At an IAS Term, Part 35 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 15th day of October, 2013.

P R E S E N T:

HON. KAREN B. ROTHENBERG,
Justice.

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In the Matter of the Verified Petition of

VA'AD HAKOHOL DESCHUNAS CROWN HEIGHTS,
CROWN HEIGHTS JEWISH COMMUNITY COUNCIL, INC.,
FISHEL BROWNSTEIN, and ELIE C. POLTORAK,

Petitioners,

Pursuant to CPLR 7510, to confirm an arbitral award,

- against -

VA'AD HAKASHRUS OF CROWN HEIGHTS CORP.,
VA'AD HAKASHRUS OF CROWN HEIGHTS INC.,
BETH DIN OF CROWN HEIGHTS, INC.,
YISROEL BEST, ZEV CADANER, MOTTEL CHEIN,
MENACHEM GERLITZKY, NOCHUM GROSS,
MENACHEM MENDEL HENDEL, YAAKOV HERZOG,
AVROHOM HOLTZBERG, YITZCHOK HOLTZMAN,
SHMUEL KRAUS, YISROEL LANDA, HARVEY TZVI LANG,
ZALMAN LIPSKIER, YOSEF LOSH, LEIBISH NASH,
URIEL NIASOFF, AVROHOM OSDOBA, YAAKOV OSDOBA,
ZALMAN OSDOBA, SHMUEL PLOTKIN, YITZCHOK RAITPORT,
BENTZION RASKIN, MOSHE RUBASHKIN, SHOLOM RUBASHKIN,
YISROEL SANDHAUS, AHARON YAAKOV SCHWEI,
SHLOMO YEHUDA SEGAL, CHANINA SPERLIN,
YOSEF BORUCH SPIELMAN, YAAKOV SPRITZER,
YAAKOVSUFRIN, ALEXANDER WEISS, and YITZCHOK ZIRKIND,

Respondents.

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AMENDED DECISION, ORDER, AND JUDGMENT

Index No. 8548/11

Mot. Seq. #6

The following papers numbered 1 to 14 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/

Petition/Cross Motion and Affidavits (Affirmations) Annexed	1-3
Opposing Affidavits (Affirmations)	4-5
Affidavit in Further Support	6-7
Additional Affidavits (Affirmations)	8, 9-13
Letter to the Court, dated Sept. 13, 2013	14

In this proceeding pursuant to CPLR article 75 to confirm arbitration awards, dated Apr. 14, 2010, and Jan. 3, 2011, petitioners Va'ad Hakohol Deschunas Crown Heights (Hakohol), Crown Heights Jewish Community Council, Inc., Fishel Brownstein, and Elie C. Poltorak (collectively, petitioners) cross-move (1) pursuant to this Court's short-form order, dated Oct. 19, 2012, for a judgment against respondents Va'ad Hakashrus of Crown Heights Corp., Va'ad Hakashrus of Crown Heights Inc., Beth Din of Crown Heights, Inc., Nochum Gross, Harvey Tzvi Lang, Avrohom Osdoba, Yaakov Osdoba, Zalman Osdoba, Shmuel Plotkin, Yitzchok Raitport, Bentzion Raskin, Moshe Rubashkin, Sholom Rubashkin, Shlomo Yehuda Segal, YaakovSufrin, and Alexander Weiss (collectively, the Osdoba respondents) for the relief sought in the amended petition on account of the Osdoba respondents' failure to participate in further arbitration proceedings; (2) pursuant to CPLR 2221 (e), for leave to renew their cross motion, dated Jan. 3, 2012, and the amended petition; (3) pursuant to CPLR 2221 (d), for leave to reargue their cross motion, dated Jan. 3, 2012, and the amended petition; (4) upon renewal and reconsideration, granting the relief requested in the amended petition in all respects; (5) pursuant to CPLR 7510, confirming both arbitration awards; (6) pursuant to CPLR 2001, amending the caption of this proceeding to correct non-prejudicial errors in certain respondents' names; (7) pursuant to CPLR 2104, enforcing the settlement agreement, dated June 4, 2013, among petitioner Hakohol, Beis

