SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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TERRACE VIEW ESTATE HOMEOWNERS ASSOCIATION, INC., ARON MARGULIES, INDIVIDUALLY and on behalf of DAVID BANDNER and BINYAN TORAH, JACOB HERSKOWITZ, CHAIM FISCHER, and NISSAN PORTNOY,

Petitioners,

-against-

DECISION & ORDER
Index. No. 030904/13

BATES DRIVE CONDOMINIUM III, JOSEPH MENACHEM ROSENBERGER, JOEL HOCOHEN GLANZER, MENACHEM MANDEL GUTMAN, PINCHAS SHAPIRA, ZEV ARYA KOHN, JACOB S. ROCHEACH, and MENACHEM HALPRIN,

Respondents.

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Hon. Thomas E. Walsh, II, A.J.S.C.

The following papers numbered 1-11 read on this contested petition for a Judgment pursuant to CPLR §7510 confirming an Arbitration Award:

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Affirmation in Opposition to Petition (Ostrer)/Affidavits (Glanzer, Shapira, Schlesinger & Reisman)/Exhibits (A-L)–5-7
Reply Affirmations (Haspel & Herskowitz)/Exhibits (A-F)–8-9
Sur-Reply Affirmation (Ostrer)/Exhibits (A&B)–10-11

This contested petition seeks the confirmation of the Arbitration Award issued by Rabbinical Arbitrator Avraham Yitzchak Bronshstein dated November 6, 2012 (Petitioner's Exhibit E). The dispute giving rise to the arbitration stems from an effort by petitioner, Terrace View Estates Homeowners Association, Inc. (hereinafter "Terrace View"), to construct what it describes as a community center on the common grounds of the respondent, Bates Drive Condominium III (hereinafter "Bates Drive").

Terrace View is the umbrella homeowner's association for the development which is comprised of eight separate condominium complexes in the development, one of which is Bates Drive, each of which is governed by it's own by-laws, regulations and condominium association. Bates Drive is comprised of nine individual residential units and is managed by a Board of Managers pursuant to it's by-laws.

Bates Drive objected to the construction on various grounds. The parties agreed to submit

their dispute to binding Rabbinical Arbitration and the contested Arbitration Award resulted.

Respondents oppose the confirmation of the Arbitration Award and assert, in their counter-claims, that it must be vacated because: (i) petitioners have failed to join necessary parties to this proceeding, including all of the owners of Bates Drive and the holders of mortgages filed against the units and common elements in Bates Drive; (ii) petitioners lack standing to bring this proceeding because it did not exist as a corporate entity at the time it was involved in the arbitration brought in it's name; (iii) petitioner did not amend it's Declaration or Bylaws through the requisite vote of its members in order to allow it to own a community center or a synagogue; (iv) the arbitration hearings were conducted on Sundays in violation of the Judiciary Law; (v) the arbitration violates strong public policy; (vi) the arbitrator was not impartial and/or was unfairly influenced by petitioners or a prior undisclosed pecuniary relationship with petitioner; (vii) the translation of the Hebrew Arbitration Award into the English language is inaccurate; (viii) the proceeding is an illegal, fraudulent and unconstitutional attempt by petitioners to obligate owners of real property to cede their real property for and to participate in and support the construction of a religious synagogue under the guise of a secular community center; and, (ix) the arbitrator exceeded his authority (See Answer ¶¶15-22). Respondents also assert that petitioners lack standing to enter this arbitration because none of them are owners of the common elements in Bates Drive and none of them maintained or reserved any legal or equitable right to divest Bates Drive or its unit owners of any interest or portion of their interest in the condominium's common elements (See ¶7(b), Ostrer affirmation in opposition).

An Arbitration Award shall be vacated if the rights of the party opposing its confirmation was prejudiced by: (i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection [CPLR §7511(b)(1)].

The award shall be vacated even on the application of a party who neither participated in the arbitration nor was served with a notice of intention to arbitrate if: (i) the rights of that party were prejudiced by one of the grounds specified in paragraph one; or (ii) a valid agreement to arbitrate was not made; or (iii) the agreement to arbitrate had not been complied with; or (iv) the arbitrated claim was barred by limitation under CPLR §7502(b) [CPLR §7511(b)(2)].

