

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



## CASE FILE

Rabbi Meir Orlian  
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לע"נ הרב אהרן בן הרב גדליהו ע"ה

## TZEDAKAH COMMISSION

Mr. Goodman was frequented by *tzedakah* collectors, who came on behalf of many Torah and *tzedakah* institutions. He greeted them pleasantly, and, when appropriate, offered them a cup of coffee as they explained the cause for which

they came.

Over the years, Mr. Goodman developed a personal connection with one of the *meshulachim*, Rabbi Rosen.

"There is something I've been wondering about for a long time," Mr. Goodman said one day.

"What is that?" asked Rabbi Rosen.

"What is the salary arrangement for *tzedakah meshulachim*?" Mr. Goodman asked. "Do they get paid a flat salary or a commission based on what they collect?"

"There are different arrangements," replied Rabbi Rosen. "Some get a flat salary, while others get a commission, a percentage of what they collect. Many have some combination, a base salary and an additional amount based on commission. A commission encourages us to work harder!"

"So when I donate \$100 or \$1,000 to your cause," said Mr. Goodman, "only part of it really goes to the organization; part of it goes to support you! When you collect money for yeshivos, needy families, or sick people... thank G-d you are self-sufficient and healthy!"

"That is true, but I view myself as part of the organization," replied Rabbi Rosen. "There are also administrators, secretaries, and many other organizational expenses that are covered through your donation."

"But most other workers have set salaries, commensurate with their work," argued Mr. Goodman. "On the other hand, for every dollar I donate, you take a part off the top!"

"Personally, I don't see the difference," replied Rabbi Rosen. "Each person has a contract based on what's appropriate for their type of work."

Mr. Goodman called Rabbi Dayan and asked:

**"Is it acceptable for the *meshulach* to take a percentage of the donation? Is this counted as part of my *tzedakah*?"**

"*Poskim* of recent centuries have justified the practice of allowing *tzedakah* fundraisers to take a percentage of what they collect," replied Rabbi Dayan.

"Maharam Galanti, a disciple of Rav Yosef Karo in Tzfas over 400 years ago, mentions the practice of receiving a quarter to a third, and rules that the stipulation is binding" (Responsum #7; *Knesses Hagedolah, Hagahos Beis Yosef, C.M. 331:7*).

"Maharsham (5:77) was asked by the Rabbanim of Teveria 150 years ago about the practice of increasing the stipend of *meshulachim*, accordance with the amount they raised through their efforts, in addition to their salary for the



## BHI HOTLINE

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

## SELLER'S REMORSE

**Q:** I contacted a real estate agent and asked him to list my house for sale. He invested a lot of time and effort into arranging a sale, but when we were nearly ready for the closing, I changed my mind and decided not to sell.

The realtor claims that I owe him money for his efforts. Is he correct?

**A:** This is a common occurrence with both realtors and *shadchanim* (who are viewed in *Halachah* as agents [*Rema, C.M. 185:10*]). They often invest extensive efforts into arranging the sale of a property, or a *shidduch*, and when one of the sides backs out at the last minute, the agent or *shadchan* seek remuneration for the efforts they invested.

We have discussed several times whether a realtor or *shadchan* is paid as a *po'el* (employee) or for the benefit he provided to the recipients of his service.

In short, it depends how the agent or *shadchan* came to provide his services. If he provided that service of his own accord, then he is re paid for the benefit they provided.

If, however, one of the parties requested that the agent work on his behalf, then the agent is paid as a *po'el* of that party (*Shulchan Aruch, ibid., with Be'ur HaGra 13, and 264:13*).

Given these rules, if a *shadchan* suggested a *shidduch*, or a realtor tried to arrange a sale, of his/her own accord, he/she is not considered an employee. Therefore, if the *shidduch* or deal fell through, they are not entitled to payment, because the parties did not derive any benefit from their effort. Furthermore, even if one of the parties *asked* the agent to try to convince the other party to agree to the deal or *shidduch*, the agent still isn't entitled to payment unless he succeeded in that job, because payment for such a service is usually rendered only if the deal is finalized and the parties benefit from the agent's involvement (*Beis Yosef 185, explaining Teshuvos HaRosh 105:1*).

In your case, however, the agent succeeded in the job you asked him to do, and now you are backing out.

## DID YOU KNOW?

Vendor agreements can have clauses that may be ribbis but can often be corrected with halachic guidance.

Ask your Rav or email  
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for guidance and solutions.



## CASE FILE

travel. He allowed this based on the *Gemara (Arachin 6b)* that Rabi Yanai, who was a *gabbai tzedakah*, would borrow and return excess *tzedakah* for his personal use, since this ultimately resulted in a benefit for the needy through his collecting more. Here, too, the *meshulach* will toil harder to raise more money if he gets a share of it. Maharsham similarly mentions the *Gemara (Rosh Hashanah 23b)* that Sanhedrin would use public funds to make lavish meals for witnesses of the new moon, to encourage them to come.

