

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

TENAFLY ERUV ASSOCIATION, INC.,
CHAIM BOOK, YOSIFA BOOK, STEFANIE
DARDIK GOTLIEB, and STEPHEN BRENNER,

Plaintiffs-Appellants,

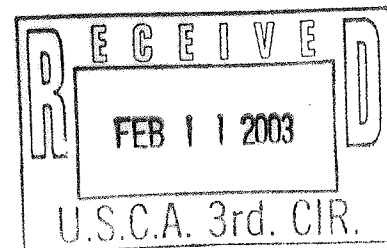
v.

THE BOROUGH OF TENAFLY, ANN
MOSCOVITZ, individually and in her official
capacity as Mayor of the Borough of Tenafly,
CHARLES LIPSON, MARTHA B. KERGE,
RICHARD WILSON, ARTHUR PECK, JOHN T.
SULLIVAN, each individually and in their
official capacities as Council Members of the
Borough of Tenafly,

Defendants-Appellees.

Docket No. 01-3301 (cmh)

District Court No. 00-6051
(WGB)



**DECLARATION OF BRUCE S. ROSEN IN SUPPORT OF DEFENDANTS-
APPELLEES' MOTION TO STAY CONSIDERATION OF PLAINTIFFS-
APPELLANTS' APPLICATIONS FOR ATTORNEYS FEES**

Bruce S. Rosen, Esq.
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Attorneys for Defendants-Appellees
Borough of Tenafly, Ann A. Moscovitz,
Charles Lipson, Martha B. Kerge, Richard
Wilson, Arthur Peck and John T. Sullivan

Received and Filed

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Marcia M. Waldron,
Clerk

Bruce S. Rosen hereby declares as follows:

1. I am an attorney at law licensed to practice in the State of New Jersey, a member of the Bar of this Court, and a partner at McCusker, Anselmi, Rosen, Carvelli & Walsh, P.A., co-counsel for Defendants-Appellees, Borough of Tenafly, Ann A. Moscowitz, Charles Lipson, Martha B. Kerge, Richard Wilson, Arthur Peck and John T. Sullivan, in the above-referenced matter. This declaration is submitted in support of Defendants-Appellees' motion to stay this Court's consideration of Plaintiffs-Appellants' fee applications.

2. On October 24, 2002, this Court reversed the District Court's denial of injunctive relief and directed the District Court to issue a preliminary injunction barring Defendant-Appellee Borough of Tenafly from removing lechis from telephone poles that constitute an eruv located in the Tenafly, New Jersey.

3. Defendants-Appellees' motion for reconsideration or reconsideration *en banc* was denied on November 20, 2002.

4. On December 3, 2002, Plaintiffs-Appellants Chaim Book, Yosifa Book and Stephen Brenner filed a motion for an award of attorneys' fees, pursuant to Local Appellate Rule Misc. 108.1 and 42 U.S.C. §1988.

5. Subsequently, on January 3, 2003, Plaintiffs-Appellants Tenafly Eruv Association, Inc. and Stephanie Dardik Gotlieb, represented by different counsel, filed a motion for an award of attorneys' fees.

6. Thereafter, this Court granted Defendants-Appellees uncontested motion for an extension of time to file a consolidated opposition to the two fee applications filed

by Plaintiffs-Appellants. Defendants-Appellees were given until February 20, 2003 to file their opposition.

7. On January 31, 2003, Defendants-Appellees applied to the Supreme Court of the United States requesting an extension of time, until April 18, 2003, to file petition of writ of certiorari. The motion was granted on February 5, 2003, extending time to file until April 19, 2003.

8. Since the Court of Appeals denied Defendants-Appellees motion for reconsideration and reconsideration *en banc*, the parties had been involved in intensive settlement talks in hopes that a Petition would prove unnecessary.

9. The parties reached agreement on most issues, including a Consent Order creating a permanent injunction that would have permitted expansion of the eruv and waiver of all legal fees by appellants. However, on or about January 28, 2003, the negotiations reached an impasse on an issue that cut to the heart of municipal sovereignty: appellants, both individuals and a private religious organization, essentially demanded prior veto power over any municipal action that may compromise the efficacy of the eruv. This essentially would have subjugated municipal needs to religious law. While this Court's decision creates questions as to the present and future ability of the Borough of Tenafly to police its right of way, the Borough Council believes that it still should be able control of its right of way without having to rely on interpretations of religious law and without creating a situation where the onus would be on Tenafly to run to the District Court for clarification if the religious entity refused permission for a Borough request.

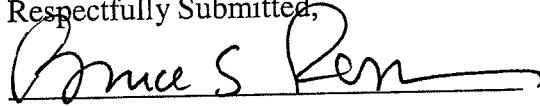
10. Unable to reach agreement on a Consent Order, Defendants-Appellees, believing this case involves important issues concerning the Free Exercise Clause of the First Amendment of the United States Constitution, decided to proceed with a Petition for Certiorari to the United States Supreme Court.

11. Due to the substantial question to be presented in Defendants-Appellees' Petition, there is good cause to stay consideration of Plaintiffs-Appellants' fee applications. The United States Supreme Court may accept this Petition and reverse this Court's decision, thereby altering who is the "prevailing party" for attorneys' fees purposes, pursuant to 42 U.S.C. §1988. As such, an award of attorneys' fees now, without awaiting a determination as to Defendants-Appellees' Petition, may prove to be premature and involve an additional waste of attorney time in litigating same at this juncture.

12. Therefore, Defendants-Appellees respectfully request that this Court stay its consideration of Plaintiffs-Appellants fee applications until disposition of Defendants-Appellees' Petition.

13. Pursuant to 28 U.S.C. §1746, I hereby declare under the penalty of perjury that the foregoing is true and correct.

Respectfully Submitted,

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February 10, 2003

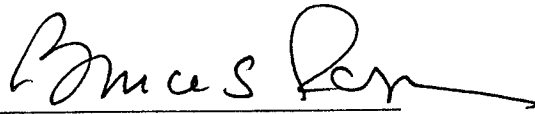
CERTIFICATION OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Motion to Stay Consideration of Attorneys Fees was served upon opposing counsel as listed below by depositing same on this date with Federal Express addressed to:

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February 10, 2003