

Matter of Congregation Machne Ger v Cohen

2025 NY Slip Op 33543(U)

September 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 524608/2020

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 524608/2020

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Mot. Seq. No.: 1, 2

In the Matter of the Application of

CONGREGATION MACHNE GER and DAVID
BERLINER And ISAAC BIRNHACK as Trustees of
CONGREGATION MACHNE GER,

Petitioners,

-against-

DECISION/ORDER

YEHUDA COHEN, MEIR FREI, YEHUDA ARYE
SEGAL, SAMUEL YESHAYA SEIDENFELD, YAKOV
KLEIN, AND AVROHOM MORDECHAI WEITS,
YEHUDA COHEN, MEIR FREI, YEHUDA ARYE
SEGAL, SAMUEL YESHAYA SEIDENFELD, YAKOV
KLEIN, AND AVROHOM MORDECHAI WEITS, and
JOHN DOES NOS. 1 through 100, representing any
persons purportedly appointed as officers and/or approved
as new members of CONGREGATION MACHNE GER,

Respondents,

For an Order Pursuant to Section 618 of the Not-for-Profit
Corporation Law Annuling Purported Actions Taken by
Respondents

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The following papers, which are e-filed with NYCEF as items 1-53, 55-101, were read on
this petition and cross-petition:

In their petition, Congregation Machne Ger and its trustees, David Berliner and Isaac
Birnhack, seek an order declaring an election null and void, which they claim they first learned
about on February 14, 2022. Petitioners also seek to enjoin the respondents from taking any
action on behalf of the Congregation, especially concerning a camp located at 336 Whittaker
Road, Fallsburg, New York.

According to the petition, Congregation Machne Ger is a religious corporation founded on June 15, 1972, with its main function being the operation of a children's camp on its property in Fallsburg, New York. The petitioners, David Berliner and Isaac Birnhack, claim to be the duly elected president and vice president/secretary, respectively, as well as board members. Berliner claims he has been involved with and managed the camp since around 2000 and that he saved the property from a tax lien in 2002. The petitioners assert that none of the respondents have been involved in the Congregation's temporal matters or attended board meetings since at least 1995.

The petitioners claim that they learned of the election they seek to invalidate in a footnote in a letter from Rabbi Yehuda Cohen's attorneys on February 14, 2022, which stated that Cohen, as the "sole valid board member," had filled five board vacancies and appointed new officers and members.

The petitioners argue that Cohen is not a trustee or a member and therefore had no authority to hold a meeting or make the appointments. They point to the Congregation's bylaws, which require a majority vote of officers to elect new members, and the court's previous finding that Cohen and his associates are not members. The petitioners are asking the court to annul these new actions and declare them null and void under the Not-for-Profit Corporation Law § 618.

The respondents cross-petition to dismiss the petition for two main reasons. They contend that Rabbi Yehuda Cohen is a valid trustee of the congregation because he was a signatory of the Certificate of Incorporation. They point out that Under New York's Not-for-Profit Corporation Law and Religious Corporation Law, this gives him the authority to fill vacancies on the board. They maintain that the other respondents, who were appointed by Rabbi Cohen, are also valid board members. Respondents argue that there is no legal basis to terminate Rabbi Cohen's status due to his residency in Israel and that his term continues until a successor is properly elected.

Respondents' second main contention is that petitioners David Berliner and Isaac Birnhack, lack the legal standing to challenge the appointments because they are not valid members or trustees of the congregation. They cite to a prior decision of the undersigned which

they interpret as standing for the proposition that it is impossible for anyone to pray on a regular basis at the Congregation's summer camp, which is a requirement for membership under the "pay and pray" criteria of the Religious Corporation Law. They contend that the petitioners' own sworn statements to the Attorney General confirm that no religious services are conducted at the camp. Finally, they contend that the meetings and corporate actions undertaken by the Berliner Faction, including a 2017 election, were invalid because Rabbi Cohen did not receive proper notice.

This proceeding is one of several actions and proceedings that have been brought concerning the issue of legal control over the Congregation, which can be summarized as follows:

1. The First Kings County Action - *Congregation Machne Ger v. Olewski* [Index # 514285-2019] (The 2019 election case).

This action was commenced by Congregation Machne Ger, by its members David Mendel Berliner and Yitzchok a/k/a Isaac Birnhack. A default judgment was entered in this case that reads as follows: "ORDERED, ADJUDGED and DECREED that the Amended Petition is granted to the sole extent that it seeks to invalidate any election or elections which may have occurred on June 29, 2019, during a Special Meeting held by the Respondents."

2. The Sullivan/Kings County Action – *Cohen v. Berliner* [Index # 510874-2022] (The 2017 election case).

In this action, both the plaintiffs and defendants claim to be rightful board of directors of the Congregation. Plaintiffs Cohen claim to be an original, and still rightful member of the board of directors. The Defendants, including Berliner, claim to have been elected to the board in a 2017 election, the election he claims gave him authority to act as the President of the Board in this case. The plaintiffs are challenging the validity of the 2017 election in power. The lawsuit was filed around the time the Berliner's action was pending in Kings County that challenged the 2019 election where the plaintiffs claimed to have been re-elected.

