



UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

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ALIYAH BIDS

Congregation Ahavas Torah was full for *Maariv* on the night of Shavuos. After *davening*, the president announced that there would be a learning program throughout the night, immediately followed by *Shacharis* at daybreak. "We ask your patience for a few more minutes," he added. "The *gabbai* will auction off the *aliyah* of *Aseres Hadibros* for the benefit of the shul *tzedakah* fund."

Hands shot up. "One thousand..." "Two thousand..." "Three thousand..." "Three thousand going once, three thousand going twice..." said the *gabbai*. "Four thousand..." called out Mr. Furst. "Four thousand going once, four thousand going twice..." said the *gabbai*. "Five thousand!" called out Mr. Weiss. "Five thousand going once, five thousand going twice, five thousand going three times," said the *gabbai*. "Sold to Mr. Weiss for \$5,000."

Mr. Weiss attended the learning program, but at about 2 a.m. a wave of fatigue overcame him. "I'm going home to sleep for an hour or two," he said to the *gabbai*. "I'll be back for *davening*, *b'ezras Hashem*."

Toward morning the congregation began *davening*, but Mr. Weiss had not returned. As *davening* progressed, the *gabbai* looked anxiously at Mr. Weiss' seat. The shul finished *Hallel*.

"Mr. Weiss is not here," the *gabbai* said to the president. "I'm going to have to give his *aliyah* to someone else."

"We need the money he pledged," said the president. "Ask the Rabbi what to do." The *gabbai* approached Rabbi Dayan. "Mr. Weiss bought *Aseres Hadibros* for \$5,000, but he's not here," he said. "What should we do?"

"People are tired; there isn't time to do another auction," replied Rabbi Dayan. "However, quickly ask if anyone is willing to pay \$5,000 for the *aliyah*. If not, give it to the highest bidder before Mr. Weiss for the amount he pledged."

Just before *leining* the *gabbai* announced: "*Aseres Hadibros* has become available again. We are not doing another auction, but does anyone want to buy it for \$5,000?"

No one raised their hand. The *gabbai* told Mr. Furst that he would get the *aliyah* for \$4,000.

That afternoon, after *Minchah*, Mr. Weiss approached Rabbi Dayan. "Unfortunately, I was exhausted and overslept," he said. "Could you please explain what happened this morning with the *Aseres Hadibros*?"

DID YOU KNOW?

Did you know that signing a service contract that includes a late fee that accrues monthly is a Ribbis violation?



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COERCED INVESTING?

Q. Gad and Asher inherited an apartment building from their father. Gad informed Asher that if the faulty heating system in the building would not be repaired, it might die and need to be replaced, which would be much more costly than the repair.

In addition, Gad felt that if they would invest \$200,000 into upgrading the building, the value of the property would rise significantly, and they would be able to raise the rental prices in the building. Asher replied that he doesn't have \$100,000 to invest into this endeavor.

Can Gad force Asher to pay for half of the repairs, and to invest in the renovations to upgrade the building? And if Gad decides to invest into the upgrade on his own, can he then collect the additional rent for himself, or at least take back the value of his investment – and payment for the time he invested into the renovation – from the rental income or future sale of the building?

A. The general rule is that the cost of repairs that are necessary for the basic maintenance of a jointly held property, such as repairs to the structural integrity of a building, is shared by both partners – assuming that one partner cannot repair only his portion and leave the other person's section as is. Therefore, in the case of a heating system, which must be repaired for the entire building at once, Gad would be allowed to force Asher to invest in the repair (Shulchan Aruch Choshen Mishpat 178:3, with Nesivos 3). If Asher does not have the capital to invest, Gad can invest all of the money and then be rewarded with a higher percentage of ownership in the property based on the amount he invested. This arrangement must be formalized either through a *kinyan* between the two partners, or under the auspices of a *beis din*.

If Gad invests money into the repair on his own without a *kinyan* or *beis din*, the amount he invested to cover Asher's portion is considered a



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"There is a question whether to view the sale of *aliyos* as an actual sale of the rights to the *aliyah*," replied Rabbi Dayan, "or merely as a pledge to give *tzedakah*, on account of which the highest bidder is honored with the *aliyah*."

