

[\*1]

<b>Matter of Kleinbart (Build Green Solutions LLC)</b>
2014 NY Slip Op 51599(U)
Decided on November 7, 2014
Supreme Court, Kings County
Demarest, J.
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Decided on November 7, 2014

Supreme Court, Kings County

**In the Matter of the Arbitration between Benjamin Kleinbart,  
Petitioner, - and -**

**against**

**Build Green Solutions LLC, d/b/a BGS, and Elkana Tombak,  
Respondents.**

507814/13

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Carolyn E. Demarest, J.

*The following e-filed papers read herein:*

*Papers Numbered*

## Notice of Motion/Order to Show Cause/

### Petition/Cross Motion and

Affidavits (Affirmations) and Exhibits Annexed 1-3, 5-6, 914-26, 28

Opposing Affidavits (Affirmations) and Exhibits Annexed 14-26 29-32, 34-45

Reply Affidavits (Affirmations) and Exhibits Annexed 29-32, 34-45 46-47

Affidavit (Affirmation)

*Other Papers Memoranda of Law 27, 33, 48/49*

*Upon the foregoing papers, Benjamin Kleinbart [\[FN1\]](#) (petitioner) seeks an order, pursuant to CPLR 7510 and 7514, confirming an arbitration award against Build Green Solutions LLC, d/b/a BGS, (BGS) and Elkana Tombak [\[FN2\]](#) (Tombak) (collectively, respondents), directing the Clerk of the Court to enter judgment against respondents in the amount of \$150,000, plus interest, and awarding petitioner attorney's fees incurred in this action. Respondents cross-move for an order dismissing the proceeding, under CPLR 3211 (a) 7) and 3211 (a) (8), and vacating the arbitration award, under CPLR 7511 (b).*

### ***Background And Allegations***

(1)

*BGS is a company that respondents describe as "a provider of energy saving solutions to owners or tenants of commercial property." In March 2012, Yisroel Volkovitz [\[FN3\]](#) (Volkovitz), a "Partner/Regional Sales Director" at BGS, apparently told petitioner that BGS would pay him a 7.5% commission on BGS equipment sales he procured. Later that spring, petitioner arranged for David Kornitzer (Kornitzer), BGS's Vice President of Business Development and Chief Operating Officer, to meet with representatives of E & M Associates (E & M), [\[FN4\]](#) a property owner, to discuss purchase and installation of BGS equipment. E & M bought a \$24,700 BGS boiler-control system, and Volkovitz thereafter requested, via e-mail, that petitioner forward an invoice for 7.5% of the purchase price. The parties agree that BGS sent petitioner a check for \$926.25, or half the commission apparently due.*

*After failing to receive the remainder of the commission, petitioner, in November [\[\\*2\]](#)2012, summoned Volkovitz and Kornitzer before a Beth Din, [\[FN5\]](#) the Rabbinical Court of Givas Hamorah (Givas Hamorah), in Brooklyn. No party contests that Volkovitz and Kornitzer voluntarily signed an arbitration agreement and submitted to the arbitral process. Volkovitz, Kornitzer and petitioner seemingly agreed that Volkovitz had promised petitioner a 7.5% commission on the E & M purchase, but Volkovitz and Kornitzer represented that petitioner would not receive the other half of the commission until BGS received full payment from E & M, an occurrence dependent upon E & M's receipt of Consolidated Edison rebates. Petitioner purportedly sought further information on the workings of Consolidated Edison rebates related to use of BGS equipment, which Kornitzer states he refused to provide, as petitioner also sells competing equipment. This arbitral session apparently ended inconclusively.*

*Rabbi Shia Gluck [\[FN6\]](#) (Rabbi Gluck), a member of the Givas Hamorah arbitral panel, subsequently issued a handwritten notice to Tombak, the chief executive officer of BGS, which stated,*

*"We summon you to appear before our Rabbinical Court with [petitioner], on Wednesday V'yieshev, 21 Kislev 5773, December 5, 2012 3:30 PM.*

