

## NEWS &gt; MISSISSAUGA &gt; LEGAL

# Israeli emigrant one of 20 profiled in photo exhibit

**Shlomit Kriger**

Feature Correspondent

THORNHILL — It's no secret that those moving to a new country often face barriers and challenges.

Thornhill resident Haya Zilberboim has demonstrated that with the proper attitude and connections, people can navigate through the hurdles.

Determined to create a bright future for her family, within about four years after emigrating from Israel to Canada, she has landed her current position as chief operating officer of Fishman Holdings North America Inc., the subsidiary of an Israeli investment group.

Zilberboim's story is featured in

*20 Journeys: A Visual Essay of the Immigrant Experience*, a travelling photo exhibit that tells the stories of skilled immigrants who have successfully entered the local workforce. Presented by the Toronto Region Immigrant Employment Council, *20 Journeys* is on display at the Mississauga Civic Centre until Feb. 23.

When Zilberboim arrived in Canada in July 2004 with her husband and their three sons, they had to rebuild their lives. They left all of their relatives behind and only knew one couple in their new town.

"That was very difficult, especially in the first year," said Zilberboim. "But we were excited to

meet new people, have new adventures and learn about a new place."

In Israel, Zilberboim worked as a certified public accountant and held top managerial positions in the high-tech industry.

To get her Canadian chartered accountant designation, she learned that she needed to go back to university. She also had to upgrade her English skills and gain 30 months of Canadian experience in a CA firm and write all final CA exams.

Since she had worked for KPMG in Israel, she decided to seek work at KPMG Canada. Using her contacts in Israel, she managed to get a job interview and be hired within

a few weeks.

Although she considers herself lucky to have had a fairly smooth transition, Zilberboim thinks improvements can be made to help immigrants enter the local workforce.

"The process to get permanent residency in Canada isn't easy, and the bar is set very high," she said. "These immigrants are talented and educated people, but once they come here employers say they need Canadian experience to work for them. If you are an immigrant, this equation doesn't work."

Zilberboim noted that the Israeli government provides many programs to help new immigrants and use their experience and knowl-

edge, and she would like to see more of that in Canada.

"If instead of the immigrants pulling the information the government will push the information and provide programs, both sides

will benefit," she said.

Zilberboim hopes that other immigrants remain confident that they, too, can find their way, adding that "immigrants have a lot to offer."

## Are presents given to powers of attorney kosher?


**Charles Wagner**

TORONTO — Shelly used her power of attorney to transfer her mother's house into her name. That started a law suit. But that's the middle of the story, let's start at the beginning.

Shelly lived with her mother Ruth in her Forest Hill home worth \$1.4 million. The only other asset Ruth had was \$300,000 in cash, which she inherited from her late husband.

In 2001 Ruth appointed Shelly as power of attorney over property and personal care. Ruth also drafted a will where she left her house to Shelly with the balance of her estate to her son Mike.

In 2003 Ruth was diagnosed with Alzheimer's. She was soon unable to care for herself or manage her own property. Ruth was taken to a chronic-care facility, which cost more than \$80,000 per year. Shelly used her power of attorney to transfer the house into her name. Shelly later claimed that she did it to save probate fees.

Ruth died in 2006. Shelly used all of Ruth's money to pay for the chronic-care facility and Ruth's other expenses. In other words, there was nothing left for Mike.

Mike took the matter to court. His lawyers argued that Shelly, as an attorney for property, was a fiduciary. As articulated by Professor Waters in *Law of Trusts in Canada Second Edition* (Carswell: 1984, Toronto): "It is a fundamental principle of every developed legal system that one who undertakes a task on behalf of another must act exclusively for the benefit of the other, putting his own interests completely aside." Mike's lawyers argued that given that the deceased had no knowledge of the transfer and did not give her consent to it, there was a clear breach of Shelly's fiduciary duty as attorney. Finally, at the very least, Ruth was an elderly vulnerable woman in the care of her daughter during the period when the house was transferred to the daughter and a presumption of undue influence applies. The burden is on Shelly to prove that the transaction was fairly conducted as between strangers and that their mother was not taken advantage of at her most vulnerable moment.

Shelly's lawyer argued that Ruth knew about the transfer and approved of it. He also relied on certain provisions of the *Substitute Decisions Act* (sections 35.1(3)(b) and 37), which permitted Shelly to take the gift because:

- a) it was bequeathed to her under the will; and
- b) when the transfer was made Ruth had more than enough money to support herself.

Mike's lawyer countered that section 37(4) of the act restricts these types of gifts to only those where the remaining property will remain sufficient to satisfy the requirements reasonably necessary for Ruth's support. He also argued that the legislation contemplated gifts to other people — not to the attorney for power herself. He argued that Shelly knew, or ought to have known, that their mother (as an elderly person) may have needed the equity in the house and the transfer was contrary to their mother's interest.

What would a judge have decided?

In *Laird v. Mulholland* (1998), 21 E.T.R. (2d) 204 (Ont. Gen. Div.), a woman gave her attorney for property a gift of \$10,000. Since the attorney was a fiduciary bound only to act in the interests of that woman, there was a presumption of undue influence and the attorney had to show that the woman gave the gift "full, free and informed." Based on this decision it is reasonable to assume that the attorney for property could, in some circumstances take a gift. However, in our case, for Shelly to succeed, the court would have to find that at the time the transfer took place, her mother (Ruth) knew about the transfer, would have wanted Shelly to have the house and that there was no indication that the cash on hand would be insufficient to cover the expenses.

Despite the temptation to jump to conclusions, it would be a mistake to substitute this case review for substantive legal advice. Every case turns on its own specific set of facts and there is no replacement for hiring a competent solicitor whose own research, analysis and judgment should be canvassed before going to court.

*Charles B. Wagner is the senior partner at Charles B. Wagner & Associates, a boutique litigation law firm. For more information about estate litigation you can access [www.cbwagnerlaw.com](http://www.cbwagnerlaw.com) or contact the lawyer at [cwagner@cbwagnerlaw.com](mailto:cwagner@cbwagnerlaw.com) or call him at (416) 366-6743.*

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