

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

AMERICAN FRIENDS OF
LUBAVITCH (CHABAD), *et al.*

Plaintiffs,

v.

YEHUDA STEINER, *et al.*

Defendants.

Case No. 2014 CA 0006353 B
Judge Neal E. Kravitz

DEFENDANTS' ANSWER AND COUNTERCLAIMS TO PLAINTIFFS' COMPLAINT

Defendants Rabbi Yehuda Steiner and Rivky (Brikman) Steiner hereby submit the following Answer to the Complaint filed by Plaintiffs American Friends of Lubavitch (Chabad) and Rabbi Levi Shemtov. Concurrent with this Answer, Defendants have filed: (1) an Opposition to Motion for Preliminary Injunction; (2) an Opposition to Motion to Confirm Arbitration Award; (3) a Motion to Compel Arbitration; and (4) the Declaration of Rabbi Yehuda Steiner.

1. Paragraph 1 of the Complaint constitutes Plaintiffs' characterization of this action to which no response is required. Furthermore, many of the allegations in Paragraph 1 of the complaint are conclusions of law, to which no response is required. Insofar as a response may be deemed required, Defendants deny the allegations in Paragraph 1 of the Complaint.

2. The allegations in Paragraph 2 of the Complaint are conclusions of law to which no response is required, except that Defendants deny causing harm to Plaintiffs. Insofar as any

further response may be deemed required, Defendants deny the allegations in Paragraph 2 of the Complaint.

3. Defendants deny causing irreparable harm to Plaintiffs and deny Plaintiffs' allegation that they have refused to leave their employment with Plaintiffs.

THE PARTIES

4. Paragraph 4 contains factual statements about the Plaintiff of which Defendants are without knowledge or information sufficient to form a belief as to the truth of an averment, except that Defendants deny that Plaintiff American Friends of Lubavitch (Chabad) is the Chabad-Lubavitch movement's mandated representative entity in Washington, D.C. Exh. A.

5. Paragraph 5 is a factual statement about the Plaintiff of which Defendants are without knowledge or information sufficient to form a belief as to the truth of an averment.

6. Defendants admit the allegations in Paragraph 6 of the Complaint.

JURISDICTION

7. The allegations in Paragraph 7 of the Complaint are conclusions of law to which no response is required. Insofar as a response may be deemed required, Defendants deny that the Superior Court has subject matter jurisdiction because all contract terms Plaintiffs cite in their Prayer for Relief are subject to mandatory arbitration, as required under the contract. Defendants admit personal jurisdiction.

FACTUAL ALLEGATIONS

8. Defendants admit the first sentence of Paragraph 8 of the Complaint. Defendants deny the second sentence of Paragraph 8.

9. Defendants admit the statement in Paragraph 9 and clarify that the activities Defendants were hired to operate were Rabbinical, religious and outreach activities that Defendants had spent a lifetime training for and practicing as members and emissaries of the Chabad-Lubavitch movement. Steiner Decl. ¶ 1-2.

10. Defendants admit that a prior dispute between the parties was resolved by a Psak Din issued on June 15, 2011. Defendants admit that Plaintiffs' definition of a Psak Din is accurate.

11. Defendants admit that a new contract was executed on August 6, 2012.

12. Defendants admit to the Contract, but deny all of Plaintiffs' characterizations and allegations contained in Paragraph 12 of the Complaint. Defendants respectfully refer the Court to the Contract for a complete and accurate statement of its contents.

13. Defendants admit to the Contract, but deny all of Plaintiffs' characterizations and allegations contained in Paragraph 13 of the Complaint. Defendants respectfully refer the Court to the Contract for a complete and accurate statement of its contents.

14. Defendants admit to the Contract, but deny all of Plaintiffs' characterizations and allegations contained in Paragraph 14 of the Complaint. Defendants respectfully refer the Court to the Contract for a complete and accurate statement of its contents.

15. Defendants admit to the Contract, but deny all of Plaintiffs' characterizations and allegations contained in Paragraph 15 of the Complaint. Defendants respectfully refer the Court to the Contract for a complete and accurate statement of its contents.

16. Defendants admit to the Contract, but deny all of Plaintiffs' characterizations and allegations contained in Paragraph 16 of the Complaint. Defendants respectfully refer the Court to the Contract for a complete and accurate statement of its contents.

