

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AVIV L. TUCHMAN, ESQ., SB#133321
Loren N. Cohen, Esq. SB#186839
TUCHMAN & ASSOCIATES
3435 Wilshire Boulevard, 30th Floor
Los Angeles, California 90010
Telephone: (213) 385-8000

Attorneys for Defendants and Respondents
MARC HABERMAN, C-CUBED SOLUTIONS, Inc.
a Delaware Corporation, C-CUBED PRIVATE SOLUTIONS
LIMITED, a business entity formed in India

FILED
LOS ANGELES SUPERIOR COURT

FEB 27 2002

JOHN A. CLARKE, CLERK
T Scott
BY T. SCOTT, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES CENTRAL DISTRICT

C-CUBED SOLUTIONS, INC. a Delaware Corporation, C-CUBED PRIVATE SOLUTIONS LIMITED, a business entity formed in India, ROCKY STEFANSKY, an individual

Plaintiff,

v.

MARC HABERMAN, aka MOSHE HABERMAN, an individual

Defendants.

ROCKY STEFANSKY,

Petitioner,

v.

MARC HABERMAN aka MOSHE HABERMAN C-CUBED SOLUTIONS, Inc. a Delaware Corporation, C-CUBED PRIVATE SOLUTIONS LIMITED, a business entity formed in India.

Respondents

CASE NO.: BC 255351

[Assigned to the Hon. Helen Bendix, Dept. 18]

REPLY TO PLAINTIFF and PETITIONER ROCKY STEFANSKY'S REPLY MEMORANDUM IN FURTHER SUPPORT OF HIS PETITION TO CONFIRM AWARD OF ARBITRATION

[Evidentiary Objects and Request To Strike Declarations of

- 1. Rabbi Avrohom Union;
- 2. Rabbi Gershon Bess;
- 3. Rabbi Nachum Sauer;
- 4. Mark Bess; and
- 5. Benjamin Kiss.

Filed and Served Concurrently Herewith]

Date : Feb. 28, 2002
Time : 9:00 a.m.
Place : 18

RESPONDENTS MARC HABERMAN aka MOSHE HABERMAN, C-CUBED SOLUTIONS, Inc., a Delaware Corporation, C-CUBED PRIVATE SOLUTIONS LIMITED, a

1 Business entity formed in India (hereby "Respondents") hereby submits the following Memorandum
2 of Points and Authorities in Support of Reply To Plaintiff and Petitioner Rocky Stefansky's Reply
3 Memorandum In Further Support of His Petition To Confirm Award of Arbitration.

4 Original Declaration of Marc Haberman and Supplemental Declaration of Marc Haberman
5 attached hereto.

6 Filed and Served concurrently herewith are Evidentiary Objections To and Request To Strike
7 Declarations of:

- 8 1. Rabbi Avrohom Union;
- 9 2. Rabbi Gershon Bess;
- 10 3. Rabbi Nachum Sauer;
- 11 4. Mark Bess; and
- 12 5. Benjamin Kiss.

13
14 DATED: FEBRUARY 26, 2002

15
16 TUCHMAN & ASSOCIATES

17
18 
19 _____
20 AVIV L. TUCHMAN
21 LOREN N. COHEN
22 Attorneys for Respondents and Defendants
23 MARC HABERMAN, C-CUBED
24 SOLUTIONS, Inc. a Delaware Corporation, C-
25 CUBED PRIVATE SOLUTIONS LIMITED, a
26 business entity formed in India
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. PRELIMINARY STATEMENT**

3 The perfunctory declarations submitted in support of Petitioner's Reply utterly fail to respond
4 to Respondent's claim that the Arbitrators committed gross misconduct and acted outside of their
5 authority for the financial benefit of Mark Bess, the son of Arbitrator Rabbi Gershon Bess.

6 Petitioner and the Arbitrators fail to address, let alone refute, uncontested facts that render the
7 entire Arbitration Award tainted with the likelihood that it was rendered with bias and partiality
8 against Respondents.

9 Respondents in their Opposition papers presented a clear challenge to the Petitioner and
10 Arbitrators of the Beis Din i.e.;

11 **Present an accounting of the Thirty Thousand Dollars from Sylmark.**

12 Respondents in their papers set forth that no accounting had ever been presented. [Response
13 P&A p. 1 lns 22-23; Declarations of Marc Haberman ¶¶86-88 and Steve Durham ¶29]

14 The Reply brief and each of the three supporting declarations of the Arbitrators fail to even
15 address the issue. Most telling is that Mark Bess the president of Sylmark in his supporting
16 declaration fails to address the issue of payment and completely absent from the reply is Petitioner
17 Stefansky's declaration that he received payment.

18 The required response that needed to be made in the Reply Memorandum was Declarations
19 stating the facts of payment, a copy of the bank statement, the canceled check of Sylmark and bank
20 confirmation that Mr. Stefansky received the payment.

21 The focus of the misconduct, bias and possible fraud alleged is that the Arbitrators abused and
22 exceeded their powers for the financial benefit of the son of one of the Arbitrators. If Sylmark never
23 paid the funds or if the funds were paid with substantial delay than clearly the Arbitrators were acting
24 for the benefit of Sylmark at the expense of the Respondents. As a result the award has absolutely no
25 credibility and must be vacated.

26 Rabbi Avrohom Union in his declaration at paragraph 6 admits that he discovered the
27 relationship between Slymark and C-cubed when the Arbitrators reviewed the financial statements of
28

1 C-cubed. The Arbitrators may have never contacted other clients of C-cubed that had outstanding
2 balances and this contention is un-refuted by the Arbitrators declarations. [Declarations of M.
3 Haberman ¶¶75 & 76; Steve Durham ¶¶30-31]

4 The only reasonable logical inference from these uncontested and un-refuted facts is that the
5 Arbitrators ruled against Respondents in order to avoid Sylmark's payment obligation. The
6 uncontested and un-refuted facts further show that the Arbitrators inappropriately included six new
7 plaintiffs to increase the size of the award and inappropriately included an equitable order for a lien or
8 writ of attachment that is beyond the power of any Arbitrator.

9 Accordingly, pursuant to California *Code of Civil Procedure* section 1286.2 this Court must
10 vacate the award and order a rehearing, because the "record reveals facts which [not only] might
11 create an impression of possible bias," but clearly shows a substantial likelihood of bias, misconduct
12 and possible fraud. [Betz v. Pankow (1st Dist. 1995) 31 Cal.App.4th 1503, 1508; see also Neaman v.
13 Kaiser Foundation Hospital (1992) 9 Cal.App.4th 1170, 1175]. In the alternative the Court should
14 correct the award by removing the new plaintiff/creditors and the order of lien/writ of attachment.

15 **2. PETITIONER FAILS TO OBJECT TO THE DECLARATIONS SUBMITTED**
16 **BY RESPONDENTS AND FAILS TO REFUTE THEM WITH ADMISSIBLE**
17 **FACTS OF THEIR OWN**

18 Petitioner did not object to any of the declarations and exhibits submitted in Respondents
19 Response to Petition. Any evidentiary objection is waived by failure to assert it. [Broden v. Marin
20 Humane Society (1999) 70 Cal.App.4th 1212, 1226-1227.] Once the arbitrators found out about the
21 relationship and took it upon themselves to infuse themselves with C-cubes relationship with Sylmark
22 they were required to recuse themselves.

23 Petitioner's declarations on the other hand have numerous evidentiary objections [See
24 Evidentiary Objections] and have glaring omissions in there factual account of what happened.

25 **a. Petitioner Admits That The Arbitrator's Failed To Disclose The Familial**
26 **Relationship**

27 The declarations of Rabbi Gershon Bess at paragraph 3 and Mark Bess at paragraph 3 fail to
28 present any admissible evidence that Mr. Haberman knew of their familial relationship. Their

1 speculation of Mr. Haberman's knowledge is beyond their personal knowledge and inadmissible
2 pursuant to California *Evidence Code* section 702.

3 Petitioner fails to recognize that the existence of any ground specified in Section 170.1 for
4 disqualification of a judge must be disclosed by an arbitrator. See C.C.P. §1281.9. California Code of
5 Civil Procedure section 170.1(6)(C) requires disclosure if "a person aware of the facts might
6 reasonably entertain a doubt that the judge would be able to be impartial." see [Ceriale v. Amco Ins.
7 Co. (2nd Dist. 1996) 48 Cal.App.4th 500, 504]

8 **b. Rabbi Union Never Denies The November 4, 2001 Call and Key Allegations**
9 **Made**

10 Rabbi Union at paragraph 7 never denies making a call to Mr. Marc Haberman and never sets
11 forth what he said nor does he deny key allegations. However it is undisputed that Mr. Haberman
12 was represented at this time, but Rabbi Union spoke directly with Mr. Haberman as oppose to his
13 counsel Rabbi Fried. This is unacceptable misconduct which effects the entire process of the
14 arbitration.

15 Rabbi Union does not deny Marc Haberman's declaration at:

- 16 1. Paragraph 54 that the Arbitrators were aware of the \$30,000.00 owed C-cubed;
- 17 2. Paragraph 55 that the Arbitrators were ordering monies owed by Sylmark be paid to the
18 Beis Din;
- 19 3. Paragraph 56 that "this is merely a courtesy call, but that [he] is very concerned that
20 service [to Sylmark] not be interrupted."
- 21 4. Paragraph 58 that "...there is a very fine line between civil and criminal
22 conversion."

23 Marc Haberman was represented by counsel at the time and this telephone call clearly
24 evidences the misconduct of the Arbitrators.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

c. Arbitrators Knew That They Did Not Have The Authority To Take The Sylmark Money

The Arbitrators had no authority to order Sylmark to turn over the thirty thousand dollars and the Arbitrators knew that the *ex-parte order* was denied. The power to impose provisional remedies is an equitable power only reserved to the Courts and not a private arbitrator. See [Marsch v. Williams (1994) 23 Cal.App.4th 238, 248.]

This fact goes directly to the misconduct of the arbitrators and evidences the bias and partiality toward the Respondents. The Arbitrators acting in knowing disregard of the limits to their power to allegedly hold funds owed by Sylmark, a company owned by one of the Rabbi's sons is clear evidence of misconduct and inexorably taints the Arbitration Award.

3. THE AWARD MUST BE VACATED OR CORRECTED BECAUSE OF THE ADDITIONAL PLAINTIFFS and THE INCLUSION OF A LIEN

The Arbitration Agreement does not set forth the additional plaintiffs and Petitioner and the Arbitrators are bound by the Agreement. Any modification to a written Agreement must be in writing. Accordingly, the new plaintiffs cannot be included.

An arbitrator does not have equitable powers as a court and therefore any creation of a writ of attachment or lien must be stricken from the award. See [Marsh v. Williams (4th Dist. 1994) 23 Cal.App.4th 238, 246.]

\\
\\
\\

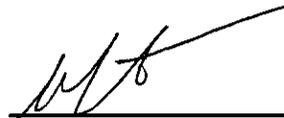
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. CONCLUSION

Based upon the forgoing and the papers filed previously, this Court should vacate the Arbitration Award pursuant to California *Code of Civil Procedure* section 1286.2 or in the alternative correct the award to remove the additional plaintiffs and the creation of a lien or attachment.

DATED: FEBRUARY 26, 2002

TUCHMAN & ASSOCIATES



AVIV L. TUCHMAN
LOREN N. COHEN
Attorneys for Respondents and Defendants
MARC HABERMAN, C-CUBED
SOLUTIONS, Inc. a Delaware Corporation, C-
CUBED PRIVATE SOLUTIONS LIMITED, a
business entity formed in India

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 9. The R.C.C. is the only standing Rabbinical Court in Los Angeles for the Orthodox community. It is known as the "R.C.C. Beis Din."
- 10. In early July, 2001 I contacted the R.C.C. regarding the procedures for arbitration for civil matters. I was referred to speak with Rabbi Union. This was the first time I ever spoke with Rabbi Union or had any dealings with him.
- 11. On July 24, 2001 an arbitration agreement was signed by myself, both individually and on behalf of the C-Cubed Defendants on the one hand, and Mr. Rocky Stefansky on the other. Attached hereto as Exhibit 1 is a true and correct copy of the Agreement To Submit To Binding Arbitration (herein "Arbitration Agreement") with the R.C.C.
- 12. The Arbitration Agreement set forth that Rocky Stefansky was the Plaintiff and that C-Cubed Solutions, C-Cubed India and myself were defendants. There were no other parties to the Arbitration Agreement.
- 13. The Arbitration Agreement provided that Rabbi Nachum Sauer, Rabbi Gershon Bess and Rabbi Avrohom Union (herein "Arbitrators") would be the arbitrators for the matter.
- 14. It should be noted that these three Rabbis are the only arbitrators for the R.C.C. that handle civil business dispute matters. Accordingly there is no selection process of arbitrators in the R.C.C. for these disputes.
- 15. Prior to entering into the Arbitration Agreement, I did not know anything of Rabbi Gershon Bess or Rabbi Avrohom Union (except for my preliminary discussions with Rabbi Union in early July 2001.) I did speak with Rabbi Nachum Sauer two times nearly nine months prior to the arbitration regarding Sabbath issues. Aside from this, I never spoke with or had any dealings with these Arbitrators.

**THE ARBITRATORS NEVER PROVIDED WRITTEN DISCLOSURES OF THEIR
CONFLICTS**

- 16. At no time throughout the arbitration process did the arbitrators provide me, in writing or orally, facts that would reasonably call into question their neutrality or impartiality.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17. During the Arbitration process the Arbitrators never disclosed to me that Rabbi Gershon Bess was the father of Mark Bess the President of Sylmark who was then a major client of the C-Cubed defendants. Attached hereto as Exhibit 4 is a true and correct copy of a print out from the Sylmark web site indicating that Mark Bess is the President. In the hearing on September 10th and 11th, Sylmark was raised several times in the Arbitration.

18. I did not find out about the relationship between Rabbi Gershon Bess and his son Mark Bess until November 2001. This is more fully set forth below.

19. Sylmark in the last half of August stopped paying their invoices and therefore owed the C-cubed defendants in excess of \$30,000.00.

20. Throughout 2001 the C-cubed defendants were a young start up Internet based company that was experiencing extreme cash flow and financial problems. The failure of Sylmark to pay the monies owed for the services rendered made it impossible for the C-cubed defendants to pay the costs associated with the services provided including the payment of workers.

21. I also have not received any disclosures, either written or oral, regarding their relationships with plaintiff Mr. Stefansky, any of the new persons incorporated into the Arbitration agreement or Mr. Stefansky's counsel, Rabbi Spiegel.

ARBITRATION PROCEEDING ON JULY 24, 2001

22. There were four arbitration hearings which occurred in the matter on July 24, 2001, August, 2001 and September 10th and 11th, 2001.

23. The July 24, 2001 hearing occurred immediately after Mr. Stefansky and myself signed the Arbitration Agreement.

24. At the time we entered into the Arbitration Agreement the claims that were being brought against myself and the C-cubed defendants were not fully set forth and I did not fully understand Mr. Stefansky's allegations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

25. In my initial conversation with Rabbi Union in early July, 2001 he explained that I was entitled to know the allegations being brought against me and the C-cubed defendants. Since I did not have counsel, Rabbi Union said that we will have a hearing on July 24, 2001 so that plaintiff could present his claims. Rabbi Union assured me that at this time I would not have to substantively respond.

26. I came without counsel at the July 24, 2001 hearing. Mr. Stefansky appeared with counsel, Rabbi Spiegel.

27. At the July 24, 2001 hearing Mr. Stefansky's counsel requested that the Arbitrators restrain my assets and the assets of C-cubed. Rabbi Spiegel waived a document in the air and requested permission if he could file it with the court. I never received a copy of the document displayed by Rabbi Spiegel. I believe that the Arbitrators said that it was okay for Mr. Spiegel to file the document.

28. I was caught completely unprepared and off guard at this hearing. As stated earlier, Rabbi Union said that the July 24, 2001 hearing will be for me to learn about Plaintiff's allegations.

29. I then told the arbitrators that I will retain counsel and that the hearing must be continued in order for me to prepare.

THE ARBITRATORS KNOWINGLY SET A HEARING DATE WHEN MY COUNSEL WAS UNABLE TO ATTEND

30. The Arbitrators set a hearing date in the later half of August, 2001.

31. My retained counsel, Rabbi Fried, sent them a letter a week before the hearing was scheduled requesting that the hearing take place a week later. Due to my counsel's diabetic condition and difficulty in travel he was unable to attend on the scheduled date. I also had an attorney, Mr. Wisnicki from Wolf, Rifkin and Shapiro also contact the arbitrators to request a continuance. Mr. Wisnicki, however, does not represent parties in Beis Din arbitrations and was only asking for a continuance.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

32. The arbitrators insisted that the hearing take place in August, 2001 and again I had no representation.

33. There were two days scheduled in August. The first day solely concerned the Arbitrators presumed injunction and my alleged violation. Rabbi Union called witnesses personally and asked them to come in.

34. On the second day, my counsel Mr. Wisnicki called the arbitrators to inform them that I could no longer appear before them without representation.

35. The arbitrators then set the September 10th and 11th dates.

36. The Arbitration Agreement provides that "we understand that we have the right to be represented by attorneys or other advisors in the arbitration at any time but that any party may elect to proceed without an attorney and the parties have the right to argue for themselves before the arbitrators." Exhibit 1.

37. My counsel, Rabbi Fried requested a reasonable extension and it should have been provided.

THE ARBITRATORS' PRELIMINARY INJUNCTION WAS WITHOUT AUTHORITY

38. During the hearing in late August 2001, I received a letter dated July 25, 2001 from the R.C.C. entitled "Psak Din/Judgment." A true and correct copy of the July 25, 2001 letter is attached hereto as Exhibit 2. I never received this letter prior to this hearing.

39. The entire hearing in August concerned my alleged violations of the July 25, 2001 letter. The July 25, 2001 R.C.C. later in the last paragraph states:

The Beis Din authorizes the enforcement of these orders through the Superior Court of Los Angeles, and explicitly authorizes filing for temporary protective orders and appropriate restraining orders to uphold the terms contained herein, pending final determinations of the arbitrators.

40. On or about January 27, 2002 I was presented with a Complaint For: 1. Breach of Contract; 2. Declaratory Relief; 3. Breach of Fiduciary Duty; 4. Conversion; 5. Fraud; and 6. Injunctive Relieve. Attached hereto as Exhibit 5 is a true and correct copy of

1 the complaint short captioned, C-Cubed Solutions, Inc. a Delaware Corp. et. al v.
2 Marc Haberman LASC Case No. BC255351.

3 41. The copy of the complaint that I was served with indicates that the complaint was filed
4 on August 2, 2001.

5 42. On February 8, 2002 it came to my attention that on August 2, 2001 Plaintiff
6 Stefansky, represented by Mr. Benjamin Kiss, Esq., attempted to obtain a Temporary
7 Restraining Order and Preliminary Injunction.

8 43. I never received any notice from anyone that Mr. Stefansky or his counsel were going
9 to court on August 2, 2001 nor was I ever informed of its results.

10 44. I understand that the ex-parte application for preliminary injunction was denied by
11 Hon. Dzintra Janavs Judge. Attached hereto as Exhibit 6 is a true and correct copy of
12 the transcript of the August 2, 2001 ex-parte hearing.

13 45. At no time when I entered into the written "Agreement To Submit To Binding
14 Arbitration" (Exhibit 1) was I told that the Arbitrators would have the authority to act
15 in such a manner during the pendency of the arbitration. I never had the understanding
16 that the Arbitrators would have authority to issue provisional remedies.

17 46. My understanding of the Arbitration Agreement was that the arbitrators would
18 conduct an arbitration to make a "comprehensive settlement of all claims and cross
19 claims." (Exhibit 1.)

20 47. In my review of the Arbitration Agreement I do not see that the arbitrators would
21 have the authority to issue orders to restrain me or the C-Cubed Defendants from
22 doing anything pending the arbitration.

