

Matter of Home of the Sages of Israel, Inc.
2017 NY Slip Op 32187(U)
October 16, 2017
Supreme Court, New York County
Docket Number: 153111/2015
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

Index No.: 153111/2015

THE HOME OF THE SAGES OF ISRAEL, INC.
(BETH TOMCHE TORAH VEZIKNEH YISROEL)
a/k/a BETH TOMCHE TORAH VEZIKNEH
YISROEL, INC. and a/k/a HOME OF THE SAGES
OF ISRAEL

DECISION/ORDER

Motion Seq. 015

For Leave to Sell Real Property

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits/Affirmations/ Memos of Law annexed	1
Opposition/Answering Affidavits/Affirmations/ Memos of Law annexed	2-6
Reply Affidavits/Affirmations/Memos of Law annexed	7-11

ERIKA M. EDWARDS, J.:

Petitioner, The Home of the Sages of Israel, Inc. (Beth Tomche Torah Vezikneh Yisroel) a/k/a Beth Tomche Torah Vezikneh Yisroel, Inc. and a/k/a Home of the Sages of Israel (“Home of the Sages”), a religious corporation, filed this action seeking the court’s approval of the sale of its property to On the Way to Brooklyn, LLC (“On the Way”), pursuant to a contract for sale, dated January 10, 2014. Petitioner’s property contains two lots located at 25-31 Bialystoker Place, New York, New York, and Petitioner wishes to sell the property for \$13 million and the right to maintain a long-term lease for office space in the building at \$10 per year. Petitioner proposes to retain \$3 million of the sale proceeds as a reserve for the continued operation of a house of worship and related activities to be controlled by Petitioner’s president, Rabbi Samuel Aschkenazi, and to distribute the remainder of the proceeds in the amount of approximately \$10

million to Friends of Mosdot Goor, Inc. to go toward the construction of a new synagogue in Jerusalem.

There are currently four other related actions, including three pending before this court: *On the Way to Brooklyn, LLC v. Home of the Sages of Israel, Inc.*, under Index Number 152021/2017, *On the Way to Brooklyn, LLC v. Charles Korn, et al.*, under Index number 155728/2016, *Charles Korn v. Rabbi Samuel Aschkenazi*, under Index number 652804/2017, and a Nassau County Supreme Court action entitled *Block v. The Home of the Sages of Israel, Inc.*, under Index No. 607962/2015.

For the reasons set forth herein, the court denies approval of the sale, dismisses Petitioner's petition and amended petition and makes additional findings of fact as requested by the parties and required by the circumstances of this matter.

BACKGROUND

Essentially, there are two groups competing for control of Petitioner and each group claims to be the legitimate, rightful Board of Trustees who are authorized to act on Petitioner's behalf. The first group is led by Rabbi Aschkenazi, who claims to be Petitioner's president and chairman of its Board of Trustees/Directors who were elected in 2012 ("2012 Board"). This Board was elected by individuals who argue that they are members of Petitioner since they use the premises for the advanced study of the Talmud. Some of these individuals receive a modest stipend to study at the premises several times a week, and none of the Board members or qualified voters live near the premises, participate in or attend the regular worship services held in the sanctuary and some had never been to the premises prior to attending the meeting where they were elected to the Board.

The second group is led by Charles Korn, who claims to be the president and a member of the Board of Trustees that was elected in 2016 ("2016 Board"). This Board was elected by individuals who claim to be members of Petitioner because they attend the regular worship services on the Sabbath and Jewish holidays conducted by Rabbi Shmuel Fishelis, they are regular financial contributors to Petitioner and they live in the area near the premises.

