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CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

BANKRUPTCY

Mr. Stein owned a travel and tourism business, in which he had invested great sums. A serious medical condition, compounded with a steep decline in business due to coronavirus, drove Mr. Stein into very significant debt, personal and corporate, in both the United States and Israel.

"I don't see how I am going to come out of this debt," Mr. Stein said to his accountant.

"I suggest that you seriously consider filing for bankruptcy," replied the accountant. "This way, you can get a fresh start afterward."

Mr. Stein was an honorable man, though, and was hesitant. "I borrowed this money," he said. "I feel that it is unethical not to repay the creditors."

"You would certainly be correct in normal circumstances," replied his accountant. "I respect your ethical honesty. However, your situation is not regular! I do not foresee any way that you will ever be able to repay this large debt completely. It will remain a noose around your neck to the end of your days, with no chance of rebuilding yourself!

"The rules of bankruptcy were made precisely for this situation," encouraged his accountant. "It's not like you're hiding assets to evade your creditors. You are truly unable to pay!"

"Let me think about it," said Mr. Stein.

Mr. Stein discussed the idea with his *chavrusa*. "Is there a concept of bankruptcy in *Halachah*?" he asked. "Do I have a right not to repay the creditors, or to give them only a fraction of what I owe?"

"I'm not sure," replied his *chavrusa*. "On the other hand, bankruptcy is an acceptable legal practice, when filed legitimately. If you're not sure," his *chavrusa* said, "you can consult a rabbinic authority."

Mr. Stein consulted Rabbi Dayan, and asked:

"Halachically, am I allowed to file for bankruptcy? Does this exempt me from my liability?"

"*Halachah* eliminates debt only through *shemittas kesafim*, at the end of the *Shemittah* year," replied Rabbi Dayan. "Otherwise, it provides a framework to limit collection from a debtor who is unable to pay fully (*mesadrin l'baal chov*), but does not erase the remaining debt" (*C.M.* 67:2; 97:23).

"Nonetheless, in many situations a court order of

BHI HOTLINE

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

SHADY REAL ESTATE PRACTICE

In my work as a real-estate agent, the following situation has recently arisen several times: A seller set the price he wanted for his property, and I found a buyer who was willing to pay more than the seller's price. For example, the seller was asking for $500,000, while the buyer was willing to pay $550,000, a difference that far eclipses my usual 3% commission.

Q: Am I allowed to tell the buyer that the price is $550,000 and keep the $50,000 difference for myself? (Other agents do this by telling the buyer that the additional amount is not part of the official listed price of the house, but will be paid in cash to the agent, who will transfer it to the seller after the closing. The agents then retain that cash for themselves.)

Although it might seem that I am tricking the two parties, I could really turn the same profit by "flipping" the house – purchasing it from the seller myself for $500,000, and then selling it to the buyer for $550,000. Shouldn't I be able to cut out the intermediate step and earn the same profit without flipping it?

If it is not allowed, then what would the *halachah* be if a realtor already did this – is he permitted to keep the difference, or must he return it? And if he must return it, does the money belong to the buyer or the seller?

A: A realtor who engages in the practice you describe is not merely guilty of misleading the seller; he is considered an actual thief.

Even though you could theoretically have purchased

bankruptcy would exempt the debtor from his debt also according to *Halachah*.

"First, regarding debt to non-Jews, civil law applies. Therefore, regarding most debts outside of Israel, the bankruptcy ruling would exempt the debtor.

"Second, debts of corporations (LLC), which are structured from the beginning with limited liability, fall under the halachic category of *aputeki meforash* (explicit mortgage), since the creditor can collect only from the corporation's assets, so that bankruptcy would apply" (*C.M.* 117:1).

"Furthermore, almost all corporate charters subject the corporation to the civil law, so that anyone who deals with them – lends to, or borrows from them – does so with this intention. This rationale would apply also to Jewish banks or financial institutions in Israel.

