the proceeds were simply deposited into a trust account, not only would the deposit appear, but any gain would as well, thus increasing the value of the account. However, neither the deposits nor the gain in the value of the account were ever noted. The account balances, inexplicably, did not change.

153. The Court must, therefore, hold the Trustee accountable for the missing gains resulting from the (inferred) sales in 1975 of the National Shawmut Bank stock (unreported gain of \$2,978.55) and the First National Bank stock (unreported gain of \$12,287.24). The total of such missing "gains" was \$15,265.79 as of December 31, 1975.

154. As no evidence was presented that there were any similar missing gains from the sales of the EG & F, South Shore Bank (incorporating the GTC) or the FFI stocks, the Court will assume that the proceeds remained in the trust accounts, since the value of the investments remained unchanged, despite the absence of documentation from the Trustee in support thereof.

155. During the years from 1953 though 2008, inclusive, the funds produced the net income, and Woodward School received the monies, set forth in the chart in finding no. "156." below. (See Special Master's Report, Exhibit 214.)

156. WOODWARD SCHOOL
INCOME AND EXPENSE ACCOUNTING RECONCILIATION
1952-2008

Year	Net Income	Distribution to Woodward	Net Income After Distribution	Accumulated Undistributed Income
1953	10,764.63	5,520.51	5,244.12	5,244.12
1954	6,536.50	3,920.40	2,616.10	7,860.22
1955	5,734.76	10,076.27	-4,341.51	3,518.71
1956	4,820.55	6,326.09	-1,505.54	2,013.17
1957	6,003.15	5,979.46	23.69	2,036.86
1958	3,536.51	4,761.76	-1,225.25	811.61
1959	4,055.68	3,955.67	100.01	911.62
1960	5,013.95	4,913.95	100.00	1,011.62
1961	6,920.56	6,820.56	100.00	1,111.62
1962	7,167.75	7,092.75	75.00	1,186.62
1963	1,768.09	6,128.70	-4,360.61	-3,173.99

1964	5,393.53	7,100.00	-1,706.47	-4,880.46
1965	6,141.14	11,000.00	-4,858.86	-9,739.32
1966	7,049.48	14,450.00	-7,400.52	-17,139.84
1967	1,120.40	1,900.00	-779.60	-17,919.44
1968	4,943.48	2,400.00	2,543.48	-15,375.96
1969	5,971.15	0.00	5,971.15	-9,404.81
1970	-264.15	2,246.53	-2,510.68	-11,915.49
1971	3,544.67	3,544.67	0.00	-11,915.49
1972	5,933.38	5,933.38	0.00	-11,915.49
1973	12,346.69	6,173.35	6,173.34	5,742.15
1974	15,069.16	2,000.00	13,069.16	7,327.01
1975	16,649.28	6,034.58	10,614.70	17,941.71
1976	20,091.42	8,324.50	11,766.92	29,708.63
1977	20,150.97	10,045.71	10,105.26	39,813.89
1978	20,337.91	10,075.49	10,262.42	50,076.31
1979	20,944.91	10,168.96	10,775.95	60,852.26
1980	29,206.03	21,121.63	8,084.40	68,936.66
1981	31,726.45	11,778.88	19,947.57	88,884.23
1982	36,475.99	26,863.23	9,612.76	98,496.99
1983	35,148.71	36,975.00	-1,826.29	96,670.70
1984	33,871.60	33,549.70	321.90	96,992.60
1985	24,200.84	34,630.74	-10,429.90	86,562.70
1986/1987	47,953.56	45,942.50	2,011.06	88,573.76
1988	20,651.46	22,100.00	-1,448.54	87,125.22
1989	18,094.76	21,000.00	-2,905.24	84,219.98
1996	11,391.96	13,000.00	-1,608.04	84,526.23
1997	15,966.90	12,000.00	3,966.90	88,493.13
1998	20,154.89	18,000.00	2,154.89	90,648.02
1999	16,932.36	13,800.00	3,132.36	93,779.38
2000	15,972.62	15,500.00	472.62	94,252.00
2001	14,972.16	18,000.00	-3,027.84	91,224.16
2002	16,612.35	13,500.00	3,112.35	94,336.51
2003	14,191.44	16,500.00	-2,308.56	92,027.95
2004	12,328.44	10,000.00	2,328.44	94,356.39
2005	12,612.95	5,000.00	7,612.95	101,969.34
2006	5,016.68	5,000.00	16.68	101,986.02
2007	25,529.02	0.00	25,529.02	127,515.04
2008	11,069.44	40,000.00	-28,930.56	98,584.48

157. Newburg, the forensic accountant employed by the Special Master, found an investment variance of \$78,381.73 as of 1989. Said "variance" may have been explained by two separate, prior, transactions in 1983 and 1987. On April 19, 1983, the Trustee made a purchase in the amount of \$28,615 for a South Shore Bank investment; on a September 21, 1987, the Trustee wrote a check for \$51,200.00 to the City of Quincy, as recorded on the Adams Temple and School Fund's cash disbursements journal, but which may not have been included in the Trustee's Report. The two transactions (1983 and 1987) total \$79,815 which may explain the discrepancy. Although the Trustee did not produce a clear and compelling substantiation of the discrepancy, the Court, contrary to the position taken by the Special Master, finds the circumstances to be to coincidental to have any other reasonable, rational, explanation. The Court will not, therefore, assess the alleged investment variance, or the \$1,433.27 difference, against the Trustee despite the absence of specific records reflecting such.

Real Estate Sales

158. With regard to all of the parcels of land owned by the Adams Temple and School Fund as of January of 1953, as previously noted, the Trustee was seeking to unload them. The Trustee did not thereafter obtain appraisals or seek competitive bids for any parcels of land which it sold. Thus, the Court has no evidence indicating how the Trustee derived the purchase price. Most if not all of the parcels were sold for less than fair market value, and in some cases - nominal, consideration, in keeping with the City's interest in unloading the properties and obtaining tax revenue from them.

159. The Court finds that it is perplexing how John Adams' original, large grants of realty as described in Deeds A and B (see Exhibits 3 and 4) devolved in many small pieces, even scraps, of land. Such was, however, the state of the real property holdings in the Adams Temple and School Fund as of January 1953 following one hundred and thirty-one years of the City of Quincy's fiduciary management of the fund's assets.

160. With regard to the sale by the Adams Temple and School Fund of numerous parcels of land in Quincy between the years of 1953 through 1972, the Court heard from two, both highly competent, real estate appraisers. While each appraiser employed a comparable sales analysis to valuing the realty, each witness was, to a considerable degree, handicapped by the absence of truly comparable sales. The sales from the Adams Temple and School Fund in the period from 1953 - 1962 were of raw land and in several instances involved fairly large parcels. Most of the parcels were "encumbered", to varying degrees, with quarry holes and granite ledge. Consequently, while all real estate is, to a degree, unique, there were few, if any, very comparable sales, other than those with which the fund was involved.

A. Mr. Webster Collins (hereinafter referred to as "Mr. Collins"), who is an Executive Vice President and Partner, P.C. of CB Richard Ellis/New England, was the Woodward School's expert witness concerning the real estate sales by the Adams Temple and School Fund. An expert in real estate valuation, Mr. Collins had experience in valuing properties in the City of Quincy, including retail properties, vacant land and apartments. Mr. Collins also owned property in a building located at 100 Hancock

Street, Quincy and served as a co-managing trustee at said location. Currently, Mr. Collins has interests in approximately twenty properties in the Greater Boston area. In addition, Mr. Collins has served as a trustee for trusts that own real estate and for two pension funds.

Mr. Collins defines market value as “[a] type of value stated as an opinion that presumes the transfer of the property as of a certain date under specific conditions set forth in the definition of the term identified by the appraiser as applicable to the appraisal.” [Tr. page 166, lines 2-15, November 18, 2010]. He testified that market value, “. . . goes into the motivations of buyer, of seller, willing buyer, willing seller concepts.” [Tr. page 166, lines 17-19, November 18, 2010]. Further, Mr. Collins defined “highest and best use” as “the reasonably probable and legal use of vacant land or an improved property that is legally permissible, physically possible, appropriately supported, financially feasible, and that results in the highest value.” [Tr. pages 167-168, November 18, 2010]. Mr. Collins also defined an assemblage as “. . . [t]he combining of two or more parcels usually, but not necessarily, contiguous, into one ownership or use, the process that creates plottage value.” [Tr. page 170, lines 14-17, November 18, 2010].

B. Mr. Donald Bouchard (hereinafter referred to as “Mr. Bouchard”), is a senior Vice-President in the valuation group at Lincoln Property Management, was the City of Quincy’s expert witness concerning the real estate sales by the Adams Temple and School Fund. As a real estate appraiser, Mr. Bouchard has previously appraised real estate in the City of Quincy, including a 200,000 square foot office tower located at 100 Hancock Street, Quincy, a 70,000 square foot industrial building on Commander Shea Boulevard, Quincy, a 128,000 square foot office building on Newport Avenue and a medical office condominium on Copeland Street. In addition, Mr. Bouchard has appraised properties that are burdened with development issues, including 60 acres of property located along Route 128, 83 acres of land located in Sherborn, 20 acres in Taunton, as well as property located in Weymouth and Cohasset.

