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LOS ANGELES SUPERIOR COURT

MAY 12 2009

JOHN A. CLARKE, CLERK

BY RAUL SANCHEZ, DEPUTY

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8 *Attorney For Plaintiff Rita Pauker*

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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

RITA PAUKER,

Plaintiff,

vs.

RABBI SAMUEL OHANA, BETH
MIDRASH MISHKAN ISRAEL,

Defendants

Case No. BS119163
Before the Honorable Zaven V. Sinanian

**REPLY TO OPPOSITION TO PLAINTIFF'S
MOTION TO RECONSIDER COURT'S
RULING ON PLAINTIFF'S PETITION TO
CONFIRM ARBITRATION AWARD [C.C.P.
§ 1008(a)]; DECLARATION BARUCH C.
COHEN**

Date: May 20, 2009
Time: 8:30 am
Place: Courtroom 23
111 North Hill Street
Los Angeles, CA 90012

Plaintiff Rita Pauker (hereinafter "Plaintiff") hereby Replies to the Opposition filed by Defendants Rabbi Samuel Ohana, Beth Midrash Mishkan Israel (hereinafter "Defendants" and/or "Rabbi Ohana") to Plaintiff's *Plaintiff's Motion to Reconsider Court's Ruling on Plaintiff's Petition to Confirm Arbitration Award [C.C.P. § 1008(a)]* (hereinafter "Motion").

Defendants' Opposition claims that the Motion was procedurally defective because while the Motion adequately stated what application was made before, when and to what judge and what orders were made, the fact that said language was not repeated in the Declaration in

1 support of the Motion, that the Motion is jurisdictionally faulty. Defendants further claim that
2 the Declaration cannot be amended or supplemented with that information but offers no
3 precedent for said argument. In Plaintiff's Reply, the information is provided and counsel's
4 declaration is supplemented. Certainly, Defendants cannot claim that they were ambushed or
5 prejudiced with this information as all of the relevant information was contained in the Motion as
6 was the attached exhibits including the *Court's Ruling on Plaintiff's Petition to Confirm*
7 *Arbitration Award* - that defined what application was made before, when and to what judge
8 and what orders were made.¹

9 Defendants' Opposition acknowledges that new facts exist in the April 10, 2009 blog,
10 but argues that the April 10, 2009 blog of Brad Greenberg is inadmissible, as it allegedly lacks
11 foundation and is hearsay because Brad Greenberg did not authenticate his April 10, 2009 blog.
12 The problem with Defendants' position, is that the same "defects" that apply to Brad
13 Greenberg's April 10, 2009 blog would apply equally to Brad Greenberg's February 19, 2007
14 blog - that Defendants based their motion to vacate the arbitration award on. If the court
15 considers one blog, it should consider both blogs, and if the court excludes one, it should
16 exclude both blogs from evidence.

17 Defendants' Opposition acknowledges that the April 10, 2009 blog of Brad Greenberg
18 came after the court's April 3, 2009 ruling and is a "new fact" but argues that Brad
19 Greenberg's testimony should have been brought prior to this proceeding. But the fact remains
20 that the April 10, 2009 blog of Brad Greenberg is a newly discovered fact. Plaintiff attempted
21 to secure Mr. Greenberg's testimony, but litigation counsel for the Jewish Journal interceded
22

23 ¹This Court will have to address Plaintiff's concerns in one form or another, as Plaintiff
24 could also bring a new motion under CCP 1008(b): A party who originally made an application for
25 an order which was refused in whole or part, or granted conditionally or on terms, may make a
26 subsequent application for the same order upon new or different facts, circumstances, or law, in
27 which case it shall be shown by affidavit what application was made before, when and to what
28 judge, what order or decisions were made, and what new or different facts, circumstances, or law
are claimed to be shown. For a failure to comply with this subdivision, any order made on a
subsequent application may be revoked or set aside on ex parte motion.

1 and requested that Mr. Greenberg be properly served with subpoena notices. It was virtually
2 impossible to obtain Brad Greenberg's testimony within the 10-day time limit of Section
3 1008(a).² Plaintiff requests that should this court deem it worthy to continue this proceeding to
4 schedule an evidentiary hearing wherein the parties can call Mr. Greenberg to the stand to
5 testify as to Rabbi Ohana's knowledge of Brad Greenberg's February 19, 2007 blog and to the
6 hypothetical nature of his question to Rabbi Sauer.

7 Defendants' Opposition claims that the April 10, 2009 blog of Brad Greenberg is
8 irrelevant to the ruling. The new blog is relevant for several reasons: (1) Ground 1 - on
9 February 19, 2007, Brad Greenberg asked Rabbi Sauer a hypothetical question about Torah
10 ownership (nothing specific about this case); (2) Ground 2 - Rabbi Ohana lied to the Court
11 when he feigned ignorance to the February 19, 2007 article. These grounds are relevant to the
12 Court's *sua sponte* ruling based on § 170.1(a)(6)(iii): that "[a] person aware of the facts might
13 reasonably entertain a doubt that the judge would be able to be impartial." Such a person would
14 have to be aware of all of the facts: Brad Greenberg's February 19, 2007 blog and Brad
15 Greenberg's April 10, 2009 blog. Plaintiff believes that a person being aware of both blogs
16 including Brad Greenberg's April 10, 2009 blog would not reasonably entertain a doubt that
17 Rabbi Sauer would not be able to be impartial.³

18 This Court should remember that Rabbi Ohana lied about other matters at the April 3,
19
20

21
22 ²A true and correct copy of correspondence attempting to secure Brad Greenberg's
testimony is attached hereto as Exhibit 'J' and is incorporated herein by this reference.

23
24 ³At the April 3, 2009 hearing, counsel for Pauker specifically cautioned the Court against
25 making such a "leap" (of faith) - that Rabbi Sauer had an obligation to disclose the February 19,
26 2007 article, without properly submitted evidence before the court that Rabbi Sauer even knew
27 about the February 19, 2007 blog in the first place. Counsel for Pauker argued that one cannot be
28 obligated to disclose something that he does not know exists. How telling is it, that Rabbi Ohana's
declaration in opposition does not even state the grounds for § 170.1(a)(6)(iii). Rabbi Ohana's
declaration did not state: that once he became aware of the facts that he might reasonably entertain
a doubt that the judge would be able to be impartial.

1 2009 hearing.⁴ Reporter's Transcript page 27, lines 17-20 wherein Rabbi Ohana's lawyer G
2 Scott Soble states: "*Third point. Rabbi Sauer seems to forget a lot. We have evidence that Rabbi*
3 *Ohana called Rabbi Sauer as a legal authority in Jewish law in this matter and said Rabbi,*
4 *here's the situation.*"[Emphasis added]. See also Reporter's Transcript page 28, lines 3-9:
5 "*There's no reason to believe that Rabbi Ohana did not make such phone calls to Rabbi Sauer.*
6 *Rabbi Sauer denies any such prior knowledge of the case in his declaration. It appears that*
7 *Rabbi Sauer forgets everything. He forgets about talking to Rabbi Ohana about the case. He*
8 *forgets being interviewed by a Daily Journal - Daily News reporter and giving a response to a*
9 *reporter.*" [Emphasis added]. Plaintiff's counsel immediately pointed out Mr. Soble's lie to the
10 court (Transcript page 31, 3-8), that there never was a pre-trial conversation between Rabbi
11 Sauer and Rabbi Ohana over this lawsuit, and that Rabbi Ohana's declarations said no such
12 thing: "*There is no declaration from Rabbi Ohana that he had a conversation with Rabbi Sauer,*
13 *It's a myth. What you just heard was a complete fabrication. I just checked both declarations of*
14 *Rabbi Ohana. He doesn't state it once. It's a boldfaced lie made out of whole cloth.*" Plaintiff
15 posits that since Rabbi Ohana's credibility is nil and has no problem lying on the record, his
16 claim that he was unaware of Rabbi Sauer's purported quote in the Brad Greenberg blog is
17 specious and properly dismissed by the Court.

18 The notion that an arbitrator can be disqualified or that an arbitration can be vacated
19 because the arbitrator demonstrated an expertise and proficiency of law in the area of law in
20 question (and was quoted accordingly in a blog) would jeopardize the very fabric of private
21 arbitration. Virtually every arbitration company advertises its arbitrators and their expertise in
22 the areas of law in question; many of them are quoted publically, publish articles and speak on
23 the areas of law that they subsequently have to render decision in. The fact that Rabbi Sauer is a
24 Halachic expert, and well-versed in the Jewish Laws of ownership of Sifrei Torah, should not
25 be a ground for disqualification or to vacate an arbitration award.