*"In order to determine matters between [petitioner] and between (BGL Inc. [sic]) Mr. David Kornitzer, and Mr. Israel Volkowitz.*

*"If you will fail to appear at the aforementioned time, we will issue a Rabbinical Court Ruling in your absence."[FN7](#)*

*Tombak accordingly appeared at Givas Hamorah on December 5, 2012. He claims that he believed he had been subpoenaed as a witness in a proceeding between petitioner and Volkovitz and Kornitzer. Tombak states that, when he appeared and the arbitral panel instructed him to sign an arbitration agreement written in English (the Arbitration Agreement), he asked for time to examine and consider it, as he was not fully fluent in English, but the panel refused and demanded that he sign it immediately or face the issuance of a siruv.[FN8](#) Tombak asserts that Givas Hamorah refused his request to obtain an [\*3] attorney and would not even identify the controversy in issue until after he signed the Arbitration Agreement. Petitioner, however, contends that Tombak made no request for an attorney and signed the Arbitration Agreement voluntarily.*

*The Arbitration Agreement, which Tombak does not contest that he in fact signed, stated, in relevant part,*

*"We the undersigned hereby agree to submit to binding arbitration (individually, and on behalf of corporations, LLCs, and all other entities involving this matter) all the controversies (claims and counter claims) between the undersigned parties including but not limited to the following controversy:*

*[This portion of the agreement is blank.]*

*"We further agree that the controversy be heard and determined by the three*

*following Arbitrators . . .*

*"The Arbitrators may render their award based upon Din Torah, compromise, settlement, or any other way they wish to reach a decision; that no transcript of the proceeding shall be made unless the Arbitrators decides [sic] to hire a stenographer or minute taker . . . , that the Arbitrators may follow any procedure as they decide . . . .*

*"The parties hereby waive all rights provided under CPLR Article 75, including but not limited to formal notice of the time and place the [sic] arbitration proceeding and consent that the arbitration be held and commenced with the jurisdiction of the testimony and evidence without the presence of a party if the party doesn't attend a scheduled hearing. . . . The arbitrators need not explain to the parties or to anyone else the reason for their decision, and their decision is not open for appeal neither [sic] in any religious court nor in any secular court.*

*"The parties agree to faithfully abide by and perform any interim or final award or decision rendered by the Arbitrators, and consent to the entry of judgment thereon. In the event one party does not obey by the award/decision and the other party seeks court intervention or enforcement, it is hereby agreed that the disobeying party shall pay reasonable attorney fees incurred by such proceeding. The decree of the Arbitrators shall be enforceable in the courts in the State of New York and / or New Jersey. . . . The parties submit themselves to the personal jurisdiction of the courts of the State of New York and/or New Jersey for any action or proceeding to confirm or enforce a decree of the Arbitrators pursuant to article 75 of the New York Civil Practice Law and Rules."*

*After signing the Arbitration Agreement, Tombak alleges that he and petitioner met with the tribunal for "approximately 20 minutes" and discussed petitioner's commission claim with a focus on the procedure surrounding Consolidated Edison rebates. Petitioner contends that, during this session, he presented the evidence necessary to establish his claim against respondents.*

*The parties present differing, though perhaps not absolutely inconsistent, versions of the events following the meeting before Givas Hamorah. Respondents claim that*

*Rabbi Gluck directed petitioner and Tombak to meet at BGS offices to enable Tombak to provide petitioner further information from BGS records. Tombak explains that he and petitioner made attempts to set up a meeting around December 16, 17 or 18, but were unable to find a time when he, petitioner and Kornitzer would all be available. Tombak states that he took his daughter to a Boston hospital on December 18 and was at the hospital on December 19 when Rabbi Guck telephoned him to demand that he and Kornitzer meet with petitioner within 24 hours or face a ruling in petitioner's favor.*