Din of Crown Heights, and respondent Va'ad Hakashrus of Crown Heights Inc.; (8) in accordance with the aforementioned agreement, declaring certain individuals to be the directors of Va'ad Hakashrus of Crown Heights Inc.; (9) pursuant to the aforementioned agreement, directing the Osdoba respondents to deliver trademarks for kosher certification to Hakohol; and (10) pursuant to 22 NYCRR 130-1 and the inherent powers of the Court, sanctioning the Osdoba respondents and their counsel for frivolous, dilatory, and contumacious conduct (seq. No. 6).

Background

One of the rules by which Jewish Orthodox residents in the Crown Heights section of Brooklyn live is that food that is sold in their local stores must be Kosher. Three local organizations are involved with the kosher-certification process. The first is the permanent community court, the Beis Din of Crown Heights, which has been incorporated (improperly in petitioners' view) as respondent Beth Din of Crown Heights, Inc. (Crown Heights Beth Din); the second is a religious corporation, petitioner Hakohol; the third is comprised of two non-profit religious corporations, respondents Va'ad Hakashrus of Crown Heights Corp. and Va'ad Hakashrus of Crown Heights Inc. (collectively, Hakashrus). As part of the kosher-certification process, Crown Heights Beth Din serves as a religious consultant on which and when food is considered Kosher and allows its name to appear on certificates signifying its approval. Hakohol serves as a community organization that is not directly involved in the matter of Kosher approval, while Hakashrus, which was originally intended to be part of Hakohol, provides the necessary personnel to implement the Kosher-certification process (butchers, inspectors, etc.). Food suppliers and retailers are assessed monthly fees for having their products certified as Kosher for sale in Crown Heights. These fees are used to fund operations of Crown Heights Beth Din, which, in addition to providing religious counsel on Kosher certification, serves as a full-time community court to the Crown Heights residents on a wide range of religious matters.

Between 2006 and 2009, heated disputes erupted within the Crown Heights Jewish Orthodox community for the control of, and the revenues from, its Kosher-certification process. It was claimed, among other things, that Rabbi Avrohom Osdoba (Rabbi Osdoba), a long-term member of Crown Heights Beth Din, split Hakashrus from Hakohol and appointed his sons and supporters to run Hakashrus independently of Hakohol. It was further claimed that Hakashrus was then

incorporated under three different names, that Hakashrus registered the Crown Heights Kosher trademark with the US Patent and Trademark Office as its own property, and that Crown Heights Beth Din was incorporated as a non-profit corporation. These, plus allegations of financial improprieties, were brought to the Court in four separate lawsuits that were ultimately referred to voluntary arbitration. A five-member panel of rabbinical judges, presided over by Rabbi Abraham Baruch Rosenberg (the Rosenberg Beth Din), issued a Rabbinical Court Ruling on Apr. 14, 2010 (the Apr. 14, 2010 award), which set up a mechanism for the resolution of the parties' ongoing disputes. As is relevant to this case, the Rosenberg Beth Din issued four rulings in its Apr. 14, 2010 award. First, a new election of members of the community organization Hakohol was ordered, with the date of such elections set for June 13, 2010. Second, an election for the three-member Crown Heights Beth Din was ordered to fill one vacancy in that court. Here, detailed criteria for eligible candidates were established, with the date of such elections set for Sept. 5, 2010. Third, the post-election powers of Crown Heights Beth Din were spelled out (in ¶ 43), as follows:

> "After the elections, every directive that will be issued by the Rabbinical Court [in writing or verbally] shall be unanimous, and when there are differences of opinion it shall be the majority opinion, and the minority must acquiesce its opinion to the opinion of the majority. . . ." (bracketed language in the original).

Fourth and finally, the Rosenberg Beth Din expressed hope that, after the aforementioned elections, Hakohol and Hakashrus would negotiate a consensual resolution of the financial and other arrangements between them without the need for further intervention from the Rosenberg Beth Din. In this regard, the Rosenberg Beth Din commented (in ¶¶ 45, 48, and 54) that:

> "45. We hope that after a new Vaad Hakohol is appointed and after a third rabbi is appointed, the elected Rabbinical Court [or a majority thereof] and the new Vaad will be able to arrange matters in agreement without the need for the Rabbinical Court signed hereinafter to get involved. Nevertheless, we shall offer a number of

fundamental points.

* * *

48. In the interests of the matter, there is a need to create a Vaad Hakashrus which shall be the executive body of the Rabbis and of the Vaad Hakohol. After the elections, an effort shall be made to arrange in agreed fashion, how much authority to give them, who determines the composition of the Vaad, whether the Vaad has access to the income of the Kashrus; if they do not succeed there will be no escape but for the Rabbinical Court signed hereinafter to decide.

* * *

54. If there will be a question or a dispute related to interpretation of the Rabbinical Court ruling and/or implementation of the Rabbinical Court ruling, as well as if it becomes clear that there are additional matters in need of a decision, the parties shall return to the Rabbinical Court signed hereinafter" (bracketed language in the original).

In accordance with the Apr. 14, 2010 award, the first two directives – an election to Hakohol and an election of a new member to Beth Din – were fulfilled. Whereas the election of new Hakohol members is unchallenged, Rabbi Osdoba has complained to the Rosenberg Beth Din that Rabbi Joseph Shaya Braun (Rabbi Braun), who emerged as the winner for the vacancy on Crown Heights Beth Din, was unqualified. Separately, the newly elected chairman of Hakohol requested, in anticipation of potential opposition from Rabbi Osdoba, that the Rosenberg Beth Din appoint a supervisor to implement the Apr. 14, 2010 award. In a decision, dated Jan. 3, 2011 (the Jan. 3, 2011 supplemental award), the Rosenberg Beth Din disallowed both contentions. First, the Rosenberg Beth Din rejected, over Rabbi Osdoba's objection, all challenges to Rabbi Braun's qualifications, finding that Rabbi Braun had been properly ordained based on a certificate the latter had received from nonparty Rabbi Gavriel Zinner. The Rosenberg Beth Din further rejected related challenges to Rabbi Braun's qualifications, noting that Rabbi Braun was ordained based on Rabbi Zinner's certificate alone and without regard to the validity of any additional certificates of

ordination that Rabbi Braun and Beth Din obtained from other rabbis. The Rosenberg Beth Din reinforced its ruling with a firm announcement (in ¶ 10) that:

> "In light of the above, it is clear that Rabbi Joseph Shaya Braun shlita was elected in accordance with halacha, and the Vaad Hakohol must conclude the negotiations regarding a contract as soon as possible, not later than Rosh Chodesh Adar I. After signing the contract, they must make an inauguration (hachtara) ceremony as they did for other rabbinical candidates. The entire public must honor him and all the other rabbis of the community must cooperate with him, etc., etc." (footnote omitted; bold-face type and italics omitted).

Turning to Hakohol's request for the appointment of a supervisor to enforce the Apr. 14, 2010 award, the Rosenberg Beth Din characterized such request as "impractical." Specifically, the Rosenberg Beth Din noted (in ¶ 14) that:

> "Recently, the Rabbinical Court received numerous complaints from plaintiffs that the opposing plaintiff was not fulfilling the Rabbinical Court Ruling. . . . If they want the Rabbinical Court to deal with every complaint of violations of the Rabbinical Court Ruling, the only way to do this is for the whole Rabbinical Court to come here for a certain time to hear the verbal claims of the plaintiffs in the presence of the whole Rabbinical Court. It is very possible that when the appointment of Rabbi Joseph Shaya Braun shlita comes into force as we ruled above, many of these matters will solve themselves without the intervention of the Rabbinical Court" (footnotes and italics omitted).

On Apr. 13, 2011 (or within one year of the Apr. 14, 2010 award), petitioners commenced the instant article 75 proceeding. In their original petition, they alleged only two causes of action: (1) a request for confirmation of the Apr. 14, 2010 award, and (2) a declaratory judgment that Hakohol has sole control and possession of the financial affairs and assets of Hakashrus, the right to appoint and dismiss its directors, all rights to its intellectual property, and the kosher certification symbol "CHK," which has been registered with the US Patent and Trademark Office, to be used under the directions of Crown Heights Beth Din (seq. No.1). Petitioners did not seek confirmation

of the Jan. 3, 2011 supplemental award in their original petition.

On Sept. 2, 2011, certain respondents, represented by the law firm of Seidemann & Mermelstein (Seidemann), cross-moved, in essence, pursuant to CPLR 7511 (b) (1) (iii), for an order vacating the Apr. 14, 2010 award as not "final and definite," and returning the parties to the pre-arbitration "status quo"; or, alternatively, confirming respondents' interpretation of the Apr. 14, 2010 award, which, if such interpretation were accepted, would also have returned the parties to the pre-arbitration status quo (seq. No. 2) (the Seidemann cross motion).

On Jan. 3, 2012, petitioners cross-moved for an order (1) pursuant to CPLR 7510, confirming the Jan. 3, 2011 supplemental award; (2) pursuant to CPLR 2001, amending the caption of this proceeding to correct non-prejudicial errors in certain respondents' names; (3) directing Seidemann to produce proof of authority to represent respondents and to specifically name which respondents it represented; (4) striking the cross motion as unauthorized; and (5) granting petitioners such other and further relief as the Court may deem just, proper, and equitable (seq. No. 3) (the prior motion). As part of their cross motion which was served on Jan. 3, 2012, petitioners annexed an amended verified petition, which, in addition to the two causes of action asserted in the original petition, added a request for confirmation of the Jan. 3, 2011 supplemental award as a new cause of action (the amended petition). Although petitioners in their prior motion sought an order confirming the Jan. 3, 2011 supplemental award as well as amending the caption, they did not specifically request leave, pursuant to CPLR 3025 (b), to serve and file the amended petition, which, as noted, requested confirmation of the Jan. 3, 2011 supplemental award as a new cause of action.

In an eight-page decision, order, and judgment, dated June 20, 2012 (the prior order), the Court addressed the original and amended petitions as well as respondents' cross motion and petitioners' prior motion. In particular, the Court ruled (at pages 7-8) that:

"ORDERED that the petition to confirm the Rosenberg Beth Din's April 14, 2010 award is denied and all controversies regarding control or operation of Vaad Hakashrus, ownership of Vaad Hakashrus assets, appointment of directors to Vaad Hakashrus, or ownership of any intellectual property associated with Vaad Hakashrus are remanded to the Rosenberg Beth Din; and it is further

ORDERED that the branch of the Seidemann cross motion to confirm the Rosenberg Beth Din's April 14, 2010 award is denied; and it is further

ORDERED that the branch of Seidemann cross motion to vacate the Rosenberg Beth Din's April 14, 2010 award is denied and the issue whether the election of a third member to the Beth Din of Crown Heights is a condition precedent for enforcement of the Rosenberg Beth Din's April 14, 2010 award together with a determination whether or not such a condition has been satisfied is remanded to the Rosenberg Beth Din; and it is further

ORDERED that the branch of petitioners' cross motion to confirm the Rosenberg Beth Din's January 3, 2011 supplemental award is denied; and it is further

ORDERED that the branch of petitioners' cross motion to amend the caption herein is deemed moot and any disputes regarding which entity/entities exercise(s) actual control of Vaad Hakashrus kosher operations or are properly subject to the Rosenberg Beth Din's jurisdiction are remanded to the arbitration panel; and it is further

ORDERED that the branch of petitioners' cross motion for an order compelling attorney Seidemann to produce proof of authority that he represents respondents and to strike his cross motion are deemed moot."

