

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

FRAN GOLDSTEIN, Individually and On Behalf of)
All Others Similarly Situated,)

Plaintiff,)

-against-)

BAYSIDE CEMETERY and CONGREGATION)
SHAARE ZEDEK,)

Defendants.)

Civil Action No.:

08 9920

CLASS ACTION COMPLAINT

Jury Trial Demanded

DEARIE, CH. J.
AZRACK, M.J.

Plaintiff, on behalf of herself and all others similarly situated, alleges as follows against Defendants Bayside Cemetery and Congregation Shaare Zedek on information and belief formed after an inquiry reasonable under the circumstances:

BACKGROUND ALLEGATIONS

1. It has been said that a Jewish cemetery is eternity in the eyes of Jews. According to Jewish law, burial grounds are sacred places in perpetuity. This is a consumer class action which concerns respect for the deceased (the Hebrew term being "kavod hameit"). This action is brought as a class action on behalf of all persons, or relatives of persons, who purchased a perpetual care or annual care contract from Defendants Bayside Cemetery and/or Congregation Shaare Zedek ("Defendants") or their agents or assigns (the "Class") from January 1, 1970 to present (the "Class Period").

2. While headstones at Bayside Cemetery read "Gone but not forgotten," Defendants have all but forgotten the cemetery and now refuse to honor perpetual care or annual care contracts which were entered into in accordance with New York and Jewish law. As a result, Bayside Cemetery is in deplorable condition. *The Jewish Week* news article entitled *Weeding Out An Eyesore* dated June 6, 2004 described the cemetery as follows:

much of the cemetery remains mired in overgrowth, and large swaths continue to look like rainforest, where fallen headstones are buried under vines, weeds, wildflowers and fallen trees.

3. Bayside Cemetery, located at 80-35 Pitkin Avenue, Ozone Park, New York (the “cemetery”), is one of the oldest Jewish cemeteries in New York City. The cemetery, founded in the mid-nineteenth century, includes the graves of Jewish veterans of the Civil War and subsequent conflicts. It is the final resting place for approximately 35,000 Jews.

4. In 1842, Congregation Shaare Zedek was located on the lower East Side of New York. It purchased the land at Bayside Cemetery for five percent of its congregation members and sold the remaining plots to individuals and burial societies.

5. In connection with the land it sold to individuals and burial societies, Defendants have routinely advertised and offered to the general public for sale perpetual care contracts to maintain land located at the cemetery. In addition to offering, selling and entering into perpetual care contracts concerning plots at the cemetery, Defendants have also offered, sold and entered into annual care contracts for plots at the cemetery. Perpetual care or annual care is a contractual undertaking to provide, in exchange for compensation, all general work necessary to keep one or more plots at a cemetery property in a presentable condition at all relevant times including, but not limited to: (i) the cutting of grass at reasonable intervals; (ii) raking, cleaning, filling, seeding, and/or sodding of graves; (iii) replacement, pruning, or removal of shrubs and trees; and (iv) prevention and removal of wild foliage growth in order to assure access to interment rights and grave visitation by surviving family, friends, and other interested parties.

6. Defendants used standard form contracts to enter into perpetual care or annual care agreements with consumers. Upon the purchase of a perpetual or annual care contract, Defendants recorded the appropriate information, issued necessary paperwork memorializing the

purchase of the contract and marked plots to identify those plots under perpetual care or annual care. For example, Defendants placed “stickers” with the embossed large black letters “PC” on headstones for which perpetual care had been purchased in order to be able to identify such plots.

7. Despite having received hundreds of thousands of dollars for perpetual or annual care for numerous graves, Defendants have not been maintaining plots for which perpetual or annual care has been purchased.

8. In an attempt to avoid their legal obligation to provide perpetual or annual care at the cemetery, Defendant Shaare Zedek has baselessly denied that it owns Bayside Cemetery. It further denied that it has any legal obligation to Plaintiffs or members of the Class.

9. Upon information and belief, Defendants have deliberately destroyed documents which identify perpetual care plots. Graves once marked with perpetual care stickers have had stickers removed or allowed to remain missing. Defendants destroyed these and other documents in order to now contend that they cannot identify which plots are governed by perpetual care contracts. The number of perpetual care stickers visibly present at the cemetery is entirely inconsistent with adjacent cemeteries of similar or identical age and other Jewish cemeteries in the surrounding area.

