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In Sharabani v. Sharabani, a case recently decided in New York, the court considered the implications of a husband’s refusal to grant his wife a religious divorce. This decision highlights the very thorny issues that surround this interplay between church and state resulting from a New York statute with the unstated, but clear, purpose of solving a problem that is unique to Jewish marriages.”

Sharon Klein and Michael Stutman provide members with their analysis of Sharabani v. Sharabani, a case recently decided in New York where the implications of a husband’s refusal to grant his wife a religious divorce were addressed.

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Michael Stutman is founding partner of Stutman Stutman & Lichtenstein. He is a fellow and Past President of the New York Chapter of the American Academy of Matrimonial Lawyers. He has more than thirty years of family law experience, handling all forms of nuptial agreements, settlements and court trials. Michael has served three terms on the City Bar Trust Estate and Surrogates court committee and is serving his fourth term on the City Bar Matrimonial Law Committee. He has written two books on New York law of divorce and has lectured at numerous CLE programs and at prestigious universities.

Here is Sharon and Michael’s commentary:

**EXECUTIVE SUMMARY:**

With the increasing overlap between the trust & estates and matrimonial practices, trusts & estates practitioners often become involved in premarital planning for their clients, or their clients’ children. It’s important for practitioners to be cognizant of religious issues that can impact divorce proceedings.

In *Sharabani v. Sharabani*, a case recently decided in New York, the court considered the implications of a husband’s refusal to grant his wife a religious divorce.

This decision highlights the very thorny issues that surround this interplay between church and state resulting from a New York statute" with the
unstated, but clear, purpose of solving a problem that is unique to Jewish marriages.

A Get is a religious divorce under Jewish law that must be given voluntarily by a husband to a wife in order for her to remarry under religious law. Simply put, if a Jewish woman was married to a Jewish man and the marriage was solemnized by Jewish clergy, the woman needs to receive a “Get” from the husband in order for her to remarry in the Jewish faith and, perhaps more importantly, in order for her children of that subsequent marriage, and their issue, to marry freely in the Jewish faith. Without the Get, in an observant community, the woman is a pariah. The term for her in Hebrew is “agunah” (a-goon-ah) which literally translates into “chained woman.” This has been problematic if, out of spite or as a manipulative tool, a husband refuses to give his wife a Get.

**FACTS:**

**The Holding in Sharabani v. Sharabani**

Husband’s refusal to provide a religious divorce to Wife led the court to award Wife 100% of certain marital assets, if Husband continued to refuse.

**The Basis for the Decision**

In determining equitable distribution in New York, the court must consider the factors listed in New York’s Domestic Relations Law. Among those factors is:

“All other factor which the court shall expressly find to be just and proper”

Husband’s refusal to give a Get was considered under that category.

The court found that refusal to give Wife a Get essentially limits her future financial circumstances in depriving her of the ability to remarry religiously and deprives her of emotional support. The court noted that it has the authority to consider the consequences to the Wife in the Husband's refusal to remove the barriers to her remarriage. Specifically, the court found that Husband's refusal to remove the religious barrier to her
remarriage is a basis to exercise discretion under New York’s Domestic Relations Law in disproportionately distributing the marital assets.iii

The court ordered that certain marital assets were to be divided equally between the parties provided the Wife received a Get within 30-60 days of service upon him of the judgment of divorce with notice of entry. If she did not receive a Get within the permissible time frame, she was to receive 100% of the assets.

The Details

The parties were married in August 2006 by Israeli religious tradition. Their oldest daughter was born in April 2007 and their younger daughter was born in February 2009. The principal marital assets that the court considered for maintenance, child support and distribution purposes included an apartment in Israel, storage units, and a parking spot. The rental income from the apartment was also taken into account, along with various personal items such as candelabras and silverware. Wife filed an action for dissolution of the marriage in September 2010. Both parties also filed actions for religious divorce (Get), Wife in Israel, and Husband in New Jersey. The Wife’s Israeli petition was dismissed, but Husband would not remove the religious barriers that prevented Wife from remarrying.

Regarding the Israeli apartment, storage unit and parking space, the court ordered that it should be sold and the net proceeds divided equally between the spouses, conditioned on the fact that Wife received a Get within 30 days of service of the judgment of divorce upon the Husband. If the Husband failed to do so, the court ordered that the Wife receive 100% of the net proceeds of the sale of these assets. The same disposition was applied to rental income from the apartment, if the Husband did not provide the Wife a Get after the earlier of 60 days from service of the judgment of divorce or the sale of the apartment.

