

# Kashrus of Home Establishments

*Rabbi Yona Reiss*

## 1. Introduction

This article shall examine the growing trend of home food businesses for profit within the observant Jewish community and provide guidelines for proper kashrus supervision. For some reason, although it is self-understood by most members of the community that every restaurant and food product in a store needs to have proper kosher supervision, the same understanding has not carried over to home establishments, which often do not have such supervision.

The new phenomenon of individuals operating home businesses without kosher supervision is certainly troubling. As a matter of practical halacha, whenever an individual provides food for sale, the food should carry kosher supervision, regardless of the individual's trustworthiness. It is on this basis that a *kol korei* (public proclamation) was issued in September 2022 by several eminent halachic authorities requiring all kosher home businesses to obtain reputable kosher certification.<sup>1</sup>

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1. The *kol korei* (in which the author was privileged to be involved in drafting the precise language) was issued in Elul 5782 (September 2022) and signed by R. Shmuel Kaminetsky, R. Shlomo Miller, R. Yaakov E. Forchheimer, and R. Shmuel Fuerst. It reads as follows:

It is a long-standing tradition in Jewish law (see *Beis Hillel* Y.D. 65:5; *Darchei Teshuva* 119:7) that whenever food is prepared for sale, regardless of the credentials of the producer of the food, there is a requirement for kosher supervision (*hashgacha*) from an outside source. Even if a person is trustworthy, a more rigorous standard of supervision is

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*Rabbi Reiss is the Av Beth Din of the Chicago Rabbinical Council and a Rosh Yeshiva at RIETS.*

This article is intended to provide some of the sources and halachic underpinnings behind the sentiments expressed in this important letter to the Jewish community.

Although, as we shall see, this practice is based at least to some degree on an extra measure of stringency, it is nonetheless the accepted practice. As R. Moshe Chaim Luzzatto writes,<sup>2</sup> the same way that we take great precaution to avoid eating poison, we should go to great lengths to ensure the kashrus of the food that we eat.

## 2. Why Not Simply Trust Everybody?

Requiring supervision seems to run afoul of the principle of *eid echad ne'eman b'isurin*,<sup>3</sup> that one person is trusted regarding the permissibility of ritual matters. Thus, for example, a person who slaughters an animal is believed to say that the animal was slaughtered properly.<sup>4</sup> Why don't we simply trust the proprietor of an establishment to verify the kashrus of what he is selling?

The answer is that it is clear from this very example that the principle of believing one witness does not apply across the

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required when the person has a business that sells products for profit. It has come to our attention that there has been a recent proliferation of home businesses selling food for profit to our communities without kosher supervision. This practice is contrary to accepted practice and unfortunately jeopardizes the kashrus standards in our communities. Therefore, we are signing this letter as a reminder and a reinforcement for all those who either produce such food products or might purchase such food products, that food produced for a profit should not be purchased, unless it either bears a reputable hashgacha, or a respected Rav gives his personal hashgacha on the operation. We urge any owners of home businesses to obtain certification as a fulfillment of their halachic obligations. In the merit of doing so, we bless them that Hashem should provide them with sustenance and great success *b'chol ma'aseh yedeihem* [in all of their endeavors].

2. *Mesillas Yesharim* Ch. 11.

3. *Gittin* 2b.

4. See Tosafos ad loc. s.v. *eid echad*.

board. Nobody would buy meat, even from a trusted *shocheit*, that does not have independent kosher supervision. This is in accordance with the ruling of the Rambam,<sup>5</sup> who writes that nowadays, one can only purchase wine, meat, cheese, or fish from an individual who is “*huchzak b’kashrus*,” who has established an impeccable reputation for halachic integrity.<sup>6</sup>

The Radvaz<sup>7</sup> explains the basis for the Rambam’s ruling requiring a stricter standard to trust the kashrus of someone who sells food. The Gemara<sup>8</sup> states that in Suria, where the merchants were not deemed that trustworthy, one is only permitted to purchase certain kashrus-sensitive items, such as wine or cheese, from a “*mumcheh*.” In this context, the commentators note that a *mumcheh* connotes someone who is *muchzak b’kashrus*.<sup>9</sup>

The commentators explain that the reason for the need to only buy these items from a person of sterling kashrus reputation is based on the concern that the merchants may not otherwise be careful about the interdiction of *lifnei iver* (feeding non-kosher items to others) even though they were presumed to adhere to kashrus standards at home.<sup>10</sup> Alternatively, a non-*mumcheh* may take liberties based on feeling that certain requirements imposed by the rabbis regarding these food items are unnecessary stringencies.<sup>11</sup> According to the Rambam, this rule is not limited to Suria, but applies to any community outside of Israel. Nowadays, when the influence of other nations permeates the land of Israel as well, the rule applies there, too.

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5. *Hilchos Ma’achalos Asuros* 11:25.

