

Matter of Congregation Sfard & Talmud Torah of Flatbush

2019 NY Slip Op 33809(U)

December 20, 2019

Supreme Court, Kings County

Docket Number: 524911/18

Judge: Carolyn E. Wade

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At an IAS Term, Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 20th day of December, 2019.

P R E S E N T:

HON. CAROLYN E. WADE,

Justice.

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IN THE MATTER OF THE APPLICATION OF
CONGREGATION SFARD AND TALMUD
TORAH OF FLATBUSH,

Petitioner,

DECISION AND ORDER

Pursuant to Religious Corporation Law § 18 to dissolve and for Leave to sell its Real Property Located at 1575 Coney Island Avenue, Brooklyn, New York,

Index No. 524911/18

See's 1, 2, 3

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The following papers numbered 1 to 15 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

1-4, 5-8, 13-15

Opposing Affidavits (Affirmations) _____

10-11

Reply Affidavits (Affirmations) _____

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Upon the foregoing cited papers, and after oral argument, petitioner Congregation Sfard and Talmud Torah of Flatbush ("Sfard"), moves, in motion sequence [mot. seq.] one, for an order, pursuant to Religious Corporations Law ("RCL") § 18, permitting the sale of its real property, dissolving the corporation, and declaring that Henry Wolbrom ("Wolbrom") is not Sfard's legitimate president. Wolbrom moves, in mot. seq. two, for an order, 1)

granting him permission to intervene in this matter, pursuant to CPLR 1012 and 1013; 2) dismissing the petition, pursuant to CPLR article 4 and CPLR 3012; 3) dismissing the petition for Sfard's failure to properly apply for dissolution of a religious corporation and failure to comply with RCL § 18; and 4) alternatively, permitting him to serve a responsive pleading to the petition. Wolbrom also moves, in mot. seq. three, for an order allowing Wolbrom to supplement his cross motion with additional information. Sfard has opposed Wolbrom's cross motion.

Background Facts and Procedural History

Sfard was originally incorporated as Chevera Sward Nussach Ahrih of Flatbush on October 14, 1925 by the filing of a certificate of incorporation with the Kings County Clerk's Offices pursuant to the RCL. Allegedly, Sfard changed its original name to its present name by filing two separate certificates of name changes with the Kings County Clerk's Office on May 3, 1935 and July 27, 1939. Sfard was incorporated, among other reasons, to establish and maintain a Congregation and Synagogue for the purpose of conducting Hebrew Worship.

Sfard adopted governing by-laws on June 22, 1954. These by-laws detailed corporate rules and procedures such as the name and form of religious service of the corporation, membership qualifications, elections, and duties of the officers and trustees ("directors"). However, it appears that the corporation abandoned parts of these by-laws, particularly those parts governing elections of officers and trustees, several decades ago. Indeed, Sfard has been exclusively controlled by two of its trustees, Bernard Samet ("Samet") and Eli

Lieberman (“Lieberman”), and a now deceased rabbi, David Schwartz. Samet, as President of Sfard, verified the petition, seeking its dissolution in accordance with RCL § 18, claiming that Sfard has permanently closed its doors for services due to declining membership and revenues, and that its only asset, the Synagogue building located at 1575 Coney Island Avenue, Brooklyn, New York, must be sold as soon as possible. To that end, Sfard’s papers include a copy of a March 2, 2015 \$635,000 sales contract for the property. However, a sale has not occurred.

On January 31, 2016, a corporation membership meeting was held where the members voted on dissolving Sfard. A quorum was reached, and all members, except proposed intervener and cross-movant, Wolbrom,¹ voted to “sell the building to 1575 Coney LLC.” Thereafter, in the summer of 2016, Sfard sought the proposed sale’s approval from the New York State Attorney General’s Charity Bureau. The record contains no indication whether or not the Charity Bureau approved the sale.

A certified copy of a resolution authorizing the sale is annexed as exhibit “L” to the petition. However, this resolution, affirmed by Lieberman as Sfard’s secretary on March 12, 2016, claims that a meeting occurred on February 15, 2016 and that the vote was unanimous, contrary to the petition and Wolbrom’s claims. Further, this resolution contradicts the

¹ Wolbrom was originally a rent paying tenant in the building and thereafter a congregation member.

proffered affidavits of the attendees of the January 31, 2016 meeting, annexed as exhibit "G" to the petition. Sfard ceased having services and closed its doors permanently in July 2017.

Wolbrom opposes dissolving the corporate entity, and claims to be its new president, following an October 7, 2018 meeting he called. Wolbrom claims that a number of alienated congregants want the synagogue to continue operations, and are willing to contribute financial support to Sfard, if Samet and Lieberman were removed as its trustees and officers. Wolbrom, as mentioned, seeks to intervene and requests the petition's dismissal, by cross motion, mot. seq. two, and a subsequent motion, mot. seq. three.

