

Arbitration at the Beth Din of America



BETH DIN *of* AMERICA

בית דין דאמריקא



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The Beth Din of America serves the North American Jewish community as a forum for the adjudication of commercial, communal and matrimonial conflicts. It is unique among rabbinic courts in its ability to combine unwavering fealty to *halacha* (Jewish law) with a sophisticated understanding of the role that secular law and commercial practice play in rabbinic conflict resolution.

The Beth Din of America is a professional arbitration organization, headed by leading rabbinic scholars and secular legal experts. It serves affiliated and unaffiliated Jews, and has a well-earned reputation for conducting arbitration proceedings with professionalism, competence, integrity and fairness.

Cases at the Beth Din of America

HALACHIC EXPERTISE. The rabbinic leadership of the Beth Din, and the *dayanim* (arbitrators) who hear its cases, include some of the leading experts in Jewish commercial law in the United States. These scholars are specially trained in the application of Jewish law to contemporary business matters.

LEGAL AND COMMERCIAL EXPERTISE. Arbitration panels typically include lay professionals and experts, including attorneys, businessmen and psychologists (for the handling of child custody disputes), along with experts in Jewish law. All cases are overseen by the Beth Din's staff, which includes attorneys with Beth Din and secular law experience.

PROCEDURAL DUE PROCESS. Proceedings before the Beth Din of America are governed by the Beth Din's Rules and Procedures, which are available in a separate booklet and at www.bethdin.org/rules. These Rules and Procedures supplement applicable Jewish law procedural requirements and standards of fairness, and reflect norms of due process similar to those employed by courts and secular arbitration associations. Among other things, the Beth Din's rules prohibit *ex parte* communications (private communications between litigants and arbitrators), require that the Beth Din provide adequate notice to the parties prior to any hearings, specify that recordings of arbitration proceedings be made available to the parties, and detail the procedures governing the submission of evidence and testimony in a case.

GOVERNING LAW. To the fullest extent permitted by Jewish law, the Beth Din respects contractual "choice of law" clauses (i.e. contract provisions in which parties have agreed for their disputes to be resolved based on principles of secular law). Similarly, where parties explicitly or implicitly accept the common commercial practices of a particular trade, profession or community, the Beth Din will accept such practices as governing, to the fullest extent permitted by Jewish law.

BINDING DECISIONS. Litigants before the Beth Din are required to execute binding arbitration agreements prior to the inception of a *din torah* (arbitration proceeding). Following its proceedings, the Beth Din issues written rulings that are legally binding and enforceable in secular court.

REPRESENTATION BY COUNSEL. In all proceedings before the Beth Din, litigants are entitled to be represented by attorneys of their choosing. Attorneys licensed to practice law may appear before the Beth Din, without regard to gender or religion.

Frequently Asked Questions about the Din Torah Process

Where do the hearings take place?

Typically, hearings take place at the offices of the Beth Din of America in New York. The Beth Din can also send *dayanim* (arbitrators) to other locations. In some situations, the Beth Din has conducted arbitrations by video or phone teleconferencing.

How many *dayanim* (arbitrators) sit on a panel hearing any particular case? Who decides which *dayanim* will hear the case?

Generally, cases are heard by a panel of three *dayanim*. Small cases, usually those involving amounts in controversy of less than \$10,000, are typically heard by a single *dayan*. The Beth Din maintains a roster of *dayanim*, and staffs each case based on subject matter and their particular areas of expertise. When parties mutually agree, the Beth Din can often accommodate requests for particular *dayanim* to hear a case.

Does the Beth Din of America decide cases based on *halacha* (Jewish law) or based on secular law?

Cases at the Beth Din of America are decided based on Jewish law, although there are many instances when Jewish law calls for the application of secular law to a case. In deciding a dispute arising under a contract that contains a "choice of law" provision, the Beth Din will respect that provision and apply secular law, except to the extent it runs afoul of a specific Jewish law prohibition (such as the collection of prohibited forms of interest). Even without a written choice of law provision, the Beth Din will apply secular law if it is clear, based on the circumstances and the context of their business dealings, that the parties intended for their transactions to be governed by secular law. In some cases, such as certain bankruptcy matters, the Beth Din will apply secular law under the Jewish law principal of *dina dimalchuta dina* (the law of the land is the law) even absent an intent of the parties for secular law to govern their dealings.

Are there any restrictions on who may testify in cases heard by the Beth Din of America, based on considerations of Jewish law?

There are no such limitations in the *din torah* (arbitration) context. Although Jewish law contains detailed rules relating to who may serve as valid witnesses, those rules are practically limited to situations such as a marriage or divorce. A *beit din* deciding a dispute has complete latitude to gather information from anyone who has knowledge of facts relevant to the case.

