

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

6/11/10

BIKUR CHOLIM, INC., RABBI SIMON LAUBER,
FELLOWSHIP HOUSE OF SUFFERN, INC.,
MALKA STERN, MICHALE LIPPMAN,
SARA HALPERN, ABRAHAM LANGSAN
and JACOB LEVITA,

05 Civ. 10759 (WWE)

Plaintiff,

v.

CONSENT DECREE

THE VILLAGE OF SUFFERN,

Defendant.

X

WHEREAS, this action seeks to enforce the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc et seq. ("RLUIPA"); and

WHEREAS, plaintiffs BIKUR CHOLIM, INC., RABBI SIMON LAUBER, FELLOWSHIP HOUSE OF SUFFERN, INC., MALKA STERN, MICHALE LIPPMAN, SARA HALPERN, ABRAHAM LANGSAN and JACOB LEVITA (the "Private Plaintiffs") have commenced the above-referenced lawsuit pursuant to the Religious Use and Institutional Persons Act of 2000, 42 U.S.C. § 2000cc et seq., the First and Fourteenth Amendments to the United States Constitution, and Article I § 11 of the New York Constitution to enforce compliance with these provisions, and as a CPLR Article 78 proceeding to obtain a use variance; and

WHEREAS, in 2005, Fellowship House of Suffern, Inc. ("Fellowship House"), purchased a one-family residence, located at 5 Hillcrest Road, directly across the street from Good Samaritan Hospital (the "Hospital") in Suffern, New York; and

WHEREAS, in 2005, Bikur Cholim entered into a lease with Fellowship House for the property at 5 Hillcrest Road and relocated the Shabbos House to that property; and

WHEREAS, Bikur Cholim, Inc. ("Bikur Cholim") has operated the "Shabbos House" at 5 Hillcrest Road in the Village of Suffern (the "Village") for the purpose of providing free kosher meals and overnight lodging to Orthodox Jews who are (i) visiting patients at Good Samaritan Hospital (the "Hospital") on the Sabbath and other Jewish Holy Days or (ii) discharged from The Hospital and unable to return home prior to the Sabbath or other Jewish Holy Days, (iii) attending to children who are patients at the hospital; and

WHEREAS, on November 17, 2005, the Zoning Board of Appeals of the Village denied Bikur Cholim's variance application to allow it to operate a Shabbos House at 5 Hillcrest Road on the Sabbath and other Jewish Holy Days; and

WHEREAS, the Private Plaintiffs alleged in their Complaint that the Village's denial of the variance violates RLUIPA and their constitutional rights; and

WHEREAS, the Village's Zoning Code does not permit the Plaintiffs' use as a permitted or special exception use within its jurisdiction; and

WHEREAS, the Village's Zoning Code permits certain assembly and institutional uses in certain zoning districts within its jurisdiction, including in the zoning district in which the Shabbos House is currently located; and

WHEREAS, the Village filed a Counterclaim requesting an order enjoining Bikur Cholim's use of the Shabbos House at its present location; and

WHEREAS, the Private Plaintiffs and the Village having the mutual goal of allowing for and permitting the continued use, maintenance, and operation of the Shabbos House, and desiring to settle this action and to avoid protracted and expensive litigation, agree to the entry of this Consent Decree to resolve all issues that are raised by the Private Plaintiffs in their Complaint and the Village's Counterclaim;

NOW, THEREFORE, in resolution of this action, and with agreement of the parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction over the parties and the subject matter of this action, and the Court has authority to enforce and administer the terms of this Consent Decree.

II. OPERATION OF A SHABBOS HOUSE AT 5 HILLCREST ROAD

2. Subject to receiving Site Plan approval from the Village of Suffern as herein provided in this Consent Decree, the Village agrees that Bikur Cholim shall be permitted to continue the ongoing use of the existing one-family residence and property, located at 5 Hillcrest Road, for a Shabbos House, other provisions of the Village Zoning Law notwithstanding, in order to provide free overnight lodging, kosher meals, and allow for religious observance and prayer on the Sabbath days of Friday and Saturday and other Jewish Holy Days to (i) visitors of patients at The Hospital or (ii) patients discharged from The Hospital on the Sabbath or other Jewish Holy Days, or discharged prior to the Sabbath or other Jewish Holy Days and unable to travel home prior to their onset. No more than fourteen Hospital visitors and/or discharged patients

may be accommodated overnight at the Shabbos House at one time. The parties acknowledge that there are Thirteen Jewish Holy Days (Holidays) in each calendar year and that such Days as does the Sabbath, commence at sundown and end at sundown on the following days. . Those holidays are: Rosh Hashanah (2 days), Yom Kippur (1 day), Succos (4 days), Passover (4 days), Shavuos (2 days).

III. LEGAL FEES AND COSTS

3. In consideration of the settlement of this case, pursuant to which the Village acknowledges and agrees that Bikur Cholim may continue to operate the Shabbos House at 5 Hillcrest Road as provided for in this Consent Decree and in this Paragraph, the parties have agreed that the Private Plaintiffs have the right to make an application for payment by the Village of full costs and Attorney's fees in accordance with 42 U.S.C. § 1988. The Village shall pay an award of Attorney's fees and Disbursements within fifteen days after the date this Court signs an Order directing payment to the Private Plaintiffs.

IV. VILLAGE ACTION

4. This Consent Decree is subject to the Village Planning Board granting Site Plan Approval for the site upon which is located the existing house in which the Shabbos House is located. In the event site plan approval shall not be granted for any reason within sixty days after the Shabbos House files a complete application for site plan approval, or in the event the Shabbos House objects to any conditions imposed by the planning board, other than such as is typical for approvals of existing structures on sites such as: parking layout, fence, landscaping, lighting, and other similar items

enumerated in the Village of Suffern Site Plan Regulations applicable to the site, then in that event at the sole election of the Plaintiffs, this Consent Decree shall be void and the Court shall schedule a Trial of this case.

V. COMPLIANCE WITH APPLICABLE LAWS & REGULATIONS

5. Subject to the provisions of Paragraph 2 regarding the permitted use of the existing premises as a Shabbos House, nothing contained herein shall be deemed to exempt the Plaintiffs from compliance with all other applicable laws and regulations, which do not deal with the agreed use of the property or the enforcement of same by the Village.

VI. ENFORCEMENT

6. The Court shall retain jurisdiction to enforce the terms of and resolve any disputes arising out of or under this Consent Decree.

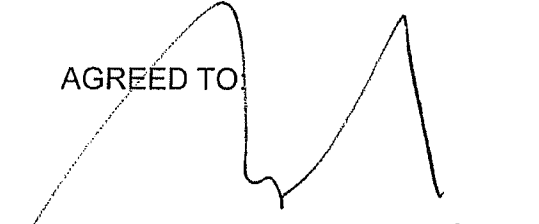
VII. PRESS

7. The parties agree that, other than in the course of a public meeting to implement the terms of this agreement, that the parties shall not discuss the case before a public forum. The parties will issue a joint press release, the terms of which shall be mutually agreed upon, and shall not issue any additional press releases. Nothing shall prevent the attorneys from discussing the case before attorneys' seminars, or in connection with other legal proceedings.

VIII. INTEGRATION AND MODIFICATION

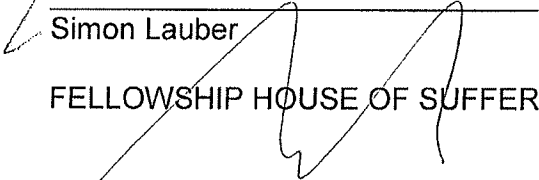
8. The parties understand and agree that this Consent Decree contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect. This Consent Decree may be modified only in writing and with the written consent of the parties and approval of the Court.

AGREED TO:



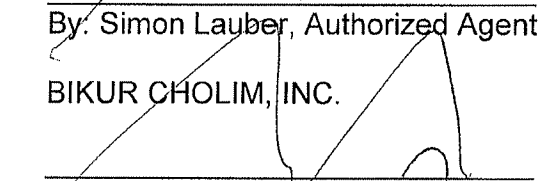
Simon Lauber

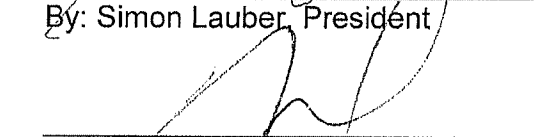
FELLOWSHIP HOUSE OF SUFFERN, INC.

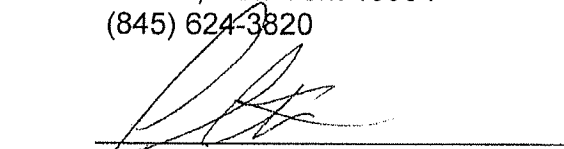


By: Simon Lauber, Authorized Agent

BIKUR CHOLIM, INC.

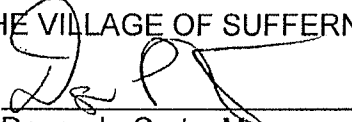


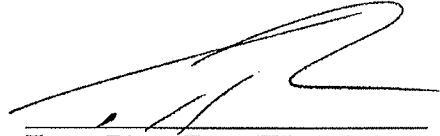
By: Simon Lauber, President

Paul Savad, Esq. (PS 5358)
Sayad Churgin
Attorneys for Private Plaintiffs
55 Old Turnpike Road, Suite 209
Nanuet, New York 10954
(845) 624-3820

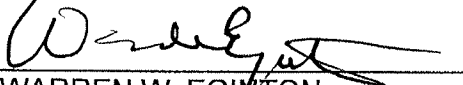
Roman Storzer, Esq.
Admitted pro hac vice
Storzer & Greene, P.L.L.C.

110 Wall Street, 11th Floor
New York, NY 10005
(212) 943-4343

THE VILLAGE OF SUFFERN
By: 
Dagan LaCorte, Mayor


Terry Rice, Esq. (TR 1022)
Attorney for Defendant
Village of Suffern
61 Washington Avenue
Suffern, New York 10901
(845) 357-2600

SO ORDERED:


HON. WARREN W. EGINTON
SENIOR U.S. DISTRICT JUDGE

June 17, 2010