

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of:	:	
	:	PETITION FOR CY PRES
JUDITH PINCUS, in her Capacity as Chapter 11	:	RELIEF PURSUANT TO
Plan Administrator for FEDERATION	:	<u>N-PCL §555 AND EPTL §8-1.1</u>
EMPLOYMENT AND GUIDANCE SERVICE,	:	
INC., d/b/a FECS,	:	
	:	
Petitioner,	:	Index No.
	:	
For Disposition of Funds for Charitable Purposes	:	
Pursuant to Section 8-1.1 of The Estates, Powers and	:	
Trusts Law of The State of New York, and Section	:	
555 of the New York Not-For-Profit Corporation	:	
Law.	:	
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Petitioner, Judith Pincus (“Petitioner”), in her capacity as Chapter 11 Plan Administrator for Federation Employment and Guidance Service, Inc. d/b/a FECS (“FECS”)¹, a not-for-profit health and human services organization formed under the laws of the State of New York, by her attorneys, Garfunkel Wild, P.C., respectfully alleges:

I. Introduction

1. Petitioner requests the assistance of the Court with regard to the disposition of certain funds donated to FECS for charitable purposes to ensure that the funds will be directed to and used by other not-for-profit institutions in a manner most closely aligned with the donors’ original intent.

2. Established during the Great Depression in 1934, FECS was a not-for-profit health and human services organization which provided a broad range of assistance to more than 120,000 individuals annually in the areas of behavioral health, intellectual and developmental

¹ As set forth herein, Judith Pincus was appointed Plan Administrator pursuant to an Order of the Bankruptcy Court (as hereinafter defined) dated February 6, 2018. Except as expressly stated in this Petition, she has no first-hand knowledge of many of the facts set forth herein. They are asserted based on FECS’ documents, court filings, and due diligence conducted by her counsel, including conversations with donors and their families.

disabilities, housing, home care, employment/workforce training, education assistance, and youth and family services. Since its inception, FECS was committed to providing quality health and social services to individuals facing complex challenges, helping them lead independent and successful lives.

3. In this regard, FECS administered a sizeable number of complex treatment and support programs for the intellectually and developmentally disabled and mentally ill, and a comprehensive portfolio of residential programs for both populations. At its peak, FECS employed over two-thousand people, and its programming operated in over 350 locations throughout the New York Metropolitan and Long Island regions.

4. As a result of its outstanding service to the community for over eighty years, FECS received numerous generous and substantial charitable gifts and bequests.

5. Unfortunately, FECS filed for Chapter 11 bankruptcy protection on March 18, 2015 (“Petition Date”).

6. Following the Petition Date, the programs previously run by FECS were transferred to other not-for-profit providers with the cooperation of the New York State Office of Mental Health, the Office for People with Developmental Disabilities, and various other State and City agencies who had contracted for FECS’ services. The program transfers were seamless and clients continued to receive services with a minimum of disruption. Thereafter, with the State’s assistance, FECS conveyed the properties housing the transferred programs largely to the providers who assumed program responsibilities.

7. On February 6, 2019, the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”) entered an Order (the “Confirmation Order”) confirming the Third Amended Plan of Liquidation Under Chapter 11 of the Bankruptcy Code of Federation Employment and Guidance Service, Inc. d/b/a FECS (“the Plan”) A copy of the Confirmation Order is annexed hereto as Exhibit 1 and is also available at E.D.N.Y. Bankr. Docket No. 8:15-bk-71074 at 1050.

8. Under the terms of the Plan and Paragraph 4 of the Confirmation Order, the Petitioner was appointed as Plan Administrator to assume responsibility, *inter alia*, for the liquidation and disposition of all of FECS’ remaining assets. *Id.*

9. After the wind-down and liquidation, one of the projects addressed by the Petitioner was the disposition of permanently and temporarily restricted charitable assets held by FECS at and since the time of the Petition Date. In connection with this project, FECS initially conducted a diligent search for, and identified with particularity, each and every donor-restricted charitable asset held by FECS, as further described below.

10. FECS is presently holding \$3,826,981 in donated funds that were, upon information and belief, restricted by the donors to a particular purpose. As a result, these funds are not available to FECS’ creditors in the bankruptcy proceeding.

11. FECS’ transfer of all of its programs to other not-for-profit providers, and the sale of substantially all of its assets has made it impossible for FECS to comply with the terms of any such restricted charitable disposition, thereby requiring FECS to petition this Court for relief pursuant to the *cy pres* doctrine and New York Not-For-Profit Corporation Law (“NPL”) §555 and Estates, Powers and Trusts Law (“EPTL”) §8.1-1(c).

12. Accordingly, for the reasons set forth more fully below, FECS asks this court to issue an order directing that FECS' temporarily and permanently restricted funds be redirected to a similar purpose as soon as possible, in a manner consistent with the intent expressed by the original donors, as detailed below.

II. NPL §555 and Related Cy Pres Doctrine

13. NPL Sections 555(b) and (c), enacted effective July 1, 2014, state as follows with regard to the disposition of charitable gifts:

(b) A court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the donor, if available, and the attorney general of the application, and the attorney general and such donor must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the purposes expressed in the gift instrument. The institution shall notify the donor, if available, and the attorney general of the application, and the attorney general and such donor must be given an opportunity to be heard.

14. FECS respectfully asks the Court to exercise the powers granted to it under NPL §555(b) to redirect funds donated to FECS to other not-for-profit institutions for their use in a manner consistent with the donors' original intent, as nearly as it may be ascertained, as set forth below.

15. In addition, in certain circumstances, FECS also asks the Court to modify the purpose of the fund or the restriction on its use pursuant to NPL §555(c) where, for example, continued maintenance of the fund as an endowment would be impracticable or wasteful.

16. In addition to the NPL, this Court also has authority to redirect the use of charitable funds donated to FECS pursuant to the “cy pres doctrine” as exists pursuant to common law and as codified in the Estates, Powers and Trusts Law (“EPTL”).

