Va'ad Hakohol v Va'ad Hakashrus Notice of Appeal 11.2.17.docx
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the matter of the Verified Petition of,

VA'AD HAKOHOL DESCHUNAS CROWN HEIGHTS, CROWN HEIGHTS JEWISH COMMUNITY COUNCIL, INC., FISHEL BROWNSTEIN and ELIE POLTORAK Index No.: 8548/2011

NOTICE OF APPEAL

Petitioners,

Pursuant to CPLR 7510, to confirm an arbitral award,

-against-

VA'AD HAKASHRUS OF CROWN HEIGHTS, CORP., VA'AD HAKASHRUS OF CROWN HEIGHTS INC., BETH DIN OF CROWN HEIGHTS, INC., YISROEL BEST, ZEV CADANER, MOTTEL CHEIN, MENACHEM GERLITZKY, NOCHUM GROSS, MENACHEM MENDEL HENDEL, YAAKOV HERZOG, AVROHOM HOLZBERG, YITZCHOK HOLTZMAN, SHMUEL KRAUS, YISROEL LANDA, HARVEY TZVI LANG, ZALMAN LIPSKIER, YOSEF LOSH, LEIBISH NASH, URIEL NIASOFF, AVROHOM OSDOBA, YAAKOV OSDOBA, ZALMAN OSDOBA, SHMUEL PLOTKIN, YITZCHOK RAITPORT, BENTZION RASKIN, MOSHE RUBASHKIN, SHOLOM RUBASHKIN, YISROEL SANDHAUS, AHARON YAAKOV SCHWEI, SHLOMO YEHUDA SEGAL, CHANINA SPERLIN, YOSEF BARUCH SPIELMAN, YAAKOV SPRITZER, YAAKOV SUFRIN, ALEXANDER WEISS and YITZCHOK ZIRKIND,

Respondents.	
	X

PLEASE TAKE NOTICE that the Respondents, Avrohom Osdoba and Shlomo Yehuda Segal, hereby appeal to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from the annexed Order of Hon. Karen B. Rothenberg, dated October 23, 2017 and duly entered in the Office of the Clerk of the within named court on

November 1, 2017. This appeal is taken from each and every part of said Order as well as from the whole thereof.

Dated: New York, New York November 9, 2017

Yours, etc.

Howard Wintner, Esq.

THE ABRAMSON LAW GROUP, PLLC Attorneys for moving Respondents 570 Lexington Avenue, 23rd Floor New York, New York 10022 (212) 686-4401

TO: ZANE and RUDOFSKY
Attorney for certain Respondents
601 West 26th Street
New York, New York 10001
(212) 245-2222

Noson Kopel, Esq. of counsel to Poltorak, PC Attorney for Petitioners Elie Poltorak and Fishel Brownstein 1653 President Street Brooklyn, New York 11213 (718) 493-0995

David Stein, Esq.
Attorney for Petitioners
Va'ad Hakohol Deschunas Crown Heights
and Crown Heights Jewish Community Council, Inc.
1 Metrotech Center
Brooklyn, New York 11201-3948
(212) 596-7251

SUPREME COURT OF THE STATE OF NEW YORK **COUNTY OF KINGS: TRIAL TERM PART 35** In the Matter of the Verified Petition of

VA'AD HAKOHOL DESCHUNAS CROWN HEIGHTS, CROWN HEIGHTS JEWISH COMMUNITY COUNCIL, INC., FISHEL BROWNSTEIN, and ELLIE C. POLOTRAK,

Petitioners.

Index No: 8548/2011

-against-

DECISION AND ORDER

VA'AD HAKASHRUS CROWN HEIGHTS, INC, A/K/A VA'AD HAKASHRUS OF CROWN HEIGHTS, INC., et al.,

Respondents.

Recitation as required by CPLR 2219(a), of the papers considered in this MOTION TO VACATE THE COURT'S SECOND AMENDED DECISION AND ORDER PURSUANT TO CPLR 5015(a)(4).

