

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Presentment Date: 6/11/07 at 12:00 p.m.

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In re

Chapter 11

KOLLEL MATEH EFRAIM, LLC

Case No. 04-16410 (SMB)

Debtor.
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DEBTOR'S OBJECTION TO HELEN-MAY HOLDINGS, LLC'S NOTICE OF SETTLEMENT OF PROPOSED JUDGMENT AND ORDER (ECF DOCKET NO. 134)

Kollel Match Efraim, LLC a/k/a Match Ephraim LLC ("Debtor") submits this objection to Helen May Holdings, LLC's ("HMH") notice of settlement of proposed judgment and order (ECF Docket No. 134). The proposed judgment should not include the additional name of Kollel Match Efraim, since it is a separate and distinct religious corporation from the Debtor which is a limited liability company. Moreover, there should be no judgment entered, since HMH never requested such relief.

I. The Proposed Judgment Should Not Include The Additional Name Of Kollel Match Efraim, Since It Is A Separate And Distinct Religious Corporation From The Debtor, Kollel Match Efraim, LLC a/k/a Match Ephraim LLC, A Limited Liability Company

1. HMH's proposed judgment and order seeks entry of judgment against "Match Efraim, LLC, d/b/a Kollel Match Efraim, LLC, and Kollel Match Efraim" (PropJud. p. 2, para 1). Thus, HMH's proposed judgment seeks to include judgment not only against Match Efraim, LLC, d/b/a Kollel Match Efraim, LLC, but also against the additional name of "Kollel Match Efraim". However, Kollel Match Efraim is a separate and distinct religious corporation from Match Efraim, LLC, which is a limited liability company.

2. Annexed hereto as Exhibit A is a certified copy of the certificate of incorporation of Kollel Match Efraim which was filed way back on August 27, 1986 with the Kings County Clerks Office. The certificate of incorporation indicates that Kollel Match Efraim

is a religious corporation with an office only in Brooklyn, New York. The certificate of incorporation also lists Abraham Steinwurz as one of the trustees of Kollel Match Efraim.

3. Annexed hereto as Exhibit B is a copy of a printout from the New York State Department of State, Division of Corporations for the Debtor Match Ephraim LLC, which was filed on July 30, 1999, thirteen years after Kollel Match Efraim. Annexed hereto as Exhibit C is a copy of the Articles of Organization for Match Ephraim LLC, which was likewise filed with the New York Department of State on July 30, 1999. The Department of State's records further demonstrate that Match Ephraim LLC is a domestic limited liability company and not a religious corporation (Ex.'s B & C). The Department of State's records also show that Match Efraim LLC, unlike Kollel Match Efraim, had an office in New York, at One World Trade Center, Suite 89-11, New York, New York, 10048 (Ex.'s B & C).

4. Thus, the documentary evidence confirms that Kollel Match Efraim is a separate and distinct religious corporation from the Debtor, Match Ephraim LLC, which is a limited liability company.

5. Moreover, HMH recently admitted in its reply papers in support of its motion to hold the Debtor in contempt (ECF Doc. No. 130, para 7)(the relevant excerpts of which are annexed hereto as Exhibit D) that the Debtor is not a religious corporation. HMH stated that: "The fact is that the Debtor is **not** a Religious or not-for-profit corporation." (Ex. D).

6. Furthermore, HMH never sought relief against Kollel Match Efraim in any of the underlying pleadings upon which the proposed judgment and order is based. See generally, (a) HMH Motion to Convert (ECF Doc. No. 25); (b) HMH's Reply (ECF Doc. No. 33); (c) Orseck Affidavit (ECF Doc. No. 34); (d) 7/20/05 Transcript, pp. 5-12 (ECF Doc. No.

54); (e) HMH Notice of Presentment (ECF Doc. No. 102); (f) Carlebach's March 23, 2007 letter (ECF Doc. No. 103); (g) HMH Reply (ECF Doc. No. 109); (h) HMH Notice of Presentment (ECF Doc. No. 112); (i) HMH Reply (ECF Doc. No. 118); (j) the Order (ECF Doc. No. 119); (k) HMH's Order to Show Cause (ECF Doc. No. 126); and (l) HMH's Reply (ECF Doc. No. 130).

7. In fact, in the underlying Order requiring adequate protection payments upon which the proposed judgment is based (which was drafted by HMH), the Debtor is defined to include only Kolllel Match Efraim, LLC and not Kolllel Match Efraim (Exhibit E, ECF Doc. No. 119, at p. 1). Thus, pursuant to the Court's Order, Kolllel Match Ephraim was not required to make any adequate protection payments, and therefore should not be subject to any judgment. Moreover, in both the proposed underlying orders upon which the judgment is based, which were both drafted by HMH, the Debtor is likewise defined to include only Kolllel Match Efraim, LLC and not Kolllel Match Efraim. See, (a) HMH Notice of Presentment (ECF Doc. No. 102, Ord. p. 1); and (b) HMH Notice of Presentment (ECF Doc. No. 112, Ord. p. 1). Consequently, no judgment should be entered against Kolllel Match Ephraim on this ground as well.

8. Furthermore, the Debtor has advised the Court that Match Ephraim LLC is the proper legal entity registered with the Secretary of State and the proper name of the Debtor. See, Debtor's Disclosure Statement (ECF Doc. No. 28, pp. 4-5, para 3). By way of background, Kolllel Match Efraim, LLC initially filed this bankruptcy, and Match Ephraim LLC subsequently filed its own petition (Case No. 04-17525) to ensure that the proper legal entity was before the Court. The second bankruptcy case was dismissed and the caption was amended in this case to include the complete name of the Debtor, i.e., Kolllel Match Efraim, LLC, a/k/a Match Ephraim LLC. Since the Debtor has sometime used the name Kolllel Match Efraim as a

d/b/a, it was also included in the caption. However, as set forth herein, Kolliel Mateh Efraim is a separate and distinct religious corporation from the Debtor, Mateh Ephraim LLC, which is a limited liability company. Therefore, judgment should not be entered against Kolliel Mateh Efraim.

II. Judgment Should Not Be Entered, Since HMH Never Requested Such Relief

9. HMH never requested that the Court enter judgment against the Debtor in any of the underlying pleadings upon which the proposed judgment and order is based. See generally, (a) HMH Motion to Convert (ECF Doc. No. 25); (b) HMH's Reply (ECF Doc. No. 33); (c) Orseck Affidavit (ECF Doc. No. 34); (d) 7/20/05 Transcript, pp. 5-12 (ECF Doc. No. 54); (e) HMH Notice of Presentment (ECF Doc. No. 102); (f) Carlebach's March 23, 2007 letter (ECF Doc. No. 103); (g) HMH Reply (ECF Doc. No. 109); (h) HMH Notice of Presentment (ECF Doc. No. 112); (i) HMH Reply (ECF Doc. No. 118); (j) the Order (ECF Doc. No. 119); (k) HMH's Order to Show Cause (ECF Doc. No. 126); and (l) HMH's Reply (ECF Doc. No. 130).

10. Moreover, in the underlying Order requiring adequate protection payments upon which the proposed judgment is based (which was drafted by HMH), there is no request for entry of judgment based on a default under the Order (Exhibit E, ECF Doc. No. 119, at p. 1). Thus, pursuant to the Court's Order, HMH is not authorized to enter judgment upon a default thereunder. Moreover, in both the proposed underlying orders upon which the judgment is based, which were both drafted by HMH, it never requested entry of judgment against the Debtor in the event of a default under the Order. See, (a) HMH Notice of Presentment (ECF Doc. No. 102, Ord. p. 1); and (b) HMH Notice of Presentment (ECF Doc. No. 112, Ord. p. 1).

11. Thus, no judgment should be entered, since HMH failed to request such relief. Even if the Court does enter judgment, as set forth in the first paragraph of the proposed judgment and order, it should still strike the second paragraph, which essentially authorizes any County Clerks Office to file the judgment. Preliminarily, HMH never asked for such relief, and the Court never ordered such relief. Secondly, such a paragraph would subvert the procedure necessary to docket judgments in other New York Courts, which requires the payment of certain fees and obtaining transcripts of the judgment.

CONCLUSION

For all the foregoing reasons set forth herein, the Court should deny entry of judgment against Kollel Match Ephraim, since it is a separate and distinct religious corporation from the Debtor, Kollel Match Efraim, LLC a/k/a Match Ephraim LLC which is a limited liability company. The Court should also deny entry of the judgment, since HMH never requested such relief.

Dated: New York, New York
June 8, 2007

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