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לע"נ הרה"ח ר' נחמיה ב"ר שלמה אלימלך ז"ל
by his son, R' Shlomo Werdiger

STORYLINE

stolen sweets

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Purim was less than a month away. An advertisement for Mishloach Manos baskets on the shul bulletin board depicted an assortment of mouth-watering baskets.

"Manny's Magnificent Mehadrin Mishloach Manos offers a range of baskets to suit every taste and budget. Your shul representative is Mr. Jerry Lewis. Please place orders by Rosh Chodesh Adar to ensure timely delivery."

A week before Purim, Manny brought 250 baskets of Mishloach Manos to Jerry's house.

"We'll put them over there in the corner of the living room," Jerry said. The two men unloaded the baskets into the house.

"Manny's Mishloach Manos baskets have arrived," Jerry announced in shul. "Orders can be picked up from 7 to 10 PM."

During the following days, most of the bas-

kets were collected. Jerry looked forward to receiving 20% of the sales profits from Manny as payment for his efforts.

Three days before Purim, Jerry came home from work in the afternoon and saw that one of the windows was pried open. The remaining Mishloach Manos baskets were gone!

Jerry called Manny to inform him of the theft. "Our house was broken into," he said. "Fifty baskets of Mishloach Manos were stolen!"

"I can't believe it!" exclaimed Manny. "That's a thousand dollars worth of baskets. Who's going to pay for this?"

"I suggest we let Rabbi Dayan work this one out for us," replied Jerry.

The two came before Rabbi Dayan.

"We have an unfortunate case to discuss," Manny said. "Mr. Lewis agreed to sell Mishloach Manos baskets for 20% profit, but

some baskets were stolen from his house. Is he responsible for them?"

"Was the house properly locked?" asked Rabbi Dayan.

"Of course," said Jerry. "The thief pried open one of the windows."

Rabbi Dayan turned to Manny. "Were you aware that the baskets were being kept in the living room?"

"Yes," answered Manny. "I unloaded the baskets there."

"It might seem, at first glance, that Mr. Lewis is responsible," said Rabbi Dayan, "but there are two reasons to exempt him."

"Can you please explain?" asked Manny.

"A sales agent is considered a shomer sachar (paid guardian) on the merchandise he holds," said Rabbi Dayan. "Therefore, in principle, he is responsible for theft and

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FROM THE BHI HOTLINE

Submitted by
R. B.

sibling rivalry

I recently moved to a new town and rented a house from the owner, Reuven. Last week, Shimon, Reuven's brother, called me. He claims that he inherited the house from his father, and Reuven does not have the authority to rent it to me. He further informed me that they are scheduled to go to a din torah.

When I contacted Reuven, he became furious and said that we had signed a lease; the fact that Shimon is claiming ownership

of the home is none of my business.

Q: I am already living in the house. Should I pay rent to Reuven or Shimon?

A: It is obvious that you are not obligated to put yourself at financial risk as a result of the disagreement between Reuven and Shimon. If one pays rent to a landlord who, as it turns out, misrepresented himself and is not actually the legal owner, the tenant

must now pay rent to the legal owner for the months he has already spent living in the house (C.M. 363:10). Therefore, you are not obligated to send the rent money to either one of the disputing parties, since this would put you at risk of having to pay double rent.

Additionally, since it is not known at this point in your circumstance who the owner is, neither one can file a definitive claim against you.

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STORYLINE CONTINUED

loss of the merchandise. This is true even if he hasn't earned any profit yet, since he has the potential of profit from the sales (C.M. 185:7; 186:2; Pischei Choshen, Pikakon 1:5)."

"But I kept the baskets in my house like the rest of my possessions," said Jerry. "We've never had a break-in before."

"A shomer sachar is obligated in theft even if he guards the entrusted item the same as his own property," replied Rabbi Dayan. "He is being paid to watch extra carefully (303:10-11)."

"Why, then, should Jerry be exempt?" asked Manny. "This seems a classic case of theft."

"Although a shomer sachar is generally obligated in theft and is expected to watch extra carefully, he can stipulate with the owner for a lower level of responsibility (296:5)," said Rabbi Dayan. "A number of authorities maintain that when the owner was aware of the conditions in which the merchandise would be kept, it is considered as a stipulation that such guardianship suffices. Here, you knew that the baskets would be kept in the house and that Mr. Lewis would go to work

daily. Similarly, some exempt a sales agent if he guarded the merchandise in the customary manner of such merchandise, since this is the common business practice and expectation of the supplier (P.C., Pikadon 3:[53]; Divrei Geonim 95:69).

"Although a sales agent is considered a shomer sachar on account of the expected share of profits, he is not being paid explicitly to guard the merchandise, but for his efforts in selling it," added Rabbi Dayan. "Therefore, some authorities write that he does not carry liability when he kept the merchandise the way people regularly do, unlike a true shomer sachar who is expected to be extra careful (Pischei Teshuva 303:1; P.C., Pikadon 3:[54])."

"If I am exempt from the theft," said Jerry, "I suppose Manny also has to pay my share of profits?"

"Because both reasons to exempt are subject to debate," concluded Rabbi Dayan, "if Manny has not paid you and you do not hold any of the sales money, he can withhold payment of your profit or wages against the value of the theft."

FROM THE BHI HOTLINE CONTINUED

The essential question is whether Reuven can demand and obligate you to take the rent money and put it in escrow. This method would require you to give it to a third party to hold, so that when Bais Din decides who the house belongs to, the owner would be able to access the rent money right away.

Precedent for this approach is found in a case in which a buyer does not recall who sold him an object and five people claim to be the seller. Shulchan Aruch (C.M. 222:2) states that the buyer must give the money to Bais Din to hold until the matter can be sorted out. Seemingly, the same approach should be followed in this case.

However, even in such a circumstance, many Poskim disagree and maintain that he can keep it in his possession

until the matter is resolved (Shach ibid). The reason is that when there is a concern that one may lose out by giving the money to a third party (e.g. if the money is lost, he will not be released from his obligation to pay the seller), one is not required to give the money to a third party. It is only if both parties agree to leave the money with a third party that he would be required to do so (Y.D. 305:29 and Shach 35), because if so, he bears no responsibilities if the monies are lost (see Nesivos C.M. 76:4,5).

In your circumstance, if both parties - Reuven and Shimon - ask for the money to be deposited into an escrow account where it will be secure and available for the true owner of the house, you are required to comply with their request.

Please contact our confidential hotline with your questions & comments

877.845.8455 ■ ask@businesshalacha.com

MONEY MATTERS

borrowing and lending week #15

Q: Someone lent me money many years ago and never bothered asking for it. Must I still pay, even though many years have passed and the lender totally forgot about the loan?

A: In principle, there is no statute of limitations on a loan. However:

1) Some authorities maintain that if the lender does not ask for payment, the borrower is

not required to initiate payment of his own accord. However, if the lender ultimately demands the loan, even many years later, it must be paid. Others maintain that, regardless, the borrower has a personal responsibility and mitzvah to pay his debts (see Shach 232:2; Pischei Choshen, Halva'ah 2:4).

2) If the lender abandoned hope of reclaiming the loan, there is a dispute whether the

concept of yei'ush (despair) exists regarding a loan. Many authorities maintain that the concept of yei'ush does not apply to loans and they remain in force even after yei'ush (see C.M. 98:1; Rama 163:3; Pischei Choshen, 2:29).

3) If the loan was granted in a commercial setting, the concept of minhag hamedina (common commercial practice) would apply (Pischei Choshen, 2:ftnt. 72).

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