SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** **60M**

Justice

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NAFTALI ROTENSTREICH, CHABAD OF GRAMERCY PARK

Plaintiff,

- v -

SHAYA LESCHES,

Defendant.

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INDEX NO. 655503/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

In this special proceeding, petitioners ultimately seek to vacate a *Zabla* panel's arbitration award. The unanimous Arbitration Decision was issued on 9/26/23 by three Rabbis: Rabbi Greenwald, Rabbi Chaikin, and Rabbi Rivkin (Doc 12 [award]). In the petition, petitioners contend that the award should be vacated because: (1) there was no valid agreement to arbitrate and petitioner Chabad of Gramercy was not a party to the arbitration; (2) the panel exceeded its authority in various ways; (3) one of the arbitrators was biased; and (4) the panel engaged in misconduct by refusing to consider certain evidence (*see* Doc 1 [petition]).

In Motion Seq. No. 01, petitioners move for a preliminary injunction: (1) "staying [plaintiff Rotenstreich's] compliance with the [underlying] arbitration award"; and (2) "enjoining Respondent from holding a special meeting of the board of the Young Jewish Professional Foundation ("YJPF") . . . seeking to oust Rabbi Rotenstreich from the board . . . " (Doc 24 [order to show cause]).

DISCUSSION

In order to obtain a preliminary injunction, a petitioner must demonstrate (1) a probability of success on the merits, (2) danger of irreparable injury in the absence of an injunction, and (3) a balance of equities in plaintiffs' favor (*e.g. Nobu Next Door, LLC v Fine Arts House., Inc.,* 4 NY3d 839, 840 [2005]; *Doe v Axelrod,* 73 NY2d 748, 750 [1988]). Petitioners bear the burden of establishing their right to a preliminary injunction by demonstrating their likelihood of ultimate success on the merits (*Scott v Mei,* 642 NYS2d 863, 864 [1st Dept 1996]).

1. The Board Meeting

Rotenstreich has not established that he is entitled to a preliminary injunction enjoining respondent from calling a special board meeting as YJPF's president. Rotenstreich's status as a board member of YJPF is not addressed in the arbitration award. Even if this court were to ultimately vacate the award, it would have no bearing on Rotenstreich's current status as a board member of YJPF. In opposition to this motion, respondent submits a copy of YJPF's by-laws. The by-laws expressly provide the procedures for removing board members (*see* Doc 26 [by-laws] at Article V § 3). Given YJPF's by-laws, petitioners cannot demonstrate that respondent is

> "threaten[ing] or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual; or that the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff"

(CPLR 6312).

2. Staying Compliance with the Award

Petitioners also have not established that they are entitled to a preliminary injunction staying their compliance with the arbitration award. In opposition to this motion, respondent submits a copy of the parties' arbitration agreement. The Agreement to Submit to Arbitration (Doc 29) is signed by petitioner as "Pres. Of CGP [Chabad of Grammercy Park]" and by

respondent as "Pres. Of YJPF." The parties agreed to binding arbitration of the following: "all the controversies . . . between the undersigned parties including but not limited to salaries, debts, conflict of interests, assets, properties relating to YJP and Chabad of Grammercy Park" (*id.*). They further agreed "that the controversy be heard and determined by the three following arbitrators: Rabbi Chaikin, Rabbi Rivkin, and Rabbi Greenwald" (*id.*). Thus petitioner, who initiated the arbitration proceeding, executed the arbitration agreement, and ultimately participated in the Zabla, cannot establish that he's likely to succeed in vacating the award on the basis that there was no arbitration agreement.

Further, petitioners' own submissions undermine their contention that CGP was not a party to the Zabla arbitration, because their own Hazmana [arbitration summons] indicates that it was initiated by "Rabbi Naftali Rotenstreich, on behalf of Chabad of Grammercy Park dba Young Jewish Professionals" (Doc 6). Petitioner also apparently signed the arbitration agreement in his official capacity as president of CGP.

Likewise, petitioners cannot establish that the panel exceeded their authority in issuing the decision. The arbitration agreement states that the parties agreed to binding arbitration of "all controversies [claims and counterclaims] between the undersigned parties" (Doc 29). The award confirms what the parties intended to arbitrate, stating: "Background: The Entities This dispute revolves around a variety of issues pertaining to the YJPF - including, but not limited to, salaries, debts, conflict(s) of interest, building ownership and mortgages" (Doc 12 at 2). Under CPLR 7511 (b) (iii), "an excess of power occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*see e.g. Matter of New York City Tr. Auth. v Transportation Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332, 336 [2005]). Here, the arbitration agreement did not

specifically limit the panel's authority, undermining petitioners' assertion that the panel exceeded their authority.

Petitioners also have not demonstrated likelihood of success on the merits based on the contention that the panel engaged in misconduct. Petitioners assert that the Zabla should have been conducted using Beth Din of America's ("BDA") rules. While petitioners' hazmana summons sought a din torah under the BDA's rules, the hazmana provided that respondent could elect arbitration by Zabla panel. Respondent selected the Zabla option. Section 2 (e) of the BDA's rules provide:

> "If the litigant who is sent an invitation (hazmana) chooses option 2 [zebla], and they have chosen as their representative a person who — in the opinion of the Av Beth Din [head of the BDA] — is authorized by Jewish law to serve as their arbitrator, the Beth Din will withdraw from this matter. The Beth Din may permit and encourage any one of its arbitrators (dayanim) to accept this case under the zebla arrangement, although the arbitrator (dayan) in such circumstances will not be functioning as a member of the [BDA]"

(Doc 27 [BDA Rules]).

In addition, petitioners' conclusory allegations that Rabbi Rivkin was biased are insufficient to establish likelihood of success on the merits. Notably, the arbitration award was issued by the panel unanimously. Petitioners also have not established that Rabbi Rivkin was not qualified to serve as a Dayan in the Zabla proceeding.

The court has considered the petitioners' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that petitioners' motion for a preliminary injunction is denied; and it is further

ORDERED that there shall be no further motion practice without a pre-motion conference; and it is further

ORDERED that the parties must appear for a conference over Microsoft Teams on December 8, 2023 at 12:00 p.m.

11/15/2023
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE