199270.23

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----------X Index No. 515647/2017

In the matter of the Application of
DAVID Y. SHOR, RAFAEL GRAUSZ, LEVI GOLDBERG, FEIVEL UNGER, MOTTI KATZ, MOSHE HERSHKOWITZ, JACOB LEVITMAN, CHAIM KATZ, YITZCHOK LUNGER, LAZER FISCHER, MENDEL WEISBERG, ARON JUNGREIS, DAVID BERKOVITS and NOSON JOSEPHY, as members of CHEVRA ANSHEI LUBAWITZ OF BOROUGH PARK,

Petitioner,

-against-

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Respondent,

-and-

CHEVRA ANSHEI LUBAWITZ OF BOROUGH PARK, 4024 12TH AVENUE, LLC, and WATERFRONT MANAGEMENT, LLC,

Intervenors-Respondents.

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AFFIRMATION IN FURTHER SUPPORT
OF PETITION TO ANNUL APPROVAL OF SALE OF SYNAGOGUE PROPERTY

STATE OF NEW YORK)

COUNTY OF KINGS) ss:

David Y. Shor hereby affirms under the penalties of perjury as follows:

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199270.23

1. I am a Petitioner in the above-referenced Proceeding and a member of Congreagation Chevra Anshei Lubawitz of Borough Park (the "Synagogue"). I submit this Affirmation in further support of the Petitioners' Application to annul and rescind the May 3, 2017 Attorney General's approval of the sale of our Synagogue's Building to a developer for demolition. Except as otherwise indicated, I have personal knowledge of the matters set forth herein. While our attorneys are submitting a Memorandum of Law that addresses the matters raised in the joint answering papers submitted by the Synagogue and the Developer, as well as the response of the Attorney General, I wish to bring a number of points to this Court's attention.

2. *First*, in their opposition papers, the Developer and the Synagogue tell this Court that the Synagogue Building is in absolutely terrible condition;that no rational worshiper would want to continue praying in the Building or otherwise use the facility; and that the only reasonable and practical solution is to demolish our beloved, beautiful and historic Synagogue Building and replace it with a box like basement and first floor space in a six story residential development, to be provided to us (at least in theory, *see* below) by the Developer. These Respondents also state that it would cost well in excess of one million dollars to bring the Synagogue Building up to satisfactory standards. (The Respondents purport to support these claims with reports from a number of "construction experts", none of which were furnished to the Attorney General in connection with the Application, but were only obtained in connection with this litigation and in order to buttress Respondents' "litigation position.")

3. While I believe that the photographs we have previously provided to the Court belie any claim that the Building is dilapidated or unsafe, we have obtained from a licensed engineer (David Salamon, PE of Salamon Engineering) a full survey and inspection report of the

Building, a copy of which is annexed hereto as Exhibit A. To be sure, the Report candidly acknowledges that, like all historic buildings (more than 100 years old), the Synagogue Building could use some modest repair and maintenance work—especially in the basement area and relating primarily to water damage from the window and chimney areas.

4. But it is a far cry to suggest that because our Synagogue Building needs some maintenance, the only viable solution is demolition. Quite the contrary, Mr. Salamon's Report confirms that the Building is "in fair structural condition" and that "no hazardous structural defects were noted." Mr. Salamon also confirms that the ceiling and floors are in good condition. Moreover, Mr. Salamon states that the estimated cost of completing the necessary renovation and repairs is in the neighborhood of $100,000.

5. These conditions are hardly a justification for demolishing the Building—especially because Messrs. Gluck and Vaysman made no effort whatsoever to try to raise the necessary funds for the repair work. Instead, without authority from the membership (indeed, behind the backs of the membership), they proceeded to engineer a sale of the Building.

6. In this regard, there are numerous sources of funding for the required repair work for this historic sacred structure. I annex hereto as Exhibit B a letter from the New York Landmarks Conservancy, noting that the interior of the Synagogue was specifically featured on the back cover of a book about New York City synagogues, and listing a number of potential sources of funding for any necessary renovation work identified by our engineer's report. I am also highly confident that the other members of the Synagogue—had they been made aware that the choice was "demolition" or "repair"—would have chosen (and will choose) to repair and preserve, and would have (and will) generously contributed toward the latter alternative.

