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FILED
LOS ANGELES SUPERIOR COURT

JUN 29 2009
JOHN A. CLARKE, CLERK
[Signature]
BY AMBER LA FLEUR-CLAYTON, DEPUTY

Attorney for Defendants Rabbi Samuel Ohana and Beth Midrash
Mishkan Israel American Institute For Judaic Studies, Inc.

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

RITA PAUKER,
Plaintiff,

vs.

RABBI SAMUEL OHANA, BETH
MIDRASH MISHKAN ISRAEL,
Defendants

Case No: BS119163
Assigned for all purposes to the Honorable Zaven
V. Sinanian, Dept. 23

Filing Date: 2/19/2009

**OPPOSITION TO PLAINTIFF'S MOTION
TO COMPEL BINDING ARBITRATION
BEFORE THE BEIS DIN OF THE
RABBINICAL COUNCIL OF CALIFORNIA;
DECLARATIONS OF RABBI SAMUEL
OHANA AND G. SCOTT SOBEL**

Date: July 8, 2009
Time: 8:30 a.m.
Dept.: 23

TO THE COURT, PLAINTIFF AND HER ATTORNEYS OF RECORD:

Defendants Rabbi Samuel Ohana and Beth Midrash Mishkan Israel American Institute

For Judaic Studies, Inc. hereby oppose Plaintiff's Motion to Compel Binding Arbitration, as follows:

- 1) The Agreement To Submit To Binding Arbitration (hereinafter referred to as "Agreement") which Plaintiff seeks to enforce has been fully performed, albeit defectively, and is no longer binding upon the parties;

1 2) The Agreement should be voided due to mistake;

2 3) The Rabbinical Court of California has shown bias and prejudice in this matter.

3 Accordingly, Defendants offer to submit the matter in a trial *de novo* for final and binding
4 resolution to either a different Beit Din entirely as a binding arbitration in Los Angeles, to this
5 Court in a non-jury trial, or to a retired judge in binding arbitration under the auspices of an
6 organization such as ARC in Los Angeles.
7

8 I. **THE AGREEMENT HAS BEEN FULLY PERFORMED AND IS NO LONGER**
9 **BINDING UPON THE PARTIES:**

10 Following is the complete language of the Agreement To Submit To Binding
11 Arbitration, a true and correct copy of which is attached hereto as Exhibit A:
12

13 **AGREEMENT TO SUBMIT TO BINDING ARBITRATION:**

14 We, the undersigned, hereby agree to submit to binding arbitration the
15 following controversy:

16 A comprehensive settlement of all claims and cross claims between Rita
17 Pauker v. Rabbi Samuel Ohana and Beth Midrash Mishkan Israel pertaining to the
18 ownership and disposition of four Torah Scrolls.

19 The arbitration shall be conducted in the state of California under the
20 auspicious of the Beth Din of the Rabbinical Council of California, 3780 Wilshire
21 Blvd. #420, Los Angeles, California. We further agree that the controversy be
22 heard and determined by the following arbitrators: Rabbi Nachum Sauer, Rabbi
23 Gershon Bess, Rabbi Avrohom Union.

24 The parties recognize and acknowledge that by agreeing to binding arbitration,
25 they waive and surrender their right to present their dispute to a court. The only
26 recourse to court will be in the event that one of the parties hereto does not honor
27 this agreement or the decisions made by the arbitrators under this agreement. In
28 the event that a party does not honor the decisions of the arbitrators or seeks to
vacate the award, we authorize the arbitrators to award additional legal fees and
costs.

It is agreed that 50% of the arbitrators fee shall be paid by each party to the
controversy; that the arbitrators may make their award based upon Din Torah, or
compromise or any other matter they wish to reach a decision; that the arbitrators
need not explain the basis of their decision verbally or in writing; that no
transcript of the proceedings need be made unless the arbitrators decide to hire a
stenographer or minute taker whose cost shall be paid equally by the parties; that
the arbitrators need not be sworn to hear and decide the controversy and that no
witness or party need be sworn unless the arbitrators so direct; that the arbitration

1 may be conducted in whole or in part in a language other than English; that the
2 arbitrators may follow any lawful procedure as they decide; that the parties waive
3 the right to cross examination except under the procedures set by the arbitrators;
4 that the arbitrators may determine evidentiary issues; that the arbitrators have the
5 power to issue subpoenas for witnesses and production of documents; that the
6 arbitrators are authorized to make an award on attorneys fees and legal costs; that
7 the award of the arbitrators shall be in writing and shall be signed by at least two
8 arbitrators and need not be acknowledged or notarized in order to be confirmed or
9 enforced; that the hearings may be held on Sundays or any legal holiday; that the
10 arbitrators will be held blameless for their decision; that the parties agree that they
11 will faithfully abide by and implement the award of the arbitrators and that
12 judgment upon the award may be entered in the court pursuant to applicable
13 California law; and that the award of the arbitrators may be enforced pursuant to
14 laws of State of California. We understand that we have the right to be
15 represented by attorneys or other advisors in the arbitration at any time but that
16 any party may elect to proceed without an attorney and the parties have the right to
17 argue for themselves before the arbitrators. The undersigned hereby waive formal
18 notice of the time and place of the arbitration proceeding and consent that the
19 arbitration be held and comments with the jurisdiction of the arbitrators to
20 continue until a final award is made. The terms of this agreement are severable,
21 and the illegality or violability of any terms of this agreement shall not affect
22 remainder of this agreement, which shall remain valid and enforceable. If any
23 party to this agreement fails to participate pursuant to the terms of this agreement,
24 the arbitrators may decide the matter before them ex parte, in the absence of such
25 party and may issue a valid and binding award without the necessity of obtaining a
26 court order.

16 The parties arbitrated the matter before the RCC Beit Din on July 27, 2008. The
17 arbitration proceeded that afternoon to its conclusion. Thus, the parties fully performed the
18 contract, as agreed. The Beit Din issued its ruling on January 19, 2009. Defendants' election not
19 to abide by the ruling has been fully justified by the previous rulings of this Court. The foregoing
20 constitutes the full performance of the contract. The contract does not anticipate, nor does it
21 provide for, any continuing obligations upon the parties after this Court's ruling vacating the Beit
22 Din's ruling, and in particular, it does not provide for re-submission of the matter to the RCC
23 Beit Din under the present circumstances.

25 There is no longer a contract binding Defendants to arbitrate this dispute before the RCC
26 Beit Din.

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II. THE AGREEMENT SHOULD BE VOIDED DUE TO MISTAKE:

Alternatively: As this Court has previously ruled with regard to Rabbi Sauer’s pre-arbitration newspaper quote concerning the matter, “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” It is clear that the Rabbi Ohana signed the Agreement without full knowledge of the facts of Rabbi Sauer’s prior knowledge and public expression of an opinion concerning the matter, and it is reasonable to conclude that if Rabbi Ohana had been fully informed of these facts, he would not have entered into the Agreement. Thus, the Agreement should be voided due to mistake.

**III. THE RABBINICAL COURT OF CALIFORNIA HAS SHOWN PREJUDICE
IN THIS MATTER.**

As shall be demonstrated below, the RCC has shown prejudice against defendants in this matter. Accordingly, Defendants offer to submit the matter in a trial *de novo* for final and binding resolution to:

1. A different Beit Din entirely as a binding arbitration in Los Angeles;
2. This Court in a non-jury trial, or;
3. A retired judge in binding arbitration under the auspices of an organization such as ARC in Los Angeles.

As defense counsel asserted in open court at the conclusion of the May 20, 2009 hearing on Plaintiff’s Motion to Reconsider (transcript, pages 18:5 – 19:1):

Your Honor, I find no need for an earlier date to be motivated to return to the proper procedure in this case. However, given the prejudice and the virile [sic. intended: vitriolic] nature of the letters that have passed, specifically from the head of the RCC Bais Din court to me personally, we will not be reappearing before the RCC Bais Din or under their auspices. We will -- they are prejudiced against us, and they have notified us in writing that they are, in their words. But

1 there are many rabbis in Los Angeles. We don't have to leave the city to find three
2 rabbis who might hear the case anew. So that would be our position. I want Mr.
3 Cohen to know it, I want the court to be aware of it, because we've suffered too
4 much prejudice already, and we need to find three new rabbis not under the
5 auspices of the same group. . . . And so we're . . . we're prepared to proceed, as I
6 suggested earlier. . . . I only await a call from Mr. Cohen.

7 This matter can only fairly be settled in a forum which is acceptable to both sides. While
8 Rabbi Ohana was previously willing to submit the matter to the RCC Beit Din, and at that time
9 trusted that forum so fully that he was willing to do so without representation, that is no longer
10 the case. Given the prejudice that has been shown against Defendants, they feel they cannot
11 possibly get a fair hearing in any proceeding under the auspices of the RCC, whether or not three
12 different rabbis are assigned to hear the matter.¹ Evidence of prejudice follows:

13 1) The Beit Din reached its decision in this matter based upon Plaintiff's claim that her
14 deceased husband's family had owned the four Torah scrolls in New York, and that he had
15 brought them to Los Angeles from New York more than 40 years ago. Attached as Exhibit B is a
16 true and correct copy of Plaintiff's Arbitration Brief (without exhibits), which makes the
17 following claim, without presenting any evidence for the claim: "Rabbi Norman Pauker's four
18 Sifrei Torah were originally donated decades ago by his sister to the Young Israel of the Bronx.
19 When the Bronx synagogue closed, the four Sifrei Torah were given to Rabbi Pauker." (Exhibit
20 B, pg. 2, lines 3-5.) The Beit Din did not question how Mrs. Pauker knew this information. The
21 rabbis did not ask for any evidence of the truth of this claim, which was clearly inadmissible
22 hearsay. Even the alleged donor sister's name was not given or elicited. (See Declaration of
23 Rabbi Ohana.)
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26 ¹ It should be noted that the RCC Beit Din is composed of the same three above-named rabbis
27 in virtually all cases, not an organization consisting of numerous possible judges, such as ARC,
28 JAMS or ADR in Los Angeles. Occasionally one is exchanged for another L.A. rabbi, but not as
a rule. The empanelling of three entirely different rabbis has not been heard of in the history of
the RCC. (See Declaration of Rabbi Ohana.)

1 2) In this matter, the Torah law (which should inform the decision of rabbis in Beit Din)
2 is consistent with California law on the admissibility of hearsay stated for the truth of the matter
3 asserted – – and particularly when used in an attempt to transfer the possession of disputed
4 property from one party to another. The rabbis were not concerned that Mrs. Pauker had met and
5 married her late husband here in Los Angeles, and did not witness the alleged transfer of the
6 Torah scrolls from New York. Furthermore, at Beit Din, Rabbi Ohana presented photographs of
7 all four Torah Scrolls in their fabric covers, showing that each cover is embroidered with the
8 name of the family which donated the Torah, and the dedication. In addition, Rabbi Ohana
9 presented photographs of the silver inlaid dedications on the wooden staves attached to the
10 scrolls themselves, one of which states clearly that it had been dedicated in Los Angeles. Not
11 one of the donor family names on the covers or the staves is Pauker. The RCC rabbis' lack of
12 inquiry and disregard for truth evidences the prejudice of the RCC. (See Declaration of Rabbi
13 Ohana.)
14

15 3) The RCC is in competition with Rabbi Ohana. Rabbi Ohana conducts a Beit Din for
16 limited matters, located in the Beth Midrash Mishkan Israel American Institute For Judaic
17 Studies, primarily serving the Sephardic Jewish community of the San Fernando Valley, as well
18 as serving occasionally as a Rabbinic Judge on various Batei Din (plural for Beit Din) in the City,
19 although not on the RCC Beit Din. Over the past decade or more, Rabbi Avrohom Union, the
20 Administrator of the RCC, who also sat as a judge on the Beit Din arbitration panel that heard
21 this matter, has made it known publicly that he feels his Beit Din should be the only Beit Din
22 serving all of Los Angeles. As a member of the RCC, Rabbi Ohana did not previously fear that
23 the Administrator and/or Beit Din of the RCC would allow this low level of competition to
24 prejudice them against him. Rabbi Ohana now fears that this competition may have been a
25 motivating factor in the RCC Beit Din's decision against him in this matter, and has continued to
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1 motivate the RCC's attitude and behavior against him during the course of this Court proceeding.
2 (See Declaration of Rabbi Ohana.)

3 4) On a Friday night in late February, 2009, shortly after Rabbi Ohana had sent his
4 Notice of Appeal to the Jerusalem High Court, numerous poster sized blow up copies of the RCC
5 Beit Din's Arbitration Award were plastered on the glass front of Defendants' synagogue for
6 congregants to see upon arrival for services on Shabbat (Saturday) morning. It is common
7 knowledge in the Los Angeles Orthodox community that when a member of the community fails
8 to abide with a decision of the RCC Beit Din, Rabbi Union authorizes such poster plastering on
9 their private property. (See Declaration of Rabbi Ohana.)
10

11 5) The Administrator of the RCC has been personally involved in this matter, addressing
12 two letters to defense counsel herein, as attached (Exhibits A and B hereto). In the first, Rabbi
13 Union threatens the imposition of attorney's fees and costs against Defendants, should they
14 pursue their course in opposing the Arbitration Award. In the second letter, Rabbi Union urges
15 defense counsel "spare your client further expense and embarrassment by urging him to comply
16 with the judgment post haste." To date, it is clear that the RCC rabbis/administrator have
17 suffered embarrassment, leading to prejudice.
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19 6) Plaintiff's counsel has had extensive *ex parte* contacts with, and cooperation from, the
20 Administrator of the RCC and the other two rabbis who sat on the Beit Din, in making Plaintiff's
21 case before this Court, with three nearly identical declarations submitted in reply for the Petition
22 to Confirm Arbitration Award. These declarations evidence *ex parte* contacts with Plaintiff's
23 counsel and prejudice in the matter. (While such *ex parte* contacts followed the Beit Din hearing
24 of last summer, they have all been in advance of the requested second Beit Din hearing.) This
25 argument might be a weak one if Plaintiff had solicited and produced only a declaration from the
26 one Rabbi whose conduct was in question (Rabbi Sauer) on the issue in question (the prior
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1 newspaper quotation). However, the May 20 email from Plaintiff's counsel to Rabbi Union as
2 Administrator (attached as Exhibit 4 to the Motion to Compel), demonstrates that Rabbi Union
3 himself would select the three replacement rabbis to sit as arbitrator/judges on re-trial. Plaintiff
4 clearly desires that Rabbi Union alone select the panel of rabbis to sit in judgment upon
5 Defendants herein.

6
7 7) Plaintiff's moving papers incorporate and attach a series of email letters exchanged
8 between Attorneys Cohen, Sobel, and the RCC on the afternoon and evening of May 20, 2009,
9 immediately following the hearing on Plaintiff's Motion to Reconsider herein. The last of these
10 exchanges was sent by the RCC's own counsel (Exhibit 7 to the Motion), as follows:

11 Mr. Sobel: As counsel for the Rabbinical Council of California, we received a copy
12 of your e-mail message to Mr. Cohen dated May 20, which you copied to Rabbi
13 Union. Your message was ill-considered, unfounded and unprofessional. First, there
14 is absolutely no basis for your irresponsible statements that the RCC is prejudiced
15 against Rabbi Ohana and that the arbitration hearing was an "utter sham." You were
16 not counsel at the Beit Din proceedings and cannot cite any evidence of any
17 impropriety in those proceedings, other than the fact that the arbitrators ruled against
18 Rabbi Ohana. The fact that the matter was under consideration for approximately six
19 months alone refutes your scurrilous accusations. The only aspect of the arbitration
20 warranting the label "sham" is Rabbi Ohana's agreement to arbitrate, given **his**
21 **contemptuous disregard for the arbitral decision** and his willingness to challenge
22 and denigrate the arbitration panel simply because they rejected his position. Second,
23 there were no "extensive ex parte communications with the RCC in connection with
24 this matter." The very fact that you chose to make this assertion shows your utter lack
25 of understanding of the nature and procedures of arbitration before the Beit Din, as
26 conducted pursuant to the parties' agreement to arbitrate. Third, your statement that
27 "Rabbi Ohana will not appear in any Beit Din under the auspices of the RCC"
28 confirms **his contumacious refusal to abide by the arbitration agreement** he
entered into and to cooperate in any further proceedings that would facilitate a
resolution of the underlying dispute. **The RCC will be governed accordingly.** In
this regard, the RCC assumes Mr. Cohen will take such actions as as he sees fit on
behalf of his client; the RCC has, and will have, no say on that issue. It is most
unfortunate that you and **your client have chosen to take the evasive and dishonest**
course evinced in your message. [Emphasis added]

