

Rotenstreich v Lesches

2024 NY Slip Op 34130(U)

November 19, 2024

Supreme Court, New York County

Docket Number: Index No. 655503/2023

Judge: Melissa A. Crane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

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

Justice

-----X

NAFTALI ROTENSTREICH, CHABAD OF GRAMERCY
PARK

Plaintiff,

- v -

SHAYA LESCHES, YJP FOUNDATION, INC.,

Defendant.

-----X

INDEX NO. 655503/2023

MOTION DATE 07/08/2024

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 139, 140, 141, 142, 143

were read on this motion to/for RENEWAL.

Upon the foregoing documents, it is

On May 31, 2024, this court upheld the decision of the religious arbitral panel and remanded to that panel several issues that the parties had agreed to arbitrate but the panel had neglected to decide [see EDOC 117]). The panel is what is known as a Zabla. Under this type of arrangement, each side appoints its own arbitrator and those two choose a third. Part of the reason for the decision to uphold the arbitration award was because the panel was unanimous, despite petitioner having appointed one of the arbitrators.

Before the Zabla panel could reconvene, petitioner, Rabbi Rotenstreich (hereinafter Petitioner or Rotenstreich) interposed a motion for renewal to bring to the court’s attention communications and circumstances that Petitioner claimed demonstrated bias on the part of the panel. These included that, after the award, certain of the arbitrators had spoken *ex parte* to Petitioner’s adversary, Shaya Lesches. The primary evidence for this is in the form of an April 3, 2024 letter, by which the panel informed Chabad’s governing body that Petitioner had failed

to comply with its award, accused Petitioner of being a “moser” for availing himself of the secular courts, and asking the governing body to compel compliance with the award:

“We hereby request that Your Honors compel him to abide by the Ruling, and if not, that you inform him that he can no longer continue to serve as the Shaliach if he continues to act in the manner set forth, and that he must abide by the Din Torah fully.”

(see EDOC 127). Unfortunately for Petitioner, Chabad did remove him from its list of emissaries (see EDOC 130), the impact of which has impaired Petitioner’s business.

The April letter contained information that the panel members could not have known on their own. This information was that Lesches was locked out of the premises to which the award had given him access. None of the Zabla panel members could have known this on their own indicating that at least one of them had spoken to Lesches, Rotenstreich or both.

The court, being unaware of the rules of Rabbinic courts, was concerned about the possible occurrence of *ex-parte* communications and that the referral to the governing body that resulted in Petitioner’s removal as an emissary reflected bias. However, the court was also cautious not to tread on proceedings of a religious tribunal. Accordingly, the court held the motion for renewal in abeyance pending a hearing into whether or not the Zabla panel remains sufficiently free of bias to sit on the remaining issues for arbitration.

At the hearing, the court heard from each member of the Zabla. Rabbi Greenwald, petitioner’s choice on the panel, testified first. Rabbi Greenwald described two types of religious arbitration panels. Under the first type, *ex parte* communications between a party and a member of the panel are forbidden. However, with a Zabla, where each side has appointed their own rabbi and those two chose a third, *ex parte* communications are not inappropriate. In fact, each side is expected to communicate with the party who chose them (see Tr.12). Moreover, although

it is unusual, the other side's pick could have *ex parte* discussions with the opposing party (Tr. 18).

As to the April 2024 letter, Greenwald explained it was his understanding this was normal procedure when a party has ignored the ruling of the "beit din" (rabbinic court) and has availed themselves of a secular court, "a violation of Jewish law." (Tr. 25-26; 30). Far from exhibiting bias, Rabbi Greenwald's testimony reflected that he participated in the April 2024 letter because he was trying to be cooperative and because it was Chabad procedure, an organization that he is not part of (Tr. 30 "I am not part of Chabad. I have no idea what those proceedings were about").

Rabbi Greenwald admitted that he had no independent knowledge about Lesches being locked out and recalled hearing it from possibly Rabbi Rivkin (Lesches' choice), but he could not really remember. Rabbi Greenwald was very credible and seemed to want to do the right thing. He considers petitioner to be his friend. He testified that he begged petitioner to come back to the panel "as his friend." He testified that he could remain impartial for the remaining issues. He also left open the possibility that "arbitrators can come back for more information and retry the case" (Tr. 28). This does not reflect a person with bias, but rather reflects some one who is open to changing their decision should new information come to light.