26 _____
27 ⁴A true and correct copy of the Reporter's Transcript of the April 3, 2009 hearing is
28 attached hereto as Exhibit **2** and is incorporated herein by this reference.

1 For the foregoing reasons, the Court should GRANT the motion to reconsider by
2 revoking the ORDER vacating the arbitration award and should confirm the arbitration award.

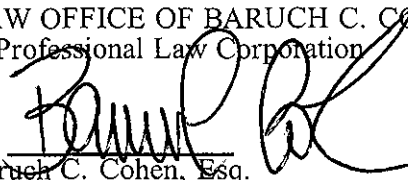
3

4 DATED: May 11, 2009

LAW OFFICE OF BARUCH C. COHEN
A Professional Law Corporation

5

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By 
Baruch C. Cohen, Esq.
Plaintiff Rita Pauker

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SUPPLEMENTAL DECLARATION OF BARUCH C. COHEN

I, BARUCH C. COHEN, declare and state as follows:

1. The facts stated below are true and correct to the best of my personal knowledge and if called upon to testify to them, I could and would competently do so.
2. I am a member in good standing and eligible to practice before the following courts: California State Supreme Court; US Court of Appeals - Ninth Circuit; Bankruptcy Appellate Panel; United States District Courts: Central District of CA; Eastern District of CA; Northern District of CA; & Southern District of CA.
3. I am the principal shareholder and President of The Law Office of Baruch C. Cohen, a Professional Law Corporation, located at 4929 Wilshire Boulevard, Suite 940, Los Angeles, California 90010.
4. I proudly represent Plaintiff Rita Pauker.
5. I represented Mrs. Pauker at the arbitration trial on July 27, 2008.
6. This Declaration Supplements the Declaration in support of *Plaintiff's Motion to Reconsider Court's Ruling on Plaintiff's Petition to Confirm Arbitration Award* [C.C.P. § 1008(a)].
7. Defendants' Opposition claims that the Motion was procedurally defective because while the Motion stated what application was made before, when and to what judge and what orders were made, the fact that said language was not parroted verbatim in the Declaration in support of the Motion, that the Motion is jurisdictionally faulty. Defendants claim that the Declaration cannot be supplemented with that information but offers no precedent for said argument. In Plaintiff's Reply, the information is provided.
 - a. What application was made before: plaintiff's petition to confirm arbitration award.
 - b. When and to what judge: The Honorable Zaven V. Sinanian, judge presiding, on April 3, 2009.
 - c. What orders were made: the Court vacates the arbitration award.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and that this Declaration was executed on May 11, 2009, at Los
3 Angeles, California.

4 
5 By _____
6 BARUCH C. COHEN, Declarant

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PROOF OF SERVICE

I, Baruch C. Cohen, declare as follows:

I am, and was at all times herein mentioned, a citizen of the United States, a resident of the County of Los Angeles, State of California, over the age of 18 years and not a party to this action or proceeding. My business address is 4929 Wilshire Boulevard, Suite 940, Los Angeles, California 90010.

Upon this day, I served the within **REPLY TO OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER COURT'S RULING ON PLAINTIFF'S PETITION TO CONFIRM ARBITRATION AWARD [C.C.P. § 1008(a)]; DECLARATION BARUCH C. COHEN** on all interested parties in this action through their attorneys of record by placing a true and correct copy thereof, addressed as per the attached service list.

 X **VIA FIRST CLASS MAIL** [C.C.P. §§ 1012a, et seq.]. I deposited said document(s) into the United States mail at Los Angeles, California, in a sealed envelope with postage fully prepaid. My practice is to collect and process mail on the same day as shown on this declaration. Under that practice, all correspondence is deposited with the US Postal Service on the same day that it is placed for collection and processing, in the ordinary course of business.

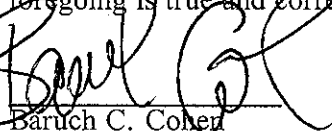
 VIA HAND DELIVERY/PERSONAL SERVICE (C.C.P. §§ 1001, et seq.). I directed a courier to personally deliver said document(s) to each addressee.

 VIA FEDERAL EXPRESS/OVERNIGHT/NEXT BUSINESS DAY DELIVERY SERVICE (C.C.P. §§ 1011, 1012). I enveloped, properly labeled, and caused to be deposited into a Federal Express pick-up receptacle as per the regular practice of my office.

 VIA FACSIMILE (C.C.P. §§ 1012.5). I caused the said document(s) to be transmitted by facsimile machine to the number indicated after the address(es) noted herein. I received written confirmation that the facsimile transmission was received by the addressee.

I declare that I am a member of the State Bar of this Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California on May 11, 2009.


Baruch C. Cohen

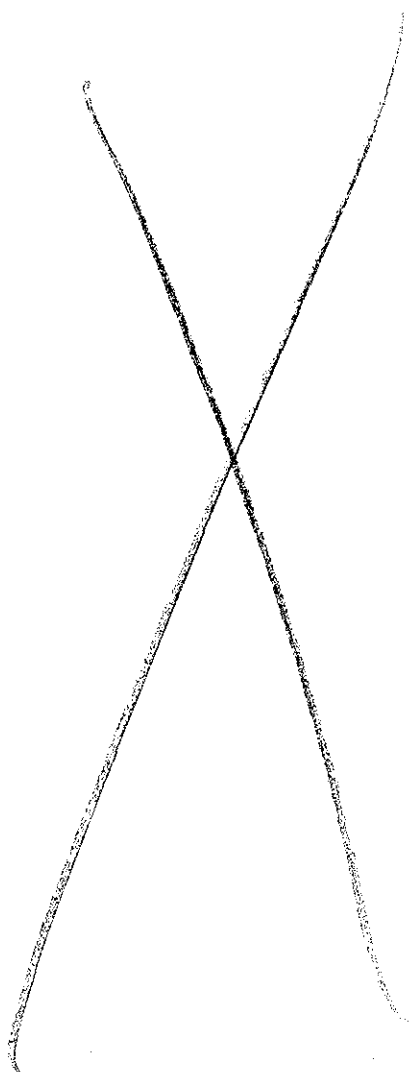
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Scott Sobel, Esq.
Law Offices of Scott Soble
8350 Wilshire Boulevard, Suite 200
Los Angeles, CA 90211

Rabbi Avrohom Union
Rabbinical Council of California
3780 Wilshire Boulevard, Suite 420
Los Angeles, CA 90010



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Subj: **Pauker vs. Ohana**
Date: 4/13/2009
To: thecreator@thegodblog.org
CC: bcc4929
BCC: bohrrerlaw@gmail.com

Brad Greenberg:

I represent Rita Pauker in Bais Din and before the Court.

1. Rabbi Ohana testified that he was not aware of your original article until February 2009. Your article proves that he knew about it after you published it ("After all, Ohana called after my story ran to berate me. Sauer's comment couldn't have been a surprise").

2. Rabbi Sauer maintained that you asked him a hypothetical question about Torah ownership. Your article seems to verify this ("I had asked him who would own a set of scrolls if they were given to a synagogue for regular use but not officially deeded over. Sauer told the court that his comment was "in response to a general inquiry, and not based on the facts of the instant dispute.")

I plan on filing shortly a **motion for reconsideration** of the Court's order based on your article and want you to sign a declaration regarding same. Can you please call me?

Respectfully,

Baruch C. Cohen, Esq.

Law Office of Baruch C. Cohen, APLC

4929 Wilshire Boulevard, Suite 940

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THE JEWISH JOURNAL

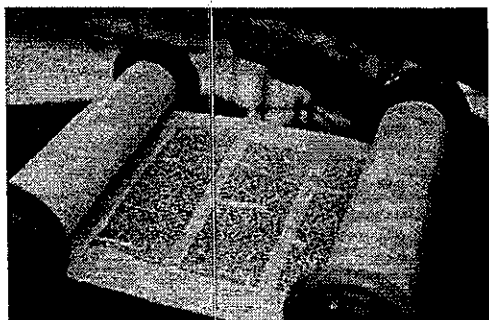
April 10, 2009

Secular judge rules against rabbinical court scrolls case

By Brad A. Greenberg

http://www.jewishjournal.com/thegodblog/item/secular_judge_rules_against_rabbinical_court

Since her husband died in 2002, Rita Pauker has been fighting to have returned to her a set of scrolls that her late husband, Norman Pauker, left his Sherman Oaks synagogue when he retired in 1994. She achieved a n



Beit Din, a rabbinical court, ruled in her favor.

