

# Business

## weekly

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under the auspices of Harav Chaim Kohn, shlita

### STORYLINE

#### no intruding

By Rabbi Meir Orlian, Yerushalayim  
Halacha Writer for the Business Halacha Institute

"I've had it!" said Mrs. Rosen to her husband. They had been looking at houses for sale all day. "Our friends, the Jacobs, invited us for a drink before we head home."

Mrs. Jacob welcomed them in and asked, "How was your day?"

"Exhausting," answered Mrs. Rosen. "Each house has its plusses and minuses, not to mention negotiating with the seller."

"Do you have any realistic options?" asked Mr. Jacob.

"Yes," answered Mr. Rosen. "It's just a question of which one to go with."

"Our neighbors are also selling their house," said Mrs. Jacob, "but I think they just found a buyer."

"It's actually a decent house and fairly priced," said Mr. Jacob. "I don't know whether it's still possible to make an offer."

"Have they signed a contract yet?" asked Mr.

Rosen.

"I believe not," said Mr. Jacob.

The Jacobs took the Rosens to the neighbor's home.

"The house was for sale," neighbor told them.

"We haven't signed anything official yet, but we've accepted an offer."

"Would you show us the house?" asked Mr. Rosen.

"I guess so," said the neighbor. He took them on a tour.

"This is really what we're looking for," said Mr. Rosen. "How much are you asking for?"

"We agreed on \$470,000," said the neighbor. "We expect to sign next week."

Mr. and Mrs. Rosen quietly exchanged glances with each other and then short nods of approval.

"I understand that you haven't finalized yet," said Mr. Rosen. "This house seems good for

us and we are willing to pay \$500,000."

"I don't know," said the neighbor hesitantly. "We already agreed to someone else's offer in principle. In any case, I wouldn't sell to you without offering our buyer to match your price. Leave me your name and number, and we'll talk later this week."

The next day, however, Mr. Rosen received an irate phone call from the prospective buyer. "I understand that you just made an offer for the house next to the Jacobs."

"Yes," acknowledged Mr. Rosen. "We understand that the seller agreed to your offer but hasn't signed anything, and we are willing to give him a better price."

"What you're doing is wicked!" shouted the buyer. "It's against halacha!" He slammed the phone down.

"We'd better check with Rabbi Dayan," said Mr. Rosen to his wife. They called Rabbi Dayan

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### FROM OUR HOTLINE

#### rules of engagement

Submitted by  
R. Leiser

A shadchan called us and suggested a shidduch for our daughter. The information seemed fine to us and we suggested to our daughter to travel out of town to meet the young man. Since then, they have since met several times. Yesterday the young man came to our town and I finally met him. Unfortunately, I see that he is clearly unsuitable for our daughter. We'd obviously like

the relationship to end, but at this point it is likely that we'll be unable to persuade my daughter to back out.

**Q: If the shidduch goes through against our wishes, are we obligated to pay the shadchan?**

**A:** A shadchan is paid for providing a ser-

vice for the couple and their families. The service includes suggesting the name of a prospective spouse and some negotiations necessary for the couple to agree to marry. Even if the families did not ask the shadchan to get involved, once s/he has performed this service, s/he deserves fair compensation (Bior HaGra Choshen Mishpat 185:13, 264:13). Whenever two parties enter into

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right away and asked whether this was true.

"The buyer is correct," said Rabbi Dayan. "You have no right to intrude and take the house for yourself after the parties have agreed to the sale."

"Why not?" asked Mr. Rosen  
"It is because of the concept of ani hamehapech bacharara," explained Rabbi Dayan. "If a poor person is scavenging after a loaf of bread and someone comes and snatches it from him – he is called wicked."

"What does that have to do with us?" asked Mr. Rosen.

"The Gemara (Kiddushin 59a) applies this concept also to your situation, in which someone is actively involved in acquiring a field and another person intrudes and preempts him," answered Rabbi Dayan. "This halacha is cited in Shulchan Aruch (C.M. 237:1) regarding both buying and renting." "How, then, can anyone ever compete for a house or apartment?" asked Mr. Rosen, "It doesn't make sense that once someone makes an offer, no one else is entitled to offer more. It's not fair to the seller or landlord!"

"Correct," responded Rabbi

Dayan. "For this reason, the Rama (ibid.) limits the law to situations in which the buyer and seller have already agreed to a price, even if they haven't yet signed or made a formal kinyan. Some commentators note a custom not to intrude also if the parties are actively negotiating and about to settle (Pischei Teshuva 237:3)."

"Wow," said Mr. Rosen. "There must be a lot of discussion about this!"

"The poskim debate whether the law applies when there aren't comparable houses available," continued Rabbi Dayan, "what the seller's responsibility is, and whether there is legal recourse if the second buyer already completed the transaction. As such, it would be preferable not to infringe even if there aren't comparable houses available. However, in your case, you have alternatives, though, so you clearly have no right to intrude upon the first buyer's agreement with the seller."

Mr. Rosen thanked Rabbi Dayan. He then called the Jacobs' neighbor and withdrew his offer.

a service agreement – unless otherwise discussed – it is assumed that the parameters of the relationship follow common custom (Shulchan Aruch Choshen Mishpat 331:1). For example, an employer cannot expect his employees to do work that other employees in the same field are not expected to perform, even if the employer pays a higher salary than other employers. Employees can rightfully claim that they received the additional funds to do a better quality job, and without an explicit stipulation, the higher salary does not increase their obligations. Similarly, a shadchan has the right to assume that his job involves nothing more than helping to facilitate the

relationship of this couple until their engagement. If a family is particular about something, e.g. the height of the young man, that expectation must be stipulated up front. If nothing was specified, the shadchan can assume that the family is not particular about that matter and they want the shadchan to perform his job according to local custom. If parents want to make their approval a prerequisite to the shidduch, they must specify that when they first speak to the shadchan. Since you did not make that stipulation here, the shadchan did the job. If your daughter decides to get engaged to this young man, you are obligated to pay the full shadchanus fee.

**Please contact our confidential hotline with your questions & comments**  
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# MONEY MATTERS



## completing the transaction week #6

**Q:** I received complimentary samples of a product that the manufacturer sent to me by mail. I did not need that product, but thought my neighbor would appreciate it. I tossed the samples onto my neighbor's porch or walkway. If I later decide that I would like to take the product back, can I take it before my neighbor comes home?

**A:** The Gemara (B.M. 11a) teaches that a person acquires items that are in or on his property, even if he is not aware that the items are there. This is known as kinyan chatzer. However, this applies only if the property is secure or if the person is standing next to his property, so it depends where you tossed the sample. If you tossed it onto the neighbor's

porch, it immediately becomes his, and you cannot take it back. [Of course, this is only if the neighbor ultimately expresses interest in receiving the product.] However, if you tossed it onto his open lawn or walkway and he is not present at the time, his property does not acquire the sample, and you can still take it back.

## ACTIVITIES

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