



Accidentally Paying Back Early

Question: Recently, the Citigroup “bank” mistakenly paid some \$900 mil. to Revlon’s creditors before the loans were due. A few big creditors refused to return the money. A court ruled that since the creditors took the money (they were owed) in good faith, they need not return it. Citigroup cannot demand the money from Revlon and will be paid by Revlon when the loans are due. Would the halachic ruling be the same?

Answer: We saw a bit of further information in financial newspapers but cannot promise to have captured all the details and legal nuances. Our presentation of the view of Halacha is thus quite general.

This decision relates to two questions – 1. Should the mistake be reversed (Citigroup vs. creditors)? 2. Must the bank take responsibility for its mistake and how (Citigroup vs. Revlon)?

The creditors received the money, apparently without wrongdoing on their part. On the other hand, if one innocently accepts a present intended for another person

delivered by a courier, he must return it if it is demonstrated that the transaction was a mistake. This is a broad rule regarding misinformed transactions/commitments (see Shulchan Aruch, Choshen Mishpat 25:5). It is not that simple to apply that rule here because it is not objectively a full mistake, as the creditors received money due to them, even if it was envisioned to have been given under different circumstances, so perhaps the creditors can act on them once they are in their hands.

Thus, before a loan is due, payment has no place in the lender’s hands unless the borrower intends to pay him

The following cases are good precedents. Reuven owes Shimon for two loans and pays him partially. The Shulchan Aruch (CM 58:4) rules that Shimon can determine which loan the money goes for (which is significant if one of the loans has strong guarantees). Furthermore, even if Reuven said he was giving the money for one loan and Shimon was silent, Shimon can say later that he received it for the other loan (ibid.). Even if Reuven gave money to Shimon to deliver it to Levi for Levi’s loan, Shimon can keep the money for his own loan (ibid. 5). So we might conclude that

Revlon's creditors are "in the driver's seat" once they have control of money owed, and Revlon/Citigroup's intention is inconsequential.

However, this is not so because the creditors do not yet have the right to demand the money. The K'tzot Hachoshen (83:1) and Netivot Hamishpat (Chiddushim 83:1) say that in the case of two loans, where only one is due, the lender must take the payment for the one that is due. Likewise, the deliverer of payment cannot claim the money for his own not-yet-due loan (Pitchei Choshen, Halva'ah 6:(16)). Likewise, the Tumim (67:16) rules that seizure of assets for a loan, which often gives the lender extra rights, applies only when the loan is due. Thus, before a loan is due, payment has no place in the lender's hands unless the borrower intends to pay him. (A possible exception is if there is specific reason for concern that the borrower will lack funds to pay when the due date comes – see Shulchan Aruch, CM 105:4 and Sha'ar Mishpat ad loc. 4.) Therefore, it is likely that Halacha disagrees with the court ruling, and that the mistake should be remedied by return of the money. (If the confusion damages the creditors, compensation may be appropriate.)

Regarding affairs between Citigroup and Revlon, when an agent makes a clear mistake to the detriment of the one he

represents, he must compensate him for the loss (Shulchan Aruch, CM 185:1). Sometimes, the lack of the agent's authority causes a situation whereby a transaction with a third party does not stand, and sometimes it stands and the agent must compensate (ibid. 182:2). One could argue that it would be more appropriate for payment to be taken from Revlon and that Citigroup should pay the damage this causes. However, (halachic/financial analysis is beyond our present scope), Citigroup gave their own money, and while normally they could charge Revlon, there is no reason for Revlon to agree. Therefore, according to the court's ruling regarding the creditors, we agree that Citigroup needs to wait until it is time for Revlon to pay. ■

Eretz Hemdah has begun a participatory Zoom class - "Behind the Scenes with the Vebbe Rebbe" - an analytical look at the sources, methodology, and considerations behind our rulings, with Rav Daniel Mann. Contact info@eretzhemdah.org to join.

Having a dispute?



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