

Translation of an article published in "Globes"

Prof. Barnea, on attorney Perry, who was convicted of stealing 320 million German marks from Holocaust survivors: "He did not steal, but rather provided an original insurance service"

Prof Amir Barnea said, in the framework of an expert opinion he submitted to the court on behalf of attorney Perry, in response to a petition to approve a class action suit against him: "Perry effectively operated as an insurance company and facilitated a service for purchasing insurance via a loan from the insurer - a service that does not exist in the insurance world"

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"What attorney Israel Perry did is almost impossible, and he did it. This is not theft," claims Prof. Amir Barnea, who explains that, "Attorney Perry essentially operated as an insurance company and facilitated a service of purchasing insurance via a loan from the insurer - a service that does not exist in the insurance world."

Barnea makes this claim in the framework of an expert opinion submitted to the court on behalf of attorney Perry, in response to a petition to approve a class action suit against him and against the Organization for the Implementation of the Social Security Treaty (Israel-West Germany), which he headed.

Perry was convicted of stealing about 320 million German marks from some 9,000 of the organization's clients in the German pensions affair, and sentenced to 12 years in prison. His appeal is currently being reviewed by the Supreme Court. After his conviction, two suits were filed against him, plus petitions to hear them as class action suits. In a suit for NIS 2.5 billion, filed by Reuven Cohen, the plaintiff claims that Perry provided his clients with a series of fictitious loans in order to finance the one-time premiums they were required to pay, and obligated them to pay insurance premiums on the loan. This despite the fact that

no insurance was actually executed, because the premiums were transferred to companies controlled by Perry, a fact that was not disclosed.

Barnea addresses this issue in his opinion, which deals with the insurance Perry provided to his clients, and says that, “the law suit errs in identifying the monetary charge as damage... the monetary charge that Mr. Cohen calls fictitious purchased a genuine service for him - an exemption from the obligation to repay the loan, granted to his estate, in the event that he died before completing the repayment of the loan.

“The charges against the plaintiff’s account were fair and even lower than the prices derived from his actuarial characteristics,” continues Barnea, explaining that the plaintiff would not have been able to purchase those services in real time for a lower price.

An original method

The main and most problematic aspect of the suit, according to Barnea, relates to the clients who borrowed the money to finance the investment required by the German Social Security insurance authority (BFA) for acquiring rights and eligibility, in exchange for the repayment of the loan from the pension payments that would be received. At the same time, the borrowers received an exemption from repaying their loan in the event of death, and considering the fact that the population in question was very old, on average, and without medical underwriting, the insurance was executed for the repayment of the loan.

In his expert opinion, Barnea contends that in effect the damage claimed by the plaintiff is actually an original and legal payment method for executing self-insurance that Perry offered clients who borrowed money from him to finance the process for getting payments from Germany.

“This is insurance on the balance of the payments for the loan, in the event of death,” which Barnea says provides the heirs with absolute protection. Similarly, Barnea notes that unlike regular life insurance with an insurance company, in this class action suit the exemption from the obligation to pay for the “insurance” is part of the loan agreement. He claims that it is highly doubtful whether it would have been possible to obtain bank financing based on the pension payments alone, which were not a sure thing, and life insurance to back them.