

SUPREME COURT OF  
THE STATE OF NEW YORK  
COUNTY OF NEW YORK

STEVEN R. LEVENTHAL as representative of a  
class consisting of himself and all others  
similarly situated,

Plaintiff,

-against-

BAYSIDE CEMETERY, CONGREGATION  
SHAARE ZEDEK, and COMMUNITY  
ASSOCIATION FOR JEWISH AT-RISK  
CEMETERIES, INC.,

Defendants.

ANSWER

Index No. 100530/2011E

AXINN | VELTROP | HARKRIDER LLP

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

STEVEN R. LEVENTHAL as representative of a  
class consisting of himself and all others similarly  
situated,

Plaintiff,

v.

BAYSIDE CEMETERY, CONGREGATION  
SHAARE ZEDEK AND COMMUNITY  
ASSOCIATION FOR JEWISH AT-RISK  
CEMETERIES, INC.,

Defendants.

Index No. 100530/2011E

Hon. Debra A. James

**ANSWER**

Defendants Congregation Shaare Zedek and Bayside Cemetery, by and through their attorneys Axinn, Veltrop & Harkrider LLP, answer Plaintiff's Complaint upon information and belief formed after an inquiry reasonable under the circumstances as follows:

**PRELIMINARY STATEMENT**

1. Defendants deny each and every allegation contained in paragraph 1 of the Complaint, except that Defendants (i) admit that "according to Jewish law, burial grounds are sacred places in perpetuity and deserve to be respected"; (ii) admit that this action is purportedly "brought on behalf of all persons or entities who purchased a perpetual care or annual care contract from Defendants Bayside Cemetery and/or Congregation Shaare Zedek ("Defendants") or their agents or assigns," but deny that this action is properly brought as a class action under Article 9 of the CPLR; and (iii) admit that the final sentence of paragraph 1 of the Complaint

substantially accurately quotes a portion of a 2004 news article, but deny the allegations contained therein.

2. Defendants deny each and every allegation contained in paragraph 2 of the Complaint.

3. Defendants deny each and every allegation contained in paragraph 3 of the Complaint, except that they admit that the third sentence of paragraph 3 accurately quotes a portion of a 2009 statement by Shaare Zedek's then-rabbi.

4. Defendants deny each and every allegation contained in paragraph 4 of the Complaint.

5. Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.

6. Defendants state that the second sentence of paragraph 6 states a legal conclusion that does not require a response, but to the extent that a response is required, Defendants deny the allegation contained therein. Defendants otherwise deny each and every allegation contained in paragraph 6 of the Complaint.

#### **JURISDICTION AND VENUE**

7. Defendants admit that Congregation Shaare Zedek has its principal place of business in New York County. The other allegations of paragraph 7 of the Complaint state legal conclusions that do not require a response, but to the extent that a response is required, Defendants admit that the Court has jurisdiction over them and that venue is proper in this Court and otherwise deny the allegations contained in paragraph 7 of the Complaint.

#### **PARTIES**

8. Defendants deny each and every allegation contained in paragraph 8 of the Complaint, except that Defendants state that they lack knowledge or information sufficient to

form a belief as to the truth of the first sentence of paragraph 8 of the Complaint and Defendants admit the allegations contained in the second and third sentences of paragraph 8 of the Complaint.

9. Defendants deny each and every allegation contained in paragraph 9 of the Complaint, except that Defendants (i) admit that Congregation Shaare Zedek is a religious corporation organized and existing under the laws of the State of New York with its principal place of business located at 212 West 93<sup>rd</sup> Street and that Congregation Shaare Zedek is a multi-generational, egalitarian Conservative congregation on the Upper West Side of Manhattan embracing a traditional approach to contemporary Judaism; (ii) admit that Congregation Shaare Zedek owns, operates, manages, maintains and controls Bayside Cemetery, subject to deeds granting exclusive burial rights over portions of the cemetery to independent third parties, which third parties have certain contractual obligations to operate, manage, maintain and control those portions of the cemetery; and (iii) admit that Congregation Shaare Zedek received funds for the perpetual or annual care of graves in Bayside Cemetery from individuals who are members of the purported class described in paragraph 37 of the Complaint, but deny that such individuals constitute a class properly entitled to bring a class action under Article 9 of the CPLR.

10. Defendants deny each and every allegation contained in paragraph 10 of the Complaint, except that Defendants (i) admit that 80-35 Pitkin Avenue, Ozone Park, New York is the address of Bayside Cemetery; and (ii) admit that Congregation Shaare Zedek received funds for the perpetual or annual care of graves in Bayside Cemetery from individuals who are members of the purported class described in paragraph 37 of the Complaint, but deny that such individuals constitute a class properly entitled to bring a class action under Article 9 of the CPLR.

