Exploiting the Vulnerable: The Case of HI-LI Manor Home for the Aged and Regulation by the NYS Department of Social Services

May 1992

NYS COMMISSION
ON QUALITY OF CARE
FOR THE MENTALLY DISABLED

Preface

Approximately one year ago the Commission completed a study of adult homes at the request of the Legislature and published a report entitled, *Adult Homes Serving Residents with Mental Illness: A Study of Conditions, Services, and Regulation*, October 1990. Forty-seven adult homes were studied and each residence was classified in one of three ways: "good," "in need of improvement" or "poor." The HI-LI Manor Home for the Aged [hereinafter HI-LI] ranked as one of the worst, being deficient in virtually every area studied but one (namely, the availability of medical/mental health services from other service providers).

In the course of that study, the Commission heard complaints from many of the operators of adult homes that the reimbursement rate of approximately $24/day per resident was simply insufficient and contributed to the unsatisfactory conditions in many of the homes. Thus, in addition to examining the conditions, the Commission gathered information about the income and expenditures of the homes. HI-LI Manor was selected for a closer fiscal study because the Commission, under its statutory jurisdiction to study the "cost effect" of programs which serve persons with mental illness, wanted to see if the poor conditions found were related to inadequacies in government funding for services or to the ineffective and inappropriate expenditure of the Federal and State Supplemental Security Income (SSI) funds which support virtually the entire operation of this adult home.

This in-depth fiscal review, the first such review of an adult home since the investigation by the Deputy Attorney General for Medicaid Fraud Control in the late 1970's, began over two years ago, but has been substantially delayed and remains incomplete at this time because Beryl Zyskind, the administrator of HI-LI Manor, and David Kolatch, the executive director of the Hebrew Academy of the Five Towns and Rockaway (hereinafter HAFTR), the corporation which holds the operating certificate from the New York State Department of Social Services [hereinafter DSS], have resisted and obstructed the Commission's lawful attempts to obtain the information it needs to conclude the study.[1]

Unlike many other adult homes which have readily provided access to the information sought, HI-LI Manor and HAFTR management have chosen to utilize litigation to challenge and/or delay divulging this information about their financial activities and the activities of other businesses they control which transact business with HI-LI Manor. They have also attempted to take advantage of the delays they caused by claiming that the Commission's legal authority to conduct this investigation had expired. This litigation has been ongoing for over two years, and is still pending as this report goes to press.

But despite the court's consistent declarations of the authority of the Commission to review these records over the course of the past two years, HI-LI and HAFTR officials and their accountants systematically offered only token or partial compliance with the Commission's subpoenas and with the subsequent judicial orders to compel compliance with those subpoenas. The routine records which are necessary for the operation of these businesses, for the preparation of tax returns and other such records kept in the ordinary course of business, have either not been turned over or have inexplicably been declared missing in the wake of unsuccessful challenges to the Commission's authority. Court-

[1] History repeats itself. The same facility resisted the Deputy Attorney General's attempts to gain fiscal information, leading to litigation that went all the way to the Court of Appeals of New York in 1977 (Report p. 1).

ordered disclosures have consistently come up short of being full and complete and, curiously, the missing documents almost always were the key documents needed to determine the nature of certain questionable financial transactions.

At this time, the Commission believes that the overall picture of this agency's operations is known sufficiently well to make a report of its findings and to refer aspects of this investigation to agencies which have appropriate licensing, disciplinary and prosecutorial authority. The Commission has every intent of pursuing the balance of records required to be produced under the orders of the court in this litigation in order to be able to answer many remaining questions and thereby to appropriately fulfill its legislative mandate under Chapter 50 of the Laws of 1989. The litigation has reached a stage which involves the Commission's motion against HI-LI and HAFTR's principal officers for their contempt of court orders in this case. A hearing is anticipated in the spring of 1992.

As a result of the Commission's continuing investigation and the State Attorney General's efforts to compel compliance with the Commission's subpoenas for financial records, there has been a falling out between Mr. Zyskind and HAFTR. Consequently, litigation has ensued between the parties themselves, each seeking to bar the other from operating the HI-LI Manor facility. When issuing a preliminary order on March 4, 1992 giving HAFTR custody of the operations of the home, the judge made it very clear that he considers neither party to be without fault (Appendix A). Subsequently, on April 6, 1992, Beryl Zyskind filed a petiton for reorganization under Chapter 11 of the United States Bankruptcy Code. In his debtor's affidavit, he listed liabilities of $22.3 million and non-valued ownership interests in four apartment buildings, one office building, two adult homes, three ambulance/ambulette companies and a vacant lot.

This report represents the unanimous opinon of the members of the Commission. A response to a draft of the report from the New York State Department of Social Services is attached as Appendix B.

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Executive Summary

Adult homes, licensed by the State Department of Social Services, are an important component of the State's safety net for the elderly and persons who are mentally ill. Of the approximately 25,000 adult home beds in the State, over 9,000 serve people with a history of mental illness. HI-LI Manor is one such home that provides residential services to approximately 125 people. As of January 1, 1989, the home collected from its residents' SSI income about $24/day for providing room, board and supervision to the residents. In addition, the residents themselves received a personal needs allowance (PNA) of $81/month to purchase items not covered in the residence rate.[2]

In the Commission's 1990 study of adult homes, HI-LI Manor was found to be deficient in virtually every area of operations examined (Appendix C).

- The majority of the furnishings were old, dirty, and in disrepair. In the sunroom and TV/reception area, vinyl chairs were dirty and ripped, and some had sunken seat cushions with broken springs and others had rusted metal legs. Bedrooms had rusted metal wardrobe cabinets, broken lamps, no light bulbs, ripped chairs, and dressers with broken drawers.
- The majority of residents were poorly dressed with dirty, ill-fitting and seasonally inappropriate clothing. The majority of the residents were clothed in garments which were either too big or too small.

Adult Home Characteristics

- 454 Homes - 25,000 Beds
- 9,000 Mentally Ill Residents
- Licensed by DSS
- Homes with MI Primarily Funded by SSI
- SSI Income - $24 per Day (1989)
- Residents Receive $81 per Month PNA

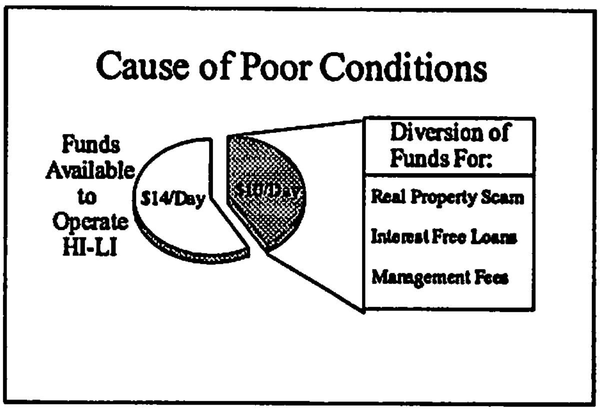
- Extensive maintenance problems were noted in most of the rooms. The majority of bathrooms had wall and floor tile problems; two toilets were clogged and overflowing; and stained tubs with rusted grab bars, chipped toilet seats and leaky sinks were seen in bathrooms. In some areas, the plaster was falling down and fire hazards were noted.

Additionally, the Commission's review of DSS inspection records over a ten-year period revealed repeated citations of deficiencies in maintenance, fire safety, resident safety and other areas (Appendix D).

As a result of the fiscal investigation described in this report, the Commission has concluded that the significant and pervasive deficiencies found at HI-LI Manor very likely have nothing to do with inadequacy in the level of SSI funding for its

[2] As of January 1, 1992, an individual residing in an adult home in New York City, Nassau, Suffolk and Westchester Counties is entitled to a yearly SSI benefit of $10,284, and in the rest of the State, $9,924. Of these respective amounts, the adult home operator receives $9,156 ($25/day) or $8,796 ($24/day) for residential care, and the resident receives $1,128 ($94 per month) allowance for his/her personal needs. The public portion of SSI payments may be reduced by "countable income" received by a recipient during any calendar quarter from earnings or unearned sources (e.g., public or private pensions), but the home receives such income up to the standard SSI amount. Homes may also receive payments above the SSI amount from "private-pay" residents who have income or resources that make them ineligible for SSI benefits. At HI-LI Manor there were few "private-pay" residents.

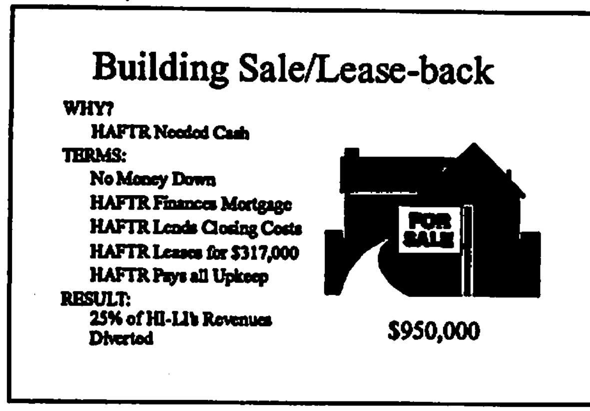
services; rather, these deficiencies are directly attributable to decisions to divert a substantial portion of the available money to purposes unrelated to resident care. These decisions were made by HI-LI's administrator, Mr. Beryl Zyskind, and were either approved or acquiesced in by the operator of the home, HAFTR, a not-for-profit religious corporation. Through a long-standing pattern of such decisions, the Commission estimates that as little as $14/day per resident remained available for resident care. So much of the facility's income was diverted through the schemes described below that, over a 21-month period, 190 checks totaling $463,134 bounced because of insufficient funds. The facility incurred substantial penalty charges for delinquent payments of FICA, payroll withholding and real estate taxes (Report p. 24). And, on a recurring basis



it resorted to improperly "borrowing" residents' personal allowance funds to meet the payroll.

The situation became so desperate that, during November 1990, a $122,658 retroactive benefit check from the Veterans Administration, intended for the exclusive use of a disabled veteran who had resided at the home, was misappropriated and used, in part, to pay for the general operating expenses of the home. Also, proximate to this time, the Internal Revenue Service was blocking HI-LI bank accounts and seizing its funds to collect over $100,000 in delinquent payroll taxes (Report pp. 24-25).

Additionally, in apparent retaliation for HAFTR's attempts to restrict his actions in operating the home, Beryl Zyskind deposited most of the home's September 1991 income into a HI-LI Manor account over which he had exclusive check writing authority, and $212,079 of the following two month's income and resident PNA monies into the checking account of a realty holding company owned by his wife and himself. The Commission noted questionable disbursements from these sources including: $49,700 to an associate at a nursing home where Mr.



Zyskind was employed as a fiscal consultant, $26,000 to an adult home operated by Mr. Zyskind which was facing financial difficulties, $50,000 to Mr. Zyskind's personal checking account and $25,000 for some unknown purpose (Report p. 26).

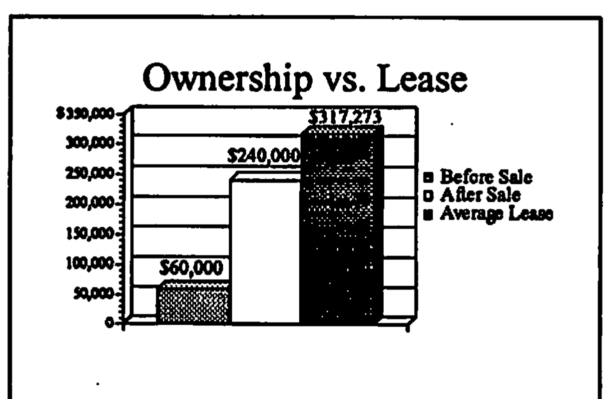
By the end of 1991, the fiscal operations of HI-LI Manor were reduced to such a state of disarray that vendors, including utility, telephone and insurance companies, were not paid for several months, resulting in the deliveries of food and fuel to the facility being jeopardized (Appendix E).

Not surprisingly, the facility often operated with half the staff required by DSS' regulatory standards. Yet, because of weaknesses in the regulation of adult homes, including the lack of fiscal audits by DSS, the fiscal improprieties uncovered by the Commission's investigation and described in this report were not previously detected, and residents of the home endured the poor conditions.

The Commission's principal findings are as follows:

❑ Less-Than-Arm's Length Real Property Transactions

1. Among the many means through which SSI funds were diverted away from resident services and to the enrichment of Mr. Zyskind was a series of less-than-arm's length real property transactions



through which Mr. Zyskind and his wife purchased in 1985 the real property of HI-LI Manor from HAFTR for no money down, and proceeded to lease the property back to HAFTR at a greatly increased annual cost (from $60,000/year annual mortgage paid by HAFTR *before* the transaction, to $240,000 immediately *after* the transaction, to an average of $317,273/year over the course of an 11-year lease). While these transactions enriched Mr. Zyskind, they disadvantaged both the not-for-profit HAFTR and the residents of HI-LI Manor (Report pp. 14-16).

2. To facilitate the Zyskinds' purchase of this property with no money down, HAFTR took a second mortgage for $450,000 of the $950,000 purchase price. Three years later, with no principal payments having been made on this debt and with about $50,000 in interest payments past due, this mortgage was subordinated to a new loan of $1.2 million to the Zyskinds from the Village Savings Bank, under the signature and corporate seal of HAFTR president Theodore Schiffman. Furthermore, Mr. Zyskind, signing as the "Chief Administrator" of HAFTR, provided the bank with an Unconditional Guaranty of Payment and Performance Agreement naming HAFTR as a guarantor of the $1.2 million debt (Report pp. 17-18).

The Commission can discern no reason why a not-for-profit corporation would undertake such financial risks on behalf of an employee, risks that soon materialized as the Zyskinds were unable to make payments on this mounting debt. Recently, HAFTR has filed affidavits/affirmations asserting that the signature of its president was a forgery (Report pp. 18-19). Also, in a recent affirmation by HAFTR's attorney, he states that Mr. Zyskind did not obtain HAFTR board approval to guarantee the Village Savings Bank debt and that the document filed with the bank is fraudulent (Appendix F).

❑ Misapplication of Bank Loan

Furthermore, even though the purpose of the loan was to refinance existing mortgages and to improve the HI-LI premises, it appears that major portions of the $300,000 net proceeds were diverted to other purposes. The Commission found that immediately after receipt of the loan, $150,000 was deposited into the personal checking account of Beryl Zyskind and $20,000 went to another adult home operated by Beryl Zyskind which was having financial problems (Report p. 17).

Bank Loan to Improve HI-LI Manor
$300,000

$150,000–To Beryl Zyskind's Personal Checking Account
$20,000–To New Belle Harbor

No Improvements Recorded on HI-LI Realty Tax Return

❑ Interest-Free Loans

Mr. Zyskind used HI-LI Manor as a private bank into which SSI payments intended for resident care were deposited and from which he could take interest-free loans at will.

1. From 1984 to 1988, Mr. Zyskind, although only an employee, obtained interest-free loans from HI-LI in an amount over $1.9 million and apparently used these funds to finance his private business ventures (Report pp. 19-20).

— Approximately $864,000 went to the Morris Park Nursing Home which is owned by Mr. Zyskind's father-in-law, and where Mr. Zyskind was employed as a controller (although he assured DSS that he had terminated this employment in order to serve as a full-time administrator of HI-LI) (Report pp. 3, 5-6, 19).

— During the period of these loans, Mr. Zyskind acquired ownership of three other adult homes with the approval of the Department of Social Services: New Belle Harbor Manor, New Rochelle Manor, and Vanderbilt Manor (Report pp. 6-9).

Interest-Free Loans
Beryl Zyskind
$1.9 Million

- No Limit on Borrowing
- No Terms or Conditions for Repayment
- No Collateral Required
- No Board Approval
- $864,706 to Father-in-Law's Nursing Home-MPNH

Year-End Balances	
1984	$119,289
1985	$255,826
1986	$291,421
1987	$254,966
1988	$159,350

2. "Repayments" on these loans came, in part, from cash deposits and from funds which seemed to belong to others, including funds intended for HI-LI/HAFTR, and checks written to vendors or businesses. Nevertheless, the deposit of these funds was credited on HI-LI's books to reduce the balance of Mr. Zyskind's loans (Report pp. 20-22).

— For example, HI-LI/HAFTR funds totalling approximately $200,000 in the form of a real estate tax refund, charitable contributions and other receipts were credited as "repayments" of loans taken by Mr. Zyskind.

3. Despite such "repayments," at the end of 1988, Mr. Zyskind still owed HI-LI $159,350 (Report p. 20).

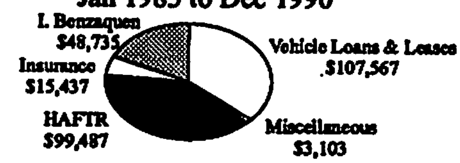
Loan Repayments
With Other People's Money

Realty Taxes	$93,600
Real Estate Tax Refund	73,900
Escrow Refund	13,600
Intracorporate Cash Transfers	12,000
Charitable Contributions	8,300
	$201,400

❑ Hidden Account

In yet another means of personal enrichment at the expense of resident care, Mr. Zyskind and David Kolatch of HAFTR established a "Hidden Account." From 1985 to 1990, over $274,000 was deposited into this account and misrepresented on HI-LI's books as "management fees" although it was actually a "slush fund" for luxury vehicle rentals, and personal life, auto, home, jewelry and fur insurance for Messrs. Zyskind and/or Kolatch and his family. Most of the $99,487 from this account that went to HAFTR disappeared in cash payments. Another $48,735 went directly to David Kolatch's son-in-law, Isaac Benzaquen. Mr. Benzaquen was also on the payroll of HI-LI Manor while simultaneously working at the home as an independent contractor for a mental health agency that

Management Fees
Jan 1985 to Dec 1990



Management Fees Deposited into Hidden Bank Account
Used to Fund Perks & "Added Pay" for Employees
Hidden Account Checks Signed by Zyskind & Kolatch

operated an unlicensed clinic at the home[3] (Report pp. 22-24).

❑ Misappropriation of Veteran's Benefits

In November 1990, HI-LI Manor received a retroactive lump-sum payment from the Veterans Administration (VA) totaling $122,658 for one of HI-LI's *former* residents who had been owed the money by the VA since 1983. Although the disabled veteran was no longer living at HI-LI, within 12 days of receipt of the retroactive payment, *all* of the money was either spent on various expenses of the home, taken out in cash, or diverted to one of Beryl Zyskind's other adult homes. This occurred even though the case manager of the home agreed that any benefits received on behalf of the resident would be *"for his use and use only."*

The resident, who has been in and out of psychiatric hospitals for the past several years, resided at HI-LI for only about eight months, from March 1990 to late October or early November 1990, before he voluntarily left the residence to reportedly work and live with a friend in Staten Island. In January 1992, the resident was brought to Bellevue Hospital by Project Help because of extremely agitated and bizarre behavior at Penn Station. The resident was reported to be homeless at the time. He currently is an inpatient at Creedmoor Psychiatric Center (Report pp. 24-25).

