

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
ELIZABETH KONDRATICK,

Plaintiff,

- against -

ORTHODOX CHURCH IN AMERICA,

Defendant.

Index No. 07-22717

Assigned Justice:
Hon. Daniel Martin

Adjourned Return Date:
March 14, 2008

DEFENDANT'S SWORN STATEMENTS AND EXHIBITS IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN LIEU OF A COMPLAINT

- Affirmation of Jon A. Ward, Esq., dated February 29, 2008;
- Affidavit of Father Alexander Garklavs, sworn to on February 28, 2008, with supporting exhibits;
- Affidavit of Father Vladimir Berzonsky, sworn to on February 27, 2008;
- Affidavit of Father Stavros Strikis, sworn to on February 28, 2008, with supporting exhibits; and
- Affidavit of Stephen Lamos, sworn to on February 26, 2008.

[X] Oral Argument is Requested

Dated: Uniondale, New York
February 29, 2008

Respectfully submitted,

SAHN WARD & BAKER, PLLC

By: 

JON A. WARD, ESQ.

Attorneys for Defendant

333 Earle Ovington Boulevard, Suite 601
Uniondale, New York 11553
(516) 228-1300

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

ELIZABETH KONDRATICK,

Plaintiff,

- against -

ORTHODOX CHURCH IN AMERICA,

Defendant.

AFFIRMATION

Index No. 07-22717

**Assigned Justice:
Hon. Daniel Martin**

**Adjourned Return Date:
March 14, 2008**

JON A. WARD, an attorney duly admitted to practice law in the Courts of the State of New York, affirms the following under the penalty of perjury:

1. I am a member of **SAHN WARD & BAKER, PLLC**, the attorneys for the Defendant, **THE ORTHODOX CHURCH IN AMERICA** (the "Church"), in the above-captioned action.
2. I respectfully submit this Affirmation in opposition to the motion by the Plaintiff, Elizabeth Kondratick ("Mrs. Kondratick"), for summary judgment in lieu of complaint.
3. Pursuant to this action, Mrs. Kondratick seeks to enforce a purported obligation of the Church to pay \$250,000.00 to herself and her husband, Robert Kondratick, a former priest and Chancellor of the Church. Mrs. Kondratick bases her claim against the Church on a "letter agreement" purportedly signed on or about April 19, 2002 by the Metropolitan of the Church and witnessed by members of the Administrative Committee of the Church's Metropolitan Council. Pursuant to the "letter agreement," the Church purportedly agreed to pay \$250,000.00 to Mr. and Mrs. Kondratick in full settlement of the cost of improvements that the Kondraticks allegedly made with their own money to a Church-owned property in which they resided while Mr. Kondratick was Chancellor of the Church.

4. The Church submits the following sworn statements in opposition to the Plaintiff's motion:

- Affidavit of Father Alexander Garklavs, sworn to on February 28, 2008, and exhibits annexed thereto;
- Affidavit of Father Vladimir Berzonsky, sworn to on February 27, 2008;
- Affidavit of Father Stavros Strikis, sworn to on February 28, 2008, and the exhibits annexed thereto; and
- Affidavit of Stephen Lamos, sworn to on February 26, 2008.

5. The Church also submits the accompanying Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment in Lieu of a Complaint, dated February 29, 2008.

6. As the Court will see from these documents, the Church opposes Mrs. Kondratick's motion on the following grounds:

A. Mrs. Kondratick lacks standing and/or capacity to sue on the purported "letter agreement." The purported "letter agreement" is a "non-negotiable instrument" under New York law. Under New York State Uniform Commercial Code ("UCC") § 3-805, the "letter agreement" is subject to the provisions of Article 3 of the UCC, except that there can be no holder in due course of the instrument. Under UCC § 3-116, an instrument payable to two or more persons, if not payable in the alternative to each of them, is payable to all of them and may be enforced only by all of them. The "letter agreement" is payable jointly to Mr. and Mrs. Kondratick, and is not payable in the alternative. Although Mrs. Kondratick claims that she is the "owner and holder" of the purported "letter agreement," she does not allege that she is the only owner and holder of the purported "letter agreement," nor is there any evidence before the Court that Mr. and Mrs. Kondratick, jointly, assigned their interest in the purported "letter agreement" solely to Mrs. Kondratick. Based on the

foregoing, only Mr. and Mrs. Kondratick, jointly, can enforce the purported agreement. Mrs. Kondratick, alone, has no standing or capacity to sue on the purported agreement.

B. The Church cannot confirm the authenticity of the purported “letter agreement,” and Mrs. Kondratick failed to authenticate it in her affidavit. Additionally, the Church does not have an original of the purported agreement in its file, and it does not appear that Mrs. Kondratick has submitted an original of the purported agreement to the Court, nor has she laid a proper foundation for the use of a copy instead of an original. Further, it is noted that Mrs. Kondratick’s affidavit is in defective form. It does not state the state and county wherein it was given, and it does not identify the name of the notary public who administered the oath, the state and/or county where the notary is licensed, or the expiration date of the notary’s commission. These evidentiary deficiencies cannot be cured in reply papers. Since Mrs. Kondratick’s motion is not based on admissible evidence, it should be denied in its entirety.

C. The purported “letter agreement” is not supported by consideration because the Church has no evidence that the Kondraticks actually paid for the cost of renovating the Church-owned property in which they resided with their own, rather than Church proceeds. Facts may exist, but are in the exclusive possession of the Kondraticks, to show that the Kondraticks actually used Church proceeds to fund some or all of the renovations. If the Kondraticks used Church proceeds rather than personal proceeds to pay for some or all of the renovations, they fraudulently induced former Metropolitan Theodosius into signing the agreement. Under CPLR 3212(f), the Church should be permitted to conduct discovery regarding these issues.

D. Former Metropolitan Theodosius and the former Administrative Committee of the Metropolitan Council lacked authorization to bind the Church to the alleged debt evidenced

by the purported “letter agreement.” Based on the Church’s organizational documents, only the Metropolitan Council, one of the three governing bodies of the Church, had the authority to incur the indebtedness evidenced by the purported “letter agreement” on behalf of the Church. The purported “letter agreement” was never submitted to, reviewed, approved, or ratified by the Metropolitan Council, and, in fact, was actively concealed from the Metropolitan Council by Mr. Kondratick.

E. The purported “letter agreement” is void or voidable under New York State Not-for-Profit Corporation Law § 715 because it purports to be an agreement between the Church and one of its officers, and the material terms of the agreement were not disclosed to and approved by the Metropolitan Council, the body of the Church with the authority to incur the alleged debt evidenced by the purported agreement.

F. Assuming the Court determines as a matter of law that the “letter agreement” is a binding obligation of the Church, the facts set forth in the opposition affidavits also support the defenses of partial payment and/or partial equitable set-off and show that the Church has affirmative claims against the Kondraticks for breach of fiduciary duty, fraud, waste, conversion, accounting, restitution, unjust enrichment, and monies had and received. Additionally, facts may exist, but are in the exclusive possession of the Kondraticks, to establish the defenses of complete payment and/or complete equitable set-off, and the affirmative claim that former Metropolitan Theodosius was fraudulently induced into signing the purported “letter agreement.” Again, under CPLR 32 12(f), the Church should be given an opportunity to conduct discovery regarding these facts.