"Even if you in fact bought the rights to the *aliyah*, since you were not present there is an aspect of *hashavas aveidah* to resell the *aliyah* on your behalf to recoup what is possible," continued Rabbi Dayan. "That is why we tried to resell it this morning, but no one else was willing to pay the full amount, so we gave it to Mr. Furst to minimize the loss" (C.M. 267:24).

"Do I owe anything?" asked Mr. Weiss.

"Although the common understanding nowadays is that the pledge is conditional on receiving the *aliyah* in practice, since it was available but you were not present, it is not clear that you are exempt," replied Rabbi Dayan. "Certainly, it is proper to ensure that *tzedakah* should not suffer a loss on account of your absence."

"The *Mishnah* (*Arachin* 27a) teaches that if a number of people bid to redeem an item consecrated to the treasury of the Beis Hamikdash, if the highest bidder retracts, the item is sold to the previous bidder and the highest bidder is responsible to cover the difference," continued Rabbi Dayan. "*Tzemech Tzedek* (#72) applies this to buying *aliyos*. Although some disagree (*Magen Avraham* 154:23), it seems the best route to take is to follow this ruling where possible."

"Therefore," concluded Rabbi Dayan, "Mr. Furst received the *aliyah* and should pay the \$4,000 that he bid, and you should make up the \$1,000 difference" (*Tel Talpiyos*, vol. 59 (5763), pp. 127-131).



MONEY MATTERS

BROKERS #4 Additional Profit

(Based on writings of Harav Chaim Kohn, shlita)

Q: I asked my mechanic if he could sell my car for \$4,000. He ultimately sold it for \$4,300. Who gets the extra \$300?

A: The mechanic is your agent to sell (*sarsur*). If the *sarsur* sold for more than the owner stated, the additional profit is the owner's. However, had the *sarsur* initiated the sale and offered to sell on your behalf for whatever price you set, there is a dispute whether he is like any other agent and additional profit is yours, or since he initiated the sale at the price that you set, the implicit stipulation of the *sarsur* is that the extra is his (*Beis Yosef* and *Bach* 186:2).

If you offered the mechanic that anything beyond \$4,000 would be his, even if he was silent and didn't agree explicitly, presumably he agreed to the offer and the \$300 is his. You cannot claim that he did not accept your offer. Conversely, he becomes a *shomer sachar* on the car (C.M. 185:4; *Sma* 185:5).



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loan, and he is reimbursed from the future rents, but the ownership of the property remains evenly split between the two (see *ibid.* 176:41; *Mishpat Shalom* who rules against *Nesivos* 55, and see *Tshuras Shai*, *Mahadura Tinyana* 131).

If Gad has to take a bank loan to raise capital for the repair, he is entitled to be reimbursed for the interest on the loan as well, and there is no issue of *ribbis* (see *Taz*, *Yoreh Dei'ah* 170:3 and *Mishpat Shalom* 176:44, who also contemplates whether Gad may demand interest on his personal funds invested into the property, and see *Chelkas Binyamin*, *Yoreh Dei'ah* 177:58).

On the other hand, Gad may not force Asher to invest into renovations that are not necessary for the basic maintenance of the property, because they did not enter the partnership with an agreement to make such an investment (see *Nesivos* 176:32). Gad may invest the money on his own and then reclaim his investment, along with the typical fees charged by a developer to enhance this sort of property, from the future sale or rental of the building.

This ruling is based on the concept that a partner who invests into a shared enterprise is considered akin to a sharecropper who received permission to cultivate a field (*yoreid b'reshus*). The halachah in such a case is that he is compensated according to the typical percentage of a crop paid to sharecroppers in that city (*Shulchan Aruch Choshen Mishpat* 176:3), which is significantly higher than hourly wages paid to an employee who does not receive a share of the crop. Accordingly, in our case the partner funding the upgrade will be compensated in the amount that a developer would charge for such work (we will expand on the rules of partners investing into properties in a later issue).

Gad must realize that if he does decide to pay for the renovation alone, he bears all the risk of the investment. If the property value does not rise as a result of the renovations, he will not be able to claim back even the capital he invested, and he certainly will not be reimbursed for the time he invested, since he was not doing this at Asher's behest (*Rema* *ibid.*). [Some *poskim* disagree and argue that a partner in an enterprise is able to claim his expenses, because he has the status of a *yoreid b'reshus* (*Beis Shmuel*, *Even Ha'ezer* 88:20; see *Mishpat Shalom* 178:3).]

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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