*Petitioner, in contrast, contends that the arbitral panel gave Tombak two weeks to furnish documents showing that BGS had yet to receive full payment for the E & M system and that Tombak claimed that he would attempt to settle the case during that time. Tombak, petitioner urges, ignored communications and generally delayed meeting "with constant excuses as to why he cannot meet with me to discuss settlement." Petitioner recounts that, two weeks after the meeting, he contacted Givas Hamorah's secretary to complain of Tombak's uncooperativeness and express his desire to proceed with arbitration. This complaint, petitioner asserts, resulted in Rabbi Gluck's call to Tombak demanding relevant documents, and petitioner argues that Tombak then refused to produce the documents and told Rabbi Gluck to rule without them.*

*On December 21, 2012, the Givas Hamorah panel issued a ruling ordering "Elkana Tombak, BGS inc" to pay petitioner \$150,000 within 30 days and authorizing, in the event of nonpayment, petitioner to enforce the award in court (the Arbitration Award). [\[FN9\]](#)*

**(2)**

*Petitioner thereafter commenced an action against respondents in the Superior Court of New Jersey, Ocean County, seeking to confirm the Arbitration Award. That court effectively dismissed the action without prejudice, instructing petitioner that he could seek to confirm the Arbitration Award in New York or simply bring an independent legal action against respondents in New Jersey.*

(3)

*Petitioner then commenced the instant proceeding to confirm the Arbitration Award, pursuant to CPLR 7510, on December 11, 2013. Petitioner argues that New York courts have personal jurisdiction over respondents under the terms of the Arbitration [\*4]Agreement and also because Tombak signed the Arbitration Agreement in New York, BGS conducts business in New York and the agreement for petitioner to market BGS equipment called for performance in New York. Petitioner contends that respondents voluntarily submitted to arbitration, that the Arbitration Agreement specifically authorized a proceeding to enforce any resulting award as well as interest, attorney's fees and costs and that Givas Hamorah properly awarded him \$150,000.*

(4)

*Respondents now cross-move for an order dismissing the proceeding for failure to state a claim and lack of personal jurisdiction, pursuant to CPLR 3211 (a) (7) and 3211 (a) (8), and vacating the Arbitration Award, pursuant to CPLR 7511 (b). Respondents contend that no valid agreement to arbitrate ever existed, as the Arbitration Agreement resulted from fraud, coercion and duress. Tombak, respondents urge, signed the Arbitration Agreement only because Givas Hamorah threatened him with excommunication, denied him the opportunity to obtain counsel and led him to believe that he was present only as a witness, not a party. Respondents further argue that, as the Arbitration Agreement fails to identify a specific controversy between the parties, it cannot be treated as a voluntary waiver of legal rights.*

*The Arbitration Award must also be vacated, respondents assert, because it resulted from corruption, fraud or misconduct, Givas Hamorah denied Tombak counsel, Rabbi Gluck failed to disclose a childhood friendship with petitioner and petitioner engaged in ex parte communications with the panel. Respondents urge that the award is completely irrational, as it "granted relief not requested, against a person not a party to the dispute." They contend that the Arbitration Award violated Givas Hamorah's own rules, which restricted it to hearing controversies involving parties from the*

*"Metropolitan New York area," whereas Tombak resided in Lakewood, New Jersey, and as Tombak never received a proper summons. Respondents also allege that another Beth Din has issued a siruv against Rabbi Gluck, thus nullifying any summons or award issued by him.*

*Finally, respondents urge that this court lacks personal jurisdiction over Tombak, a New Jersey resident who engaged in no direct business or interaction with petitioner. Any underlying agreement, respondents assert, existed only with BGS, and they contend that Tombak had no role in forming a contract with petitioner and did not even know of petitioner at that time. As the Arbitration Agreement should be treated as invalid, respondents argue that its forum selection clause lacks legal force.*

