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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

DEFENDANTS' OPPOSITION TO PETITION TO CONFIRM ARBITRATION AWARD; REQUEST TO VACATE AWARD AND TO ENTER JUDGMENT IN FAVOR OF DEFENDANTS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF RABBI SAMUEL OHANA AND G. SCOTT SOBEL

Date: August 31, 2010
Time: 8:30 a.m.
Dept.: 23

TO THE COURT AND TO PLAINTIFF:

Defendants Rabbi Samuel Ohana and Beth Midrash Mishkan Israel American Institute For Judaic Studies, Inc. (incorrectly named herein "Beth Midrash Mishkan Israel") hereby oppose the Petition filed by Rita Pauker, request that the award be vacated, and request that this Court enter Judgment in favor of Defendants.

SUMMARY OF ARGUMENTS:

The arbitration Award should be vacated:

In the second Beit Din arbitration hearing, Plaintiff argued and prevailed in proving to the arbitrator that Plaintiff lacks standing to claim ownership of the four Torah scrolls. Thus, the arbitrator decided: "I rule that the four Torah Scrools in question are the property of the non-profit Valley Mishkan Israel Congregation of which Rita Pauker is the Agent."

In this contractual arbitration, the arbitrator's power to act is derived exclusively from, and is limited by, the contractual agreement of both parties. The arbitrator exceeded the power granted him by the parties in granting an award in favor of a non party, non signatory to the agreement. Defendants were never asked to and did not, in any manner, consent to arbitrate any dispute with Valley Mishkan Israel Congregation. Defendants did not waive their fundamental rights of legal process, and particularly the right to a jury trial, vis-à-vis any such entity. As one of Defendants' primary defenses was Plaintiff Rita Pauker's lack of standing to assert ownership of the Torah scrolls, the arbitrator's *sua sponte* award in favor of a non-party is prejudicial error which cannot be affirmed by the Court.

Further, the arbitrator violated Defendants' fundamental right to the counsel of their choice by excluding one of Defendants' two attorneys present at the arbitration hearing from participating in and arguing the law at the hearing.

This Court should enter Judgment in favor of Defendants:

This Court should NOT order the parties to return to arbitration for a third time in this matter. The Rabbinical Council of California, "RCC," has shown its extreme prejudice against Defendants throughout the course of the matter. The conduct of the first arbitration hearing, the course of conduct since the last hearing in this Department (exhibits attached), and the second RCC Award demonstrate the prejudice against Defendants. Because the arbitrator ruled against Plaintiff Rita Pauker in her claimed ownership of the Torah scrolls, this Court should enter Judgment in favor of Defendants.

THE PROPOSED JUDGMENT EXCEEDS THE AGREEMENT OF THE PARTIES BECAUSE THE DEFENDANT NEVER AGREED TO CONTRACTUAL ARBITRATION WITH ANY PLAINTIFF ENTITY.

Plaintiff Rita Pauker, an individual, has never had any ownership interest in the property in question (four Torah scrolls) and therefore lacked any standing to commence, prosecute or obtain judgment on her claim of ownership of the Torah scrolls. Based thereon, Defendants agreed to binding arbitration exclusively between Rita Pauker, the individual, and the Defendants. Plaintiff Rita Pauker's lack of standing was one of Defendants' primary argument at both arbitration hearings in this matter.

The contractual agreement to arbitrate is limited to determining the rights of the parties to the agreement: Rita Pauker as an individual and the Defendants. The arbitrator in fact concluded that Defendants' position that Pauker had no right to the property in question was correct. Therefore judgment in favor of the Defendants must be entered, as the affirmative defense of lack of standing was found to be correct.

As the Court will recall, the prior arbitration award was vacated due to violation of the appearance of impropriety and failure to disclose the potential conflict: one of the arbitrators had given an interview which was published in a newspaper, indicating his conclusion as to the law of the case prior to sitting as an arbitrator and the taking of evidence.

Thereafter, in this Court the Defendants opposed further proceedings before the same arbitration organization (RCC), due to demonstrated bias of the RCC against Defendants and because the RCC had few neutral Rabbis available to empanel as arbitrators. In reply, Petitioner represented to the Court that the RCC has many other trained and qualified arbitrators. Defendants were ordered by the Court to return to the RCC for arbitration with a new panel.