The court declined to award the Wife final maintenance because of Husband’s limited job prospects; final maintenance, the court found, would be impractical and an unjust remedy to his refusal to provide a Get. Instead, the court found the disproportionate marital asset distribution served as an appropriate remedy.
COMMENT:

The use of religious doctrine to secure an advantage in a secular proceeding is really nothing new and its potential abuse to subjugate women is also a tale that is as old as time. Yet, it has only been in the relatively recent past that this problem has garnered the attention of the popular press, legislatures and courts.

The issues were first addressed by the New York Court of Appeals in the case of *Avitzur v. Avitzur*, 58 N.Y.2d 108 (1983) which addressed the enforcement of a promise made in a "Ketubah" (a traditional agreement between Jewish husband and wife, executed moments before the marriage which provides, among other things, that the couple will seek the advice and counsel of the Beth Din, a religious tribunal, in matters pertaining to their marriage). Here the court found no impediment to directing that the husband appear before the Beth Din in accordance with the agreement, as this was consistent with his promise to do so. The fact that the promise was made in conjunction with a religious ceremony did not make the promise "religious."

One year later, the New York legislature enacted a statuteiv that denies a divorce to a party who commences a divorce proceeding without having taken all steps within his power to remove any barrier to the other party’s remarriage following the divorce. However, the penalty of withholding the entry of a judgment of divorce is only effective against the plaintiff party seeking a divorce. If an uncooperative husband was the defendant, he was not required to provide a sworn statement that he had removed his wife’s barriers to remarriage. Nine years later, the legislature enacted laws upon which the court relied in *Sharabani*. Those laws allow the court to consider the effect of a barrier to marriage when distributing marital assets and determining spousal support awardsv. Possible sanctions a court can impose include various financial penalties that affect the liability for maintenance and can have an adverse impact on the husband’s share of equitable distribution.

There are a number of incentives (or depending on your view, disincentives) that can be administered by the secular court to achieve the granting of the Get yet these raise the question of whether under the threat of these incentives, the delivery of the Get is “voluntary” by the husband. A
strict reading of Jewish principles can lead one to conclude that if the Get is not voluntary, it’s not valid.

The Rabbinical Council of America has had some success in constructing a prenuptial agreement (http://theprenup.org/pdf/Prenup_Standard.pdf) that provides for some fixed sum of support to be paid to a spouse until a Get is delivered in order to give the husband a financial incentive to grant the Get. This document, however, is relatively bare bones and provides for the parties to consent to arbitration of their marital dispute before a Beth Din. That tribunal, generally composed of older religious men, without any compulsion to apply the Domestic Relations Laws of any jurisdiction, can be unpredictable.

Perhaps the better course is to extract a contractual promise to deliver a Get upon request and have that promise contained within a prenuptial agreement. A flurry of cases in New York in the 1970s all upheld provisions in parties’ separation agreements with respect to the obligation to deliver (and in at least one instance to accept) a Get.vi Nearly two decades later, in Fischer v. Fischer, 237 A.D.2d 559 (2d Dept. 1997) a couple had settled their case with a stipulation and a judgment which provided that Husband would deliver a Get. Husband disobeyed the directive numerous times and was found in contempt for his failure. He appeared before the Beth Din but refused to deliver the Get. The Supreme Court found that his appearance purged him of the contempt and Wife appealed. The Appellate Division reversed finding there was no constitutional reason to deny Wife this remedy.

Against this statutory and decision framework, although applied to post-marriage agreements, it seems that such promises in prenuptial agreements should be enforced as well. Assuming that the promise to deliver the Get was made voluntarily before the marriage, the prospect of subsequent penalties for failure to honor the promise should not detract from the voluntariness of the promise in the first instance and, perhaps, can be used to sanitize the deliverance of the Get.

HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!
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CITES:

Sharabani v. Sharabani, 54890/2010, NYLJ 1202798565597, at *1 (Sup.,
KI, Decided August 30, 2017), New York Domestic Relations Law (DRL)
§253, 256 (B)(5)(h), 236 (B)(6)(d); Avitzur v. Avitzur, 58 N.Y.2d 108 (1983),
Waxstein v. Waxstein 90 Misc.2d 784 (Sup. Kings 1976), Fischer v.
Fischer, 237 A.D.2d 559 (2d Dept. 1997);
http://theprenup.org/pdf/Prenup_Standard.pdf

CITATIONS:

i New York Domestic Relations Law (DRL) §253.

ii New York Domestic Relations Law (DRL) §253.

iii DRL §236(B)(5)(h) which states “…the court shall, where appropriate,
consider the effect of a barrier to remarriage…on the factors
enumerated…” in connection with an award of equitable distribution.

iv DRL §253.

v DRL §236(B)(5)(h) and 236 (B)(6)(d).
See for example *Waxstein v. Waxstein* 90 Misc.2d 784 (Sup. Kings 1976).