

SUPREME COURT : STATE OF NEW YORK
COUNTY OF ORANGE

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WILMOS FRIEDMAN, HERMAN KAHAN, ZIGMOND
BRACH, JOSE MASRI, ERVIN ROSNER,
MORRIS FRIEDMAN, JOSEPH EPSTEIN,
HERMAN LANDAU, MOSES SPIELMAN, and all
others similarly situated,

To commence the statutory time period
for appeals as of right (CPLR 5513[a]),
you are advised to serve a copy of this
order, with notice of entry, upon all
parties.

Plaintiffs,

-against-

DECISION AND ORDER

Index No: 8208-2009

CYL CEMETERY, INC., CONGREGATION YETEV
LEV D'SATMAR, INC., CHEVRE KADISHE
D'SATMAR, a division of CONGREGATION
YETEV LEV D'SATMAR, INC., CONGREGATION
YETEV LEV D'SATMAR OF KIRYAS JOEL,
INC., CENTRAL CONGREGATION YETEV LEV
D'SATMAR, INC., RABBI EZRIEL GLUCK,
JOSEPH WEISS, MOSES WITRIOL, DAVID
MARKOWITZ, CHAIM ELIEZER GROSS, JOEL
KAUFMAN, DAVID EKSTEIN, ELIAS
HOROWITZ, and SHLOMO WERTZBERGER,

Defendants.

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CONGREGATION YETEV LEV D'SATMAR, INC.,

Plaintiff,

- against -

BERL FRIEDMAN, ISAAC ROSENBERG, DAVID
HAUER and SAMUEL OBERLANDER,

Additional Defendants
On the Cross-Claims.

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HON. VICTOR J. ALFIERI, JR., A.J.S.C.

By Notice of Motion dated April 19, 2010, defendants Berl

Friedman, Isaac Rosenberg, David Hauer, Samuel Oberlander, CYL Cemetery, Inc., Central Congregation Yetev Lev D'Satmar, Inc., Joseph Weiss, David Markowitz and Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. move for an Order seeking to compel arbitration of the within action. The Court has considered the following papers on the motion:

1. Notice of Motion dated April 19, 2010;
2. Affirmation in Support dated April 19, 2010 and Exhibits 1 through 8 attached thereto;
3. Affirmation of Berl Friedman dated April 8, 2010 and Exhibits A and B attached thereto;
4. Affirmation in Opposition dated April 30, 2010 and Exhibits A through N attached thereto;
5. Affirmation of Shaul Perlstein in Opposition dated April 27, 2010;
6. Affirmation of Chaim Jacobowitz in Opposition dated April 29, 2010;
7. Sur-Reply Affirmation in Opposition dated May 20, 2010 and Exhibits A through C attached thereto;
8. Sur-Reply Affirmation of chaim Jacobowitz in Opposition dated May 18, 2010 and Exhibit A attached thereto
9. Miscellaneous correspondence addressed to the Court.

Also pending before the Orange County Supreme Court (McGuirk, J.) is defendants' motion to renew/reargue the Decision and Order dated November 13, 2010 whereby the Court denied defendants' motion to dismiss.¹ For the reasons set forth herein, defendants' motion to compel arbitration is granted and this Order shall remain in effect regardless of the outcome of the aforementioned motion to reargue/renew as the outcome of that motion is not determinative of or dependent on the issues pending before this Court.²

By way of background, the parties to the within action have been embroiled in an ongoing bitter dispute which centers on which of two opposing factions is the "true leader" of the Congregation Yetev Lev D'Satmar, Inc. Numerous decisions, from trial courts to the New York Court of Appeals, have been written on various aspects

¹ By Decision and Order dated July 1, 2010, defendants' motion to renew/reargue, which was originally assigned to and made returnable before this Court, was transferred to the Honorable John K. McGuirk, J.S.C. pursuant to CPLR R 2217(a) and R 2221(a).

² Although defendants, in the within motion, seek to compel arbitration as an alternative form of relief in the event their motion to reargue/renew is denied, this Court finds that it need not await a determination of the reargument/renewal motion prior to rendering a decision on the instant motion.

of the issues involved.³ As such, this Court finds it unnecessary to set forth the sordid procedural and factual history of this matter and instead refers to the Court of Appeals decision in Matter of Congregation Yetev Lev D'Satmar, Inc. V. Kahana, 9 N.Y.3d 282 (2007) and Frankel v. Congregation Yetev Lev D'Satmar, 69 A.D.3d 788 (2d Dept. 2010).

