Process and Pitfalls of Confirming Piskei Din *as Arbitration Awards*

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Beth Din of America Agreement to Arbitrate

BETH DIN *of* AMERICA
בית דין דאמריקא

AGREEMENT TO ARBITRATE

This agreement made and entered into as of this ___ day of _____, 2008 between _____ with an address at _____, as plaintiff, and _____with an address at _____, as defendant.

Witnesseth: That there exists between the above named parties certain differences and disputes in reference to _____, with each party having certain claims and counterclaims against the other party.

In consideration of the above recitals, the terms and covenants of this agreement and other valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

For the purposes of satisfactorily adjudging said differences and disputes, it has been agreed by the said parties that the matters in dispute between them, touching the several contentions above mentioned, be submitted to the arbitration of the Beth Din of America, which shall resolve the matter in accordance with its rules and procedures.

Said parties agree that they have selected the aforesaid Beth Din to resolve their disputes, and shall accept the ruling of the arbitrators appointed by that organization as a binding decision.

The parties acknowledge that the arbitrator may resolve this controversy in accordance with Jewish law ("*din*") or through court ordered settlement in accordance with Jewish law ("*p'shara krova l'din*").

If any arbitrator withdraws, or is disqualified from hearing the case, or unable to function as an arbitrator, the parties agree to accept any new arbitrator named by the Beth Din of America, in accordance with its rules and procedures, which all parties agree that they have read and accept.

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Let the arbitrators, after they have made the award, furnish each of the parties with a copy thereof. The arbitrators shall retain jurisdiction over this matter for one year after it publishes its award, and they shall be authorized to modify the award for any reason they deem proper.

This agreement may be executed in separate counterparts which together shall constitute a single document.

The parties agree that the judgment may be entered on the award in any court of competent jurisdiction in the State of New Jersey and the State of New York and that such agreement shall be final as to the parties and issues encompassed in this agreement, and specified in the rules of the Beth Din of America.

In witness whereof, each party to this agreement has caused it to be duly executed.

Signed:

_____ _____

Example of Standard Arbitration Clause

ARBITRATION. The Parties agree that any claim or dispute between them or against any agent, employee, successor, or assign of the other, whether related to this agreement or otherwise, and any claim or dispute related to this agreement or the relationship or duties contemplated under this contract, including the validity of this arbitration clause, shall be resolved by binding arbitration by the American Arbitration Association, under the American Arbitration Association Commercial Rules then in effect. Any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction.

Information may be obtained and claims may be filed at any office of the American Arbitration Association or at Corporate Headquarters, 335 Madison Avenue, Floor 10, New York, New York 10017-4605. Telephone: 212-716-5800 212-716-5800 , Fax: 212-716-5905, Website: www.adr.org. This agreement shall be interpreted under the Federal Arbitration Act.

Joe's Pizza v. Mike's Pizza

In 2008, Joe opens a pizza store on Main Street. He's always dreamed of opening a pizza store and invests all of his savings to do so. Because of Joe's limited resources, the store is small and doesn't have much capacity in terms of the amount of pizzas it can produce. As a result, to pay the rent, Joe's prices are a bit high.

A year later – in 2009 – Mike opens a pizza store two blocks down from Joe. Mike actually has some serious entrepreneurs financing his new pizza store. In turn, Mike's store is much bigger than Joe's and produces a lot more pizzas. Because of its higher volume, pizza at Mike's is much cheaper, but has less of the homemade taste that Joe's pizza has.

A few months after Mike's store opens, Joe begins to see his profits plummet. Concerned that his store is going to go bankrupt, Joe decides to file a cause of action for *hasagas gevul* with the local *beis din*.

I. DURESS AND THE *SHTAR SERUV*

1) "The 'threat' of a siruv, which entails a type of ostracism from the religious community, and which is prescribed as an enforcement mechanism by the religious law to which the petitioner freely adheres, cannot be deemed duress. The record in the present case does not support a finding that the wife was subjected to any particular coercion greater than that which is intrinsic in the case of any member of a religious community who, as a matter of conscience, feels obligated to obey the laws of his or her religious organization, or to follow the decrees of a religious court, and who consequently exposes himself or herself to the ecclesiastical sanctions available for the enforcement of such decrees or such law."

Greenberg v. Greenberg, 238 A.D.2d 420, 421 (2d Dep't 1997) (internal citation omitted)

2) "With respect to CPLR 7511 (b) (1) (i), the plaintiff claims to have been coerced by the threat of a 'Sirov.' A Sirov is a prohibitionary decree that subjects the recipient to shame, scorn, ridicule and public ostracism by other members of the Jewish religious community. While the threat of a Sirov may constitute pressure, it cannot be said to constitute duress."

Lieberman v. Lieberman, 149 Misc. 2d 983, 987 (Kings Cty. Sup. Ct. 1991)

II. STATUTE OF LIMITATIONS FOR CONFIRMING AN AWARD

3) N.Y. CPLR 7510: Confirmation of award.

The court shall confirm an award upon application of a party made within one year after its delivery to him . . . .

III. DEFERENCE TO ARBITRATORS

4) "Courts are bound by an arbitrator's factual findings, interpretation of the contract and judgment concerning remedies. A court cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one. Indeed, even in circumstances where an arbitrator makes errors of law or fact, courts will not assume the role of overseers to conform the award to their sense of justice."