17. Defendants admit to the Contract. Defendants respectfully refer the Court to the Contract for a complete and accurate statement of its contents.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint. By August 2014, Rabbi Shemtov and American Friends of Lubavitch (“AFL”) owed Rabbi Steiner and his wife \$50,535.34 in unpaid salary, rent and other reimbursements, together with late fees. Steiner Decl. ¶ 7.

19. Defendants deny the characterizations and allegations contained in Paragraph 19 of the Complaint and respectfully refer the Court to the Contract for a complete and accurate statement of its contents. Defendants admit in part Plaintiffs’ assertion in the last sentence of Paragraph 19 that the word Zabla “roughly translates as ‘each picks his one’ (and the third is mutually chosen),” but deny that this is a complete and accurate translation of this word, as a Zabla is “[a] procedure for convening a rabbinical court of law to hear a case involving a dispute.” Exh. B.

20. Defendants admit the existence of the statement contained in Paragraph 20 of the Complaint. Defendants respectfully refer the Court to the Contract for a complete and accurate statement of its contents.

21. Defendants deny the characterizations contained in Paragraph 21 of the Complaint. Defendants respectfully refer the Court to the Contract for a complete and accurate statement of its contents.

22. Defendants deny the characterizations contained in Paragraph 22 of the Complaint. Defendants respectfully refer the Court to the Contract for a complete and accurate statement of its contents.

23. Defendants deny the characterizations contained in Paragraph 23 of the Complaint. Defendants respectfully refer the Court to the Contract for a complete and accurate statement of its contents. Defendants aver that Paragraph 23 of the Complaint is referring to a non-compete clause in the Contract that is unenforceable under applicable law and public policy.

24. Defendants deny that they violated two provisions of the Contract that entitled Plaintiffs to terminate Defendants under the Contract. Defendants deny the other allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny that the Zabla was formed or empanelled in accordance with the requirements of the Contract. Defendants aver that the Zabla statement cited in Paragraph 25 of the Complaint was not issued in accordance with the requirements of the Contract, has no legal effect under the terms of the Contract, and by its own terms was not a legal ruling or other enforceable award of any type.

26. Defendants admit to the first, second, fourth, and fifth sentences in Paragraph 26 of the Complaint. Defendants deny Plaintiffs' characterizations and allegations contained in the third sentence of Paragraph 26 of the Complaint.

27. Defendants admit to the second sentence in Paragraph 27 of the Complaint. Defendants deny all of Plaintiffs' other characterizations contained in Paragraph 27 of the Complaint. Defendants aver that Defendants have responded and Plaintiffs have ignored communications and requests from the parent organization of both Parties, Merkoz L'inyonei Chinuch, regarding the termination issues contained in Plaintiffs' letters.

28. Defendants admit to the second sentence in Paragraph 28 of the Complaint. Defendants otherwise deny the characterizations contained in Paragraph 28 of the Complaint.

Defendants aver that Defendants have responded to and Plaintiffs have ignored requests from the Rabbinical Authority as detailed in Answer Paragraph 27.

29. Defendants admit that the October 1 letter sent by Plaintiffs' attorneys contains certain allegations of contract violations. Defendants deny all of Plaintiffs' other characterizations and allegations contained in Paragraph 29 of the Complaint.

30. Defendants deny the characterizations contained in Paragraph 30 of the Complaint. Defendants aver that Rabbi Steiner is recognized by Chabad on Campus International and Merkos as a representative of Chabad outreach. Defendants aver that Rabbi Steiner's negotiations with other entities and efforts with his new and distinct organization are connected with this authorized Chabad outreach. Steiner Decl. ¶ 18.

COUNT ONE: BREACH OF CONTRACT

31. Defendants repeat and re-allege the responses in Paragraphs 1-30.

32. Defendants deny the characterizations of the Contract contained in Paragraph 32 of the Complaint. Defendants aver that the non-compete clause cited in Paragraph 32 of the Complaint is unenforceable under applicable law and public policy.

33. The allegations in Paragraph 33 of the complaint are conclusions of law, to which no response is required. Insofar as a response may be deemed required, Defendants deny the allegations and characterizations in Paragraph 33 of the Complaint. Defendants do aver that the non-compete clause cited in Paragraph 33 of the Complaint is unenforceable under applicable law and public policy.

