

October 26, 2007

VIA ELECTRONIC FILING

The Honorable Raymond J. Dearie
Chief United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Lucker at. al. v. Bayside Cemetery and Congregation Shaare Zedek,
Civil Action No. 07 Civ. 3823 (RJD)(JMA)

Dear Chief Judge Dearie:

I represent Plaintiffs John R. Lucker, Elizabeth A. Lucker and Nancy L. Rousseau in the above-referenced consumer class action.¹ I write in opposition to Defendant Congregation Shaare Zedek's ("Shaare Zedek") request for leave to file a motion to dismiss. Defendant's request should be denied in its entirety for the reasons set forth below.

After this suit was commenced, Defendant publicly admitted *for the first time* in newspaper articles that it "*borrowed*" perpetual care monies from a purportedly "*non-restricted account*."² In its letter request to this Court, Defendant "does not deny that Bayside is [in] an unfortunate state of disrepair . . ."³ In an effort to avoid liability, Defendant requests leave to file a dismissal motion on three meritless grounds.

Before addressing the three grounds, it is important to note that the perpetual care account from which Shaare Zedek "*borrowed*" monies was clearly a "*restricted*" account. Defendant's public assertion to the contrary is incredible for two reasons. *First*, perpetual care contracts, which Defendant Shaare Zedek routinely prepared and issued, are entitled "Trust Fund Receipt."⁴ A trust fund, by its very nature, is a *restricted* account to which a fiduciary duty is owed. *Second*, the "Trust Fund Receipts" prepared and issued by Defendant incorporated by reference Section 92 of the Membership Corporation Law of New York, which required that Defendant keep perpetual care monies "separate and apart from its other funds." See Exhibit E. It further required that the money be invested and investment income "*used solely for perpetual*

¹ This action is brought on behalf of Plaintiffs individually and 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 from January 1, 1970 to present.

² See Exhibit A, The Jewish Week, *Bayside Cemetery Mess Lands in Federal Court*, dated October 5, 2007; Exhibit B, New York Daily News, *Bayside Cemetery Is a Disgrace, Suit Says*, dated October 4, 2007 (emphasis added).

³ Letter of Stephen M. Axinn, Esq., dated October 22, 2007, ("Def. Ltr.") at p. 2.

⁴ See Exhibits C & D.

care and maintenance of the lot or lots for which such income has been provided.” *Id* (emphasis added). These contractual terms, which are consistent with terms typically found in general perpetual care agreements, *prohibited the invasion of the corpus of the perpetual care trust account and prohibited the use of monies for any purpose other than perpetual care and maintenance of perpetual care plots at the cemetery.* Defendant’s admission that it invaded the corpus of the perpetual care trust to fix a synagogue roof constitutes a *per se* violation of law. Taken together, Defendant’s public admissions and the “Trust Fund Receipts” make liability as to the breach of fiduciary duty, breach of contract, false advertising, deceptive trade practice, unjust enrichment and conversion claims alleged in the detailed Class Action Complaint (“Complaint”) uncommonly clear.

Defendant’s “three principal grounds” for dismissal are not well based in fact or law for the following reasons:

Standing: Defendant concedes that “legal representatives of any person” who entered into a contract with a Defendant possesses standing. Def. Ltr., p 2. Plaintiffs possess such standing. Plaintiffs’ father was the primary Executor of Plaintiffs’ grandmother’s estate and Plaintiffs Elizabeth A. Lucker and Nancy L. Rousseau (formerly Nancy L. Berliner) are the alternate Executors.⁵ Plaintiff John Lucker is the personal representative of his father’s estate.⁶ Moreover, they possess standing to sue in New York for two additional reasons: (i) there is *no* privity requirement as to the false advertising/deceptive trade practice⁷ and there is a relaxed privity requirement for all other claims;⁸ and (ii) they are third-party beneficiaries under the perpetual care contract.⁹ Thus, Defendant’s assertion that Plaintiffs do not possess standing is factually and legally misplaced.

Statute of Frauds: Defendant would have this Court mistakenly conclude that it never entered into written perpetual care contracts with consumers and, therefore, the statute of frauds bars all contract claims. Def. Ltr., p. 2. Exhibits C and D demonstrate that Defendant routinely entered into *written standard form perpetual care contracts* with consumers as alleged in the Complaint. Complaint at ¶6. While Plaintiffs do not possess an actual copy of the contract in question, Chebra Shebath Achim Burial Society, the agent for Plaintiffs’ grandparents, confirmed in 1973 that it purchased such a contract for

⁵ See Exhibit F, Paragraph Third.

