

No. 26A382

**In the
Supreme Court of the United States**

SAMUEL STRULOVITCH, MS ACQUISITION I, LLC, AND 10 CLAREMONT AVENUE, LLC,
Applicants,

v.

MOSHE BAIN,

Respondent,

and

PARKVIEW OPERATING CO., LLC, WESTCHESTER GARDENS REALTY LLC,
JONATHAN BLEIER, AND ROBERT BLEIER,

Nominal Respondents.

**SUPPLEMENTAL APPENDIX TO RESPONSE IN OPPOSITION TO
EMERGENCY APPLICATION FOR STAY PENDING APPELLATE REVIEW**

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September 28, 2026

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TABLE OF CONTENTS

	Page
Supreme Court of the State of New York, County of Rockland, Petition to Confirm Arbitral Award (Aug. 25, 2024), Doc. No. 1.....	1a
Petitioner-Plaintiff Moshe Bain’s Memorandum of Law in Support of Temporary Restraining Order and Preliminary Injunction (Nov. 21, 2024), Doc. No. 18	5a
Supreme Court of the State of New York, County of Westchester, Transcript of Conference Proceedings held Feb. 13, 2025	18a
Supreme Court of the State of New York, County of Westchester, Order Granting Preliminary Injunction (Apr. 22, 2025), Doc. No. 83.....	50a
Rabbinical Court Beis Aaron, Summons (Feb. 19, 2026), Doc. No. 115	52a
Supreme Court of the State of New York, Appellate Division: Second Department, Attorney Affirmation in Opposition to Motion for Stay Pending Appeal (May 21, 2026), Doc. No. 11	54a

FILED: WESTCHESTER COUNTY CLERK 12/07/2024 07:21 PM

INDEX NO. 75548/2024

NYSCEF DOC. NO. 25

RECEIVED NYSCEF: 12/07/2024

FILED: ROCKLAND COUNTY CLERK 08/29/2024 03:58 PM

INDEX NO. 035405/2024

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 08/29/2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application for a Confirmation of	:
Arbitral Award of SAMUEL STRULOVITCH,	:
	:
	: Index No.
Petitioner,	:
	:
- against -	: VERIFIED PETITION TO
	: CONFIRM ARBITRAL AWARD
	:
JONATHAN BLEIER, WESTCHESTER GARDENS	:
REALTY LLC, and PARKVIEW OPERATING CO.,	:
LLC,	:
	:
Respondents.	:
	:
	:
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Petitioners Samuel Strulovitch (“Strulovitch” or “Petitioner”), by his attorneys, allege as follows upon knowledge as to themselves and their acts and as to all other matters upon information and belief:

PARTIES, JURISDICTION, AND VENUE

1. Strulovitch is a resident of Kings County in New York.
2. Respondent Jonathan Bleier (“Bleier”) is a resident of Rockland County in New York.
3. Respondent Westchester Gardens Realty LLC (“Westchester Gardens”) is a New York corporation with a registered address of 199 Community Drive, Member, New York.
4. Respondent Parkview Operating Co., LLC (“Parkview”) is a New York corporation with a registered address of 32 East 57th Street, 10th Floor, New York, New York.
5. This Court has jurisdiction over Bleier, Westchester Gardens, and Parkview (collectively, “Respondents”) because they are residents of New York.

FILED: WESTCHESTER COUNTY CLERK 12/07/2024 07:21 PM

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6. Venue is proper in this Court because the place of arbitration was this County and Strulovitch resides in this County.

THE DISPUTE, ARBITRATION, AND AWARD

7. A dispute arose between Petitioner and Respondents regarding the ownership of the entities relating to realty and operating companies for Westchester Center for Rehabilitation and Nursing: Parkview and Westchester Gardens.

8. Thereafter, the disputed matter was submitted for arbitration to Bais Din Rabbinical Court of Mechon L'Hoyroa, located at 168 Maple Avenue, Monsey, New York (hereinafter "Bais Din").

9. Following due notice received by the parties, the parties appeared before Bais Din and the arbitrators subscribed to their oaths of office and proceeded to hear the proofs of the parties herein.

10. The parties presented their claims, evidence, and arguments to Bais Din.

11. Bais Din issued an award in writing, dated and affirmed the 17th day of April, 2024 (the "Award").

12. Annexed hereto as **Exhibits A** and **B** are true copies of the Award and a certified translation of the Award, respectively.

13. A copy of the Award was received by Petitioner and Respondents.

14. This petition is brought within one year after the aforesaid delivery of the award to Petitioners, and that the award has not been vacated or modified upon any ground specified in CPLR § 7511.

FILED: WESTCHESTER COUNTY CLERK 12/07/2024 07:21 PM

INDEX NO. 75548/2024

NYSCEF DOC. NO. 25

RECEIVED NYSCEF: 12/07/2024

FILED: ROCKLAND COUNTY CLERK 08/29/2024 03:58 PM

INDEX NO. 035405/2024

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 08/29/2024

WHEREFORE, Petitioner respectfully requests that the Court confirm the Award pursuant to CPLR 7510, enter final judgment pursuant to CPLR 7514, and grant any other relief that this Court deems just and proper.

Dated: August 25, 2024
New York, NY

BRONSTEIN, GEWIRTZ & GROSSMAN, LLC

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FILED: WESTCHESTER COUNTY CLERK 12/07/2024 07:21 PM INDEXED 08/28/2024

NYSCEF DOC. NO. 25

RECEIVED NYSCEF: 12/07/2024

FILED: ROCKLAND COUNTY CLERK 08/29/2024 03:58 PM INDEXED 08/29/2024

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 08/29/2024

VERIFICATION

Samuel Strulovitch deposes and says:

I am a named plaintiff in the captioned proceeding. I have read the foregoing Petition to Confirm Arbitral Award, know the contents thereof, and the same is true to my knowledge, except as to matters therein stated to be upon information and belief, and as to those matters I believe same to be true.

I affirm this 25 day of August, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



Samuel Strulovitch

FILED: WESTCHESTER COUNTY CLERK 11/21/2024 09:51 AM

INDEX NO. 75548/2024

NYSCEF DOC. NO. 18

RECEIVED NYSCEF: 11/21/2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

In the Matter of the Application of
MOSHE BAIN,

Index No. 75548/2024

Petitioner-Plaintiff,

-against-

SAMUEL STRULOVITCH, on his own behalf and on
behalf of MS ACQUISITION I, LLC and 10
CLAREMONT AVENUE, LLC,

Respondents-Defendants,

-and-

PARKVIEW OPERATING CO., LLC, WESTCHESTER
GARDENS REALTY LLC, TOVAH BAIN, JONATHAN
BLEIER, and ROBERT BLEIER,

Nominal Defendants.

-----X

**PETITIONER-PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

PRELIMINARY STATEMENT

Petitioner-Plaintiff Moshe Bain (“Bain” or “Petitioner”) respectfully submits this memorandum of law in support of his application, via Order to Show Cause, for a temporary restraining order and preliminary injunction. Specifically, Petitioner seeks to stay an action pending in Supreme Court, Rockland County captioned *Strulovitch v. Bleier et al.*, Index No. 035405/2024 (the “Rockland Action”), and prevent Respondents-Defendants from taking any other actions to confirm and/or enforce an illegal arbitral award.

Samuel Strulovitch (“Strulovitch”), the primary Respondent-Defendant at bar, initiated the Rockland Action to confirm said arbitral award, which purports to grant him partial ownership of Parkview Operating Co., LLC, which owns the Westchester Center for Rehabilitation & Nursing (hereafter the “Nursing Facility”), and Westchester Gardens Realty LLC, which owns the realty on which the Nursing Facility is located (hereafter the “Nursing Facility Property”). But Strulovitch improperly excluded Petitioner from both the Rockland Action and from the underlying arbitration (which was before a panel of Rockland County Rabbinical Court judges)—notwithstanding that Petitioner has a documented, uncontested ownership interest in the Nursing Facility’s operating and realty companies, and notwithstanding that confirmation of the arbitral award would dilute these ownership interests. In so doing, Strulovitch denied Bain procedural and substantive due process by deliberately omitting him from the arbitration.

To remedy that fatal flaw, Petitioner recently initiated his own arbitration before a different, Brooklyn-based Rabbinical Court. Unlike Strulovitch, though, Bain joined all the necessary parties. At the same time, Bain obtained a remedy akin to a TRO from that Brooklyn-based Rabbinical Court precluding Strulovitch from seeking to enforce the award he obtained.

Given the procedural quagmire and due process issues created by Strulovitch, Petitioner seeks to stay the Rockland Action (and any other actions Strulovitch might file in an attempt to confirm the flawed original Rabbinical Court Award), in order to allow the latest Rabbinical Court arbitration to play out. In the alternative, to the extent Strulovitch refuses to participate in the arbitration commenced by Bain (which would be contrary to community norms and Strulovitch's own prior invocation of the arbitration process), the Court should stay enforcement of the arbitral award pending its adjudication of Baine's specific performance claim that he has a contractual right to acquire any membership interests offered to Strulovitch on account his arbitration award. Absent such a stay, Petitioner will be prejudiced because Strulovitch may obtain control of membership interests to which he is not entitled on account of Bain's right of first refusal with respect to such interests.

RELEVANT FACTUAL BACKGROUND¹

Beginning in 2010, the parties entered into a series of integrated written agreements under which Petitioner and his partners (all of whom are nominal defendants to the action at bar) would acquire 100% of the Nursing Facility, a Westchester nursing home, a facility which is highly regulated by the New York State Department of Health ("DOH"). Those written agreements included an asset purchase agreement (the "APA"), an application to the DOH for approval of the transaction, and an assumption of loan agreement, all of which are attached to the Verified Petition-Complaint. The DOH ultimately approved the acquisition.

Strulovitch was not due to receive any monetary compensation under the APA. He therefore communicated to Jonathan Bleier, Petitioner's primary partner and one of the nominal

¹ A full recitation of the facts is set forth in the Verified Petition-Complaint which is incorporated herein by reference.

defendants hereto, that he would block the acquisition. To placate Strulovitch, Bleier orally agreed to pay Strulovitch a monthly “consulting fee” consisting of \$10,000 monthly payments over a period of approximately ten years. From 2011 to 2020, Strulovitch accepted these monthly payments, ultimately receiving a total of \$1.3 million. Strulovitch never claimed during this period that he had any ownership interest in the Westchester nursing home.

It was not until 2022, after Bleier had ceased paying him monthly “consulting fees,” that Strulovitch claimed, for the first time, an ownership interest in either the Nursing Facility or the Nursing Facility Realty. Bleier rejected this claim.

Strulovitch then commenced the underlying arbitration before a Rockland County Rabbinical Court. Notably, the only party on whom Strulovitch served notice of this arbitration was Bleier, even though Strulovitch knew that Petitioner and others also had ownership interests in the Nursing Facility and the Nursing Facility Realty. Critically, Petitioner had never agreed to arbitrate any disputes over the Nursing Facility ownership before that Rockland County Rabbinical Court. The only persons who participated in the underlying arbitration were Strulovitch and Bleier.

After holding four arbitration hearings, a panel of Rabbinical Court judges issued the challenged Award, dated April 17, 2024. Without providing any justification or reasoning whatsoever, the Award gave Strulovitch “22% in the aforementioned Nursing Home [Operation and Realty].” (Ex. 1.) There are no transcripts from the underlying arbitration hearings.

Strulovitch then initiated the Rockland Action against Bleier to confirm the Award pursuant to Article 75 of the CPLR. As in the underlying Rabbinical Court arbitration, Strulovitch failed to name anyone aside from himself and Bleier as parties to that proceeding— notwithstanding the fact that Petitioner and others have documented ownership interests in the

Nursing Facility and the Nursing Facility Realty which would be diluted if the Award is confirmed, and notwithstanding the fact the Petitioner has a Right of First Refusal regarding any ownership interests transferred to Strulovitch.

The Rockland Action has been assigned to the Hon. Keith Cornell, A.J.S.C. The NYSCEF docket reflects that no answering papers have been filed and no discovery has occurred; it further reflects that counsel for Strulovitch and Bleier stipulated to an adjournment of the underlying Article 75 petition until December 13, 2024.

Petitioner recently asked a different, Brooklyn-based Rabbinical Court to arbitrate the dispute over the Nursing Facility and the Nursing Facility Realty, taking into account his ownership interests in those entities. Unlike Strulovitch, Petitioner served everyone with asserted ownership interests in the Nursing Facility and the Nursing Facility Realty of this pending arbitration, including Strulovitch. The Brooklyn Rabbinical Court issued the equivalent of a TRO preventing Strulovitch from enforcing the Award until the Brooklyn Rabbinical Court adjudicates Petitioner's claims. (Ex. 14.) The Brooklyn Rabbinical Court further authorized Petitioner to have the TRO "certified by the civil courts, so that [Strulovitch] cannot continue there until after [he] shall have received a full verdict covering all the partners." (*Id.*)

LEGAL STANDARDS

Petitioner seeks a preliminary injunction pursuant to CPLR § 7502(c) precluding Strulovitch from enforcing the Award pending the outcome of the arbitration commenced by Petitioner. To show entitlement to injunctive relief pursuant to CPLR § 7502(c), the party seeking the injunction must demonstrate that the arbitral award would be rendered meaningless or ineffectual without the granting of the injunction. *See, e.g., H.I.G. Capital Mgmt. v. Ligator*, 233 A.D.2d 270 (1st Dep't 1996); *Chiavarelli v. State Univ. of N.Y. Health Sci. Ctr.*, 248 A.D.2d 712

(2d Dep’t 1998). Critically, the party seeking injunctive relief need not demonstrate irreparable harm, a probability of success on the merits and balancing of the equities. *See National Telecommunications Ass’n, Ltd. v. National Communications Ass’n, Inc.*, 189 A.D.2d 573 (1st Dep’t 1993); *see also Guarini v. Severini*, 233 A.D.2d 196 (1st Dep’t 1996) (“under CPLR 7502(c) the only consideration in deciding whether to grant a preliminary injunction is whether the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief”); *Suffolk Cty. Patrolmen’s Benevolent Ass’n v. County of Suffolk*, 150 A.D.2d 361, 361 (2d Dep’t 1989) (“CPLR 6301, which governs the grounds for the granting of preliminary injunctions and temporary restraining orders, is ‘simply inapplicable’ to applications for injunctive relief in such arbitrable controversies”).