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26 This email by counsel for the RCC demonstrates beyond any doubt whatsoever the prejudice and
27 contempt of the RCC for Rabbi Ohana, calling Rabbi Ohana "contemptuous," "contumacious,"
28 "evasive and dishonest," and issuing a vague threat that, "The RCC will be governed

1 accordingly.” The RCC’s prejudice against Rabbi Ohana could not have been more clearly
2 demonstrated than by its own legal counsel so labeling Rabbi Ohana (and his counsel).

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4 **IV. THE SOLUTION:**

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6 As above, Defendants offer to submit the matter in a trial *de novo* for final and binding
7 resolution to:

- 8 1) A different Beit Din entirely as a binding arbitration in Los Angeles;
9
10 2) This Court in a non-jury trial, or;
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12 3) A retired judge in binding arbitration under the auspices of an organization such
as ARC in Los Angeles.

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14 When parties wish to submit a dispute to a Beit Din, but cannot agree on the
15 composition of the Beit Din, they follow an ancient Jewish selection method known by the
16 Hebrew acronym “ZAVLA,” a method which is widely used in secular law today: party
17 arbitration, whereby each party selects its own representative or “party” arbitrator, and the two
18 are to select a mutually agreeable third arbitrator to fill out and head the panel. Plaintiff’s
19 counsel rejected this proposal on May 20, insisting upon the RCC as the only possible forum
20 to decide the dispute. (Exhibit 5 to the Motion to Compel.) In fact, it is unlikely that any
21 rabbis chosen by the parties could agree on a third, and the selection stalemate would likely
22 bring them back to this Court for resolution. (Declaration of Sobel.)

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25 **III. CONCLUSION**

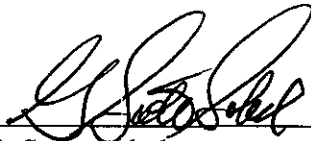
26 Defendants have shown great flexibility in the selection of the forum for the final
27 resolution of the parties’ dispute. Plaintiff has shown none, attempting to take her dispute back
28 to the forum that unfairly and improperly judged the case in the first place. The Agreement

1 Plaintiff seeks to enforce is no longer binding upon the parties, having been fully performed.

2 Alternatively, the Agreement should be found to be void due to mistake. Finally, for all of the
3 reasons above, the Motion to Compel Binding Arbitration should be denied with prejudice.

4 Respectfully submitted,

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6 DATED: June 26, 2009

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8 _____
9 G. Scott Sobel
10 Attorney for Rabbi Samuel Ohana and Beth
11 Midrash Mishkan Israel American Institute For
12 Judaic Studies, Inc.

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1 DECLARATION OF RABBI SAMUEL OHANA IN SUPPORT OF OPPOSITION TO
2 MOTION TO COMPEL BINDING ARBITRATION

3
4 Rabbi Samuel Ohana declares:

5 1) I am a Defendant in the above-caption action, and the President of Beth Midrash
6 Mishkan Israel American Institute For Judaic Studies, Inc. The following facts are within my
7 personal knowledge, or based upon information and belief. If called as a witness, I could and
8 would competently testify thereto.

9 2) We are prepared to submit the matter in a trial *de novo* for final and binding resolution to
10 either a different Beit Din entirely as a binding arbitration in Los Angeles, to this Court in a non-
11 jury trial, or to a retired judge in binding arbitration under the auspices of an organization such as
12 ARC in Los Angeles.

13 3) The parties arbitrated the matter before the RCC Beit Din on July 27, 2008. The
14 arbitration proceeded that afternoon to its conclusion.

15 4) I signed the Agreement without full knowledge of the facts of Rabbi Sauer's prior
16 knowledge and public expression of an opinion concerning the matter. If I had been fully
17 informed of these facts, I would not have entered into the Agreement.

18 5) I feel that we cannot possibly get a fair hearing in any proceeding under the auspices of
19 the RCC, whether or not three different rabbis are assigned to hear the matter.

20 6) I have lived in the Los Angeles area since 1972. I first became a rabbinic member of the
21 RCC in approximately 1974.

22 7) The Beit Din is one of several functions of the RCC. For at least the past 15 years, the
23 RCC Beit Din has been composed of the same three above-named rabbis (Rabbis Union, Sauer
24 and Bess) in virtually all cases. The RCC Beit Din does not consist of numerous possible
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1 rabbinic judges. Occasionally one rabbi is exchanged for another member rabbi, but not as a
2 rule. To my knowledge, the empanelling of three entirely different rabbis has not occurred in the
3 history of the RCC.