Subsequently, by short-form order dated Oct. 19, 2012, the Court set the deadline, subject to the parties' agreement to extend, by which they were to appear before the Rosenberg Beth Din to resolve the aforementioned issues. The Court warned in its Oct. 19th order that "[f]ailure to do so shall result in the granting of petitioners' amended petition [and] entry of the [Rosenberg] Beth Din's two prior awards as judgments of the Court, upon an application by a party."

Thereafter, the parties made some attempts (all unsuccessful) to appear before the Rosenberg

Beth Din. According to the latest communication the Court has received by way of a letter, dated Sept. 13, 2013 from the Abramson Law Group, counsel to the Osdoba respondents, Rabbi Rosenberg confirmed receipt of a check in payment for the outstanding amounts owed for the Osdoba respondents' prior appearances before the Rosenberg Beth Din. To date, however, the Court has not been advised of a firm date for the parties' appearance for further arbitration before the Rosenberg Beth Din.

Meanwhile, petitioners and some of the respondents have attempted to bypass their obligation to appear for further arbitration before the Rosenberg Beth Din. To that end, Hakohol, Crown Heights Beth Din, and one of the Hakashrus entities (Va'ad Hakashrus of Crown Heights Inc.) entered into a settlement agreement, dated June 4, 2013 (the settlement agreement), purportedly to implement the principles outlined in the Apr. 14, 2010 award concerning Hakashrus. Only two of the three rabbis on the board of Crown Heights Beth Din signed the settlement agreement on its behalf. The remaining (third) member – Rabbi Osdoba – did not sign the settlement agreement and did not indicate in any manner that he acquiesced in his opinion to the majority opinion.

Separately, petitioners have presented to the Court for signature a stipulation of partial settlement, dated Aug. 20, 2013 (the stipulation of partial settlement), providing that this proceeding is settled as between petitioners and the so-called "settling respondents." The settling respondents are Yisroel Best, Zev Cadaner, Mottel Chein, Menachem Mendel Hendel, Yaakov Herzog, Yitzchok Holtzman, Shmuel Kraus, Yisroel Landa, Zalman Lipsker, Leibish Nash, Uriel Niasoff, Yisroel Sandhaus, Aharon Yaakov Schwei, Chanina Sperlin, Yosef Boruch Spielman, Yaakov Spritzer, and Va'ad Hakashrus of Crown Heights Corp. In accordance with the stipulation of partial settlement, the settling respondents have consented to the entry of judgment confirming the Apr. 14, 2010 award and the Jan. 3, 2011 supplemental award as against them.

Leave to Renew the Prior Motion and the Amended Petition

The settlement agreement does not qualify as new evidence under CPLR 2221 (e) (2) because it fails to constitute "new facts not offered on the prior motion that would change the prior determination." The Apr. 14, 2010 award has established a general rule (in ¶ 43) that all decisions of Crown Heights Beth Din must be unanimous, with one limited exception, that is, where, as here, one of its members (*i.e.*, Rabbi Osdoba) dissents, he "must acquiesce [his] opinion to the opinion of the majority." The settlement agreement does not meet this requirement because Rabbi Osdoba did not sign it, and he did not indicate in any manner that he has acquiesced in the majority opinion. Petitioners erroneously rely on another paragraph in the Apr. 14, 2010 award (¶ 45), which provides that "[w]e hope that after a new Vaad Hakohol is appointed and after a third rabbi is appointed, the elected Rabbinical Court *[or a majority thereof]* and the new Vaad will be able to arrange matters in agreement without the need for the Rabbinical Court signed hereinafter to get involved" (emphasis added). The phrase "majority thereof" refers to the exception, as outlined in the general rule (¶ 43), which applies only if the dissenting rabbi acquiesces in the majority opinion. Accordingly, the settlement agreement is unenforceable, and any relief petitioners are seeking in the instant motion on the basis of the settlement agreement is denied.