10. Notwithstanding the fact that Shaare Zedek received \$145,000 from United Jewish Appeal in 2005 and likely other substantial contributions from Jewish and other organizations, Defendants have repeatedly claimed that they lack the financial resources to maintain plots at the cemetery in accordance with their contractual obligations. *See* 2005 Form 990 Return of Organization Exempt From Income Tax. For United Jewish Appeal – Federation of Jewish Philanthropies of New York, Inc. Despite having advertised and offered perpetual care or annual care contracts for sale and accepted monies for decades, Defendants, including

Defendant Shaare Zedek which is now located on the Upper West Side and owns a multi-million dollar property, now contend that the cemetery should somehow become the responsibility of the broader Jewish Community. In their public statements, Defendants suggest that the perpetual or annual care monies they collected over the years have all been spent on the cemetery. That simply is neither true nor the entire story.

11. Defendants represented in contracts with consumers that they would not remove the principal of the perpetual care monies and use only interest income for upkeep. In the 1980s, however, Defendant Shaare Zedek was essentially defunct and suffered from a faltering budget. Statements recently made on behalf of the Defendants to the New York State Attorney General's Office make clear that the synagogue made a conscious decision to improperly remove principal monies originally intended for perpetual or annual care investments in violation of Defendants' fiduciary duties and contractual obligation. These monies were improperly taken from the perpetual/annual care account for the purpose of making significant structural repairs to the synagogue building, thereby using the money for the living and not the deceased as initially promised, represented and intended.

12. While Defendants now contend all of the improperly removed monies have been returned to the perpetual/annual care accounts, no formal, independent accounting has been conducted to show that all monies improperly removed, and earnings from those monies, have been entirely restored. Indeed, Defendants have refused to conduct such an accounting, claiming that they no longer possess or control adequate business records concerning perpetual care or annual care contracts for the cemetery. This statement is incredible since Section 92 of the Membership Corporation Law of New York, which Defendants incorporated by reference into their contracts with consumers, required Defendants to maintain this information. This Section

provides in relevant part as follows: “[t]he officers of the corporation shall keep accurate records of such funds separate and apart from its other funds.” Defendants have likely engaged in the systematic destruction of records concerning Bayside Cemetery and perpetual or annual care accounts for the purpose of concealing past behavior and avoiding liability.

13. For years, Defendants have marketed, sold and collected monies from consumers for perpetual or annual care knowing that perpetual and annual care contracts were not being honored and that they had no intention or inadequate resources to honor new perpetual care or annual care contracts. They did not disclose material facts to consumers concerning the perpetual/annual care fund’s financial strength, or lack thereof, at the time consumers purchased contracts during the class period. Moreover, when accepting monies during the class period Defendants led consumers to believe that perpetual care or annual care services would be provided when, in fact, Defendants had not been nor would be providing such services. For example, in 2001 the Chechonover Society paid annual care monies for seasonal care which the Defendants accepted. Defendants, however, refused to provide contractual services in whole or in part. *See The Jewish Week* dated October 18, 2002 entitled *The Cemetery Nobody Wants*.

14. Defendants also frustrated this organization and others from making their own repairs or maintaining their own plots at the cemetery. For example, the Chechonover Society attempted to repair head stones in their area. When the company the Chechonover Society paid to perform such services arrived at the cemetery, a cemetery official:

denied the company access, telling its workers there was too much overgrowth and it would not be safe.

See The Jewish Week dated August 1 2003 entitled *Frustration at Bayside Cemetery*. The Chechonover Society also could not access their sections as a result of garbage piles blocking their plots. Defendants have essentially turned a blind-eye to Bayside Cemetery and have

refused to assume responsibility for any activity which occurs on its property. When mausoleums at Bayside Cemetery were vandalized, Defendants did virtually nothing to restore the property in accordance with traditional Jewish law. Instead, Defendants relied on the good will of non-Jewish volunteers to return exposed remains to coffins and vaults. On August 1, 2003, *The Jewish Week* noted Defendants' failure to take corrective action reporting as follows:

For two months now, Leslie and Ralph Francisco have been leading a volunteer effort to re-entomb remains in more than 30 badly vandalized mausoleums at the Bayside Cemetery.