**(5)**

*In opposition to respondents' motion and further support of his claim, petitioner stresses New York's public policy favoring arbitration and discouraging judicial interference with arbitration awards. He urges that Tombak signed the Arbitration Agreement voluntarily and that case law establishes that a threat of siruv is insufficient to demonstrate duress or coercion. Tombak's signing of the Arbitration Agreement, petitioner contends, belies Tombak's purported belief that he was at the arbitration merely [\*5] as a witness, and petitioner argues that parol evidence may not be introduced regarding Tombak's subjective beliefs at the time he signed the Arbitration Agreement.*

*Petitioner further contends that vacating an award based on fraud requires not only that a movant demonstrate, with clear and convincing evidence, that the award resulted from fraud, but also that the fraud could not have been discovered with due diligence by the movant. He then urges that "[r]espondents failed to demonstrate that the fraud could not have been discovered upon his exercise of due diligence," as "there is ample evidence that if Tombak would have exercised due diligence he could have avoided submitting the controversy before the Givas Hamorah Beth Din." He suggests*

*that, instead of signing the Arbitration Agreement, Tombak could simply "have refused by walking out of the room." Petitioner also contends that, "[a]t best, Tombak was negligent in signing the arbitration agreement[;] [h]owever, [i]gnorance through negligence or inexcusable trustfulness will not relieve a party from his [or her] contract obligations"* (fourth and fifth alteration in original).

*Tombak, petitioner contends, may not challenge the Arbitration Agreement's validity, in any case, as he voluntarily participated in the arbitration and made no request to be represented by counsel. Petitioner urges that Tombak signed the Arbitration Agreement in his personal capacity and "on behalf of corporations, LLCs, and all other entities involving this matter" and that he must have been aware of petitioner's work for BGS as he signed the check for the first half of the commission and was copied on an e-mail sent to petitioner. The Arbitration Agreement, petitioner argues, authorized the arbitrators to resolve the controversy in any manner they wished to reach a decision.*

*Petitioner contends that the evidence he submits, e-mails, a copy of the BGS contract with E & M and the check for the first half of his commission, prove his right to recovery. He characterizes the award against Tombak personally as rational, since Tombak "was the principal of a partially disclosed agent, BGS, and it was undisclosed that BGS is a limited liability company." Petitioner argues that Tombak should thus be held personally liable as the principal of an unincorporated association. Accordingly, petitioner asserts that a plausible basis justified the award, requiring confirmation.*

*Petitioner labels respondents' allegations of arbitrator bias and ex parte communications as speculative and unsupported by evidence. He urges that an indirect relationship between an arbitrator and a party is insufficient to substantiate a claim of bias and that respondents waived any potential bias objection by waiting over seven months to raise it. Petitioner also contends that another Beth Din's criticism of Rabbi Gluck or Givas Hamorah cannot be considered herein, as a nonjusticiable religious issue*

*Finally, petitioner urges that the Arbitration Agreement's forum selection clause must be observed, and, in any case, that respondents' arguments, in the New Jersey action, that New York law controls, judicially estop respondents from now claiming that New York courts lack personal jurisdiction over Tombak.*

*Petitioner supports his opposition with an affirmation from the members of the Givas Hamorah panel, who deny engaging in ex parte communications with petitioner or any relationship between petitioner and Rabbi Gluck. They additionally provide an explanation of the events leading up the Arbitration Award's issuance:*

*"[O]n December 20, 2012, Rabbi Gluck called Mr. Tombak inquiring why the documents have not yet been turned over. However, Mr. Tombak told Rabbi Gluck that he has decided not to release the documents to the arbitrators and expressly told Rabbi Gluck that you can do whatever you want and given [sic] any decision you think.' In response, Rabbi Gluck stated that the Rabbinical Court is giving Mr. Tombak an additional 24 hours to produce the documents; otherwise a decision would be issued without the documents. Thereafter, we did not hear from Mr. Tombak so we issued the award . . . ."*

