

## **296338 - Ruling on supervising finishing of apartments in return for a percentage of the final cost**

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### **the question**

I have a friend who worked as a freelance supervising engineer. A while ago, he supervised the finishing of an apartment in return for a percentage of the final cost. He had a dispute with the customer with regard to painting, ceramics and carpentry, because the customer claimed that the prices were higher than the market rate. My friend used to get some workers whom he knows to do the work for less than the going rate; for example, they would do the work for 5, but he would tell the customer that the price was 8. He started with the painting, but the customer objected, so my friend suggested changing the paint, but the customer refused and told him to complete it. But the ceramic was actually finished. As for the carpentry, the agreement was that the customer was the one who would make the final check on the carpenter and would pay the carpenter directly, because he refused to give a percentage to my friend for supervising the carpentry, because there were faults with the carpentry. Now the customer has deducted part of the percentage from my friend and from the cost of the painting and ceramics, on the grounds that they were more expensive than the market rate, and he has deducted something from the carpentry on the grounds that there are faults in it, and he said that he will not overlook the money that he paid to my friend. Is the money that my friend took haraam? And if it is haraam, can he repay it in full?

### **Detailed answer**

Firstly:

It is permissible to work supervising the finishing and equipping of an apartment in return for a known fee or wages, and this comes under the heading of wages in return for work.

But it is not permissible for that payment to be in the form of a percentage of the final cost, for several reasons:

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Ambiguity or the fact that this payment is not known at the time of drawing up the contract. This renders the wages in the contract of hire invalid according to the majority of fuqaha'.

It says in Asna'l-Mutaalib (2/441): The fourth principle is that it is stipulated that there should be an agreement on fees. In one manuscript it says that it is stipulated that the wages be known, like the issue of fees when renting something. If the payment is unknown or not specified, such as a garment, or wine, or something seized by force, then in that case the worker must be given the usual fee for such work, and paying the usual fee becomes a must, as the contract is rendered null and void because the wages are unknown [in the case of an unspecified garment], or are najis (impure) [in the case of wine], or it is not possible to give it to him, as is the case with renting.

The reason why the contract is invalid on the grounds of the wages being unknown or unspecified is that it is not permissible to be ignorant of wages, as in the case of renting, and that is different from the case of ambiguity about the work and the worker. Moreover, a person would not be interested in doing work when he does not know what his wages will be, and thus the aim of the contract will not be achieved. End quote.

In al-Ma'aayeer ash-Shar'iyyah (p. 26), it says: It is stipulated that the wages should be known, should have value from an Islamic perspective, and one should be able to give it. If the wage is unknown, or has no value according to Islamic teachings, or one is unable to give it, then the worker should be given the usual fee for that work. End quote.

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It is consuming wealth unlawfully, because wages are given in return for work, and the effort involved does not vary according to the final cost in most cases. If the customer chooses materials worth 100, supervising the installation of those materials is no different than supervising the installation of materials worth 200. So what the supervisor takes in this case is unlawful.

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This could lead to lying and deceit to increase the final cost and thereby increase the percentage, as described in the question. In this case the supervisor will be consuming wealth unlawfully twice.

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This may prompt the customer to choose one thing, when there is something better than it, in order to reduce the percentage paid to the supervisor.

We think that this kind of contract is not allowed, and there should be an agreement to pay a specific sum in return for supervising the work.

If the supervisor fears that he may be affected adversely, or that more time may be needed for some materials, he can make a special agreement, based on time, such as saying that the fee for one hour, or one day, of supervision for this particular material will be such and such.

Or he can agree to raise his fee for supervising, because he may fear harm and delay when installing that material.

Secondly:

Your friend has to return to the customer what he took unlawfully, namely the difference between five and eight in the worker's fee and his own percentage.

That is because the supervisor in this case was working on behalf of the customer to bring workers, and the agent should not make money without the knowledge of the one who appointed him as his agent, even if he is able to hire workers for lower than the market rate.

It says in Kashshaaf al-Qinaa' (3/477): Or if the one who appointed him says: Buy me a sheep for one dinar, then the agent buys two sheep for that dinar, one of which is worth a dinar on its own, or the agent buys a sheep that is worth one dinar for less than that. In that

case, the purchase is valid and the extra amount goes to the one who appointed him, because of the hadith of 'Urwah ibn al-Ja'd, according to which the Prophet (blessings and peace of Allah be upon him) sent him with a dinar to buy an udhiyah for him – or on one occasion he said, a sheep – and he bought two for him, then sold one for a dinar and brought the other one to him. The Prophet (blessings and peace of Allah be upon him) prayed for blessing for him. [As a result of this du'aa'], if he bought dust, he would make a profit on it! End quote.

If your friend returns the difference, then perhaps the dispute between him and the customer will be resolved.

Thirdly:

With regard to the carpentry, your friend does not have to do anything, because he was not appointed to supervise it. The customer can ask the carpenter to fix the work.

And Allah knows best.