

CONGREGATION SHAARE ZEDEK

Est. 1837

212 WEST 93rd STREET
NEW YORK, N.Y. 10025
(212) 874-7005 FAX (212) 724-5316
E-Mail: office@sznyc.org

November 1, 2004

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Office of the Attorney General
Charities Bureau
120 Broadway
New York, New York
attn: Robert Pigott, Esq.
Robert Molic, Esq.

Re: Bayside Cemetery

Gentlemen:

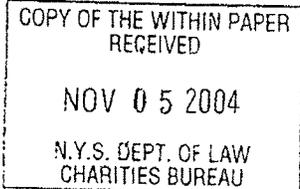
As representatives of Congregation Shaare Zedek, we write to follow up on recent conversations that Ethan Klingsberg of Cleary, Gottlieb Steen & Hamilton (CGSH) has had with your office about Bayside Cemetery. Prompt action will be needed to prevent a situation where the cemetery is left without any entity attempting to continue maintenance or operations.

1. Cemetery Funds

Pursuant to your request conveyed to CGSH and the Jewish Community Relations Council (JCRC), we have annexed to this letter:

- a list of each reference in the Bayside Cemetery financial statements to both a "perpetual care" payment and an expressly identified family name and plot that corresponds to such payment (There were 21 such references relating to an aggregate of \$26,700 in payments, based on a review of the Bayside Cemetery financial statements previously provided to you for the years ending December 1965 through December 2003); and
- a list of the actual perpetual care contracts that we have found in the files of Congregation Shaare Zedek (There were two such contracts relating to an aggregate of \$2,700 in payments).

This information has been compiled based on a review of (a) the financial statements prepared for the years ending on or after December 1964, and (b) the contracts that could be located at the synagogue or the cemetery. In addition, as described to you at a recent meeting, representatives of the JCRC conducted a limited review of the archival materials relating to the synagogue



and the cemetery in the archives of the Jewish Theological Seminary. We think that this was a reasonable review for purposes of identifying specific graves for which perpetual care payments have been made.

We understand that your office has considered the contents of this letter and whether there is any legal impediment to the payment of general operating expenses of Bayside Cemetery by drawing from the approximately \$400,000 of cash and \$20,000 of Israel bonds that are currently held in a segregated account for the benefit of Bayside Cemetery. We understand that it is the view of your office that a portion of such funds (representing the excess of the current \$420,000 of assets over the amount equal to the sum of (a) the amount of such assets that such review has expressly listed as being attributable to specifically identified graves for which perpetual care payments have been made plus (b) a reasonable cushion amount) may be treated by the synagogue or any other entity that may hold such funds (see 2 below) as general assets of the cemetery (*provided* that any entity holding such funds may also elect to place the funds in a perpetual care fund). Accordingly, we understand that it is the view of your office that the funds may be applied at any time and from time to time to the general operating expenses of Bayside Cemetery, *provided* that at least \$100,000 in cash or cash equivalents (representing \$29,400 attributable to perpetual care for specifically identified graves and a cushion amount of \$70,600) remains at all times in the segregated account for the benefit of Bayside Cemetery. We understand that your office will write a letter to us confirming these views. At this time, the general operating expenses of the cemetery do not cover special care of any particular grave, but are only applied toward payments for general maintenance activities, including the salaries of two caretakers.

2. Formation of a New Entity to Hold the Cemetery Assets

We understand that you are interested in facilitating the formation of a new corporation to hold the cemetery assets and that this corporation will have to be controlled by "members" with interests in the cemetery. At your request, we have compiled the attached list of entities that own plots at the cemetery. In our view, this list speaks to the fact that Bayside is really a collection of many sub-cemeteries, the owners of the vast majority of which are now unfortunately defunct. We have separated the defunct owners from the small number we are aware of that are currently functioning and presumably would be suitable candidates to be the requisite members and designate the corporation's board of directors.

We are of the view that this new corporation, under the supervision of the New York State Division of Cemeteries, will be far better equipped to manage the day-to-day operations of Bayside Cemetery. Absent a timely assumption of this responsibility by another entity with the necessary professional and financial resources (see 4 and 5 below), Congregation Shaare Zedek may need to reduce or curtail the current maintenance and operating schedule of Bayside Cemetery notwithstanding the ability to access the funds described in section 1 of this letter.