Three days a week, in summer heat, the husband-and-wife funeral directors have taken turns putting their own business needs aside and with a group of volunteers, most of them non-Jewish, taken on the messy work of returning bones to coffins and placing the coffins in vaults in the Ozone Park, Queens, burial ground.

For their work, Leslie Francisco says the couple have 'yet to get a thank you,' from Bayside's owner, Congregation Shaare Zedek.

Worse she says, the Upper West Side Conservative shul for weeks ignored their request for [d]umpsters.

'The last time I was at the cemetery I had to walk past mice – I won't do it anymore,' she said in an interview last week. 'There are bags and bags of garbage at the front gate. It's rotting piled in bags and attracting vermin. **We've spoken to [Shaare Zedek president Daniel Werlin] and [Councilman] Joe Addabbo has spoken to him, but it falls on deaf ears. He just gives lip service.**' *Id.* (emphasis added).

15. While Defendants have insisted "the cemetery is 'one of our top priorities' . . . [it has] been vague when questioned about what they are doing to improve the situation." *Id.* News articles in *The Jewish Week* document that many other individuals have been outraged by Defendants' refusal to maintain the cemetery in accordance with their contractual obligations and Jewish law. Indeed, one individual, Ms. Beth Rocke, took Shaare Zedek to Small Claims Court and prevailed on a breach contract theory in the amount of \$2,364.00. *See* *The Jewish Week* dated October 18, 2002 entitled *The Cemetery Nobody Wants*. It is noteworthy that Shaare

Zedek refused to pay the judgment and documents were issued by Ms. Rocke to Shaare Zedek's bank which paid the judgment.

16. In sum, Defendant Shaare Zedek has raided the perpetual and/or annual care accounts it has held in trust for the benefit of Bayside Cemetery. Defendant Shaare Zedek has stolen monies which it has inappropriately used for purposes other than those for which they were originally bestowed and intended. Each day Defendants refuse to restore monies, refuse to conduct a full and complete formal, independent accounting and refuse to honor perpetual care or annual care contracts they are complicit in the theft which has occurred. As a direct and proximate result of the foregoing, Defendants have falsely advertised perpetual and annual care contracts, engaged in deceptive conduct, violated their fiduciary duties, engaged in conversion and breached their perpetual and annual care contracts with Plaintiffs and hundreds or likely thousands of class members. Defendants' deliberate false statements and fraudulent conduct has resulted in the desecration of thousands of plots at the cemetery in violation of New York and Jewish law.

JURISDICTION AND VENUE

17. This Court has jurisdiction of this class action pursuant to the Class Action Fairness Act of 2005, which, *inter alia*, amends 28 U.S.C. § 1332 to add a new subsection (d) conferring federal jurisdiction over class actions, where as here, any member of a class of plaintiffs is a citizen of a State different from any defendant and the aggregate amount of the controversy exceeds five million dollars (\$5,000,000.00), exclusive of interests and costs. 28 U.S.C. § 1332(d)(2) and (6).

18. Venue is proper in this judicial district. During the Class Period, Defendants resided, transacted business, were found, or had agents in this district, and a substantial part of the events giving rise to Plaintiffs' claims occurred. A substantial portion of the affected

interstate trade and commerce described below has been carried out, in this District. Some of the Class members likely reside and purchased perpetual or annual care policies in this District and thereby sustained injury in this District. Defendants received substantial compensation from sales of such products in this District.

PARTIES

19. Plaintiff Fran Goldstein resides in New York State. Ms. Goldstein's family members/relatives are buried at Bayside Cemetery. Ms. Goldstein's family member(s)/relative(s) entered into one or more perpetual care contract with a Defendant. At times relevant herein, Defendants have failed and refuse to abide by their contract(s). See Exhibit "A".

22. Defendant Congregation Shaare Zedek ("Shaare Zedek") is a New York not-for-profit corporation with its principal place of business located at 212 West 93rd Street, New York, New York. Shaare Zedek is a multi-generational, egalitarian Conservative congregation on the Upper West Side of Manhattan purportedly embracing a traditional approach to contemporary Judaism. Shaare Zedek owns, operates, manages, maintains or controls Bayside Cemetery. During the class period, Defendant Shaare Zedek marketed and sold perpetual and annual care contracts, either directly or through its agents, to class members.

