SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID BENJAMIN COHEN** **PART** **IAS MOTION 58EFM**

Justice

----------X

RONALD KAPLAN,

Plaintiff,

- v -

CENTRAL CONFERENCE OF AMERICAN RABBIS, STEVEN FOX, JOHN DOES, JANE DOES, ABC ORGANIZATIONS 1-10, XYZ COMPANIES 1-10

Defendant.

----------X

INDEX NO. 155862/2018

MOTION DATE 03/11/2019

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISSAL.

Defendants' motion to dismiss is granted. Plaintiff Ronald Kaplan is a former member of defendant Central Conference of American Rabbis ("CCAR"). CCAR describes itself as a membership rabbinical assembly for the Reform Jewish movement. Steve Fox is currently the Chief Executive Emeritus of CCAR and was the Chief Executive at the time the events described herein arose. It is undisputed that CCAR does not ordain, nor defrock, Rabbis and that use of the title Rabbi by a Reform Rabbi is not dependent on CCAR permission. However, a CCAR member institution may not employ someone as a Rabbi who has been expelled from CCAR membership. In the Amended Complaint, plaintiff claims that defendants knowingly published false and defamatory statements about plaintiff's expulsion from CCAR. The Amended Complaint lists two causes of action; defamation and defamation per se. The undisputed facts are that following an internal process, plaintiff was expelled by CCAR as a member; that on June 19, 2017 the Forward newspaper (not a defendant in this action) sought information from

defendants relating to the CCAR internal proceedings with plaintiff. Specifically, the Forward emailed CCAR the following questions:

> 1. What are CCAR's current procedures around the expulsion of a rabbi? How much information is being released to affected communities and the public?
> 2. What is the CCAR's guidance on the presence of an expelled rabbi within a Reform congregation?
> 3. What was the basis for Rabbi Ron Kaplan's expulsion from the CCAR?
> 4. Has the leadership and members of Congregation Har Shalom in NJ been informed about the circumstances of Rabbi Kaplan's expulsion?
> 5. Is it appropriate for Rabbi Kaplan to have accompanied a youth group from the synagogue on a trip to the nation's capital and blown a shofar on the congregation's bima, as seen in photos from the congregation newsletter?

On June 21, 2017, defendants, through Fox, provided detailed responses to the questions:

> As a preliminary matter, as you know, we remain committed to the sanctity and safety of our communities and individuals. We are pained by any abuse or misconduct and we have an ethics system in place to address ethical misconduct by a CCAR rabbi that harms any individual, congregation or organization.
> 1a. The CCAR Ethics Code explains that when a rabbi is suspended by the CCAR and the rabbi does not adhere to the terms of the suspension, the rabbi is subject to expulsion. During the Ethics process, we offer support for congregations, individuals, victims, rabbis and their families, working with our Reform Movement partners.
> 1b. The CCAR provides information about an expelled rabbi to our entire membership, the rabbi's congregation, and with our Reform Movement partners to other area congregations. Additionally, beginning in July, we will publish the names and reason for expulsion of expelled rabbis on CCAR's public website. This new policy for publication was approved by the CCAR membership at our recent Convention to demonstrate our continued commitment to transparency and safe communities for our members and the public at large.
> 2. While we cannot defrock a rabbi, we can and do make a determination that a rabbi is unfit for membership in the CCAR and that an expelled rabbi should not be employed in any rabbinic capacity. We do prohibit CCAR members from employing any person (directly or by consenting to the employment of such a person by his/ her congregation/organization) who has been expelled. Any CCAR member who violates this policy is at risk for suspension or expulsion from the CCAR.

3. Ron Kaplan was suspended from the CCAR for violation of our Code of Ethics Section I.C. (Financial misconduct); Section II.C.4. (Relationships Between Rabbis in Different Congregations or in Organizations); and Section V. (Ethics Guidelines Concerning Sexual Boundaries). That suspension prohibited him from working as Rabbi and provided a process for T'shuvah, counseling and rehabilitation. Rather than comply with the terms of suspension, Kaplan chose to submit a letter of resignation from the CCAR. The CCAR responded by formally expelling him, as mandated in CCAR's Ethics Code.

4. Yes, the rabbi and president of Congregation Har Shalom in NJ were notified about the reasons for his expulsion, including the Ethics Code provisions that he violated.

5. No, and we are deeply disturbed that he continues to present himself as a rabbi available for hire in the community. Further, as I mentioned above, no CCAR member should hire him under the Code of Ethics. We take ethical misconduct of any kind extremely seriously and we are pained to see any misconduct by a rabbi in the Jewish community. We are fully committed to the sanctity, safety and security of our communities and the people our rabbis serve, as well as the importance of rabbinic integrity.

