SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ **PART** IAS MOTION 47EFM

Justice

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NACHUM FINKELSTEIN, ZLATA FRIEDMAN,

Petitioners,

- v -

REUVEN FINKELSTEIN, 1212 GRANT REALTY LLC,CRESTEF REALTY LLC,829 REALTY LLC,CEDARROW REALTY LLC,1180 REALTY LLC,911 LLC,409 REALTY CORP, AKIVA FINKELSTEIN, YITZCHAK FINKELSTEIN, AVRAHAM FINKELSTEIN, LIBA MAGID, DOES 1-10

Respondents.

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INDEX NO. 650559/2021

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 10, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Petitioners Nachum Dov Finkelstein, both individually and in his capacity as trustee of the SF Family Credit Shelter Trust (the "SF Trust") and Zlata Friedman, both individually and in her capacity as trustee of the JSF S Corp Irrevocable Trust (the "JSF Trust") move by order to show cause pursuant to CPLR § 7510 to confirm a May 6, 2020 arbitration award as clarified by a January 6, 2021 clarification rendered by a Rabbinical Court comprised of three rabbis (the "Beth Din"). Respondents other than Shmuel Akiva Finkelstein and Yitzchak Finkelstein (moving respondents) cross move to vacate the arbitration award.

BACKGROUND

The individuals in this proceeding are siblings and they brought a dispute before the Beth Din concerning among other things, the ownership of a portfolio of properties amassed by their late father Jacob Finkelstein. The portfolio includes seven properties located in the Bronx,

Brooklyn and Manhattan (the properties).[1] Jacob placed the bulk of his assets including the properties into the SF Trust and the JSF Trust for the benefit of his seven children (petition ¶ ¶ 3 - 4). Jacob's wife Shaindel Finkelstein was a beneficiary of the SF Trust and in 2008 she relinquished her spousal rights in that trust (ex. 2 to Friedman affd.). The LLC respondents and the Corp. respondent are controlled by respondent Reuven Finkelstein and are the record owners of the seven properties (petition ¶ 8).

The agreement to submit to arbitration dated April 26, 2019 signed by petitioners and the individual respondents describes the dispute to be resolved by the Beth Din as including, among other things, beneficial ownership and control of the properties regardless of "record owner". The parties' arbitration agreement provides "that the arbitration will cover all monetary assets (ex. Real estate, investments, cash, loans., bank accounts ex.), that [Jacob] had an interest in during his lifetime, or that were acquired with his funds (fully or partially). Each [beneficiary] is responsible for any of the above assets, regardless who is the recorded owner. [Beneficiaries are] also responsible for any third party who may have received assets, because of association with the [beneficiary], regardless of who is the recorded owner. The decision of the [Beth Din] will be final and binding." On May 13, 2019 the parties signed an addendum to the arbitration agreement that they "execute this agreement in our capacity as individuals, shareholders, members, Trustees, officers, beneficiaries or any other capacity" (ex. B to petition). On September 12, 2019 the parties signed a further agreement that "Although [Jacob and his wife] had already given their assets to a trust, we nevertheless agree and give the rabbinic court the

[1] 1212 Grant Ave., Bronx, New York; 225 Cross Bronx Expressway, State Road North, Bronx, New York; 829 Greenwood Ave., Brooklyn, New York; 65 W. 192nd St., Bronx, New York; 1180-1182 Lebanon St., Bronx, New York; 911-923 Walton Ave., Bronx, New York; 409 W. 129th St., New York, New York.

authority to respect their wishes as reflected in the wills they made pursuant to Jewish law" (ex. 3 to Freidman affd.).

On May 6, 2020 the Beth Din, comprised of Rabbis Avraham Baruch Rosenberg, Yitzchak Isaac Menachem Eichenstein and Avraham Yitzchak Braunstein, rendered its decision/award (titled a Verdict; referred herein as initial award or determination) in Hebrew (translated to English) declaring that "1212 Grant St, 225 Cross Bronx Expressway, and 50% of 829 Greenwood Ave belong to the estate, while the other half belongs to charity as shall be explained hereinafter in section 17." Section 17 of the Beth Din award provides in pertinent part that "[a] portion of the income from the house at 829 Greenwood Ave, . . . is designated for the distribution of a portion to Torah scholars at Avraham [Finkelstein's] discretion. . ." Section 14 of the award provides that "[a]ll the assets that are specified in the will named in section 1, and are not specified in this verdict, belong to the estate." Section 1 of the award determines that a will executed by Jacob and Shaindel Finkelstein dated December 28, 2009 and as amended on February 24, 2010 (together referred to herein as the "New York Will") "are in effect in all their particulars, including those not specified in this verdict, except those particulars in which this verdict specifically provides otherwise." Section 2 of the award determines that the wills dated January 14, 2010 (referred herein as the "Arizona Will"), March 6, 2011, and July 13, 2014 (together referred herein as the "Lakewood Will")[2] "are of no effect, except where this verdict specifically provides otherwise" (ex. A to petition).

