

IT'S ABOUT PEOPLE: COMMON SENSE ADVICE FOR RESOLVING DISPUTES

By *Edward R. Finkelstein*



The broad sword and shield are often the primary tools used by litigation attorneys in protecting a client's rights. However, there are times when a client will be best served by tact, diplomacy and understanding, which can go a long way toward resolving disputes before they turn into lawsuits.

For example, a retail client retained us to recover a substantial sum that had mistakenly been overpaid to a vendor. After discovering the error, the client sent several letters to the vendor advising that it would commence a lawsuit unless the money was returned. The client received no response to its letters. After reviewing the file, I called the vendor who acknowledged that he owed our client the money and agreed to repay the entire amount. When I asked the vendor why he simply had not done this, he told me that he was offended and upset because the client had sent threatening demand letters instead of simply calling and politely asking him to return the money. He said he was now willing to resolve the matter because he had been politely asked to repay the money and had been allowed to express his anger.

Similarly, a lender client sued a longtime customer who defaulted on a major personal loan. We were instructed to take a hard line with the debtor and insist on payment of 100% of the debt. The debtor's attorney was baffled by the hard line taken by the lender since it was a large institution to which the amount of the loan was a "drop in the bucket." I explained that institutions are made up of individuals who have feelings and concerns. In this case, several bank officers had a long-term business relationship with the debtor and they felt personally betrayed by the debtor and were furious with him for his conduct. Based on the personal dynamics, I

thought it would be helpful if the officers and debtor could address each other directly and I suggested a settlement meeting. After some resistance, the debtor finally agreed to attend the meeting. At the meeting, the bank officers expressed their anger and disappointment and the debtor apologized and expressed a desire to resolve the matter. Since the personal feelings had been addressed in a meaningful manner, the matter was satisfactorily settled shortly after the meeting.

Of course, not all disputes can be resolved this easily. However, as the above cases illustrate, ignoring the concerns and emotions of the people on both sides of a dispute will lead to increased tensions and hostility that will make it much harder to settle. However, acknowledging and addressing the concerns of the people involved in a dispute can often avoid or substantially reduce tensions and lead to a settlement. Sometimes you just have to pick up the phone before you sue.

About Edward R. Finkelstein, Counsel

Ed represents individual and corporate clients in a broad range of commercial litigation matters, with an emphasis on real estate, creditor's rights, employment, commercial torts, banking and financial transactions and contract and partnership oriented disputes. Ed can be reached at efinkelstein@tarterkrinsky.com.