11. To the extent that paragraph 11 of the Complaint requires a response in light of the Court's decision and order dated January 9, 2012 (Motion Sequence No. 1) dismissing CAJAC from this action (the "CAJAC Dismissal Order"), Defendants deny each and every allegation contained therein, except that Defendants (i) admit the allegations contained in the first and third sentences of paragraph 11, (ii) admit that CAJAC has entered into at least one contract concerning Bayside Cemetery and (iii) state that they lack knowledge or information sufficient to form a belief as to the allegations contained in the fourth sentence of paragraph 11 of the Complaint (except as to the allegation that Mr. Katz is a member of Congregation Shaare Zedek, which allegation Defendants deny).

## **FACTS**

### **A. Facts Specific to All Defendants**

12. Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, except that Defendants admit that Bayside Cemetery is located at 80-35 Pitkin Avenue, Ozone Park, New York, that Bayside Cemetery was established in the mid-nineteenth century and that at least 30,000 individuals are buried at the cemetery.

13. Defendants deny each and every allegation contained in paragraph 13 of the Complaint, except that Defendants admit that, in 1842, Congregation Shaare Zedek's principal place of business was on the Lower East Side of Manhattan, that Congregation Shaare Zedek acquired the land at Bayside Cemetery in one or more transactions and that Congregation Shaare Zedek sold burial plots to individuals and burial societies.

14. Defendants deny each and every allegation contained in paragraph 14 of the Complaint, except that Defendants admit that they have entered into annual and perpetual care contracts with respect to plots in the cemetery.

15. Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, except that Defendants admit that they have, at times relevant to the Complaint, used a standard form “Trust Fund Receipt” to acknowledge payments in trust for the perpetual care of graves at Bayside Cemetery.

16. Defendants deny each and every allegation contained in paragraph 16 of the Complaint.

17. Defendants deny each and every allegation contained in paragraph 17 of the Complaint.

18. Defendants deny each and every allegation contained in paragraph 18 of the Complaint.

19. Defendants deny each and every allegation contained in paragraph 19 of the Complaint, except that Defendants admit the allegations contained in the second sentence of paragraph 19 and further admit that Congregation Shaare Zedek owns the property on which its synagogue building is now located on the Upper West Side of Manhattan and has worked with other Jewish communal organizations to formulate a long-term plan for Bayside Cemetery.

20. Defendants deny each and every allegation contained in paragraph 20 of the Complaint.

21. Defendants deny each and every allegation contained in paragraph 21 of the Complaint, except that Defendants state that all of the funds required to be held in trust for the perpetual care of graves at Bayside Cemetery are on deposit in appropriate trust funds as required by law. Defendants further admit that Trust Fund Receipts issued by Defendants cite to section 92 of the Membership Corporation Law.

22. Defendants deny each and every allegation contained in paragraph 22 of the Complaint.

23. Defendants deny each and every allegation contained in paragraph 23 of the Complaint, except that Defendants admit that paragraph 23 purports to quote a 2003 article in the Jewish Week and state that they lack sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.

24. Defendants deny each and every allegation contained in paragraph 24 of the Complaint, except that Defendants admit that vandalism has been a problem from time-to-time at Bayside Cemetery, as at other cemeteries.

25. Defendants deny each and every allegation contained in paragraph 25 of the Complaint, except that Defendants admit that paragraph 25 purports to quote a 2003 article in the Jewish Week and state that they lack sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.

26. Defendants deny each and every allegation contained in paragraph 26 of the Complaint.

27. Defendants deny each and every allegation contained in paragraph 27 of the Complaint.

**B. Facts Specific to CAJAC**

28. Without prejudice to their contention that paragraph 28 of the Complaint does not require a response in light of the CAJAC Dismissal Order, Defendants deny each and every allegation contained in paragraph 28 of the Complaint, except that Defendants admit that the original corporate name of CAJAC was “Friends of Bayside Cemetery, Inc.,” that members of Congregation Shaare Zedek acting in their individual capacities helped to form CAJAC, that CAJAC listed 212 West 93<sup>rd</sup> Street, which is Congregation Shaare Zedek’s address, as its

mailing address for purposes of incorporation and that Gary Katz and Ethan Klingsberg each became an officer of Friends of Bayside Cemetery, Inc.

29. Without prejudice to their contention that paragraph 29 of the Complaint does not require a response in light of the CAJAC Dismissal Order, Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint, except as to the first sentence of paragraph 29, which Defendants admit.

30. Without prejudice to their contention that paragraph 30 of the Complaint does not require a response in light of the CAJAC Dismissal Order, Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint, except that Defendants admit that Mr. Klingsberg is a former trustee-at-large of Congregation Shaare Zedek whose final term expired in 2009 and that Mr. Klingsberg served as chairman of the Congregation's cemetery committee at various points prior to approximately 2007.