17. Pursuant to EPTL §8.1-(c)(1):

[W]henver it appears to such court that circumstances have so changed since the execution of an instrument making a disposition for religious, charitable, education or benevolent purposes as to render impracticable or impossible a literal compliance with the terms of such disposition, the court may, on application of the trustee or of the person having custody of the property subject to the disposition ... make an order or decree directing that such disposition be administered and applied in such manner as in the judgment of the court will most effectively accomplish its general purposes, free from any specific restriction, limitation or direction contained therein ...

18. Before the Court may properly apply the cy pres doctrine, it must find three specific conditions: (1) the gift must be charitable in nature; (2) the language of the gifting instrument, when read in light of all attendant circumstances, must indicate that the donor demonstrated a general, rather than specific, charitable intent; and (3) it must be determined to the Court’s satisfaction that the particular purpose for which the gift or trust was created has failed, or has become impossible or impracticable to achieve.

19. As explained in detail below, FECS respectfully submits that the information presented in this Petition satisfies the conditions for cy pres relief with regard to all of its restricted assets.

A. The Donations In Issue Were Charitable in Nature

20. Gifts or bequests for the promotion or advancement of healthcare, housing, education, rehabilitation, and similar human services have long been recognized as charitable in nature.

21. Here, with regard to each of the permanently and temporarily restricted funds set forth below, FECS describes the purpose for which the original donation was made to FECS. In general, the overarching purpose of charitable donations to FECS was to promote the advancement of its mission: the provision or other promotion of diverse services in the areas of behavioral health, developmental disabilities, rehabilitation, homecare, youth and family services, employment training, and career and educational development.

22. Plainly, any and all donations made to FECS in support of its mission are charitable in nature.

B. The Donors Demonstrated A General, Not A Specific, Charitable Intent

23. Generally, the cy pres doctrine will be applied when the primary intention of the donor is to devote his or her property to a general charitable purpose, rather than to give a gift to a particular charity or for a particular, limited purpose. Stated another way, cy pres applies when a general charitable purpose is primary, and the particular beneficiary is merely secondary to the donor's general charitable intentions.

24. The distinction between a general and specific charitable intent can be determined by the presence or absence of a "gift-over" provision. That is, if the donor named an alternative beneficiary in the event that the gift to the designated beneficiary failed, then the courts will find that the donor's intent was specific to the institution rather than general to the purpose, thus

precluding application of the cy pres doctrine. Here, none of the gifts to FECS, as described below, contain such a gift-over provision.

25. Further, a general charitable intent may be found where a grant is general in character, or gives the charitable trustee/recipient substantial discretion in the use of the funds. Here, as described more fully below, many of the gifts to FECS may have been designated for a particular set of programs or services. Still, the donors generally left FECS wide latitude as to the specific use or application of the funds within the designated service area.

26. Accordingly, FECS respectfully asserts that its donors' intentions were general rather than specific in nature, and that the cy pres doctrine should invariably apply. *See e.g., In re Estate of Post*, 2 A.D.3d 1091 (3d Dep't 2003); *Application of Abrams*, 151 Misc.2d 1056, 574 N.Y.S.2d 651 (Sup. Ct., Nassau County 1991); *In re Goehring's Will*, 69 Misc.2d 145, 329 N.Y.S.2d 516 (Surr. Ct., Kings County 1972); *Conway v. Bowe*, 116 N.Y.S.2d 182 (Sup. Ct., Albany County 1952).

C. It Has Become Impossible For FECS to Achieve the Donors' Purposes

27. On March 18, 2015, FECS filed for bankruptcy protection. Since then, FECS has wound down its affairs and sold or otherwise conveyed substantially all of its assets. There are no continuing services provided by FECS.

28. As a result of the transfer of its programs to other not-for-profit providers, the sale of substantially all of its assets, and the discontinuance of its provision of any services, it is now and will continue to be impossible for FECS to use the funds donated to its permanently and temporarily restricted accounts for the purposes intended by the donors.

D. The Court Can Exercise Its Cy Pres Power With Regard To The Restricted Assets

29. In similar circumstances, New York courts have exercised their power and discretion under the “cy pres” doctrine, as codified in EPTL §8.1-1(c), to remove gift and bequest restrictions and allow the donors’ general charitable intent to be realized. This cy pres power is also codified in the more-recently enacted NPL §555.

30. Accordingly, by this Petition, FECS respectfully asks the Court to issue an order pursuant to EPTL §8.1-1(c) and/or NPL §555, directing the manner in which the restricted assets should be redistributed, to provide the funds to other not-for-profit institutions and/or programs that will, as near as possible, match the original intent of the donors who gave so generously to FECS over its eighty-plus years of service.

III. Necessary And Interested Parties

A. FECS

31. Federation Employment and Guidance Service, Inc. d/b/a FECS is a not-for-profit health and human services organization formed under the laws of the State of New York. FECS’ principal place of business is located at 2 Park Avenue, 20th Floor, New York, New York 10016.

B. Attorney General Of The State of New York

32. Pursuant to NPL §555(b) and (c), and EPTL §8.1-1(c), the Honorable Letitia James, Esq., Attorney General of the State of New York, is a necessary party to these proceedings.

33. FECS has met and conferred with the Charities Bureau of the Attorney General’s Office on several occasions during the preparation of this Petition, to take into account any

suggestions or objections the Charities Bureau may have, given its substantial experience and expertise in these matters.

34. Upon information and belief, the Attorney General's Office will file a "notice of no objection" to this application following the commencement of the within proceeding.

C. Donors

35. Pursuant to NPL §555(b) and (c), donors are entitled to notice and an opportunity to be heard on applications brought before the Court with respect to the modification of a restriction in a gift instrument.

36. Since its closure, FECS, through its Plan Administrator and legal counsel has made contact with many of its largest, most important donors and/or their descendants regarding its intent, and regarding any input or suggestions for an alternative recipient. In addition, FECS records were searched to locate all other donor sources that could reasonably be located with diligence regarding the funds listed below.