On the Way and its sole member, Peter Fine ("Fine"), intervened in this matter to support the petition for court approval of the sale. Two groups of objectors challenged the sale and the proposed distribution of sale proceeds. One group is led by Baruch Singer and Aron From ("Respondent/Congregation/Objectors") and they allege they are members of Petitioner as congregants and regular attendees of Petitioner's regular worship services. The second group is led by Louis Atlas and Samuel Block ("Intervenor/Donor/Objectors") and they allege to be members of Petitioner as donors. Both groups of objectors argue in substance 1) that the sale was not legally authorized by a legitimate Board of Trustees; 2) the Board was not voted on by lawful members of Petitioner or qualified voters; 3) the legitimate members were not notified of the meeting; and 4) the election and subsequent approval of the sale violate applicable provisions of the Religious Corporation Law (RCL) and are therefore void and invalid. Furthermore, one or more objectors argue that the \$13 million sale price is well below the market value of the property since there is another appraisal which values the property at approximately \$42 million.

Petitioner filed its original petition on March 31, 2015, and an amended petition on May 4, 2015. Both petitions contradict each other in the manner in which the sale was authorized by Petitioner and they contain many unexplained inconsistencies. Petitioner included a different set of by-laws with each petition, both of which are unsigned and undated, and sought to have the court approve the sale based on completely different theories. Additionally, Rabbi Aschkenazi

verified both petitions as Petitioner's President and presiding clergyman, but he changed his third title from being a Trustee in the original petition to being a Chairman of the Board and Chairman of the Board/Trustee in the amended petition to reflect Petitioner's new theory of approval and new amended by-laws.

In the initial petition, Petitioner argued in substance that the sale was authorized and approved according to its by-laws by the 2012 Board, the members subsequently approved the sale and proposed distribution of proceeds at a membership meeting and the Board re-confirmed the sale. The by-laws attached to the initial petition were certified in 1982 by Rabbi Aschkenazi's father, Rabbi Joel Aschkenazi, and the by-laws include provisions for members and regular membership meetings. Petitioner's first petition also discussed Petitioner's services as a house of worship and continuation of such services.

In its amended petition, Petitioner changed its position and argued in substance that it recently found amended by-laws which provided that Petitioner had no members. Additionally, Petitioner alleged that the 2012 Board of Directors (not Trustees) was elected by individuals from Petitioner's community of interest which voted to approve the sale solely on an advisory basis since they were not required to do so. Petitioner also alleged that it ceased operating a house of worship many years ago and that it had spun off such services to a new, separate entity called Beth Tomche Torah Home of the Sages of Israel, Inc. (a/k/a Tomche Torah Vezikneh Yisroel) ("Beth Tomche Home"). Petitioner also attempted to substitute its name in the caption to Home of the Sages of Israel, Inc. and drop all references to other names, which was an improper attempt at amendment without court approval. Petitioner claims that since 2000, Petitioner leased the premises to the private nursing home, sold its nursing home equipment and

the lease was amended to permit Beth Tomchei Torah Veziknei Yisroel (not Beth Tomche Home) to continue to worship in the sanctuary space.

Additionally, Rabbi Fishelis stated in his affidavit, dated April 7, 2015, that he has been the rabbi at Home of the Sages of Israel for 35 years. The synagogue has services twice a day during week days and services on Friday evenings, Saturdays and all Jewish holidays. The synagogue has no membership dues and he is only aware of the members who pray in the synagogue. Also, there is evidence that Rabbi Fishelis got paid by Petitioner and not Beth Tomche Home. The congregants claim that they attended services held by Petitioner, that they financially contributed to support Petitioner's activities and that they were members of Petitioner's synagogue.

The underlying sale was previously approved by the New York State Attorney General's Office, but in a letter dated August 10, 2015, the Attorney General's Office requested the court to determine whether the sale of the premises was properly approved and which individuals were proper members of Petitioner's Board and members of Petitioner. This case involves over 2 ½ years of vexatious litigation which includes fifteen motions, an extended hearing which began in March 2016 and was abruptly halted when Rabbi Aschkenazi was detained by law enforcement personnel during a court break. Additionally, Rabbi Aschkenazi travelled to Israel for an extended period, there was a stay ordered by the Appellate Division, First Department and this matter was subsequently transferred to a new judge prior to the completion of the hearing.