But the scrolls' current steward, Rabbi Samuel Ohana, refused to have had agreed to the arbitration. Ohana has held that the scrolls belong to the synagogue, Beth Midrash Miskhan Israel.

"He called me in front of his wife," Ohana told me two years ago. "I cannot bear having these Torahs gathering dust in my garage."

Not among the disputed scrolls. Pauker sought to have a secular court confirm the arbitration award. A Los Angeles Superior Court judge ruled this week to vacate the arbitration award. Why? Because one of the three rabbis on the Beit Din should have been disqualified. Ohana's complaint was filed this comment long before ruling on the case:

"Lending a Torah to a synagogue is a common way Jews fulfill a mitzvah, or a good deed," said Rabbi Sauer, who teaches Torah studies at Yeshiva University High Schools of Los Angeles. "It is on long-term loan, but the synagogue still owns it."

Now, as a journalist, this is a bit awkward. We try to stay out of the stories we are reporting. A reporter who called Sauer and got that quote.

I had asked him who would own a set of scrolls if they were given to a synagogue for regular use. Sauer told the court that his comment was "in response to a general inquiry, and not based on any specific case."

But the judge ruled: "the fact remains that Rabbi Sauer's above-cited quotation could create a reasonable person that the matter had been prejudged by him."

Fair enough. But why then did Rabbi Ohana agree to settle the case before the Beit Din in the first place? He called after my story ran to berate me. Sauer's comment couldn't have been a surprise.

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PHOTO BY JEFFREY M. HARRIS FOR THE JEWISH JOURNAL

Subj: **THE JEWISH JOURNAL/Pauker v. Ohana**
Date: 4/14/2009 11:08:53 A.M. Pacific Daylight Time
From: jk@jonathankirsch.com
To: BCC4929@aol.com

Dear Mr. Cohen,

I am the *pro bono* publishing counsel for *The Jewish Journal of Greater Los Angeles*. On behalf of my client, I am responding to the email that you sent to Brad Greenberg, a staff writer for *The Jewish Journal*, regarding the Pauker v. Ohana matter.

It would be inappropriate to provide a declaration in a contested civil action. If you elect to proceed by deposition pursuant to subpoena, please contact me, and please direct all further communications regarding this matter to me.

Thank you for your kind attention,

Jonathan Kirsch

cc: Brad Greenberg
Rob Eshman

Jonathan Kirsch
Law Offices of Jonathan Kirsch
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 23 HON. ZAVEN V. SINANIAN, JUDGE

RITA PAUKER,)
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 Plaintiff,)
)
 vs.) NO. BS119163
)
 RABBI SAMUEL OHANA, et al.,)
)
 Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Friday, April 3, 2009

A P P E A R A N C E S :

For Plaintiff: BARUCH C. COHEN
ATTORNEY AT LAW
4929 Wilshire Boulevard
Suite 940
Los Angeles, California 90010
(323) 937-4501

For Defendants: G. SCOTT SOBEL
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8350 Wilshire Boulevard
Suite 200
Beverly Hills, California 90211
(310) 422-7067

ORIGINAL

GABRIELLE AMMON, CSR #5202
OFFICIAL REPORTER

1 CASE NUMBER: BS119163
2 CASE NAME: PAUKER V. OHANA
3 LOS ANGELES, CALIFORNIA APRIL 3, 2009
4 DEPARTMENT NO. 23 HON. ZAVEN V. SINANIAN, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: GABRIELLE AMMON, CSR #5202
7 TIME: 9:19 A.M.
8

9 **THE COURT:** Rita Pauker versus Rabbi Samuel Ohana.

10 **MR. COHEN:** Good morning, your Honor. I'm Baruch
11 Cohen, B-a-r-u-c-h, Cohen, C-o-h-e-n, representing Rita
12 Pauker, who is with me in the court.

13 **MR. SOBEL:** Your Honor, Scott Sobel, S-o-b-e-l, for
14 Rabbi Ohana and the Beth Midrash.

15 Would it be all right if the rabbi stands by
16 me?

17 **THE COURT:** Yes, please.

18 Okay. The court has read and considered the
19 petition to confirm the arbitration award and motion to
20 disqualify attorney Ben-Cohen. I will invite the parties
21 to address the issue of the petition to confirm
22 arbitration first.

23 Moving party may be heard at this time.

24 **MR. COHEN:** That is I, your Honor. Can I use this
25 lectern? Because I have notes, and I would prefer to be
26 able to read it.

27 **THE COURT:** That's fine.

28 **MR. SOBEL:** Your Honor, may I, for a moment, please.

1 **THE COURT:** Yes.

2 **MR. SOBEL:** The motion to disqualify, it seems,
3 should be heard first. Because if it has merit, then
4 Mr. Cohen would not be available to be heard on the
5 petition itself. The motion was filed for this date
6 first. The petition was apparently improperly filed
7 earlier, and it was rejected, and then refiled for this
8 date. Therefore, I believe the petition must be heard
9 second.

10 **THE COURT:** All right. So we can do that. We can
11 argue the motion to disqualify first.

12 You may proceed.

13 **MR. COHEN:** It's his motion.

14 **THE COURT:** I understand.

15 **MR. SOBEL:** Thank you, your Honor.

16 I believe that all -- that much has been said.
17 And if the court has had an opportunity to read both the
18 motion, the opposition, and the reply -- I must apologize
19 that my reply was late, because I got it in after the
20 holiday because I was delayed on Monday.

21 Has the court had an opportunity to read the
22 reply?

23 **THE COURT:** I have read all the papers.

24 **MR. SOBEL:** I appreciate that, your Honor. And
25 therefore, I would defer to hear the court's inclination
26 or any inquiries the court has in regard to the motion.

27 **THE COURT:** Well, first of all, let me address the
28 issue of the objections. The objections lodged in the

1 matter are improper. The way they are submitted, they
2 are -- they're set forth by way of substantial parcels of
3 evidence and testimony and asserting that somewhere
4 within, there is some evidence which is objectionable, and
5 the court is required to ferret those out. It appears
6 that that's not a proper way to present objections to the
7 court, and therefore, the court will decline to rule on
8 the evidentiary objections.

9 As far as the disqualification is concerned,
10 the court's tentative ruling on that issue is to deny the
11 motion to disqualify. While it is clear that the Rule of
12 Professional Conduct 2-100 provides that while
13 representing the client, a member shall not communicate
14 directly or indirectly about the subject of the
15 representation with a party the member knows to be
16 represented by another lawyer in the matter, unless the
17 member has the consent of the other lawyer.

18 These violations, it appears to me, under
19 current law result in the disqualification if the
20 transgression will have a continuing effect on the
21 litigation. Disqualification is not an appropriate
22 punitive measure. The complaint states that the
23 information gleaned from attorney Bohrer, who should be
24 noted does not represent Pauker, was transmitted to
25 attorney Ben-Cohen, who then attempted to utilize the
26 information to extort a settlement from Rabbi Ohana by
27 creating a conflict between him and his lawyer, attorney
28 Sobel, which settlement was ultimately rejected.

1 There is no continuing effect delineated with
2 adequate specificity in the motion, and I cannot conjure
3 one up which pertains to the narrow matter before us;
4 namely, the confirmation, correction, or vacation of the
5 Bais Din --

6 Is that correct way to say it?

7 **MR. SOBEL:** Bais Din or Bais Din.

8 **THE COURT:** -- arbitration award. And therefore,
9 the motion to disqualify attorneys Bohrer and Ben-Cohen is
10 denied, in addition to the sanctions issue. I will
11 address that briefly.

12 The request for sanctions is based on conduct
13 in violation of CCP 128.5. 128.5 is inapplicable to
14 actions filed after December 30, 1994. And therefore,
15 sanctions are denied.

16 You may address the court.

17 **MR. SOBEL:** Your Honor, as I pointed out in the
18 motion itself -- oh, may I make a correction? The court
19 has referred to my opponent as Ben-Cohen, but it would be
20 Baruch.

