

Agudas Chasidei Chabad of United States v. CLI et al., Index No. 106015KLT2011  
Merkos L'Inyonei Chinuch v. CLI et al., Index Nos. 106106KLT2011 and  
106107KLT2011

**CLOSING STATEMENT ON BEHALF OF MOVING RESPONDENTS  
ON MOTION TO FIX UNDERTAKING PURSUANT TO CPLR 5519(a)(6)**

**Introduction**

May It Please The Court:

In her Decision and Decision and Order herein dated April 25, 2020, Judge Thompson stayed any warrant of eviction herein for six months, without requiring that any bond be posted whatsoever. The unconditional stay granted by Judge Thompson clearly informs the issues presently before this Court.

In her Decision and Order dated August 3, 2020 (as amended August 17, 2020), Justice Walker-Diallo (a) granted the moving Respondents' motion for the fixing of an Undertaking to secure an automatic stay pending appeal pursuant to CPLR 5519(a)(6), (b) denied Petitioners' cross-motion to "vacate, modify or limit" the automatic stay "after careful analysis of the arguments presented and a balancing of the equities," and (c) directed a hearing to determine the amount of the CPLR 5519(a)(6) Undertaking.

In the August 3<sup>rd</sup> Decision and Order, Justice Walker-Diallo, held that the amount of the Undertaking had to be calculated to “(a) protect against potential waste to the premises; (b) safeguard payment of use and occupancy of the premises, and (c) guarantee payment of any deficiency.” We refer to these as “the Hearing Issues.”

In the motion practice leading up to the August 3<sup>rd</sup> Decision and Order, moving Respondents had submitted the factual Affidavit of Gabbai Zalmen Lipskier (“Gabbai Lipskier”) and Petitioners submitted the factual Affidavit of Rabbi Yehuda Krinsky (“Rabbi Krinsky”), the Chairman of petitioner Merkos and the Secretary of petitioner Agudas.<sup>1,2</sup> Justice Walker-Diallo then held that the information provided in the moving affirmations were “insufficient predicates” for purposes of fixing the amount of an Undertaking and directed that an evidentiary hearing be held, which

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<sup>1</sup> See Krinsky Affirmation, 6/17/20, at para. 1.

<sup>2</sup> Both sides also submitted *attorney affirmations*. It is axiomatic that such affirmations may be used to sponsor documents into evidence but otherwise have no probative or evidentiary value and should be disregarded unless reflecting the personal knowledge of the attorney, which these do not. *See, generally, Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980); *accord, Bank of New York v. Castillo*, 120 A.D.3d 598 (2<sup>nd</sup> Dept. 2014) (“*no evidentiary value*”); *Lampel v. Sergel*, 297 A.D.2d 709 (2<sup>nd</sup> Dept. 2002) (“*no evidentiary value*”); *Browne v. Castillo*, 288 A.D.2d 415 (2<sup>nd</sup> Dept. 2001) (“*without evidentiary value*”); *Frimmerman v. Bernstein*, 107 A.D.2d 795 (2<sup>nd</sup> Dept. 1985) (“*no probative value*”) (emphases added).