



Orange County Government

Orange County
Administration Center
201 S Rosalind Ave.
Orlando, FL 32802-1393

Legislation Text

File #: 24-1263, **Version:** 1

Interoffice Memorandum

DATE: August 16, 2024

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: Jeffrey J. Newton, County Attorney

FROM: Lee Bernbaum, Assistant County Attorney

CONTACT: Lee Bernbaum, Assistant County Attorney

PHONE: 407-836-7320

DIVISION: County Attorney's Office

ACTION REQUESTED:

Approval of the settlement in the case of United Community Bank v. Orange County Animal Services, et al., 6:23-CV-2018-ACC-DCI, and authorization for execution of the corresponding Settlement Agreement by Diane Summers, Manager of Orange County Animal Services, and by Lee Bernbaum, Assistant County Attorney.

PROJECT: N/A

PURPOSE: This Consent Agenda item requests settlement authorization by the Board for the above referenced lawsuit and authorization for execution of the corresponding Settlement Agreement.

I. The Lawsuit

Jane Dershewtz (the "Decedent") passed away in December, 2022. She owned certificates of deposit in two accounts at United Community Bank (UCB). The accounts were set up as Pay-On-Death Beneficiary accounts, with the named beneficiary being "Orange County Humane Society." The amount in the accounts is \$362,109.09 (the "funds").

The dilemma which exists and the reason for the interpleader complaint (discussed below) is that there is no longer any Orange County Humane Society. The Orange County Humane Society is now part of Pet Alliance of Greater Orlando, Inc. ("Pet Alliance"). There is also Orange County Animal Services, a division of Orange County, Florida (the "County").

UCB filed an interpleader complaint in federal court. The lawsuit alleges: UCB is not the owner of the funds; there are competing claims to the funds; UCB cannot determine the rightful beneficiary; and the Court should thus determine the rightful beneficiary of the funds. UCB's lawsuit names as defendants Ms. Dershewitz's Estate, Pet Alliance, and Orange County Animal Services. While the named party in the complaint is Orange County Animal Services, for purposes of the Settlement Agreement, the mutual release therein, and issuance of payment, all other parties have been notified that the correct entity is Orange County, Florida.

The competing claims to the funds are primarily between the County and Pet Alliance. The County contends that the key phrase showing the intent of the Decedent in the named beneficiary "Orange County Humane Society" is "Orange County." By contrast, Pet Alliance contends that the key phrase showing the intent of the Decedent in the named beneficiary "Orange County Humane Society" is "Humane Society." There are no documents - a will, trust, or other writings of the Decedent - which shed any light on the Decedent's intent.

II. The Settlement

The County and Pet Alliance have agreed to a 50/50 split of the (net) funds. From the funds, an amount will be paid to reimburse the Dershewitz Estate and UCB for the costs and fees of this litigation. By reaching an early resolution of this matter, the parties have kept those costs and fees down, resulting in a higher amount of net funds to be split between the potential beneficiaries. Orange County Animal Services will ultimately receive more than \$170,000.

The parties have agreed to a settlement, contingent upon Board approval. The material terms of the settlement are:

- a) The Dershewitz Estate will receive \$10,000 as reimbursement of attorney's fees and costs.
- b) UCB will receive \$5,000 as reimbursement of attorney's fees and costs.
- c) Orange County Animal Services will receive 50% of the net funds.
- d) Pet Alliance will receive 50% of the net funds.
- e) All parties will fully release each other from any and all claims arising out of this matter, and the lawsuit will be dismissed with prejudice.

The parties entered into a corresponding Settlement Agreement, which is attached hereto.

III. Recommendation

Staff and the County Attorney's Office recommend that the Board approve the settlement.

BUDGET: N/A

BCC Mtg. Date: September 10, 2024

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into on the last day set forth on the signature page hereto (the “Effective Date”) by and between UNITED COMMUNITY BANK (“United Community”), MARTIN DERSHEWITZ, as Personal Representative of the Estate of Jane Ellen Dershewitz (“Dershewitz”), PET ALLIANCE OF GREATER ORLANDO, INC. (“Pet Alliance”), and ORANGE COUNTY ANIMAL SERVICES (“OCAS”). OCAS shall be defined to include Orange County, Florida. In the remainder of this Agreement, United Community, Dershewitz, Pet Alliance, and OCAS shall each be referred to as a “Party” and they shall be referred to collectively as the “Parties.”

RECITALS

A. In July 2016, Jane Ellen Dershewitz (the “Decedent”) opened a personal certificate of deposit account (# XXXXXX5881) with United Community (“Account 5881”). In January 2020, the Decedent opened another personal certificate of deposit account (#XXXXXX7918) with United Community (“Account 7918”). Both Account 5881 and Account 7918 named “Orange County Humane Society” as the Pay-On-Death Beneficiary. Account 5881 and Account 7918 shall be referred to collectively as the “POD Accounts.”