The next person to testify was Rabbi Rivkin. Rabbi Rivkin was Lesches choice. Like Rabbi Greenwald, he testified that the Zabla panel allowed for *ex parte* communications, at least with respect to the Rabbi each side chose (Tr. pg 40 "It is a basic right that under Zabla you can discuss and hear the case with the person who chose you." See also Tr. 61). He explained that the restriction on *ex parte* communications would apply to the third judge whom the other two chose (Tr. 61-62).

Rabbi Rivkin also echoed Rabbi Greenwald when he testified that if Rotenstreich had new complaints, he should come back to the Zablá and they would hear him out (Tr. 47-48). Rabbi Rivkin also said that the reason for the April 2024 letter to Chabad's governing body was because Rotenstreich had violated Jewish law by "going to secular court in order to overturn the rabbinic ruling of the Torah." He also testified that the panel warned Rotenstreich about the consequences of going to secular court, but this fact is largely irrelevant as petitioner did not establish that he had a right to be warned in the first place. Rabbi Rivkin also testified that he heard about locking Lesches out of the premises from both petitioner and respondent (Tr. 54)¹

There are also text exchanges that Rabbi Rivkin exchanged with Rotenstreich (incidentally *ex parte*). Rotenstreich instigated most of the contact. The texts involve insults flying back and forth. They are very heated. (See EDOC 142)


When asked said he could be fair and impartial, despite the texts and despite testifying that Rotenstreich was trying to "terrorize" him by threatening to sue him, Rabbi Rivkin stated yes without hesitation. He said he could be free from bias in any further proceedings because he was G-d fearing, did not hold grudges and would uphold Jewish law. Given that the texting from Rotenstreich was relentless, that Rivkin said he could be judge on the basis of Jewish law, and that Rivkin was Lesches pick anyway, the court does not see the texts as a reason to disqualify Rivkin. To do so would allow Petitioner to orchestrate a new panel through the initiation of relentless and disparaging text messages or threats to sue.

¹ To be clear when the court said, on page 53 of the transcript, that it did not want "to receive evidence from a witness," it did not mean testimony. It meant it did not want documentary evidence in the middle of a hearing that had not been shared with the other side ahead of time.

Rabbi Chaiken was the next to testify. He said that the panel warned Rotenstreich that a letter asking for his termination could be sent (Tr. 67). As the middle rabbi whom the others chose, Rabbi Chaiken was not supposed to engage in *ex parte* communications. He credibly denied having *ex parte* communications before the Zabla rendered their unanimous decision (Tr. 71). He testified he could be fair and independent concerning the remaining issue for arbitration (Tr. 73-74).

Because petitioner called no witnesses other than the three rabbis, their testimony is unrefuted. First and foremost, the testimony that the only member restricted on having *ex parte* communications was the dayan (judge) the other two chose is unrefuted. Rabbi Chaiken is that dayan and he testified that he never had *ex parte* communications with either side while the matter was *sub judice*. All three testified that they could remain fair and impartial. The testimony that the letter sent to Chabad's governing body was standard operating procedure is also unrefuted. Accordingly, while actions of this sort would disqualify a secular judge, it appears that the rules governing a Zabla arbitration panel are different. The court cannot question the unrefuted testimony that Jewish law allows for what occurred here (see *Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 9 N.Y.3d 282, 286, [1st Dep't 2007] [court could not get involved in election dispute among religious factions because resolution of the issues would require it to apply ecclesiastical doctrine in violation of the First Amendment]; *Bronx Islamic Soc'y, Inc. v. Ally*, 158 A.D.3d 581, 582 [1st Dep't 2018] [As plaintiff's bylaws "condition membership on religious criteria," plaintiff's decision to terminate defendants' memberships is binding on the courts]).

Accordingly, the court grants renewal, and upon renewal sees no reason to change its prior decision to remand the outstanding issues to the original panel.


20241119174549MACRANE22B833646D46CA88166FC6CEE4AA3B

11/19/2024
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE