

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

CONGREGATION HAKSHIVAH, d/b/a/  
GEMACH L'SIMCHOS

Index No. 501104/2019

Plaintiff,

- against -

**COMPLAINT**

HERSH DEUTSCH and  
DEUTSCHE VENTURE CAPITAL LLC,

Defendants.

Plaintiff Congregation Hakshivah, d/b/a Gemach L'Simchos ("Hakshivah/GLS"), by its attorneys, Newman & Greenberg, LLP, complaining against defendants Hersh Deutsch ("Deutsch") and Deutsche Venture Capital LLC ("DVC"), alleges as follows:

**NATURE OF THE ACTION**

1. This is an action by Hakshivah/GLS, a not for profit religious and charitable organization seeking actual damages, punitive damages, and attorney's fees from defendants for their fraudulent and defamatory conduct directed against plaintiff. In essence, Hakshivah/GLS acted to facilitate a loan between defendants and a third-party. Defendants authorized Hakshivah/GLS to swipe their credit cards and forward the cash they received to the third-party who would then repay defendants directly. Despite the fact that these credit card charges were authorized by the defendants and the loans repaid by the third-party with funds forwarded by plaintiff, defendants falsely claimed to American Express and others that the charges were unauthorized causing plaintiff's assets to be seized, its reputation to be harmed and thereby damaging plaintiffs.

### **THE PARTIES**

2. Congregation Hakshivah, is a New York not for profit religious organization located at 1105 48<sup>th</sup> Street, Brooklyn, New York, 11219. Congregation Hakshivah runs various aid and assistance programs in both the United States and abroad. Among its many projects is a free loan society run under the name Gemach L'Simchos that provides free loans to individuals and businesses primarily located in Brooklyn, New York.

3. The defendant, Hersh Deutsch is a citizen and resident of the State of New York, who resides at 2022 59<sup>th</sup> Street, Brooklyn, New York 11204. Deutsch is the owner and operator of Deutsche Venture Capital LLC ("DVC"), a New York State LLC with a business address at 2022 59<sup>th</sup> Street, Brooklyn, New York 11204.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the Defendants based upon Defendants' residence or principal place of business.

5. Venue in this County is appropriate pursuant to CPLR §503(a) and (d) because both Plaintiff and Defendants reside in this County.

### **FACTUAL ALLEGATIONS**

6. In July 2017, Aryeh Gottesman, the president of Hakshiva/GLS was approached by Joel Klein ("Klein"), an individual requesting assistance in obtaining short-term funding from certain individuals who were willing to provide such loans via their credit cards. Klein was among Hakshivah/GLS's community network of donors and was known in the community as a successful real estate investor, and an active donor and participant in the various charitable projects undertaken by Hakshivah/GLS.

7. Klein requested that Hakshivah/GLS facilitate the processing of the credit card loan transactions by making authorized credit card charges using Hakshivah/GLS's

merchant account and then advancing the monies Hakshivah/GLS received to Klein or his companies; Klein agreed to then repay the lenders directly when the loans came due. Klein assured Hakshivah/GLS that it would pay any fees that Hakshivah/GLS incurred as a result of the expenses involved in facilitating the card processing and transfer transactions, and that he would ultimately make a donation to Hakshivah/GLS as it did in the past.

8. In consideration of its ongoing relationship with Klein, Hakshivah/GLS facilitated these transactions on numerous occasions from on or about August 2017 through November 2018. The credit cards used in these transactions were from several different individuals, and Klein always represented that he was authorized by the cardholder to use the card.

9. As relevant to this action, in November 2017, Klein informed Hakshivah/GLS that Hersh Deutsch had authorized Hakshivah/GLS to charge his credit card and forward the resulting money Hakshivah/GLS received to Klein.

#### **The November 2017 Charge**

10. On or about November 16, 2017, Deutsch sent Klein a copy of his American Express credit card ending in 1002 which Klein then forwarded to Hakshivah/GLS to submit a charge in the amount of \$20,000. Hakshivah/GLS submitted the charge and received \$20,000 less processing fees from American Express.

11. During that same time period, Hakshivah/GLS had other transactions with Klein not affiliated with Deutsch for another \$62,000. On November 20, 2017, Hakshivah/GLS wired \$82,000 to Klein's company, Joel K Holding Company LLC ("Joel K Holding").

12. Deutsch was fully aware of the \$20,000 charge to Hakshivah/GLS and informed Klein that these monies had to be repaid to him by January 8, 2018. On or about

January 8, 2018, Klein issued check number 1796 on the account of Joel K Holding payable to Deutsch Venture Capital for \$20,000, in repayment of the \$20,000 charge made by Hakshivah/GLS. The \$20,000 check was deposited into DVC's account.