Mr. Bouchard defines market value as “the price set between a willing buyer and a willing seller, each acting in their own interest with neither party under compulsion.” [Tr. page 26, lines 1-5, December 13, 2010].

C. Both witnesses were competent to testify as to the fair market values of the real property sold by the Adams Temple and School Fund between 1953 and 1962.

161. Lot 32

This lot was a triangular parcel of land, containing a total of 2,540 square feet, that fronted on Churchill Road. Pursuant to a deed dated April 13, 1951, the lot was sold to Astrid M. Leif for \$50. As a result of acquiring this road frontage, Ms. Leif received a considerable increase in the value to the land which she owned abutting, and behind, this parcel of property. The Court credits Mr. Collins’ testimony that, as a result of the conveyance of lot 32, the subject lot and lot 11 (also known as the Astrid Leif parcel) merged and was then subdivided into four parcels. Prior to the conveyance of lot 32, such a subdivision was not possible. Thus, “the motivation is that the owner of lot 32 holds the key to the value of the back parcel” of land. [Tr. page 214, lines 11-14, November 18, 2010].

Ms. Leif did not record said deed until October, 1953 (see Exhibit 11) as the purchase price (\$50) was only paid in October, 1953. This is of significance only because, if the consideration has been paid in 1951, such would have been before the Woodward School became the beneficiary of the Adams Temple and School Fund. The Court concludes, and so finds, that the conveyance of the deed occurred upon payment and receipt of the consideration in October of 1953.

Mr. Collins' testified that, by 1953, half of Churchill Road on the northern side had been developed. The Court credits Mr. Collins' description of the topography of the land, wherein he describes Churchill Road as a "reasonably level subdivision street, no ledge" . . . with ". . . single-family residential houses" and . . . located ". . . just off Adams Street. . . . It is a key location, close into the center of the City of Quincy. That was developed in the mid-1950s time frame, under the economic conditions that existed in 1950 to '60 in Quincy." [Tr. page 202, lines 1-20, November 18, 2010].

Mr. Collins also testified that lot 32 extracted its value from lot 11 and the total value of lot 11 and lot 32, when combined would have been is 35 cents per square foot. When separated from lot 11, lot 32 had a fair market value of \$889. [Tr. pages 223-226, November 18, 2010].

Mr. Bouchard opined that this land sold for pennies per square foot ". . . because of thousands of dollars the Adams Trust would have been subjected to in terms of the sewer betterment and the roadway betterment charges." [Tr. pages 88-89, December 13, 2010]. Mr. Bouchard testified that although the Adams Trust was an exempt organization and did not pay real estate taxes, it was not exempt from sewer and roadway betterments for Churchill Road. According to Mr. Bouchard, the Adams Temple and School Fund would have been charged \$3,022 in sewer and roadway betterments if they were not able to sell the lot to Astrid Leif. [Tr. page 89, lines 8-16, December 13, 2010]. The Court did not receive any credible evidence indicating when such betterments needed to be paid.

Mr. Bouchard opined that this was a long, triangular lot that would interest only an abutter because it was not independently developable. He further opined that the fair market value of this lot would be between 4 and 8 cents per square foot, or on average approximately \$150.

Based upon the foregoing, the Court finds that the property had a fair market value of ten cents a square foot as of the date of sale. The property was, thus, sold for less than its fair market value as, at the time of the sale, it had a fair market value of \$254 or \$204 more than the actual sales price.

162. Lot 30

This lot had frontage on Churchill Road and contained a total of 69,460 square feet. This lot was sold by the Trustee on December 22, 1955 to Astrid M. Leif for \$800. Mr. Collins opined that the fair market value of the parcel was 35 cents per square foot or a total of \$24,311. [Tr. pages 229-231, November 18, 2010].

Mr. Bouchard testified that when this lot was acquired by Astrid Leif, it was an isolated piece of land that abutted quarry land to the south. He further opined that this lot was not yet developable land because the road was not put in until 1957. The lot contained no water or sewer and had four or five quarry holes. Mr. Bouchard opined that the highest and best use at the time of the sale would be for an assemblage. As a

result, when the road was eventually developed, Astrid Leif was able to subdivide this lot into various lots. In addition, Mr. Bouchard testified that the fair market value of this lot was between 4 cents and 10 cents per square foot, or between approximately \$2,700 and \$6,946.

Based upon the foregoing, the Court finds that, given the extent of work needed to be completed on the property, the value assigned by Mr. Collins seemed excessive. The Court has adopted the upper end of Mr. Bouchard's suggested range as representing the fair market value of the property at the end of 1955.

The Court thus finds that the property was sold for less than its fair market value as, at the time of the sale, it had a fair market value of \$6,946 or \$6,146 more than the actual sales price.

163. Lot 31

This lot had frontage on Mount Ararat Road and contained 32,400 square feet of land. It was sold to Herbert Duane on December 22, 1955 for \$225. See Exhibit 235. [Tr. page 232, 243, November 18, 2010]. The lot was part of an assemblage parcel. From 1952 to 1962, Herbert Duane acquired land from the Adams Temple and School Fund which ultimately became part of a large tract involving a total of approximately 67 acres of land along Quarry Street. A portion of Lot 31 abutted Mount Ararat Road. [Tr. pages 244-245, November 18, 2010].

Mr. Collins opined that this lot had a value of 35 cents per square foot or \$11,340.

Mr. Bouchard noted that this lot was triangular shaped. Today, it remains a large pile of granite and rocks. He further testified that this lot contained land that could not be developed residentially because of "feasibility issues." [Tr. page 105, lines 7-13, December 13, 2010]. Mr. Bouchard also noted that this lot would only have value to an abutter (which the Court notes is precisely who bought it). He testified that the fair market value for this lot would be between 1 and 2 cents per square foot, or from \$324 to \$650.

For some of the reasons set forth in finding no. 164, the Court finds that this land, the value of which was derived from its being part of an assemblage, had a fair market value as of the date of sale of at least ten cents a square foot, or \$3240.

Based upon the foregoing, the Court finds, therefore, that the property was sold for less than its fair market value as, at the time of the sale, it had a fair market value of \$3,240 or \$3,015 more than the actual sales price.

164. Plot 20

This plot contained 211,466 square feet of land and was located on Quarry Street. It was sold by the Trustee to Herbert Duane on December 22, 1955 (the same day that Mr. Duane purchased Lot 31 for \$225) for \$1,455.01. This plot consisted of unimproved land with a quarry hole and frontage on Quarry Street. It was irregularly shaped and in the middle of the large assemblage of land being acquired by Herbert Duane. By 1955, Herbert Duane had already acquired the two abutting lots to the left of plot 20 (plots 39 and 43). The land to the right of plot 20 (labeled P.U.D.²⁶) was acquired by Herbert Duane in approximately 1962. Similar to lot 5, this plot contained several

²⁶ Planned Unit Development.

deed restrictions, one of which provided that if the land owner wanted to develop the land, he or she had to fill the quarry holes. Similar to lot 5, Mr. Collins opined that this deed restriction did not affect the value of the land, for the reasons described under "lot 5."

Another deed restriction provided that the buyer of this plot would/could not object to a City of Quincy incinerator anticipated to be built on nearby property. Mr. Collins opined that this restriction had no effect on the fair market value of this property. [Tr. page 230, lines 14-22, November 19, 2010].

In addition, Mr. Collins opined that the value of plot 20 should be 35 cents per square foot or \$73,943.00.

Mr. Bouchard opined that this lot was an irregularly shaped piece of raw land, containing narrow frontage that was in the midst of the quarrying area. He was of the opinion that highest and best use of this lot was considerably limited because of the physical constraints and the nature of the neighborhood and thus, had limited potential. Further, Mr. Bouchard testified that the fair market value of this lot was between 1 and 2 cents per square foot or \$2,100 or \$4,200. The Court does not credit Mr. Bouchard's testimony in this regard.

Consistent with the value found for the other parcel of land which Mr. Duane purchased on the same day, the Court finds that both parcels had a fair market value of ten cents a square foot.

Based upon the foregoing, the Court finds that the property was sold for less than its fair market value as, at the time of the sale, it had a fair market value of \$21,146 or \$19,691 more than the actual sales price.

165. Lot 33

This lot which contained 3,800 square feet of land was sold on March 1, 1956 to an employee of the City of Quincy for \$75. It had frontage on both Churchill Road and Mount Ararat Road. [Tr. pages 232-233, November 18, 2010]. As a result of his purchase of this lot, the buyer was able to develop another house lot. Prior to the purchase of lot 33, the buyer had frontage for two lots on Mount Ararat Road; as a result of this purchase, a third lot could be, and was, developed because of the acquisition of additional road frontage. [Tr. page 234, lines 3-13, November 18, 2010].

Mr. Collins opined that the value of lot 33 was \$1,330.

