183100 - Can Brokers Get Commission from both Parties in Islam?

the question

What is the ruling on charging a brokerage fee to both parties, or to one of them without the knowledge of the other?

Summary of answer

1- is permissible to charge a fee for acting as a broker or middleman to the seller or the purchaser or both of them, provided that it is done in accordance with the stipulated conditions or local custom.
2- If the broker is working for one of the two parties to the transaction, it is not permissible for him to make a deal with the other party to increase or lower the price.
3- If the broker is working for one of the two parties to the deal in return for a specific fee, he does not have to inform the other party of it.

Detailed answer

Praise be to Allah.

Can Brokers Get Commission from both Parties?

It is permissible to charge a fee for acting as a broker or middleman to the seller or the purchaser or both of them, provided that that is done in accordance with the stipulated conditions or local custom. This is the view of the Malikis. If there is no stipulated condition or local custom, then in their [the Malikis'] view, it should be paid by the seller.

Dr. `Abd Ar-Rahman ibn Salih Al-Atram (may Allah preserve him) said:

"If there is no stipulated condition and no local custom, then what appears to be the case is that

the fee should be paid by the one who appointed him as a broker . So if the seller appointed him to act as a broker in selling his products, then he should pay the fee, and if the purchaser appointed him, then he should pay the fee. If they both appointed him, then the brokerage fee should be paid by both of them." (Al-Wasatah At-Tijariyyah, p. 382) (See also: Hashiyat Ad-Dasuqi, 3/129)

It says in Fatawa Al-Lajnah Ad-Da'imah (13/129):

There is a great deal of argument about how much the broker should charge. Sometimes they say 2.5% and sometimes they say 5%. What is the brokerage charge according to Islamic teaching? Or is it as agreed by the seller and broker?

Answer:

"If there is an agreement between the broker, the seller and the purchaser that he will take a specific amount from the purchaser or the seller or both of them, that is permissible. There is no set percentage for the fee; rather whatever is agreed upon with the one who is going to pay the fee is permissible, but it should be within the limits of what people usually pay that will be fair to the broker, in return for his efforts and mediation to complete the sale between the seller and the purchaser, and it should not be detrimental to the interests of the seller or the purchaser by charging more than the usual rate." (Bakr Abu Zayd, Salih Al-Fawzan, `Abd Al-`Aziz Al Ash-Shaykh, `Abd Al-`Aziz ibn `Abdullah ibn Baz)

Can brokers ask the other party to increase or lower the price?

If the broker is working for one of the two parties to the transaction, it is not permissible for him to make a deal with the other party to increase or lower the price, because that comes under the heading of deceit and betraying the trust, especially if the broker is the one who is in charge of concluding the deal, because in that case he is acting as a proxy, and the proxy must be honest; whatever profit he makes is for the one who appointed him as his proxy.

It says in Matalib Uli An-Nuha (3/132):

“A gift given by the seller to the proxy who bought from him [on behalf of the purchaser] is to be regarded as being like reducing the price for him. Therefore the gift becomes part of the deal, because it belongs to the one who appointed him as a proxy.”

If the broker’s role is limited to finding a seller or purchaser, but does not include concluding the deal, and no specific amount was mentioned for the price – rather he was only asked to look for the best price, whether he is buying or selling – then his making a deal with anyone other than the one who appointed him is a kind of deceit and betrayal.

However, some of the jurists describe brokerage in general as acting as a proxy in return for a fee. (See Al-Wasatah At-Tijariyyah by Dr. `Abd Ar-Rahman ibn Salih Al-Atram, p. 115.)

Should the broker inform the other party of the fee?

If the broker is working for one of the two parties to the deal in return for a specific fee, he does not have to inform the other party of it, even if the fee is added to the price, so long as this addition to the price is not so excessive that it results in being unfair to the purchaser, in which case it is not allowed.

So if the purchaser says: Sell this for one hundred, and you will have ten, and the market price of the item is ninety, the broker does not have to tell the purchaser about the fee, so long as the purchaser agrees to the price and there is no cheating or deceit.

A number of jurists stated that the broker’s fee is one of the expenses that may be added to the price when selling for profit, in which case he must be honest if he tells the purchaser about the original price. Hence it is more appropriate to add it to the price in sales in which there is a great deal of bargaining, in which it is not obligatory to disclose the original price.