6. For the sake of conforming with the more frequently employed terminology with respect to this standard, we will use the term “*muchzak b’kashrus*” for the rest of the article.

7. Ad loc.

8. *Avodah Zarah* 39b.

9. See, for example, Ran on the Rif *Avodah Zarah* 16a s.v. *ein*.

10. Rashi *Avodah Zarah* 39b s.v. *ein lokchin*.

11. See Radvaz, *Hilchos Ma’achalos Asuros* 11:25.

However, the Gemara states, if the person who has not established an impeccable reputation for halachic integrity is not looking to make a profit, but rather is simply serving food to a guest within the privacy of his home, the guest may rely upon his or her kashrus. It is clear from this passage that there is a distinction between relying upon a host who is serving kosher food to guests and relying upon the same person to produce kosher food for sale to the broader community.

The Ra'avad<sup>12</sup> disagrees with the Rambam and asserts that even someone who is not *muchzak b'kashrus* can be trusted when it comes to selling food. According to the Ra'avad, the only person who cannot be trusted is a "*chashud*," a person who is suspected of being personally lax when it comes to eating non-kosher. Otherwise, there is no requirement that a person be a *muchzak b'kashrus*. The Rambam, by contrast, holds that even ordinary people cannot be relied upon when it comes to selling kashrus-sensitive food items.

It is noteworthy that the Gemara does not specifically identify meat as a food that requires a *mumcheh*, as the Ra'avad explicitly notes. The argument to be less stringent in the case of meat is that sellers are less likely to take liberties with respect to food which is obviously forbidden, such as improperly slaughtered or non-kosher meat. Nonetheless, the Rambam includes meat on his list of food items which can only be sold by trustworthy individuals. The *Aruch Hashulchan*<sup>13</sup> explains that the Rambam is based upon the *Yerushalmi*,<sup>14</sup> which specifically includes meat in the category of items requiring an extra degree of trustworthiness. Accordingly, the Rambam interprets the corresponding passage in the Gemara as including meat as well. The Gemara omits meat because it is obvious (a *kal vachomer*) from the items that it does list. In other words, the more stringent the item, the more obvious the need for the seller to be a *muchzak b'kashrus*.

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12. *Hasagos* on the Rambam ad loc.

13. Y.D. 119:3.

14. *Avodah Zarah* 2:9.

### 3. The Rama's Ruling to Require *Muchzak B'kashrus*

The Rama<sup>15</sup> rules in accordance with the view of the Rambam that a person is only trusted to sell kashrus-sensitive food items if he is *muchzak b'kashrus*. Although the *Shulchan Aruch* rules in accordance with the opinion of the Ra'avad that only a person who is suspected of eating non-kosher cannot be trusted, the *Taz*<sup>16</sup> notes that the Rama clearly disagrees and that his ruling should be followed, especially given the lower level of religiosity that exists in later generations.

Interestingly, the *Shach*<sup>17</sup> cites the comment of the *Darkei Moshe* that the custom is not like the Rambam. Rather, every Jew who is not suspected of eating non-kosher is in fact presumed to be reliable. However, the *Taz* points out that since the Rama did not repeat this comment in his glosses to the *Shulchan Aruch*, the clear implication is that this permissive custom should not be relied upon.<sup>18</sup>

At the same time, the requirement that a seller of food be *muchzak b'kashrus* is still not necessarily the most stringent standard, but simply a requirement for a minimum threshold of clear-cut observance. Thus, according to the *Aruch Hashulchan*,<sup>19</sup> the standard of *muchzak b'kashrus* does not mandate that

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15. Y.D. 119:1.

16. *Taz* Y.D. 119:2.

17. *Shach* Y.D. 119:1.

18. In fact, the *Shach* elsewhere (*Nekudos Hakesef* Y.D. 63:1) seems to reinforce the idea behind the Rama's ruling, as he writes that we don't automatically trust regular people to identify lost objects based on recognition alone without providing identification signs (unlike in the case of identifying one's own unattended meat, where we are more lenient) because people are considered less trustworthy in cases where they have a financial stake. In terms of the custom of leniency that he cites in Y.D. 119, the *Shach* indicates that any such leniency is contextual, and in those types of situations, such as in the realm of ritual slaughter where there is a greater potential for error, even the *Shulchan Aruch* would agree that we would not presume a seller to be reliable if he is not *muchzak b'kashrus*. See, for example, Y.D. 65:14.

19. Y.D. 119:11.

the individual be a “*yarei es Hashem meirabim*” (amongst the saintliest of his generation - see *infra*), but it does require that he be known to wear *tallis* and *tefillin* each day, *daven* three times a day, wash his hands before eating bread, and raise his children with a Torah education and environment. (Obviously the same qualifications apply, to the degree relevant, to female merchants as well). In other words, *muchzak b'kashrus* essentially connotes that a person comports himself both privately and publicly as a full-fledged Orthodox (*frum*) member of the community.

