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CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

UNAUTHORIZED RENTAL

As Reuven approached the bike path in the park, he saw Shimon standing next to a bike.

"Would I be able to use your bike for half an hour?" Reuven asked.

"I'll rent it to you for $15," Shimon answered.

"OK," Reuven agreed. He gave Shimon $15 and took the bike.

When the half-hour was up, Reuven returned to the starting point, but didn't see Shimon. Instead, Levi was standing there, with an angry look on his face.

"What are you doing with my bike?" Levi asked Reuven.

"What do you mean?" asked Reuven. "Shimon rented it to me! I paid him $15 for use of his bike."

"That was nice of Shimon," replied Levi sarcastically. "The bike is mine, not Shimon's. I asked him to watch it for me. I don't rent out my bike; he tried making a buck on me."

"I'm sorry," apologized Reuven. "I didn't realize that the bike wasn't Shimon's. I'm going to demand my money back!"

"If you're talking money," said Levi, "Shimon should give it to me! You agreed to rent the bike, which is mine, so I should get the $15!"

"Why should I pay you?" argued Reuven. "You said that you don't rent out your bike! Shimon took money wrongly from me, for a bike that is not his, so he should return it to me. Although I mistakenly used your bike, nothing happened to it, and I'm returning it exactly as it was."

"But you were willing to pay $15 to use the bike," insisted Levi. "What's the difference to whom you pay? The money was intended for the owner. Since the bike is mine, Shimon accepted it for me."

"Had Shimon told me that it's your bike and that he's accepting the money for you, I would agree," said Reuven. "Unfortunately, though, I don't think that was his intention. He just wanted the money for himself!"

The two decided to turn to Rabbi Dayan. Reuven asked:

"Should Shimon give the money back to me or to Levi?"

"You presumably know the *halachah* of *zeh neheneh v'zeh lo chaser* (this one gained and this one did not lose)," replied Rabbi Dayan.

Did You Know?

Using another person's credit card for your purchase and paying back the cost including the interest accrued can entail ribbis.

Ask your Rav or email ask@businesshalaca.com for guidance and solutions.

BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

WHO HAS THE RIGHTS TO THE CASHBACK?

Q: A friend asked me to purchase an item for him online, using his credit card. When shopping online, I frequently use cashback sites. The way this works is that you open a (usually free) membership on the site, and you receive back a small percentage of each purchase you make from participating online merchants.

Can I use a cashback site when purchasing this item for the person, considering that I will receive the cashback, not him?

A: Your question assumes that the cashback sites operate on the premise that they are returning money to the person who makes the purchase – i.e., the person who is paying for the item – and since the account on the site is yours but the money is not, making this purchase for someone else might be dishonest.

It seems, however, that your assumption is incorrect. The purpose of a cashback site is to get people to purchase as much as possible through the site, because the operators of these sites earn money from each transaction referred by their site. Since you, as an agent for the buyer, are deciding where and how to make the purchase, the cashback offer is actually targeted toward you, not the person paying for the item.

Therefore, you may definitely use the cashback site to make the purchase. The only question is whether you should pass on the cashback reward to the person who asked you to buy the item (we will refer to him as the "buyer" and you as the "agent," for clarity).

Now, if the purchase was made on a website that offers a rebate to every buyer, then the cashback would belong to the actual buyer, not to you. But since the website offers the rewards only to members – and you are a member and the buyer

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"A person who used another's property that is not intended for rental, without permission, does not have to pay for the usage *de facto* when it did not entail any damage or loss" (*C.M.* 363:6).

Accordingly, the *Gemara* (*B.K.* 21a) teaches that a person who rented a house from another, who was not the owner, must pay the true owner when the house is intended for rent, but not when it is unintended for rent.

Rishonim add that when the house is unintended for rent, even if the tenant already paid the third party, he receives his money back and does not have to pay the true owner. It is considered a *mekach taus*, mistaken transaction (*C.M*. 363:9).

In truth, a user is liable when he demonstrates willingness to pay the owner, even when *zeh neheneh v'zeh lo chaser*, but this case is not viewed as willingness to pay the *owner*. The rental proved in error, so that the house was never rented, and any money paid to the third party was *mechilah b'taus*. (*C.M.* 363:8; *Sma* 363:22; see also *Aruch Hashulchan* 363:20; *Ohr Same'ach, Gezeilah* 2:9).

