



**TORAH ACADEMY**  
of Bergen County

# קול תורה

**Parashat VaYishlach**

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## THE NECESSITY OF A NAME

by *Rabbi Joel Grossman*

In Parashat VaYishlach, after Ya'akov's encounter with an angel, he is told that his name will be changed from Ya'akov to Yisrael, since Ya'akov had successfully fought with an angel of Hashem as well as with men (BeReishit 32:29). In his *Darash Moshe*, Rav Moshe Feinstein explains that this was the first of two times in which Ya'akov was informed about the changing of his name, the second time occurring three Perakim later (35:10) when Hashem tells Ya'akov that he will now be called Yisrael. Why is it that the angel gives Ya'akov a clear reason as to why his name is being changed, but Hashem does not give any reason at all?

Rav Moshe explains that there are two different types of challenges that a person has. The first type of challenge is an inner struggle between oneself and his Yeitzer HaRa, his evil inclination. Hashem instills within us this Yeitzer HaRa so that we will constantly have an inner desire to violate the Torah. By giving us this constant struggle, Hashem is granting us free will and the ability to overcome these inner struggles in order to ultimately receive a portion in Olam HaBa, the next world. The second type of struggle that we constantly face is the struggle between the Jewish people as a whole and those who want to stop us from following the Torah. In every generation, there are people who want to stop the Jews from following the Torah, and it is our job to overcome these people and follow in the ways of the Torah. When the angel changes Ya'akov's name to Yisrael, he explains that Ya'akov has defeated both the angel of Hashem as well as men. Rav Moshe explains that the defeat of the angel of Hashem represents Ya'akov's constant defeat of his God-given Yeitzer HaRa, and the defeat of men represents Ya'akov's defeat of those who attempt to remove him from the ways of the Torah. Therefore, the angel has to give a reason for changing Ya'akov's name. However, when Hashem changes Ya'akov's name to Yisrael, He is not concerned about what Ya'akov had accomplished in the past, but rather what would happen in the future. He is elaborating on what the angel had said by promising to Ya'akov that in the future, there will always be people who defeat their Yeitzer HaRa and their physical enemies. Therefore, He does not have to give another reason for why He was changing Ya'akov's name.

By changing Ya'akov's name to Yisrael, Hashem is promising Ya'akov that in every generation, any Jew will be able to overcome both his inner struggles as well as his external struggles. This is supported by the Gemara (Ta'anit 5b) which states that Ya'akov never died, because he lives in his children and in all future generations which continue to follow in his ways. If any Jew can overcome his inner and outer struggles, then he is effectively continuing the life of Ya'akov Avinu.

The Gemara (Berachot 28b) relates that when Rabban Yochanan

Ben Zakkai was on his death bed, his students came to visit him for one last time. Upon seeing his students, Rabban Yochanan Ben Zakkai began to cry. His students did not understand why he was afraid to die, for he would surely go to Olam HaBa. He explained to his students why he was crying, and then he gave them a Berachah that they should fear Hashem as much as they fear people. He explained that there are times when people sin because no person is watching them. However, we must all constantly overcome our Yeitzer HaRa, whether or not there are other people watching us.

In addition to constantly being aware that Hashem is with us, we must also associate with good people who will keep us far away from sin. As Rashi (BeMidbar 16:1 s.v. VeDatan VaAviram) explains, "Woe to the wicked and woe to the neighbor," meaning that if somebody associates with bad people, then the bad people will influence him to follow in their wicked ways. We should associate ourselves with good people who influence us to do Hashem's will. By doing so, we illustrate Ya'akov's eternal legacy, for he lives on through us. If we do so, then we can surely say that Ya'akov was deserving of the name Yisrael.

## LIFE LESSONS FROM YA'AKOV

by *Eitan Leff ('18)*

This week's Parashah contains the famous preparations of Ya'akov before he meets with his brother Eisav. As Ya'akov and his family prepare to meet Eisav, they cross a stream; however, Ya'akov remains alone on the other side of the stream by himself, where it is written, "*VaYei'aveik Ish Imo Ad Alot HaShachar*," "And a man wrestled with him until the break of dawn" (BeReishit 32:25). While Chazal interpret this Ish to be an angel, there is a dispute amongst later opinions regarding the identity of this angel, the majority believing that this is an angel of Eisav, with the minority believing that it is actually an angel of Ya'akov.

The Ramban (32:26 s.v. VaYar Ki Lo Yachol Lo) asserts that the angel was an angel of Eisav. He explains this event as symbolizing the struggle between Ya'akov, the Jews, and Eisav, identified as Edom, throughout the generations. The angel wrestling with Ya'akov and injuring him represents how Eisav will control Ya'akov until near extinction. However, as happens in the story, Ya'akov survives and ultimately prevails; similarly, the Jews will do the same. In fact, the Midrash (Pesikta Zutra, BeReishit 32:25) states that the fight between Ya'akov and the angel is a representation of the wars the Jews will have against other nations. "Until the break of dawn" should be understood as, "until the moment of our redemption," meaning that although we will pay a huge price in our fights, as represented by Ya'akov's injury, ultimately, we will be redeemed.

Before attempting to understand the minority opinion in this debate, we must consider one of the most puzzling questions which arises from this story: why did Ya'akov remain alone on the other side of the river from his family? Rashi (32:25 s.v. VaYivater Ya'akov) famously quotes a Gemara (Chullin 91a) which states that

Ya'akov returned to retrieve the small jars he had left at the campsite. The Rashbam (ad loc. s.v. VaYei'aveik Imo), though, states that Ya'akov was actually trying to flee from Eisav. Ya'akov knew that Eisav intended to kill only him, and not his family, because their grudge was merely between the two of them. The Rashbam, contrary to the Ramban, says that the angel was an angel of Ya'akov. The angel fights with Ya'akov to reinforce the promise from Hashem that Eisav will not harm him.

Rav Zev Leff, the Rosh Yeshivah of Yeshivah Gedolah Matisyahu, expounds this Rashbam to apply to everyday problems. He explains that when we are faced with a problem, we should never run away from the problem, but face it head-on, trusting that everything will work out as Hashem intends. Rav Yitzchak Berkowitz furthers this notion and believes that we should enjoy the challenges that we are faced with.

We are unfortunately reminded on a day-to-day basis that we have many enemies that would like to harm us; however, we cannot simply avoid them. Just as we must not ignore the recent terrible attacks on Jews, we must not make our lives miserable because of them. We must enjoy life, despite the fact that there are challenging moments, and we must fight through our struggles. Just as Ya'akov was ultimately successful in his battle, we, too, will be successful in our battles and eventually live in peace and harmony.

### THE MAN IN THE MIRROR

by Zack Greenberg ('16)

In the opening Pesukim of Parashat VaYishlach, Eisav gathers four hundred men to destroy Ya'akov and his family. Ya'akov prepares for the battle in three different ways: he divides his people into two camps, he prays to Hashem, and he gives Korbanot. It would be expected that the next event would be a dramatic battle between Ya'akov and Eisav, but instead we find that a man appears out of nowhere and begins to wrestle with Ya'akov, as it says, "*VaYivteir Ya'akov Levado VaYei'aveik Ish Imo Ad Alot HaShachar*," "Ya'akov was left alone and a man wrestled with him until the break of dawn" (BeReishit 32:25). The next Pasuk describes the fight: "*VaYar Ki Lo Yachol Lo VaYiga BeChaf Yereicho VaTeika Kaf Yerech Ya'akov BeHei'avko Imo*," "When he perceived that he could not overcome him, he struck the socket of his hip; so Jacob's hip-socket was dislocated as he wrestled with him" (32:26).

There are many glaring questions which should strike us upon reading these Pesukim. Firstly, who is this mysterious Ish and why does he want to fight Ya'akov? Secondly, from a grammatical perspective, the narrative includes only pronouns. Furthermore, in context, doesn't the scene seem out of place? Ya'akov and his family are about to meet their greatest enemy, and the Torah seems to be taking a break in this climactic event by relaying this seemingly insignificant story.

Rav Ari Kahn offers a fantastic insight which clarifies this ambiguous story and its purpose. Ya'akov had everything he could have ever wanted—he had a loving family, beautiful wives, many servants, and an abundance of wealth. While contemplating this, though, he realized that he was becoming increasingly similar to Eisav. He started life by learning Torah

the entire day (see Rashi [25:27 s.v. Yosheiv Ohalim]), but then he went to Lavan and worked his fields for twenty years. Ya'akov had become a man of the field just like Eisav. With this increase in material possessions, Ya'kov felt like he was becoming Eisav.