At petitioners' request the Beth Din issued a January 6, 2021 clarification in English (clarification). Section 3 of the clarification provides that 100% of 911-923 Walton Ave., 829 Greenwood Ave., 1212 Grant Ave. and 225 Cross Bronx [Expressway]; 50% 65 W. 192nd St.,

[2] The names assigned to the wills indicate the geographic locations where they were executed.

1180-1182 Lebanon St.; 11.305% of 409 W. 129th St. belong to[3] the SF Trust. Section 4 of the clarification provides that 50% of 65 W 192 St. and 1180 – 1182 Lebanon St.; and 33% of 409 W. 129th St. belong to the JSF Trust (*id.*).

DISCUSSION

Under New York law "an arbitrator's rulings, unlike a trial court's, are largely unreviewable" (F*alzone v NY Central Mut. Fire Ins. Co.*, 15 NY3d 530, 534 [2010]). "A court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*id.*; CPLR § 7511 [b] [1] [iii]). "Even where an arbitrator has made an error of law or fact, courts generally may not disturb the arbitrator's decision" (*id.*).

Moving respondents make several arguments in opposition to affirming the Beth Din's determination and in support of their cross motion to vacate that determination. Moving respondents argue that pursuant to CPLR § 7502 (2) the proper venue for this proceeding is Kings County not New York County; petitioner's failed to comply with a condition precedent to filing this proceeding by obtaining authorization in writing by a majority of the Beth Din; the determination is invalid because it concerns the distribution of assets under testamentary instruments which the Beth Din has no authority to determine; one of the three arbitrators, Rabbi Avraham Rosenberg, undisclosed involvement in the underlying transactions tainted the proceedings; the clarified award made substantive modification to the first award and was rendered more than twenty days after the first award and is therefore invalid under CPLR § 7509; to the extent that the clarified award was based on trusts it deprived respondents of their rights

[3] Footnote 2 of the clarification explains that the Beth Din has "used the term 'belong to' to reflect a declaration as to the current actual and beneficial ownership of the properties and assets at issue as of the date of the May 6th Judgment."

under CPLR § 7506 because the trust instruments were not presented to the Beth Din; and necessary and indispensable parties were missing from the arbitration.

As an initial matter, petitioners assert that moving respondents' cross motion to vacate the Beth Din determination is time barred. Relying on *1000 Second Ave. v Pauline Rose Trust* (171 AD2d 429 [1st Dept 1991]) petitioners argue that moving respondents' cross motion to vacate the Beth Din's determination is untimely pursuant to CPLR § 7511 (a) because it was not made within the ninety day period allowed under section 7511. However, *1000 Second Ave.* is distinguishable because unlike here the petition was to vacate the arbitration (*id.*). Indeed, the Court *1000 Second Ave.* observed that "[w]hile an aggrieved party may wait to challenge an award until the opposing party has moved for its confirmation, it does not extend the time in which the aggrieved party may move to vacate or modify the award" (*id.* at 430). The First Department reaffirmed the two avenues available for opposing an arbitration award in *Pine St. Assoc., LP v Southridge Partners, LP* when it observed that "a party may oppose an arbitral award either by motion pursuant to CPLR 7511 (a) to vacate or modify the award within 90 days after delivery of the award *or* by objecting to the award in opposition to an application to confirm the award notwithstanding the expiration of the 90-day period" (107 AD3d 95, 100 [1st Dept 2013] [emphasis supplied] *but see Barclays Capital Inc. v Leventhal*, 28 Misc3d 1222[A] [SC NY Co 2017]). Therefore, the merits of moving respondents' arguments will be addressed since under controlling First Department case law they are permitted to raise their objections to the Beth Din's determination by objecting to petitioners' application to confirm it.