Even if the Court were to find that Petitioner must satisfy the traditional elements to obtain injunctive relief, as set forth below, Petitioner can satisfy those elements as well. “The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual.” *Ruiz v. Meloney*, 26 A.D.3d 485, 486 (2d Dep’t 2006). “The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court.” *Id.* “Furthermore, even when the facts are in dispute, a court may find a likelihood of success on the merits; conclusive proof is not required.” *Id.*

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.

CPLR § 6301. “The determination whether to grant a motion for a preliminary injunction rests within the sound discretion of the Supreme Court, and requires a party to demonstrate a probability of success on the merits, a danger of irreparable injury in the absence of an injunction, and a balance of equities in that party’s favor. These elements must be established by clear and convincing evidence.” *Jones v. State Farm Fire & Cas. Co.*, 189 A.D.3d 1565, 1566 (2d Dep’t 2020) (citations omitted).

ARGUMENT

The Court Should Temporarily Restrain and Preliminarily Enjoin Any Confirmation of the Underlying Arbitral Award Until a Full and Fair Proceeding, With All Necessary Parties, Can Be Completed by the Rabbinical Court

I. Absent Injunctive Relief, Any Award Issued to Petitioner Will Be Rendered Ineffectual

As set forth above, in order to obtain a preliminary injunction in aid of arbitration, Petitioner need only demonstrate that an arbitration award will be rendered ineffectual absent the injunction. *See supra*. Here, absent a preliminary injunction precluding Strulovitch from enforcing the Award, any award obtained by Petitioner will be rendered ineffectual because the arbitration commenced by Petitioner challenges the Award. As such, to the extent Petitioner is afforded relief in the arbitration he commenced, it will be meaningless if Strulovitch is permitted to try and enforce the Award in the interim. Indeed, the Rabbinical Court panel in the arbitration commenced by Petitioner recognized that reality, and therefore, the panel issued the equivalent of a TRO/injunction precluding Strulovitch from seeking to enforce the Award. (*See Ex. 14*). This Court should do the same and grant Petitioner injunctive relief pending the outcome of the arbitration he commenced.

II. Petitioner Also Satisfies the Traditional Preliminary Injunction Elements

A. Petitioner Has Demonstrated a Likelihood of Ultimate Success on the Merits

Section 7511(b)(2) of the CPLR states that a challenged arbitral award “shall be vacated on the application of a party who neither participated in the arbitration nor was served with a notice of intention to arbitrate,” if the court finds that, *inter alia*, “a valid agreement to arbitrate was not made[.]” Here, it is undisputed that Bain did not participate in the original arbitration commenced by Strulovitch before the Rockland County Rabbinical Court, and that Strulovitch did not serve Bain with notice of said arbitration. The reason for both is obvious; Bain had never agreed to arbitrate any dispute regarding ownership of the nursing home.

The Court need look no further. The language of Section 7511(b)(2) is mandatory, not discretionary, and it requires vacatur of an arbitral award where there was no valid agreement to arbitrate. Petitioner Bain is thus very likely to ultimately prevail on the merits of his instant Article 75 action to vacate the original Rabbinical Court Award.

To the extent the Court wishes to look further, another ground for vacating an arbitral award is where the rights of a party were “prejudiced by one of the grounds specified” in Section 7511(b)(1), *e.g.*, “misconduct in procuring the award” or where an arbitrator “exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made.” There can be little doubt that Bain’s rights were prejudiced by the challenged Award—it purports to grant Strulovitch an ownership interest in the Nursing Facility and the Nursing Facility Property, which would necessarily dilute Bain’s ownership interests in both of those entities. Moreover, the Award simply ignores Bain’s contractual Right of First Refusal.

Indeed, if it is not vacated, Bain will exercise said right as to any membership interest purportedly conveyed to Strulovitch. Under analogous circumstances, Courts have not hesitated

to vacate arbitration awards that would dilute the ownership interests of a non-party to the arbitration. *See Terrace View Estates Homeowners Ass'n, Inc. v. Bates Drive Condominium*, 128 A.D.3d 975 (2d Dep't 2015); *Matter of Braver v. Silberman*, 90 A.D.3d 654 (2d Dep't 2011),

Similarly, there can be little doubt that Strulovitch engaged in “misconduct in procuring the award.” Strulovitch deliberately failed to notice Bain about the arbitration—even though he knew Bain has an ownership interest in the nursing home—and Strulovitch apparently represented to the Rockland County Rabbinical Court that this was a bilateral dispute between himself and Bleier. Thus, Bain was unable to assert his interests before the Rockland County Rabbinical Court.

Moreover, the Rockland County Rabbinical Court so imperfectly executed its power “that a final and definite award upon the subject matter submitted was not made.” The Award purports to give Strulovitch an ownership stake of 22% in the nursing home—but is utterly silent as to anyone else’s ownership stake, including that of Petitioner. Whose ownership interests would be diluted, and by how much, in order to grant Strulovitch his purported ownership interest? The Award contradicts the contractual agreements that the parties, including Strulovitch himself, had signed and been bound to for a decade, and apparently² credited Strulovitch’s allegations of a secret “side deal” with Bleier—even though Bleier could not unilaterally transfer ownership in the nursing home without his partners’ approval.

Stated differently, by crediting Strulovitch’s claim that he was entitled not only to \$1.3 million in payments over a period of ten years, but also to a substantial ownership stake in the nursing home, and then conjuring up a baseless numerical ownership figure of 22%, the challenged

² As noted, there is no transcript of the original Rockland County Rabbinical Court arbitration hearing and no explanation of the decision. (*See* Ex. 1.)

Award in effect rewrote all of the contractual agreements that the parties had signed and been bound to for a decade.

Accordingly, given that Bain did not receive notice of the arbitration commenced by Strulovitch, which resulted in the Award that directly implicates Bain's ownership interests in the Nursing Facility and the Nursing Facility Property, the Rockland Action should be stayed and Strulovitch should be barred from seeking to enforce the Award.

B. Danger of Irreparable Injury Absent TRO/Preliminary Injunction

Strulovitch will inevitably argue that all that is at stake here are the parties' respective ownership interests in the nursing home, which can be monetized and which therefore do not qualify as "irreparable injury." That is false. To the extent Strulovitch obtains an ownership interest in the Nursing Facility and Nursing Facility Property, he may also seek to take a role in the operation of those businesses. It is well established that interference with a business interest is a form of irreparable injury. *See David Harp Rest. Mgmt., Inc. v. Cromwell*, 183 A.D.2d 423, 423 (1st Dep't 1992); *Tappan Motors, Inc. v. Waterbury*, 318 N.Y.S.2d 125, 126 (Sup. Ct. Westchester Cty. 1971).

Likewise, any claim of ownership by Strulovitch may damage the Nursing Facility's business reputation and goodwill since if he is permitted to continue asserting his ownership claim he will cause confusion for the Nursing Facility's residents and their families, who are dependent on clear and accurate information as to who is responsible for their loved ones well-being. It is well-established that injury to business reputation and goodwill constitutes irreparable harm and merits injunctive relief. *See Second on Second Café v. Hing Sing Trading*, 66 A.D.3d 255, 272-73 (1st Dep't 2009); *see also CPTS Hotel Lessee LLC v. Holiday Hosp. Franchising LLC*, 171 A.D.3d 484, 485 (1st Dep't 2019). That is particularly true in the nursing home context, as the Court of

Appeals has held, “facility operations once compromised for lack of adequate funding may occasion irreparable harm within an especially fragile and dependent resident population.”

Brightonian Nursing Home v. Daines, 21 N.Y.3d 570, 578 (2013).

Accordingly, Bain faces multiple forms of irreparable harm absent a TRO and preliminary injunction precluding Strulovitch from seeking to enforce the Award.

C. Balance of the Equities

A balancing of the equities at bar favors the requested TRO/Preliminary Injunction. As an initial matter, Petitioner seeks to maintain the status quo—it is Strulovitch who is trying to disrupt it by rushing to confirm the original Award via the Rockland Action. Maintaining the status quo is of course the very purpose of a preliminary injunction. *See Ruiz*, 26 A.D.3d at 486; *see also Johnson v. Johnson*, 220 A.D.3d 482, 484 (1st Dep’t 2023) (“balance of the equities favors plaintiff, as the Supreme Court stay maintains the status quo”).

Equally important, Strulovitch acted inequitably by failing to name Bain as a party to the Rockland Action and failing to notice Bain of the underlying Rabbinical Court arbitration. It is inconceivable that Strulovitch was unaware of Bain’s (and his partners’) ownership interest in the nursing home—their names are all over the transactional documents. Yet Strulovitch only initiated the underlying Rabbinical Court arbitration as against Jonathan Bleier, giving Bain and his partners no opportunity to assert their rights. Strulovitch then doubled down on this strategy by naming only Bleier as a respondent to the Rockland Action.

In sharp contrast, Bain has made Strulovitch (and everyone else with an asserted ownership interest in the nursing home) a party to the instant action before this Court, and similarly noticed Strulovitch of the new arbitration that Bain recently initiated with the Brooklyn Rabbinical Court.

(See Ex. 14.) In other words, Bain is giving Strulovitch a full and fair opportunity to assert his claims—an opportunity he himself was denied.

For similar reasons, Strulovitch will not be prejudiced by a stay—he can arbitrate his ownership claims before the Rabbinical Court, and if necessary litigate Bain’s Article 75 petition and declaratory judgment claim at bar. Bain, in contrast, would be highly prejudiced if the Rockland Action is permitted to proceed, given that he is not a party to it and was not a party to the underlying arbitration whose Award the Rockland Action seeks to confirm.

III. In the Alternative, the Rockland County Action Should be Stayed Pending the Outcome of this Litigation

In the event that Strulovitch refuses to arbitrate Petitioner’s challenge to the Award, this Court should still issue a stay of Strulovitch’s attempt to enforce the Award pending the outcome Petitioner’s specific performance claim (third cause of action) in this case. CPLR § 2201 provides that “the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” New York courts have broad discretion to issue a stay, and do so pending the resolution of related proceedings and in the interests of judicial economy and avoiding inconsistent adjudications. *See Slifka v. Slifka*, 162 A.D.3d 530, 530 (1st Dep’t 2018) (affirming stay “pending resolution of the related action” in the interests of “judicial economy and the prevention of inequitable results”); *Concord Assoc., L.P. v. EPT Concord, LLC*, 101 A.D.3d 1574, 1575 (3d Dep’t 2012) (“stay would preserve judicial resources, further the interest of justice by preventing inequitable results and promote orderly procedure by furthering the goals of comity and uniformity” notwithstanding “the parties and issues are not completely identical”).

Here, Petitioner has asserted a specific performance claim to enforce his right of first refusal to acquire any interests in the Nursing Facility that may be transferred to Strulovitch. Given that the crux of that claim is a dispute over which party is entitled to ownership of those interests,

it would be a waste of judicial resources to allow Strulovitch to try and enforce his Award when any interest in the Nursing Facility would end up being acquired by Petitioner. Further, Petitioner will be prejudiced if a stay is not granted because Strulovitch may obtain control over membership interests to which he is not entitled on account of Petitioner's right of first refusal with respect to such interests. Accordingly, in the alternative, the Court should stay Strulovitch's attempt to enforce the Award pending the outcome of Petitioner's specific performance claim.

CONCLUSION

For the foregoing reasons, the undersigned respectfully submits that the proposed Order to Show Cause should be signed, that the Rockland Action should be stayed, and that Respondents-Defendants should be temporarily restrained and preliminarily enjoined from taking any further action to confirm the challenged arbitral Award.

Dated: White Plains, New York
November 21, 2024

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER: COMMERCIAL DIVISION: PART LSJ

-----x
In The Matter of the Application of :
MOSHE BAIN,

Petitioner-Plaintiff,

-against-

: INDEX #:
75548/2024

SAMUEL STRULOVITCH, on his own behalf and on
behalf of MS ACQUISITION I, LLC. and
10 CLAREMONT AVENUE, LLC.,

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and
PARKVIEW OPERATING CO., LLC., WESTCHESTER GARDENS
REALTY, LLC., TOVAH BAIN, JONATHAN BLEIER and
ROBERT BLEIER,

Nominal Defendants. :
-----x

Conference Proceedings

Westchester Supreme Courthouse
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, New York 10601
February 13, 2025

B E F O R E: HONORABLE LINDA S. JAMIESON,
Supreme Court Justice

BARBARA MARCIANTE, SCR
Senior Court Reporter

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Proceedings

1 THE COURT: Bain versus Strulovitch. Go ahead,
2 Clerk.

3 COURT CLERK: Index Number 75548 of 2024.
4 Appearances, please.

5 MR. HARRINGTON: William Harrington from Bleakley
6 Platt & Schmidt on behalf of the Plaintiff. Good morning,
7 Your Honor.

8 THE COURT: Good morning.

9 MR. CHEN: Good morning, Your Honor. David Chen,
10 also from Bleakley, Platt & Schmidt.

11 THE COURT: Good morning.

12 MR. SOLOVEICHNIK: Good morning. Yitzchak
13 Soloveichik of Bronstein Gewirtz & Grossman for the
14 Defendant, Samuel Strulovitch.

15 THE COURT: Good morning.

16 MR. DONNELLAN: Good morning, Your Honor. Alfred
17 Donnellan, DelBello, Donnellan, Weingarten, Wise &
18 Wiederkehr, attorneys for Nominal Defendants, Westchester
19 Gardens Realty and Parkview Operating Co., LLC.

20 THE COURT: Good morning.

21 MR. SCHARF: Good morning, Your Honor. Y. David
22 Scharf and Aaron Lauchheimer, from Morrison Cohen, LLP.,
23 909 Third Avenue, New York, New York on behalf of the
24 Nominal Defendant, Jonathan Bleier.

25 THE COURT: Everybody, please be seated. Do we

Proceedings

1 have everybody? Yes, we do. Yes? Is there somebody who
2 is here representing Robert Bleier? We're missing
3 somebody. So we are missing somebody.