Papers	Numbered
Order to Show Cause/Motion and Affidavits Annexed.	1, 2, 3, 4
Cross-motion	10, 11
Answering Affidavits	6
Reply papers	8, 12, 13, 14
Memoranda of law	5, 7, 9, 15

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

In this proceeding, respondents Avrohom Osdoba and Yehua Sholmo Segal move for an order pursuant to CPLR 5015(a)(4) vacating this court's second amended decision, order, and judgment dated October 17, 2013, for lack of subject matter jurisdiction, on the grounds that the arbitration awards are violative of Judiciary Law §5 as two of the hearing were held on a Sunday. Petitioners cross-move to impose sanctions on respondents for frivolous litigation conduct pursuant to 22 NYCRR §130-1.1.

The court rejects respondents' argument that the second amended order, decision and judgment should be vacated pursuant to CPLR 5015(a)(4), for lack of subject matter jurisdiction. An alleged violation of Judiciary Law §5 is not jurisdictional and this court had the power to entertain this matter and to enter the second decision, order and judgment herein (see generally Lacks v Lacks, 41 NY2d 71 [1976]).

Respondents' motion is really a futile attempt to renew the prior motion. Firstly, the dates the arbitrations were held were known to the respondents/participants and no reasonable justification is provided for the failure to submit these additional facts and arguments on the prior motion (see Matter of Parker v New York City Hous. Auth., 81 AD3d 964 [2d Dept 2011]). Further, these new facts do not warrant a change in the prior determination (see CPLR 2221(e)(2); Huma v Patel, 68 AD3d 821 [2d Dept 2009]). It is uncontroverted that the matters submitted to arbitration before the Beth Din were in settlement of a religious controversy. Unlike in a commercial dispute, an award resulting from an arbitration conducted on a Sunday involving parties and arbitrators of the Jewish faith, in settlement of a religious dispute, has been held valid (see Isaacs v Beth Hamedash Society, 1 Hilt 469 [Common Pleas 1857] affd 19 NY 584 [1859]); see also Katz v Uvegi, 18 Misc.2d 576 [Sup Ct, NY County 1959]. There is no later case law holding otherwise (see In the Matter of Stark v Rubel, 2015 NY Slip Op 31385(U) [Sup Ct, Kings County 2015]). Thus, the court finds that the arbitration awards in this matter are not void under Judiciary Law §5¹.

In view of the foregoing, the motion is denied. The cross-motion for sanctions is likewise denied.

This constitutes the decision/order of the court.

Dated: October 23, 2017

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Although having no bearing on the instant motion, it is noteworthy that Judiciary Law §5 has recently been amended so that the section shall not be deemed to prohibit or prevent an arbitration from being conducted on a Saturday and/or Sunday, provided there is written consent by the parties and the tribunal (see Judiciary Law § 5, as amended by L 2017, ch 215, § 1, eff Aug 21, 2017).

Supreme Court of the State of New York Appellate Division: Second Judicial Department

Form A - Request for Appellate Division Intervention - Civil See § 670.3 of the rules of this court for directions on the use of this form (22 NYCRR 670.3).

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	Petitioners,			
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	Respondents.			
Case Type	CPLR article 78 Proceeding	Filing Type	Transferred Proceeding	
CONCRETE AND CONTRACTOR SALES OF THE SECTION OF THE	Special Proceeding Other	Appeal		
CPLR article 75 Arbitration				
Nature of Suit:	Check up to five of the following ca	tegories which best reflect the natu	re of the case.	
A. Administrative Review	D. Domestic Relations	F. Prisoners	I. Torts	
1 Freedom of Information Law	1 Adoption	1 Discipline	1 Assault, Battery, False	
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Form A - RADI - Civil