Venue

Moving respondents argue that pursuant to CPLR § 7502 (c) the proper venue for this proceeding is Kings County because with the exception of Zlata Freidman and Liba Magid who now reside in New Jersey all the parties reside in Kings County and the arbitration was conducted in Kings County. Moving respondents also aver that none of the parties reside in New York County. However, 7502 (c) pertains to venue for a party seeking provisional remedies when an arbitration is pending. Here the arbitration was decided by the Beth Din upon the issuance of the award and the clarification. Therefore, CPLR § 7502 (a) is applicable since it addresses first applications to the court. Subsection (i) requires that a special proceeding brought pertaining to an arbitration "shall be brought in the court and county specified in the [arbitration] agreement." Where, as here, there is no county specified in the arbitration agreement, "the proceeding may be brought in any county" (CPLR §7502 [a] [ii]). Consequently, venue in New York County is proper.

Condition Precedent to Initiation of the Proceeding

In support of their argument that petitioners failed to fulfill a required condition precedent before initiating this proceeding, moving respondents quote language from a handwritten addendum dated May 13, 2019, to the parties' arbitration agreement. The language relied on by moving respondents is "[w]e further agree that no party shall seek any relief from secular court, unless authorized in writing by a majority of the arbitrators" (ex. B to petition). According to moving respondents, petitioners failure to obtain written authorization by a majority of the arbitrators, deprives them of standing to initiate this proceeding.

Petitioners' note that the arbitration agreement also provides "that the award of the arbitrators shall be in writing and shall be signed by a majority of the arbitrators and need not be

acknowledged or notarized to be confirmed or enforced" (ex. B to petition) indicating that post-award steps are not required to pursue enforcement of the award in court.

"The fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties' intent. . . . [and] '[t]he best evidence of what parties to a written agreement intend is what they say in their writing.' Thus, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms'" (*Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569 [2002] [internal citations omitted]; *see Marin v Constitution Realty, LLC*, 28 NY3d 666, 673 [2017]; *IDT Corp. v Tyco Group, S.A.R.L.*, 13 NY3d 209, 214 [2009]). "Further, a contract should be 'read as a whole, and . . . interpreted as to give effect to its general purpose'" (*Beal Sav. Bank v Sommer*, 8 NY3d 318, 324-325 [2007], quoting *Matter of Westmoreland Coal Co. v Entech, Inc.*, 100 NY2d 352, 358 [2003]; *see Marin*, 28 NY3d at 673). "'[P]articular words should be considered, not as if isolated from the context, but in the light of the obligation as a whole and the intention of the parties manifested thereby'" (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 39 [2018], quoting *Kolbe v Tibbetts*, 22 NY3d 344, 353 [2013]). "[I]mportantly, '[i]n construing a contract, one of a court's goals is to avoid an interpretation that would leave contractual clauses meaningless'" (*Georgia Malone & Co. v E&M Assoc.*, 163 AD3d 176, 186 [1st Dept 2018] (citation omitted); *see Cortland St. Recovery Corp.*, 31 NY3d at 39; *Beal Sav. Bank*, 8 NY3d at 324).

Here, the two provisions may be read in harmony so as to give meaning to each provision while effectuating the overall purpose of the parties' agreement to arbitrate. Achieving that harmony requires bearing in mind the legal maxim that "equity will act only when no adequate remedy is available at law" (*Breed v Barton*, 54 NY2d 82, 87 [1981]). The language from the

arbitration agreement relied on by moving respondents refers to the parties invoking the court's equitable jurisdiction whereas the language relied on by petitioners refers to the parties enforcing a remedy available to them at law and thus the two provisions would be invoked at different stages in the resolution of the parties' dispute.

The prohibition against seeking *relief* in a secular court absent an authorization in writing by a majority of the arbitrators relied upon by moving respondents means none of the parties could go to a court seeking to invoke the equitable jurisdiction of the court to obtain preliminary injunctive relief without a majority of the arbitrators' written approval (*cf Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.* ["'Relief' also means deliverance from oppression, wrong, or injustice. In this sense it is used as a general designation of the assistance . . . of the court, particularly in equity."]). The evident laudable goal of this provision is to allow the Beth Din an opportunity to resolve preliminary issues with the parties thereby potentially negating a need to seek the court's intervention.