7. The Respondents also claim that because of the condition of the Synagogue

Building, the Synagogue is in a death-spiral and its services are not well attended. I annex hereto as Exhibit C a photograph that was recently taken, showing that this is simply not correct, and that on a regular basis we get many worshipers to our services. And during the recent High Holidays, the Synagogue raised over $6,000, in addition to the revenue from the sale of seats.

8. *Second*, I am advised that the Synagogue and the Developer claim that the Petitioners "sat on their rights" by knowingly delaying raising an objection to the Sale until after the Attorney General gave its Approval to the Sale and after a Deed was delivered to the Developer. Nothing could be further from the truth. As explained in the Petition and the affidavits, the Petitioners only learned about the Sale after it was a "done deal" (in late June 2017), and only after the "cover story" about a closing of the Synagogue for the Summer months (due to lack of funds) fell apart. Had we known that an Application had been filed with the Attorney General concerning the Sale, we would have mobilized at that time—precisely as we organized our opposition and went to court.

9. Immediately after news of the Sale became public, and in late June 2017, at a meeting in Mr. Vaysman's basement, I and a number of other Petitioners (as well as other members) confronted Messrs. Gluck and Vaysman and raised our vigorous objection to the Sale having been accomplished without a meeting of the members and without full disclosure of the terms of the agreement with the Developer. It is nothing short of outrageous for Messrs. Gluck and Vaysman--having intentionally concealed the Sale from us--to turn around and assert that we are somehow "too late" in voicing our objections.

10. Any doubt as to the intentional concealment from us of the terms of the transaction is put to rest by Mr. Vaysman's statement to Aron Graus (when Mr. Graus confronted him after news of the Sale leaked out and demanded to know "why was I never

consulted"), that "if the details became known, there would be significant opposition and the deal would never happen." (Graus Aff., par. 4). Mr. Vaysman's assessment of the sentiment of the Synagogue's membership is entirely accurate.

11. *Third*, the purported Minutes of the April 3, 2016 "Special Meeting of the Members of and the Trustees of" the Synagogue that were submitted to the Attorney General as part of the original Application for Approval of the first transaction recite that it was "RESOLVED by majority vote of twelve votes for, one against, by the members, and of unanimous three votes for by the Trustees that the organization sell the real property at 4024 12th Avenue, Brooklyn, New York, to 4024 12th Ave LLC for $3,100,0000, and is further RESOLVED that the terms, as discussed, are fair and reasonable..."

12. But the transcript of the April 3, 2016 meeting (prior to the first proposed sale of the Synagogue Building to Mr. Haut) completely and utterly refutes Mr. Gluck's representation to this Court and, equally important, the sworn representation to the Attorney General (in the Minutes and in the Application itself), that during the Meeting the Trustees provided details of the transaction with Mr. Haut and that the membership voted on and "support[ed] the Sale of the Synagogue." The transcript establishes that during the meeting Mr. Gluck emphasized that he was only exploring the *concept* of a Sale on a preliminary basis, and assured the participants that he would return and provide full details of any actual negotiations or steps taken to effectuate this "concept."

13. None of these statements were true because Mr. Gluck had already struck a deal with Mr. Haut. We know this because in his affirmation he freely admits that *two days after* this "conceptual" meeting in April, Mr. Vaysman signed an *actual contract of sale* with "an entity that was formed with Mr. Haut's involvement." Moreover, this entity (4024 12th Ave, LLC) was

formed by Mr. Haut one full month *before* the April 3, 2016 meeting. I annex hereto as Exhibit D a record of the filing from the Secretary of State's website.

14. In fact, we ask this Court to closely examine the Contract of Sale between the Synagogue and the Developer's entity, which is part of Exhibit 4 to Mr. Vaysman's affirmation. The fax imprint on the left hand top corner indicates that the Contract (which was originally drafted by the Synagogue's attorney, Joseph A. Schubin, Esq., for the Haut transaction, confirms that the document was prepared and transmitted on February 9, 2016—almost two months before the April 3, 2016 Special Meeting. In other words, the existence of an actual proposed Contract was not disclosed at the Meeting (as verified by the transcript, during which Mr. Gluck provided repeated assurances that he would return with "details" when an actual transaction was on the table).