4 MR. DONNELLAN: Yes. He's coming. He said he
5 was coming.

6 THE COURT: See, I knew it.

7 MR. HARRINGTON: You know what, we got the gang
8 back together. We forgot we brought somebody else in.

9 THE COURT: You brought somebody else in.

10 MR. SCHARF: I'll go check in the hall.

11 THE COURT: Off the record.

12 (Whereupon, an off-the-record discussion took
13 place.)

14 MR. SCHARF: Nobody is out there yet.

15 THE COURT: Does anybody want to give him a
16 holler, make sure he remembered?

17 MR. SCHARF: We were emailing this morning.

18 THE COURT: Oh, okay. Well, I mean, he's not
19 technically late. He has five minutes.

20 (Whereupon, Mr. Robert Spolzino enters the
21 Courtroom.)

22 THE COURT: Your appearance, Mr. Spolzino,
23 please.

24 MR. SPOLZINO: Robert Spolzino, Abrams
25 Fensterman, 81 Main Street, White Plains, New York for

Proceedings

1 Robert Bleier.

2 THE COURT: They actually forgot about you. But
3 I said, who is representing Robert Bleier?

4 MR. SPOLZINO: People didn't used to forget about
5 me, but lately --

6 THE COURT: I was just trying to protect you.
7 Okay, so that being said, we do have a letter here, which I
8 would like to address, asking about bringing in -- Go
9 ahead.

10 MR. HARRINGTON: Well, Your Honor, I think that's
11 their --

12 THE COURT: Theirs, I know.

13 MR. HARRINGTON: -- their letter. So I'll talk
14 about whatever you want to talk about, obviously.

15 THE COURT: Well, I want to talk about that
16 because it's of interest to me, that we have all the
17 players, if necessary.

18 MR. HARRINGTON: Well, we think we have all the
19 players anyway.

20 THE COURT: Okay.

21 MR. HARRINGTON: We think by naming
22 Mr. Strulovitch in his capacity as the beneficial owner of
23 those two other entities they're in, I don't understand if
24 this is that big of a problem. But again, if there is a
25 representation by Counsel that he wants to bring them in,

Proceedings

1 from our perspective, that isn't a problem. It makes
2 sense.

3 What is a bigger problem is the last time we were
4 here, we had, at least, we had an understanding that we
5 were proceeding to an arbitration in Brooklyn.

6 And now, after the Brooklyn tribunal issue did
7 the series of injunctions, apparently Mr. Strulovitch,
8 through Mr. Soloveichik, said well, not really. And I'm
9 only going to arbitrate in Brooklyn against my client,
10 which is just yet another nullity. It makes no sense.

11 So we want to go to arbitration. They agreed to
12 go to arbitration. But we want to make a Motion to Compel
13 them to go to arbitration. And because we need to make a
14 record here, Judge. This is clearly not going to go away.

15 So if they don't want to go to arbitration,
16 having agreed to go to arbitration, but they are only going
17 to arbitrate against my client, I want that to be
18 documented. And I want that to be documented for the
19 simple reason is that's precisely the defect with the prior
20 award.

21 They want to cherry pick, I'll go with you, but I
22 am not going to bring everyone else in. And that's the
23 fundamental defect that needs to be ultimately litigated in
24 front of Your Honor.

25 We're confident that if we go to tribunal in

Proceedings

1 Brooklyn, we're going to get a good result. We are willing
2 to take that risk and save you the effort. That said, we
3 need to make a motion, unless they agree. If they don't
4 agree, we want permission to make a motion, which we can
5 make a proffer.

6 THE COURT: Okay. You say you want all the
7 players involved.

8 MR. SOLOVEICHNIK: Yes.

9 THE COURT: Go ahead.

10 MR. SOLOVEICHNIK: Yes, I would like all the
11 players involved in this proceeding. We don't believe --

12 THE COURT: But not in the other proceeding?

13 MR. SOLOVEICHNIK: We don't believe we need to go
14 to arbitration again with Jonathan Bleier. We have a
15 judgment. We have reason to believe that that judgment
16 does not impinge on any rights of Mr. Bain.

17 If Mr. Bain wants to go to arbitration,
18 preliminarily my client has indicated he would be willing
19 to go to arbitration, sub law arbitration, with Mr. Bain,
20 perhaps with somebody other -- with Jonathan -- with Robert
21 Bleier, perhaps. But he's not willing to go to arbitration
22 again with Jonathan Bleier.

23 So again, there's been no agreement. We've had a
24 couple of letters and we explained, again, that in our
25 previous appearance, we said there was no agreement. If

Proceedings

1 they want to make a Motion to Compel, that's fine, and we
2 will respond to that.

3 But in any event, what we would like is for
4 everything to be resolved in this proceeding. We're not
5 trying to do anything in Rockland County. We're happy to
6 have it here. In Rockland County, Jonathan Bleier took a
7 position, and MS Acquisition --

8 THE COURT: Has to be in.

9 MR. SOLOVEICHNIK: Yes, has to be in.

10 THE COURT: I know that.

11 MR. SOLOVEICHNIK: So we just want them in here so
12 we can make a cross petition to confirm the award. And
13 then everything will be resolved here.

14 THE COURT: Not only MS, but also 10 Claremont.

15 MR. SOLOVEICHNIK: Correct. Correct. And they
16 can make a Motion to Compel and we will address that at the
17 proper time.

18 THE COURT: Go ahead.

19 MR. SCHARF: Just very briefly, Your Honor.
20 There is no judgment that's been awarded to
21 Mr. Strulovitch. There is an award of arbitration that
22 there are parties sitting in this Courtroom who contest the
23 validity of, based upon the fact that, they were necessary
24 and indispensable parties and they were not included.

25 This notion that Mr. Strulovitch wants to jump

Proceedings

1 ahead and confirm the award of arbitration seems to be
2 really putting the cart before the horse. There needs to
3 be an adjudication of the rights of all of the partners.

4 Mr. Strulovitch is claiming to have been a
5 partner. And he is impacting the rights of the partners.
6 And those partners are looking to be heard. And they have
7 a right to be heard, either as a matter of law before Your
8 Honor, or to have those issues adjudicated before a
9 religious tribunal.

10 I won't step on Mr. Harrington's toes with
11 respect to the Motion to Compel. You know, he will make
12 that motion. But I think what is most important to
13 understand here is that we need to get to some process
14 before he makes a confirmation motion.

15 And I think that was the basis, if I understood
16 Your Honor's stay last time, is we need to put a pause. We
17 need to create a process either before this Board or before
18 a panel of arbitrators to decide all of the rights of all
19 of the parties.

20 Or maybe more fundamentally, could there be an
21 arbitration award that can go forward without all of what
22 there are parties in this Courtroom saying that they were
23 necessary and indispensable parties?

24 So I certainly appreciate that Mr. Strulovitch
25 wants to move forward with confirmation. And I'm presuming

Proceedings

1 that's why he made the motion for a -- He made that motion
2 in Rockland County.

3 There are obviously people in this room who feel
4 otherwise. And that doesn't even get to other merits, such
5 as, you know, whether or not that award is an enforceable
6 award, how that award, you know, comes up.

7 I know Mr. Strulovitch's Counsel was just as
8 recently as last week requesting of the arbitration, the
9 Rockland County award, was requesting a modification and
10 clarification and explanation of that award.

11 Now, personally, you know, I think that was a
12 violation of your stay. I don't think it was appropriate,
13 but there is that issue.

14 We've opposed the request for modification, but
15 to the heart of whether or not you have a final award
16 that's even confirmable, you know, I venture to say even
17 the late request for modification demonstrates that what is
18 up before Rockland County and what he's trying to bring
19 before Your Honor isn't a final confirmable award.

20 THE COURT: Go ahead.

21 MR. SOLOVEICHNIK: We're not trying to jump ahead
22 of anything. If this Court wants all the parties that are
23 here and I will make a cross petition, says let's hold off
24 on that, let's figure out what's going on with the vacatur
25 and everything else before we can see about the award,

Proceedings

1 that's fine.

2 But we have to preserve our rights. And what the
3 other parties are trying to do is delay the ability of
4 Mr. Strulovitch and those two entities to get a
5 confirmation award --

6 THE COURT: Because they don't believe all the
7 people were there. So the point being is, they are saying
8 they are fine to go to the Beis Din or as long as everybody
9 is there and we start anew; is that correct? Is that what
10 you're saying?

11 MR. HARRINGTON: That's what I'm saying, Your
12 Honor.

13 THE COURT: That's what I think I'm hearing. But
14 go ahead.

15 MR. SOLOVEICHNIK: Again, it's fine if they want
16 to contest the validity and the ability to confirm the
17 award. But we have to be in a position where if we prevail
18 against their claims as to why this award is defective, we
19 are not --

20 THE COURT: But if I take it all, it's defective
21 defacto. If I bring it all in here and say I'm starting
22 anew with all the parties and this is where it's going, how
23 does it withstand --

24 MR. SOLOVEICHNIK: I don't understand.

25 THE COURT: Well, because I'm basically saying

Proceedings

1 all the parties weren't there. Am I -- Maybe I'm missing
2 it.

3 MR. LAUCHHEIMER: No, Your Honor.

4 MR. SCHARF: No, I don't think so, Your Honor.

5 MR. SOLOVEICHNIK: My concern is, if, at the end
6 of the day, let's say I show that the other parties were
7 not necessary for that arbitration, okay. So they lose on
8 all of their claims, assuming that's right.

9 Then what will happen, let's say, nine months to
10 a year from now, let's assume that happens, at that point,
11 it's going to be past the year from when the award was
12 delivered. And I will not be able to confirm the award.

13 I just want to be put in place where if they --
14 If we prevail on their claims, we can confirm the award.
15 It's fine if the Court ultimately decides that the award is
16 defective and can't be confirmed or it should be vacated,
17 that's fine.

18 But let's bring all the parties here and then now
19 in this proceeding everything could be handled. That's
20 all. It's totally normally. It's happens all the time,
21 where a party who vacated an award and the other party
22 cross petitions or cross moves to confirm the award.
23 That's all we're trying to do here.

24 And then if the Court wants to say, okay, you got
25 your place marker there and we will hold off now on your

Proceedings

1 stuff. We're going to look at their Causes of Action.
2 That's fine. But we need to be able to have all the
3 parties here so our rights are preserved. That's all we're
4 trying to do.

5 MR. HARRINGTON: Your Honor, I think you got it
6 right. And I think Counsel's concern about being able to
7 confirm an award that's not confirmable, but I get the
8 technical argument, is easily resolved. Your stay can be
9 expanded to extend his time for a year. And I think, quite
10 frankly, it does and it has tolled his ability to do that.
11 But that's number one.

12 Number two is, we have other claims. This is a
13 plenary action, Your Honor, that goes beyond confirming an
14 award. If you were to ultimately rule on the merits
15 yourself or the Brooklyn Beis Din, that, in fact,
16 Mr. Strulovitch is entitled to some kind of relief, then
17 you've been charged now with unscrambling the eggs; when,
18 where, how, how does it affect people.

19 And to the extent my client has been injured by
20 that, we're going to want relief against our other
21 partners. So this is -- It is good to have everyone here,
22 you're right. This is pretty simple. That award was
23 defective. He wants to have the ability to confirm a
24 defective award.

25 THE COURT: He doesn't want to lose the ability.

Proceedings

1 But I can easily have the stay to include that ability,
2 that the stay would go and allow confirmation later on.
3 Because if I'm staying something, it's staying that clock
4 as well.

5 MR. HARRINGTON: Right.

6 MR. SOLOVEICHNIK: So that would be good. I would
7 say -- And not just good, great. But I would say, it seems
8 to me, in resolving all these issues, there is no reason we
9 shouldn't also resolve the issue of confirmation, meaning
10 it's going to be the same types of issues.

11 So yeah, there shouldn't be an ultimate ruling on
12 confirmation before a ruling on their Causes of Action.
13 But there is no reason it all can't be decided together.

14 MR. SPOLZINO: Judge.

15 THE COURT: Yes, Mr. Spolzino?

16 MR. SPOLZINO: I'm a little new to this. So I
17 may be a little mistaken in my facts. But I don't
18 understand, Mr. Robert Bleier, whom I represent, was not a
19 party to the arbitration. The arbitration award, at least
20 apparently, affects his interest, right. So it says the
21 nursing home and the property.

22 So I don't see either because it's unclear,
23 because we weren't a party, I don't see how you can ever
24 confirm that an award would ever be confirmable. I would
25 submit on behalf of Mr. Robert Bleier that you got

Proceedings

1 everybody here, you should take it and resolve all of this
2 and then we can all go our separate ways.

3 THE COURT: That's what I am doing.

4 MR. SPOLZINO: Okay.

5 MR. DONNELLAN: Just to chime in, Your Honor.

6 THE COURT: Yes, Mr. Donnellan.

7 MR. DONNELLAN: On behalf of the entities,
8 Westchester Gardens Realty of which there are members as
9 Robert, Jonathan and Mr. Bain and Parkview Operating, which
10 is Mr. Bain and Robert Bleier, whatever proceeding we have,
11 we need everybody. So they weren't in the first
12 proceeding.

13 We just want all of our members that represent
14 the entities. So all our members who are parties to the
15 Operating Agreements, and have been getting K-1s for the
16 last ten years, they need to be part of the proceeding,
17 whether it's the arbitration in Brooklyn or whether it's
18 before Your Honor.

19 THE COURT: Okay. So definitely, we need MS
20 Acquisitions I and 10 Claremont, correct? Who else do we
21 need?

22 MR. SCHARF: Well, Your Honor, you know, it's an
23 interesting question. I think MS Acquisition and Claremont
24 should be in. To the extent that Mr. Strulovitch is
25 claiming to have a representative capacity --

Proceedings

1 THE COURT: Correct.

2 MR. SCHARF: -- he sought, he commenced the
3 Rockland arbitration with those parties in it. You know,
4 we're Nominal Defendants around this table. The parties in
5 interest are over there. You know, I appreciate
6 Mr. Strulovitch's Counsel's position that maybe because
7 this is a special proceeding, he can't third-party in MS.

8 But I think he can because as Mr. Harrington
9 pointed out, this is also a plenary proceeding. And in a
10 weird kind of way, we're not even at the pleadings stage,
11 right.

12 So if Mr. Strulovitch feels that MS Acquisition
13 should be in this matter and 10 Claremont should be in this
14 matter, let Mr. Strulovitch, who is the Defendant, claim
15 over.

