**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

RITA PAUKER,

Plaintiff and Respondent,

v.

RABBI SAMUEL OHANA et al.,

Defendants and Appellants.

B229553

(Los Angeles County
Super. Ct. No. BS119163)



APPEAL from a judgment of the Superior Court of Los Angeles County, Zaven V. Sinanian, Judge. Affirmed.

Steven R. Friedman and G. Scott Sobel for Defendants and Appellants.

No appearance for Plaintiff and Respondent.

## INTRODUCTION

Appellants Rabbi Samuel Ohana and Beth Midrash Mishkan Israel American Institute for Judaic Studies, Inc. (Beth Midrash)[1] appeal from a judgment confirming an arbitration award. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Rita Pauker (Pauker) filed a petition to confirm an arbitration award of the Bais Din[2] of the Rabbinical Counsel of California. In it, she alleged that her deceased husband, Rabbi Norman Pauker, was the rabbi of a synagogue in North Hollywood, Beth Midrash Mishkan Israel. Rabbi Pauker owned four Sifrei Torah—handwritten scrolls containing the five books of Moses. Rabbi Pauker's sister had donated them to a synagogue in New York. When that synagogue closed, they were given to Rabbi Pauker. They were worth $100,000 to $200,000.

When Rabbi Pauker retired and closed his synagogue in 1994, he transferred most of the synagogue's assets to Rabbi Ohana and the new Beth Midrash. However, according to a handwritten contract between the two rabbis and signed by Rabbi Ohana, the four Sifrei Torah were to be loaned to the new synagogue for two years.

Beginning in 1996, Rabbi Pauker demanded the return of the Sifrei Torah. Rabbi Ohana promised to return them but then gave excuses why he did not do so. Rabbi Pauker died in 2002, and Pauker begged Rabbi Ohana for the return of the Sifrei Torah. Again, he promised to return them but then gave excuses for not returning them.

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1 Beth Midrash was incorrectly named Beth Midrash Mishkan Israel in the petition.

2 Bais Din (alternatively Beis Din, Beit Din or Beth Din) is a rabbinical court which applies Jewish law to the resolution of disputes. (Beth Din of America, http://bethdin.org/organization-affiliations.asp; Wikipedia, http://en.wikipedia.org/wiki/Beth_din.)

Pauker hired attorney Baruch C. Cohen (Cohen) to prosecute her case before the Bais Din of the Rabbinical Council of California. Cohen called Rabbi Ohana, requesting that he voluntarily submit the matter to the Bais Din. Rabbi Ohana refused, claiming that he already had received a ruling from Rabbi Nachum Sauer allowing him to keep the Sifrei Torah. Cohen checked and found there had been no such ruling. He again requested that Rabbi Ohana voluntarily submit to the Bais Din, and Rabbi Ohana again refused.

On June 16, 2008, Cohen wrote to Rabbi Avrohom Union of the Rabbinical Council of California, requesting that he issue a summons to a Din Torah to Rabbi Ohana and Beth Midrash. Rabbi Ohana agreed to binding arbitration before the Rabbinical Council of California, with Rabbis Sauer, Union and Gershon Bess to serve as arbitrators. On July 16, 2008, Rabbi Ohana and Pauker signed the agreement to submit to binding arbitration.

The arbitration was held, and on January 19, 2009, the Bais Din issued its judgment. The court determined:

"1. The parties stipulated that in 1994, the late Rabbi Norman Pauker transferred four Sifrei Torah (Torah scrolls) to Rabbi Shmuel Ohanna. Beyond that determination, all of the facts surrounding the origin and ownership of the Sifrei Torah are in dispute.

"2. The Plaintiff seeks the return of the Sifrei Torah to her for the purpose of distributing them to family members serving in the Orthodox Rabbinate. The Respondent maintained that he is not obligated to return the Sifrei Torah to her, and wishes to keep them in his synagogue.

"3. Based on the evidence and the law, the Beis Din determines that the Sifrei Torah must rightfully be returned to Plaintiff for said distribution.

"4. The Respondent shall return, or arrange for the return, of the four Sifrei Torah to the Plaintiff within thirty days of this order."

On January 27, 2009, Cohen wrote to Rabbi Ohana "to arrange for the orderly turnover of the four *Sifrei Torah* before the 30-day deadline." When he called to follow

up on his letter, Rabbi Ohana hung up on him. Cohen wrote to Rabbi Ohana, asking him to "advise whether you will be complying with the *Bais Din's* ruling."

In response, Rabbi Ohana retained attorney Scott Sobel (Sobel). Sobel indicated that Rabbi Ohana would not comply with the judgment of the Bais Din unless Pauker agreed to his "settlement terms." These terms "were so egregious and offensive, that they were summarily denied and rejected." Pauker then filed her petition to confirm arbitration award on February 19, 2009.

Rabbi Ohana and Beth Midrash opposed the petition. The trial court vacated the arbitration award, i.e., the judgment of the Bais Din, on one of the grounds raised in the opposition, namely Rabbi Saur's failure to disclose grounds for his disqualification as an arbitrator. (Code Civ. Proc., § 1286.2, subd. (a)(6).)

Pauker moved for reconsideration of this ruling. The trial court denied her motion.

Pauker then filed a motion to compel binding arbitration. The trial court granted her motion, finding "that pursuant to Code of Civil Procedure Section 1287, the Court may order a rehearing before new arbitrators who provide services under the auspices of the Rabbinical Council of California." The court then dismissed the action without prejudice but retained jurisdiction in order to confirm or deny any subsequent arbitration award.

Cohen contacted the Bais Din and requested a new hearing before new arbitrators. There followed disputes over the selection of the arbitrators and the date of an arbitration status conference. The trial court ultimately vacated the status hearing date and again dismissed the case without prejudice while retaining jurisdiction to confirm or vacate the arbitration award.

On July 12, 2010, Pauker filed her second petition to confirm the arbitration award of the Bais Din. To this petition, she added the allegations that a second Bais Din hearing was held on January 13, 2010. On May 10, Rabbi Sholom Tendler issued the judgment on behalf of the Bais Din, ruling "that the four Torah Scrolls in question are the property of the non-profit Valley Mishkan Israel Congregation of which Rita Pauker is the Agent.

[¶] Therefore the four Torah Scrolls should be returned to Ms. Pauker within 10 days of this ruling. . . ." Pauker then demanded the return of the Sifrei Torah, but Rabbi Ohana refused to do so.

Rabbi Ohana and Beth Midrash filed opposition to the petition and requested vacation of the arbitration award and entry of judgment in their favor. They claimed the arbitrator had no authority to award the Sifrei Torah to Valley Mishkan Israel Congregation, which was not a party to the arbitration agreement; the arbitrator violated their right to counsel by excluding one of their two attorneys from participating in the proceedings; and the Rabbinical Council of California showed extreme prejudice against them.

The trial court granted the petition and confirmed the arbitration award, entering judgment in Pauker's favor.

## DISCUSSION

The Legislature through the provisions of the Code of Civil Procedure has established "'a strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution.'" (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) For this reason, the courts indulge every intendment in favor of an arbitration award. (*Ibid.*) Under Code of Civil Procedure section 1286.2, there are only limited grounds upon which an arbitration award may be vacated. (*Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1365.) A party seeking vacation of an arbitration award must show that one of the grounds set forth in Code of Civil Procedure section 1286.2 exists and must show substantial prejudice. (*United Brotherhood of Carpenters etc., Local 642 v. DeMello* (1972) 22 Cal.App.3d 838, 840.) We review the trial court's ruling de novo. (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376, fn. 9.)