⁶ See Exhibit G, Paragraph 5.1.

⁷ There is *no* privity requirement for deceptive trade practice/false advertising claims under GBL §§ 349, 350. See *Blue Cross and Blue Shield of New Jersey, Inc. v. Phillip Morris, Inc.*, 178 F. Supp. 2d 198 (D.N.J. 2001) (no privity requirement for GBL 349); *In re Methyl Tertiary Butyl Ether (MTBE) Prod Liab. Litig.*, 175 F. Supp. 2d 593, *reconsideration denied*, 2001 WL 1042051 (S.D.N.Y. 2001).

⁸ See *Schwartz v. Greenfield, Stein & Weisinger*, 90 Misc. 2d 882, 396 N.Y.S.2d 582 (N.Y. Sup. 1977 (easing of “strict privity requirement” in New York in fiduciary cases where injury to third-party is foreseeable.)).

⁹ See *Burns Jackson Miller Summit & Spitzer v. Lindner*, 59 N.Y.2d 314, 464 N.Y.S.2d 712 (1983) (third-party beneficiaries have standing to sue if they establish: (i) the existence of a valid and binding contract between other parties; (ii) the contract was intended for their benefit; and (iii) the benefit is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate them if the benefit is lost.).

Plaintiffs' grandparents noting "we purchased perpetual care [for] the cemetery." Exhibit H. Defendants should possess and produce a copy of this contract during discovery.

Statute of Limitations: The statute of limitations has not run on Plaintiffs' claims in this case. Each day, Defendant continues to: (i) breach perpetual/annual care contracts; (ii) fraudulently sell perpetual/annual care contracts or accept such monies knowing it will not perform contractual services (false advertising/deceptive trade practices); (iii) breach its fiduciary duties by concealing the true nature and extent of the theft (breach of fiduciary duty); and (iv) breach their fiduciary duties by refusing to conduct an independent accounting (breach of fiduciary duty and conversion). If the Court believes one or more of the alleged violations is not continuing in nature, Plaintiffs alleged in paragraph 31 of the Complaint that Defendants fraudulently concealed that monies had been "*borrowed*" from the perpetual care account.¹⁰ Defendant, which owes Plaintiffs and members of the class a fiduciary duty, *for the first time* publicly disclosed *after* this suit was commenced that it "*borrowed*" money from the perpetual care account.¹¹ It is illogical for Defendant now to contend a claim alleged in the Complaint is time-barred when it has: (i) concealed information; (ii) denied Plaintiffs' repeated requests for documents; and (iii) publicly announced the theft *after* the commencement of this action.¹² Collectively, these acts constitute "affirmative steps" Defendant took to prevent Plaintiffs from discovering the legal claims alleged in the Complaint. *Id.*

Accordingly, Defendant's proposed motion to dismiss is a thinly veiled effort to unnecessarily burden this Court with a frivolous motion and impose delay and unwarranted expense. Plaintiffs' counsel is available, at the Court's convenience, to confer concerning Defendant's application for leave to file the proposed motion to dismiss.

Respectfully submitted,



Michael M. Buchman (MB-1172)

cc: Stephen M. Axinn, Esq. (Counsel for Defendant Congregation Shaare Zedek)

¹⁰ "The *sine qua non* of fraudulent concealment is that the defendant fraudulently concealed from the plaintiff his cause of action during the time in which plaintiff could have brought that action." *Barkley v. Olympia Mortgage Co.*, Civil Action No. 04 Civ. 875, 2007 U.S. Dist. LEXIS 61940 (E.D.N.Y. 2007) (Dearie, CJ).

¹¹ See Exhibits A & B.

¹² See Exhibit I.

EXHIBIT A

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The Jewish Week

SERVING THE JEWISH COMMUNITY OF GREATER NEW YORK

(10/05/2007)

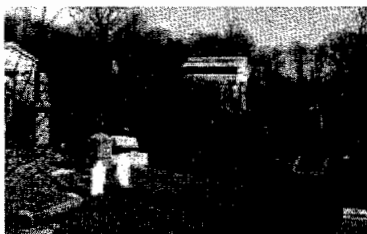
Bayside Cemetery Mess Lands In Federal Court

Class-action suit filed against Shaare Zedek alleges diversion of perpetual care funds.

