

# Ethics at Work

By Aaron Levine

In the early 1940s, Rabbi Eliyahu HaKohen Dushnitzer, the *mashgiach* of the Lomza Yeshiva in Petach Tikvah, sought to sell an orchard he owned near Tel Aviv. On his way to inspect the property with a prospective buyer, Rabbi Elya learned that the American buyer was not planning to settle in Israel and would therefore not personally manage the orchard. Rabbi Elya began discouraging him from buying the property and cited Rav Yochanan's dictum, "If someone wishes to lose his money, he should hire workers and not supervise them."<sup>1</sup> Rabbi Elya went on to describe all of the orchard's defects. The buyer was still interested. When they arrived

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at the orchard, Rabbi Elya insisted on taking him around to point out the property's defects, invoking the Talmudic dictum, "Hearing is not the same as seeing."<sup>2</sup> The buyer was still interested. But when Rabbi Elya observed the buyer swallowing a few pills because of a heart condition, he simply refused to sell the property. Over the protests of the buyer, Rabbi Elya gently but firmly stated that owning the orchard would entail too much aggravation for an absentee owner who was also in such delicate health.<sup>3</sup>

Rabbi Elya's actions certainly reflected his conscientiousness about fulfilling the mitzvah of "love your neighbor as yourself" (Leviticus 19:18) even in his business transactions. But does *halachah* require this behavior? Does it require, for example, that all information be shared before a deal is concluded? Does it demand that a seller probe the personal circumstances of a potential buyer to ensure that he will not be better off spending his money

on something else?

## Disclosing Faults

In a face-to-face transaction, *halachah* requires that a seller point out all the flaws in a product,<sup>4</sup> other than those that are obvious.<sup>5</sup> To satisfy *halachah*, Rabbi Elya, however, only needed to point out the defects when the actual inspection took place. Rabbi Elya did much more. He made *two* disclosures of the defects: one on the way to the site, and a second during the actual inspection. If Rabbi Elya's conduct represents the ideal, it would not suffice for a used-car salesperson to warn a customer that the vehicle he is interested in has a faulty break system and needs repair. Instead, he would be expected to add that the vehicle "in its present condition is a death trap." Of course, this statement transforms a sales presentation of a car with a defect into that of a "death trap" that can be turned into a car. While *halachah* forbids a seller to exaggerate the benefits

of his product, at the same time, it does not require him to disclose a product's defects in a manner that effectively magnifies them.<sup>6</sup>

### Are You Your "Buyer's Keeper"?

What is apparent from Rabbi Elya's conduct is that he put himself in the prospective buyer's shoes and reached the conclusion that the orchard was not a prudent investment for him. Rabbi Elya's conduct raises the question of whether it is the duty of a seller to become a "buyer's keeper" and probe into his circumstances to ascertain if the purchase is in his best interest. In other words, how does *lifnei iver*, the prohibition against offering someone ill-suited advice,<sup>7</sup> apply to a salesperson? Consider the following scenario:

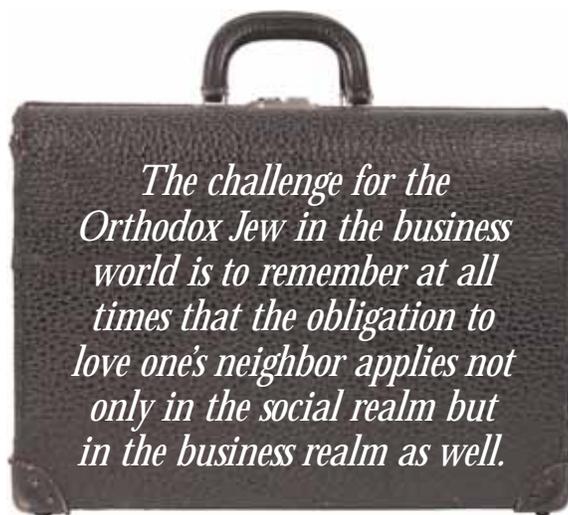
*Ilan and Shalhevet Berkowitz, a newlywed kollel couple, go to Stillwell's furniture store to shop for a dining room set. Stillwell knows the couple personally and is well aware of their meager income. He nonetheless, shows the couple a \$10,000 dining room set, the most expensive one in the store. When Shalhevet meekly asks whether a set in a lower price range is available, Stillwell replies, "Of course, but the exquisite set I just showed you puts the cheaper ones to shame. Furniture is for life; I wouldn't skimp."*

