Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D33155
Y/prt

_____AD3d_____ Submitted - October 17, 2011

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2010-02117 DECISION & ORDER
2010-10823

In the Matter of Shaya Braver, respondent, v
Tzvi Elimelech Silberman, also known as
Herman Silberman, etc., appellant.

(Index No. 3772/09)

Meissner, Kleinberg & Finkel, LLP, New York, N.Y. (George S. Meissner of counsel), for appellant.

Goldberg & Rimberg, PLLC, New York, N.Y. (Israel Goldberg and Brad Coven of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to confirm an arbitration award dated December 18, 2008, Tzvi Elimelech Silberman, also known as Herman Silberman, etc., appeals, (1) as limited by his brief, from so much of an order of the Supreme Court, Kings County (Jacobson, J.), dated January 7, 2010, as, in effect, denied that branch of his motion which was to vacate the award, and (2) from an order of the same court dated October 8, 2010, which denied his motion for leave to reargue and renew that branch of his prior motion which was to vacate the award.

ORDERED that the appeal from the order dated October 8, 2010, is dismissed; and it is further,

ORDERED that the order dated January 7, 2010, is reversed insofar as appealed from, on the law, and that branch of the defendant's motion which was to vacate the arbitration award is granted; and it is further,

ORDERED that one bill of costs is awarded to the appellant.

In August 2000, the petitioner began residing in an apartment located on Wallabout

Street in Brooklyn (hereinafter the Wallabout Property). At that time, the building was owned by Yeshiva Shearith Hapleta (hereinafter Hapleta). While residing in the apartment, the petitioner received a rental subsidy through the Federal Section 8 housing assistance payment program (*see* 42 USC § 1437f [hereinafter the Section 8 program]), which was administered at the local level by the New York City Housing Authority. On November 28, 2005, the petitioner and Tzi Elimelech Silberman, also knwn as Herman Silberman (hereinafter the appellant), individually, and on behalf of Hapleta and Beth Chana (the developers), apparently as an officer of those entities, entered into an agreement with the petitioner to arbitrate a dispute regarding the ownership of the subject apartment before a rabbinical court. The petitioner claimed that he had purchased the apartment, while the appellant maintained that the petitioner was a tenant of the apartment, not an owner. Approximately 10 months before the arbitration agreement was signed, however, the Wallabout Property had been transferred to nonparty Yeshiva Beis Leivy, Inc. (hereinafter Leivy).

On December 18, 2008, the rabbinical court issued its award, finding that the petitioner had purchased the apartment. The rabbinical court awarded possession of the apartment to the petitioner's successor-in-interest, and awarded to the petitioner, inter alia, "[a]ll the monies that were received by the [appellant] as rent, from whatever sources." Thereafter, the petitioner commenced this proceeding to confirm the arbitration award, and the appellant moved, among other things, to vacate the award. In an order dated January 7, 2010, insofar as relevant to this appeal, the Supreme Court, in effect, denied that branch of the appellant's motion which was to vacate the award. We reverse that order insofar as appealed from.

"An arbitration award may not be vacated unless it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*Matter of Board of Educ. of Arlington Cent. School Dist. v Arlington Teachers Assn*, 78 NY2d 33, 37; *see Matter of Rockland County Bd. of Coop. Educ. Servs. v BOCES Staff Assn.*, 308 AD2d 452, 453).

Here, the rabbinical court exceeded its authority in awarding an ownership interest in the Wallabout Property, which is owned by nonparty Leivy, to the petitioner's successor-in-interest. Leivy was not a party to the arbitration agreement, and there is no evidence that Leivy agreed to be bound by the rabbinical court's determination (*see TNS Holdings v MKI Sec. Corp.*, 92 NY2d 335, 339; *Matter of Waldron* [*Goddess*], 61 NY2d 181, 183), or that Leivy was an "alter ego" of the appellant (*see TNS Holdings v MKI Sec. Corp.*, 92 NY2d at 339).

The arbitration award also violates public policy. The petitioner failed to comply with certain rules specified in 24 CFR 982.551, which sets forth the requirements for eligibility in the Section 8 program, including the requirement that the recipient not own or have any interest in the apartment for which the subsidy is issued (*see* 24 CFR 982.551[j]). The portion of the award returning to the petitioner Section 8 program funds paid on his behalf violates public policy since the petitioner claims to own the apartment while receiving those funds. Thus, the award rewards the petitioner for perpetrating a fraud in connection with the Section 8 program in violation of 24 CFR 982.551(k).

Accordingly, that branch of the appellant's motion which was to vacate the arbitration award should have been granted.

The appeal from so much of the order dated October 8, 2010, as denied that branch of the defendant's motion which was for leave to reargue must be dismissed, as no appeal lies from an order denying reargument (*see Barany v Barany*, 71 AD3d 613). The appeal from so much of the order dated October 8, 2010, as denied that branch of the defendant's motion which was for leave to renew must be dismissed as academic in light of our determination on the appeal from the order dated January 7, 2010.

In light of our determination, we need not reach the appellant's remaining contentions.

SKELOS, J.P., HALL, LOTT and ROMAN, JJ., concur.

2010-02117 DECISION & ORDER ON MOTION
2010-10823

In the Matter of Shaya Braver, respondent, v
Tzvi Elimelech Silberman, also known as
Herman Silberman, appellant.

(Index No. 3772/09)

Motion by the respondent on appeals from two orders of the Supreme Court, Kings County, dated January 7, 2010, and October 8, 2010, respectively, inter alia, to dismiss the appeal from the order dated October 8, 2010, on the ground that no appeal lies from an order denying reargument. By decision and order on motion of this Court dated March 31, 2011, that branch of the motion was held in abeyance and was referred to the panel of Justices hearing the appeals for determination upon the argument or submission of the appeals.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the submission of the appeals, it is

ORDERED that the motion is denied as academic (*see Matter of Braver v Silberman*, _____AD3d_____ [decided herewith]).

SKELOS, J.P., HALL, LOTT and ROMAN, JJ., concur.

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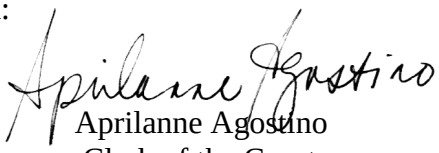

Aprilanne Agostino
Clerk of the Court