DISCUSSION

Intervenors On the Way and Peter Fine now move under motion sequence 015 for an order striking the objections, or in the alternative, for an order approving the sale and placing the sale proceeds in escrow subject to the court's determination of how the proceeds will be

distributed. There are currently five outstanding motions involving three of the pending matters and other issues raised throughout these proceedings which need to be determined by the court. In an effort to streamline these matters, the court held a joint conference for all interested parties on May 25, 2017, and provided everyone involved in this matter and the related cases pending before this court with an opportunity to submit papers under motion sequence 015 in support of, or in opposition to Intervenor On the Way's and Fine's motion and to specifically address 1) which objectors, if any, have standing to object to the sale; and 2) which individuals were the lawful members of Petitioner's Board of Trustees/Directors that were authorized to act on Petitioner's behalf at the time of the contract for sale and who are the current members of the Board which are currently authorized to act on Petitioner's behalf.

To date, the court has considered multiple submissions from the movants, Intervenor On the Way and Fine; Petitioner (2012 Board and Rabbi Samuel Aschkenazi), Respondent/Congregant/Objectors Singer and From, Intervenor/Donor/Objectors Atlas and Block and Petitioner (2016 Board and Charles Korn). The court considered all documents submitted, including those involving an expert's professional opinion. The court determines that no hearing or additional testimony is necessary and relies upon its broad discretion to decide the outstanding matters and ultimate issue based on the voluminous record and submissions of the parties, intervenors, objectors and interested individuals.

Based on the credible evidence submitted, the court makes the following findings:

- 1) That the court DENIES approval of the sale of the premises, located at 25-31 Bialystoker Place, New York, New York, from Petitioner Home of the Sages of Israel, Inc. to Intervenor On the Way to Brooklyn, LLC, and determines that the

- agreement to sell the property, dated January 10, 2014, is null and void, as it was not properly approved by anyone with authority to act on Petitioner's behalf;
- 2) That Petitioner's petition and amended petition in this matter are hereby dismissed with prejudice;
 - 3) That the purported amended by-laws submitted with Petitioner's amended petition are null and void;
 - 4) That the by-laws certified by Rabbi Joel Aschkenazi on November 8, 1982 submitted with Petitioner's original petition were technically in effect and controlling at all relevant times since 1982 because such by-laws were never legally and properly amended, however since neither by-laws were followed over the years, the court deems them to have been abandoned for all relevant purposes;
 - 5) That Petitioner did not cease to maintain or operate a house of worship, it did not legally and properly split off all of its religious services to Beth Tomche Torah Home of the Sages of Israel, Inc. (a/k/a Tomche Torah Vezikneh Yisroel) in 1993, and Petitioner continued to maintain and operate a house of worship in the sanctuary of the premises at all relevant times pertaining to the election of both Boards, designation of members and authorization and approval of the sale;
 - 6) That the Respondent/Congregation/Objectors led by Singer and From and the Intervenor/Donor/Objectors led by Atlas and Block have standing to challenge the sale of the premises and distribution of the sale proceeds;
 - 7) That at the time of the contract of sale, the authorization of such sale and the approval of such sale, there was no legitimate Board of Trustees/Directors in place which was authorized to act on Petitioner's behalf;