15. It does not take a licensed detective to figure out what really happened. Messrs. Gluck and Vaysman were negotiating for months prior to the Meeting, and making actual commitments and agreements without the knowledge, consent or authorization of the Synagogue's membership. And when Mr. Gluck presided over the April 3, 2016 meeting, he deliberately withheld the details of this "done deal", and falsely assured the group that he would return for further approval and nothing would be done until such approval was obtained. A greater affront to transparency and "Synagogue Democracy" could hardly be imagined.

16. I recognize that the first deal with Mr. Haut did not go through. But the fraudulent and secretive machinations on the Haut transaction were replicated in the revised transaction with Mr. Karpen that was submitted to and approved by the Attorney General. In this latter case as well, Messrs. Gluck and Vaysman withheld disclosure of the material terms of the Sale with the Developer and effected a Sale of the Synagogue Building without the approval of

the membership.

17. Indeed, as noted in the accompanying Affidavits of Messrs. Shmaya and Graus, while the purported Resolution of the February 26, 2017 Meeting that was submitted to and relied upon by the Attorney General recites that the membership voted upon and approved the Sale of the Synagogue Building for $3.1 million in exchange for the basement and first floor of the new structure—and that "the terms, as discussed, are fair and reasonable"– there was no discussion of any "terms" of the transaction and no vote was even taken. Rather, there was, much like at the April 3, 2016 Meeting, a general discussion of the *concept* of a Sale. Not a single term of the transaction—such as price, terms of security or the value of the property—was mentioned. Not to put too fine a point on it, the Resolution is a complete and utter fraud.

18. That Messrs. Gluck and Vaysman made a deliberate decision to sidestep the membership and withhold all of the material terms of the deal they engineered with Mr. Karpen is conclusively confirmed by Mr. Gluck's admission to Mr. Ungar, in a June 30, 2017 conversation, that he kept these matters secret from the membership on orders from Vaysman. A few days later, on July 10, Mr. Gluck admitted that he was orchestrating these transactions to benefit someone other than the Synagogue's membership. In fact, in the conversation, Mr. Gluck candidly admits that "I did not steal the property for me" and "I am going to hand it [the building] over God willing to a congregation", "if not Zlozitz it will be someone else." A copy of transcripts of those conversations are annexed hereto as Exhibit E. (The tapes will be furnished to the Court upon request.)

19. Furthermore, as explained in our Memorandum, while the entire legitimacy of the Sale and the Approval turns on the validity of the February 26, 2017 Meeting, there is not a single document that supports or corroborates the membership's alleged approval of the Sale

during that meeting (other than, as noted above, the two page Resolution prepared by counsel specifically for the Attorney General's Application). Not only is there no written agenda, no contemporaneous notes, no copies of a written presentation of the material terms of the proposed deal, there is not even a list of those members present and voting! Instead, we have an identical statement inserted into the affirmations of Messrs. Gluck and Vaysman that "to the best of [their] recollection, the vote to change the deal structure passed overwhelmingly by a show of hands of the Members in attendance."

20. In order to sustain the validity of the Sale and the Attorney General's Approval, this Court must also take at face value Mr. Vaysman's statement that he gave "oral notice" of the Meeting to the membership at the two prior Sabbath Services preceding the February 26, 2017 Meeting—even though the Affidavits of Messrs. Shmaye, Graus, Weisberg, Lindner, Levitman and Katz, submitted herewith, specifically state that (i) they each attended those Sabbath services; and (ii) that no such "oral notice" was ever given.

21. I trust this Court will understand that the proposed sale and demolition of our Synagogue Building is perhaps the most important decision the membership may be asked to make. It is respectfully submitted that on this factual record it is impossible for this Court to determine (and was equally impossible for the Attorney General to conclude) that there was adequate notice, discussion and approval by the membership of all of the material terms and conditions of the Sale to the Developer. At a minimum, there must be written notice of the meeting, a written agenda, a statement of who attended and who voted, and some type of contemporaneous record of what happened. There is none of that. Instead, there is an after the fact attempt by the Developer, the Synagogue and their joint counsel to rectify material deficiencies in the submissions to the Attorney General and the internal Synagogue decision-

making processes.