Mr. Bouchard opined that this lot was analogous to lot 32 in that lot 33 was an abutter purchase for roadway frontage. Mr. Bouchard testified that the fair market value of this lot would be between 4 and 8 cents per square foot. He also noted that there was a total betterment charge of \$1,800 assessed against this lot. [Tr. page 94, lines 3-20, December 13, 2010]. The Court finds that the approach taken by Mr. Collins was the more logical and appropriate and represented a fair statement of what the fair market value was and thus what the sale price should have been. Unlike Lot 30, little work needed to be done in order for it to have significant, immediate, value to the purchaser. The Court finds this parcel to have had a fair market value of twenty cents a square foot.

Based upon the foregoing, the Court finds that the property was sold for less than its fair market value as, at the time of the sale, it had a fair market value of \$760 or \$665 more than the actual sales price.

166. Lot/Plot 20

This property is located on the south side of Parker Street and contains 13,426 square feet. It was sold by the Trustee on November 1, 1958 for 3 cents per square foot, or \$425. According to Mr. Collins, in 1958, the property contained raw, unimproved, land and had ledge on the front of the property along Parker Street and behind the property was sloping land. Parker Street had been approximately 60 percent developed with single-family homes and there were various parcels of undeveloped land remaining on the street, including plot 20. Currently, there is a 6 unit-multi-family, 3-story apartment on this lot, which was erected in the 1970s, according to Mr. Collins.

Mr. Collins opined that at the time of the sale, the highest and best use would have been single-family residential. He further opined that the value of the property would have been 42 cents per square foot, or \$5,638.92. [Tr. 11-12, November 19, 2010].

Mr. Bouchard testified that this lot is a rectangular parcel that currently contains a 6-unit apartment building. Mr. Bouchard opined that the fair market value of this lot was between 2 and 5 cents per square foot or \$270 to \$670. He further noted that the highest and best use for this lot was for "speculative development, land hold, land speculation, that at some point they could get approvals to build something with enough density to be able to overcome the site costs. . . ." [Tr. page 124, lines 6-12, December 13, 2010].

The Court, without giving significant credence to either opinion, finds that the fair market value of the property to have been twelve cents a square foot as of the date of the sale.

Based upon the foregoing, the Court finds that the property was sold for less than its fair market value as, at the time of the sale, it had a fair market value of \$1,611 or \$1,186 more than the actual sales price.

167. Plots 8, 9, 10 and 57

These four plots (8, 9, 10 and 57) were a single transaction and represented the sale of 48,614 square feet of land located just off of Granite Street. The access entrance was from Parker Street. These lots were sold for a total of \$1,975 or approximately 4 cents a square foot. The deed was recorded in November 1958. Parker Street is a "hilly street" and there was ledge on the street at various points. Plot 57 was a triangular parcel and the easterly property was lot 8. The center parcel was plot 9 and the western most property was lot 10. Currently, there are three condominium units on plot 57. Plot 8 presently contains the same small building, as well as some unimproved land, that existed at the date of sale. Plots 9 and 10 currently have five condominium units that were developed relatively recently, according to Webster Collins. [Tr. pages 245-249, November 18, 2010].

Mr. Collins characterized these four lots as a plottage "because of it being an opportunity to acquire four, in one piece, four separate individual parcels, hold them for a length of time until their highest and best use fully became evident. . . ." [Tr. page 249, lines 6-12, November 18, 2010].

In determining the value of these four plots, Mr. Collins considered residential land values at the time (1958). At the time, the street was "essentially pretty well built

up" with houses. Mr. Collins opined that the highest and best use of the total of the four parcels was for residential purposes/use. He opined that the total value of these four parcels was 42 cents per square foot or \$20,418. [Tr. pages 251-253, November 18, 2010].

Mr. Bouchard opined that these lots reflect "substantial evidence of rock and . . . difficult development constraints that would have impacted this property at the time." [Tr. page 110, lines 16-20, December 13, 2010]. He further noted that frontage of these plots has been developed in recent years, while the back portion of the lots contains a steep piece of ledge that goes up in the back. Mr. Bouchard opined that the fair market value of these plots was between 4 and 8 cents per square foot. In addition, he testified (and agreed with Mr. Collins) that the highest and best use of these parcels was for residential development.

As the sales were almost three years after the sales of Lots 30, 31 and plot 20, the Court finds that the fair market value of the realty at the time of the sale(s) would have been slightly higher than the sales of trust property three years prior. (Mr. Bouchard did not appear to adjust his figures for the later sales.) The Court finds that the fair market value of these sales would have been for twelve cents a square foot or, for all four parcels, or \$5,834.

Based upon the foregoing, the Court finds that the property was sold for less than its fair market value as, at the time of the sale, it had a fair market value of \$5,834 or \$3,859 more than the actual sales price.

168. Plot 18

This property consists of 21,780 square feet on Parker Street. It was sold to another city employee on November 1, 1958 for \$150. According to Mr. Collins, the sale price was the equivalent of less than one cent per square foot. Currently, a single family house with a pool and grass occupy plot 18. Further, Mr. Collins noted that there was no ledge on this lot.

This plot contained the same deed restriction as plot 15, providing that no dwelling shall be erected on this plot and that this plot was to be used in conjunction with the abutting property. [Tr. pages 265-266, November 18, 2010]. The abutting property was also owned by the purchaser and, thus, the two plots merged. Mr. Collins noted that the deed restriction was removed prior to the construction of a single-family house on plot 18. He opined that the deed restriction ". . . did not have a major impact . . ." on the value ". . . because the buyer was the abutter of the property and wanted to acquire . . ." [Tr. page 268, November 18, 2010]. Mr. Collins noted that plot 18 was ". . . an enhancement to the existing property for residential use." [Tr. page 269, November 18, 2010]. Thus, as of 1958, the highest and best use for this lot was "to be the abutter additive value." [Tr. page 270, November 18, 2010]. Mr. Collins opined that the value of plot 18 is 42 cents per square foot or \$9,148.00.

Mr. Bouchard testified that this land was filled in over a period of ten years by the purchaser. He opined that the fair market value of this property was 1 to 2 cents per square foot due to the "development restrictions in place at the time of the sale" and the "physical restraints of the development at the time of the sale," which ultimately limited the appeal of this lot to an abutter. [Tr. page 119, lines 9-17, December 13, 2010].

(See Finding no. 169 re: abutter purchasers.) Mr. Bouchard, called by the Trustee as its expert witness testified that the fair market value of the land, was

diminished by the restrictions in place at the time - restrictions which were put into the deed by the Trustee restrictions which did not, in any manner benefit the Adams Temple and School Fund, and which were wholly unnecessary. (They were later removed, apparently for no or nominal consideration.)

Based upon the foregoing, the Court finds that, owing to the need to fill a portion of the lot, the fair market value of the land would have been ten cents a square foot as of the date of sale or \$2,178. The property was sold for less than its fair market value as, at the time of the sale, it had a fair market value of \$2,178 or \$2,028 more than the actual sales price.

169. Plot 15

This lot contained 7,500 square feet and was located on Parker Street. It was sold for \$300 on May 19, 1959 (see Exhibit 187). This parcel contained a steep ledge on the north side for approximately half of the property, then a flat parking area below. This was another abutter transaction in which the flat portion of this plot provided the parking for the abutting property. Shortly after his purchase of plot 15, the purchaser sold both plots 15 and 16 to a subsequent buyer as a unit. There has been no development on lot 15, other than paving it over. The deed to plot 15 contained a restriction, inserted by the seller, the Adams Temple and School Fund, regarding the use of the land. Said deed provided, "[t]he land hereby conveyed is hereby restricted so that it shall be used solely in conjunction with other land of the Grantee bounded on the northwesterly side of said parcel and further restricted so that no dwellings shall be erected on said lot." Exhibit 187. Thus, the deed restriction provided that plot 15 could only be used in conjunction with the plot that was adjacent plot (16); said plot was already owned by the purchaser of plot 15. According to Mr. Collins, the deed restriction increases the value of plot 15 because it created the parking for a parcel of land that previously had no parking.

Mr. Collins opined that the highest and best use of this property was as an assemblage for the abutting property. Further, he opined that the value of this parcel was 42 cents per square foot or \$3,150. [Tr. pages 255-260, November 18, 2010].

Mr. Bouchard also testified that this sale was an abutter purchase. He also noted that the deed restriction, which provided that the lot could not be built upon, resulted in diminished group of potential buyers for this lot. "... [T]he only logical buyer for the property is an abutter who may want to add to their property and have privacy, or in this case, use a little bit, a portion of the frontage to extend their driveway in a very narrow street." [Tr. 116, lines 9-14, December 13, 2010]. Mr. Bouchard opined that the fair market value of this lot was between 1 and 2 cents per square foot.

The fact that this (and many other sales of Adams Temple and School Fund real estate parcels) was a sale to an abutter does not necessarily indicate that it needed to be sold for less than, or more than, fair market value. In each instance, the seller was a willing seller and the buyer a willing buyer. Neither party needed to act - although the benefit to the buyer might have caused the price to have been greater than it may have been were it to have been sold to a non-abutting party. The Court did not factor such into its determination of fair market value with regard to this plot (or any other parcel with which these findings are concerned).