34. The allegations in Paragraph 34 of the Complaint are conclusions of law to which no response is required, except that Defendants deny causing harm to Plaintiffs. Insofar as any

further response may be deemed required, Defendants deny the allegations in Paragraph 34 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

35. Plaintiffs' breach of contract claims are barred by the doctrine of unclean hands. Plaintiffs have accumulated unpaid obligations of \$50,535.54 to Defendants since February 2014, forcing Defendants to carry out their contractual obligations without the contractually promised funding. Steiner Decl. ¶ 7. Furthermore, Plaintiff Shemtov misrepresented himself to Defendants as the ultimate rabbinic and executive authority over Chabad-Lubavitch activities in Washington, D.C. Exh. A.

SECOND AFFIRMATIVE DEFENSE

36. Plaintiffs' breach of contract claims are barred by fraud in the inducement. During the formation of the Contract and at all other times, Plaintiff Shemtov misrepresented himself to Defendants as the ultimate rabbinic and executive authority over Chabad-Lubavitch activities in Washington, D.C. for governmental, communal, and local aspects, including universities. Rabbi Shmuel Kaplan has a prior and more authoritative claim on the communal, local, and university Chabad activities. This claim dates back to 1978 and was agreed to by Rabbi Chaim Mordechai Aizik Hodakov, then the Director of Merkos and Chief of Staff to the Lubavitch Rebbe, Menachem Mendel Schneerson, the undisputed leader of the Chabad movement. Plaintiff Shemtov's father Rabbi Abraham Shemtov also agreed to such division of jurisdiction in a signed letter to Rabbi Kaplan. *See* Exh. A. By representing to Defendants that he had been granted the communal authority, Plaintiff Shemtov committed fraud in the inducement by claiming authority that he did not actually have.

THIRD AFFIRMATIVE DEFENSE

37. The D.C. Superior Court currently lacks subject matter jurisdiction over Plaintiffs' breach of contract claims due to the presence of a mandatory, binding arbitration clause in the Contract. There has been no arbitration proceeding regarding Plaintiffs' termination rights that fully satisfies this arbitration clause.

FOURTH AFFIRMATIVE DEFENSE

38. Plaintiffs' bringing of this lawsuit and asserting contract claims in Superior Court breaches the Contract. Both parties agreed in Section G not to seek recourse in any other venue unless a Zabla issuing a ruling under the Section confirms in writing that the other party is not adhering to its decision. The Plaintiffs' claims must first be arbitrated by a Zabla issuing a halachically and legally binding ruling, and then the Zabla must confirm in writing that one party or the other is not adhering to its decision. Exh. 1 to Plaintiffs' Complaint, § G.

FIFTH AFFIRMATIVE DEFENSE

39. The non-compete clause in Section G of the Contract is unenforceable and void under applicable law and public policy.

FIRST COUNTERCLAIM: REQUEST FOR DECLARATORY JUDGEMENT

40. Defendants hereby incorporate in this section the averments and responses in Paragraphs 1-39 of this Answer.

41. In their Complaint and related motions, Plaintiffs seek the enforcement of a broad and permanent non-compete clause in the Contract. In particular, Plaintiffs seek to enforce the requirement that Defendants "not enter into employment or arrangement – of whatever scope or

duration – with any Chabad-Lubavitch entity or any other institution, performing similar work, anywhere in DC, or suburban MD or VA.” Exh. 1 to Plaintiffs’ Complaint, § G. This non-compete clause is unlimited in duration, applies to a wide geographic area, and covers all religious outreach work. If enforced, the restriction would severely limit the Defendants’ ability to exercise their chosen occupations.

42. Defendant Rabbi Steiner was born and raised in the Chabad-Lubavitch branch of Hassidic Judaism. Rabbi Steiner was educated in the Chabad Yeshiva (religious school) system, and attended rabbinical college for four years, during which time he studied and participated in weekly outreach services. After college, Rabbi Steiner entered into a formal program to obtain a rabbinical ordination, known as Smicha, which he received in 2005. During and after his studies, he continued to engage in Chabad outreach work. Steiner Decl. ¶ 1. By attempting to restrict Rabbi Steiner from working with any Chabad entity, or with any other institution performing similar work, Plaintiffs seek to permanently ban Rabbi Steiner from practicing and teaching his religion, or exercising his chosen profession, in a broad geographic region.

