

The Beth Din of America takes confidentiality very seriously. Before publishing any case, we modify key details to protect the identities of all parties involved. Names, dates, locations, and other identifying information are changed or omitted, and certain unique facts may be altered. For example, the industry in which the dispute took place is often modified.

כ"ב חשוון תשפ"ו
November 13, 2025

Klein v. Rosenfeld

The Beth Din of America has been chosen by the parties as arbitrators pursuant to an arbitration agreement, dated as of June 24, 2025, between David Klein, with an address at 300 Main Street, White Plains, New York, and Michael Rosenfeld, with an address at 434 1st Avenue, Parsippany, New Jersey. The parties agreed to submit their dispute over 100 Round Street, Staten Island, New York (the "Property"), with each party having certain claims and counterclaims against the other, to the Beth Din of America for a binding decision. The Beth Din gave proper notice of the time and place of the hearing and heard the parties testify at a hearing before the undersigned panel on September 29, 2025. Having given said matters due consideration, the Beth Din decides as follows:

1. Background

David Klein ("Klein") is a licensed real estate broker in New York. In December of 2023, Klein entered into discussions with the owner (the "Seller") of the Property about purchasing it for \$2 million, with the intention of flipping it to a third-party buyer. Although Klein's attorney drafted a sales contract, it was never signed or executed, and no contractual relationship ever existed between Klein and the Seller.

Klein hired Mr. Levy, a broker, to advertise the property and find a buyer. Through word of mouth, Michael Rosenfeld ("Rosenfeld") heard about the property and approached Levy. On December 19th, Rosenfeld signed a non-binding letter of intent stating that he would purchase the Property from Klein for \$2,400,000. The next day, Rosenfeld surveyed the Property with Jonathan Green (Klein's business partner), Mr. Levy, and the Seller.

Shortly thereafter, Klein sent Rosenfeld a contract-form draft that would assign the underlying contract between Klein and the Seller to Rosenfeld. Klein's draft represented that he had already executed the underlying purchase agreement. But when Rosenfeld pressed Klein for a copy of the underlying agreement, Klein could not produce it, as it had never been executed. At that point, Rosenfeld realized

that Klein had not yet purchased the Property. Rosenfeld circumvented Klein and purchased the Property directly from the Seller for \$2 million.

2. Claims

Klein claims that Rosenfeld tortiously interfered with his prospective contract and seeks damages in the amount of \$400,000. Klein argues that but for Rosenfeld's interference, he would have purchased the Property for \$2 million and sold it at a profit for \$2,400,000.

Rosenfeld responds that his discussions with Klein were premised on Klein's representations that he had already purchased the Property. When it became evident that Klein was attempting to sell a property that he did not own, Rosenfeld contends that he had no duty to forbear from contacting the Seller directly.

3. Analysis

Klein argues that he's entitled to damages under secular law's tortious interference with prospective economic advantage as well as Jewish law's principle of '*ani ha-mehapekh be-chararah*'.¹ In the sections below, we consider, in turn, the grounds for liability under both secular and Jewish law.

3.1 Tortious Interference with Prospective Economic Advantage

To prevail on a claim of tortious interference with prospective economic advantage, the plaintiff must demonstrate that the defendant's conduct was wrongful by some measure other than the fact of interference itself.² The defendant's conduct must fall outside of the privilege of fair competition.³ After reviewing the parties' testimony and submissions, we are not persuaded that Rosenfeld's conduct falls outside of the bounds of fair competition. Both Rosenfeld and Klein were interested in pursuing the Property from the Seller, and each of them had equal privilege to do so.

Moreover, we are not convinced that it was Rosenfeld's "*interference*" that caused Klein to lose the deal with the Seller rather than Rosenfeld's walking away from Klein's offer. Klein's "flip" strategy was that he would enter into an agreement to purchase the Property from the Seller only after he had a binding contractual commitment from Rosenfeld. In other words, Klein's interest in pursuing the Property was contingent on his securing a buyer to whom he could flip it. Rosenfeld's walking away from Klein's offer extinguished Klein's own interest in purchasing the Property from the Seller (at least until he could find a different buyer).

3.2 Ani Ha-Mehapech

Under the principle of '*ani ha-mehapekh be-chararah*', Jewish law prohibits a third party from interfering with an acquisition that is about to be executed.⁴ Yet, *poskim* limit the application and liability of '*ani ha-mehapekh*' in three important ways.