13. Notwithstanding the fact that this charge was fully authorized by Deutsch, on or about November 20, 2018, Deutsch informed American Express that the charge was unauthorized. Deutsch's claim was false and defamed Hakshivah/GLS. Moreover, notwithstanding the fact that DVC was repaid the \$20,000 charged by Hakshivah/GLS, Defendants have fraudulently sought to recover through the chargeback process from American Express an additional \$20,000 from Hakshivah/GLS.

#### **The January and Early-February 2018 Charges**

14. On or about January 16, 2018, Klein advised Deutsch that he again wished to charge Deutsch's card through Hakshivah/GLS, a request that Klein repeated on January 17, 2018 and again named GLS as the establishment at which he wished to charge Deutsch's cards. Deutsch responded by asking for the amounts and dates to be charged. Thereafter, on January 18, 2018, at or about 3:32 PM, Deutsch replied by asking Klein, "can it [be] paid by 13 of February?" and "how much?" Klein responded "yes." Within two minutes, Deutsch providing Klein with pictures of two of his credit cards ending in 8498 and 1006, and authorized Klein to charge \$50,000 on each. At or about 3:41 PM on that same date, Klein informed Deutsch that Hakshivah/GLS had attempted to charge one of the cards but that the charge was declined. Deutsch responded by directing Klein to submit the charge again; the charges went through resulting in two credit card charges by Hakshivah/GLS to Deutsch's cards each for \$50,000.

15. On January 30, 2018, at or about 12:48 PM, Deutsch sent Klein a picture of his credit card ending in 9813 with a written message "100 Straight." Klein responded at

or about 1:54 PM that the charge had been “declined”, within minutes Deutsch replied “try now.” Hakshivah/GLS charged the card ending 9813 for \$100,000.

16. Notwithstanding the fact that this charge was fully authorized by Deutsch, on or about November 20, 2018, Deutsch informed American Express that the charge was unauthorized. Deutsch’s claim was false and defamed Hakshivah/GLS.

17. On February 1, 2018, Klein and Deutsch discussed Klein’s request to charge an additional \$100,000. Deutsch responded that the charge could be made so long as it was repaid before February 13. At or about 9:47 PM, Deutsch sent Klein a picture of his American Express credit card ending in 2000.

18. On or about February 1 and 2, Hakshivah/GLS submitted two charges for \$80,000 and \$20,000 to Deutsch’s American Express card ending in 2000.

19. Notwithstanding the fact that these charges were fully authorized by Deutsch, on or about November 20, 2018, Deutsch informed American Express that the charges made on his American Express card ending in 2000 were unauthorized. Deutsch’s claim was false and defamed Hakshivah/GLS.

20. After receiving payment on the foregoing charges from the credit card processing companies, based on the arrangement between Deutsch and Klein, Hakshivah/GLS issued wire transfers to Joel K Holding. For example, on February 2 and 5, 2018, Hakshivah/GLS sent wires for \$100,000 and \$200,000 respectively, i.e., the proceeds from the January 18, January 30, February 1 and February 2 charges.

21. On or about February 7, 2018, Deutsch advised Klein by WhatsApp text message to prepare repayments to him and providing Klein with a list of four Hakshivah/GLS charges, Deutsch then clarified that there had been five charges and the total due was \$300,000.

22. As requested by Deutsch on February 13, 2018, Klein repaid Deutsch the full \$300,000 charged by Hakshivah/GLS.

23. Notwithstanding the fact that Deutsch was repaid the full \$300,000 charged by Hakshivah/GLS, Defendants have fraudulently sought to recover through the chargeback process from American Express an additional \$100,000 from Hakshivah/GLS.

**The Mid-February 2018 charges**

24. On February 7, 2018, at or about 2:58 PM and again at or about 11:47 PM, Deutsch informed Klein that on February 16, 2018, i.e., after his prior monthly bill was paid and a new billing cycle had begun, Klein could submit new credit charges using the same cards that Hakshivah/GLS had previously charged. Klein inquired of Deutsch whether he could tell Hakshivah/GLS already now that it was okay to submit the new charges on February 16. Deutsch replied “sure” and confirmed that it was okay to charge the “same cards.”

25. On or about February 16, 2018, after an initial \$100,000 was successfully charged by Hakshivah/GLS to Deutsch’s card ending 2000, and after some other cards were declined, Klein communicated with Deutsch, who directed Klein to charge an additional \$50,000 on his American Express card ending 2000 but to split them into smaller increments if declined. In total, on February 15 and 16 four charges totaling \$145,000 were charged to Deutsch’s credit cards by Hakshivah/GLS.