After receiving the above responses, on that same day, the Forward asked several follow-up questions:

1. When was Rabbi Ron Kaplan suspended? When was the expulsion of Rabbi Kaplan finalized?

2. Can you be more specific about the allegations against Rabbi Kaplan that led CCAR to believe there had been ethics code violations?

3. Does employment refer solely to paid work? If Rabbi Kaplan were involved in the life of Congregation Har Shalom without being paid a salary, would that trigger an ethics code violation for his wife?

4. How many CCAR rabbis have been suspended and/or expelled in recent years?

5. Did Rabbi Kaplan's actions amount to potentially criminal activity, and were they reported to the police?

Defendants responded to the follow-up questions on June 22, 2017, as follows:

• Ron Kaplan was suspended from CCAR in April 2015. During the entire time of his suspension, Kaplan was prohibited from working as Rabbi and there was also an appeals process during which the terms of his suspension were upheld. Subsequently, he chose not adhere to the terms of his suspension, submitted a letter of resignation and was therefore expelled. On March 7, 2016, Rabbi Kaplan was officially notified of his expulsion from the CCAR.

> • In the Ethics process, the CCAR protects the confidentiality and identity of victims of misconduct and complainants by not publicly disclosing information about them. To that end, all we can reiterate is what we said earlier today: that Ron Kaplan was suspended from the CCAR for violation of our Code of Ethics Section I.C. (Financial misconduct); Section II.C.4. (Relationships Between Rabbis in Different Congregations or in Organizations); and Section V. (Ethics Guidelines Concerning Sexual Boundaries). That suspension prohibited him from working as Rabbi and provided a process for T'shuvah, counseling and rehabilitation. Rather than comply with the terms of suspension, Kaplan chose to submit a letter of resignation from the CCAR. The CCAR responded by formally expelling him, as mandated in CCAR's Ethics Code.
>
> • It is inappropriate for any rabbi expelled by CCAR to be acting in a rabbinical capacity, regardless of whether they are receiving remuneration for those rabbinical services.
>
> . • Eight rabbis have been expelled in the last 12 years.

The Forward published a story on June 28, 2017. The article contained some incorrect information and, on June 28 and June 29, the Forward sought clarifications from defendants, which defendants provided. On June 30, 2017, the Forward published an amended article correcting the information.

Plaintiff lists five specific and distinct statements contained in the emails as the defamatory statements: (1) a statement that the suspension of Rabbi Kaplan from the CCAR "prohibited him from working as a Rabbi;" (2) a statement that "we [the CCAR] are deeply disturbed that he [plaintiff] continues to present himself as a rabbi available for hire in the community;" (3) a statement that Rabbi Kaplan's former congregation had been notified "about the reasons for his expulsion, including the Ethics Code provisions that he violated;" (4) a statement that "[W]e [the CCAR] take ethical misconduct of any kind extremely seriously and we are pained to see any misconduct by a rabbi in the Jewish community. We are fully committed to the sanctity, safety and security of our communities and the people our rabbis serve, as well as the importance of rabbinic integrity;" and (5) a statement that "we [the CCAR] remain committed to the sanctity and safety of our communities and individuals. We are pained

by any abuse or misconduct and we have an ethics system in place to address ethical misconduct by a CCAR rabbi that harms any individual, congregation or organization."

Defendants moved to dismiss this action on several grounds, including subject matter jurisdiction and privilege. The Court's determination to dismiss this matter is based solely on the discussion below and makes no determination as to other arguments. When deciding a motion to dismiss pursuant to CPLR §3211, the court should give the pleading a "liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference" (*Landon v. Kroll Laboratory Specialists, Inc.*, 22 NY3d 1, 5-6 [2013]; *Faison v. Lewis*, 25 NY3d 220 [2015]). However, if a complaint fails within its four corners to allege the necessary elements of a cause of action, the claim must be dismissed (*Andre Strishak & Associates, P.C. v Hewlett Packard & Co.*, 300 AD2d 608 [2d Dept 2002]. Under CPLR § 3211(a)(7), the court "accepts as true the facts as alleged in the complaint and affidavits in opposition to the motion, accords the plaintiff the benefit of every possible favorable inference, and determines only whether the facts as alleged manifest any cognizable legal theory" (*Elmaliach v Bank of China Ltd.*, 110 AD3d 192, 199 [1st Dept 2013] (quoting *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001])).