The Rabbinical Arbitrator, Rabbi Avraham Yitzchak Bronshstein, found in favor of the petitioners and issued his Arbitration Award on November 8, 2012. The arbitration lasted for approximately eighteen months with 80 hours of hearings. The Arbitrator ruled that the Petitioners had the right to build a "Community Center" (the actual translation of the Hebrew term "Bet Midrash," as used in the arbitration award, is contested by the parties) no bigger than 6,000 square feet on respondent's land. He ordered the petitioners to build a fence preventing passageway from the "Community Center" to Bates Drive. His award stated that parking would be separate from that of Bates Drive and the petitioners would be obliged to place aesthetically pleasing trees to separate the condominium from the "Community Center." Additionally, the arbitrator awarded $15,000.00 to every apartment owner in Bates Drive, payable by Terrace View.

Arbitration has been an effective and expeditious method of resolving disputes, especially

those involving commercial affairs. Judicial tribunals are averse to interfere with arbitration awards lest the value of this method of resolving controversies be undermined [*Local 375 v. New York City Health & Hospitals Corp.*, 257 A.D.2d 530, 532, (1st Dept., 1999)]. Courts will not interfere with arbitration awards or proceedings unless the circumstances fall under CPLR §7511, which requires the vacatur or modification of an arbitration award under certain specified circumstances. Although CPLR §7511(a) proscribes a 90-day time limit for a party aggrieved by an arbitration to make a motion to vacate or modify an award, that party may choose not to make such a motion at that time and may instead raise the objection when the victor moves to confirm the award [*State Farm Mut. Auto. Ins. Co. v. Fireman's Fund Ins. Co.*, 121 A.D.2d 529 (2nd Dept., 1986)].

The Court finds that the arbitrator exceeded his power by illegally taking the land that belonged to the owners of Bates Drive in order to build a community center. It can be inferred that the arbitrator believed it was a taking of land that belonged to these owners because he awarded them each $15,000 in his Arbitration Award. However, in Article Tenth of the Bates Drive Condominium III Declaration, it states,

> "The dedication of the property to condominium ownership herein shall not be revoked or the property withdrawn from Condominium ownership unless eighty percent of the Home Owners in number and in common interest and the first mortgagees, if any, of each of these same homes agree to such revocation or removal of the property from the plan by duly recorded instruments."

[See also Respondent's Exhibit D, "Condominium Offering Plan", at p. 1, ¶(A) and at p. 9 wherein it is stated that "...The HOA will own no real property of its's own, it will act as an umbrella organization that will be responsible for providing landscaping and grounds maintenance services for the condominiums that will be it's members."

Respondents argue that the award should be vacated because several parties, Saul Schlesinger, Henry Rausman, and Martin Reisman, and the mortgagees, if any, were not included in the arbitration proceedings. These papers indicate that Martin Reisman is the owner of 580 F, LLC, which is the owner of Unit A-4. The Petitioners argue that Reisman allowed his son-in-law, Mr. Shapira, to act on his behalf in the arbitration, but the Respondents dispute that fact. With regards to Rausman, it appears that he is a minority owner in Unit A-5 and that the majority owner of that Unit, Mr. Halprin, signed the arbitration agreement. The Court does not find reason to decide the aforementioned disputes because the omission of Mr. Schlesinger and mortgagees from the arbitration was fatal to the award. Petitioners presented no evidence that Mr. Schlesinger was notified of the arbitration proceedings even though he is the owner of Unit A-1 and thus has a property interest in the land that is being taken by Terrace View, and, petitioner did not offer any proof that there were no mortgagees, an obligation it had, if it was true, by virtue of these proceedings and the opposition to this petition. Therefore, the absence of notice to Mr. Schlesinger and the absence of a denial of the existence of mortgagees that should have been given notice of this arbitration is fatal to the proceedings [CPLR §7511(b)(2)].