16 Otherwise, we are being asked to go back to the
17 beginning, you know, do an amended petition. We've got to
18 come back and ask Your Honor to, please, keep the stay in
19 place. We're at our early pleading stage. So he's got a
20 pleading he wants to put in.

21 THE COURT: But why can't you just stip them in
22 and agree to it? I don't understand that. You just can't
23 work around it? Yes?

24 MR. SOLOVEICHNIK: That's exactly, they can stip
25 to put them in. That's what I was suggesting, they be put

Proceedings

1 in as Defendants Respondents.

2 MR. HARRINGTON: Well, Your Honor, the thing
3 about being in Court --

4 THE COURT: I mean we are early in the
5 proceedings, but again, why create more stuff than is
6 necessary. You took the position, I think it was you, you
7 took the position that they were necessary.

8 MR. SCHARF: Yes, in Rockland. Because when he's
9 seeking confirmation and he's seeking confirmation of an
10 award that was issued under the agreement to arbitrate
11 where Mr. Strulovitch, you know, brought the claim on
12 behalf of himself and those two entities.

13 THE COURT: I understand, but the Decision didn't
14 even make reference to it, right?

15 MR. SCHARF: Yes. Who knows.

16 MR. HARRINGTON: To answer your question, Your
17 Honor, being in Court is liberating because we have a
18 record. And so when Counsel says things, it's now on the
19 record. And that's liberating. It's not in letters, it's
20 on the record. And you're here to listen to it.

21 So would we add them, we think they are already
22 in, of course, we would, Your Honor, it's our case. We can
23 do it by stip. And by the way, we can amend -- he hasn't
24 answered yet. We can amend the petition to include those
25 parties. We're happy to do it. If it makes everybody's

Proceedings

1 life easier, of course.

2 Now, that begs the question about this
3 arbitration in Brooklyn, which, again, it's an interesting
4 question. Can you agree and then not agree. I have an
5 Affidavit from the Rabbi that runs the Beis Din that says
6 they agreed. And then they didn't agree.

7 So we haven't done exhaustive research on that.
8 I don't know the answer to that question. And it's
9 obviously up to your discretion. But this proceeding, as
10 you're learning or you're going to learn, is that it's
11 going to be engaged and involved.

12 And I want people to have -- Credibility at the
13 end of the day is going to be very important in this case,
14 Your Honor. So I need to make a record.

15 THE COURT: Well, you are, aren't you?

16 MR. HARRINGTON: I am. And I want to make that
17 motion as well, if you would allow me to.

18 MR. SOLOVEICHNIK: But the only other issue I
19 raise is that Tovah Bain is named as a party in the
20 caption, but apparently she was not alive. So in the
21 amendment, it should probably name the actual
22 beneficiaries.

23 MR. HARRINGTON: Your Honor, Ms. Tovah Bain was
24 the mother. She passed away seven years ago. We didn't
25 know that at the time. Mr. Bain is the beneficial owner of

Proceedings

1 her interest. So we can clean that up as well. She's not
2 a necessary party.

3 THE COURT: Okay, good. What else do we need to
4 do? Mr. Donnellan, you were mentioning some other people?

5 MR. DONNELLAN: No. The members are now
6 involved. It's Jonathan Bleier --

7 THE COURT: Right and --

8 MR. DONNELLAN: Represented by Mr. Scharf.

9 THE COURT: Right.

10 MR. DONNELLAN: Mr. Bain is represented by the
11 Plaintiff.

12 THE COURT: Right.

13 MR. DONNELLAN: And now Robert Bleier is
14 represented by Robert Spolzino. Those are all the members
15 that I'm aware of, according to my corporate documents for
16 the entities, Your Honor.

17 THE COURT: Okay. So are you going to make a
18 motion to go to arbitration?

19 MR. HARRINGTON: Yes, Your Honor.

20 THE COURT: You're going to make a motion to go
21 to Beis Din? Do you want to put it all there or do you
22 want to keep it here?

23 MR. HARRINGTON: Well, Your Honor, I think I
24 would like to do both.

25 THE COURT: Okay.

Proceedings

1 MR. HARRINGTON: When I say that, Your Honor,
2 there are certain things -- Listen, I will obviously leave
3 here today and think about it.

4 THE COURT: Okay.

5 MR. HARRINGTON: But I wanted to put that on your
6 radar and let you know -- Well, listen, we're all thrilled
7 that we are all here; maybe not Mr. Strulovitch, but we
8 are.

9 So I have to go back. And, you know, having
10 heard what I had heard today, what's on the record, but I
11 wanted to alert you to that and have the ability to make
12 that motion.

13 THE COURT: Okay. So here, I appreciate what
14 you're saying about your ability to confirm it and not
15 loosing that Statute of Limitations, basically, that you
16 have a year. But my stay can include that that be stayed
17 as well and I think adding extra time. Because once you
18 stay it, you're tolling that time.

19 MR. SOLOVEICHNIK: That's fine, Your Honor.

20 THE COURT: But I would like something -- you
21 need something that would include that. I would spell it
22 out in an Order and present it to the Court to sign.

23 MR. SOLOVEICHNIK: Do you mean that we shouldn't
24 make a cross petition to confirm, is that what Your Honor
25 is suggesting?

Proceedings

1 THE COURT: I don't know that you need to make
2 it. I mean, because they are going to oppose it. Right?

3 MR. SOLOVEICHNIK: That's right. But my point is,
4 everyone is here. Everyone has been served or is going to
5 be --

6 THE COURT: So is it going to be made here or is
7 it going to be made where it was?

8 MR. SCHARF: Here.

9 MR. CHEN: Here.

10 MR. SOLOVEICHNIK: We're happy to do it all here.
11 And then the Court can manage it however it sees fit with
12 input from the other parties.

13 THE COURT: What do you think about that,
14 Counsel?

15 MR. SCHARF: My reaction is similar to
16 Mr. Harrington's, which is I understood Your Honor's stay
17 to stay everything.

18 THE COURT: Everything.

19 MR. SCHARF: Including the totaling of the time.

20 THE COURT: Yes, but --

21 MR. SCHARF: If somebody needs that to be
22 clear --

23 THE COURT: Right.

24 MR. SCHARF: Obviously, we have no problem with
25 that. But if Mr. Harrington wants to go back and, you

Proceedings

1 know, consider, we will have an amended pleading.

2 The unfortunate part of going back and doing an
3 amended pleading is that the P.C. Order that we submitted
4 to Your Honor was predicated on we're like -- we're already
5 at the pleading stage, not going back to the beginning of
6 the pleading stage.

7 THE COURT: But it's not a big deal to amend the
8 pleading. You already had those -- You knew those players.
9 It's not like new people are coming in. It's just
10 correcting it, basically, because it didn't include those
11 two corporations or LLCs or whatever they are. LLCs,
12 right?

13 MR. HARRINGTON: Yes.

14 MR. DONNELLAN: Right. And Your Honor, my
15 understanding of the reason for the stay was not because
16 the motion was made up in Rockland County. It's because it
17 didn't include everybody.

18 THE COURT: Correct.

19 MR. DONNELLAN: So the reason for the stay is to
20 decide whether the other parties, who are now parties in
21 this action, have rights that would be affected by that.

22 So that's why, for the same reason that stay was
23 granted, there should not be a motion to confirm until
24 those issues are decided, which is the reason why we're
25 here.

Proceedings

1 THE COURT: Okay.

2 MR. SOLOVEICHNIK: I was just suggesting that we
3 should be able to cross petition for it. Everyone is here,
4 as a matter of judicial efficiency. Many of the same
5 issues that would be involved in their motion to vacate or
6 their Cause of Action --

7 THE COURT: Listen to me, if nobody -- if they
8 are all claiming that they weren't a party and it affected
9 them, and they need -- do you think I'm going to grant it?

10 MR. SOLOVEICHNIK: Of course not, no, but that's
11 my point. But if you decide that they are incorrect, then
12 we will be in a position --

13 THE COURT: But I'm going to decide that a lot
14 further down the road than now. That's my point. Right?

15 MR. SOLOVEICHNIK: Correct. But we're just
16 putting in the cross petition. And then it could be
17 decided when ever that's decided.

18 MR. HARRINGTON: But Your Honor, then we have to
19 respond. And we can't respond until we get discovery. I
20 mean, we can articulate the same arguments we made before,
21 that it's defective. But we expect that discovery will
22 reflect a series of additional bases to oppose it.

23 So to me, whether or not they file it, it's
24 really a question of when. And I would say now is
25 premature. They are closing discovery. If he wants to

Proceedings

1 cross move, go right ahead.

2 THE COURT: You will not lose your right to
3 cross, okay. But I would hold it in abeyance pending some
4 discovery. Okay?

5 MR. SOLOVEICHNIK: Meaning we shouldn't file or --

6 THE COURT: You should not file.

7 MR. SOLOVEICHNIK: Okay.

8 THE COURT: I'm going to hold it in abeyance.
9 You are not going to lose your right to do that. What?

10 MR. HARRINGTON: Could we have an understanding
11 or agreement that the Rockland proceeding is going to be
12 withdrawn?

13 THE COURT: Counsel?

14 MR. SOLOVEICHNIK: That's fine. We can stipulate
15 to the withdrawal.

16 THE COURT: Okay. On the record, that will be
17 withdrawn.

18 MR. HARRINGTON: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. SOLOVEICHNIK: Again, assuming the stay is
21 extending to --

22 THE COURT: Yes.

23 MR. SOLOVEICHNIK: -- the tolling?

24 THE COURT: Yes.

25 MR. SOLOVEICHNIK: Yes, okay.

Proceedings

1 THE COURT: Anything else? Speak now or forever
2 hold your peace.

3 (Whereupon, there was no response.)

4 THE COURT: Okay. Your Preliminary Conference
5 Order then is going to include the other two entities,
6 which are --Are you getting separate Counsel for them or
7 no?

8 MR. SCHARF: It's going to be an interesting
9 question. Because as I'm sure Mr. Strulovitch's Counsel
10 knows, MS Acquisition was not a single member LLC. There
11 were partners in both of those LLCs. So I cannot predict.

12 And I realize that I should at least raise my
13 hand and say Your Honor's question is a good one. It
14 remains to be seen.

15 MR. SOLOVEICHNIK: I don't know if there will be.
16 I'll check.

17 THE COURT: That's important because I'm going to
18 enter into a Preliminary Conference Order that's going to
19 have times, things that you have to do for discovery.

20 And I just want to know if there is going to be
21 somebody else that's going to be raising up and saying, hi,
22 I'm not a party to it. So how long will that take you?

23 MR. SOLOVEICHNIK: I can let the Court know by
24 Tuesday?

25 THE COURT: Perfect. Thank you. Okay.

Proceedings

1 MR. HARRINGTON: And Your Honor, can we await
2 entering the Order that's been submitted until we get
3 clarification on that issue?

4 THE COURT: Yes. Yes. I'm going to hold off and
5 I'm going to want to --

6 MR. HARRINGTON: Great.

7 THE COURT: I'm holding off until Tuesday. But
8 Tuesday, if this person is coming in, you're going to show
9 the person your Preliminary Conference Order. And you're
10 going to say these are our times. This is where we're
11 going at. Move them a little bit.

12 MR. SPOLZINO: Judge?

13 THE COURT: Yes. Go ahead.

14 MR. SPOLZINO: Are you going to build in --
15 Mr. Harrington is going to amend his pleadings at this
16 point. Are you going to build in a schedule for us to
17 answer, cross petitions, cross whatever names there are.

18 THE COURT: I wasn't going to build it in. I'm
19 hoping to hold it all in abeyance, basically, until you do
20 your discovery. You'll have the time if you really -- I
21 mean, I don't know what the cross petitions are going to
22 allege.

23 MR. SPOLZINO: So you don't want us to answer?

24 THE COURT: Do you want to answer? Do you want
25 to spend your time doing that?

Proceedings

1 MR. SPOLZINO: I think there maybe --

2 MR. SOLOVEICHNIK: I thought he was referring to
3 answering the amended petition, not the cross petition.

4 THE COURT: Oh, the amended, yes, you should
5 definitely answer that.

6 MR. SPOLZINO: So you're going to build in some
7 time to schedule us to do that?

8 THE COURT: Yes, well, come on. You're late to
9 the party. Yes, we will give you a little bit more time,
10 but not a lot. I would like the discovery to be done by
11 the end of the summer, everything done.

12 MR. SPOLZINO: I'm okay with going ahead with
13 discovery. I just want to have a deadline.

14 THE COURT: I'm looking to end discovery the end
15 of August.

16 MR. SPOLZINO: I don't have a problem with that.

17 THE COURT: Is that all good with you? Then I
18 was going to hold off on any motions or anything until we
19 determine that and then I'll set a schedule if you think
20 you're going to be making motions.

21 MR. SPOLZINO: I'm not objecting to starting
22 discovery -- shooting discovery demands around today.

23 THE COURT: Well, no, they should. You should be
24 doing that. Let's going, okay?

25 MR. SPOLZINO: Sure.

Proceedings

1 THE COURT: So what else? Go ahead.

2 MR. SOLOVEICHNIK: In response to their -- I mean
3 I was intending, if not -- if I wasn't doing a cross
4 petition, to make a Motion to Dismiss.

5 THE COURT: Denied. I'm just kidding. I'm
6 kidding. But you really think you're going to do a Motion
7 to Dismiss?

8 MR. SOLOVEICHNIK: Yes. I mean I can spell it out
9 in a letter to Your Honor.

10 THE COURT: It's not going to stay anything.
11 That's my point.

12 MR. SOLOVEICHNIK: No, I understand that. Of
13 course not.

14 MR. HARRINGTON: We are here, Judge --

15 THE COURT: Tell me what the motion is based on.
16 I'll take it orally right now.

17 MR. HARRINGTON: I would like to hear this to see
18 if he could convince me.

19 MR. SOLOVEICHNIK: Sure. Sure. With regard to
20 the First Cause of Action, which is for Preliminary
21 Injunction based on the arbitration, there was no
22 arbitration agreement between Mr. Strulovitch and Mr. Bain.

23 With regard to their Cause of Action to vacate,
24 the arbitral award, they were not a part of the arbitral
25 award. That's what's required under the CPLR. They cannot

Proceedings

1 vacate.