❑ Misuse of Residents' Personal Allowances

The diversion of large amounts of SSI income to real estate profits, interest-free loans, and hidden

[3] In 1991, after HI-LI became aware of the Commission's knowledge of this hidden account, CPA Samuel Kohn in closing the 1989 HI-LI books began to record the "management fees" on HI-LI's books as "loans and exchanges" to Mr. Zyskind and HAFTR.

compensation packages, as described above, often left HI-LI Manor unable to meet its payroll. On a recurring basis, money was "borrowed" from the residents' personal allowance accounts to cover the shortage, in violation of Social Services Law §131-o which makes such a commingling of funds a misdemeanor (Report p. 25).

❑ Violations of Not-For-Profit Corporation Law

There appear to be numerous violations of the Not-For-Profit Corporation Law (N-PCL), such as a lack of evidence of approval by the HAFTR board of directors of the lease and loan transactions that dissipated assets and opportunities belonging to this religious corporation. If these transactions were approved by the board of directors, they raise the question: Why would this not-for-profit corporation enter into financial deals that drained its corporate assets while simultaneously encumbering it with the business risks of its landlord? Alternatively, if they were not, they raise questions about the board's vigilance in complying with its fiduciary responsibilities and its obligation as holder of the operating certificate for HI-LI Manor (Report pp. 15-16, 26-27).

❑ Regulatory Violations

In addition to the evident problems in the quality of services provided to the residents of HI-LI, the Commission found other regulatory violations including the failure to maintain required business records. Furthermore, in the course of seeking approvals for other licenses, Mr. Zyskind repeatedly lied to DSS about his continuing employment as controller of the Morris Park Nursing Home. Indeed, given his numerous other activities, it is unlikely that he met the regulatory requirement of being a full-time administrator of HI-LI Manor. He also misrepresented his financial condition in seeking a guaranteed loan of $5.6 million from the Federal Department of Housing and Urban Development. Similarly, he withheld information from the Village Savings Bank on the extent of his personal borrowings from HI-LI Manor when seeking the $1.2 million mortgage and diverted monies he represented were needed to improve the HI-LI premises to other unrelated purposes.

❑ Violations of Professional Standards by CPAs

One of the important safeguards over public money spent by private entities for public purposes, such as providing residential services, is the review of their financial records by certified public accountants and the provision of reports to boards of directors and others. The Commission found that the conduct of the CPAs in this instance did not meet professional standards and helped conceal material aspects of the operation of HI-LI, including a failure to note in the report to the HAFTR board (Report pp. 27-28):

— a related party lease between HAFTR and Mr. Zyskind, the administrator of HI-LI, and his wife;

— the hundreds of thousands of dollars in interest-free loans to Mr. Zyskind; and

— the commingling and borrowing of residents' personal needs allowance funds for operating purposes.

Conclusion

In licensing a not-for-profit corporation to provide services to a vulnerable population, the State relies on the board of directors of the corporation to ensure that the corporation is faithful both to its charter and to the obligations imposed by the license. In this case, it appears that the board was insufficiently vigilant over the activities of HI-LI Manor and the actions of HAFTR in entering into the sale and lease back arrangement that signifi-

How Could This Occur?

- No Financial Audits by DSS
- Insufficient Character & Competence Reviews
- No Related Party Disclosure to DSS
- Insufficient HAFTR Board Oversight
- Inadequate Services Performed by CPAs

cantly disadvantaged this religious corporation; over the activities of Mr. Zyskind in engaging in interest-free borrowing from HI-LI Manor; and over the other actions of its employees as described in this report. Alternatively, if the board *was* aware of these activities, its approval of or acquiescence in them raises substantial questions about whether it fulfilled its fiduciary obligation to preserve and protect the assets of the not-for-profit corporation.

To ensure that the State's reliance upon a licensee to provide necessary services to a vulnerable population is not misplaced, State laws require approval of the "character and competence" of the licensee and administrator both upon initial licensure and upon periodic renewal of licenses.

However, many of the fiscal irregularities and improprieties at HI-LI Manor uncovered in the course of this investigation remained unknown to the Department of Social Services as that agency has not conducted fiscal audits of adult homes in over a decade. Thus, while DSS inspectors were regularly citing HI-LI Manor for deficient conditions (Appendix D),[4] DSS conducted no audits to determine the cause of these deficiencies[5] but continued to relicense the agency. Moreover, during this time DSS approved Mr. Zyskind's purchase and operation of three other adult homes, two of which later experienced similar cash shortages, resulting in utility bills and vendors going unpaid and deficient conditions for their residents (Report pp. 6-9). One of these homes, Vanderbilt Manor, was closed and the residents relocated after DSS determined that the home constituted a danger to the physical and mental health, safety and well-being of the residents. The other, New Belle Harbor Manor, has been denied renewal of its operating certificate, but is appealing the decision.

Mr. Zyskind also acquired ownership interests in three ambulance/ambulette companies. During the period of his ownership, State regulatory agencies have cited numerous problems with these companies, including:

— DSS twice terminated Medicaid provider agreements for failure to meet licensing requirements of the NYC Taxi and Limousine Commission;

— The Department of Health (DOH) has imposed civil penalties for violations of the Public Health Law and State Emergency Medical Services Code; and

— DSS proposed to exclude one of the companies from the Medicaid program for filing false claims and unacceptable record keeping (Report p. 10).

Beryl Zyskind's Expanding Role
Problem Facilities

Year Acquired	Facility	Current Status
1985	HI-LI Realty HI-LI Manor	Mortgage in Default
1986	New Belle Harbor	Bills Unpaid
1987	41 Lockwood Realty New Rochelle	Safety Deficiencies
1988	Vanderbilt Manor	Home Closed
	Linden Bay Nursing Home	Default on Loan
1989	Endicott Ambulance	Regulatory Violations
1990	Aaron Ambulette Flatbush Ambulance	

Notwithstanding this web of licensed businesses and the pattern of regulatory violations and fiscal irregularities, their scope apparently remained unknown to the Division of Adult Residential Services of DSS which repeatedly attested to Mr. Zyskind's "character and competence" to be an owner, operator or administrator of these licensed businesses, funded by public monies. As detailed in this report, in several applications for licensure and loans, Mr. Zyskind lied about or withheld material information about the full scope of his activities (Report pp. 3, 6, 8-9). Yet, these misrepresentations were not discovered because of cursory investigations of character and competence and the lack of fiscal audits which could have exposed the extent of the financial inter-relationships between these businesses and the diversion of public funds intended for services to needy and dependent people.

Furthermore, the absence of a mechanism for effectively sharing information among State agencies about common licensees or principals in licensed operations left each State agency which cited regulatory violations with only a small fragment of the information bearing upon overall "character and competence."

[4] During the period from June 1981 to June 1991, the Department of Social Services conducted eight complete inspections of HI-LI Manor. In every one of them, the facility was found "Not In Compliance."

[5] Indeed, during this period, Mr. Zyskind was engaged in a lobbying effort to have the SSI rates increased, claiming he needed "help to remain in business" (Appendix G).

The victims of the deficiencies in the various licensed programs, and in the State's regulatory systems themselves, are the poor, the needy and the dependent people who rely upon publicly funded services because they often have no alternative. The Commission is particularly concerned that the lessons taught by the investigations of the Moreland Act Commission into nursing homes and of the Deputy Attorney General for Medicaid Fraud Control into adult homes more than a decade ago appear not to have been fully heeded. Careful scrutiny of the character and competence of persons entrusted with services to vulnerable populations, more effective enforcement, examination of *how* public funds are being spent — especially when the quality of services is deficient — are all essential safeguards in any regulatory system. Particularly at a time of mounting public concern over the cost of human services, it is essential that regulatory agencies exercise vigilance to ensure that funds appropriated to meet the needs of people are indeed reaching their intended beneficiaries. Without an effective program of fiscal audits to determine how funds are being spent, decisions on appropriate levels of reimbursement for services are often left to guesswork and the effectiveness of lobbying by provider groups.

Recommendations

Based on the findings reported herein, the precarious financial position of HI-LI Manor and the real threat of imminent danger to the health and welfare of its residents, the Commission makes the following recommendations and has or will refer the findings of its investigation to the following agencies for follow-up actions within the scope of their responsibilities:

❑ Referrals

- *The Department of Social Services:* to close HI-LI Manor, immediately move its residents and then proceed to revoke its operating certificate. DSS should also place an immediate stop on residents' SSI checks after the move so that HI-LI Manor cannot receive further public assistance.
- *The Office of Mental Health:* to assure orderly provision of psychiatric care upon closure and placement of the residents into other settings.

Referrals

· DSS	· IRS
· OMH	· NYS Tax
· Attorney General	· HUD
· District Attorney	· SED
· US Attorney	· V.A.
· Special Prosecutor	· Other

- *The Department of Law:* for possible violations of the Not-For-Profit Corporation Law including possible recoupment of funds of the corporation that were misappropriated.
- *The District Attorney's Office of Queens and Nassau Counties:* for possible criminal violations relating to interest-free loans, potential theft of client funds, forgery and fraud.
- *The U.S. Attorney for the Eastern District of New York:* for possible bank fraud, forgery and fraud in obtaining a bank mortgage and misappropriation of a resident's V.A. check.
- *The Deputy Attorney General for Medicaid Fraud Control:* to review other proprietary homes run by Mr. Zyskind to determine possible statutory and regulatory violations.
- *Internal Revenue Service and State Department of Taxation and Finance:* for possible violations of the tax laws.
- *The Federal Department of Housing and Urban Development:* for possible misrepresentation in applying for a HUD loan.
- *State Education Department:* for possible violations of regulations relating to the practice of public accountancy.
- *The Veterans Administration:* for misappropriation of a veteran's benefit check.
- *Other State Agencies:* the Department of Health, the Department of Motor Vehicles, the Department of Transportation, the Banking Department and the Division of the Budget.

❑ Executive Actions

- Executive Order No. 36 should be expanded to allow the Deputy Attorney General for Medicaid Fraud Control the authority to

Recommendations
Executive Actions

- Expand Special Prosecutor's Jurisdiction to NFP Homes
- Establish an Information "Clearinghouse" for Character and Competence Evaluations

investigate and enforce violations of law relating to not-for-profit adult homes.

— A central State "clearinghouse" should be established to gather and maintain information on current prospective licensees and on principals involved in licensed agencies. Such information should include data bearing upon the performance record of the licensed entity, and should be available to State agencies in making decisions to grant initial applications or renewals of licenses and operating certificates.

❑ Statutory Changes

Adult home statutes/regulations should be amended to:

— Preclude not-for-profit homes from diverting corporate assets to the officers and certain employees by prohibiting corporate loans to such persons.

— Provide for disclosure to the board of directors by the officers and certain employees of not-for-profit homes of their financial interests in any corporate contracts or transactions.

— Require not-for-profit homes to disclose annually to the licensing agency (DSS) any related-party interests and require for all adult homes that related-party realty companies disclose their financial profitability and viability.

— Establish a privity relationship between an adult home's certified public accountant and the State licensing agency to remove doubt as to the accountant's liability for negligence stemming from the accuracy of the accountant's audit work and reports.

Recommendations
Statutory Changes

- Prohibit Loans to NFP Executives
- Require Disclosure of Executive Self-Dealing to NFP Boards and DSS
- Require Annual Reports on Profit and Viability of Related Party Realty Companies
- Establish Privity Between DSS and CPAs for Liability Reasons

❑ Internal Regulatory Changes

DSS should:

— Reform its inspection process to identify key indicators of compliance and deny renewal of licensure after substantial noncompliance on two concurrent annual inspections.

Recommendations
Regulatory Changes

- Focus Inspections on Key Indicators
- Make Public Failed Annual Inspection Reports
- Conduct Fiscal Audits to Understand Poor Conditions
- Tie SSI Rate Increases to Quality of Services
- Create Public Directory of Homes' Regulatory Status

— Make public the reports of DSS inspections of homes which fail annual inspections, in much the same manner as DOH currently reports on restaurant health violations.

— Conduct financial audits of homes experiencing poor conditions to determine the underlying reason for these poor conditions.

— Base its recommendations for the SSI rate for adult homes on a careful fiscal review and audit of actual expenditures to provide the required services. Increases in the SSI rate should be directly tied to improvements in the quality of services provided to the residents.

— Create and periodically update a directory of adult homes, including their regulatory status, as a means of informing consumers and the public of the performance of the home.

Background

Adult Home Industry — Recent History and Previous Reports

It is important to avoid viewing HI-LI as an isolated incident for two reasons. First, Mr. Zyskind was not only financially manipulating HI-LI for his personal enrichment, but was also using its monies to acquire financial interests in other facilities as well. And secondly, the circumstances existing in the State licensing and oversight system that permitted these activities to occur with relative ease, and for a considerable period of time without detection, are generic in the sense that others could do the same if so inclined with little fear of discovery and even less of facing significant fines or punishment. Therefore, it is worthwhile to recount history, to see the long-existing deficiencies of the regulatory system, and to put the specific facts of HI-LI into a more proper statewide context, starting with the most recent reports on adult homes performed by the Deputy Attorney General for Medicaid Fraud Control (also known as the Special Prosecutor).

After extensive revelations in the mid-1970s about the scandalous conditions of the nursing home industry, it became apparent from reports of the Moreland Act Commission that nursing homes were not the only long-term care facilities whose practices were open to question.[6,7] Mindful of the parallels between adult homes and nursing homes — in that both cared for vulnerable residents, were financed with public money and were poorly regulated—Governor Hugh L. Carey directed that a study be done of the adult home industry.[8] As head of a special independent unit in the Attorney General's Office which was charged with investigating the nursing home scandal, Deputy Attorney General Charles J. Hynes was given the responsibility to conduct a public investigation to help fashion legislative and legal remedies for the alleged abuses.

Special Prosecutor Hynes initiated a survey with two major goals: (1) to understand the web of financial transactions of the industry, and (2) to examine the conditions affecting resident care.[9] Although some owners of adult homes were cooperative, the Special Prosecutor faced a wall of non-cooperation by other operators which necessitated litigation lasting years. Some challenged the Special Prosecutor's authority to gain access to the basic operating records necessary for the State to know if its grants of money were being used appropriately. Remarkably similar to the Commission's experience in this HI-LI case, the Special Prosecutor's authority was challenged in his attempt to acquire the requisite documents from HI-LI Manor (coincidentally, the same facility but with a different operator at the time) and to understand how that licensee was spending its publicly generated funds. In July 1977, the State's highest court, the Court of Appeals, affirmed the Special Prosecutor's authority to investigate adult homes.[10]

[6] "Reimbursing Operating Costs: Dollars Without Sense," *Report of the New York State Moreland Act Commission on Nursing Homes and Residential Facilities*, March 1976, pp. 18-22.

[7] "Long Term Care Regulation: Past Lapses, Future Prospects, A Summary Report," *Report of the New York State Moreland Act Commission on Nursing Homes and Residential Facilities*, April 1976, pp. 56-69.

[8] Hugh L. Carey, "Executive Order, No. 36," *Official Compilation of Codes, Rules and Regulations, State of New York*, Title 9, Section 3.37, August 2, 1976.

[9] Charles J. Hynes, *Private Proprietary Homes for Adults, An Interim Report*, March 31, 1977.

[10] *In the Matter of Arthur Friedman, as Special Assistant Attorney - General, et al., Respondents, v. HI-LI Manor Home for Adults, Appellant*, 42 N.Y. 2d 408 (1977).

Today, many adult homes serving residents with mental illness, despite new laws and regulations, are not measurably different than those found by Special Prosecutor Hynes over a decade ago. The Commission's study also found that adult residences with similar funding levels had a wide and disparate range of performance.

In many adult residences not only were records inappropriately withheld, but resident care inspections by the Special Prosecutor experienced problems similar to those of the Commission. The Special Prosecutor's staff was prevented from entering the homes without the owners' consent and had other difficulties obtaining search warrants. It wasn't until a joint inspection protocol was worked out with the State licensing agency that the operations of adult homes were properly studied.[11]

After these and other protracted litigation delays, the Special Prosecutor was able on March 31, 1979 to issue his second and final investigative report in response to the Governor's Executive Order.[12] Concerning financial matters, the report concluded that "*the claims and figures advanced by the industry could not be taken at face value.*" There were operators who were able to operate decent homes profitably on government assistance payments to residents under the Supplemental Security Income (SSI) program.[13] There were also many homes with substandard, unhealthy and dangerous conditions.[14]

More than a decade later, these major findings are disturbingly similar to those in the Commission's recent study. Today, many adult homes serving residents with mental illness, despite new laws and regulations, are not measurably different than those found by Special Prosecutor Hynes over a decade ago.[15]

The Commission's study also found that adult residences with similar funding levels had a wide and disparate range of performance. More importantly, the Commission found that since 1979 DSS has not conducted a fiscal audit of any adult home.[16] Thus, this probe into the management and finances of HI-LI Manor Home for the Aged is the first in-depth look by any State agency of an adult home's finances in over a decade.

HI-LI Manor Home for the Aged — Beginnings

HI-LI Manor, located at 12-14 Heyson Road, Far Rockaway, New York, is a 125-bed adult home licensed by DSS. Its residents have documented histories of mental illness. The money for their residential care is derived mostly from public assistance funds under the federally-administered SSI program. The home was formed through a November 21, 1979 Consent Agreement between operators of the previous HI-LI Manor Home for Adults and the landlord, the Hebrew Institute of Long Island. The mortgage on the property was in default because the operators had not paid their rent and taxes for many months and the Hebrew Institute desired to continue the operations of HI-LI Manor to protect its financial investment in the property. At the time, the home's maximum occupancy of 125 residents had been reduced by almost 50 percent because the home was not in compliance with DSS regulations and placements had been restricted. A six-month Operating Certificate was issued in the name of the Hebrew Institute of Long Island.

On April 2, 1980, the Hebrew Institute of Long Island and The Hillel School, each a religious corporation, were consolidated into one corporation under the name of the Hebrew Academy of the Five Towns and Rockaway. The DSS Operating Certificate for HI-LI Manor was renewed in the name of the Hebrew Institute of Long Island.

HAFTR received a series of notices of noncompliance with DSS regulations in late 1980, mid-

[11] Hynes, pp. 5-6.

[12] Charles J. Hynes, *Private Proprietary Homes for Adults*, March 31, 1979.

[13] Ibid., p. 121 (emphasis added).

[14] Ibid. p. 17.

[15] *Adults Homes Serving Residents with Mental Illness: A Study of Conditions, Services, and Regulation*, New York State Commission on Quality of Care for the Mentally Disabled, October 1990.

[16] Ibid., p. 36.

1981, and early 1982. During this period Beryl Zyskind served as the assistant to the executive director of HAFTR, David Kolatch, and had the responsibility for overseeing the operation and administration of HI-LI Manor for HAFTR.

On January 13, 1983, Beryl Zyskind filed an application with DSS to become HI-LI Manor's full-time administrator, stating that his working hours would be Monday through Friday 9:30 a.m. to 5:30 p.m.[17] As a condition for approval as the residence's administrator, Mr. Zyskind assured DSS that he had terminated his employment as controller of the Morris Park Nursing Home. In a June 5, 1984 letter, Mr. Zyskind formally notified DSS of his resignation from the nursing home in October 1983. He also affirmed in his statement of qualifications that his education credentials included a B.B.A. (Accounting) degree (1972) and 32 credits toward an M.B.A. (Finance) degree from Baruch College.

But Beryl Zyskind never resigned as controller of Morris Park Nursing Home[18] and, in fact, began to funnel HI-LI money to it as he expanded his role in becoming a supplier of human services at other facilities licensed by the State of New York.

