

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY,
CIVIL DIVISION

GHASSAN MANSOUR, ABBAS HASHEMI
AND HAMID FARAJI, collectively as the
Trustees of the Islamic Education Center
Of Tampa, Inc., and ISLAMIC EDUCATION
CENTER OF TAMPA, INC., a non profit
corporation,

PLAINTIFFS,

CASE NUMBER: 08-CA-003497
DIVISION: "L"

vs.

ISLAMIC EDUCATION CENTER OF TAMPA,
INC., a nonprofit corporation,

DEFENDANT.

ORDER OF DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION

THIS CAUSE having before the court on the Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction filed on October 24, 2011; Plaintiff's Response in Opposition to Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction filed on November 2, 2011; and Defendant's Reply in Support of its Motion to Dismiss for Lack of Subject Matter Jurisdiction filed on November 7, 2011. The court having reviewed the motion and memorandum in support and Motion and being otherwise fully apprised in the matter, it is thereupon

ADJUDGED as follows:

1. In *Franken v. Poulos*, 604 So. 2d 1260 (Fla. 3rd DCA 1992), the court found that the trial court could not intervene in an internal church governance dispute. The *Franken* court said that the U.S. Constitution (the First and Fourteenth Amendments) "permit(s) hierarchical religious organizations to establish their own rules and regulations for internal discipline and governance, and to create tribunals for adjudicating disputes over these matters." Once such matters are

decided by an ecclesiastical tribunal, the civil courts are to accept the decision as binding on them. See also, *Southeastern Conference Association of Seventh-Day Adventists, Inc. v. Dennis*, 862 So. 2d 842 (Fla. 4th DCA, 2003); *Mansour v. Islamic Education Center of Tampa, Inc.*, Opinion (March 22, 2011).

2. The Motion to Dismiss for Lack of Subject Matter Jurisdiction is **GRANTED**.

ORDERED in Chambers, in Tampa, Hillsborough County, Florida on this _____ day of December, 2011.

ORIGINAL SIGNED

DEC 08 2011

~~RICHARD A. NIELSEN
CIRCUIT COURT JUDGE~~
RICHARD A. NIELSEN
Circuit Court Judge

CC: Brian E. Langford, Esq.
Lee Segal, Esq.
Paul B. Thanasides, Esq.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
COMPLEX BUSINESS LITIGATION DIVISION

GHASSAN MANSOUR, ABBAS HASHEMI, HAMID
FARAJI AND DR. SAM HAKKI, collectively as the
Trustees of the Islamic Education Center of Tampa, Inc.,

Plaintiffs,

CASE NO. 08-CA-003497
DIVISION L

vs.

ISLAMIC EDUCATION CENTER OF TAMPA, INC., a
nonprofit corporation,

Defendant.

**DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Defendant, Islamic Education Center of Tampa, Inc. ("IEC"), hereby moves the Court to dismiss this case for lack of subject-matter jurisdiction. In support, IEC states:

In this case, Plaintiffs have sued IEC, a not-for-profit religious organization, seeking a judgment declaring that the IEC's removal of Plaintiffs from their positions on the board of trustees of the mosque in 2002 was procedurally improper. ~~By their suit, Plaintiffs ask this Court to take jurisdiction over a church internal governance dispute. Florida law is clear that courts may not decide corporate governance disputes involving religious organizations.~~

In its March 22, 2011 Opinion, the Court cited to *Se. Conference Ass'n of Seventh-Day Adventists, Inc. v. Dennis*, 862 So.2d 842 (Fla. 4th DCA 2003) and *Franzen v. Poulos*, 604 So.2d 1260 (Fla. 3d DCA 1992). These cases require the Court to dismiss this case.

In *Dennis*, the district court court issued a writ of prohibition to prevent the trial court

from exercising jurisdiction over a dispute challenging the clergy termination procedures followed by the church. *Dennis*, 862 So. 2d at 844 (“~~Civil courts may not inquire into internal organizational disputes between different factions of a religious organization or into property disputes that would require interpreting religious doctrine or practice.~~”).

The *Franzen* court vacated an injunction entered by the trial court in a similar clergy termination procedure dispute and ordered the trial court to dismiss the case for lack of subject matter jurisdiction. *Franzen*, 604 So. 2d at 1263. (“~~While the trial court is ordinarily empowered to adjudicate questions of Florida corporate law, a First Amendment exception applies to matters of internal governance of a hierarchical religious organization.~~”).