Petitioner's representation that the RCC has many other trained and qualified arbitrators proved not to be true. Upon returning to the RCC to select a new arbitration panel, the RCC was able to propose only five "qualified" Rabbis. Defendants served a peremptory challenge to one, and objections for cause to three of them, pointing out that the three were, in essence, alter

egos of the three Rabbis from the first hearing, all disqualified by this Court. Finally, upon Defendants' proposal, a single arbitrator, Rabbi Shalom Tendler, was appointed. (See Exhibit A, extensive correspondence between Rabbi Union, (Administrator of the RCC and a disqualified prior arbitrator), Baruch Cohen, Plaintiff's counsel at the time, Benny Westreich, Esq. (counsel for the RCC), and Sobel, concerning the constitution and selection of the second panel of arbitrators, including objections, "disclosures" made, and resolution. The extensive correspondence is copied not only to illuminate the selection and "disclosure" process, but also to demonstrate the alarming degree of cooperation between the RCC and Plaintiff, and the alarming degree of the RCC's prejudice against Defendants herein.

The arbitration hearing was held on January 13, 2010. Unfortunately this arbitrator was also untrained in the law and unfamiliar with the law. The request of the Defendant to record the proceedings was denied by the arbitrator. The request to determine the substantive law which would be applied by the arbitrator, California or Jewish law ("Halacha"), was denied. And in a strange twist, the arbitrator refused to allow licensed counsel to appear and argue issues of Jewish Law for the Defendant entity.

Prior to the commencement of arbitration, Defendants' two counsel submitted to the arbitrator, and copied to Plaintiff, two trial briefs: one trial brief in English addressing the facts and California law (attached hereto as Exhibit B), and a separate two page brief entirely in Hebrew (attached as Exhibit C), addressing issues of Jewish law.[1] Both of Defendants' counsel arrived timely for the arbitration. Immediately prior to the hearing, the arbitrator appeared in the lobby waiting area of the RCC offices and invited each side to enter the conference room with a single advocate of his/her choice. Mr. Sobel accompanied Defendant Rabbi Ohana into the room. Once inside the room behind closed doors, the arbitrator announced that each party would be allowed to have one, and only one, attorney or advisor attend the hearing. All others were barred. Mr. Sobel explained that each of defense counsel was assigned and prepared to

[1] In the Beit Din Rabbinical courts, briefs are commonly presented in Hebrew, and the proceedings are often conducted in Hebrew or Yiddish, according to the preferences of the participants, as is provided in the Agreement to Binding Arbitration herein.

argue a different area of the law: that Sobel was prepared to present witnesses and argue issues of State and Federal law, and that Rabbi Ohana had retained Steven Friedman, Esq. 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 matter proceeded, over Defendants' objections. Among the defenses presented was the fact that under both state and federal law, the property of non-profit organizations is not the personal property of the non-profit's officers. The arbitrator clearly accepted this point, and the evidence was conclusive that the property in question was at all times either the property of the Defendant non-profit or of the **non party** Valley Mishkan Israel Congregation, Inc.

The arbitrator agreed that Mrs. Pauker, an individual, the Petitioner here and the sole Plaintiff party to the arbitration agreement, had no right, title or interest in the property in question. That was the SOLE question presented by the arbitration agreement.

In entering into a contract for binding arbitration, Defendants never agreed to waive their rights to trial by Court or jury, to the protections of the Code of Civil Procedure and the application of California law, as to anyone other than Rita Pauker, an individual.

Despite the express language of the agreement and the unambiguous identity of the only parties to the agreement ("Mrs. Rita Pauker v. Rabbi Samuel Ohana and Beth Midrash Mishkan Israel") the arbitrator's award seeks to award the property in question to a **non party: "the non profit Valley Mishkan Israel Congregation**, of which Rita Pauker is the Agent."

In other words the arbitrator, probably due to his lack of training and education in the law, simply took the affirmative defense, agreed with that defense, and exceeded his authority and jurisdiction by attempting to award the property to an entity which was never a party to the arbitration agreement. Further, the arbitrator erroneously identified Plaintiff as "the Agent" of the corporation. In fact, in their brief, Defendants had presented evidence that Plaintiff was the Agent for Service of Process for the Corporation. No evidence or testimony whatsoever was presented that Plaintiff acted in any other or greater capacity for the non party Valley Mishkan Israel Corporation.

Given Defendants' now clearly meritorious defense of lack of standing in the Plaintiff, it

is clearly understandable that the Defendants would be willing to arbitrate the claim, because the party plaintiff had no evidence or law to support her expressly pleaded and briefed position that the Torahs in question belonged to her as an inheritence from her husband.

Because the Defendant never entered into an agreement to arbitrate any claim with Valley Mishkan Israel Corporation, the Court cannot enter judgment in favor of that entity.

> "As a starting point for our analysis, we accept appellant's basic premise that a party cannot be compelled to arbitrate without its consent. It is beyond cavil that 'arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.' (*Steelworkers v. Warrior & Gulf Co.* (1960) 363 U.S. 574, 582, 80 S.Ct. 1347, 4 L.Ed.2d 1409; accord, *Freeman v. State Farm Mut. Auto. Ins. Co.* (1975) 14 Cal.3d 473, 481, 121 Cal.Rptr. 477, 535 P.2d 341; *Cheng-Canindin v. Renaissance Hotel Associates* (1996) 50 Cal.App.4th 676, 683, 57 Cal.Rptr.2d 867.)"

Ajida Technologies, Inc. v. Roos Instruments, Inc. (2001) 87 Cal.App.4th 534, 541-542

> "Our assessment of appellant's claim begins with this fundamental proposition: "The powers of an arbitrator derive from, and are limited by, the agreement to arbitrate." (*Advanced Micro Devices, Inc. v. Intel Corp.*, supra, 9 Cal.4th at p. 375, 36 Cal.Rptr.2d 581, 885 P.2d 994, citing *Moncharsh v. Heily & Blase*, supra, 3 Cal.4th at p. 8, 10 Cal.Rptr.2d 183, 832 P.2d 899.) Thus, in determining whether the arbitrators exceeded the scope of their powers here, we first look to the parties' agreement to see whether it placed any limitations on the arbitrators' authority."

Ajida Technologies, supra. at 543

> ""In cases involving private arbitration, '[t]he scope of arbitration is ... a matter of agreement between the parties' [citation], and ' "[t]he powers of an arbitrator are limited and circumscribed by the agreement or stipulation of submission." ' [Citations.]" (Moncharsh, supra, 3 Cal.4th 1, 8-9)"

Vandenberg v. Superior Court (1999) 21 Cal.4th 815, 830

> "An agreement to arbitrate particular claims reflects each ***party's*** conclusion that the immediate stakes make it preferable to avoid the delay and expense of court proceedings, and instead to resolve the matter between themselves without resort to the judicial process. Under such circumstances, each party is willing to risk that the arbitration will result in a "final" and "binding" defeat with respect to the submitted claims, even though the party would have won in court, and even though the arbitrator's errors must be accepted without opportunity for review. (See Moncharsh, supra, 3 Cal.4th 1, 10-12, 10 Cal.Rptr.2d 183, 832 P.2d 899.)"

Vandenberg , supra. at 832.

"Of course, an arbitrator may not exert or retain jurisdiction over issues that the parties have not submitted. (*Ray Wilson Co. v. Anaheim Memorial Hospital Assn.* (1985) 166 Cal.App.3d 1081, 1091-1092, 213 Cal.Rptr. 62, disapproved on other grounds in *Moncharsh v. Heily & Blase*, supra, 3 Cal.4th at pp. 27-28, 10 Cal.Rptr.2d 183, 832 P.2d 899.)"

Ajida Technologies, supra. at 547-548.

CONCLUSION:

Plaintiff argued and prevailed in proving to the arbitrator that Plaintiff lacks standing to claim ownership of the four Torah scrolls. The arbitrator exceeded the power granted him by the parties in granting an award in favor of a non party, non signatory to the agreement. Defendants did not waive their fundamental rights of legal process, and particularly the right to a jury trial, vis-à-vis Valley Mishkan Israel Congregation. The arbitrator's *sua sponte* award in favor of a non-party is prejudicial error which cannot be affirmed by the Court.

Further, the arbitrator violated Defendants' fundamental right to the counsel of their choice by excluding one of Defendants' two attorneys from participating in and arguing the law at the hearing.

Due to the RCC's pattern and practice of prejudice against Defendants, this Court should NOT order the parties to return to arbitration for a third time in this matter.

Based upon the foregoing, this Court should Vacate the award of the arbitrator, and because the arbitrator ruled against Plaintiff Rita Pauker in her claim of ownership of the Torah scrolls, this Court should enter Judgment in favor of Defendants.

Respectfully submitted,

DATED: July 27, 2010

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