The provision delineating that the written award need not be acknowledged or notarized to be confirmed relied upon by petitioners means that once the Beth Din issued its award/verdict, no further steps were required before seeking confirmation of the award in court which is a legal remedy afforded by CPLR § 7510. Adopting moving respondent's reading of the arbitration agreement as requiring written approval from a majority of the Beth Din before seeking confirmation of the award in effect reads the provision as requiring the parties to go back to the arbitrators and asking did you really mean what you said in the arbitration award you just issued. Such a reading would then render the provision that the award need not be acknowledged or notarized before confirmation by a court meaningless. Therefore, the arbitration agreement does not require petitioners to seek written approval from a majority of the arbitration panel before

seeking confirmation of the award in court. In any event even if the arbitration agreement did impose such a precondition to a confirmation proceeding, authorization was obtained in the January 6, 2021 clarification wherein the Beth Din states that the clarification of the judgment was issued "for purposes of enforcement and related court proceedings" (ex. A to petition, at 1 of Clarified Judgment).

The Beth Din Exceeded Its Authority

Moving respondents argue that under longstanding case law the Beth Din does not have authority to determine matters concerning the distribution of property under testamentary instruments and that because the May 6, 2020 award refers to the parents' wills and the manner in which their property shall be distributed to the parties under those wills, the Beth Din's award must be vacated.

Petitioners respond that the Beth Din could not have determined the distribution of the properties under a will because the properties were transferred *inter vivos* into the trusts prior to the passing of the parents and that references to the wills was merely to determine the parents' wishes under Rabbinical law. Petitioners aver that the clarification makes plain that the Beth Din awarded the properties back to the trusts for the *pro rata* benefit of Jacob's children.

This issue presents an interesting intersection of Rabbinical law and secular law. Jacob's wills were only an issue since under Rabbinical law the distribution of assets that are not owned by an individual because they were transferred to trusts or other legal entities (pursuant to secular law) in their lifetime may be determined by evaluating the intent of the individual gleaned from his/her Halachic (Jewish) will, a binding instrument under Rabbinical law (Honigwachs affd. ¶ 9). The parties September 2019 agreement memorialized that they wanted to be bound by this

principle because it provides that even though the parents had transferred their assets to trusts, the parties agreed to respect their parents' wishes as reflected in their Halachic wills.

Nor is it a violation of public policy to consider Jacob's Halachic wills in the arbitration to determine the beneficial distribution of the properties since the arbitrators were not resolving distribution of estate assets (*accord Estate of Stella Spanos*, 1992 NYLJ LEXIS 2639 at * 6 [Sur Ct Nassau Co 1992] [holding since the real property at issue passed by operation of law, not violative of public policy for beneficiaries of an estate to arbitrate their dispute concerning the property in their individual capacities]; *cf Swislocki v Spiewak*, 273 AD 768 [1st Dept 1947] [recognizing arbitrability of "funds originating in an estate but presently in a status beyond any stage of estate administration"]) but rather matters relating to *inter vivos* trusts and Surrogate's Court does not have exclusive jurisdiction over disputes surrounding *inter vivos* trusts (*Parker v Am. Assoc. of Univ. Women*, 185 AD3d 471, 471 – 472 [1st Dept 2020] [recognizing Surrogate's Court and Supreme Court have concurrent jurisdiction over *inter vivos* trusts]). Moreover, the Beth Din's clarification makes clear that it was awarding the properties back to the trusts for the *pro rata* benefit of the parties. Therefore, the Beth Din did not exceed its authority.

Rabbi Avraham Rosenberg's Involvement With An Underlying Transaction

Moving respondents contend that during the arbitration proceedings Reuven argued that the Lakewood Will, which according to Reuven authorized his control and ownership of the properties, was the controlling will and that it expressed his parents' true intent. Moving respondents further contend that petitioners and another sibling argued during the arbitration that the New York Will, which again according to Reuven "revoked" his control and ownership of the properties and "restored" them to the all the siblings, was the controlling document and that the Lakewood Will was invalid (Reuven affd. ¶ 10).

The dispute as to which will expressed the intent of the parents is the basis upon which moving respondents argue that Rabbi Rosenberg's membership on the arbitration panel tainted the proceedings. Moving respondents assert that Rabbi Rosenberg's involvement in assisting Jacob in preparing the New York Will upon which the Beth Din relied in making its determination was not disclosed until the second to last session (Reuven affd. ¶¶ 20 – 24). Moving respondents acknowledge that they were aware that Rabbi Rosenberg met with the parties about their father's *inter vivos* gifts to his children and that he was present at the signing of the New York Will "because he had over forty years of experience in these matters and wanted to make sure things were done properly and in a technically correct manner" (*id.* ¶ 18). But it was only "during the course of the Beth Din Proceedings" that the moving respondents learned "that Rabbi Rosenberg . . . was, in effect, the prime mover behind the New York Will and that Rabbi Rosenberg had, among other things, purportedly obtained Jacob's 'approval' for the distribution of assets reflected in the New York Will" (*id.* ¶ 20). Reuven maintains that some of siblings had an opportunity to review the New York Will prior to Jacob's execution of it but that he did not have the opportunity to review it (*id.* ¶ 21). According to moving respondents Rabbi Rosenberg's involvement in the preparation of the New York will calls into question the objectivity and fairness of the Beth Din creating at least an appearance of bias and partiality on Rabbi Rosenberg's part in favor of ensuring that the New York Will was upheld.