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Paper Appealed From (check one only): Amended Decree Determination Amended Judgment Finding Amended Order Interlocutory Decree Decision Interlocutory Judgment Decree Judgment	Order Resettled Order Order & Judgment Ruling Partial Decree Other (specify): Resettled Decree Resettled Judgment				
Court: Supreme Court	County: Kings				
Dated: October 23, 2017	Entered: November 1, 2017				
Judge (name in full): Karen B. Rothenberg	Index No.: 8548/2011				
Stage: Interlocutory I Final Post-Final	Trial: Yes No If Yes: Jury Non-Jury				
Prior Unperfected App	peal Information				
Are any unperfected appeals pending in this case? Yes covered by the annexed notice of appeal with the prior appeals. Number(s) of any prior, pending, unperfected appeals:					
Original P	roceeding				
Commenced by: Order to Show Cause Notice of Petitic	on Writ of Habeas Corpus Date Filed:				
Statute authorizing commencement of proceeding in the Appel	late Division:				
Proceeding Transferred F Court:	Pursuant to CPLR 7804(g) County:				
Judge (name in full):	Order of Transfer Date:				
CPLR 5704 Review	of Ex Parte Order				
Court:	County:				
Judge (name in full):	Dated:				
Description of Appeal, Proceeding or	Application and Statement of Issues				
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of the proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.					
The Order dated October 23, 2017 of the Hon. Karen Rothenberg which denied the motion to vacate the court's second amended decision, order and judgment.					
Amount: If an appeal is from a money judgment, specify the a Specify the issues proposed to be raised on the app	amount awarded. leal, proceeding, or application for CPLR 5704 review.				
The arbitration awards in this matter are void unde before the arbitration panel on Sunday.	r Judiciary Law §5 due to having hearings				

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Issue	s Continued:		
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		ditional Appeal Information	
		Information	
party in any. If	tions: Fill in the name of each party to the action or proceeding er line. If this form is to be filed for an appeal, indicate the status of the court of original instance and his, her, or its status in this couth form is to be filed for a proceeding commenced in this court, a party's name and his, her, or its status in this court.	of the petitioner, respondent, claimant, urt, if defendant, and intervenor. Examp	oles of a party's Appellate Division statu
No.	Party Name	Original Status	Appellate Division Status
1	VA'AD HAKOHOL DESCHUNAS CROWN HEIGHTS	Petitioner	Respondent
2	CROWN HEIGHTS JEWISH COMMUNITY COUNCIL, INC.	Petitioner	Respondent
3	FISHEL BROWNSTEIN	Petitioner	Respondent
4	ELIE POLTORAK	Petitioner	Respondent
5	VA'AD HAKASHRUS OF CROWN HEIGHTS, CORP.	Respondent	Respondent
6	VA'AD HAKASHRUS OF CROWN HEIGHTS INC.	Respondent	Respondent
7	BETH DIN OF CROWN HEIGHTS, INC.	Respondent	Respondent
8	YISROEL BEST	Respondent	Respondent
9 ,	ZEV CADANER	Respondent	Respondent
10	MOTTEL CHEIN	Respondent	Respondent