4 8) While I was previously willing to submit the matter to the RCC Beit Din, and at that
5 time I trusted that forum so fully that I was willing to do so without representation, that is no
6 longer the case. Given the prejudice that has been shown against me, I feel I cannot possibly get
7 a fair hearing in any proceeding under the auspices of the RCC.
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9 9) The Beit Din reached its decision in this matter based upon Plaintiff's claim that her
10 deceased husband's family had owned the four Torah scrolls in New York, and that he had
11 brought them to Los Angeles from New York more than 40 years ago. The Beit Din did not
12 question Mrs. Pauker as to how she knew this information. The rabbis did not ask her for any
13 evidence of the truth of the claim. The rabbis were not concerned that Mrs. Pauker had met and
14 married her late husband here in Los Angeles, and did not witness the alleged transfer of the
15 Torah scrolls from New York. Even the alleged donor sister's name was not given or elicited.
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17 10) In this matter, the Torah law (which should inform the decision of rabbis in Beit Din)
18 requires actual admissible evidence in support of an attempt to transfer the possession of disputed
19 property from one party to another.
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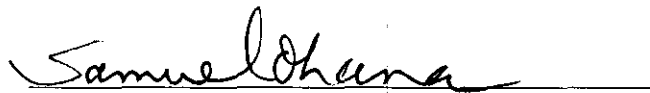
21 11) Furthermore, at Beit Din, I presented photographs of all four Torah Scrolls in their
22 fabric covers, showing that each cover is embroidered with the name of the family which donated
23 the Torah, and the dedication. In addition, I presented photographs of the inlaid ivory
24 dedications on the wooden staves attached to the scrolls themselves, one of which states clearly
25 that it had been dedicated in Los Angeles. Not one of the donor family names on the covers or
26 the staves is Pauker.
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1 12) The RCC is in competition with me. I conduct a Beit Din for limited matters, located in
2 the Beth Midrash Mishkan Israel American Institute For Judaic Studies, primarily serving the
3 Sephardic Jewish community of the San Fernando Valley, as well as serving occasionally as a
4 Rabbinic Judge on various Batei Din (plural for Beit Din) in the City, although not on the RCC
5 Beit Din. Over the past decade or more, Rabbi Avrohom Union, the Administrator of the RCC,
6 who also sat as a judge on the Beit Din arbitration panel that heard this matter, has made it
7 known publicly that he feels his Beit Din should be the only Beit Din serving all of Los Angeles.
8 As a member of the RCC, I did not previously fear that the Administrator and/or Beit Din of the
9 RCC would allow this low level of competition to prejudice them against me. I now fear that
10 this competition was a motivating factor in the Beit Din's decision against me in this case, and
11 has continued to motivate the RCC's attitude and behavior against me during the course of this
12 Court proceeding.
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14 13) On a Friday night in late February, 2009, shortly after I had sent my Notice of Appeal to
15 the Jerusalem High Court, numerous poster sized blow up copies of the RCC Beit Din's
16 Arbitration Award were plastered on the glass front of my synagogue for congregants to see upon
17 arrival for services on Shabbat (Saturday) morning. It is common knowledge in the Los Angeles
18 Orthodox community that when a member of the community fails to abide with a decision of the
19 RCC Beit Din, Rabbi Union authorizes such poster plastering on their private property.
20

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.
23

24 Executed June 26, 2009 at Los Angeles, California.
25

26 
27 Samuel Ohana, Rabbi and President of Beth
28 Midrash Mishkan Israel American Institute For
Judaic Studies, Inc.

DECLARATION OF G. SCOTT SOBEL

G. Scott Sobel declares:

1. I am an attorney licensed to practice law in the State of California and the attorney of record for Defendants herein. The following facts are within my personal knowledge, or based upon information and belief. If called as a witness, I could and would competently testify thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the Agreement To Submit To Binding Arbitration.

3. Attached hereto as Exhibit B is a true and correct copy of Plaintiff's Arbitration Brief (without exhibits).

4. Attached hereto as Exhibits C and D respectively are true and correct copies of two letters, dated February 8 and February 18, 2009, which were sent by Rabbi Avrohom Union, Administrator of the RCC, to me in this matter.

5. When parties wish to submit a dispute to a Beit Din, but cannot agree on the composition of the Beit Din, they follow an ancient Jewish selection method known by the Hebrew acronym "ZAVLA," a method which is widely used in secular law today: party arbitration, whereby each party selects its own representative or "party" arbitrator, and the two are to select a mutually agreeable third arbitrator to fill out and head the panel. Plaintiff's counsel rejected this proposal on May 20, insisting upon the RCC as the only possible forum to decide the dispute. (Exhibit 5 to the Motion to Compel.) In fact, it is unlikely that any rabbis chosen by the parties could agree on a third, and the selection stalemate would likely bring them back to this Court for resolution.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 26, 2009 at Los Angeles, California.


G. Scott Sobel

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. My business address is 8350 Wilshire Blvd., Suite 200, Beverly Hills, CA 90211, Telephone: (310) 422-7067. On the date below, I served the document(s) described as:

OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL BINDING ARBITRATION BEFORE THE BEIS DIN OF THE RABBINICAL COUNCIL OF CALIFORNIA; DECLARATIONS OF RABBI SAMUEL OHANA AND G. SCOTT SOBEL


on the following interested parties in this action:

Baruch C. Cohen, Esq. LAW OFFICE OF BARUCH C. COHEN, APC 4929 Wilshire Blvd., Suite 940 Los Angeles, CA 90010-3823 Fax: (323) 937-4503 BCC4929@aol.com	Attorney for Petitioner Rita Pauker
---	-------------------------------------

by Email to the above address.

by U.S. Mail on the date below by placing a true and correct copy thereof, enclosed in a sealed envelope addressed as described above and depositing such envelope with the United States Postal Service in Los Angeles, California with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 26, 2009 at Los Angeles, California.


G. Scott Sobel

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02/05/2009 18:09 FAX 2134898077
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07/18/2008 10:05 FAX 2134898077

RCC
BARUCH C. COHEN, APLC
RCC

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001/001

07/01/2008 11:50 FAX 2134898077

RCC

002/002

בית דין צדק

נס"ד

BEIS DIN
RABBINICAL COURT

ועד הרבנים דקליפארניא

AGREEMENT TO SUBMIT TO BINDING ARBITRATION

We, the undersigned, hereby agree to submit to binding arbitration the following controversy:

A comprehensive settlement of all claims and cross claims between Mrs. Rita Pauker
v. Rabbi Samuel Ohanina and Beth Midrash Michtam Seane
relating to the ownership and disposition of four Torah scrolls

The arbitration shall be conducted in the state of California under the auspices of the Beis Din of the Rabbinical Council of California, 3780 Wilshire Blvd. # 420, Los Angeles, California. We further agree that the controversy be heard and determined by the following arbitrators:

Rabbi Nachum Sove

Rabbi Leahon Gess

Rabbi Avraham Union

The parties recognize and acknowledge that by agreeing to binding arbitration, they waive and surrender their right to present their dispute to a court. The only recourse to court will be in the event that one of the parties hereto does not honor this agreement or the decisions made by the arbitrators under this agreement. In the event that a party does not honor the decisions of the arbitrators or seeks to vacate the award, we authorize the arbitrators to award additional legal fees and costs.

It is agreed that 50% of the arbitrators fee shall be paid by each party to the controversy; that the arbitrators may make their award based upon Din Torah, or compromise or any other manner they wish to reach a decision; that the arbitrators need not explain the basis of their decision verbally or in writing; that no transcript of the proceedings need be made unless the arbitrators decide to hire a stenographer or minute taker whose cost shall be paid equally by the parties; that the arbitrators need not be sworn to hear and decide the controversy and that no witness or party need be sworn unless the arbitrators so direct; that the arbitration may be conducted in whole or in part in a language other than English; that the arbitrators may follow any lawful procedure as they decide; that the parties waive the right to cross-examination except under the procedures set by the arbitrators; that the arbitrators may determine evidentiary issues; that the arbitrators have the power to issue subpoenas for witnesses and production of documents; that the arbitrators are authorized to make an award on attorneys fees and legal costs; that the award of the arbitrators shall be in writing and shall be signed by at least two arbitrators and need not be acknowledged or notarized in order to be confirmed or enforced; that the hearings may be held on Sundays or any legal holiday; that the arbitrators will be held blameless for their decision; that the parties agree that they will faithfully abide by and implement the award of the arbitrators and that judgment upon the award may be entered in the court pursuant to applicable California law; and that the award of the arbitrators may be enforced pursuant to the laws of the State of California.

We understand that we have the right to be represented by attorneys or other advisors in the arbitration at any time but that any party may elect to proceed without an attorney and the parties have the right to argue for themselves before the arbitrators. The undersigned hereby waive formal notice of the time and place of the arbitration proceeding and consent that the arbitration be held and commence with the jurisdiction of the arbitrators to continue until a final award is made. The terms of this agreement are severable, and the illegality or violability of any terms of this agreement shall not affect remainder of this agreement, which shall remain valid and enforceable. If any party to this agreement fails to participate pursuant to the terms of this agreement, the arbitrators may decide the matter before them ex parte, in the absence of such party and may issue a valid and binding award without the necessity of obtaining a court order.

Dated: 7/16/08

Signed: Samuel Ohanina

Rita Pauker

Rabbinical Council of California

3780 Wilshire Blvd., Suite 420, Los Angeles, CA 90010 (213) 389-3382 • Fax (213) 489-8077 E-mail info@rcvca.org

EXA-

1 Baruch C. Cohen, Esq. (SBN 159455)
2 LAW OFFICE OF BARUCH C. COHEN, A Professional Law Corporation
3 4929 Wilshire Boulevard, Suite 940
4 Los Angeles, California 90010
5 (323) 937-4501 Fax (323) 937-4503
6 email: BCC4929@aol.com

7 *Attorney for Rita Pauker*

8 RABBINICAL COUNCIL OF CALIFORNIA
9 VAAD HARABBONIM BAIS DIN TZEDEK

10 **בית דין צדק**

11
12 RITA PAUKER,

13 Plaintiff,

14 vs.

15 RABBI SAMUEL OHANA, BETH
16 MIDRASH MISHKAN ISRAEL,

17 Defendants

18 **ARBITRATION BRIEF**

19 Date: July 27, 2008

20 Time: 1:00 p.m.

21 Place: בית דין צדק

22 Rabbinical Council of California

23 3780 Wilshire Boulevard, Suite 420

24 Los Angeles, CA 90010

25
26 Rita Pauker (hereinafter referred to as "PAUKER") hereby respectfully submits her
27 *Arbitration Brief* in the above-referenced matter.

28 DATED: July 25, 2008

LAW OFFICE OF BARUCH C. COHEN

By *Baruch Cohen*
Attorney for Rita Pauker

1 1. MEMORANDUM OF POINTS AND AUTHORITIES

2 a. STATEMENT OF FACTS

3 Rabbi Norman Pauker's four Sifrei Torah were originally donated decades ago by his
4 sister to the Young Israel of the Bronx. When the Bronx synagogue closed, the four *Sifrei*
5 *Torah* were given to Rabbi Pauker.

6 When Rabbi Pauker retired in 1994 and closed his synagogue, Rabbi Pauker transferred
7 ownership of most of the assets to Rabbi Samuel Ohana of Beth Midrash Mishkan Israel,
8 including the *Aron Kodesh*, *Talleisim* and *Seforim*. But according to a handwritten contract
9 between Rabbi Pauker and Rabbi Ohana, signed by Rabbi Ohana, the four *Sifrei Torah* were to
10 be loaned for only two years (who was to insure them for two years).¹

11 Since Rabbi Pauker's death in 2002, his widow, Rita Pauker, has been repeatedly
12 begging and imploring Rabbi Ohana for the return of the *Sifrei Torah*. To Mrs. Pauker, Rabbi
13 & Mrs. Ohana repeatedly promised the return of the Torahs but came up with excuses after
14 excuses for failing to do so.

15 i. RABBI OHANA'S ADMISSIONS THAT THE TORAHS ARE NOT
16 HIS, BUT MRS. PAUKER'S

17 On Monday February 19, 2007, Brad Greenberg, a reporter for the Valley News and the
18 Jewish Journal, briefly interviewed Rabbi Ohana who said that "*he would return the Torahs if*
19 *Pauker could prove she was going to give them to another synagogue and not sell them.*"²

20 Approximately 5 or 6 years ago, both Rabbi & Mrs. Ohana, called Mrs. Pauker about
21 coming over to her home to return two of the Torahs very soon.

22 Approximately 4 to 5 years ago, Mrs. Yvonne Ohana told Mrs. Pauker that her husband
23 Rabbi Ohana was in Israel and was returning with new Torahs and that Mrs. Pauker would have
24

25 ¹A true and correct copy of the contract is attached hereto as Exhibit "1" and is incorporated
26 herein by this reference.

27 ²A true and correct copy of "The Written Word" an online portfolio of Brad A. Greenberg,
28 <http://musclys.blogspot.com/2007/02/ownership-of-torah-scrolls-disputed.html> is attached hereto as Exhibit "2" and is
incorporated herein by this reference.

1 her Torah's back. It was in June of whatever year it was.

2 Approximately 3 years ago Mrs. Pauker went to the North Hollywood police
3 department. The police were apparently willing to seek recovery on her behalf and contacted
4 Rabbi Ohana. Thereafter, Rabbi Ohana called Mrs. Pauker to offer her a weekly stipend in
5 return for him keeping the Torahs. Mrs. Pauker refused Rabbi Ohana's offer.

6 ii. **RABBI OHANA'S CONSTANTLY CHANGING STORY**

7 On February 20, 2007, in an interview with the LA Daily News, as quoted in the Failed
8 Messiah blog, Rabbi Ohana claimed that the Torahs belonged to his Shul, Beth Midrash
9 Mishkan Israel as Rabbi Pauker.³

10 On February 21, 2007, Rabbi Ohana is quoted as having said that his handwritten
11 contract between the two rabbis that has Rabbi Ohana's signature at the bottom "*was for*
12 *insurance purposes.*"⁴

13 On February 22, 2007, Rabbi Ohana admitted/acknowledged to a reporter for the
14 Associated Press that the Torahs were lent to him, but then claimed that they were subsequently
15 gifted. "He called me in front of his wife and he said, '*Rabbi I cannot bear having these Torahs*
16 *gathering dust in my garage,*' Ohana said. "*Take them, please.*"⁵

17 On ar about February 2007, KABC Eyewitness News did a story on this dispute, and
18 Rabbi Ohana was quoted as having said: "*I told him, Rita the Torahs is not yours. They were*
19 *not even your husband's. They belong to his congregation.*"

20 Reporter:KABC Eyewitness News reporter Melissa MacBride

21 "The issue here is whether these Torah's were on loan or donated to a synagogue in

22
23 ³A true and correct copy of "Rabbi Steals Torah Scrolls from Widow" at
24 http://failedmessiah.typepad.com/failed_messiahcom/2007/02/rabbi_steals_to.html is attached hereto as Exhibit 3 and is
incorporated herein by this reference.

25 ⁴A true and correct copy of "Rabbi's Widow U.S. Synagogue dispute ownership of Torah
26 Scrolls" on the Chaptzem Blog at <http://chaptzem.blogspot.com/2007/02/rabbis-widow-us-synagogue-dispute.html#comments>
is attached hereto as Exhibit 4 and is incorporated herein by this reference.

27 ⁵A true and correct copy of the North County Times - the California, "Torah Sacroll Claim
28 Disputed" at http://www.nctimes.com/articles/2007/02/27/faihb/18_56_022_22_07.txt, is attached hereto as Exhibit 5 and
is incorporated herein by this reference.

1 Sherman Oaks. This dispute has been going on for years, and there is no resolution in
2 site. For the past ten years, Rabbi Samuel Ohana has used these torah scrolls during
3 services at Beth Midrash Mishkan Israel. He says they were donated to his Congregation
4 in 1997 by the late Rabbi Norman Pauker after he retired and closed his Congregation,
5 but Paukers' widow says the Torah's were in her husband's family and she wants them
6 back!

