

<b>Matter of Milgrim Fraternal Assn., Inc.</b>
2007 NY Slip Op 31338(U)
April 23, 2007
Supreme Court, New York County
Docket Number: 0402971/2003
Judge: Lewis Bart Stone
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. LEWIS BART STONE  
Justice

PART 508

Index Number : 402971/2003

INDEX NO. \_\_\_\_\_

SERIO, GREGORY V.

MOTION DATE \_\_\_\_\_

vs

MILGRIM FRATERNAL

MOTION SEQ. NO. \_\_\_\_\_

Sequence Number : 002

MOTION CAL. NO. \_\_\_\_\_

OTHER RELIEFS \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *is granted in accordance with the annexed Decision and Order*

**FILED**  
MAY 25 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: Apr 26 2007

*Lewis Bart Stone*  
\_\_\_\_\_  
HON. LEWIS BART STONE J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 50

-----X

In the Matter of : DECISION AND  
ORDER

the Liquidation of :  
INDEX NUMBER

MILGRIM FRATERNAL ASSOCIATION, INC. 402971/03

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**FILED**  
MAY 25 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Hon. Lewis Bart Stone:

Milgrim Fraternal Association, Inc. ("Milgrim") is a benevolent burial society, or "landsmanschaft" incorporated on January 24, 1919, to provide succor, support and burial facilities for its members. As was common for landsmanschaften at the time of Milgrim's incorporation, general membership rights were limited to men, although under Milgrim's by-laws, a wife of a member could be admitted as a special member with limited rights, under certain circumstances. Upon the death of her husband, a widow's membership was to terminate, except that, if her husband died in good standing, she could, on the payment of dues, be entitled to continue as a special member so as to be entitled to a burial plot. The Milgrim constitution specifically limits wives' membership rights to exclude any other privilege and any voting rights.

Under New York Insurance Law, the New York Superintendent of Insurance ("Superintendent") is to serve as liquidator of landsmanschaften such as Milgrim, when they can no longer perform their functions. Here, Milgrim was placed in liquidation on October 17, 2003. On October 6, 2006, the Superintendent submitted

to this Court for approval a First and Final Audit and Report (the "Accounting") to complete Milgrim's liquidation, giving notice of such submission as required by law.

On January 16, 2007, Yaffa Schlessinger ("Yaffa"), the widow of Martin Schlessinger ("Martin"), a former member of Milgrim, who died in 1984, filed her objection to the Accounting on the grounds that her claim for a ratable share of the liquidation proceeds had been rejected by the Superintendent, as liquidator.

The Affidavit of Murray Milgrim, the sole remaining officer of Milgrim in New York at the time of the commencement of the liquidation, asserts that Martin died before Milgrim was placed into liquidation. Thus as of the date of the commencement of the liquidation Martin was not a member. Accordingly, Yaffa, at most, under Milgrim's constitution, was entitled to limited membership rights, which excluded participation in the liquidation proceeds. At most, she was entitled to burial, and provision has been made therefor in the final accounting by the transfer to her of an unused grave site.

Yaffa asserts that Milgrim's actual practices may have modified its constitution's provisions. Whatever may be the validity of such agreement for other purposes, such argument cannot be used to modify provisions in Milgrim's Constitution relating to distributions on dissolution, as this proceeding is the first time a dissolution of Milgrim will have occurred. Thus there could be no prior actual practices relating thereto.

Yaffa's claim is rejected and the accounting is hereby approved in accordance with the annexed Order and Judgment Closing Proceeding.

This is the Decision and Order of the Court.

DATED: APRIL 23, 2007  
NEW YORK, NEW YORK

A handwritten signature in cursive script, appearing to read "Lewis Bart Stone", written over a horizontal line.

Hon. Lewis Bart Stone  
Justice of the Supreme Court

Yaffa's claim is rejected and the accounting is hereby approved in accordance with the annexed Order and Judgment Closing Proceeding.

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DATED: APRIL 23, 2007  
NEW YORK, NEW YORK



Hon. Lewis Bart Stone  
Justice of the Supreme Court

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