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י' טבת תשפ"ו

December 30, 2025

*Psak Din (Decision): Spiro v. Fink*

The Beth Din of America (the “Beth Din”), having been chosen by the parties as arbitrators pursuant to an arbitration agreement (the “Agreement”, attached hereto as Exhibit A) dated as of September 11, 2025, between Jonathan Spiro, with an address at 742 East Harbor Road #310, Bayside, New York 11360 (“Plaintiff”), and Eric Fink, with an address at 1890 Riverside Avenue #12B, Bayside, New York 11360 (“Defendant”), to submit to the Beth Din of America for a binding decision with respect to certain financial claims as described below, and the parties having acknowledged that the Beth Din of America is authorized to resolve this dispute, having heard all parties testify as to the facts of said disputes and differences, having read their material submissions, and having given said matters due consideration, hereby decides as follows:

Facts and Claims

In January 2024, Plaintiff tendered a check in the amount of \$500,000 to Defendant. According to Defendant, the funds were deposited in a Chase brokerage account that held approximately \$1,500,000 of his own money, bringing the balance in that account to approximately \$2,000,000. Defendant presented account statements indicating that he incurred significant trading losses over the next seven months.

The parties disagree on the basic structure of their deal. According to Plaintiff, the money was intended as a loan, payable on the earlier of January 1, 2025, or within 30 days of demand, with interest at the rate of 4% per annum. Defendant maintains he and Plaintiff entered into an equity deal, and Plaintiff is therefore only entitled to a percentage of the current balance in the account corresponding to his share of the initially invested funds.

The parties signed closing documents at the time of the funding, including a promissory note which called for repayment on the earlier of January 1, 2025, or within 30 days of demand, and interest at the rate of

4% per annum, and a *shtar iska*. A *shtar iska* is a document that characterizes an investment as a purchase of equity, but which imposes a high burden of proof to demonstrate profits and losses, and provides for an alternative return at a fixed rate in lieu of meeting the burden of proof. This structure has the benefit of preserving the equity nature of the deal, so as not to violate the halakhic prohibition against charging interest, while providing debt-like features that secure the investor's ability to recover his principal along with a fixed annual return. In this case, the document provided that to avoid the obligation to repay the principal and any return on the investment, Defendant would need to demonstrate losses through the testimony of two kosher witnesses.

According to Plaintiff, the parties always understood that his advance of funds would mimic a loan, albeit through the structure described above that would permit him to collect interest-like payments. Defendant claims that the intent of the parties was that Plaintiff was making an equity investment, and stood to profit or lose money depending on the performance of the investment, which was to be managed by Defendant. Defendant maintains that both parties understood that, in contrast to the loan terms set forth in the promissory note, the equity arrangement described in the *shtar iska* reflected the essential nature of their deal, and that the promissory note was superseded by the *shtar iska* and should therefore be disregarded. Notably, the *shtar iska* provides that in the event of any conflict between that document and the other loan documents, the *shtar iska*'s provisions should control.

Notwithstanding the documents that the parties signed and the manner in which they are customarily interpreted, Defendant asserts that under the plain meaning of the *heter iska* document the investment was an equity investment, and Defendant is within his rights to avoid repayment by proving the losses that his portfolio sustained. To back up this assertion, Defendant also argues that it would not have made sense for Defendant to borrow money from a friend for the types of investments he was making, especially when he could have borrowed on margin from his broker. He also points out that he and Plaintiff maintained a regular email correspondence in which Defendant updated Plaintiff regarding the performance of the invested funds. Plaintiff's participation in this conversation, argues Defendant, indicates Plaintiff had a direct interest in the success of the investment.

Plaintiff argues that the *shtar iska* should be viewed in its normal vein, and that the high evidentiary threshold for establishing losses provided for in the document is essential to its functioning in the manner intended by the parties. Accordingly, argues Plaintiff, the *shtar iska* must be interpreted literally and strictly. Plaintiff notes that Defendant himself was the one who first circulated the form of promissory note that they ultimately signed, a clear indication that he intended their deal to function as a loan. In addition, contrary to Defendant's claim that he genuinely thought the equity provisions in the *shtar iska* memorialized the essence of their deal, Plaintiff points to an email he sent to Defendant on December 26, 2023, shortly before their transaction, which indicated that *heter iskass* are enforced as notes, not as equity partnerships:

"Eric,

See heter iska document attached.