What remains questionable are loans between Jewish individuals, whether bankruptcy falls under the category of *dina d'malchusa dina* (law of the land) or *minhag hamedinah* (common commercial practice). *Shulchan Aruch* limits *dina d'malchusa* to laws relating to government functions, while *Rama* expands it also to laws for proper societal functioning" (*C.M.* 369:6,11).

"Based on *Rama*, *Igros Moshe* (*C.M.* 2:62) and others rule that bankruptcy falls under *dina d'malchua*, since there is societal purpose in dividing the available assets equitably between the creditors. *Chelkas Yaakov* (2:32) disagrees, and maintains that bankruptcy remains in the personal realm, regarding which *dina d'malchusa* does not apply. Moreover, regarding a *gemach* that lent to someone, he does not see a societal purpose in the creditor losing his money entirely.

"All this applies when the debtor files bankruptcy legitimately," concluded Rabbi Dayan. "However, if he unethically divested assets and then declared bankruptcy to evade creditors, *Halachah* would not recognize this, and he would remain liable" (*Pischei Choshen, Halvaah* 2:[63]).

Verdict: Legitimate court-declared bankruptcy would be acknowledged by *Halachah* in many situations, but there exists a dispute regarding debt between non-incorporated Jewish individuals.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Mechilah (Forgoing) #7
Implicit *Mechilah*

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

Q: I told my creditor that I owe him $1,000, but he said that I don't. I know that I do. Must I pay him?

A: You are exempt, since the creditor's denial that you owe him is considered *mechilah*. There is not even a Heavenly obligation. The creditor should have considered the issue carefully before explicitly denying your debt. Therefore, we do not presume that he was *mochel* in error, but rather with a full heart (*C.M.* 75:11; *Shach* 75:32).

Sma (175:27) requires that the creditor state that you "certainly" don't owe him, but most other *Acharonim* do not (*Shach* 75:31; *Taz* 75:11).

If the creditor later claims that he erred in his calculations, and now realizes that you do owe him, most authorities maintain that he is not believed; it is like he was explicitly *mochel* the debt (*Sma* 75:28; *Shach* 75:33).

Nonetheless, *Aruch Hashulchan* (75:15) writes that if you believe him that he erred, there is now a Heavenly obligation; if *beis din* concludes under the circumstances that he erred, you are liable to pay.

the house yourself, the seller intended to sell it to the buyer, not to you. You are not the party who signed the sale contract as the purchaser, and you didn't give the seller any money; you are an agent brokering a deal between the two parties. Since the property never belonged to you, you cannot take the additional money as though you purchased and sold the property (*Kovetz Hayashar V'hatov,* v. 20, p. 22, and see also v. 3 pp. 72 and 248).

Your second question is more complex. If an agent already made such a deal and pocketed the difference between what the buyer gave him and what he gave the seller, he clearly has no right to keep it. But should he return that money to the buyer, who paid more than the seller demanded, or should he give it to the seller, since the buyer intended to give that money to him when he bought the house?

If the agent was not empowered by the seller as his representative (*shaliach*) to negotiate and complete the sale on his behalf, he should return the money to the buyer. His job was merely to bring the parties to an agreement, and they complete the sale between them. Since the seller asked for only $500,000, any additional amount the agent extracted from the buyer is not in exchange for the property and is therefore considered stolen. Even if he was hired by the seller, since he was only acting as an intermediary, the seller is entitled only to the amount he asked for, and any amount above that belongs to the buyer.

Although the agent intended to steal from the buyer, the buyer may not withhold his commission. Since he benefited from the agent's brokerage he is required to pay for that service (see *C.M.* 264:4, and *Mishpetei Yosher*, *Hilchos Tivuch* 9:5, but cf. *Kovetz Hayashar V'hatov,* v.3, 5). If the seller didn't hire the agent to bring the parties to an agreement but empowered him to sell the house on his behalf, then he must return the money to the seller. Since he served as a *shaliach* of the seller, it's as though the seller asked for the full $550,000, even though he knew nothing

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