Memorandum

MIAMI-DADE COUNTY

Date: July 1, 2008

Agenda Item No. 12(A)(1)

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

R.A. Cuevas, Jr.
County Attorney

Subject: Final Mediated Settlement Agreement in the Estate of Donald R. Bergman

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Recommendation
It is recommended that the Board approve the attached Final Mediated Settlement Agreement in reference to the Estate of Donald R. Bergman, Broward County Circuit Court Case No. 07-5558(61) in the amount of $140,000 to Miami-Dade County and authorize the Mayor or his designee to execute the agreement and all other documents necessary to implement the agreement.

Scope
This Mediated Settlement Agreement arises from a Final Will and Testament of Mr. Donald R. Bergman.

Fiscal Impact/Funding Source
The agreement provides for $140,000 to be paid to Miami Metrozoo.

Track Record/Monitor
The County Attorney's Office facilitated and monitored the execution of the Final Mediated Settlement and will continue to do so in order to ensure that the funds are paid to Miami Metrozoo.

Background
Upon his death on November 7, 2007, Mr. Donald R. Bergman's Last Will and Testament (the "Will") provided for a cash sum of $275,000.00 to be given to his wife and for the remainder of his estate (personal property, with certain exceptions, money, and real property) to be divided evenly among: two (2) Greek Orthodox Churches and Miami Metrozoo.

Mr. Bergman's three (3) adult children objected to the validity of the Will and its admission into probate, claiming that their father had been mentally incapacitated at the time he executed the Will and sought to invalidate it. The court appointed a mediator and ordered the parties to attend a mediation conference. On Monday, May 19, 2008, a mediated settlement was reached whereby Miami Metrozoo shall be paid a total of $140,000 ($100,000 to be paid on or before August 15, 2008 and the remaining $40,000 to be paid on August 15, 2009 or whenever the condominium owned by the Estate of Donald R. Bergman is sold, whichever is sooner). The mediated settlement agreement specifically states that it is contingent upon approval by the Board of County Commissioners.

Attachments

Alex Muñoz, Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: July 1, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 12(A)(1)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(1)
7-1-08

RESOLUTION NO. _____

RESOLUTION APPROVING THE FINAL MEDIATED SETTLEMENT AGREEMENT IN REFERENCE TO THE ESTATE OF DONALD R. BERGMAN, BROWARD COUNTY CIRCUIT COURT CASE NO. 07-5558(61) IN THE AMOUNT OF $140,000 TO MIAMI-DADE COUNTY AND AUTHORIZING MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY TO IMPLEMENT THE AGREEMENT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Final Mediated Settlement Agreement ("Agreement") in the Estate of Donald R. Bergman, Broward County Circuit Court Case No. 07-5558(61), attached hereto, in the amount of $140,000 to Miami-Dade County and authorizes the County Mayor or his designee to execute the Agreement in substantially the form attached hereto, and to execute all other documents necessary to implement the Agreement, subject to the approval of the County Attorney's Office as to legal sufficiency.

The foregoing resolution was offered by Commissioner ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of July, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MR

Monica Rizo

IN THE CIRCUIT COURT IN AND FOR
BROWARD COUNTY, FLORIDA
PROBATE DIVISION: ROSS

IN RE: THE ESTATE OF

Case No. 07-5558(61)

DONALD R. BERGMAN,

Deceased.
_____/

FINAL MEDIATED SETTLEMENT AGREEMENT

The parties, Cheryl Conito Bergman (the "Wife"), individually and as Personal Representative of the Estate of Donald R. Bergman (the "Estate") (Broward Circuit Court Case No. 07-5558), St. Demetrios Greek Orthodox Church, located at 815 N.E. 15th Ave., Ft. Lauderdale, Florida, The Greek Orthodox Church of the Annunciation, located at 12250 N.W. 2nd Ave., Miami, Florida, Miami-Dade County Metrozoo, located at 12400 S.W. 152nd St., Miami, Florida, and Lori E. Bergman, Michael C. Bergman, and Scott S. Bergman (hereinafter referred to jointly as the "Children") agree as follows:

WHEREAS, the Wife has filed a Petition for Administration in Broward Circuit Court Case No. 07-5558(61); and

WHEREAS, the Last Will and Testament of Donald R. Bergman (the "Will") provides that the Wife is to receive all of Donald R. Bergman's furniture, furnishings, household effects, automobiles, and $275,000.00 in cash; and

WHEREAS, the Will provides that all other tangible property and jewelry possessed by Donald R. Bergman at the time of his death and all the rest, residue and remainder of his property are devised, in equal shares, to St. Demetrios Greek Orthodox Church, The Greek Orthodox Church of the Annunciation, and Miami-Dade County Metrozoo (hereinafter referred to jointly as the "Original Beneficiaries"); and

WHEREAS, the Will provides that the Children are to receive and take nothing from the Estate; and

WHEREAS, the Children have filed an objection to the probate and are challenging the Will; and

WHEREAS, all parties are competent, interested parties; and

WHEREAS, the parties desire and hereby agree to conditionally revoke the Will and probate order admitting the Will to probate:

The parties agree as a Mediated Settlement:

(1) The Estate shall pay St. Demetrios Greek Orthodox Church, The Greek Orthodox Church of the Annunciation, and Miami-Dade County Metrozoo a total of $420,000.00, payable in two (2) installments. The Estate shall pay the first installment of $300,000.000 from the Estate on or before August 15, 2008 and the second installment of $120,000.00 shall be paid by the Estate from the Estate on August 15, 2009 or whenever the apartment owned by the Estate of Donald R. Bergman and located at 4020 Galt Ocean Drive, Apt. #1106, Ft. Lauderdale, Florida (the "Apartment") sells, whichever date is sooner. Both installments shall be divided equally among the Original Beneficiaries so that each receives $100,000.00 by August 15, 2008 and $40,000.00 by the sooner of the following: August 15, 2009 or the date of sale of the Apartment. If the Apartment is not sold on or before August 15, 2009, then the Children shall pay, be personally responsible for, and shall guarantee, the payment of the remaining $120,000.00 to the Original Beneficiaries. This is a guarantee of funding from the Children to the Original Beneficiaries. The Children and the Wife shall be considered as donating the aforesaid sums in memory of the Bergman Family.

(2) The remainder of the Funds in the Estate and the remainder of the property of the Estate shall be distributed as follows:

a.) $275,000.00 payable to the Wife as an inheritance;
b.) $40,000.00 payable to the Wife for her loan claim in the Estate;
c.) $65,000.00 payable to the Wife as additional sums as an inheritance;
d.) $4,500.00 payable to the Wife's accountant and for income taxes;
e.) $10,000.00 to Dr. Caddy, for his expert witness services;
f.) $180,000.00 to the Children, payable in two (2) installments; and
g.) Any remaining funds to the Wife.

(3) The parties agree that the Children will receive $135,500.00 on or before August 15, 2008 (payable to Michael Bernstein Trust Account) but only after the Original Beneficiaries have been paid first. The Children shall receive the remaining $44,500.00 (the "Children's Second Installment") when the Apartment is sold. The parties agree that the Wife will receive $250,000.00 on or before August 15, 2008 and all remaining funds on or before August 15, 2009 or when the Apartment is sold, whichever date is sooner. In no event shall the Children and the Wife be paid the Children's Second Installment or the Wife's remaining funds until the Original Beneficiaries have been paid first. If the Apartment fails to sell by August 15, 2009, the Children will pay the Wife the sums set forth in 2(a), 2(b), 2(c), and 2(d) by said August 15, 2009. This is a guarantee of Funding from the Children to the Wife.

(4) The following shall be the order of priority of payment when the Apartment is sold:

a.) The first $120,000.00 will be payable in equal shares to the Original Beneficiaries;
b.) The next $150,000.00 will be payable to the Wife;
c.) The next $44,500.00 will be payable to the Children; and
d.) The remainder, if any, will be payable to the Wife.

If there is not enough money to pay the Original Beneficiaries, the Wife, and the Children, the parties must be paid in full in order of priority. For instance, if the Apartment is sold for $200,000.00, the Original Beneficiaries shall receive the full $120,000.00 from the proceeds of the sale of the Apartment, the Wife shall be paid the remaining $80,000 from the proceeds of the sale of the Apartment, and the Children will receive nothing. In addition, the Children shall pay the Wife the remaining $70,000.00 she is due.

(5) This Mediated Settlement is conditioned upon there being no other last will and testament of which the parties are aware.

(6) This Mediated Settlement is conditioned upon the approval of the Board of County Commissioners of Miami-Dade County, Florida.

(7) Upon acceptance and approval by Miami-Dade County, Florida and the Probate Court in Broward Circuit Court Case No. 07-5558, the Order Adjudicating probate will be revoked.

(8) The Wife shall continue as Personal Representative of the Estate. Upon each party receiving their respective total sums, each party shall execute receipts and waive all further proceedings to close the Estate.

(9) All parties will bear their own costs and attorneys' fees in relation to this matter.

(10) If any clause, phrase, portion, section, promise, or obligation contained in this Mediated Settlement Agreement is deemed to be unenforceable, null, void, or invalid, then the entire Mediated Settlement Agreement shall be deemed to be unenforceable, null, void, and invalid and no part thereof shall be binding on any of the parties.

(11) This Mediated Settlement Agreement constitutes full and final agreement between the parties and supercedes any prior oral or written agreements. There is nothing that the parties have agreed to that is not contained in this Mediated Settlement Agreement.

SIGNATURES:

Michael Bernstein, Esq.

Lori Bergman, for herself and on behalf of Michael and Scott Bergman

Joseph DeGance, Esq.

Cheryl Conito, individually and as Personal Representative of the Estate of Donald R. Bergman

John Ioannou, Jr., Attorney for the Churches

St. Demetrios Greek Orthodox Church

The Greek Orthodox Church of the Annunciation

Monica Rizo and Martin Sybblis, Assistant County Attorneys

Carlos Alvarez, Mayor or his designee
Miami-Dade County, Florida

Clerk of the Board
BOARD OF COUNTY COMMISSIONERS
FOR MIAMI-DADE COUNTY, FLORIDA

Signature Page to the Estate of Donald R. Bergman Mediated Settlement Agreement