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No. 03-CV-952

DISTRICT OF COLUMBIA

COURT OF APPEALS

DAVID MESHEL, ISADORE GITTLESON, and TONY GILBURT,

Plaintiffs-Appellants,

v.

OHEV SHOLOM TALMUD TORAH and
FRIENDS OF OHEV SHOLOM TALMUD
TORAH,

Defendants-Appellees

On Appeal from the Superior Court for the District of Columbia

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BRIEF OF AMICUS CURIAE

AGUDATH ISRAEL OF AMERICA

IN SUPPORT OF

PLAINTIFFS-APPELLANTS

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PRELIMINARY STATEMENT

On July 23, 2003, Judge Zoe Bush of the Superior Court of the District of Columbia ruled that the provision in the Ohev Sholom Talmud Torah bylaws mandating that disputes should be submitted to "a Beth Din of Orthodox Rabbis for a Din Torah" was too vague and did not clearly refer to arbitration. She further stated that to find that the terms Beth Din and Din Torah refer to a process of arbitration would require the court "to delve into the religious beliefs and practices of Orthodox Jewish Law, which is barred by the First Amendment."

As detailed below, Agudath Israel of America is concerned about the potential ramifications the decision below could have—if upheld—on the ability of parties to make use of such Beth Din provisions in their bylaws, contracts, and agreements. Contrary to the lower court, we believe that the failure of the courts to enforce provisions mandating arbitration by a Beth Din would jeopardize freedom of religion, and, as we will explain, itself could lead to excessive government entanglement with religion in violation of the Establishment Clause. Agudath Israel accordingly submits this amicus curie brief, in the hope that it will provide a useful Jewish communal perspective on the case before the Court.

INTEREST OF THE AMICUS CURIAE[1]

Agudath Israel of America, founded in 1922, is a national Orthodox Jewish organization with affiliated chapters and congregations in many parts of the country. Among its other activities, Agudath Israel serves as an advocate in various governmental arenas for the interests and concerns of American Orthodox Jewry.

Agudath Israel generally maintains a policy of non-involvement in litigation involving disputes between members of our constituency. But we feel compelled to offer our views in this case because of our deep concern that the ruling below, if upheld, will have ramifications that extend far beyond the specific dispute between the parties, and indeed represents a serious threat to an established and vital institution in our community: the Beth Din.

We must emphasize that our involvement in this case should not be misconstrued as advocacy on behalf of either party with respect to their underlying claims. We know nothing about the underlying dispute or its procedural history beyond the facts summarized in the decision below; we have no idea and take no position whatsoever as to which side is in the right. Indeed, a Beth Din may well determine that the Defendants' position should prevail. Our sole concern in this case is to protect the viability of the institution of Beth Din, and to uphold the validity of provisions—whether they be in bylaws of an institution or in contractual agreements—that specify that disputes be resolved by a Beth Din.

By way of background, as a matter of Jewish law, legal disputes between Jews are required to be resolved by arbitration before a rabbinical court ("Beth Din") that employs substantive Jewish law ("*Halacha"*) in making its decisions. *Shulchan Aruch (Code of Jewish Law), Choshen Mishpat, 26:1*. That

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[1] We acknowledge and thank Steven Adler, a law student at Columbia Law School, for his assistance with this brief. Pursuant to Rule 28(a)(2)(B), Amicus Curiae Agudath Israel of America is a nonprofit corporation that has not issued stock and has no parent corporation or subsidiaries.

corpus of law encompasses not only matters of religious ritual, but also commercial dealings, interpersonal relationships, rights and duties of fiduciaries—the entire gamut of human experience. The Beth Din proceeding is known as a "Din Torah". Many bylaws of Orthodox Jewish organizations, as well as numerous contracts and agreements between Orthodox Jewish individuals, thus contain clauses similar to the ones at issue in this case—stating that disputes shall be submitted to a Beth Din for Din Torah arbitration.

Until the lower court's decision, as will be demonstrated below, such provisions have always been clearly understood and respected by the civil courts as mandating arbitration before a panel of rabbinic judges. But the lower court's ruling not only questions this definition, but states that it is constitutionally prohibited for the courts to enforce such provisions. This ruling, if upheld, puts in jeopardy perhaps thousands of bylaws and commercial understandings and contracts between Orthodox Jews that stipulate that disputes shall be resolved by a Beth Din. If bylaw provisions and contract terms that mandate resort to Beth Din will not be enforced by the courts, they will have very little value. The time-honored Jewish institution of Beth Din will decline, and many Orthodox Jews will be severely hampered in their ability to adhere to the requirement of their religion that disputes be submitted to a Beth Din. This would constitute a tremendous blow to freedom of religion, and would push many disputes between Orthodox Jews into the civil courts. The courts, in turn, would be forced to grapple with provisions in bylaws and contracts that require the knowledge and application of Jewish law, which would inevitably lead to unconstitutional entanglement with religious beliefs and practices.