Rav Kahn explains that the fight was Ya'akov's internal struggle over who he wanted to become. The two men fighting are Ya'akov's physical self and his spiritual self. The "Ish" is the Ya'akov who is rich and powerful just like Eisav. Ya'akov, however, is the real Ya'akov, the one who wants to study Torah and follow in the ways of Hashem. Throughout the night Ya'akov struggles with what kind of person he wants to be. Finally, at dawn, Ya'akov strikes himself in the thigh in order to separate his physical self from his spiritual self. By doing this, he sets a boundary between the spiritual world and the physical world, and, as a result, we no longer eat the Gid HaNasheh. This also explains why there are only pronouns in the story—Ya'akov is, in reality, fighting himself!

Ya'akov realizes that while he may have looked like Eisav, been a man of the field like Eisav, and possess the wealth Eisav was destined to have, he—at his very core—was not Eisav. It is because of this that Ya'akov changes his name to Yisrael. Ya'akov needs to reestablish himself as being devoted to the service of Hashem and uses Yisrael to represent a man who is wealthy and powerful, but, more importantly, a man who is connected to Hashem. Ya'akov realizes that although he may no longer be like his old self, he is not like Eisav, but he is a new and improved man. Ya'akov recognizes that he is Yisrael and is no longer afraid that he had become Eisav. It is only with this epiphany that Ya'akov feels that he is ready to face Eisav and his army. In light of this, we must all take time to think about who we are and who we want to be. Only when we are satisfied with our own identities can we improve ourselves, face our challenges, and become greater people like Ya'akov Avinu.

### UNITED SAVINGS, LLC v. DUNKIRK CENTER FOR HEALTH, INC. AND ROYAL REHABILITATION: A DECISION OF THE BETH DIN OF AMERICA

*Kol Torah is honored to present an important and precedent setting ruling of the Beth Din of America. We thank Rav Shlomo Weissman, the director of the Beth Din of America, for kindly granting permission to print this ruling. We hope our publishing this article will help to raise the profile of dispute resolution in proper Batei Din. This week, we will present the facts of the case and the first part of the discussion. Next week, we will conclude with the remainder of the discussion and the decision.*

#### Introduction

The Beth Din of America, having been chosen by the Parties to commence administration of an arbitration case pursuant to an arbitration agreement (the "Arbitration Agreement"), dated as of May 20, 2012, between United Savings, LLC, with an address at 555 Ceder Rd, Buffalo, NY, (the "Claimant") and Dunkirk Center for Health, Inc. ("Dunkirk") and Royal Rehabilitation LLC ("Royal") with an address at 888 Washington Street, Dunkirk, NY, (Columbus and Royal, collectively, the "Respondent") (the Claimant and Respondent, collectively, the "Parties"), with respect to certain differences and disputes in reference to monies owed with respect to a cost savings, with each Party having certain claims and counterclaims against each other, does decide as follows:

*HEARING:*

Hearings (the "Hearings") in this matter took place at the Beth Din on October 12, 2012; January 17, 2013; April 8, 2013; and June 3, 2013. Following the Hearings, the Parties made various written submissions to complete the record in this case. Present at the Hearings were Mr. Harvey Goldman, on behalf of the Claimant, and Dr. Mark Furst and Mr. Yosef Green, on behalf of the Respondent. The Claimant was represented Michael Schwartz, Esq. and Jonathan Miller, Esq.; the Respondent was represented David Goldberg, Esq. For the sake of convenience, in this decision, unless it would lead to a lack of clarity, written correspondence to us from or statements made before us by attorneys on behalf of the Parties are attributed to the Parties rather than the attorneys.

