

Blutreich v Kleiner

2004 NY Slip Op 30114(U)

September 30, 2004

Supreme Court, New York County

Docket Number: 0110950/2004

Judge: Edward H. Lehner

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EDWARD H. LEHNER

PART 19

Justice

IRA BLUTREICH,

Plaintiff,

- against -

**BARRY DAVID KLEINER, BENJAMIN SAUERHAFT, THE
PRIOR BOARD OF TRUSTEES OF CONGREGATION
BNAI JACOB and JEFFREY KATZ, ELISSA SAMPSON
BOYARIN and the ALLEGED PRESENT BOARD OF
TRUSTEES OF BNAI JACOB,**

Defendants,

INDEX NO. 110950/04

MOTION SEQ. NO. 001

MOTION DATE 9/14/04

MOTION CAL. NO. _____

FILED
OCT 08 2004
NEW YORK
COUNTY CLERK'S OFFICE

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion by plaintiff to restore his membership in Congregation Bnai Jacob is denied. Defendants' cross-motion to dismiss the complaint is granted and the Clerk shall enter judgment accordingly.

The congregation's by-laws provide in Article II: "8. (a) member of the Congregation may be suspended or expelled from the Congregation by a two-thirds secret vote of the Board of Trustees at any regular or special meeting for any of the following reasons: ...

c. Gross misconduct which brings discredit on the Congregation and its Members, or the Jewish faith. d. Action that is materially detrimental to the functioning or reputation of the Congregation. e. Usage of the Congregation's name without the prior written authorization of the Board of Trustees 10. Appeal of Termination of Membership. Any member of the Congregation whose membership has been terminated pursuant to Article II, Section 8, and who has been notified as required pursuant to Article II, Section 9, shall have the opportunity to appeal that termination. (a) Upon presentation, within two (2) weeks of such notification of termination, of a written request for a referendum signed by one-fifth of the Members in good-standing, the Board shall, within thirty (30) days of receipt of the request, put the question of the termination of that Member's membership to the Congregation in a referendum held at a membership meeting duly called and limited to that purpose."

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

The minutes of the April 29, 2004 meeting of the Board of Trustees state that a motion to expel plaintiff and his wife for "gross misconduct" under Article II, Section 8 (c), (d), (e) was passed unanimously. After notification, plaintiff did not present a written request for a referendum signed by one-fifth of the Congregation's members.

"(I)n order to be entitled to an Injunction, plaintiff had to show a probability of success, danger of irreparable harm in the absence of an injunction, and a balance of the equities in their favor" [Aetna Insurance Co. v. Capasso, 75 NY2d 860, 862 (1990)]. "A member of the church who is expelled from membership must exhaust his administrative remedies within the church before making an application to the civil courts for redress" [Rodyk v. Ukrainian Autocephalic Orthodox Church of St. Volodimir, 31 AD2d 659, 659-660 (2nd Dept. 1968) affd. 29 NY2d 898 (1972)]. Moreover, "(I)t is well settled that membership requirements are strictly an ecclesiastical matter and decisions of the church or synagogue are binding on the courts" [Park Slope Jewish Center v. Stern, 128 AD2d 847, 848 (2nd Dept. 1987)]. See also, Kissel v. Russian Orthodox Greek Catholic Holy Trinity Church of Yonkers, New York, 103 AD2d 830 (2nd Dept. 1984).

Dated: September 30, 2004



J.S.C.

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