



**AGUDATH ISRAEL OF AMERICA
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**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION--FIRST DEPARTMENT**

KAY LOWINGER, on her own behalf and as the natural
guardian of Liza, Alan and Michelle Lowinger,

Plaintiffs-Respondents,

against

MAURICE LOWINGER,

Defendant,

and

EDITH LOWINGER,

Defendant-Appellant

BRIEF OF AMICUS CURIAE

AGUDATH ISRAEL OF AMERICA

IN SUPPORT OF DEFENDANT-APPELLANT

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INTEREST OF THE AMICUS CURIAE

The ruling below that a court will enforce a promise to pay money or other tangible assets to induce an individual to convert from one religious faith to another is deeply troubling to Agudath Israel of America, a 79-year-old national Orthodox Jewish organization, for two reasons.

First, the decision undermines the integrity of the Jewish conversion process, as is sadly apparent in this case. Under classical Jewish law, a convert to Judaism must be motivated by a sincere desire to join the Jewish people and accept the tenets and practices of Judaism. As both experts in the

court below testified, the authoritative *Shulchan Aruch* (Code of Jewish Law) states explicitly that a rabbinic tribunal overseeing a conversion must ascertain the prospective convert's motivation for seeking to become a Jew [*Shulchan Aruch, Yoreh De'ah, Hilchot Geirim* (Laws of Converts) 268:2]; and that the prospect of economic gain is not considered an acceptable motivation. [*Id.* 268:12.] The decision below that conversion for cash is consistent with public policy points in the opposite direction, and may well lead to a dangerous tension between secular and religious law.

Second, and in certain ways even more importantly, the ruling renders Jews, especially poor Jews, more vulnerable to the aggressive proselytization tactics of various Christian missionary groups that target Jews for conversion. Evangelical groups like the Southern Baptist Convention, Jews for Jesus and Chosen People Ministries focus substantial resources and energies on the missionizing of Jews, a process that is deeply offensive and harmful to the Jewish community. (See, e.g., "Coalition of Jews Protests Southern Baptist Conversion Tactics," *N.Y. Times* Sept. 9, 1999.) An especially troubling tactic practiced by at least some missionary groups is to attract poor immigrant Jews, who are often most vulnerable to proselytization pressures, with offers of material assistance. (See, e.g., "True Believers?," *The Jewish Week* Oct. 20, 1995.) Indeed, the Israeli Parliament, concerned about the prospect of conversions obtained through economic incentive, has enacted legislation expressly prohibiting people from offering cash or other material assets as a means of proselytizing others. (*Id.*) By upholding a purported cash for conversion agreement as an enforceable contract consistent with public policy, the decision below will only embolden those who target vulnerable Jews for proselytization.

Agudath Israel respectfully submits this short brief as *amicus curiae* to bring these communal concerns to the attention of the Court, and to urge the Court to hold that “contracts” of this nature are repugnant to public policy and thus unenforceable.

ARGUMENT

It is well-settled hornbook law that contracts are not enforceable if they are contrary to public policy. (See authorities cited in defendant-appellant’s main brief at 27-28.) The precise question presented in this case, though, is apparently one of first impression: Is public policy offended by an agreement to pay money or other tangible assets in exchange for religious conversion?

The court below, bereft of on-point precedent, analogized a contract to convert to a contract between parents to raise their children in a particular faith. Citing the proposition that “no public policy issues are implicated” by such parental agreements, the court declared that “there appears to be no reason not to extend these concepts to this litigation.” (Slip Opinion at 9; Record on Appeal at 16.)

This is bald *ipse dixit*, not reasoned legal analysis. In fact, there is ample public policy reason to distinguish between, on the one hand, an agreement between mother and father, who are jointly responsible for the upbringing of their minor children, as to how that joint responsibility is to be discharged; and, on the other hand, an agreement between two parties under which one of the parties agrees to change his religion for a price.

In the former situation, which typically arises in the context of custody agreements, society has a great interest in encouraging parents to decide amongst themselves the fundamental question of the faith in which their minor child should be raised. That interest is so great that it must be considered alongside the minor child's own best interests when the custodial parent breaches an agreement with the other parent regarding the religious upbringing of the child. *Perlstein v. Perlstein*, 76 A.D. 2d 49, 55 (1st Dept. 1980) ("When neither party has a special claim or right to custody, the well-being of the child is the sole denominator of his best interests. But when, as here, the parties have agreed upon an appropriate standard of religious upbringing, both interests, the child's and the parents' as regards his moral and religious training, must be weighed and, where possible, reconciled.").

Society has no comparable interest in encouraging, or in any way aiding, an individual who is prepared, for the right price, to trade in one religious affiliation and set of beliefs for another. Quite the contrary: Society has an interest in promoting the free exercise of religion as an expression of an individual's sincerely-held beliefs, and in protecting vulnerable adherents of one faith from the proselytization pressures of wealthy missionary groups who will go to great lengths to "save their souls".

If public policy is offended by an agreement to relinquish one's right to run for public office in exchange for money, *Davies v. Grossmont Union High School District*, 930 F. 2d 1390 (9th Cir. 1991), so too is public policy offended by an agreement to relinquish one's religious identity and faith for money; treating religion as an economic commodity corrupts religion no less than "treat[ing] political rights as economic commodities corrupts the political process." *Davies, id.* at 1398. Contracts for religious conversion should not be enforceable.

CONCLUSION

For the reasons set forth above, *amicus curiae* Agudath Israel of America respectfully urges the Court to reverse the decision below and grant defendant's motion for summary judgment on the ground that contracts of the nature allegedly entered into between plaintiff and defendants are contrary to public policy and not enforceable in a court of law.

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