3. Title

As discussed, title to Bayside is far from clear. A new title search recently conducted at your request reveals that title to the southern portion of the cemetery is held by

“Shira Sadeck” and the northern portion is held by “Bayside Cemetery,” subject in both cases to the sales of sections of the cemetery to various societies. A copy of this title search was delivered to your office on October 15, 2004. As we have previously noted as well, other internal records, such as the map of the cemetery, indicate that most of the cemetery was previously sold to the societies and other organizations set forth in the attached list of entities.

4. Financing

We understand that the State Cemetery Board appears to be the applicable governmental body with authority to resolve the issue of whether and to what extent the new corporation would be able to access the State Vandalism Fund to finance the repair of vandalism damage and the repair and/or removal of monuments or markers not owned by the cemetery. CGSH has advised us that, while a religious corporation or a cemetery abandoned by a religious corporation may not access the Fund, the applicable law and regulations (in particular, Not-For-Profit Corporation Law Section 1507(h) and Rules of Procedure of State Cemetery Board Sections 200.11(d) (repair of vandalism) and 200.11(i) (repair of monuments), on their face, permit access to the Fund by the type of not-for-profit corporation that you have proposed without regard to the amount of previous contributions to the Fund by such not-for-profit corporation and even though the cemetery may have been transferred to the not-for-profit corporation by a religious corporation. We understand that lawyers at both CGSH and the JCRC are willing to continue to work with your office, the State Cemetery Board and other relevant officials on arriving at a basis for an appropriate interpretation of the law that would permit use of the Fund to finance the repair of vandalism damage and the repair and/or removal of monuments or markers not owned by the cemetery, thereby supporting the new corporation’s ability to finance urgently needed work at Bayside.

As outlined in greater detail in previous correspondence, other sources of financing for the new corporation would include private donations (which will be greatly facilitated once the face of Bayside becomes this new corporation), issuance of cemetery financing instruments, the sale of previously sold but unused plots (once the legal right to sell these plots, which are technically held by defunct entities, is clarified), increased ordinary course revenue made possible by a one-time, extraordinary cleanup and higher standards of maintenance, and the lease of some of the cemetery land for use as a cellular communications tower pursuant to a recent offer by T-Mobile.

For the synagogue’s part, we are eager to contribute any and all rights relating to the cemetery that we may have, including all rights relating to unused graves and other real estate at the cemetery and to the segregated funds discussed above.

5. Involvement of Cemetery Professionals

We continue to receive numerous requests from various organizations throughout the State of New York about how they can help clean up the cemetery. Anything that your office could do to help restart discussions with those individuals who are qualified to design and manage a large-scale, professional clean up plan would be greatly appreciated.

6. Release of Potential Shaare Zedek Liabilities

Finally, it has now become critical for the synagogue to remove the overhang that Bayside presents for us. Toward this end, we will be in touch with you about our interest in the commencement of discussions with you and any other interested parties as to what must be done (including the possibility of a monetary settlement) to permit the synagogue to put an immediate end to the current stalemate relating to whether the synagogue has any liabilities relating to Bayside notwithstanding our willingness to make the contributions referred to above in Item 4 and the significant amount of synagogue dues and resources that have been applied to Bayside.

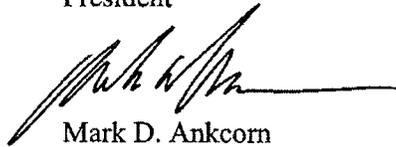
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We are very grateful for the considerable time and resources that your office has dedicated to this matter and for your efforts to devise, recommend and support constructive, interim and long-term proposals that are in the best interests of Bayside Cemetery, Congregation Shaare Zedek, those with relatives buried at Bayside Cemetery, the Jewish community of the State of New York, and the neighborhood in which Bayside Cemetery is located.