Discussion

Not-for-profit religious corporations are governed by both the New York State RCL and the Not-for-Profit Corporation Law ("NFPCL"). NFPCL § 511 governs applications to the Supreme Court, and § 511-a governs applications to the Attorney General for approval of the sale, mortgage, exchange or disposal of all or substantially all assets of any religious or not-for-profit corporation. NFPCL § 511 (a) requires a petition to set forth:

- "1) The name of the corporation, the law under or by which it was incorporated.
- "2) The names of its directors and principal officers, and their places of residence.
- "3) The activities of the corporation.
- "4) A description, with reasonable certainty, of the assets to be sold, leased, exchanged, or otherwise disposed of, or a statement that it is proposed to sell, lease, exchange or otherwise dispose of all or substantially all the corporate assets more fully described in a schedule attached to the petition; and a statement of the fair value of such assets, and the amount of the corporation's debts and liabilities and how secured.

“5) The consideration to be received by the corporation and the disposition proposed to be made thereof, together with a statement that the dissolution of the corporation is or is not contemplated thereafter.

“6) That the consideration and the terms of the sale, lease, exchange or other disposition of the assets of the corporation are fair and reasonable to the corporation, and that the purposes of the corporation, or the interests of its members will be promoted thereby, and a concise statement of the reasons therefor.

“7) That such sale, lease, exchange or disposition of corporate assets, has been recommended or authorized by vote of the directors in accordance with law, at a meeting duly called and held, as shown in a schedule annexed to the petition setting forth a copy of the resolution granting such authority with a statement of the vote thereon.

“8) Where the consent of members of the corporation is required by law, that such consent has been given, as shown in a schedule annexed to the petition setting forth a copy of such consent, if in writing, or of a resolution giving such consent, adopted at a meeting of members duly called and held, with a statement of the vote thereon.

“9) a request for court approval to sell, lease, exchange or otherwise dispose of all or substantially all the assets of the corporation as set forth in the petition.”

For a court to approve the transaction, strict compliance with this statute is required.

A review of the petition indicates that compliance with the statute is lacking. Specifically,

1) Sfarid's corporate name cannot be verified, as a copy of the May 3, 1935 certificate of name change is missing from the petition; 2) the petition does not list the names and addresses of the corporate directors and officers; 3) while the petition does claim that the corporate purposes and interests will be promoted by the sale, it does not explain how such purposes and interests will be promoted. Moreover, assigning the sales proceeds to an unnamed and unknown synagogue in Israel is insufficient for such purposes; 4) the corporate

debts and liabilities schedule was not separately certified by a corporate officer [see CPLR 4518 (a)]; and 5) the conflicting resolutions referenced earlier clearly require that part of the petition, pursuant to NFPCL § 511 be denied, with leave to resubmit upon proper papers.

RCL § 18 governs dissolving a not-for-profit religious corporation and pertinently provides that:

“Whenever any religious corporation shall cease to act in its corporate capacity and keep up the religious services; it shall be lawful for the supreme court of this state, upon the application of a majority of the trustees thereof, in case said court shall deem it proper so to do, to order and decree a dissolution of such religious corporation, and for that purpose to order and direct a sale and conveyance of any and all property belonging to such corporation, and after providing for the ascertaining and payment of the debts of such corporation, and the necessary costs and expenses of such sale and proceedings for dissolution, so far as the proceeds of such sale shall be sufficient to pay the same; such court may order and direct any surplus of such proceeds remaining after paying such debts, costs and expenses, to be devoted and applied to any such religious, benevolent, or charitable objects or purposes as the said trustees may indicate by their petition and the said court may approve.

1. Such application to said court shall be made by petition, duly verified by said trustees, which petition shall state the particular reason or causes why such sale and dissolution are sought; the situation, condition and estimated value of the property of said corporation, and the particular object or purposes to which it is proposed to devote any surplus of the proceeds of such property; *and such petition shall, in all cases, be accompanied with proof that notice of the time and place of such intended application to said court, has been duly published once in each week for at least four weeks successively, next preceding such application, in a newspaper published in the county where such corporation is located*” (emphasis added).

The petition contains no proof of publication, a necessity to put creditors and others on notice of the petition and potential corporate dissolution; thus, this part of the petition must also be denied. Accordingly, it is

ORDERED that Sfarid's petition for approval to sell its real property and dissolve, mot. seq. one, is denied in its entirety, and the petition is denied and dismissed, with leave to resubmit upon proper papers; and it is further

ORDERED that Wolbrom's cross-motion, mot. seq. two, is granted to the extent that the petition is denied and dismissed, and is otherwise denied as moot; and it is further

ORDERED that Wolbrom's subsequent motion, mot. seq. 3, is also denied as moot.

This constitutes the decision and order of the court.

E N T E R,



Hon. Carolyn E. Wade,

A. J. S. C. HON. CAROLYN E. WADE
ACTING SUPREME COURT JUSTICE

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