*Petitioner also submits an affirmation from Yaakov Markowitz (Markowitz), Givas Hamorah's secretary, who recounts that he mailed a summons to Tombak and that Tombak voluntarily signed the Arbitration Agreement without requesting counsel. He states that petitioner called him on December 20, 2012 to complain that Tombak was not "properly communicating with him, and had not attempted to settle the case." Markowitz further states that the purported internal rules, which respondents claim Givas Hamorah violated, are merely explanations in a frequently-asked-questions section on the Givas Hamorah website and that such statements do not constitute rules.*

*Petitioner's counsel submits an additional affirmation, in which he details his work on the proceeding and claims that attorney's fees and other costs total \$22,299.68.*

**(6)**

*Respondents, in reply, argue that asking the court to confirm a Beth Din award already vacated by another Beth Din itself constitutes a nonjusticiable religious issue. They reiterate their arguments that the Arbitration Agreement resulted from fraud, coercion or duress and urge factual discrepancies between the cases petitioner cites concerning siruv threats and the circumstances herein. They urge that the Arbitration Award and petitioner's own arguments reveal that Givas Hamorah based the Arbitration Award upon evidence submitted at the arbitration session with Kornitzer and Volkovitz, before Tombak even knew of the controversy. The Arbitration Agreement, respondents argue, contained no waiver of Tombak's right to attend all arbitration sessions.*

*Respondents further reiterate their argument that the Arbitration Award was irrational, as it awarded \$150,000 on a claim for only \$926.25 and petitioner has introduced no evidence to support the award's size. They urge that petitioner must have known that BGS was a company, as both the partial commission check and the E & M contract referenced the company as "BGS Inc." Respondents argue, in any case, that nondisclosure of the principal could not render Tombak personally liable, as Volkovitz was the agent who formed the agreement with petitioner. The factual dispute over [\*6] whether Tombak requested counsel, respondents argue, warrants an evidentiary hearing.*

*Respondents additionally repeat their arguments that the court lacks jurisdiction over Tombak and that Rabbi Gluck failed to disclose a prior relationship with petitioner.*

**Discussion***The Arbitration Agreement*

*An arbitration award may be vacated only upon the grounds enumerated in CPLR 7511 (b) ([Matter of State Farm Mut. Auto. Ins. Co. v Motor Veh. Acc. Indem. Corp.](#), 25 AD3d 740, 740 [2006]; [Boggin v Wilson](#), 14 AD3d 523, 524 [2005]). CPLR 7511 (b) (2) permits vacating an arbitration award if the party seeking vacatur did not*

*participate in the arbitration or receive notice of the intention to arbitrate and, among other circumstances, no valid arbitration agreement existed (see [Matter of Jadhav v Ackerman](#), 62 AD3d 797, 798 [2009]). Respondents herein contend that Tombak received no proper summons and that both his execution of the Arbitration Agreement and purported participation in the Givas Hamorah proceeding resulted from fraud, coercion or duress.*

*"To sustain a claim for fraudulent inducement, there must be a knowing misrepresentation of material fact, which is intended to deceive another party and to induce them to act upon it, causing injury" (Sokolow, Dunaud, Mercadier & Carreras v Lacher, 299 AD2d 64, 70 [2002]; see also [Jo Ann Homes at Bellmore v Dworetz](#), 25 NY2d 112, 118-119 [1969]). Here, respondents argue that the notice Givas Hamorah used to call Tombak before the tribunal and its general conduct led him to believe that he was present only as a witness, not a party. Although the contents of the notice can be read as implying that Givas Hamorah sought testimony from Tombak in an arbitral proceeding against Volkovitz and Kornitzer, the Arbitration Agreement made clear that Tombak was agreeing to "submit to binding arbitration (individually, and on behalf of corporations, LLCs, and all other entities involving this matter) all the controversies (claims and counter claims) between the undersigned parties." Such language unambiguously conveyed that Tombak was agreeing to appear before Givas Hamorah as a party to arbitration, not merely as a witness. A person who signs a document, even if misled as to its contents, "is under an obligation to read [the] document before signing it, and cannot generally avoid the effect of the document on the ground that he or she did not read it or know its contents" ([Financial Servs. Veh. Trust v Saad](#), 98 AD3d 1077, 1078 [2012] [internal quotation marks omitted]; see also [Scott v Fields](#), 85 AD3d 756, 758 [2011]; [Reznikov v Walowitz](#), 63 AD3d 1134, 1135 [2009]).*

