

RUSSELL M. STEINTHAL
(212) 728-2207
RMS@AVHLAW.COM

AXINN, VELTROP & HARKRIDER LLP
114 WEST 47TH STREET NEW YORK, NY 10036
TEL: 212.728.2200 FAX: 212.728.2201

1330 CONNECTICUT AVENUE, N.W. WASHINGTON, DC 20036
TEL: 202.912.4700 FAX: 202.912.4701

90 STATE HOUSE SQUARE HARTFORD, CT 06103-3702
TEL: 860.275.8100 FAX: 860.275.8101

www.avhlaw.com

October 12, 2011

VIA ELECTRONIC FILING SYSTEM AND OVERNIGHT DELIVERY

The Honorable Debra A. James, J.S.C.
Supreme Court of the State of New York - New York County
Part 59
71 Thomas Street
New York, NY 10013

Re: Lucker et al. v. Bayside Cemetery et al., Index No. 114818/2009E
Leventhal v. Bayside Cemetery et al., Index No. 100530/2011E

Dear Justice James:

I write as counsel to Defendants Congregation Shaare Zedek and Bayside Cemetery (collectively "Shaare Zedek") in the above-referenced actions in response to the letter from Plaintiffs' counsel to the Court dated October 11, 2011.

Shaare Zedek strenuously denies the allegations in Plaintiffs' counsel's overwrought letter, particularly the claim that the *Lucker* judgment was "procured by fraud upon the Court" or that Shaare Zedek or its counsel made any "deliberate misrepresentations." However, the sole purpose of this letter is to respectfully suggest to the Court that the relief requested by Plaintiffs' counsel on page 4 of his letter must be preceded by a motion on notice to all parties. *See* CPLR 5015 ("The court which rendered a judgment may relieve a party from it upon such terms as may be just, *on motion of any interested person* with such notice as the court may direct," based on specified grounds) (emphasis added).

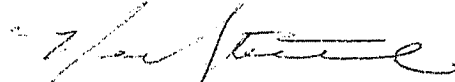
Indeed, the undersigned had already agreed with Plaintiffs' counsel as to a stipulated schedule for briefing a motion for reargument limited to the issue of Mr. Lucker's status as an executor, as referenced on page 2 of Plaintiffs' counsel's letter. We trust that, if Plaintiffs decide

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to proceed with their broader attempt to have the judgment vacated, they will similarly serve formal motion papers seeking such relief, and we will certainly oppose the motion at that time. If, however, the Court were to deem the request for *sua sponte* relief to be equivalent to a notice of motion, we respectfully request the opportunity to provide the Court with a responsive memorandum and to be heard prior to the Court's determination of Plaintiffs' request.

Finally, as to Plaintiffs' request to permit discovery in the *Leventhal* action to proceed, we respectfully submit that such a decision would be premature pending the Court's determination of the motions to dismiss that are currently *sub judice*. With the limited exception described in our letter dated October 10th, Shaare Zedek continues to stand by each and every argument contained in its briefs, which provide multiple independently adequate grounds for dismissing the *Leventhal* action. There is, therefore, no cause to lift the CPLR 3214(b) discovery stay.

Respectfully submitted,



Russell M. Steinthal
*Attorney for Defendants Congregation
Shaare Zedek and Bayside Cemetery*

cc: All Counsel (via NYSCEF)