ARGUMENT

I. THE TERMS "BETH DIN" AND "DIN TORAH" HAVE A CLEAR AND SETTLED MEANING IN AMERICAN LAW

The decision below represents a radical and unprecedented departure from settled precedent. No court, until now, has ever had any difficulty either understanding what the terms Beth Din and Din Torah mean, nor with applying and enforcing provisions that disputes should be resolved by a Beth Din. Many courts have dealt with Beth Din provisions, and all of them have understood the term to refer to an arbitration panel composed of rabbinic judges. See, e.g., *Meisels v. Uhr*, 79 N.Y.2d 526, 531 (N.Y. 1992) (the term Beth Din refers to a "religious tribunal that adjudicates disputes according to Jewish law and custom."); *Spilman v. Spilman*, 273 A.D.2d 316 (N.Y.A.D. 2000) (parties agreed to resolve their dispute before "a religious arbitration tribunal known as a Beth Din which adjudicates disputes according to Jewish law and custom"); *Cougar Audio, Inc. v. Reich*, 2000 U.S. Dist. LEXIS 4894 (S.D.N.Y. 2000) (a case was "to be submitted to arbitration conducted by the Beth Din Tzedek of the Central Rabbinical Congress"); *Weisshaus v. Ginsburg*, 1996 U.S. Dist. LEXIS 2785 (S.D.N.Y. 1996) ("The Court ordered the parties to complete the arbitration before the Beth Din"); *Neiman Ginsburg & Mairanz, P.C. v. Goldburd*, 179 Misc. 2d 125 (N.Y. Sup. Ct. 1998) (describing a Beth Din as a "Jewish religious arbitration tribunal"). In no case of which we are aware has any court held that to define the term Beth Din would require unconstitutional delving into matters of religious law.

Because the institution of Beth Din is so well understood, courts have required the Beth Din to meet the arbitration standards required by state statute. See *Stein v. Stein*, 184 Misc. 2d 276 (N.Y. Sup. Ct. 1999) (the court denied a petition to confirm the arbitration award of a Beth Din without prejudice to renew, "upon a proper showing that the statutory requirements of CPLR Article 75 were adhered to in the Beth Din proceeding"); *Spilman v. Spilman* 273 A.D.2d 316 (N.Y.A.D. 2000) (referring to a Beth Din

as a "religious arbitration tribunal," the court remanded a case to determine whether the Beth Din exceeded its statutory arbitration authority). Similarly, the Supreme Court of New Jersey has said that when a party agrees to submit their dispute before a Beth Din they are subject to the decision of the Beth Din in the same way a party is bound to the decision in a civil arbitration. *Elmora Hebrew Center Inc. v. Fishman*, 125 N.J. 404 at 417-19 (1987). It is therefore quite settled that a Beth Din, in the eyes of secular law, is simply an arbitration panel.

Furthermore, the term Din Torah has also been understood by the courts to be referring to an arbitration proceeding that uses Jewish law as its guidelines. See *Kozlowski v. Seville Syndicate*, 314 N.Y.S.2d 439, at 445 (N.Y. Sup. Ct., 1970) (the court stated that a Din Torah is "from the point of view of the law of the State of New York, an arbitration proceeding . . ."); *Mikel v. Scharf*, 432 N.Y.S.2d 602 (N.Y. Sup. Ct., 1978) (referring to a Din Torah, the court said that, "In addition to the procedural rules established by Judaic Law, there are state, civil, procedural rules for arbitration (CPLR, Article 75) to which the rabbinical court, as an arbitration forum, must also adhere.").

These cases make it clear that the understanding of the courts is that a Beth Din is an arbitration panel and the term Din Torah is the name for the arbitration proceeding. Accordingly, the mandate in the Ohev Sholom Talmud Torah Congregation Bylaws to submit disputes to "a Beth Din of Orthodox Rabbis for a Din Torah" is clearly a requirement to submit disputes to rabbinic arbitration before a Beth Din, and should have been interpreted and enforced as such.