43. The District of Columbia recognizes that a non-compete clause is unenforceable as a matter of public policy if it unreasonably restrains trade, such that “the restraint is greater than the need to protect the promisee’s legitimate interest, or the promisee’s need is outweighed by the hardship to the promisor and the likely injury to the public.” *Ellis v. James V. Hurson Associates, Inc.*, 565 A.2d 615, 618 (D.C. 1989) (adopting Restatement (Second) of Contracts). Courts have recognized “that where the restriction was not limited as to time and territory, and where, by its terms, great hardship was placed upon the employee, [the restriction] would be invalidated.” *Deutsch v. Barsky*, 795 A.2d 669, 679 (D.C. 2002) (quoting *Erikson v. Hawley*, 12 F.2d 491, 495 (D.C. Cir. 1926)) (internal citations omitted).

44. Although District of Columbia courts have found that non-compete provisions which merely restrict competition for employer's clients are reasonable restrictions which protect the employer's legitimate business interests, these courts have distinguished such limited restrictions from broad non-compete provisions like that in the instant case, which cover the employer's general field of business. *See Ellis v. James V. Hurson Associates, Inc.*, 565 A.2d 615, 620 (D.C. 1989) (concurring with other jurisdictions which distinguish broad non-compete clauses covering the employer's entire field of business with limited non-compete clauses regarding an employer's clients). Defendants thus seek a declaratory judgment that the non-compete clause contained in Section G of the August 6, 2012 Contract is unenforceable as a matter of applicable law and public policy.

SECOND COUNTERCLAIM: BREACH OF CONTRACT

45. Defendants hereby incorporate in this section the averments and responses in Paragraphs 1-44 of this Answer.

46. Plaintiffs first hired Rabbi Steiner and his wife in 2008 to serve as the Chabad Rabbi and Rebbetzin at George Washington University (GWU). In November 2011, Plaintiffs fired the Steiners, but the head Rabbinical Authority held in a binding arbitration ruling that the termination was unlawful, and required the parties to sign a new contract. Steiner Decl. ¶ 4.

47. The parties signed a new contract on August 6, 2012 (the "Contract"), outlining the Defendants' obligations at GWU and the Plaintiffs' obligations to support Rabbi Steiner in his outreach efforts. Exh. 1 to Plaintiffs' Complaint. Plaintiffs agreed under Section F of the Contract to reimburse Defendants for approved expenses. Exh. 1 to Plaintiffs' Complaint, § F. Plaintiffs also agreed to compensate Defendants \$4,200 per month in salary, and to pay rent on an apartment for Defendants near the GWU campus. Exh. 1 to Plaintiffs' Complaint, § F.

Section F, in relevant part, states that “In addition to full funding of all approved activities, meals, etc., [Defendants] shall be compensated in a manner which allows a comfortable, presentable (shluchim) lifestyle ... this includes a monthly salary of \$4200.00, in addition to an apartment or other suitable (3BR) residence in proximity to the GW campus.” Exh. 1 to Plaintiffs’ Complaint, § F.

48. Plaintiffs also agreed under Section D of the Contract to pay the rent on any property associated with the Shlichus, such as the Chabad Lounge at GWU. Section D, in relevant part, states that “any property associated with this shlichus (other than a solely private residence) will be rented (or bought) in the name of [Plaintiffs], who will pay for it.” Exh. 1 to Plaintiffs’ Complaint, § D.

49. In accordance with the Contract, Rabbi Steiner consistently sent Rabbi Shemtov monthly reports with a list of expenses and scanned receipts. These reports also included reminders about the promised monthly salary. Exh. C. As reflected in Rabbi Steiner’s monthly reports, in March 2014, Plaintiffs failed to reimburse Defendants for expenses of \$270. In April 2014, Plaintiffs failed to reimburse Defendants for expenses of \$2,449.09. In May 2014, Plaintiffs failed to pay \$1,112.90 of Defendants’ salary. In June 2014, Plaintiffs failed to reimburse Defendants for expenses of \$563.27 and failed to pay \$779.92 of Defendants’ salary. In July 2014, Plaintiffs failed to reimburse Defendants for expenses of \$578.16 and failed to pay the entirety of Defendants’ salary of \$4,200. In August 2014, Plaintiffs failed to reimburse Defendants for expenses of \$1,000 and failed to pay the pro-rata amount of Defendants’ salary of \$1,050. As of August 7, 2014, Plaintiffs thus owed Defendants \$4,860.52 in reimbursements and \$7,142.82 in salary — or a total of \$12,003.34. Steiner Decl. ¶ 7; Exh. C; Exh. D.

