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Judge fines Chabad of Calif. \$845,000, says group misused federal grant with 'reckless disregard'

by Jared Sichel
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Bais Chana Chabad High School in the Los Angeles neighborhood of Pico-Robertson. Image via Wikipedia

A federal judge ruled last week that Chabad of California intentionally misused \$272,495 in Department of Homeland Security (DHS) grants it received in 2009 and must pay \$844,985 in penalties, a portion of which will go to whistleblowers who brought the suit against Chabad.

Chabad of California's head, Rabbi Boruch Shlomo Cunin, applied for the funds in 2008 as part of a national program to boost surveillance systems at religious institutions. He convinced two other local Chabad institutions — Chabad of Marina Del Rey and the Yeshiva Ohr Elchonon high school — to also apply for the grants and allow Chabad of California to carry out the logistics of managing the funds and contracting with a security firm.

But according to a ruling by Judge Morrison England, Cunin never established procedures for the money, and he also did not create a separate bank account to segregate and track the federal funds. The judge also ruled that Chabad did not use the funds for their intended purposes, and instead used the money for "regular operating expenses, including employee payroll, building repairs, mortgages, and utility expenses."

Chabad of California's attorney, Mark Hathaway, said that his clients

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were “very surprised” that England granted the Justice Department’s motion for summary judgment — the court ruled that the case didn’t warrant a trial because the facts against Chabad of California weren’t in question.



“Chabad has always had a very good relationship with the government and believed they complied with the accounting rules for security grants,” Hathaway said. He added that Chabad is deciding how to move forward and may appeal the summary judgment ruling.

This case was filed in 2010 by Donna Kozak and her husband, Aria Kozak, who is president and CEO of Elite Interactive Solutions, a security company Chabad hired to install cameras at multiple facilities. According to court documents, Chabad paid \$50,000 to Elite in 2009 but still owed the company \$145,000 for work it performed under the grant, money that should have been available for immediate payment had it been overseen and secured in a separate bank account. The Kozaks are entitled to receive a portion of Chabad’s penalty, in an amount yet to be determined.

Chabad of California was obligated to complete its security upgrades between Dec. 31, 2009, and May 31, 2010, depending on the facility, and to pay Elite no later than 90 days after the “performance deadline”— the last day that the grant money could legally be used for security improvements. The California Emergency Management Agency (Cal EMA), which manages the DHS security grants program for local religious institutions, allocated \$72,750 to each of the three Chabad facilities in Los Angeles — Chabad of Marina Del Rey, Yeshiva Ohr Elchonon and Chabad’s headquarters in Westwood — and an additional \$97,000 to Chabad’s former summer camp in the San Bernardino County town of Running Springs that Bnei Akiva of Los Angeles bought in September after Chabad lost the property in foreclosure.

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When Cal EMA sent Chabad the grant awards for Running Springs and for its Westwood building, the ruling states that Chabad deposited the funds in a general operating account it uses at Comerica Bank. And when Cal EMA sent Yeshiva Ohr Elchonon and Marina Del Rey their respective awards, they transferred the bulk of the money to Chabad, which again deposited the money in its Comerica Bank account.

By August 2010, once Chabad’s deadline for utilizing the federal grants had passed, the court’s ruling says Chabad had spent nearly \$272,495 on unauthorized expenses from the \$322,495 it received from the government. In November 2010, Cal EMA — after performing an audit — demanded Chabad refund to the state \$612,066 in unused grant funds and penalties for violating the terms of the grant. Three months later, in February 2011, Chabad paid \$102,000 to Elite Interactive Solutions and \$130,137 to Continental Business Solutions (the collection agency hired by Elite). It wasn’t until July 2014, however, that Chabad paid any amount back to Cal EMA. At that time, it remitted \$136,920 for “overpayment of grant advances,” according to the court’s ruling.

England was unsparing in his language, writing that Chabad used explicitly designated federal grant funds for entirely unrelated purposes. “The evidence belies any assertion that it actually complied with the applicable requirements,” England wrote. During deposition, the summary judgment ruling indicates that Cunin said his plan was to “deposit advances in the ‘general pot’ and later pay vendors with a ‘similar amount of funds’ that would ‘need to be found.’ ”

“This cavalier attitude shows, at minimum, a reckless disregard for administering the Nonprofit Security Grant Program in accordance with its requirements,” England wrote. “A compelling argument can be made that Rabbi Cunin[’s], and thus Chabad’s, behavior was intentional.”

Yet to be seen is how this will impact Yeshiva Ohr Elchonon and Chabad of Marina Del Rey, which enlisted Cunin and Chabad of California as a principal in receiving and executing the federal grants. The Justice Department asked England also to rule in summary judgment against those two groups, but England only ruled against Chabad of California, stating that a trial would have to determine whether Yeshiva Ohr

Elchonon and Chabad of Marina Del Rey can be held responsible for placing Cunin in charge of the grant funds.

Donald Saltzman, the attorney for Yeshiva Ohr Elchonon, said that Chabad of California had approached the school and convinced its leadership that the grant would help improve security and that Chabad has experience in executing federal grants. "You had no reason to believe they couldn't do it," Saltzman said. "You trust your friend. You say, 'Sure, go ahead.'"

Saltzman hopes that the Justice Department will be satisfied enough with the summary judgment ruling against Chabad of California to not continue its push to penalize Yeshiva Ohr Elchonon. "This judgment is a benefit to Yeshiva Ohr," he said. "In my view, [it's] very unlikely the government will continue to proceed against Yeshiva Ohr or Marina. I believe they got what they wanted."

Chabad of California released a statement Dec. 16 that noted the group's "fifty year positive track record" in partnering with the government and characterized Elite as a "dissatisfied vendor" that sought the government's assistance.

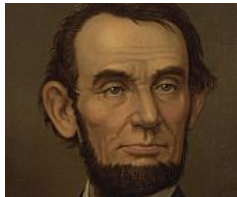
"We continue to hope to work closely with the federal government to resolve the situation amicably, so that Chabad's good work is not impugned unfairly," the statement read in part. "The federal funding provided by Homeland Security for safety was used as earmarked. The unused grant funds were returned."

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