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ADR Case Update 2020-3

New York

TRIAL COURT ERRS IN SUBSTITUTING AAA FOR RABBINICAL COURT

In the Matter of Chaim Silberman v. Moshe Shmuel Farkas, et al.

2020 WL 465385

Supreme Court, Appellate Division, Second Department, New York

January 29, 2020

The business partnership agreement of Silberman and Farkas provided for arbitration “before a Rabbinical Court within the Jewish community.” Following a dispute regarding employment of Farkas’s son, the Beth Din of Kollel Bais Talmud L’Horuah served Farkas with notice of Silberman’s intent to arbitrate the matter before a Rabbinical Court. Farkas did not respond to the notice; however, he responded to a subsequent letter from Silberman’s attorney, asserting that Silberman needed to send a *Hazmuneh* from an acceptable Bes Din. Silberman petitioned to compel arbitration pursuant to the partnership agreement and to appoint Beth Din of America as the arbitrator. Farkas moved to dismiss, asserting that they were not served with a summons from a rabbinical court and that the Manhattan-based Beth Din of America should not be appointed because it was unfamiliar with customs and practices of the Hasidic community in Brooklyn. The court granted the petition, compelling the parties to arbitrate before AAA.

The Supreme Court, Appellate Division, Second Department, New York affirmed, as modified, and remitted. The partnership agreement provided for arbitration before a rabbinical court and contained no conditions precedent. Farkas was served with notice of Silberman’s intent to arbitrate before a rabbinical court and did not raise concerns about Beth Din of America until after Silberman’s motion to compel. The trial court “improvidently exercised its discretion” when it appointed AAA as the arbitrator. The parties’ intent, clearly expressed in their agreement, was to submit disputes before a Rabbinical Court in the Jewish community.

Case research and summaries by Deirdre McCarthy Gallagher and Richard Birke.

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