The Judiciary Law of New York provides that "a court shall not be opened, or transact any business on Sunday, nor shall a court transact any business on a Saturday in any case where such day is kept as a holy day by any party to the case, except to receive a verdict or discharge a jury and for the receipt by the criminal court of the city of New York or a court of special sessions of a plea of guilty and the pronouncement of sentence thereon in any case in which such court has jurisdiction" [Judiciary Law §5].

Arbitration is a judicial proceeding and arbitrators perform a judicial function and therefore arbitrations are held to this same rule of law as are Courts [*Brody v. Owen*, 259 A.D. 720 (2nd Dept., 1940)]. It is well established that arbitrations cannot be held on Sundays, as it would be a violation of Judiciary Law §5 [*Katz v. Uvegi*, 18 Misc.2d 576 (N.Y. Sup. 1959), affm'd 11 A.D.2d 773 (2nd Dept., 1960); *Brody v. Owen* infra; *Jones v. E. Meadow Fire Dist.*, 21 A.D.2d 129, 131 (2nd Dept., 1964)].

Petitioners cite *Isaacs v. The Beth Hamedash Society*, an 1857 case, which held that a religious arbitration for people of the Jewish faith could be held on Sunday as long as the award was rendered on a weekday [*Isaacs v. The Beth Hamedash Society*, 1 Hilt. 469 (1857)]. The Court in that case said, "It is very natural... that they should select, for a matter of this kind, a day when, from keeping Saturday as a Sabbath, they are privileged to engage in any labor that does not disturb the rest of their fellow-citizens" [*Isaacs v. The Beth Hamedash Society*, 1 Hilt. 469 (1857)]. However, that decision was not based on the current Judiciary Law §5, rather, it was based on 1 Rev. Stat. 675, §70 which read: "The statute prohibits, on the first day of the week, called Sunday, shooting, hunting, fishing, sporting, playing, horseracing, gaming, frequenting of tippling houses, or any unlawful exercises, or pastimes; also traveling on that day, unless in certain cases, which, are specially mentioned in the statute; and also, servile labouring or working, except works of necessity and charity, and except persons who keep Saturday as holy time" [1 Rev. Stat. 675, §70]. That statute clearly states that it did not apply to people of the Jewish faith, who hold Saturday as their Sabbath.

The Court takes particular note that not even the arbitrator can state with any specificity how many sessions of this arbitration were held on a Sunday, how long each Sunday session lasted, what transpired during those Sunday sessions, and who was present at the Sunday sessions [See Rabbi Abraham Braunstien affirmation, Petitioner's Reply Affirmation as Exhibit F], nor has petitioner submitted a record of those Sunday proceedings. The issue of just how many of the 80 hours of arbitration sessions were held on Sunday appears to have been squarely addressed by petitioner's counsel when, while asserting that respondent's arguments concerning the Sunday arbitration sessions should be disregarded, he referred to those sessions as and said "...some undefined and unknown amount of these hours occurred on Sunday..." [See ¶21, Haspel Reply Affirmation]. The answer to the question of whether there were four or forty Sunday arbitration sessions, and whether or not the number of Sunday sessions makes any difference to the outcome of this petition, is in the applicable statutory and judicial authority cited herein.

This Court must apply the current statute to the case at hand. Judiciary Law §5 makes no mention of any exceptions to it's provisions, other than in certain circumstances not relevant here, and the statute represents the public policy of this State [*Brody v. Owen*, 259 A.D. 720, 721 (2nd Dept., 1940)]. CPLR §7511(b)(1)(iii) provides that an arbitrator cannot exceed his (or her) power. Pursuant to this section, an arbitrator exceeds his power where his arbitration award violates strong public policy [*In re Kowaleski (New York State Dep't of Corr. Servs.)*, 16 N.Y.3d 85, 89 (2010); *In re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 N.Y.3d 530, 537 (2010)]. Therefore, because the arbitrator exceeded his power and violated the public policy of New York by not adhering to the mandates of the Judiciary Law §5 prohibition against holding arbitration proceedings on Sundays, the award must be vacated. This conclusion is not avoidable even if Respondents did not object to the arbitration taking place on Sunday because the statute expresses the public policy of the State, and cannot be waived [*Brody v. Owen*, 259 A.D. 720, 721 (2nd Dept., 1940)].