Al-Kasani (may Allah have mercy on him) said, speaking of sales for profit:

“There is nothing wrong with adding to the price the fee of the fuller, dyer, washerman, rope maker, tailor, broker, shepherd, rent, costs of feeding and clothing workers and what they need on

a reasonable basis, and feed for mounts, taking custom into consideration, because what is customary among merchants is to regard all of these costs as part of their capital." (Bada'i` As-Sana'i`, 5/223)

Shaykh Khalid Al-Mushayqih (may Allah preserve him) was asked:

I have a brokerage business in one of the Middle Eastern countries; we act as a middleman between the purchaser and seller. The purchaser may come from any country, and I help him with buying and shipping. In return for that, there is an agreed-upon fee. Is this fee permissible or prohibited? What if I receive a brokerage fee from the factory after I have drawn up the deal and the purchaser has agreed to it, but this fee is without the knowledge of the purchaser? May Allah reward you with good.

He replied:

"Praise be to Allah alone, and blessings and peace be upon the Messenger of Allah. To proceed:

Whatever you receive of fees is wages for acting as a broker, and this fee is permissible in principle, because Allah, may He be Glorified and Exalted, says (interpretation of the meaning):

{O you who have believed, fulfill [all] contracts.} [Al-Ma'idah 5:1]

{But Allah has permitted trade and has forbidden interest.} [Al-Baqarah 2:275]

Moreover, the Prophet (blessings and peace of Allah be upon him) said: "The Muslims are bound by their conditions." (Narrated by At-Tirmidhi, 1352, Abu Dawud, 3594, and others from 'Amr ibn 'Awf Al- Muzani (may Allah be pleased with him)). But if there is any Shar'i reservation about that, such as if it goes against the system set up by the local people, or it goes against the conditions agreed upon by the seller and purchaser, and so on [then it is not permissible]. The point is that if there is anything contrary to what the two parties are familiar with, or to what they have agreed upon, or to what is customary in that country, according to which he does not have the right to receive any commission from the factory if he receives commission from the purchaser, and so on, then that is not permissible. But if there is nothing of that nature, then in principle that is

permissible." (Fatawa Al-Islam Al-Yawm)

There should be an exception from that in the case where the purchaser or the party to the contract will be harmed because the broker's fee is too much, or because he has shaped the deal to favour his own interests.

Shaykh Muhammad ibn Muhammad Al-Mukhtar Ash-Shinqiti (may Allah preserve him) was asked:

There is someone who wants to sell land for one hundred, and someone says to him: I will sell it to you for one hundred and twenty, and I will tell the purchaser that the owner of the land wants one hundred and twenty. The deal is concluded and the broker gives the seller one hundred, and keeps the twenty, in addition to his percentage from the purchaser. Is this valid, may Allah reward you?

He replied:

"There is more than one issue here.

Firstly, with regard to the real owner of the land, if he says to you: Sell it for one hundred, then you should pay attention to the rights of your fellow Muslims, especially if you realise that they need this land, and that the people who are going to buy it from you are short of money. So you must fear Allah, for this is part of being sincere towards the Muslims in general.

The individual should not be greedy or avaricious, and he should not ignore the rights and needs of his brothers. If someone else did that to him, he would not be pleased with it, and the Muslim should love for his brothers what he loves for himself and hate for his brothers what he hates for himself. So he should not aim for too much profit when he can sell it for less…

… The best is for him to fear Allah with regard to his brothers, and not make his personal gain at the expense of causing harm to the market." (Sharh Zad Al-Mustaqni').

It is better for him to excuse himself from acting as a broker if the purchaser is a friend or relative who thinks highly of the broker, because if the relative or friend is not aware that he works as a broker and charges a fee, then in that case the broker's praising the product and offering it to him

is deceiving him.

Dr. Salah As-Sawi (may Allah preserve him) was asked:

I received a sum of money as a fee [for acting as a broker] without the purchaser's knowledge. Is this prohibited or permissible?

He replied:

"Blessings and peace be upon the Messenger of Allah, and upon his family and companions and those who follow him. To proceed:

The basic principle regarding the broker's fee is that it is permissible, if the deal that he is trying to bring about is a permissible deal. But what you have asked about varies according to the situation. If the purchaser expects you to do this work for him voluntarily, with nothing in return, because of the existing close relationship between you, then you should not charge him this fee that the purchaser is not expecting. But if that is not the case, then the fee remains permissible. And Allah, may He be Exalted, knows best."

For more details, please see this category: Employment for a Salary

And Allah knows best.