#### 4. When is There a Requirement for Kashrus Expertise?

In the context of discussing the credentials of a *shocheit*, the *Aruch Hashulchan*<sup>20</sup> notes that there is also a requirement of being an actual *mumcheh* (professional expert) with respect to food-preparation activities, such as *shechitah*, that contain myriad laws and regulations regarding the smoothness of the knife or the inspection of possible adhesions on the lung. In these cases, very slight, nuanced determinations can make the difference between kosher and non-kosher.<sup>21</sup> Therefore, the requirement is that a person be both an individual of impeccable halachic reputation as well as an expert in the kosher preparation of food.

Finally, the *Aruch Hashulchan* concludes that in the realm of ritual slaughter of animals, even if a person possesses both these qualities (i.e. *muchzak b'kashrus* and an actual *mumcheh*), he cannot be trusted to make the fine-tuned determinations that would be required to trust him to be a qualified *shocheit* unless he is a “*yerei Elokim b'yoser*” – someone who has an extra measure of fear of G-d in him (this seems to be akin to the standard of “*yarei es Hashem mei'rabim*” that would not otherwise be required). This determination of a person's credentials, concludes the

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20. Y.D. 1:11; see also his comments in Y.D. 119:8 and 12.

21. In this vein, it is instructive that the Ritva (*Avodah Zarah* 40a s.v. *ein*) explains the requirement for *mumcheh* in the Gemara there as encompassing both being *muchzak b'kashrus* as well as an actual expert in kosher food supervision.

*Aruch Hashulchan*, must be made by the rabbi of the city and the other leaders of the community.<sup>22</sup>

In this vein, it is cogent to assert that nowadays, with the complexity of food production and sophisticated kitchen equipment, one needs to be a *mumcheh* with respect to the production of virtually any kind of food product, especially when being produced in a specialized fashion to satisfy paying customers. Although there are certain straightforward food products in terms of equipment and production, the shifting demands of a sophisticated customer base often require unusual or difficult-to-obtain ingredients. Sometimes, the use of these ingredients requires informed determinations as to which types of products require certification or which unfamiliar certifications are considered reliable. Thus, even according to the strict halacha, there is often a need for a person to have both impeccable halachic reputation and high-level kashrus expertise to be eligible to sell food without certification.

## 5. The Need for Outside Kosher Certification

The *Aruch Hashulchan*<sup>23</sup> writes that the “*minhag hapashut*” (widespread custom) in all Jewish communities is to require a *kesav hechsher* (written kosher certification) from a local certifying rabbi, especially nowadays when there is unfortunately much

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22. The *Aruch Hashulchan* (Y.D. 119:9-11) initially suggests that the Rambam’s stringency with respect to meat only applies to a butcher who sells the meat that he personally slaughters, because he may be tempted to not clarify doubts that arise regarding the kashrus of the slaughtering knife or questionable adhesions (*sirchos*) in the lungs of the animals. If he is selling the meat of others, on the other hand, he is less likely to sell that which he knows to be prohibited even if he is not *muchzak b’kashrus*. However, later on (Y.D. 119:9), the *Aruch Hashulchan* retracts this distinction for purposes of modern times, since “In our great sins, the generation is unconstrained (*parutz*),” and therefore concludes that it is always necessary to require kosher certification for a butcher not known to be *muchzak b’kashrus*, even if he is selling smoked meat or the like that someone else slaughtered.

23. Y.D.119:9.

more laxity in terms of religious observance, unless the seller is known to be *muchzak b'kashrus*. According to this custom, there is certainly a need for certification when a seller is not known to be *muchzak b'kashrus* (which in certain cases, as we have seen, may also require a certain amount of kashrus expertise as well a reputation for impeccable conduct).

Moreover, as noted by the *Chelkas Binyamin*,<sup>24</sup> the *Beis Hillel*<sup>25</sup> (in the 17th century) refers to a communal enactment in Lithuania not to purchase food even from a person who is *muchzak b'kashrus* unless the seller has kosher certification. According to the *Beis Hillel*, this was instituted as a matter of *lo plug* (not creating fine-tuned distinctions between different individuals that may be difficult to monitor or enforce). This requirement is also recorded by the *Lechem Hapanim*<sup>26</sup> and the *Darkei Teshuvah*<sup>27</sup> and indeed has become the standard practice in the kashrus industry to ensure the proper kosher supervision of all food products.<sup>28</sup> It is for this reason that it would be almost

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24. Y.D. 119:6.

25. Y.D. 65:5.

26. Y.D. 119:2. The author of the *Lechem Hapanim* was a son-in-law of the *Magen Avraham* and lived in the 17<sup>th</sup> century.