Pursuant to CPLR Section 7501, "[a] written agreement to submit any controversy thereafter arising or any existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction to the courts of the state to enforce it. . . ." In other words, the court must first determine, without regard to the underlying dispute, whether the parties have an enforceable agreement to arbitrate. In the context of this case, "[i]t is axiomatic among Orthodox Jews that Jewish law . . . demands that disputes among Jews be adjudicated by a Jewish court referred to as a Beth Din unless permission is obtained from the Beth Din to submit the controversy to the secular court." Congregation Yetev Lev D'Satmar v. Kahan, 5 Misc.3d 1023A (Kings Cnty. Supr. Ct. 2004). Thus, in New York, arbitration has been recognized as a method of dispute resolution by Orthodox Jews. See, e.g., Avitzur v. Avitzur, 58 N.Y.2d 108 (1983). As such, it is for this Court to determine whether there is an enforceable arbitration agreement and the Court, in making such a determination, must apply "neutral principles of law." See, Matter of Congregation Yetev Lev D'Satmar, 9 N.Y.3d at 286. In doing so, the Court may look to internal documents, such as the Congregation's bylaws.

In the instant matter, the bylaws of the Congregation⁴ provide, in the section "Rights and Duties of Members," that a member of the congregation shall (Exhibit 6) or must (Exhibit 7) be expelled if that member declines to appear before a Rabbinical Court (Exhibit 6) or submit to a Din Torah (Exhibit 7). In other words, as Jewish law requires and the bylaws provide, issues involving members of the Congregation must be adjudicated before a Rabbinical Court. As succinctly stated in 66 AmJur 2d Religious Societies §19, the bylaws of a congregation set forth the

³ In fact, a Lexis/Nexis Shepard's Summary lists 23 citations that are all related to this Congregation.

⁴ As set forth in defendants' Affirmation, both factions have caused the Congregation's bylaws to be interpreted from Yiddish (see, Exhibit 5) to English. Exhibit 6 is the defendants' (Friedman faction) interpretation of the bylaws and Exhibit 7 is the Kahan faction's interpretation of the bylaws.

relations, rights and obligations of its members.⁵ "[E]ach day [that] a person remains a member of an organization is properly considered an implicit reaffirmation of the person's agreement to adhere to the organization's bylaws." Meshel v. Ohev Sholom Talmud Torah, 869 A.2d 343 (US App DC 2005) (Citations omitted).

Since the Congregations' bylaws are a secular corporate document adopted by its members pursuant to New York law, this Court finds that the Congregation and its members adopted the Rabbinical Court, *i.e.*, the Din Torah (Rabbinical Court proceeding) as the alternate dispute resolution mechanism of choice for disputes between and among members of its congregation. As such, this Court finds that the parties are required to arbitrate the within action before the Rabbinical Court.

With respect to Cross-Claim Plaintiff's contention that defendants waived their right to arbitrate this dispute, this Court rejects that argument. Due to the procedural complexities involved in this and the other related matters, this Court cannot find that defendants "elected to litigate rather than arbitrate." Fein v. General Elec. Co., 40 A.D.3d 807 (2d Dept. 2007).

Based on the foregoing, it is hereby

ORDERED that defendants' motion to compel arbitration is granted; and it is further

ORDERED that the parties to the within action submit to the Rabbinical Court comprised of Rabbinical Court Judge Yitzchok Chaim Zeltenreich, Rabbinical Court Judge Yekusiel Zalmaen Graus, and Rabbinical Court Judge Mordechai Babad for binding resolution of the parties' underlying dispute or any other Rabbinical Court as mutually agreed upon by the parties; and it is further

ORDERED that the within action and all the proceedings therein are stayed until arbitration has been had in accordance with this decision; and it is further

ORDERED that the relief sought in the papers considered by the

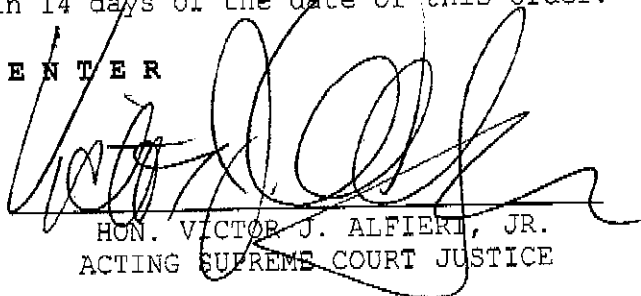
⁵ Specifically, 66 AmJur 2d Religious Societies §19 states as follows: "The relations, rights, and obligations arising from membership in a religious society are to be determined according to the constitution, rules, or bylaws of the society, as well as by reference to the statutory provisions governing such religious bodies, because one who becomes a member of a church is presumed to have voluntarily submitted to all the known tenets of congregational discipline, with an implied consent to its government, and is bound by its laws, usages, customs, and principles. Membership in a church is not a property right."

Court not herein decided is denied.

ORDERED that defendants shall serve a copy of the within Order on all counsel of record within 14 days of the date of this Order.

ENTER

Dated: July 15, 2010
Goshen, New York



HON. VICTOR J. ALFIERI, JR.
ACTING SUPREME COURT JUSTICE

TO: Kravet & Vogel, LLP
1040 Avenue of the Americas, Suite 1101
New York, New York 10018