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9 Mishkan Israel American Institute For Judaic Studies, Inc.

**FILED**

LOS ANGELES SUPERIOR COURT

JUL 07 2009

JOHN A. CLARKE, CLERK

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 BY AMBER LAFLEUR CLAYTON, DEPUTY

12 FOR THE COUNTY OF LOS ANGELES – CENTRAL

13 RITA PAUKER,

14 Plaintiff,

15 vs.

16 RABBI SAMUEL OHANA, BETH  
17 MIDRASH MISHKAN ISRAEL,

18 Defendants

Case No: BS119163

Assigned for all purposes to the Honorable Zaven  
V. Sinanian, Dept. 23

Filing Date: 2/19/2009

**SUPPLEMENTAL OPPOSITION TO  
PLAINTIFF'S MOTION TO COMPEL  
BINDING ARBITRATION AND MOTION  
TO STRIKE DECLARATION OF BARUCH  
C. COHEN; DECLARATIONS OF RABBI  
SAMUEL OHANA AND G. SCOTT SOBEL**

Date: July 8, 2009

Time: 8:30 a.m.

Dept.: 23

19 **TO THE COURT, PLAINTIFF AND HER ATTORNEYS OF RECORD:**

20  
21 **I. PLAINTIFF'S REPLY REVEALS FURTHER GROUNDS FOR THE**  
22 **RCC'S DISQUALIFICATION AND PREJUDICE.**

23 **A. RCC RABBIS' FAILURE TO MAKE MANDATORY DISCLOSURES:**

24 Plaintiff's counsel states (Declaration of Baruch C. Cohen, paragraph 17: "I have been  
25 representing parties before Bais Din for over 13 years ...," raising a question not previously  
26 addressed in this proceeding: None of the rabbi/arbitrators provided the mandatory disclosures  
27 required of them in this matter. (Declaration of Rabbi Ohana.)  
28

California Rules of Court (“CRC”), Rule 3.816 “Disclosures by arbitrator” provides:

(b) In addition to any other disclosure required by law . . . , an arbitrator must disclose to the parties:

(2) Any significant personal or professional relationship the arbitrator has or has had with a party, attorney, or law firm in the instant case, including the number and nature of any other proceedings in the past 24 months in which the arbitrator has been privately compensated by a party, attorney, law firm, or insurance company in the instant case for any services, including service as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, settlement facilitator, or other alternative dispute resolution neutral. [Emphasis added.]

The appointed arbitrator must disclose information that the parties or their lawyers “might consider relevant to the question of disqualification” ... even where the arbitrator believes there is no actual basis for disqualification. Pursuant to CRC 3.816(a), cause for disqualification may be waived, but the ground first must be disclosed in writing to the parties, and must be waived by them in writing. These disclosures are NOT optional, and none were ever made by any of the rabbi/arbitrators in this matter.

In his Reply brief and email communications, Plaintiff’s counsel has demonstrated that he has a relationship with the RCC which is far from “arms length,” further evidencing the prejudice herein: Although the RCC is not a party to the proceedings herein, Mr. Cohen adds the RCC’s counsel to his Proof of Service herein. In addition, Mr. Cohen emails his pleadings to counsel for the RCC. (See Exhibit D, a copy of Mr. Cohen’s June 30, 2009 email to Attorneys Westreich and Stern, counsel for the RCC, and to Defendants’ counsel.) These contacts with the RCC are not necessary to the pursuit of justice in this proceeding. They merely “fan the flames of” actual prejudice, or at least the appearance thereof, on the part of the RCC against Defendants. (See below as well concerning ex parte contacts between the arbitrators, counsel, and one or more of the parties.)