[For this reason, it is also permissible for *tzedakah* organizations to give gifts to donors, to encourage them to donate, if the directors deem it ultimately profitable.]

Nonetheless, Rav Moshe Shternbuch, *shlita*, (*Teshuvos V'hanhagos 2:475*) writes that the percentage must be reasonable, since the donors clearly intend that the bulk of the donation go for the intended cause. If the fundraiser takes an excessive amount, he is cheating the donors and it is considered theft. *Poskim* discuss how much is still considered reasonable" (see *Hilchos Tzedakah 19:1*).

"From the donor's perspective, the entire amount is considered *tzedakah*, since the salaries are part of the operating costs and overhead of the institution" (*Tzedakah Umishpat 7:23[44]*).

"Despite this," concluded Rabbi Dayan, "nonprofit organizations nowadays are increasingly moving away from commission-based fundraising, to flat-rate salaries with overall performance-based bonuses, like other workers" (see also *Hayashar v'Hatov*, vol. 12, p. 32 ff.)

**Verdict: *Poskim* have allowed commission-based *tzedakah* collecting, to encourage the *meshulach* to toil harder, but the percentage must be reasonable. This amount is also considered *tzedakah* for the donor. Nowadays, this arrangement is becoming less common.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS

*Dayanim* (Judges) #35

Arbitrators, Communal Leaders, Relatives, Gifts

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

### Q: Does the prohibition of bribery apply to people other than *Dayanim*?

A: It is prohibited to tilt a compromise unfairly, just as it is prohibited to tilt judgment. Thus, an arbitrator to mediate a compromise is like a *Dayan* and is included in the prohibition against bribery (*Pischei Teshuvah 9:13*).

Communal leaders who are responsible to rule in communal matters or impose fines upon those who violate communal enactments are like *Dayanim* and prohibited from accepting bribes, or even gifts for ruling (*Pischei Teshuvah 34:27*).

*Dayanim* who are relatives and disqualified from ruling but were accepted by the parties to adjudicate, are included in the prohibition against bribery. The same is true for women who were accepted by the parties (*Minchas Chinuch 83:4*).

Giving a gift after the ruling is also included in the prohibition against bribery. However, there is no prohibition against a person's giving a gift to one who is not the *Dayan*, but rather came before *beis din* to advocate on his behalf (*Rema 34:18; Pischei Teshuvah 34:28*).



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Some *Rishonim* rule that in such a case, you are required to pay him (*Mordechai, B.K. 173*) — at minimum for his work, and possibly for the entire amount you promised him (see *Hagahos Machaneh Ephraim to Mordechai ibid.*, and *Mishpat Shalom 185:6*).

It is possible, however, that the *halachah* depends on specific circumstances and local customs. Nowadays, when someone asks a *shadchan* or realtor to get involved in a deal, they agree to pay that agent only if the deal is brought to a successful conclusion. The person who asked the agent to do the work is therefore not required to pay, even if he himself backs out, because a realtor and *shadchan* know that the party that is currently interested in the deal might back out because he received a better offer or some other reason, and his asking the agent to work on finalizing the deal is not a commitment to conclude the deal if he has a valid reason not to.

The agent likely spent a lot of time and effort to resolve issues that arose in negotiations, and now that the party that hired him is backing out, all of his efforts are for naught. Yet it is generally understood that this might be the case, so when the agent agreed to try to broker the deal, he did so with full knowledge that if the deal falls through — for *any* reason — he will not get paid. He agreed to do this because he knows that as a realtor, he will sometimes invest extensive efforts and earn nothing, and sometimes he will do very little work and get paid a lot. [Some people do pay a realtor or *shadchan* a certain amount in recognition of his effort, and it is often appropriate to do so.]

The *halachah* might differ, however, if the agent had to go beyond the typical duties of a realtor — for instance, if there were legal issues preventing the sale of the property and he resolved them, or if he worked to eliminate a zoning restriction so that the buyer would be able to use it for his intended purpose. If someone who does such work would usually be paid for that work, and the agent is requesting payment for that work independent of his work as a broker, then the person who engaged his services is required to pay.

Although the agent may have communicated that he was planning to do that work for free, he did so only because he thought he was going to be paid his commission on the sale. Now that he is not getting paid for brokering the deal, it is obvious that he would not have done that additional work for free. In such a case, since the seller benefited from that additional work and we are certain that the agent's offer to do this work for free was a *matanah beta'us* (gift given in error), the seller is obligated to pay. This would be true even if the realtor was hired by the other party, not the party who derived benefit from that work.

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

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