*FACTS AND CLAIMS:*

***The Agreement***

The Claimant is a utility-cost-savings consultant. On January 10, 2008, Mr. Joe Bush ("JB"), an individual, who represented that he was authorized to sign a contract on behalf of Dunkirk, signed a cost recovery agreement (the "Agreement") that authorized the Claimant to try to recover utility costs expended by Dunkirk. The Respondent provided us with two versions of the Agreement. In one, JB did not date, enter his title, or print his name. In the other, we noted JB's title and the date (January 10, 2008) he purportedly executed the Agreement. (We note that the Respondent submitted to us an undated copy of a "Letter of Authorization" signed by JB that included his printed name, and "Owner," as his title.). The Agreement, in general, provided that JB, on behalf of Dunkirk, retained the Claimant to correct and reduce its gas, electric, and oil costs, including taxes, and that any dispute arising under it "will be resolved in accordance with the laws of the State of New York State [sic]." The Agreement also generally provided that the Claimant would be entitled to receive an amount equal to one-third of the total utility savings generated by the Claimant as compensation for its services. The savings generally would be calculated based on actual cost recovery, as well as for 30 months of projected savings. We also note that although the Claimant did not provide us with a cost-recovery agreement executed on behalf of Royal, the Claimant's August 20, 2013 letter to us asserts that such an agreement was executed.

The Respondent asserted that the Agreement is invalid because it was not signed by an officer of the Respondent who was authorized to enter into agreements on behalf of the Respondent. The Claimant argued that JB was authorized by the Respondent to execute the Agreement, and that even if JB was not actually authorized to act on behalf of the Respondent, his signature on the Agreement is nevertheless legally binding upon the Respondent under the secular legal doctrine of apparent authority. Under this doctrine, a principal can be bound by the actions of a purported agent in some circumstances if a reasonable person would conclude, based on various factors, that the agent duly represents the principal.

JB was no longer alive by the time we convened; thus, we were never able to interview him.

***The Savings***

The Parties disagree about how much the Claimant saved, if any, for the Respondent.

Ultimately, the Claimant requested that, pursuant to the Agreement, we award it \$243,130.77 for invoices related to savings for Dunkirk, \$4,333.22 for invoices related to savings for Royal, plus an unspecified amount of attorneys' fees. Initially, the Claimant requested a higher amount, \$312,990, but after questioning by the arbitrators, the Claimant reduced its claim.

The Claimant assumes that without its intervention the Respondent would have paid a negotiated rate (the "Negotiated Rate") of an amount equal to 19.539 percent less than the posted interruptible transportation rate (the "Posted Rate"). The Claimant bases its assertion on looking at an average percentage difference between (a) the actual rate the Respondent was billed and (b) the Posted Rate for the seven months from February through August 2009, as cited in an email dated May 23, 2013, from Mr. Chris Johns to Mr. Fred Strand. Ultimately, the Claimant switched to a firm transportation rate (the "Firm Rate"), resulting in significant savings compared to the Negotiated Rate.

In contrast, the Respondent asserts that even without the Claimant's intervention and a switch to the Firm Rate, it is reasonable to assume that over time its Negotiated Rate would have been lowered to a rate equal to 20 percent more than the Firm Rate. The Respondent bases its assertion on what four customers on a negotiated Posted Rate paid compared to those on the Firm Rate. Accordingly, the Respondent argued that the baseline for determining savings should be a rate equal to 20 percent more than the Firm Rate, and even if we were to rule against it on every other issue, the most it should be required to pay is \$37,136.15.

Particularly with respect to certain gas-price savings, the Respondent asserts that the Claimant did not achieve the savings on behalf of the Respondent it claimed because New York Gas Company, the gas-transportation company used by the Respondent, would have inevitably, without the Claimant's intervention, offered to the Respondent the cost-effective Firm Rate (albeit the Claimant may have accelerated the period when the savings began) and therefore the claimed savings were never achieved by the Claimant.

In addition, the Respondent counterclaimed that it had been overbilled (and therefore had overpaid) for invoices 77-1352, 77-1364, and 77-1376. Applying a 19.539 percent discount to the posted firm rates of the months to which those invoices pertain yields an amount of \$4,548.77 due to the Respondent.<sup>1</sup>

*DISCUSSION:*

***The Arbitration Agreement***

The Arbitration Agreement provides that the arbitrators may choose to resolve the controversy in accordance with either Din (strict application of the law) or Pesharah HaKerovah LaDin, which essentially grants Dayanim (arbitrators) discretion on many issues to arrive at a conclusion that is equitable, in a manner that may depart from the application of Jewish law in its strictest sense. The Rules and Procedures of the Beth Din state that unless there is an agreement otherwise, the case will

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<sup>1</sup> We believe that the Claimant made a mechanical error and used the wrong meter charge when it recalculated the revised amount due on invoice 77-1352. See Exhibit B.

be resolved according to Pesharah HaKerovah LaDin. Although they had the discretion, the arbitrators saw no compelling reason not to resolve the controversy in accordance with Pesharah HaKerovah LaDin. There is a general preference in Halachah (Jewish law) for the resolution of conflicts in an equitable manner. Consistent with that, some of the decisions contained in this ruling may reflect the application of Pesharah HaKerovah LaDin.