Very truly yours,



Joel M. Shaiman
President



Mark D. Ankorn
Rabbi of Shaare Zedek

cc: Marcia Eisenberg, General Counsel, Jewish Community Relations Council
Max Gitter, Cleary, Gottlieb, Steen & Hamilton
Charles Goldman, UJA-NY Federation
Michele Hirshman, Office of the Attorney General
Gary Katz, Delaware Street Capital, LLC
Ethan Klingsberg, Cleary, Gottlieb, Steen & Hamilton
Michael Knopf, MBIA, Inc.
Michael Miller, Jewish Community Relations Council
Rabbi Michael Paley, UJA-NY Federation
David Pollock, Jewish Community Relations Council
Hon. Eliot Spitzer
David Yudin, Cleary, Gottlieb, Steen & Hamilton

Year Ending December,	Name/plot Expressly Identified in Financial Statements	Amount
1965	Jacobs Mausoleum	\$3,500.00
1965	Siegfried Michaels Grave	\$350.00
1965	Henrietta Herman Kahn Graves	\$700.00
1965	Kirschenbaum – 2 Graves	\$700.00
1965	Wolfenstein Lot #8	\$1,000.00
1965	Taft Faber Lot	\$1,000.00
1965	Munstick Plot	\$750.00
1965	Adolph Alexander Grave	\$350.00
1965	Rosabelle Bienenfeld Grave	\$350.00
1965	Hebron Lodge Plot	\$4,000.00
1964	Levinson Graves	\$1,500.00
1964	Rudowsky Graves	\$350.00
1964	Finkelstein Graves	\$350.00
1964	Cohen Plot	\$2,500.00
1964	Epstein Plot	\$2,000.00
1964	Sperber Graves	\$1,050.00
1964	Kahn Graves	\$700.00
1964	Gluck Plot	\$2,500.00
1964	Lipsius Graves	\$700.00
1964	Gross Plot	\$1,750.00
1964	Orlios Plot	\$600.00

Total: \$26,700.00

Date of Contract	Counterparty	Amount
April 2000	Alexander Woodle & Lynda Moore	\$750.00
November 23, 1999	Elaine Zwicker	\$1,950.00

Total: \$2,700.00

List of Societies or Other Organizations Owing Plots in Bayside Cemetery¹

1. Cong. Mishkan Israel Anshe Suwalk
2. Kalwarya
3. Cong. Beis Abraham (Chevra Anshe Tristina)
4. Cong. Mishkan Israel Anshe Suwalk
5. Cong. Kol Israel Anshe Polen
6. Cong. Ohel Jacob
7. Chevra Anshe Stawisk
8. Chevra Agudas Auhim (United Brothers)
9. Chevra Bnai Lesle
10. Cong. Seinerier and Wilna
11. Kahal Adath Jeshurun
12. Cong. Beth Jacob Anshe Sholom
13. Cong. B'nai Peiser
14. Chebra Bnai Zedek
15. Lincoln Society of Friends
16. Hillel Benevolent Ass'n.
17. Scherper Society, Inc.
18. First Young Men's Cracow Ben. Ass'n.
19. Beth Hamedrash Hagodel
20. Anshe Makower of Polen
21. Doresh Tov Society (Dubrinsky)
22. Cong. Adereth El
23. Agudath Achim M'Plock Society
24. Sierpcer Chebra
25. King David Lodge (Free Sons of Isreal)
26. Old Mt. Sinai Grounds
27. United Hands M.B. Society
28. Chevra Anshe Radishkowitz
29. Simon Lodge – Washington and Roosevelt Lodge #70
30. Chevra Agudeth Bnei Anshei Kroz
31. Kalisher Benefit Society
32. Chevra Kedusha Oheil Yitzchok
33. Chevra Anshi Libowitz of Brooklyn
34. Chevra Ahatath Schulom Beth Aron (Beth Aron of Brooklyn)
35. Stuthiner Veanshe Grajevo
36. Beth Tefilath Israel
37. Dan Lodge #9 (King Solomon Lodge #28) (International Order of Free Sons of Israel)
38. Hebron Burial and Benevolent Society
39. Chebra Bnai Konin Zwei Amsterdam
40. Chebra Madrash Makower
41. Treue Bundes Bruder

¹ The names of these entities are derived from different lists and documents found in the synagogue's records. Some of these entities may be known under different names and therefore some of the names listed may be duplicative.