37. FECS has compiled the names and address of all donors who donated the restricted funds that are the subject of this petition, and will provide notice of this application to those donors by means of a letter to their last known address. *See* Affirmation of Colleen M. Tarpey, dated December 8, 2020 (hereinafter "Tarpey Aff.") for additional information regarding the manner and method of notice to donors as required by N-PCL § 555. The list of all donors is also annexed hereto as Exhibit 2.²

² The addresses of the donors or their descendants have been redacted for privacy reasons, but an un-redacted version can be made available to the Court for *in camera* inspection. In addition, the unredacted version has been shared with the Attorney General's Charities Bureau.

38. In addition, FECS has agreed to make a copy of this Petition and its Exhibits, and any papers that accompany or support the Petition, available to the public on its website, so that interested donors who receive letters can review the relief requested herein. The letters sent to the donors will detail how to access FECS' website for additional information.

IV. The Restricted Funds

39. Funds donated to FECS over the course of its eighty-plus years of service fall into four general categories: unrestricted gifts, temporarily restricted gifts, permanently restricted (or endowed) gifts, and administratively-transferred gifts.

40. Unrestricted gifts are simply donations to FECS that were not designated for any particular purpose by the donor and, as a result, were placed into FECS' general operating accounts. Such unrestricted gifts are not the subject of this application.

41. Additionally, FECS holds certain funds that it will transfer administratively, outside of this proceeding. Funds that fall within the parameters of NPL §555(d), insofar as they are more than twenty years old and contain less than \$100,000 meet the conditions for administrative transfer upon written notice to the Attorney General's Office, so long as the Attorney General does not object to the proposed transfer within ninety days. A meaningful number of the charitable funds held by FECS fit within these parameters, and such funds are also not the subject of this application.

42. Finally, certain other restricted funds were donated for a particular purpose, as expressed by the donor. FECS, in those instances, used the funds only for their intended purpose. FECS' bankruptcy, the liquidation of its assets, and the transfer of its programs to other providers, however, have made it impossible for FECS to continue to do so.

43. The restricted funds currently held by FECS include both permanently restricted assets (sometimes referred to as permanent endowments or just endowments) and temporarily restricted assets.

44. The current total of restricted donations to FECS that are subject to this petition equals \$3,408,827.

A. Permanently Restricted Funds (“Endowments”)

45. The permanently restricted funds held by FECS were designated as such by their donors, who intended that the donations be held as permanent endowments, with only the income generated from their donations used to meet the purpose of the restriction.

46. The permanently restricted endowments subject to this petition include donations dating back to 1992, and certain individual funds hold upwards of two-million dollars. Upon information and belief, these permanently restricted funds include, in some cases, donations from multiple individual and institutional sources. Programs supporting vocational training and job placement, academic scholarships, and even programs encouraging compassion and innovation among FECS’ employees – to name a few – have been the beneficiaries of such endowments.

47. There are five such endowments which are the subject of this petition, currently representing \$3,342,185 in permanently restricted funds.

48. Set forth below, to the fullest extent possible given the passage of time and, in certain circumstances, the incompleteness of the records available to Petitioner, is a description of each endowment, its donor-intended purpose, and its suggested disposition.

1. Fund For Opportunity – Skills Training Endowment Fund

49. As part of a capital campaign proposal to UJA, FECS proposed establishing a \$5 million endowment fund for skills training and job placement, primarily for older workers who otherwise did not qualify for government-sponsored programs. Annexed hereto as Exhibit 3 are January 19, 1989 Board Minutes and a letter from FECS to UJA Federation of New York (“UJA”) discussing FECS’ intention to establish the endowment.

50. The purpose of the Fund for Opportunity was to provide scholarships and/or skills training to Jewish individuals who have been excluded from government-supported training, with a priority afforded men and women over the age of 45. A driving force was FECS’ concern about systemic discrimination against older workers and the desire to impart needed skills to this segment of the workforce. Additionally, given the influx of Jewish immigrants from the Soviet Union at the time the Fund was established, priority was also given to emigres, most of whom were ineligible for government funding.

51. The campaign was formally initiated in February 1990 when FECS received a contribution from the Louis and Anne Abrons Foundation in the amount of \$375,000 through UJA’s capital campaign. Annexed hereto as Exhibit 4 is a February 8, 1990 letter from the Abrons Foundation to UJA, setting forth its pledge of \$375,000 to FECS, and related internal communications from UJA to FECS regarding the establishment of the endowment.³

52. A second major contribution to the Fund was made in the late 80’s and early 90’s from the Michael Saphier Trust and Ruth Saphier Estate. Michael Saphier had been a

³ Any and all Exhibits containing donor addresses, personal information, and/or bank account numbers have been redacted to protect donor privacy. To the extent that the Court wishes to view the un-redacted Exhibits, they can be provided for *in camera* inspection, and an un-redacted copy of the Exhibits has been provided previously to the Charities’ Bureau.

President and Board Member of FECS and he and his wife left substantial sums to FECS in their estate plans. *See* Exhibit 5, a letter to the Board dated October 23, 1987, advising the Board of Mr. Saphier's passing. Mr. Saphier, for example, left his estate in Trust to his wife Ruth, with one-third of his residuary estate to FECS after her passing, to be held as an endowment. Annexed hereto as Exhibit 6 is the Notice of Probate filed in Mr. Saphier's estate proceeding, describing the bequest to FECS. Annexed hereto as Exhibit 7 is additional correspondence dated November 19, 1990, regarding distributions to FECS from Ruth Saphier's estate and the Trust established under Michael Saphier's will. By the time Michael Saphier's Trust and Ruth Saphier's estate had been fully distributed, FECS had received a total of more than \$1,400,000.

53. Two other contributions of \$75,000 and \$53,732 were made by other individual donors between 1992 and 1996. Annexed hereto as Exhibit 8 and Exhibit 9 are letters dated February 16, 1992 and October 29, 1996, detailing gifts from James and Barbara Block (\$75,000) and the Estate of Nathan Clay (\$53,732).

54. Additional donors made contributions and, of course, the Fund accrued interest over the years. As of the Petition Date, the balance in the Fund totaled \$2,449,400. *See* Exhibit 2 for a list of all known donors to this Fund.