2 With regard to the breach of the contract, the
3 Right of First Refusal, as described previously, the Right
4 of First Refusal does not apply to the transfer of
5 Mr. Strulovitch's majority owner under the terms of the
6 Operating Agreement.

7 THE COURT: Those are your motion grounds.

8 MR. HARRINGTON: I feel good about our chances,
9 Your Honor.

10 THE COURT: Obviously, you have to do that before
11 you answer, right?

12 MR. SOLOVEICHNIK: Correct. Correct. I just
13 wanted to make sure you weren't precluding it.

14 MR. HARRINGTON: We're good. There is a couple
15 of factual issues out there that might be material as a
16 result of --

17 THE COURT: I mean if you're going to do that,
18 you're going to have to do it immediately, if not sooner.

19 MR. SOLOVEICHNIK: Sure. Right after they
20 amend --

21 THE COURT: You're going to amend today, right?

22 MR. HARRINGTON: Absolutely, Your Honor.

23 THE COURT: Thank you. Okay.

24 MR. SOLOVEICHNIK: And again, we're not objecting
25 to continuing discovery.

Proceedings

1 THE COURT: How much time do you need to make
2 that motion?

3 MR. SOLOVEICHNIK: A week after they file the
4 amended.

5 THE COURT: A week, okay. How much time do you
6 need to reply, to respond to it?

7 MR. HARRINGTON: Ten days.

8 THE COURT: Ten days. So you're going to have
9 this motion done by -- right, because you're going to get
10 your thing out now so he is going to make his motion a week
11 after. By March 21st, fully submitted.

12 MR. HARRINGTON: I'm going to need 17 days, Your
13 Honor. I forgot about St. Patrick's Day.

14 MR. SOLOVEICHNIK: We have no objection, Your
15 Honor.

16 THE COURT: That's serious.

17 MR. HARRINGTON: It's very serious, Your Honor.
18 Both the day before and two days after.

19 MR. SOLOVEICHNIK: I'm sorry, are we building on a
20 couple of days for reply?

21 THE COURT: Yes, I'm building it all in. I want
22 you to be on this -- I mean, you can work out a schedule
23 amongst yourselves if you'd like.

24 MR. HARRINGTON: Why don't we do that, Judge.

25 THE COURT: But I want it to be done so that I

Proceedings

1 can make that decision. And during that time, I don't want
2 to stay any discovery.

3 MR. SOLOVEICHNIK: Correct.

4 MR. HARRINGTON: We will work it out.

5 THE COURT: Yes.

6 MR. HARRINGTON: On a tight basis.

7 THE COURT: Okay, that's fine.

8 MR. HARRINGTON: Thank you, Your Honor.

9 MR. SOLOVEICHNIK: Thank you.

10 THE COURT: Thank you. Okay, anything else while
11 you're here?

12 (Whereupon, there was no response.)

13 THE COURT: Okay. When do you want to come back?

14 (Whereupon, an off-the-record discussion took
15 place.)

16 THE COURT: April 22nd, how is that?

17 MR. SOLOVEICHNIK: Sounds good.

18 MR. SPOLZINO: Your Honor, I'm away that week.

19 Can we put it over to the following week?

20 THE COURT: No, because then I'm away. You're
21 away the whole week, Mr. Spolzino?

22 MR. SPOLZINO: The whole week.

23 THE COURT: When are you leaving?

24 MR. SPOLZINO: I'm leaving the 15th and I'm
25 coming back on the 23rd.

Proceedings

1 THE COURT: 24th is fine, how is that? 24th
2 good?

3 MR. SCHARF: It works.

4 THE COURT: Okay, April 24th at 11:00 a.m.

5 MR. HARRINGTON: Thank you.

6 MR. CHEN: Thank you.

7 MR. SOLOVEICHNIK: Thank you.

8 MR. DONNELLAN: Thank you, Judge.

9 MR. SCHARF: Thank you, Your Honor.

10 MR. LAUCHHEIMER: Thank you, Judge.

11 MR. SPOLZINO: Thank you, Judge.

12 THE COURT: Thank you, everybody.

13 (Whereupon, the proceedings were concluded.)

14 * * * * *

15 C E R T I F I C A T I O N

16
17 Certified to be a true and accurate
18 transcript of the minutes of the proceedings held on February
19 13, 2025, in the matter of Bain versus Strulovitch, et al.,
20 taken by the undersigned, to the best of her ability.

21

22 Barbara Marciante

23 Barbara Marciante, SCR
24 Senior Court Reporter

25

FILED: WESTCHESTER COUNTY CLERK 04/26/2025 12:36 PM

INDEX NO. 75548/2024

NYSCEF DOC. NO. 83

RECEIVED NYSCEF: 04/26/2025

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
In the Matter of the Application of
MOSHE BAIN,

Petitioner-Plaintiff,

-against-

SAMUEL STRULOVITCH, MS ACQUISITION I, LLC
and 10 CLAREMONT AVENUE, LLC,

Respondents-Defendants,

-and-

PARKVIEW OPERATING CO., LLC, WESTCHESTER
GARDENS REALTY LLC, JONATHAN BLEIER, and
ROBERT BLEIER,

Nominal Defendants.
-----X

Index No. 75548/2024

Hon. Linda S. Jamieson, J.S.C.

~~PROPOSED~~ ORDER

Motion Seq. 001

Upon Petitioner-Plaintiff Moshe Bain's ("Petitioner") motion ("Motion"), brought by order to show cause, for an order, *inter alia*, staying and preliminarily enjoining Respondents-Defendants Samuel Strulovitch, MS Acquisition I, LLC, and 10 Claremont Avenue, LLC (collectively, "Respondents") from taking any action to confirm or enforce the challenged April 17, 2024 Rabbinical Court arbitral award ("Award"), the accompanying Affirmation of David H. Chen (NYSCEF Doc. No. 17), the accompanying Memorandum of Law (NYSCEF Doc. No. 18), the Affirmation of Alfred E. Donnellan (NYSCEF Doc. No. 23) in connection with the Motion, the Affirmation of Y. David Scharf (NYSCEF Doc. No. 24) in connection with the Motion, and the exhibits attached thereto (NYSCEF Doc. Nos. 25-28); and upon the proceedings held before this Court on December 9, 2024, at which time this Court granted Petitioner's Motion, the record of which is incorporated herein by reference; and upon the proceedings held before this Court on

FILED: WESTCHESTER COUNTY CLERK 04/20/2025 12:36 PM

INDEX NO. 75548/2024

NYSCEF DOC. NO. 83

RECEIVED NYSCEF: 04/20/2025

February 13, 2025, the record of which is incorporated herein by reference; and upon all of the pleadings and proceedings heretofore had herein, it is hereby

ORDERED, that Petitioner's Motion is granted; and it is further

ORDERED, that Respondents are hereby preliminarily enjoined, and have been enjoined since December 9, 2024, from taking any action to confirm or enforce the Award, including, without limitation, seeking modification, clarification, or explanation of the Award from the issuing Rabbinical Court; and it is further

ORDERED, that Respondents' time to bring an application or petition to confirm the or other similar proceeding Award, pursuant to CPLR § 7510, has been tolled since December 9, 2024 and shall remain tolled while Respondents are subject to the injunction set forth in this Order.

Dated: White Plains, New York
April 22, 2025

ENTER:


Hon. Linda S. Jamieson, J.S.C.



T 718.384.8040
W TargemTranslations.com
E projects@targemtranslations.com
A 185 Clymer St. Brooklyn, NY 11211

CERTIFICATE OF ACCURACY

On this day, personally appeared before me, a Notary Public in and for the State of New York, County of Kings, Wolf Markowitz, who after having duly affirmed, deposes and certifies that he is and has for more than 40 years been, a competent professional translator of the HEBREW and ENGLISH languages; that he carefully prepared the attached ENGLISH translation of a **Rabbinical Court Summons** written in HEBREW; and certifies that the translation is a true, accurate and correct rendering of such document and the whole thereof. Described and affirmed to before me this March 19, 2026.



Translator

Notary Public

ROCHAL WEISS
Notary Public - State of New York
No. 01WE6293785
Qualified in Kings County
My Commission Expires 12/16/2029



Translation from the H E B R E W Language

Rabbinical Court Beis Aaron

*In memory of Rabbi Aaron Wolkin of blessed memory – Author of Beis Aaron
Founded by Rabbi Moshe Joel Wolkin*

Date: 2 *Adar* 5786 [February 19, 2026]

Summons #1

To the attention of Mr. Moshe Bain

At the request of Mr. Sam Strulovitch, we are summoning you to submit before rabbinical court arbitration with him, before this Rabbinical Court.

Location: 3714 18th Ave. Brooklyn, NY 11218
Time: 12 *Adar* 5786; March 1, 2026, at 10:00AM
Dispute is Regarding: court case Index No. 15548/2024

Please notify the rabbinical court office immediately via the phone number above whether you are prepared to submit for arbitration at the aforementioned time and location, as well as any response to the above, so that we can make arrangements in a most positive manner. The rabbinical judges will not appear, unless we hear a response from you.

On this we affixed a signature on 2 *Adar* 5786, corresponding to calendar date February 19, 2026; here in Brooklyn N.Y.

YM Perlman, Rabbinical Judge, on behalf of the Rabbinical Court

You have been summoned to a Din Torah at the place and time indicated. The request was made by the party named in the second line. Please inform us ASAP whether you will be able to attend the session as scheduled as well as any other response you may have so that we can confirm with the Dayanim. We will make every effort to accommodate your schedule.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

-----X

In the Matter of the Application of

Case No.: 2026-04501

MOSHE BAIN,

Petitioner-Plaintiff-Respondent,

**Westchester County
Index No.: 75548/2024**

-against-

SAMUEL STRULOVITCH, MS ACQUISITION, LLC,
and 10 CLAREMONT AVENUE, LLC,

Respondent-Defendant-Appellants,

**ATTORNEY AFFIRMATION
IN OPPOSITION TO MOTION
FOR STAY PENDING APPEAL**

-and-

PARKVIEW OPERATING CO., LLC,
WESTCHESTER GARDENS REALTY LLC,
JONATHAN BLEIER, and ROBERT BLEIER,

Nominal Defendants-Respondents.

-----X

DAVID H. CHEN, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following under penalty of perjury:

1. I am a partner with the law firm of Bleakley Platt & Schmidt, LLP, which is counsel of record for Petitioner-Plaintiff-Respondent Moshe Bain (“Bain”) in the above-captioned action.
2. I am familiar with this case from the records of my firm, the underlying docket, and from all prior court filings and proceedings.
3. I submit this affirmation in opposition to the motion of Respondent-Defendant-Appellant Samuel Strulovitch, MS Acquisition I, LLC and 10 Claremont Avenue, LLC (together, “Appellants”), brought by Order to Show Cause, for a stay pending their appeal of the Decision and Order of Supreme Court, Westchester County (Jamieson, J.) (“Supreme Court”), dated April 24, 2026 and entered on April 29, 2026 (hereafter the “Order”).

4. This Court has already denied Appellants’ application for interim emergency relief. For the reasons set forth below, and those set forth by Nominal Defendants-Respondents (collectively, “Nominal Defendants”), it should deny Appellants’ motion for a stay as well.

BACKGROUND

5. The underlying action arises in connection with a 2024 rabbinical arbitration award (NYSCEF Doc. No. 50)¹ (“Award”) resulting from an arbitration (the “Rockland Arbitration”) between Strulovitch and Nominal Defendant Jonathan Bleier (“J. Bleier”) before a Rockland County rabbinical arbitration panel. Such rabbinical arbitration panels are known as a “beis din” (sometimes spelled “beth din”).

6. The Award purports to grant Appellants a 22% ownership interest in both Parkview Operating Co., LLC and Westchester Gardens Realty LLC, which respectively operate and own the realty of a nursing facility located in Mount Vernon, New York (hereafter the “Nursing Facility”). The Nursing Facility is heavily regulated by the New York State Department of Health (“DOH”), and DOH approval is required for ownership changes in the Nursing Facility via a thorough application and review process.

7. Strulovitch obtained the Award based on his representation that a 2011 email J. Bleier sent him constituted a secret side agreement pursuant to which Strulovitch received a 42% ownership interest in the Nursing Facility—which was a larger percentage interest than J. Bleier even held at the time.

8. Bain also has an ownership interest in the Nursing Facility, a fact Strulovitch has never disputed. Despite this, Strulovitch failed to include Bain in the Rockland Arbitration.

¹ Unless otherwise stated, references in this Affirmation to “NYSCEF Doc. No. ___” refer to the docket in the underlying action in Westchester County Supreme Court, Index No. 75548/2024.

9. The Award did not contain any reasoning, nor did it indicate from whom the 22% ownership interest it purported to award Strulovitch would be drawn. There is no transcript or record of the Rockland Arbitration. Notably, the Rockland beis din instructed Strulovitch and J. Bleier that to the extent there were any issues in enforcing the Award, they should return to the Rockland beis din.

10. In contravention of that directive, on August 29, 2024, Strulovitch commenced an action in Rockland County Supreme Court, Index No. 035405/2024 (the “Rockland Action”) to confirm the Award. (NYSCEF Doc. No. 25).

11. Upon learning of the Award, Bain—who was excluded from the Rockland Arbitration despite his undisputed ownership interest in the Nursing Facility Entities—initiated his own rabbinical arbitration before another beis din, Mishpetei Yisroel Rabbinic Court (“Mishpetei Yisroel”) in Brooklyn. (NYSCEF Doc. No. 64).

12. Bain invited all parties asserting an ownership interest in the Nursing Facility to participate in the proceeding before Mishpetei Yisroel. Strulovitch, however, refused to arbitrate with all parties and offered to participate only in a bilateral arbitration with Bain. Because the parties could not reach an agreement, the arbitration before Mishpetei Yisroel never went forward.

13. On November 20, 2024, Bain initiated the underlying action (“Action”) in Supreme Court, Westchester County (Commercial Division) seeking, *inter alia*: (a) to vacate the Award pursuant to CPLR Article 75, including, among other grounds, because Strulovitch deliberately excluded him and other necessary parties from the underlying Rockland Arbitration; (b) declaratory relief concerning the ownership of the Nursing Facility; and (c) to enforce his contractual right of first refusal as a member of the Nursing Facility with respect to transfers of membership interests. (See NYSCEF Doc. No. 1; *see also* NYSCEF Doc. No. 50). Bain’s position

is simple: he should have been included in the Rockland Arbitration because any change in ownership of the Nursing Facility would, among other things, materially affect Bain's rights and interests, as well as the Nursing Facility's DOH regulatory license.