- 8) That Petitioner's purported 2012 Board of Trustees/Directors, including Rabbi Samuel (a/k/a Shmelka) Aschkenazi, Avrohom Jalas, Samuel Y. Seidenfeld, Abraham Brodjak, Hyman Friedman, Yedidya Greenstein, Aron Stryn, Meir Kagan and Stephen Werdiger, which was purported to have been elected on December 26, 2012, was not legally or properly elected according to the relevant provisions of the Religious Corporation Law, nor according to either set of by-laws, and the 2012 Board was and is not authorized to act on Petitioner's behalf during any of the relevant times, including the date of the contract of sale, the date when the sale was authorized by the 2012 Board and the subsequent dates when the sale was approved or re-confirmed by the 2012 Board or Petitioner's purported community of interest;
- 9) That the purported 2016 Board of Trustees alleging to have been elected on March 20, 2016, including Charles Korn, Nathan Berkowitz, Aron From, Rabbi Azriel Siff, Moses Wachsman, Rabbi Dov Tropper, Aaron Klopowitz, Baruch Zalman Lichtenstein and Bernard Wachsman was also not legally and properly elected according to the 1982 by-laws, however, as mentioned above, these by-laws were not followed by Petitioner and are deemed abandoned;
- 10) That the 2016 Board was legally and properly elected pursuant to the relevant provisions of the RCL and the court deems this Board to be the legitimate Board authorized to act on Petitioner's behalf as of March 20, 2016, and thereafter;
- 11) That in addition to being legally elected at a meeting which was properly noticed according the RCL, based on factual, legal and equitable principles, the court determines that the 2016 Board is in a better position to act on Petitioner's behalf because the evidence demonstrates that the members of the 2016 Board and the

individuals who elected them were members of Petitioner in that they regularly attended worship services on the Sabbath and holidays, prayed in the synagogue during the week and/or financially contributed to Petitioner for many years prior to the election, including the year before the election as required; they were local residents who regularly used the facility and benefited most by Petitioner's services; and they were most concerned with the success and continuation of Petitioner's services to its members/congregants and the lower east side community;

12) That the court determines that the Amended Certificate of Incorporation which was approved by the 2016 Board and Petitioner's members on March 20, 2016, and which was filed with the New York County Clerk on April 4, 2016, is legally valid and binding upon Petitioner; and

13) That Israel Goldberg, Esq. and the law firm, Goldberg, Rimberg & Weg PLLC, which were previously disqualified by this court in this action on December 8, 2016, because of Mr. Goldberg's extensive role in the meetings and election of the Board, are deemed disqualified for all related actions involving Petitioner, including, but not necessarily limited to, the above-mentioned actions pending before this court, as they involve issues which create an ongoing conflict for Mr. Goldberg and his firm, including the approval of the sale, which individuals purport to have authority to act on Petitioner's behalf, the meetings which gave rise to the determination of who were qualified voters and members, and the election of Petitioner's Board and officers.

A. Applicability of the Religious Corporation Law

Since Petitioner failed to properly govern itself according to valid by-laws, the court must look toward the Religious Corporation Law (RCL) for guidance based on the totality of the

circumstances, including the credible evidence, conduct of the parties in Petitioner's daily operations and on the intent of the individuals involved.

Under the RCL, an incorporated church is a "religious corporation created to enable its members to meet for divine worship or other religious observances." A "church" includes a Jewish synagogue and a "clergyman" or "minister" includes a rabbi (RCL § 2). Article 10 of the RCL applies to Petitioner.

RCL § 193 sets forth the requirements of a religious corporation's certificate of incorporation and election of the trustees for their respective terms. It states that upon the filing of the executed and acknowledged certificate of incorporation, the members of such church and the persons qualified to vote at the corporate meeting "shall be a corporation by the name stated in such certificate" and the newly elected trustees of the church are the trustees of the corporation for their respective terms (RCL § 193). Therefore, a religious corporation is required to have members and its membership consists of members of the congregation and qualified voters at the corporate meeting. Additionally, the trustees of the congregation, who have been newly elected by the qualified voters, are the trustees of the religious corporation for their designated terms.

RCL § 194 sets forth the requirements of the board of trustees' annual corporate meeting notice, including the substance and timing of such notice (RCL § 194). It requires in substance that if there is a regular weekly morning worship service, then the board must give notice of the meeting at this service for two consecutive weeks during the two weeks prior to the meeting. A board may only post a notice on the outer entrance to the building if there is no regular weekly meeting. Based on the evidence submitted, the meetings of the 2012 Board were not properly noticed and the meetings of the 2016 Board were properly noticed at the worship services.