21 **THE COURT:** Thank you. I apologize.

22 - You may proceed.

23 **MR. SOBEL:** And I'd like to correct myself. He's
24 not always my opponent. He's also been my friend for a
25 long time, and I appreciate that.

26 First of all, your Honor, and particularly --
27 well, the question of whether it may taint the
28 violation -- let's go directly to the violation. I'm

1 sorry. It's clear that Mr. Bohrer was a representative as
2 counsel of Ms. Pauker previously in this litigation, and
3 we're not privy to the current nature of that
4 representation. That was not addressed in any of the
5 declarations. I had called it a negative pregnant, that
6 the declaration failed to inform the court whether that
7 relationship continued at the time.

8 Now, Mr. Bohrer did not appear in this matter
9 because he, as I understand, passed or referred the matter
10 to Mr. Cohen for his expertise in dealing with matters of
11 Bais Din, the religious court. In the Jewish religious
12 court. But there's no indication that he did not continue
13 to represent her. And every indication is that he was
14 cc'd on all correspondence both before the Bais Din
15 proceeding and after, as recently as in February and
16 during this litigation.

17 It's clear that Mr. Cohen employed Mr. Bohrer
18 to conduct the service. It's clear that Mr. Cohen sent
19 him there that -- and so Mr. Bohrer was acting as
20 Mr. Cohen's agent. As I indicated in the reply papers, I
21 don't presume that Mr. Cohen said "Talk to the rabbi. Try
22 and get as much information as you can." I don't believe
23 that occurred.

24 But what did occur is that Mr. Cohen took the
25 information and used it as a sword against the rabbi and
26 myself and attempted to interfere with the relationship
27 between client and counsel, as I pointed out, by pointing
28 out what he believed to be an admission by Rabbi Cohen to

1 Mr. Bohrer during that improper conversation.

2 Thereby, he did not distance himself from or
3 shield himself from the violation. He adopted the
4 violation. He ratified it using it as a sword. Using it
5 as a sword to attempt to interfere with the relationship
6 between client and counsel has a clear tainting effect on
7 the litigation.

8 Now, the other issue is, we don't know the
9 content of all the discussions, but they certainly have
10 tainted the litigation, the conduct of counsel, the
11 conduct of settlement discussions, and the conduct of the
12 two of us at this table before this court. Therefore, I
13 believe the disqualification is proper, particularly since
14 Mr. Cohen did not come to the court and say, I apologize
15 for what my agent did. I apologize for the use I made of
16 the information he gained from it. He didn't come and
17 humble himself. He came and said -- he lied about his
18 e-mail to me. He mischaracterized it. And that conduct
19 should be noted and dealt with severely.

20 I don't say disqualification should be used as
21 a punishment. The cases are clear that it is not a
22 punishment, but to avoid tainting the litigation --
23 Mr. Cohen is here representing himself today -- to avoid
24 disqualification, to get fees. And that, in and of
25 itself, I would argue, should be seen as a conflict of
26 interest. Though that's not my conflict of interest, it's
27 Ms. Pauker's. She's in the courtroom.

28 So for many reasons, disqualification is a

1 proper measure.

2 **THE COURT:** Thank you.

3 Mr. Cohen, you may respond.

4 **MR. COHEN:** Your Honor, I just want to note that
5 counsel did not address your Honor's comment as to how
6 there is a continuing effect and how it's prejudicial. We
7 heard the same conclusion being used, but no evidence was
8 presented, no argument was presented as to how there is a
9 continuing lingering effect as to anything that's
10 prejudicial.

11 I want to point out, we don't know how many
12 more parties to this case can sign declarations under
13 penalty of perjury to say emphatically that Mr. Bohrer was
14 not counsel of record to Rita Pauker. I have obtained
15 declarations from every one of the three arbitrators who
16 state he wasn't counsel. I have a declaration from
17 Mrs. Pauker who says he wasn't counsel. I've got a
18 declaration from Jeffrey Bohrer, the witness in the
19 arbitration, who says he wasn't counsel.

20 So to ignore declarations under penalty of
21 perjury, and to then make a claim out of whole cloth that
22 somehow he is counsel, or the theory that counsel says,
23 well, I'm not aware if he is or isn't, but there is no
24 evidence that he was counsel. We have a statement by the
25 lawyer and the client and the rabbi and the arbitrator
26 saying he wasn't.

27 We also have a declaration from Mr. Bohrer who
28 says emphatically that his role in this case was that of a

1 peacemaker. He was Rabbi Ohana's student many years ago.
2 He was also a congregant of Rabbi Pauker. His role was
3 not that of a lawyer. His role was try to bring peace
4 within the Jewish community between two rabbis who he had
5 cared for very much. He was cc'd not because he referred
6 me the case but because he was trying to effectuate peace.
7 That's the only evidence that's before you as to his role.

8 So I agree with this court's tentative. I
9 cannot conjure up a theory of prejudice or lingering
10 prejudice. There is none. I should also state that the
11 only evidence of this -- of this conversation that
12 occurred between Rabbi Ohana and Mr. Bohrer was my letter
13 afterwards, after the conversation took place. I've
14 written a declaration under penalty of perjury, Mr. Bohrer
15 did, that he was not authorized to make any -- have any
16 such conversation with Rabbi Ohana.

17 And in fact, I didn't take advantage of this
18 settlement discussion. What I did was the responsible
19 thing. I communicated with opposing counsel, Mr. Sobel.
20 I verified the terms of the settlement. And I'm just
21 amazed that a letter that says on its caption that this
22 letter is pursuant to the Federal Rules of Evidence 408,
23 and it's pursuant to Evidence Code 1152, and no part of
24 this letter can be used for any other reason, I'm amazed
25 that a lawyer presents a settlement letter into evidence
26 to establish the substance of what was being said.

27 And the only evidence of there being a
28 conversation was my confirmation letter of settlement

1 discussions that I sent to counsel. No prejudice
2 whatsoever. So, again, I'd just submit that the theory
3 that any violation by Mr. Bohrer, to the extent one
4 existed, trickles to me and is imputed to me, I reject.
5 There's no case law or facts presented to support it.
6 There's no prejudice to the sharing of this communication,
7 which is inadmissible in the first place, which I shared
8 with counsel. Didn't share with anyone else.

9 I ask that you adopt your tentative and deny
10 the motion.

11 **THE COURT:** Thank you.

12 Mr. Sobel, would you like to respond to this?

13 **MR. SOBEL:** There are two things that I would ask
14 the court to indicate. First, Mr. Cohen seems to fail to
15 read the intent of Evidence Code Section 452. I made that
16 point in my reply at the outset. These communications
17 were not used to prove liability. Liability is not an
18 issue. I think that's -- that's a red herring that
19 Mr. Cohen needs to be corrected on.

20 And if this court fails to even suggest to
21 Mr. Cohen that he change his tactics, that he change his
22 behaviors, and he change his attitudes toward litigation,
23 toward counsel, toward the court, that he's going in the
24 wrong direction. If he is to not be disqualified, I
25 believe that he should be sanctioned. I don't mean,
26 necessarily, monetarily. I don't mean, necessarily, in
27 any way other than that the court would have sharp words
28 for the tactics he used in this litigation.

1 I did say to the court, as I've said in our
2 motion, we do not know the whole content of this
3 approximately one-hour conversation between counsel for
4 Ms. Pauker and Rabbi Ohana. And we don't know how such
5 information may be used in the next hearing in this
6 matter.

7 If the court has no contempt for the actions
8 of the attorneys on the other side, including Mr. Bohrer,
9 who has been Ms. Pauker's attorney for years, then I'm
10 personally quite surprised. I thank the court for the
11 time.

12 **THE COURT:** Thank you.

13 The court will not give an advisory opinion to
14 Mr. Cohen regarding any conduct here. I think Mr. Cohen
15 is well aware of his obligations. And I find that the
16 court's tentative is appropriate under the circumstances.
17 The court will adopt its tentative as the final order in
18 this case. I will ask the moving party to prepare Notice
19 of Ruling regarding this issue; that is, the motion to
20 disqualify.

21 As attorney Cohen is not disqualified, I will
22 ask attorney Cohen at this time to address the issue of
23 the petition to confirm the arbitration award. I will
24 indicate to you what my tentative is with regard to the
25 petition to confirm the arbitration.