II. THE COURT ERRED IN NOT APPLYING NEUTRAL PRINCIPLES TO DETERMINE THE MEANING OF THE BYLAWS

Even assuming that the lower court was justified in ignoring all judicial precedent and holding that the terms Beth Din and Din Torah do not have clear meaning, it still should have been possible for the court to easily decipher the meaning and intention of the Bylaws' provisions without delving deeply into matters of religious law and doctrine. This is true not only with respect to the bylaws of Ohev Sholom Talmud Torah Congregation (the"Ohev Sholom Bylaws"), which contain the Beth Din/Din Torah references, but also with respect to the bylaws of the Friends of Ohev Sholom Talmud Torah (the "Friends of Ohev Sholom Bylaws"), which require that disputes be resolved in accordance with Jewish law as interpreted by the officiating rabbi of the main synagogue.

A. The Ohev Shlom Bylaws.

The Ohev Sholom Bylaws state that "Any claim of a member against the Congregation which cannot be resolved amicably shall be referred to a Beth Din of Orthodox Rabbis for a Din Torah. The decision of the Beth Din shall be binding on the member and the Congregation". Let us analyze these words. A "claim . . . which cannot be resolved amicably" is a dispute. Such a dispute shall be referred to something called a Beth Din, which is composed of Orthodox Rabbis, who are to conduct something called a Din Torah and render a "decision" that shall be "binding". An uninformed reader would be hard-pressed to conclude that this clause is referring to anything other than some form of arbitration proceeding.

The lower court's ruling states that "civil courts are constitutionally barred from interpreting religious principles." But courts are not barred from applying common sense and "neutral principles" to

legal documents that contain religious terminology. *Jonas* v. *Wolf*, 443 U.S. 595 (1979). As the Supreme Court explained:

> "The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general -- flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.
>
> "This is not to say that the application of the neutral-principles approach is wholly free of difficulty. The neutral-principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust." *Id.* at 603-604.

Indeed, the use of neutral principles has been found to be applicable in cases similar to the instant case. For example, in *Avitzur v. Avitzur*, 58 N.Y.2d 108 (N.Y. 1983), a couple had signed a marriage document known as a "Ketubah" in which they both agreed to appear before a Beth Din to arbitrate matters relating to their marriage. After the husband was granted a civil divorce the wife summoned him to appear before the Beth Din for a procedure that would allow her, under Jewish law, to remarry. When the husband refused to recognize the Beth Din, the wife sought an action in court to compel his attendance at the forum. Defendant moved to dismiss on the grounds that the court lacked subject matter jurisdiction and the complaint failed to state a cause of action. The Court of Appeals of New York, reversing lower court decisions, found that "[t]he present case can be decided solely upon

the application of neutral principles of contract law, without reference to any religious principle." *Id.* at 115.

While a Ketubah is in many respects a religious document, the bylaws of a congregation have no religious component to them. The fact that the Bylaws here comport with Jewish law and require a Jewish law forum for dispute resolution does not make the Bylaws a religious document and their enforcement a religious issue. The ruling of *Avitzur* is thus quite applicable here:

> "In short, the relief sought by plaintiff in this action is simply to compel defendant to perform a secular obligation to which he contractually bound himself. In this regard, no doctrinal issue need be passed upon, no implementation of a religious duty is contemplated, and no interference with religious authority will result… To the extent that an enforceable promise can be found by the application of neutral principles of contract law, plaintiff will have demonstrated entitlement to the relief sought." *Id.*

In sum, the court in the instant case is not being asked to decide matters of Jewish law, or to inspect religious documents, or even to enforce religious agreements. It is being asked to use neutral principles of contract law and enforce a provision in an organization's bylaws that specifies a particular method of dispute resolution.

B. <u>The Friends of Ohev Sholom Bylaws</u>.

Also at issue in this case is the provision in the Bylaws of the Friends of Ohev Sholom Talmud Torah. That provision states:

> The Corporation shall be operated in accordance with the requirements of Jewish Law as determined by *Halacha* in conformity with the *Shulchan Aruch* and strict Orthodox Jewish law and tradition, and no action or decision by the Board of Directors or Officers of the Corporation shall be contrary to *Halacha*. Any dispute as to the interpretation of *Halacha* shall be resolved by the officiating rabbi of the Main Synagogue.

The bylaws clearly state that any question as to Halacha, religious law, will be decided by the rabbi. Accordingly, it does not require any court to "delve into religious practices" to understand and enforce this provision—it merely requires taking testimony from the rabbi or acknowledging his affidavit as to what Jewish law requires. And here, as the lower court duly notes, the rabbi has submitted an affidavit stating that Halacha "mandates that the issues as presented in this case be resolved by a submission to a Beth Din." By the very terms of the provision, any issue that the court finds to be religious can be resolved by rabbinical determination without requiring the court to evaluate aspects of Jewish law.