RCL § 195 sets forth that qualified voters of an incorporated church are “[a]ll persons who are then members in good and regular standing of such church by admission into full communion or membership therewith in accordance with the rules and regulations thereof, and of the governing ecclesiastical body, if any, of the denomination or order to which the church belongs, or who have been stated attendants on divine worship in such church and have contributed to the financial support thereof during the year next preceding such meeting” (RCL § 195). Therefore, according to this definition, the Respondent/Congregant/Objectors were qualified voters and members of Petitioner and the members of the 2012 Board of Trustees/Directors and the people who elected them were not qualified voters of Petitioner.

RCL § 195 also requires a quorum to be at least six qualified voters and, if present, then the minister of the church shall preside over the meeting (RCL § 195). This means that Rabbi Fishelis had priority to preside over the meetings to elect the Board and approve the sale if he was present. However, the evidence demonstrated that he did not preside over the 2012 Board meetings and he only inadvertently walked into one of the meetings.

This provision also requires the polls of the annual corporate meeting to remain open for at least one hour or longer at the discretion of the presiding officer, or if required by a majority vote of the qualified voters present (RCL § 195). Here, when the 2012 Board was elected, the meeting lasted much less than one hour. According to the video provided, the meeting lasted approximately 17 minutes and according to the minutes, it lasted approximately 30 minutes, which is clearly insufficient to properly elect a Board.

RCL § 207 states that a congregation of the Jewish faith may change the number of trustees to up to 72 and that the elected trustees must hold office for three years with 1/3 of their terms expiring each year (RCL § 207). Also, according to RCL § 195 at each annual corporate meeting,

the qualified voters shall elect successor trustees for three-year terms to replace the trustees whose terms expire (RCL § 195). Therefore, Rabbi Aschkenazi and the other Board members were required to have been elected for three-year terms with 1/3 of their terms expiring annually.

RCL § 207 also provides that the right of the members of a Jewish congregation shall be fixed by its by-laws (RCL § 207). Here, Petitioner failed to follow the provisions of any of its by-laws for years so they are deemed abandoned.

B. Invalidity of Amended By-Laws

According to these principles, the court determines that Petitioner's purported amended by-laws are invalid because they violate the RCL by providing that the corporation has no members. Additionally, they are unsigned, undated, uncertified, they do not state that they are amended by-laws and there are no supporting documents to provide details of their enactment. Petitioner failed to present sufficient evidence to prove the circumstances of the amendment, including when they were amended, by whom, or that they were properly adopted according to RCL provisions or the previous by-laws. Also, there is no evidence that Petitioner followed either set of by-laws for over thirty years, so they are both deemed abandoned.

C. Petitioner Continued to Provide Regular Religious Worship Services

The court is not persuaded by Petitioner's arguments that Petitioner no longer conducted regular worship services and that it split off and assigned such duties to the newly formed Beth Tomche Home in 1993. As some of the objectors correctly noted, there is no provision under Article 10 of the RCL to authorize such a split of a religious corporation, Beth Tomche Home's corporate documents did not mention Petitioner or that it was taking over Petitioner's religious responsibilities. Also, Beth Tomche Home's by-laws only require eight Trustees to be elected annually, which violates the provisions of the RCL that require a minimum of nine Trustees, 1/3

of which must have expiring terms annually. Additionally, if Petitioner no longer engaged in such services, it could no longer be a religious corporation under Article 10 and it would be required to seek court approval to dissolve according to the provisions of the RCL. Also, Petitioner failed to amend its articles of incorporation which required such religious services and failed to provide sufficient verification or legitimate corporate documents to support its claim that it no longer operated a house of worship and assigned such responsibilities to another entity.