Here is a helpful link related to this:

<https://www.schlamstone.com/heter-iska-enforced-as-a-note-not-a-partnership-agreement/>

Best,  
Jonathan”

[emphasis added]. As for Defendant’s other arguments, Plaintiff suggests that Defendant may have wished to borrow money rather than trade on margin in order to avoid margin calls in a volatile trading environment, and that any interest he did express in the performance of the portfolio simply reflected his concern that the Defendant have sufficient funds to pay him back.

### Discussion and Decision

The *shtar iska* obligates Defendant to repay the principal, plus 4% per annum, unless he is able to demonstrate losses on the basis of testimony provided by two kosher witnesses. The purpose of the “two kosher witnesses” provision is to create an exceedingly difficult burden of proof to establish losses, which allows the equity investment to (artificially) mimic the low-risk feature of a loan by securing the investor’s ability to recover the principal.<sup>1</sup> At the hearing, Defendant testified that there were no kosher witnesses present at all times that Defendant managed the portfolio. Defendant acknowledged that he could not provide kosher witnesses who could testify that Plaintiff’s money was deposited in the Chase account or who could testify about the specific losses on the accounts. Under the clear terms of the *shtar iska*, Defendant is obligated to repay the principal, plus 4% of principal per annum.

Defendant claims that it should be sufficient for him to establish losses by providing statements from the Chase account. But this ignores the clear threshold of evidence required by the *shtar iska*. Admittedly, a *beit din* attempting to understand the facts of a case in order to adjudicate an ordinary monetary dispute will not typically adhere to such strict standards in requiring formal testimony by valid kosher witnesses possessing direct, first-hand knowledge of the facts.<sup>2</sup> If we thought that a strict application of the provisions of the *shtar iska* did not reflect the intent of the parties, we might have relaxed the evidentiary requirements of the document under principles of *peshara krova le-din*<sup>3</sup> or other operative halachic

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<sup>1</sup> See *Brit Yehudah*, Chapter 40, sections 3-4. Note that some early versions of the *heter iska* raise the threshold of evidence even higher, requiring that all losses be established by the direct testimony of the Rabbi and Cantor of the community. Barring their testimony of losses, the investor is entitled to recover his principal. See *Terumat Ha-Deshen* no. 302.

<sup>2</sup> See *Rama Choshen Mishpat* 35:14, *Rambam Sanhedrin* Chapter 24, and *Shulchan Arukh Choshen Mishpat* 15:5. This lenient approach in monetary law stands in contrast to the standards relevant to witnesses whose presence is necessary to effect changes in personal status, such as in the context of marriage and divorce.

<sup>3</sup> See R. Itamar Rosensweig, “Pesharah vs. Din,” *Jewishprudence* (April 21, 2020), <https://bethdin.org/pesharah-vs-din/>

principles<sup>4</sup> and come to a different conclusion. But the testimony of the parties and evidence presented leads us to the clear factual conclusion that the parties intended to structure their transaction precisely as it was memorialized in the documents they signed: as an *iska* arrangement that would mimic the provisions of the promissory note, as facilitated by the high burdens of proof provided for in the *shtar iska*. Defendant himself proposed the standard promissory note that hints at the essential nature of their deal. Plaintiff's December 26, 2023 email further demonstrates that there was no misrepresentation of the documents being presented, and that the parties knew, or should have known, what they were signing.

Based on the foregoing, Defendant is ordered to pay Plaintiff the amount of \$539,945.21 within thirty (30) days of this *psak*. This amount should continue to increase by 4% per annum if not paid in a timely fashion.

All other claims are hereby 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.

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Rabbi AA, Esq.

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Rabbi BB

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Rabbi CC, Esq.

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<sup>4</sup> See note 2, *infra*.