Because Stillwell dissuades the couple from buying a cheaper set and, to boot, shames them into buying the \$10,000 set, he violates *lifnei iver*. Before showing them anything, Stillwell should have told the Berkowitzes what the store had in terms of styles and asked them their price range. As a salesperson this is his duty to all customers. But suppose, without any initiation or prodding from Stillwell, the couple *immediately* request to see the \$10,000 set and without asking to see other sets, order it. While it may be good business for Stillwell to offer to show the couple other sets before the purchase is made, he has no ethical duty to do so. The

couple never solicited Stillwell's opinion. Accordingly, the role of counselor was never thrust upon him, nor is he obligated to assume this role voluntarily. Moreover, it is wrong for Stillwell to assume the role of counselor on his own initiative and say something like: "I think the lower end of the price range fits your pocketbook much better." This gratuitous comment decidedly invades the couple's privacy. For all Stillwell knows, a wealthy grandmother could be paying for the set.<sup>8</sup>

### How Much is Too Much?

Another notable feature of Rabbi



Elya's transaction is that he was driven to share all the information on the orchard. Besides the duty to disclose defects, does *halachah* require the sharing of all information?

Consider that *halachah* requires one to make an investment in information gathering just to avoid inadvertently dashing the reasonable expectations of the other party. The laws of *ona'ah* (price fraud) and *mekach ta'ut* (transaction concluded in error) demonstrate this. The law of *ona'ah* says that if a product is sold in a competitive marketplace, the transaction may be overturned or the price terms adjusted if the price at which the deal was concluded diverged from the competitive norm. There is a market price and everyone is generally bound to it.<sup>9</sup> A seller must be aware of what the

competitive norm is in order to avoid violating price fraud, and hence *gezel* (theft), unwittingly.<sup>10</sup>

The notion that educating oneself about the marketplace is not just an exercise in self-interest but must be done for the benefit of the other expands significantly in consideration of *mekach ta'ut*. This law says that if a transaction turns out to dash the reasonable expectations of one of the parties regarding a material matter, the transaction can be cancelled by the disappointed party.<sup>11</sup>

*An online clothing company receives an order for a sweater in a specific color, which it does not currently carry. Despite this, the company sends the customer a sweater in the closest color it has to the one requested. The company is prepared to offer a refund and pay for the shipping if the customer complains.*

Even though the company is prepared to make amends, because it deliberately did not fulfill the customer's expectations, it violated the prohibition against dashing the reasonable expectations of one of the parties, *mekach ta'ut*. According to Ramban, *mekach ta'ut* is actually price fraud.<sup>12</sup>

Consequently, it does not suffice for the ethical person to say to himself, "If the error is discovered, I'm prepared to reverse the transaction." Even if the transaction is cancelled, because it was conducted with deception, it constitutes a violation of *halachah*.

Beyond the need to provide all the information that one is entitled to, the Torah requires that the information be given in a forthright manner. Here, the various nuances of the prohibition against misleading and creating (or failing to correct) a false impression, *geneivat da'at*, come into play. *Halachah*, however, does not demand that all information be shared.

Reuven places an order to buy one hundred shares of General Motors stock at the market price. At the same time Levi places an order to sell the same number of shares of the same

stock. Because the transaction is effected through the impersonal stock exchange, Reuven will be unknown to Levi and vice versa. Moreover, the transaction will be effected without any prior exchange of information between Reuven and Levi. Perhaps we should regard the transaction as unethical. Why? Reuven and Levi implicitly communicate to each other no more than they harbor opposite expectations regarding the price movement of the stock, but say nothing about the data and the analysis of the data that led to their different conclusions.

Nevertheless, they have each fulfilled their halachic responsibilities in this transaction. Consider that much time and energy as well as many resources are needed to arrive at investment decisions, whether the decision is based on an expert's advice or on one's intuition. Predictions on matters such as domestic economic growth, the direction of interest rates, the prospects for General Motors relative to those of its competitors, both domestic and foreign, all go into the decision to buy or sell the stock. Because obtaining and analyzing the relevant information entails a significant cost, no one is entitled to a free ride. Accordingly, by putting in a buy order, Reuven is saying much more than that he expects the price of the stock to rise; he is also communicating that the data on which he made his decision is in the public<sup>13</sup> domain and Levi is free to get this information and seek an expert's opinion on whether it indicates buy or sell.