Based upon the foregoing, the Court finds that the fair market value of this parcel, would, at the time of the sale in 1959, have been twelve cents a square foot, or \$900. The property was sold for less than its fair market value as, at the time of the sale, it had a fair market value of \$900 or \$600 more than the actual sales price.

170. Lot 5

This lot contains 207,728 square feet located along Quarry Street. It was sold to Herbert Duane on October 23, 1962 for \$1,900 or less than 1 cent per square foot. At the time of the sale, the property consisted of raw unimproved land located close to downtown Quincy. There were quarry holes on the property. This property was the fifth and last acquisition by Herbert Duane, thereby completing his assemblage of a tract of land comprising a total of 67 acres along Quarry Street. Herbert Duane owed the contiguous parcels of property from roughly Common Street to Scotch Pond Place, just before Quarry Street ends at Granite Street. According to contemporaneous newspaper accounts, Mr. Duane planned to develop the property into residential house lots.

Lot 5, along with plot 20, contained various deed restrictions, inexplicably (as far as the trust was concerned, put into the deed by the Trustee City of Quincy, including one requiring that if the land owner wanted to develop the land, he or she had to fill the quarry holes. (Mr. Duane was in the commercial trash disposal business.) There were approximately eight or nine quarry holes on the property. Mr. Collins testified that the deed restriction did not affect the value of the land because "[i]t runs with the land, and it is part of the development. Any successor, if there had been a resale, has to buy the property based on these restrictions." [Tr. page 40, November 19, 2010] In addition, Mr. Collins testified the said deed restrictions were unusual because "the trustee and the City are the same. So on one hand, you've got the City acting as a zoning administrator. On the other hand, you've got the trustee. And so it is very unusual to have a restriction of this type in a deed. There's potentially a huge conflict there." [Tr. page 43, lines 15-22, November 19, 2010].

Today, the entire assemblage of Herbert Duane's property has been developed. It took 40 years for development of the assemblage into 520 mid-rise apartment units called High Point, with a portion of the 520 units being condominiums.

Mr. Collins further opined that the highest and best use for this lot, as of 1962, would be for residential purposes. He opined that the fair market value was 54 cents a square foot or \$112,173.

Mr. Bouchard opined that the fair market value of this parcel was between 1.0 - 1.5 cents per square foot or between \$2,100 and \$3,100. The Court can not, in any manner, credit Mr. Bouchard's opinion as to the fair market value of this property. A minuscule parcel of land was sold the same day by the Trustee to an abutter (as Mr. Duane could certainly have been considered) for 7 cents a square foot. Under the circumstances, the Court deems that the fair market value of this lot would have been between 15 to 20 cents a square foot, or 17 cents a square foot.

Based upon the foregoing, the Court finds that the property was sold for less than its fair market value as, at the time of the sale, it had a fair market value of \$35,314 or \$33,414 more than the actual sales price. In so finding, the Court agrees with the opinion of Headmistress Bacon as noted in finding no. 118 and referenced in finding no. 31 above.

171. Triangular piece of land on Packard's Lane, abutting Lot 5

This lot, a triangular parcel containing a total of 1,400 square feet, was sold on October 23, 1962 for \$100, or approximately 7 cents per square foot. This lot was part of an assemblage and represented an opportunity for the purchaser "to acquire the land

directly behind him to add to their existing holdings. It was an abutter purchase." [Tr. pages 13-14, November 19, 2010]. Mr. Collins opined that there would be considerable value to the purchaser of the parcel, noting that abutters "will pay a premium just to acquire . . ." [Tr. page 14, November 19, 2010]. Mr. Collins also opined that the highest and best use "would be the same use as the abutting use, residential." [Tr. page 15, November 19, 2010]. Moreover, Mr. Collins opined that the intrinsic value of this lot was 54 cents per square foot and the fair market value would have been \$756. [Tr. page 15, November 19, 2010].

Based upon the foregoing, the Court finds that the property was sold for less than its fair market value as, at the time of the sale, it had a fair market value of 35 cents per square foot or \$490, which amount was \$390 more than the actual sales price.

172. MBTA Land - bordered by Dimmock Street, Quincy

This was a narrow, small strip of land that was subsequently (post 1953) subject of an eminent domain taking by the MBTA on December 4, 1967 from the Adams Temple and School for the creation of the Red Line extension. The Adams Temple and School Fund received \$1,100 as a result of this taking. The Court (Langlois, J.) inferred that the Adams Temple and School Fund received notice of the taking from the MBTA and that the Adams Temple and School Fund was aware of the taking. [Tr. 53, lines 13-19, November 19, 2010]. Mr. Collins' opined that the fair market value of this land was \$2,200. Mr. Bouchard did not provide an opinion regarding this land.

Other than the above-mentioned information, this plot of land was not addressed during the course of the litigation.

The Court considers that, as the Trustee accepted the *pro tanto* award and that any appeal therefrom would not have made economic sense (in view of Mr. Collins' opinion), this issue of the value of said parcel is, essentially, moot.

173. Lot 8

This 2,699 square foot parcel of land fronting on Dimmock Street, which has been referred to as the so-called "Vigoda" parcel, has been addressed elsewhere in these findings.

174. 8 Adams Street, Quincy, MA

This property consists of approximately 62,000 square feet, plus or minus, of level land near an MBTA stop and Quincy Center. There is a building on the site, which formerly housed the Adams Academy; the property is subject to a 50 year lease, which expires in 2022, to the Quincy Historical Society. There is a parking area/lot, which can accommodate 45-50 parking spaces, on the rear portion of the property.

The City of Quincy's Assessor's office states that the current assessed value of the property is \$1,860,500.

The Court has elsewhere in these findings referenced the leasing of the Adams Academy to the Quincy Historical Society.

The lease was for less than fair market rent as it was even less than the parking space rental income. The lease does not appear to be a prudent investment by the Trustee. It may have been marginally beneficial in the 1970's when the building and property was appraised at \$150,000 but the term of 50 years at the fixed rate of \$1,200

per year appears grossly undervalued. The Court also notes that the desire and intention of the Trustee to essentially "gift" the property was noted (or otherwise inferred) in (ret.) Judge Mulhall's letter of 1968 to the Trustee. See Exhibit 244.

175. The Court finds that the City of Quincy had two very different motives with regard to these sales. On one hand, the City sought, in an expedient manner (essentially conveying the property for nominal amounts) to place additional real estate on the tax rolls of the City as it would not have been receiving any real property taxes on land owned by a charitable trust. On the other hand, the City represented the trust and was responsible for overseeing the management of the trust properties. If the Trustee (the City) was going to sell the trust properties, it, as the Trustee of the Fund, had a duty to sell any such realty for the best possible price, i.e., the highest price that it could reasonably obtain or, in any event, at least for the fair market value of the property. Thus, with regard to said sales, the City was serving two masters and, invariably, chose to serve their own needs over those of the Fund. The Court finds, however, that its duties and functions as Trustee should have taken precedence over its municipal needs and obligations. Unfortunately, such did not occur.

176. The Trustee City of Quincy had, therefore, between 1953 and 1962, authorized the sale of properties owned by the Adams Temple and School Fund for, in total, \$71,198 below fair market value of said realty. Said funds, together with applicable interest thereon from January 1, 1963 (as the last sale had occurred in 1962) should be returned to the trust.

So-called "Vigoda" "purchase"

177. As noted in several of the prior findings, as of 1971, the Adams Temple and School Fund was possessed of 2,699 square feet of land fronting on Dimmock Street in Quincy. An offer for the purchase of the property for \$13,495 was received by the Trustee in 1965 from an individual by the name of Murray Vigoda (hereafter "Vigoda").

178. Based upon the facts available to him at the time he filed his initial report, the Special Master had concluded that the City of Quincy had sold the Dimmock St. property to Vigoda in 1971 for \$13,495, but he (the Special Master) could not find any evidence that the purchase funds had ever been deposited into the Adams Temple and School Fund's account.

179. Contrary to the best interest of the Adams Temple and School Fund, however, the Trustee City of Quincy had inappropriately failed to sell the property, which property had never produced, nor would ever produce, any income for the trust, to Vigoda²⁷, a fact which came to light by disclosures from the City of Quincy only after the

²⁷ Quincy's assertion that it did not believe that it owned the property and, therefore, it could not sell it, simply does not make sense. Initially, despite its belief (whether justified or not) that it did not own the land, the land was owned by the Trust. The Trustee is accountable for knowing what assets and property is under its dominion

Special Master had filed his initial report. The property, given its size and shape, was generally unmarketable to anyone other than an abutter.

180. The Court finds that a prudent trustee must know, and be aware of, the assets that are in the trust and over which the trustee has control. In the within action, the Trustee failed to meet that (presumably minimal) standard with regard to the so-called "Vigoda" property²⁸. The Trustee should have known, at the time that Vigoda offered to purchase the property in 1971, that the property had since 1822 been owned by/in the Adams Temple and School Fund.