G. Plaintiff has no right to the recovery of attorney’s fees and expenses.

7. Furthermore, even Mrs. Kondratick’s counsel concedes that Mrs. Kondratick requires

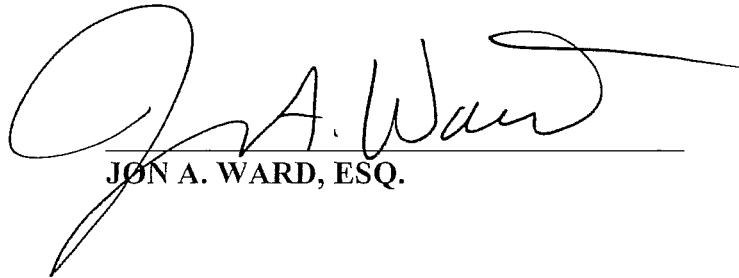
discovery to establish her claim. By letter dated February 26, 2008, a copy of which is annexed hereto as **Exhibit "1"**, Mrs. Kondratick's counsel asked the Church's accounting firm, Lambrides, Lamos, Moulthrop, LLP ("Lambrides"), to cooperate in "informal" discovery in this action and threatened to issue a subpoena if such cooperation was not forthcoming. By letter dated February 28, 2008, a copy of which is annexed hereto as **Exhibit "2"**, I informed Mrs. Kondratick's counsel that the Church's accountants had no authority to voluntarily share any of the Church's financial information with him and that if he issued a subpoena we would promptly move to quash it on the grounds that he is not entitled to discovery in a CPLR 3213 proceeding. By letter dated February 28, 2008, a copy of which is annexed hereto as **Exhibit "3"**, Mrs. Kondratick's counsel advised that he served similar requests on various attorneys who have provided legal counsel to the Church. These letters underscore the fact that this action cannot be summarily resolved in Mrs. Kondratick's favor merely on her presentation of the purported "letter agreement" and her allegation of non-payment. Accordingly, Mrs. Kondratick's motion should be denied in its entirety.

8. Finally, the Church respectfully requests oral argument on this motion.

WHEREFORE, for the reasons set forth in the accompanying documents, it is respectfully submitted that: (i) Mrs. Kondratick's motion for summary judgment should be denied in its entirety and summary judgment should be granted to the Church on one or more of its defenses; or in the alternative, (ii) Mrs. Kondratick's motion for summary judgment should be denied because there are triable issues of fact with respect to one or more of the defenses raised by the Church; or, in the alternative, (iii) Mrs. Kondratick's motion for summary judgment should be denied because facts essential to justify opposition to the motion may exist but cannot be stated at present because they are within the exclusive knowledge and control of the Kondraticks or third parties, and the Church

should be given an opportunity to conduct disclosure regarding them. If Mrs. Kondratick's motion is denied and this action is not dismissed, the Church requests an order under CPLR 3213 directing Mrs. Kondratick to serve and file a complaint in this action, and directing the Church to serve and file an answer.

Dated: Uniondale, New York
February 29, 2008



JON A. WARD, ESQ.

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

ELIZABETH KONDRATICK,

AFFIDAVIT

Plaintiff,

Index No. 07-22717

- against -

**Assigned Justice:
Hon. Daniel Martin**

ORTHODOX CHURCH IN AMERICA,

**Adjourned Return Date:
March 14, 2008**

Defendant.

STATE OF NEW YORK }
 }:ss
COUNTY OF NASSAU }

ALEXANDER GARKLAVS, being duly sworn, deposes and says as follows:

1. I am an ordained priest and the Chancellor and Acting Secretary of the Defendant, **THE ORTHODOX CHURCH IN AMERICA** (the “Church”).

2. I am fully familiar with the facts and circumstances hereinafter set forth based on my experience with the Church, my review of its books and records, and my discussions with Church officials.

3. I respectfully submit this Affidavit in opposition to the motion by the Plaintiff, **ELIZABETH KONDRATICK** (“Mrs. Kondratick”), for summary judgment in lieu of a complaint.

4. The purpose of this Affidavit is to address: (i) the history and organizational structure of the Church; (ii) the purported “letter agreement” that is the basis of Mrs. Kondratick’s claim against the Church and its lack of authorization from the Metropolitan Council, the body of the Church with responsibility for managing the Church’s financial affairs; and (iii) the financial scandal within the Church that led to the Church’s deposing (defrocking) of Mrs. Kondratick’s husband, Robert Kondratick, a former priest and Chancellor of the Church and a party to the “letter

agreement” that Mrs. Kondratick seeks to enforce in this action.

MY PERSONAL BACKGROUND

5. I have been a member of the Church my entire life, and my family has a long history of dedicated service to the Church.

6. My father is a retired Orthodox priest, now in his 50th year of the priesthood, and his adopted father, and my grandfather, was Archbishop John Garklavs, who was Bishop of Riga (Latvia), until his immigration to the United States, when he thereafter served as Archbishop of Chicago from 1957 until 1979.

7. Between 1974 and 1979, while my grandfather was Archbishop of Chicago, I had the privilege of serving as his assistant and personal secretary.

8. After graduating from Tulane University with a B.A. in English in 1980, I attended St. Vladimir’s Seminary in Crestwood, New York, where I graduated with honors in 1982 with a Masters in Divinity.

9. Upon graduation from the seminary in 1982, I was ordained a priest in the Orthodox Church in America.

10. Between 1982 and 1988, I served as Pastor of Ss. Peter and Paul Church in Buffalo, New York; and, between 1988 and June 30, 2007, I served as Pastor of the Holy Trinity Church in East Meadow, New York.

11. In 1995, while I was serving as the Pastor of the Holy Trinity Church in East Meadow, I earned a Masters in Theology from St. Vladimir’s Seminary.

12. In addition, I have held the following positions of responsibility within the Church:

- I served as a member of the Metropolitan Council of the Church from

between 1997 and 2001;

- Between 1986 and 1993, I served as a member of the Diocesan Council of the Diocese of New York and New Jersey, and between 1991 and 1993, I served as Secretary to the Diocesan Council; and
- I served as the Chair of both the Church's Department of Pastoral Life and Ministry and the Diocese of New York and New Jersey's Pastoral Commission from between 1994 and 2005.

13. On July 1, 2007, I was appointed Chancellor and Acting Secretary of the Church. By virtue of this appointment, I became, once again, a member of the Metropolitan Council of the Church.

14. Based on my experience and positions with the Church, I have extensive knowledge of the Church's organizational structure as well as its customs and practices.

HISTORICAL BACKGROUND OF THE CHURCH

15. The Church is an autocephalous Church of the Eastern Orthodox Christian Faith. It traces its origins in North America back to 1794, when missionaries from the Orthodox Church of Russia established a mission in Alaska. It later became a diocese of the Orthodox Church of Russia, uniting in its fold Orthodox Christians of various national backgrounds in North America.