Another example:

*Eitan Kramer, the head of a multi-billion dollar real estate development conglomerate, wants to build a Disneyland-like park in Seattle. Realizing that open entry into the real estate market would give away his entrepreneurial intent and enormously bid up the value of the desired parcels of land, Kramer uses several of his less-known subsidiaries to negotiate the real estate deals. With obscurity thereby achieved, Kramer acquires the parcels at relatively low prices.*

## Completely Flooded!

When my wife and I first purchased our apartment in Israel a number of years before making our *aliyah* official and permanent, we decided to carpet one of the bedrooms. We visited a carpet store on Rechov Jaffa that was owned and operated by Persian Jews. The old grandfather was still active in the business, and his sons and grandsons deferred to him with honor. We chose the carpet, and the store installed it efficiently and professionally two days later. I paid for the carpeting with an American check, and the matter was satisfied to everyone's good feelings.

The following summer, upon our return visit to Jerusalem, we decided to carpet a second bedroom. Satisfied with the service we had received the year before from the carpet store on Rechov Jaffa, we trekked down there again. As I entered the store, the grandfather leaped out of his chair and excitedly said to me, "Rabbi Wein, I have been searching for you for a whole year! Where have you been? There is a problem with your check!" Abashed, I asked him what problem there could be since my records indicated that the check had successfully cleared my account. He then reached into his wallet and took out a small wad of bills wrapped in a rubber band; a piece of paper with my name written on it covered the money. "No," he said, "the fault is mine. I recalculated the cost of your carpeting a week after you left, and I realized I overcharged you by seventy shekels. I have prayed to God that you would return to my store so that I could return the money to you. I have kept your money separate in my wallet until today, and the Lord has heard my prayer since you have come to my store."

Needless to say, there are carpet stores and there are carpet stores. I am so impressed till this day with this incident that I even hesitate to walk upon my carpets for I see in them an element of holiness—of ethics and Jewish values. It is in everyday life and commerce that the holiness of Torah and its values should be most apparent and translated into practical behavior. The carpet store taught me that lesson.

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Kramer has no ethical duty to make the real-estate owners partners in his venture. Accordingly, Kramer bears no duty to volunteer what he intends to do with the land or how important

a particular property is for his overall plan. While Kramer bears no duty to volunteer this information, if he is directly asked this question he has two options. One is to respond. If Kramer chooses that option, he must respond in an open and forthright manner. But Kramer has the right to refuse to answer as well. If he chooses to stonewall, the seller will probably conclude that Kramer has a very valuable project in mind, and he will increase his asking price. By cloaking his true identity, Kramer is able to keep his idea, and the profits it would generate, to himself.

Because the landowners have no right to demand to become partners in Kramer's venture, they bear the onus to probe Kramer as best they can to



ascertain his intentions. Accordingly, when they are approached by an obscure corporation, the onus is upon them to grill the buyer with queries such as, “Are you aware of any entrepreneurial plans for my land? Are you a principal or an agent? Are you an independent company or a subsidiary of some other company?” Kramer’s agent may, of course, refuse to answer these questions. Doing so will signal the landowner to increase his asking price. If the landowners do not pursue these inquiries, it is at their own risk. Concealing his true identity does not make Kramer guilty of either deceiving or misleading the landowners. Rather, his strategy only makes it more difficult for them to pick up on information that they are, in any case, not entitled to.

Indeed, were *halachah* to demand that all information be shared, many transactions would be cancelled.

their self-interest. Moreover, there would be no incentive to invest in information gathering in the first place. Instead, free-riding conduct would be encouraged. Consequently, the notion that certain information does not have to be shared preserves economic incentives for society and promotes wealth creation and a higher standard of living. Preserving the integrity of a competitive marketplace enhances the economic well being of our fellow man and should therefore be regarded as a fulfillment of “love your neighbor as yourself.”

Not only does “love your neighbor” apply in the marketplace, it can be fulfilled in this arena in an ideal fashion. According to Rambam, the highest form of charity is helping an individual get back on his feet and restoring his dignity (while keeping one’s charity intent unknown).<sup>14</sup> By offering a job to an individual in need

To illustrate: The owner of an apartment building instructs his manager to raise rents across the board by 2 percent. May the manager raise the rents of all the tenants other than the poor by more than 2 percent? No. By taxing the rich and subsidizing the poor, the manager has arrogated for himself the role of a government. But the manager is not a government; he is only an agent. What he has done is hence a gross abuse of his authority.