Leave to Reargue the Prior Motion and the Amended Petition

After reviewing the prior order, which, to date, has not been served with notice of entry, the Court, in its discretion, grants petitioners leave to reargue pursuant to CPLR 2221 (d) and, upon reargument, rules as follows.

As an initial matter, the Court construes petitioners' request in the prior motion for confirmation of the Jan. 3, 2011 supplemental award, coupled with their concurrent request for "such other and further relief as the Court may deem just, proper and equitable," to constitute a request for leave under CPLR 3025 (b) to amend their original petition to add a cause of action seeking confirmation of the Jan. 3, 2011 supplemental award (*see Tirado v Miller*, 75 AD3d 153, 158 [2d Dept 2010]). The additional relief is supported by a copy of the Jan. 3, 2011 supplemental award that is annexed to the prior motion. The Court is satisfied that respondents are not prejudiced by petitioners' request for this additional relief. Turning to the requirements of CPLR 3025 (b), "applications for leave to amend pleadings should be freely granted except when the delay in seeking leave to amend would directly cause undue prejudice or surprise to the opposing party, or when the proposed amendment is palpably insufficient or patently devoid of merit" (*Mastrokostas v 673 Madison, LLC*, 109 AD3d 459, 460 [2d Dept 2013]). As noted, no prejudice to respondents exists, and the proposed amendment to add a new cause of action seeking confirmation of the Jan. 3, 2011 supplemental award is meritorious because, as the Court held in the prior order (at page 7), and as it reaffirms today, "[t]he Rosenberg arbitration panel . . . has clearly and unequivocally confirmed the results of that election." Moreover, the prior motion, which included a signed amended petition, was served on Jan. 3, 2012, which is within one year by which confirmation of the Jan. 3, 2011 supplemental award must be made (*see* CPLR 7510 ["The court shall confirm an award upon application of a party made within one year after its delivery to him. . . .]; Gen. Constr. L. § 20 ["The day from which any specified period of time is reckoned shall be excluded in making the reckoning."]). Accordingly, the signed amended petition, as annexed to the prior motion, is deemed served on all respondents and filed with the County Clerk nunc pro tunc to Jan. 3, 2012.

More importantly, the Court finds that the prior order failed to differentiate among the three

distinct causes of action asserted in the amended petition. These causes of action are for (1) confirmation of the Apr. 14, 2010 award, (2) confirmation of the Jan. 3, 2011 supplemental award, and (3) a declaration regarding control and possession of the financial affairs and assets of Hakashrus, including the trademarks for kosher certification. The Court further finds that the prior order failed to differentiate among the discrete rulings of the Apr. 14, 2010 award; namely, that the award (in ¶¶ 45-50) separately, albeit generally, addressed Hakashrus. The prior order's failure to differentiate the causes of actions in the amended petition, compounded by the prior order's failure to differentiate the discrete rulings of the Apr. 14, 2010 award, has led to several internal inconsistencies in the decretal paragraphs in the prior order. The prior order is hereby vacated in its entirety, and all of its decretal paragraphs are hereby replaced with the following:

> "[1] ORDERED that the first cause action in the amended petition for confirmation of the Rosenberg Beth Din's Apr. 14, 2010 award is granted, and such award is hereby confirmed pursuant to CPLR 7510, except for ¶ 48 of the Hakashrus portion of the award, which is hereby vacated pursuant to CPLR 7511 (b) (1) (iii), and the Hakashrus issue – encompassing all controversies regarding (1) its control or operation, ownership of its assets, appointment of its directors, and ownership of any intellectual property associated with it, and (2) which entity/entities exercise(s) actual control of its operations or are properly subject to the Rosenberg Beth Din's jurisdiction – is hereby remanded to the Rosenberg Beth Din for a hearing and for a determination of this issue; and it is further
>
> [2] ORDERED that the second cause of action in the amended petition for confirmation of the Rosenberg Beth Din's Jan. 3, 2011 supplemental award is granted, and such award is hereby confirmed pursuant to CPLR 7510; and it is further
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> [3] ORDERED that the third cause of action in the amended petition for a declaration as to control and possession of the financial affairs and assets of Hakashrus is denied; and it is further
>
> [4] ORDERED that the branch of petitioners' cross motion to amend the caption to correct the name of respondent Va'ad Hakashrus of Crown Heights, Inc. to read "Va'ad Hakashrus Crown Heights, Inc.,

a/k/a Va'ad Hakashrus of Crown Heights, Inc.," is granted, and the caption is amended accordingly; and it is further

