

VOLUME I: NUMBER 2: CHEATERS NEVER PROSPER

by Rabbi Aron Tendler

Question:

Reuven was interested in selling a parcel of land to Shimon. However, they had a difficult time agreeing on a price. Reuven wanted \$130,000 for the land, but Shimon insisted that the actual value was \$100,000. They decided to go to a professional appraiser to assess the correct value.

Reuven went ahead and told the appraiser that he would pay him \$5,000 if he would appraise the land to be worth \$130,000. The appraiser agreed to do so, and the parcel of land was sold for the higher price. However, when the appraiser requested the \$5,000, Reuven refused to pay him.

After a while, Reuven decided to do Teshuvah ("Return" to G-d and atone for his sins), and returned the \$30,000 that he had illegally taken from Shimon. Reuven now comes to Bais Din with the following question: Is he obligated to pay the amount that he had promised to the appraiser for the "service" rendered, or do we say that "Ayn shaliach l'dvar aveirah" (there is no messenger when it comes to doing something Halachically forbidden) and therefore, Reuven has no obligation to pay him?

What is the Halacha?

Answer:

The Bais Din's answer was surprising. Although the appraiser was an accomplice with Reuven in doing something illegal, Reuven is Halachically obligated to give him the promised amount. This is similar to the case of someone who hires false witnesses to testify for him, in which case he is obligated to pay the agreed upon "wages" for the service rendered.

Sources:

The Nesivos Mishpat (Choshen Mishpat 9:1) writes that although it is stated in the Shulchan Oruch (ibid.) that a Dayan (Rabbinic Judge) who accepts a bribe is obligated to return it to the person that gave it, false witnesses who accept a bribe have no Halachic obligation to return the "wages" that they received for the false testimony. See his in-depth explanation there.

The Nesivos also writes there that he has "some proof" (K'tzas Hochacha) from the words of Rashi in Tractate Rosh Hashana 22b. The Gemara there tells us the reason why the Chachamim decreed that only people who are known to them can be accepted as witnesses to testify regarding the new moon: One time, the "Bysusim" (* see below) wanted to mislead the Chachamim. They decided to hire false witnesses to testify that they had seen the new moon at a false time. A certain person heard about this plan and was concerned, so he volunteered to testify for the Bysusim, with the intention of becoming a double agent. They agreed to pay him 200 Zuz for his testimony. The Gemara continues and tells us that when he came in front of the Chachamim, he said to them "I was going up the slope of Ma'aleh Adumim, and I saw the moon between two large boulders etc., and if you do not believe me, here are the 200 Zuz (given to me for my testimony)!" They asked him, "Who put you up to this?" He told them the entire story. The Chachamim then said to him, "The 200 Zuz are yours as a present, and the people that hired you should be stretched on a beam (and whipped)!" Rashi explains that the reason the witness was entitled to keep the 200 Zuz as a present is because, even though he had not fulfilled the conditions for which he was paid, Bais Din has the right to remove property from one person and give it to another (Hefker Bais Din Hefker).

The Nesivos derives from this Rashi, that the only reason that we have to rely on the concept of Hefker Bais Din Hefker is because he did not actually testify for the Bysusim, as he said he would. Had he actually misled the Chachamim and testified falsely, Rashi seems to imply that he would be deserving of the 200 Zuz as his wages according to Halacha.

In our case, Reuven did pay the appraiser the \$5000 that he had agreed to pay him for the false appraisal.

* Bysusim - A sect of Jews that lived during the times of the second Bais HaMikdash . They rejected the Oral Torah and believed that the Written Torah is only to be understood in the most literal way.

The reason that the Bysusim had an interest in causing the Chachomim to declare the Rosh Chodesh at an incorrect time was because of the Mitzvah of Sefiras HaOmer, the Torah says (VaYikrah 23:15) "And You Should Count >From The Day After The Shabbos." Based On the Oral Torah, our Chachomim explain this to mean that the Mitzvah to count the Omer starts on the second day of Pesach, no matter which day of the week it falls out on. The Bysusim, however, interpreted the Posuk literally - to mean that the counting of the Omer should start on the Sunday after the first

Shabbos of Pesach. In their opinion, Shavuot always fell out on Sunday. Therefore, they had an interest in tricking the Chachamim regarding the new moon, especially Rosh Chodesh Nissan, to try to arrange that Rosh Chodesh Nissan should occur on Shabbos, so that the first day of Pesach will also fall out on Shabbos. This would cause the Korban Omer to be brought on Sunday, which is consistent with the Bysusim interpretation of the Torah.

This week's class is based on a column by Rabbi Tzvi Shpitz, who is an Av Bet Din and Rosh Kollel in the Ramot neighborhood of Jerusalem. His column originally appears in Hebrew in Toda'ah, a weekly publication in Jerusalem. It has been translated and reprinted here with his permission and approval.

This class is translated and moderated by Rabbi Aaron Tendler of Yeshivas Ner Yisroel in Baltimore. Rabbi Tendler accepts full responsibility for the accuracy of the translation and will be happy to fax originals of the articles in Hebrew to anyone interested.

Feedback is appreciated! It can be sent to atendler@torah.org.

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Please Note: The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!