

Does One Have Any Recourse to Extricate Himself from a Halachic Non-Compete?

Rav Shmuel Binyomin Honigwachs

Question: Reuven signed a halachic non-compete that he claims locks him into very unfair terms, such as forbidding him to ever work again in his industry. Does he have any way to get out of this agreement?

Answer: It is very important for employers and employees to know that there are some ways to get out of a halachic non-compete.

To begin the discussion, it is important to realize that a non-compete document is different from almost any other *shtar*. In most transactions – such as a loan, sale or partnership – the main purpose of the *shtar* is simply to document the transaction. Even if the *shtar* would be lost or there would be no *shtar*, it is usually possible to prove and actualize the transaction in some way. In the case of a non-compete, however, all that one has is the contract. The document has to do “all the heavy lifting,” it is set up in a way that has penalties for not adhering to the terms of the transaction, and that creates the non-compete. Therefore, if there is any problem with the documentation, it is very possible that the contract can be nullified.

Furthermore, most transactions usually have some emails or texts or other forms of correspondence that can be used as proof of the agreement, even if there is a problem with the actual *shtar*. When it comes to a non-compete, there usually is no communication about it at all, and the only paper that mentions it is the contract. Again, this means that if there is any problem with the document, the entire agreement will fall away.

We have mentioned that it is very important to get any *shtar* signed on every page; this is even more important with a non-compete due to the reasons mentioned above. Since the contract is the only documentation and proof of the agreement, it must be in perfect, irreproachable order.

A non-compete relies heavily on a concept known as “*odisa*”. This means that it is only enforceable because, with his signature, the employee admits to the agreement and binds himself to it. Would a non-compete only be signed on the last page, the employee always has the ability to say that he only admits that he signed that page, and there is no proof that he agreed to whatever is stated on the other pages. Because he technically could say this – even if he doesn’t actually make this claim – the fundamental component of “*odisa*” is no longer there and the employer is left with no valid documentation of the agreement and, thereby, no way to force its terms. This could very well render the entire contract null and void.

Simply put, an employee should know that there may be ways to extricate himself from a non-compete, and he should not think he is always locked in forever.