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Newsletter, October 2014 Dealing with Negotiation Tactics

Today I discuss a recent lease negotiation.

Here are the facts: I represented a physician in negotiating an office lease. The named tenant was to be the physician's medical corporation. The basic form of lease was reasonable, but I had a few reasonable objections. I sent a letter to the landlord's broker that listed the objections. Our first objection was to the landlord's demand that the physician give a personal guaranty.

The landlord used three negotiation tactics in response. You might remember these tactics from my prior newsletters.

Tactic #1: Negotiate by Proxy. The landlord negotiated through a broker. This keeps the decision maker (the landlord) away from the table. A distant decision maker receives concessions, but never gives them. The broker's job was to get a concession on the personal guaranty, but give nothing in return.

Tactic #2: Negotiate in Pieces. We sent an organized and reasonable short-list of points to negotiate in the lease. Instead of responding to each objection on our list, the landlord had the broker only respond to our first objection (the personal guaranty). The landlord negotiated this single issue, and refused to negotiate anything else until that single issue was resolved.

Tactic #3: Negotiate by Ultimatum. The landlord negotiated by ultimatum. The landlord negotiated the guaranty on a take-it-or-leave-it basis. Either the tenant signs a personal guaranty or there's no deal. Ultimatums are a dangerous tactic in negotiation, because the other side can just say no and walk away. That's ultimately what happened.

Dealing with the Tactics

By its three tactics, the landlord tried to cut off quid-pro-quo. In sum, the landlord used a broker, to negotiate a single issue, on a take-it-or-leave-it basis.

The risk for the tenant is that if she concedes the single issue, she does so for free, without gaining a corresponding concession from the landlord. The tenant might concede the single issue just for the

sake of keeping the negotiation alive, but she still loses her ability to demand a quid-pro-quo. This violates the nature of negotiation, which is give-and-take. In negotiation between two sides with equal leverage, every concession should receive a quid-pro-quo from the other side.

The tenant's best response to the three tactics is to negotiate the entire list of objections, without exception. The tenant should force a complete, exhaustive and final negotiation on all issues. This isn't hard – send an email stating that you prefer to negotiate all issues together, not piecemeal, and request a complete and final response from the landlord on all issues. If you take the time to deliver a complete list of negotiation points, demand the same respect in return. This forces the landlord to take a position on all issues, which circumvents all three tactics: use of the broker, single issue negotiation, and the ultimatum.

We did so, and the broker responded by rejecting each of our (reasonable) objections, one by one. The landlord refused to engage in negotiation, which is an aggressive move. By this response, the landlord said: no negotiation, either take our terms or go away.

My client politely went away.¹ I informed the broker that my client was looking at other offices. My client found another office for rent within a week. Brokers talk to each other, and I'm sure the first landlord learned of this, because he came back offering to waive the personal guaranty. Now my client had two good opportunities for office space, and room to negotiate both leases. In the end, she chose the second office.

If there's a moral to the story, it's this – negotiate with fairness and respect. Respond to each issue raised by the other side. You might not give the other side what it wants, but give each issue the respect it deserves, and offer quid-pro-quos where possible. Negotiation requires time. Put in the time, and don't use ultimatums or other shortcuts.

¹ Let's give credit where credit is due. It takes courage to negotiate and live with the consequences. My client had strength of character. Refer to Matt's first rule of negotiation – always have another deal lined up. It's easier to negotiate if you have an alternative to fall back on.

Seinfeld and Letterman Conversation:

Letterman: Over the winter, [my son and I] built a little push-car. So he goes down the driveway, loses control, and goes over like this. But it was all pretty minor. Two hours later, his first baseball practice of the season. So now he says 'I can't go to baseball practice 'cause I've hurt my hand.' So, what do you do in that situation?

Seinfeld: I support whatever position my wife takes. That's what I do.

Letterman: Because she knows more about parenting than you?

Seinfeld: Here's the answer: It doesn't matter what you do, but why have a fight with your wife?



"I asked You, in the nicest possible way, to make me a better person, but apparently You couldn't be bothered."