55. There are no known descendants of the Saphiers, the largest donors to this Fund. The Plan Administrator has contacted representatives of the Abrons Foundation, the next largest donor, to inquire about the Foundation's suggestions regarding transfer to a like organization. The Plan Administrator has been advised that the Foundation's Board of Trustees requested the Fund be transferred to the Henry Street Settlement, a New York City based not-for-profit that provides, among other things, job-readiness training to the disadvantaged.

56. As a citywide leader in the field of workforce development, Henry Street's Employment Services Division provides high-quality services for thousands of job seekers each year, facilitating more than 600 job placements annually. Its integrated workforce services are designed to address the needs of all job seekers regardless of age, literacy/skill levels, work history, education, housing stability, or social service needs. As such, its program services are tailored for a variety of high-need populations including: walk-in job seekers of all demographic backgrounds; immigrants; English language learners; public housing residents; young adults, including those who are disconnected from school and the workforce; adult learners with literacy levels as low as 4th grade; and job seekers residing in Henry Street's family homeless shelters. Henry Street's employment programs also leverage the comprehensive range of social services that are available across the agency. Richard Abrons, a former President of the Henry Street board, died in September, 2019. Anne Abrons, an extended family member, continues on the board of Henry Street.

57. The client population intended to be serviced by Henry Street Settlement is largely consistent with the client population of FECS – New York's needy. Given the preferences of the major donor Foundation, the Plan Administrator believes it is appropriate that the Fund be transferred to Henry Street Settlement, restricted to its use as an endowment, with the interest from the endowment used to support Henry Street Settlement's Employment Services Division.

2. Susan R. Knafel Internship Fund

58. Susan R. Knafel, a long time FECS board member and board secretary, died in 1998, having expressed a desire in her Will to leave \$250,000 to FECS. See August 18, 1998 letter from Sydney R. Knafel to FECS, annexed as Exhibit 10. Her husband Sidney Knafel, in

consultation with FECS leadership, agreed to establish an endowment to offer scholarship assistance to students who, for financial reasons, might not otherwise be able to partake in FECS' extensive internship program, naming the endowment the "Susan R. Knafel Internship at FECS." See October 5, 1998 letter from FECS to Sydney Knafel, annexed as Exhibit 11.

59. FECS' internship program annually placed more than 200 students from undergraduate and graduate programs from virtually every college and university in the tri-state area, including Columbia, NYU, Yeshiva, Princeton, Cornell, Fordham, Adelphi and Stony Brook among others, in areas of discipline including social work, psychology, occupational therapy, and host of other disciplines directed at serving social services agencies. *Id.*

60. The Susan R. Knafel Internship endowment was meant to assist students to obtain an internship with FECS who might not otherwise have been able to do so for financial reasons, to attract students in certain professions needed by FECS, to provide an annual lecture addressing timely issues in education, economics, social policy, etc., and to award the students who earned their internship through this endowment with a certificate in Susan's name at the completion of their studies. *Id.*

61. The Knafel Fund was originally funded through Sydney Knafel's transfer of 4,000 shares of stock to FECS, valued at \$273,000. See January 7, 1998 letter from U.S. Trust regarding transfer of shares, annexed as Exhibit 12. Approximately a year later, the shares were sold for \$320,119 and the Fund was established. See February 26, 1999 Chase bank statement, annexed as Exhibit 13. With investment earnings and interest, this Fund grew and had a balance of \$432,288 as of the Petition Date.

62. The Plan Administrator has contacted Sidney Knafel, Susan R. Knafel's husband, who originally worked to create the endowment after his wife's bequest to FECS. Mr. Knafel requested that the fund be transferred to another mission consistent not-for-profit which administers a like kind program. The Plan Administrator proposes to move the endowment over to United Jewish Appeal Federation of Jewish Philanthropies of New York, Inc. ("UJA") which administers a number of scholarship programs for students wishing to work in the not-for-profit sector and studying disciplines needed by the social service community – social work, clinical psychology, education, and not-for-profit management.

63. UJA has agreed to abide the restrictions originally established by Mr. Knafel regarding use of the funds and to administer scholarships for students whose course of study is consistent with the needs of the federation of agencies it sponsors. As such, transfer of the Knafel Fund to UJA will further the original intent of the donor and allow mission continuity.

3. NYANA Scholarship Fund

64. New York Association for New Americans ("NYANA"), a New York not-for-profit and member agency of UJA, previously administered, among other things, a scholarship fund to assist clients of NYANA's refugee resettlement programs.

65. In 2008, in connection with its judicial dissolution, NYANA entered into a court-ordered Stipulation of Settlement with the Attorney General's office. As a part of that Stipulation, it transferred its donor restricted scholarship funds to FECS. Pursuant to the Court's *quasi cy pres* order, FECS received \$282,500 which was to be endowed by FECS with the income used solely to provide scholarships to resettlement program clients to support their participation in vocational, educational, training and other programs to promote their self-

sufficiency. *See* July 23, 2012 Order of Dissolution and Other Relief and Stipulation of Settlement, annexed hereto as Exhibit 14.

66. FECS thereafter administered program initiatives which provided refugee scholarship assistance for career and employment training. At the time of the filing there was \$329,208 in this Fund.

67. Given that NYANA, had dissolved and the funds transferred by Court order, there are no donors for the Plan Administrator to consult. However, given that NYANA was a UJA Federation agency, the Plan Administrator discussed a proposed recipient of the funds with UJA, which in turn suggested that the funds be transferred to HIAS, Inc. (“HIAS”).

68. HIAS is a not for profit agency dedicated to providing assistance to refugees fleeing the danger and persecution of their homelands. Originally founded in 1881 to assist Jews fleeing the pogroms in Russia and Eastern Europe and through both World Wars, HIAS assisted in the resettlement of more than 150,000 Jews to more than 330 communities in the United States and Canada. In the 1970s, HIAS brought more than 140,000 Jews from the former Soviet Union for reunification with relatives. Starting in the 2000s, HIAS expanded its resettlement work to provide assistance to non-Jewish refugees fleeing the conflicts in Afghanistan, Bosnia, Bulgaria, Ethiopia, Haiti, Iran and the African continent, among other areas.

