

Is a Verbal Non-Compete Binding?

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Question: We have spoken about the efficacy of a halachic non-compete. Would it be less enforceable if it was only agreed to verbally, without any documentation?

Answer: As we have stated, non-competes rely on the concept of "*odisa*", and therefore are not enforceable if all the paperwork is not fully in order. This would mean that a verbal non-compete would not be effective to forbid an employee from competing.

However, this would only be true about "unfair" terms, such as forcing an employee not to work in this industry for a length of time. Regarding "fair" terms, such as forbidding him to take clients or trade secrets away from his old employer, a verbal agreement should be enough. The employer can argue that the worker would be harming him by engaging in such behavior, which would mean he has a basis for his claim even without any documentation of an agreement; therefore, the verbal non-compete would suffice to bolster his claim.

Additionally, the Chasam Sofer writes that an employee who was trained into the job by his employer may be obligated to uphold the terms of a non-compete even without a halachically binding agreement. He explains that the worker owes the employer something, as he is really obligated to pay for his training in some way. He therefore is beholden to pay him back by abiding by the terms of any type of non-compete agreement he reaches with the employer.