Nonetheless, *Nesivos* (363:7) writes that if the third party already gave the money to the owner, he does not have to return it to the renter (*Pischei Choshen*, *Geneivah* 7:13[46]).

"Thus, in our case," concluded Rabbi Dayan, "Shimon must return the money to Reuven, who is not required to pay Levi *de facto*."

Verdict: An unauthorized person who rented out an item belonging to another, if the item is intended for rental, should give the money to the owner; if not, he should return it to the renter, who is exempt when *zeh neheneh v'zeh lo chaser.* If the third party already gave the money to the owner, some say that he can keep it.

MONEY MATTERS

APOTROPUS #23

FIDUCIARY GUARDIAN

Based on writings of Harav Chaim Kohn, shlita

Forsaken Property, part 2 (Retushim**)**

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' חי' בת ר' שמואל חיים ע"ה

Q: What is *beis din's* responsibility toward forsaken property of people who left of their own accord?

A: We mentioned that when a person is taken captive or forced to flee, *beis din* should look after his assets.

However, when a person left of his own accord, or to avoid creditors, and forsook his assets (*retushim*), it is considered *aveidah midaas*, and *beis din* has no responsibility to look after them; we leave the assets as they were. Even if relatives took charge, we remove them. Since the person did not appoint them before he left, he implicitly indicated that he does not want them to tend to his assets (*C.M*. 285:4; *Sma* 285:16).

This applies when the person left for a distant journey, since then it is typical to appoint someone. However, if he went to a nearby place expecting to return shortly but did not, presumably he was prevented from returning, and *beis din* should look after his assets like one who was taken captive (*Sma* 285:2).

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is not – the *halachah* depends on a dispute between the *Rishonim* regarding how to explain a similar case.

In that case, someone sent an agent to buy a specific amount of product for him, and gave him money to pay for it, but the seller gave the agent more of the product than the buyer requested. If the product he was sent to buy does not have a fixed price, then we assume the buyer's intention was that the agent should buy whatever amount he can get with the money he gave him, even if it's more than the amount he requested. The additional product therefore belongs entirely to the buyer.

If, however, the price for the product is fixed, and the seller decided to give the agent more than he requested without raising the price, then the additional product is divided between the buyer and the agent (*Shulchan Aruch, C.M.* 183:6 with *Sma* 20).

The reason for this *halachah* is debated by the *Rishonim*.

Some write that it's because we're unsure whether the seller intended that the additional product should go to the buyer, who is the actual client, or to the agent – either because the agent is his friend, or as a reward for choosing to buy the item in his store, or to encourage him to keep buying there (*Rashi, Kesubos* 98b; see *Shu"t Rabbi Akiva Eiger* 3:33). According to this approach, if we are certain the seller wanted to reward the agent, not the buyer – which is the case in your scenario – then the entire rebate belongs to the agent.

But other *Rishonim* write that the reason the buyer and agent split the additional product is because the agent is able to receive that bonus only because the buyer funded the purchase, so the buyer should also benefit from the largesse of the seller (*Rif, Kesubos* 57b*; Sma* 183:8; *Shach* 12*;* and *Taz*. *Shulchan Aruch Harav* [*Mechirah* 11] writes that a *yerei Shamayim* should take this opinion into consideration and split the difference with the seller). According to this approach, you should split the cashback with the buyer.

(A third opinion maintains that if the item has a fixed price, then we assume that the *mazel* of both the buyer and agent caused the seller to provide the additional product, and they therefore split it. If the price is not fixed, however, we assume that the *mazel* of the buyer is what caused the seller to be generous; see *Hagahos Ashiri*, cited in *Ketzos* 183:8 and *Gra* ibid. 25.)

Taking all of these opinions into consideration, if you want to keep the entire cashback reward for yourself, you may do so in keeping with Rashi's approach, according to the principle of *kim li,* which entitles a *muchzak* (the person holding the money) to claim that he subscribes to the opinion that rules in his favor. But a *yerei Shamayim* should follow the approach of the *Rif* and split the amount with the buyer.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com