69. With a focus on economic empowerment of vulnerable groups, HIAS administers programs to foster self-reliance through business skills training, financial management training and technical support to access grants. The ultimate transfer of the NYANA fund to HIAS, restricted to its purpose as outlined in NYANA’s Order of Dissolution (to provide scholarships to resettlement program clients to support their participation in vocational, educational, training and

other programs to promote their self-sufficiency) would be closely aligned with the original purpose of the fund at NYANA, and as subsequently administered by FECS, and would permit mission continuity.

4. Joy and Harry B. Henshel Arts Endowment Fund

70. In 1999, Harry B. and Joy Henshel made a \$100,000 pledge to FECS, initially intended to establish the Joy and Harry B. Henshel Consumer Art and Information Center, a gallery-like space intended to, among other things, provide a venue for the display and sale to the public of art produced by people with disabilities. *See* December 23, 1999 letter from FECS to Harry B. Henshel, annexed as Exhibit 15.

71. Following further discussions with the donors following disruption in the original plans caused by 9/11, the Henshel's donation was used to establish the Joy and Harry B. Hensel Arts Endowment Fund to support the Hyam Salomon Division for the Arts at FECS (the "Hyam Salomon Division"), in 2006. *See* November 6, 2006 letter from FECS to the Henshels, annexed as Exhibit 16. The Hyam Salomon Division had been established several years prior to support integration of the arts into FECS' rehabilitation and treatment programs for individuals with disabilities, the elderly, youth, and others. The Hyam Salomon Division's purpose was the support of visual and performing arts initiatives, including, among other things, an artist residency program, support for annual awards to art contest winners, exhibitions of artwork, and theatrical and musical performances by FECS' clients.

72. The Henshel's \$100,000 donation was thereafter used to establish the Joy and Harry B. Hensel Arts Endowment Fund to create a permanent source of support for select art projects that could not otherwise be supported by the Hyam Salomon Division. *Id.*

73. The \$100,000 pledge was fully paid by the Henshel Foundation as of 2010. See letter May 10, 2010 letter to Joy Henshel, annexed as Exhibit 17. There were additional small donations added to the Henshel Fund at the request of other donors from time to time, none more than \$2,500. As of the Petition Date there was a balance in the Fund of \$115,738.

74. The Plan Administrator contacted Joy Henshel, one of the original donors, and her children, who requested that the Fund proceeds be transferred to Arts For All, Inc., a New York not-for-profit that offers accessible artistic opportunities to children in the metropolitan area who face socio-economic, physical, or emotional barriers to exploring the arts.

75. Through Arts For All, professional artists work with youth organizations to deliver arts programming designed to build self-confidence, self-expression, teamwork, and creativity in children. Currently, Arts For All serves more than 3,000 children per year. It partners with public schools and community organizations that lack funding for arts programming. Arts For All offers programs in multiple disciplines building literacy through multi-arts curriculum, sponsoring residences in theater, literature, music, visual arts, dance and poetry, and offering special extra-curricular opportunities for students, such as field trips to museums and professional theatre performances. See <http://www.arts-for-all.org/>.

76. Transferring the endowment to Arts For All will provide a source of funding to permit the Arts For All to expand its reach and program offerings. Given that the interest earned annually on the endowment is relatively small, however, and program expansion would be limited if Arts for All were confined by the terms of the endowment to spend income only, Mrs. Henshel has requested that Arts For All be freed from the restrictions of the endowment and be permitted to spend such amounts as it reasonably deems appropriate to fund programming

opportunities. Annexed as Exhibit 18 is a Memorandum of Understanding between Joy Henshel and Arts For All outlining the intended use of the funds.

77. The use proposed by Arts For All is entirely consistent with the very purpose for which the Fund was originally established – promotion of the arts for the disadvantaged and disabled. Further, the geographic population receiving services from Arts For All is substantially similar to the FECS’ client base. Given the preferences of the donor, the Plan Administrator believes it is appropriate for the Fund to be transferred to Arts For All, freed of the current endowment restrictions.

5. Roland and Ruth Baxt Memorial Chanukah Fund

78. Roland Baxt was the longtime former Executive Director of FECS, serving for more than 34 years until 1976. In June 2002, in honor of his wife Ruth who passed away in 1977, and whom he lovingly described as “the best investment that I made in my life,” Mr. Baxt created the Roland and Ruth Baxt Memorial Chanukah Fund. *See* June 3, 2002 letter from Roland Baxt to FECS, annexed as Exhibit 19.

79. Mr. Baxt expressed his wish that his donation be invested, with the earned income used to make Chanukah gifts, with the decisions regarding what to give, to whom, and how much per gift left to FECS’ discretion. *Id.* In many of the years since the inception of the Fund, the money was used to provide Chanukah food vouchers to needy Jewish families known to FECS.

80. The Fund was started with an initial contribution from Roland Baxt in the amount of \$5,000, and subsequent contributions to the Fund came from Baxt family members, or friends and colleagues of Baxt family members. *See* Ex. 2.

81. As of the Petition Date, there was \$15,521 in the Fund.

82. The Plan Administrator consulted with Robert Baxt, the son of Roland Baxt, who expressed a desire to transfer the Fund to Selfhelp Community Services Foundation, Inc. (“Selfhelp”). Selfhelp is a not-for-profit social services organization providing assistance in New York City as well as Nassau and Suffolk Counties to more than 20,000 elderly, frail and vulnerable persons. Selfhelp also remains the largest regional provider of comprehensive services to Holocaust survivors. Selfhelp is dedicated to maintaining the dignity and independence of seniors and at-risk persons through an amalgam of housing, home health care, and social services.

83. Selfhelp proposes to use the Fund to provide financial assistance to Holocaust survivors and other seniors living at or near the poverty level. The proposed use is not dissimilar to the gifts given to financially-needy clients of FECS, and will serve a similar population in the geographic area previously covered by FECS.