181. The parties, by agreement, each submitted to the Court an appraisal of the so-called Vigoda parcel of land off Dimmock Street in Quincy together with the further agreement that, without the need for testimony or cross-examination, the Court would, after a review of both appraisals, make a finding as to the fair market value of the property. The appraisal submitted by the City of Quincy indicated a present fair market value of between \$67,415 - \$80,970. The appraisal submitted by the Woodward School set forth a (nominal) fair market value of \$1,000. (See Exhibits 250 & 251.)

182. The Court does find that the fair market value of the property in July of 1965, i.e., when Vigoda offered to purchase same, was \$13,495, i.e., the amount of Vigoda's offer to purchase. As the Trustee City of Quincy negligently, and without good cause, failed to sell the parcel to Vigoda at that time, the Adams Temple and School Fund sustained a loss of the value of said property at that time and an attending loss of the income which the proceeds of the sale would, conceivably and reasonably, have generated since that time.

183. Were it necessary for the Court to make a finding as to the present fair market value of the so-called Vigoda parcel, the Court, considering the undevelopable nature of the property and its location and topography, would conclude and find that it would have value only to an abutter as part of an assemblage. Its current fair market value would, thus, likely be negligible, or \$1,000. See Keating v. Duxbury Housing Authority, 11 Mass. App. Ct. 934, 935 (1981); R. H. White Realty Co., Inc. v. Boston Redevelopment Authority, 3 Mass. App. Ct. 505, 507-508 (1975).

184. As the Trustee City of Quincy is being held accountable to the Adams Temple and School Fund for its failure to sell the property pursuant to the Vigoda offer,

and control. See Generally G. L. c. 203C, § 5. The Trustee received a valid offer to purchase the property. If the prospective purchaser uncovered a title defect, it (the prospective purchaser) could have voided any agreement. Under the circumstances presented, it was not the seller's responsibility to question the status of its title.

²⁸ As late as November 24, 2008, the Trustee apparently believed that it then owned only one parcel of land, i.e., 8 Adams Street, on which the Adams Academy building was located. (See Exhibit 222, letter of said date from Kevin J. Madden, First Assistant Solicitor, City of Quincy to Special Master James A. McLaughlin, Esq.)

the Adams Temple and School Fund will be required to convey, for nominal consideration, the said realty to the City of Quincy in order to avoid a windfall to the Adams Temple and School Fund which would result from the Adams Temple and School Fund's being awarded damages resulting from the Trustee's failure to sell the property while still maintaining ownership of same. See Rutanen v. Ballard, 424 Mass. 723 (1997); Fine v. Cohen, 35 Mass. App. Ct. 610, 616 (1993).

185. From 1955 through 1968, it does not appear that an accounting was ever made of rent for "Vigoda" property, which had been leased to an individual by the name of "Joseph Underwood" in 1869 for 99 years, at \$140 per year. At some point, Underwood (or a relative of his) apparently subleased, or assigned his rights in, the realty to the Old Colony Railway Company (later the MBTA). Said "Underwood" lease, in any event, expired in 1968. The Court will not, however, be addressing this matter further.

Return on Investments

186. The Adams Temple and School Fund is entitled to a return on monies which it would have reasonably realized but for the imprudent actions of the Trustee/Supervisors of the Fund. The Adams Temple and School Fund, empirically received an annual rate of return on capital averaging 7.54% for the years 1953 through 2008. (See Special Master's Report, Exhibit 214, incorporating Exhibit 19 of report of Howard Newburg.)

187. Although it may seem logical to apply such a rate to funds which should have been in the fund, such should not be applied to the funds which represent the difference between the present value of the portfolio and the value of the portfolio as it could reasonably have been expected to be (per testimony of Scott Winslow). Had the Fund's assets been invested per the Board of Supervisor's vote of April 11, 1973, the funds assets would, in all likelihood, have earned only a five (5%) percent annual return on investment as they would not have been invested primarily in fixed income assets, which did, in fact, experience a 7.54% annual rate of return.

188. The Court has, as a result, assigned a five (5%) percent annual rate of return to the value of the assets that, more likely than not, would have been (and should have been) part of the investment portfolio from 1974 to 2008. Said rate of return was based upon the rate anticipated in the March 29, 1973 proposal from the investment department of South Shore Bank. (See Exhibit 220). The Trustee was, presumably, aware of, and accepted such a proposed rate of return when it voted on April 11, 1973 to adopt and implement the advice it had been given. Howard Newburg, the forensic accountant employed by the Special Master, determined that between the years 1953 to 2008, inclusive, the Adams Temple and School Fund had attained an average annual yield on its invested assets of 7.54%. (See Report of Special Master, Exhibit 214, incorporating Exhibit 19 of Report of Howard Newburg.)

189. In all other circumstances, the Court has assigned an interest rate of 7.54% as that is the rate of return which the investment portion of the fund actually returned. Said rate of return has been applied to: unreported gains, missing or accounted for

funds; and, the unrealized income that resulted when real property was sold for less than fair market value²⁹. In many instances, however, the Court did not assign an interest rate from the date when disallowed transaction, or a below market price sale, occurred. In those instances, the Court assigned a convenient date after which an event occurred and had interest accrue from that date forward.

190. The Court has also declined to compound interest. There was no evidence presented that the Woodward School would have created or expanded an endowment fund if it had received the income it should have received. The school was, for many years, in difficult financial circumstances and, undoubtedly would have spent whatever monies it would have received. Under the circumstances presented here, the Court deems it inappropriate and inequitable to award compounded, rather than simple, annual, interest.

191. The monies/income realized from the investments in the Adams Temple and School Fund were to be forwarded to the Woodward School on an annual basis, with a few notable exceptions during the 1953-2008 period. Such income payments may have been made to the Woodward School but there was no evidence presented with regard to how the Woodward School expended said funds, other than that the school included a line item in its annual budget for anticipated income from the fund. The Court assumes that any income from the Adams Temple and School Fund received by the Woodward School would have been expended on an annual basis. The Court thus finds that it would be inappropriate to compound any resulting award of such interest. The Court has, as a result, applied simple annual interest only to any of the amounts which the Trustee may owe to the Adams Temple and School Fund for its imprudent actions. Any other approach would require inappropriate speculation.

192. Notwithstanding the foregoing, the Court shall, however, apply the 7.54 % annual rate of return to any and all other funds which the City of Quincy may owe to the trust(s) pursuant to these findings and the accompanying judgment as said monies would, presumably, have been invested consistent with the Trustee's ongoing investment in fixed income accounts and government securities.

193. When viewed in the most basic light, in 1953, the Adams Temple and School Fund had cash/investments valued at \$258,197.02 (\$4,474 in cash; \$253,197.02 in investments.) As of March 29, 1973, approximately twenty years later, the Adams Temple and School Fund had a cash/investment portfolio valued at \$300,223. (See Exhibit 214) Not included therein would have been a credit for the overpayment of \$5,742.15 of "net income" to the Woodward School made during the period from 1953 - 1973 (inclusive) if proper distributions had been made. Between 1953 and March of

²⁹ The Court is not applying any interest to disallowed expenses as the City has, in fact, been given a credit against the disallowed expenses which exceeds the amount of the expenses which had been considered as disallowable.

1973, the Adams Temple and School Fund had, however, sold real estate which realized total proceeds of \$70,926.57. Thus, the trust account should, even assuming no appreciation, have contained not less than \$334,866, even if the "overpayment" of net income was not credited back to the account. The account, by 1973, had an unexplained deficiency of at least \$34,643.

194. By the end of 2008, the Trustee had not only made up for the pre-1973 overpayment to the Woodward School but had, in fact, failed to distribute a total of \$98,584.48 of accumulated net income to the school for the entire period from 1953 to 2008, inclusive.

195. Thus, when considering just retained earnings (\$98,584), initial capital of \$258,197.02 and real estate sales³⁰ of \$70,926.57, the Adams Temple and School Fund investment account, assuming only that there were no losses in any investments (and there, indeed, were none), should, by the end of 2008, have contained at least \$427,708. (See Special Master's Report page 8, incorporating Newburg report, Exhibit 17.) The balance in the Adams Temple and School Fund, investment/cash account(s) as of the end of 2008 was, however, only \$321,932.43. (See Special Master's report, page 8). The deficiency had, thus, by 2008 grown to \$105,776.

196. The amount set forth in the prior finding would have been at least \$170,873 were the Court to have added back the missing \$49,831 South Shore Bank account and the unreported, and missing, gains on stock of \$15,266.