One of the grounds for vacating an arbitration award is that "[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of

the decision upon the controversy submitted." (Code Civ. Proc., §1286.2, subd. (a)(4).) An arbitrator exceeds the scope of his or her powers by acting without subject matter jurisdiction, deciding an issue not submitted to arbitration, arbitrarily remaking a contract, upholding an illegal contract, issuing an award that violates public policy or a statutory right, fashioning a remedy not rationally related to the contract, or selecting a remedy not authorized by law. (*O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1055-1056.) We give substantial deference to the arbitrator's determination as to the scope of his or her powers. (*Advanced Micro Devices, Inc. v. Intel Corp.*, *supra*, 9 Cal.4th at p. 372; *O'Flaherty*, *supra*, at p. 1056.)

However, an arbitrator does not exceed his or her powers "merely by rendering an erroneous decision on a legal or factual issue, so long as the issue was within the scope of the controversy submitted." (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775.) Similarly, "unless expressly restricted by the agreement of the parties," an arbitrator has "the authority to fashion relief [he or she] consider[s] just and fair under the circumstances existing at the time of the arbitration, so long as the remedy may be rationally derived from the contract." (*Advanced Micro Devices, Inc. v. Intel Corp.*, *supra*, 9 Cal.4th at p. 383.) We will uphold the award "so long as it was even arguably based on the contract." (*Id.* at p. 381.)

Appellants first contend that since it had no contract to arbitrate with Valley Mishkan Israel Congregation, the arbitrator had no authority to make an award in its favor. The authority on which they rely does not support this contention, however.

*Nguyen v. Tran* (2007) 157 Cal.App.4th 1032, 1036 holds that "only parties to an arbitration contract may enforce it or be required to arbitrate." The other authorities appellants cite have similar holdings. As stated in *County of Contra Costa v. Kaiser Foundation Health Plan, Inc.* (1996) 47 Cal.App.4th 237 at pages 244 through 245, "Public policy favors arbitration as an expedient and economical method of resolving disputes, thus relieving crowded civil courts. However, arbitration assumes that the parties have elected to use it as an alternative to the judicial process. [Citation.] Arbitration is consensual in nature. The fundamental assumption of arbitration is that it

may be invoked as an alternative to the settlement of disputes by means other than the judicial process solely because all parties have chosen to arbitrate them. [Citations.] Even the strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement or who have not authorized anyone to act for them in executing such an agreement. 'The right to arbitration depends on a contract.' [Citations.] A party cannot be compelled to arbitrate a dispute that it has not elected to submit to arbitration. [Citation.] A party can be compelled to arbitration only when he or she has agreed in writing to do so. [Citations.] In essence, an action to compel arbitration is a suit in equity to compel specific performance of that contract. [Citation.] Absent a written agreement—or a preexisting relationship or authority to contract for another that might substitute for an arbitration agreement—courts sitting in equity may not compel third party nonsignatories to arbitrate their disputes."

The arbitrator ruled "that the four Torah Scrolls in question are the property of the non-profit Valley Mishkan Israel Congregation of which Rita Pauker is the Agent. [¶] Therefore the four Torah Scrolls should be returned to Ms. Pauker within 10 days of this ruling. . . ." That the Sifrei Torah *are now* the property of Valley Mishkan Israel Congregation does not mean that the arbitrator necessarily resolved a dispute between appellants and Valley Mishkan Israel Congregation in the absence of an agreement to arbitrate between the parties. Pauker stated in her declaration in reply to appellants' opposition to the petition to confirm: "I am the Plaintiff in this matter; further, I am Agent and only Principal of Valley Mishkan Israel Congregation." Clearly, she had the authority to make the determination that the Sifrei Torah belonged to the congregation rather than to her personally.

Moreover, the arbitrator ordered that the Sifrei Torah be *returned to Pauker*, a party to the arbitration agreement. This order supports the conclusion that the arbitrator conducted an arbitration of the dispute between Pauker and appellants.

