SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: TRIAL TERM PART 35 x
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,

x

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 §5[1].

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

Enter,

Karen B. Rothenberg
Justice, Supreme Court

FILED
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COUNTY CLERK

[1] 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).