The First Amendment prohibition against resolving church internal governance disputes has been applied consistently by courts throughout the land, including district courts in Florida, the Florida Supreme Court and the United States Supreme Court. *See* Annot., *Construction and Application of Church Autonomy Doctrine*, 123 A.L.R.5TH 385 (2004) (“It has been recognized, generally, that civil courts are prohibited by the First Amendment ... from inquiring what church rules are, and from determining whether or not they have been correctly applied.”) (citing C.J.S., *Constitutional Law* § 534); *Malicki v. Doe*, 814 So.2d 347, 355 (Fla. 2002) (“[T]he First Amendment prevents courts from resolving internal church disputes that would require adjudication of questions of religious doctrine.”); *Kond v. Mudryk*, 769 So.2d 1073, 1076 (Fla. 4th DCA 2000) (“It is well settled that excessive governmental entanglement with religion will occur if a court is required to interpret church law, policies, or practices; therefore, the First Amendment prohibits such an inquiry.”); *House of God Which is the Church of the Living God, the Pillar & Ground of the Truth Without Controversy, Inc. v. White*, 792 So.2d 491, 493 (Fla. 4th DCA 2001) (“Excessive entanglement with religion occurs when the courts begin to review

and interpret a church's constitution, laws, and regulations. The First Amendment prohibits courts from resolving doctrinal disputes or determining whether a religious organization acted in accordance with its canons and bylaws."); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952) (freedom of religion requires freedom to select or terminate church officials); *Archdiocese of Miami, Inc. v. Minagorri*, 954 So.2d 640, 642 (Fla. 3d DCA 2007) (no jurisdiction to review employment decision concerning religious school principal); *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (BRENNAN, J., concurring) (no jurisdiction to identify the governing bodies that exercise authority within a church or control church property); *Serbian Eastern Orthodox Diocese for U. S. of America and Canada v. Milivojevich*, 426 U.S. 696 (1976) (no right to review defrockment of priest).

As required by the district courts in *Franzen* and *Dennis*, this Court should dismiss this case for lack of subject-matter jurisdiction.

Respectfully submitted,

/s/Paul B. Thanasides
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Counsel for Petitioner, Islamic Education
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October, 2011, I electronically filed the foregoing with the Clerk of Court by using the ECF system. I further certify that I served the foregoing document by U.S Mail and Electronic Mail to: **Brian E. Langford, Esq.**, (brian@lmolawfirm.com) Langford Myers & Orcutt P.A., 1715 W. Cleveland Street, Tampa, Florida 33606 and **Lee Segal, Esq.**, (lee@segalschuh.com) Segal & Schuh Law Group, P.L., 13575 58th Street N. Suite 140, Clearwater, Florida 33760.

/s/Paul B. Thanasides
Attorney

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

GHASSAN MANSOUR, ABBAS HASHEMI,
HAMID FARAJI, AND DR. SAM HAKKI,
collectively as the Trustees of the Islamic Education
Center of Tampa, Inc.,

Plaintiff(s),

CASE NO.: 08-03497
DIVISION: L

vs.

ISLAMIC EDUCATION CENTER OF TAMPA,
INC., a non profit corporation,

Defendant(s).

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO
DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Plaintiffs, GHASSAN MANSOUR, ABBAS HASHEMI, HAMID FARAJI, AND DR. SAM HAKKI, collectively as the Trustees of the Islamic Education Center of Tampa, Inc. (collectivity the "Plaintiffs"), hereby file their response in opposition to Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and in support thereof would further state:

1. Defendant filed a Petition for Writ of Prohibition to the Second District Court of Appeals for the purposes of preventing this Court from applying Islamic Ecclesiastical Law to the arbitration award and dispute resolution procedures in this case.
2. The Second District Court of Appeals has since denied Defendant's Writ of Prohibition.

3. Defendant now moves this Court to dismiss the case for lack of subject matter jurisdiction.

4. ~~Defendant through counsel, has raised the same argument for dismissal, at hearings held on, January 10, 2011 and February 23, 2011.~~ See transcript of January 10, 2011 Hearing, Pages 24 - 27, and Pages 129 - 130. Additionally, see transcript of February 23, 2011, Pages 5 - 6.

5. ~~This Court has already declined to address Defendant's argument and has been clear in its Orders that the hearing on the enforcement of the arbitration award needs to be concluded and that the Court has subject matter jurisdiction.~~

6. ~~Defendant raises no new issues~~ in its Motion that it has not previously argued to this Court.

7. Plaintiff's counsel contacted Defendant's counsel, via email, on October 25, 2011, and asked Defendant's counsel to withdraw the motion, however, Defendant's counsel has declined to withdraw the Motion.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny Defendant's Motion, and for whatever further relief this Court deems just and proper.

Dated: November 2nd, 2011.

Respectfully submitted,

s/ Lee Segal

Lee Segal, Esquire

F.B.N.: 037837

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 2, 2011, I electronically filed the foregoing with the Clerk of Court by using the ECF system. I further certify that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail to Paul B. Thanasides, Esquire (paul@mcintyrefirm.com), McIntyre, Panzarella, Thanasides, Hoffman, Bringgold & Todd, P.L., 400 N. Ashley St., Suite 1500, Tampa, Florida 33602.

s/ Lee Segal
Lee Segal, Esquire

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

GHASSAN MANSOUR, ABBAS HASHEMI, HAMID
FARAJI AND DR. SAM HAKKI, collectively as the
Trustees of the Islamic Education Center of Tampa, Inc.,

Plaintiffs,

CASE NO. 08-03497
DIVISION: "L"

vs.

ISLAMIC EDUCATION CENTER OF TAMPA, INC., a
nonprofit corporation,

Defendant.

**DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

Defendant, Islamic Education Center of Tampa, Inc. ("IEC"), hereby submits its reply in support of its motion to dismiss this case for lack of subject-matter jurisdiction, and states:

Plaintiffs cite no case in support of their opposition to IEC's motion to dismiss. Not surprisingly, Plaintiffs could find no law that stands for the proposition that the Court has subject matter jurisdiction to hear this internal church governance dispute.

Instead, Plaintiffs argue that IEC petitioned the Second District for a writ of prohibition, which petition was denied without opinion. This fact has no bearing on the issue, as a denial of a petition for a writ of prohibition without opinion is not a decision on the merits of the jurisdictional issue. *Fyman v. State*, 450 So.2d 1250 (Fla. 2d DCA 1984); *Thomas v. State*, 422 So.2d 93 (Fla. 2d DCA 1982); *Public Employees Relations Comm'n v. District School Bd. of DeSoto County*, 374 So.2d 1005 (Fla. 2d DCA 1979), *cert. denied*, 383 So.2d 1193 (Fla. 1980). See also *Barwick v. State*, 660 So. 2d 685, 691 (Fla. 1995).

Plaintiffs also cite to two instances in open court where IEC's counsel ~~manfully attempted to explain IEC's position that the Court lacks subject matter jurisdiction. As Plaintiffs admit, the Court declined to consider the arguments at that time.~~ The Court's refusal to examine its subject matter jurisdiction based on the attempted oral explanation of the issue by counsel, is not law of the case. The Court has not ruled on the issues presented by IEC in the Motion to Dismiss for Lack of Subject Matter Jurisdiction.

Even if the Court had already ruled on the issue in response to the oral suggestion of counsel, IEC's written Motion to Dismiss should be granted. ~~The Court is obliged to continually reassess its subject matter jurisdiction, at every point in the case, even after trial or for the first time on appeal.~~ See *84 Lumber Co. v. Cooper*, 656 So. 2d 1297, 1300 (Fla. 2d DCA 1994) ("We strongly emphasize, therefore, an attorney's ethical obligation, as an officer of the court, to immediately raise before a trial court the fundamental issue of lack of subject matter jurisdiction, after it becomes apparent.")

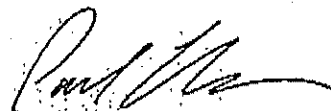
Plaintiffs base their opposition on the flawed premise that this Court or the Second District has already ruled in their favor, and not on any precedent in the case law, because there is no law to support their position that the Court has subject matter jurisdiction to hear this case. See *Malicki v. Doe*, 814 So. 2d 347, 356 (Fla. 2002). This is because "[t]he First Amendment provides churches with the 'power to decide for themselves, free from state interference, matters of church government.'" *Id.* (quoting *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 107-08 (1952)). ~~This fundamental legal tenet is recognized consistently by federal courts, including the United States Supreme Court, and the highest court of every state in this country.~~ See e.g., *Scharon v. St. Luke's Episcopal Presbyterian Hosps.*, 929 F.2d 360, 363 (8th Cir. 1991); *Nunn v. Black*, 506 F.Supp. 444, 448 (W.D.Va. 1981) ("[T]his court is compelled by the First Amendment

to avoid adjudicating the issue of whether the plaintiffs' expulsion was in accordance with the procedure prescribed by the Church of God of Prophecy.... [B]oth procedural-governance questions and doctrinal disputes are constitutionally removed from this court's review."), aff'd 661 F.2d 925 (4th Cir.1981) (table); *Fowler v. Bailey*, 844 P.2d 141, 145 (Okla.1992) ("We now accept as fundamental the position that a church's decision as to the status of a person's church membership must be considered as binding and beyond the reviewing power of courts such as ours.").

The conclusion that the Court lacks subject-matter jurisdiction to hear this internal church governance dispute is especially true in light of the fact that this Court has already found that a portion of this case – the confirmation of an alleged arbitration award – must be resolved by reference to religious law, instead of the Florida Arbitration Code or the Federal Arbitration Act, which govern every other request to confirm an arbitration award made in this state. The Florida Supreme Court has held unequivocally that Florida courts may not adjudicate questions of religious doctrine. *Malicki*, 814 So.2d at 355 ("[T]he First Amendment prevents courts from resolving internal church disputes that would require adjudication of questions of religious doctrine.").

This is a clear-cut case, as evidenced by Plaintiffs' failure to cite any law to support the position that this Court has subject matter jurisdiction over this dispute. Accordingly, the Court should dismiss this case for lack of subject-matter jurisdiction.

Respectfully submitted,

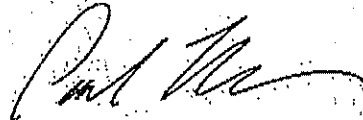


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November, 2011, I served the foregoing by U.S. Mail and Electronic Mail to: Brian E. Langford (brian@lmolawfirm.com), Langford Myers & Orcutt P.A., 1715 W. Cleveland Street, Tampa, Florida 33606 and Lee Segal (lee@segalschuh.com), Segal & Schuh Law Group, P.L., 13575 58th Street N. Suite 140, Clearwater, Florida 33760.



Attorney