14. Bain joined in the underlying Action all parties with a claimed ownership interest in the Nursing Facility, including Appellants, Nominal Defendant Robert Bleier ("R. Bleier"), J. Bleier, and both Nursing Facility entities.

15. Bain also filed a motion (NYSCEF Doc. Nos. 16-21) for a preliminary injunction and stay of enforcement of the Award. On December 9, 2024, the Hon. Linda Jamieson, J.S.C. granted Bain's motion and preliminarily enjoined Strulovitch "from taking any action to confirm or enforce the Award, including, without limitation, seeking modification, clarification, or explanation of the Award from the issuing Rabbinical Court." (NYSCEF Doc. No. 84) ("First Injunction"). Strulovitch did not appeal the First Injunction and his time to do so has long since expired.

16. Strulovitch sought and obtained from Supreme Court a toll of his time to confirm the Award under CPLR Article 75 during the period that enforcement of the Award is stayed under the First Injunction. (*See* February 13, 2025 Certified Transcript of Proceedings ("February 2025 Tr."), a true and correct copy of which is attached as **Exhibit A**, at 12:5-13:4, 20:13-19.)

17. Strulovitch voluntarily consented to withdrawing his Rockland Action in favor of the Westchester Supreme Court adjudicating all claims and issues concerning the Award in the underlying Action. (*See* February 2025 Tr. 8:3-6, 14:6-13, 24:10-17.) Strulovitch thereafter discontinued the Rockland Action in accordance with his stipulation.

18. By Decision and Order dated June 6, 2025 (NYSCEF Doc. Nos. 96-97), Supreme Court denied Appellants' motions to dismiss Bain's Amended Petition-Complaint and R. Bleier's cross-claims. Strulovitch did not appeal these decisions.

19. Instead, Appellants joined issue by answering the Amended Petition and cross-claims on June 16, 2025, (NYSCEF Doc. Nos. 100–01) and stipulated to discovery orders on July 18 and 30, 2025. (NYSCEF Doc. Nos. 104–05).

20. Over the next eight months, Appellants voluntarily and actively participated in all phases of discovery, including affirmatively issuing document requests and conducting depositions of Bain and all of the Nominal Defendants. Discovery is now complete and a trial readiness order has been issued (NYSCEF Doc. No. 126), including a briefing schedule for the parties' anticipated cross-motions for summary judgment.

21. Discovery has exposed Strulovitch's deceit, which likely explains why he is now trying to run away from Supreme Court.

22. Specifically, Strulovitch had told the Rockland beis din that J. Bleier agreed to give him a 42% interest in the Nursing Facility in 2011. Of course, if that agreement existed, which it does not, Strulovitch would be forced to contend with numerous legal issues, including his failures to: (a) disclose his purported ownership interests in the Nursing Facility to the DOH or seek DOH approval to become an owner of the Nursing Facility, which is required by applicable law; (b) report as distributions of partnership income on his tax returns any of the approximately \$1.3 million he admittedly received from the Nursing Facility between 2012–2022; and (c) disclose his purported ownership to the mortgage lender for the Nursing Facility, which released Strulovitch from liability on the mortgage based on his representation that he sold all his interests in the Nursing Facility pursuant to a 2010 asset purchase agreement. (NYSCEF Doc. No. 55).

23. To try and avoid those consequences, Strulovitch changed his story at his March 2026 deposition and claimed, for the first time, that he had a purchase option to acquire interests in the Nursing Facility, rather than actual ownership going back to 2011. That would conveniently enable him to avoid regulatory and tax scrutiny associated with his original claim.

24. That same month, as discovery in this Action neared completion, Strulovitch initiated a third rabbinical arbitration before yet another beis din (the “2026 Arbitration”), Rabbinical Court Beis Aaron (“Beis Aaron”), the subject of which was to be the exact issues raised in the underlying Action. Strulovitch sought to conduct this 2026 Arbitration unilaterally, without agreement by Bain (or any other party) and without even notifying the parties’ counsel.

25. Moreover, Strulovitch again excluded from this latest beis din necessary parties with affected interests, namely Nominal Defendants, despite the fact that Bain and the Nominal Defendants had already explicitly rejected such an arbitration.

26. The subject of Strulovitch’s 2026 Arbitration, as stated in the rabbinical summons served upon Bain (NYSCEF Doc. Nos. 114-115), is “court case Index No. 75548/2024,” *i.e.*, the underlying Supreme Court action. When Bain declined to participate, he was threatened with a “seruv”—a letter of recalcitrance subjecting him to communal sanctions and societal pressures under Jewish law. Specifically, Strulovitch’s rabbinical representative e-mailed Bain directly to warn him that “[t]his is serious and the lawyer cannot protect you from your ... religious obligations. If you get a seruv everyone will know that you do not listen to beis din.” (NYSCEF Doc. No. 117).

27. On March 17, 2026, Bain filed a motion (NYSCEF Doc. Nos. 107–10) for sanctions against Strulovitch for violating the First Injunction and for injunctive relief staying and enjoining

Strulovitch’s unilateral 2026 Arbitration. The Nursing Facility entities and R. Bleier filed joinders to Bain’s motion. (NYSCEF Doc. Nos. 113–17, 124).

28. In the appealed-from Order (NYSCEF Doc. No. 125), Supreme Court denied Bain’s motion for sanctions² but held that its First Injunction prohibiting Appellants “from taking any action to confirm or enforce the [Award]” applies to Strulovitch’s 2026 Arbitration, the purpose of which “is to confirm the [Award]” and which “potentially covers all of the parties’ disputes about the [Nursing Facility].” (Order 3–4, 6–7.) In addition, Supreme Court held that the “matters that Strulovitch has raised with the Beis Din [in the 2026 Arbitration] . . . are not religious, as clearly stated in the summons (hazmana),” and that it would “only need to apply neutral principles of secular law to the issues raised herein. There is, thus, no First Amendment reason to deny the motion.” (*Id.* at 6–7.)

29. Supreme Court further held that “[t]he parties may agree to go to a Beis Din (this present one, or any other), if they wish. However, unless and until [Supreme] Court rules otherwise, without such an agreement, these disputes among the parties shall remain in front of [Supreme] Court, and [Supreme] Court only.” (Order 8.)

30. Absent such an agreement between the parties, the Order further directed Strulovitch to take all steps necessary to withdraw his unilateral 2026 Arbitration “[t]o rectify the potential damage to Bain’s reputation in the religious community.” (*Id.*)

31. Supreme Court denied Strulovitch’s request to stay the Order pending appeal, and following appearances and oral arguments by all parties on May 7, 2026, this Court similarly denied Strulovitch’s request for a temporary stay pending the appeal.

² Bain cross-appealed from this denial but seeks no interim relief from this Court.

ARGUMENT

The motion for a stay of the Order pending appeal should be denied.

32. CPLR § 5519(c) gives the court “to which an appeal is taken” discretion to “stay all proceedings to enforce the judgment or order appealed from pending an appeal[.]” “In considering a party’s request for a discretionary stay pending appeal, the most important factor is whether the appeal has merit.” *Day v. Plumber’s Shop & Assocs. LLC*, 244 N.Y.S.3d 912 (Sup. Ct. N.Y. Cnty. 2025) (citations omitted). A court may also consider “the harm that might result to the appellant if the stay is denied, and the potential prejudice to the respondent if the stay is granted.” *Newmont Props. LP v. Callendar*, 225 N.Y.S.3d 893, 898 (Civ. Ct. Kings Cnty. 2025); *see Da Silva v. Musso*, 76 N.Y.2d 436, 443 n.4 (1990) (“the court entertaining the application is duty-bound to consider the relative hardships that would result from granting (or denying) a stay”).

A. Strulovitch waived any right to arbitrate by extensively participating in the underlying Action, and his initiation of another beis din without agreement from Bain to do so constitutes blatant forum shopping.

33. It is well settled that a litigant who otherwise “has the right to arbitrate a claim may forfeit or waive that right by acts inconsistent with the intention to arbitrate,” including by “[utilizing] the tools of litigation, or [participating] in litigation for an unreasonable period without asserting the right to arbitrate.” *Arnav Indus. Inc. Profit Sharing Plan and Tr. v 3449-3461 Hamilton Ft, LLC*, 237 A.D.3d 786, 790 (2d Dep’t 2025); *see also P.S. Fin., LLC v. Eureka Woodworks, Inc.*, 214 A.D.3d 1, 12 (2d Dep’t 2023).

34. And it is well established that proceedings before a rabbinical court are considered arbitration proceedings subject to the provisions of CPLR Article 75. *See Mew Equity, LLC v. Sutton Land Services, LLC*, 144 A.D.3d 872, 874 (2d Dep’t 2016) (treating beis din as arbitration proceeding and holding that resulting arbitration award had *res judicata* effect in subsequent litigation); *Kingsbridge Ctr. of Israel v. Turk*, 98 A.D.2d 664, 665–66 (1st Dep’t 1983) (“the

provisions of Article 75 of the CPLR are applicable to the decision of the Beth Din.”); *Matter of Meisels v. Uhr*, 79 N.Y.2d 526, 538 (1992) (confirming beis din award under CPLR Article 75 and holding that participation in the beis din resulted in waiver of objections based on invalidity of the arbitration agreement); *Matter of Weisenberg v. Sass*, 209 A.D.2d 424, 424 (2d Dep’t 1994) (“appellant...participated in the arbitration proceeding before the Beth Din. Under these circumstances, the Supreme Court properly confirmed the award”).

35. Here, Strulovitch’s litigation-related conduct in Supreme Court over a multi-year period is plainly inconsistent with, and resulted in a waiver of, his newly-asserted purported First Amendment right to resolve the issues in this Action via a beis din arbitration.

36. Indeed, Strulovitch is the one who commenced the Rockland Action in August 2024 to confirm the Award, thereby availing himself of civil court jurisdiction. *See P.S. Fin., LLC v. Eureka Woodworks, Inc.*, 214 A.D.3d 1, 12 (2d Dep’t 2023) (“party who commences an action may generally be assumed to have waived any right it may have had to submit the issues to arbitration”).

37. Strulovitch also consented (*see* February 2025 Tr. 8:3-6, 14:6-13, 24:10-17) to Supreme Court’s exclusive jurisdiction of the very subject matter he now seeks to arbitrate, including by stipulating on the record to withdrawing the Rockland Action in favor of the Westchester Supreme Court’s adjudication of all claims and issues concerning the Award. *See Radziewsky v. Macmillan, Inc.*, 170 A.D.2d 400, 400 (1st Dep’t 1991) (“an election to litigate arbitrable issues constitutes a waiver of the right to arbitrate those issues”).

38. Strulovitch extensively participated in litigating this Action in several significant ways (all while failing to raise his purported right to arbitrate), including by: (a) electing not to appeal the First Injunction, which by its terms, prohibited him from seeking relief before a beis

din concerning the Award; (b) seeking and obtaining a toll of his statutory time to confirm the Award while enforcement was stayed (February 2025 Tr. 12:5-13:4, 20:13-19; NYSCEF Doc. No. 80); (c) participating in and appearing at preliminary and compliance conferences, including on February 13, 2025, July 15, 2025, January 7, 2026, March 24, 2026, and April 29, 2026; (d) moving to dismiss the Amended Petition and R. Bleier's cross-claims; (e) answering the Amended Petition and R. Bleier's cross-claims after Appellants' motions to dismiss were denied, and failing to raise therein a defense based on a right to arbitrate; (f) stipulating to discovery orders; and (g) thereafter participating without objection in all phases of discovery for eight months, including affirmatively conducting several depositions and issuing document requests, producing responsive documents, and meeting and conferring on several occasions concerning discovery disputes.

39. Strulovitch accordingly waived any right to arbitrate before a beis din or any other arbitral panel. *See Friedman v. CYL Cemetary, Inc.*, 99 A.D.3d 857, 858 (2d Dep't 2012) (respondents waived right to rabbinical arbitration by "actively participating in the litigation," including seeking discovery, moving to dismiss claims, failing to plead the right to arbitration, and waiting more than a year after claims were interposed and more than eight months after serving answers to seek arbitration, all of which was "clearly inconsistent with [their] later claim that the parties were obligated to settle their differences by arbitration"); *Arnav Indus. Inc. Profit Sharing Plan and Tr. v. 3449-3461 Hamilton Ft, LLC*, 237 A.D.3d 786, 790 (2d Dep't 2025) (finding waiver of arbitration where "appellants were aware that the instant action was commenced against them but did not assert the right to arbitrate until over a year after commencement of the action"); *Hyde v. Jewish Home Lifecare*, 149 A.D.3d 674, 674–75 (1st Dep't 2017) (waiver of arbitration where defendant failed to plead right to arbitrate as a defense, appeared for a preliminary conference, served a demand for authorizations, and failed to participate in arbitration noticed by

plaintiff before seeking arbitration approximately four months after commencement of the action); *LZG Realty, LLC v. H.D.W. 2005 Forest, LLC*, 71 A.D.3d 642, 643 (2d Dep’t 2010) (waiver of arbitration where appellant did not assert the right in his answer or at any other time until approximately 1½ years after commencement of action, stipulated to joint trials, and participated in extensive discovery, which conduct “evinced an intent over an extended period of time to litigate, rather than to arbitrate”)

40. Recognizing that his position is inconsistent with his pervasive litigation conduct, Strulovitch relies on misguided First Amendment arguments (addressed below) to justify his obvious attempt at forum shopping.

41. Courts have found a waiver of arbitration where, like here, a litigant’s conduct is indicative of forum shopping. *See Cusimano v. Schnurr*, 26 N.Y.3d 391, 401 (2015) (plaintiffs, after litigating for nearly a year and representing they did not want to arbitrate, sought arbitration after court expressed that their claims were vexatious and untimely); *Out/Med Transcription Servs., Inc. v. Breitner Transcription Servs., Inc.*, Index No. 652548/2013 (NMB), 2016 N.Y. Slip Op. 30079 (U) (Sup. Ct. N.Y. Cnty. Jan. 12, 2016) (defendant waived right to arbitration where it delayed enforcement of arbitration provision, and its decision to seek arbitration after a motion to compel discovery was granted was “clearly prejudicial to the plaintiff”).

42. Moreover, if Strulovitch was truly concerned with his ability to preserve and exercise his First Amendment rights, he would have appealed from the First Injunction. That he chose not to evidences the disingenuous nature of his stay application, which represents a transparent attempt at forum shopping given that Supreme Court, as noted above, decided several motions in this Action adversely to Appellants and recently entered a trial readiness order setting a schedule for summary judgment. Strulovitch knows his recently concocted story to support his

claim and his defenses in this Action are unlikely to succeed in sustaining the Award so he seeks to undermine Supreme Court's jurisdiction in an effort to escape future adverse rulings.

43. Now that Strulovitch has been prevented from going back to the beis din when he believes that outcome would serve his interests, he has raised a First Amendment red herring to try to regain the leverage he has lost in this Action.

44. Indeed, notwithstanding that the Award provides that the parties to the Rockland Arbitration were to return to the Rockland beis din if an issue arose "regarding execution of the ruling," Strulovitch elected to commence the Rockland Action to confirm the Award in civil court.

45. Further, before commencing the underlying Action, Bain sought to resolve his dispute with Strulovitch before a beis din. Strulovitch refused to participate in Bain's proposed beis din.

46. Having realized that he is unlikely to succeed in confirming the Award in Supreme Court, Strulovitch is trying to reverse course and run back to beis din, seeking the exact relief in that forum that he seeks in Supreme Court, to wit: confirmation of the Award.

47. Strulovitch's conduct here is plainly indicative of forum shopping. Strulovitch only raised his purported right to arbitrate after: (a) he actively litigated this Action for over a year; (b) he represented to Supreme Court that he wanted to resolve all issues concerning the Award in this Action; (c) Supreme Court issued several adverse motion rulings in this Action; and (d) he refused to participate in Bain's proposed beis din.

48. Allowing Strulovitch to avoid an unfavorable litigation result by forcing a bilateral beis din upon Bain after the completion of discovery would materially prejudice Bain by requiring him to litigate the dispute in another forum, without all necessary parties, more than a year after he commenced the Action and obtained the First Injunction preventing that very result. *See Empire*

Core Grp., LLC v. Perennial Painting & Cleaning LLC, Index No. 653643/2020 (DAJ), 2020 N.Y. Misc. LEXIS 46024, at *5 (Sup. Ct. N.Y. Cnty. Oct. 7, 2020) (petitioner would be prejudiced by being required to arbitrate after having applied for a stay of arbitration where the respondent had already waived right to arbitrate). Nominal Defendants would also be prejudiced as Strulovitch excluded them from the 2026 Arbitration despite their undisputed interests in the Nursing Facility.

49. As a result, Strulovitch waived any right he may have had to arbitrate the claims in the underlying Action, and the Order preventing him from doing so should not be disturbed.

B. The Order does not implicate the First Amendment’s Church Autonomy Doctrine or Free Exercise Clause because it decides secular issues on neutral principles of law.

50. This Action, in very basic terms, seeks to vacate a rabbinical court arbitral award that purports to determine the ownership of the Nursing Facility. The crux of the dispute is that the Award affects the ownership interests of Bain and other Nominal Defendants who were excluded from the Rockland Arbitration. This is a secular commercial dispute that can be resolved by applying neutral principles of contract, partnership, and property law. Strulovitch does not dispute that. (*See Soloveichik Affirmation in Support of Motion for Stay Pending Appeal* (“Soloveichik Aff.”), ¶ 30). There is no religious issue on which this dispute turns.

51. Strulovitch’s would-be new rabbinical arbitration presents exactly the same issue. Strulovitch does not even attempt to disguise that. The rabbinical summons issued in the 2026 Arbitration (*see Soloveichik Aff.* 119) explicitly states: “Dispute is Regarding: court case index No. 15548/2024.”³ Under the circumstances, Supreme Court was plainly authorized to stay and enjoin the 2026 Arbitration and providently exercised its discretion in doing so in order to prevent

³ The correct index number for this proceeding in the Supreme Court is 75548/2024.

Strulovitch’s attempted end run around its jurisdiction over the secular claims at issue, as well as material prejudice to Bain, who never agreed to participate in Strulovitch’s 2026 Arbitration.

52. It is well-established that litigation of secular matters, such as the contract-based claims and issues in this Action, does not infringe upon a religious individual’s First Amendment rights or implicate the Church Autonomy Doctrine. *See, e.g., Congregation Yetev Lev D’Satmar, Inc. v. Kahana*, 9 N.Y.3d 282 (2007) (“civil disputes involving religious parties or institutions may be adjudicated without offending the First Amendment as long as neutral principles of law are the basis for their resolution”), *Park Slope Jewish Ctr. v. Congregation B’nai Jacob*, 90 N.Y.2d 517, 522 (1997) (reversing determinations that a dispute between the Jewish Center and a Congregation over the use and occupancy of a building was a nonjusticiable religious dispute, and remanding the matter to resolve the dispute on neutral principals of law); *Avitzur v. Avitzur*, 58 N.Y.2d 108, 115 (1983) (courts can enforce agreements to appear before rabbinical tribunals as secular contractual obligations.)

53. Although a beis din rabbinical tribunal is religious in nature, New York courts have long recognized them as arbitral bodies within the meaning of CPLR Article 75 and routinely hold that such proceedings are subject to New York’s statutory arbitration framework, including statutory requirements, public policy limits, and equitable safeguards. *See Matter of Meisels v. Uhr*, 79 N.Y.2d 526, 532–39 (1992); *Kingsbridge Ctr. of Israel v. Turk*, 98 A.D.2d 664, 664 (1st Dep’t 1983) (“the provisions of article 75 of the CPLR are applicable to the decision of the Beth Din”). Courts regularly treat commercial and property disputes before rabbinical tribunals in that way. *See, e.g., Meisels*, 79 N.Y.2d at 526; *Kingsbridge*, 98 A.D.2d at 664; 528-538 W. 159th St. LLC v. Soloff Mgt. Corp., 27 Misc. 3d 1216(A) (Sup. Ct. Kings Cnty. 2010); *Kahan Jewelry Corp. v. Venus Casting, Inc.*, 17 Misc.3d 684 (Sup. Ct. N.Y. Cnty. 2007).

54. Because Article 75 governs the secular legal consequences of rabbinical arbitration, courts are authorized to regulate those proceedings under statutory and other applicable law. CPLR 7503(b), for example, authorizes New York courts to stay arbitration proceedings at the request of a party who has not participated in them when “a valid agreement [to arbitrate] was not made or has not been complied with.”

55. Indeed, it is black-letter law—law that Strulovitch availed himself of earlier in this Action—that one cannot be compelled to arbitrate absent a “clear, explicit and unequivocal” agreement to do so. *See Messiah’s Covenant Cmty. Church v. Weinbaum*, 74 A.D.3d 916, 918 (2d Dep’t 2010); *see also In re Ismailoff (Golan)*, 836 N.Y.S.2d 493 (Surr. Ct. Nassau Cnty. 2007) (“in the absence of any ... agreement to a ‘Beth Din,’ the First Amendment ... prohibits the appointment of a religious tribunal”).

56. Proceedings before a rabbinical court or beis din are no different. *See Schwartz v. Schwartz*, 79 AD3d 1006, 1011 (2d Dep’t 2010) (“Supreme Court properly granted the wife’s separate motion to permanently stay the husband’s demand for arbitration before the Beth Din...contrary to the husband’s contention, the Stipulation does not contain a clear, explicit and unequivocal agreement or mandate to arbitrate.”); *Blatt v Sochet*, 199 AD2d 451, 453 (2d Dep’t 1993) (“The rabbinical arbitration should be permanently stayed, as the parties’ agreement does not contemplate rabbinical arbitration.”).

57. Just so here. It is undisputed that there is no agreement by Bain or the other parties to participate in Strulovitch’s 2026 Arbitration. As in *Blatt* and *Schwartz*, Strulovitch’s unilateral decision to commence the 2026 Arbitration seeking to adjudicate the same claims at issue in the underlying Action, without Bain or any other party having agreed to do so, was appropriately stayed and enjoined by Supreme Court pursuant to its Order.

58. This statutory structure does not offend religious autonomy because courts decide only secular legal issues such as whether a valid arbitration agreement exists; not religious law. *See Davis v. Melnicke*, 25 A.D.3d 503 (1st Dep’t 2006). That distinction is dispositive here. It is undisputed that neither Bain nor any of the Nominal Defendants agreed to submit this dispute to the beis din that issued the *hazmana* in Strulovitch’s 2026 Arbitration. Because there is no valid agreement to arbitrate here, Supreme Court properly stayed and enjoined Strulovitch’s 2026 Arbitration. *See Blatt*, 199 A.D.2d at 451.

59. In an attempt to avoid this necessary conclusion, Strulovitch argues that the beis din proceeding is, itself, “religious in nature,” so that he can conveniently claim that his 2026 Arbitration is beyond the supervision of civil courts despite the secular nature of the substantive dispute and issues presented in connection with his unilateral decision to commence the arbitral proceeding. (Soloveichik Aff. ¶ 30.) But that is not law.

60. Indeed, even if Strulovitch is “a highly observant orthodox Jew” who believes “he is required, under Jewish law, to resolve [his] disputes with other orthodox Jews before a rabbinical court,” *Sieger v. Sieger*, 297 A.D.2d 33, 34 (2d Dep’t 2002), the Court need not evaluate whether Jewish law obligates the resolution of disputes before a beis din. *See id.* at 36. That question is wholly unnecessary for judicial determination of the threshold issue that is the subject of the stay application: whether a secular agreement to arbitrate exists. This threshold inquiry can be decided, and was decided by Supreme Court, under neutral principles of law, without reference to any religious principles. *See Sieger*, 297 A.D.2d at 36; *see also Stefansky v. Kaufman*, 220 N.Y.S.3d 914, at n.6 (Sup. Ct. Kings Cnty. 2024) (denying motion to compel arbitration where *hazmana* and email correspondence did not constitute a clear agreement to arbitrate, and rejecting argument that “this matter should be heard in Rabbinical Court...as is customary and required of observant Jews”

because “[w]hether an agreement to arbitrate has been entered into must be determined by a court under the principles of secular law and without application of religious requirements...[c]onsistent with First Amendment principles.”).

61. When a beis din is asked to resolve a secular commercial dispute like that here, it functions for civil law purposes as an arbitral panel, not as a body whose decision-making automatically becomes a matter of theological controversy, church discipline, or ecclesiastical governance. *See Avitzur*, 58 N.Y.2d at 115; *Meisels*, 79 N.Y.2d at 532–39; *Davis*, 25 A.D.3d at 503. *Meisels* is illustrative. The dispute there concerned commercial partnerships and real property investments, the forum was a beis din, and the Court of Appeals analyzed the award under Article 75. *See* 79 N.Y.2d at 532–39. *Kingsbridge*, *Kahan Jewelry*, and *Soloff Management* likewise demonstrate that routing a commercial dispute to a rabbinical tribunal does not convert a contract or property dispute into an ecclesiastical question.

62. Where courts have jurisdiction, they are empowered to protect it by staying overlapping arbitrations when a party makes sufficiently affirmative use of the judicial process to resolve the same underlying claims. *See Reed v. Cohen*, 120 A.D.2d 598, 598–99 (2d Dep’t 1986); *Board of Ed. of Roosevelt Union Free Sch. Dist. v. Roosevelt Adm’rs Ass’n*, 65 A.D.2d 591, 592 (2d Dep’t 1978).

63. Strulovitch’s assertion of a First Amendment free exercise interest does not change this result. Although he claims a religious obligation to resolve disputes before a rabbinical court, the Order does not regulate Strulovitch’s beliefs or his religious observance. It merely prevents him, in accordance with neutral principles of secular law, from using an unauthorized religious tribunal as a parallel adjudicative mechanism against an adversary in pending civil litigation who never agreed to arbitrate or submit the dispute to such tribunal. The Free Exercise Clause protects

religious belief and practice; it does not create a right to compel an opposing litigant into a religious forum to which that litigant never agreed.

64. In sum, as applicable law demonstrates, rabbinical arbitral proceedings implicate substantive legal rights under New York law, and where, as here, no secular agreement to arbitrate exists, New York courts unequivocally have jurisdiction to stay rabbinical arbitration. This does not interfere with free exercise under the First Amendment. Rather, a stay of arbitration is authorized by the absence of a required contractual predicate—a valid agreement to arbitrate—under neutral principles of secular contract and arbitration law.

65. This is especially true here because it is undisputed that Bain never agreed to Strulovitch’s 2026 Arbitration. *See Funti v. Andrews*, 250 N.Y.S.3d 466, 473 (1st Dep’t 2026) (“the court can make a determination about what is required for a ceremony to be solemnized...in a given religious denomination without becoming entangled in a religious dispute” because “[t]here is no dispute in this case about what the requirements are for a marriage to be solemnized in the Coptic Church.”); *Merkos L’Inyonei Chinuch, Inc. v. Sharf*, 59 AD3d 403, 407 (2d Dep’t 2009) (court resolution of undisputed issues does not require consideration of religious principles).

66. Therefore, Supreme Court’s Order, in effect, staying Strulovitch’s 2026 Arbitration does not run afoul of the First Amendment. As Supreme Court held in the Order, Strulovitch’s 2026 Arbitration was stayed on neutral, secular grounds—the undisputed absence of a valid arbitration agreement—without adjudicating any theological question.

67. In any event, the procedural history relating to this Action belies Strulovitch’s assertion his “religious beliefs” require him to resolve his legal dispute with Bain before a beis din. (Soloveichik Aff. ¶ 6.) This dispute arose in the first instance because Strulovitch excluded Bain from the Rockland Arbitration. Then, when offered the opportunity to correct that error,

Strulovitch refused to participate in a second beis din with Bain and the Nominal Defendants. It was only sixteen months later, having lost a series of decisions before the Supreme Court and with summary judgment looming, that Strulovitch suddenly decided that his “religious beliefs” required a beis din with Bain.