27. Y.D. 119:7. The *Darkei Teshuvah*, after citing the opinion of the *Beis Hillel*, cites the *Chochmas Adam* (71:1) as embracing the stringency of requiring each seller to be *muchzak b'kashrus*, in accordance with the opinion of the Rambam. Although the *Chochmas Adam* is certainly stringent in that regard, he does not go as far as the previously cited opinion of the *Darkei Teshuvah* to require a written certification even from a person who is known to be *muchzak b'kashrus*. Nonetheless, the fact that the *Darkei Teshuvah* quotes both opinions without indicating that the *Chochmas Adam* is in dispute with the *Darkei Teshuvah* leads to the interpretation that the *Darkei Teshuvah* was endorsing all the opinions that lead towards greater stringency, including that of the *Beis Hillel*.

28. See, for example, *Teshuvos V'hanhagos* 2:377, who endorses this standard (I thank R. Benzion Sommerfeld for this reference). In terms of whether it may sometimes be sufficient for the rav of the community to state that he trusts the kashrus standards of the food supplier, see R. Zilberstein's *Chashukei Chemed* (*Avodah Zarah* 39b). In any event, the rabbinic authorities of each community would ultimately have to determine the appropriate kashrus standards for certification.



unthinkable nowadays to patronize a kosher restaurant that does not have some type of respected kosher certification.

This desideratum for all individuals to have kosher certification is particularly true in today's complex food industry, where in addition to halachic integrity, it is necessary to be a *mumcheh* who is trained in the complicated and nuanced world of contemporary food production, particularly when producing items that may require specialized ingredients and/or equipment. In this vein, it is rare to find the types of cases described in *Shulchan Aruch*,<sup>29</sup> where no supervision is necessary because a product is completely free of any kind of problem, except in certain rare instances (such as 100% pure extra virgin olive oil or bottled water without added flavors or vitamins). Any processed food automatically poses potential problems in terms of ingredients, equipment, and manner of production.

Along these lines, R. Asher Weiss<sup>30</sup> cites a precedent from the *Tur*,<sup>31</sup> who writes (in the name of his father, the Rosh) that the custom developed not to trust even righteous butchers to certify their own meat, but rather to require outside supervision. So too nowadays, argues R. Weiss, it is appropriate for rabbinic leaders to require that in all other areas of food production there be outside supervision whenever the purveyors of the food are deriving a monetary gain, which could potentially cloud their judgment.

R. Weiss also cites the opinion of the 18th-19th century rabbinic authority the *Yeshuos Yaakov* (R. Yaakov Meshulam Orenstein)<sup>32</sup> that one needs to be especially scrupulous with respect to matters that affect the broader public, even when the odds of causing a violation are very small. R. Weiss concludes that regardless of whether one accepts this opinion, the concern for violations in the world of kashrus are generally significant

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29. See Y.D. 114:3-5, 7-9, 11.

30. *Teshuvos Minchas Asher* 1:37-38.

31. Y.D. 18.

32. *Yeshuos Yaakov* Y.D. 15:1 (*Peirush Ha'aroch*).

enough to constitute a *miut hamatzui* (significant minority of cases), in which case a higher degree of investigation and oversight are required.<sup>33</sup>

## 6. The Need for Higher Standards in the Contemporary Commercial Marketplace

The complexities of the kashrus world today also require a higher degree of vigilance when dealing with a broader commercial population. As communities grow and expand, it becomes difficult to differentiate between the restaurant and store establishments that are deemed to require *hashgachah* (supervision) and “mom and pop” home food establishments. Although an operation that is very basic with only one person overseeing all the food production may be less problematic on its face, it becomes difficult to differentiate between different gradations of home businesses, including those which might have a more complex ingredient base or multiple parties involved with the food production. As food production in general has become more complex, the concept of the *lo plug* of the *Beis Hillel* makes more sense, particularly when a large community is relying upon a particular product.

R. Moshe Feinstein similarly writes in several places that the standards are stricter when dealing with food that is sold to the public in contemporary commercial settings. For example, he writes<sup>34</sup> that even though he once permitted an elderly family member in dire circumstances to rely upon the kashrus of food prepared by a non-observant family member whom he trusts based on the principle of “*kim li b’gaveih*”<sup>35</sup> (knowing him intimately well), this type of trust is not applicable when dealing with giving certification to the broader public. In a different case,

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33. To buttress this conclusion, R. Weiss (1:37, *supra*) cites the Rashba (*Toras Habayis* 3:3) regarding the need to investigate *miut hamatzui* in cases of ritual prohibitions.

34. *Igros Moshe* Y.D. 1:54.

35. See *Kesubos* 85a.

R. Moshe was not willing to rely upon an earlier dispensation<sup>36</sup> to rely upon the representation of an oil manufacturer that its company did not use animal fat<sup>37</sup> in its oil production, since it is common nowadays in the commercial food industry for ingredients to change without the company being caught unless there is vigilant kosher supervision.<sup>38</sup>

Additionally, R. Moshe Shternbuch<sup>39</sup> writes that one must have *mashgichim* (kashrus supervisors) of impeccable credentials when dealing with the contemporary food industry, where companies are often located in far-flung locations, since ingredients are constantly being changed, and owners of factories can rely on plausible deniability that they thought a particular ingredient was synthetic and unproblematic.

Although some of the concerns regarding the commercial marketplace may be less acute when dealing with home businesses in a geographically small community, they remain relevant insofar as there is now a plethora of complicated ingredients that go into many food products, and even a private operator depends on the complex world of kosher food ingredients to serve the community.<sup>40</sup> In addition, the nature

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36. *Igros Moshe* Y.D. 1:55 (written in the 1950s).

37. R. Moshe's leniency in this case was based on a variety of considerations, including the principle that a craftsman would not want to ruin his reputation, that the information was being disclosed to address a health query rather than a kashrus query (thus qualifying as *meisiach l'fi tumo*), and that any misinformation would eventually be discovered.

38. See *Igros Moshe* Y.D. 4:1 (written in the 1980s).

39. *Teshuvos V'hanhagos* 2:379.

40. One area where the complexities of kosher food preparation has created a need for greater kashrus supervision is in the domain of party planners, which is not the subject of this particular essay. As R. Sholem Fishbane, kashrus administrator of the Chicago Rabbinical Council, has pointed out, there are multitudinous pitfalls that arise when even well-meaning party planners do not have proper oversight, including: (a) unsealed meats; (b) lack of proper checking for insects; (c) purchasing food from multiple venues, including questionable sources; (d) non-*mevushal* wine that is not properly handled; (e) fish and meat not properly separated; (f) *amirah l'akum* (instructing gentiles to

of many “small-town communities” in the Orthodox world is that they are expanding exponentially to the point that informal mechanisms of checking on people and their kashrus practices are no longer as easy as in the past.

### 7. What About a *Yarei Es Hashem Meirabim*?

One could argue that despite these sources pointing to the need for greater stringency when (a) selling food for a profit, and (b) when dealing with the contemporary commercial food marketplace, there is room for leniency when a person is a “*yarei Elokim b’yoser*” as indicated by the *Aruch Hashulchan* (supra) in the context of *shochtim* or is “*yarei es Hashem meirabim*.” It is thus important to examine this status.

The category of *yarei es Hashem meirabim* is taken from a verse in *Nechemyah*<sup>41</sup> relating to Nechemyah’s appointment of Chananyah, based on his credentials as a “*yarei es ha’Elokim meirabim*,” to guard the newly fortified walls of Jerusalem. Along these lines, the *Shulchan Aruch* rules<sup>42</sup> that a *bodeik* (halachic inspector) of possible adhesions in animals’ lungs is only trusted to rely upon the test of reaching his hands into the animal’s lungs to determine that a possible adhesion is merely sticky spittle (*rir*) that falls away upon touch if the *bodeik* is a *yarei es Hashem meirabim*.

However, even if there was more room for leniency for such an individual, it is not possible to assume that the standard

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do prohibited labor) on Shabbos; (g) *hachazarah* (improperly returning food to a flame) on Shabbos; and (h) lack of separation between meat and dairy, including utensils. See R. Sholem Fishbane, “Keeping Your Simchah Kosher All the Way,” cRc Year in Review 5781. Many of these pitfalls are relevant to home food businesses as well, particularly those which feature complex food products or *simcha*-event planning. See also Yosef Herz, “Step Up to the Plate,” *Mishpacha Magazine* 1 Adar 1 2022 (interview with R. Fishbane), pp. 80-88.

41. 7:2. See supra, section 3.

42. Y.D. 39:11.

supplier of food meets this standard. The *Darkei Teshuvah*<sup>43</sup> suggests several possible definitions for this category, including the following: (a) the person is more G-d-fearing than both the vast majority and the leaders of the generation; (b) the person is known by the multitudes to be exceptionally G-d-fearing. The Malbim<sup>44</sup> furnishes a third definition, writing that the term refers to a person who does not yield to peer pressure when others are practicing certain leniencies in their religious practices. It is highly questionable if a standard home-business proprietor, even if otherwise *muchzak b'kashrus*, meets any of the three definitions, especially if he or she does not obtain rabbinical certification for their product when there are others who are meticulous to do so.<sup>45</sup>

In any event, the halachic authorities such as the *Beis Hillel*, *Lechem Hapanim*, and *Darkei Teshuvah* who cite the practice to require kosher supervision for any product that is sold, including when the merchant is *muchzak b'kashrus*, do not specifically carve out an exception for any individual who is *yarei es Hashem meirabim*. Furthermore, as the *Aruch Hashulchan* notes,<sup>46</sup> it is up to the rabbinic authorities of the city to certify an individual as satisfying any such criterion. Accordingly, it does not appear that there is a sufficient basis to be lenient in those circumstances to allow a person to sell food without rabbinic certification even if a particular seller can be presumed to be on this lofty level. Particularly in this day and age, when there are unfortunately kashrus scandals that arise all too often, there

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43. Y.D. 39:373.