23 48. I was never informed by the Arbitrators, Mr. Stefansky or his counsel that an ex-parte
24 application had been denied by the Court.

25 49. After the August 2001 hearing I was then ordered by the R.C.C. to turn over
26 approximately \$36,500.00 of my personal money to them pending the arbitration. I
27 drafted the check and turned over the money to the R.C.C.. I requested that an
28

1 escrow be opened for these funds, but this was never done.

2 50. The December 14, 2001 Award (Exhibit 3) never made mention of the \$36,500.00
3 which was held by the R.C.C. The R.C.C. only acknowledged these funds in their
4 February 3, 2002 letter.(Exhibit 10).

5 **FOLLOWING THE ARBITRATION, BUT BEFORE THE AWARD WAS ISSUED,**
6 **THE ARBITRATORS**
7 **ATTEMPTED TO COERCE FREE SERVICES FOR**
8 **ARBITRATOR RABBI GERSHON BESS'S SON**

9 51. On November 4, 2001 at about 12:23 p.m. I received a telephone call from Rabbi
10 Union. This was the first time any of the arbitrators contacted me directly since
11 September 2001. At this time I was represented by Rabbi Fried (and Norman Wisnicki
12 of Wolf, Rifkind and Shapiro). Since September 2001 correspondence always through
13 Rabbi Fried.

14 52. Rabbi Union's call is evidenced by my cellular phone bill for December 5, 2001.
15 Attached hereto as Exhibit 7 is a true and correct copy of the my phone bill indicating
16 the sequence of calls. The call is indicated by the "incoming" call at 12:23 p.m. on
17 November 4, 2001.

18 53. Rabbi Union stated that he was calling from Miami Florida.

19 54. Rabbi Union told me that the Beis Din are "aware that Sylmark [Mark Bess's
20 Company] owes C-Cubed approximately \$30,000.00." Rabbi Union stated that "they
21 knew this for awhile."

22 55. Rabbi Union told me that the Beis Din is "ordering that the monies owed by Sylmark
23 be paid to the Beis Din and not to C-cubed."

24 56. Rabbi Union stated that "this is merely a courtesy call, but that [he] is very concerned
25 that service [to Sylmark] not be interrupted." Rabbi Union wanted the monies owed
26 by Sylmark to go to the Beis Din, but did not want the C-cubed defendants to stop
27 servicing the Sylmark accounts.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

57. Rabbi Union threatened me that **“If service is interrupted then the Beis Din will hold you [me] personally responsible for the damage caused to Sylmark’s business.”**
58. Rabbi Union further threatened that **“I would lose the case and that there is a very fine line between civil and criminal conversion”**
59. Again Rabbi Union stated that **“any cessation in services to Sylmark will have a major impact on its business and that I and the company [C-cubed defendants] would be personally responsible for any damages caused.”** Rabbi Union also stressed that **“if you [C-cubed] were to continue the service then we [Beis Din] will look upon the case more favorably.”**
60. I was shocked and dismayed at the remarks made by Rabbi Union and I felt threaten because I was concerned about the award and did not understand his statements of “criminal conversion.” It was clear from my conversation with Rabbi Union that the Beis Din wanted C-cubed to continue service to Sylmark, the business of Arbitrator Rabbi Gershon Bess’s son (Mark Bess) without getting paid, and it was clear that the outcome of the award depended upon C-cubed’s ability to comply with the demand.
61. I explained to Rabbi Union that “if the workers are not paid their wages than there is no way that C-Cubed could keep them working.” I further explained that C-cubed is “struggling to keep afloat and that the money was necessary to pay for the costs incurred in the services provided to Sylmark.”
62. Rabbi Union then replied **“that the choice is yours [mine], or else”** and then he hung up the phone.
63. At 12:39 p.m. I then telephoned my Rabbinic Counsel, Rabbi Fried, at 718-686-7908 to tell him what happened. Rabbi Fried was not in. This call is evidenced by Exhibit 7, telephone invoice. The call is indicated in the exhibit as a call to Brooklyn New York at 12:39 p.m. on November 4, 2001 to 718-686-7908.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

64. Following my call to counsel I then telephoned Mr. Asher Low at 12:41 p.m. at phone number (732)522-410. Mr. Low is a representative of a large investor in C-cubed. Mr. Low's company's name is United Systems Investments, LTD. This call is evidenced by Exhibit 7 and is indicated as the 12:41 p.m. call to New Brunswick, New Jersey phone number 732-522-4101.

65. I told him the statements of Rabbi Union and requested the necessary funds to comply with the Arbitrators demands. Mr. Low told me in no uncertain terms that neither he nor his company will advance the necessary monies to maintain service to Sylmark without their payment. See Declaration of Asher Low.

66. I then telephoned Aron Gold who is an advisor to the same company as Asher Low in order to see if he could change Mr. Low's mind on this issue. Mr. Gold also told me that United Systems will not be providing and more funds. See Declaration of Aron Gold.

