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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### REDUCED RENTAL

Yehuda wished to rent a house in the neighborhood. He saw two houses advertised: a four-bedroom for \$4,000 a month and a five-bedroom for \$4,500.

Yehuda and his wife went to see both houses. His wife was extremely impressed with the layout of the second house. "This serves our needs almost perfectly," she said.

"But it's expensive," replied Yehuda. "We decided that our budget won't allow more than \$4,000 a month."

"Let's try negotiating with them," said his wife.

"We're very interested in renting the house," Yehuda said to the landlord, Aryeh. "However, the \$4,500 you're asking is beyond what we're able to pay. We're looking at another house three blocks away for \$4,000. If you can't match that, we'll have to rent there."

Aryeh thought for a moment. "I'll make you a deal," he said. "If you pay monthly, it's \$4,500; if you pay six months up front, I'll give it to you for \$4,000."

"We would be willing to do that," Aryeh replied. "I don't know, though, whether we're allowed to! I'm concerned that there may be a prohibition of ribbis (charging interest)."

"What do you mean?" asked Aryeh. "Who's borrowing anything here?"

"Think about it," said Yehuda. "You want \$4,500 monthly, but if we pay six months ahead, you're willing to accept a lower rent. It's like you're giving us a discount because we're laying out money to you, like granting you a loan!"

"I hadn't thought of that," said Aryeh. "Why don't we check with Rabbi Dayan to see if that's a problem?"

Yehuda and Aryeh met with Rabbi Dayan and explained the situation.

"A prepayment discount or, conversely, a two-tier price surcharge for purchase of merchandise is often considered ribbis," replied Rabbi Dayan. "However, the Mishnah (B.M. 65a) teaches that a prepayment discount for rentals is permissible" (Y.D. 176:6).

"Why is there a difference between a purchase and a rental?" asked Yehuda.

"One explanation is that the monetary obligation of a customer is only at the consummation of the sale," explained Rabbi Dayan. "Therefore, any advance payment is considered a loan to the seller; any delay of payment is a loan to the customer. Hence, there is potential



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### RENEGING ON INVESTMENT

This question is based on an inquiry from a reader inspired by Rabbi Nachman Seltzer's story "The Turnaround" featured in the June 18/20 Sivan issue of Inyan.

Reuven, a developer, solicited many investors to invest in a \$65-million project. A bank would furnish most of the money, but a sizable portion had to be collected from private investors. One investor committed to contributing \$400,000 but a couple of days before closing he reneged on his commitment, too late to find a different investor to keep the deal going.

Reuven, a developer, solicited many investors to invest in a \$65-million project. A bank would furnish most of the money, but a sizable portion had to be collected from private investors. One investor committed to contributing \$400,000 but a couple of days before closing he reneged on his commitment, too late to find a different investor to keep the deal going.

**Q: Is the investor permitted to back out?**

**A:** The first issue is whether the investor formed a halachically binding partnership. If the investor committed to invest funds but did not sign a contract to do so, no partnership was established; if the investor signed a contract committing to invest funds or actually transferred those committed funds, or if he worked on behalf of the partnership, it created a halachically formed partnership and the investor cannot unilaterally dissolve that partnership. However, even if the potential investor merely committed to contribute, there are still two issues to be addressed:

(1) Is the investor who retracts his commitment considered a mazik (damager) since the developer spent money assuming that the investment was viable? In this case it seems the investor is not liable for Reuven's expenses. The Gemara (B.K. 99b) discusses whether an appraiser of coins is liable when he errs concerning the validity of a coin. Halachah rules that the appraiser is not liable unless the customer informs him

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ribbis. However, a renter has an ongoing monetary commitment from the beginning of the rental, even if the payment is due only month by month. Therefore, the prepayment is not viewed as a loan to the landlord, but as payment of the existing rental obligation" (see Bris Yehudah 26:1 ftnt. 1; Shach, C.M. 126:76 ).

"Another lomdishe (analytical) explanation," continued Rabbi Dayan, "is that there are two different models of renting. When paying monthly, the rental payment is for the actual usage and due only at that time. However, paying up front is like 'acquiring' the usage rights of the entire rental period at the time of payment. Thus, there is no 'prepayment' and no loan — since the legal transaction of the rental rights is occurring now" (Kovetz He'aros, Yevamos #502; Kehillos Yaakov, B.M. #46).

"What if the rental discount requires payment before moving in?" asked Yehuda. "For example, the landlord may demand that payment be made a month before the rental lease begins. The rationales you mentioned might not apply in this case."

"There is a dispute on this issue, but many authorities allow the prepayment discount even before the renter moves in," answered Rabbi Dayan. "However, there must already be a binding commitment to the rental, either through a signed lease, kinyan sudar, etc. Some also suggest that the rental must be fit for renting at the time of the prepayment" (Taz and Nekudos Hakesef 176:7; The Laws of Ribbis 11:14-22; Bris Yehudah 26:1 ftnt. 2).



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or it is otherwise evident that he is relying on his expertise (Shach 306:12). If it is not evident that the customer is relying on the appraiser's assessment and the customer did not verbalize this, the appraiser is not responsible for his error since he assumed that the customer would obtain a second opinion.

Similarly, if one commits to invest with a developer but is not informed that the developer is relying on these funds for the deal to go through, thus investing his own time and resources accordingly, the investor is not liable for any loss the developer incurs if the investor backs out. As long as the investor did not sign a document committing to invest, the developer had no reason to assume the investor was fully committed to invest such a sum of money that involves risk.

(2) Generally, one who reneges on an agreement is categorized as mechusar amanah (unreliable). However, in order to be a mechusar amanah it must be assumed that the other party had reason to expect that the one who committed would follow through on his commitment (semichus daas). When someone commits to give a large gift, he may renege on that agreement since the intended recipient had no reason to assume that the benefactor would give such a generous gift (C.M. 204:8). Similarly, there is no reason for a developer to be certain that an investor will follow through on an oral commitment to invest funds with risks involved if he hasn't formally committed to do so by signing a contract.

If the investor signed a contract committing to invest funds, and certainly if he already transferred those funds to the developer, he may no longer demand the return of his funds earlier than what is stipulated by the contract (C.M. 176:22-23; Y.D. 177:35-36).

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## MONEY MATTERS

### COPYRIGHTS AND PATENTS # 6

**Q: Is there any difference between the copyright on Torah works and other intellectual property, such as music or secular works?**

**A:** The Sho'el U'meishiv (1:44) applies full ownership rights also to Torah thoughts.

However, the Gemara (Nedarim 37a) states that, in principle, Torah teachings should be disseminated without charge, just as Moshe taught Am Yisrael free of charge. Based on this, some authorities distinguish between the copyright of Torah works and other intellectual property. They maintain that a person has only limited ownership or rights in Torah works.

For example, Beis Yitzchak (Y.D. 2:75) restricts the copyright to the first printing, which allows the author to recoup his publishing costs. Although the Torah requires teaching Torah thoughts for free, it does not require the additional effort of writing or publishing for free. Thus, according to him, the author or publisher has ownership rights to ensure proper compensation for his financial investment and a reasonable return for his effort, but a Torah work might not have the long-term profit-making rights of other works.

Nonetheless, other reasons for copyright — e.g., dina d'malchusa and common commercial practice — would apply equally to Torah works (see Emek Hamishpat, Zechuyos Yotzrim, ch. 6, 12).

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