

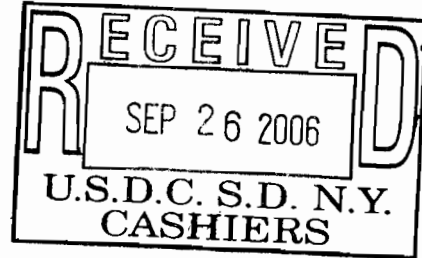
MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
By: RUSSELL M. YANKWITT
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Telephone: (212) 637-2745
Facsimile : (212) 637-2686

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,
Plaintiff,

v.

THE VILLAGE OF SUFFERN,
Defendant.
----- X



COMPLAINT

06 CV 7713

Plaintiff United States of America (the "United States") upon information and belief, alleges for its complaint as follows:

NATURE OF THE CASE

1. The United States files this complaint to enforce the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc et. seq. ("RLUIPA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 2000cc-2(f) and 28 U.S.C §§ 1331 and 1345.

3. Pursuant to 42 U.S.C. § 2000cc-2(f), the United States is authorized to commence suit against a local government for injunctive or declaratory relief to enforce compliance with RLUIPA.

4. Venue is proper in this district under 28 U.S.C. § 1391.

THE PARTIES

5. Plaintiff is the United States.

6. Defendant, the Village of Suffern (“Suffern”), is a “government” within the meaning of 42 U.S.C. § 2000cc-5(4) (A).

BACKGROUND

7. On the Sabbath and other Holy Days, Orthodox Jews engage in prayer and refrain from many activities, including using electricity, exchanging money, carrying objects, and driving.

8. A Shabbos House provides meals and lodging to Orthodox Jews on the Sabbath and other Holy Days in order to allow them to observe their religious beliefs and practices on those days.

9. Since 1988, Bikur Cholim, Inc. (“Bikur Cholim”) has operated a Shabbos House (“the Shabbos House”) on the grounds of, or directly across the street from the parking lot entrance to, Good Samaritan Hospital (“Hospital”) in Suffern, New York.

10. Bikur Cholim’s Shabbos House provides meals and lodging for religious observance on the Sabbath and other Holy Days to Orthodox Jews who take patients to or from the Hospital, visit patients at the Hospital, or are patients released from the Hospital. Its location allows Orthodox Jews to engage in these activities while refraining from activities forbidden on the

Sabbath by their religion.

11. In 2004, the Hospital decided that it could no longer accommodate the Shabbos House on its grounds. Thereafter, Bikur Cholim moved the Shabbos House to 5 Hillcrest Road, which is located directly across the street from the entrance to the Hospital's parking lot.

12. On one side of the Shabbos House is a parking lot of a professional building, the Kohl Building. There are fourteen separate offices in the Kohl Buildings and its parking lot can accommodate fifty-six cars.

13. Residential houses are located on the other side of the Shabbos House. Hillcrest Road is perpendicular to Route 59, which is a main road in Suffern.

14. The Hospital parking lot provides sufficient parking to guests at the Shabbos House.

15. Bikur Cholim and five individual plaintiffs, who have all stayed at the Shabbos House at 5 Hillcrest Road to visit their sick relatives who were patients at the Hospital, and who plan to stay in the future if a relative is a patient of the Hospital on the Sabbath or on a Holy Day, filed a complaint on December 23, 2005. See Bikur Cholim, Inc. Et al. v. Village of Suffern, 05 CV 10759 (SCR) ("Suffern I").

A. Suffern's Prohibition of the Shabbos House

16. Under Suffern's Code, there is no "as of right" permission to operate a Shabbos House.

17. The Shabbos House is located in an "R-10" zoning district.

18. Suffern has determined that the Shabbos House is a "transient/motel."

19. There is no zoning district within Suffern that permits “transient/motel uses.”

20. There is no other location within reasonable and safe walking distance of the Hospital that could accommodate Orthodox Jews on the Sabbath or Holy Day, and afford those guests the opportunity to exercise their religious belief by visiting the sick and observing the laws of the Sabbath.

B. Suffern’s Denial of Bikur Cholim’s Variance Application

21. On or about August 2, 2005, the Suffern Building and Zoning Inspector denied Bikur Cholim a building permit to allow it to continue providing the services of the Shabbos House.

22. Immediately after Suffern denied Bikur Cholim the building permit, Bikur Cholim submitted an application for a use variance to continue to operate the Shabbos House in the R-10 Zone.

23. The application sought a variance from the requirement of the Suffern Zoning Law which states that any use “not specifically listed as being permitted shall be deemed to be prohibited.”

24. The variance application requested “hardship” and sought permission to use a one-family residence for overnight occupancy for up to seventeen people, who are family members of the patients at the Hospital.

25. Thereafter, Bikur Cholim told the Suffern Building and Zoning Inspector that it was willing to limit the occupancy of its residence to fourteen individuals to comply with the New York State Building Code.

26. On November 17, 2005, Suffern denied Bikur Cholim's variance application to allow it to house fourteen guests at the Shabbos House on the Sabbath and other Holy Holidays.

27. Suffern has not identified any compelling government interest for denying Bikur Cholim's application. In addition, even if there were any compelling interests, Suffern has failed to enforce its zoning code in the least restrictive means possible.

First Claim For Relief

(Violation of Section 2(a) of RLUIPA)

(Substantial Burden Claim)

28. Paragraphs 1 through 27 are re-alleged and incorporated in this paragraph by reference.

29. Suffern's denial of Bikur Cholim's variance application constitutes the imposition or implementation of a land use regulations within the meaning of RLUIPA. 42 U.S.C. § 2000cc(a)(1).

30. Suffern's denial of the variance application substantially burdens the religious exercise of Orthodox Jews who need to visit the sick in Suffern while observing religious proscriptions against driving on the Sabbath and other Holy Days.

31. Suffern's denial of the variance does not further a compelling government interest, or even if it does, it is not the least restrictive means of furthering any compelling government interest.

RELIEF REQUESTED

WHEREFORE, the United States prays that this Court enter judgment that:

A. Declares that the Village of Suffern's denial of Bikur Cholim's variance

application violates RLUIPA;

B. Enjoins the Village of Suffern, its officers, employers, agents, successors and all other persons in active concert or participation with them, from applying Suffern's laws in a manner that substantially burdens the participants' of Bikur Cholim religious exercise;

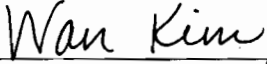
C. Enjoins the Village of Suffern, its officers, employees, agents, successors and all other persons in active concert or participation with them, from adopting or enforcing any zoning restriction, or from applying their laws in a manner that violates RLUIPA;

D. Grants such further relief as the Court may deem just, together with the United States' costs and disbursements in this action.

Date: Washington, D.C.
September 26, 2006

ALBERTO R. GONZALES
Attorney General

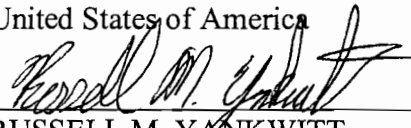
By:


WAN J. KIM /s/ WJK
Assistant Attorney General
Civil Rights Division

Dated: New York, New York
September 26, 2006

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff
United States of America

By:


RUSSELL M. YANKWITT
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Telephone: (212) 637-2745
Facsimile: (212) 637-2686