

If a Purchasing Agent Takes a Kickback, Does His Employer Have a Claim to That Money?

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Question: A purchasing manager took a kickback from a vendor without his employer's knowledge. The employer found out about it and said that the money from the kickback should belong to him. Does he have a claim for it in beis din?

Answer: The Divrei Chaim speaks about a story where a guardian was appointed by a court to oversee certain properties and find renters for them. Instead of looking for a fair price for the properties, the guardian accepted kickbacks and rented them out below market value. For example, instead of finding a renter for the \$100 the property was worth, he accepted an offer of \$70 and pocketed \$10 in kickbacks from the renter.

The Divrei Chaim says that the guardian is guilty of theft from the landowner; therefore, it is up to the owner whether he wants to nullify the entire deal or accept the rent plus the money the guardian pocketed, which he would be obligated to hand over to him.

Similarly, in such a case that the manager accepted a lower quote due to a kickback, it would seem that the employer has the right to either nullify the entire deal or recover any kickback money that came from the vendor to the purchasing manager and take that as his own, while allowing the deal to stand.

Question: What if the purchasing manager had three identical quotes, and accepted one of the quotes because that vendor offered him a kickback? Would the owner still have a claim?

Answer: If that were the case, there would have been no actual theft from the owner because he did get the fair market value so the Divrei Chaim's argument would not apply. It is possible that the purchasing manager is guilty of unjustly enriching himself by using someone else's property, which is prohibited, but it is much less clear that the owner has any financial claim against him.