

If a Deal Falls Through After a Broker is Paid Part of His Commission, Must he Return That Money?

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Case: I hired a broker to find me a deal and indeed, he did find me a good deal. He asked to be paid a portion of his commission at the time of the signing of the contract, and I agreed and wrote him a check at that time. Unfortunately, the deal later fell through before closing.

Question: Does he have to refund money?

Answer: A brokerage payment is contingent upon the closing of a deal, which is why brokers are generally paid only once the deal closes. The Rema writes that a *shadchan* (which is a form of broker) only collects payment after the wedding because that is the closing of the deal. It appears that the contemporary *minhag* is not like this, but if there would be no common custom, that *shadchan* would only get paid after the wedding. If a *shidduch* is broken before the wedding, the Rema says that whether or not the money must be returned depends on the common custom. If the *minhag* is for the *shadchan* to be paid at the time of the engagement, he would get to keep the money even if the marriage never materializes. If the *minhag* is that the *shadchan* is paid at the *chasuna*, he would not get paid if the *shidduch* is broken off before the wedding.

The same idea applies to brokers. Since brokers are usually paid at the time of closing, if the deal falls through before the closing he would not receive any payment.

In a case like the one in question, where the broker was given part of his payment before closing, the Maharsham cites an opinion that he would not have to return the money. These Poskim say that if the client paid before the closing, it is a sign that he willingly submitted payment for the broker's legwork and efforts, without making the payment contingent on closing. Since the broker is now a *muchzik* on that money, it would be very difficult to force him to return it.