

The Baal Shem Tov and Bankruptcy

CONDEMNING YOURSELF—UNWITTINGLY



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One of the US Trustee's points was particularly striking. She pointed out that in another recent case that involved the same attorney and financial advisor, both of them objected strongly to another party's failure to disclose similar

be judged leniently. If, on the other hand, he responds with outrage, assuming the worst intentions and demanding that the book be thrown at the wrongdoer, then he has pronounced his own strict judgment.

This, Rebbe Nachman explains, is the deeper meaning of the Mishnah in Avos 3:16, which states that a person is punished with his knowledge or without his knowledge. One is judged based on his own knowledge and opinion of others who are guilty of the same or a similar thing.

This is also why Nasan Hanavi does not tell Dovid Hamelech outright that Hashem views his conduct with Bas-Sheva and Uriah Hachiti as a grave mistake. Rather, Nasan Hanavi tells Dovid Hamelech about a poor man with one sheep that was taken by a rich man to feed his guests. It was only after David Hamelech says that the rich man is deserving of death that the prophet says, "You are that man!"

The unwitting judgment pronounced by the "nefarious" fee-sharing financial advisor against himself is a stark reminder of the importance of recognizing that Hashem causes us to see everything around us for a reason. As we approach Shabbos Nachamu and remember that the *Beis Hamikdash* was destroyed because of *sinas chinam*, baseless hatred, the Baal Shem Tov's lesson reminds us to judge others favorably. Not only will looking at others' faults with a forgiving eye go a long way toward rectifying the world, we may just spare ourselves a lot of heartache in the process. ●

I was struck by recent events in a corporate bankruptcy case, which were eerily reminiscent of a powerful teaching of the Baal Shem Tov.

In bankruptcy cases, the bankrupt company's assets are used to pay its attorneys and other professionals before creditors can get paid. Bankruptcy courts therefore pay very close attention to the fees charged by those professionals. In one major bankruptcy case in Lower Manhattan, a huge fight is going on between the government watchdog appointed to oversee professionals' fees (the US Trustee), on one hand, and both the company's attorney and financial advisor, on the other hand.

The US Trustee asked the court to order the attorney and financial advisor to "disgorge" all of the fees they had collected during the case. What was their heinous crime? One of the US Trustee's primary allegations is that the financial advisor failed to disclose an agreement to share its fees with an individual who was an independent contractor of the financial advisor in violation of a Bankruptcy Code rule against "fee sharing" agreements.

prohibited "fee sharing" agreements with independent contractors, arguing that the professionals in that case "willfully disregarded fundamental disclosure and 'fee sharing' rules" and that "the disgorgement should be very big."

Wow. What greater indictment can there be than a person's own judgment coming back to haunt him?

This reminded me of a striking teaching by the Baal Shem Tov, as quoted by Rebbe Nachman. The Baal Shem Tov teaches that before a heavenly decree is issued against an individual, the person must agree to the designated consequence. Who would ever agree to his own punishment in advance? He answers that the heavenly court uses the following ingenious strategy:

If an individual possesses a certain fault, the heavenly court arranges events on earth to ensure that the person will encounter or hear about someone else who has committed a sin very similar to his own. Then the court waits to see how the person will judge the other person. If he judges the other person favorably and tries to find some mitigating circumstances for the other person, then he will