¹ The arbitration agreement calls for the case to be decided according to Jewish law. In the following section we assume, *arguendo*, that Jewish law could incorporate secular law's principle of tortious interference under an expansive, if questionable, theory of *minhag hasochrim* or *dina demalkhusa dina* and consider whether, having granted that assumption, Klein could prevail on the tortious interference claim.

² *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Ca.4th 376,393.

³ *PMC, Inc. v. Saban Entertainment, Inc.* (1996) 45 Cal. App. 4th 579, 603.

⁴ *Kiddushin* 59a.

First, *poskim* mostly agree that the duty not to interfere under ‘*ani ha-mehapekh*’ is primarily a moral one. Breach of that duty does not generally give rise to an enforceable obligation of compensation.⁵

Second, Rama rules that a third-party is prohibited from interfering only after the point that the would-be buyer and seller have reached an agreement on all aspects of sale. The transaction must be “ready to go,” lacking only the final execution.⁶ Klein was not ready to close with the Seller until he had a binding agreement from Rosenfeld. Rosenfeld’s letter of intent was non-binding, and he was under no obligation to purchase the Property. Insofar as Klein didn’t have Rosenfeld locked in, his deal with the Seller was fundamentally incomplete.

Third, many *poskim* maintain that interference under ‘*ani ha-mehapekh*’ is wrongful only if it is gratuitous, such as when the interferer could purchase a similar property elsewhere at a comparable price. Interference is permitted, however, when the property in question provides a rare or special business opportunity.⁷ Given New York City’s competitive and high-demand real estate market, we are not prepared to conclude, without further evidence, that Rosenfeld’s direct purchase from the Seller was gratuitous.

Finally, for reasons we outlined earlier, Rosenfeld’s interference is distinguishable from the standard case of *ani ha-mehapekh*. In the standard case, the defendant’s interference is the cause of the plaintiff’s loss. But in our case, where Klein’s interest in purchasing the Property from the Seller was contingent on Rosenfeld’s purchasing it from him, it was Rosenfeld’s walking away from Klein’s offer rightfully that caused Klein’s loss rather than any subsequent alleged interference.⁸

Based on the foregoing, we deny any claim for damages arising from tortious interference and ‘*ani ha-mehapekh*’. In the next section, we consider whether Klein is entitled to compensation under Jewish law’s principle of restitution for conferring an incontrovertible benefit.

4. Brokerage Commission

Jewish law generally requires a beneficiary of a service to pay for a received benefit even if the parties never entered into a formal agreement. The beneficiary is presumptively liable to compensate the benefit-conferrer unless he can demonstrate either that he received no benefit or that there was an implicit understanding that the benefit-conferrer would not be compensated.⁹ Some of the paradigmatic cases involve brokerage commissions.¹⁰

⁵ Be’er Heitev Choshen Mishpat 237:6.

⁶ Shulchan Arukh Choshen Mishpat 237:1, Mordekhai Bava Batra 551. (“*lo mikriy mehapekh be-chararah ela heikha de-gamru ha-pissuk kevar... ve-nitratzu zeh la-zeh, ve-lo hayu chaseirim rak ha-kinyan.*”)

⁷ Tosafot Kiddushin 59a s.v. ‘*ani*’; Shulchan Arukh Choshen Mishpat 237:1.

⁸ Similar considerations lead us to the conclusion that the Jewish law principle of *Ma’arufya* and *Dagim Deyahavi Sayara* also do not apply to this case (see Bava Batra 21b, Mordekhai Bava Batra 515, Shulchan Arukh 156:5, Pitchei Choshen Geneivah 9:9). These principles generally prohibit interference with economic gains about to be vested in the plaintiff if the expectancy of the gain is reasonably certain. In the Talmud’s discussion (Bava Batra 21b), a fisherman may not intercept a fish that would otherwise be caught in a fellow fisherman’s trap. Mordekhai (Bava Batra 515) and Rashba (Shut 6:259) extend this principle to prohibit interfering with a competitor’s sustained client relationships. Neither of these principles is applicable to our case. Firstly, *poskim* rule that such competition is prohibited only when the economic gains were reasonably certain (*pesika she-yavo, ke-ilu ba le-yado*). See Shut Chavot Ya’ir 42 and Pitchei Teshuvah Choshen Mishpat 156:7. In our case, there was no obligation upon the Seller to close with Klein, and no special relationship obtained between them. Second, as we note above, liability under any of these principles presupposes that the defendant’s interference caused the loss. In our case, it was Rosenfeld’s rightful walking away that caused Klein’s loss rather than any subsequent interference.