26 The crux of the issue is, it appears to me,
27 the issue of whether or not there was a prejudging of the
28 case. While the court's tentative ruling is to deny the

1 motion to confirm the arbitration and vacate the award, it
2 appears to me from the evidence presented that accepting
3 Rabbi Sauer's declaration -- and I have no reason to doubt
4 it -- the fact remains that Rabbi Sauer's quotation could
5 create the strong impression in the mind of a reasonable
6 observer that the matter had been prejudged by him; in
7 other words, that a person aware of the facts to
8 reasonably entertain a doubt that the proposed arbitrator
9 would be able to be impartial.

10 In light of this role, the statement to the
11 media in the context of the instant matter -- however
12 misconstrued it may be and however unbiased Rabbi Sauer
13 may be -- could cause a reasonable person to entertain
14 doubts as to Rabbi Sauer's impartiality. This information
15 should have been disclosed pursuant to Rabbi Sauer's
16 obligation under CCP 1289(a)(1). The failure to do so is
17 grounds for a mandatory vacation of the award under the
18 CCP 1286.2(a)(6), which specifies that the court shall
19 vacate an award upon finding grounds to do so.

20 Mr. Cohen, you may address the court.

21 **MR. COHEN:** Your Honor, can I just address that
22 issue? Or I don't have to address any of the other
23 ancillary issues in the petition to confirm?

24 **THE COURT:** Well, you're welcome to address whatever
25 you think is important, but I think that's the crux of the
26 issue here.

27 **MR. COHEN:** Then let me focus on that for now.

28 **THE COURT:** Thank you.

1 **MR. COHEN:** CCP 1281.9(a)(1) states (Reading:)

2 *The existence of any ground*
3 *specified in Section 170.1 for*
4 *disqualification of a judge.*

5 It makes reference to 170.1. I now look to
6 170.1. CCP 170.1(a) states:

7 *A judge shall be disqualified if*
8 *any one or more of the following is*
9 *true.*

10 Subsection (1)(a) states:

11 *The judge has personal knowledge*
12 *of disputed evidentiary facts concerning*
13 *the proceeding.*

14 Rabbi Sauer has signed a declaration under
15 penalty of perjury. Stated that he had no personal
16 knowledge of the disputed evidentiary facts concerning
17 this proceeding at all. Rabbi Sauer's declaration states
18 that he never heard of plaintiff Rita Pauker before the
19 trial -- before the arbitration. He stated that he was
20 completely unfamiliar with the dispute prior to the
21 hearing. He stated that he was not consulted about the
22 specifics of this case and was unaware of the particular
23 dispute prior to trial.

24 Rabbi Sauer has also stated in his declaration
25 that as a matter of professional practice, and pursuant to
26 Jewish law, he does not and cannot give tentative rulings
27 to disputed matters unless both parties are present before
28 him. And both parties were never present before him.

1 And if you read the blog in question -- you
2 know, your Honor, I try not to read blogs because they're
3 usually anonymous. You don't know who's writing them. If
4 you read the different blogs, some of the blogs -- and
5 I'll spell it -- Chaptzem blog, C-h-a-p-t-z-e-m, has no
6 author. We don't know who wrote. Who's accountable for
7 that statement? The one blog that has an author's name is
8 Brad Greenberg.

9 **THE COURT:** The Daily Journal one -- I'm sorry.

10 **MR. COHEN:** The Jewish Journal.

11 **THE COURT:** Right. The Jewish Journal.

12 **MR. COHEN:** And in that article, a careful reading
13 of the article does not show that Rabbi Sauer was making
14 comments about this particular matter. After the
15 reporter -- after this blogger did an analysis of the
16 dispute between Rabbi Pauker and Rita -- between Rabbi
17 Ohana and Rita Pauker, he then shifts into narrative. And
18 it's in that separate paragraph, and he says (Reading:)

19 *"Lending a Torah to a synagogue is*
20 *a common way Jews fulfill a mitzvah, or*
21 *a good deed..."*

22 M-i-t-z-v-a-h.

23 *"...or a good deed," said Rabbi*
24 *Nachum Sauer, who teaches Torah studies*
25 *at Yeshiva University High Schools of*
26 *Los Angeles. "It is on long-term loan*
27 *to their synagogue, but he still owns*
28 *it," Rabbi Sauer said.*

1 Note, your Honor, that that quote does not
2 talk about Rabbi Ohana. It doesn't speak about Rita
3 Pauker. Rabbis receive inquiries all the time. They go
4 to synagogue. They're bombarded with people asking
5 questions. Is this kosher? Is that okay? Many times
6 generic or hypothetical questions are presented all the
7 time. Reporters call all the time. But there's nothing
8 connecting that statement and that quote to this dispute.

9 Rabbi Sauer's an expert in Jewish law, and he
10 receives -- and he states in his declaration that he
11 receives many inquiries on a daily basis -- I think he
12 said hundreds -- about Jewish law. And hardly a day goes
13 by without him receiving numerous queries regarding Jewish
14 law. And Rabbi Sauer believed that the quote attributed
15 to him in the article may have come from one of the
16 thousands of inquiries that he receives about Jewish law
17 concerning disputed ownership of religious objects,
18 including Torahs. It is a issue that is addressed in
19 Torah lectures in Los Angeles, all over the country, all
20 over the -- all the time. Furthermore, Rabbi Sauer wrote
21 in his declaration, that he has spoken publicly on this
22 hypothetical issue numerous times.

23 So the implication that the court speaks
24 about, really, if you look at it carefully and you look at
25 the article carefully, doesn't really have that
26 implication, because there is no connection between Rabbi
27 Sauer's comment to the dispute in question.

28 Going beyond that, we have the issue of

1 waiver.

2 **THE COURT:** If I may.

3 **MR. COHEN:** Yes.

4 **THE COURT:** My focus has been on 170.1(a)(6),
5 subsection 3, which provides that disqualification is
6 appropriate when a person is aware of facts that might
7 reasonably entertain a doubt that the judge would be able
8 to be impartial. I think that's what the focus should be.

9 **MR. COHEN:** And on that, your Honor, we still need
10 evidence on that. Why?

11 I find out after the fact that I was quoted in
12 some blog somewhere. I'm not aware of 99 percent of the
13 times my name appears on a blog. I know that within the
14 Jewish community, it's frowned upon to read these
15 anonymous blogs because they're prone to defamation,
16 speaking bad about somebody. It's not something we want
17 to promote.

18 So the fact that his name appears on a blog
19 has no evidentiary effect that Rabbi Sauer even knew his
20 name appeared on the blog. There was no discovery taken.
21 There's no evidence to show that he knew his name appeared
22 on a blog. In fact, your Honor, I'm willing to bet you
23 don't even know if your name appears on a blog somewhere
24 in Texas or even in Los Angeles. You would have no way of
25 knowing.

26 And unless there's evidence by Rabbi Ohana
27 that Rabbi Sauer knew of this blog, that he knew that his
28 name was being quoted, then I would submit that that

1 second subsection of 170 -- 107 that your Honor just cited
2 would be inapplicable, because there's no foundation that
3 he knew. If he didn't know, how could he be charged with
4 a duty to disclose? It's pretty elementary. The only
5 time I have an obligation to disclose is when I'm aware of
6 a situation.

7 **THE COURT:** Mr. Cohen, the focus was on Daily News
8 of Los Angeles. Are you suggesting that that is a blog.
9 And the source is Brad Greenberg. Are you suggesting
10 that's a blog?

11 **MR. COHEN:** I'm suggesting that I don't even know
12 that he reads The Daily News. There's no evidence that he
13 reads The Daily News.

14 **THE COURT:** Who reads The Daily News?

15 **MR. COHEN:** Rabbi Sauer. There is no -- there is no
16 evidence that he reads it. There is no evidence that he
17 subscribes to it. And by the way, if it's a requote from
18 the Brad Greenberg article, then the same -- I don't want
19 to use the word "naivete," because that's not capturing
20 the message I want to convey -- but the same -- and the
21 word "ignorance" doesn't capture it either -- but the same
22 not knowing that your name is being quoted, you know, in
23 this particular dispute. Right?

24 So there was an L.A. Times article. A
25 Jewish -- a Jewish Journal article. If someone tells me
26 that there's some paper in Israel quoting me, I would have
27 no way of knowing. I don't know. I don't read it.

