

NJ Trial Court Error Resulted In Years Of Litigation

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Writing for *Law360*, Attorneys Lawrence H. Shapiro and Nicole D. Miller discuss how a New Jersey Trial Court's failure to comply with the state's Uniform Arbitration Act led Superior Court of New Jersey Appellate Division Judges to reverse the trial judges in favor of Ansell Grimm & Aaron's client.

In matters of religion and real estate, the question is not which court prevails — the secular Superior Court of New Jersey or the nonsecular rabbinical court. Rather, it is about strict compliance with New Jersey's Uniform Arbitration Act, N.J.S.A 2A:23B-1, et al.

Such was the case in the arbitration of plaintiffs-appellants Chevra Lomdei Torah and Eliyaou Levine v. Liba Areyeh and Moshe Aryeh, defendants-respondents, et al. In what should serve as a warning for trial judges faced with proceedings arising from an arbitration award, Superior Court of New Jersey Appellate Division Judges William Nugent and Richard Geiger reversed the trial court's decision in the matter because it had not stated the reasons for its legal conclusion and failed to strictly comply with the act.

The result of the trial court error? Long delays and costly litigation.

Arbitrating the Right of First Refusal

The plaintiffs owned property in Lakewood, New Jersey. The defendants owned an adjoining property which they attempted to sell to the Areyehs.

Under Judaic law, an adjoining property owner has the right of first refusal to purchase a neighboring property and the plaintiffs sought to enforce that right and, in December 2010, filed suit against the property owners and Areyeh in the Superior Court of New Jersey Chancery Division.

In Torah, after allowing the property to be transferred to Areyeh to be held pending adjudication of the matter and the sellers being removed from the matter, the plaintiffs and Areyeh agreed to submit their dispute to arbitration in a rabbinical court and have the decision rendered be docketed in the Superior Court of New Jersey as an arbitration award enforceable in the state courts. In September 2011, the rabbinical court issued a decision in favor of plaintiffs, awarding them the property. The Areyehs subsequently moved to vacate the rabbinical court's ruling claiming that it suffered from conflicts and engaged in inappropriate activities. The plaintiffs sought to have the decision entered as a judgment, submitted under the 5-day rule.[1]

While the motion to vacate was pending, the trial court, sua sponte, requested that a rabbi, as a friend of the court, review the facts of the case and provide the court with his opinion as to whether the rabbinical court was

correct under Jewish law, due to sensitive religious issues with which the court was not familiar.

In a June 2012 letter to the court, which neither the plaintiffs nor Areyeh received, the rabbi concluded the rabbinical court had no grounds upon which to stand and was not viable under Jewish law. The rabbi further opined that enforcement of the rabbinical court's decision would be a "serious miscarriage of justice." The plaintiffs argued that the rabbi had no authority to issue such an opinion. However, the trial court disagreed and stated it had given the rabbi the authority to do so. The trial court further stated that the rabbi would normally oversee the rabbinical court but failed to provide any explanation of in what capacity or under what authority that oversight would take place.

Subsequently, on June 15, 2012, the trial court denied Areyehs' motion to vacate the rabbinical court decision but also refused to enter the ruling as a judgment. The trial court gave three reasons for not enforcing the decision: (1) the plaintiffs' application was procedurally deficient and untimely; (2) the plaintiffs did not formally move to enter the ruling as a judgment; and (3) it accepted the rabbi's opinion that a conflict of interest existed. Yet, the trial court failed to identify the individual(s) with conflicts of interest or the nature of their purported conflicts. The trial court further decided that the ruling was not a final decision. Despite these reasons for not confirming the award, without any explanation the trial court declined to vacate the ruling.

In February 2013, the trial court entered an order referring the parties to a second rabbinical court to hear the matter without consideration of the first rabbinical court's rulings. The order directed that the parties enter into an arbitration agreement upon penalty of dismissal or suppression of their pleadings if they failed to do so within 30 days. Facing dismissal of their complaint, the plaintiffs agreed to a second round of arbitration. The second round of arbitration occurred, which resulted in a decision again awarding plaintiffs the property. After the property was transferred to the plaintiffs, subsequent motion practice arose over allocation of closing costs and fees. When the plaintiffs refused to participate in further arbitration arguing that the matter was completed and the second rabbinical court had no longer had jurisdiction, the second rabbinical court held them in contempt and the trial court entered orders in that regard, including stripping the plaintiffs of ownership of the property, which ultimately led to the plaintiffs' filing of an appeal in 2017.