In a very short period of time, he was able to become associated in various, often interrelated, capacities as landlord, owner, operator, administrator, fiscal consultant and controller of nursing and adult homes involving 1,057 residential beds as well as three ambulance/ambulette companies. Chart I illustrates these interrelationships.

[17] DSS regulation (18 NYCRR 487.9) requires facilities with a certified capacity of 25 or more beds to have a qualified administrator employed and on duty during the day at least 40 hours each week.

[18] According to financial reports filed with the State Department of Health, Beryl Zyskind never terminated his employment as controller at the Morris Park Nursing Home. The reports indicate further that the nursing home is owned by Mr. Zyskind's father-in-law, Morris Berkowitz. From 1984 to 1988, the not-for-profit HI-LI Manor advanced $864,706 to the for-profit nursing home. These interest-free advances were recorded as charges to an account on HI-LI Manor's books called "loans and exchanges — BZ." *See, infra,* Discussion at pp. 19-20.

Chart I

Beryl Zyskind

EMPLOYMENT

— HI-LI MANOR (125 BEDS)
(Operator: HAFTR)
Administrator: B. Zyskind 1983 -
40 Hours/Week
1989 Salary $65,200

— MORRIS PARK NURSING HOME (191 BEDS)
(Operator: Morris Berkowitz)
Controller: B. Zyskind 1981 -
20 Hours/Week
1989 Salary $35, 643

CONSULTANT

— LINDEN BAY CARE CENTER (140 BEDS)
(Operators: L. Berkowitz 50%, I. Orzel 50%)
Fiscal Consultant: B. Zyskind 4/88 -
1989 Fee $75,200

LICENSED OPERATOR

ADULT HOMES

— NEW BELLE HARBOR MANOR (162 BEDS) 3/87 -
B. Zyskind 90%, G. Zimmerman 10%

— NEW ROCHELLE MANOR (250 BEDS) 10/87 -
B. Zyskind 50%, I. Orzel 50%

— VANDERBILT MANOR (189 BEDS) 2/88 - 1/91
B. Zyskind 50%, I. Orzel 50%

AMBULANCE/AMBULETTE SERVICES

— ENDICOTT AMBULANCE SERVICE, INC. 4/89 -
B. Zyskind 50%, I. Orzel 50%

— AARON AMBULETTE & TRANSPORTATION SERVICES, INC. 2/90 -
B. Zyskind 50%, I. Orzel 50%

— FLATBUSH EMERGENCY OXYGEN & AMBULANCE SERVICES CO., INC. 2/90 -
B. Zyskind 50%, I. Orzel 50%

REALTY OWNER (LANDLORD)*

— HI-LI REALTY COMPANY 1985 -
B. Zyskind 50%, F. Zyskind 50%
Owns the HI-LI Manor Property 1/85
1989 Rent $290,000

— OZ REALTY CORP.
B. Zyskind 25%, I. Orzel 25%, L. Berkowitz 50%
Owns Linden Bay Care Center and Baptist Medical Center 3/88
1989 Rent Charged to Linden Bay Care Center $260,958

— 41 LOCKWOOD REALTY CORP.
F. Zyskind 50%, R. Orzel 50%
Owns New Rochelle Manor Property 10/87
1989 Rent $725,373

* Although a portion of the realty holdings are under the name of Beryl Zyskind's wife, Frady Zyskind, he possesses control over the properties through a power of attorney.

The Pyramid of Facilities

Sale of HI-LI from HAFTR to the Zyskinds (d/b/a HI-LI Realty Co.)

On January 17, 1985, Beryl Zyskind and his wife Frady (d/b/a HI-LI Realty Company, a partnership) purchased the real estate of HI-LI Manor from HAFTR for $950,000 *with no money down.* They obtained two mortgages, one of which was guaranteed by HAFTR, the other was directly from HAFTR. The Zyskinds also simultaneously entered into an 11-year lease with HAFTR.

The annual rent over the course of this lease was made variable, averaging $317,272 per year (or $2,538 per bed).[19] Under this lease, payment of property taxes is the joint responsibility of the tenant and landlord; other expenses relating to the upkeep and operation of the premises remain HAFTR's responsibility. Thus, HI-LI continued to be operated by HAFTR, but now Beryl Zyskind was assured a profit with little risk or costs to himself as its landlord and administrator.

HAFTR told Commission staff that the sale was necessary to avoid forfeiting the property and to alleviate a cash shortage as, just prior to the sale of the residence in 1985, HI-LI was involved in an *in rem* proceeding resulting from a tax lien held by the City of New York. However, the Commission's analysis of the finances found that the home at that time could have easily turned around its cash position if it had merely called in the outstanding interest-free loans that Mr. Zyskind had taken for himself. Moreover, the home paid off its back taxes about 18 days *prior* to the real estate sale to the Zyskinds, thus negating the necessity of the sale to him for those reasons. Finally, and ironically, this sale actually produced very little cash to HAFTR, as virtually all the proceeds of the sale were immediately tied up in mortgages and loan guarantees.

Ironically, this sale actually produced very little cash to HAFTR, as virtually all the proceeds of the sale were immediately tied up in mortgages and loan guarantees.

Furthermore, even though the lease payments by HAFTR to the Zyskinds' realty company were more than sufficient to cover the mortgage payments and expenses, in August 1990, the City of New York filed an *in rem* action in response to delinquent real estate taxes on the HI-LI Manor property. And, in May 1991, the mortgagor Village Savings Bank filed a notice of *lis pendens* because of the Zyskinds' failure to meet mortgage obligations subsequent to September 1990.[20]

Due to the complexity of these transactions, the details have been enumerated separately in Audit Findings, *infra*.

Morris Park Nursing Home (MPNH)

Since 1981, Beryl Zyskind has served as controller of the 191-bed Morris Park Nursing Home (MPNH), 1235 Pelham Parkway North, Bronx, New York, which is owned by his father-in-law Morris Berkowitz. Mr. Zyskind continued to work as controller although he had indicated to DSS in his application to become HI-LI Manor's full-time administrator that he had left the MPNH job in 1983. In 1989, Mr. Zyskind was paid $35,643 as controller (20 hrs/week) of MPNH while its owner Morris Berkowitz received $420,714 as administrator, wife Doris Berkowitz $210,000 as assistant administrator, and son Leopold Berkowitz $409,826 as direc-

[19] *See, infra,* Discussion at p. 15.

[20] *See, infra,* Discussion at p. 18.

From 1984-1987, the Commission was able to identify at least $864,706 of interest-free advances to MPNH from HI-LI Manor which were recorded in and charged to Mr. Zyskind's loan account.

tor of operations. The 191-bed home also had a profit of $885,020 on 1989 revenues of $8.6 million, reaping the Berkowitz family almost $2 million from the MPNH.

From 1984-1987, the Commission was able to identify at least $864,706 of interest-free advances to MPNH from HI-LI Manor which were recorded in and charged to Mr. Zyskind's loan account.[21] These cash withdrawals from HI-LI Manor were apparently made without the approval of the HAFTR Board of Directors.[22] Because of incomplete access to records, the amounts repaid by MPNH to HI-LI cannot be precisely determined. Yet, some repayments were made by Beryl Zyskind personally or from his private businesses, leading to the question: What real use was made of this money borrowed from the adult home and given to his father-in-law's business?

There is a possibility which should be pursued by the NYS Department of Health (which has jurisdiction over nursing homes) that MPNH may have been used as a conduit for investing substantial HI-LI Manor monies into Mr. Zyskind's private business ventures. In his dual and conflicting roles as the HI-LI Manor administrator and MPNH controller, Mr. Zyskind was in a position to avoid scrutiny of such dealings. Mr. Zyskind has contended that it was MPNH that had been helping HI-LI Manor with its cash problems, but the Commission cannot find any basis in fact or in records for this assertion.

Zyskind's Other Involvements in Adult Homes, Nursing Home and Ambulance/Ambulette Companies

New Belle Harbor Manor

On June 9, 1986, Beryl Zyskind further expanded his role when he and Gary Zimmerman formed a partnership for the purpose of purchasing operations and leasing the premises of the 162-bed Belle Harbor Manor adult home, located at 205 Beach 125th Street, Belle Harbor, New York. Their interests in the *New* Belle Harbor Manor partnership were 90 percent and 10 percent, respectively.

In applying for an Operating Certificate, Mr. Zyskind again stated in his employment history that, although he was the administrator of HI-LI Manor, he had terminated his employment as controller of the Morris Park Nursing Home. Additionally, DSS records indicate that, while it had no knowledge of Mr. Zimmerman, it knew that Beryl Zyskind was only nominally the administrator of HI-LI Manor since the *de facto* day-to-day administration of the home was the responsibility of Anne Schrier, the home's case manager.[23] Notwithstanding this information and despite this violation of regulations (*see* footnote 17 at page 3), an Operating Certificate was issued to Messrs. Zyskind and Zimmerman on March 23, 1987.

Under Mr. Zyskind's control, it did not take long before the facility became so cash-poor that by November 1990, the Long Island Lighting Company (LILCO) initiated a lawsuit against New Belle Harbor for failure to pay the gas and electric service totalling $107,853. On February 5, 1991, LILCO sent subpoenas and restraining notices to six entities[24] to identify corporate assets and to stop the sale

[21] *See, infra,* Discussion at p. 19.

[22] *See, infra,* Discussion at pp. 26-27.

[23] In 1989, Mr. Zyskind's salary as administrator for a 40-hour work week was $65,200; Anne Schrier received a $21,200 salary for a 40-hour week as case manager and an additional $10,600 for undocumented "nonemployee compensation."

[24] New Rochelle Manor, New Belle Harbor Manor, HI-LI Realty Corporation, 41 Lockwood Realty Corporation, Aaron Ambulette & Transportation Service, Inc., and Endicott Ambulance, Inc.

or transfer of any property owned by Mr. Zyskind in order to protect LILCO's interests, but each subpoena went unanswered. LILCO then initiated contempt proceedings against each entity. The judgment debtors, New Belle Harbor and Beryl Zyskind, failed to respond to these subpoenas. Mr. Zyskind was also in arrears in rent on New Belle Harbor Manor in the amount of $163,946, and has been involved in an eviction proceeding brought by the landlord.

On April 15, 1991, DSS, after being informed of the legal proceedings, denied renewal of the New Belle Harbor Manor Operating Certificate because Messrs. Zyskind and Zimmerman "failed to show financial responsibility in operating Belle Harbor Manor." It is pertinent to note that DSS has taken this action primarily based upon New Belle Harbor's failure to pay its electric bill and rent, but has not conducted a financial audit to determine the underlying reasons for this situation.

DSS, unaware of Mr. Zyskind's range of financial maneuvers, subsequently met with Mr. Zyskind and his attorney M. Joshua Aber during July 1991. DSS agreed to give Mr. Zyskind until September 1, 1991 to work out an arrangement to bring his bills current. As of September 25, 1991, the LILCO debt was still outstanding and DSS was holding to its position of not renewing the New Belle Harbor license. In the meantime, the facility, which is appealing the license denial, continues to operate and to receive SSI funds.[25]

OZ Realty Corporation — Baptist Medical Center

OZ Realty Corporation is owned by Mr. Zyskind (25%), his business partner Israel Orzel (25%), and his brother-in-law Leopold Berkowitz (50%) who is part of the family which owns the Morris Park Nursing Home which also employs Mr. Zyskind. Beryl Zyskind is also OZ Realty's president.

On December 22, 1987, the United States Bankruptcy Court, Eastern District of New York, accepted a $6.5 million offer from OZ Realty for the purchase of the real property, furniture and fixtures of the Baptist Medical Center of New York.[26] Since October 10, 1987, the hospital portion of the Center has been empty due to the loss of its Medicare status but operation of a 140-bed nursing home complement was the responsibility of the Operating Trustee. OZ Realty entered into a lease with the nursing home (d/b/a Linden Bay Care Center) for $210,000 annually (or $1,500 per bed), but, because of its inability to utilize the entire premises as income producing property and its highly leveraged mortgage debt, OZ Realty has become financially unstable. According to a certified financial statement filed with the State Department of Health (DOH), OZ Realty lost $892,105 in 1989 and at year's end had an accumulated deficit of $1,575,615.

Linden Bay Care Center

Simultaneous with the acquisition of the Baptist Medical Center by OZ Realty, Leopold Berkowitz and Israel Orzel were appointed as voluntary receivers to run the nursing home portion of the Center, d/b/a Linden Bay Care Center, 2749 Linden Boulevard, Brooklyn, New York. Mr. Zyskind was also employed as a fiscal consultant. In 1989 he was paid $75,200; Messrs. Orzel and Berkowitz were each paid receivership fees of $25,000 under the Receiver Agreement. Although operational ownership of the nursing home was not explicitly stated in the Order of Sale, the receivers have affirmed their intention to continue to run the facility by seeking DOH approvals to reestablish the nursing home and to expand its capacity by 96 beds. DOH, however, has raised concerns about the ability of the operators to generate sufficient revenues to offset projected operating and capital costs, and DOH expressed its concern over the tenuous financial position of its landlord, OZ Realty. On October 27, 1989, the State Public Health Council recommended disapproval of the receivers' application for an Operating Certificate. As of January 30, 1992, a requested hearing on this denial still had not been scheduled.

Shortly after commencement of the receivership, DOH approved a $450,000 non-interest-bearing loan to Linden Bay to cover an expected cash flow problem related to a lag in Medicaid receipts due to the change in operators. The six-month loan,

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[25] These financial problems occurred despite an infusion of $45,000 by HI-LI Manor from funds that were misappropriated from a disabled veteran and a $26,000 check written from the HI-LI Manor Resident Funds Account I. *See, infra*, Discussion at pp. 25-26.

[26] Financed by $5.5 million first mortgage held by Chapter 11 Operating Trustee and $1 million second mortgage held by J.L.B. Equities.

Despite Mr. Zyskind's poor record in managing adult residences, here he was deemed a fiscal expert to assist a problem facility to overcome bankruptcy.

which was collateralized by the home's accounts receivables, was payable by December 31, 1988. However, over three years later this loan still had not been repaid despite a July 1991 DOH letter calling for immediate repayment. Linden Bay certified financial statements filed with DOH indicate that, while the State loan remained unpaid, non-interest-bearing loans were being made to other entities where there was substantial common ownership (i.e., Vanderbilt Manor Adult Home and OZ Realty Corporation). Thus, despite Mr. Zyskind's poor record in managing adult residences, here he was deemed a fiscal expert to assist a problem facility to overcome bankruptcy.

41 Lockwood Realty Corporation — New Rochelle Manor

On July 13, 1987, a certificate of incorporation created the 41 Lockwood Realty Corporation for the purpose of purchasing the New Rochelle Manor adult home property. At the time, the adult home was in receivership and was being operated by a trustee of the United States Bankruptcy Court, Southern District of New York. DSS records indicate that 41 Lockwood Realty Corporation is owned by the wives of Messrs. Zyskind and Orzel.

On October 5, 1987 Messrs. Zyskind and Orzel, d/b/a New Rochelle Manor, entered into a partnership and paid $200,000 for the business operations of the 250-bed Lockwood Manor adult home at 41 Lockwood Avenue, New Rochelle, New York.[27]

In the application for an Operating Certificate, Beryl Zyskind again represented to DSS that he had terminated his employment as controller of the Morris Park Nursing Home.

The property was purchased and financed in October 1987 using three separate mortgages totalling $3,350,000 ranging from $500,000 to $1.8 million with interest rates from 10.5 percent to 24 percent.

In September 1989, new financing was obtained from Village Savings Bank and Bank Leumi for $3,800,000 at 11.75% which enabled them to pay off some of the existing mortgages. This resulted in a total new debt of $4.8 million.

In June 1991, the property was again refinanced with a Federal Housing and Urban Development (HUD) guaranteed loan for approximately $5.6 million. This loan allowed the pay off of existing mortgages with Village Savings Bank and Bank Leumi and made available about $700,000 for renovations, including "new floors throughout the home, new windows, new boilers, new roof repairs, new furniture in rooms, and new kitchen equipment." The loan application was initially denied by HUD because financial statements submitted by Messrs. Zyskind and Orzel reflected "an insufficiency of liquid funds to meet estimated net cash requirements . . ." However, Messrs. Zyskind and Orzel were able to get the HUD loan approved after $500,000 of outstanding debt was reassigned to "other properties owned by the General Partners" including HI-LI Manor. The HUD loan application contains erroneous representations made by Mr. Zyskind: that the underutilized property at the Baptist Medical Center was about to be rented by the State mental hygiene agencies and that the nursing home portion was approved for expansion; these were simply not true.

This "shell game" of shifting debt from one business to another and misrepresenting income streams to acquire additional financing raises serious questions concerning the ability of the operators to pay back the debt on these highly leveraged properties.

Vanderbilt Manor

On January 23, 1988, Messrs. Zyskind and Orzel took over the ownership of the 189-bed Staatsburg Manor Home for Adults and entered into an agreement to lease and subsequently purchase the land and building. Operating as the Vanderbilt Manor of Hyde Park, located at Anderson School Road, Staatsburg, New York, Messrs. Zyskind and Orzel were issued an Operating Certificate on February 4, 1988. In applying for the license Mr. Zyskind again

[27] Since 1985, Israel Orzel has also been the operator and lessor of the 263-bed New Monsey Park Home for Adults, 15 Monsey Boulevard, Monsey, New York. The home was visited during the Commission's adult home study and its condition was rated as "poor" (Appendix C).

Although Vanderbilt was classified as a "poor" condition home in the Commission's adult home study, DSS stipulated to a form of immunity against use of its many shortcomings to assess the character and competence of the operators' other dealings with the State.

represented to DSS that he was no longer employed as controller of the Morris Park Nursing Home.

After a series of cash shortages and substantial mortgage arrears, an attempt was made in early 1990 to sell the leasehold interest in Vanderbilt, but the sale was contingent on DSS approval of new operators. Such approval was never granted. On March 20, 1990, the DSS Adult Services Division referred the home to DSS Counsel's Office for commencement of an enforcement action against it with a recommendation that its Operating Certificate be revoked because of its many serious violations of the adult home regulations. On October 31, 1990, DSS found the conditions at the home to constitute a danger to the physical and mental health, safety and well-being of the residents and issued an order restricting any new admissions. A Voluntary Closure and Relocation Plan was approved by DSS on November 19, 1990 resulting in the relocation of all residents to other facilities by January 18, 1991. The operators surrendered their Operating Certificate.

In an April 30, 1991 Stipulation of Settlement, operators Zyskind and Orzel admitted to violations of DSS adult home regulations and accepted a $10,000 fine. A pending administrative proceeding initiated by DSS against the operators was adjourned. However, even though the violations agreed to should have become part of the operators' compliance record used for "character and competence" assessments on future license applications or renewals by these individuals, DSS agreed to stipulate "that the Violations referenced herein shall not constitute a sole basis for Department denial or enforcement action relative to another adult care facility operated by the Operators, either jointly or singularly, if such other adult care facility operated by the Operator is operating in compliance with Department regulations."

Thus, although Vanderbilt was classified as a "poor" condition home in the Commission's adult home study, DSS stipulated to a form of immunity against use of its many shortcomings to assess the character and competence of the operators' other dealings with the State.

Endicott Ambulance Service, Inc.

