

**Frydman v Rosen**

2015 NY Slip Op 30171(U)

February 4, 2015

Supreme Court, New York County

Docket Number: 159833/14

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

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JACOB FRYDMAN,

Plaintiffs,

Index No. 159833/14

-against-

**DECISION/ORDER**

JACK ROSEN, RICHARD GORDON, BRUCE  
BLAKEMAN, HERB LONDON, BEN CHOUAKE,  
ELI VERSCHLEISER, FELIX AISEN, LEO BARD,  
MORTY DAVIS, GIL KAPEN, MUNR KAZMIR,  
JOHN KRUGER, MICHAEL MELNICKE, ALAN  
PINES, GARY RATNER, DANIEL ROSEN,  
JORDAN ROSEN, HENRY SMITH and VIVIEN  
WEISSMAN-HOWARD,

Defendants.

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**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for  
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Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff Jacob Frydman commenced the instant action against defendants Jack Rosen, Richard Gordon, Bruce Blakeman, Herb London, Ben Chouake, Eli Verschleiser, Felix Aisen, Leo Bard, Morty Davis, Gil Kapen, Munr Kazmir, John Kruger, Michael Melnicke, Alan Pines, Gary Ratner, Daniel Rosen, Jordan Rosen, Henry Smith and Vivien Weissman-Howard alleging causes of action for, *inter alia*, fraud and breach of fiduciary duty. Defendants now move for an Order (1) pursuant to CPLR § 3211 dismissing plaintiff's complaint; and (2) granting defendants sanctions against plaintiff. For the reasons set forth below, defendants' motion is granted in part

and denied in part.

The relevant facts according to the complaint are as follows. Plaintiff, as a donating member of the American Jewish Congress (“AJC”), a charitable organization, commenced the instant action against defendants, AJC’s officers and directors, alleging causes of action for gross negligence, fraud, breach of fiduciary duty, breach of loyalty, breach of duty of care and breach of duty of obedience arising out of defendants’ alleged violations of their legal obligations to the AJC. Specifically, plaintiff alleges that defendants appointed Mr. Verschleiser as AJC’s treasurer despite the fact that they knew, or should have known, that he is a convicted criminal and that they failed to disclose that fact on certain reporting documents as is required by law.

As an initial matter, that portion of defendants’ motion for an Order pursuant to CPLR § 3211 to dismiss the complaint is granted. It is well-settled that only the Attorney General has the right to take action against a not-for-profit corporation based upon a claimed violation of its legal obligations. *See Not-For-Profit Corporation Law § 112*. Indeed, “[i]n the event there is proof of misconduct or bad faith on the part of [a not-for-profit corporation], the Attorney General may, in his discretion, take appropriate remedial action.” *Thome v. Alexander & Louisa Calder Found.*, 70 A.D.3d 88, 109 (1<sup>st</sup> Dept 2009).

Here, the complaint must be dismissed on the ground that plaintiff, a private individual, lacks standing to bring the instant action against defendants, the officers and directors of the AJC, a not-for-profit corporation. It is undisputed that plaintiff’s claims against defendants are based upon allegations of violations of their legal obligations as officers and directors of a not-for-profit corporation and thus, the Attorney General is the only party that may commence an action against the AJC for the alleged violations.

Plaintiff’s reliance on *Smithers v. St. Luke’s-Roosevelt Hosp. Ctr.*, 281 A.D.2d 127 (1<sup>st</sup>

Dept 2001) and *Alco Gravure, Inc. v. Knapp Found.*, 64 N.Y.2d 458 (1985) for the proposition that he has standing to commence the instant action against the officers and directors of the AJC on the ground that he is a donor is without merit as said cases are distinguishable. In *Smithers*, the First Department found that the estate of a donor of a charitable gift had standing to sue the charitable organization to enforce the terms of the gift. However, in the instant action, plaintiff does not seek to enforce any terms of the donation he made to the AJC. Rather, plaintiff alleges that defendants acted in bad faith and breached their fiduciary duty to the AJC when they failed to comply with their legal obligations as the officers and directors of the AJC by appointing Mr. Verschleiser as treasurer despite his alleged criminal conviction and failing to report that information. Additionally, the court in *Alco Gravure* held that the plaintiffs, as trustees, had standing to sue the defendant not-for profit directly. However, the court made clear that standing was conferred because plaintiffs had a private action against the not-for-profit. Specifically, the court held that “the present action concerns not the ongoing administration of a charitable corporation, but the dissolution of that corporation and the complete elimination of the individual plaintiffs’ status as preferred beneficiaries of the funds originally donated....” *Alco Gravure*, 64 N.Y.2d at 466. As the instant action does not allege any private right of action on behalf of plaintiff but only that the directors and officers of the AJC breached their general legal obligations to the AJC, defendants’ motion to dismiss the complaint is granted on the ground that plaintiff lacks standing to bring this action.

However, that portion of defendants’ motion which seeks an Order granting them sanctions against plaintiff on the ground that “the Complaint was spurred by [plaintiff’s] animus against Verschleiser and that this lawsuit provides [plaintiff] some form of tactical leverage in the multiple litigations between the two” is denied as defendants have failed to provide a sufficient

basis for such relief.

Accordingly, defendants' motion to dismiss the complaint is granted but defendants' motion for sanctions against plaintiff is denied. The complaint is hereby dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 2/4/15

Enter: PK  
J.S.C.

CYNTHIA S. KERN  
J.S.C.