7 Rabbi Ohana: Unfortunately, I'm sorry to say but Rabbi Pauker would be turning in his
8 grave now, to hear what's all this discussion. For two years I have tried to reason with
9 her.

10 Rita Pauker says her husband loaned the scrolls to Ohana, who insured them for two
11 years. She has his signature as proof, but those two years have come and went and her
12 husband never asked for them back. He passed away in 2002. Pauker says the Torah's
13 should go to her nephews who are Rabbis.

14 Rita Pauker: I feel Normans' nephew's, who are Rabbis, They should be the rightful
15 owners.

16 Pauker tried to involve the police, but no crime has been committed. She can't sue in
17 civil court because Jewish Law prohibits a suit involving a religious article.

18 Her attorney says, she's legally stuck.

19 Jeffrey Bohrer: I think it's heartbreaking that something along these lines could happen.
20 There's right and there's wrong.

21 The only other legal avenue at this point is to go to a Rabbinical court. Rabbi Ohana
22 says he's consulted other Rabbis who say the torahs belong with the congregation. He
23 accuses Pauker of trying to profit an accusation she denies.

24 Rabbi Ohana: *I told him, Rita the Torahs is not yours. They were not even your
25 husband's. They belong to his Congregation.*

26 Rita Pauker: I just want them to go back to his family.

27 Rita Pauker is reluctant to take her case to a Rabbinical court. She feels the court would
28 side with the synagouge. So, for now, these torah's remain in Sherman Oaks."⁶

b. CONCLUSION

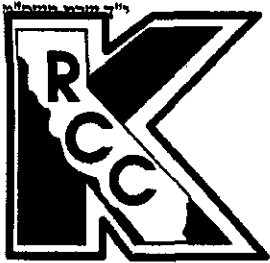
Mrs. Pauker wants the four Torahs returned to her immediately.

DATED: July 25, 2008

LAW OFFICE OF BARUCH C. COHEN

By Baruch Cohen
Attorney for Rita Pauker

⁶A true and correct copy of the video of the KABC Eyewitness News story by reporter
Melissa MacBride is attached hereto as Exhibit "" and is incorporated herein by this reference.



ועד הרבנים דקליפארנא

Rabbinical Council of California

בס"ד

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Rabbi Meyer H. May

Rabbinic Administrator

Rabbi Avrohom Union

Director of Kashrut Services

Rabbi Yakov Vann

Kashrut Administrator

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Dr. Mark Goldenberg

*Vice-President***Counsel**

Benzion J. Westreich, Esq.

Katten Muchin Rosenman LLP

י"ד שבט תשס"ט

February 8, 2009

Mr. G. Scott Sobel
8350 Wilshire Blvd. suite 200
Beverly Hills, CA 90211

Via Electronic Mail and Facsimile

RE: Pauker v. Ohana

Dear Mr. Sobel,


The Beis Din is in receipt of your faxed letter from February 6, 2009.

The judgment issued by our Beis Din is final, and is not subject to appeal to another Beis Din locally or abroad. Our policy on judicial review is carefully explained at the onset of each hearing.

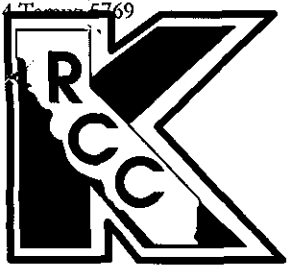
You are free to enter into any mutual agreeable arrangement to arrange for transfer of the Sifrei Torah in fulfillment of the psak din, but the Beis Din declines to involve itself or to be a party to this discussion.

Please note that the arbitration agreement entered into by your client provides that a prevailing party may seek an additional award of all necessary fees and costs to uphold and enforce the Beis Din decision. This clause was upheld in numerous court actions.

On behalf of the Beis Din,


Rabbi Avrohom Union
Rabbinic Administrator
Rabbinical Council of California

Cc: Rabbi Samuel Ohana
Mr. Baruch Cohen
Rabbi Nachum Sauer
Rabbi Gershon Bess



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Co-Chairman
 Dr. Irving Lebovics
President
 Dr. Mark Goldenberg
Vice-President

Counsel
 Benzion J. Westreich, Esq.
 Katten Muchin Rosenman LLP

4 Tamuz 5769
 June 26, 2009

Mr. G. Scott Sobel
 8350 Wilshire Blvd. suite 200
 Beverly Hills, CA 90211

Via Electronic Mail and Facsimile

RE: Pauker v. Ohana

Dear Mr. Sobel,

The Beis Din is in receipt of your faxed letter from February 18, 2009. Thank you for forwarding Rabbi Ohana's letter to Israel.

The Beis Din reviewed the ten points contained in Rabbi Ohana's letter to Rabbi Peretz. Six of his ten points are patently false statements. Several of them contradict Rabbi Ohana's own testimony in front of the Beis Din. Two points are pure speculation on his part as to the reasoning of the judgment (incorrect, as it turns out). One of the ten is factually correct but procedurally wrong.

We are confident this case will not be reviewed by the Beis Din HaGadol, and urge you to spare your client further expense and embarrassment by urging him to comply with the judgment post haste.

On behalf of the Beis Din,

Rabbi Avrohom Union
 Rabbinic Administrator
 Rabbinical Council of California

Cc: Mr. Baruch Cohen
 Rabbi Nachum Sauer
 Rabbi Gershon Bess