23. Defendant Bayside Cemetery is a legal entity which maintains its principal place of business at 80-35 Pitkin Avenue, Ozone Park, New York. During the class period, Defendant Bayside Cemetery marketed and sold perpetual or annual care contracts, either directly or through its agents, to members of the Class.

CLASS ACTION ALLEGATIONS

24. Plaintiff bring this action on her own behalf and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) and (b)(3) on behalf of the following Class:

All persons, or relatives of persons, who purchased a perpetual care or annual care contract from a Defendant or their agents or assigns from January 1, 1970 to present.

25. The Class excludes Defendants, their parents, subsidiaries, affiliates, officers, directors, agents, assigns and employees. Also excluded are any federal, state or local governmental entity, and any judge or judicial officer presiding over this matter, judicial staff, and the members of their immediate families.

26. Because information concerning the purchase and sale of perpetual care and annual care contracts is or should be in the control of Defendants, Plaintiff does not know the exact number of members of each Class. Due to the nature of the trade and commerce involved, Plaintiff believes that Class members number at least in the thousands and are sufficiently numerous and geographically dispersed throughout the United States so that joinder of all Class members is impracticable.

27. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff and all Class members were injured by the same wrongful conduct as alleged herein.

28. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual Class members. Such common questions include:

- (a) Whether the alleged conduct violates N.Y. Gen. Bus. Law § 350;
- (b) Whether the alleged conduct violates N.Y. Gen. Bus. Law § 349;
- (c) Whether the alleged conduct constitutes a breach of contract;
- (d) Whether the alleged conduct constitutes conversion;
- (e) Whether a formal accounting should be required;
- (f) Whether Defendants were unjustly enriched; and

(g) Whether Plaintiff and members of the Class are entitled to damages and the appropriate measure of such damages.

29. As the claims of Plaintiff are typical of the claims of the Class, and Plaintiff have no interests adverse to or which irreconcilably conflict with the interests of other members of the Class, Plaintiff are adequate class representatives.

30. Plaintiff will fairly and adequately protect the interests of the Class and have retained counsel experienced and competent in the prosecution of complex class action litigation. A class action is superior to other available methods for the fair and efficient adjudication of the controversy and substantial benefits will derive from proceeding as a class action. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not afford to individually litigate such claims against a large, well funded organization. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient group-wide adjudication of this controversy.

TOLLING OF APPLICABLE STATUTES OF LIMITATION

31. Any applicable statutes of limitation have been equitably tolled by Defendants' affirmative acts of fraudulent concealment, suppression, and denial of the true facts regarding the invasion of the fiduciary account(s) containing monies dedicated exclusively for perpetual care or annual care at Bayside Cemetery. Such acts of fraudulent concealment include intentionally covering up and refusing to publicly disclose critical documents and information concerning the deliberate invasion fiduciary account(s) containing monies dedicated exclusively for perpetual

care or annual care at Bayside Cemetery to class members, their families and the general public. Through such acts of fraudulent concealment, Defendants were able to actively conceal from class members and the public for years the truth about their deceptive practices, thereby tolling the running of any applicable statutes of limitation.

COUNT I

Action For Damages Under New York Gen. Bus. Law § 350

32. Plaintiff repeats and realleges each and every prior allegation contained in paragraphs 1 through 31 hereof with the same force and effect as if fully set forth herein.

33. N.Y. Gen. Bus. Law § 350 provides that “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.”

34. As more fully described above, Defendants’ advertisement and sale of perpetual and annual care contracts and the subsequent refusal to maintain the plots in accordance with those contracts constitute violations of N.Y. Gen. Bus. Law § 350.

35. Plaintiff and the Class seek damages for their injuries caused by these violations in an amount to be determined at trial.

36. Defendants’ willful acts and conduct, as described above, entitle Plaintiff and the Class to an award of damages.

COUNT II

New York Gen. Bus. Law § 349

37. Plaintiff repeats and realleges each and every prior allegation contained in paragraphs 1 through 36 hereof with the same force and effect as if fully set forth herein.

38. N.Y. Gen. Bus. Law § 349 makes unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

39. N.Y. Gen. Bus. Law § 349 (h) provides that “any person who has been injured by reason of any violation of this section may bring . . . an action to recover his actual damages or fifty dollars, whichever is greater”

40. Defendants engaged in deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349 which resulted in injury and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted. Defendants’ deceptive conduct caused highly vulnerable individuals who placed their trust in Defendants to pay monies for the perpetual or annual care for their own or family member’s plots located at cemetery. Defendants have failed to abide by these contracts and have allowed the cemetery to fall into a state of shameful disrepair.

41. Plaintiff and the Class seek actual damages for their injuries caused by these violations in an amount to be determined at trial. Without prejudice to their contention that Defendants’ unlawful conduct was willful and knowing, Plaintiff and the Class do not seek in this action to have those damages trebled pursuant to N.Y. Gen. Bus. Law § 349 (h). Plaintiff and the Class seek single damages with respect to this claim.

COUNT III

New York Gen. Bus. Law § 349-c

42. Plaintiff repeats and realleges each and every prior allegation contained in paragraphs 1 through 41 hereof with the same force and effect as if fully set forth herein.

43. N.Y. Gen. Bus. Law § 349 makes unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

44. N.Y. Gen. Bus. Law § 349 (h) provides that “any person who has been injured by reason of any violation of this section may bring . . . an action to recover his actual damages or fifty dollars, whichever is greater”

45. Defendants engaged in deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349 which resulted in injury and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted. Defendants' deceptive conduct caused highly vulnerable individuals who placed their trust in Defendants to pay monies for the perpetual or annual care for their own or family member's plots located at cemetery. Defendants have failed to abide by these contracts and have allowed the cemetery to fall into a state of shameful disrepair.

46. Defendants have knowingly directed and sold perpetual care or annual care contracts to individuals age sixty-five (65) years or older or otherwise engaged in conduct in willful disregard of the rights of individuals age sixty-five (65) years or older in violation of GBL 349-c.

47. Defendants' conduct caused individuals age sixty-five (65) years or older to lose monies for personal or family care in violation of GBL 349-c.

48. Plaintiff and the Class seek actual damages for their injuries caused by these violations in an amount to be determined at trial. Without prejudice to their contention that Defendants' unlawful conduct was willful and knowing, Plaintiff and the Class do not seek in this action to have those damages trebled pursuant to N.Y. Gen. Bus. Law § 349(h). Plaintiff and the Class seek single damages with respect to this claim.

COUNT IV

Breach of Contract

49. Plaintiff repeats and realleges each and every prior allegation contained in paragraphs 1 through 48 hereof with the same force and effect as if fully set forth herein.

50. Using standard form contracts, Defendants offered perpetual or annual care contracts for sale for at Bayside Cemetery or assumed legal rights and responsibilities for existing perpetual or annual care contracts concerning Bayside Cemetery.

51. Defendants accepted monies from Plaintiff or members of their family, Class members or persons in kinship with such individual(s) to provide perpetual care or annual care of certain plots at Bayside Cemetery.

52. Over the past few years, Defendants have intentionally removed perpetual care stickers from plots and refused to provide perpetual or annual care services in breach of their obligations under contracts entered into between Defendants and Plaintiff's family members as well as other Class members.

53. Defendants' refusals to honor perpetual care or annual care contracts have caused injury by allowing plots subject to such contracts to fall into complete disrepair.

COUNT V

Unjust Enrichment

54. Plaintiff repeats and realleges each and every prior allegation contained in paragraphs 1 through 53 hereof with the same force and effect as if fully set forth herein.

55. Defendants benefited from their unlawful acts through the payments for perpetual or annual care services which they have failed to provide. It would be inequitable for Defendants to be permitted to accept and retain the benefit of these payments designated for perpetual or annual care services, which were conferred by Plaintiff or her family and the Class members and retained by Defendants, when these Defendants refuse to provide such services.

56. Plaintiff and the Class members are entitled to have returned to each of them the amount of such overpayments as damages or restitution.

COUNT VI

Breach of Fiduciary Duty Against Defendants

57. Plaintiff repeats and realleges each and every prior allegation contained in paragraphs 1 through 56 hereof with the same force and effect as if fully set forth herein.

58. The Class members have suffered damages due to the Defendants' conduct as detailed above. The claims asserted herein against the Defendants are asserted on behalf of the Plaintiffs and Class members to recover from Defendants the damages sustained and to be sustained by Plaintiff and the Class due to the grossly negligent mismanagement of the funds entrusted to them for the perpetual or annual care of the cemetery plots and the improper or negligent handling of perpetual and annual care monies in violation of Defendants' fiduciary duties.

59. The conduct detailed above was not due to an honest error of judgment but to Defendants' conflicts of interest, gross, reckless, bad faith and/or willful disregard of their fiduciary duties and of the rights and interests of Plaintiff and members of the Class. Defendants' conduct cannot be justified as valid acts of business judgment because they engaged in, caused, or permitted, gross mismanagement and violated their fiduciary duties and their duties of due care, diligence and candor.

60. By reason of defendants' breaches, Plaintiff and Class members have sustained and will continue to sustain serious damage and irreparable injury, for which relief is sought herein.

COUNT VII

Aiding and Abetting Breaches of Fiduciary Duties Against Defendants

61. Plaintiff repeats and realleges each and every prior allegation contained in paragraphs 1 through 60 hereof with the same force and effect as if fully set forth herein.

62. Each of the Defendants breached fiduciary duties owed to Plaintiff and the Class in a willful manner as detailed above.

63. Each of the Defendants knowingly gave substantial assistance and encouragement to each other in committing the wrongful acts alleged above.

64. Each of the Defendants acted in concert with at least one other defendant to commit the breaches of fiduciary duties detailed above.

65. Plaintiff and members of the Class were injured as a result of the Defendants' conduct.

COUNT VIII

Conversion

66. Plaintiff repeats and realleges each and every prior allegation contained in paragraphs 1 through 65 hereof with the same force and effect as if fully set forth herein.

67. Plaintiff and members of the class provided Defendants with monies for placement in a trust with the understanding that monies would only be removed for the purpose of maintaining or making improvements to certain plots at Bayside Cemetery.

68. Defendants accepted receipt of these monies under these conditions and placed them in a trust fund.

69. Plaintiff and members of the Class had an ownership right or an immediate superior right of possession of these monies over Defendants.

70. By taking perpetual or annual care monies out of the fund without Plaintiff's and members of the Class's express authorization or consent and by holding or using these monies in a manner entirely inconsistent with the purpose originally given to the exclusion of the Plaintiff and members of the Class, Defendants have converted Plaintiff's and members of the Class' property.

71. Plaintiff and members of the Class have been denied right to their monies and have been injured.

JURY DEMAND

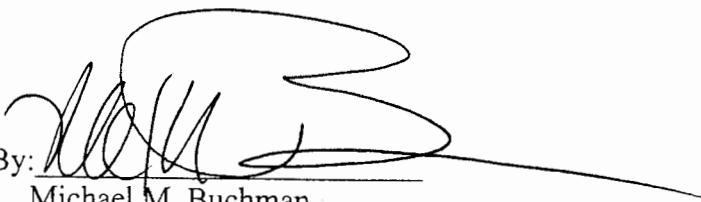
Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class members pray for judgment against all Defendants, jointly and severally, as follows:

- (a) awarding Plaintiff and the Class their actual damages from Defendants for Defendants' violation of N.Y. Gen. Bus. Law § 349 in an amount to be determined at trial;
- (b) granting Plaintiff and the Class the costs of prosecuting this action, together with interest and costs, pursuant to N.Y. Gen. Bus. Law § § 350 and 349;
- (c) awarding Plaintiff and the Class their actual damages from Defendants' breaches of contract;
- (d) declaring that the defendants have violated their fiduciary duties to the Class and/or aided and abetted each other in breaching those duties;
- (e) enjoining Defendants from using any perpetual care or annual care funds for any purpose other than perpetual or annual care of plots at Bayside Cemetery;
- (f) placing a constructive trust over any funds paid to Defendants for the perpetual or annual care of Bayside Cemetery plots;
- (h) requiring the Defendants to conduct a thorough and complete accounting of all perpetual and annual care monies held in their care, custody, possession or control for Bayside Cemetery at anytime since January 1, 1970; and
- (i) granting such other and further relief as this Court deems just and proper.