*Tombak further asserts that he signed the Arbitration Agreement only because the Givas Hamorah panel threatened to issue a siruv against him, thus rendering the agreement voidable as a product of coercion or duress. The Appellate Division, Second Department, has established, however, that a threat of a siruv will not be treated as duress [\*7] ([Berg v Berg](#), 85 AD3d 950, 952 [2011]; [Matter of Greenberg v Greenberg](#), 238 AD2d 420, 421 [1997]; see also [Matter of Wydra \[Brach\]](#), 32 Misc 3d 1241(A),*

*2011 NY Slip Op 51664(U), \*9 [Sup Ct, Kings County 2011], affd 114 AD3d 865 [2014]). While the facts in these cases may differ somewhat from the facts that produced the Arbitration Agreement herein, the case law indicates that prior refusals to consider siruv threats as coercive reflected the inherent nature of a siruv, rather than the circumstances particular to those cases (see *Berg v Berg*, 85 AD3d at 952; *Matter of Greenberg*, 238 AD2d at 421, citing *Lieberman v Lieberman*, 149 Misc 2d 983, 987 [Sup Ct, Kings County 1991] ["(w)hile the threat of a Sirov may constitute pressure, it cannot be said to constitute duress"]). Accordingly, the Arbitration Agreement must be treated as valid and binding upon respondents.*

*The Arbitration Agreement's validity extends to Tombak's submission to New York courts therein, and, consequently, respondents' jurisdictional arguments must fail. Furthermore, as a valid arbitration agreement exists, and no party disputes that the arbitral panel issued an award, there seems no basis to dismiss this proceeding seeking to confirm such award for failure to state a claim under CPLR 3211 (a) (7).*

#### *The Arbitration Award*

*"Judicial review of an arbitrator's award is very limited" ([Matter of Town of Babylon v Carson](#), 111 AD3d 951, 953 [2013] [internal quotation marks omitted]; *see also* [Matter of Aftor v Geico Ins. Co.](#), 110 AD3d 1062, 1064 [2013]; [Matter of Allstate Ins. Co. v GEICO \[Govt. Empls. Ins. Co.\]](#), 100 AD3d 878, 878 [2012]), and an arbitrator need not observe substantive law or evidentiary rules in issuing a decision (*Matter of Aftor*, 110 AD3d at 1064; *Matter of Allstate Ins. Co.*, 100 AD3d at 878; [Matter of Susan D. Settenbrino, P.C. v Barroga-Hayes](#), 89 AD3d 1094, 1095 [2011], lv dismissed in part, denied in part 18 NY3d 954 [2012], cert denied sub nom. *Settenbrino v Barroga-Hayes*, \_\_\_ US \_\_\_, 133 S Ct 572 [2012]). New York favors arbitration as a method of dispute resolution ([Shah v Monpat Constr., Inc.](#), 65 AD3d 541, 543 [2009]), but CPLR 7511 (b) (1) permits vacating an arbitration award if, among other circumstances, the arbitrator "exceeded his power or so imperfectly executed it that a final determination and definite award upon the subject matter submitted was not made."*

*An award may be found to have exceeded the arbitrator's powers if it violates a*

*strong public policy, is totally irrational or breaches an explicit limitation on such power (Matter of Town of Babylon, 111 AD3d at 953; [Matter of Gansburg v Blachman, 111 AD3d 935](#), 936 [2013]; Matter of Aftor, 110 AD3d at 1064; [Matter of Westchester County Corr. Officers' Benevolent Assn. v County of Westchester, 100 AD3d 644](#), 645 [2012]). "On review, an award may be found to be rational if any basis for such a conclusion is apparent to the court based up on a reading of the record" ([Matter of State Farm Mut. Auto. Ins. Co. v City of Yonkers, 21 AD3d 1110](#), 1111 [2005]; see also *Caso v Coffey*, 41 NY2d 153, 158 [1976]; [Matter of Travelers Indem. Co. v United Diagnostic Imaging, P.C., 70 AD3d 1043](#), 1043 [2010]).*

*Here, no apparent rational basis exists to justify an award to petitioner of \$150,000. Petitioner makes no attempt to refute, and submits evidence that seems to confirm, that his claim sought a 7.5% commission on a \$24,700 sale, thus equal to \$1852.50, of which BGS had already paid half. No party attempts to explain how a claim pursuing \$926.25 resulted in an award of more than 160 times that amount.*

*Furthermore, no rational basis supports holding Tombak personally liable for any failure by BGS to pay petitioner a sales commission. Petitioner formed an agreement with Volkovitz to seek buyers of BGS equipment for a specified commission, and petitioner does not contend that he had any direct interaction whatsoever with Tombak before the arbitration process. Petitioner erroneously relies on the general precept of contract law that an agent who forms a contract on behalf of an undisclosed or partially disclosed principal may be held personally liable for obligations thereunder ([see Stonhard v Blue Ridge Farms, LLC, 114 AD3d 757](#), 758-759 [2014]). Tombak, though an agent of BGS, was indisputably not the agent who formed any agreement with petitioner, and, therefore, could not be held personally liable even if petitioner successfully established that BGS was inadequately disclosed as the true party to the contract. As no plausible basis exists for the Arbitration Award, it must be vacated and the petition to confirm it must be denied.*

*The Arbitration Agreement, however, remains binding, and the controversy must, therefore, be remanded for further proceedings in accordance with this decision and order and the requirements of CPLR article 75. Whether to remand to the same arbitral*

panel or a different one is a matter for the court's discretion ([\*see Matter of Wydra v Brach, 114 AD3d 865\*](#), 866 [2014]), and, as respondents offer no admissible evidence demonstrating any bias or partiality on the part of Givas Hamorah, the matter shall be remanded to the same panel ([\*see Caruso v Viridian Network, LLC, 112 AD3d 515\*](#), 515 [2013]). Accordingly, it is

*ORDERED that the petition is denied in its entirety; and it is further*

*ORDERED that respondents' cross motion is granted to the extent of vacating the*

*December 21, 2012 arbitration award and remitting the matter to the Rabbinical Court of Givas Hamorah for rehearing in accordance with this decision and order, and it is otherwise denied.*

*This constitutes the decision and order of the court.*

*E N T E R,*

*J. S. C.*

### ***Footnotes***

***Footnote 1:*** Also referred to as "Yumi Kleinbart."

***Footnote 2:*** Also spelled as "Alkana Tombak."

***Footnote 3:*** Also spelled as "Israel" or "Volkowitz."

***Footnote 4:*** Also referred to as "ENM Mangement."

***Footnote 5:*** A Beth Din is "a religious tribunal that adjudicates disputes according to Jewish law and custom" (*Matter of Meisels v Uhr*, 79 NY2d 526, 531 [1992]).

**Footnote 6:** *Also referred to as "Joshua Gluck" or "Yehoshua Gluck"; sometimes spelled as "Glick."*

**Footnote 7:** *The original notice was written in Hebrew. Petitioner submits a certified translation, and respondents do not challenge the accuracy of this translation.*

**Footnote 8:** *The Appellate Division, Second Department, has defined a siruv (also spelled seruv or sirov) as "a type of writ issued by a rabbinical court against a party who has disobeyed its decrees," but notes that it also "entails a type of ostracism from the religious community" (Matter of Greenberg v Greenberg, 238 AD2d 420, 421 [1997]). Tombak describes the effect of a siruv as "excommunication from the Orthodox Jewish community."*

**Footnote 9:** *The original Arbitration Award was written in Hebrew. Petitioner submits a certified translation, and respondents do not challenge the accuracy of this translation.*

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