

If a Deal Stalls and is Concluded by Someone Else, Is the Original Broker Owed a Commission?

By Rabbi Aryeh Finkel

Question: A fellow who runs a school got a good deal on a property that he purchased through the government. He decides that the property is not ideal for his school and, through a broker, finds a buyer to purchase the property, with intentions of buying a different piece of land elsewhere for his school.

Subsequently, the buyer tells the seller that he does not want to go through with the deal because he found out that the property is zoned for a school and he won't be able to build housing on it.

A short while later, the school owner contacts another broker, who goes back to the original buyer and explains to him that there are legal maneuvers that would allow him to build housing on the property after all. With this new information, the buyer agrees to the deal.

The first broker now returns and says that he deserves commission for being the one to find this buyer originally. Does he have a valid claim?

Answer: First of all, the second broker definitely gets a commission for finalizing the deal. The only question is if the first broker also deserves part of the commission.

We can compare this to a case where one *shadchan* suggests a *shidduch*, but is unable to bring it to fruition. A second *shadchan* then gets involved and pushes the *shidduch* through, and the couple eventually gets married. Is the first *shadchan* owed *shadchanus*?

Rav Moshe Feinstein rules that a broker is entitled to a commission as long as it can be said that his work played a role in making the final deal happen. If his efforts created interest in the deal, and the second broker capitalized on those efforts to finalize the transaction, the first broker deserves a portion of the commission. The same would apply to a *shadchan*.

If the deal was completely off the table, however, and the second broker had to revive it completely and start over from scratch, the first broker would not be entitled to anything. In this vein, the Erech Shai discusses a story in which someone suggested a *shidduch* for a certain boy, and it did not materialize. The boy then married someone else, only to get divorced and ultimately marry the first girl. The Erech Shai rules that the original *shadchan* would not be entitled to any *shadchanus* because his suggestion was rendered completely obsolete for some time before it was revived by the second *shadchan*. Therefore, the second *shadchan* is considered to have made a completely new *shidduch*.

The same concept would apply to brokers. If the deal was completely scuttled and the second broker had to revive it and start over from scratch, the first broker would not be owed any commission.