

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY,
CIVIL DIVISION

GHASSAN MANSOUR, ABBAS HASHEMI
AND HAMID FARAJI, collectively as the
Trustees of the Islamic Education Center
of Tampa, Inc., and ISLAMIC EDUCATION
CENTER OF TAMPA, INC., a non profit
corporation,

PLAINTIFFS,

CASE NUMBER: 08-CA-3497
DIVISION "L"

vs.

ISLAMIC EDUCATION CENTER OF TAMPA,
INC., a nonprofit corporation,

DEFENDANT.

OPINION

The purpose of this opinion is to discuss the facts, procedural history and analysis relating to the court's Order in Connection with Plaintiffs' Emergency Motion to Enforce Arbitrator's Award dated March 3, 2011.

FACTS AND PROCEDURAL HISTORY

This action was filed in 2008 to resolve issues relating to the corporate governance of the Islamic Education Center of Tampa, Inc. ("IEC"). The IEC is a learning center and community center for Muslims in the Tampa Bay area. The dispute began in the early 2000s, but was exacerbated by disagreement concerning control of the cash proceeds from an eminent domain settlement.

The court conducted a pre-trial conference on November 23, 2010. The non-jury trial in this case was then set for the January 2011 trial term.

Shortly before the scheduled trial the plaintiff filed Plaintiffs' Emergency Motion to Enforce Arbitrator's Award claiming that the litigation should be concluded in line with the decision of an arbitrator. The Plaintiff sought an emergency hearing on the motion in view of the impending trial. Prior to the motion the court was not aware of any arbitration pending between the parties.

The hearing on Plaintiff's motion began on January 10, 2011. Testimony was taken and the attorneys presented legal argument on the motion. The primary goal of the hearing was to determine whether an arbitration had taken place, the nature of the arbitration (whether civil or religious) and the outcome of the purported arbitration.

The IEC is governed by a "constitution" drafted by an Islamic A'lim. Part of the evidence considered by the court was a document entitled "Organizational Structure of the Islamic Education Center of Tampa as described in its constitution which was adopted on September 25, 1993" (Plaintiffs' Exhibit #4). This document guides the operation of the IEC.

Plaintiffs' Exhibit #4 contains several provisions that are relevant to the issue of corporate governance of the IEC. Article 5 is entitled "Organizational Framework." Subsection 5.2 describes the Resident A'lim and his role. The IEC constitution provides that a Resident A'lim has veto power over the board of trustees. The IEC constitution also provides in paragraph 5.2.2 that the Resident A'lim is to guide the IEC "to insure adherence to Islamic laws."

The A'lim is also to provide judgment on matters of conflict referred to him by the board. The decision by the A'lim on such matters is to be implemented. According to one witness, in the Muslim religion, an A'lim is a person who is specially educated and trained in Islam. The A'lim teaches, guides and leads the people.

The initial inquiry of the court was to determine whether the purported arbitration was part of an established dispute resolution process recognized by ecclesiastical law. The testimony taken at the initial hearing established that in Islam the Quran provides that two or more brothers who have a dispute are first required to try to resolve the dispute among themselves. If that does not occur they can agree to present the dispute to the greater community of brothers within the mosque or the Muslim community. If that is not done or the dispute is not resolved then it is presented to an Islamic judge, an A'lim.

The testimony further was to the effect that the individual litigants were all Muslim and participated in the work of the IEC. In an effort to resolve the dispute some of the individual litigants invited an A'lim from Texas by the name of Ghulam Hurr Shabbiri (also referred to as Sheikh G. Shabbari) to speak to the members of the IEC. After he spoke to the IEC he met with a group of the individual litigants and discussed whether he could serve as an arbitrator of the dispute.

One side claims that when Mr. Shabbiri met with everyone they signed a document whereby they agreed to have him arbitrate their dispute. The other side contends that there were two conditions to Mr. Shabiri serving as arbitrator. First, Dr. Bahraini had to agree to Mr. Shabiri serving as the arbitrator and second, the other side in the dispute had to dismiss their lawsuit.

A handwritten agreement dated January 17, 2009 was introduced (Plaintiffs' Exhibit #2). It was signed by most, if not all, of the individual litigants. Later, Mr. Shabbiri met separately with both sides involved in the dispute. No immediate decision was rendered by Mr. Shabbiri. It was not until December 28, 2010 that Mr. Shabbiri provided a written decision in the arbitration (Plaintiffs' Exhibit #3). Mr. Shabbiri's decision addresses alleged ambiguity in the IEC

constitution, appointment of Trustees for the IEC, and allegedly improper amendments to the IEC constitution.

The hearing on January 10, 2011 was bifurcated and has not yet been concluded.

ANALYSIS

From the outset of learning of the purported arbitration award, the court's concern has been whether there were ecclesiastical principles for dispute resolution involved that would compel the court to adopt the arbitration decision without considering state law. Decisional case law both in Florida and the United States Supreme Court tells us that ecclesiastical law controls certain relations between members of a religious organization, whether a church, synagogue, temple or mosque.

For example, in *Franzen v. Poulos*, 604 So. 2d 1260 (Fla. 3rd DCA 1992), the court found that the trial court could not intervene in an internal church governance dispute. The *Franzen* court said that the U.S. Constitution (the First and Fourteenth Amendments) "permit(s) hierarchical religious organizations to establish their own rules and regulations for internal discipline and governance, and to create tribunals for adjudicating disputes over these matters." Once such matters are decided by an ecclesiastical tribunal, the civil courts are to accept the decision as binding on them. See also, *Southeastern Conference Association of Seventh-Day Adventists, Inc. v. Dennis*, 862 So. 2d 842 (Fla. 4th DCA 2003).

The court has concluded that as to the question of enforceability of the arbitrator's award the case should proceed under ecclesiastical Islamic law. Based upon the testimony before the court at this time, under ecclesiastical law, pursuant to the Qur'an, Islamic brothers should attempt to resolve a dispute among themselves. If Islamic brothers are unable to do so, they can agree to present the dispute to the greater community of Islamic brothers within the mosque or

the Muslim community for resolution. If that is not done or does not result in a resolution of the dispute, the dispute is to be presented to an Islamic judge for determination, and that is or can be an A'lim.

The court will require further testimony to determine whether the Islamic dispute resolution procedures have been followed in this matter. When the hearing was recessed to reconvene at a later date the defense was presenting its case. Counsel advised that he anticipated calling between five and seven witnesses.

ORDERED in Chambers in Tampa, Florida this ____ day of March, 2011.

ORIGINAL SIGNED MARCH 22ND, 2011

The Honorable Richard A. Nielsen
CIRCUIT COURT JUDGE

Copies furnished to:

Lee Segal, Esq.
Segal & Schuh Law Group, P.L.
13575 58th Street N., Suite 140
Clearwater, FL 33760

Brian E. Langford, Esq.
Langford, Myers & Orcutt, P.A.
1715 West Cleveland Street
Tampa, Florida 33606

Paul Thanasides, Esq.
McIntyre, Panzarella Thanasides, Hoffman, Bringgold & Todd, P.L.
400 N. Ashley St., Suite 1500
Tampa, Florida 33602