22. *Fourth*, even though the Synagogue concedes that Petitioners are regular worshipers at the Synagogue, they assert that these individuals are not "real members" but something called "mispalalim", who are not entitled to vote on Synagogue business. I am advised by counsel that the attempt to disenfranchise regular worshipers and financial contributors is inconsistent with the Religious Corporation Law. Moreover, this distinction has never been followed by the Synagogue, is not founded in any document and has essentially been created by Messrs. Gluck and Vaysman in order to defend their actions in selling the Synagogue Building.

23. In their opposition papers, the Synagogue attaches an alleged "membership list." As an initial matter, it is clear that this "list" was manufactured for purposes of this litigation and in order to justify the Synagogue's deliberate exclusion of many additional bona fide members (including some of the Petitioners herein). I note that Messrs. Gluck and Vaysman admit that they have no books and records relating to Synagogue corporate governance, and have come forward with no evidentiary support for their claim that the individuals on their "list" and no others are the sole members of the Synagogue. I know for a fact that Mr. Isaac Forkosh, who has previously submitted an affirmation in opposition to the Sale, is a long time member who was, by virtue of his membership status, permitted to purchase a cemetery plot (which he still owns). There are likely dozens of other individuals who own plots through the Synagogue and are, for that reason, members who had a right to be notified of the proposed Sale.

24. Messrs. Gluck and Vaysman also say that in order to be a bona fide "member" of the Synagogue, one must "attend our synagogue as their primary congregation." It is therefore highly significant that Mr. Gluck himself—the prime mover behind the Sale and the alleged

Secretary and Gabbai of the Synagogue—flunks this so-called "primary congregation" test! I know of my own personal knowledge that Mr. Gluck is an active and participating member of the Zlowitz Congregation in Borough Park, as are Michael Maimon and Shlomo Rosenberg (who also submitted affidavits claiming to be bona fide members of our Synagogue, while in fact neither attends services on only an occasional basis). Annexed hereto as Exhibit F is proof that Mr. Gluck and his brother Jacob Gluck are active current members of the Zlowitz Synagogue, promoting and participating in all of that synagogue's events. Mr. Gluck's machinations with respect to the Sale are part and parcel of his scheme to permit the Zlowitz Synagogue (and its Rabbi) to essentially take over our Synagogue and (at our expense and at the cost of our beautiful Synagogue Building) to be lodged in a new facility in the residential structure to be constructed on our property.

25. So one of two things is true—either Mr. Gluck has made up the "primary congregation" test as a way to disenfranchise persons that disagree with him or he himself cannot qualify as a valid "member" (let alone officer) of the Synagogue so that all action he has taken must be deemed void.

26. I also ask this Court to consider the absurdity of the Synagogue's "membership" policy, as advanced to this Court and as reflected in the so-called "new By-Laws." According to Messrs. Gluck and Vaysman, the only way to become a member of the Synagogue with a right to vote is to file an application for membership with the Trustees and obtain the Trustees' approval. In other words, three Trustees of the Synagogue get to decide who becomes a member. A surer route for self-perpetuation in office—and the complete divestiture of *membership control* over the religious organization-- could hardly be imagined. (I also note that there is not a shred of evidence furnished as to how or whether this "membership application" process actually

transpires. Where, for example, is the "application for membership"?)

27. *Fifth*, even if this Court could somehow conclude that the material terms of the transaction with the Developer were disclosed to and approved by the membership (which they were not), the Attorney General should not have given its Approval to the Sale because, as structured, the transaction is not in the best interests of the Synagogue and the Application on its face was insufficient to demonstrate that the best interests of the Synagogue were served by demolishing the Synagogue Building I give a few examples.