[5] ORDERED that the branch of petitioners' cross motion to amend the caption to correct the name of respondent Va'ad Hakashrus of Crown Heights Corp. to read "Va'ad Hakashrus of Crown Heights, a/k/a Va'ad Hakashrus of Crown Heights Corp." is denied as moot because the instant proceeding against this respondent has been resolved pursuant to the stipulation of partial settlement; and it is further

[6] ORDERED that the remaining branch of petitioners' cross motion to compel attorney Seidemann to produce proof of authority that he represents certain respondents and to strike his cross motion is denied; and it is further

[7] ORDERED that the Seidemann cross motion is granted with respect to ¶ 48 of the award only, and is otherwise denied of the Hakashrus portion of the award in accordance with the first decretal paragraph hereof and is otherwise denied."

In an article 75 proceeding, the Court plays a limited role (*see Matter of New York State Correctional Officers & Police Benevolent Assn., Inc. v State of N.Y.*, 94 NY2d 321, 326 [1999]). The Court is bound by the Rosenberg Beth Din's factual findings, interpretation of evidence, and judgment concerning remedies. The Court may not examine the merits of the Rosenberg Beth Din's awards and substitute its own judgment for that of the Rosenberg Beth Din. Here, the Rosenberg Beth Din's Apr. 14, 2010 award has determined all, except one, of the issues between the parties. The discrete self-contained issue which the Rosenberg Beth Din's Apr. 14, 2010 award did not determine – (1) Hakashrus' control or operation, ownership of its assets, appointment of its directors, and ownership of any intellectual property associated with it, and (2) which entity/entities exercise(s) actual control of its operations or are properly subject to the Rosenberg Beth Din's jurisdiction (collectively, the Hakashrus issue) – is severable from all of the other determined issues, including the manner of election of the Hakohol membership and the filling of a vacancy on Crown Heights Beth Din (*see Muller v Wertzberger*, 2013 NY Slip Op 50915(U), *2 [Sup Ct, Kings County 2013, Schmidt J.] [a partial arbitration award is considered final if it fully resolves a separate and

independent claim or the liability of a particular party]). Except for one paragraph (¶ 48) in the Hakashrus portion of the April 14, 2010 award, the remainder of the Apr. 14, 2010 award is confirmed pursuant to CPLR 7510. Paragraph 48 in the Hakashrus portion of the Apr. 14, 2010 award[1] is vacated as indefinite or non-final because it has left the parties unable to determine the Hakashrus issue (*see Matter of Board of Educ. of Amityville Union Free School Dist. v Amityville Teacher's Assn.*, 62 AD3d 992, 993 [2d Dept 2009] [internal quotation marks omitted]).

Furthermore, whereas the Jan. 3, 2011 supplemental award upheld the validity of Rabbi Braun's election to Crown Heights Beth Din as a final and definite matter, it declined to appoint a supervisor to ensure that the Osdoba respondents complied with the Apr. 14, 2010 award. Thus, both awards contemplated further proceedings before the Rosenberg Beth Din in the event of, among other things, a continued controversy over Hakashrus. Accordingly, a remand to the Rosenberg Beth Din for a hearing and determination of the Hakashrus issue is appropriate (*see Board of Educ. of Amityville Union Free School Dist.*, 62 AD3d at 994).

