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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

MAY 07 2009

John A. Clarke, Executive Officer/Clerk  
By *[Signature]* Deputy  
GLORIETTA ROBINSON

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

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

12 RITA PAUKER,

13 Plaintiff,

14 vs.

15 RABBI SAMUEL OHANA, BETH  
16 MIDRASH MISHKAN ISRAEL,

17 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 RECONSIDER**

Date: May 20, 2009

Time: 8:30 a.m.

Dept.: 23

18 **TO THE COURT, PETITIONER AND TO HER ATTORNEYS OF RECORD:**

19 Defendants Rabbi Samuel Ohana and Beth Midrash Mishkan Israel American Institute  
20 For Judaic Studies, Inc. hereby oppose Plaintiff Rita Pauker's Motion to Reconsider this Court's  
21 April 6, 2009 denial of her Petition to Confirm Arbitration Award. This Opposition shall be  
22 based upon the following grounds:  
23

24 1) The Court lacks jurisdiction to consider the Motion for failure of Plaintiff's affidavit to  
25 comply with the jurisdictional requirements of C.C.P. § 1008;

26 2) The purported "new facts" are not properly set out by affidavit or in any admissible  
27 form;  
28

5/7/09

1 3) The purported "new facts" were discoverable prior to the filing of the Petition.

2 4) Per the Court's April 6, 2009 Ruling, the purported "new facts" are not relevant to the  
3 Ruling.

4 **I. THE COURT LACKS JURISDICTION TO HEAR THE MOTION.**

5 The mandatory language of paragraphs (a) and (b) of C.C.P. § 1008 states that  
6 whenever an application for Reconsideration is made, "The party making the application  
7 shall state by affidavit what application was made before, when and to what judge, what  
8 order or decisions were made, and what new or different facts, circumstances, or law are  
9 claimed to be shown." (Emphasis Added) C.C.P. § 1008 continues, stating that compliance  
10 with the Code section is JURISDICTIONAL, and therefore cannot be waived or excused by  
11 the Court:  
12

13  
14 (e) **This section specifies the court's jurisdiction with regard to applications**  
15 **for reconsideration of its orders and renewals of previous motions, and applies**  
16 **to all applications to reconsider any order of a judge or court, or for the renewal**  
17 **of a previous motion, whether the order deciding the previous matter or motion**  
18 **is interim or final. *No application to reconsider any order or for the renewal***  
19 **of a previous motion may be considered by any judge or court unless made**  
20 **according to this section.** (Emphasis Added)

21 Plaintiff's declaration fails to comply with the jurisdictional requirements set out above.

22 The declaration fails to state any of the following, as required by C.C.P. § 1008:

- 23
- 24 • What application was made before;
  - 25 • When and to what judge;
  - 26 • What order or decisions were made;

27 As C.C.P. § 1008 very clearly and adamantly sets out, failure to comply with the  
28 requirements of C.C.P. § 1008 is jurisdictional. Due to Plaintiff's failure to comply with the  
affidavit requirements, the Court lacks jurisdiction to consider the Motion.

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1 Because the jurisdictionally required affidavit was required to have been filed within the  
2 time frame provided in C.C.P. § 1008, the deficiencies in Plaintiff's Motion, Declaration, and  
3 evidence cannot be corrected in response hereto.  
4

5  
6 **II. THE PURPORTED "NEW FACTS" ARE NOT PROPERLY SET OUT BY**  
7 **AFFIDAVIT OR IN ANY ADMISSIBLE FORM.**

8 The purported "new facts" consist of statements by reporter Brad Greenberg made in a  
9 "blog" on the internet, which is entirely inadmissible. Unsupported by any affidavit or  
10 declaration by Brad Greenberg, the statements lack foundation. The statements are presented for  
11 the truth of the matters stated. There is no exception to the hearsay rule which might render the  
12 blog statements admissible as evidence herein.  
13

14 Defendants hereby object to Exhibit 2 to the Motion to Reconsider on the ground that it  
15 lacks foundation, and move to strike all references thereto from the Motion and Declaration of  
16 Baruch C. Cohen, as follow: Motion at page 5, lines 12-24; pg. 6:1-5; pg. 7:24-26; pg. 8:1-8;  
17 Declaration paragraphs 6 and 7.  
18

19  
20 **III. THE PURPORTED "NEW FACTS" WERE DISCOVERABLE PRIOR TO THE**  
21 **FILING OF THE PETITION.**

22  
23 Plaintiff presents a new writing (a recent "blog"), but not new facts. The law has long  
24 held that facts available prior to trial do not constitute "new evidence" or "new facts" for  
25 reconsideration or new trial when discovered and presented after trial. In Blue Mountain  
26 Development Co. v. Carville (1982) 132 Cal.App.3d 1005, Justice Trotter wrote:  
27

28 "Public policy requires that pressure be brought upon litigants to use great care in  
29 preparing cases for trial and in ascertaining all the facts. A rule which would