31. Without prejudice to their contention that paragraph 31 of the Complaint does not require a response in light of the CAJAC Dismissal Order, Defendants deny each and every allegation contained in paragraph 31 of the Complaint, except that Defendants admit that they have not provided any funds to CAJAC related to the perpetual or annual care of graves at the cemetery or related to the allegations of this lawsuit.

32. Without prejudice to their contention that paragraph 32 of the Complaint does not require a response in light of the CAJAC Dismissal Order, Defendants deny each and every allegation contained in paragraph 32, except that Defendants admit that Congregation Shaare Zedek has publicly stated its desire to transfer ownership of the cemetery, as well as related trust



funds, to an independent, appropriately capitalized not-for-profit cemetery corporation at some point in the future.

33. Without prejudice to their contention that paragraph 33 of the Complaint does not require a response in light of the CAJAC Dismissal Order, Defendants deny each and every allegation contained in paragraph 33 of the Complaint, except that Defendants admit that they entered into certain agreements with UJA Federation of New York and CAJAC to allow a substantial UJA grant to be used to pay for a professional landscaping and restoration of Bayside Cemetery.

34. Without prejudice to their contention that paragraph 34 of the Complaint does not require a response in light of the CAJAC Dismissal Order, Defendants deny each and every allegation contained in paragraph 34 of the Complaint, except that Defendants admit that CAJAC entered into a contract with a landscaper to perform restoration work at Bayside Cemetery.

35. Without prejudice to their contention that paragraph 35 of the Complaint does not require a response in light of the CAJAC Dismissal Order, Defendants deny each and every allegation contained in paragraph 35 of the Complaint.

36. Without prejudice to their contention that paragraph 36 of the Complaint does not require a response in light of the CAJAC Dismissal Order, and their contention that paragraph 36 of the Complaint states legal conclusions that do not require a response (but with which Defendants disagree), Defendants deny each and every allegation contained in paragraph 36 of the Complaint, with the exception of the specific facts admitted in paragraphs 28-35 above, or those allegations with respect to which Defendants have stated above that they lack knowledge or information sufficient to form a belief as to their truth.

## CLASS ACTION ALLEGATIONS

37. Defendants admit that Plaintiff purports to bring this action as a class action as described in paragraph 37 of the Complaint, but deny that this action is properly brought as a class action under Article 9 of the CPLR or that the putative class described in paragraph 37 of the Complaint can properly be certified under Article 9 of the CPLR.

38. Defendants admit that Plaintiff purports to limit the putative class as described in paragraph 38 of the Complaint, but deny that the putative class, even so limited, can properly be certified under Article 9 of the CPLR.

39. Defendants deny each and every allegation contained in paragraph 39 of the Complaint, except that Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein with respect to Plaintiff's knowledge or beliefs.

40. Paragraph 40 of the Complaint states legal conclusions that do not properly require a response. To the extent, however, that a response is required, Defendants deny each and every allegation contained in paragraph 40 of the Complaint.

41. Paragraph 41 of the Complaint states legal conclusions that do not properly require a response. To the extent, however, that a response is required, Defendants deny each and every allegation contained in paragraph 41 of the Complaint.

42. Paragraph 42 of the Complaint states legal conclusions that do not properly require a response. To the extent, however, that a response is required, Defendants state that they lack knowledge or information sufficient form a belief as to the truth of the allegations contained therein.

43. Paragraph 43 of the Complaint states legal conclusions that do not properly require a response. To the extent, however, that a response is required, Defendants deny each

and every allegation contained in paragraph 43 of the Complaint, except that Defendants admit that Plaintiff's counsel is experienced and competent in the prosecution of complex class action litigation.

**TOLLING OF APPLICABLE STATUTES OF LIMITATIONS**

44. Defendants deny each and every allegation contained in paragraph 44 of the Complaint.

**COUNT I**

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

45. Paragraph 45 of the Complaint does not require a response in light of the Court's decision and order dated January 9, 2012 dismissing Counts I, II, III, V, VII and VIII of the Complaint (Motion Sequence No. 2) (the "Partial Dismissal Order"). To the extent that a response is nonetheless required, Defendants repeat and reallege each and every prior response contained in paragraphs 1 through 44 hereof with the same force and effect as if fully set forth herein.

46. Paragraph 46 of the Complaint does not require a response in light of the Partial Dismissal Order and further states a legal conclusion to which no response is required. To the extent that a response is nonetheless required, Defendants admit that paragraph 46 of the Complaint accurately quotes a portion of General Business Law § 350.

47. Paragraph 47 of the Complaint does not require a response in light of the Partial Dismissal Order and the first sentence of paragraph 47 further states a legal conclusion to which no response is required. To the extent that a response is nonetheless required, Defendants deny each and every allegation contained in paragraph 47 of the Complaint, except that Defendants state that they lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third and fourth sentences of paragraph 47.