Even absent such a clause empowering a rabbi or other authority to decide on questions of Jewish law, the court should not be hampered in attempting to understand the terms of the Friends' Bylaws. The court could allow expert testimony as to the meaning of the terms contained in the Friends' Bylaws so as to effectuate the intent of the Bylaws' authors. In *Hinkle Creek Friends Church v. Western Yearly Meeting of Friends Church*, 469 N.E.2d 40, 45 (Ind. Ct. App. 1984), when a dispute arose as to the structure of a religious organization, the court looked to expert testimony to describe its hierarchical makeup. Similarly, in *In re Marriage of Goldman*, 196 Ill. App. 3d 785 (Ill. App. Ct. 1st Dist. 1990), the court relied extensively on expert opinions to determine issues of Jewish marriage law. "In resolving the conflict, the court will use accepted methods of contract interpretation, including the use of expert testimony, to ascertain the intent of the parties with respect to the contract terms." *Id*. at 792-793.

It is conceivable that at some point, perhaps due to a disagreement among experts on Jewish law, the court would find that such a determination is impossible without excessive entanglement with religious doctrine. However, in cases like this, where the Bylaws themselves identify the person whose determination of Jewish law requirements is binding, and where there is no controversy as to the requirement of *Halacha* that the parties' dispute should be submitted to Beth Din, a civil court should not be barred from attempting to understand and enforce the clear intent of the Bylaws.

III. UPHOLDING THE LOWER COURT RULING WOULD LEAD TO MORE, NOT LESS, GOVERNMENT ENTANGLEMENT WITH RELIGION

Were this Court to uphold the lower court ruling, provisions in perhaps thousands of commercial understandings and contracts between Orthodox Jews, stipulating that disputes shall be resolved by a Beth Din, would be placed in jeopardy. Until now, the parties to such contracts could expect that the civil courts would compel arbitration before a Beth Din if the matter came before them. But the specter that bylaw provisions and contract terms that mandate resort to Beth Din will no longer be enforced by the courts will significantly devalue those provisions. Many cases that would have been resolved by rabbinical courts will inevitably end up in the civil courts instead. Once an agreement to submit to a Beth Din is no longer legally binding, the enforceability of Beth Din arbitration decisions themselves will by definition be called into question.

The institution of Beth Din will be severely weakened, and many Orthodox Jews will be hampered in their ability to practice the Jewish religious requirement that disputes be submitted to a Beth Din. This would constitute a tremendous blow to freedom of religion. Further, this would force many disputes between Orthodox Jews into the civil courts. Courts faced with the job of adjudicating such disputes will either craft decisions without reference to Jewish law, which would completely frustrate the intention of the parties; or, alternatively, attempt to understand and apply Jewish law, which would inevitably lead to unconstitutional entanglement with religious beliefs and practices.

Weakening the rabbinical courts will also result in an increased burden on the civil courts at a time when public policy seeks to encourage alternative methods of dispute resolution. As noted in *Meisels v. Uhr*, 547 N.Y.S2d 502, 505-06 (Sup. Ct. Kings Co. 1989) (dictum), *aff'd* 570 N.Y.S.2d I007 (2d

Dept.1991), *rev'd on other grounds*, 79 N.Y.2d 526 (1992), "The need for expansion of arbitrations as a method of resolving intragroup conflicts is well recognized. That is especially true when you factor in the proliferation of state court litigation. Were state courts required to absorb the explosion of dispute resolution situations created by these contractual rights contests, the system would be bogged down. Already overburdened facilities and resources would be taxed beyond acceptable limits."

We do not mean to suggest that the broad negative ramifications of a decision upholding the lower court itself justifies reversal. Obviously, were the law indeed clear that a court cannot enforce Beth Din provisions in bylaws and contracts, the harmful communal and judicial ramifications of the decision would be irrelevant. But given the more than ample precedent to take judicial cognizance of Beth Din provisions and to enforce them, and given that the ruling of the lower court departs from accepted judicial practice, the negative ramifications of upholding the lower court decision should surely be taken into account.

CONCLUSION

For the reasons set forth herein, the decision of the Superior Court should be overturned.

RESPECTFULLY SUBMITTED this 3rd day of March, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2004, I personally served a copy of the Motion Of Agudath Israel Of America For Leave to File Brief As Amicus Curiae in support of Plaintiffs-Appellants, and Brief of Agudath Israel as Amicus Curiae, upon the following counsel for the parties by first-class mail:

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Affirmed before me this 3rd day of March, 2004.

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