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1 B. RCC RABBIS' EX PARTE COMMUNICATIONS WITH PLAINTIFF'S  
2 COUNSEL AND PARTY LITIGANT(S):

3 Pursuant to CRC 3.816, "Communication with the arbitrator,"

4 (b) Ex parte communication prohibited

5 An arbitrator must not initiate, permit, or consider any ex parte communications or  
6 consider other communications made to the arbitrator outside the presence of all of  
7 the parties concerning a pending arbitration<sup>1</sup>, except as follows:

8 (1) An arbitrator may communicate with a party in the absence of other parties  
9 about administrative matters, such as setting the time and place of hearings or  
10 making other arrangements for the conduct of the proceedings, as long as the  
11 arbitrator reasonably believes that the communication will not result in a  
12 procedural or tactical advantage for any party. When such a discussion occurs, the  
13 arbitrator must promptly inform the other parties of the communication and must  
14 give the other parties an opportunity to respond before making any final  
15 determination concerning the matter discussed. [Emphasis added.]

16 In his Declaration (paragraph 19), Cohen denies "extensive ex parte contacts with the  
17 RCC Bais Din . . ." The issue, pursuant to CRC 3.816(b) is not the *extent* of ex parte contact.  
18 Any and all prohibited ex parte communications are prohibited. Cohen does not deny ex parte  
19 communications with the RCC and its rabbis/administrator. Nor does he claim that the ex parte  
20 communications fit within the exception of permitted communications. (They clearly do not.)  
21 Nor does he argue that the Rabbi/arbitrators' declarations did not evidence prejudice. A quick  
22 review of the three declarations reveals that they were not neutral factual recitations by unbiased  
23 judicial officers, but in fact opinionated and argumentative taking of sides in the post-arbitration  
24 dispute. In so doing, each of the rabbis and the organization they represent forfeited any  
25 appearance of neutrality in this matter.

26 The focus at this juncture is not whether Plaintiff's counsel erred in conducting ex parte  
27 communications with the rabbi/arbitrators. It is whether the RCC's ex parte cooperation with

28 <sup>1</sup> Any argument that the arbitration was no longer "pending" at the time of the ex parte communications  
would support Defendants' position that the Agreement had been fully performed, without any right or  
expectation of any future proceedings before the RCC Beit Din in the matter.

1 Plaintiff's counsel (including each rabbi/arbitrator signing a declaration in support of Plaintiff, in  
2 large part virtually identical to the others' declarations) evidences prejudice, or the very strong  
3 appearance of prejudice, which cannot be overcome and remedied by allowing Rabbi Union, the  
4 Administrator of the RCC and arbitrator herein, to unilaterally hand select three replacement  
5 rabbis in order to constitute a fair Beit Din under the auspices of his organization. Defendants  
6 note that Plaintiff made no attempt to refute the fact, pointed out in Defendants' Opposition, that  
7 Rabbi Union himself would select the three new rabbi/arbitrators to sit as the reconstituted Beit  
8 Din, and the obvious appearance that such a Beit Din would not be independent of his and the  
9 RCC's influence.  
10

11 Furthermore, on or about January 8, 2009, Rabbi Union telephoned Rabbi Ohana,  
12 asking Rabbi Ohana to allow Plaintiff's counsel or a relative of Plaintiff to take  
13 photographs of the four Torah scrolls at issue. Rabbi Union did not explain the request, but  
14 requested that Rabbi Ohana consent to it as a matter of courtesy. Rabbi Ohana consented.  
15 The scrolls were photographed in Defendants' synagogue. Approximately 10 days later,  
16 the Beit Din's Judgment was issued. This communication might not have been "ex parte,"  
17 as it appears to have been at the request of Plaintiff's counsel. However, such request  
18 certainly would have been a prohibited ex parte communication, as well as a further  
19 indication of a cooperative relationship between Mr. Cohen and Rabbi Union.  
20  
21

22 **II. DEFENDANTS HEREBY MOVE TO STRIKE THE DECLARATION OF**  
23 **BARUCH C. COHEN SUBMITTED IN REPLY:**

24 The Declaration of Baruch C. Cohen submitted in Reply should be stricken nearly in its  
25 entirety as consisting of argument, opinions, and the few purported facts stated therein are  
26 irrelevant or lack foundation, as follows:

27 Paragraph 10 [sic, mis-numbered beginning Declaration with number "3" rather than "1"]  
28 on the copy received by email] purports to summarize Defendants' arguments. Mr. Cohen's

1 summary is irrelevant. Further, it is lacking in foundation and inaccurate, particularly as to his  
2 points numbered (3)(d) and (3)(e).