Furthermore, based on the conduct and inferred intent of the relevant people involved, it is clear that the regular worship services were conducted by Rabbi Fishelis under the name and auspices of Home of the Sages of Israel, the regular congregants were not aware of the separate entity, nor the sanctuary's lease agreement. Also, the synagogue's name was not prominently displayed in the synagogue, the congregants were not notified of the change, and, until after this litigation began, the name on the bulletin board remained Home of the Sages of Israel. Additionally, the petition used for approval of the nursing home lease in 2000, included admissions by Rabbi Aschkenazi that Petitioner was a religious organization that conducted a house of worship for people of the Jewish faith and that the proceeds from the sale of the nursing home equipment would be used to refurbish the synagogue for the continuation of such services and others. He did not mention that a separate entity had been conducting such services since 1993. Also, there is no information that Beth Tomche Home had any regular corporate activity over the years, including meetings, elections, religious services or any other organized events. As such, there is simply no evidence that the day to day operation and control of the synagogue was ever transferred from Petitioner to the separate entity. Even Rabbi Aschkenazi appears to have forgotten about the new entity as he failed to mention it in his original petition.

D. Objectors Have Standing and are Petitioner's Members

Additionally, the court finds that the Respondent/Congregation/Objectors led by Singer and From and the Intervenor/Donor/Objectors led by Atlas and Block have standing to challenge the sale of the premises and distribution of the sale proceeds. Intervenor On the Way and Fine argue in substance that these objectors have no standing because they are not the type of people permitted to object under the law. Non-Profit Corporation Law § 511(b) strictly defines persons entitled to appear at a hearing to challenge or object to the approval of a sale as a “person interested” who is a “member, officer, or creditor of the corporation” N-PCL § 511(b).

On the Way and Fine further argue that the Respondents/Congregation/Objectors led by Singer and From lack standing because they are not members, officers or creditors of Petitioner; they do not pay any membership dues to Petitioner; they have no connection to Petitioner; and they waived their rights to object by failing to do so at any of the prior meetings, timely notice of which was posted on the door to the sanctuary. Furthermore, Petitioner no longer operates a house of worship and no longer has any members according to its amended by-laws. It leases the sanctuary to Beth Tomche Home, which operates the house of worship and is a licensee of Petitioner. It is possible that the Respondents/Congregation/Objectors could claim to be members of Beth Tomche Home simply because they allege to attend services in the sanctuary, but they are not members of Petitioner. Furthermore, the Respondents/Congregation/Objectors have no basis to object since the Intervenor On the Way and Fine agreed to provide the congregation with adequate space in the new building which will include portions of the old sanctuary and a temporary facility, both of which will be handicap accessible.

On the Way and Fine also argue in substance that the Atlas and Block Intervenor/Donor/Objectors lack standing because they too are not members, officers or creditors of Petitioner; they

have no relationship to the property; they are only really challenging the distribution of the sales proceeds because of their allegations that Rabbi Aschkenazi fraudulently solicited donations to assist Petitioner with housing elderly, impoverished Jewish scholars when Petitioner admitted that it has not housed such scholars since 1996. This allegation is the subject of the Nassau County case and there has been no judgment in that case, so the Intervenor/Donor/Objectors are not Petitioner's creditors.

The Respondent/Congregation/Objectors led by Singer and From argue in substance that they are members of Petitioner because they are members of Petitioner's congregation, they regularly attend worship services at Petitioner's sanctuary and they contribute financially to Petitioner. They contend that the new location attached to Rabbi Aschkenazi's home would be insufficient because the Lower East Side residents have no way to get to services without using motorized vehicles on the Sabbath and holidays.

The Intervenor/Donor/Objectors claim to be members as financial contributors and because Petitioner considers them to be its members. Petitioner's donor records refer to each donor as a member and assigned each of them a member number.

The court finds that since Petitioner's amended by-laws claiming that it had no members are invalid and deemed abandoned and since Petitioner maintained no approved set of guidelines to establish its membership, the Respondent/Congregation/Objectors are members of Petitioner according to the guidelines set forth in RCL § 195 because they are regular attendees of Petitioner's worship services and they contribute financial support to Petitioner. The Intervenor/Donor/Objectors are members of Petitioner based on their donations and Petitioner's membership designation in its records.

As such, the court deems them both to be within the category of individuals authorized to object to these proceedings and the court determines them to be members of Petitioner.