197. In keeping with the foregoing findings, a simple annual rate of return of 7.54 % shall, therefore, be computed on, and added to, the funds set forth below with the exception of the funds referenced in "q. - s."

a. Recoupment of funds not received by Fund as a result of sales of real estate below fair market value - total funds not received	\$ 71,198	
b. Interest at 7.54 % from the end of 1962 (year of last sale) to 12/31/10	\$263,032	
c. Total of "a." and "b."		\$334,230
d. "Vigoda" sale - unrealized income	\$ 13,495	
e. Interest from 1/1/66 (transaction should have occurred in 1965) at 7.54 % to 12/31/10	\$ 45,788	
f. Total of "d." and "e."		\$ 59,283

³⁰ No real estate has been sold by the trust since 1962.

g. Disallowed expenses ³¹ - total		\$ (8,902.)
h. "Missing" So. Shore Bank account	\$ 49,831;	
i. Interest at 7.54 % from 1/1/80 to 12/31/10	\$ 116,474	
j. Total of "h." and "i."		\$ 166,305
k. "Missing", unreported stock gains	\$ 15,265.79;	
l. Interest at 7.54% from 1/1/76 to 12/31/10	\$ 40,286	
m. Total of "k." and "l."		\$ 55,552
n. Unexplained account deficiency as of 12/31/09	\$ 105,776	
o. Interest at 7.54 % from 1/1/09 to 12/31/10	\$ 15,951	
p. Total of "n." and "o."		\$ 121,727
q. Unrealized gain in portfolio (see finding "198." below)	\$ 1,135,494	
r. Interest on unrealized gain computed at 5 % from 1/1/74 through 12/31/10	\$ 1,135,400	
s. Total of "q." and "r."		\$ 2,270,894.

198. Income which should have been realized at 5% per annum, not compounded, on the unrealized appreciation (\$1,135,494³²) which would, more likely than not, have occurred if the Trustee had both heeded the investment advice which it sought and followed through and effectuated the investment strategy set forth in its own April 11, 1973 vote. From January 1, 1974 to December 31, 2008, interest would be computed as follows: the first year interest would be determined as follows: gain from 1/1/74 through 12/31/74 of \$ 32,443 x .05 = \$ 1,622; the second year interest would be determined as follows: gain from 1/1/74 to 12/31/75 of \$ 64,886 x .05 = \$ 3,244; and so on.

199. As the Court received no evidence concerning what gains or losses may have occurred in the portfolio during the years 2009 and 2010 had it been invested per the April 11, 1973 vote of the Trustee, the Court has assumed that the value of the portfolio would have remained static, i.e., as it was as of the end of 2008 (thus not increasing at the rate of \$ 32,443 per year). Interest has, therefore, been computed for

³¹ See findings "126 - 139."

³² The annual average appreciation during the 35 years (1974 - 2008) would have been \$32,443.

the years 2009 and 2010 on the \$1,135,494 amount at the same rate, i.e., 5 %.³³ As a result, the total interest due on the unrealized gain, when computed as aforesaid through 2010, would be \$ 1,135,400.

Obligations of a Trustee

200. Trustees are required to act as a prudent investor would meaning they must exercise sound discretion and intelligence weighing the risks and rewards of all potential investment options and invest trust funds in a manner appropriate given the facts and circumstances at the time.

201. In general, trustees owe beneficiaries three primary duties.

1. Duty of Prudent Administration.
2. Duty of Loyalty.
3. Duty to Keep Records and Report.

Prudent Administration

202. The duty of prudent administration includes the duty to invest in an appropriate manner. The legal standard for trustee investment originated in Massachusetts and has been followed by courts of the Commonwealth for almost two centuries. The Supreme Judicial Court first established the "prudent man" rule in 1830 (approximately eight years after President John Adams created the Adams Temple and School Fund) in Harvard College v. Amory, 9 Pick. 446 (1830), stating:

"All that is required of a trustee to invest is, that he shall conduct himself faithfully and exercise sound discretion. He is to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested. . . Trustees . . . [should] conduct themselves honestly and discreetly and carefully, according to the existing circumstances, in the discharge of their trusts."

203. In subsequent decisions, the Court has continued to follow the "prudent man" rule as set out in Harvard College v. Amory, 9 Pick. 446 (1830).

In Kimball v. Whitney, 233 Mass. 321, 331 (1919), the Court stated, "Good faith and sound discretion, as these terms ought to be understood by reasonable men of good judgment, were thus made the standard by which the conduct of trustees is to be measured. That is a comprehensive principle. It is wide in its scope. It is not limited to a particular time or a special neighborhood. It is general and inclusive, so that while

³³ There would, therefore, have been 630 "units" of simple interest from 1974 through 2008, inclusive, but 700 of such units when computed through 2010.

remaining itself fixed, it may continue to be a safe guide in changing circumstances." Kimball, 233 Mass. at 331.

In Berry v. Kyes, 304 Mass. 56, 58-59 (1939), the Court stated, "[A trustee is] required to act in good faith, with reasonable prudence and sound judgment, guided by a due and rational appreciation of the fiduciary obligation and actuated by an honest, intelligent and diligent effort to discharge fully the responsibility which it had voluntarily accepted."

In Chase v. Pevear, 383 Mass. 350, 364 (1981), the Court stated:

"The trustee must exercise prudence in making or retaining each investment, and is chargeable with any loss by failing to do so. . . . in deciding what is prudent, the cases "warrant some regard being had to the administration of the fund as a whole. . . . The record of any individual investment is not to be viewed exclusively, of course, as though it were in its own water-tight compartment, since to some extent individual investment decisions may properly be affected by considerations of the performance of the fund as an entity The focus of inquiry, however, is nonetheless on the individual security as such and factors relating to the entire portfolio are to be weighed only along with others in reviewing the prudence of the particular investment decisions." (citations omitted)

204. Adherence to the "prudent man" rule may require the sale and reinvestment of under-productive property. In Rutanen v. Ballard, 424 Mass. 723 (1997), the Court held that where a property was under-productive, the trustees were under a duty to sell the property, in circumstances in which the trust instrument authorized such sale and there was no evidence that the trust settlor manifested any intent that the assets be retained. The Court stated, "The duty to sell is triggered 'only where the difference is so great that it is unfair to the life beneficiary to retain the property'". Rutanen, 424 Mass. at 728 (citing Restatement (Second) of Trusts, § 240 comment b. The rule further allows the trustee to exercise discretionary powers in that the trustee is entitled to weigh prudential concerns such as the makeup of the portfolio of investments as a whole, the likelihood of growth in value of the assets, and tax consequences." Id. In that case, the Court found that the "rate of return is highly disproportionate to what could be earned elsewhere." Id. The Court further stated, "If the trustee fails to sell trust property which it is his duty to sell, the beneficiary can charge him with the amount which he would have received if he had properly sold the property, with interest thereon." Id. at 734. (See also Fine v. Cohen, 35 Mass. App. Ct. 610, 616 (1993) (beneficiary "entitled to be put in the position he would have been in if no breach of fiduciary duty had been committed").

205. According to the American Law Institute, the Prudent Investor Rule consists of the following five basic principles:

- o Sound diversification is fundamental to risk management and is therefore ordinarily required of trustees.
- o Risk and return are so directly related that trustees have a duty to analyze and make conscious decisions concerning the levels of risk appropriate to the purposes, distribution requirements, and other circumstances of the trust they administer.

- o Trustees have a duty to avoid fees, transaction costs, and other expenses that are not justified by needs and realistic objectives of the trust's investment program.
- o The fiduciary duty of impartiality requires a balancing of the elements of return between production of income and the protection of purchasing power.
- o Trustees may have a duty as well as having the authority to delegate as prudent investors would. (See Restatement of the Law Third, Trusts: Prudent Investor Rule, 1992).

206. In 1998, the Legislature enacted the Massachusetts Prudent Investor Act, codified in G. L. c. 203C which states, in § 2 thereof, "a trustee who invests and manages trust assets shall owe a duty to the beneficiaries of a trust to comply with the prudent investor rule set forth in this chapter."

207. § 3 of the Prudent Investment Act also provides:

"(a) A trustee shall invest and manage trust assets as a prudent investor would, considering the purposes, terms, and other circumstances of the trust, including those set forth in subsection(c). In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets shall be considered in the context of the trust portfolio as a part of an overall investment strategy reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (1) general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio;
- (5) the expected total return from income and the appreciation of capital;
- (6) other resources of the beneficiaries;
- (7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has such special skills or expertise, shall have a duty to use such special skills or expertise."

208. § 4 of the Act further states that, "A trustee shall reasonably diversify the investments of the trust unless, under the circumstances, it is prudent not to do so." §6 requires a trustee to "invest and manage the trust assets solely in the interest of the beneficiaries." Pursuant to §9, the Court should look to the prudence of the investment decision at the time it was made in light of the facts and circumstances existing at that time. Finally §10 allows delegation of investment duties when it is prudent to do so.

209. Massachusetts General Laws Chapter 203C, Section 5 provides, as follows: "Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, and the other circumstances of the trust, and with the requirements of this chapter."

210. Thus, trustees are required to act as would a prudent investor, meaning that they must exercise sound discretion and intelligence, weighing the risks and rewards of all potential investment options, and invest trust funds in a manner appropriate given the facts and circumstances at the time. G. L. c. 203C, § 3. If they fail to do so, the trustee is accordingly chargeable for any loss resulting from a failure to act prudently. See Chase v. Pevear, 383 Mass. 350, 364 (1981).