New York State Correctional Officers & Police Benevolent Ass'n v. State, 94 N.Y.2d 321, 326 (1999)

5) "An arbitrator's paramount responsibility is to reach an equitable result, and the courts will not assume the role of overseers to mold the award to conform to their sense of justice."

Sprinzen v. Nomberg, 46 N.Y.2d 623, 629 (1979)

IV. VACATING AWARDS

6) "An arbitration award may not be vacated unless it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power."

Board of Educ. of Arlington Cent. School Dist. v. Arlington Teachers Ass'n, 78 N.Y.2d 33, 37 (1991)

a. Specifically Enumerated Grounds

7) N.Y. CPLR 7511(b): Grounds for vacating an arbitration award

1. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were 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.

8) N.Y. CPLR 7506: Hearing

(b) Time and place. The arbitrator shall appoint a time and place for the hearing and notify the parties in writing personally or by registered or certified mail not less than eight days before the hearing. The arbitrator may adjourn or postpone the hearing. . . .

(c) Evidence. The parties are entitled to be heard, to present evidence and to cross-examine witnesses. Notwithstanding the failure of a party duly notified to appear, the arbitrator may hear and determine the controversy upon the evidence produced.

(d) Representation by attorney. A party has the right to be represented by an attorney and may claim such right at any time as to any part of the arbitration or hearings which have not taken place. This right may not be waived. . . .

b. Public Policy

9) "[A] court may vacate an arbitral award where strong and well-defined policy considerations embodied in constitutional, statutory or common law prohibit a particular matter from being decided or certain relief from being granted by an arbitrator. . . . A court, however, may not vacate an award on public policy grounds when vague or attenuated considerations of a general public interest are at stake."

N.Y. State Corr. Officers & Police Benevolent Ass'n, 94 N.Y.2d, 321, 327 (1999)

c. Irrationality

10) "An arbitration award shall be vacated where it is totally irrational or violative of strong public policy. In the present case, the record is patently clear that all parties understood that after the college's March 11, 1993, letter, [plaintiff] was no longer employed by the college in any capacity.

Loiacono v. Nassau Community College, 262 A.D.2d 485, 486 (2d Dep't 1999)

d. Examples of the Public Policy Exception

Child Custody

11) "The Bais Din awarded joint custody of the children to the parties, with residential custody to the wife and liberal visitation to the husband. Disputes concerning child custody and visitation are not subject to arbitration as the court's role as parens patriae must not be usurped. The parties' matrimonial action was pending in which custody was an issue, and a Family Court order was in effect which granted custody to the wife and supervised visitation to the husband. Accordingly, the Supreme Court properly determined that the Bais Din's award with respect to these issues was contrary to public policy.

Although the issue of child support is subject to arbitration, an award may be vacated on public policy grounds if it fails to comply with the Child Support Standards Act (hereinafter the CSSA) and is not in the best interests of the children. We agree with the Supreme Court that the award, which directed the husband to pay the sum of only $ 457 a month as support for the parties' six children, was not in the children's best interests, and was not made in compliance with the CSSA. The Family Court had previously directed the husband to pay support in the sum of $ 340 a week, based in part on his earning capacity. The Bais Din failed to consider the husband's earning capacity or any income available to him from the four businesses he owned in determining the amount of support."

Hirsch v. Hirsch, 4 A.D.3d 451, 452-53 (2d Dep't 2004) (internal quotation marks and citations omitted)

Anti-Trust

12) "Thus the issue which the arbitrators will be called upon to decide transcends the private interests of the parties. It is not simply that arbitrators can impose unnecessarily restrictive or lenient standards. The evil is that, if the enforcement of antitrust policies is left in the hands of arbitrators, erroneous decisions will have adverse consequences for the public in general, and the guardians of the public interest, the courts, will have no say in the results reached. To paraphrase the court's language in the Manhattan Stor. & Warehouse case, the parties will obtain a decision here on a matter of moment to the public at large, although the State is not a party to the proceedings, and no party to the proceedings is authorized to defend the interests of the public."

Aimcee Wholesale Corp. v. Tomar Products, Inc., 21 N.Y.2d 621, 627 (1968)

V. ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT:
"Congress shall make no law respecting an establishment of religion . . . ."

13) "A longstanding principle of first amendment jurisprudence forbids civil courts from deciding issues of religious doctrine or ecclesiastical polity. . . . courts can and do decide secular legal questions in cases involving some background issues of religious doctrine, so long as the courts do not intrude into the determination of the doctrinal issues. . . . Without regard to the governing structure of a particular church, a court may, where appropriate, apply neutral principles of law to determine disputed questions that do not implicate religious doctrine. 'Neutral principles' are wholly secular legal rules whose application to religious parties or disputes does not entail theological or doctrinal evaluations. . . . [However, w]e do not reach . . . the first amendment . . . question[] that underlie[s] this case . . . . Rather, we believe, as did the trial court and the Appellate Division that the EHC's consent to proceedings before the Beth Din precludes its later challenges to the results of those proceedings."

Elmora Hebrew Ctr. v. Fishman, 125 N.J. 404, 414-17 (1991)