As the trial court observed, appellants "have not pointed to any provision in the arbitration agreement that prevents such an award." If, at the time of the arbitration, the Sifrei Torah belonged to Valley Mishkan Israel Congregation as a result of actions taken

by Pauker, the arbitrator certainly had the authority, in arbitrating the dispute between Pauker and appellants, to order that appellants return the Sifrei Torah to Pauker, and to rule that the Sifrei Torah were now the property of Valley Mishkan Israel Congregation. (*Advanced Micro Devices, Inc. v. Intel Corp.*, *supra*, 9 Cal.4th at p. 383.)

Appellants' additional claims regarding the interpretation of the arbitration contract and the propriety of the award rest on the assumption that the arbitrator improperly arbitrated a dispute between appellants and Valley Mishkan Israel Congregation. Inasmuch as the assumption is incorrect, these claims fail.

Appellants next contend that the Bais Din did not have the authority to deprive them of their chosen counsel, and it was prejudicial error to inform them on the day the arbitration took place that they could have only one attorney represent them in the arbitration. They also claim the limitation to one attorney violated the express wording of the arbitration agreement.

Sobel stated in his declaration in opposition to the petition to confirm the arbitration award that he and Steven R. Friedman (Friedman), the other attorney representing appellants, arrived at the location where the arbitration was to take place. At that time, the arbitrator announced that each party would be allowed to have only one attorney attend the hearing. Sobel "explained that each of defense counsel was assigned and prepared to argue a different area of the law: that [Sobel) was prepared to present witnesses and argue issues of State and Federal law, while Rabbi Ohana had retained [Friedman] to address or argue issues of Jewish law. The arbitrator stated in response: 'With all due respect, I don't need to hear argument from Mr. Friedman on Jewish law.'"

The trial court rejected appellants' claim that they were denied their right to counsel, explaining that they had not cited any authority which supported their position. On appeal, they cite cases which stand for the proposition that the terms of the arbitration agreement control the arbitration. (See, e.g., *Freeman v. State Farm Mut. Auto. Ins. Co.* (1975) 14 Cal.3d 473, 481; *Rhodes v. California Hospital Medical Center* (1978) 76 Cal.App.3d 606, 609.) In their view, the use of the plural "attorneys" in the arbitration

agreement gave them the right to have two attorneys present during the hearing. We disagree.

The provision at issue reads: "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." Because the plural "attorneys" is used in conjunction with the plural "parties," it is clear the meaning of the term is that each party may be represented by his or her own attorney or advisor. (Cf. *California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) While the language does not preclude representation of a party by more than one attorney, it does not create a right to such representation.

Appellants also cite Code of Civil Procedure section 1282.4, subdivision (a), which provides: "A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title." This section refers to "an" attorney. Nothing in this provision can be interpreted to confer a right to multiple attorneys at an arbitration hearing. (See *Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal.4th 217, 227 [if the language of the statute is clear and unambiguous, we will give effect to its plain meaning].)

Appellants also claim the arbitration award should have been vacated because "if a party resisting arbitration can show that the rules under which arbitration is to proceed will operate to deprive him of what we in other contexts have termed the common law right of fair procedure, the agreement to arbitrate should not be enforced." (*Graham v. Scissor-Tail, Inc.* (1981) 28 Cal.3d 807, 826.) Appellants argue that the "[r]ight to multiple counsel is preserved in the arbitration agreement, which was created by the [Rabbinical Counsel of California]. [¶] Only after the fight over the original 'award' was lost did the [Rabbinical Counsel of California] unilaterally, and at the 12th hour, change the rules and violate[] the terms of the arbitration agreement." Since the arbitration agreement did not provide appellants with the right to be represented by more than one

attorney, there was no violation of their contractual rights. They cite no law demonstrating a violation of their common law rights.

Appellants also contend that the arbitration award should have been vacated because the arbitrator "was subject to conflicting and personal obligations," having been "placed in the impossible predicament of having to discredit the organization he worked for by finding against the prior three arbitrators if the award followed the evidence and was different than the prior award." In the absence of any citation to the record or authority to support their claims of bias or impropriety, we reject this contention. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830; *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

## DISPOSITION

The judgment is affirmed. Appellants are to bear their own costs on appeal.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.