

## Does a Business Have to Pay Commission For an Advertisement That They Never Asked For?

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**Question:** Reuven usually places seasonal advertisements for his business in a local magazine. One year, he chose not to advertise; however, the magazine already had his information in their system and they ran the advertisement anyway. The ad was successful and it brought in some business for Reuven.

The magazine wants commission for the business they generated. Do they have a legitimate claim?

**Answer:** There is a concept in the Gemara known as "*yored*", in which someone goes into someone's field and plants without being hired. The Halacha is that the owner of the field owes the worker something for the benefit he received, even though he never solicited the work.

The Vilna Gaon writes that the rule of *yored* applies to brokers as well. If someone performs a brokerage service for you, even if you never asked him to do it, you owe him a commission for the benefit he provided. In this case, the magazine performed a brokerage service by running the advertisement and thereby finding clients. This would seemingly mean that Reuven owes them some commission for this service.

On the other hand, there is also a rule called "*zeh neheneh v'zeh lo chaser*," which means that if one person derives a benefit from someone else without causing that person any loss, he cannot be charged. For example, if someone squats on someone else's vacant property without causing any loss to the owner, he cannot be charged. Accordingly, one may argue that the magazine had no loss by running the ad, which would mean that even though Reuven benefited from them, he cannot be charged.

At a closer glance, however, it would appear that this reasoning is incorrect. The Gemara says that "*zeh neheneh v'zeh lo chaser*" is only applied in a case where there was absolutely no loss at all. If there was even a minute loss, the person who benefited can be charged in full. In this story, the magazine did have a small expense, as the ink and paper of the advertisement did cost them something; therefore, Reuven could be charged for the benefit he derived.

Still and all, they would not be able to charge him the full value of the advertisement. This is because a *yored* can only charge the full value of the work if the property in question was anyway set to be improved upon. If the property was not imminently set for improvement, the *yored* is only entitled to a reduced payment. In this story, it cannot be said that Reuven's business was in imminent need of advertisement, as not every business advertises all the time. This would mean that although the magazine is owed something, it is not owed the full price of an ad, and they would have to work out some kind of reduced rate.