16. After the Russian revolution of 1917, the Church developed into a self governing Metropolinate known as the Russian Orthodox Greek Catholic Church of America.

17. In 1970, the Church was confirmed as an autocephalous church by the Patriarch and Holy Synod of Russia, and became the Orthodox Church in America.

18. The Church is comprised of thirteen dioceses encompassing all of North America,

and it has approximately seven hundred (700) missions, parishes, cathedrals, monasteries and institutions located throughout North America.

19. The central administrative offices of the Church, known as the Chancery, are located in Oyster Bay Cove, New York.

THE ORGANIZATIONAL STRUCTURE OF THE CHURCH

20. The Church has a unique organizational structure based on its customs and practices. Its organizational structure is encompassed within a special act of the New York State Legislature and its by-laws, both of which are discussed at length below.

A. The Special Act

21. The Church was formally incorporated in 1972 by a special act of the New York State Legislature (Chapter 519 of the Laws of 1972) (the “Special Act”). A copy of the Special Act is annexed hereto as **Exhibit “A”**.

22. Pursuant to Section 4 of the Special Act, the Church was incorporated and continues to exist exclusively for the following religious, educational and charitable purposes and activities:

(a) To constitute the ecclesiastical governing body of that group of churches, cathedrals, chapels, congregations, societies, parishes, committees and other religious agencies and organizations in the United States of America and the Dominion of Canada which, immediately prior to the passage of the Act, were subject to the ecclesiastical governance of the unincorporated religious association known as The Orthodox Church in America, or which hereafter shall be created or organized in the United States of America, the Dominion of Canada, or elsewhere in North and South America, for the purpose of and with the intent of adhering to and being subject to the ecclesiastical governance of the corporation hereby established;

(b) To adhere to, practice, promulgate, and disseminate the doctrine, discipline and worship of One, Holy, Catholic and Apostolic Church as taught by the Holy Scriptures, Holy Tradition, the Ecumenical and Provincial Councils, and the Holy Fathers;

(c) To promote and advance the spiritual and temporal aims of the Eastern Orthodox Faith in the United States of America, the Dominion of Canada, and elsewhere in North and South America by all proper and lawful means, directly as well as through corporations or other organizations, entities or agencies now existing or hereafter created or organized;

(d) to support, maintain, aid, advise or cooperate with any corporation or other organizations, entities, or agencies created or organized and operated exclusively for religious, educational or charitable purposes, or two or more of such purposes, and now or hereafter existing with the United State of America, the Dominion of Canada, or elsewhere in North or South America.

23. Section 5 of the Special Act sets for the various powers of the Church. It states as follows:

The corporation shall have power to take by bequest, devise, gift, purchase or lease, and hold, either absolutely or in trust that, for any of its purposes, any property, real or personal, without limitation as to amount or value; to sell, mortgage, lease, or otherwise convey or transfer any such property without obtaining the approval of any court; to invest and reinvest funds without limitation as to amount or value; to sell, mortgage, lease, or otherwise convey or transfer any such property without obtaining the approval of any court; to invest and deal with, use, apply and expend any such property or funds and the income derived therefrom in such manner as will best promote its objects. It shall have all the powers and be subject to all the restrictions which now pertain by law to religious corporations created by special act, so far as the same are applicable to this corporation and are not inconsistent with the provisions of this act.

24. Section 7 of the Special Act describes the three bodies of the Church that are authorized to conduct its affairs. It provides as follows:

The affairs of the corporation shall be conducted by a Holy Synod, as its supreme canonical body, an All-American Council, as its highest legislative and administrative body, and a Metropolitan Council, as its permanent executive body. The corporation shall have the power by the vote of two-thirds of the members of its All-American Council to make, alter, amend, or repeal by-laws, which may be denominated as the statute of the corporation, for the

management of the affairs of the corporation and the regulation of the affairs of its dioceses, deaneries, parishes and other constituent bodies or agencies, provided such by-laws are not inconsistent with the constitution and laws of this state. Such by-laws may, among other things, provide for the authority and powers of the corporation's Holy Synod, All-American Council and Metropolitan Council, and the number, qualifications, and method of choosing the members and officers of said bodies, and may from time to time change the title of any such body.

25. Section 10 of the Special Act prohibits the sale, mortgaging or leasing of any of the Church's real property without approval of the Metropolitan Council.

26. Section 13 of the Special Act prohibits any individual, member, officer or employee of the Church from receiving any pecuniary profit from the Church, except for reasonable compensation for services rendered in effecting one or more of the Church's purposes.

B. The "Statute" (By-Laws) of the Church

27. Pursuant to Section 7 of the Special Act, the All-American Council has adopted by-laws, which are entitled "The Statute of the Orthodox Church in America" (the "Statute"). The Statute was last revised in 2002. A copy of the Statute is annexed hereto as **Exhibit "B"**.

28. Article II of the Statute addresses the Holy Synod. It provides, among other things, that the Holy Synod: (i) is the "supreme canonical authority" of the Church (Statute, Article II, § 1); (ii) is comprised of the diocesan bishops of the Church (Statute, Article II, § 2); and (iii) shall hold regular sessions twice annually, in the autumn and the spring (Statute, Article II, § 3).

29. Article II, Section 7, of the Statute sets forth the matters that are within the "jurisdiction and competence" of the Holy Synod. Those matters are as follows:

- a. All matters involving doctrine, canonical order, morals, and liturgical practice;
- b. All canonical matters pertaining to the election and consecration of

bishops . . .;

- c. The establishment of new dioceses, the definition of diocesan boundaries, and the acceptance of dioceses into the jurisdiction of the Orthodox Church in America;
- d. Transfer of bishops and their retirement . . .;
- e. The acceptance of bishops from other jurisdictions;
- f. Bishops' leaves of absence;
- g. Bestowing honors upon bishops;
- h. Examination of annual reports of the Metropolitan and the bishops on the fulfillment of their pastoral duties;
- i. Solution of problems arising from the administration of individual dioceses and requiring the judgment of the entire episcopate;
- j. Determination in all complaints involving bishops;
- k. Acting as the Supreme Court of Appeals for all matters involving bishops, clergy and laity . . .;
- l. Establishment of general policies in relation to other Orthodox Churches and non-Orthodox religious bodies;
- m. Appointment, upon recommendation by the Metropolitan Council, of the Chancellor, Secretary, Treasurer, and other officials whose competence or service extend beyond the boundaries of a single diocese;
- n. Pastoral supervision over all Church organizations whose activity extends beyond the boundaries of a single diocese;
- o. Appointments of committees on matters belonging to the competence of the Holy Synod;
- p. General supervision over Armed Forces Chaplaincies, with the Metropolitan being particularly and immediately responsible in this field;
- q. Decisions in cases involving non-Orthodox clergymen applying for

- admission into the Orthodox Church;
- r. Supervision over theological schools;
- s. Establishment of standards required for ordination;
- t. Overseeing the missionary, educational, and social programs of the Church;
- u. Supervision of ecclesiastical arts: architecture, iconography, choral music, and other applied arts.

30. Under the Statute, “[a] Permanent Lesser Synod of at least three diocesan bishops, presided over by the Metropolitan, may receive from the Holy Synod a delegation of power to make necessary and provisional decisions on all matters, except those covered by points a, b, c, d, e, f, i, j, k and l of Section 7.” (Statute, Article II, Section 6).

31. Article III of the Statute addresses the All-American Council. The All-American Council is the “highest legislative and administrative authority” of the Church and is comprised of various members of the Church community, including the Metropolitan, all the bishops, all the members of the Metropolitan Council, all priests, and lay delegates (Statute, Article III, §§ 1 and 2). The All-American Council is required to convene periodically at intervals of three years (Statute, Article III, § 3). No resolution of the All-American Council is valid unless approved by a vote of the majority of bishops attending the session (Statute, Article III, § 12). The All-American Council elects a three member auditing committee to audit the accounts of the Treasurer and the funds of all Church related institutions on a quarterly basis and to report to the Metropolitan Council (Statute, Article III, § 15).

32. Article IV of the Statute addresses the Metropolitan. The Metropolitan is a bishop of the OCA who enjoys primacy, being the first among equals (Statute, Article IV, § 1). He is

responsible for, among other things, “supervising the internal and external welfare” of the OCA (*id.*). Article IV, Section 2, of the Statute specifies various “duties” of the Metropolitan. It states as follows:

The Metropolitan:

- a. Consecrates and distributes the Holy Chrism;
- b. Provides the diocesan bishops with the Holy Relics necessary for the consecration of the Church altars and Holy Antimensia;
- c. Convenes the All-American Council, presides over it, and promulgates its decisions;
- d. Convenes and presides over the meetings of the Holy Synod and of the Metropolitan Council;
- e. Issues pastoral letters addressed to the bishops, clergy, and laity of the Church;
- f. Reports to the Council concerning the life of the Church;
- g. Initiates action to fill vacancies in the office of the diocesan bishop;
- h. Gives advice to his brother bishops, and in cases of necessity, submits their cases to the Holy Synod;
- i. Has the right of pastoral initiative and guidance, and when necessary the right of pastoral intervention, in all matters concerning the life of the Church within the framework of the holy canons;
- j. Receives petitions for admission of clergy from other Orthodox Churches.

33. Article V of the Statute addresses the Metropolitan Council. The Metropolitan Council is the “permanent executive body of the church administration” (Statute, Article V, §1). It consists of the Metropolitan, the Chancellor, the Secretary, the Treasurer, two representatives from each diocese (one priest and one layman), and three priests and three layman elected by the All-

American Council (*id.*). The Metropolitan Council is required to meet at least twice a year (Statute, Article V, § 3).

34. Article V, Section 4, of the Statute sets forth the “competence” of the Metropolitan Council. It states as follows:

The Metropolitan Council:

- a. Implements the decisions of the All-American Council and of the Holy Synod in the areas of its competence;
- b. Assists the Metropolitan and the Holy Synod in implementing decisions within the areas of its competence;
- c. Establishes the budget for the operations of the Church and examines all financial reports;
- d. Supervises the collection of the assessments and fees established by the All-American Council and determines the allocation of such funds;
- e. Organizes plans for obtaining voluntary contributions for the satisfaction of the needs of the Church;
- f. Provides for the maintenance of the central administrative bodies of the Church and for the allocation of the general funds of the Church;
- g. Decides on the purchase, sale, or mortgaging of property of the Church . . . ;
- h. Maintains an inventory of all properties of the Church;
- i. Provides for the establishment and maintenance of institutions of charity and education, as well as for publications for the propagation of the Orthodox Faith;
- j. Determines the forms and books necessary for the keeping of records and statistical data by the dioceses, requiring all statistics necessary for reports;
- k. Appoints officers and committees on matters within its competence;

1. Initiates, prosecutes, and defends all legal matters affecting the interests of the Church;
- m. May receive reports from any department in areas within the competence of the Metropolitan Council.

(Emphasis added).

35. No decision of the Metropolitan Council is effective until approved by the Metropolitan or Holy Synod, depending on the nature of the decision (Statute, Article V, § 2). Thus, either the Metropolitan or the Holy Synod, as appropriate to the matter under consideration, can effectively veto any decision of the Metropolitan Council (*id.*).

36. The Metropolitan Council may, between meetings, “delegate a committee consisting of the Chancellor, Secretary, Treasurer, and two other members to meet in conjunction with the Lesser Synod of Bishops upon their invitation, to discuss normal church procedures. This committee shall report back to the Metropolitan Council concerning all actions and decisions.” (Statute, Article V, § 1). This committee of the Metropolitan Council is referred to as the “Administrative Committee.”

37. Thus, under the Statute, and consistent with the customs and practices of the Church, among the three bodies of the Church vested with authority to manage its affairs, the Metropolitan Council was specifically empowered to manage its financial affairs.

38. Under the Statute, the Administrative Committee of the Metropolitan Council is only authorized to handle matters in the ordinary course of the Church’s business operations between meetings of the Metropolitan Council, and it is required to report back to the Metropolitan Council on all of its actions and decisions (Statute, Article V, § 1).

39. Pursuant to the Statute and the customs and practices of the Church, the Metropolitan

Council is the only body of the Church with authority to incur substantial indebtedness on behalf of the Church or to authorize substantial expenditures to improve Church property.

40. Finally, Article XI of the Statute addresses Church courts and canonical procedure within the Church. Church courts have jurisdiction over cases involving “unorthodox belief, breaches of canonical or moral discipline, marital problems, disputes involving clergy and parish officers, and any other matters involving the good order of the Church.” (Statute, Article XI, § 3). Among other things, a Church court has authority to depose (defrock) a priest, which judgment does not become effective until confirmed by the Holy Synod (Statute, Article XI, § 3).

THE KONDRATICKS

41. The Plaintiff, Mrs. Kondratick, is married to Robert Kondratick. Both of the Kondraticks are former employees of the Church.

42. Robert Kondratick is a former ordained priest of the Church. He served as a priest from 1967 until August 1, 2007, when he was deposed by the Holy Synod. He also served as the Chancellor of the Church, a member of the Metropolitan Council, and a member of the Administrative Committee of the Metropolitan Council, from 1989 until March 16, 2006, when the Metropolitan removed him from those positions.

43. Mrs. Kondratick is also a former employee of the Church. She previously held the position of Administrator of the Pension Plan between 1993 and 2006, and the position of Benefits Coordinator, between 2000 and 2006.

44. Between approximately 1991 and 2006, and while Mr. Kondratick served as the Chancellor of the Church, the Kondraticks and their family resided at 216 Martin Drive, Syosset, New York (the “Martin Drive Property”), a Church-owned property. While the Kondraticks resided

at the Martin Drive Property, they did not pay any rent to the Church. In fact, the Church paid them a housing allowance of approximately \$18,000.00 per year, even though they did not have any housing expenses.

