

Hackers Intercept a Payment, Who Suffers the Loss?

Reuven sold \$50,000 worth of merchandise to Shimon. After the delivery of the merchandise, Reuven asked Shimon to pay for the merchandise.

“No problem! Send me your bank info and I will Zelle the money to you.”

Reuven immediately emailed his bank info to Shimon.

The next day an annoyed Reuven messaged Shimon, “What happened? Why didn’t you send me the money?”

“What are you talking about,” responded Shimon, “I sent the money yesterday as soon as I received your email with the bank info. I will send you a copy of the receipt I received when I sent the money.”

After Reuven received the copy of the receipt he messaged Shimon, “That’s not my account number and I don’t even use that bank!”

“I’ll send you back the message with the bank info that you sent me, and you will see, it matches exactly,” answered a surprised Shimon.

After reviewing everything it became apparent that hackers intercepted the email that Reuven sent to Shimon with his banking info and replaced it with their own.

Reuven’s Claim: You owed me \$50,000 for merchandise that you received. As of now I was not paid for that merchandise. The hackers stole your money and I’m so sorry for your loss, but bill for the merchandise that I sent you remains unpaid.

Shimon’s Claim: I received an email from you with banking info and followed your instructions. I am not expected to suspect that hackers intercepted the email and replaced your banking info with their own. Since I paid the bill, as you instructed, I cannot be held accountable for the stolen money.

There are two, apparently contradictory rulings in Shulchan Aruch that are relevant to your case. The first *halachah* states: A borrower is responsible to assure that the money he owes reaches the lender’s hands, or at least his agent’s hands. Even if the lender said, “Throw me the money,” and the borrower threw the money to the lender, if something happened to the money (e.g., a strong wind blows and the money cannot be retrieved) and it does not reach the lender’s possession, the borrower remains obligated to repay the debt. The borrower is exempt only if the lender says, “Throw me the money and you will be absolved of any further responsibility,” (C.M. 120:1).

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On the other hand, Shulchan Aruch rules (C.M. 121:1): If a creditor instructs his debtor to send him the money or object that he is owed with a child or a gentile, and the debtor follows those instructions, he has satisfied his obligation. Even if something happens to the money and it does not reach the creditor, the debtor is absolved of any further liability. In this *seif*, Shulchan Aruch does not require the creditor to explicitly exempt the debtor from liability if something happens to the money. What is the difference between these two rulings?

Sema (120:1) answers that when the lender said, "Throw me the money," it is clear that his intent was, if, for your convenience, you want to simply throw me the money, you can, but be aware, that if something happens to the money before it reaches me, you will remain liable. In contrast, when the creditor instructs the debtor to send the money with a child or a gentile, his intent is to exempt him once he hands the money to the child or gentile. The reason is that it is unreasonable to think that he would say, send it with a child, but if something happens you remain responsible. Such an expectation would require the debtor to accompany the child, and that does not make the process of repaying any easier for the debtor.

The Levush (121:4) discusses different variations of this case.

- A. A borrower claims that he received a handwritten letter from the lender to send the money with Levi and he did, but a mishap occurred and the money is gone. The lender claims that he never sent such a note. If the note is not available to examine and the borrower is certain that the note was written by the lender, the borrower takes an oath that he received a note with instructions to send the money with Levi and he is then exempt.
- B. If both parties agree that the lender never sent such a note, but the borrower explains that he trusted the agent who claimed to be representing the lender, the borrower remains liable since he agrees that he did not receive instructions from the lender to send the money with the agent. The theft was from the borrower, and he remains liable to repay his loan. This is true even though the note he received had identifying marks leading him to believe that it was authentic. The Shach (C.M. 121:22) adds that if it becomes known that the "agent" forged the note, the lender does not even have to take an oath that he was not repaid, since it is known that the note was a forgery and thus the borrower's obligation remains in force.

The Aruch HaShulchan (C.M. 121:7) writes that when the note has identifying marks indicating that it is authentic and the lender agrees that those marks make it look

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authentic but claims that he, in fact, did not send the note, but others forged those identifying marks, the borrower remains liable since he should not have relied upon the identifying marks without a signature. Therefore since the borrower admits that it is not the lender's signature, he falls into the category of one who admits that he owed money but is uncertain whether he repaid the debt (יודע אני שנתחייבתי ואיני יודע אם פרעתיך), and must repay the lender.

Rav Yitzchok Zilberstein (ווי העמודים וחשוקיהם חלק נג עמי פר-פז) ruled that in our case, Shimon is exempt from having to repay Reuven. The reason is that Reuven instructed him, "Send the money using the bank info that I will send you." Shimon followed those instructions exactly. Although everyone acknowledges that hackers intercepted Reuven's email and inserted their own bank information, nevertheless, since Shimon followed the instructions that he was given, he satisfied his responsibility to send the money to Reuven. If Reuven was not concerned that hackers could intercept his email and resend it with their banking information, Shimon also did not have to be concerned with that possibility. Therefore, Shimon satisfied his obligation when he carried out the instructions he received in Reuven's email.