

Rav Yosef Greenwald, Rav of Khal Dexter Park and Dayan in the Bais HaVaad

Question: An individual who sells medical supplies made an order from one of his regular suppliers. He placed an order for 1,000 boxes of gloves, but when it arrived he saw that he only was sent 950. Normally, he would just accept the order and reorder when he runs out. This time, however, he became aware that another supplier was going out of business and was selling gloves at a very discounted rate. He decides that he will claim *mekach ta'os* on the shipment by saying that it was less than what he ordered. In this way, he hopes to be able to back out of the entire purchase so that he can order all 1,000 boxes from the other supplier. Is he permitted to do this?

Answer: This question hinges on a dispute between the Rambam and Ra'avid.

The Ra'avid rules that a discrepancy in amount or size is a *mekach ta'os*. If someone buys a plot of land and then discovers that the plot is smaller than what he contracted for, he has a claim of *mekach ta'os* and he can nullify the entire deal as if it never occurred. The Raavid says that the same ruling applies in cases where someone orders a specific amount of a certain item and receives less. This too is *mekach ta'os*, and the purchaser has the right to annul the entire sale. According to this opinion, the individual in question who received 950 boxes of gloves instead of 1,000 has every right to nullify the entire sale as if it never happened and ask for his money back.

The Rambam agrees with the Raavid **only** in the case of the property that is smaller than expected, as a 35-acre plot of land is a completely different entity than a 40-acre plot of land; therefore, a buyer can make the claim that he only had in mind to complete the sale if he received a property that is the size he needs. However, if someone ordered a certain amount of an item, such as in the story in our question, and receives a lesser amount of the same item, the Rambam rules that this is not a *mekach ta'os*. He says that the deal still stands and the seller has to produce the remainder of the merchandise that was ordered.

An exception to this rule would be in a case where the buyer needs the exact amount at the time of delivery. For example, if a caterer ordered 100 rolls from a bakery which he needs for a simcha that day and only receives 80, he has a legitimate claim of *mekach ta'os* as he did not receive the merchandise he required and contracted for. In a case like the one in the question, however, where the buyer doesn't actually need the full order of exactly 1,000 boxes for immediate use, the Rambam would rule that he has no claim of *mekach ta'os*.

The Shulchan Aruch rules like the opinion of the Rambam, so it would not be so simple for the purchaser to back out of his order for gloves in the scenario described in the question.

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