

August 6, 2018

Mark C. Fleming

BY E-MAIL AND FIRST CLASS MAIL

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Re: *Hatt v. Trustees of the Berkshire Museum*, No. 2017-P-1556 (Mass. App. Ct.)

Dear Nick:

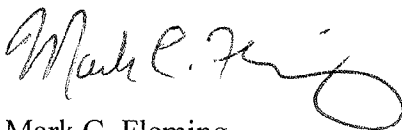
On behalf of the Trustees of the Berkshire Museum, I write to ask that your clients dismiss their appeal, because there is no substantial basis for pursuing it. Indeed, further pursuit of this appeal, which is foreclosed on several grounds and, indeed, is moot, would be frivolous.

On April 5, 2018, the Supreme Judicial Court for Suffolk County issued a judgment expressly authorizing the Berkshire Museum to sell up to 40 works subject to specific terms and conditions on the use of the proceeds. *See* Judgment, *Trustees of the Berkshire Museum v. Healey*, No. SJ-2018-065 (Mass. Apr. 5, 2018). The Supreme Judicial Court's judgment, to which the Attorney General assented, rested on the Court's authority under the doctrines of equitable deviation and *cy pres*. Your clients sought and obtained leave to file a brief and present oral argument in that proceeding. Accordingly, even if your clients had established their standing to sue (which they did not), and even if your clients had shown that the Superior Court abused its discretion in finding that the objects at issue were unrestricted (which they also did not), the Supreme Judicial Court has now expressly granted the Museum relief from any restrictions on the terms set forth in the Judgment.

Going forward with any further proceedings in this case, including oral argument, would be a waste of the Appeals Court's time and of the Berkshire Museum's resources. Your clients have no valid reason to require a public charity to incur the cost of preparing for and presenting argument in an appeal that is wholly insubstantial and frivolous. Accordingly, we once again request that your clients dismiss this appeal.

I would appreciate receiving your response on or before Friday, August 10, 2018.

Yours sincerely,



Mark C. Fleming