3 Paragraph 11: Argument, Opinion, or at best, entirely Lacks Foundation.

4 Paragraph 12: Irrelevant.

5 Paragraph 13:

6 "The RCC Bais has not shown bias and  
7 prejudice in this matter."

Opinion.

8 "On the contrary, notwithstanding Ohana's  
9 name-calling and hostility, the Bais Din afforded  
10 him every courtesy and patiently allowed Ohana  
11 to make his claims."

Opinion; Lacks Foundation; Best Evidence  
Rule (minutes or recording of proceedings  
missing).

12 "The RCC Bais Din took months to inquire into  
13 the truth of Ohana's claims and ruled against  
14 him."

Lacks Foundation as to what the rabbis were  
doing and the reason for the delay between  
July 27, 2008 and January 19, 2009; Best  
Evidence Rule (others would have personal  
knowledge of the purported fact).

15 "Ruling against Ohana is not evidence of bias."

Opinion; Argument.

16 "Ohana's dislike for the RCC's decision-making  
17 process(to which he was not privy to) is not  
18 evidence of bias."

Opinion; Lacks Foundation; Prejudicial.

19 Paragraphs 14 through 16: Opinion; Lacks Foundation; Best Evidence Rule (minutes or  
20 recording of proceedings missing).

21 Paragraph 17:

22 The RCC is not in competition with Ohana.

Opinion.

23 I have been representing parties before Bais Din  
24 for over 13 years, and until Ohana's declaration  
25 appointing himself a Dayan over a Bais Din, I  
26 never heard of his Bais Din.

Irrelevant.

27 "Further, first Ohana claims that the RCC is in  
28 competition with him re Bais Din case then he  
retreats to saying that he 'fears' that the RCC's  
competition against him was a motivating factor  
in ruling against him."

Opinion; Argument; Irrelevant.

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1 "According to Jewish law, there is no such thing  
2 as competition for Torah-based Bais Din's as the  
3 Talmud states: '*Kinaas Sofrim Tarbeh  
4 Chochmah*,' jealousy among scholars increases  
5 wisdom.' "

Opinion; Argument; Irrelevant; Lacks  
Foundation ( Talmudic quote is taken out of  
context so as to corrupt its meaning, and is  
provided without citation to the source  
location, Declaration of Sobel); Best  
Evidence Rule (uncertified translation).

6 Paragraph 18: Irrelevant; Opinion; Lacks Foundation. Footnote 1 is Irrelevant and  
7 Prejudicial.

8 Paragraph 19: Opinion; Lacks Foundation; Argumentative.

9 Paragraph 20:

10 "The RCC's counsel's letter to Ohana's counsel  
11 does not evidence prejudice."

Opinion

12 "Ohana defamed the Rabbis of the RCC and  
13 ridiculed their award in this court,"

Opinion; Lacks Foundation; Argumentative;  
Prejudicial.

14 "and then, when RCC's legal counsel correctly  
15 called Scott Sobel [sic] for his 'contumacious'  
16 behavior, Ohana cries foul-play and alleges  
17 prejudice."

Opinion; Lacks Foundation; Argumentative;  
Prejudicial. In using the label  
"contumacious," counsel for the RCC was  
specifically referring Rabbi Ohana, not  
Sobel.<sup>2</sup>

18 "Finding a party or his counsel in contempt is not  
19 necessarily evidence of bias when that lawyer  
20 acted beneath contempt and deserved the  
21 sanction."

Opinion; Lacks Foundation; Argumentative;  
Prejudicial.

