

If a Partner Makes an Error

**Rav Yitzchok Grossman**

**Question:** We previously spoke about an instance where one partner deviates from the partnership - for example, if the business sells electronics and he decides to purchase a shipment of shoes - and we said that he is responsible for all losses his deviation causes. What if he claims he really thought his actions were in the best interest of the business and this deal would be beneficial to all the partners? Would that absolve him of responsibility?

**Answer:** This question was discussed extensively by the *chachmei hasefardim*, beginning in the 16th Century. The consensus was that even if the partner says he meant well and he genuinely thought this was in the best interest of the partnership, that is not a valid defense. If he was expected to act differently, he should not have done what he did, even if he honestly thought his actions were in the best interest of the business; therefore, he is still liable for all losses incurred as a result of his deviation. There are some Acharonim who say that this is only true if he actively deviated, meaning he purchased the wrong product, shipped it in the wrong way, or did any active steps that he should not have done according to the terms of the partnership. However, if he passively failed to do something he should have done, he would not be liable. For example, say one partner was holding merchandise for the partnership, and the others instructed him to sell because they believed the price of the merchandise was going to drop, but he genuinely believed they were mistaken and the price was about to go up, so he decided not to sell. Since he felt it was in the best interest of the partnership to hold on to the merchandise, he did not sell immediately - but he turned out to be wrong and the price did, in fact, drop. In such a case, these Acharonim say that since he did not actively deviate, and only failed to do what he should have done, he would not be liable if his deviation was done with the best interest of the partnership in mind.

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לע"נ ר' יעקב בן ר' זאב ז"ל

Dedicated by Mr. and Mrs. Tzvi Meltzer

נפטר כ"ח אדר