67. I then telephoned Mr. Steve Durham at 714-865-5358 who is the Chief Operations Officer for the C-cubed defendants. This call is evidenced by Exhibit 7 and indicated as the 2:28 p.m call to Pomona California at 714-865-5358.

68. I told Mr. Durham of the threats made by Rabbi Union. I tried to discuss with him whether it was possible to keep the service going with Sylmark if they do not pay their invoices. Mr. Durham said that would be impossible and that he will call the Rabbi to explain the situation and hope to convince him to release the funds to the company so that the workers and other bills could be paid. See Declaration of Steve Durham.

69. At this time C-cubed was still a young company that was experiencing significant cash flow problems and losses. There was no money in the bank to maintain the costs of providing the ongoing salaries and other related expenses. The monies owed by Sylmark were to pay for the ongoing operations of the business. It was impossible for the C-cubed defendants to continue to provide service to Sylmark and incur the costs involved if it was not going to be paid. In fact, the previous month the company had a

1 loss in excess of \$30,000.00.

2 70. I provided Mr. Durham, Rabbi Union's phone number which is 323-397-1018. I
3 obtained the number from my caller identification on my cellphone.

4 71. I called Mr. Durham at about 2:55 p.m. on November 4, 2001. Mr. Durham informed
5 me that he spoke with Rabbi Union and that he explained to the Rabbi that the
6 workers need to be paid or else service cannot continue. Mr. Durham informed me
7 that Rabbi Union told him that the monies will go to the Beis Din and that he
8 confirmed that the Beis Din did not want the services to Sylmark stopped. Mr.
9 Durham told me that at this point he became upset and Rabbi Union hung up on him.
10 See Declaration of Steve Durham.

11 72. Following this conversation with Mr. Durham, I telephoned Rabbi Union at about 4:10
12 p.m. on the same day. I told Rabbi Union that I was working very hard to try and get
13 the necessary funding or get the permission to have C-cubed continue to provide
14 services to Sylmark. I told Rabbi Union that "Steve Durham is a person that can help
15 and that [he] should have a conversation with him." The Rabbi stated to me that he
16 had to hang up on Mr. Durham because "he does not listen to profanities."

17 73. On November 5, 2001 Mr. Durham tried to convince Mr. Bess from Sylmark not to
18 pay the monies directly to the Beis Din. Mr. Durham reported to me that Mr. Bess
19 stated that he felt compelled to pay the money to Beis Din and that he expressed that
20 "he hoped the service continues."

21 74. I was carbon copied with a letter from Mr. Durham who wrote to Mr. Bess requesting
22 that the money owed to C-cubed be provided to C-cubed and not the Beis Din. The
23 letter explained that this money was necessary to pay for labor and other costs
24 incurred in the services rendered to Sylmark. The letter further stated that the
25 Arbitrators were without authority to issue such provisional relief. Attached hereto at
26 Exhibit 8 is a true and correct copy of Mr. Durham's November 5, 2001 letter.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

75. Payment from C-cubed regarding these outstanding invoices was never received by any of the C-cubed defendants. Accordingly, on Friday, November 9, 2001 the C-cubed defendants cut service to Sylmark. As of the making of this Declaration I do not know if the Sylmark funds had ever been paid to anyone.
76. The C-cubed defendants had approximately four other clients during this November 2001 time period. The names of these companies were brought up during the arbitration and made known to the Arbitrators. It was further brought up and made known to the Arbitrators that there were outstanding balances owed from these companies.
77. The Arbitrators never contacted these other companies. The only client of the C-cubed defendants that the Arbitrators did contact was Rabbi Bess's son's company, Sylmark.

THE AWARD

78. I received the Psak Din/Judgment on or about December 14, 2001(herein Award). Psak Din means judgment in Hebrew. Attached hereto as Exhibit 3 is a true and correct copy of the December 14, 2001 award.
- a. **Award Included Plaintiffs Never Made Part Of The Arbitration**
79. On the very first paragraph of the award the Arbitrators included new plaintiffs that were never part of the Arbitration Agreement. The only plaintiff part of the arbitration was Rocky Stefansky. Exhibit 1.
80. The award includes six other plaintiffs. These persons include: 1. Rabbi Meir Silver, Rabbi Reuven Silver, Euro Factors New Zealand, The Stefansky Family Limited Partnership, Super Reliable Management and Rafi Katz.
81. At no time did I ever agree to arbitrate any disputes with these persons and entities. I only agreed to arbitrate the disputes of Mr. Rocky Stefansky. At the initial July 24, 2001 hearing the claims set forth were only those of Mr. Rocky Stefansky.
82. The petition brought herein is only by Mr. Rocky Stefansky.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

83. It is impossible to know from the award what portion is that of Rocky Stefansky and that of the other persons named in the judgment.

b. The Award Never Made Mention Of The Sylmark Monies Allegedly Held By The Beis Din

84. Although the Award included as part of the Arbitrators determinations the events concerning the July 25, 2001 interim order, the Award fails to address the monies allegedly held by the Beis Din from Sylmark or myself.

85. In fact, the Award sets forth certain dollar amounts in the judgment and makes no allocation for the Sylmark funds.

86. This fact raises serious and significant questions about whether the Beis Din ever collected monies owed for outstanding invoices from Sylmark.