### **Business vs. Social Realm**

In the social realm, especially in the family circle, relationships are typically personal and enduring, while in the business world they are oftentimes impersonal and fleeting. In contrast to the social sphere, in the marketplace we often interact with non-Jews.<sup>15</sup> Compounding this dichotomy is that business decisions, especially when made by executives of large multi-

## **The Extreme Business Makeover**

The matchmaking tab on the Sephardic Angel Fund’s web site ([www.sephardicangelfund.org](http://www.sephardicangelfund.org)) is deceiving. You won’t find the latest breakthrough techniques in Ocean Parkway *shidduchim*. Instead, you’ll find a portal into a fascinating group that turns business savvy into life preservers for foundering businesses.

The matchmaking service attempts to pair investors with clients. Think of it as the twenty-first century version of Rambam’s famous teaching that the highest form of *tzedakah* is providing a livelihood for someone so that he will not need any handouts. SAF was started by young Jewish Syrians who cared for their community, and realized that they could contribute more than cash. By intervening before a business fails, they can prevent the adding of a new recipient to the communal dole list, and even turn disappointment into success.

When a manufacturer of plastic flowers looked like he would go under, a team of SAF volunteers stepped in. One observed that he could operate far more cost efficiently in a foreign plant, and found one that would manufacture for him. Another found a buyer for his existing inventory so he would not have to face a complete write-off in dealing with his old inefficiency. Taking note that this fellow might easily make other mistakes, a team studied his operation and put together a formal business plan for him, capitalizing on their know-how.

SAF now serves as a model for other communities to nip business problems—so often the reason that people cut ethical corners—in the bud.

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Wealth creation would be stymied. Each party would rely on the other for information. If cooperation were to replace competition it is likely that individuals would not end up pursuing the opportunities that best promote

or proposing a partnership with him, one can fulfill this highest form of charity. But, there are limits here. What is praiseworthy when done in the capacity of a principal is an abuse if done by an unauthorized agent.

national corporations, affect large numbers of people who are remote and anonymous. This dichotomy often creates a split personality: We perceive the humanity of those with whom we interact socially, but regard those peo-

## The Candy Man

Lazar Paskesz arrived in America with Old World attitudes in a new world reality.

Lazer's family was killed in the Nazi inferno, and Lazer cautiously approached the opportunity to begin anew. This would mean gainful employment for one whose entrepreneurial skills had yet to be tested and whose linguistic prowess was limited to Yiddish and Hungarian.

Undeniably, this put a damper on his career choice, and the professions of engineer, architect, surgeon and scientist were eliminated in the first round. Ultimately, he allowed his business sense to be guided by his sweet tooth.

Alas, the kosher food industry in America was in its infancy, and kosher-certified candy did not exist—not that it mattered much to the kosher consumer of then.

The accepted norm for kosher consumers was to casually peruse the list of ingredients on a candy bar, and if the contents didn't include pig, the confectioneries were summarily consumed. Never mind hydrogenated shortenings to extend shelf life, diglycerides processed from animal fat or gelatin.

History is a bit murky as to when people started worrying about *treif* elements in candy, but Lazer was concerned from the get-go. The man was obviously far less apprehensive about standard business norms as he delivered his products one box at a time (shunning a hand-truck as a *modern* invention), kept no records and did not have a warehouse per se, preferring vacant stores so that he would only have to pay short-term rent.

These were very humble beginnings and difficult years for the founder of the premier kosher candy company in the world, whose line is so large that even the Paskesz Candy outlet in Borough Park, Brooklyn, cannot carry its full range of confectionaries. And yet, the meteoric rise of this company cannot be attributed to Lazer's detail regarding P&L statements and accounts receivable.

I learned Lazer's key to success from a former Brooklyn resident reminiscing about his perennial visits to Paskesz Candy in the Crown Heights section of Brooklyn. Every week his Pirchei leader would send him to the small shop on Kingston Avenue to buy some cookies for their Shabbat afternoon group.

To the wonderment of this kid, Mr. Paskesz, who could afford neither a single employee nor the rudiments of any Mom and Pop operation—and who emptied the shipping containers with his children and was the sole salesman, distributor, retail clerk and bookkeeper—would always throw a couple more cookies onto the scale after he had weighed out Pirchei's order.

When asked why he did this, Lazer responded in all innocence, "A crooked scale is the worst sin of all, it's even worse than dishonesty!"

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ple affected by our business decisions as mere statistics. From an ethics perspective, this dichotomy is very troubling because the superficial and impersonal nature of business relationships only encourages misconduct, especially the type that is not easily discovered. The challenge for the Orthodox Jew in the business world is to remember at all times that the obligation to love one's neighbor applies

not only in the social realm but in the business realm as well.