44. *Nechemyah* 7:2. In addition, see the commentaries of Rashi and *Metzudas David* ad loc., also cited by the *Darkei Teshuvah*, that "*meirabim*" means "for a very long time."

45. It should be noted in this regard that a number of proprietors of home establishments in fact sought and obtained kosher certifications even prior to the issuance of the *kol korei* referenced above.

46. Y.D. 1:11.

remains a requirement for a higher standard of supervision based on the principle of *miut hamatzui*, as noted by R. Weiss.<sup>47</sup>

## 8. Can I Ever Rely on Another Person's Kashrus?

This does not mean that people are never deemed trustworthy when it comes to sharing their own food with others. The Rama notes,<sup>48</sup> as indicated by the Gemara,<sup>49</sup> that there is a more lenient standard with respect to eating in someone's home based on the assumption that a host will not cut corners if there is no pecuniary gain. The same leniency applies if such an individual prepares food for a family in need as part of a communal *bikur cholim* program without charging money.

Of course, the host in question would need to be an individual who is never suspected of eating non-kosher.<sup>50</sup> Additionally, the *Chochmas Adam* writes<sup>51</sup> that even in terms of eating at a person's home, it is necessary nowadays to ascertain that the host is *muchzak b'kashrus*. Also, as indicated above, the host needs to be knowledgeable about what is kosher and what is not and how to properly maintain kosher utensils and appliances.

It is also possible that there are grounds for leniency if someone produces a product for private use and then asks the specific person for whom the product was produced for remuneration, since the product was not produced for the larger community. In such a case, there is less of a need to enact a stricter standard, since there is no fear of public scandal. It is also easier for one customer to make an assessment regarding a seller's credibility than for an entire community to make that determination.<sup>52</sup>

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47. *Supra*, section 4.

48. Y.D. 119:1-2.

49. *Avodah Zarah* 39b.

50. See *Taz* Y.D. 119:4.

51. 71:1.

52. See *Meishiv Davar* 2:7 and *Chelkas Binyamin* Y.D. 119 *Biurim* s.v. *assur*. An example that comes to mind would be a small lemonade stand for people on the block. It is also questionable whether the *lo plug* requirement for *hashgachah*

An interesting question arises when an otherwise G-d-fearing individual offers a friend a gift of a product that he or she produced for communal sale. As mentioned previously, it is permissible to eat a meal in the home of a G-d-fearing person if there is no concern that the food was produced for monetary gain and if there was no special skill or expertise required in the production of the food from a kashrus perspective. Nonetheless, in the case of a person who is suspected of selling forbidden food to others (but is not suspected of eating forbidden food himself), the *Chelkas Binyamin* concludes that food that this person prepared for sale should be forbidden even if offered for free.<sup>53</sup> However, one may argue that in the case of a G-d-fearing individual, where the basis for stringency of not buying food from such an individual is fundamentally based upon the principle of *lo plug* in cases of widespread sale, one may not need to exercise this stringency.

### **9. *Dina D'malchusa* (Law of the Land) Concerns with Home Businesses**

In fairness, one of the reasons that home businesses have not been obtaining *hashgachah* is because many kosher agencies have been wary of certifying establishments operating in contravention of local zoning laws and other regulations that limit homeowners' ability to run businesses out of their homes and that require the observance of many additional safeguards in order to receive permission to sell food products to the public.

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would extend to a person of otherwise fine reputation who produces and charges for special fruit platters or even meat boards for friends or family on an infrequent, case-by-case basis but does not sell to the broader community or advertise his or her services. These types of cases require further consideration.

53. See *Chelkas Binyamin* Y.D. 119:15. Similarly, the *Chelkas Binyanim* notes (Y.D. 119:10) that the credibility of a regular person who is not *muchzak b'kashrus* (or, according to the standard of the *Chochmas Adam*, who is *muchzak b'kashrus* but does not have reputable certification) to host a guest is only applicable within the confines of the person's house, but not in a restaurant that is owned by that person, even if someone else is footing the bill.

Quite understandably, major kashrus organizations do not want to be associated with the responsibility or potential scandal and *chillul Hashem* (desecration of G-d's name) that can result from giving certification to illegal establishments.<sup>54</sup>

One solution has been for the major kosher agencies to recommend local rabbinic figures who operate on a smaller scale and are less subject to public scrutiny with respect to the consequences of offering such supervision, especially if it is for the purpose of maintaining high kashrus standards for consumers. Of course, this solution is not ideal, in part because it deprives the community of the more sophisticated kosher-certifying organizations to oversee home businesses. It also creates the unseemly specter of an unofficially endorsed "underground" for illicit businesses.