THE PURPORTED "LETTER AGREEMENT"

45. Pursuant to a purported "letter agreement" signed on or about April 19, 2002, a copy of which is annexed hereto as **Exhibit "C"**, the former Metropolitan of the Church, Metropolitan Theodosius, purportedly acting on behalf of the Church, agreed to pay the Kondraticks, jointly, the sum of \$250,000.00 in full settlement of all costs for improvements that they allegedly made, at the direction of the Church and with their own personal funds, to the Martin Drive Property between 1991 and 2002 (this letter is hereinafter referred to as the "Letter Agreement").

46. Specifically, the purported Letter Agreement states as follows:

This is to confirm the agreement between the Orthodox Church in America and V. Reverend Robert S. Kondratick and Elizabeth Kondratick concerning reimbursement by the Orthodox Church in America for improvements they have made on behalf of the Orthodox Church in America to the church-owned property located at 216 Martin Drive, Syosset, New York from the time of its purchase until the present. All bills and contracts for these improvements are on file in the Treasurer's Office located at the Chancery Office.

Per this agreement, the Orthodox Church in America will reimburse V. Rev. Robert S. Kondratick and Elizabeth Kondratick the sum of two hundred and fifty thousand dollars (\$250,000.00) in full settlement of all costs for the improvements they were directed to make on this property and which were paid from their personal funds. This reimbursement will be made in the form of payments to be made in three annual equal installments, the first week of September 2002, 2003 and 2004. Further, per this agreement, no interest is to be paid on this amount.

47. Under what purports to be the signature of former Metropolitan Theodosius, the purported Letter Agreement states that it was signed and delivered in the presence of the members

of the Administrative Committee of the Metropolitan Council, and it bears their respective signatures.

48. Under the signatures of the members of the Administrative Committee, the Letter Agreement contains an affirmation by the Secretary of the Church stating that “the above” was executed before him on April 19, 2002, and it then bears his signature, and a notary stamp of a New Jersey notary public.

49. While there is a copy of this purported agreement on file in the Chancery, the Church does not have an original of the agreement on file.

50. I have made inquiry into the authenticity of the Letter Agreement. Former Metropolitan Theodosius, the purported signatory to the Letter Agreement, is an elderly man who is ill. He has advised that he does not recall signing the agreement. Additionally, some members of the Administrative Committee that allegedly witnessed the execution of the Letter Agreement by former Metropolitan Theodosius (Father Dimitri Oselinsky and Father Paul Kucynda) have informed me that they do not recall witnessing his signature to the Letter Agreement, and at least one member (Father Gregory Safchuk) has informed me that former Metropolitan Theodosius did not execute the purported Letter Agreement in front of him.

51. There are other irregularities surrounding the execution of the purported agreement. As discussed above, the at the end of the purported agreement, Father Paul Kucynda affirms that the agreement was executed before him on April 19, 2002, and his signature is then followed by the signature and stamp of a New Jersey notary. This raises questions concerning the circumstances of its execution. Where was the document executed by the parties, in New York, where the Chancery is located and former Metropolitan Theodosius and Mr. Kondratich resided at the time, or New

Jersey, where, Father Kucynda's parish is located?

52. Also, the minutes for the Administrative Committee meeting dated April 14, 2002, copies of which are annexed hereto as **Exhibit "C-1"**, indicate that a "Letter Agreement for Capital Improvements between the Orthodox Church in America and Robert S. Kondratick and Elizabeth Kondratick was approved (attached)." However, there is no copy of the purported Letter Agreement attached to the minutes. Additionally, the minutes list the persons who participated in the meeting, and former Metropolitan Theodosius is not among those who are listed as participants. Further, the minutes indicate that the meeting was held on April 14, 2002, but the purported Letter Agreement is dated April 19, 2002.

53. On April 15, 2002, the day after the just-cited Administrative Committee meeting, the Metropolitan Council met at the LaGuardia Marriot Hotel in Elmhurst, New York. Pursuant to the minutes of that meeting, copies of which are annexed hereto as **Exhibit "C-2"**, the purported "Letter Agreement" was never discussed or brought to the attention of the Council, even though, among others, both Mr. Kondratick, as Chancellor, and Father Dimitri Oselinsky, as Treasurer, gave reports to the Council at that meeting.

54. Given these substantial irregularities, the Church seriously questions the authenticity of the purported Letter Agreement.

55. I am advised by counsel that since Mrs. Kondratick has not authenticated the purported Letter Agreement in her affidavit and has not otherwise laid a proper foundation for its admission into evidence, the purported Letter Agreement cannot serve as a basis for an award of summary judgment against the Church.

56. Additionally, pursuant to the Statute as well as the customs and practices of the

Church, even if it is established that the purported Letter Agreement is authentic, neither the Metropolitan nor the Administrative Committee had the authority to bind the Church to the Letter Agreement without the review and approval of the Metropolitan Council. The purported debt evidenced by the Letter Agreement was substantial and clearly was not incurred in the ordinary course of the Church's business operations. See Statute, Article V, §§ 1 and 4.

57. As the Court will see from the accompanying Affidavit of Father Vladimir Berzonsky, a member of the Metropolitan Council between 2001 and 2007, neither the purported Letter Agreement nor the debt evidenced by the agreement was ever submitted to, reviewed, approved or ratified by the Metropolitan Council. As mentioned above, although the Metropolitan Council met the day after the purported Letter Agreement was apparently approved by the Administrative Committee, no one from the Administrative Committee informed the Metropolitan Council about the purported agreement or sought its approval from the Council at that meeting.

58. Additionally, as the Court will see from the accompanying Affidavit of Father Stavros Strikis, Mr. Kondratick took steps to actively conceal the purported Letter Agreement from the Metropolitan Council.

59. Furthermore, I have conducted a review of the Church's books and records, and the Church is not in possession of any documents or proof that the Kondraticks actually paid for the cost of the renovations to the Martin Drive Property.

60. Finally, I have reviewed the minutes of the meetings of the Metropolitan Council between 1991 and 2002, and I did not find any entries therein pursuant to which the Metropolitan Council authorized or directed the Kondraticks to make any improvements to the Martin Drive Property. The absence of such an authorization or directive in the minutes of the Council contradicts

the statement in the purported Letter Agreement that the Kondraticks were directed by the Church to make improvements to the Martin Drive Property.

61. Based on the foregoing, I am also advised by counsel that the Letter Agreement is not a binding obligation of the Church.

THE FINANCIAL SCANDAL AND THE DEPOSING OF FATHER KONDRATICK

62. In the fall of 2002, Metropolitan Theodosius resigned, and a new Metropolitan, Metropolitan Herman, was elected by the bishops of the Church.

63. In the fall of 2005, Protodeacon Eric Allen Wheeler, a former Treasurer and Secretary of the Church, accused Metropolitan Theodosius and Mr. Kondratick of engaging in serious financial corruption between 1988 and 1999.

