

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 01-21376 CA 08

GENERAL JURISDICTION DIVISION

JOAN LIGHT, SHIRLEY EISENBERG
CAROL PRISCO, and GLORIA ZIMMER

Plaintiffs,

-vs-

SCI FUNERAL SERVICES OF FLORIDA,
INC., a Florida corporation d/b/a MENORAH
GARDENS & FUNERAL CHAPELS and
SERVICE CORPORATION
INTERNATIONAL, a Texas corporation,
MENORAH PARTNERSHIP, a
Florida General Partnership, and SHARON
GARDENS LIMITED PARTNERSHIP, a
Florida Limited Partnership,

Defendants.

**ORDER ON DETERMINATION OF EMOTIONAL DISTRESS CLAIMS
COMPENSABLE BY MONETARY DAMAGES AND WHICH CLAIMANTS MAY
RECOVER THE MONETARY DAMAGES**

THIS MATTER came before the Court for the determination of what emotional distress claims are compensable under Florida law and what category of claimants may recover emotional distress damages. The Court appointed Lauri Waldman Ross, Esq. as Amicus Curiae to provide the Court with guidance on: (1) what general factual scenarios allow recompense for emotional distress/outrage damages; and (2) what relatives of the decedent are entitled to recover such damages. The Legal Memorandum provided by Ms. Ross as Amicus Curiae was comprehensive, well-written and set out an accurate statement of Florida law. Having reviewed Ms. Ross's analysis, the Court further appointed Geoffrey B. Marks, Esq. and Gonzalo R. Dorta,

Esq. in order to challenge, where applicable, Ms. Ross's analysis of the law. Interestingly, Second Amicus Counsel, Geoffrey B. Marks, Esq. and Gonzalo R. Dorta, Esq. reached the same conclusion as Ms. Ross and simply argued that in the interest of justice the Court should reserve the right to expand those entitled to recover emotional distress damages. The matter was decided by the Court based on the Court's understanding of the facts involving class members' claims, on analysis of the applicable law, and consideration of the legal positions set forth by both Amicus Curiae on all issues.

On the issues of what claims may be compensable for emotional distress damages and which class members may be able to recover those damages, the Court has determined and hereby ORDERS and ADJUDGES as follows:

1. Class members, within the appropriate degree of kinship discussed below, may be entitled to recover emotional distress damages under the following circumstances:
 - a. where the defendants' conduct has caused a desecration of a relative's remains;
 - b. where the defendants' conduct requires a relative's disinterment and re-interment for a proper burial;
 - c. where a class member discovers the need for disinterment of a relative at the time of interment of another relative where they had intended to be interred next to each other;
 - d. where the defendants' conduct requires a relative to be interred separately from a previously interred relative where the relative had previously chosen to be buried next to each other;
 - e. where the defendants' conduct has resulted in the inability to identify the remains of a relative;
 - f. where the defendants' conduct has resulted in the inability to find the location of the relative's remains;
 - g. where the defendants have lost the remains of a relative;
 - h. where the defendants significantly misplaced grave markers by the width of at least one grave space, so as to be considered a misplaced burial; and

i. where the defendants' conduct requires a lateral realignment of a relative's remains in order to provide sufficient space for other interments.

2. The categories of claims that may qualify for a potential award of emotional distress damages are subject to modification in the interest of justice as determined by the Court.

3. The amount, if any, of emotional distress damages will be determined by a Special Master appointed by the Court based on the Special Master's determination of the emotional distress, impact and negative effect of the defendants' conduct upon the qualifying class members. The Special Master's findings and recommendations are subject to approval by the Court.

4. Class counsel shall seek approval or review of the Special Master's findings within thirty (30) days from the date of the Special Master's report and recommendation to the Circuit Court.

5. The Court recognizes that many individuals suffered emotional distress as a result of hearing of the highly publicized problems at Menorah Gardens. Nevertheless, based on a comprehensive review of Florida law, the Court finds that class members that have only suffered distress over hearing about the problems at the cemeteries and those who only suffered contract damages are not entitled to recover emotional distress damages under Florida law.

6. Similarly, class members who have pre-paid for burial plots whose burial locations are no longer available are entitled to the equitable relief set forth in the subject settlement agreement and are also entitled to recover the economic benefits allowed pursuant to the terms of the settlement agreement, but they have no recognizable claims for emotional distress damages based on the uncertainty of their burial plans in the future.

7. Accordingly, class members whose claims do not fall within the categories listed in paragraph 1 will be limited to the recovery of the equitable relief and economic contract damages allowed by the settlement agreement in this matter.

8. The class members with qualifying claims that may be entitled to recover emotional distress damages are limited to "next of kin" as defined in Florida's Intestacy Statutes, Florida Statutes sections 732.102 and 732.103 (2003). Thus, class members who have claims that fall within the categories set forth in paragraph 1 of this Order may be entitled to recover emotional distress damages as determined by the Special Master and approved by the Court, depending on their degree of kinship with the decedent. The Court adopts the following order of priority in deciding who may be entitled to recover emotional distress damages:

a. the decedents surviving spouse, or if none;

- b. the decedent's lineal descendants, or if none;
- c. the decedent's father and mother, or if none;
- d. grandparent(s), or if none;
- e. uncle(s) and aunt(s) or, if none;
- f. other kindred who survived.

9. The Court's analysis of the individuals entitled to recover emotional distress damages is subject to modification as required in the interest of justice.

10. Claimants within the appropriate degree of kinship discussed in paragraph 8, who fall within the categories discussed in paragraph 1 may be entitled to recover emotional distress damages under a tortious interference theory, whether or not they were actually present at the time the remains or graves of their relatives were affected.

11. In the interest of justice, the Court will consider the qualifying emotional distress claims of those class members who, although not defined within Florida's Intestacy Statutes, maintained such a special relationship with the decedent for at least five (5) years prior to the death of the decedent so as to permit the individual with the special relationship to make a claim for emotional distress damages.

DONE and ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on _____, 2005.

J. Leonard Fleet,
Circuit Court Judge

J. LEONARD FLEET

OCT 20 2005

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Copies furnished to all counsel of record