26. On March 8, 2018, Deutsch reminded Klein about payments that were soon to be due as a result of the Hakshivah/GLS transactions. Thus, on March 8, 2018 at or about 4:40 PM, Deutsch texted Klein that “145k due on April 1” and that these charges were for the “Amex Platinum, HAKSHIVA February 15 and 16.”

27. On March 26, 2018, Deutsch again reminded Klein of the \$145,000 that needed to be paid on April 1.

28. Notwithstanding the fact that this charge was fully authorized by Deutsch, on or about November 20, 2018, Deutsch informed American Express that the charges were unauthorized. Deutsch's claim was false and defamed Hakshivah/GLS.

29. On or about April 1, 2018, Klein issued check number 2302 to Deutsch in the amount of \$145,000 in full repayment of the Hakshivah/GLS charges.

30. Notwithstanding the fact that Deutsch was repaid the full \$145,000 charged by Hakshivah/GLS, Defendants have fraudulently sought to recover through the chargeback process an additional \$145,000 from Hakshivah/GLS.

#### **The August 2018 charges**

31. In August 2018, Hakshivah/GLS was again approached by Klein to facilitate a loan using the Deutsch credit cards. On August 21, 2018, Hakshivah/GLS made three charges on the Deutsch cards, for \$36,000, \$40,000 and \$60,000. Hakshivah/GLS credited all of these amounts to Klein.

32. Deutsch was aware of, and authorized his cards to be used for the three charges. For example, on or about August 21, 2018 at 2:01 PM, after Deutsch's credit card ending 2000 had been charged \$100,000 through Hakshivah/GLS, Klein informed Deutsch that "I can have hakshiva do 36 more?," Deutsch after verifying what had already been charged, agreed that Hakshiva could charge an additional \$36,000.

33. Moreover, at or about 2:14 PM on August 21, 2018, Deutsch informed Klein that these three charges would have to be paid on October 1.

34. Notwithstanding the fact that these charges were fully authorized by Deutsch, on or about November 20, 2018, Deutsch informed American Express that these charge by

Hakshivah/GLS were unauthorized. Deutsch's claim was false and defamed Hakshivah/GLS.

35. On October 4, 2018, Deutsch reminded Klein that "I need to make a payment to AMEX", and at or about 12:32 PM on that same day, Deutsch provided Klein with a screenshot of all the Hakshivah transactions from August 21, 2018, totaling \$136,000, the same transactions that Deutsch has falsely alleged were done without his knowledge and authorization.

36. Bank records for Klein show that from October 15 to October 19, 2018, Klein paid Deutsch \$135,800, i.e., all but \$200 from the amounts charged on August 21, 2018.

37. Notwithstanding the fact that Deutsch was substantially repaid all of the amounts charged by Hakshivah/GLS, Defendants have fraudulently sought to recover those same monies from Hakshivah/GLS through the chargeback process.

38. Hakshivah/GLS charged other cards of Deutsch's including a Mastercard ending in 8498 for \$50,000 on November 24, 2017, and again Deutsch's cards were charged on January 16, February 18 and February 22. Upon information and belief, none of these charges have been disputed to date. They were all similarly authorized by Deutsch.

#### **Deutsch Submits Fraudulent Chargebacks**

39. A "chargeback" is a reversal of a transaction between a merchant and a cardholder resulting from a dispute between the cardholder and the merchant. Once a dispute is submitted, a chargeback typically results in a debit to the merchant account for the disputed amount, which is then credited to the cardholder pending an investigation by the credit card company which includes a request for a response by the merchant. Chargebacks typically occur for reasons having to do with an allegation by the cardholder that the transaction at issue was unknown to them, or that the cardholder's card was lost or

stolen, or due to a merchant's alleged failure to render purchased goods or services as agreed upon between it and its customer credit card holder. In the absence of a true and valid dispute on a transaction, a cardholder would not be entitled to a chargeback credit, and no chargeback can technically be initiated without the submission of some claim by the cardholder giving rise to justify a chargeback.

40. Prior to November 2018, Deutsch never complained to Hakshivah/GLS or American Express about the charges on his card. Nevertheless, on or about November 20, 2018, Deutsch submitted chargeback claims to American Express disputing many of the charges made by Hakshivah/GLS and falsely claiming that those charges were unauthorized and unknown to him.