Dated: September 25, 2008
New York, New York

By: 

Michael M. Buchman
123 Harbor Road
Westport, Connecticut 06880
Telephone: (203) 557-4304

Counsel for Plaintiff

EXHIBIT A

TRUST FUND

RECEIPT

No. _____

CONGREGATION SHAARE ZEDEK, hereinafter called "CONGREGATION", a domestic religious corporation, of No. 212 West 93rd Street, Manhattan Borough, New York City, and the owner of BAYSIDE CEMETERY, Woodhaven (Ozone Park), Queens County, New York, hereby acknowledges the receipt of the sum of

Twelve Hundred Dollars

(\$ 1200.00), hereinafter called "FUND", from

Sol D. Levy

whose address is 260 Fort Washington Avenue, New York Cit

for the following uses and purposes;

Pursuant to Section 92 of the Membership Corporation law of New York, said sum shall be held as part of the Special Fund of the "CONGREGATION", maintained by it for the perpetual care of lots, plots or graves in Bayside Cemetery, and deposited by the "CONGREGATION" in its name in any State or Federal Savings Bank or Association paying interest thereon, or invested or re-invested by it for the purchase in its name of any Federal, State, Municipal or other Government certificates or bonds, or of other securities authorized by law for investment of Trust Funds.

The interest or income realized from the "FUND" shall be used toward the perpetual care and upkeep of the following lots, plots or graves of Levy Plot No. 13-A

located in said Bayside Cemetery, limited, however to the extent for which such interest or income derived therefrom will permit and pay, as provided for in Section 91 of the aforesaid Membership Corporation law, and without applying any part of the principal "FUND" for that purpose. PROVIDED, however, that the "CONGREGATION" will not allow, pay or apply in any year or be in any way responsible for a higher rate of interest on the principal sum of the aforesaid "FUND" than the average rate of interest it may receive in such year from its total perpetual care funds.

The "CONGREGATION" shall not be held responsible for any loss, depletion or deprecia-

of No. 212 West 93rd Street, Manhattan Borough,
New York City, and the owner of BAYSIDE CEMETERY,
Woodhaven (Ozone Park), Queens County, New York,
hereby acknowledges the receipt of the sum of

Twelve Hundred Dollars

(\$ 1200.00), hereinafter called "FUND", from

Sol D. Levy

whose address is 260 Fort Washington Avenue, New York Cit

for the following uses and purposes;

Pursuant to Section 92 of the Membership Corporation Law of New York, said sum shall be held as part of the Special Fund of the "CONGREGATION", maintained by it for the perpetual care of lots, plots or graves in Bayside Cemetery, and deposited by the "CONGREGATION" in its name in any State or Federal Savings Bank or Association paying interest thereon, or invested or re-invested by it for the purchase in its name of any Federal, State, Municipal or other Government certificates or bonds, or of other securities authorized by law for investment of Trust Funds.

The interest or income realized from the "FUND" shall be used toward the perpetual care and upkeep of the following lots, plots or graves of Levy Plot No. 13-A

located in said Bayside Cemetery, limited, however to the extent for which such interest or income derived therefrom will permit and pay, as provided for in Section 91 of the aforesaid Membership Corporation Law, and without applying any part of the principal "FUND" for that purpose. PROVIDED, however, that the "CONGREGATION" will not allow, pay or apply in any year or be in any way responsible for a higher rate of interest on the principal sum of the aforesaid "FUND" than the average rate of interest it may receive in such year from its total perpetual care funds.

The "CONGREGATION" shall not be held responsible for any loss, depletion or depreciation of the principal of said "FUND", or the value of any investment made therewith after it makes such deposit or investment.

IN WITNESS WHEREOF, THE "CONGREGATION" has caused this instrument to be subscribed by one of its officers and its corporate seal to be affixed this 16 day of July, 1967.

CONGREGATION SHAARE ZEDEK

By Barnet Kaprow L.S.
President

ATTESTED BY:

Benny Bronsky
Secretary

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS

On this 16 day of July, 1967, before me personally came Barnet Kaprow

to me known, who, being by me duly sworn, did depose and say; that he resides at No. 7 West 96th Street Borough of Manhattan, City and State of New York; that he is President of Congregation Shaare Zedek, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation, and that he signed his name thereto by like order.

Joseph L. Blum
Notary Public

JOSEPH L. BLUM
Notary Public, State of New York
No. 31,535,500
Qualified in New York County
Commission Expires March 30, 1968