

# **Bond Case Briefs**

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## **MUNICIPAL TRUSTEE - MASSACHUSETTS**

### **The Woodward School For Girls, Inc. v. City Of Quincy**

**Supreme Judicial Court of Massachusetts, Norfolk - July 23, 2014 - N.E.3d - 2013 WL 8923423**

Income beneficiary of charitable trust brought action against trustee, seeking an accounting and asserting that trustee committed breach of its fiduciary duties to keep adequate records, invest trust assets properly, exercise reasonable prudence in the sales of real estate, and incur only reasonable expenses related to the management of the funds. The Probate and Family Court Department removed trustee as trustee and ordered trustee to pay nearly \$3 million judgment. Trustee appealed and beneficiary cross-appealed.

Following transfer from the Appeals Court, the Supreme Judicial Court of Massachusetts held that:

- Trustee' failure to follow investment advice was not per se breach of fiduciary duty;
- Failure to invest in growth securities was breach of fiduciary duty;
- Damages award calculation based on unrealized gains was inappropriate;
- Trial judge was not required to subtract from damages potential costs and expenses;
- Beneficiary was entitled to prejudgment interest from date of breach, rather than date of filing of complaint;
- Breach of fiduciary duty claim sounded in tort, rather than contract;
- Sovereign immunity was impliedly waived; and
- Action was not barred by doctrine of laches.

Trustee of charitable trust breached fiduciary duty of prudent investment pursuant to the Prudent Investor Act by failing to invest in growth securities, where, although it was the trustee of a trust with only an income beneficiary, trustee was still required to protect the trust's principal against inflation, and acting prudently in managing a charitable trust that benefited an institutional income beneficiary required considering the specific needs of the beneficiary in the short and long term and balancing prioritization of income with protection and preservation of the principal.

Sovereign immunity was impliedly waived, and therefore income beneficiary's failure to comply with requirements of Tort Claims Act in breach of fiduciary duty of prudent investment action against municipal trustee of charitable trust did not bar action, where, when trustee agreed to serve as trustee, it assumed fiduciary duties of that role, including the consequences for not fulfilling those duties, and Prudent Investor Act created a formal system of actionable guaranties and expected the same level of conduct from any trustee.