Respondent

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MENACHEM GERLITZKY

NOCHUM GROSS

MENACHEM MENDEL HENDEL

YAAKOV HERZOG

AVROHOM HOLZBERG

YITZCHOK HOLTZMAN

SHMUEL KRAUS

YISROEL LANDA

HARVEY TZVI LANG

ZALMAN LIPSKIER

Attorney Information Instructions: Fill in the names of the attorneys or firms of attorneys for the In the event that a litigant represents herself or himself, the box respective parties. If this form is to be filed with the notice of petition or order to marked "Pro Se" must be checked and the appropriate information for that litigant show cause by which a special proceeding is to be commenced in the Appellate must be supplied in the spaces provided. Division, only the name of the attorney for the petitioner need be provided. Attorney/Firm Name: Howard Wintner, Esq. The Abramson Law Group, PLLC. Address: 570 Lexington Avenue, 23rd Floor City: New York State: New York Zip: New York Telephone No.: 212-686-4401 Attorney Type: Retained ☐ Assigned Government ☐Pro Se Pro Hac Vice Party or Parties Represented (set forth party number[s] from table above or from Form C): 2 5 2 4 2 6 Attorney/Firm Name: Howard Wintner, Esq. The Abramson Law Group, PLLC. Address: 570 Lexington Avenue, 23rd Floor City: New York State: NY Zip: 10022 Telephone No.:212-686-4401 Attorney Type: ☐ Assigned Retained ☐ Government ☐Pro Se Pro Hac Vice Party or Parties Represented (set forth party number(s) from table above or from Form C): 2 7 3 1 Attorney/Firm Name: Noson Kopel, Esq. Address: 1653 President Street City: Brooklyn State: NY Zip: 11213 Telephone No.: 718-493-0995 Attorney Type: Retained Assigned Government ☐ Pro Se Pro Hac Vice Party or Parties Represented (set forth party number[s] from table above or from Form C): 3 4 Attorney/Firm Name: David Stein, Esq. DAVID STEIN LAW GROUP Address: 1 Metro Tech Center City: Brooklyn State: NY Telephone No.: 212-596-7251 Zip: 11201 Attorney Type: Retained ☐ Assigned ☐ Government Pro Se ☐ Pro Hac Vice Party or Parties Represented (set forth party number[s] from table above or from Form C): 1 Attorney/Firm Name: Edward S. Rudofsky, Esq. ZANE and RUDOFSKY Address: 601 West 26th Street, #1315 City: New York State: NY Zip: 10001 Telephone No.: 212-245-2222 Attorney Type: ■ Retained ☐ Assigned Government Pro Se Pro Hac Vice Party or Parties Represented (set forth party number(s) from table above or from Form C): 0 1 1 Attorney/Firm Name: Edward S. Rudofsky, Esg. ZANE and RUDOFSKY Address: 601 West 26th Street, #1315 State: NY Telephone No.: 212-245-2222 City: New York Zip: 10001 Attorney Type: Retained Assigned Government ☐ Pro Se Pro Hac Vice Party or Parties Represented (set forth party number[s] from table above or from Form C): 1 4 1 5 Use Form C for Additional Party and/or Attorney Information The use of this form is explained in § 670.3 of the rules of the Appellate Division, Second Department (22 NYCRR 670.3). If this form is to be filed for an appeal, place the required papers in the following order: (1) the Request for Appellate Division Intervention [Form A. this document]. (2) any required Additional Appeal Information Forms [Form B], (3) any required Additional Party and Attorney Information Forms [Form C], (4) the notice of appeal or order granting leave to appeal, (5) a copy of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal is or are taken, and (6) a copy of the decision

or decisions of the court of original instance, if any.

