

Court Rules NJ Charities Must Follow Donor's Wishes or Return Money

by Christine M. Vanek on August 21, 2013

The Appellate Division of the New Jersey Superior Court recently clarified what happens when a charity receives a donation slated for a particular mission and then cannot fulfill the purpose of the gift. In these cases, the decision in *Adler v. SAVE* is clear —charities must return the funds.

The Facts of the Case

SAVE, A Friend to Homeless Animals, is a non-profit animal shelter located in the greater Princeton area. Bernard and Jeanne Adler, who were animal lovers and long-time supporters of the shelter, donated \$50,000 towards a capital building campaign that sought to construct a new facility. The Adlers maintain that their charitable gift was intended to create two rooms dedicated to the care of large dogs and elderly cats, for which the Adlers would also receive naming rights. The two sides never discussed what would happen if SAVE decided not to construct the planned facility.

After the plan faced setbacks, SAVE announced that it was merging with another charitable foundation. As a result, SAVE would not construct its new shelter at its original location, but rather construct a new, scaled back animal shelter in a different location. After learning of the new plan, the Adlers requested the return of their donation. After these attempts failed, the couple filed suit, alleging that SAVE violated a material aspect of their gift by deciding, without their knowledge or approval, to use the funds to construct a facility that did not meet their expressed animal-care conditions and would be located outside the original service region.

The Court's Decision

The Appellate Division concluded that a charity that solicits and accepts a gift for the express purpose of funding a particular aspect of the charity's mission is bound to return the gift when the charity cannot honor the donor's originally expressed purpose.

As further explained by the court, “Absent the donor's consent, the recipient of the gift is not at liberty to ignore or materially modify the expressed purpose underlying the donor's decision to give, even if the conditions that existed at the time of the gift may have materially changed, making the fulfillment of the donor's condition either impossible or highly impractical.”

“When, as here, the donor is alive and able to prove the conditional nature of the gift through his or her testimony and other corroborative evidence, a reviewing court's duty is

to enforce the donor's original intent, by directing the charity to either fulfill the condition or return the gift," the panel added.

As this case highlights, both donors and recipients should not only make it clear when funds are earmarked for certain missions, but also specify what will happen if the original purpose of the donation cannot be fulfilled.

If you have any questions about this case or would like to discuss the legal issues involved, please contact me, Christine Vanek, or the Scarinci Hollenbeck attorney with whom you work.