Negotiation Tips for Business Owners

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger, both attorneys at Offit Kurman, and today we are talking about negotiations. So there's a lot of different times that business owners might find themselves in a position where they need to negotiate a resolution.

It might be prior to getting an attorney involved just in their regular day-to-day business dealings, or in a more formal setting. Like we deal with it, obviously with our clients. So in mediations or pre-litigation negotiations or negotiations during litigation, sending demands. I mean, it's all kind of falls under that umbrella of trying to find a resolution, which is really what, it comes down to at the end a negotiation is trying to find some way forward that both parties are willing to agree to. But with that comes a lot of dynamics and challenges and things. So what are things that business owners should be keeping in [00:01:00] mind when they're approaching negotiations, especially the formal legal negotiations that you and I deal with Russell?

Russell Berger: Yeah. Well, number one, you should know what you're stepping into before you step into it. And, if you're going at it alone, what position, why, how the positions you're taking might impact things down the road. Whether they might be discoverable or, become part of the history of the case.

You have to be careful about how you navigate that. And, as lawyers it's a little bit less of an issue because usually when we get involved it's the underlying case that's happening, it's the attempts at resolving it. And that's a clearer line. But, I think importantly when you get to the substantive part of it is there's really two aspects of any negotiation.

There's, one, what cards are you holding? When you look at it objectively and analytically and how strong are the facts on your side, how does that fit with the law? And you can objectively analyze, what you think the outcome of the case might be.

And, basically again, how strong is your hand? And then there's the other [00:02:00] side, the human aspect of this is, what does the other side want and, how do they view it? And any negotiation is kind of a combination of both the objective assessment of facts as well as the subjective assessment of the person you're negotiating with.

Sarah Sawyer: And I think setting expectations, right? So a lot of times folks will do that process that you just described, Russell, and they'll be like, I have the strongest case ever. Look at me. I'm gonna have a great position, which may very well be true. Sometimes you do that analysis and you end up on the other side of that coin where you realize some really challenging things about your position and have to adjust your expectations for that reason. But even if you have what you feel like is a slam dunk argument or position, you also have to realize, well, part of a negotiation is convincing the other side of that, which the more objective facts you have, obviously the better off you are.

But also the ability to reach a resolution is gonna really depend on what the other side's abilities are to get there also. So it could be that they have financial constraints that [00:03:00] don't allow you to get everything you're looking for. It might be that they just are failing to see your point of view.

So it's very rare, I would say, in a negotiation that you get that like slam junk moment where you go, I have this really strong position and I just, completely cooperated the other side and got everything kind I wanted. Right? So often you have to be prepared for resolution that might not meet those expectations?

Russell Berger: Well, yeah. I mean, just to again, insert the subjectivity to it. I mean, if that happened to you, you wouldn't say, oh, well you got me. Here you go. Here's your big pile of money. Like you'd say, well, what about this and what about that? No, that's not right. You don't have the facts, right. You're missing this and, you're not seeing the full picture, you would push back on it.

And I think obviously you want to try to create as much leverage as you can for your side. And when you go through a process like a mediation where you have a neutral third party mediating that can be helpful and they can say, look, you're really up against it.

And you can create that kind of pressure, but , ultimately, I think when you get into kind of formal [00:04:00] negotiations and mediations, it's about crafting something that both sides are going to agree to. And we used to go to court and come back and people say, well, did you win,

or you lose? You had an answer for that. And sometimes people wouldn't know where you went and you'd go to mediation, you'd come back and say, did you win or lose? And my joke was always like, well, I've never lost a mediation. I've never agreed to something that ultimately we didn't think was the right thing to agree to.

And that's an important reminder too. If you don't like the results. Well, that's why we've got court and that's why we've got other avenues to seek redress. And certainly, if you go into a mediation thinking I'm gonna settle in, I don't have any other option, then you're gonna get a worse deal.

Right? If you went to buy a car and you said, I'm gonna buy a car today. And I have to drive outta here and something, 'cause my old car's beat up. You're not gonna get as good deals if you say, you know what, I can choose to buy today or not, and if I walk away, that's totally fine too.

And, having that comfort, confidence, and that leverage will put you in a better position in any negotiation.

Sarah Sawyer: And having the patience, right? I mean a big part of a mediation context [00:05:00] specifically that you're mentioning is a really good example of that. Having patience, realizing that it's gonna take time and 'cause also rushing to try to get to our resolution can produce a similar result, which you're describing as well, like the speed in which you're trying to get, because it can be a painful process to be in that uncertainty of a negotiation. And I think it's always really important to remember that, it is a process, how slow it might be. And that also will factor in though how much you wanna be staying in that position of negotiating and be in that in between place. And how much you wanna absorb that time and pressure and feelings that come along with that is also gonna, dictate what the ultimate result is, what you're willing to give on, those types of things.

So a lot of that goes into it. A lot of mental prep work, for sure. Well, thanks Russell, we'll see you next time.

Russell Berger: Thanks Sarah.

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