On April 1, 1989, Beryl Zyskind and Israel Orzel took over the ownership of the Endicott Ambulance Service, Inc., a proprietary (for-profit) corporation located at 895 Liberty Avenue, Brooklyn, New York. According to the 1989 Annual Report filed with the State Department of Transportation (DOT), Endicott had 17 ambulettes[28] and nine ambulances; and it had total operating revenues of $1,735,529 and total operating expenses of $1,886,400, resulting in a deficit of $150,871.

Since April 1, 1989, Endicott has been targeted in a number of enforcement actions by various State agencies.

- On November 15, 1989, the Department of Motor Vehicles (DMV) suspended Endicott's certification to operate as a common carrier of passengers; the suspension ended on February 7, 1990.
- On August 1, 1990, DOT suspended Endicott's authority to operate for failure to timely file a 1989 annual report; again, the suspension was terminated on August 30, 1990.
- On November 5, 1990, DSS terminated Endicott's Medicaid provider number because it did not meet the licensing requirements of the New York City Taxi and Limousine Commission.
- Apparently, the number was subsequently reinstated since on April 4, 1991 DSS again terminated the number for the same reason.
- On May 23, 1991 Endicott entered into a Stipulation of Settlement and Order with DOH arising out of violations of the Public Health Law and the State Emergency Medical Services Code. The Order cited vehicle equipment violations and the operation of 11 vehicles with expired DMV registrations. A civil penalty of $15,900 was assessed, but $9,000 of the penalty was to be suspended if Endicott operated in compli-

[28] An ambulette is a special-purpose vehicle, designed and equipped to provide non-emergency care, that has either wheelchair carrying capacity or the ability to carry handicapped individuals.

Chart II
Regulatory Control

Business Type/Name	Regulatory Agencies
Adult Home	NYS DSS
HI-LI Manor	NYS OMH
Vanderbilt	(For Mental Health Services)
Belle Harbor	
Nursing Home	NYS DOH
Linden Bay	
Morris Park	
Ambulette	NYS DSS
Endicott	NYS DOT
Aaron	NYS DMV
	NYC Taxi and Limousine
Ambulance	NYS DOH
Flatbush Oxygen	NYS DMV

ance with the Public Health Law and DOH regulations for a period of two years.

- DOH recently took all of Endicott's ambulances out of service because Endicott could not obtain valid titles to the vehicles from DMV.

Aaron Ambulette & Transportation Service, Inc.

Flatbush Emergency Oxygen and Ambulance Service Co., Inc.

On or about February 15, 1990 Israel Orzel and Beryl Zyskind purchased the stock of two entities located at 895 Liberty Avenue, Brooklyn, New York: (1) the Aaron Ambulette & Transportation Service, Inc. which was licensed by the State Department of Transportation to operate, as a contract carrier of handicapped persons, some 27 ambulette vehicles at all points within the City of New York and Long Island, and (2) the Flatbush Emergency Oxygen and Ambulance Service Co. Inc. (d/b/a Aaron Ambulance) which was licensed by DOH to operate some 15 vehicles to provide ambulance services in the City of New York. Both have provider numbers with DSS for the receipt of Medicaid funds.

On May 7, 1990, Aaron Ambulance entered into a Stipulation of Settlement and Order with DOH for violations of the Public Health Law and the State Emergency Medical Services Code. The violations included numerous equipment problems with two ambulances. A $12,000 civil penalty was assessed, but as with Endicott, $5,000 of the penalty was to be suspended if Aaron Ambulance operated in compliance with the Public Health Law and DOH regulations for a period of 24 months.

On February 14, 1992, DSS notified Aaron Ambulette that it proposed to exclude the company from the Medical Assistance Program (Medicaid) for five years and seek restitution of $150,444 because the company violated provisions of the Medicaid program which included filing false claims and unacceptable record keeping. Aaron has requested an administrative hearing to refute the DSS charges.

Summary

Misrepresentation, poor services and insolvency characterize the entire decade that Beryl Zyskind has been involved in the State's human services system. Contrary to the outward appearance of being a caring administrator who could take over

Chart III
Beryl Zyskind's Expanding Role
Problem Facilities

Year Acquired	Facility	Status
1985	HI-LI Realty	Defaulted on $1.2M HI-LI Mortgage
	HI-LI Manor	Utilities Unpaid
		Checks to Vendors Bouncing
		Residents' Personal Funds "Borrowed"
		Veteran's Benefit Misappropriated
1986	New Belle Harbor	Bills Unpaid:
		Utility — $107,853
		Rent — $163,946
1987	41 Lockwood Realty	OMH Survey Finds Safety and
	New Rochelle	Environmental Deficiencies
		Leveraged by $5.6M HUD Mortgage
1988	Vanderbilt Manor	Home Closed Due To Health and Safety Hazards
	Linden Bay Nursing Home	Defaulted on $450,000 DOH Loan
1989	Endicott Ambulance	Numerous Regulatory Violations from: DSS,
		DOT, DMV and DOH
1990	Aaron Ambulance	Violations of Public Health Law
	Flatbush Ambulance	DSS Disallowance of Medicaid Claims

and revitalize troubled facilities, the Commission found Mr. Zyskind to be the central problem not only at HI-LI but in a complex pyramiding of other facilities.

By and large, he has survived and continued to expand his empire due to regulatory weaknesses, including a lack of fiscal audits to determine how money is being spent, insufficient scrutiny of character and competence of those licensed to provide services, and a lack of coordination in the regulatory activities among the several State agencies that deal with common licensees (Chart II).

In other respects, Mr. Zyskind misled DSS when he falsely assured it that he was no longer involved as controller of the Morris Park Nursing Home when applying for various licenses. He loaned HI-LI money to the Morris Park Nursing Home, but the obvious conflict created by the latter being controlled by his father-in-law was unknown to DSS. DSS did not require "balance sheet" financial statements, and it had not performed an audit of any adult home; and because it does not require divulgence of familial relationships involved in doing business with a not-for-profit licensee, it was unaware of these facts.

Beryl Zyskind's history of deficient services and conditions at places he was licensed by the State to operate should have been obvious in each case and are absolutely stark when all viewed together (Chart III). Yet, Mr. Zyskind was repeatedly certified by the State as having the requisite character and competence to assume responsibility for the care of the mentally ill and other dependent and vulnerable persons.

A competent financial audit and a sharing of information among State agencies would have disclosed this situation, but DSS has performed no audits in any adult home in a decade and State agencies simply do not generally share such relevant information or make inquiries of each other about the character and competence of persons who obtain licenses from the State. The operations in which Mr. Zyskind was involved sent up many "red flags" of financial irregularities, but few were diligently pursued. (*See*, next page.)

"RED FLAG"	CONDITION
1. Concealment of Bank Records	Although swearing they provided full access to all books and records, Messrs. Kolatch and Zyskind failed to disclose a bank account in which over $274,000 in "management fees" were deposited. The account was used to finance hidden perquisites for Messrs. Kolatch, Zyskind, and Benzaquen.
2. Missing Documentation	Although DSS regulations require that records be kept for seven years, since 1989, HI-LI books for 1984 and 1985 have been "missing." These records were crucial to the understanding of financial transactions relating to the period when Beryl Zyskind and his wife purchased the real property from HAFTR. HI-LI Realty Co. books for 1989 are also "missing." They are needed to examine the disposition of mortgage proceeds.
3. Improper Related Party Transactions	Mr. Zyskind purchased the HI-LI property from HAFTR for $950,000 with no down payment, and began leasing it back to HAFTR at an average annual rental of $317,000 over 11 years. Mr. Zyskind personally borrowed hundreds of thousands of dollars from HI-LI — interest free.
4. Diversion of Funds to Employees	$274,000 was diverted from HI-LI to a "hidden" bank account which was used to pay for perquisites for HI-LI/HAFTR employees. Mr. Zyskind pocketed the proceeds of a $110,000 real estate tax refund which was due HI-LI.
5. Failure to Disclose Significant Information	In obtaining a $1.2 million loan from the Village Savings Bank to consolidate his debts, Mr. Zyskind failed to disclose the hundreds of thousands that he personally borrowed from HI-LI Manor. In obtaining a $5.6 million HUD guaranteed loan, Mr. Zyskind failed to disclose his HI-LI loans.
6. Covering up Sources of Receipts of Income by False Descriptions of Source	Examples of how HI-LI Manor was covering up sources of its income which were used to offset Mr. Zyskind's loan account: 1. two donations to HAFTR totaling $3,200 from a Yeshiva Special Bingo Account. 2. a $2,100 donation to the Hebrew Institute of Long Island from Mr. Zyskind's partner in the Belle Harbor adult home. 3. a $1,500 donation for "charity" made out to the Hebrew Institute from a Neil Zyskind. 4. several intracorporate cash transfers from HAFTR. 5. checks written from Belle Harbor adult home to "Choice Paper Co." for $3,000 were deposited into HI-LI's account. 6. monthly rent checks for another business owned by Mr. Zyskind.
7. Old Outstanding Checks	HI-LI Manor was continuously in a poor cash position and had many old outstanding checks. For example, at the end of November 1987, 39 checks totalling $104,729 were at least 1 year old, including checks written to the IRS and the NYS income tax.
8. Unexplained Dealings in Large Sums of Currency	Many unexplained cash transactions took place at the home. For example, over an 8-day period in October 1988, five separate cash deposits of $9,000 each by HI-LI were used to reduce Mr. Zyskind's loans. Most of the $99,487 deposited into the management fee account disappeared in cash payments.
9. Failure to Keep Adequate Records, Especially, if Put on Notice	In 1986, HI-LI's CPA notified Mr. Zyskind that he could not audit HI-LI's 1985 books and records because they were "in a complete state of chaos." HI-LI dismissed the CPA and hired a new one who tolerated the poorly kept accounting records.

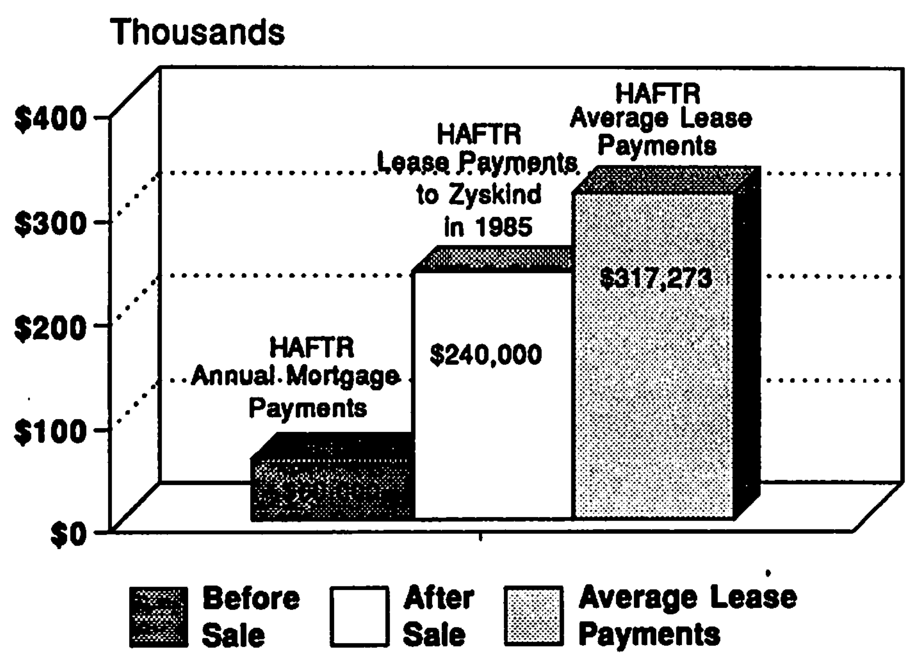
Audit Findings

The pattern of fiscal irregularities by the HI-LI Manor administrator Beryl Zyskind, who is professionally trained in accounting and finance, cannot be excused as innocent errors. They occurred over a period of many years even after a CPA that he subsequently dismissed warned him that "substantial sums of money are not properly accounted for" and records were kept in such a way that the books were "unauditable." Additionally, Board minutes of the licensee religious corporation which might help to explain a series of financial transactions that siphoned off the assets of the "not-for-profit" adult home and the religious corporation itself were either sparse or nonexistent. Perhaps because operators no longer feel fiscally accountable to the State, the Commission had to serve over 25 subpoenas to obtain the information necessary for this investigation, and had to go to the court to enforce many of

Perhaps because operators no longer feel fiscally accountable to the State, the Commission had to serve over 25 subpoenas to obtain the information necessary for this investigation, and had to go to the court to enforce many of these subpoenas.

these subpoenas. But, the Commission has doggedly pursued and has obtained numerous documents from secondary sources which, along with chaotic facility records, shed substantial light on how public monies intended for the care of mentally ill residents were diverted for private benefit or gain.

Chart IV
Ownership vs. Lease



Less-Than-Arm's Length Property Transactions

Sale and Lease-back of HI-LI Premises

On January 17, 1985, HI-LI Realty Company (a partnership consisting of Beryl Zyskind and his wife Frady Zyskind), with no money down, purchased the HI-LI Manor building for $950,000 from the religious corporation HAFTR. The business of the adult home continued to be owned, licensed and operated by HAFTR. On the same day as the sale, HAFTR entered into a lease with the Zyskinds which required graduated annual rental payments that greatly exceeded its existing $60,000 annual mortgage which was scheduled to be paid off within five years (Chart IV). The scheduled annual rents, beginning with an outlay of $240,000 in 1985, rising to $390,000 by 1995, average $317,273 over the 11-year lease. For 1991, the scheduled rent of $350,000 would account for about 30 percent of the home's projected income. At the end of the lease, HAFTR has the option of renewal for an additional 12 years at an average annual rent of $570,000.

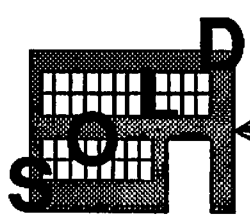
Both David Kolatch and Beryl Zyskind told the Commission that HAFTR sold the HI-LI Manor property because HAFTR needed the cash. Yet, as discussed below, any possibility of a cash gain was offset through HAFTR's financing and collateralizing of the transaction for the purchaser (i.e., the Zyskinds) and by the substantial annual rent outlays. Also, because the property was no longer owned by a tax exempt agency, under its lease HI-LI Manor became responsible for any increase in property taxes beyond the January 1985 base amount. Real estate taxes rose from $20,800 in 1985, to $53,700 in 1991.

Sale of HI-LI Manor to the Zyskinds

Despite the contentions of Messrs. Kolatch and Zyskind about the cash gains to HAFTR that would result from the sale, HAFTR netted only $60,000 from the $950,000 sales price (Chart V). This occurred because: (1) HAFTR held a second mortgage of $450,000 with very low up front scheduled payments; (2) $250,000 of the receipts were scheduled to be placed in a certificate of deposit (CD) for five years with Norstar Bank of Long Island to collateralize the Zyskinds' first mortgage; and (3) $190,000 was required to pay off HAFTR's existing first mortgage. Moreover, the $60,000 generated from the sale was quickly depleted because of its immediate monthly $20,000 rental obligations. HAFTR also loaned the Zyskinds $14,000 to cover closing costs.

Chart V
Sale of HI-LI Manor

HI-LI MANOR



$950,000

DISPOSITION OF PROCEEDS

HAFTR Second Mortgage	$450,000
Collateral CD	250,000
Payoff of Existing Mortgage	190,000
Net Proceeds to HAFTR	60,000
	$950,000

Table 1
Cash Flow to Zyskinds from HAFTR
(Thousands)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Rent to Zyskinds*	$240	$265	$265	$290	$290	$290	$350	$360	$370	$380	$390
Mortgage from Zyskinds**	$ 25	$ 50	$ 50	$ 75	$ 75	$ 75	$125	$125	$125	$125	$125
Net Cash to Zyskinds	$215	$215	$215	$215	$215	$215	$225	$235	$245	$255	$265

*Rent payments based upon lease dated January 17, 1985.

**Second mortgage payments based upon mortgage dated January 17, 1985 (includes interest and principal).

It is not much of an oversimplification to say that HAFTR gave the Zyskinds a building and a profit-making business with no money down and with little legal responsibility or risk on the part of the Zyskinds.

Lease-back Arrangement

On the day of the closing, David Kolatch signed an 11-year lease on behalf of HAFTR (tenant) with the Zyskinds [d/b/a HI-LI Realty Company (landlord)], which required a total scheduled payout of $3,490,000. The terms of the lease seem to be very favorable to the Zyskinds because under it the tenant (i.e., HAFTR) is responsible for the following expenses for the operation of the facility: utilities, insurance, upkeep, maintenance and nonstructural repairs.[29]

Moreover, even though the tenant is *not* responsible for 1985 base year property taxes ($20,800), HI-LI Manor has nevertheless been paying for *all* property taxes, though there have been delinquencies. In short, aside from required interest payments on mortgages and "non-cash" depreciation expenses, the rental payments represent mostly profit to the Zyskinds.

In the final analysis of the flow of money, it is apparent that after the Zyskinds make the interest and principal payments on the second mortgage held by HAFTR, and with the gradually increasing lease payments from HAFTR back to the Zyskinds, this financial arrangement was structured to guarantee the Zyskinds a $215,000 cash flow from HAFTR each year (Table 1).

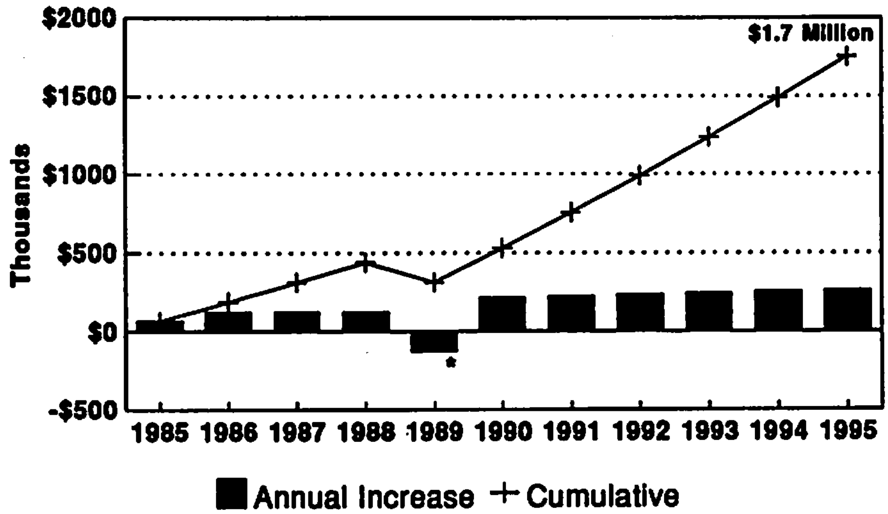
This net inflow of money is sufficient to cover payments on the Zyskinds' first mortgage and yield them a considerable profit. But, as discussed below, the Zyskinds are in default on their (reconstituted) mortgage obligations.

Thus, it is not much of an oversimplification to say that HAFTR gave the Zyskinds a building and a profit-making business with no money down and with little legal responsibility or risk on the part of the Zyskinds. But, rather than improving the facility which has a history of problems, more money was drained out of it to fund other facilities which were themselves in trouble.