64. Specifically, in a letter dated October 17, 2005, a copy of which is annexed hereto as **Exhibit “D”**; a document entitled “A Call for Accountability” dated October 17, 2005, a copy of which is annexed hereto as **Exhibit “E”**; and a letter dated November 1, 2005, a copy of which is annexed hereto as **Exhibit “F”**, Protodeacon Wheeler alleged that Metropolitan Theodosius and Mr. Kondratick improperly used Church funds to “cover embarrassing credit card debts incurred by the Metropolitan, provide family members who leached off their relatives with a steady stream of assistance, pay blackmail requests and provide the means to entertain with dinners, trips and gifts of cash the foreign dignitaries and ‘friends of Syosset.’” According to Protodeacon Wheeler, monies for these improper activities came from the following sources: (i) secret, “off-book” discretionary bank accounts that were maintained by Metropolitan Theodosius and Mr. Kondratick that were funded with bequests from donors to the Church; (ii) withdrawals of cash from the Church accounts containing temporarily restricted special appeals funds, which cash was given to Mr. Kondratick;

and (iii) the Church's payment of Mr. Kondratick's personal credit card debts.

65. In response to these explosive allegations, the Church retained professionals to investigate the allegations of financial corruption.

66. Specifically, by letter dated January 3, 2006, a copy of which is annexed hereto as Exhibit "G", the accounting firm of Lambrides, Lamos, Moulthrop LLP ("Lambrides") was retained to audit the statement of financial position of the Church as of December 31, 2004; by letter dated March 10, 2006, a copy of which is annexed hereto as Exhibit "H", Lambrides was also retained to examine the disposition of monies collected through Church appeals from 2001 through 2005; and by letter dated March 11, 2006, a copy of which is annexed hereto as Exhibit "I", the law firm of Proskauer Rose LLP ("Proskauer") was retained to conduct an internal investigation.

67. On March 16, 2006, Metropolitan Herman discharged Father Kondratick from his position as Chancellor, although he continued to remain an ordained priest in the Church.

68. By letter dated May 16, 2006, a copy of which is annexed hereto as Exhibit "J", Lambrides issued its findings regarding its examination of the disposition of monies collected through Church appeals from 2001 through 2005. As set forth in the letter, and as supplemented by the Affidavit of Stephen Lamos, submitted herewith, Lambrides found that between 2001 and 2005, \$1,019,071.00 was withdrawn from Church checking accounts in the form of checks made payable to cash. \$575,300.00 of this \$1,019,071.00 was appeals funds, including \$176,500.00 of appeal income designated by donors for victims of 9/11. The money was withdrawn through Church checks that were made payable to cash and then endorsed by various employees within the Church's central administration, including Mr. and Mrs. Kondratick. In fact, Lambrides discovered that Mrs. Kondratick cashed Church checks payable to cash in the total amount of \$271,043.00, and Mr.

Kondratick cashed Church checks payable to cash in the total amount of \$179,561.00.

69. According to Father Stavros Strikis, the Comptroller of the Church at the time, after the checks were cashed by the employees, the cash was delivered either to him or Mr. Kondratick, and he (Father Strikis) delivered whatever cash he received to Mr. Kondratick. See the Affidavit of Father Strikis submitted herewith.

70. After conducting their inquiry, Lambrides found that the Church lacked any supporting documentation explaining how the cash proceeds were then disbursed by Mr. Kondratick and to whom they were disbursed. Stephen Lamos of Lambrides met with Mr. Kondratick on several occasions in April 2006, but, according to Mr. Lamos, Mr. Kondratick was unable to account for with any specificity as to how the cash was disbursed. Mr. Kondratick did not produce any corroborating evidence from third parties for any of the cash disbursed, and he was unable to give the names of any individuals who may have received the money. In particular, according to Mr. Lamos, Mr. Kondratick did not produce a single name of an individual or parish that received aid from the emergency appeal fund for the victims of 9/11.

71. In August 2006, the Church was required to obtain a \$1.7 million secured loan from an institutional lender to, in part, replenish monies that had been removed by Mr. Kondratick from the Church's special appeals funds.

72. On or about October 2, 2006, Mr. and Mrs. Kondratick commenced an action in Nassau County Supreme Court against the Church for summary judgment in lieu of a complaint based on the Letter Agreement. Pursuant to the litigation papers, the Kondraticks sought a money judgment against the Church in the amount of \$250,000.00 plus interest. A copy of the Summons, Notice of Motion for Summary Judgment, and the supporting Affidavit of Mrs. Kondratick are

annexed hereto as Exhibit “K”. By Notice of Discontinuance dated October 13, 2006, a copy of which is annexed hereto as Exhibit “L”, however, the Kondraticks voluntarily discontinued the action without prejudice.

73. On March 13, 2007, a special committee formed by Metropolitan Herman to bring the internal investigation to a close issued a report to the Holy Synod and the Metropolitan Council. In the report, the committee reported the findings and conclusions of Proskauer and Lambrides with respect to the investigations that they had conducted on behalf of the Church. I am advised by the Church’s legal counsel that since the report contains summaries of attorney-client communications and attorney-work product, it is privileged and confidential.

74. Upon hearing and discussing the report of the special committee at a joint meeting, the Holy Synod and the Metropolitan Council recommended, among other things, the immediate suspension of Father Kondratick from the priesthood.

75. Internal Church proceedings were thereafter commenced against Mr. Kondratick under Article XI of the Statute. Among other things, Mr. Kondratick was accused of misappropriating money from the Church in the following manner:

- Between 2001 through 2005, \$1,019,071.35 was withdrawn in cash from the OCA’s operating checking accounts at Father Kondratick’s request and given directly to him. Church records lack any supporting documentation to indicate how the cash was spent and for what purposes.
- Of the more than \$1 million taken from church accounts and give to Father Kondratick, \$575,300.00 was taken from the accounts holding the special appeals funds, including \$176,000.00 from a fund designated for the 9/11 victims.
- An audit of the check and wire disbursements from the special appeals funds from 2001 to 2005, shows American Express charges of \$5,608.36 for Father Kondratick’s son,

Robert, designated by Father Kondratick as a charitable distribution.

- Father Kondratick instructed the payment of at least \$137,000.00 of acknowledged personal credit card charges out of OCA funds.

76. After giving due notice to Mr. Kondratick, a Spiritual Court trial was held on June 11 and July 6, 2007. Mr. Kondratick chose not to participate in the trial.

77. At the conclusion of the trial, the Spiritual Court found Mr. Kondratick had committed theft of Church funds, alienated Church funds for his personal use, repeatedly refused to cooperate with those who were charged with giving an accounting of Church funds, actively concealed his actions, refused to cooperate with this Court and thus brought shame and reproach to the priesthood all in violation of the cited canons, scriptural commands, and the oath that he took upon being ordained into the priesthood.

78. On July 31, 2007, the determination of the Spiritual Court was confirmed by the Holy Synod, and Mr. Kondratick was formally deposed as a priest. A copy of a statement issued by the Holy Synod regarding the defrocking of Mr. Kondratick is annexed hereto as **Exhibit "M"**.

