

Can Someone Sell Something on Behalf of a Partnership Without Informing his Partners?

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Question: If someone is a partner in a real estate company, together with a few other partners and he decides on his own to sell a property, can the other partners cancel the sale if they don't agree to it?

Answer: The halacha is that a *shliach*, an agent who is working on behalf of others, cannot deviate from his mission and sell something he wasn't authorized to sell. If he does sell something that he had no authorization to sell, the sale is null and void.

Partnerships are actually a hybrid of several different halachic concepts. To some extent, partners are considered employees of each other. They also are considered *shomrim* to each other, meaning each one is a protector of the others' assets. They also are sometimes considered agents of each other because when a partner acts on behalf of the partnership as a whole, he is acting both for himself and for the interests of his partners as their agent. Since a partner is an agent, we might expect that he has the same *halachos* as a standard *shliach*, and if he oversteps his authority, his actions are not valid. The Shach, however, says that this is not the halacha. He says that it is not practical to expect a partner in a business to obtain the approval of all his partners before engaging in any business activity. He says that it is understood that partners have authority to transact business on behalf of the partnership; therefore, even if some partners later come with claims that a sale wasn't authorized, it is still valid.

Some Acharonim agree with the Shach, but others, including the Urim V'Tumim disagree, and say that a partner has the same status as a regular *shliach* and has no right to exceed his authority. If he does so, these Acharonim rule that the sale can be reversed by the other partners.

The Maharsham says that even according to the Shach's opinion that whatever any partner does on his own is valid, that is only true if there is no explicit clause in the partnership agreement that denies him that authority. If he flouts an explicit provision in the contract, his actions will not be valid. Similarly, the Maharsham says that the idea that a partner has autonomy to make deals on his own is only true in broad, ongoing business partnerships; however, if two people are partners for a single venture, neither of them can act on their own. For example, if two people purchased one house together as an investment, although they are partners for this one deal, it is not a broad enough partnership to say that either partner has the authority to act on his own on behalf of the partnership.