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Bayside Case Goes To New Court



Ozone Park community volunteers clean the sidewalk around Bayside Cemetery and adjacent cemeteries during an Oct. 25 cleanup.

by Julie Wiener
Associate Editor

After two years with little progress in federal court, a class-action lawsuit against the long-neglected Bayside Cemetery and its owner, Congregation Shaare Zedek, has been moved to New York State court.

And this time, the plaintiffs — who have added the fledgling Community Association for Jewish At-Risk Cemeteries (CAJAC) to the list of defendants — plan to “push the case more aggressively.”

“We were accommodating in the federal case,” said John Lucker, whose grandparents are buried in the historic Jewish cemetery. “We’re not as inclined to be this time.” Lucker’s pro bono attorney, Michael Buchman — who also has relatives buried at the Ozone Park, Queens, cemetery — said this time he plans to seek an injunction to “force the defendants to start taking care

of the perpetual care plots as they’re contractually obligated to do.”

Like the previous lawsuit, which last month Judge Raymond Dearie ruled did not fall within federal jurisdiction, the new one accuses Shaare Zedek and Bayside of breach of contract, breach of fiduciary duty, stealing perpetual and annual care monies and false advertising.

“The deplorable condition of the cemetery is entirely the result of Defendants’ unlawful conduct,” the suit argues

But why add CAJAC, a group that is overseeing a cleanup effort at Bayside?

“CAJAC is a straw man created to absolve Shaare Zedek of liability,” said Buchman, noting that CAJAC’s original name was Friends of Bayside Cemetery and that it initially shared a mailing address with Shaare Zedek.

Not surprisingly, CAJAC board members — and officials at UJA-Federation of New York, which is providing startup funds to CAJAC — vehemently disagree.

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"The concept behind CAJAC is to solve the larger Jewish cemetery problem," said Gary Katz, a White Plains investment manager who is the group's president. Modeled on the Jewish Cemetery Association of Massachusetts, a 25-year-old nonprofit that owns and manages more than 100 cemeteries in the Boston area, CAJAC's mission is to find long-term funding and maintenance solutions for Jewish cemeteries in the New York area and possibly beyond.

Katz notes that many Jewish cemeteries — while in relatively good condition now — risk being neglected once they fill all their graves and can no longer depend on revenues from grave sales and burial fees.

"Conceptually, many cemeteries inadvertently work like Ponzi schemes," said Katz, who is also on the board of the Hebrew Free Burial Association. "When they're still operating, people think everything is covered by perpetual care, but when the last grave is filled and the office closes, what happens? ... You have to ask the cemetery owner, 'Do you have a plan?' Because the perpetual care fund is not allowed to be used for hiring staff or for [other maintenance], so who's gonna do it?"

Since the end of July, CAJAC has operated without any paid staff; Katz says he hopes to hire a full-time lead professional by the end of this year. UJA-Federation is contributing \$120,000 over two years to help fund the position.

Howard Feinberg, a former senior staff member at the United Jewish Communities, was part-time consulting director for CAJAC for nine months, until late July 2009, and now serves on the board. His position also was funded by UJA-Federation.

While CAJAC hopes to take on the entire Jewish cemetery landscape, the situation at Bayside, meanwhile, remains far from solved.

A UJA-Federation-funded \$145,000 cleanup effort begun in May is now several months behind schedule, and piles of woodchips for mulch — along with chopped-down trees awaiting chipping — are strewn about the 30,000-plot cemetery, covering a number of graves.

Many areas that had been cleared of weeds this summer are fast becoming overgrown again.

Katz attributes the problems to the unusually rainy conditions this summer.

"You can't operate a wood chipper when things are wet," he says, adding that landscapers applied herbicide four times to weed-infested sections, but "it washed out and there's been a lot of regrowth."

Buchman counters that the two cemeteries adjacent to Bayside "used the same herbicide and look a lot better."

Asked if UJA-Federation is concerned about the cleanup delays, Alan Cohen, senior director of Strategic Planning and Organizational Resources sent an e-mail response through the federation's media department: "Given the years of growth, we expect that it will take more than a few months to totally clean up the cemetery. We believe that CAJAC is focused on achieving sustainable results and believe their leadership is keeping their eye on the goal."

Asked about allegations that CAJAC is a straw man, he wrote, "We believe that CAJAC was founded to repair, preserve, and protect 'orphaned' Jewish cemeteries in perpetuity." Despite the challenges, CAJAC is continuing to recruit volunteers to help clean the cemetery and the area around it. CAJAC's volunteer coordinator Dr. Ronny Herskovits (himself a volunteer) spends one to two days each week working at the cemetery, and has brought busloads of yeshiva students and others.

On Oct. 25, a crew of 30 volunteers from Manhattan's Sutton Place Synagogue cleared weeds for several hours, while a community association of Ozone Park residents cleared litter from the sidewalks surrounding the cemetery and its two neighbors, Acacia Cemetery and Mokom Sholom Cemetery.

Meanwhile, City Councilman Eric Ulrich, who lives a few blocks from the cemetery, recruited the Mayor's Community Affairs Department to remove graffiti on the walls outside neighboring Acacia.

While Katz (a former member of Shaare Zedek), Feinberg and Herskovits came to Sunday's cleanup, no current member or staff from Shaare Zedek attended.

Asked why no one from his synagogue came to the recent cleanup, Shaare Zedek President Richard Friedman said, "It was just a question of timing," adding that the synagogue intends to send a group of volunteers sometime in the next month. Since 2004, the synagogue has been the subject of a New York State Attorney General's investigation. The Attorney General's office confirmed to The Jewish Week that it continues to investigate Shaare Zedek but declined to comment on the matter.

Leaders of the Conservative congregation on the Upper West Side have long argued that they lack the funds to properly maintain Bayside and that the cemetery never collected enough money from grave sales or perpetual care fees. Critics, particularly Buchman, have countered that if the synagogue were to sell its building, at Broadway and West 93rd Street, it would have more than enough money to endow the cemetery. Indeed, the synagogue has been exploring various real estate deals with developers in order to bring in income, although it is not clear whether the income would benefit the cemetery or just the synagogue.

Shaare Zedek officials insist that rather than raiding the cemetery accounts for synagogue use, as the plaintiffs allege, they have long been using synagogue funds to subsidize cemetery operations. Responsibility for the cemetery's condition lies not with the synagogue, they argue, but with the scores of now-defunct burial societies that purchased plots there.

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Friedman says the synagogue continues to subsidize the two groundskeepers' salaries out of the synagogue bank account, even as it has cut back on synagogue staff. Rabbi Julia Andelman, who was hired in 2007, quit in August and is being replaced with a part-time rabbi. "We can't afford a full-time rabbi at this point," Friedman says.

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