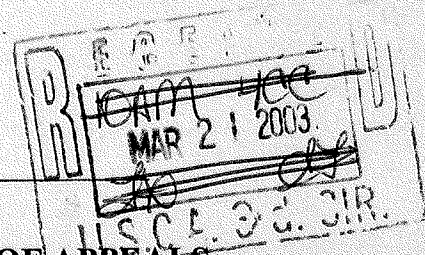


Case No. 01-3301



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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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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 capacity as Council Members of the Borough of Tenafly

Defendants-Appellees.

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**PLAINTIFFS-APPELLANTS TENAFLY ERUV ASSOCIATION, INC. AND  
STEFANIE DARDIK GOTLIEB'S RESPONSE TO DEFENDANTS-APPELLEES'  
MOTION TO STRIKE**

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY  
Case No. 00 CV 6051

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Attorneys for Plaintiffs-Appellants

Plaintiffs-Appellants Tenafly Eruv Association, Inc. and Stefanie Dardik Gotlieb (“plaintiffs-appellants”) file this Response To Defendants-Appellees’ Motion to Strike the Reply Memorandum and Affirmation submitted by Plaintiffs-Appellants, in further support of plaintiffs-appellants’ application for attorneys’ fees and costs. Defendants-Appellees’ Motion to Strike is equally without basis or merit, and therefore should be denied.

Contrary to assertions of defendants-appellees, plaintiffs-appellants, as the prevailing party in this matter, are not precluded from filing a reply brief addressing the allegations articulated in defendants-appellees’ response to the initial fee application. Third Circuit Local Appellate Rule (“L.A.R.”) 108 does not indicate in any way that a reply brief may not be filed. See Third Circuit Local Appellate Rule 108. The mere absence of any language explicitly providing for such a reply does not lead to the conclusion that such a reply is improper, especially in light of the absence of any language in L.A.R. 108 explicitly prohibiting the filing of such a reply. Id.

Furthermore, Craig L. Lowenthal, one of plaintiffs-appellants’ counsel, had several discussions with the Office of the Clerk of the Third Circuit concerning the timing of filing the reply brief and was never told that filing a reply was impermissible under the Local Appellate Rules. Mr. Lowenthal spoke with Chief Deputy Clerk Kathy Brouwer on more than one occasion about when plaintiffs-appellants would have to file their reply brief in connection with their application for attorneys fees. See Affirmation of Craig L. Lowenthal, ¶ 3. Chief Deputy Clerk Brouwer never told Mr. Lowenthal that plaintiffs-appellants were unable to file such a reply brief. Id. at ¶ 4. In addition, Mr. Lowenthal also spoke to Carmen Hernandez, the case manager for this matter, about whether plaintiffs-appellants were still required to file a reply brief within the prescribed time period in light of this Court’s recent order staying consideration of Plaintiffs-Appellants’ Motion for Attorneys’ Fees and Costs pending the Supreme Court’s decision on defendants-appellees’ Petition for Certiorari. Id. at ¶ 5. Ms. Hernandez told Mr.

Lowenthal that the stay order did not stay the filing of any papers, and that if plaintiffs-appellants wanted to file a reply brief they had to do so within the specific time-frame. Id. at ¶ 6. Ms. Hernandez never told Mr. Lowenthal during the course of this conversation that plaintiffs-appellants were not able, under either L.A.R. 108 or any other local or federal rule, to reply to defendants-appellees' opposition papers. Id. Furthermore, Ms. Hernandez did not indicate that it was necessary for plaintiffs-appellants to file a separate motion with the Court requesting permission to file a reply brief before actually filing said reply. Id.<sup>1</sup>

The reply brief filed by plaintiffs-appellants, moreover, does not assert arguments not addressed in the initial fee application, as defendants-appellees erroneously contend. It merely replies to the arguments raised by defendants-appellees in their response, and no more.

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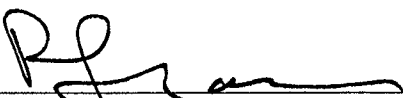
<sup>1</sup> If the Court concludes that plaintiffs-appellants were not entitled to file a reply to defendants-appellees' response to the initial fee application, plaintiffs-appellants respectfully request that the Court consider this response as a request, nunc pro tunc, to file a reply brief in further support of the initial fee application, and that the Court accept the reply brief previously filed with the Court on March 3, 2002.

**CONCLUSION**

For the foregoing reasons, defendants-appellees' Motion to Strike the Reply Memorandum and Affirmation submitted by Plaintiffs-Appellants should be denied.

Dated: March 19, 2003

Respectfully submitted,

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Stefanie Dardik Gotlieb*

CERTIFICATE OF SERVICE


I hereby certify that I caused a true and correct copy of the foregoing Plaintiffs-Appellants Tenafly Eruv Association, Inc. and Stefanie Dardik Gotlieb's Response to Defendants-Appellees' Motion To Strike to be served by Federal Express on March 19, 2003, on the following individuals:

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