87. I have requested an accounting, but have never received an accounting from the Beis Din to clarify when the monies were paid, how much was paid, where were the funds were stored and when were the funds provided to Mr. Stefansky or any of the other new plaintiffs/creditors included in the judgment.

88. I do not believe that these monies were ever collected from Sylmark or if the funds were paid late which would have benefitted Sylmark's cash flow problems.

THE ARBITRATORS FAILED TO PROVIDE A COGENT EXPLANATION OF THEIR DECISION

89. I instructed new counsel, Mr. Baruch Cohen, Esq. to request that the Arbitrators clarify the Award. Attached hereto as Exhibit 9 is a true and correct copy of the carbon copy I received from Mr. Cohen, Esq. of his January 24, 2002 letter to the Arbitrators.

90. The letter requested explanation and resolution on the additional plaintiffs/creditors included in the judgment, explanation of the "joint asset" that was claimed to be converted, explanation of the amounts and remedy ordered, and explanation of the whereabouts of the Sylmark monies.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

91. I received a responsive letter from the Beis Din on February 3, 2002. Attached hereto as Exhibit 10 is a true and correct copy of the Beis Din Response Letter.

92. It is clear from paragraph 5 of this letter that the Beis Din did not account for the monies allegedly held by them from Sylmark in the judgment. Prior to my request the Beis Din never mentioned these monies in the judgment and award. Again it is my sincere belief that these monies were either never paid or were paid substantially late. Sylmark was always having cash flow problems and any delay in payment for Sylmark would have been a benefit to them.

I declare under the penalty of perjury under all of the laws of the State of California that the foregoing is true and correct.

This declaration is 27 day of February, 2002 in Los Angeles County.



MARC HABERMAN

1 **SUPPLEMENTAL DECLARATION OF MARC HABERMAN IN SUPPORT OF**
2 **OPPOSITION TO PETITION TO CONFIRM AWARD OF ARBITRATION and IN**
3 **SUPPORT OF PETITION TO VACATE SAID AWARD**

4 I, Marc Haberman declare as follows:

- 5 1. I am over the age of eighteen and reside in the County of Los Angeles. I am one of
6 the defendants/respondents in regard to the subject petition. For all relevant periods I
7 was the Chief Executive Officer of defendants/respondents C-Cubed Solutions, Inc. a
8 Delaware Corporation, C-CUBED PRIVATE SOLUTIONS LIMITED, a business
9 entity formed in India.(herein "C-CUBED Defendants")
- 10 2. I have personal knowledge of the facts and circumstances set forth herein and submit
11 this supplemental declaration in support of the Opposition To Petition To Confirm
12 Award of Arbitration and In Support of Petition to Vacate Said Award.
- 13 3. I did not receive any telephone call from anyone regarding an August 2, 2001 hearing.
14 Nor do I remember receiving the letter attached as Exhibit C to Petitioner's papers.
- 15 4. I do not know a person named Gregory Gershuni nor was I ever represented by him.
- 16 5. My Rabbinical Counsel Rabbi S. Fried, who has been unavailable this past week,
17 carbon copied me the two letters attached hereto as Exhibit 17 and 18. Accordingly,
18 Exhibits 17 and 18 are true and correct copies of Mr. Fried's two letters to the Beis
19 Din in this matter requesting a continuance for his schedule.
- 20
- 21 6. The letters are written in Hebrew. I am fluent in reading and writing of the Hebrew
22 language and I will translate the letters in this declaration.
- 23 7. Exhibit 17, August 20, 2001 letter reads as follows:
24 August 20, 2001
25 In honor of the Beis Din of the Vood Haronhonim of Los Angeles
26 Honored Rabbi Union, Bess and Sauer
27 Peace and Blessing

1 Mr. Haberman called me from Los Angeles regarding his case where he is a defendant
2 against Rocky Stefansky. It is my will to come to Los Angeles in this matter.

3 I am available to come on Sept. 4 or Sept. 5 please contact me if these dates
4 are acceptable to you.

5 I would like to inform that I have not yet had the chance to become expert in
6 this matter and the respondent still requires the documentation that the accountant of
7 the plaintiff took from him. Therefore please require the plaintiff to produce these
8 documents, because without them it would be impossible to present a defense as is
9 understood.

10 It is my hope that the plaintiff comply immediately because then the delay will
11 be the responsibility of the plaintiff and will have no right to claim that the respondent
12 is causing a delay.

13 I request that the respondent be in receipt of these documents within one
14 week, so we may have one week to prepare. .

15 With respect Samuel Fried.

16 8. Exhibit 18 read as follows:

17 In honor of the Rabbi, Rabbis Union Bess and Sauer

18 Mr. Haberman informed me that the Beis Din set Sept. 10 & 11 for a hearing.

19 I will be prepared to come to present for the respondent regarding the
20 matter of when Mr. Haberman retained me to represent him. I do not
21 require my customers to sign a retainer agreement because they
22 typically pay as the service is rendered. If I must travel then I require a
23 signed retainer a day or two before the travel date. (Because I do not
24 fear they will take another in my stead as I am not worried about
25 competition.