Form C - Additional Party and Attorney Information

		Additional	Party Information				
No.	Party Name		Original Status	Appellate Division Status	2020 (2000)		
21	YOSEF LOS	Н	Respondent	Respondent			
22	2 LEIBISH NASH Respondent Respondent						
23	URIEL NIASOFF Respondent Respondent						
24	AVROHOM OSE	OBA	Respondent	Appellant			
25	YAAKOV OSD	OBA	Respondent	Respondent			
26	ZALMAN OSDO	DBA	Respondent	Respondent			
27	SHMUEL PLOT	KIN	Respondent	Respondent			
28	YITZCHOK RAIT	PORT	Respondent	Respondent			
29	BENTZION RAS	SKIN	Respondent	Respondent			
30	MOSHE RUBAS	HKIN	Respondent	Respondent	والمسالمة		
31	SHOLOM RUBAS	SHKIN	Respondent	Respondent			
32	YISROEL SANDI	HAUS	Respondent	Respondent	mon amone		
Attorney/Firm Name: Edward S. Rudololsky, Esq. ZANE and RUDOFSKY Address: 601 West 26th Street, #1315 City: New York State: NY Zip: 10001 Telephone No.: (212) 245-2222 Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice Party or Parties Represented (set forth party number[s) from table above or from Form C): 1 6 1 7 1 8 1 9							
Attorney/Firm Name: Edward S. Rudolsky, Esq. ZANE and RUDOFSKY Address: 601 West 26th Street, #1315							
	lew York	State: N	Y Zip: 10001	Telephone No.: (212) 245-2222	\dashv		
Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice							
Party or Parties Represented (set forth party number(s) from table above or from Form C): 2 0 2 1 2 2 3							
Attorney/Firm Name: Edward S. Rudolsky, Esq. ZANE and RUDOFSKY							
	s: 601 West 26th Street, #131	5					
City: N	ew York	State: N	Zip: 10001	Telephone No.: (212) 245-2222			
Attorne	y Type: 🔳 Retained	Assigned [☐ Government ☐ Pro	Se Pro Hac Vice			
	r Parties Represented (set forth p	arty number[s] from table at	pove or from Form C):	2 8 2 8 3 0 3 1			
	y/Firm Name: Edward S. Rudolsky, Esq. ZANE and RU				_		
	s: 601 West 26th Street, #131				_		
~~~~	ew York	State: N		Telephone No.: (212) 245-2222	_		
	y Type: Retained	Assigned [	☐ Government ☐ Pro		4		
Party o	r Parties Represented (set forth p	arty number[s] from table ab	ove or from Form C):	3 2 3 3 3 5 3 6			

Form C - RADI - Civil

## Form C - Additional Party and Attorney Information

		Additiona	l Party Informa	tion					
No.	Party Name		Origina	l Status	Appe	llate Di	visio	n Stat	us
33	AHARON YAAKOV S	CHWEI	Respo	ondent		Resp	onde	nt	William
34	SHLOMO YEHUDA	SEGAL	Respo	ondent		App	ellan	t	***************
35	CHANINA SPER	LIN	Respo	ndent		Resp	onde	nt	
36	YOSEF BARUCH SP	ELMAN	Respo	ndent		Resp	onde	nt	WINE COLUMN COLON
37	YAAKOV SPRITZ	ZER	Respo	ndent		Resp	onde	nt	
38	YAAKOV SUFR	IN	Respo	ndent		Resp	onde	nt	
39	ALEXANDER WE	ISS	Respo	ndent		Resp	onde	nt	-
40	YITZCHOK ZIRKI	ND	Respo	ndent		Resp	onde	nt	
41	VA'AD HAKASHRUS CROWN	HEIGHTS, INC	. Respo	ndent		Resp	onde	nt	
						W	***************************************		
		-						CONTRACTOR OF THE PERSON NAMED IN COLUMN TWO IS NOT THE PERSON NAMED IN COLUMN TRANSPORT NAMED IN COLUMN TWO IS NOT THE PERSON NAMED IN COLUMN TRANSPORT NAMED IN COLUMN TWO IS NOT THE PERSON NAMED IN COLUMN TRANSPORT NAMED IN COLUMN TWO IS NOT THE PERSON NAMED IN COLUMN TRANSPORT NAMED IN COLUMN TWO IS NOT THE PERSON NAMED IN COLUMN TRANSPORT NAMED IN CO	E-Marie Commission of the Comm
		Additional A	ttorney Inform	ation					
Attorn	9y/Firm Name: Edward S. Rudolsky, Esq. ZANE and RUI								
Addres	ss: 601 West 26th Street, #1315			1 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4		***************************************	· · · · · · · · · · · · · · · · · · ·		<del></del>
City: 1	lew York	State: I	VY Zip: 100	001 Tel	ephone N	o.: 212	-245	-2222	<u></u>
Attorne	ey Type: 🔳 Retained	☐ Assigned	Government	☐ Pro Se	☐ Pro H	lac Vice	)		
Party or Parties Represented (set forth party number[s] from table above or from Form C):  3 7 3 8 3 9 4 0									
Attorne	ey/Firm Name:								
Addres	ss:							*************	
City: State: Zip: Telephone No.:									
Attorne	ey Type: 🔳 Retained	☐ Assigned	Government	☐ Pro Se	☐ Pro H	ac Vice			
	or Parties Represented (set forth par	ty number[s] from table	above or from Form C):						
Attorne	ey/Firm Name:								
Addres	S:					RATE MANAGEMENT			
City:		State:	Zip:	Tele	ephone No	D.:			
Attorne	y Type: Retained	☐ Assigned	Government	☐ Pro Se	☐ Pro H	ac Vice			
	r Parties Represented (set forth par	ty number[s] from table	above or from Form C):						
<u>-</u>	y/Firm Name:								
Addres	S:		-		4444				
City:		State:	Zip:	Tele	phone No	).:			
Attorne	y Type: 🔳 Retained	☐ Assigned	☐ Government	□Pro Se	☐ Pro Ha	ac Vice			
Party o	r Parties Represented (set forth part	ly number[s] from table	above or from Form C):						

Form C - RADI - Civil