Julie Wiener - Special To The Jewish Week

John Lucker, 46, fondly recalls visiting his late grandparents, Ruth and Harry Lucker, in the Midwood section of Brooklyn.

A year ago, shortly after his father passed away, Lucker — nostalgic about the Saturday nights he spent watching "I Love Lucy" with his grandparents — was inspired to pay another visit, this time to their final resting place.



What he found horrified him. Unlike the tidy two-family house of Lucker's childhood memories, his grandparents' current home at Bayside Cemetery in Ozone Park, Queens, was a mess, so overgrown with chest-high weeds and poison oak that he could barely see the headstones.

This in spite of the fact that the Luckers' burial society, Chebra Shebeth Achim, had purchased a perpetual care contract from the cemetery.

Together with his two sisters, Lucker, an accountant who lives in Simsbury, Conn., has filed a class-action lawsuit against Bayside and Congregation Shaare Zedek, the 175-family Upper West Side synagogue that owns the long-neglected historic cemetery, where a number of Civil War veterans are buried.

Among the allegations of their complaint, filed on Sept. 12 in the U.S. District Court in Brooklyn, are:

- Breach of contract, for failing to maintain plots for which annual and perpetual care policies were sold.
- Deliberately destroying documents that identify perpetual care plots "in order to now contend that they cannot identify which plots are governed by perpetual care contracts."
- Improperly diverting money from the cemetery perpetual care fund for use in the synagogue. "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."

The suit is being brought on behalf of all persons, or relatives of persons, who purchased a perpetual care or annual care contract from Bayside Cemetery and/or Shaare Zedek from 1970 to the present.

Shul Denies Wrongdoing

The synagogue's attorney, Stephen Axinn, has not yet filed a response and has until Oct. 22 to do so. However, in a press release issued this week, the congregation called the lawsuit "frivolous" and said it "utterly denies any wrongdoing in connection with its stewardship of Bayside Cemetery."

In an interview with The Jewish Week, Axinn denied that the 170-year-old synagogue, which has long claimed it lacks the resources to properly maintain Bayside, diverted money from the cemetery's perpetual care fund. However, he said that in the 1960s and '70s, when the congregation — like many other neighboring synagogues — fell on hard times, it did "borrow" money from the cemetery's general operating accounts and subsequently repaid its debts. Such a practice, he said, is "not at all unusual for charitable corporations, including religious corporations."

Shaare Zedek's fortunes rebounded in the 1990s as the neighborhood gentrified. Most of its current members, many of whom are in their 20s and 30s, have joined in recent years.

Because Shaare Zedek is a religious entity, it is not under the jurisdiction of the New York State Division of Cemeteries, which has intervened on behalf of other neglected burial grounds.

Shaare Zedek officials say the timing of Lucker's class-action suit is "ironic," because they

— in partnership with the Jewish Community Relations Council of New York, UJA-Federation of New York and the Hebrew Free Burial Society and apparently in cooperation with the New York State Attorney General's Office — are in the final stages of creating and hiring an executive director for the Community Association for Jewish At-Risk Cemeteries, a nonprofit organization that will be responsible for funding and managing the cleanup and maintenance of Bayside. Once Bayside's future is secured, CAJAC will also be charged with helping other neglected Jewish cemeteries in the tri-state area.

According to Gary Katz, first vice president of the Hebrew Free Burial Society and a board member of CAJAC, UJA-Federation has pledged over \$200,000 in seed money for the project: \$125,000 for a onetime cleanup effort, to be commenced once CAJAC's formation is complete, along with a two-year grant of \$40,000 — to be matched with money from a Shaare Zedek account designated for the cemetery — to help pay the salary of CAJAC's executive director, whom the group expects to hire by the end of December.

Synagogue officials did not disclose how much additional money they plan to invest in the new group's formation, nor would they say how much the congregation currently spends — from the synagogue budget and from accounts designated for Bayside — on maintaining the cemetery. Calls to the Attorney General's Office — which has been reviewing Shaare Zedek's management of Bayside Cemetery for several years — were not returned by press time.