41. As a result of Deutsch's fraudulent chargeback claims, on November 27, 2018 American Express immediately debited Hakshivah/GLS's account in the amount of \$136,000, i.e., the charges made by Hakshivah/GLS on August 21, 2018. American Express has also notified Hakshivah/GLS that there is an additional \$365,000 in pending disputes which are still being investigated due to the age of the transactions, and which it may seek to collect from Hakshivah/GLS.

42. On information and belief, American Express has nonetheless credited Defendants' account for at least \$301,000 of the at least \$401,000 in chargeback claims that Defendants have submitted to American Express.

43. After receiving the foregoing chargeback claims, Mr. Gottesman contacted Klein to learn why these chargebacks had been submitted. Klein had no knowledge at the time on what basis Deutsch had disputed the charges, but he advised Mr. Gottesman that several days earlier Deutsch had threatened him that he would attempt to dispute some credit card charges due to an ongoing contract dispute he had with Deutsch over certain

unrelated transactions, and he assumed Deutsch was trying to take abusive advantage of the chargeback system.

44. Klein assured Mr. Gottesman that he had paid Deutsch for all of the charges that were transacted with Hakshivah/GLS using the Deutsch cards, and that all of the transactions at issue were expressly authorized by Deutsch prior to each charge. Klein also shared with Mr. Gottesman copies of his WhatsApp messages with Klein, as well as his banking records to demonstrate Deutsch's authorization, as well as the payments to Deutsch for all relevant charges as represented by Klein.

45. Upon information and belief, Hakshivah/GLS is not the only entity that Deutsch has attempted to defraud through the use of fraudulent chargebacks. Instead, Deutsch has submitted substantial chargeback claims to several other credit card issuers for charges transacted on his credit card with other merchants.

46. Hakshivah/GLS has been unable to process credit card transactions a circumstance that has affected its ability to accept credit card donations and caused further damages to it.

**FIRST CAUSE OF ACTION  
(Defamation Per Se)**

47. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 46, with the same force and effect as if fully set forth herein.

48. As set forth above, the representation by Defendants to American Express that the Hakshivah/GLS charges on the Deutsch and DVC credit cards were unauthorized is false, accuses Hakshivah/GLS of theft, and speaks directly to Plaintiff Hakshivah/GLS's character, honesty, integrity and reputation in the community.

49. The above-referenced statements to American Express by Deutsch constitute defamation per se.

50. The above-referenced false and defamatory statements to American Express by Deutsch were maliciously made in that as Deutsch well-knew he had authorized the charges, and he had been repaid for them. The statements were made in furtherance of Defendants' attempts to defraud Hakshivah/GLS.

51. As a result of the above-referenced defamation on the part of Defendants, Plaintiff's reputation in the community has been harmed, it has been the subject of a law-enforcement investigation, and its ability to carry-out its business has been affected.

52. Defendants' false statements were willful, intentional and maliciously made even though defendants knew that the statements to American Express were incorrect and untrue.

53. Plaintiff is entitled to compensatory and punitive damages.

**SECOND CAUSE OF ACTION  
(Fraud in Inducement)**

54. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 53, with the same force and effect as if fully set forth herein.

55. Defendants engaged in a fraudulent scheme whereby they tricked Hakshivah/GLS to charge their cards, forward the money to Klein for ultimate credit to Defendants knowing that they would then seek to recover those monies again from Hakshivah/GLS through the American Express chargeback process.

56. Defendants were aware that the authorization given to charge their cards would be relied on by Hakshivah/GLS in charging the cards, and in advancing the money it received to Klein.

57. Plaintiff materially and continually justifiably relied upon the representations made by the Defendants.

58. Defendants' later representations to American Express that the charges were unauthorized were done with the knowledge and intent that American Express would deprive Plaintiff of their property for the benefit of Defendants.

59. Defendants understood that their false representations would result in a loss to Hakshivah/GLS.

60. Plaintiff was injured by reason of the Defendants' improper acts, and has suffered damages in an amount of at least \$401,000.

**THIRD CAUSE OF ACTION  
(Fraud)**

61. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 60, with the same force and effect as if fully set forth herein.

62. Defendants' representations to American Express that the Hakshivah/GLS charges were unauthorized was false.

63. Defendants made the representations to American Express in the expectation that they would be conveyed to Hakshivah/GLS, and that Hakshivah/GLS would rely on it to its detriment in not timely contesting Defendants' chargeback claims.

64. Defendants understood and intended that American Express would debit Hakshivah/GLS's account as a result of the chargebacks and credit those monies back to Defendants.