84. Thus, the Plan Administrator, consistent with the wishes of the principal donor’s family, suggests that the Fund be transferred to Selfhelp Community Services Foundation, Inc. Also, given the limited amount of the Fund, and the limited income it can generate, the Plan Administrator proposes that Selfhelp be free of any restriction against use of the principal and that it be accorded the discretion to make such awards as it deems reasonable and necessary.

B. Temporarily Restricted Funds

85. In addition to permanently restricted endowments, FECS is also holding temporarily restricted assets that were designated by donors for particular programs or purposes. Such funds were not intended to be endowed to generate income, but were intended simply to be used for the purpose directed by the donor.

86. The difference between these assets and the permanently endowed assets is that, while the donors of the temporarily restricted assets intended for them to be used for a particular purpose, they did not express an intention for FEGS to hold the funds in perpetuity, using only the income derived from the donations. Instead, the donors of these funds gave the money to FEGS for its outright use in pursuit of a designated purpose, such as tuition assistance, job training, awards to FEGS staff in particular amounts on an annual basis, or financial assistance for the mentally and intellectually disabled – to name a few.

87. FEGS currently holds \$66,642 in total donated, temporarily restricted funds which are subject to this petition. Said funds come from multiple different sources, each designated by their donors for various charitable purposes.

88. Set forth below, to the fullest extent possible given the passage of time and the incompleteness, in certain circumstances, of the records available to Petitioner, is a description of each temporarily restricted fund, its purpose, and the suggested disposition of each.

1. Haym Salomon Division Board-Designated Fund

89. The Haym Salomon Foundation was initially incorporated in 1925, under the name Associated Warschauer Society for the Aged, Inc. The Foundation generally worked with New York City's elderly population, enhancing the artistic experiences of people with special needs. The Foundation provided grants to not-for-profit agencies to help them develop artistic endeavors for their constituents, integrating art with the delivery of health and human services to various populations including seniors, the physically challenged, and the economically and socially disadvantaged.

90. In 2001, the Foundation encountered difficulties maintaining independent sustainability; FECS, in turn was interested in introducing art into its service delivery programs. The parties entered into an affiliation arrangement which ultimately led to a merger of the Foundation into FECS in 2004. *See* the June 2, 2004 Certificate of Merger and related documents, annexed hereto as Exhibit 20. The merger resulted in the creation of the Haym Salomon Division of FECS, dedicated to improving people's quality of life through the development of innovative and meaningful art initiatives, programs, and grants to the community, as a center for arts initiatives within FECS. *See* excerpts from the Agreement and Plan of Merger between FECS and Haym Salomon Foundation, annexed hereto as Exhibit 21.

91. The Haym Salomon Division Board-Designated Fund was created under the Plan of Merger as one mechanism through which the activities of the Division would be funded. *See id.* It consisted initially of the cash and cash equivalents held by the Foundation as of the date of the merger. It was thereafter contributed to by a large number of institutional and individual donors. *See* Exhibit 2.

92. In the ensuing years, through the benefit of the Fund, FECS created an array of art initiatives and cultural experiences for program participants and the broader community. FECS developed opportunities for arts professionals to teach and mentor through artist residences, created The Dignity Through Art program to provide a venue for education, training and creative expression, started an awards competition to celebrate the achievement of individual artists, and enlisted the assistance of outside organizations to provide creative arts programs to those suffering from mental illness and developmental and other disabilities. *See* Haym Salomon Division of the Arts Brochure, annexed hereto as Exhibit 22. The Hyam Solomon Division included a program called Roots and Branches Intergenerational Theater ("Roots and

Branches”), which used the medium of theater productions, workshops and publications to strengthen the bond between generations. Each season, Roots & Branches actors, both young and old, collaborated with professional writers and directors to create an original play based on their life stories, imaginations and interactions. Performances were held for underserved audiences at senior centers.

93. As of the Petition Date, the Fund had a balance of \$105,939. The Plan Administrator consulted two of the consistent major donors to the Fund, Allen Greenberg and Alex Gabay, both former FEGS Board members and former Haym Salomon Foundation board members, who requested that the Fund proceeds be transferred to The Jerome Robbins Dance Division of the New York Public Library for the Performing Arts (“JRDD”). (Allen Greenberg is a trustee of JRDD.) The Jerome Robbins Foundation, Inc. was itself a frequent and generous donor to the Fund. *See* Exhibit 2.

94. The monies would continue to be restricted for use by the JRDD residency program – an intergenerational program designed to teach rare dances on the verge of extinction to young practitioners. The work would be supplemented by audio and video histories of older participants, providing access for future generations. This would continue the spirit of the work of the Division and the Roots & Branches program, and, as such, the Plan Administrator believes it is appropriate to transfer the Fund to JRDD.

2. Joseph Stein Jr. Compassion Award Fund

95. Joseph Stein, Jr. was a long time Board member of FEGS and a former Chairman and President. In 2004, fellow Board member Barry Fingerhut established the Joseph Stein, Jr.

Compassion Award Fund in Mr. Stein's honor with a \$10,000 contribution. *See* August 24, 2004 email, annexed as Exhibit 23.

96. The Fund was initially established as an endowment, with the income meant to provide for an annual award to a FECS employee exhibiting great compassion for individual clients of the Agency. *Id.* It was agreed at establishment that the award would be presented by Mr. Fingerhut or his designee to an FECS employee annually at FECS Chanukah award ceremony each December. *See* acknowledgment letter dated August 30, 2004, annexed as Exhibit 24.

97. Closer to the date that the initial award was to be presented, however, in November 2004, Mr. Fingerhut changed the amount awarded from the income on his initial donation, to a flat amount of \$1,000, lifting the restriction that the Fund be maintained as an endowment in order to do so. *See* internal FECS email dated November 27, 2004, annexed as Exhibit 25.

98. As such, awards in this amount were made from 2004 through 2007. *See* email dated December 4, 2008, annexed as Exhibit 26. However, given the depletion of principal at the \$1,000 award level, Mr. Fingerhut agreed, in December 2008, to lower the amount of the award to \$500 per year so as to enable the award to be more readily covered solely by interest earned on the Fund, and only supplemented by principal if necessary. *Id.*

99. The award was given annually for several years and, as of the Petition Date, the balance in the fund was \$7,460. Mr. Fingerhut was the only donor to the Fund. *See* Exhibit 2.