However, the good news is that it has become easier in recent times for homeowners to receive permits to engage in food-preparation businesses.<sup>55</sup> It is no longer a foregone conclusion that just because someone is performing catering services in the privacy of their home that they are violating local laws. Therefore, it has been suggested that a viable solution is simply to require an attestation from the homeowner that he/she is complying with all local laws and ordinances. If the certifying kashrus organization discovers that this representation is unfounded, it may choose to remove its certification. This matter requires further consideration.

## 10. How Do We Certify the Certifiers?

The Gemara<sup>56</sup> comments on the verse at the beginning of *Rus*, "And it was during the days of the judging of the Judges" that

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54. See *Yoma* 86a that those with important communal authority have greater responsibility to conduct themselves in a way that does not bring dishonor to G-d's name.

55. See, for example, 410 ICLS 625/4, passed on January 1, 2022 (known as the Illinois Home to Market Act, or as the Cottage Food Operation Law).

56. *Bava Basra* 15b.



the *megillah* is speaking about a “generation that judged its leaders.” According to the popular saying cited in the Gemara, if a judge would tell a member of the community to “remove a splinter from his eye,” the individual would retort, “Remove the giant beam that is in your eye.” To be a proper certifier, the certifying rabbi or kashrus organization must also be above suspicion in terms of its own motivations.

This issue is particularly difficult to write about from the vantage point of a kosher-certifying organization. Kashrus organizations, although generally not-for-profit entities, get paid for certifying kosher establishments. This could conceivably create the perception of a conflict of interest.

There are several reasons why payment for a proper *hashgachah* generally does not, or should not, present this problem:<sup>57</sup> (a) the price for the *hashgachah* is not based upon the amount of food that is sold or profit that is generated, but rather upon the kashrus supervision; (b) the kashrus agency is not at all beholden to the owner of the establishment and is paid even if the *mashgichim* direct that all the food be discarded based on a kashrus infraction; and (c) the kashrus agency is primarily answerable to the community, which is not looking to the kashrus agencies to provide tasty food, but rather to uphold the highest degree of kashrus. As such, the major incentive of the kashrus organization is to ensure that it maintains high kashrus standards rather than satisfying the whims of the owners of the establishment being certified.<sup>58</sup>

However, R. Eliyahu Shlesinger<sup>59</sup> argues that the arrangement with *mashgichim* becomes more problematic, at least in terms

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57. *Ne'emanuso Shel Mashgiach Kashrus, Torah Sheb'al Peh* 42 pp. 86-97.

58. Another consideration with respect to the certification of kosher food providers is that as a community service, kashrus agencies often lose money, or only charge for cost, with respect to the certification of local kosher establishments, generating the bulk of their profit from factories and ingredient production.

59. *Ibid.*

of exercising ideal standards in the kashrus industry, if the *mashgiach* is paid directly by the owner of the establishment rather than by a kashrus agency, since then the livelihood of the *mashgiach* becomes dependent upon pleasing the owner. The credibility of a *mashgiach* is based on *eid echad ne'eman b'isurin* (see section 2, supra), and this principle becomes more tenuous, as we have seen, when there is a pecuniary interest.<sup>60</sup> Nonetheless, sometimes, based on bookkeeping practices or other considerations, it is impractical for the certifying agency to be the direct payor of the *mashgiach*. If so, R. Shlesinger argues,<sup>61</sup> any such arrangement should still have the following safeguards in place: (a) the owner of the establishment must be prohibited from removing the *mashgiach*, reducing his pay, or imposing any demands upon the *mashgiach*; (b) if the owner violates this mandate, his business will not be given certification and will be

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60. R. Shlesinger cites the Rambam (*Hilchos Eidus* 11:7-8), who writes that even wicked people are fearful of committing ritual prohibitions but are not fearful of fleecing others financially. In truth, R. Shlesinger's proof text is not exactly on point, since the Rambam is speaking about a person who is a *chashud*, i.e. one who is generally suspected as untrustworthy when it comes to eating kosher, in which case the Rambam says that even such a person is believed to testify that another person's food is kosher, as opposed to his own food, regarding which he has a monetary interest to sell for profit. One would presume that a duly hired *mashgiach* or kashrus agency has a greater level of credibility. Even in the Rambam's case, it should be noted that the Ra'avad (ad loc.) disagrees and rules that a person who is a *chashud* is generally not believed even with respect to someone else's food and would thus not be subject to the principle of *eid echad ne'eman b'isurin* altogether. Although the *Shulchan Aruch* (Y.D. 119:7) accepts the lenient view of the Rambam, the *Taz* (Y.D. 119:18) concludes that one should in practice follow the stricter view, and the *Shach* (Y.D. 119:18) writes that even the *Shulchan Aruch's* lenient ruling only applies to a *chashud* but not to a *mumar* (one who is not merely suspected of eating non-kosher food, but is known to be a regular transgressor). See also *Bei'ur HaGra* (Y.D. 119:18), who raises objections to the lenient opinion of the Rambam. As to why the Rambam is more lenient in terms of the credibility of a *chashud* (at least vis-à-vis others) and more strict with respect to the credibility of a non-*chashud* (in terms of selling to others), see the discussion in R. Shlesinger's article, pp. 89-91.