According to petitioners while the New York Will was being drafted on at least one occasion Rabbi Rosenberg met with all of Jacob's children together, including Reuven, to discuss the proposed distribution of Jacob's properties and all of Jacob's children were provided an opportunity to review the New York Will including the dispute resolution process contained in it specifying that Rabbi Rosenberg would resolve any disputes among the beneficiaries

(Friedman affd. ¶¶ 11 – 12). Indeed, according to petitioners under Rabbinical law it is common to have the Rabbi who was involved in the creation of a document determine disputes arising out of the document (Honigwachs affd. ¶ 6) and is the precise reason why the parties selected Rabbi Rosenberg to serve on the Beth Din (Furst affd. ¶ 5). Moreover, petitioners recollect that prior to the start of the first arbitration session Rabbi Rosenberg disclosed that he was the author of the New York Will (Friedman affd. ¶ 18; Furst affd. ¶ 6).

"A party seeking to set aside an arbitration award for alleged bias of an arbitrator must establish his claim by clear and convincing proof. And the mere inference of partiality . . . is not sufficient to warrant interference with the arbitrator's award" (*Infosafe Sys. v Int'l Dev. Partners*, 228 AD 2d 272, 272 – 273 [1st Dept 1996] [internal citations and quotation marks omitted]; *see also Fernandex v NYCTA*, 178 AD3d 549 [1st Dept 2019]).

Moving respondents do not submit any evidence that Rabbi Rosenberg's participation in the drafting of the New York Will had any effect upon his ability to be a neutral arbitrator other than a conclusory statement that Rabbi Rosenberg had a vested interest in seeing that the New York Will was the pivotal document relied upon by the Beth Din in reaching its determination. Indeed, "if the parties [to an arbitration] agree, the relationship of an arbitrator . . . to the matters in dispute will not disqualify him" (*Siegel v Lewis*, 40 NY2d 687, 690 [1976]; *see also Piller v Schwimmer*, 135 AD3d 766, 768 [2nd Dept 2016]). Moreover, moving respondents waived any discernable objection they had in Rabbi Rosenberg's sitting on the Beth Din since by their own admission they knew he was connected to the New York Will in some manner at the outset of the arbitration process but nevertheless failed to raise their objection during the arbitration and continued to participate (*Piller*, 135 AD3d at 768 ["observing "where a party becomes aware of a relationship between an arbitrator . . . to the matters in dispute that could lead to bias, if the party

continues to participate in the arbitration, the party has waived his [or] her right to object to the award on this ground"]). Moving respondents' assertion that they did not find out the extent of Rabbi Rosenberg's connection to the New York Will until the second to last arbitration session even if sufficient to meet their burden (and it is not since they were on notice at the outset of the process) is not supported by the details of what they learned at this second to last session that has now caused them so much concern. Thus, moving respondents have failed to establish by clear and convincing proof bias on the part of Rabbi Rosenberg much less the entire Beth Din panel.

Clarification Substantively Modified Award, Is Untimely and Based Upon Evidence Not Presented To The Beth Din

Moving respondents argue that the clarification was issued beyond the twenty-day period permitted for modifications pursuant to CPLR § 7509 and in any event is impermissible because it goes beyond the non-substantive, form modifications permitted pursuant to CPLR § 7511(c) and is based upon trust documents not presented to the Beth Din thereby depriving them of their rights under CPLR § 7505. In support of these last two arguments moving respondents posit that the clarification is grounded upon a different rationale than the initial award which determined that the New York Will was the operative document because the clarification determines that two trusts that were not mentioned in the original award and were not presented to the Beth Din were controlling. While moving respondents aver that the trust documents were not presented to the Beth Din they concede that the result from both the clarification and the initial determination is the same since both take control of the properties away from Reuven. Finally, moving respondents note that the clarification contains detailed findings concerning dozens of separate properties and other provisions not mentioned in the initial award.