As support for the Commission's conclusion that HAFTR has been greatly disadvantaged by the transaction, the projected cash outflow from HAFTR over the lease term is presented in Chart VI. This analysis finds that by the end of the lease HAFTR will have spent $1.7 million more than if it had retained ownership of the HI-LI Manor property. And, if the 12-year lease renewal is exercised in 1995, this cash outlay will rise to $8.6 million.

[29] HAFTR representatives have stated that the rent payments were to be limited to funds generated from the HI-LI operations and if the operations could not support the rent, HAFTR was not obligated to meet the shortfall. Nevertheless, despite staffing deficiencies and fiscal deficits at the home, the Commission has not found any instance where HAFTR attempted to pay less rent than enumerated by the lease.

Chart VI
Increase in HAFTR Cash Outflow from Sale/Lease-back



*The $250,000 CD collateral was scheduled to be released in 1989. However, by that point in time, the cumulative outflows to the Zyskinds outweighs this newly available cash.

Clearly, the structure of this lucrative deal, in which the Zyskinds had no money down and HAFTR assumed or guaranteed their financing, raises important questions about whether the board was properly informed in their role of promoting the best interests of the corporation consistent with its not-for-profit status.

Apparent Misappropriation of Real Estate Tax Refund

On September 15, 1986, HI-LI Manor applied to the City of New York, Department of Finance, for a refund of overpaid real estate taxes on the adult home property for several years prior to 1985, when the property was on the tax rolls but should have been exempt, because it was owned by the not-for-profit religious corporation HAFTR. A refund was authorized and on August 31, 1987 a $110,421 check was issued to the "Hi Li Manor Home." Although the refund was deposited into HI-LI Manor's bank account, after a series of accounting entries the money (minus a $36,549 fee paid to the law firm of Brandt & Brandt) went to reduce the debt on interest-free borrowing of Mr. Zyskind from HI-LI Manor.[30] Simply put, Mr. Zyskind pocketed the tax refund which belonged to HI-LI Manor.

Simply put, Mr. Zyskind pocketed the tax refund which belonged to HI-LI Manor.

Mr. Zyskind has not denied that this money wound up in his pocket. Rather, in a sworn statement contesting a Commission subpoena he said that he was entitled to the refund because "as part of the purchase agreement . . . [he] personally advanced the [money to reduce the] outstanding tax indebtedness [$68,000] upon the Home's property." But the HI-LI Manor's accountant's working papers belie this claim. The Commission found that in December 1984, when Mr. Zyskind "advanced the outstanding indebtedness upon the Home's property," his loan balance was *reduced* on the books of HI-LI Manor. And when the refund was received from the City his loan balance was *again* reduced. This was in effect, a double loan reduction.

[30] *See, infra,* Discussion at p. 21.

There are reasonable grounds, therefore, to believe that funds due to HI-LI Manor were misappropriated by Mr. Zyskind.

Refinancing of HI-LI Manor Properties

On April 19, 1989, HI-LI Realty Company refinanced and consolidated mortgages that were on the HI-LI Manor property and an adjacent vacant land parcel bought in 1982 for $23,000. Using these properties as collateral, existing mortgages were assigned to Village Savings Bank along with additional financing obtained in the form of a $1.2 million first mortgage with the Village Savings Bank. (As can be seen below the $500,000 Norstar Bank first mortgage had a $291,667 balance outstanding, three other mortgages had balances totaling $505,000, and the additional new financing obtained was $403,333.)

	Mortgages Outstanding 4/19/89
Original first mortgage from Norstar Bank	$ 291,667
Three new mortgages acquired from 2/88 through 2/89	505,000
Additional financing from Village Savings Bank	403,333
New first mortgage, refinanced	$1,200,000

In a March 16, 1989 commitment letter from Village Savings Bank, Beryl Zyskind agreed that the proceeds of the $1.2 million debt would be used "To refinance mortgages and for improvements on premises at 12-14 Heyson Road, Far Rockaway, New York."

After paying off existing mortgages, closing and other costs, only about $300,000 was available to improve the HI-LI Manor premises. However, the Commission cannot determine from the incomplete records produced by HI-LI Realty Company whether any improvements were actually made or if the $300,000 was used by the Zyskinds for some other purpose. HI-LI Realty Company has withheld records subpoened by the Commission (e.g., books and invoices) leaving the Commission with no evidence that such improvements were undertaken. Conversely, what was produced (1989 bank statements, cancelled checks, and the partnership return) do not support claims of any such major outlays for capital improvements. For example, in less than a week of depositing the loan proceeds into the HI-LI Realty Company checking account, $150,000 was wire transferred to Mr. Zyskind's personal checking account and $20,000 to the New Belle Harbor Manor adult home. The HI-LI Realty tax return recorded nothing for HI-LI Manor improvements which would have been a depreciable expense item for tax reduction purposes, suggesting further that the loan proceeds were not used to improve the facility as represented to the bank. Misapplication of funds obtained for a purpose not sanctioned by the lender may be a felony.[31]

Subordination of HAFTR Second Mortgage

At the time of the mortgage refinancing with Village Savings Bank, the HAFTR second mortgage on the HI-LI Manor property remained at $450,000 since no principal payments had been made on this 1985 debt. As part of the refinancing, an agreement was executed on April 13, 1989, under the alleged signature (and corporate seal) of HAFTR's board president Theodore Schiffman, subordinating the $450,000 HAFTR second mortgage to the Zyskinds' $1.2 million personal debt. Additionally, Mr. Zyskind signed as "Chief Administrator [of the] Hebrew Academy of the Five Towns and Rockaway"

[31] Proximate to the time of the mortgage refinancing, Mr. Zyskind was involved in a series of financial situations which could account for a need to infuse substantial cash outlays to keep these ventures fiscally viable. For example, he had a major interest in the purchase of three ambulance/ambulette entities (*See, supra,* Discussion at pp. 9-10); as part owner of the Vanderbilt adult home he had experienced severe financial difficulties and was trying to sell off the operations and lease (*See, supra,* Discussion at pp. 8-9); as principal owner of the New Belle Harbor Manor adult home he was in serious arrears on its utility payments (*See, supra,* Discussion at pp. 6-7); and as part owner of OZ Realty he was responsible for substantial losses related to the acquisition of the underutilized former Baptist Medical Center properties (*See, supra,* Discussion at pp. 7-8).

The risk is even more inexplicable considering that the Zyskinds as of December 31, 1988 had never made any principal payments on the HAFTR-held second mortgage and owed about $50,000 in past due interest.

an Unconditional Guaranty of Payment and Performance agreement which names HAFTR as a guarantor of the $1.2 million mortgage. Thus, with a total of $1.65 million borrowed against the properties, HAFTR for no apparent advantage or reason which the Commission can discern was placed into a position of extreme financial risk as second mortgagee and guarantor of Mr. Zyskind's greatly increased personal debt.

The risk is even more inexplicable considering that the Zyskinds as of December 31, 1988 had never made any principal payments on the HAFTR-held second mortgage and owed about $50,000 in past due interest. Furthermore, the graduated 11-year second mortgage called for relatively small payments in these early years. If the Zyskinds could not make the smaller payments on a timely basis, the prospect that they could meet the future payments was even more remote given the newly assumed debt with Village Savings Bank.

Recent affidavits/affirmations filed in court by HAFTR officials claim that Mr. Schiffman's signature on the Subordination Agreement is a forgery and that he was not the president at the time and, therefore, did not have the authority to execute the agreement on HAFTR's behalf. Furthermore, Mr. Kolatch has sworn that there was no board approval authorizing Mr. Zyskind to bind HAFTR as a guarantor of the Zyskinds' reconstituted mortgage with Village Savings Bank.

Default on the Zyskinds' Newly Acquired Debt

It took less than two years after the loan for the Zyskinds' apparent leveraging of debt to escalate

The Commission has recently become aware, by means of affidavits/affirmations filed in its pending litigation with HI-LI and HAFTR and its officials, that allegedly the guarantee document was fraudulently executed by Beryl Zyskind and the signature of Theodore Schiffman was forged on the Subordination Agreement.

beyond their ability to service the obligation. On May 3, 1991 attorneys for Village Savings filed a Notice of Pendency (*lis pendens*) with the Queens County Clerk that a foreclosure action had been commenced against Beryl and Frady Zyskind, HAFTR, and other creditors with claims or liens against the HI-LI Realty properties. The foreclosure action stated that despite "repeated requests and notice" principal and mortgage arrears, due and payable on October 10, 1990 and each month thereafter ($4,000 per month, plus interest), remained unpaid.[32]

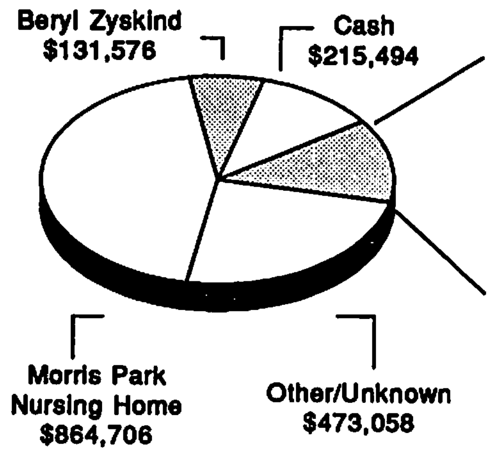
HAFTR is listed as a defendant in the foreclosure action because its subordinated mortgage might affect title to the premises. No action was brought against HAFTR as guarantor. Nevertheless, the Commission has recently become aware, by means of affidavits/affirmations filed in its pending litigation with HI-LI and HAFTR and its officials, that allegedly the guarantee document was fraudulently executed by Beryl Zyskind and the signature of Theodore Schiffman was forged on the Subordination Agreement (Appendix F).

Affidavits/affirmations obtained by the Commission in its litigation recite the following factual allegations:

- In an October 8, 1991 affidavit, Mr. Kolatch swore that the Subordination Agreement was "forged by Beryl Zyskind" and that the guarantee document was "fraudulently executed."

[32] On May 3, 1990, a Village Savings Bank official met with Mr. Zyskind to discuss concern over "late payments" and "checks being returned for non-sufficient funds." Later that month the bank was paid with a check that bounced. The Zyskinds were then informed that their loan was in default and unless payment was received by certified check within five business days, the full amount of the loan would be demanded. Apparently this payment was made but subsequently the problem reoccurred and the *lis pendens* was filed.

Chart VII
Interest-Free Borrowing
Beryl Zyskind
1984 - 1988



Business Entities or Related Interests of Zyskind	
MBM Management	$101,551
DLS Realty	63,996
LaSalle Shopping Center	30,500
Belle Harbor Manor	24,500
Foresight Jewelry	14,000
ABZ Wiping & Glove Co.	11,000
K & J Jewelry	7,749
	$253,296

$1,938,130

- In a September 27, 1991 affirmation submitted to the court by the current HAFTR board president Harvey Dachs, he states "The Board of Trustees did not authorize the signing of purported Subordination Agreement dated April 1989 on behalf of HAFTR. Moreover, the signature thereon is not that of Theodore H. Schiffman."
- In a September 27, 1991 affirmation submitted to the court by Theodore Schiffman, he states "I have examined the purported Subordination Agreement dated April 1989 which purports to bear my signature. I did not sign that document. The signature is not my signature."

Accordingly, if forgery is involved on this instrument, a broader inquiry may be necessary to determine who, with the cover of the HAFTR corporate seal, signed this document, and whether Mr. Zyskind had the authority to represent himself as "Chief Administrator" of HAFTR in guaranteeing the $1.2 million first mortgage.

Interest-Free Borrowing by Beryl Zyskind

Loan Disbursements

Since at least 1984, Beryl Zyskind exacerbated HI-LI Manor's cash flow problems by borrowing, interest free, over $1.9 million from the not-for-profit home and using these monies primarily to finance private or related business ventures. Chart VII summarizes how these funds were disbursed.

As can be seen, the major portion borrowed by Mr. Zyskind ($864,706) went to the Morris Park Nursing Home which is owned by his father-in-law, Morris Berkowitz, and where Mr. Zyskind is employed as the controller. Other borrowing went either directly or indirectly to Mr. Zyskind in the form of cash ($215,494) and checks ($131,576) and to other businesses he was involved with, such as: MBM Management ($101,551); DLS Realty ($63,996); and, Belle Harbor Manor ($24,500).

Basically, what occurred was that Mr. Zyskind would write checks from the home's account to pay

Table 2
Beryl Zyskind's Loan Activity

Year	Annual Disbursements	Year-End Ledger Off-Sets	Loan Balance
1984	$ 242,594*	$ 120,000*	$119,289
1985	713,510	576,973	255,826
1986	546,334	510,739	291,421
1987	393,612	430,067	254,966
1988	42,080	137,696	159,350
Total	$1,938,130	$1,775,475	

*The 1984 figures are stated at their minimum due to incomplete records.

for his own personal businesses or related interests, similar to drawings against a "line of credit." The advances were charged to a HI-LI Manor ledger account called "loans and exchanges — B.Z." Any funds repaid by Mr. Zyskind would be used to offset the outstanding loan balance. For example, at the end of 1984, Mr. Zyskind owed HI-LI Manor $119,289; during 1985, he borrowed $713,510 but repaid only $576,973, creating a net increase in borrowing of $136,537 for the year. Therefore, at the end of 1985, Mr. Zyskind had an outstanding balance due HI-LI Manor of $255,826 ($119,289 + $136,537).

Importantly, from 1984 to 1988 the monies flowing through this "loans and exchanges" account were very substantial relative to the amount of SSI income received by HI-LI Manor from its mentally ill residents. During this period, Mr. Zyskind had borrowed hundreds of thousands of dollars, even though the home received on average less than a million dollars in revenue each year from its residents. HI-LI Manor could ill afford this cash drain as it was frequently running deficits and unable to pay many of its bills. Table 2 summarizes the account's annual activity and the year-end balances that Mr. Zyskind owed the home.

There are stark differences, however, between Mr. Zyskind's borrowing and a normal line of credit, namely: there was no limit on the amount that Mr. Zyskind could borrow; there were no terms or conditions for repayment; no collateral was required to secure the loan; the loans were interest free; and, the borrowing was totally inconsistent with HI-LI Manor's corporate purpose as a part of a "not-for-profit" religious entity licensed by the State to run an adult home. To the contrary, Mr. Zyskind accessed "carte blanche" the home's monies for personal benefit or gain.

Although HAFTR's executive director, David Kolatch, stated that the board of directors was aware and approved of the loans, the Commission found no evidence in the board minutes that HAFTR's board ever approved or was aware of the borrowing. Indeed, Mr. Kolatch even said that he did not know how much money Mr. Zyskind borrowed from the home until he read about the amount in a Commission affidavit filed in its attempt to obtain facility records. Also, to the extent Mr. Zyskind, as administrator of HI-LI Manor, is deemed an officer of the corporation such loans are prohibited under Section 716 of the Not-For-Profit Corporation Law [N-PCL].

Loan Repayments

Perhaps even more questionable than the loans themselves is the nature of the repayments. The Commission found numerous instances where funds, intended for HI-LI Manor, appear to have been misappropriated and used instead to reduce Mr. Zyskind's personal borrowing. It is estimated that *at least* $200,000 of HI-LI Manor/HAFTR monies were diverted to reduce his loan balance. Therefore, although the HI-LI Manor books show that Mr. Zyskind owed the home $159,350 as of the end of 1988, the Commission believes he actually owed the home about $360,000 *or more*.

Although the instances that the Commission uncovered were not easy to detect because of a series of complex accounting manipulations, it was able to identify a pattern of entries, repeatedly favoring Mr. Zyskind, which suggest more than simple error, especially in view of Mr. Zyskind's professional training in accounting and finance. These included:

❑ Real-Estate Taxes

- ❑ In September 1987, HI-LI Manor received a NYC real estate tax refund of $110,421. However, after a series of questionable accounting entries the net refund of $73,872 was used to offset Mr. Zyskind's loan account (*See, supra*, Discussion at p. 16).
- ❑ When HAFTR sold HI-LI Manor to the Zyskinds', a portion of the sale proceeds were placed into escrow to pay for various expenses related to the closing. Eventually, about $13,600 was refunded, but Mr. Zyskind used this refund to offset his loan account, instead of returning the money to the adult home.
- ❑ The Zyskinds' realty company from 1985 to at least 1988 has been improperly charging the home for base year real estate taxes of $20,800 annually that are the responsibility of the landlord under the lease arrangement with HAFTR (*See, supra*, Discussion at p. 15). Also, a $10,400 property tax for the first half of 1985 was double billed to the home. As of the end of 1988, Mr. Zyskind has inappropriately benefitted by $93,600.

❑ Donations

- ❑ The Commission found that donations made to HAFTR from various sources were used by Mr. Zyskind to offset his loan account. The donations included: one check from a Neil Zyskind for $1,500; a $2,100 check from Gary Zimmerman (Beryl Zyskind's partner at New Belle Harbor); a check for $1,500 from a Herman Zimmerman; and two checks totalling $3,200 written by Gary Zimmerman from the "Yeshiva Meor Hatorah Special Bingo Account."[33]

❑ Intracorporate Transfers

- ❑ On a frequent basis HI-LI Manor and HAFTR transferred funds between each other. The Commission noted several instances totaling about $12,000 where Mr. Zyskind reduced his loan balance with HAFTR's funds that were being transferred to HI-LI Manor.

The above examples reflect how Mr. Zyskind, with the help of creative accounting, appeared to misappropriate funds intended for HI-LI Manor.

❑ Other

- ❑ The Commission also noted other loan activity of a similarly suspicious nature. However, because of incomplete documentation (e.g., 1984 and 1985 records are claimed by Mr. Zyskind to be missing) the nature of these transactions could not be fully verified. Nonetheless, given the pattern of questionable activity with respect to this account, the evidence gathered to date raises serious questions concerning the legitimacy of other loan reductions as well. For example:
  - ❑ As of December 31, 1988, the HI-LI Manor books reflect a $100,000 intracorporation receivable from its parent entity HAFTR. Yet, HAFTR's books do not reflect a corresponding payable to HI-LI Manor, indicating that the books are "out of balance." About $12,000 of this inconsistency occurred due to entries that lowered Mr. Zyskind's loan account. However, without access to missing books and records the remaining discrepancy cannot be reconciled.
  - ❑ At least $58,104 was deposited into HI-LI Manor for rent checks written to a Foresight Jewelry where Mr. Zyskind was a partner. Why this rental income for a jewelry store was deposited into HI-LI Manor needs to be examined for its possible income tax consequences at this private business. Similarly, a check for $120,000 in December 1984, made out to a C.B. Ruder but then endorsed payable to Beryl Zyskind, was deposited into a HI-LI Manor special administrator's account. Based on a notation on the check,

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[33] There were other checks from these individuals written to HAFTR totaling about $8,000. However, the checks were not clearly noted as being a charitable contribution.

it appears the money was related to a shopping center (LaSalle) which was partially owned by the Zyskinds.