### **The Agreement**

The Agreement is effective and the Parties are bound by the Agreement. We base this conclusion on six separate lines of reasoning:

#### *1: Apparent Authority as a Custom of the Marketplace*

Although JB was not technically authorized to bind the Respondent, he possessed apparent authority to do so. As a matter of New York law, "a principal is bound by a transaction entered into by its agent where the principal's conduct creates the appearance that the agent has such authority."<sup>2</sup>

The doctrine of apparent authority is a creature of secular law, with no equivalent theory under Halachah. By engaging in commerce through the mechanism of a corporation or limited liability company, the Respondent, however, has implicitly agreed to be bound by Dina DeMalchuta (secular law) and by the customs that generally pertain to corporate entities and limited liability companies.

Except in the context of major transactions, it is generally customary to rely on the apparent authority of an individual to bind an entity, and not to demand evidence that such authority exists. In turn, all business entities understand that unless they adequately notify third parties to the contrary, individuals who appear to possess authority may legally bind them in some instances. By engaging in business in the general marketplace as a corporation or limited liability company, the Respondent implicitly accepted the norms of that marketplace and subjected itself to liability through the doctrine of apparent authority.

Based on the testimony we heard, it is our view that JB possessed apparent authority. Notwithstanding the fact that the Respondent convinced us that it attempted to take steps to demonstrate that JB had no actual authority, the issue is whether those steps were sufficient to put outsiders on notice as to his lack of authority. The facts and circumstances of his relationship with the Respondent lead to the conclusion that the Respondent was aware or should have been aware of his activities, and that the Respondent should be held responsible for any misapprehension regarding his ability to bind the company.

#### *2: Dina DeMalchuta Dina*

In some cases, Halachah sanctions the binding nature of secular rules and regulations that are legislated for the economic benefit of the marketplace.<sup>3</sup> The doctrine of apparent authority allows the market to conduct business in an efficient manner, as it allows its participants to rely on their reasonable perceptions of who is able to bind an entity, without burdening them with the requirement of

<sup>2</sup> Goldston v. Bandwith Technology Corp., 859 N.Y.S. 2d 651, 654 (2008) citing Hallock v. State of New York, 485 N.Y.S.2d 510 (1984).

<sup>3</sup> R. Moshe Sofer (1762–1839), Shu"t Chatam Sofer, Choshen Mishpat, No. 44.

obtaining detailed corporate documents and certificates to transact routine business. Given the sound policy basis for allowing parties to rely on apparent authority, we feel that, in the case at hand, Chatam Sofer would recognize the binding nature of this doctrine.

#### *3: Apparent Authority as a Halachic Doctrine*

According to a strict interpretation of Halachah, the Claimant should have ascertained from the Respondent the scope of the authority of JB, was not permitted to rely on JB's representation alone, and bore the risk that JB was not authorized to bind the Respondent.

Notwithstanding the foregoing, the argument can be made that Halachah itself recognizes some concept of apparent authority, based on the view of Shach.<sup>4</sup> Shach addresses the case of an agent who was authorized in writing, but where the principal later revoked the agent's authority. The third party, unaware of the revocation, acted in reliance on the written Harsha'ah (authorization) presented to him by the agent; the Halachah recognizes the validity of that transaction. We think it is reasonable to argue that Shach's opinion is not limited to a case where there was a valid Shelichut (agency) that was later revoked, but that such opinion applies to any case where the third party acted reasonably in reliance on the validity of the agency. The reasonableness of relying on an individual's capacity as a Shaliach (agent) is based on the circumstances of the particular case. As described above, it is our view that in the contemporary business context the Claimant reasonably relied on JB's apparent authority.

<sup>4</sup> Shach, Choshen Mishpat, 122:11.

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