42. Cong. Bnai Jacob Titkin
43. Chevra Bnai Abraham Anshei Chechanover
44. Chevra Machziskei Tfillo Anshei Stuchiner
45. Anshe Emuno
46. Cong. Bikor Cholim
47. Cong. Lubowitz Weinzein
48. Netherland Society #2
49. Netherland Society #1
50. Chevra Shebath Achim
51. Chebra Kadish Beth Israel
52. Chebra Bnai Ephraim
53. Mariamopolen Cong.
54. Cong. Bnai Abraham
55. Chebra Bnai Israel
56. Hillel Lodge #43, Free Sons of Israel
57. Jersey City Lodge #50
58. Joseph Lodge #14
59. Cong. Bnai Israel Kalwayer
60. Kadaska Bnai Abraham
61. Beersheva Benevolent Society
62. Palestina Lodge #36 – Free Sons of Israel
63. French Society
64. Hospital Ground Shaare Zedek
65. Akiba Eger Lodge #31
66. Chebra A.A.M. Plazk
67. Jubiläum Lodge K.S.B.
68. Chebra B.A. Weishweiser
69. Chebra Mashzikel Torah Memorial Sinai Congregation
70. N.Y. Hebrew (Mutual) Benevolent Society
71. Members of Suwalker Congregation #1
72. United Brethren M.B. Aid Society
73. Asher Lodge #13 – Free Sons of Israel
74. Kutno Society (B'nai Jacob)
75. Chebra Schaumei Shaboz Williamsburg
76. Temple Israel of Harlem Hand & Hand
77. Biezoner Chebra
78. Moses Montefiore Ben. Society
79. Simon Ben. Ass'n
80. Yorkville Lodge
81. United Israel Lodge #33 K.S.B.
82. Benjamin Ass'n
83. Prushnitzer Chevra
84. Order Brith Abraham
85. Chebra Kad. Abraham Ohel Jacob
86. Sheris Israel Cong. I.A. Stawisk
87. Royal Lodge I.O.S.B. Akiba Eger Lodge S.B.

88. Cong. B.I.S. Sammet Sulanter Chevra
89. Cong. A.B.K.A. Kraz
90. Nashielker
91. 1st Yassir Congregation org. dedicated 11/6/10
92. Abraham Lincoln Lodge
93. Chebra Oroch Chaim Radoshkowarts
94. Cong. Bnai Abraham
95. Cong. S.A. Libswitz
96. Gnesner Benevolent Society
97. Jersey City Lodge #30
98. Malawer Chevra
99. Rosh Chodesh Cong. Ver Chevra Mikra Chodesh Betitsva RoshChodesh Ayar 5636
100. Scherpzer Chevra Gemlith Chasadim 5654
101. Scherpzer Lodge No. 31 – Free Sons of Israel
102. Sinai Benevolent Ass'n
103. B'nai Abraham Tristina Society
104. Joshua Lodge
105. Kadusha Beth Israel
106. Libowitz of Winezen
107. Reuben RFD
108. Royalite Association, Inc.
109. Sneer Shul Society
110. Ticktiner Society
111. Yorkshire Lodge (Franklin D. Roosevelt)
112. Anshe Lubz—Russian
113. Zemack Zedek

Entities Confirmed to be in Existence (as of October 2004)

1. Hebrew Free Burial Society
2. Chernikover Society
3. United Brothers Society (contact: Bernard Bornstein, 718-507-1524)
4. Chechanower (contact: Joel Fried, 516-796-1809; Howard Fried, (212) -529-7282)

We understand that your office's position, as set forth in the letter to which this annex is attached, has been adopted after considering the information conveyed in the letter and this annex, as well as information previously discussed or conveyed in documentation delivered to your office. This information includes the reference in the Bayside Cemetery financial statements to a balance sheet liability named "Perpetual Grave Care" that has steadily grown since the 19th century, the reference in some of these financial statements to a line item named "additions to perpetual care" in the reconciliation of Bayside Cemetery's year on year net worth, and the existence of archival ledger books and related materials that appear to include references to "perpetual care" and the names of families. In addition, we understand that you are aware of the significant limitations applicable to the review to date of relevant ledger books, documents and archival materials, including the absence of any professional forensic legal or accounting review.

For the avoidance of doubt, we note that we reserve our rights relating to the funds held for the benefit of Bayside Cemetery and all other matters relating to Bayside Cemetery. In addition, nothing in the attached letter is intended to imply that Congregation Shaare Zedek has assumed obligations or has any other liability relating to Bayside Cemetery, including without limitation, any obligation to hold or use any funds on behalf of the cemetery, or that your office necessarily has jurisdiction over Congregation Shaare Zedek or Bayside Cemetery. We acknowledge that your office has similarly put these issues to the side at this time, but reserves its rights in this regard.