- Checks totaling about $16,000 written from the former Belle Harbor Manor adult home to other businesses or individuals, such as Choice Paper Co. and SSI Security, were deposited into HI-LI to offset the loan account. These deposits raise questions concerning the validity of Belle Harbor's expenses.
- In 1986, a check for $1,800 from a LaLita Singh was made out to "Mr. Devita & Mr. Zyskind" for the "Shirley Plaza" and deposited into HI-LI Manor. Also, two checks from Mr. Devita in the amount of $900 each were used to offset Mr. Zyskind's loan account. Mr. DeVita was reportedly a partner of Mr. Zyskind in the Brookhaven Center for Medicine. The Commission found that HI-LI Manor was carrying Mr. DeVita on its health insurance policy, even though he is not an employee of the adult home.
- Under the Bank Secrecy Act of 1970, a bank must disclose any cash deposit of $10,000 or more. In October 1988, HI-LI Manor made five separate $9,000 cash deposits on almost consecutive business days against Mr. Zyskind's loan account.
- In September 1986, Mr. Zyskind wrote a $13,000 check to HAFTR, but the money was deposited into HI-LI Manor and used to reduce Mr. Zyskind's loan balance. Mr. Zyskind's 1986 Federal tax return lists, as an itemized charitable deduction, a $13,000 donation to HAFTR. The legitimacy of this "charitable deduction" is questionable.

Management Fees—Hidden Account

During an examination of subpoenaed bank records the Commission independently learned about a "hidden" bank account, neither recorded on the books of HI-LI Manor nor HAFTR, where checks drawn on HI-LI Manor and classified as management fees were deposited. The bank account was titled "HI-LI Manor Home for the Aged, Special, c/o David Kolatch" and addressed to HAFTR's business address. The authorized signatories of this account were David Kolatch, Beryl Zyskind and Theodore Schiffman.[34]

From the years 1985 to 1990, over $274,000 was disbursed from HI-LI Manor for these "management fees." From subpoenaed bank records, the Commission was able to prepare Chart VIII which summarizes the actual disbursements from the special account.

The Commission was initially told by Mr. Zyskind that the monies were paid to HAFTR as reimbursement of various costs it incurred on behalf of HI-LI Manor, such as shared maintenance. However, after gaining limited access to HAFTR's books, the Commission learned that these disbursements were not recorded being received by HAFTR. David Kolatch said the disbursements were improperly classified on HI-LI Manor's books and that the expenses were actually for auto expenses for him and Beryl Zyskind and for a supplemental salary of a HI-LI Manor employee. Other than cancelled checks, Mr. Kolatch produced no other documents to support his statements.

According to the cancelled checks, the largest disbursements ($107,567) appeared to be for various auto and installment type loans and leases, $99,487 was disbursed from the hidden account to HAFTR, $47,735 went to HI-LI Manor employee Isaac Benzaquen, for what Mr. Koltach characterized as "additional compensation," and $15,437 was for insurance payments.

Yet, despite promises by Mr. Kolatch of access to documents that might clarify the disposition of these funds, a Supreme Court ruling that the records were relevant to the Commission's understanding of the adult home's finances, and an offer by Mr. Kolatch's attorney to allow an inspection of original HAFTR documents in response to a judicial sub-

[34] In a March 5, 1990 affidavit, Mr. Kolatch swore that the Commission had been provided "with complete disclosure of the financial records and affairs of HI-LI Manor" and that "investigators for THE COMMISSION requested and were afforded *full* access to the books and records of HI-LI Manor for the years 1986 through 1988" including "Bank Statements & Cancelled Checks." Mr. Zyskind made similar statements in a concurrently filed affidavit. These sworn statements were untrue since at the time the Commission was not told about the hidden bank account despite extensive inquiries of Messrs. Kolatch and Zyskind concerning the disposition of the management fees.

poena, virtually no records pertaining to this hidden account have been produced.

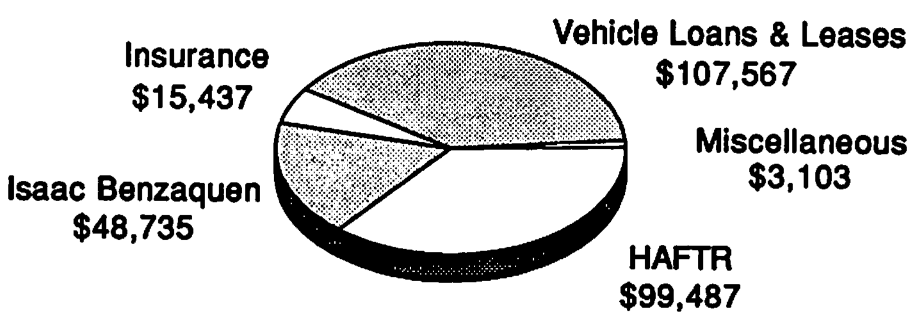
In fact, the history of attempting to obtain records to determine where this money has been spent is replete with concealment, deception and non-cooperation on the part of Mr. Kolatch and his attorneys. The following summarizes that history:

March 1990	David Kolatch swore in an affidavit that the Commission has been provided with "complete disclosure of the financial records and affairs of HI-LI Manor" including "Bank Statements & Cancelled Checks."
Sept. 1990	The Commission independently learned of the hidden account. Through its subpoena power the Commission obtained copies of records from the bank back to Jan. 1985 (records prior to this time were destroyed by the bank).
March 1991	After the Commission obtained the copies, Mr. Kolatch produced the original bank statements and checks. However, only checks dating back to Jan. 1985 were provided even though the account was opened prior to this time.
Oct. 1991	Mr. Koltach swore in an affidavit that HAFTR "did not receive any of the proceeds" from the hidden account even though he cosigned checks for almost $100,000 which were directly disbursed from the account to HAFTR.
March 1992	Although HAFTR's attorneys agreed to take affirmative action to obtain records concerning the "management fees," only two documents have been provided concerning the expenses. Again, these records were provided after the Commission already obtained the information from the companies.

> **Given the result of these subpoenas, it is not surprising that Mr. Kolatch has steadfastly refused to supply us with any information concerning these expenses.**

Because of this defensive strategy, the Commission issued subpoenas to the various auto leasing or insurance companies to determine the nature of these expenses. Given the result of these subpoe-

Chart VIII
Management Fees
January 1985 to December 1990



Total Expense $274,329

Management Fees Deposited Into Hidden Bank Account
Used to Fund Perks & "Added Pay" for Employees
Hidden Account Checks Signed by Zyskind & Kolatch

nas, it is not surprising that Mr. Kolatch has steadfastly refused to supply us with any information concerning these expenses. The Commission has found that many of the disbursements from the account have gone for the personal benefit of Mr. Kolatch or members of his family. The Commission has found the following concerning the "management fees:"

- The $107,567 for auto payments were primarily for automobiles leased from Avis or Dealers Leasing Corp. for David Kolatch (1987 Volvo), New Belle Harbor (1989 Lincoln Town Car) and a "Wigdor Zyskind" (unknown).
- The $99,487 disbursed to HAFTR mainly disappeared in cash payments resulting in its ultimate identity being lost. Approximately $10,000 of the funds were used for tuition payments at the HAFTR parochial school on behalf of HI-LI Manor employee Isaac Benzaquen.
- $48,735 went to Isaac Benzaquen for unspecified services. No information was provided to the Commission concerning the services provided by Mr. Benzaquen, nor was any information provided such as IRS forms 1099 reflecting that this compensation was properly reported to the IRS. In 1991, Mr. Benzaquen received $55,600 from the New Hope Guild for Emotionally Disturbed Children, Inc. for his services as an independent contractor/treatment team leader at HI-LI Manor. He also has been employed by HI-LI Manor as assistant administrator at a salary of almost $25,000 annually. The Commission independently learned that Mr. Benzaquen is the son-in-law of David Kolatch.
- The $15,437 in insurance payments went to various companies for: insurance on Mr. Kolatch's and his wife's first and second homes, jewelry and furs; life insurance on Mr. Kolatch and Isaac Benzaquen; and, automobile insurance for Mr. Kolatch.

Poor Financial Condition of HI-LI Manor

The combination of high rental payments, interest-free borrowing, management fees, and annual remuneration to the nominal HI-LI Manor administrator, Beryl Zyskind, has had a detrimental impact on the finances of HI-LI Manor.

The Commission found that there were a great number of instances where, because of severe cash flow problems, checks were bouncing; checks were being written and held for extensive periods; checks were being written and signed without being dated, or were postdated; and dates were sometimes pencilled in and subsequently changed. In 1986, when Beryl Zyskind's borrowing was several hundreds of thousands of dollars, the home spent nearly $6,000 for bank penalties on bounced checks. Furthermore, it was not uncommon for the home to be charged 16 to 18 percent for interest on overdue payments while at the same time Mr. Zyskind was personally benefiting from interest-free borrowing from the home.

In June 1986 alone, of 207 checks drawn on the HI-LI Manor bank account, 154 bounced because of insufficient funds. For the 21-month period, January 1, 1990 to September 30, 1991, 190 checks totaling $463,134 that were written from the HI-LI operating and resident funds account bounced.

HI-LI Manor has also incurred substantial penalty charges for delinquent remittal of FICA, payroll withholding and real estate taxes. In 1986, the home incurred $33,458 in expenses related to such charges. By January 1991, when payroll taxes were in arrears by over $100,000, the Internal Revenue Service (IRS) issued tax levies and began blocking HI-LI bank accounts and seizing deposits to collect the delinquencies.

As a result of the 1985 sale/lease-back realty transaction, Beryl Zyskind's annual remuneration, and the subjugation of the homes finances to personal financial interests, the Commission calculates that for 1988 as little as 60 percent of the home's monies, or about $14 per resident per day, was available for their care. In 1988, it is noteworthy that the home had only about 50 percent of the staffing level called for by DSS regulation. Given all this, it is not surprising that this home was classified as one of the worst of those examined during the Commission's 1989-90 site visits to 47 adult homes.

Misappropriation of Veteran's Benefits

On November 8, 1990, HI-LI Manor received a retroactive lump-sum payment from the Veterans Administration (VA) totaling $122,658. The payment was for one of HI-LI's *former* residents, C.R., who had been owed the benefits by the VA since 1983. However, instead of the money ever reaching the resident, it was taken out in cash, spent by HI-LI for general operating expenses, and diverted to one of Beryl Zyskind's other adult homes.

C.R. is a mentally disabled veteran who has been in and out of psychiatric hospitals for at least the past several years. In March 1990, C.R. was discharged from Rockland Psychiatric Center to HI-LI Manor. He resided at HI-LI for about eight months from March 1990 to late October or early November 1990 when he voluntarily left the residence to reportedly work and live with a friend in Staten Island. During his stay at HI-LI, the home's case manager, Anne Schrier, applied to the VA for benefits on behalf of the resident. In August 1990, the VA conducted a site visit of HI-LI, interviewed the resident, and appointed the administrator of the home as legal custodian of his benefits.[35] According to VA records, at the time of the site visit, Anne Schrier represented herself to be the administrator of HI-LI and acknowledged that any benefits received on behalf of C.R. would be used *"for his use and use only."*

On November 15, 1990 (seven days after HI-LI Manor received and deposited the $122,658 retroactive check), Beryl Zyskind wrote to the VA stating that HI-LI was in receipt of the money but that C.R. was no longer at the facility. He further stated that "there is a strong indication that he will return" and inquired from the VA as how to proceed regarding the "funds deposited in our account." (Although this letter was written, there is a question as to whether it was ever sent because the VA has no record of it in its files.)

It didn't take long for Mr. Zyskind to spend the resident's money on himself or on behalf of HI-LI Manor, even though his case manager signed an agreement stating that the money would be used for the resident's benefit only. Within 12 days of receipt of the retroactive payment, *all* of the money was taken out in either cash, spent on various expenses of HI-LI Manor, or used for one of Beryl Zyskind's adult homes—New Belle Harbor ($45,000). Indeed, within the 7 days prior to Mr. Zyskind writing to the VA asking their advice on how to proceed regarding the funds, over $75,000 was spent on various expenses.

In January 1992, C.R. was brought to Bellevue Hospital by Project Help because of extremely agitated and bizarre behavior at Penn Station. C.R. was reported to be homeless at the time. He currently is residing as an inpatient of Creedmoor Psychiatric Center.

Personal Funds Commingling

According to Section 131-o of the Social Services Law, damages, civil penalties and class A misdemeanor charges may be assessed against "any person who commingles, borrows from or pledges any personal allowance funds" which are to be made available to residents from their SSI checks for their own use in obtaining clothing, personal hygiene items and services not otherwise provided by the facility. These monthly allowances, which ranged from $63 per month in 1986 to $94 per month by 1992, are to be "segregated and recorded on the facility's financial records as independent accounts."

The books and records of HI-LI Manor show that, although the home did open separate bank accounts specifically for resident personal funds, the monies were generally commingled in the home's operating account resulting in the funds being improperly used for operating expenses or for loans to Mr. Zyskind.

Table 3

Personal Funds Commingling

Year End	Owed to Residents	Cash in Bank Accounts
1986	$18,948	$6,409
1987	27,864	5,844
1988	39,433	(9,975)

The home's financial statements showed that the operator had diverted resident funds illegally because the cash balances for all funds (operator and resident) were lower than the balances that should have been in the residents' accounts alone. For example, the balances of cash available show that, based on the facility's own financial statements and its accountants' working papers, the operator had illegally commingled resident personal funds with facility funds. Additionally, there are clear indications that resident funds were used on a recurring basis to cover the HI-LI payroll.

[35] Although Beryl Zyskind was the administrator of record at HI-LI Manor, Anne Schrier represented to the VA that she was the administrator and signed a "Fiduciary Agreement" on behalf of C.R. to that effect.

In a most extraordinary series of transactions, in apparent retaliation to HAFTR's attempts to restrict him from running the facility, Beryl Zyskind deposited almost all of the facility's September 1991 revenues into the HI-LI Manor Resident Funds Account I. This enabled Mr. Zyskind to write checks with only one signature (HI-LI Manor's operating account required that David Kolatch cosign checks) including checks for HI-LI operating purposes, a $49,700 check to himself which was deposited into an account entitled Larry Newman-special and a $26,000 check to the New Belle Harbor Manor adult home. Another $50,000 check written to OZ Management bounced. Larry Newman is reportedly the director of operations at the Linden Bay Care Center where Beryl Zyskind has been employed as a fiscal consultant. Probably for similar reasons, all October and November 1991 receipts of HI-LI Manor totaling $212,079 (which included resident personal allowance funds) were deposited into HI-LI Realty's checking account. In addition to checks written for HI-LI Manor operating purposes, the Commission noted questionable disbursements including a $50,000 check drawn by Mr. Zyskind and deposited into his personal checking account and another $25,000 certified check for some other unknown purpose.

Aside from the apparent illegalities associated with commingling resident funds, there appear to be obvious questions as to whether larceny has been committed by Beryl Zyskind in his apparent attempt to keep afloat his financially distressed pyramid of human service facilities.

Because the Special Prosecutor's authority to investigate resident personal funds abuses is limited to proprietary adult homes, the Commission believes that legislation is necessary to extend its jurisdiction to not-for-profit homes as well.

Board of Director Oversight

Section 509 of the N-PCL requires "a vote of two-thirds of the entire board," or a "majority of the entire board" if there are 21 or more members, for the sale of a not-for-profit corporation's property. Aside from one reference in the minutes of an August 1980 Board of Trustees meeting, which passed a "motion to negotiate and sell HI-LI Manor property with a lease=back (sic)" of the premises, and one in the minutes of a HAFTR Executive Board discussion on May 14, 1984 about finalizing the financial arrangements with Beryl Zyskind to sell the premises for $1,465,000 (vs. actual sale price of $950,000), no other minutes of HAFTR board meetings pertaining to the operations of HI-LI Manor were made available to the Commission. Given this information, it is not clear whether "a majority of the entire board" voted on and approved this transaction.[36]

The terms and conditions of the sale of the HI-LI Manor premises, the lease-back arrangement, Beryl Zyskind's pocketing of the real estate tax refund due HAFTR, the interest-free loans to Mr. Zyskind, and the guaranteeing of the Zyskinds' private refinancing are so one-sidedly favorable to the Zyskinds that serious questions must be asked as to why this supposedly cash poor religious corporation would enter into financial deals that served to drain off its corporate assets while simultaneously leaving it with the business risks of its landlord. When combined with the special bank account and the hidden benefits to Messrs. Zyskind, Kolatch and his son-in-law Isaac Benzaquen, the Commission questions whether the board knew of the management and other financial arrangements that existed between Messrs. Zyskind and Kolatch.

If indeed the Commission has the complete board records relating to HI-LI Manor, noticeably absent is any evidence that the board is keeping an eye on the best interests of the HAFTR corporation. It appears that the board never discussed the "deficient" conditions at the home and the quality of care and services being provided to the residents. In addition, the Commission has been told by HAFTR's CPA that despite being the licensee, the finances of HI-LI Manor were never discussed at the finance committee meetings of the board which he regularly attends.

The Commission believes the board did not review the finances of HI-LI Manor since HAFTR's "compiled" (unaudited) financial reports excluded the operations of HI-LI Manor. Section 519 of the

[36] The Commission has attempted to gain access to the Board through the issuance of a subpoena calling for the production of a current listing of HAFTR Board members' names and addresses. Nevertheless, HAFTR's attorney refused to produce such a listing based upon the position that the Commission's need for this information "was unnecessary and clearly outside the scope of a demand for records which pertained to HI-LI."

N-PCL appears to have been violated since the board apparently has not been presented annual "verified" or "certified" financial reports depicting the financial condition of the entire HAFTR entity, including the HI-LI Manor division. Had a certified audit been performed, the CPA would likely have informed the HAFTR Board of Directors of serious internal control weaknesses concerning large amounts of cash transactions which were not adequately documented or accounted for (e.g., most of the $99,487 from the HI-LI hidden account that went to HAFTR immediately disappeared in cash payments).

Professional Misconduct by Accountants

HI-LI Manor's certified public accountant, Samuel Kohn, appears to have violated numerous regulatory provisions (8 NYCRR 29.10) governing the practice of public accountancy in "compiling" financial statements for the home. He also appears to have prepared erroneous personal financial statements for Beryl and Frady Zyskind which were used as support for the $5.6 million New Rochelle mortgage guaranteed by HUD and the $1.2 million HI-LI Realty mortgage held by Village Savings Bank.[37] Additionally, he apparently failed to apply Generally Accepted Auditing Standards (GAAS) in examining expense items recorded on the Annual Report of HI-LI Manor's revenues and expenses filed with the DSS.

Mr. Kohn took over the examination of HI-LI Manor's finances in 1986 after its previous CPA firm of Brand & Sonnenschine suspended its auditing work on the 1985 books because it had no assurances it would receive payment for its services and since the books and records of the home were in such a state of chaos that they were unauditable. In the Commission's opinion, the internal control weaknesses and improper accounting for substantial sums of money that Brand & Sonnenschine brought to Mr. Zyskind's attention still continue. Perhaps for this reason, CPA Kohn attempts to limit his liability in this engagement by not issuing certified financial statements but, rather, by performing a lower level of service referred to as a "compilation."

The CPA's report on a compilation includes a statement that an audit or review was not performed and no opinion or other assurance is expressed on the accompanying financial statements. Nevertheless, compilation standards[38] require the CPA to indicate in the report the omission of any required disclosures which could be misleading to those who might reasonably be expected to use the financial statements. On the 1986 and 1987 HI-LI Manor statements—which were addressed to the "Board of Directors, HI-LI Manor Home For the Aged Division of Hebrew Academy of the Five Towns And Rockaway"—Mr. Kohn did not mention the following serious omissions that may have prevented the HAFTR board from exercising its fiduciary oversight prudently and intelligently: (1) a related party lease with the home administrator Beryl Zyskind and his wife; (2) hundreds of thousands of dollars of interest-free loans to Mr. Zyskind; and, (3) monies apparently owed to HI-LI Manor from HAFTR as intracompany receivables totaling $93,862 and $98,862 at years ended 1986 and 1987 respectively.