⁹ Shulchan Arukh Choshen Mishpat 264:4, Pitchei Choshen Sekhirut 8:31, and Pitchei Choshem Sekhirut 14:6.

¹⁰ See Pitchei Choshen Sekhirut 14:1.

Based on the testimony and submissions, we believe that Klein conferred a valuable benefit upon Rosenfeld. Klein introduced the Property to Rosenfeld through his brokerage agent Levy, and it was Klein's business partner Jonathan Green who arranged for the walk-through of the Property and accompanied Rosenfeld throughout. Klein invested effort and money in introducing Rosenfeld to the Property, and that effort directly led to Rosenfeld's purchasing it from the Seller. In fact, Rosenfeld was able to close on the Property immediately afterwards, without a broker, as the relevant brokerage services had been provided by the Klein-Green-Levy team.

We are mindful of the argument that Klein, though himself a licensed broker, was acting as a flipper and not as a broker. Arguably, a flipper forgoes his brokerage commission in pursuit of the more lucrative, but riskier, spread on the flip. On this view, one can choose to act either as a flipper or as a broker, but not both.

This argument would have bite if Klein's compensation claim turned on formal taxonomies. From the perspective of Jewish law, however, it matters not whether Klein formally acted as broker, but whether he provided services and conferred a benefit that would be valued by the measure of a brokerage commission.¹¹ In our opinion, Klein conferred that benefit, and he is entitled to be compensated accordingly.

5. Evaluating the Brokerage Commission

Compensation for services, when not explicitly agreed upon by the parties, is generally determined by *minhag ha-medinah*.¹² In the absence of a clear minhag, services can be evaluated by the past practice of the parties or the last offer on the table.¹³

Klein argues that a brokerage commission of 6% paid by the buyer is customary for comparable properties. Rosenfeld responds that the commission for a comparable property customarily would be lower than 6%. Rosenfeld also disputes Klein's contention that the brokerage fee would be paid by the buyer.

In our opinion, the most reasonable valuation is that which was actually contemplated by the parties in their dealings. An advertisement posted by Klein's agent, Levy, states that the buyer would pay a 2% brokerage fee. Based on testimony at the hearing, it is most likely that Rosenfeld knew of that 2% fee. Not only does that number fall squarely within the range of *minhag ha-medinah*, it also satisfies an alternative Jewish law method of evaluation that looks to the last offer on the table.¹⁴

6. Conclusion

Based on the foregoing, Rosenfeld is to remit \$40,000 to Klein¹⁵ within 30 days of this *pesak*.

¹¹ See for example Arukh Hashulchan 183:5 who discusses a case where Reuven sends Shimon as his agent to purchase a property. Shimon breached his agency and purchased the property for himself. Arukh Hashulchan ruled that since Reuven had "introduced" Shimon to the property, he must pay Reuven a brokerage commission.

¹² Pitchei Choshen Sekhirut 14:1, 8:4, 8:31.

¹³ See Shulchan Arukh Choshen Mishpat 333:8, Shut Rivash 475, Tosefta Kiddushin 2:9, Pitchei Choshen Sekhirut 8:5 n. 13, and Shulchan Arukh Choshen Mishpat 221:1.

¹⁴ See above, n. 13.

¹⁵ While it is clear to us that the brokerage commission is to be shared between Klein-Green-Levy—as they jointly provided the service—we take no position on how the brokerage commission should be split between them. If he deems it prudent to do so, Rosenfeld may condition his payment to Klein pursuant to this *psak* on Klein's furnishing a simple indemnity to Rosenfeld protecting him, to the extent of his payment to Klein, from later overlapping

All other claims are denied. Any request for modification of this award by the arbitration panel shall be in accordance with the rules and procedures of the Beth Din of America, the provisions set forth herein, and the arbitration agreement of the parties. The obligations set forth herein shall be enforceable in any court of competent jurisdiction, in accordance with the rules and procedures of the Beth Din of America and the arbitration agreement. Any provision of this agreement may be modified with the written consent of both parties. Except as otherwise indicated, all of the provisions of this decision shall take effect immediately.

IN WITNESS WHEREOF, we hereby sign and affirm this order as of the date written above.

Rabbi AA

BB, Esq.

Rabbi CC

claims by Green and Levy against Rosenfeld. We retain jurisdiction over this case to sort out any disputes regarding the specific wording of an indemnification.