68. Strulovitch argues that the appealed-from Order “intrudes directly into the internal governance of a religious institution.” (Soloveichik Aff. ¶ 32). It does nothing of the sort. As noted, the beis din in the 2026 Arbitration is considered as an arbitration panel under New York law, even if its members happen to be rabbis. In any event, the Order does not purport to dictate any internal governance of the beis din.

69. Indeed, by unilaterally initiating a beis din to adjudicate the very subject of the underlying Action, it was Strulovitch who intruded into the jurisdiction of the Supreme Court. This is why the Order directs Strulovitch to restore the status quo, which is necessary to protect Bain’s rights, as a non-consenting civil court litigant against whom a rabbinical arbitration was commenced.

70. Strulovitch’s assertion that he “has no authority to control” the beis din (Soloveichik Aff. ¶ 23) is disingenuous, given that he is the one who initiated it in the first place. It is undisputed that Strulovitch has an agent who appears before the beis din to advocate for Strulovitch’s interests. This is the same agent who threatened Bain with a “seruv” if Bain did not participate in Strulovitch’s 2026 Arbitration.⁴ Supreme Court refused to countenance this behavior and this Court should not, either.

⁴ In the event that the Court determines that the portion of the Order that requires Strulovitch to instruct the beis din to withdraw the servv violates the First Amendment, Bain respectfully requests that the Court sever that portion of the Order and otherwise not stay that portion of the Order that enjoins Strulovitch from arbitrating issues in the Action in a beis din arbitration.

71. New York courts have regularly refused to enforce beis din awards that would suppress, override, or coerce withdrawal of pending secular proceedings. That rule rests on a public policy of the highest order: the right of access to civil and criminal courts. *See Rakoszynski v. Rakoszynski*, 174 Misc.2d 509, 515 (Sup. Ct. Rockland Cnty. 1997). The *Rakoszynski* Court held that an arbitration award may not be confirmed if it “directs acts which are contrary to public policy or would deprive parties of their constitutional right to seek redress or protection in the future under civil law,” and that a religious tribunal “cannot abrogate to itself exclusive jurisdiction over all civil and criminal matters involving the parties.” *Id.*

72. This Court adopted and applied that principle in *Hirsch v. Hirsch*, 4 A.D.3d 451 (2d Dep’t 2004), affirming the vacatur of a beis din award that directed a party to withdraw a pending criminal complaint. The Court held that “an arbitration award that deprives a party of a constitutional right to seek redress or protection in a civil or criminal matter is against public policy.” *Id.*

73. By bringing the same dispute already pending in Supreme Court to a beis din and seeking a *seruv* against Bain, Strulovitch sought to influence this litigation through communal and religious pressure rather than through the merits of the secular claims. That is the same public policy concern identified in *Rakoszynski* and *Hirsch*. If New York courts will not confirm a beis din award that directs withdrawal of civil or criminal proceedings, they may enjoin a party from prospectively using the beis din process to achieve the same coercive end.

74. Strulovitch attempts to insulate the *seruv* by calling it a religious determination of Jewish law compliance. (*See Soloveichik Aff.*, ¶ 30.) But New York courts have recognized the practical consequences of a *seruv*. This Court has described a *seruv* as a sanction that “entails a type of ostracism.” *Matter of Greenberg v. Greenberg*, 238 A.D.2d 420, 421 (2d Dep’t 1997).

Other courts have similarly recognized that a *seruv* may subject the recipient to communal shame, scorn, or ridicule. *See Berg v. Berg*, 85 A.D.3d 950, 951 (2d Dep’t 2011); *Matter of Kleinbart v. Build Green Solutions, LLC*, 2014 N.Y. Slip Op. 51599(U) (Sup. Ct. Kings Cnty. 2014); *Lieberman v. Lieberman*, 149 Misc.2d 983 (Sup. Ct. Kings Cnty. 1991).

75. Strulovitch may rely on *Greenberg*, *Lieberman*, *Berg*, and *Kleinbart* for the proposition that a *seruv* threat is not “duress.” But those cases answer a different question: whether the threat of a *seruv* is sufficient to set aside a party’s consent to Beis Din arbitration after the fact. They hold that, where a party voluntarily submits to a religious tribunal, the religious consequences inherent in that system generally do not establish duress sufficient to vacate the award. Those cases do not authorize one litigant to use a *seruv* prospectively against a non-consenting adversary in order to pressure that adversary out of pending civil litigation.

76. The distinction matters. This appeal is not about a consensual submission agreement or retroactive vacatur of an award. It is undisputed that Bain never consented (nor did Nominal Defendants) to arbitration before the beis din Strulovitch selected in the 2026 Arbitration. Nor did Bain consent to bilateral arbitration with Strulovitch in any forum. Strulovitch instead invoked the *seruv* prospectively as pressure against a non-consenting litigant who was already in court on the same secular dispute. The *Greenberg/Lieberman* line of cases recognize that a *seruv* is pressure; *Rakoszynski* and *Hirsch* explain why pressure directed at extinguishing access to civil or criminal courts violates public policy.

77. *Congregation Darech Amuno*, *Rakoszynski* and *Hirsch* establish the public policy that the Order vindicates. And the Order regulates Strulovitch’s conduct; it does not adjudicate Jewish law, declare the *seruv* invalid as a matter of religious doctrine, or instruct the beis din how

to decide internal religious questions. That critical distinction preserves both religious autonomy and the integrity of the civil courts.

78. In other words, a litigant has no constitutional right to deploy a religious tribunal as a weapon to drive a non-consenting adversary from court. The cases Strulovitch invokes protect religious belief and religious practice against government interference; they do not involve a party's use of a religious tribunal as coercive leverage against a non-consenting civil litigant.

79. For more than four decades, New York courts have applied a consistent framework to disputes involving beis din proceedings. That framework forecloses Strulovitch's First Amendment challenge.

80. The Order does not decide any religious question. It does not invalidate a *seruv* as a matter of Jewish law. It does not command the beis din to do anything. It merely restrains Strulovitch from using an unauthorized parallel forum to pressure his non-consenting adversary in a civil action that has been litigated in Supreme Court a year and a half. That is a proper exercise of judicial authority, fully consistent with the First Amendment and New York law.

C. Strulovitch cannot rely on expert testimony for the first time on appeal.

81. On May 6, 2026, Strulovitch filed a letter application for pro hac vice admission of John A. Meiser, Esq. of Notre Dame Law School's Lindsay and Matt Moroun Religious Liberty Clinic. It appears that, in an attempt to save his claim, Strulovitch intends to have Mr. Meiser opine that this matter presents an issue of religious law.

82. That effort would not improve his likelihood of success on appeal. First, Strulovitch cannot introduce evidence or offer experts to establish interpretation or application of religious requirements under Jewish law. *Sieger*, 297 A.D.2d at 37.

83. Separately, Strulovitch cannot use an appeal to introduce, for the first time, expert testimony, affidavits, or any opinion evidence that was not submitted in connection with the underlying motion.

84. It is well established that appellate review is confined to the evidence before the motion court. *See Czernicki v. Lawniczak*, 25 A.D.3d 581, 582 (2d Dep’t 2006) (“[P]laintiff’s attorney’s reply affirmation and the defendant’s deposition transcript excerpts attached as an exhibit thereto and included in the record on appeal are *dehors* the record”); *Devellis v. Lucci*, 266 A.D.2d 180, 181 (2d Dep’t 1999) (depositions not included in the underlying motion cannot be considered on appeal).

85. Here, the record before Supreme Court contained no expert affidavit, testimony, deposition, or other proof establishing that this dispute presents an issue of religious law. Strulovitch had a full and fair opportunity to present such proof below and failed to do so. He cannot cure that failure on appeal by attempting to supplement the record with new expert opinion. Accordingly, any anticipated reliance on Mr. Meiser’s opinion would not support a likelihood of success on the merits.

D. Strulovitch cannot circumvent his failure to timely seek appellate review of the First Injunction via this Appeal.

86. Even if Strulovitch could obtain a stay of the Order pending appeal, Appellants would still be subject to the First Injunction staying and enjoining any action to confirm or enforce the Award, including in a *beis din*. As discussed above, Appellants elected not to appeal or otherwise challenge the First Injunction and their time to appeal expired long ago. The First Injunction would therefore remain in effect irrespective of the outcome of the instant stay application and appeal.

87. There is no material difference between the prohibitory relief in the First Injunction that Strulovitch failed to appeal and the Order. Specifically, the First Injunction, *inter alia*, enjoins Appellants “from taking any action to confirm or enforce the Award, including, without limitation, seeking modification, clarification, or explanation of the Award from the issuing Rabbinical Court.”

88. As it relates to the Order, the Supreme Court merely held that it “issued [the First Injunction] which enjoined respondents-defendants from taking any action to confirm or enforce the [Award]” and clarified that the First Injunction applies to Strulovitch’s 2026 Arbitration because it seeks to confirm the Award and covers the issues in the Action. (Order 3.)

89. Accordingly, Strulovitch’s appeal from the portion of the Order that simply restates relief granted in the First Injunction is precluded because it is, in effect, an improper attempt to circumvent his failure to timely appeal the First Injunction. *See de Lara Nunez v. CCNY Constr., Inc.*, 188 A.D.3d 424, 425 (1st Dep’t 2020) (plaintiff should have appealed from the earlier order granting summary judgment, rather than the “substantively identical” short-form order entered two weeks later); *Panasia Estate, Inc. v. Broche*, 103 A.D.3d 426 (1st Dep’t 2013) (where there was no material difference between the order being appealed and an earlier order, the time to appeal was properly measured from the earlier order); *MacKenzie v. Bison El., Inc.*, 8 A.D.3d 1062, 1063 (4th Dep’t 2004) (where time to appeal the first order had passed, “[i]nasmuch as the second order insofar appealed from merely clarified the first order, the second order is not appealable and the appeal must be dismissed”); *U.S. Bank v. Sofer*, 2022 N.Y. Misc. LEXIS 10630, at *4 (Sup. Ct. Kings Cnty. Nov. 22, 2022) (where plaintiff sought an order directing conduct that the referee would have been required to do even without the requested order, such relief was not a material change to the judgment that re-started the time to appeal).

90. Allowing an appeal from the substantially identical relief in the Order that is contained in the non-appealed First Injunction would countenance Strulovitch’s attempt to sidestep his previous election to forego appellate relief from the First Injunction. At a minimum, the relief in the First Injunction should therefore be excluded from this appeal. *See Rivera v. Skanska USA Civ. Northeast, Inc.*, 179 A.D.3d 455, 455 (1st Dep’t 2020) (declining to treat notice of appeal as valid where “plaintiff is clearly seeking to circumvent an untimely appeal from the order”).

E. Strulovitch fails to show that he would suffer irreparable harm absent a stay.

91. Strulovitch argues that he will face “grave and irreparable harm absent a stay,” but nothing in the record suggests that his “sincerely held religious beliefs” required him to initiate this unilateral beis din against Bain. (Soloveichik Aff. ¶ 42.) Notably absent from the motion papers is any sworn affidavit from Strulovitch attesting to those beliefs, let alone an explanation from Strulovitch as to why his religious beliefs either compelled him to exclude Bain from the Rockland Arbitration, to decline to participate in Bain’s own Brooklyn beis din, or to affirmatively litigate the Action in Supreme Court for over a year.

92. Strulovitch also fails to explain how he stands to suffer any irreparable harm without a stay of the Order given his election not to appeal the First Injunction in December 2024.

93. Supreme Court merely directed Strulovitch to restore the status quo he upended. In the (unlikely) event the underlying appeal succeeds, Strulovitch would obviously be able to reconvene his beis din in the 2026 Arbitration, just as Bain could reconvene his own beis din if Strulovitch were to agree to multi-party arbitration. There is no risk of “irreparable” harm.

94. Finally, Strulovitch dismisses “Bain’s interest in reputational protection within the religious community[.]” (Soloveichik Aff. ¶ 46.) If Strulovitch’s religious beliefs were as sincere as his attorney claims, he might not be so flippant about the impact of his threatened seruv.

F. The balance of the equities favors denying Strulovitch’s stay application.

95. Strulovitch argues the equities tip in his favor because he purportedly “faces the immediate compelled violation of his First Amendment rights – he must act against his sincerely held religious convictions, petition a religious body to retract a religious act, and forgo the religious forum he believes Jewish law requires.” (Soloveichik Aff. ¶ 48.) But as noted, Strulovitch unilaterally initiated the 2026 Arbitration against Bain seeking to adjudicate the same claims and issues as the underlying Action in furtherance of his efforts to confirm the challenged Award, notwithstanding that: (a) Bain never agreed to arbitrate in the 2026 Arbitration and otherwise expressly rejected bilateral arbitration with Strulovitch previously; (b) Strulovitch was and remains subject to the First Injunction staying and enjoining any action to confirm or enforce the Award; (c) Strulovitch intentionally excluded from the 2026 Arbitration necessary parties with interests in the Nursing Facility, including Nominal Defendants; and (d) Strulovitch has actively litigated this Action from inception through the recent completion of discovery and previously represented to Supreme Court that he intended to adjudicate all issues concerning the Award in this Action.

96. As a result, and especially considering the undisputed absence of an agreement to arbitrate, it is Bain’s rights that are at risk, not Strulovitch’s. Indeed, given that a stay of arbitration is warranted under these circumstances as a matter of settled, neutral principles of law, and that it is Strulovitch who asks this Court on appeal to evaluate his purported religious rights and obligations in violation of the very First Amendment principles he half-heartedly claims the Order threatens, the balance of the equities plainly tip in Bain’s favor.

97. Strulovitch does not stand to suffer any appreciable harm in the absence of a stay. Conversely, if a stay were granted, Strulovitch would undoubtedly continue his backchannel

efforts to force Bain into a bilateral arbitration while at the same time undermining Supreme Court's jurisdiction to avoid an unfavorable result litigating the underlying Action.

CONCLUSION

98. Strulovitch raises the specter of the First Amendment's Free Exercise clause, but this Court should not be fooled—his actions in initiating a beis din arbitration absent Bain's agreement to do so were calculated to try and reverse his (mis)fortune in this litigation. Strulovitch should not be allowed to selectively use religion as a weapon in his quest to obtain ownership of a nursing home. This is a business dispute, nothing more.

99. For the foregoing reasons, the undersigned respectfully request that Strulovitch's motion for a stay pending appeal be denied.

Dated: White Plains, New York
May 21, 2026

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