Petitioners acknowledge that they asked the Beth Din to issue a clarification of the initial award because of translation issues. They claim that Reuven objected to the use of the words

"estate" and "belong to" in the initial award and to address his objections they asked the Beth Din to clarify the initial award in English by identifying each trust and custodian by property and asset using a list of properties previously shared with Reuven. According to petitioners Reuven never objected to the list of properties or the trusts included therein (Friedman affd. ¶ 39).[4] Petitioners argue that the clarification merely more specifically identifies which entity should hold legal title to which properties/assets and is the reason why it is longer and confirms the Beth Din's intent to award the properties to the children *pro rata* through the trusts thereby addressing Reuven's claims of ambiguity about the use of the Hebrew term translated as "belong to".

Significantly moving respondents do not identify any specific new findings in the clarification other than identifying the trusts holding the properties for the benefit of Jacob's children. Nor do they identify any relief in the clarification that was not in the initial award. While moving respondents proclaim surprise (but not prejudice) by the mention of the trusts, Reuven and all of his siblings agreed in the arbitration agreement that the Beth Din was authorized to resolve disputes as to beneficial ownership and control of the properties regardless of "record owner" and he and his siblings executed the arbitration agreement in their capacity "as individuals, shareholders, members, Trustees, officers, beneficiaries or any other capacity." Moreover, and most significantly Reuven does not deny that the properties that were in dispute and detailed in the clarification were held in the trusts created by his father (ex. B to petition). Indeed, Reuven signed an agreement acknowledging that the properties were held in trusts and giving the Beth Din authority to determine his parents' wishes based on their will made pursuant to Jewish law. In addition, Reuven did not object to the list of properties and trusts provided by petitioners to the Beth Din and Reuven in furtherance of facilitating the clarification (Friedman

[4] Petitioners' memorandum of law also cites to a "Statement of Additional Facts". However, there is no document uploaded to the New York State Courts Electronic Filing system entitled "Statement of Additional Facts".

affd. ¶ 39). Therefore, because the clarification did not include any new findings nor did it grant any relief different from the initial award and because Reuven does not dispute that the properties were held in the trusts identified in the clarification; the clarification was not a modification subject to CPLR ¶¶ 7509 & 7511(c) and his rights under CPLR § 7506 were not violated (*accord Beleggingsmaatschappij Wolfie, BV v AES Ecotek Europe Holdings, BV.*, 21 AD3d 858, 859 [1st Dept 2005][holding "[s]ince the original final award was not modified, there could have been no failure to comply with CPLR 7509 or 7511.").

Necessary And Indispensable Parties Were Missing From The Arbitration

Moving respondents argue that the initial award and the clarification are invalid because the record owners of the properties were not parties to the arbitration by the Beth Din. However, as previously noted, and petitioners argue Reuven and all of his siblings agreed in the arbitration agreement that the Beth Din was authorized to resolve disputes as to beneficial ownership and control of the properties regardless of "record owner" and he and his siblings executed the arbitration agreement in their capacity "as individuals, shareholders, members, Trustees, officers, beneficiaries or any other capacity." Reuven does not dispute that he controlled the properties since he asserts that the initial award and clarification took the properties "away from him." Therefore, petitioners have met their burden of showing that the intent to arbitrate may be imputed to the title owners of the properties under the theory of alter ego/veil piercing (*accord TNS Holdings Inc. v MKI Sec. Corp.*, 92 NY2d 335, 339 [1998] [observing that nonsignatories to an arbitration agreement may be bound to an arbitration agreement under the theories of alter ego and veil piercing]; *Rural Media Grp., Inc. v Yraola*, 137 AD3d 489 [1st Dept 2016] [same]) and the title owners of the properties are bound to the Beth Din's determination through Reuven's actions.

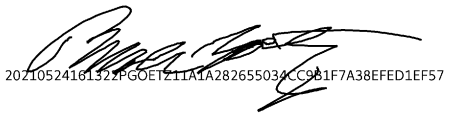
CONCLUSION

Based on the foregoing, it is

ORDERED that petitioners' motion to confirm the May 6, 2020 arbitration award as clarified by the January 6, 2021 clarification is granted; and it is further

ORDERED that moving respondents' cross motion is denied; and it is further

ORDERED that petitioners shall submit a proposed judgment within 20 days of notice of entry of this order.



5/24/2021
DATE

PAUL A. GOETZ, 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