Turning to the Jan. 3, 2011 supplemental award, the Court finds that its unambiguous pronouncement that Rabbi Braun was elected in accordance with religious law is adequate for the Court to confirm this award. "The path of analysis, proof and persuasion by which an arbitrator reaches a conclusion is beyond judicial scrutiny" (*Matter of Vermilya [Distin]*, 157 AD2d 1030, 1031 [3d Dept 1990] [internal citations omitted], *lv denied* 75 NY2d 710 [1990]). The Rosenberg Beth Din's endorsement of Rabbi Braun's credentials to qualify as a member of Crown Heights Beth

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[1] As noted, paragraph 48 of the Apr. 14, 2010 award reads in full as follows:

> "In the interests of the matter, there is a need to create a Vaad Hakashrus which shall be the executive body of the Rabbis and of the Vaad Hakohol. After the elections, an effort shall be made to arrange in agreed fashion, how much authority to give them, who determines the composition of the Vaad, whether the Vaad has access to the income of the Kashrus; if they do not succeed there will be no escape but for the Rabbinical Court signed hereinafter to decide."

Din, therefore, is controlling. The Court is proscribed from evaluating Rabbi Braun's credentials, as doing so would infringe "upon a religious community's independence from secular control or manipulation" (*Sieger v Union of Orthodox Rabbis of U.S. & Can.*, 1 AD3d 180, 181 [1st Dept 2003] [internal quotation marks omitted], *lv dismissed* 2 NY3d 758 [2004], *lv denied* 3 NY3d 604 [2004]). With the confirmation of the Jan. 3, 2011 supplemental award, there is obviously no need for the Rosenberg Beth Din to consider, as was erroneously stated in the prior decision, "the issue whether the election of a third member to the Beth Din of Crown Heights is a condition precedent for enforcement of the Rosenberg Beth Din's April 14, 2010 award together with a determination whether or not such a condition has been satisfied."

In light of the foregoing, the Court need not address the petitioners' request for a judgment against the Osdoba respondents pursuant to the October 19, 2013 order. Lastly, the Court, in its discretion, declines to award petitioners costs or sanctions (*see S & B Petroleum, Inc. v Gizem Realty Corp.*, 8 AD3d 550 [2d Dept 2004]; 22 NYCRR 130-1.1 [a]).

All other relief not expressly granted herein is denied.

To reflect the amendment of the caption in accordance with the fourth decretal paragraph set forth above and to reflect the resolution of this proceeding against the aforementioned "settling respondents" pursuant to the stipulation of partial settlement, the caption is amended to read as follows:

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In the Matter of the Verified Petition of

VA'AD HAKOHOL DESCHUNAS CROWN HEIGHTS,
CROWN HEIGHTS JEWISH COMMUNITY COUNCIL, INC.,
FISHEL BROWNSTEIN, and ELIE C. POLTORAK,

Petitioners,

Pursuant to CPLR 7510, to confirm an arbitral award,

- against - Index No. 8548/11

VA'AD HAKASHRUS CROWN HEIGHTS, INC., a/k/a

VA'AD HAKASHRUS OF CROWN HEIGHTS, INC.,
BETH DIN OF CROWN HEIGHTS, INC.,
MENACHEM GERLITZKY, NOCHUM GROSS,
AVROHOM HOLTZBERG, HARVEY TZVI LANG,
YOSEF LOSH, AVROHOM OSDOBA, YAAKOV OSDOBA,
ZALMAN OSDOBA, SHMUEL PLOTKIN, YITZCHOK RAITPORT,
BENTZION RASKIN, MOSHE RUBASHKIN, SHOLOM RUBASHKIN,
SHLOMO YEHUDA SEGAL, YAAKOVSUFRIN, ALEXANDER WEISS,
and YITZCHOK ZIRKIND,

Respondents.

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This constitutes the amended decision, order, and judgment of the Court.

A copy of this amended decision, order, and judgment has been furnished to the Chambers of Judge David I. Schmidt who presides over the related action of *Osdoba v Braun*, index No. 502137/13 (Sup Ct, Kings County).

ENTER,

J. S. C.