26 **As it is in my Letter I was contacted by Mr. Haberman the first**
27 **time July 30 regarding the previous hearing. I was unable to come**
28 **to Los Angeles. Therefore I wrote to you in a letter a week before**
that I would not be attending. IT is for the same reason that I
cannot attend on a Sunday when away from home (and even at
home and do not begin a hearing on a Sunday before 1 p.m.)
Because and suffer from diabetes.

I hope that all will become in order.

Samuel Fried.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. There was another letter from Rabbi Fried in early August requesting the hearings be set in September. I do not have this letter but it is referenced in the August 29, 2001 letter.

I declare under the penalty of perjury under all of the laws of the State of California that the foregoing is true and correct.

This declaration is 27 day of February, 2002 in Los Angeles County.



MARC HABERMAN

Haberman

RABBI S. FRIEL
MEDIATOR & ARBITRATOR
5805 13 Ave., BROOKLYN N.Y. 11219

הרב שמואל פריעד
מפטר ומתווך
ברוקלין ניו יארק

TEL. (718) 686 7908 = FAX (718) 686 7909

ב"ט

ד' תצא, י' אלול תשס"א

כבוד הרבנים הגאונים שליט"א [יוניאן, בעס, סאווער]
חברי הבי"ד דלוס אנגלס קא.

שלי רב

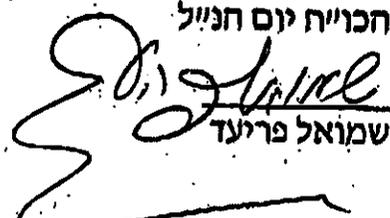
הודיע לי מר משה העבערמאן שי שהבי"ד קבע את שני הימים [ב' דסליחות וגי
דסליחות] עבור שמיעת הטענות.

אי"ה חגני מוכן לבוא אז לטעון עבור חני"ל.

בנוגע המכתב שכתבתם להודיע אימתי חתם ר' משה העבערמאן כתב התחייבות
לשלם לי עבור עבודתי [חנקרא Retainer].
הנה אין אני רגיל לבקש מהקאסטימערס שלי כתב התחייבות, כי בדרך כלל
משלמים על אתר, ואם אני צריך לנסוע למרחקים אזי חותמים לי כתב תשלומין
יום או יומים קודם הנסיעה [כי אין לי שום פחד שיקחו אחר במקומי, ואין לי
ביזנעס של קאמפיטשעיין [competition] וגם בעסק זה לא בקשתי שיחתמו לי איזה
כתב.

כפי שרשום אצלי דברתי בפעם הראשון על הטלפון עם ר' משה העבערמאן ביום ב'
ואתחנן [ולמס' July 30].
בענין של יום אי תצא, הנה לא היי לי האפשרות לבוא, ולכן הודעתי לכבודכם
במכתב ביום ב' שופטים [שבוע מקודם] שא"א לי לבוא, ומה גם שאי אפשר לי
לבוא ביום א' בשבוע לדין תורה במרחקים [וגם פח אין אני מתחיל שום די"ת ביום
א' בשבוע קודם שעה 1 אחצה"ר] כי יש לי צוקער [diabities].

אקוה שהכל יסודר על נכון.

חכו"ה יום חני"ל

שמואל פריעד

AUG 29 - 01

Exh. 18

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am over the age of 18 years and am not a party to the within action; I reside in the County of
4 Los Angeles.

5 On February 27, 2002 I served the foregoing **REPLY TO PLAINTIFF and PETITIONER ROCKY**
6 **STEFANSKY'S REPLY MEMORANDUM IN FURTHER SUPPORT OF HIS PETITION TO CONFIRM AWARD OF**
7 **ARBITRATION** on interested parties in this action by placing a true copy thereof, enclosed in a sealed
8 envelopes, on the date hereinabove set forth in this Certificate, in sealed envelopes with the postage
9 thereon fully prepaid for certified mail, return receipt requested, addressed as follows:

10 Benjamin Kiss, Esq.
11 Fisher, Bang & Kiss
12 1800 Avenue of the Stars, Suite 320
13 Los Angeles, CA 90067

14 BY MAIL:

15 _____ I placed such envelope for deposit in the U.S. Mail for service by the United States Postal
16 Service, with postage thereon fully prepaid.

17 _____ I am readily familiar with the firm's practice of collection and processing correspondence for
18 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
19 day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of
20 business. I am aware that on motion of the party served, service is presumed invalid if the
21 postal cancellation date or postage meter date is more than one day after date of deposit for
22 mailing in affidavit.

23 _____ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the offices of
24 the addressee. PROOF OF SERVICE IS TO BE FILED.

25 (State) I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 _____ (Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I
28 am employed in the office of a member of the bar of this Court at whose direction the service
was made.

Sent via Facsimile to the Law Offices Of Benjamin Kiss at 310-785-2211 transmission
deemed complete at 11:00 a.m..

Executed on February 27, 2002, at Los Angeles, California.

LOREN N. COHEN

Type or Print

Name Signature