1 permit the re-opening of cases previously decided because of error or ignorance  
2 during the progress of the trial would in a large measure vitiate the effects of the  
3 rules of res judicata.' (Rest., Judgments, § 126, com. a.)" (Kulchar v. Kulchar  
4 (1969) 1 Cal.3d 467, 472.) When the requirement of section 1008 that the  
5 application for reconsideration be upon an "alleged different state of facts" is  
6 viewed in light of this public policy, it is evident that the party seeking  
7 reconsideration must provide not only new evidence but also a satisfactory  
8 explanation for the failure to produce that evidence at an earlier time. In short, the  
9 moving party's burden is the same as that of a party seeking new trial on the  
10 ground of "newly discovered evidence, material for the party making the  
11 application, which he could not, with reasonable diligence, have discovered and  
12 produced at the trial." (Code Civ. Proc., § 657, subd. 4.) (Id. at 1012-1013,  
13 Emphasis Added.)

14 Amendment of the Code of Civil Procedure in 1992 did not change the foregoing. In  
15 fact, it strengthened section 1008, adding the jurisdictional component of the Code section and  
16 sanctions.

17 A phone call to reporter Greenberg prior to the April 3, 2009 hearing, asking him about  
18 the matters raised in the Motion To Reconsider, would have revealed the alleged new facts,  
19 which would have been known to Greenberg even prior to the publication of his Daily News  
20 article of February 2007. Greenberg's deposition or even declaration would arguably have  
21 revealed the same facts and been admissible for consideration at the April 3 hearing. Plaintiff  
22 provides no explanation for her failure to have used reasonable diligence to discover and produce  
23 the purported new facts for the April 3 hearing.

24 **IV. PER THE COURT'S APRIL 6, 2009 RULING, THE PURPORTED "NEW FACTS"**  
25 **ARE NOT RELEVANT TO THE RULING.**

26 Plaintiff argued at the April 3 hearing that Rabbi Ohana was aware of the Daily News  
27 article, and thus of its quote of Rabbi Sauer, before agreeing to allow Rabbi Sauer to sit as an  
28 arbitrator. Plaintiff argued further that Defendants had therefore waived any conflict based upon  
29 the article and the quote. Plaintiff now brings additional purported evidence that Rabbi Ohana

1 was aware of the article and the quote. However, this Court's April 6, 2009 Ruling states (at  
2 page 8, lines 20-25):

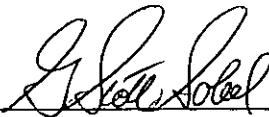
3 "Therefore, the Court vacates the arbitration award. In doing so, the Court  
4 also discards the argument by Pauker that Ohana somehow waived any conflict  
5 involved in Rabbi Sauer's role as an arbitrator because he signed the agreement  
6 expressly providing that Rabbi Sauer would be a member of the arbitral body  
(Pet., Exh. 2). No authority is advanced for the existence of a waiver of conflicts  
on this basis, and certainly the agreement does not contain language to this effect."

7 Thus, the Court has already ruled in effect that Rabbi Ohana's knowledge at the time of  
8 the arbitration concerning Rabbi Sauer's prior knowledge of the case and/or quote in the Daily  
9 News is not relevant to any determination on the Petition to Confirm the Arbitration. The  
10 purported "new facts" are therefore completely irrelevant.<sup>1</sup>

### 11 V. CONCLUSION

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13  
14 The Court lacks jurisdiction to consider the Motion for failure of Plaintiff's affidavit to  
15 comply with the jurisdictional requirements of C.C.P. § 1008. The purported "new facts" are not  
16 properly set out by affidavit or in any admissible form. The purported "new facts" were  
17 discoverable prior to the filing of the Petition. Per the Court's April 6, 2009 Ruling, the  
18 purported "new facts" are not relevant to the Ruling. Based upon the foregoing, the Motion to  
19 Reconsider should be denied.

20  
21 DATED: May 7, 2009

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23 \_\_\_\_\_  
24 G. Scott Sobel  
25 Attorney for Rabbi Samuel Ohana and Beth  
26 Midrash Mishkan Israel American Institute For  
27 Judaic Studies, Inc.

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5/28/09  
<sup>1</sup> Plaintiff also argues (Motion at pg. 8) as though the blog proves that journalist Greenberg had simply asked Rabbi Sauer a hypothetical question of law, divorced from the facts of the case. However (*arguendo* subject to the above stated objections), a careful reading of the blog reveals another 'negative pregnant' in Plaintiff's case: the blog fails to affirmatively state whether or not Greenberg related the names of the parties and the facts of the case to Rabbi Sauer, in addition to posing a question to him.

**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 RECONSIDER**

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
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by Email to the above address.

by Facsimile to (323) 937-4503 with confirmation of receipt.

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 May 7, 2009 at Los Angeles, California.

  
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 G. Scott Sobel

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