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STORYLINE

rental renewal

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

The Gubers had been looking to rent a house in the area and reached an agreement with the Bomzers. They signed a rental lease reading: "The house is rented for one year at \$3,000 a month."

Towards the end of that year, the Gubers notified Mr. Bomzer, "We would like to renew the lease and remain an additional year."

"Agreed," replied Mr. Bomzer. "We're happy to let you stay."

Although rental prices in the area had risen during the year, Mr. Bomzer did not mention anything to the effect of a price rise.

When it came time for the first rent check of the second year, Mr. Guber turned to his wife. "Mr. Bomzer never said anything about raising the rent," he said.

"If he didn't say anything," she replied, "we continue paying \$3,000, like we did last year."

Six weeks later, Mr. Bomzer contacted the Gubers. "You know that rental prices in the area have risen during the past year by at least 5%," he said. "In accordance with the going rate, please add 5% to the monthly rental, including back pay for the previous two months."

"You didn't say anything about raising the rent at the end of the year," responded Mr. Guber. "We've already started the second year at \$3,000. You can't decide to raise the rent now!"

"The lease only stated a price for one year," said Mr. Bomzer, "and there has been a 5% rent increase throughout the neighborhood. I'm willing to forgo the increase for the past months, but I am entitled to raise the rent for the coming months."

"Had we known that you would raise the

rent, we might have considered looking into another house," argued Mr. Guber. "But even if not, once we began the year for \$3,000 a month, you cannot raise the rent in the middle of the year."

"Be grateful that I didn't demand the increase right away!" bellowed Bomzer. "There's absolutely no reason, though, that I can't raise the rent for the remainder of the year!"

"Once we've renewed the lease and begun the second year without a rental increase," retorted Mr. Guber, "that remains the price for the year!"

A week later, Mr. Guber received an official letter from Rabbi Tzedek's beis din: "You are hereby summoned to appear before the beis din in response to a claim by Mr. Bomzer to raise his rental fee."

Mr. Guber and Mr. Bomzer appeared before

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FROM THE BHI HOTLINE

Submitted by
B. K. M.

the bankrupt borrower

I loaned Reuven a significant amount of money for a real estate deal. I needed cash some time later, so I sold the loan to Shimon for 70% of the value of the loan. Shimon was willing to purchase the note because Reuven was known to be wealthy, but he did a credit check to be certain that he would be able to collect the money.

About a week after Shimon purchased the loan, Reuven filed for bankruptcy as a result of a number of factors unbeknownst to the

general public. Shimon now claims that the transaction was made in error, as he did not know that Reuven was on the verge of filing bankruptcy.

Q: Shimon wants a refund of his money. Am I obligated to give him a refund?

A: A deal can be cancelled either because the price is vastly inaccurate (ona'ah) or because the merchandise is faulty (mekach

ta'us). Halacha rules that a claim of ona'ah does not apply to negotiable instruments, e.g. notes or checks (Choshen Mishpat 227:29) that have no inherent value other than the debt they represent. Therefore, if the note is vastly overpriced, the buyer cannot demand reimbursement. If the note is a forgery, the transaction is a mekach ta'us, a defect of the object, and the deal is null and void.

In a case like yours where a borrower filed

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INSURANCE PLANNING

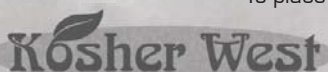
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STORYLINE CONTINUED

the beis din and presented their respective arguments.

Rabbi Tzedek conferred with the other dayanim and then ruled, "When a contract is renewed, the terms in force continue if not stated otherwise. Therefore, since nothing was said before the second year, Mr. Bomzer cannot demand the additional 5%, even for the remaining months.

"When a person rents a house for a set amount of time, the landlord cannot raise the rent for the duration of the rental, even if there is a rise in the real estate value (C.M. 312:10). If the tenant continues to live in the house past the time of the contract, the same price continues, until stated otherwise."

"I accept that I can't charge extra for the previous months," said Mr. Bomzer, "but why can't I charge an additional 5% for the coming months?"

"The Gubers asked to renew the lease," explained Rabbi Tzedek. "When a contract is renewed without any stipulation, whether a rental or an employment contract, the terms are presumed to remain the same (Rama

C.M. 333:8 and Shach 333:44). Therefore, since you didn't notify about a rent increase before the beginning of the second year, the rental lease was renewed for another year at \$3,000."

"What if the Gubers hadn't requested to renew the lease," asked Mr. Bomzer, "but simply continued living there past the original date?"

"Then, you could not charge the extra amount retroactively, but you could demand extra for the coming months," replied Rabbi Tzedek. "That rental would not be renewed for a set time, but rather continue on a per-monthly basis (see Shach 312:10)."

"What if the lease included an explicit option for a one-year renewal?" asked Mr. Guber. "Is the landlord allowed to raise the rent according to fair market value for the second year?"

"That depends on the minhag hamedina, common custom," replied Rabbi Tzedek. "In some places the option only gives priority to the tenant, but does not secure the price, whereas in other places it also secures the price if not stated otherwise in the lease."

FROM THE BHI HOTLINE CONTINUED

for bankruptcy, the document is not rendered fake. Ostensibly, it should be viewed as ona'ah, a deception of value that does not obligate the seller to reimburse the buyer. However, the purchaser's claim is that he didn't have all the necessary information regarding the status of the borrower. As such, he purchased damaged goods and should be refunded.

Yet Shulchan Aruch (C.M. 66:34) rules that since the note was not forged and the basis of the claim is that the note was not as valuable as portrayed, it is a case of ona'ah and the buyer has no recourse. Shach (ibid. 113) explains that although the purchaser did not have all necessary information, it is not a mekach ta'us. This is because

the buyer did not properly research the borrower's reliability and whether he had the resources to repay the loan. It is a unique requirement on the purchaser to perform his due diligence when buying a note, since the sale is dependent on the borrower's credibility (see also Ketzos HaChoshen 126:9).

However, in your case, the buyer properly researched the borrower's credit and determined that he was trustworthy. Therefore, when it was later discovered that there was some secret information that affected the integrity of the note itself, it is considered a case of mekach ta'us and the buyer may demand a refund. *(There are additional reasons for this ruling that are beyond the scope of this article.)*

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MONEY MATTERS

laws of interest week #11

Q: Is there a ribbis problem in receiving a discount for a yearly subscription to a magazine or buying a discounted bus ticket for multiple rides?

A: It is possible to permit such an arrangement because prepayment discounts are prohibited only when the discount is explicitly linked to the prepayment or is clearly due to the available usage of the customer's

money. When the discount is not explicitly linked to the prepayment and can be attributed to other reasons, it is permitted. In the case of a subscription, the discount can easily be attributed to the customer's commitment to purchase the magazine for a full year. Similarly, the discount of the bus ticket is understood as an incentive to ride the bus on a regular basis or a means of saving the driver the hassle of receiving a fare each

time. A bus ticket may also be considered yesh lo (having in stock), since the company can provide all the rides immediately. Therefore, purchasing the subscription or bus ticket at a discounted price is not a violation of ribbis unless the subscription offer explicitly states, "Subscription price is contingent on prepayment in full" or "Pay for a year and save 45%" (Bris Yehuda 23:7(20); The Laws of Ribbis, 7:23,8:24).

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