28 **THE COURT:** So you are essentially challenging the

1 veracity of the author of this article next to the quote
2 attributed to Rabbi Sauer.

3 **MR. COHEN:** Correct. I'm questioning the veracity
4 to the extent that it doesn't quote Rabbi Sauer vis-a-vis
5 this dispute. We have a declaration from Rabbi Sauer
6 offering no -- no -- distancing himself from it, saying he
7 never had a substantive conversation about this case.

8 And that if somebody comes over to you, your
9 Honor, and says, you know, what's the statute of
10 limitations for a contract, and you tell a reporter, and
11 then he links that quote to a dispute, you know, it's an
12 unfair linkage. And it's a reporter. You can't take the
13 words of a blog or a reporter over the sworn declaration
14 of the rabbi in question who says he had no preknowledge
15 of this.

16 You know, if he knew, then I could -- I would
17 venture to agree with your Honor. But if he didn't know
18 about the dispute, he didn't know about the facts of the
19 dispute, and he doesn't even know that there's a blog
20 quoting him out there -- and even if it's The Daily News,
21 who says he read it? Maybe he doesn't read newspapers.
22 Maybe --

23 **THE COURT:** Well, it's not -- the important issue is
24 not whether or not he read it. The important issue is
25 whether or not he made a statement that could be
26 reasonably construed to have prejudged the case. And I
27 think the crux of the issue is when he is quoted as
28 saying, and it is in quotations (Reading:)

1 *"It is on long-term loan to their*
2 *synagogue, but he still owns it..."*

3 Unquote.

4 ...Sauer said as to the Torah.

5 **MR. COHEN:** That could easily be understood. A
6 person asks a hypothetical, gee, what's the -- what's the
7 Jewish law when a man donates a Torah to a Jewish
8 institution? What's the law? I myself have donated a
9 Torah to a Jewish institution, so I had to research this
10 law, and I went to rabbis myself. Or what if the quote
11 was because this reporter was sitting at one of the
12 lectures of Rabbi Sauer, and he heard a lecture, and he
13 heard about the hypothetical issue being discussed?

14 So there's no connection to this dispute.
15 There just simply isn't. If there was -- and even though
16 the quote was put in quotes, it still wasn't a quote. The
17 reporter didn't say, you know, I asked Rabbi Sauer about
18 the Pauker-Ohana dispute, and he told me the following,
19 then I would concede with the point.

20 But if the art -- we all know how reporters
21 piecemeal stories together. We know that you ask an
22 expert opinion, he doesn't necessarily comment about the
23 facts of the case, but he tells you what is the
24 hypothetical law on this issue. Because a reporter does
25 this? And there's no evidence that the rabbi even knows
26 that it's in print. Again, we're missing a fundamental
27 foundation. If there was evidence that Rabbi Sauer even
28 knew about the blog, and if he knew about The Daily News,

1 there's room to argue whether he had an obligation to
2 disclose it. But if the man didn't know it --

3 **THE COURT:** Well, that's not the issue, whether he
4 has an obligation to disclose. The obligation to disclose
5 is whether or not he has information about the case that
6 would cause him to prejudge the case, and it would require
7 him to make a disclosure to the parties that would be --
8 disclosure that -- you know, I may know of facts or I may
9 have a belief that may be contrary to what you are trying
10 to achieve. I think that's the issue here, not whether or
11 not he knew about this article being published. It's
12 whether or not it would give a reasonable person the
13 impression that the rabbi's mind was made up before the
14 arbitration.

15 **MR. COHEN:** Let's go to the videotape, as they say.
16 Let's look at Rabbi Sauer's declaration, and let's
17 actually read it. It's page 17 to the reply. And I think
18 his declaration really, really emphatically addresses all
19 of this. Rabbi Sauer --

20 Your Honor, do you have the declaration?

21 **THE COURT:** Yes. Please go ahead.

22 **MR. COHEN:** Rabbi Sauer testified that he did not --
23 paragraph 5 (Reading:)

24 *I did not --*

25 I'm going to quote it verbatim.

26 *I did not have personal knowledge*
27 *of the disputed evidentiary facts*
28 *concerning this proceeding before the*

1 trial.

2 Paragraph 6:

3 I never heard of plaintiff Rita
4 Pauker before the trial.

5 Paragraph 7:

6 I was completely unfamiliar with
7 the dispute prior to the hearing.

8 He could have said "I'm unfamiliar." He says
9 "I'm completely unfamiliar," leaving no room for doubt.

10 Paragraph 8:

11 I was not consulted about the
12 specifics of this case and was unaware
13 of the particular dispute prior to
14 trial.

15 That's as blanket ironclad a denial that he
16 had zero involvement at all. Plus, he even supports it
17 even further in paragraph 9. Not only did he factually
18 not have any involvement, but nor would he, because:

19 As a matter of personal and
20 professional practice, and pursuant to
21 Jewish law, I cannot and do not give
22 tentative rulings to disputed matters
23 without both sides being present before
24 me.

25 Paragraph 10 of Rabbi Sauer's declaration:

26 Regarding the article in question
27 that seems to quote me, a careful
28 reading of the article does not state

1 that I made them regarding this case.
2 That article cites, "Lending a Torah to
3 a synagogue is a common way Jews fulfill
4 a mitzvah, or a good deed," says Rabbi
5 Nachum Sauer, who teaches Torah studies
6 at Yeshiva University High School of Los
7 Angeles. "It is on long-term loan to
8 their synagogue, but he still owns it,"
9 Sauer said. And the quote attributed to
10 me does not cite Rabbi Samuel Ohana or
11 Rita Pauker.

12 Paragraph 11, Rabbi Sauer says:

13 I am an expert in Jewish law
14 (Halacha)...

15 H-a-l-a-c-h-a:

16 ...and I receive many inquiries on
17 a daily basis about Jewish law. Hardly
18 a day goes by without me receiving
19 numerous queries regarding Jewish law.

20 I believe that the quote
21 attributed to me in the article may have
22 come from one of thousands of queries
23 that I receive about the Jewish law in
24 general concerning disputed ownership of
25 religious objects, including Torahs.

26 Further the RCC Bais Din...

27 B-a-i-s D-i-n.

28 ...has adjudicated disputes about

1 ownership of Sifrei Torah...

2 Which is S-i-f-r-e-i T-o-r-a-h. That's plural
3 for Sefer Torah.

4 ...in the past, and this case is
5 not the first case about disputed Sifrei
6 Torah. I have spoken publicly on the
7 general parameters of Jewish law on the
8 subject law in general.

9 Having said that -- I don't want to beat a
10 dead horse. But having said that, I do want to shift to
11 the issue of waiver. Because even if there is an issue,
12 even if there is an issue, we have the fundamental problem
13 with Rabbi Ohana waiving this issue.

14 And I draw your attention, your Honor, to the
15 arbitration agreement, or even before the agreement. I
16 signed a declaration under penalty of perjury stating that
17 on June 13th, 2008, I extended a professional courtesy to
18 Rabbi Ohana before merely summoning him to Bais Din,
19 because he's a rabbi in the community. The proper
20 protocol -- and I've done Bais Din cases in the past with
21 rabbis. You don't just merely summon them to a Bais Din.
22 It's an affront to their honor. It's not respectful.
23 It's one rabbi issue a summons to another rabbi. The
24 preferred approach is to have the rabbi agree in advance
25 so as not go through -- suffer the indignity of being
26 summoned.

27 So that's what I did. I called Rabbi Ohana on
28 June 13th. And Rabbi Ohana told me of a private ruling

1 that he received from Rabbi Sauer. I checked. I
2 verified. I spoke to the administrator of the RCC, Rabbi
3 Union, who verified back that no private ruling was ever
4 issued.

5 Rabbi Ohana also told me about negative media
6 coverage in blogs. Obviously, he knew about this Rabbi
7 Sauer issue because he put it as an issue to me. No, I
8 don't want to go to Bais Din because I have a private
9 ruling exempting me from going. And, B, I don't like the
10 negative blogs that are out there.

11 Rabbi Union writes a declaration under penalty
12 of perjury that he had a conversation with Rabbi Ohana to
13 try to get him to go to arbitration. And Rabbi Ohana
14 raised the issue of a private ruling with Rabbi Sauer, and
15 Rabbi Union told him no such thing. There was no private
16 ruling being given. And ultimately, on July 16th, 2008,
17 the parties signed an arbitration agreement.