211. In the sale or other disposition of property of the trust, the trustee are obliged to use sound judgment and a wise discretion and act as men of prudence and intelligence would act in their own affairs. In the trustees sell property or make other disposition of it, and the court finds that by reasonable diligence on their part a larger price would have been obtained, they are liable for the loss. See Exchange Trust Co. v. Doudera, 270 Mass 227, 229 (1930). See also letter from (ret.) Judge Mulhall to Board of Supervisors dated April 22, 1968, page 6 (Exhibit 244).

Loyalty

212. The Restatement of Trusts notes that "a...trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary." Restatement of Trusts Ch. 7, § 170(1).³⁴

213. In Boston Safe Deposit & Trust Co. v. Lewis, 317 Mass. 137 (1944), the Court stated:

"The general principles governing the conduct of a fiduciary in dealing with trust property have been frequently declared by this court. A trustee must exercise good faith and act solely in the interests of the beneficiaries in administering the trust. He must lay aside self-interest when it becomes adverse to the rights of the *cestuis que* trust, for the

³⁴ See Scott, The Trustee's Duty of Loyalty, 49 Harv. L. Rev. 521 (1936).

office of trustee cannot be subverted to fostering the personal advantage or individual gain of the incumbent. There can be no divided loyalty. This principle has always been rigorously enforced. . . Personal gains accruing to a trustee from the transfer of trust property to himself must be accounted for by him even though he was acting in good faith, unless the beneficiaries knew the nature and effect of the transfer and consented to its being made." Id. at 170-171.

In Hayes v. Hall, 188 Mass. 510 (1905), the Court provided, "The rule that a trustee in the management of property held by him in trust shall not be permitted directly or indirectly to derive any personal advantage from its use or sale, but must act solely for the interests of those beneficially interested, has often been referred to, and approved by this court. . . The foundation of this rule has been said to be the presumption that the trustee in dealing with the trust estate, where by its purchase his pecuniary interest is concerned, will not be disinterested. If permitted to expose himself to this temptation ordinarily he would consider his own advantage, and not that of those who are dependent upon his integrity and sound judgment for the wise and proper administration of the trust property." Id. at 511-512, citations omitted.

214. Where, as here, a trust is established, the burden of proof is on the trustee to account for money or property held by him in trust. Little v. Phipps, 208 Mass. 331, 335 (1911). See also Chopelas v. Chopelas, 303 Mass. 33, 35 (1939); Attorney General v. Bedard, 218 Mass. 378, 385-386 (1914); Campbell v. Cook, 193 Mass. 251, 256 (1906); Am. Law Inst. Restatement of Trusts, § 172.

215. A Trustee may be liable for inaction as well as action.

"[A] trustee may commit a breach of trust by improperly failing to act, as well by improperly exercising the powers of the trusteeship." Restatement (Third) Trusts § 76, comment 1 (2007).

"The duty of prudence requires the exercise of reasonable care, skill and caution." Restatement (Third) Trusts § 77(1) (2007). "[T]he trustee has a duty to exercise prudence - that is, to act with care, skill, and caution." Restatement (Third) Trusts § 77, comment 1 (2007) (emphasis added).

"[T]he rule imposing liability on trustees is applicable to positive acts, as well as omissions or negligence." 76 Am. Jur. 2d, Trusts § 333 (2005)

General Findings and Conclusions

216. Owing directly to the chaotic (or in many instances non-existent) records relating to the financial affairs of the Adams Temple and School Fund, it is possible, if not inevitable, that errors were made by the Special Master (as well as his employed forensic accountant Howard Newburg) and may be made by this Court - despite

extremely diligent efforts on the part of all - in an effort to reconstruct the financial history of the Adams Temple and School Fund and (to a lesser degree) the Charles Francis Adams Fund.

217. From February 11, 1953 to the present, the Trustee City of Quincy and the Boards of Supervisors of the Adams Temple and School Fund and the Charles Francis Adams Fund has:

- failed to keep appropriate records of its financial stewardship of the Adams Temple and School Fund and/or of the Charles Francis Adams Fund even after its accounting and record keeping practices had and/or been called into question as early as 1986 in an action involving a different trust fund;

- failed to obtain appraisals for the land which it sold out of the Trust; authorized the sale of Trust land (as testified to by the appraiser for the City of Quincy as well as the appraiser for the Woodward School, and contrary to the City of Quincy's assertions in its opening statement), for less than fair market value;

- authorized the placement of unnecessary restrictions in deeds of Trust property which served only to reduce the fair market value of the realty;

- failed to sell an undevelopable parcel of real estate ("Vigoda" offer to purchase) upon receipt of a bona fide offer to purchase realty which the Adams Temple and School Fund owned and which produced no income;

- authorized, improperly, payment of Trust funds to individuals who were already being paid by the City of Quincy to perform work for the Trust;

- failed to act upon, and otherwise imprudently ignoring, the professional investment advice which it had sought, obtained and approved as being a proper course of action to take, and, thereafter inexplicably investing in a manner that directly contradicted both the professional advice which it had obtained and its own vote adopting such advice;

- failed to keep records substantiating many expenses paid out to Trust funds;³⁵

- failed to keep clear and accurate records of either trust; and,

- breached its duty of loyalty to the trust (including, but not limited to: its effectuating a 50 year lease to the Quincy Historical Society, the sale of trust property to city employees for less than appropriate consideration; its payments to city employees for work required of the city; its failure to obtain appraisals, particularly with regard to the sale of large tracts of land, etc.).

218. The City of Quincy's management of both the Adams Temple and School Fund and the Charles Francis Adams Fund could, *if* considered in the light most favorable to the City of Quincy, be characterized as inattentive, imprudent and neglectful - but, with an emphasis, in any event, on significant neglect.

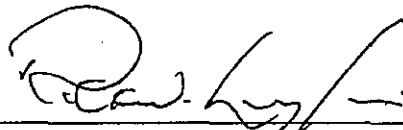
³⁵ The Court is of the belief, and so finds, that, in many instances (particularly regarding payments to individuals) no such bills, requests for payment or invoices were ever received.

219. The Court concludes and so finds, however, that the conduct of the Trustee, albeit neglectful, negligent, frequently inept and generally characterized by inattentive mismanagement, does not necessarily rise to the level of gross corruption or gross mismanagement, nor does the Court find the Trustee to have been guilty of notorious negligence or having knowingly and willfully committed or permitted a wasting of trust property.

220. The City of Quincy has proven to be, and the Court so finds that it is, incapable of appropriately managing, in a prudent, impartial, manner, the assets of both of the subject trusts. Despite the fact that the City should have realized by 1986-1991 that its actions as a Trustee were questionable and imprudent, there was no evidence presented that it took any steps to correct same. Its record keeping practices of trust funds for both funds were woefully deficient and continue to be so. The Court has, for these and other reasons referenced in these findings, determined that the City of Quincy should be removed as the trustee of both of the funds which are the subject to this litigation.

February 18, 2011

Date



Robert W. Langlois, First Justice
Norfolk Probate and Family Court

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

Norfolk Division

Docket No. 07 E - 0092 - GC1

The Woodward School for Girls, Inc.,
Plaintiff

v.

**City of Quincy, as Trustee of the Adams Temple and School Fund and the Charles
Francis Adams Fund,**
Defendant

and

**Martha Coakley, As She Is The Attorney General of the Commonwealth of
Massachusetts,**
An Interested Party

**JUDGMENT
and
RATIONALE**

In keeping with the Court's findings of fact and applicable law, the Court enters the terms set forth below as its Judgment on the plaintiff's above-referenced complaint.

1. The City of Quincy must pay over to the Adams Temple and School Fund, within ninety (90) days of the entry of final judgment, the sum of \$2,999,089.¹

2. The City of Quincy must, if it has not already done so, pay over to the Woodward School for Girls, Inc. (hereinafter "Woodward School"), within ninety (90) days of the entry of final judgment, the sum of \$2,530, which amount represents the unexpended funds (net income) in said Fund as of December 31, 2005.

3. The City of Quincy, together with the Board of Supervisors and the Board of Managers, is/are hereby removed as Trustee of the Adams Temple and School Fund, effective upon this Court's receipt of notice that a successor Trustee has assumed the

¹ See accompanying finding of fact no. 197. The total due is \$3,007,99 less the amount of \$8,902 noted in finding of fact no. 197, line "g."

duties as Trustee of the Adams Temple and School Fund. To the extent that all of the records of the Adams Temple and School Fund have not previously been turned over by the City of Quincy to the Special Master (who should deliver all such records as are in his possession to the successor Trustee), the City of Quincy must, immediately, deliver such records to the successor Trustee. The duty of the City of Quincy to deliver any such records as it may, in the future, locate remains in effect in perpetuity.

4. The City of Quincy, together with the Board of Supervisors is/are hereby removed as Trustee of the Charles Francis Adams Fund, effective upon this Court's receipt of notice that a successor Trustee has assumed the duties as Trust of the Charles Francis Adams Fund. To the extent that all of the records of the Charles Francis Adams Fund have not previously been turned over by the City of Quincy to the Special Master (who should deliver all such records as are in his possession to the successor Trustee), the City of Quincy must, immediately, deliver such records to the successor Trustee. The duty of the City of Quincy to deliver any such records as it may, in the future, locate remains in effect in perpetuity.