100. The Plan Administrator conferred with Mr. Fingerhut who has suggested that the Fund balance be transferred to the Jewish National Fund. JNF is the single largest provider of Zionist programs in the U.S. Its work is divided into seven program areas: Forestry & Green Innovations, Water Solutions, Community Building, Zionist Education & Advocacy, Research & Development, Heritage Sites, and Disabilities & Special Needs. Its services include providing therapeutic and rehabilitative services to people with special needs. See <https://www.jnf.org/menu-3/about-jnf>.

101. Thus, the Plan Administrator, consistent with the wishes of the donor, suggests that the monies be transferred to the Jewish National Fund to be used, free of any endowment restrictions, to provide an annual award to a JNF staff member who displays great compassion for individual clients of JNF with special needs.

3. Alfred P. and Zora Miller Innovation Fund

102. Alfred P. Miller, the long-time former Chief Executive Officer of FECS, together with his wife Zora, established this Fund with an initial contribution of \$10,000, on February 14, 2012, around the time of Mr. Miller's retirement. See February 22, 2012 letter from FECS to the Millers, annexed as Exhibit 27.

103. The Fund was established to provide an annual \$1,000 in awards to FECS staff members who originated or developed a new program or idea subsequently adopted by the agency. Designed to celebrate innovation, the award was presented annually at FECS' annual awards event. The Millers made two additional contributions to the Fund, in 2012 and 2013, totaling \$15,000. See Exhibit 2. As of the Petition Date, the Fund balance was \$19,443.

104. The Plan Administrator consulted with the Millers, who expressed a desire to transfer the Fund to the Carl Fenichel Community Services Inc. (“CFCS”) division of the League Education and Treatment Center, a Brooklyn based not-for-profit agency that provides programs and services for adults with intellectual disabilities and psychiatric diagnoses. These individuals, who require varying degrees of support, receive – among other things – counseling, nursing, social work, and art therapy support in an effort to ameliorate behavioral difficulties that may interfere with day-to-day activities. CFCS also provides day habilitation and pre-vocational services.

105. CFCS would agree to use the fund for similar purposes – to provide an annual award to a staff member or members who develop innovative ideas to better serve its client base.

106. Moreover, CFCS services a similar population to FECS and provides many of the same services. Thus, the Plan Administrator, consistent with the wishes of the donors, suggests that the Fund be transferred to the Carl Fenichel Community Services division of the League Education and Treatment Center, subject to the restriction that it be used to award CFCS’s staff members for innovative work for that agency.

4. June And Herbert Bienstock Scholarship At FECS

107. In June 2004, June Bienstock made a \$1,000 contribution to FECS in honor of her husband, Herbert, who passed away in 1994. June and Herbert Bienstock were both longtime friends and supporters of FECS. *See* June 21, 2004 donation and FECS acknowledgement, annexed as Exhibit 28. Although not specifically at June’s direction initially, in consultation with FECS, her regular gifts in memory of her husband were used to establish a Fund that would

provide an annual award to a FECS client who, despite great personal challenge, was driven to succeed. *See* June 15, 2007 letter, annexed as Exhibit 29.

108. The name of the Fund was expanded to include June's name when she passed away in 2008. *See* letter dated April 23, 2008, annexed as Exhibit 30. From that point forward, the Fund was designated as the "June and Herbert Bienstock Scholarship at FECS," from which the June and Herbert Personal Achievement Award was awarded annually.

109. The Fund grew largely through contributions from the Bienstock children, Ruth Bienstock Anolik and Joshua Bienstock, and some of their associates. *See* Exhibit 2. As of the Petition Date, the Fund balance totaled \$17,379.

110. The Plan Administrator reached out to both of the Bienstock children, who have requested that the Fund be transferred to Queens College Hillel to provide scholarship support to needy students for opportunities that offer professional growth. Queens College Hillel's mission is to enrich the lives of Jewish students and inspire them to make an enduring commitment to Jewish life and learning. The Bienstock children have urged Queens College Hillel to continue the intended purpose behind the original award and honor students who are driven to succeed in the face of hardship. Queens College Hillel has agreed to accept the Funds for these purposes.

111. The transfer of the Fund to Queens College Hillel will further the original purpose of the award and assist needy students who face great personal challenges, and for this reason the Plan Administrator believes Queens College Hillel is an appropriate recipient.

5. FEGS Community Trust Special Activities Fund & Russ Kanon Fund

112. FEGS maintained a program called the Community Trust Program, pursuant to which FEGS assumed responsibility to provide client support services to individuals suffering from mental disabilities upon the death or disability of their parent or benefactor. The parent or benefactor would establish a trust account through FEGS, which would then ensure continuity of care and financial support for Community Trust program beneficiaries in the absence of their primary benefactor.

113. In 2005, staff and family members of participants in the Community Trust Program desired a fund from which to assist enrollees who otherwise lacked the financial means to participate in special events held for Trust Program participants, such as birthday parties. These special events were principally organized by the Program's coordinator, Nancy Gold.

114. The initial donor to the Fund was Joel Harris, whose generous \$1,000 donation kicked off the inception of the Community Trust Special Activities Fund. *See* July 26, 2005 letter, annexed hereto as Exhibit 31.

115. The Fund continued to receive donations year after year from family and friends of Community Trust Program participants, all of which was used to assist them to participate in special events. As of the Petition Date, the Special Activities Fund had a balance of \$11,561.

116. Separately, in late 1996, Rosalind and Herbert Kanon made a \$1,000 donation in honor of their recently deceased son, Russ, who had been an enrollee in the Community Trust Program, for FEGS to use, in its discretion. FEGS chose to use the donation to establish the Russ Kanon Fund, to help individuals enrolled in the Community Trust Program "receive extra assistance." *See* December 16, 1996 letter and related correspondence, annexed as Exhibit 32.

117. The Kanons subsequently donated an additional \$100. The Russ Kanon Fund had a balance of \$1,749 as of the Petition Date.