Both Katz and David Pollock, the associate executive director of the JCRC, expressed dismay about the class-action lawsuit.

"This suit is totally unproductive and indeed counterproductive to the efforts of those of us who have worked for years to create a coalition to solve this problem," Katz said.

Pollock, who is also on the nascent CAJAC's board, said, "the litigation will prove to be disruptive to a process that's moving constructively."

'Once You're Inside It's An Adventure'

The plight of Bayside Cemetery — where many tombstones have toppled over, a thick overgrowth of vegetation obscures most graves and where many mausoleums have been vandalized — was documented extensively in The Jewish Week a 2002 article called "The Cemetery Nobody Wants."

That article spurred Shane Wamsley, a Mormon activist from Salt Lake City, to mobilized hundreds of Mormon volunteers for a multi-day cleanup project in June 2003. Soon after, several area funeral directors — led by Leslie and Ralph Francisco, who own a funeral home in Ozone Park — volunteered to re-entomb remains in Bayside's many vandalized mausoleums. However, the Franciscos soon grew disenchanted with Shaare Zedek for its lack of cooperation, particularly its unwillingness to provide Dumpsters in a timely fashion.

Other volunteers, including members of the Chechonoer burial society, have echoed the Franciscos' complaints that Shaare Zedek stymied their efforts to improve conditions at the cemetery.

While the 2003 cleanup brought some temporary improvements, conditions inside the cemetery are currently "worse than ever," said City Councilman Joseph Addabbo, who lives in and represents Ozone Park and has repeatedly complained about Shaare Zedek's failure to maintain Bayside Cemetery. While the perimeter and surrounding sidewalks of the cemetery are adequate, Addabbo said, "once you're inside, it's an adventure."

Lucker is not the first person to take legal action against Shaare Zedek and the approximately 35,000-plot Bayside, which has been neglected for decades. However, his is believed to be the first class-action suit and the broadest in scope.

The amount of damages sought is not specified in the complaint, and Lucker insists he is seeking no money for his personal gain. Instead, he says, he wants the defendants to "conduct independent, full and formal accounting and restore all monies that may have been improperly taken" as well as "pay monetary damages so the cemetery can be restored to a respectful condition and the contracts maintained in the future."

"In the end, I want the cemetery fixed up: renovated, restored and maintained so when you walk in what you see is a beautiful, ancient cemetery that's respectful and maintained in a matter of us would be proud to see," he said.

Legal Strategy

In a possible indicator of Shaare Zedek's legal strategy, officials there are downplaying the synagogue's ties to the cemetery. The recent press release it issued contends that Bayside Cemetery is "actually a collection of many sub-cemeteries, representing approximately 85 organizations," referring to the burial societies that purchased sections of the cemetery for their members' use.

"In fact, Shaare Zedek is the only organization to spend any significant money on [Bayside Cemetery's] upkeep, despite the fact that the synagogue is struggling financially, has no current members who either own a plot at Bayside or have a relative buried at Bayside, and most importantly, has only a small section of the cemetery associated with members of Shaare Zedek from previous generations."

With many records from Bayside and Shaare Zedek's past missing, it is not entirely clear what the relationship between the congregation and the numerous burial societies was: whether the societies were to be partners who shared long-term responsibility for maintaining their sections, as some officials with Shaare Zedek have contended, or whether they were essentially consumers purchasing plots with the understanding that the synagogue would manage and maintain the cemetery in perpetuity. Only a handful of the burial societies with sections at the cemetery are still in existence; the others dissolved as their members died.

Axinn, the congregation's attorney, said the congregation has deeds showing that the burial societies had the "obligation to maintain their plots."

Rabbi Julia Andelman, who has been Shaare Zedek's spiritual leader since July 2006, said she finds the current situation of the cemetery "very distressing" and "not in keeping with the values we hold of honoring the dead."

That's why, she said, "we've been working as hard as humanly possible in partnership with very prominent organizations ... to make real progress toward an actual solution," she said.

"I can't describe how many hours and how many brains have gone into engineering what's going to be a real solution," she said. "To divert that into a lawsuit ... is a step in the wrong direction."