79. A subsequent appeal of that determination was denied by the Holy Synod on December 13, 2007.

80. On December 19, 2007, six days after his appeal was denied by the Holy Synod, Mr. Kondratick's wife commenced the current action against the Church in the Supreme Court of the

State of New York, County of Nassau, seeking summary judgment lieu of a complaint in the amount of \$250,000.00 based on the Letter Agreement.

CONCLUSION

WHEREFORE, for the reasons set forth herein and for the reasons set forth in the accompanying Affidavits submitted herewith and in the accompanying Memorandum of Law, the Church respectfully requests that: (i) Mrs. Kondratick's motion for summary judgment in lieu of a complaint be denied in its entirety and that summary judgment should be granted to the Church on one or more of its defenses; or, in the alternative, (ii) Mrs. Kondratick's motion for summary judgment should be denied because there are triable issues of fact with respect to one or more of the defenses raised by the Church; or, in the alternative, (iii) Mrs. Kondratick's motion for summary judgment should be denied because facts essential to justify opposition to the motion may exist but cannot be stated at present because they are within the exclusive knowledge and control of the Kondratick's or third parties, and the Church should be given an opportunity to conduct disclosure regarding them. Additionally, if Mrs. Kondratick's motion for summary judgment is denied and this action is not dismissed by the Court, the Church respectfully requests an order directing Mrs. Kondratick to serve and file a complaint in this action, and directing the Church to serve and file an answer.

Alexander Garklavs

ALEXANDER GARKLAVS

Sworn to before me this
28th day of February, 2008.

Jon A. Ward
Notary Public

JON A. WARD
Notary Public, State of New York
No. 02WA5038260
Qualified in Suffolk County
Commission Expires January 23 20 11

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ELIZABETH KONDRATICK,

AFFIDAVIT

Plaintiff,

Index No. 07-22717

- against -

Assigned Justice:
Hon. Daniel Martin

ORTHODOX CHURCH IN AMERICA,

Adjourned Return Date:
March 14, 2008

Defendant.

STATE OF OHIO }
 } :ss
COUNTY OF Cuyahoga }

VLADIMIR BERZONSKY, being duly sworn, deposes and says as follows:

1. I am an ordained priest of the Defendant, **THE ORTHODOX CHURCH IN AMERICA** (the "Church"). I am fully familiar with the facts and circumstances hereinafter set forth.

2. I respectfully submit this Affidavit in opposition to the Plaintiff's motion for summary judgment in lieu of a complaint.

3. I have been the pastor of Holy Trinity Church in Parma, Ohio, for forty years, and I was a member of the Metropolitan Council of the Church from 2001 through 2007.

4. As the Court is aware from the Affidavit of Father Alexander Garklavs, submitted herewith, under the Statute (by-laws) of the Church as well as its traditions and customs, the Metropolitan Council is the only body of the Church with authority to incur substantial indebtedness on behalf of the Church as a corporate entity.

5. I have reviewed Plaintiff's affidavit submitted in support of her motion for summary judgment and the purported "letter agreement" annexed thereto, which purports to bind the Church

to an obligation to pay \$250,000.00 to the Plaintiff and her husband, Robert Kondratick, a defrocked priest of the Church.

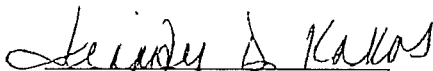
6. Neither the purported "letter agreement" nor the purported debt evidenced therein was ever submitted to, reviewed, approved, or ratified by the Metropolitan Council.

7. Based on the foregoing, it is respectfully submitted that the "letter agreement" is not a binding obligation of the Church.

WHEREFORE, I respectfully request that the Court deny the Plaintiff's motion for summary judgment in lieu of complaint and dismiss this action.


VLADIMIR BERZONSKY

Sworn to before me this 28th
day of February, 2008


Notary Public

JENNIFER D. KAKOS
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
OCT 11, 2009

02/26/2008 12:10 PM 310 322 0004
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
ELIZABETH KONDRATICK,

AFFIDAVIT

Plaintiff,

Index No. 07-22717

- against -

Assigned Justice:
Hon. Daniel Martin

ORTHODOX CHURCH IN AMERICA,

Adjourned Return Date:
March 14, 2008

Defendant.

STATE OF CALIFORNIA }
 }:ss
COUNTY OF TEHAMA }

STAVROS STRIKIS, being duly sworn, deposes and says as follows:

1. I am an ordained priest of the Defendant, **THE ORTHODOX CHURCH IN AMERICA** (the "Church"). I am fully familiar with the facts hereinafter set forth.
2. I respectfully submit this Affidavit on behalf of the Church and in opposition to the Plaintiff's motion for summary judgment in lieu of a complaint.
3. Between October 1990 and September 2007, I served as the Comptroller of the Church. My office was located at the central administrative offices of the Church, known as the Chancery, in Oyster Bay Cove, New York.
4. Between 1989 and March 16, 2007, Robert Kondratick, the husband of the plaintiff in this action, served as the Chancellor of the Church. Mr. Kondratick's office was also located in the Chancery in Oyster Bay Cove.
5. The Chancellor serves as the executive assistant to the Metropolitan of the Church, the highest ranking bishop of the Church. As such, as Comptroller of the Church, I was subordinate to the Chancellor.

6. During the time period that Mr. Kondratick served as Chancellor, I witnessed his abuse and waste of the Church's monies.

7. As Chancellor of the Church, he was given a corporate credit card. He abused this card by running up tens of thousands of dollars of debts on it, well beyond the Church's ability to pay such debts. When the Church exceeded its credit limits on the card, and the credit card company refused to extend further credit, he and his family members would charge expenses on their personal credit cards and submit the bills to the Church for payment. Many of the charges that Mr. Kondratick submitted for payment had nothing to do with Church business.

8. I documented that as of date of his departure from the Chancery on March 16, 2006, the Church had paid at least \$132,000.00 in Mr. Kondratick's and his family members' personal credit card debts and other personal debts. The Church paid for such items as his personal travel to, and lodging expenses for, places where the Church had no business; his family members' monthly living expenses for such things as groceries, wine, jewelry, clothes and shoes; and payments also went to cover unauthorized travel expenses to Russia for Mr. Kondratick's friends. Mr. Kondratick was fully aware of his debt to the Church for these payments by the Church, and he acknowledged this debt.

9. In addition to his abuse of credit cards, Mr. Kondratick also withdrew substantial sums of cash from the Church's checking accounts, including cash from accounts containing monies dedicated to special appeals funds, such as the 9/11 victims fund. As the Court will see from the Affidavit of Stephen Lamos, submitted herewith, between 2001 and 2005, \$1,019,017.00 in cash was withdrawn from the Church's checking accounts, including \$575,300.00 in monies from special appeals funds. This was accomplished in the following manner. Mr. Kondratick would direct me to prepare checks payable to the order of cash drawn on the Church's checking accounts. Usually

the cash amounts were less than \$10,000.00 in order to avoid detection by the IRS. Various employees of the Church's central administration, including Mr. and Mrs. Kondratick, would take the checks to the Church's bank, endorse them, and then return to the Chancery with the cash. The cash was either delivered to me or Mr. Kondratick. Whatever cash I received, I would deliver to Mr. Kondratick at his direction, and he would sign a receipt acknowledging his receipt of the cash.