118. After FECS' bankruptcy filing, the Community Trust Program was initially assumed by the Jewish Board of Family and Children's Services ("JBFC"), the agency which took the largest part of FECS' behavioral health programs. The Program has since been shifted to OHEL Children's Home and Family Services ("OHEL"), an agency which provides a full range of outpatient and residential services to children and adults with disabilities.

119. The Plan Administrator conferred with relatives of each of the major donors to the Special Activities Fund and all have recommended that it be transferred to OHEL to support Program participants. The Kanon Fund donors could not be located, but since the purpose of the Kanon Fund was similarly to benefit Community Trust Program participants, the Plan Administrator recommends that the Kanon Fund be "married" with the Community Trust Special Activities Fund.

120. The unification of the Community Trust Special Activities & Kanon Fund would provide continuity of purpose and care to the population that both Funds were originally designed to help and support. Thus, the Program Administrator proposes the combined amount of \$13,310 be transferred to OHEL, restricted in use to providing activities and programs to Community Trust Program participants.

6. Edith Richner Memorial Fund

121. This Fund was initiated, in November 2006, by the family of Edith Richner, a prominent local businesswoman and founder of the Long Island Herald. Upon her death on November 17, 2006, the family published a death notice in The New York Times that stated that,

“donations may be made to the Edith Richner Memorial Fund of Partners in Dignity” at F.E.G.S.’ Long Island offices. *See* Ms. Richner’s death notice, annexed as Exhibit 33.

122. The Fund was thereafter associated with the “Partners in Dignity” program, which FECS operated in conjunction with UJA at the Long Island Regional Care Center – The Jewish Healing and Hospice Alliance, which provided services to Jewish families and individuals facing advanced and life-limiting illnesses, including palliative care, pastoral and bereavement counseling, and case management services.

123. Two of Ms. Richner’s sons, Clifford and Stuart, were the predominant contributors to the Fund, which holds \$9,051 as of the Petition Date. Other friends and family members donated to this Fund over the years.

124. The Plan Administrator contacted Clifford and Stuart Richner, who have requested that the Fund be transferred to Molloy College. Molloy is an independent, Catholic college rooted in the Dominican traditions of study, spirituality, service, and community. Molloy strives to promote a lifelong search for truth and the development of ethical leadership through education. Molloy intends to use the Fund in support of its School of Nursing and Health Sciences, specifically to promote a deeper understanding of the practice of palliative care amongst its nursing students.

125. The proposed use by Molloy College is entirely consistent with the purpose for which the fund was established – the promotion of healthcare programs focused on individuals facing advanced and life-limiting illnesses. Further, as an educational institution based in Nassau County, Molloy would continue to serve a similar geographic area to that served by FECS. Given the preferences expressed by the predominant donors, the Plan Administrator

believes it would be appropriate to transfer the Fund to Molloy College, restricted in purpose to supporting its Nursing School, and specifically in promoting a deeper understanding of the practice of palliative care.

V. FEGS Has Obtained Consent From Nearly All Of Its Key Donors

126. In preparation for the filing of this Petition, FEGS has made diligent efforts to contact each of the above Funds' major donors, at least where the records available to the Plan Administrator made it possible to do so.

127. As detailed above, the Plan Administrator was remarkably successful in contacting the major donors or, where appropriate, their heirs. Still, some donors remain either unidentified or impossible to reach.

128. FEGS respectfully requests that, upon notice to donors as directed by this Court, either through direct contact or by means of publication, the Court should deem a donor's silence as consent to the disposition of the donation pursuant to the Court's application of its cy pres powers.

129. Further, Petitioner's counsel has made no representations to any interested party that Petitioner or its counsel would intervene in any regard to influence the Court's determination as to the disposition of the restricted assets described herein, other than by providing the Court and/or the Charities Bureau with any information that party might wish to supply to FEGS regarding particular programs or services offered that might match donor intent with regard to some of the funds listed herein.

130. Finally, any and all suggestions made by Petitioner or its counsel in this application with regard to the disposition of funds are based solely upon original donor intent, conversations with donors or their heirs, and knowledge regarding the location and provision of similar programming and services, and are merely suggestions. FECS reiterates that neither it nor its counsel herein have any stake in the ultimate disposition of the funds that are the subject of this application.

VI. Conclusion

131. For the reasons set forth above, the Court is respectfully urged to apply the cy pres doctrine to the restricted assets presently held by FECS, and to assist FECS in finding appropriate recipients for its restricted assets so as to come “as near as may be” to the generous and charitable purposes expressed by its donors.

132. In addition, Petitioner respectfully urges the court to apply NPL Section 555, where the court finds appropriate, with regard to notification of donors and, in certain circumstances, the removal of restrictions where, for example, the dollar amounts involved render the maintenance of a fund as an endowment to be impracticable or wasteful.

133. FECS looks forward to the Court’s guidance and directives with regard to the disposition of the charitable donations addressed herein.

134. The relief sought herein has not been sought previously before this or any other Court.

WHEREFORE, Petitioner respectfully requests that this Court issue an Order:

a) stating that it was the intent of FECS’ donors generally to benefit programs administered by not-for-profit providers and/or programs providing services in the areas of

behavioral health, intellectual and developmental disabilities, housing, home care, employment/workforce, education, youth and family services, and other similar health and social services, and that such programs are charitable in nature;

b) stating that FECS' donors expressed a general, rather than specific charitable intent by their donations to FECS, specifically as described herein;

c) stating that FECS' filing for bankruptcy protection, the closure of its offices, the sale of all or substantially all of its assets, and the transfer of its programs and services to other not-for-profit organizations, has made fulfilling the intent of its donors "impracticable or impossible," in accordance with NPL §555 and EPTL § 8-1.1(c)(1);

d) directing FECS with regard to the appropriate disposition of the restricted net assets described herein in accordance with NPL §555 and EPTL § 8-1.1; and

e) awarding FECS such other and further relief as this Court deems just.

Dated: Great Neck, New York
January 5, 2021

GARFUNKEL WILD, P.C.

*Attorneys for Judith Pincus, as Plan
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By: /s/ Colleen M. Tarpey

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