Defamation is the "[m]aking [of] a false statement that tends to expose a person to public contempt, hatred, ridicule, aversion or disgrace" (*Thomas H. v Paul B.*, 18 NY3d 580, 584 [2012]). To prove a cause of action for defamation, a plaintiff must show: "(1) a false statement that is (2) published to a third party (3) without privilege or authorization, and that (4) causes harm, unless the statement is one of the types of publications actionable regardless of harm" (*Stepanov v Dow Jones & Co., Inc.*, 120 AD3d 28, 34 [1st Dept 2014]). The contested statement also must be "'of

and concerning'" the plaintiff (*Three Amigos SJL Rest., Inc. v CBS News Inc.*, 28 NY3d 82, 86 [2016], quoting *Julian v American Bus. Consultants*, 2 NY2d 1, 17 [1956]).

The context of the communication, including "the immediate context in which the disputed words appear . . . [and] the larger context in which the statements were published," may be the most significant factor (*Brian v Richardson*, 87 NY2d 46, 51 [1995]). "Whether a particular statement constitutes fact or opinion is a question of law" (*Rinaldi v Holt, Rinehart & Winston*, 42 NY2d 369, 381 [1977], *rearg denied*, 42 NY2d 1015 [1977], *cert denied*, 434 US 969 [1977]). "Truth provides a complete defense to defamation claims" (*Dillon v City of New York*, 261 AD2d 34, 39 [1st Dept 1999]; *see also Silverman v Clark*, 35 AD3d 1 [1st Dept 2006] [Truth is an absolute defense to cause of action based on defamation]). In addition, "to survive a motion to dismiss a claim for defamation by implication where the factual statements at issue are substantially true, the plaintiff must make a rigorous showing that the language of the communication as a whole can be reasonably read both to impart a defamatory inference and to affirmatively suggest that the author intended or endorsed that inference (*Stepanov*, 120 AD3d at 37-38; *standard adopted by Udell v NYP Holdings, Inc.*, 169 AD3d 954 [2d Dept 2019]; *Partridge v State*, 173 AD3d 86 [3d Dept 2019]).

The falsity of a published statement is key to a defamation claim because only a statement that purports to convey facts about the plaintiff are actionable (*see Gross v New York Times Co.*, 82 NY2d 146, 153 [1993]). Therefore, "[o]pinions, false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions, provided that the facts supporting the opinions are set forth" ((*Rinaldi*, 42 NY2d at 380). A statement of "pure opinion," which is supported by the facts upon which the statement is based, is protected, "no matter how vituperative or unreasonable it may be" (*Steinhilber v Alphonse*, 68 NY2d 283, 289 [1986]). Similarly,

"rhetorical hyperbole, vigorous epithets, and lusty and imaginative expression . . . imprecise language and [an] unusual setting . . . [which] signal [to] the reasonable observer that no actual facts were being conveyed about an individual" are not actionable (*Immuno AG*, 77 NY2d at 244; *Dillon,* 261 AD2d at 38 [stating that "[l]oose, figurative or hyperbolic statements, even if deprecating the plaintiff, are not actionable"]). However, where a statement "implies that it is based upon facts which justify the opinion but are unknown to those reading or hearing it, it is 'mixed opinion' and is actionable" (*Steinhilber,* 68 NY2d at 289). Factors to consider in determining whether a statement constitutes fact or nonactionable opinion are:

> "(1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to 'signal … readers or listeners that what is being read or heard is likely to be opinion, not fact'"

(*Brian*, 87 NY2d at 51, quoting *Gross*, 82 NY2d at 153, quoting *Steinhilber*, at 292 [internal quotation marks omitted]).

In review of the entirety of the email conversations, none of the five alleged defamatory statements properly alleges a cause of action for defamation. First, although plaintiff attempts to cherry pick specific words as false, the Court must view those words in context of the statements that precede or follow it. A defamation claim will not survive based on words read out of context (*id.*). The statements made by CCAR relating to plaintiff's prohibition from working as a Rabbi, must be read in context of the emails, which straight-forwardly states that the prohibition is in reference to working for CCAR member congregations (see Response 2 in June 21, 2018 email). The email specifically explains that CCAR does not have the power to "defrock" an individual and that expelled CCAR Rabbis should not be employed by CCAR

members. None of the emails say that Kaplan was prohibited from working as a Rabbi in non-CCAR member institutions. Indeed, the statement that Kaplan was prohibited from working as a Rabbi in CCAR member institutions while suspended and/or expelled is a true statement.