5. Following the hearing on February 22, 2011, a competent, neutral, person will be designated and appointed to serve as successor Trustee of both the Adams Temple and School Fund and the Charles Francis Adams Fund.

6. Until such time as the City of Quincy ceases to be the Trustee of, and a successor Trustee has assumed stewardship of, the Adams Temple and School Fund, Trustee City of Quincy is enjoined from, in any manner, negotiating any change, modification (of any nature) or extension to the lease for the "Adams Academy" with the Quincy Historical Society (or any successor in interest thereto). Said injunction shall not, however, apply to any successor Trustee.

7. Within sixty (60) days of the successor Trustee assuming control over the Adams Temple and School Fund, the Trustee City of Quincy shall file an accounting with regard to the Adams Temple and School Fund for the period from January 1, 2009 through the remainder of its stewardship of said fund. A copy of said accounting shall be forwarded to the President and to the Treasurer of the Woodward School for Girls, Inc. (hereinafter the "Woodward School"). The Woodward School shall then have thirty (30) days following its receipt of said accounting to file an objection to said accounting. If no objection is so filed, the accounting will be allowed administratively without need of hearing.

8. Within sixty (60) days of the successor Trustee assuming control over the Charles Francis Adams Fund, the Trustee, City of Quincy shall file an accounting with regard to the Charles Francis Adams Fund for the period from January 1, 2006 through the remainder of its stewardship of said fund. A copy of said accounting shall be forwarded to the President and to the Treasurer of the Woodward School. The Woodward School shall then have thirty (30) days following its receipt of said accounting to file an objection to said accounting. If no objection is so filed, the accounting will be allowed administratively without need of hearing.

9. As \$1,616,931 of the amount referenced in paragraph "1." above represents either accrued interest or retained, undistributed net income ², said amount, less any normal expenses of the trust, is to be paid over to the Woodward School within thirty (30) days of the date that the funds referenced in paragraph "1." are received by the Adams Temple and School Fund.

10. The successor Trustee shall, annually, commencing in 2012, file an accounting with this Court on or before the 1st day of May each year of the fiscal activity of the Adams Temple and School Fund for the immediately preceding calendar year; a copy of said accounting shall be forwarded to the President and to the Treasurer of the Woodward School. Not less than annually, but quarterly or semi-annual should the successor Trustee, in the exercise of discretion so determine, the successor Trustee shall hereafter forward to the Woodward School the net income of the Adams Temple and School Fund.

11. If the Woodward School desires to object to any accounting of the successor Trustee of the Adams Temple and School Fund, it must do so, within thirty (30) days of its receipt of the accounting from the successor Trustee (which accounting has presumably been previously filed with this Court) by the filing of written, detailed, objections as well as a formal request for a hearing on said objections. A copy of the filings/objections must be delivered to the successor Trustee at such time as said objections are filed with the Court. If the Woodward School does not file written objections as aforesaid to any accounting filed by the successor Trustee, a judgment/decreed allowing said accounting will be entered, administratively, without the need of hearing, following the passage of the thirty (30) day period for objections.

12. The successor Trustee shall, annually, commencing in 2012, file an accounting with this Court on or before the 1st day of May each year of the fiscal activity of the Charles Francis Adams Fund for the immediately preceding calendar year³, a copy of said accounting shall be forwarded to the President and to the Treasurer of the Woodward School. Not less than annually, but quarterly or semi-annual should the successor Trustee, in the exercise of discretion so determine, the successor Trustee shall forward to the Woodward School the net income of the Charles Francis Adams Fund.

² I.e., the "net income" of the trust.

³ For 2011, the period of time to be the subject of the initial accounting will, necessarily be for only a portion of the year 2011, i.e., date of acceptance of appointment to Dec. 31, 2011.

13. If the Woodward School desires to object to any accounting of the successor Trustee of the Charles Francis Adams Fund, it must do so, within thirty (30) days of its receipt of the accounting from the successor Trustee (which accounting has presumably been previously filed with this Court) by the filing of written, detailed, objections as well as a formal request for a hearing on said objections. A copy of the filings/objections must be delivered to the successor Trustee at such time as said objections are filed with the Court. If the Woodward School does not file written objections as aforesaid to any accounting filed by the successor Trustee, a judgment/deed allowing said accounting will be entered, administratively, without the need of hearing, following the passage of the thirty (30) day period for objections.

14. The successor Trustee of the Adams Temple and School Fund shall, within ninety (90) days following entry of final judgment in this matter, deliver a deed, for nominal consideration, to the City of Quincy, wherein the said fund conveys and transfers to the City of Quincy, all of the right, title and interest that the Adams Temple and School Fund may have in the 2,699 square feet of land bordering on Dimmock Street in Quincy, Mass. (the so-call "Vigoda" parcel of land). Said deed is to be recordable and in a form acceptable to the City of Quincy,

15. The successor Trustee may, annually, receive reasonable compensation for services based upon a reasonable hourly rate that, from time to time, may be approved, in advance, by the Court. The successor Trustee may also be reimbursed for any reasonable costs or expenses that may, from time to time, be incurred in the furtherance of the interests of the Adams Temple and School Fund.

16. The successor Trustee may, annually, receive reasonable compensation for services based upon a reasonable hourly rate that, from time to time, may be approved, in advance, by the Court. The successor Trustee may also be reimbursed for any reasonable costs or expenses that may, from time to time, be incurred in the furtherance of the interests of the Charles Francis Adams Fund.

17. The successor Trustee should, on a regular basis, meet with representatives of the Woodward School concerning the status of the Charles Francis Adams Fund, the income (actual and anticipated) to be derived from both the fund's investments and the assets contained therein. Despite said recommendation, the Court is placing no affirmative duty on the successor Trustee to do so.

18. The successor Trustee should on a regular basis meet with representatives of the Woodward School concerning: the status of the Adams Temple and School Fund, the income (actual and anticipated) to be derived from both the fund's investments and from the assets contained therein. Despite said recommendation, the Court is placing no affirmative duty on the successor Trustee to do so.

19. Although the Court is not, in any manner, directing the successor Trustee to sell the Adams Academy property, said asset represents by far, the most valuable asset in the Adams Temple and School Fund with an assessed value of more than \$1,885,000. The present annual rate of return on the property is approximately 0.00064 percent. The successor Trustee should, over the coming years, take such action as is prudent with regard to the property in keeping with the interests of the income beneficiary while preserving, to the greatest extent possible, the historic and unique nature of the Adams Academy.

20. If, at some future date, there is a need or desire to designate and/or appoint a further successor Trustee to oversee and manage either or both of the funds with which this judgment is concerned, either the then Trustee, the Woodward school or the Attorney General for the Commonwealth may petition this Court for such an appointment, with notice to the other parties (including, but not limited to, the then existing Trustee). The petition would then proceed in due course.

RATIONALE

President John Adams created the Adams Temple and School Fund to benefit the religious and educational interests of the inhabitants of Quincy - the trust was not created to benefit the municipal needs of the City of Quincy. Were he to be with us today, President Adams would, most assuredly, not be pleased with the events of the past fifty-seven years.

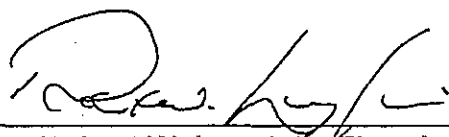
The Court does not, despite its findings, wish to cast a dark, sinister, shadow over those who, from 1953 to the present, have managed the Adams Temple and School Fund and the Charles Francis Adams Fund. Though presumably well intended, their intentions were misguided, their loyalties misplaced and their focus misdirected.

Unfortunately for the Trustee, this Court must, as a matter of law, place on the Trustee the burden of proving that the Trustee's actions were appropriate. In this regard, the Trustee has been hampered (as has the plaintiff and this Court) by both the significant inadequacies in the Trustee's records and the Trustee's inattention to its primary duty - to manage the assets in the trusts in such a manner so as to maximize, given conservative fiduciary principals, the income of the trust for the benefit of the income beneficiary. The Trustee, as noted in the accompanying findings, has failed to do so. There was little evidence presented that could have supported a finding that the Trustee generally managed the trust(s) in a competent, prudent, manner. Having disregarded the only competent, professional advice that they received, and having placed the needs of others (including the City of Quincy), above the interest of the beneficiary of the trust(s), and having failed to maintain even the most basic records required of any trustee, the Trustee must be removed and required to make the trusts whole, all in the interest of benefitting both the trusts and the income beneficiary.

This case has been a difficult one for counsel for both parties to present to the Court owing not only to the nature of the issues presented, but also to the on-going discovery and disclosure by the City of Quincy of relevant documents and facts; such discovery and disclosures continued throughout all phases of this case, even during the course of trial.

Finally, the Court wishes, again, to compliment counsel for both sides. Their intelligence, courtesy, tenacity and preparedness have served their clients well and has reflected positively on their profession. Under the unusual circumstances presented by this case, counsel performed with extraordinary competence. In this regard, John Adams, Esq. would have been quite pleased.

February 18, 2011
Date



Robert W. Langlois, First Justice
Norfolk Probate and Family Court

