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STORYLINE

meet in the middle

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Fine & Feder Furniture had been a landmark in the shopping center for decades. Rumors were circulating of a breakup in the partnership, though, due to developing mistrust. One day, Mr. Fine appeared in Rabbi Dayan's beis din and requested to summon Mr. Feder to a din Torah.

"Mr. Feder embezzled \$240,000 during the last ten years of our partnership," his claim read. "This sum needs to be factored into the dissolution of our partnership."

Rabbi Dayan issued a summons to Mr. Feder to appear before the beis din. Mr. Feder was willing to come, but responded, "I did not embezzle at all. I deserve a full 50% share of the business."

At the outset of the din Torah, Rabbi Dayan said to the two men, "We would like to offer you the option of mediation, working to-

wards a compromise."

Mr. Feder was open to the idea, but Mr. Fine refused outright. "Mr. Feder embezzled \$240,000 and owes me the money," he argued. "There's no reason for me to compromise."

"There are often two sides to the issue," Rabbi Dayan encouraged him. "One never knows the outcome of the case beforehand." "As far as I'm concerned, there are no two sides," Mr. Fine said emphatically. He demanded that the case be ruled according to the letter of the law.

The case was intricate and involved a number of sessions in the beis din. In addition to witnesses, Rabbi Dayan and his colleagues also called in accountants to provide their professional perspective. Finally, Rabbi Dayan informed Mr. Fine and Mr. Feder, "We will schedule one more session for next week, in

which we expect to render the final verdict." The following week, Mr. Fine and Mr. Feder filed into the beis din and took their seats. Mr. Fine sat upright. Rabbi Dayan turned to him and said, "We are approaching the conclusion of the case. I would like to ask you one final time, though, if you might be open to compromise."

"I don't understand," replied Mr. Fine, annoyed. "Haven't you reached a decision? Why are you still proposing a compromise?" "Until the verdict is finalized, it is still possible to offer compromise," replied Rabbi Dayan (C.M. 12:2).

"As a beis din, I would expect you to advocate the Torah law," said Mr. Fine. "Why do you seek compromise?"

"Compromise is also considered part of Torah law," explained Rabbi Dayan. "There is

continued on reverse side

FROM THE BHI HOTLINE

Submitted by
E. I.

too late

I agreed to purchase some property and gave the seller a deposit. The seller stipulated that I would have to close on the house by the end of that year.

Two years passed, and I finally received approval for a mortgage. I contacted the seller to complete the sale, but based on his original stipulation, he refuses to sell me the property. My response was that this stipulation would apply if I had neglected to close the deal in time. However, circumstances

beyond my control prevented me from purchasing the house.

Q: Now that I am prepared to complete the sale, should he be obligated to fulfill his part of the contract?

A: We assume that you want to know the halachic principle because the contract did not explicitly address this situation.

There is a well-known halachic principle that

states "ones Rachmana patrei" – one is not liable for circumstances beyond his control. This principle is generally utilized to exempt a transgressor from punishment. The question is whether and how this principle applies in the context of transaction agreements.

One approach maintains that although ones is an excuse for why one did not fulfill a condition, it does not obligate the other party to carry out his commitment. In your case, there were circumstances beyond your con-

continued on reverse side



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din – the absolute legal ruling, the strict letter of the law, in the event of irreconcilable conflict. However, there is also mishpat shalom – justice that is aimed at achieving peace and reconciliation. Shalom is an ideal even loftier than din (Sanhedrin 6b).”

“But isn’t advocating compromise unfair to the truthful party?” argued Mr. Fine. “If you already know who the winning party is, isn’t it dishonest to encourage him now to compromise?”

“Indeed, Tosfos and many other authorities maintain that once the judge knows what the ruling is, he should no longer advocate compromise,” explained Rabbi Dayan. “However, the Shulchan Aruch rules that until the verdict is issued, the dayan can still advocate compromise. The Shach (12:4) supports this position, since it is a mitzvah to achieve a peaceful resolution.”