65. Defendants understood that their false representations would result in a loss to Hakshivah/GLS.

66. Plaintiff was injured by reason of the Defendants' improper acts, and has suffered damages in an amount of at least \$401,000.

**FOURTH CAUSE OF ACTION  
(Injurious Falsehood)**

67. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 66, with the same force and effect as if fully set forth herein.

68. Defendants' false statements to American Express that the charges by Hakshivah/GLS were unauthorized and unknown to them constituted injurious falsehood damaging Plaintiff in an amount of at least \$401,000.

69. Defendants' course of conduct in making these defamatory statements was done with reckless disregard for the truth of the statements and with the reasonable expectation that harm to Plaintiff would flow therefrom.

70. Defendants' statements to American Express constitutes injurious falsehood.

71. By reason of the foregoing, Plaintiff has been damaged, and is entitled to recover from Defendants, an amount not less than \$401,000, and punitive and exemplary damages of a sum of not less than \$401,000.

**FIFTH CAUSE OF ACTION  
(Conversion)**

72. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 71, with the same force and effect as if fully set forth herein.

73. Plaintiff had rightful and legal title to the monies in its account.

74. Defendants by virtue of the false statements made to American Express caused American Express to intentionally exercise dominion and control over Hakshivah/GLS monies for the benefit of Defendants, and Defendants have taken control and possession of these assets for their own benefit.

75. As a result of Defendants' actions, Plaintiff has been denied its right to use, enjoy and take advantage of these assets.

76. Plaintiff has demanded that the Defendants return these assets, which demand Defendants have refused, and the assets have remained outside Plaintiff's dominion, control and enjoyment.

77. Plaintiff has suffered a loss of these assets.

78. By reason of the foregoing, Plaintiff has been damaged, and is entitled to recover from Defendants, an amount of not less than \$136,000.

**SIXTH CAUSE OF ACTION  
(Unjust Enrichment)**

79. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 78, with the same force and effect as if fully set forth herein.

80. Notwithstanding the fact that Deutsch knew that Klein would be charging Defendants' credit cards at Hakshivah/GLS, and all of the Hakshivah/GLS charges were repaid by Klein from funds received from Hakshivah/GLS, Defendants sought, and subsequently obtained, those same amounts from Hakshivah/GLS through American Express's chargeback process.

81. Even if Deutsch had not received any repayments from Klein, because the charges by Hakshivah/GLS were authorized by Defendants, Defendants were not entitled to seek through the chargeback process any monies Hakshivah/GLS, and by doing so Defendants were unjustly enriched at the expense Hakshivah/GLS.

82. Defendants knew that American Express would and did debit Hakshivah/GLS's account in order to credit Defendants.

83. Accordingly, equity and good conscience require that Defendants pay restitution to Plaintiffs.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) On the First Cause of Action, judgment in favor of Plaintiff and against Defendants, jointly and severally, for compensatory damages in an amount to be determined at trial of no less than \$1 million, and for punitive damages no less than \$1 million, plus prejudgment interest, and costs and disbursements of this action, and such other further relief as this Court deems just and proper.

(b) On the Second Cause of Action, judgment in favor of Plaintiff and against Defendants, jointly and severally, in an amount to be determined at trial, but in no less than \$401,000, plus prejudgment interest, and costs and disbursements of this action, and such other further relief as this Court deems just and proper.

(c) On the Third Cause of Action, judgment in favor of Plaintiff and against Defendants, jointly and severally, in an amount to be determined at trial, but in no less than \$401,000, plus prejudgment interest, and costs and disbursements of this action, and such other further relief as this Court deems just and proper.

(d) On the Fourth Cause of Action, judgment in favor of Plaintiff and against Defendants, jointly and severally, for compensatory damages in an amount to be determined at trial of no less than \$1 million, and for punitive damages no less than \$1 million, plus prejudgment interest, and costs and disbursements of this action, and such other further relief as this Court deems just and proper.

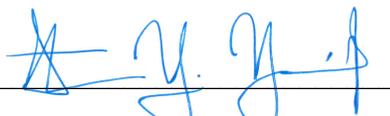
(e) On the Fifth Cause of Action, judgment in favor of Plaintiffs and against Defendants, jointly and severally, in an amount to be determined at trial, but in no less than \$401,000, plus prejudgment interest, and costs and disbursements of this action, and such other further relief as this Court deems just and proper.

(f) On the Sixth Cause of Action, jointly and severally, in an amount to be determined at trial, but in no less than \$401,000, plus prejudgment interest, and costs and

disbursements of this action, and such other further relief as this Court deems just and proper.

Dated: New York, New York  
March 13, 2019

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