50. In his monthly reports, Rabbi Steiner also kept Plaintiffs updated regarding both the private apartment rent and the Chabad Lounge rent. Exh. C. Because of Plaintiffs' delinquency in paying rents for the two locations, Defendants were also charged late fees. In 2014, Plaintiffs failed to reimburse Defendants for apartment rent and late fees amounting to \$4,750.20 for February, \$4,750.20 for March, \$4,750.20 for April, \$4,750.20 for May, \$4,750.20 for June, \$4,750.20 for July, and \$1,131.00 for August. In addition, in 2014, Plaintiffs failed to reimburse Defendants for rent on the Chabad Lounge amounting to \$2,100 for April, \$2,100 for May, \$2,100 for June, \$2,100 for July, and \$500 for August. As of August 7, 2014, Plaintiffs thus owed Defendants \$29,632.20 in un-reimbursed rent on Rabbi Steiner's apartment and \$8,900 in un-reimbursed rent for the Chabad Lounge at GW — or a total of \$38,532.20. Steiner Decl. ¶ 7; Exh. C; Exh. D.

51. In sum, Plaintiffs have breached their contractual obligations to pay Defendants \$50,535.54 in salary, expenses, rent, and late charges. Steiner Decl. ¶ 7. Defendants seek repayment of this amount in full from Plaintiffs.

THIRD COUNTERCLAIM: BREACH OF CONTRACTUAL ADDENDUM

52. Defendants hereby incorporate in this section the averments and responses in Paragraphs 1-51 of this Answer.

53. Between November 2011, when Plaintiffs terminated Defendants' employment for the first time, and August 2012, when this termination was deemed to be unlawful and the Parties concluded a new employment Contract, Rabbi Steiner personally paid for Chabad GW activities out of pocket — activities that otherwise would have been paid for by AFL. Steiner Decl. ¶ 4. Of the amounts that Rabbi Steiner paid out of pocket, he was never reimbursed for expenditures amounting to approximately \$55,000. Steiner Decl. ¶ 4.

54. Thus, upon the Parties' conclusion of the second employment Contract on August 6, 2012, they also included an Addendum to the Contract, which provided for Defendants' recovery of the \$55,000 in damages they suffered as a result of their wrongful termination. In particular, Section F of the Addendum provides that starting one year after the signing of the Addendum, Rabbi Steiner "shall be permitted to raise funds [from GWU Alumni] in order to satisfy debts he incurred in the 12 months preceding the agreement . . . [amounting] up to \$55,000." Exh. 2 to Plaintiffs' Complaint, § F; Steiner Decl. ¶ 6. .

55. Rabbi Steiner has not yet obtained the \$55,000 to which he is entitled under the Addendum, and due to Plaintiffs' wrongful termination will not be able to recover this amount. Steiner Decl. ¶ 6. Thus, he has not been compensated for the damages he suffered due to Plaintiffs' first breach of contract. Due to Plaintiffs' unlawful termination of Defendants in August 2014, Rabbi Steiner is now unable to raise funds to satisfy this debt. Defendants thus seek repayment of this \$55,000 to which they are entitled under the Addendum. Exh. 2 to Plaintiffs' Complaint, § F.

WHEREFORE, Defendants Rabbi Yehuda Steiner and his wife Rivky (Brikman) Steiner demand judgment as follows:

- a. Dismissing Plaintiffs' Complaint in its entirety;
- b. On Defendants' First Counterclaim, awarding the full \$50,535.54 to Defendants for Plaintiffs' delinquent salary, expense reimbursements, rents, and late fees;
- c. On Defendants' Second Counterclaim, granting a declaratory judgment that the non-compete clause contained in Section G of the Contract is unenforceable as a matter of applicable law and public policy; and

- d. On Defendants' Third Counterclaim, awarding the full \$55,000 to Defendants for Defendants' debts accumulated during the first contract.

Respectfully Submitted,

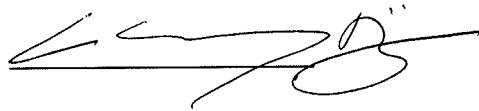
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Chauncey Bratt (D.C. Bar # 1018133)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November 2014, a copy of the foregoing Defendants' Answer and Counterclaims to Plaintiffs' Complaint was served on the following via CaseFileXpress:

Paul M. Levine



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