Are decisions issued by the Beth Din subject to review by the secular courts? Is there any way to appeal a decision of the Beth Din of America?

Dinei torah (arbitrations) are conducted at the Beth Din of America pursuant to binding arbitration agreements signed by the parties prior to the first hearing. This means that the secular courts will fully enforce decisions issued by the Beth Din in business disputes, and that the decisions are subject only to the limited court review that applies generally to arbitration awards. Section 31 of the Rules and Procedures of the Beth Din of America (available at www.bethdin.org/rules) sets forth a process whereby litigants may appeal to the *Av Beth Din* (Head of the Beth Din) or his designee to modify a decision that has been issued. Decisions may be modified on certain grounds, including where the Beth Din panel made a mistake of Jewish or secular law or improperly calculated the amount of an award.

Costs

The costs of the *din torah* (*Beit din* arbitration) process are considerably lower than those incurred through litigation in secular courts. *Dinei torah* are also less time consuming than protracted court litigation. More information about the costs of the *din torah* process is available at www.bethdin.org.

In addition to its *din torah* services, the Beth Din of America can arrange mediation, in an attempt to bring parties to a mutually agreed settlement of their conflicts. Mediated agreement through the Beth Din allows parties to maintain control over the outcome of their case. More information about these mediation services is available by contacting the Beth Din.

Beth Din Leadership

RABBI GEDALIA DOV SCHWARTZ, *Av Beth Din* (Head of Beth Din). Rabbi Schwartz, a leading authority in Jewish law, was the rabbi of the Young Israel of Boro Park for 18 years. He has served as *Av Beth Din* of the Beth Din of America since 1991. He is also the *Av Beth Din* of the Chicago Rabbinical Council.

RABBI MORDECHAI WILLIG, *Segan Av Beth Din* (Deputy Head of Beth Din). Rabbi Willig is the Rabbi Dr. Sol Roth Professor of Talmud and Contemporary Halachah and the *Segan Rosh Kollel* (Deputy Head of Kollel) of the Kollel L'Horaah Yadin Yadin at the Rabbi Isaac Elchanan Theological Seminary (RIETS), an affiliate of Yeshiva University. He also serves as the rabbi of the Young Israel of Riverdale in Riverdale, New York.

RABBI YONA REISS, *Chaver Beth Din*. Rabbi Reiss is the Max and Marion Grill Dean of RIETS. He holds advanced ordination (Yadin Yadin) from RIETS, and graduated from Yale Law School, where he served as senior editor of the *Yale Law Journal*. He previously served as Director of the Beth Din of America. Before that, he practiced law at Cleary, Gottlieb, Steen & Hamilton LLP.

RABBI SHLOMO WEISSMANN, *Menahel* (Director). Rabbi Weissmann received rabbinical ordination from RIETS in 2001, and is currently a candidate for advanced ordination (Yadin Yadin). He is a graduate of Columbia Law School, where he was a Harlan Fiske Stone Scholar. Prior to his association with the Beth Din of America, Rabbi Weissmann worked as an attorney at several law firms, including Debevoise and Plimpton LLP.

ILANA BLASS, ESQ., *Administrative Attorney*. Ilana Blass is the primary manager of the commercial and matrimonial *din torah* (arbitration) caseload of the Beth Din. Ms. Blass graduated from the Benjamin N. Cardozo School of Law in 2003 where she was a member of the Cardozo Law Review. Following graduation, Ms. Blass was an associate at the law firms of Debevoise and Plimpton LLP and Mandel, Katz & Brosnan LLP.

RABBI MICHOEL ZYLBERMAN, *Gittin Coordinator*. Rabbi Zylberman oversees the *halachic* aspects of *gittin* (Jewish divorces) administered at the Beth Din. Rabbi Zylberman is a graduate of the Bella and Harry Wexner Kollel Elyon and a Yadin Yadin *musmach* of RIETS. He also currently serves as a member of the faculty of RIETS.

For more information about the *din torah* (arbitration) services at the Beth Din of America, call the Beth Din at **(212) 807-9042** or go to **www.bethdin.org**.

Articles on *beit din* jurisprudence and sample *piskei din* (arbitration decisions) issued by the Beth Din of America are published in *The Journal of the Beth Din of America*, which is available at **www.bethdin.org/journal**.

This brochure is intended to provide general information. Arbitration proceedings before the Beth Din of America are governed by the Beth Din's published Rules and Procedures (available at **www.bethdin.org/rules**), and this publication does not replace or supplement those rules.



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*Affiliated with the Rabbinical
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