

Realtor Fee for an Altered Purchase

Q The defendants were interested in buying two apartments in Israel. They signed an agent's service contract with the plaintiff, a real estate agent, obligating them to pay the plaintiff 2% of the sales price if they were to buy an apartment that she showed them. The plaintiff told the defendants that she regularly gives a discount for buying two apartments, whereby they pay only 1.5% commission for the second apartment. At a certain point, the defendants were interested in principle in buying two apartments that the plaintiff had shown them, but they told her that they would not do so if they would have to pay the full 2% commission. After negotiations, during which the defendants calculated how much the plaintiff stood to gain from the commissions even after a reduction, the plaintiff agreed to lower her agent's fee to 1.4% for each of the apartments, and she faxed them two invoices stating the respective fees for the two imminent purchases. Subsequently, an engineer uncovered serious flaws in the more expensive apartment, and the defendants bought only the cheaper apartment. The plaintiff then sent the defendants a bill based on a 2% rate of commission, claiming she had agreed to the special reduction only because of the prospect of a double purchase. The defendants, however, paid only the 1.4% rate, which appeared in the invoice faxed earlier. Do the defendants have to pay the remaining 0.6%?

1. רמ"א חושן משפט סי' שלב סעי' ד

בעל הבית שהטעה פועלים ואמר להם, "עשו עמי בארבעה כמו ששאר הפועלים נשכרים", ונמצאו שנשכרים ביותר, או שהפועלים הטעו בעל הבית בכי האי גוונא, הוי כאילו לא שכרו זה את זה כלל, ונותן להם כפחות שבפועלים

2. קצות החושן סי' שלא ס"ק ג

ונראה דודאי כששוכר פועל בסתם ואינו מזכיר כלל לומר לפי דמים ששוכרין בעיר, אם כן אין לו אלא כפחות, ואפילו כמיעוט דזיילי, וכמו שכתב הריטב"א, אבל באומר כאחד וכשנים מבני העיר, דנחית לשומא של בני העיר, דעתו אשומא דבני העיר, והוה ליה כאומר "כדשיימי", לכן דעתו אמיצוה, וכמו שכתב הרמב"ן והרשב"א.