The Trial Court's Decision: The Sullivan County trial court dismissed the action holding that it was barred pursuant to the principles of collateral estoppel and that the action was

untimely commenced. With respect collateral estoppel, the Court found that that the Kings County decision invalidating the 2019 election prevented the plaintiffs from challenging the 2017 election. The court also found that the action was untimely because the plaintiffs had waited too long to bring the action. The Court found that the 2017 election occurred over two years before the lawsuit was filed, which the court determined was past the applicable four-month deadline for such a challenge.

The Reversal: The Third Department reversed (*Congregation Machne Ger v. Berliner*, 201 A.D.3d 1268 (3rd Dep't 2022)). The Third Department held that collateral estoppel did not apply because the central issue in the First Kings County Action was the validity of the 2019 election, not the 2017 election. The Court noted that the Kings County court explicitly stated it was taking "no position" on the 2017 election. The Third Department further held that res judicata or claim preclusion did not bar the action because the defense was never raised below. The Court further found that even if the defense had been raised, a challenge to the 2017 election would have been a "permissive counterclaim" in the Kings County case, meaning that the respondents were not required to raise such as challenge in the action.

With respect to whether the action was timely commenced, the Court held that while the four-month statute of limitations applied, the clock doesn't start to run until the aggrieved party acquired notice of the decision or action being challenged. The Court concluded that the plaintiffs presented sufficient evidence that they were not notified of the 2017 election to around the time they filed their lawsuit, there was a question of fact as to when they first acquired notice. The Court concluded that this required as trial.

The Sullivan County/Kings case thereafter transferred to Kings County. A Note of Issue was filed in May of 2024 and the case is awaiting trial.

3. The Special Meeting Case - *Cohen v. Berliner* [Index # 517690/2020]).

The petitioners in the special meeting case, Yehuda Cohen, Abraham Pluczenik, Nachman Shatz, Meilich Naperstek, Samuel Yesha Ye Seidenfeld and Sidmon Kenigsburg brought a special proceeding against David Berliner and Isaac Birnhak, as the Incumbent Trustees of the Congregation, pursuant Sections 603 and 604 of the Not for Profit Corporation

Law and Section 194 of the Religious Corporation Law seeking an order directing the respondents, to call, notice and hold a special meeting of the members of the Corporation for purposes of holding an election. The respondents opposed the application and moved to dismiss the proceeding on the grounds that the petitioners were not members of the Congregation and lacked standing. Following a trial/hearing to determine whether the petitioners were members and qualified to request the meeting, by order dated December 31, 2021, the petition was dismissed. The Court concluded that the petitioners failed to meet their burden of demonstrating that at least ten (10) of the signatories to the demand for a special meeting were “qualified voters” within the meaning of Religious Corporations Law §§ 194 and 195.

4. The Other Litigation – Cohen v. Berliner [Index No. 524608/2020] (The November 23, 2020 election).

The petitioners commenced this proceeding seeking an Order pursuant to NPCL 618 (i) declaring that an election the allegedly took place on November 23, 2020, in which David Berliner, Isaac Bimhack and Abraham M. Abramovitz were elected as Officers and board members of the Congregation, was invalid.

Discussion:

CPLR 2201 provides that “[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” “Thus, ‘a court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources’ ” (*Chaplin v. National Grid*, 171 A.D.3d 691, 692, 95 N.Y.S.3d 850, quoting *Matter of Tenenbaum*, 81 A.D.3d 738, 739, 916 N.Y.S.2d 205; see *Matter of Hersh*, 198 A.D.3d 773, 775, 156 N.Y.S.3d 62, 64; *Felix v. Law Offs. of Thomas F. Liotti*, 129 A.D.3d 773, 773, 9 N.Y.S.3d 887; *HSBC Bank USA, N.A. v. Posy*, 98 A.D.3d 945, 946, 950 N.Y.S.2d 579).

Whether the election of February 14, 2022 (which is the subject matter of this proceeding) and the election of November 23, 2020 (which is the subject matter of the *Cohen v. Berliner* [Index No. 524608/2020]) should be deemed null and void will turn largely on the outcome of the Sullivan/Kings County Action – *Cohen v. Berliner* [Index # 510874-2022]. As set forth above, this action concerns the 2017 election case, the election the petitioners claim

gave them rightful control of the Congregation in the first instance. To avoid the risk of inconsistent adjudications and to preserve the resources of the parties and the Court, this proceeding, as well as the proceedings in *Cohen v. Berliner* [Index No. 524608/2020] should be stayed.

Accordingly, it is hereby

ORDERED that all proceedings in this matter are STAYED pending a determination in the upcoming trial of the Sullivan/Kings County Action – *Cohen v. Berliner* [Index # 510874-2022] (The 2017 election case) or further order of the Court.

This constitutes the Decision and Order of the Court.

Dated: September 18, 2025.

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

KINGS COUNTY CLERK
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