Here is a list of other articles in this section

- [All Eyes On Myanmar](#)
American Jewish groups speak up for and volunteer to assist Burmese civilians hurt by the government crackdown.
- [Feminists Object, But ArtScroll Rolls On](#)
Women's siddur seen as retro; publishing success measured in sales and wide usage.
- [From Hillel To Hospital](#)
- [Guilt Is Good](#)
- [Jewish Institutions Get \\$19M In Fed. Security Grants](#)
Large share of congressional allocation suggests community targets are greater risk.
- [New, Inclusive Book Of Blessings](#)
Modern Orthodox volume balances Zionist, feminist, pluralist ideals within the boundaries of halacha.
- [Scrolling Through The Past](#)
At Shaaray Tefila, congregants mark each bar/bat mitzvah ceremony with a Czech sefer Torah that survived the Holocaust.
- [The New Russian Anti-Semitism](#)
In a troubling replay of Soviet life, tension is building in Brighton Beach between growing numbers of non-Jewish Russians and the dominant Jewish culture.

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EXHIBIT B



Bayside Cemetery is a disgrace, suit says

BY JOHN MARZULLI
DAILY NEWS STAFF WRITER

Thursday, October 4th 2007, 4:00 AM

John Lucker wept when he recently visited his grandparents' graves at Bayside Cemetery in Ozone Park, but the sadness and tears were provoked by the chest-high weeds obscuring the tombstone.

"It's like entering a forest," said Lucker, 46, of Connecticut. "The current condition of the Bayside Cemetery is a desecration of the memories and remains of the approximately 35,000 Jews buried there."

Lucker and his two sisters have filed a lawsuit in Brooklyn Federal Court accusing the cemetery operator - Congregation Shaare Zedek on Manhattan's upper West Side - of breach of contract for failing to maintain perpetual care of the plots. The suit seeks an accounting of cemetery finances and monetary damages.

But the 19-page complaint also contains serious allegations that Shaare Zedek "raided" accounts intended for the perpetual care of the cemetery to pay for repairs to the congregation's W. 93rd St. synagogue.

"It appears these monies were improperly taken ... thereby using the money for the living and not the deceased as initially promised, represented and intended," the complaint alleges.

The cemetery land, on Pitkin Ave., was bought in 1842 by Shaare Zedek when the congregation was on the lower East Side. The congregation sold most of the plots to individuals and burial societies.

Rabbi Julia Andelman of Shaare Zedek acknowledges the cemetery conditions are "very distressing," adding that many of the burial societies have disappeared or stopped contributing to the upkeep of the grounds.

Andelman said Shaare Zedek has accepted its "communal responsibility" to maintain the plots of earlier generations - no current member of the congregation has a plot there - but cannot afford to go it alone. She said it is setting up a nonprofit group to raise funds for the cleanup and maintenance.

"It's extremely counterproductive, what he's doing," Andelman said of the suit.

As to the allegations about misappropriated funds, Shaare Zedek's attorney Steven Axinn said some cemetery funds were borrowed from a nonrestricted account to repair the synagogue roof, which is entirely proper and legal. The money was repaid, he said.

jmarzulli@nydailynews.com

EXHIBIT C

CONGREGATION SHAARE ZEDEK

TRUST FUND

RECEIPT

CONGREGATION SHAARE ZEDEK, hereinafter called "CONGREGATION", a domestic religious corporation, located at 212 West 93rd Street, New York City, and the owner of BAYSIDE CEMETERY, Ozone Park, N.Y. (County of Queens) hereby acknowledges the receipt of the sum of: Four Thousand Seven Hundred Fifty Dollars

(\$4750.00), hereinafter called "FUND", from: [REDACTED]

whose address is: [REDACTED]

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 reinvested 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:

[REDACTED] Plot plus reserve graves
Graves of [REDACTED] - in [REDACTED] 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 1st day of February, 1988.

CONGREGATION SHAARE ZEDEK

By: Barnet Kaprow
President

ATTESTED BY:

Alan Talen
Secretary
Executive Director

STATE OF NEW YORK)
COUNTY OF NEW YORK

On this 1st day of February, 1988, before me personally came Mr. Barnet Kaprow

to me known, who, being by me duly sworn, did depose and say, that he resides at No. 7 West 96th St. 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.

Esther White

Notary Public

ESTHER WHITE
Notary Public, State of New York
No. 31-4746062
Qualified in New York County
Commission Expires March 30, 1989

Jan. 20, 1988

Mrs. Ethel Sheiker
Congregation Shaare Zedek
BAYSIDE CEMETERY
80-35 Pitkin Ave.
Ozone Park, N.Y. 11417

Dear Mrs. Sheiker:

As per our conversation, I am enclosing my check for \$4750.00 payable to Congregation Shaare Zedek, to cover the following:

Perpetual Care in Bayside Cemetery-
Plot plus reserve graves
Graves of

Ownership of the [redacted] and the other two [redacted] graves should be listed jointly as:

[redacted]
[redacted]
[redacted]
[redacted]

Please have copies of the contract receipt sent to all of the above. All correspondence should continue to be addressed to me, however.

Thank you again for your assistance in this matter.

Cordially,

[redacted signature]

032

EXHIBIT D

CONGREGATION SHAARE ZEDEK

TRUST FUND

RECEIPT

CONGREGATION SHAARE ZEDEK, hereinafter called "CONGREGATION", a domestic religious corporation, located at 212 West 93rd Street, New York City, and the owner of BAYSIDE CEMETERY, Ozone Park, N.Y. (County of Queens) hereby acknowledges the receipt of the sum of: Four Thousand Dollars

(\$4000.00), hereinafter called "FUND", from: [REDACTED]

whose address is: [REDACTED]

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 reinvested 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:

* Please refer to the bottom of the page.

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.

* Double grave - [REDACTED]
Child grave - [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] - Gate [REDACTED]

8 graves in all

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 14th day of January , 1993 .

CONGREGATION SHAARE ZEDEK

By Robert E. Pollack
President

ATTESTED BY:

Alan Taher
Administrator

STATE OF NEW YORK)
COUNTY OF NEW YORK

On this 14th day of January , 1993 , before me personally came Robert E. Pollack

to me known, who, being by me duly sworn, did depose and say, that he resides at No. 250 West 94th 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.

Felicia Roldan

Notary Public

FELICIA ROLDAN
Notary Public, State of New York
No. 03-4864533
Qualified in Bronx County
Commission Expires Dec. 29, 1994

CONGREGATION SHAARE ZEDEK

BAYSIDE CEMETERY

80-35 Pitkin Avenue

OZONE PARK, N. Y. 11417

TO [



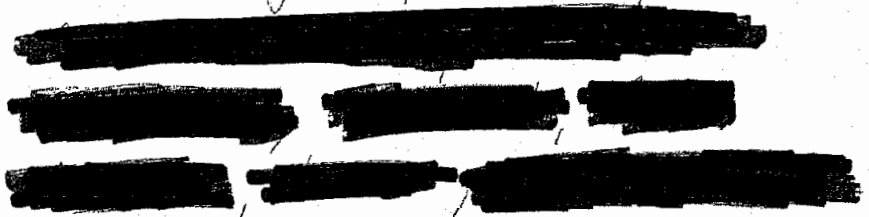
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12-21-92

Perpetual Care for graves



Cost of Per Care \$ 4000.00 -
over

Make out check payable to
Congregation Shalom Yeshiva

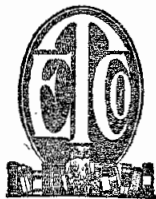
EXHIBIT E

THE CONSOLIDATED LAWS
OF
NEW YORK
ANNOTATED

Book 34
Membership Corporations Law

With
Annotations From State and Federal Courts

Kept to Date by Cumulative Annual Pocket Parts



Brooklyn, N. Y.
EDWARD THOMPSON COMPANY

such executor, trustee or administrator with the will annexed thereupon shall pay over to the treasurer of such perpetual care fund of such cemetery association any moneys remaining or being in his hands belonging to such trust, and upon making such payment and accounting therefor to the surrogate's court may be discharged from said trust as such executor, trustee or administrator with the will annexed.

Historical Note

Prior to the general amendment by L.1926, c. 722, the subject matter of this section was contained in former section 85 as added by L.1912, c. 315 and amended by L.1925, c. 75.

§ 92. Disposition of moneys paid for care of burial lots

Every cemetery corporation subject to the provision of this article, every other cemetery corporation or association and every religious corporation having charge and control of a cemetery, which heretofore has been or which hereafter may be used for burials shall keep, separate and apart from its other funds, all moneys and property received by it for the perpetual care of any lot in its cemetery. The funds so received shall be kept invested only in securities authorized by law for the investment of trust funds, and the income arising therefrom shall be used solely for the perpetual care and maintenance of the lot or lots for which such income has been provided. The officers of the corporation shall keep accurate accounts of such funds separate and apart from its other funds.

Historical Note

Prior to the general amendment by L.1926, c. 722, the subject matter of this section was contained in former section 87 as added by L.1924, c. 92.

§ 92-a. Designation of fiduciary corporation by directors or trustees of cemetery corporation to act as custodian of funds

Notwithstanding the provisions of any other law, the directors or trustees of cemetery corporations are hereby authorized to designate a bank or trust company to act as custodian and trustee of the funds of such cemetery corporation received by it for the perpetual care of lots in the cemetery thereof, and to expend and apply the income of the same to the perpetual care of the lots in such cemetery which are entitled thereto; and for which the funds so placed in trust were paid by the owners thereof. Such corporate trustee shall be designated by a resolution duly adopted by the board of directors or trustees and approved by a justice of the supreme court of the judiciary district in which the cemetery of said corporation is located; and the directors or trustees of such cemetery corporation may, with the approval of the justice of the supreme court, revoke such trust, and either take over such trust

EXHIBIT F

I, RUTH B. LUCKER, also known as RUTH LUCKER,
of the County of Kings, State of New York, do hereby make,
publish and declare this to be my Last Will and Testament,
hereby revoking all other Wills, Testaments and Codicils
heretofore made by me.

FIRST: I direct that all of my just debts, funeral
and administration expenses be paid as soon as may practicable
after my death.

SECOND: I give, devise and bequeath all the rest,
residue and remainder of my estate, real, personal or otherwise,
and wheresoever situated, hereinafter called my residuary estate
absolutely to my beloved son, JEROME R. LUCKER, if he survives
me, or if he predeceases me, absolutely to my dear grandchildren,
NANCY ELLEN BERLINER, ELIZABETH ANN LUCKER and JOHN RICHARD
LUCKER, share and share alike. If any of my said grandchildren
shall predecease me, her or his share shall be paid absolutely
to her or his issue me surviving, or in default thereof, her
or his share shall be paid to my surviving grandchildren or to
their issue, if any such other grandchild or grandchildren shall
have predeceased me.

THIRD: I nominate and appoint as the Executor of
this Will my son, JEROME R. LUCKER. Upon his death, failure to
qualify or other disqualification, I nominate my granddaughters
NANCY ELLEN BERLINER and ELIZABETH ANN LUCKER in his place and
stead. No bond or other security shall be required for any
reason whatsoever of my said Executor and his alternates.

FOURTH: I further desire and direct that the probate
proceedings in connection with his Will, all legal matters con-
nected with the settlement of my estate, the final accountings

EXHIBIT G

COPY

Last Will and Testament

OF

JEROME R. LUCKER

I, **JEROME R. LUCKER** of Brevard County, Florida, make this, my LAST WILL AND TESTAMENT, and revoke all prior Wills and Codicils.

ARTICLE I - IDENTIFICATION - FAMILY MEMBERS

1.1 Child or Children. I have three (3) children, **ELIZABETH LUCKER, NANCY ROUSSEAU, and JOHN LUCKER.** All references in this Will to my "child" or "children" are to said named child or children.

ARTICLE II - DEBTS AND EXPENSES

2.1 Debts and Expenses. I direct my Personal Representative to pay my funeral expenses, my medical expenses, any unpaid charitable pledges, the costs of administration, including ancillary, and such of my enforceable debts, other than those secured by property specifically devised under this Will or secured by property passing outside of this Will as my Personal Representative, with sole discretion, determines shall be paid.

ARTICLE III - SPECIFIC GIFTS

3.1 Personal Effects. (a) I devise all my clothing, jewelry, personal effects, furniture, furnishings, household effects, automobiles, boats and other tangible personal property (other than money), including insurance policies thereon, in accordance with a written list or memorandum which I may have executed and which is in existence at the time of my death. In the event of any conflict between such memorandum and any subsequent such memorandum, this Will, or any Codicil to this Will, then as to such conflict the provisions of the last executed document shall prevail. My Personal Representative shall conclude no written memorandum or list exists if none is found within 60 days after admission of this Will to probate.