61. *Ibid.*

penalized for any violation; and (c) only the overseeing kashrus agency may make the determination that it is appropriate for a *mashgiach* to no longer be employed at a particular location.<sup>62</sup>

In the context of *mashgichim* for home businesses who may not necessarily be part of a larger kashrus agency, it is important that these safeguards be implemented by the rabbinic leadership of the community. Thus, any *mashgiach* should be approved by the rabbinic leaders, who will ensure both the competence of the *mashgiach* and the lack of a conflict of interest. Additionally, appropriate steps should be taken to ensure that the *mashgiach* is not subject to intimidation or control by the establishment owner, in accordance with the guidelines set forth above.

## 11. Conclusion

The bottom line is that a home food business is a business no less than a restaurant, and a business should require *hashgachah* regardless of the credibility of the owner, in accordance with the enactment cited by the *Beis Hillel*, and particularly given the challenges of the contemporary kosher marketplace. It behooves each member of our community, including those who are engaged in a business enterprise of furnishing food for others, to scrupulously observe the high kashrus standards that have been established by great rabbis throughout the generations.

The requirement for kosher supervision of any such establishment devolves upon the rabbis of the community.<sup>63</sup>

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62. Some of the relevant language in the standard cRc contract for food establishments includes: "XX.p) The mashgiach's responsibilities will be limited to kosher-related duties; XX.q) The company agrees that in case of the need to dismiss the cRc designated mashgiach, prior approval from the cRc office will be necessary;... ZZ. Inappropriate behavior. If the cRc determines any of the Company's personnel acted or spoke to a cRc representative improperly, ... the cRc will have the right to terminate this Contract for cause in accordance with this Contract."

63. See *Aruch Hashulchan* Y.D. 1:11.

The certifying parties may include private certifying rabbis, but it is up to the rabbis of each city and community to certify who is qualified for this purpose. Certainly, the certifiers cannot be part of the home-business operation themselves, but rather must be objective, third-party<sup>64</sup> kashrus supervisors.

Of course, the certification of a home environment comes with its own challenges. Often, it will be necessary to set aside dedicated equipment, such as a stand-alone oven and utensils, for the preparation of the food item prepared for commercial use, as well as specially designated refrigerators, pantries, and cupboards in which the ingredients will be stored. Additionally, kosher certification generally relies upon the concept of “*mirsas*” (fear of being caught), such that even a *mashgiach* who is *yotzei v’nichnas* (comes and goes) generates a sense of trepidation, because he can come in at any moment. In the context of cooking and preparation in the privacy of someone’s home, this requirement is difficult to satisfy and may necessitate the installation of video cameras for the area of preparation and/or giving out security codes to a *mashgiach* so that at least in theory, he can arrive for a check-up even in the middle of the night.<sup>65</sup> Finally, there may also need to be a requirement for the homeowner to be certified by the *mashgiach* and the local rabbinic authorities as a *muchzak b’kashrus* as an additional assurance.<sup>66</sup>

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64. See Rashi (*Avodah Zarah* 61b s.v. *ela* and s.v. *geriusa*). See also *Shulchan Aruch* Y.D. 118:12.

65. There may also be a need to rely more upon the European model of *yotzei v’nichnas* in which there are scheduled but extremely thorough investigations that ensure accountability. See R. Dovid Cohen, *Pas Yisroel and Bishul Yisroel*, ch. 42.

66. In this sense, the citation by the *Darkei Teshuvah* (Y.D. 119:7) of the *Chochmas Adam* (71:1) to always require a seller of any food to be *muchzak b’kashrus* after previously quoting the *Beis Hillel* to require outside supervision even for a *muchzak b’kashrus* could be understood as implying that as a general matter, the standard of the *Chochmas Adam* should ideally be employed even when there is also outside supervision. See *supra*, note 27.

The *Tanchuma*<sup>67</sup> comments on the *pasuk*, “Your sons and your daughters shall prophesy”<sup>68</sup> that Hashem has promised us that at the end of days, He will speak directly with each of us. As noted by the *Kedushas Levi*,<sup>69</sup> this Midrash also underscores the fact that every member of the Jewish people must be vigilant to ensure that both what we serve and what we eat is unquestionably kosher according to the highest possible standards so that we keep our bodies and souls pure and worthy of receiving the Divine Presence. We need to ensure that any new developments in food services and food businesses are conducted in accordance with this gold standard.

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67. *Mikeitz, Parsha 4.*

68. *Yo’el 3:1.*

69. *Vayikra 11:2.* See the article by R. Mordechai Gross in *B’nesiv Hachalav* (5776), who marshals this source in his discussion regarding the importance of implementing proper kashrus standards for the spiritual welfare of the community.