On appeal, the plaintiffs argued, in part, that the denial of the 2012 first rabbinical court decision as a judgment was beyond the scope permitted by the act. The Appellate Division found that the trial court had explicitly violated Section 23(d) of the act by denying vacation of the award but also refusing to confirm the award. Furthermore, the Appellate Division found that the trial court failed to state its factual findings or analysis despite well settled law requiring trial courts to state the reasons for their legal conclusions. Not only did the trial court fail to comply with the act and fail to state its reasons for its decision, the Appellate Division also determined the trial court lacked authority under the act to compel a second round of arbitration.

The Appellate Division further warned that binding arbitration cannot be imposed by judicial fiat because the scope of an arbitrator's authority is based on the terms of a contract between the parties. Specifically, courts should not use undue pressure, compel or coerce or use the threat of sanctions to force parties into arbitration — which is what the trial court did in Torah.

Ultimately, the Appellate Division vacated the June 15, 2012, orders denying Areyehs' motion to vacate and the plaintiffs' application to confirm the award, the February 2013 order directing a second round of arbitration and each subsequent order (which involved additional issues raised on appeal) and remanded for reconsideration of the applications to vacate and confirm and make findings and conclusions of law as to the first rabbinical court's decision.

Why This Opinion Is So Important

It is well settled that public policy favors arbitration as an alternative to litigation. The setting is not as formal as a court proceeding, which may help all parties feel more at ease. Additionally, arbitrations can result in lower attorneys' fees and costs, especially when they occur earlier in a case before extensive discovery, motion practice and court hearings.

Generally, judicial review of an arbitration decision is very limited and the decision is not to be taken lightly. Once parties agree to arbitrate, the trial court is limited in its actions but is permitted to correct or modify an arbitration award^[2] and/or vacate an arbitration award.^[3]

The act provides very particular circumstances in which an arbitration award can be vacated. These circumstances are limited to:

- an award procured by corruption, fraud or other undue means;
- a court determination of evident partiality, corruption or misconduct by an arbitrator which prejudices the rights of a party to the proceeding;
- an arbitrator's refusal to postpone a hearing upon showing of sufficient cause for postponement, refusal to consider evidence material to the controversy or otherwise conduct a hearing contrary to the act so as to substantially prejudice the rights of a party to the proceeding;
- an arbitrator exceeding his or her powers;
- a lack of agreement to arbitrate, unless there was participation without raising the objection pursuant to the act; and/or
- the arbitration was conducted without proper notice.[4]

If a court vacates an award on a ground other than that there was no agreement to arbitrate, it may order a rehearing.[5] If the award is vacated due to corruption, fraud or other undue means and/or a determination of partiality, corruption or misconduct by the arbitrator, the court shall order a rehearing before a new arbitrator.[6]

If the court denies an application to vacate an arbitration award, it shall confirm the award unless an application to modify or correct the award is pending.[7] This is where the trial court in *Chevra Lomdei Torah et al. v. Liba Aryeh et al.*[8] went astray and ended up reversed on appeal.

Years of Litigation

The trial court's failures in 2012 led to six years of litigation, six years of attorneys' fees and costs, and six years of the parties' lives being disrupted — with no clear end in sight. Now with the reversal, there will be additional hearings held with the likelihood of this case extending into 2019. Notably, those hearings will involve issues about the first rabbinical court conducted six years ago and at least one witness now being deceased.

All of this could have been avoided had the trial court complied with the act's provision that the award be vacated under the limited circumstances or the award be confirmed, and the reasons for whatever the decision was, be set forth in the record.

The Torah decision is a reminder to trial courts that when statutes are involved, the language thereof must be followed and the factual findings leading to the court's legal conclusions must be set forth in the record. The decision is also a warning to trial courts that although arbitration is a preferred alternative to litigation, it cannot be coerced or compelled — no different than settlements.

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[1] N.J. Rule of Court 4:42-1(c)

[2] N.J.S.A. 2A:23B-24

[3] N.J.S.A. 2A:23B-23

[4] N.J.S.A. 2A:23B-23(a)(1)-(6)

[5] N.J.S.A. 2A:23B-23(c)

[6] *Id.*

[7] N.J.S.A. 2A:23B-23(d)

[8] 2018 WL 3520548 (N.J. App. Div. July 23, 2018)