### 22 III. CONCLUSION

23 Based upon the arguments in Part I above, it is clear that the RCC Rabbis violated the  
24 Rules of Court in utterly failing to issue mandatory pre-arbitration disclosures and that they  
25 participated in prohibited ex parte communications with Plaintiff's counsel, cooperating with  
26 him in vehemently opposing Defendants' pursuit of justice and fairness. In so doing, they and  
27 their RCC forfeited any appearance of neutrality in this matter. Alternatively, if the post  
28 judgment ex parte communications were permitted because the matter was no longer "pending,"

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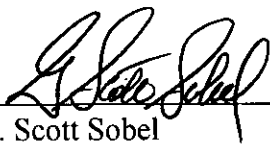
29 <sup>2</sup> Mr. Westreich wrote: "[Y]our statement that 'Rabbi Ohana will not appear in any Beit Din under the  
30 auspices of the RCC' confirms his contumacious refusal to abide by the arbitration agreement ..."  
31 [Emphasis added.]

1 then there is no longer any Agreement to enforce, having been fully performed.

2 While Defendants are no longer under any contractual obligation to arbitrate this matter,  
3 they have expressed their readiness to do so, and presented alternatives to Plaintiff's single-  
4 minded one track pursuit of the RCC as the only available arbiter of the matter. Defendants are  
5 anxious to resolve the matter by any alternative avenue, and respectfully request that this Court  
6 deny Plaintiff's "Motion to Compel Binding Arbitration Before the Beis Din of the Rabbinical  
7 Council of California."  
8

9 Respectfully submitted,

10 DATED: July 1, 2009

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12 \_\_\_\_\_  
13 G. Scott Sobel  
14 Attorney for Rabbi Samuel Ohana and Beth  
15 Midrash Mishkan Israel American Institute For  
16 Judaic Studies, Inc.  
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1 DECLARATION OF RABBI SAMUEL OHANA

2 Rabbi Samuel Ohana declares:

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

8 2) No RCC rabbi ever provided any disclosure to me, nor notified me of any prior  
9 relationship with, contact with, arbitrations or mediations with Baruch Cohen or Plaintiff Rita  
10 Pauker, either before or after the July 27, 2008 Beit Din hearing in this matter.  
11

12 3) On Thursday, January 8, 2009, Rabbi Union telephoned me, asking me, as a matter of  
13 courtesy, to allow Baruch Cohen or a member of Rita Pauker's family to take photographs of the  
14 four Torah scrolls in my synagogue. Rabbi Union did not explain the purpose of his request. I  
15 agreed to allow the photography. Within days, the scrolls were photographed by a Mr. Stewart  
16 Zimmerman.  
17

18 4) Baruch Cohen states in his Declaration (paragraph 20): "Ohana defamed the Rabbis of  
19 the RCC and ridiculed their award in this court." Never have I done any such thing. On the  
20 contrary, I was quoted in the Jewish Journal, dated April 15, 2009, as follows: "The whole thing is  
21 a very unfortunate situation. I feel very bad for the beit din. This is not something that gives the  
22 community honor." To this day, this is and shall remain my belief.  
23

24 I declare under penalty of perjury under the laws of the State of California that the  
25 foregoing is true and correct. Executed July 1, 2009 at Los Angeles, California.

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



FROM : SOBEL

FAX NO. :

Jul. 01 2009 05:35PM P1

DECLARATION OF RABBI SAMUEL OHANA

Rabbi Samuel Ohana declares:

1) I am a Defendant in the above-caption action, and the President of Beth Midrash Mishkan Israel American Institute For Judaic Studies, Inc. 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) No RCC rabbi ever provided any disclosure to me, nor notified me of any prior relationship with, contact with, arbitrations or mediations with Baruch Cohen or Plaintiff Rita Pauker, either before or after the July 27, 2008 Beit Din hearing in this matter.

3) On Thursday, January 8, 2009, Rabbi Union telephoned me, asking me, as a matter of courtesy, to allow Baruch Cohen or a member of Rita Pauker's family to take photographs of the four Torah scrolls in my synagogue. Rabbi Union did not explain the purpose of his request. I agreed to allow the photography. Within days, the scrolls were photographed by a Mr. Stewart Zimmerman.

4) Baruch Cohen states in his Declaration (paragraph 20): "Ohana defamed the Rabbits of the RCC and ridiculed their award in this court." Never have I done any such thing. On the contrary, I was quoted in the Jewish Journal, dated April 5, 2009, as follows: "The whole thing is a very unfortunate situation. I feel very bad for the beit din. This is not something that gives the community honor." To this day, this is and shall remain my belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed July 1, 2009 at Los Angeles, California.

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

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DECLARATION OF G. SCOTT SOBEL

G. Scott Sobel further 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. In his Reply brief and email communications, Plaintiff's counsel has demonstrated that he has a relationship with the RCC which is far from "arms length," further evidencing the prejudice herein: Although the RCC is not a party to the proceedings herein, Mr. Cohen adds the RCC's counsel to his Proof of Service herein. In addition, Mr. Cohen emails his pleadings to counsel for the RCC. Attached hereto as Exhibit D is a true and correct copy of Mr. Cohen's June 30, 2009 email to Attorneys Westreich and Stern, counsel for the RCC, and to me.

3. These contacts with the RCC are not necessary to the pursuit of justice in this proceeding. They merely "fan the flames of" actual prejudice, or at least the appearance thereof, on the part of the RCC against Defendants.

4. Through decades of daily study I am familiar with the Talmud, and I am familiar with the particular language quoted by Cohen in Paragraph 17 of his Declaration. The quote is incomplete, and is taken entirely out of context so as to corrupt its meaning.

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

Executed July 1, 2009 at Los Angeles, California.

  
\_\_\_\_\_  
G. Scott Sobel



G. Scott Sobel &lt;gscottsobel@gmail.com&gt;

## Pauker vs. Ohana - REPLY / MOTION COMPEL BINDING ARBITRATION

1 message

BCC4929@aol.com &lt;BCC4929@aol.com&gt;

Tue, Jun 30, 2009 at 5:11 PM

To: benny.westreich@kattenlaw.com, charles.stern@kattenlaw.com, gscottsobel@yahoo.com

Cc: BCC4929@aol.com

Messrs: Westreich, Stern &amp; Soble:

Enclosed please find courtesy copies in pdf format of:

1. PLAINTIFF'S REPLY TO OPPOSITION TO MOTION COMPEL BINDING ARBITRATION BEFORE THE BAIS DIN OF THE RABBINICAL COUNCIL OF CALIFORNIA, MEMORANDUM OF POINTS AND AUTHORITIES, DECLARATION OF BARUCH C. COHEN [C.C.P. § 1281.4]
2. EVIDENTIARY OBJECTIONS TO THE DECLARATION OF RABBI SAMUEL OHANA RE: PLAINTIFF'S REPLY TO OPPOSITION TO MOTION COMPEL BINDING ARBITRATION BEFORE THE BAIS DIN OF THE RABBINICAL COUNCIL OF CALIFORNIA

Both were filed today and served on you by mail.

Respectfully,

**Baruch C. Cohen, Esq.**

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### 2 attachments

 **COMPEL-ARBITRATION-REPLY.PDF**  
420K **EVIDENTIARY-OBJECTIONS-RABBI-OHANA-3.pdf**  
359K

EX-10 ✓

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**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:

**SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL BINDING ARBITRATION AND MOTION TO STRIKE DECLARATION OF BARUCH C. COHEN; DECLARATIONS OF RABBI SAMUEL OHANA AND G. SCOTT SOBEL**

on the following interested parties in this action:

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

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 July 1, 2009 at Los Angeles, California.

  
\_\_\_\_\_  
G. Scott Sobel