What all this points to is a desperate need to bridge the gap between the social and business worlds. Effective moral education is key here. Parents and schools must work together to provide young people with a solid moral education, one that stresses truth telling and provides training against selfishness and greed. (One effective

method of instilling the quality of selflessness in students is to require them to engage in weekly *chesed* activities such as visiting the elderly in a nursing home, preparing packages for the needy, et cetera.) It is not enough for parents to take the role of moral educator seriously; they must also spend quality time with, and instill a sense of gratitude within their children. This will hopefully prevent any unethical conduct later in life, as children will feel that submitting to such temptation is a betrayal of their parents.

While the marketplace poses unique challenges for the *yirei Shamayim*, it is precisely this setting that sets the stage for sanctifying God's name on the highest level. Poignantly punctuating this point is the story of Rav Shimon ben Shetach's discovery of a precious jewel hanging around the neck of the donkey that he had just bought. Resisting the urgings of his students to keep the precious stone, Rav Shimon ben Shetach proclaimed, "I purchased a donkey; I didn't purchase a precious stone." He then returned the necklace to the seller, an Ishmaelite, who exclaimed, "Blessed be the Lord, God of Shimon ben Shetach."<sup>16</sup>

Since the Ishmaelite despaired of ever getting his precious stone back, we can well understand the gratitude he felt toward Rav Shimon ben Shetach. But the gratitude should have inspired the Ishmaelite to bless Rav Shimon ben Shetach himself. Instead, he blessed the God of Rav Shimon ben Shetach. Addressing this issue, Rabbi Yerucham Levovitz, *z"l* (Poland, 1875-1936) posits that the Ishmaelite was not only filled with a sense of gratitude, he was nonplused by Rav Shimon ben Shetach's conduct. What the Ishmaelite witnessed was no ordinary act of kindness; it was the type of deed that made the *tzelem Elokim* (image of God) evident in Rav Shimon ben Shetach. The reaction of the Ishmaelite was in every way akin to the making of a blessing over a fruit, where we thank God for creating the "fruit of the tree." What

we are saying is that we see the greatness of the Creator in the fruit that we are about to consume. So too, the Ishmaelite saw the greatness of the Creator in Rav Shimon ben Shetach's remarkable honesty.<sup>17</sup>

In navigating the marketplace, the Orthodox Jew has extraordinary potential to make a *kiddush Hashem*. To do so, however, one must be guided by the integrity of Rav Shimon ben Shetach. **JA**

## Notes

1. *Bava Metzia* 29b.
2. *Mechilta*, Exodus 19:9.
3. Paysach J. Krohn, *The Maggid Speaks* (New York, 1987), 66-71.
4. *Shulchan Aruch, Choshen Mishpat* 228:6.
5. Rabbi Binyamin Rabinovits-Teomim, *Chukat Mishpat* 16:1, *beurim* 2, n. 2.
6. See Aaron Levine, *Case Studies in Jewish Business Ethics* (New Jersey, 2000), 35-45, for the *halachot* regarding a seller's right to put the best spin on his product as well as his duty to point out its defects.
7. *Rambam, Yad, Rotzeach* 12:14.
8. A variation of the case treated in the text is the instance where the item the buyer seeks is deleterious to his health. For the treatment of this case and the issue of paternalism for the seller, see *Case Studies*, op. cit., 114-143.
9. Leviticus 25:14; *Shulchan Aruch*, op. cit., 227:1-6. For various applications of the law of *ona'ah* to the modern marketplace, see Aaron Levine, "Ona'ah and the Operation of the Modern Marketplace," *Jewish Law Annual* 14 (Jerusalem, 2003): 225-258.
10. An *ona'ah* infraction violates both the prohibition against price fraud and the prohibition against *gezel*; see *Bava Metzia* 61a.
11. Cf., *Shulchan Aruch*, op. cit., 232:10.
12. Ramban, Leviticus 25:14.
13. If the trader makes use of insider information, the trade violates American security laws. Besides violating *dina demalchuta dina* (the obligation to follow the laws of the land), insider trading entails halachic prohibitions. For an analysis of insider trading from a halachic perspective, see *Case Studies*, op. cit., 178-190.
14. Rambam, *Yad, Matenot Aniyyim* 10:7.
15. For a treatment of the extent of the Torah's prescriptions for how interpersonal conduct applies to our interactions with non-Jews, see Aaron Levine, *Moral Issues of the Marketplace in Jewish Law* (New York, 2005), xxii-xxxi.
16. *Deuteronomy Rabbah* 3:3.
17. Rabbi Yerucham Levovitz, *Da'at Torah Parashat Bo*, pp. 123-127; *Da'at Torah Parashat Metzora*, pp. 130-133.