“If we’re going to compromise, though,” objected Mr. Fine, “what’s the point of getting the beis din involved? We can simply decide to split the money!”

“There are many factors to consider when mediating a compromise,” explained Rabbi Dayan.

“There are often legal requirements to swear, which we try to avoid because of the severity of oaths; facts that cannot be properly verified; issues that fairness and moral responsibility may dictate, but do not carry full legal weight; issues subject to halachic dispute that are difficult to resolve completely. The compromise is meant to bring the parties to a fair, willing agreement that accounts for these factors.”

“Are there guidelines regarding the amount of the compromise?” asked Mr. Fine.

“A compromise should reflect the legal ruling,” added Rabbi Dayan. “This is referred to as p’shara krova l’din, a compromise that approaches the law, depending on the additional factors of the case. Generally, this means a variance of up to one-third from the letter of the law. For example, in our dispute of \$240,000, if the law leans towards the plaintiff, the suggested compromise would be to pay at least \$160,000. If the law leans in favor of the defendant, the suggestion would be to pay \$80,000 or less (Pischei Teshuva 12:3).”

control that prevented you from purchasing the home, but those circumstances cannot obligate the seller to sell his house beyond the deadline that he set (Shach C.M. 21:3). Another approach draws a distinction between stipulations that were to be fulfilled within a certain period and stipulations that are not at all time-related. If a condition was to be fulfilled within a specified period because after that time the transaction is no longer needed, the transaction is cancelled even if there is an oness.

For example, a box of lulavim is valuable before Sukkos but has no value after Sukkos. If one orders boxes of lulavim and stipulates that they should arrive before Sukkos, once Yom Tov starts, they have lost their value. The buyer is not required to accept the lulavim even if the reason they arrived late was due to circumstances beyond the supplier’s con-

control. On the other hand, if the condition did not have to be fulfilled within a certain period and there was an oness, the commitment to complete the transaction is still binding (Taz Y.D. 236:13).

Since most authorities adopt the first approach, it emerges that even if the condition in your case was time-related, you cannot force the seller to sell you the property once the deadline has passed (Pischei Teshuva 207:2). Moreover, it is highly questionable whether this case even involves an oness. Oness by definition is something that is unexpected, e.g. illness. It is not unusual or even unexpected for a person’s mortgage application to be rejected (see Shach 55:1). As such, all opinions would agree that the seller is not obligated to sell you the property, since the condition was not fulfilled as a result of circumstances that are not out of the ordinary.

Please contact our confidential hotline with your questions & comments
877.845.8455 ■ ask@businesshalacha.com

MONEY MATTERS

borrowing and lending week #14

Q: I signed on a loan as one of two guarantors. Under what circumstances is the creditor allowed to seek payment from me?

A: A creditor may not collect from the guarantor before adjudicating with the debtor, even if he does not have known assets. If the debtor is away and unreachable, if he does not respond to the summons, or if beis din ascertains that he does not have

assets to repay, then it is possible to turn to the guarantor (C.M. 129:8-11). However, if the creditor stipulated explicitly that he “can collect first,” from whomever he wants, he can turn to the guarantor directly even if the debtor has known assets (129:14). Nowadays, there is generally a formal guarantee contract signed by the guarantor, stipulating the terms of the guarantee. There are also rules defining when the

creditor can initiate proceedings against the guarantor. Any stipulated conditions are binding (129:13).

It is a great mitzvah to help another secure a loan. At the same time, it is important that a guarantor be aware of the legal terms of the guarantee and the extent of his liability. He should also be realistic about his ability to pay if the borrower should default for any expected or unexpected reason.

WITNESSES

Can Mechutanim be Eidim together?

Sunday mornings at Bais Moshe Shmiel
(Rabbi Rottenberg’s shul: 1782 East 28th, btwn Quentin and R)
Seder Limud 9:00 - 9:45 am
Shiur: R’ Moishe Bergman, Rosh Chabura 9:45 - 10:30 am
Refreshments served

Stipends are available to participants of the seder limud

For more information, contact Rabbi Rottenberg: 347-533-2299 or rottenberg@btinternet.com

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