Additionally, Mr. Kohn prepared a Personal Financial Statement of the financial condition of Beryl and Frady Zyskind which was sent to Village Savings Bank as support for the $1.2 million refinancing of the HI-LI Manor premises[39] which showed their net worth (assets less liabilities) to be $4,435,000 as of September 30, 1988. Another statement as of April 30, 1989 which was sent to Village Savings Bank (after the date that the $1.2 million loan was approved) showed a net worth of $6,220,000. A third personal financial statement prepared by Mr. Kohn and submitted as part of the HUD application for a $5.6 million mortgage guarantee lists the Zyskinds' net worth as of March 31, 1990 at $7,524,000. Noticeably absent from each of the financial statements was a liability related to Mr. Zyskind's substantial interest-free borrowing from HI-LI Manor. Mr. Kohn had to be aware of these loans because he is also the accountant for HI-LI Manor. Additionally, the latter two financial statements failed to include the outstanding second mortgage on HI-LI Manor held by HAFTR, thereby inappropriately

[37] *See, supra,* Discussion at pp. 8 and 17.

[38] *Codification of Statements on Standards for Accounting and Review Services,* Numbers 1 to 6, as of January 1, 1991, American Institute of Certified Public Accountants, pp. 16-17.

[39] *See, supra,* Discussion at p. 17.

overstating the Zyskinds' net worth by at least $450,000.

The valuation of the personal assets of the Zyskinds on these financial statements is also questionable since, if indeed the Zyskinds have this level of personal wealth, one must ask why Mr. Zyskind has been unable or unwilling to meet rent and utility payments at the New Belle Harbor Manor adult home; handle the financial problems at the Vanderbilt Manor adult home; and meet the debt service on the $1.2 million HI-LI Manor premises mortgage.[40] Answers to these questions have an important bearing on Mr. Zyskind's character and competence and in explaining the underlying conditions and care at these licensed facilities.

Mr. Kohn also appears to have violated a GAAS requirement in examination of management fee expenses[41] on the HI-LI Manor financial report filed with DSS. GAAS requires the CPA to exercise due professional care in the performance of the audit engagement and to obtain sufficient, competent evidentiary matter through inspection, observation, inquiry and confirmation. Mr. Kohn's working papers do not document any audit inquiry or inspection of management fees to determine their real purpose. He simply noted on his working papers that the expenditure was "confirmed by management [Beryl Zyskind] who will sign the management letter." He should have known something was wrong with this expense item because the "management fee" checks were written to HI-LI Manor and deposited into a bank account not reflected on the HI-LI Manor books.

Additionally, it is likely that Mr. Kohn was aware that HI-LI was illegally commingling and borrowing resident funds and therefore he was professionally obligated to inform the board of such activities — yet he did not do so.

HAFTR's CPA, Steven Landau, compiled financial statements for the board for the seven-year period beginning September 1, 1983 and ending August 31, 1990. Mr. Landau violated professional standards by failing to include any footnotes in the financial statements as required by Generally Accepted Accounting Principles (GAAP). Disclosure omissions included information on the finances of HI-LI Manor; material facts related to the sale and lease-back of the HI-LI property to the Zyskinds; and the substantial interest-free borrowing by Mr. Zyskind. He could have complied with professional standards if he indicated in his report that disclosures were omitted if there was no intent to mislead, but he did not do this either.[42]

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[40] *See, supra,* Discussion at pp. 6-9, 18.

[41] *See, supra,* Discussion at pp. 22-24.

[42] *Codification of Statements on Standards for Accounting and Review Services,* Numbers 1 to 6, as of January 1, 1991, American Institute of Certified Public Accountants, p. 12.

Conclusion

In licensing a not-for-profit corporation to provide services to a vulnerable population, the State relies on the board of directors of the corporation to ensure that the corporation is faithful both to its charter and to the obligations imposed by the license. In this case, it appears that the board was insufficiently vigilant over the activities of HI-LI Manor and the actions of HAFTR in entering into the sale and lease back arrangement that significantly disadvantaged this religious corporation; over the activities of Mr. Zyskind in engaging in interest-free borrowing from HI-LI Manor; and over the other actions of its employees as described in this report. Alternatively, if the board *was* aware of these activities, its approval of or acquiescence in them raises substantial questions about whether it fulfilled its fiduciary obligation to preserve and protect the assets of the not-for-profit corporation.

To ensure that the State's reliance upon a licensee to provide necessary services to a vulnerable population is not misplaced, State laws require approval of the "character and competence" of the licensee and administrator both upon initial licensure and upon periodic renewal of licenses.

However, many of the fiscal irregularities and improprieties at HI-LI Manor uncovered in the course of this investigation remained unknown to the Department of Social Services, since that agency has not conducted fiscal audits of adult homes in over a decade. Thus, while DSS inspectors were regularly citing HI-LI Manor for deficient conditions (Appendix D),[43] DSS conducted no audits to determine the cause of these deficiencies[44] but continued to re-license the agency. Moveover, during this time DSS approved Mr. Zyskind's purchase and operation of three other adult homes, two of which later experienced similar cash shortages, resulting in utility bills and vendors going unpaid and deficient conditions for their residents (Report pp. 6-9). One of these homes, Vanderbilt Manor, was closed and the residents relocated after DSS determined that the home constituted a danger to the physical and mental health, safety and well-being of the residents. The other, New Belle Harbor Manor, has been denied renewal of its operating certificate, but is appealing the decision.

Mr. Zyskind also acquired ownership interests in three ambulance/ambulette companies. During the period of his ownership, State regulatory agencies have cited numerous problems with these companies, including:

- DSS twice terminated Medicaid provider agreements for failure to meet licensing requirements of the NYC Taxi and Limousine Commission;
- The Department of Health (DOH) has imposed civil penalties for violations of the Public Health Law and State Emergency Medical Services Code; and
- DSS proposed to exclude one of the companies from the Medicaid program for filing false claims and unacceptable record keeping (Report p. 10).

Notwithstanding this web of licensed businesses and the pattern of regulatory violations and fiscal irregularities, their scope apparently remained unknown to the Division of Adult Residential Services of DSS, which repeatedly attested to Mr. Zyskind's "character and competence" to be an owner, operator or administrator of these enterprises funded by public monies. As detailed in this report, in several applications for licensure and loans, Mr. Zyskind lied about or withheld material information about the full scope of his activities (Report pp. 3, 6, 8-9). Yet, these misrepresentations

[43]During the period from June 1981 to June 1991, the Department of Social Services conducted eight complete inspections of HI-LI Manor. In every one of them, the facility was found "Not In Compliance."

[44] Indeed, during this period, Mr. Zyskind was engaged in a lobbying effort to have the SSI rates increased, claiming he needed "help to remain in business" (Appendix G).

were not discovered because of cursory investigations of character and competence and the lack of fiscal audits which could have exposed the extent of financial inter-relationships between Mr. Zyskind's businesses and the diversion of public funds intended for services to needy and dependent people.

Furthermore, the absence of a mechanism for effectively sharing information among State agencies about common licensees or principals in licensed operations left each State agency which cited regulatory violations with only a small fragment of the information bearing upon overall "character and competence."

The victims of the deficiencies in the various licensed programs, and in the State's regulatory systems themselves, are the poor, the needy and the dependent people who rely upon publicly funded services because they often have no alternative. The Commission is particularly concerned that the lessons taught by the investigations of the Moreland Act Commission into nursing homes and of the Deputy Attorney General for Medicaid Fraud Control into adult homes more than a decade ago, appear not to have been fully heeded. Careful scrutiny of the character and competence of persons entrusted with services to vulnerable populations, more effective enforcement, examination of *how* public funds are being spent — especially when the quality of services is deficient — are all essential safeguards in any regulatory system. Particularly at a time of mounting public concern over the cost of human services, it is essential that regulatory agencies exercise vigilance to ensure that funds appropriated to meet the needs of people are indeed reaching their intended beneficiaries. Without an effective program of fiscal audits to determine how funds are being spent, decisions on appropriate levels of reimbursement for services are often left to guess work and the effectiveness of lobbying by provider groups.

Recommendations

Based on the findings reported herein, the precarious financial position of HI-LI Manor and the real threat of imminent danger to the health and welfare of its residents, the Commission makes the following recommendations and has or will refer the findings of its investigation to the following agencies for follow-up actions within the scope of their responsibilities:

❑ Referrals

- ❑ *The Department of Social Services* — to close HI-LI Manor, immediately move its residents and then proceed to revoke its operating certificate. DSS should also place an immediate stop order on residents' SSI checks after the move so that HI-LI Manor cannot receive further public assistance at the expense of residents and the public purse.
- ❑ *The Office of Mental Health* — to assure orderly provision of psychiatric care upon closure and placement of the residents into other settings.
- ❑ *The Department of Law* — for possible violations of the Not-For-Profit Corporation Law including possible recoupment of funds of the corporation that were misappropriated.
- ❑ *The District Attorney's Office of Queens and Nassau Counties* — for possible criminal violations relating to interest-free loans, potential theft of client funds, forgery and fraud.
- ❑ *The U.S. Attorney for the Eastern District of New York* — for possible bank fraud, forgery and fraud in obtaining a bank mortgage and misappropriation of a resident's V.A. check.
- ❑ *The Deputy Attorney General for Medicaid Fraud Control* — to review other proprietary homes run by Mr. Zyskind to determine possible statutory and regulatory violations.
- ❑ *The Veterans Administration:* for misappropriation of a veteran's benefit check.
- ❑ *Internal Revenue Service and State Department of Taxation and Finance* — for possible violations of the tax laws.
- ❑ *The Federal Department of Housing and Urban Development* — for possible misrepresentation in applying for a HUD loan.
- ❑ *State Education Department* — for possible violations of regulations relating to the practice of public accountancy.
- ❑ *Other State Agencies* — the Department of Health, the Department of Motor Vehicles, the Department of Transportation, the Banking Department and the Division of the Budget.

❑ Executive Actions

- ❑ Executive Order No 36 should be expanded to allow the Deputy Attorney General for Medicaid Fraud Control the authority to investigate and enforce violations of law relating to not-for-profit adult homes.
- ❑ A central State "clearinghouse" should be established to gather and maintain information on current prospective licensees and principals involved in licensed agencies. Such information should include data bearing upon the performance record of the licensed entity, and should be available to State agencies in making decisions to grant initial applications or renewals of licenses and operating certificates.

❑ Statutory Changes

Adult home statutes/regulations should be amended to:

- ❑ Preclude not-for-profit homes from diverting corporate assets to the officers and certain employees by prohibiting corporate loans to such persons.
- ❑ Provide for disclosure to the board of directors by the officers and certain employees of not-for-

profit homes of their financial interests in any corporate contracts or transactions.

- ❑ Require not-for-profit homes to disclose annually to the licensing agency (DSS) any related-party interests and require for all adult homes that related-party realty companies disclose their financial profitability and viability.
- ❑ Establish a privity relationship between an adult home's certified public accountant and the State licensing agency to remove doubt as to the accountant's liability for negligence stemming from the accuracy of the accountant's audit work and reports.

❑ Internal Regulatory Changes

DSS should:

- ❑ Reform its inspection process to identify key indicators of compliance and deny renewal of licensure after substantial non-compliance on two concurrent annual inspections.
- ❑ Make public the reports of DSS inspections of homes which fail annual inspections, in much the same manner as DOH currently reports on restaurant health violations.
- ❑ Conduct financial audits of homes experiencing poor conditions to determine the underlying reason for these poor conditions.
- ❑ Base its recommendations for the SSI rate for adult homes on a careful fiscal review and audit of actual expenditures to provide the required services. Increases in the SSI rate should be directly tied to improvements in the quality of services provided to the residents.
- ❑ Create and periodically update a directory of adult homes, including their regulatory compliance status, as a means of informing consumers and the public of the performance of the home.

Appendix A

Excerpts from March 4, 1992 Decision by Judge Allan L. Winick, Supreme Court, Nassau County related to cross-applications by Beryl Zyskind and HAFTR, each seeking to ban the other from operating the HI-LI Manor Home for the Aged

FACTS

In December, 1989 the Commission on Quality of Care for the Mentally Disabled subpoenaed certain records both from HI-LI Manor and HAFTR in order to enable it to complete its Legislative mandate to report to the Legislature concerning the operation of facilities for the mentally disabled.

Initially, both resisted and only through the intervention of this court has partial compliance been had.

Apparently, however, feathers were ruffled by this investigation and as the Attorney General tightened the screws to obtain these records there was a falling out between the Zyskinds and HAFTR.

Accusations of dishonesty have been leveled at Kolatch by Zyskind and claims by HAFTR that Zyskind has been behind in meeting his obligations to creditors have surfaced. There are also claims of misappropriation of resident's monies made against Zyskind and secret payments to Kolatch.

On November 29, 1991 HAFTR notified Zyskind by letter, signed by Kolatch as Executive Director, that... "you are hereby relieved of all responsibilities in connection with the operation of HI-LI Manor Home for the Aged."

DECISION

It can be concluded that both parties intended to hide certain facts [private agreement to sell the operation to B. Zyskind; employment agreement linking B. Zyskind's salary to HI-LI "profits"] from the Department of Social Services with respect to HAFTR's license.

They [HAFTR] had no right to transfer this certificate to anyone. It could not be sold and any attempted transfer violated the applicable statute and the rules of the Department of Social Services. 18NYCRR 485.5(g)

It is difficult to balance the equities between the litigants. The Zyskinds and HAFTR both seem to have "unclean hands".

However, when you add the interest of the Department of Social Services and the 125 residents of the Home to the scales, it is clear to this Court that the equities favor retaining the licensee, HAFTR, in control.

While not pinning any medals on the chest of the defendent HAFTR, in order to maintain order at the Home, and the integrity of the license, the Court grants its application as prayed for in the Order to Show Cause dated January 24, 1992.

Appendix B

NYS Department of Social Services Response to Draft Report

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001

Gregory M. Kaladjian
Acting Commissioner

March 16, 1992

Honorable Clarence J. Sundram
Chairman
Commission on Quality of Care
for the Mentally Disabled
99 Washington Avenue, Suite 1002
Albany, NY 12210

Dear Mr. Sundram:

The Department has completed the review of the Commission's draft audit report on the Hi-Li Manor Home for the Aged Adult Home and would like to offer the following comments to your findings and recommendations. Before we address the specific issues raised in your report, we wish to inform you that Mr. Beryl Zyskind, the focal point of your review, has been removed as administrator of Hi-Li Manor. The Department has initiated an administrative hearing to revoke his certificate to operate the Belle Harbor Manor Home for Adults, and is also contemplating revocation of his certificate as part operator of the New Rochelle Manor Home for Adults. In addition, revocation proceedings against the Hebrew Academy of Five Towns and Rockaway (HAFTR), the not-for-profit operator of Hi-Li Manor for the Aged, are being considered.

I. <u>INTERNAL REGULATORY CHANGES</u>

<u>Recommendation</u>: DSS should reform its inspection process to identify key indicators of compliance and deny renewal of licensure after substantial non-compliance on two concurrent annual inspections.

<u>Response</u>: The Department has modified its inspection process, as indicated in the Adult Care Facility Directive #1-91 of January 3, 1991. These changes have allowed the Department to focus its limited staff resources on facilities whose compliance histories indicate egregious operational deficiencies and re-enforce the operator's responsibility for internal quality assurance and for the development, implementation and documentation of corrective actions. In addition, the Department has implemented a process of issuing conditional and short-term certificates during the recertification period. In combination, these efforts will ensure that operators recognize the need to develop and adhere to plans of maintenance and repair of physical plant, as well as correction of other systemic operational deficiencies identified through our inspection process.

According to Section 460-d (7) (b) (1) of Social Services Law, the Department's authority to impose fines is statutorily predicated on the basis of providing an opportunity for the operator to satisfactorily demonstrate that he has either rectified violations within thirty (30) days of receiving written notification of the results of an inspection, or had submitted within thirty (30) days an acceptable plan of rectification and was rectifying in accordance with the Department approved plan. The due process rights of the operator resulting from this statutory provision would preclude the Department from denying renewal of an operating certificate solely as a result of "substantial non-compliance on two concurrent annual inspections."

In the past year, however, the Department has initiated administrative hearings to revoke the operating certificates of 2 adult home operators and has denied renewal applications for 10 facilities.

The Department hopes to assure the Commission on Quality of Care that it will continue to make every effort possible to compel facility operators to comply with Department regulations and move aggressively to prevent the recertification of those operators who exhibit an inability or unwillingness to do so.

<u>Recommendation</u>: Make public the reports of DSS inspections of homes which fail annual inspections, in much the same manner as DOH currently reports on restaurant health violations.

<u>Response</u>: The Department does not, at this time, believe it is necessary nor particularly cost-effective to publicly publish reports of DSS inspections since our regulations require operators to post the most recent inspection report in a conspicuous place within the facility, easily available to residents and visitors. In addition, facility inspection reports are public information and as such are available through Freedom of Information requests.

Similarly, the cost of publishing and continuously updating a directory of adult homes to include the enforcement status of these facilities, is not likely to serve a significantly useful purpose for the same reasons noted above.

<u>Recommendation</u>: Conduct financial audits of homes experiencing poor conditions to determine the underlying reason for these poor conditions.

<u>Response</u>: Although fiscal audits of Adult Homes have not been conducted in several years, many audits were performed by this Department and the Deputy Attorney General's Office in the past.

The observations of these audits were often similar to the Commission's findings at the Hi-Li Manor facility. The fiscal audits of adult homes were not continued because it was found there is little financial value in such audits because of the fixed price status of the industry. However, the Department is prepared to initiate fiscal audits in order to re-examine the enforcement considerations in the Commission's report.

If it is determined that such audits are a necessary component of the supervision of adult homes, the Department will provide audit coverage on a selected basis.

Some progress has also been made in the area of financial analysis of adult home operations. In 1990, the Division of Adult Services strengthened their annual financial reporting requirements to include submission by adult home operators of "balance sheet" information and a "change in capital" statement in addition to the revenue and expense statement that was the only previous requirement. Although this additional information would be of little help in uncovering the reported collusive, veiled, types of transactions occurring at Hi-Li Manor, it should be helpful in determining which facilities to schedule for future fiscal audits.

Recommendation: Base recommendations for the SSI rate for adult homes on a careful fiscal review and audit of expenditures to provide the required services.

Response: An expenditure review of adult home costs would be biased because from the revenue side, benefits for SSI residents are fixed. As a result, operating expenses in predominantly SSI facilities have been controlled to a large extent by revenues since the Level II program's inception. In conjunction with an expenditure review, standards would have to be established for ascertaining fair market costs, especially in the area of housing. This would be a difficult process. Another consideration is that the SSI benefit level structure would have to be changed to separate a new adult home rate from the existing Level II benefit as this rate is also utilized for several programs administered by other state agencies. We estimate that of the estimated 30,000 SSI Level II recipients, 14,500 reside in facilities administered by state agencies other than the Department of Social Services. It is likely that a legislative mandate would be needed to initiate a recomputation and possible restructuring of the Level II adult home rate.