E. Rabbi Aschkenazi and No Board Had Authority to Approve the Sale on Petitioner's Behalf

The court determines that Rabbi Aschkenazi was not a legitimate member of the Board of Trustees and he did not have authority to approve the sale or to act on Petitioner's behalf at the time of the sale because he claimed to have served as a member of the Board of Trustees for over twenty years, when he was only permitted to serve for three years. His attempt to change his title to member of the Board of Directors is unavailing.

Additionally, at the time of the sale, there was no legally functioning Board, as the Board did not have at least nine members, elected to three-year terms, with 1/3 having been substituted by newly-elected members of the Board annually as required by the RCL. Therefore, no Board was authorized to act on Petitioner's behalf. Therefore, neither Rabbi Aschkenazi nor any Board had authority to approve the sale of the premises on Petitioner's behalf.

F. 2012 Board Had No Authority to Act on Petitioner's Behalf

The 2012 Board was not valid and was not authorized to act on Petitioner's behalf at the time of the contract of sale, the time of the approval of the sale, nor on any date thereafter. The election violated the RCL, Petitioner's articles of incorporation and both by-laws. Although Petitioner claims to have no members, the 2012 Board's records refer to members and membership meetings. Furthermore, the 2012 Board members were not members of Petitioner, they were not elected by qualified voters of Petitioner, they were not elected at a duly noticed meeting according to the RCL, the true members of Petitioner were not properly notified of the election meeting or any subsequent meetings. Additionally, the members of the Board and individuals who elected them did not live near the synagogue and did not attend regular services on the Sabbath and

holidays. They had no connection to Petitioner prior to attending the meetings. Additionally, some had never even been to the synagogue prior to the election, some had no previous information about the sale, some were members of Friends of Mosdot Goor, Inc. or paid by Goor and one admitted that the Board was elected solely to approve the sale. As such, it is clear that these individuals were outsiders who were solely brought in to vote for a Board of Trustees/Directors to approve the sale and distribution of the sale proceeds and they had no affiliation with Petitioner, nor any concern for local residents and congregants who regularly benefit from Petitioner's religious services.

G. 2016 Board Had and Has Authority to Act on Petitioner's Behalf

As discussed above, the court determines that the 2016 Board of Trustees had authority to act on Petitioner's behalf as of March 20, 2016 and it had continuing authority to act on Petitioner's behalf. This Board was properly elected according to the RCL and it properly amended Petitioner's articles of incorporation and filed it with the court.

CONCLUSION

For the reasons set forth above, the court denies the sale of the premises, dismisses Petitioner's petition and amended petition and makes the following findings:

- 1) That the court DENIES approval of the sale of the premises, located at 25-31 Bialystoker Place, New York, New York, from Petitioner Home of the Sages of Israel, Inc. to Intervenor On the Way to Brooklyn, LLC, determines that the agreement to sell the property, dated January 10, 2014, is null and void and DENIES Intervenor On the Way to Brooklyn, LLC's request for alternative relief;
- 2) That the court dismisses Petitioner's petition and amended petition with prejudice;
- 3) That the purported amended by-laws are null and void;

- 4) That although the by-laws certified by Rabbi Joel Aschkenazi on November 8, 1982 submitted with Petitioner's original petition were technically in effect because such by-laws were never legally and properly amended, since no by-laws were followed over the years, the court deems them all to have been abandoned;
- 5) That Petitioner did not cease to maintain or operate a house of worship, it did not legally and properly split off its religious services to Beth Tomche Torah Home of the Sages of Israel, Inc. (a/k/a Tomche Torah Vezikneh Yisroel) in 1993, and Petitioner continued to maintain and operate a house of worship in the sanctuary of the premises at all relevant times;
- 6) That the Respondent/Congregation/Objectors led by Singer and From and the Intervenor/Donor/Objectors led by Atlas and Block have standing to challenge the sale of the premises and distribution of the sale proceeds;
- 7) That at the time of the contract of sale, the authorization of such sale and the approval of such sale, there was no legitimate Board of Trustees/Directors in place which was authorized to act on Petitioner's behalf;
- 8) That Petitioner's purported 2012 Board of Trustees/Directors, including Rabbi Samuel (a/k/a Shmelka) Aschkenazi, Avrohom Jalas, Samuel Y. Seidenfeld, Abraham Brodjak, Hyman Friedman, Yedidya Greenstein, Aron Stryn, Meir Kagan and Stephen Werdiger, elected on December 26, 2012, was not legally or properly elected according to the relevant provisions of the Religious Corporation Law, nor according to either by-laws, and the 2012 Board was and is not authorized to act on Petitioner's behalf during any of the relevant times;

