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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

STORY LINE

By Rabbi Meir Orlian

MATZAH LOSS

The machines were running almost 24/6 at Mandel's Matzah Factory. In the months before Pesach tons of matzah were produced.

One day, the factory mashgiach received a recall notice regarding a certain shipment of flour, about which there was a serious kashrus question. He checked the code, and realized that a large number of runs had already been made with the questionable flour. Immediately upon hearing this, the mashgiach informed Mr. Mandel of the problem and contacted his superior at the supervising kashrus agency.

The halachic advisory board convened. After a tense hour of debate, they ruled that the matzos were permitted b'di'eved (de facto) based on a combination of lenient opinions, in consideration of the great potential loss (hefsed merubeh). However, they prohibited baking any more matzos with that shipment of flour.

The mashgiach notified Mr. Mandel of the ruling. He breathed a sigh of relief.

"There is one other issue," added the mashgiach, "beyond the realm of our supervision."

"What is that?" asked Mr. Mandel.

"The labels on the boxes of matzah state that they are produced under the strict standards of our kashrus supervision," replied the mashgiach. "Given that there is a serious question about these matzos, which were permitted based only in consideration of hefsed merubeh, can they be sold without alerting the consumer that they are not on the expected level of kashrus?"

"If I notify people, nobody will buy the matzos!" exclaimed Mr. Mandel. "Once the halachic advisory panel ruled leniently, why can't I sell the matzos regularly?"

"There may be a concern of defective merchandise, since these matzos do not meet the expected halachic standards of the consumers," said the mashgiach. "But, as I said, that is beyond the scope of my responsibilities."

"Who can I contact about this?" asked Mr. Mandel.

"I suggest that you speak with Rabbi Dayan about it," said the mashgiach. "This question is right up his alley."

"Will do," said Mr. Mandel. He returned to the office and called Rabbi Dayan.

"Hello, this is Mandel's Matzah Factory," Mr. Mandel said. "We had a serious halachic question about the flour used in some of our matzos. The supervising kashrus agency allowed them b'di'eved, on account of the great potential loss. Is there need to inform the consumers of the questionable status?"

"The Chasam Sofer (O.C. #65) addresses a similar question," Rabbi Dayan replied. "He writes that wine that was permitted due to hefsed

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BAKING MATZOS PART II

Last week we discussed the situation of Moshe, who was hired to help bake matzos but due to his tardy arrival, the group was only able to use one of the two reserved hours.

Q: If due to Moshe's tardiness the group lost money, is he liable?

A: The issue at hand is whether damage that results from an employee arriving late is categorized as grama (indirect damages), in which case he is not liable. A similar situation arises when someone blocks a tenant from accessing his rented house; some authorities contend that the damage is only grama and the "damager" is not obligated to pay (see Nesivos 312:5, cf. Rabbeinu Yitzchak Elchanan 165).

However, we find that when an employee causes his employer a loss, it is categorized as garmi (a category of indirect damages for which the "damager" is liable) and thus the employee is liable (Rema 333:6; Shach 333:39). Others reject this notion and exempt the employee even in this case (Nesivos 333:14 and Chazon Ish, B.K. 23:25, who rejects the Rema's position altogether).

A possible precedent is the halachah of a sharecropper who is hired to plow and plant the owner's field. If he allows the field to lay fallow, he must pay the owner the amount he would have earned had the sharecropper done his job. Seemingly, this obligates employees who cause their employer a loss by not performing their responsibilities. This parallel, however, is not very precise because in that case the sharecropper explicitly agreed to provide a certain income to the owner. Even if such a clause was not explicitly

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merubeh is allowed only to the owner and his household, who will suffer the loss if it cannot be used. Why should others get involved and buy from him, though? He further writes that it is almost certain that the owner must inform others; if he did not, it may be considered defective merchandise, which could annul the sale. However, if the problem was widespread and the wine is needed for the masses, it is permitted to all, except for those who are known to be scrupulous" (Pischei Teshuvah, Y.D. 31:2).

"However, many other Acharonim are more lenient," continued Rabbi Dayan. "Beis Shlomo (Y.D. 188) and Divrei Malkiel (3:90) prove from numerous sources that something permitted to the one who asked the question is permitted to all. Furthermore, consumers know that kashrus organizations sometimes rely on lenient opinions on account of hefsed merubeh. Thus, the common practice is not to inform the consumers. Nonetheless, if a certain customer is extremely scrupulous and would not be lenient even for his own hefsed merubeh, the seller should inform him; otherwise, that customer would have a claim of mekach ta'us" (see Maharsham, Daas Torah, Y.D. 29: intro.[38] and Mishpat Shalom, C.M. 232:12.).

"Where does this leave us?" asked Mr. Mandel.

"The matzah can be sold normally at the discretion of the halachic advisors of the supervising agency," concluded Rabbi Dayan. "However, it is preferable that these runs not be shipped to areas where there is a large concentration of people scrupulous about eating only mehadrin" (see Hilchos Mishpat, Onaah 228:6; Pischei Choshen, Geneivah 12:[52]).

MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlita

BEIS DIN AND CIVIL COURT #5

Arbitration Panel and Trade Court

Q: Is an arbitration panel or trade court included in the prohibition against litigating in civil court?

A: This depends on the nature of the arbitration panel. If the panel is bound by law to rule based on their best understanding of civil law, it is also included in the prohibition. However, it is permissible to adjudicate before an arbitration panel, even of non-Jews, which arbitrates based on their common sense of fairness and justice (Shach 22:15; Nesivos 22:14; Minchas Pitim, Shiyurei Minchah 68:10).

Furthermore, some allow summoning a litigant to adjudicate before a trade court in a trade that has its own court, which judges based on the commercial practices of that trade, such as the diamond industry — especially if the agreed trade practices of that industry are commonly accepted. Some also allow adjudicating willingly before non-Jewish tradesmen who are well versed in the customs of that trade, but one cannot summon another to appear before them (Maharshach 2:229).

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discussed, since it is a standard clause in sharecropping agreements it is as if it was written (C.M. 328). Accordingly, in your case, since it is not common to make such an agreement, he should not be liable.

Another possible precedent is that when one hires an employee to perform a task which, if not performed, will cause the employer a loss, the employee is liable, since the employer relied on the employee to prevent the potential loss (midin arev). An example of this is a merchant who hired someone to purchase wine while it was cheap so that he could resell it at a profit, and the employee did not purchase the wine (Nesivos 176:31, 185, 306:6 and 333:3; and Chasam Sofer, C.M. 178).

Others claim that the source for this halachah represents a minority opinion and is not strong enough to force an employee to reimburse his employer for the loss he caused him (Nachalas Tzvi 292; and see Imrei Binah Halvaah 39 and Maharsham 1:77).

Even in circumstances in which the employee cannot be compelled to reimburse his employer for the loss he caused, if the loss was caused by his negligence he has a moral obligation (chayav latzeis yedei Shamayim) to reimburse his employer. Accordingly, the question of whether forgetting to perform a task is categorized as negligence would have to be explored (see Divrei Geonim 99:10 for a discussion of the issue) and in each circumstance one would have to consider whether forgetting would be categorized as negligence.

For questions on monetary matters,
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