Recommendation: Tie increases in the SSI rate directly to improvements in the quality of services provided to residents.

Response: The Department agrees with this recommendation. In each of the last 2 budget years, a targeted incentive payment methodology was proposed by the Department for reimbursing adult home operators who provide quality services to SSI residents. Although the proposal was not approved in either year, we believe an incentive payment methodology based on upgrading and maintaining quality of service delivery is the best approach toward improving the care that adult home residents receive.

II. EXECUTIVE ACTION

Recommendation: Expand Executive Order 36 to allow the Deputy Attorney General for Medicaid Fraud Control the authority to investigate and enforce violations of law relating to not-for-profit adult homes.

Response: We agree with this recommendation.

Recommendation: Establish a single state central "clearinghouse" to gather and maintain information on current prospective licensees and principals involved in licensed agencies; and to make available such information to state agencies responsible for making decisions to grant initial and renewal licenses and operating certificates.

Response: We concur with this recommendation. On a routine basis the Department has and continues to investigate whether new applicants are affiliated with previously licensed or existing adult homes. Division of Adult Services Regional Offices are notified when an application review is initiated and a request is made for information from their files on proposed operators. When it is known that a proposed operator is affiliated with another agency, information on the proposed operator's background is requested from that agency. A registry for accessing background information on prospective applicants would facilitate the Department's Adult Home certification process.

In addition, as a result of this report, we are establishing a liaison with Departmental staff who maintain listings of providers, and principals of companies, who have been disqualified from participation in the medicaid program.

III. STATUTORY

Recommendation: Preclude not-for-profit homes from diverting corporate assets to the officers and certain employees by prohibiting corporate loans to such persons.

Response: We agree with this recommendation and will study the legal ramifications of implementing this proposal in our regulations.

Recommendation: Provide for disclosure to the board of directors by the officers and certain employees of not-for-profit homes of their financial interests in any corporate contracts or transactions.

Response: We agree with this recommendation and will review the legal ramifications of implementing this proposal into our regulations.

Recommendation: Require not-for-profit homes to disclose annually to the Licensing Agency (DSS) any related party interests and require for all adult homes that related party realty companies disclose their financial profitability and viability.

Response: The first part of this proposal could be accommodated by a change in the annual financial reporting form to require the disclosure of non-arms length transactions for not-for-profit operators. Disclosure of related party transactions is already required from proprietary adult home operators.

The recommendation to require related party realty companies to disclose their annual profit and loss will be reviewed to determine if the Department has the legal authority to mandate such a requirement from business entities not licensed by the Department.

Recommendation: Establish the privity relationship between an adult homes' certified public accountant and the state agency to remove doubt as to the accountant's liability for negligence stemming from the accuracy of the accountant's audit work and reports.

Response: At present, the Department utilizes the New York State Department of Education's licensing bureau to confirm that accountants who certify the Adult Home financial reports are licensed by that agency. A desk audit procedure is also used to verify that all key information in these statements has been reported.

It would be difficult for the Department to repudiate as a misrepresentation a licensed accountant's opinion on the accuracy of reported adult home financial information.

Additionally, since the Level II SSI benefit is not a facility specific rate, assessing the amount of loss resulting from an accountant's negligence in reporting financial data would be hard to establish.

IV. OTHER ISSUES

Finding: Misuse of residents' personal allowance.

Response: The Department will investigate the commission's findings of mismanagement of resident personal allowance funds and take appropriate action as warranted. Staff from the Division of Adult Services have been in contact with Commission staff to clarify your auditors' findings regarding this issue.

A revised Department regulation dealing with SSI resident personal allowance has also been proposed for inclusion in the next scheduled revision of the Division of Adult Services regulations. The revised regulation would make it more difficult for a facility operator to use personal allowance funds for other purposes. The new regulation would require operators of adult homes to document the mandated monthly reconciliation of the individual personal allowance accounts to personal allowance cash on hand and/or on deposit. By requiring a monthly reconciliation document to be part of the PNA record, an operator would be forced to fraudulently alter the reconciliation statement if the total of PNA funds held for safekeeping was not equal to the sum of the individual ledger balances.

In conclusion, the Department is appreciative of your efforts to help in assuring that the Mentally Disabled residents of licensed adult homes receive adequate care and services under the SSI benefit program.

Sincerely,

Gregory M. Kaladjian
Acting Commissioner

Appendix C

Performance Ratings of Adult Homes Visited in 1989

Performance Ratings Of Adult Homes Rated "Good"*
[N = 19]

	Housekeeping	Furnishings	Maintenance	Fire/Safety	Nutrition/Meal	Personal Care	Medication Srvs.	Medical/Mental Health Srvs.	Activities	Residents' Rights	Staff Interaction
St. Zita's Villa	○	○	○	○	○	○	○	○	○	○	○
Seaview Manor HFA	○	○	○	○	○	○	○	○	○	○	○
Dawn Hill Adult Home	○	○	○	○	○	○	○	○	○	○	○
Pines Rest Home	○	○	○	○	○	○	○	○	○	○	○
Academy HFA	○	○	○	○	○	○	○	○	○	○	○
Ridgeview Guest Home	○	○	○	○	○	○	○	○	○	○	○
Grantier Rest Home	○	○	○	○	○	○	○	○	○	○	○
Wiltshire House	○	○	○	○	○	○	○	○	○	○	○
Evergreen Manor	○	○	○	○	○	○	○	○	○	○	○
Maple Manor HFA	○	○	○	○	○	○	○	○	○	○	○
Bida HFA	○	○	○	○	○	○	○	○	○	○	○
Johnson Adult Home	○	○	○	○	○	○	○	○	◍	○	○
DePaul HFA	○	○	○	◍	○	○	○	○	○	○	○
Chai HFA	○	○	○	○	○	○	◍	○	◍	○	○
Holly Loch Rest Home	○	○	○	○	○	○	◍	○	○	◍	○
Manor Haven Adult Home	○	◍	◍	○	○	○	○	○	○	○	○
Martin Residence	○	○	○	○	○	○	○	○	◍	◍	○
Pines HFA	○	○	●	○	○	○	○	○	○	○	○
Park Rest HFA	○	○	◍	○	○	○	○	◍	○	○	○

Key:
- ○ = No or Minor Problems
- ◍ = Some Significant Problems
- ● = Serious Problems

*It should be noted that conditions in adult homes fluctuate from time to time. These summary ratings represent a snapshot of these facilities at the time of the Commission's visit. For many adult homes visited, the operator and/or the administrator have planned or implemented corrective actions.

Performance Ratings Of Adult Homes Rated "In Need of Improvement"*
[N = 14]

	Housekeeping	Furnishings	Maintenance	Fire/Safety	Nutrition/Meal	Personal Care	Medication Srvs.	Medical/Mental Health Srvs.	Activities	Residents' Rights	Staff Interaction
Green Briar Adult Home	○	◍	○	○	○	○	○	○	◍	○	○
Rockaway Manor HFA	◍	◍	●	◍	○	○	○	○	○	○	○
Garden of Eden HFA	◍	◍	◍	◍	○	◍	○	○	○	○	○
Lakeside Manor HFA	◍	○	○	◍	◍	○	●	◍	○	○	○
Sachem Adult Home	○	◍	◍	◍	○	◍	○	○	◍	○	○
Inver Adult Home	○	●	●	○	○	◍	○	○	○	○	◍
Hedgewood	○	◍	◍	◍	○	◍	○	○	◍	○	◍
Valehaven HFA	◍	●	●	○	○	○	○	○	○	○	○
Bayshore Adult Home	◍	●	●	○	○	◍	○	◍	○	○	○
Long Beach Atlantic HFA	◍	◍	●	●	○	◍	○	○	○	○	○
Middleville Rest Home	○	○	◍	○	○	◍	○	◍	●	◍	◍
Main View Manor HFA	●	○	○	◍	○	●	○	○	◍	○	◍
Howells Harmony House	○	◍	◍	○	◍	◍	○	◍	●	○	○
Troy Adult Home	○	◍	●	◍	○	◍	○	○	●	○	○

Key:

○ = **No or Minor Problems**

◍ = **Some Significant Problems**

● = **Serious Problems**

*It should be noted that conditions in adult homes fluctuate from time to time. These summary ratings represent a snapshot of these facilities at the time of the Commission's visit. For many adult homes visited, the operator and/or the administrator have planned or implemented corrective actions.

Performance Ratings Of Adult Homes Rated "Poor"* [N = 14]

	Housekeeping	Furnishings	Maintenance	Fire/Safety	Nutrition/Meal	Personal Care	Medication Srvs.	Medical/Mental Health Srvs.	Activities	Residents' Rights	Staff Interaction
Park Inn HFA	◎	◎	●	○	◎	◎	◎	○	◎	◎	○
Dawnview HFA	●	◎	◎	◎	○	◎	◎	○	◎	◎	◎
Vanderbilt Manor	◎	●	●	◎	○	◎	○	○	●	○	◎
Wavecrest HFA	●	◎	●	◎	○	◎	◎	○	◎	◎	◎
Park Manor Adult Home	●	●	◎	○	◎	●	●	○	◎	◎	○
Hiawatha Manor	●	●	●	●	◎	◎	○	○	○	●	○
Anna Milissia Adult Home	●	●	●	◎	◎	●	◎	○	●	◎	◎
Hunter House HFA	●	●	●	●	○	◎	●	◎	●	○	◎
New Monsey Park HFA	●	●	●	●	◎	●	◎	●	○	◎	◎
Leben HFA	●	●	●	●	◎	●	●	●	◎	○	◎
Mason HFA	●	●	◎	●	◎	●	●	●	●	◎	◎
Hi-Li Manor Home for the Aged	●	●	●	●	◎	●	◎	○	●	◎	●
Babylon Manor Rest Home	●	●	●	◎	●	●	●	◎	●	●	●
New Queen Esther HFA	●	●	●	●	●	●	●	●	●	●	●

Key:

○ = No or Minor Problems
◎ = Some Significant Problems
● = Serious Problems

*It should be noted that conditions in adult homes fluctuate from time to time. These summary ratings represent a snapshot of these facilities at the time of the Commission's visit. For many adult homes visited, the operator and/or the administrator have planned or implemented corrective actions.

Appendix D

Compliance History

HI-LI Manor Home for Adults
Complete Inspections by DSS

Report Dates	Scope of Review	Status Compliance	Number of Violations	Key Deficiencies
June 81	Program Fire/Safety Nutrition	Non- Compliance	12	Personal Needs Allow. Dietary
May 84	Program Fire/Safety Nutrition	Non- Compliance	13	Staffing
July 85	Program Fire/Safety Nutrition	Non- Compliance	28	Maintenance Personal Needs Allow.
Dec.86	Program Fire/Safety Nutrition	Non- Compliance	29	Dietary Resident - Safety Maintenance
July 88	Program Fire/Safety Nutrition	Non- Compliance	12	Maintenance Resident - Safety
Nov.89	Program Fire/Safety Nutrition	Non- Compliance	13	Medication Fire Safety
Aug.90	Program Fire/Safety Nutrition	Non- Compliance	7	Fire Safety Medication Maintenance
June 91	Program Fire/Safety Nutrition	Non- Compliance	5	Medication Fire Safety

Appendix E

Affidavit of Joseph A. Pepe

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

- -X

BERYL ZYSKIND and FRADY ZYSKIND, both Individually and as Partners in a General Partnership known as Hi-Li Realty Company, Plaintiffs, -against- HEBREW ACADEMY OF THE FIVE TOWNS AND ROCKAWAY, DAVID H. KOLATCH and VILLAGE SAVINGS BANK, Defendants.	Index No. 30860/91 AFFIDAVIT IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND <u>PRELIMINARY INJUNCTION</u>

- -X

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

JOSEPH A. PEPE, being duly sworn, deposes and says:

1. I am the president of Hawthorne Investigations and Security ("Hawthorne"), an entity which engages in private security and investigation services. Prior to my association with Hawthorne, I was the Assistant Director of Capital Program Research at the Metropolitan Transit Authority. From 1987 through 1989, I was the Investigations Coordinator for New York City District Attorney's office. In addition, from 1967 through 1987, I was a New York City Police officer and achieved the rank of second grade detective.

2. In November 1991, I was retained by the Hebrew Academy of the Five Towns and Rockaway ("HAFTR") to provide security and investigations services at Hi-Li Manor Home for the Aged ("Hi-Li"). At the outset of my engagement, it was

apparent that Hi-Li seemed to lack any semblence of management or operational control. In December 1991, the paramount concern at the facility was whether Hi-Li would run out of fuel. I was told by maintenance personnel that Hi-Li's oil supply would be exhausted in 24 hours. I contacted local oil companies and requested an immediate delivery. I was routinely told that no delivery would be made to Hi-Li because of its refusal to pay on a timely basis and, in some instances, inability to pay at all. Ultimately, arrangements were made for the delivery of oil to Hi-Li.

3. In addition to oil, it appeared that food was not regularly delivered to Hi-Li. I was forced to contact several vendors and was told that food would not be delivered unless Hi-Li paid for deliveries in cash or by certified check. The identical scenario occurred with respect to laundry services.

4. The ventilation system was in disrepair. I directed the maintenance crew to repair the ventilator. I also directed the staff to clean the windows and begin painting. A new antennae was installed on the television set. These minor changes at Hi-Li had a significant and positive impact on the residents. I continued to provide my services to Hi-Li until December 12, 1991.

5. On January 22, 1992, I was contacted by HAFTR representatives who requested that I again appear at Hi-Li. I was advised that a coup had been orchestracted by Beryl Zyskind, Hi-Li's former assistant administrator. Mr. Zyskind

hadtaken over the facility and HAFTR was concerned about the preservation of Hi-Li's assets and financial documents.

6. I arrived at Hi-Li at approximately 1:00 p.m. I was immediately confronted by a group of five security officers who claimed that they were operating at Beryl Zyskind's direction. They refused to identify themselves[1] and refused to tell me whether any court order permitted them to remain on the premises. They led me to believe that Zyskind had a court order but that he was unavailable.

7. I advised the security personnel that I was acting on behalf of HAFTR, the licensee of Hi-Li. I demanded that these individuals remove themselves from the premises. They refused and told me that they were directed by Zyskind to remain. It was obvious that Zyskind hired five people, as opposed to one, as a demonstration of force intended to create an atmosphere of intimidation. While I was not intimidated, the remaining Hi-Li employees and residents at the facility were freightened and disoriented.

8. At approximately 5:00 p.m., police officers from the 101st precint in Queens appeared at Hi-Li. They confronted Zyskind's security force and asked if they possessed a court order permitting them to remain on the premises. They did not produce or claim to have any court order entitling Zyskind to occupy the premises or take over its operation. The police did not demand that Zyskind's

[1] Later in the day, the security personnel told me that they were employed by Total Protective Security Investigation, 3876 Merrick Road, Seaford, New York.

security guards vacate the premises. I was told by one of the officers that the police would not forcefully eject Zyskind's security personnel because they did not want to interfere in what they understood involved civil litigation.

9. It should be noted that I asked one of the security officers whether he was paid by Mr. Zyskind. I was advised that the security personnel received checks from Mr. Zyskind. When I explained the history of this litigation, especially Mr. Zyskind's financial track record, the security officers told me that they were going to investigate whether the checks were valid. I was told that the bank upon which the checks were drawn was contacted and advised the security personnel that there were insufficient funds to cover the checks. Subsequently, I was informed that Joseph Macy, Esq. had promised to cover the checks which Mr. Zyskind tendered earlier that day.

10. Joseph Macy, Esq., an associate at the Speno Goldman Goldberg Steingart & Penn, P.C., Zyskind's attorneys, appeared at the facility at approximately 7:00 p.m. I overheard Mr. Macy direct the security personnel that no one would be permitted to enter the facility. One of Zyskind's security personnel then handed me a letter, a copy of which is annexed as Exhibit "P". The letter, which is signed by Beryl Zyskind, states:

> This will serve to notify the Hebrew Academy of the Five Towns and Rockaway that as administrator of the Hi-Li Manor I will authorize one member of the HAFTR staff to enter upon the Hi-Li Manor premises

on January 23, 1992 for the sole purpose of executing employee payroll checks. This action is necessitated as a result of the unauthorized actions of HAFTR and David Kolatch who have previously and without authority changed the banks accounts and signatories upon the accounts maintained by Hi-Li Manor to conduct its business and affairs.

11. It is clear that Zyskind and his entourage intend to remain indefinately on the Hi-Li premises without authorization. They do not intend to allow Hi-Li's designated administrator, its bookkeeper or anyone else associated with HAFTR on the premises. They have apparently removed the facility's books and records. As the accompanying affidavit of Malka Zilban demonstrate those books and records were in the process of being reconstructed. Their conduct clearly interferes with the operation of the state regulated facility.

S/
Joseph A. Pepe

Sworn to before me this
23rd day of January 1992

S/
Notary Public

577W3AFF.6

Appendix F

Excerpts from a January 23, 1992 affirmation of Franklyn Snitow, attorney for HAFTR

25. In his affirmation, Mr. Schiffman stated that he was not HAFTR's president in April 1989 and denied that he ever signed a Subordination Agreement. In addition, Mr. Schiffman affirmed that he never acknowledged his signature before Isaac Soskin, the person identified as the notary public on the Subordination Agreement. Significantly, on April 3, 1991, Mr. Soskin wrote to Denise Hummel, Esq. and advised her that his notary stamp was stolen approximately five years ago. He denied having notarized any document involving HAFTR, Schiffman or Zyskind.

26. HAFTR also learned that Zyskind executed a Certificate of Corporate Resolution... Like the subordination agreement, that fraudulent document was submitted by Zyskind in connection with the Village Bank mortgage. Incredibly, the document appears to be a guaranty of Zyskind's mortgage loan signed by Zyskind. Zyskind signed the Certificate of Corporate Resolution as "Administrator of HAFTR". Mr. Zyskind never held that position. Moreover, HAFTR's Board of Directors never approved a loan from Village Savings Bank to Zyskind and never agreed to guaranty said loan. The document recites that the Board of Directors meeting was held on April 19, 1989. The meeting did not and could never have occurred on that day or evening, because the holiday of Passover began at sundown.

Appendix G

October 1, 1987 Plea for SSI Increase
by Beryl Zyskind

Rockaway 7-5500

HI-LI
manor

14 HEYSON ROAD FAR ROCKAWAY, N.Y. 11691

Oct. 1, 1987

Governor Mario Cuomo
Capitol Building
Second Floor
Albany, N.Y. 12224

Dear Governor Cuomo:

I am the operator of a 125 bed Adult Home in Queens County.

I urgently need your help. Our home is licensed to care for the elderly (and persons with previous mental health problems). We depend on SSI to provide our residents with the monies to pay for their care.

It has been three years since the state increased its share of SSI.

We provide our residents with room, board, personal care services, health monitoring, case management, recreation, medications management, and community linkages. We provide all of these services for $22.00/day upstate and $23.00/day downstate.

As you know, It costs more to board a dog at a kennel.

Please Governor - I need your help to remain in business. Don't let our industry die from governmental indifference. You must include an SSI increase in your budget for next year.

Sincerely,

HI-LI Manor

Beryl Zyskind, Adm.