Arbitrators are required to be neutral parties to the conflict at hand. The petitioners claim that the arbitrator, Rabbi Avraham Yizchak Bronshtein, was biased because he was "burdened with a natural predisposition in favor of the development of a synagogue, a center for religious learning...". This alleged predisposition had to have been known to all parties when they knowingly agreed to participate in a Rabbinical Arbitration proceeding. Respondents also claim that the arbitrator was biased because the Bet Din (religious court) he is affiliated with, Mechon L'Hoyroa Bais Yakov, was funded by the family of one of the petitioners, David Bandner. This argument is not persuasive because the arbitrator was not acting through this particular Bet Din for these proceedings and because there is no evidence that the relationship which may have existed at the time the Bet Din was empaneled is ongoing in any way. In *Weinrott v. Carp*, the Court stated, "It would have been preferable if [the arbitrator] had disclosed the relationship, however distant, but in the modern world of sprawling corporations and rapid travel, it would be most difficult to find a large number of potential well-qualified arbitrators who did not have some indirect relationship with one of the parties to the litigation" [*Weinrott v. Carp*, 32 N.Y.2d 190, 201, 298 N.E.2d 42, 49 (1973)]. Though this case does not deal with "sprawling corporations," it certainly would have been difficult to find a well qualified arbitrator who did not have some indirect relationship with one of the many petitioners or respondents in the relatively small Orthodox Jewish community in Rockland County and if this Court were to disqualify every arbitrator who had a "relationship" such as the tenuous one here. religious arbitrations would be seriously undermined as a favored dispute resolution alternative.

Based on the foregoing the court has no choice but to vacate the Arbitration Award because the arbitration was in clear violation of the policy of the State of New York embodied in Judiciary Law §5 by holding proceedings on Sundays, was in violation of CPLR §7511(b)(1) for failing to include all interested parties in the arbitration and because the arbitrator conveyed title in excess of his authority, any one of which is fatal to this Arbitration Award. Based on this decision the Court need not address the other contentions of the respondents. It is therefore Decided and

ORDERED that the Arbitration Award is vacated and the petition dismissed for the reasons stated herein.

In arriving at this decision the Court has reviewed, evaluated and considered all of the issues framed by this petition and it's opposition and the failure of the Court to specifically mention any particular issue in this Decision & Order does not mean that it has not been considered by the Court in light of the appropriate legal authority.

This constitutes the decision and order of the court.

All attorneys are reminded that: (a) the Individual Part Rules of this Court require a letter and conference as prerequisites to the submission of any written motion [See Judge Walsh's Individual Part Rules Art. IVA], and, (b) that printed "working copies" of electronic submissions must delivered to chambers [See Judge Walsh's Individual Part Rules Art. XIII].

Dated: New City, New York
June 25, 2013

Thomas E. Walsh II, A.J.S.C.

To:
Ostrer & Hoovler, P.C.
Joseph J. Haspel, PLLC

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This Court must apply the current statute to the case at hand. Judiciary Law §5 makes no mention of any exceptions to it's provisions, other than in certain circumstances not relevant here, and the statute represents the public policy of this State [*Brody v. Owen*, 259 A.D. 720, 721 (2nd Dept., 1940)]. CPLR §7511(b)(1)(iii) provides that an arbitrator cannot exceed his (or her) power. Pursuant to this section, an arbitrator exceeds his power where his arbitration award violates strong public policy [*In re Kowaleski (New York State Dep't of Corr. Servs.)*, 16 N.Y.3d 85, 89 (2010); *In re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 N.Y.3d 530, 537 (2010)]. Therefore, because the arbitrator exceeded his power and violated the public policy of New York by not adhering to the mandates of the Judiciary Law §5 prohibition against holding arbitration proceedings on Sundays, the award must be vacated. This conclusion is not avoidable even if Respondents did not object to the arbitration taking place on Sunday because the statute expresses the public policy of the State, and cannot be waived [*Brody v. Owen*, 259 A.D. 720, 721 (2nd Dept., 1940)].

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