- 9) That the purported 2016 Board of Trustees alleging to have been elected on March 20, 2016, including Charles Korn, Nathan Berkowitz, Aron From, M.D., Rabbi Azriel Siff, Moses Wachsman, Rabbi Dov Tropper, Aaron Klopowitz, Baruch Zalman Lichtenstein and Bernard Wachsman was also not legally and properly elected according to the 1982 by-laws, however, as mentioned above, these by-laws are deemed abandoned;
- 10) That the 2016 Board was legally and properly elected pursuant to the relevant provisions of the RCL and the court deems this Board to be the legitimate Board authorized to act on Petitioner's behalf as of March 20, 2016, and thereafter;
- 11) That based on factual, legal and equitable principles, the court determines that the 2016 Board is in a better position to act on Petitioner's behalf;
- 12) That the court determines that the Amended Certificate of Incorporation filed with the New York County Clerk on April 4, 2016, is legally valid and binding upon Petitioner; and
- 13) That Israel Goldberg, Esq. and the law firm, Goldberg, Rimberg & Weg PLLC, which were previously disqualified by this court in this action on December 8, 2016, are deemed disqualified for all related pending actions in this court.

As such, it is hereby

ORDERED that the court DENIES approval of the contract for sale of the premises, located at 25-31 Bialystoker Place, New York, New York, from Petitioner Home of the Sages of Israel, Inc. to Intervenor On the Way to Brooklyn, LLC, pursuant to the contract of sale, dated January 10, 2014, determines that such agreement is null and void; and dismisses Petitioner Home of the Sages of Israel, Inc.'s petition and amended petition with prejudice; and it is further

ORDERED that the court denies Intervenor On the Way to Brooklyn, LLC's and Peter Fine's motion for an order striking the objections, or in the alternative, for an order approving the sale and placing the sale proceeds in escrow subject to the court's determination of how the proceeds will be distributed; and it is further

ADJUDGED and DECLARED that Petitioner Home of the Sages of Israel, Inc.'s Board of Trustees elected in March 2016, which includes Charles Korn, Nathan Berkowitz, Aron From, Rabbi Azriel Siff, Moses Wachsman, Rabbi Dov Tropper, Aaron Klopowitz, Baruch Zalman Lichtenstein and Bernard Wachsman was legally and properly elected pursuant to the relevant provisions of the Religious Corporation Law and the court deems this Board to be the legitimate Board authorized to act on Petitioner's behalf as of March 20, 2016; and it is further

ADJUDGED and DECLARED that Petitioner Home of the Sages of Israel, Inc.'s Amended Certificate of Incorporation filed with the New York County Clerk on April 4, 2016, is legally valid and binding upon Petitioner; and it is further

DECLARED that Israel Goldberg, Esq. and the law firm, Goldberg, Rimberg & Weg PLLC, which were previously disqualified by this court in this action on December 8, 2016, are deemed disqualified for all related pending actions involving Petitioner, including, but not necessarily limited to, *On the Way to Brooklyn, LLC v. Home of the Sages of Israel, Inc.*, under Index Number 152021/2017, *On the Way to Brooklyn, LLC v. Charles Korn, et al.*, under Index number 155728/2016, and *Charles Korn v. Rabbi Samuel Aschkenazi*, under Index number 652804/2017.

Date: October 16, 2017



HON. ERIKA M. EDWARDS