28. The first significant deficiency is that the Attorney General took at face value the Application's thoroughly conclusory statement—which was the entire raison d'etre for the Sale—that "the premises is old, dilapidated, in need of extensive renovation and is no longer able to house the Synagogue adequately and safely." No supporting reports were submitted and no estimate of the cost of making necessary repairs was offered." Indeed, it is a matter of public record that there are no outstanding building violations against the Synagogue Building. Surely, the Attorney General should have asked for more in discharging that Office's statutory obligations (which it shares with this Court) under the Religious Corporation Law and the Not for Profit Corporation Law, rather than adopting a "see no evil" mindset.

29. Similarly, the Attorney General blithely accepted the two page Resolution that purported to confirm the approval by the membership at the February 26, 2017 Meeting. Once again, no supporting documentation of any kind was presented to ensure the truthfulness of the Resolution. Such due diligence is, of course, particularly important because, unlike the judicial approval process, approval by the Attorney General is essentially private and ex parte, with no opportunity by opponents of the Application to present their views.

30. Yet another glaring defect in the Application—which also should have resulted in

the Attorney General's denial of the Application—is that while the Synagogue submitted an appraisal of the Property, *there is no evidence whatsoever as to the value of the condo unit that is being "swapped."* In other words, assuming *arguendo* the Property is worth $3.1 million (which our real estate expert says is absurdly low), perhaps the condo unit is only worth $1.5 million or $2 million, in which case the Synagogue is not receiving fair consideration. Without evaluating what the Synagogue is getting in return for the Property, it is logically and legally impossible for the Attorney General to pass on the fairness of the transaction.

31. The Synagogue and the Developer recognize this major—I think dispositive—deficiency in the Application, by *now* telling this Court that the value of the Synagogue's new space is approximately $5 million. There is, of course, not a shred of supporting or competent evidence before this Court on this critical point. For this reason alone, the Approval must be annulled.

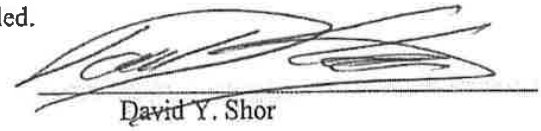
32. Furthermore, the first transaction with Mr. Haut contemplated that $3 million would be placed by the developer in escrow until delivery of the Synagogue's first floor and basement condo unit (which could take up to four years). But the revised transaction with the Developer that was also Approved by the Attorney General does not require the Developer to put the purchase price in escrow; the Synagogue's only "security" that it will ultimately receive a replacement place to worship is a personal guaranty from Mr. Karpen and a security interest in 19% of his LLC.

33. But the Attorney General should have recognized that this is no security at all, and should never have approved the revised deal with the Developer. The reason is clear—if, for some reason, Mr. Karpen is unable to construct his new condo structure (because of changes in the economy, his personal financial situation or a host of other reasons), the Synagogue will be

left with a hole in the ground, a lien for a minority interest in a worthless LLC, and the privilege of litigating for years to try to collect on Mr. Karpen's personal guaranty. If the membership of the Synagogue were informed that this deal relied entirely upon the good intentions of Mr. Karpen to "do the right thing", I cannot believe that the transaction would have been approved by the membership—even by those members who the Synagogue claims "approved" the transaction and even by those members who believe that a new space is indicated. And even if the *membership* approved it based on full disclosure, how could the Attorney General—charged with protecting religious organizations and their real property—have approved such a one-sided and unfair deal.

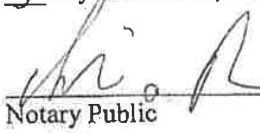
34. *Sixth*, in their opposition papers, the Synagogue accuses the Petitioners of unseemly conduct following the filing of this Proceeding. We have no desire to engage in tit-for-tat mud slinging with Messrs. Vasyman and Gluck. We note, however, that emotions are strong on both sides of this important issue and we have in our possession proof of a number of threatening messages and telephone calls from proponents of the Sale of the Synagogue to individuals opposed to the Sale.

35. For the foregoing reasons, I respectfully request that the Order approving the sale of the Synagogue be annulled and rescinded.



David Y. Shor

Affirmed to before me this
30day of October, 2017.



Notary Public

Chaim A Reisman
Notary Public, State of New York
No. 01RE6274782
Qualified in Kings County
Commission Expires January 14, 2021