



FROM THE VIRTUAL DESK OF THE **OU VEBBE REBBE** RAV DANIEL MANN



Backing Out of an Oral Offer to a Potential Worker

Question: I needed work done on my house – only part of the job was needed acutely. I contacted Reuven, who came recommended; he quoted a high price. Because of the acute need, I agreed without shopping around. When he said he could only come a week later, I found Shimon to do the first part of the job. (It is not clear to me if Reuven now expects to do the rest of the job.). Shimon told me that Reuven charged much too much and offered to do the remaining part for half of Reuven's quote. Do I have a halachic or moral obligation to use Reuven?

Answer: Regarding enforceable monetary obligations, a commitment to use a worker is not binding unless an act of *kinyan* was made or the worker came to start the job (Shulchan Aruch, Choshen Mishpat 333:1). Coming to give an estimate does not count, but to do preparatory evaluation can count. If due to your agreement to hire Reuven, he turned down another

offer and he cannot now find replacement work, you must pay based on the damage your job offer caused (ibid. 2). However, it is rare that a job that takes a few hours and the worker chooses the time would require such a worker to turn down another job (see Pitchei Choshen, Sechirut 10:(9)). **If** any of these grounds for obligation **might exist**, we cannot give you any sort of ruling, without both sides presenting their sides for us to rule.

If there was no binding obligation but one did not keep his word, the *mishna* (Bava Metzia 75b) says there are ground for *tar'omet* (being disgruntled). This is parallel to *mechusar amana*, when one backs out of an agreement to purchase something, and this is a (serious) moral deficiency.

There are several grounds that might relieve you of this status. First, the decision to employ Reuven must have been complete after the critical employment conditions were settled (compare to the rules of *mechusar amana* – Shulchan Aruch, CM 204:6; Pitchei Choshen, Kinyanim 1:(4)). It is unclear to us (maybe to you too) if this point was reached.

Another relevant matter is Reuven's high fee. If a *po'el* (roughly, one who is paid by time) overcharges, the homeowner cannot void his obligation due to mispricing, as a *po'el* is analogous to a slave, to whom

the laws of *ona'ah* do not apply (Shulchan Aruch, CM 227:33). The Shulchan Aruch (ibid. 36) rules that *ona'ah* applies to a *kablan* (one who is paid by the job), like Reuven. On the other hand, not all agree (see Maggid Mishneh, Mechira 13:15), and according to some, *ona'ah* does not apply to work done on something connected to the ground (see Pitchei Teshuva, CM 227:26).

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On the other hand, the question whether *ona'ah* applies or not may be irrelevant here. Regarding the case of *mechusar amana*, the Rama (CM 204:11) cites two opinions as to whether one may back out if the transaction is no longer worthwhile because of a price change. The final *p'sak* is unclear (Shach ad loc. 8). The S'ma (333:1) reasons that the same opinions would apply to a worker's possible *tar'omet*. The Aruch Hashulchan (ad loc. 1) says that an employer may back out if he found out the worker is unqualified without the moral stain of *tar'omet*. Similarly, if one found out the work was significantly overpriced, this should be grounds to remove the

tar'omet even if the formal rules of *ona'ah* do not apply.

This being said, it is hard to trust one partial opinion, like that of Shimon, to conclude that Reuven is objectively, grossly overcharging. Perhaps Shimon needs the job badly and is offering a large discount. Maybe Reuven's work (regarding what he has planned, how he performs it, or materials) is on a different level than Shimon's.

In summary, it is likely that you are not morally bound to employ Reuven, and in a case of doubt on a moral, not legal obligation, there is room for leniency (see Chashukei Chemed, Sanhedrin 67a). On the other hand, you might consider the lack of clarity, both about the *halacha* and the details of the story, and if we asked his opinion we do not know what points Reuven would also raise. Therefore, it would be noble to discuss the matter openly with Reuven. Feel free to contact us again with your findings. ■

Having a dispute?



For a Din Torah in English or Hebrew contact 'Eretz Hemdah - Gazit' Rabbinical Court: 077-215-8-215 • fax: (02) 537-9626
beitdin@eretzhemdah.org