18 In the arbitration agreement it says,
19 quote-unquote (Reading:)

20 *We further agree that the*
21 *controversy be heard and determined by*
22 *the following arbitrators: Rabbi Nachum*
23 *Sauer --*

24 N-a-c-h-u-m S-a-u-e-r, and the other two
25 rabbis.

26 So if, indeed, there was a problem, if,
27 indeed, there was an issue, Rabbi Ohana knew about it
28 beforehand, he signed an arbitration agreement

1 specifically agreeing to Rabbi Sauer being on the panel.
2 And, in fact, on July 27th, 2008, when we had the
3 arbitration, Rabbi Sauer was sitting right in front of
4 him. Mr. Sobel was not counsel of record at the Bais Din
5 case, so he wouldn't know what happened. Rabbi -- it was
6 a small conference room. Three rabbis, Rabbi Ohana,
7 myself, Rita Pauker, and Jeffrey Bohrer, the witness.
8 That's it.

9 Had Rabbi Ohana had an objection as to Rabbi
10 Sauer, he would have raised it at some point, but he
11 didn't. He completely waived any objection he would have.
12 He had pretrial knowledge, pre-arbitration knowledge of
13 Rabbi Sauer. His claim that he discovered it in February
14 is patently false. He certainly knew about it on the day
15 of trial.

16 If Rabbi Ohana chose not to read the
17 arbitration agreement or not to read my brief, that's his
18 problem, but he had every opportunity to object to the
19 presence of Rabbi Sauer and he didn't. He signs an
20 arbitration agreement acknowledging that Rabbi Sauer will
21 be the arbitrator. And on the day of trial, on the day of
22 the arbitration, he does not make it an issue.

23 I submit to your Honor that that is as clear a
24 waiver of any defect, and it cannot be raised now for
25 convenient litigation purposes to seek some type of
26 tactical advantage to try to squirm out of an award that
27 he lost. And again, going back to what I said earlier
28 about Rabbi Sauer, there's no foundational predicate that

1 Rabbi Sauer knew about this blog. There was no need for
2 him to disclose something that there's no evidence that he
3 knew of.

4 **THE COURT:** Thank you.

5 Mr. Sobel, would you like to respond?

6 **MR. SOBEL:** Thank you, your Honor.

7 There's been a lot of reference to anonymous
8 blogs, but the court corrected Mr. Cohen. This is not a
9 blog. It was not anonymous. This was an article that
10 appeared in The Daily News, a newspaper of record. I'm
11 not sure it's of record, whether -- legal publications
12 may -- I take that back. It is a newspaper that's
13 published daily in our community.

14 Second, the author of the article -- and I
15 just want to preface this. Had I had resources from my
16 client to take depositions and to really discover the
17 facts, I would have taken the opportunity to do that,
18 although there's a very short time period in which to do
19 so. But as my client has indicated by declaration, he
20 personally lives with his wife and their adult dependent
21 son on social security. He personally volunteers and does
22 not having -- derive any income from his rabbinic services
23 to the synagogue, although he occasionally, as I
24 understand, performs a wedding and takes a fee or performs
25 a funeral for a fee. But he is not on salary.

26 And the corporation, which is the Beth
27 Midrash, B-e-t-h M-i-d-r-a-s-h, it's one of the parties,
28 is a corporation that's in the hole all the time because

1 of the annual expenses. Mr. -- I'm sorry -- Rabbi Ohana
2 received a waiver of fees from the court because of his
3 declaration for his personal financial circumstances. Of
4 course, a corporation is not eligible for that.

5 Therefore when I asked Rabbi Ohana to
6 authorize me and fund taking of depositions in this
7 matter -- and as the court's probably aware, I'm serving
8 pro bono in this matter -- he said there are no funds to
9 pay for depositions at the expenses that they would cost.
10 I would have loved to have deposed Brad Greenberg about
11 the article, and I would have enjoyed deposing Rabbi Sauer
12 as well on his knowledge.

13 In any event, back to the argument. That's
14 the reason we don't have the evidence that would be --
15 would be desired here. This is an article written on the
16 basis of interviews. We see that at the end of the quote
17 it says "said Rabbi Sauer." It doesn't say "Rabbi Sauer
18 wrote in an article" or "Rabbi Sauer stated in a lecture
19 on the subject." It says "said Rabbi Sauer."

20 We don't have any reason to believe that the
21 reporter for the Daily Journal attends Rabbi Sauer's
22 frequent Torah law lectures. If we were to speculate, we
23 would speculate, I'm sure, to the contrary. Rabbi Sauer
24 does not say in his declaration, gee, this is an identical
25 quote of an article that I wrote and that was published in
26 this journal at a certain time on this subject. No, he
27 doesn't say that. He doesn't deny that it's something
28 that he said.

1 Counsel asks us to engage in lots of
2 speculation that the article is not what it appears to the
3 eye to be. The article appears to be based on an
4 interview of the rabbi and a quote of the rabbi on the
5 subject. Counsel asks us to speculate that the rabbi had
6 no knowledge of the names of the parties or the facts of
7 the case when he gave a Torah opinion or a legal opinion
8 on what the Torah law would say in the matter.

9 I think it would be more proper to speculate
10 that the rabbi would never give an opinion on the law if
11 he didn't understand the underlying facts. One can never
12 give an opinion on the law or state a rule of law without
13 knowing the facts underlying the question, because the
14 question may not be phrased properly. So one has to have
15 context. Any judge or any rabbi who acts as a judge would
16 not do so.

17 Third point. Rabbi Sauer seems to forget a
18 lot. We have evidence that Rabbi Ohana called Rabbi Sauer
19 as a legal authority in Jewish law in this matter and
20 said, Rabbi, here's the situation. What is the rule? And
21 the rabbi said, the Torah scrolls belong to the synagogue,
22 it would appear. Rabbis give legal rulings or advisory
23 rulings to their congregants and to other rabbis every
24 day. This is not prejudging a disputed case. This is
25 giving advice or giving question.

26 We, Mr. Cohen and I, presume -- call our
27 rabbis all the time. He said he called rabbis. He spoke
28 to rabbis before he donated a Torah to a synagogue to

1 determine the laws of the matter. We do this on a daily
2 basis.

3 There's no reason to believe that Rabbi Ohana
4 did not make such phone calls to Rabbi Sauer. Rabbi Sauer
5 denies any prior knowledge of the case in his declaration.
6 It appears that Rabbi Sauer forgets everything. He
7 forgets talking to Rabbi Ohana about the case. He forgets
8 being interviewed by a Daily Journal -- Daily News
9 reporter and giving a response to the reporter.

10 The next side point, possibly. What is a
11 judge? One who sits as an arbitrator on a daily basis in
12 a Bais Din or an arbitration court that sits daily and
13 judges cases in Los Angeles. What's he doing giving
14 quotes, talking to journalists about cases? It's very odd
15 that Rabbi Sauer forgets both conversations with a
16 reporter and with a rabbi asking an opinion.

17 The question of waiver is absurd. First of
18 all -- I'm sorry. I wanted to bring up the fact that I
19 made an objection to paragraph 17, to one particular
20 sentence in paragraph 17, as speculation. I'm sorry.
21 Paragraph 17 is Rabbi Sauer. I had moved my place.

22 I'm sorry. It's paragraph 11 of Rabbi Sauer
23 where Rabbi Sauer says (Reading:)

24 *I believe the quote attributed to*
25 *me in the article may have come from one*
26 *of thousands of queries I receive about*
27 *Jewish law.*

28 *Et cetera, et cetera.*

1 Speculation, I believe. I think that that
2 should not be considered as evidence for any means,
3 because it's clearly speculation.

4 Now on the waiver issue. As I pointed out in
5 the reply, Mr. Cohen was quoted in The Jewish Journal
6 article as stating that he had mailed a -- an arbitration
7 brief to Rabbi Ohana two weeks before the arbitration
8 hearing or the Bais Din proceeding. Mr. Cohen apparently
9 corrects that in his declaration here that he handed it to
10 him on the date of the hearing. We have no evidence that
11 he handed it to Rabbi Ohana before or after Rabbi Ohana
12 signed the arbitration agreement appointing the three
13 rabbis to be the judges in the case.

14 Rabbi Ohana has stated that he didn't read it.
15 That he was unaware of the article at any time before.
16 Oh, Mr. Cohen said, obviously Rabbi Ohana -- in this
17 conversation with Mr. Cohen before -- had read all the
18 blogs and was aware of this article and Rabbi Sauer's
19 involvement. That is not obvious at all. That's asking
20 for wild speculation.

21 As Mr. Cohen's briefs point out, this case has
22 been reported in numerous articles, news items, even on
23 television. The arbitration brief in his reply
24 referred -- has a transcript of a Channel 7 news report
25 about this case prior to the arbitration proceeding. But
26 there's no evidence that Rabbi Ohana was aware of Rabbi
27 Sauer's quote.

28 And in fact, it was in February, on

1 February 5, after Rabbi Ohana had spoken to me about
2 handling the matter for him, in terms of the award that
3 was issued, I went on the internet. I found the Rabbi
4 Sauer quote. I faxed it to Rabbi Ohana. And I'm here to
5 state to the court that he was flabbergasted. He was
6 beside himself with surprise and indignation that Rabbi
7 Sauer had actually given an interview to a newspaper on
8 the case.

9 There's every reason to believe, your Honor,
10 that the court's tentative is the correct ruling: That
11 there is reasonable doubt that an impartial prejudgment of
12 the case occurred; that Rabbi Sauer had heard the facts
13 and had given an opinion. There is every -- there is
14 clear evidence that he had spoken to the newspaper. He
15 was quoted in the newspaper on the subject. And the
16 attempt to distinguish the matter, to point out that he
17 didn't use the name Pauker or Ohana in the quote that
18 Mr. Greenberg chose to put in the paper, is a red herring
19 again.

20 There's no evidence that Rabbi Ohana had
21 knowledge of Rabbi Sauer's quote before Rabbi Ohana signed
22 the arbitration agreement. And there's every reason to
23 vacate the award, as the court has indicated the tentative
24 is to do, and to allow this matter to be heard by an
25 impartial tribunal if it cannot be settled between the
26 parties, which it's my hope that it would be.

27 Thank you, your Honor.

28 **THE COURT:** Thank you.

1 Mr. Cohen, would you like to respond briefly?

2 **MR. COHEN:** Yes. Briefly, your Honor.

3 There is no declaration from Rabbi Ohana that
4 he had a conversation with Rabbi Sauer. It's a myth.
5 What you just heard was a complete fabrication. I just
6 checked both declarations of Rabbi Ohana. He doesn't
7 state it once. It's a boldfaced lie made out of whole
8 cloth.

9 The fact that Mr. Sobel decided to commit
10 malpractice and not conduct any depositions to provide him
11 with evidence to support his motion to disqualify is
12 lamentable. It's a problem. It's a problem for
13 Mr. Sobel. But this court still doesn't have any evidence
14 before it that, indeed, Rabbi Sauer knew of this blog. He
15 can speculate. He can fall on the mercy of the court
16 because he has no money. But that's -- Rabbi Ohana has
17 recourse against Sobel against his malpractice carrier.

18 The article does not state that he interviewed
19 Rabbi Sauer. It doesn't state that. It takes a liberty.
20 Mr. Sobel takes a liberty, and he likes to conclude that
21 there was an interview with Rabbi Sauer. But again, there
22 is no evidence that there was an interview.

23 Mr. Sobel says that it's improper to state a
24 conclusion of law without knowing all the facts. It
25 happens all the time, your Honor. What is the statute of
26 limitations for a breach of contract? We know it. I
27 don't need to know the specifics to give you a conclusion
28 of law. You were a lawyer. I'm sure people asked you all

1 the time, what is the law, you know, hypothetically.

2 **THE COURT:** They still ask me, and I say I'm not a
3 lawyer. Ask a lawyer. I stopped practicing law.

4 **MR. COHEN:** That's a good way out. But
5 unfortunately, every day I walk into synagogue, I'm
6 bombarded with questions people asking me generically, you
7 know, hypothetically, what's the law.

8 There is no myopia or forgetting or amnesia by
9 Rabbi Sauer. The fact that he states emphatically that he
10 had no involvement doesn't mean that he had involvement
11 but he really forgot it. He didn't. There's no statement
12 of forgetting because this conversation with Rabbi Ohana
13 never existed.

14 The claim that the waiver is absurd cannot
15 overcome the signing of an arbitration agreement and him
16 not objecting when Rabbi Sauer was sitting in front of
17 him. If he -- if it's true that he had a conversation
18 with Rabbi Sauer, if it's true, and if it's true that he
19 had a private ruling like he claimed, then why didn't he
20 object when he went to Bais Din, when he went to
21 arbitration? He kept this secret from us? He wanted to
22 go to arbitration with a tactical advantage because he had
23 this rabbi in his pocket?

24 It's an outrageous claim to say that he had a
25 private ruling with Rabbi Sauer, private conversation with
26 Rabbi Sauer, yet he doesn't object when he signs the
27 arbitration agreement, he doesn't object when he goes to
28 trial, and there's Rabbi Sauer sitting there. Had he won,

1 trust me, he wouldn't have objected. He wouldn't have
2 said, hey, it's not fair. We would have been the ones to
3 have objected because we were not privy to this. But now
4 that he loses, he now says, oh, wait a minute. I object.
5 And the ruling that he claims he had, he claims he had
6 that Rabbi Sauer ruled in his favor, is what he claims,
7 which there's no evidence in his declaration that he had
8 such a conversation.

9 And last, but not least, I cannot emphasize
10 this enough: The court cannot give evidentiary value to a
11 blog or a newspaper reporter when I've got declarations
12 under penalty of perjury from the rabbis in question
13 stating emphatically, no prejudgment knowledge. No
14 knowledge whatsoever of the facts of the case. It was a
15 hypothetical question, if at any.

16 We ask that this court not go where Mr. Sobel
17 wants this court to go and make assumptions and leaps. I
18 ask this court to keep very careful eye on the evidence.
19 And the evidence before you, your Honor, is that there's
20 no evidence that Rabbi Sauer knew about the blog, knew
21 about the article. There's no evidence of a pretrial
22 conversation between Rabbi Sauer and Rabbi Ohana.

23 We ask that you confirm the arbitration award
24 on the basis that this motion to vacate is not properly
25 evidentiary -- there's no foundation for these
26 allegations.

27 **THE COURT:** Okay. Thank you for your arguments.
28 The court will take the matter under submission and issue

1 a ruling shortly by minute order. Thank you.

2 **MR. COHEN:** Your Honor, do you have an estimate as
3 to when?

4 **THE COURT:** It should be within the next few days.

5 **MR. COHEN:** Because Passover starts next week. I
6 think Wednesday night. And I'm out of commission for -- I
7 think we're all out of commission for those days.

8 **THE COURT:** It should be before that date. By
9 Monday or Tuesday I should have a ruling issued.

10 **MR. COHEN:** Is it going to be faxed or mailed or
11 e-mailed?

12 **THE COURT:** How are we going to do that?

13 **THE CLERK:** Mailed.

14 **THE COURT:** Mailed. So you can call in.

15 **MR. COHEN:** Would we be able to ask that it be
16 faxed, given the fact that we're all in a crunch
17 pre-Passover?

18 **MR. SOBEL:** Passover begins Wednesday evening, your
19 Honor. We're basically all out of commission as of
20 Wednesday morning, so we might not have a chance to
21 receive the mail. If the court could fax it, that would
22 be very kind.

23 **THE COURT:** I think what you can do is call in and
24 also get, you know, the clerk to read you what the ruling
25 is. I think by Tuesday at the latest I should have a
26 ruling.

27 **MR. COHEN:** Very good. Thank you very much.

28 **MR. SOBEL:** Your Honor, thank you very much.

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THE COURT: Thank you very much.

(The proceedings were concluded.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 23

HON. ZAVEN V. SINANIAN, JUDGE

RITA PAUKER,

Plaintiff,

vs.

RABBI SAMUEL OHANA, et al.,

Defendants.

NO. BS119163

REPORTER'S
CERTIFICATE

I, GABRIELLE AMMON, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages 1 through 35, inclusive, comprise a full, true and correct transcript of the proceedings held and the testimony taken in the above-entitled matter on April 3, 2009.

DATED THIS 30TH DAY OF APRIL, 2009.



GABRIELLE AMMON, CSR #5202
OFFICIAL REPORTER

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LOS ANGELES