

BUSINESS COMPETITION BETWEEN INDIVIDUALS: WHEN IS IT PROPER? PART III

by Rabbi Doniel Neustadt

The following is a discussion of Halachic topics related to the Parsha of the week. For final rulings, consult your Rav.

There he established a decree and an ordinance (14:25)

In Mara they were given the rules of civil law... (Rashi)

QUESTION: A person is negotiating the purchase of a house or a car. May another person come and bid for the item?

DISCUSSION: Three factors must be determined in order to answer this question: 1) The extent of the negotiations; 2) The availability of other homes or cars of similar [or slightly different] size, location, condition, etc.; 3) The amount of money that the new bidder will save by buying this item and not another one which is available to him. Based on these three factors, the practical halachah breaks down as follows:

If the buyer and seller have agreed [or are very close to agreeing⁽¹⁾] on a price, and there are similar items available on the market, then it is prohibited for another person to bid for the item⁽²⁾. Bais din has the right and duty to object to his bidding and to block him from doing so. If he disregards the halachah and places a bid anyway, he may be referred to as a rasha, a wicked person, publicly⁽³⁾. Even if he has already bought and taken possession of the item, he is still duty bound to return it, lest he be referred to as a rasha⁽⁴⁾. Bais din, however, does not have the power to forcibly remove it from his possession once he has already obtained it.

If the buyer and seller agreed [or are close to agreeing] on a price, but there are no similar items available on the market, then it is permitted, according to the basic halachah, for the new bidder to bid for the item⁽⁵⁾. A ba'al nefesh, though, should refrain from doing so⁽⁶⁾.

If the buyer and seller agreed [or are close to agreeing] on a price, and there are similar items

available on the market, but the new bidder will save a big amount of money(7) if his bid is accepted, there are many poskim(8) who allow him to bid on the item while other poskim do not accept this leniency(9). Although bais din cannot get involved in such a case, a ba'al nefesh should refrain from entering into this position.

If the buyer and seller did not agree [or come close to agreeing] on a price, then it is permitted for the new bidder to put in a bid for the item. If, however, the item came up for sale only as a result of the first bidder's effort [e.g., the first bidder convinced the seller to put the item on the market], some poskim hold that a newcomer may not come and place a bid on the item(10).

QUESTION: May a worker offer his services to a prospective employer knowing full well that he will cause another Jew to lose his job by replacing him?

DISCUSSION: It is prohibited for one to offer his services to an employer if he will be taking away another person's job, even if his intention is to replace him only after the current contract has expired. Bais din has the right and duty to object to his behavior and to stop him from doing so. If he disregards the halachah and does so anyway, he may be referred to as a rasha publicly(11). Bais din, however, does not have the power to forcibly terminate the newcomer's employment once he has already obtained it.

In certain well-defined cases, this restriction does not apply. Among them are the following:

If an employer asks him specifically to apply for the job(12);

If it is known that the employer is dissatisfied with his present employee and is looking for an opportunity to replace him(13);

If the present employee was hired initially only for a limited period of time and was never really counting on long-term employment(14);

If he does not directly approach an employer directly but merely advertises his availability, even though his advertisement may result in the present employee losing his job(15).

If, after spending time and effort looking for a job commensurate with his training and experience, he cannot find another job, then it is permitted for him to make himself available to an employer even though a current employee may lose his job(16). A ba'al nefesh, though, should refrain from doing so.

A slightly different set of rules will apply when the current employee is long-term, has established a business relationship with his employer and has a well-founded assumption and expectation that the job is his for as long as he is interested in keeping it. In that case, many poskim(17) maintain that it is prohibited for a newcomer to directly approach an employer to hire him, even if the newcomer cannot find any other job.

But this holds true only if other potential employees will also refrain from offering their services to that particular employer. If, however, this particular job will attract other candidates, then there is no

obligation for the observant job-seeker to place himself at a disadvantage and limit his chances, even though the present long-term employee will lose his job.

QUESTION: Is it permitted for an employer to lure another company's employee from his present job?

DISCUSSION: It is prohibited for an employer to lure away an employee from his present job, even if he will not employ him until his current contract has expired - unless he feels that this particular employee is superior to any other available employee on the market.

In a case where an employer and employee have established a long-term business relationship, and the employer has a well-founded assumption and expectation that the employee will remain in his employ indefinitely, many poskim hold that it is prohibited for another employer to lure the employee away. However, this holds true only if other potential employers will not actively recruit this particular employee, as explained earlier.

FOOTNOTES

1. See Pischei Teshuvah 237:3 and Aruch ha-Shulchan 237:1 quoting Perishah, who maintains that as long as the two parties were near agreement on a price, it is considered as if an agreement was reached in regards to this halachah. See Igros Moshe C.M. 1:60 who explains that this is the position of the Rama as well. Shulchan Aruch Harav, however, does not mention this Perishah.
2. C.M. 237:1. Even if the new bidder did not realize that a previous bid was placed on the house, he is still required to withdraw his bid once he finds out about the previous agreement.
3. If the new bidder did not follow the halachah and bid on the item, it is permitted for a third person to bid on the house at this time - Aruch ha-Shulchan 237:2.
4. In the case when his bid was made while yet unaware of the previous agreement, some poskim (Pischei Teshuvah; Aruch ha-Shulchan 237:2) maintain that he cannot be referred to as a rasha if he refuses to return the house once he has obtained it. Other poskim, however, disagree and hold that even in that case he may be referred to as a rasha (Keneses ha-Gedolah, Tur 19; Igros Moshe C.M. 1:60).
5. Rama 237:1; M'harshal 36; Ma'asas Binyamin 27, based on the view of R' Tam who permits this type of bidding. According to the Nesivos 237:3, Shulchan Aruch, too, agrees to this ruling.
6. Shulchan Aruch Harav (Hasogas Gevul 10), Har Tzvi O.C. 2:8 and Igros Moshe E.H. 1:91 based on the view of Rashi who prohibits this type of bid. See also Maharal (Nesivos Olam, Nesiv ha-Tzedek 3)

who strongly endorses Rashi's approach to this question.

7. This is defined as being a "real bargain", savings that are undisputedly substantial. When it is unclear if the amount being saved is substantial, a bais din must be consulted.

8. Rama C.M. 237:1; Avnei Nezer C.M. 17. [Igros Moshe C.M. 1:60 seems to rule in accordance with this view.]

9. Shach 237:3 based on the view of the Ramban; Aruch ha-Shulchan 237:1.

10. Teshuvos M'Rashdam 259. See, however, Teshuvos Chasam Sofer C.M. 79 who seems to disagree. See also Masa'as Binyamin 27, Nachlas Tzvi C.M. 237 and Minchas Yitzchak 5:77.

11. C.M. 237:2 as explained in Shulchan Aruch Harav (Hasogas Gevul 12).

12. Teshuvos Alshich 67.

13. C.M. 237:2.

14. R' Akiva Eiger C.M. 237 quoting Teshuvos M'harshal 36.

15. Pischei Choshen, Sechirus, pg. 161.

16. Shulchan Aruch Harav, ibid.; Igros Moshe C.M. 1:60.

17. See our previous column entitled "Competition between Individuals" for elucidation of this issue.

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