10. Although Mr. Kondratick stated that he would use the cash for Church business, he never provided me with any back-up to confirm the disposition of the cash. I would complain to him about his failure to provide me with back-up, and he would tell me that back-up would be forthcoming, but I hardly ever received anything, and when I did it was mostly incomplete. This is why the Church does not have any supporting documentation for the disbursement of the cash.

11. In February 2004, the Church received financial statements compiled by its accounting firm, Konsen & Hostelley, LLP, for years ending December 31, 2002 and 2001, copies of which are annexed hereto as Exhibit "N". The cover letter for the statements was addressed to the Metropolitan Council. As the Court will see from these statements, endnote 5 of the statements references a \$240,000.00 loan from Mr. Kondratick to the Church for improvements to Church property at 216 Martin Drive, Syosset, New York, where the Kondraticks' resided. Endnote 6 also referenced a transfer of \$567,478.00 in temporarily restricted funds, *i.e.*, the Church's special appeals funds, to meet the obligations of the Chancery and that these funds would be transferred back as soon as practical.

12. The Church's audit committee was required to audit these statements and submit them to the Metropolitan Council for review and approval. Mr. Kondratick directed me to alter endnote 5 in the statements for years ending 2002 and 2001 by removing the reference to the \$240,000.00 loan and to completely remove endnote 6 from the statement. Regrettably, I followed his directive

and removed this information from these statements. These altered statements were then made available to the Metropolitan Council. A copy of the altered statements with the covering letter from the Church's auditing committee is annexed hereto as Exhibit "O".

13. In May 2004, the Church received compiled financial statements from Hosteley for years ending 2003 and 2002. Copies of these statements are annexed hereto as Exhibit "P". These statements contained endnotes referencing the \$240,000.00 loan (endnote 6) and the transfer of restricted funds to pay the obligations of the Chancery. At the direction of Mr. Kondratick, these unaltered statements were withheld from the Metropolitan Council.

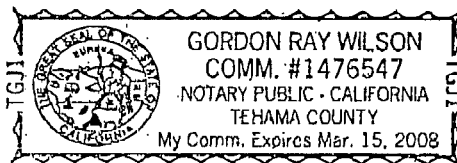
14. Additionally, in January 2006, the Church received compiled financial statements from Hosteley for years ending 2004 and 2003, copies of which are annexed hereto as Exhibit "Q". Again, at the direction of Mr. Kondratick, these unaltered statements were withheld from the Metropolitan Council.

15. After Mr. Kondratick was removed from his position as Chancellor in March 2006, I provided these financial statements to the Metropolitan Council.


STAVROS STRIKIS

Sworn to before me this 28
day of February, 2008


Notary Public



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ELIZABETH KONDRATICK,

Plaintiff,

- against -

ORTHODOX CHURCH IN AMERICA,

Defendant.

AFFIDAVIT

Index No. 07-22717

Assigned Justice:
Hon. Daniel Martin

Adjourned Return Date:
March 14, 2008

STATE OF PENNSYLVANIA }
 }:ss
COUNTY OF BERKS }

STEPHEN LAMOS, being duly sworn, deposes and says as follows:

1. I am a partner of the accounting firm of Lambrides, Lamos, Moulthrop LLP (“Lambrides”), certified public accountants and consultants with offices located at 81 Larkfield Road, East Northport, New York.
2. I respectfully submit this Affidavit on behalf of the Defendant, **THE ORTHODOX CHURCH IN AMERICA** (the “Church”).
3. I am fully familiar with the facts hereinafter set forth.
4. I have been a certified public accountant in the State of New York since 1972. I began my career in accounting in 1966, when I was employed by Lambrides upon my graduation from college. I became a partner of Lambrides in 1981.
5. Pursuant to an engagement letter dated March 10, 2006, Lambrides was retained by the Church to examine the disposition of monies collected through the Church’s appeals from 2001 through 2005.
6. In furtherance of this engagement, we performed the following procedures:

- Obtained from the Church a list of all appeals from 2001 through 2005;
- Obtained from the Church bank statements for all discretionary accounts from 2001 through 2005 and analyzed the activity that relates to the appeal list;
- Performed an analysis of the activity in the Church's general ledger that related to the appeal list; and
- Met with and interviewed various employees of the Church's central administration, including Robert Kondratick, the former Chancellor of the Church.

7. Among other things, we discovered that between 2001 and 2005, \$1,019,071.00 was withdrawn from Church checking accounts in the form of checks made payable to cash. \$575,300.00 of this \$1,019,071.00 was appeals funds, including \$176,500.00 of appeal income designated by donors for victims of 9/11.

8. The money was withdrawn through Church checks that were made payable to cash and then endorsed by various employees within the Church's central administration, including the plaintiff in this action and her husband. We discovered that Mrs. Kondratick cashed Church checks payable to cash in the total amount of \$271,043.00. We also discovered that Mr. Kondratick cashed Church checks payable to cash in the total amount of \$179,561.00.

9. According to Father Stavros Strikis, the Comptroller of the Church at the time, after these checks were cashed by the employees, the cash was delivered either to him or Mr. Kondratick, and he (Father Strikis) delivered whatever cash that he received to Mr. Kondratick. See the Affidavit of Father Strikis submitted herewith.

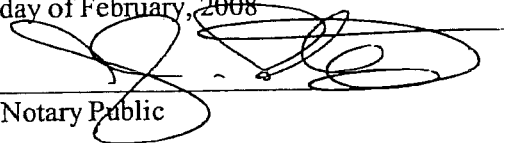
10. The Church lacked any supporting documentation explaining how these cash proceeds were then disbursed by Mr. Kondratick and to whom they were disbursed.

11. I met with Mr. Kondratick on April 5, 11, 14, and 18, 2006 to review how he disbursed the cash. During those meetings, he provided me with handwritten notes regarding the withdrawals. Notwithstanding his attempt to explain how the cash was disbursed, Mr. Kondratick was unable to account with any specificity as to how the monies were disbursed. He did not produce any corroborating evidence from third parties for any of the cash disbursed, and he was unable to give the names of any individuals who may have received the money. In particular, he did not produce a single name of an individual or parish that received aid from the emergency appeal fund for the victims of 9/11.

12. In addition to the items noted above, an examination of check and wire appeal disbursements from 2001 through 2005 revealed that \$305,729.00 of certain disbursements that had been requested by Mr. Kondratick, either directly or indirectly, had inadequate documentation. Among other things, I discovered that \$5,608.36 of American Express charges for Mr. Kondratick's son were paid by the Church and described as a charitable distribution.


STEPHEN LAMOS

Sworn to before me this 26th
day of February, 2008


Notary Public

NOTARIAL SEAL
John M. Perrott, Notary Public
Caernarvon Twp., Berks County
My commission expires February 17, 2010