B. Decedent died on December 21, 2022.

C. On or about October 19, 2023, United Community filed an Interpleader Complaint in the United States District Court for the Middle District of Florida, Orlando Division, Case Number 6:23-CV-2018-ACC-DCI seeking interpleader and a determination as to the rightful beneficiary and payee of the funds in the POD Accounts (the “Litigation”).

D. On January 18, 2024, Pet Alliance filed its Answer and Affirmative Defenses to the Interpleader Complaint, and Cross-Claim for declaratory relief as to the rightful beneficiary and payee of the funds in the POD Accounts (the “Cross-Claim”).

E. Pet Alliance, OCAS, and Dershewitz have each filed claims of entitlement to the funds in the POD Accounts in the Litigation.

F. The Parties have each determined that it is in their respective best interests to resolve, settle, and compromise the claims and all remaining issues arising in the Litigation on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each Party hereto, the Parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.

2. Within seven (7) days of the Effective Date of this Agreement, United Community shall distribute the funds held in the POD Accounts as follows:

- a. \$5,000.00 to United Community, to reimburse the Bank's costs incurred to date, additional costs that will be incurred in implementing the parties' settlement and a portion of its fees;
- b. \$10,000.00 to Dershewitz (the "Estate Share");
- c. 50% of the remaining net proceeds to Pet Alliance (the "Pet Alliance Share"); and
- d. 50% of the remaining net proceeds to OCAS (the "OCAS Share").

3. The Estate Share shall be paid via check made payable to "Tobin Reyes, PLLC", sent by U.S. Mail, Federal Express, or UPS, and provided care of Carrie S. Robinson, Esq., Tobin Reyes, 225 N.E. Mizner Boulevard, Suite 510, Boca Raton, Florida 33432.

4. The Pet Alliance Share shall be paid via check made payable to "Pet Alliance of Greater Orlando, Inc.", sent by U.S. Mail, Federal Express, or UPS, and provided care of John M. Vernaglia, Esq., Shuffield, Lowman & Wilson, P.A., 1000 Legion Place, Suite 1700, Orlando, Florida 32801.

5. The OCAS Share shall be paid via check, made payable to "Orange County, Florida", sent by U.S. Mail, Federal Express, or UPS, and provided care of Lee Bernbaum, Assistant County Attorney, Orange County Attorney's Office, 201 South Rosalind Avenue, 3rd Floor, Orlando, Florida 32802.

6. The Parties agree to expeditiously execute any and all additional documents, if necessary, to effectuate this Agreement and the terms herein.

7. Upon the Effective Date of this Agreement, apart from the obligations and rights under this Agreement, the Parties do hereby release and forever discharge each other and all of their partners, agents, attorneys, employees, executors, administrators, heirs, assigns, and all persons acting by, through or in any way on behalf of the Parties, of and from any and all claims, debts, defenses, liabilities, damages, causes of actions, attorney fees, costs, or suits, which the Parties may now have or claim to have against the other Parties, or any one of them, whether known or unknown, and whether accrued or hereafter maturing, in law or in equity, arising out of or related to the matters referenced in the above Recitals, raised in the Interpleader Complaint, the Cross-Claim, or the Litigation, from the beginning of time to the Effective Date of this Agreement. Each releasing Party covenants and agrees not to commence or prosecute any action or proceeding against a released Party in violation of the foregoing releases. Each releasing Party warrants and agrees that such Party has not transferred or assigned any claim or cause of action released by the foregoing releases and will not do so. The Parties do not intend that this mutual release covers or pertains to any other beneficial interest that they may have, if any, in the Estate of Jane Ellen

Dershewitz or any other assets that may exist or are discovered in the future in which a Party may have a beneficial interest.

8. This Agreement does not constitute, and shall not be construed as, an admission by any Party of the truth or validity of any claims asserted or contentions advanced by any other Party.

9. Other than as set forth in item 2.a above, each Party shall bear its own attorneys' fees and costs, and the Parties waive and release any claims they otherwise have or may have had to such attorneys' fees and costs.

10. This Agreement is entered into in the State of Florida, and the Agreement and any rights, remedies, or obligations provided for in the Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Venue for any proceeding to enforce this Agreement shall be in the Middle District of Florida, and all the Parties submit to jurisdiction of the federal court in the Middle District of Florida.

11. This Agreement shall be construed as if all Parties jointly prepared it, and any uncertainty or ambiguity in the Agreement shall not be interpreted against any one Party.

12. This Agreement shall not be altered, amended, or modified by oral representation made before or after the execution of this Agreement. All modifications must be in writing and duly executed by all Parties.

13. If any action is brought, or if any motion filed in the Litigation, to enforce this Agreement, or if any action is brought in connection with any dispute arising out of this Agreement, the prevailing Party or Parties shall be entitled to recover attorney fees and other costs incurred in such litigation. **THE PARTIES AGREE THAT THEY WAIVE ANY RIGHT TO A JURY TRIAL IN ANY ACTION TO ENFORCE THIS AGREEMENT.**

14. Time is of the essence in the performance of this Agreement.

15. The Parties acknowledge that this Agreement is executed voluntarily by each of them, without duress or undue influence on the part of, or on behalf of any of them.

16. The Parties acknowledge that they have had adequate opportunity to review this Agreement prior to signing same and have had legal counsel review this Agreement. The Parties further acknowledge that they fully understand this Agreement and the effect of signing it.

17. This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties and the terms of the Agreement are contractual and not merely recitals.

18. There is no other agreement, written or oral, expressed or implied, between the Parties with respect to the subject matter of this Agreement and the Parties declare and represent that no promise, inducement or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

19. The individuals whose signature are affixed to this Agreement in a representative capacity represent and warrant that they are authorized to execute the Agreement on behalf of and to bind the entity on whose behalf the signature is affixed.

20. This Agreement may be executed in counterpart, with facsimile or electronic signatures or in portable document format (.pdf), including DocuSign, Adobe Sign, or other electronic signature, and all such counterparts shall constitute a single form of this Agreement. All Parties agree that a true and correct copy of this Agreement shall be as effective as the original.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW.**

IN WITNESS WHEREOF, the Parties hereto have caused this document to be executed on the last day set forth below.

Dated: _____

United Community Bank
By: _____
Its: _____

Dated: _____

Martin Dershewitz, as Personal Representative
of the Estate of Jane Ellen Dershewitz

Dated: 08/09/24



Stephen Bardy Aug 9, 2024 11:32 EDT
Pet Alliance of Greater Orlando, Inc.
By: Stephen Bardy
Its: Executive Director

Dated: _____

Orange County Animal Services
By: _____
Its: _____

SIGNATURES OF COUNSEL FOR THE PARTIES:


Dated: _____

E. Dylan Rivers, Esq., of Ausley McMullen, as
counsel for United Community Bank

Dated: _____

Carrie S. Robinson, Esq., of Tobin, Reyes,
Alvarez & Debaise, PLLC, as counsel for Martin
Dershewitz

Dated: 08/09/24



John M. Vernaglia Aug 9, 2024 11:54 EDT
John M. Vernaglia, Esq., of Shuffield, Lowman
& Wilson, P.A., as counsel for Pet Alliance of
Greater Orlando, Inc.

Dated: _____

Lee Bernbaum, Esq., of Orange County
Attorney's Office, as counsel for Orange County
Animal Services

IN WITNESS WHEREOF, the Parties hereto have caused this document to be executed on the last day set forth below.

Dated: _____

United Community Bank

By: _____

Its: _____

Dated: 09/08/24


Martin Dershewitz - August 15, 2024 10:23 AM ET

Martin Dershewitz, as Personal Representative of the Estate of Jane Ellen Dershewitz

Dated: _____

Pet Alliance of Greater Orlando, Inc.

By: _____

Its: _____

Dated: _____

Orange County Animal Services

By: _____

Its: _____

SIGNATURES OF COUNSEL FOR THE PARTIES:

Dated: _____

E. Dylan Rivers, Esq., of Ausley McMullen, as counsel for United Community Bank

Dated: 8/9/2024



Carrie S. Robinson, Esq., of Tobin, Reyes, Alvarez & Debaise, PLLC, as counsel for Martin Dershewitz

Dated: _____

John M. Vernaglia, Esq., of Shuffield, Lowman & Wilson, P.A., as counsel for Pet Alliance of Greater Orlando, Inc.

Dated: _____

Lee Bernbaum, Esq., of Orange County Attorney's Office, as counsel for Orange County Animal Services

IN WITNESS WHEREOF, the Parties hereto have caused this document to be executed on the last day set forth below.

Dated: _____
United Community Bank
By: Chris Towery
Its: Deputy General Counsel

Dated: _____
Martin Dershewitz, as Personal Representative
of the Estate of Jane Ellen Dershewitz

Dated: _____
Pet Alliance of Greater Orlando, Inc.
By: _____
Its: _____

Dated: _____
Orange County Animal Services
By: _____
Its: _____

SIGNATURES OF COUNSEL FOR THE PARTIES:

Dated: 08/13/24
E. Dylan Rivers, Esq., of Ausley McMullen, as
counsel for United Community Bank

Dated: _____
Carrie S. Robinson, Esq., of Tobin, Reyes,
Alvarez & Debaise, PLLC, as counsel for Martin
Dershewitz

Dated: _____
John M. Vernaglia, Esq., of Shuffield, Lowman
& Wilson, P.A., as counsel for Pet Alliance of
Greater Orlando, Inc.

Dated: _____
Lee Bernbaum, Esq., of Orange County
Attorney's Office, as counsel for Orange County
Animal Services