(b) To the extent that all such property is not effectively disposed of by such written list or memorandum, or if no such list or memorandum exists, I devise such items, including insurance policies thereon, to my children who survive me, to be divided among them as they shall agree, or failing such agreement within 60 days after admission of this Will to probate, then as my Personal Representative shall determine. All reasonable costs of safekeeping, insuring and shipping my tangible personal property shall be deemed to be a general estate administration expense.

ARTICLE IV - RESIDUE

4.1 Residuary Pour-Over. I devise all the residue of my estate, but expressly excluding any property over which I have a power of appointment, to the Trustee under the Revocable Trust Agreement ("Trust Agreement") I previously executed today, to be administered in accordance with the terms of the Trust Agreement now constituted and from time to time hereafter amended. Provided, however, that if such Trust Agreement shall have terminated prior to my death, or by reason of my death, or if for any other reason distribution cannot be made to it, then I give said residue to my descendants who survive me, per stirpes.

ARTICLE V - FIDUCIARY APPOINTMENTS

5.1 Fiduciary Appointments. I appoint my son, **JOHN LUCKER,** to be Personal Representative under this my Will. No Personal Representative shall be required to furnish bond or other security in any jurisdiction.

EXHIBIT H

January 4, 1973

Seaside Cemetery

Dear Mrs. Lucker:

This is in reply to your letter regarding the Chebra Shebath Achim.

Seaside Cemetery

Yes, you are still a member on the society, and you still have your grave reserved next to your husband. I hope it will be many years yet before you use it.

The reason for making the distribution was because if this was not done while the members are alive to share it the money would eventually go to the State.



The Chebra is still alive, and will continue so until the last member passes away. After that, who knows what will be. That is why we purchased perpetual care of the cemetery.

Let me wish you a very Happy and Healthy New Year to you and your family.

With best regards, I remain

Sincerely,

Nathan Lipton
NATHAN LIPTON
PER W. Lipton
793 11th St
New York, N.Y.

Nathan Lipton
467 Central Park West
New York, N. Y. 10025

handwritten scribble

EXHIBIT I

Michael M. Buchman

From: michael b [michaelmbesq@yahoo.com]
Sent: Wednesday, January 10, 2007 2:36 PM
To: eklingsberg@cgsh.com
Subject: Re: Fwd: Shaare Zedek

Ethan,

One of the clients is traveling from out of state and is making travel arrangements to attend the meeting next friday with the Attorney General's office. We are assuming the meeting is going forward and would like to coordinate with the appropriate person at the AG's Office.

Would you please identify the name of the individual with whom we should be speaking and would you otherwise please respond to my email of last week concerning our continuing request for documents which have been provided to the AG's office.

If you would prefer, we can make a formal FOIL request and ask that the AG produce them to us the day of the meeting. Either way, we are entitled to the documents and are requesting them in order to have a meaningful discussion next week.

Please timely respond.

Michael M. Buchman, Esq.

michael b <michaelmbesq@yahoo.com> wrote:

Ethan,

It appears that more than one client will be attending the meeting with me at the AG's office.

Please identify with whom I should be corresponding concerning security clearance for admission to the AG's office.

In order to have a meaningful discussion, we previously requested copies of the documents you provided to the AG's Office. When we last spoke, you represented to me that the AG's Office suggested that you not provide those documents in advance of our meeting. Please advise whether you intend to provide us with copies of those documents and, if so, when we can expect delivery.

Looking forward to seeing you soon.

Note: forwarded message attached.

Michael M. Buchman

From: michael b [michaelmbesq@yahoo.com]
Sent: Friday, January 05, 2007 3:49 PM
To: eklingsberg@cgsh.com
Subject: Fwd: Shaare Zedek
Attachments: Shaare Zedek

Ethan,

It appears that more than one client will be attending the meeting with me at the AG's office.

Please identify with whom I should be corresponding concerning security clearance for admission to the AG's office.

In order to have a meaningful discussion, we previously requested copies of the documents you provided to the AG's Office. When we last spoke, you represented to me that the AG's Office suggested that you not provide those documents in advance of our meeting. Please advise whether you intend to provide us with copies of those documents and, if so, when we can expect delivery.

Looking forward to seeing you soon.

Note: forwarded message attached.

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>