For the same reason the second alleged statement that CCAR was disturbed that plaintiff continued to hold himself out for hire in the community is also not defamatory. First, the statement was not one of fact but a statement of CCAR's position and sentiment, and thus not actionable. Second, even adopting plaintiff's arguments, that the defamation was the implication that plaintiff was not "a rabbi available for hire in the community," the claim fails. The context of the entire communication demonstrates that CCAR's prohibition on employment was related to employment with membership entities. As it is not disputed that CCAR does not have the right or authority to prohibit non-member entities from employing CCAR suspended/expelled Rabbis, that CCAR was disturbed by Kaplan's presenting himself as a Rabbi for hire, was a sentiment and an opinion, which are not actionable as defamation (*Rinaldi*, 42 NY2d at 380]).

The third statement relating to the notification of his former congregation, is not defamation as the statement is indisputably true. Plaintiff does not argue that the statement is false but rather argues that "when viewed in context with the other statements made by Defendants, [the] statement must be construed to mean that Rabbi Kaplan was expelled for violating the CCAR Ethics Code." First, a plain reading of the sentence says that the congregation was informed of the reasons, including the CCAR Ethics Codes plaintiff violated. In other words, the congregation was informed of the reasons for the expulsion, not limited to CCAR Ethics violations. Second, the statement that plaintiff was expelled for violation of the Ethics Code, is true. It is undisputed that plaintiff was suspended and was offered a rehabilitation process. Rather than proceed with the rehabilitation process, plaintiff first

appealed the suspension and later resigned from CCAR. Under the CCAR Ethics Code Section VI.E.2 "a rabbi who resigns from the CCAR prior to, during or after the adjudicatory process will be regarded as expelled… (d) The sanction of expulsion is reserved for the gravest offenses, repeated violations, failure to comply with conditions of censure or with conditions of suspension, or willful violation of the section entitled "failure to cooperate." Here, plaintiff resigned during or after the adjudicatory process[1] and was thus deemed expelled for willful violation for failure to cooperate or failure to comply with terms of suspension. In fact, plaintiff's motion papers state "[U]nder the CCAR ethics policy, this resignation had the effect of an expulsion from the CCAR" (Plaintiffs Opposition ¶ 10). Finally, as with the previous two alleged defamatory statements, this statement must also be read in conjunction with the entire email and in the proper context. CCAR, responding to the Forward's clarifying questions as to why plaintiff was expelled, clearly explained the reasons, procedure and sequence of events leading to plaintiff's expulsion, including that "rather than comply with the terms of suspension, Kaplan chose to submit a letter of resignation from the CCAR. The CCAR responded by formally expelling him, as mandated in CCAR's Ethics Code." As the statement was true, no defamation lies (*Silverman* 35 AD3d at 12).

The fourth and fifth statements are also not defamation. First, they are generalized organizational positions, sentiments and opinions about CCAR commitment to safety, security and sanctity. Such statements are not actionable (*Rinaldi*, 42 NY2d at 380]). Further, to the extent that plaintiff argues that those statements, including statements that CCAR is pained to see

[1] The Court notes that the precise status is not clear. Plaintiff alleges that following his successful appeal, the Disciplinary matter was remanded to CCAR's Ethics Committee. Upon remand, the Ethics Committee again found violations and imposed a suspension. Plaintiff again appealed but instead of proceeding with the appeal, resigned from CCAR. Thus, the status can be either during the adjudicatory process as he appealed the decision, or after since it followed the Ethics Committee decision and the appeal was not pursued. In any event, the terms of the suspension were admittedly not complied with.

any misconduct by a CCAR rabbi or that CCAR has a process to address ethical misconduct, is defamation by implication, said argument is without merit. Plaintiff cannot meet the rigorous showing that the language of the communication as a whole can be reasonably read both to impart a defamatory inference and to affirmatively suggest that the author intended or endorsed that inference (*Stepanov*, 120 AD3d at 37-38). The emails in question do not contain any falsehood and are only intended to convey information that was permitted to be disclosed under the CCAR Ethics Code. In fact, CCAR refused to disclose any details about the incidents in question and only offered the Ethics Code Violations for which plaintiff was suspended. Defendants articulated CCARs generalized concern, did not make any false statement, and carefully and accurately worded its communications. Accordingly, none of the statements made by defendants rise to the level of defamation, and it is

ORDERED that the Complaint is dismissed as to all defendants.

This constitutes the decision and order of the Court.

11/1/2019
DATE

DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE