The Emotional Considerations in Selling a Business

In the sale of a business, the greatest value of attorneys and CPAs may be their ability to respect what their clients are going through

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Phone calls from corporate and transactional attorneys are everyday occurrences at our office, especially when the sale of a client's company is nearing completion. But this call was a little different.

"Doug" was calling not to discuss a contract provision or a step in the due diligence process, but to let off a little steam that had built up in his relationship with "Nick," our common client, who was in the home stretch of the sale of his $15 million wholesale produce company.

"I don't know what's going on with Nick," Doug began, with a touch of exasperation in his voice. "He's been a friend of mine and a client of our law firm for more than ten years, and he's always been the consummate business owner – a solid thinker, a clear communicator, and a reasonable risk taker who never let emotions keep him from making good business decisions." Doug paused, presumably for a sip of coffee. "But ever since this sale began to look like it was going to happen, he's not the same Nick."

"What do you mean, Doug," I asked, pretending not to know the answer.

"I don't know where to start," he replied. "I mean, for two years he's been telling me that he was finally ready to sell out and what he was going to do after the company sold, and he seemed to feel good about this deal. But, Jim, here he is, about to sell his business for a million dollars more than it's worth, with everything looking good, and he's become an absolute basket case.

"Nick's usually a really nice guy, but yesterday he screamed at my secretary because when he called I was meeting with another client. Last night he called me at home to tell me, for the third time this week, that he wasn't sure if this was a good deal and maybe he was making a big mistake. And then he started ranting about the buyer and wanting to know why they're asking for the maintenance records on his refrigeration units and why they don't seem to appreciate how great a company they're buying and, if they're that kind of people, how will they treat his employees and customers and on and on and on. I finally had to cut him off and said, 'Who are you and what have you done with Nick?'

"Jim, you talk to him every day, probably more often than I do. What's going on with him?"

I'm pretty sure Doug couldn't hear me smiling over the phone. Nick's behavior wasn't a surprise; in fact, it was predictable.

"Doug, what's going on with Nick is this," I answered. "He's selling his business."

There was a long pause.

“It’s really that tough on a person?” Doug asked.

“Unless you’ve been there, it’s hard to appreciate what he’s going through,” I said. “Take all of the fears and other emotions of life’s major events – raising children, getting divorced, selling your house, buying a new house, packing and moving, losing a close family member, forfeiting your identity, and knowing that it’s all going to happen and it’s all your doing – and you’ll *begin* to get an idea of what’s going on in Nick’s head.”

Another pause.

“Well,” said Doug. “I’ve gone through all of those things, but not at the same time. No wonder he’s struggling. What do I do about it?”

The advice I gave to Doug is pretty universal, because it’s a rare business owner who can emerge from the sale or purchase of a company without having paid a high emotional price. To maximize the value of the professional services they provide their business clients who are in this situation, attorneys and CPAs should remain mindful of and try to respond to the emotional side of a client’s business transaction.

Most business owners have a strong personal connection to their company. It is not just the source of their income and wealth; it may also be a major source of their identity and purpose. If they built the business from scratch, they might liken that process to parenting – nurturing the company through sleepless nights, protecting it from threats, helping it recover from illness, constantly leading and nudging it in the right direction, and preparing it to survive and thrive without them. Regardless of their motivation in selling, they will likely revisit that motivation and second-guess their decision over and over, up until, and probably for a time following, the closing.

The stress experienced in buying or selling a company often causes abrupt behavioral changes. Normally calm people become volatile. Expressive people become stoic. Confident people become vulnerable and defensive. Meek people become bold (but awkwardly so). Normally accessible people go into hiding. People who normally keep you at or beyond arm’s length become clingy. And people who you think would sell their company to their worst enemy if he was the highest bidder will end up selling to the second-highest bidder – perhaps at a cost of hundreds of thousands of dollars – because they have decided that the top bidder is not their kind of people.

The separation anxiety that sellers experience is magnified by the emotional roller-coaster that both buyers and sellers must ride, and that is largely defined by the process of the transaction.

First, there is the courtship. The buyer and seller meet, find a certain amount of chemistry between them, and then fall in love (figuratively speaking), coming to an initial agreement as to price and terms.

Next, feelings of infatuation and optimism usually give way to less blissful emotions, as the parties negotiate the details of the transaction.

The decline in bliss may lead to suspicion, resentment, anger and outright fury, as the parties proceed through the due diligence phase. Offended sellers ask "Why does he want that?" and "Why doesn't he appreciate what he's buying?" while skeptical buyers demand to know "What is he hiding?" and "Why won't he just give me what I need?"

It is sometime during the due diligence period – about five minutes after the buyer's latest request for this or that scrap of minutiae is interpreted by the seller as calling his company an "ugly child" -- that the parties' professional advisors can make their biggest impact. When the buyer-seller relationship appears headed for the rocky shoals, whether the ship returns to safer waters may depend on whether the attorneys and CPAs view themselves as "consensus builders," focused on helping their client get what he or she ultimately wants (i.e., to buy or sell the company), or as "stake drivers" who may inflate the importance of the deal's risky aspects to the point that their clients are needlessly (and perhaps harmfully) scared away from completing a deal that they really want.

Whether a deal is good or bad is a determination that professionals should leave to the parties – no matter how unhinged their party may appear to be. Attorneys and CPAs should do their jobs – tell their clients what they need to know in order to make a sound business decision – and not mistake the clients' emotional volatility for an unspoken plea to have their professionals "rescue" them from the deal.

In the early stages of a deal, we unfailingly deliver to our clients the "Three A.M. Speech," which goes something like this: "Nick, some night, probably when we get near the closing and things are a little tense, at about three o'clock in the morning, you are going to sit up in bed, worrying about all of the negatives associated with this deal. You're going to wonder why you're doing this, are you getting enough for your business, will the buyers treat your employees and customers as good as you've treated them, what are you going to do if the deal goes through, what are you going to do if it doesn't. You will be in a panic. It's natural to feel like that, everybody goes through it, but good deals get done anyway."

Despite our most encouraging attempts to relieve our clients' anxieties in advance, on the morning of their Three A.M. awakening, they will call us or you to share their panic. How we respond is key.

If the call comes to you, before you reply to your client's ravings, remember this virtually irrefutable law of business deals: *No deal gets done unless the buyer thinks he's paying too much and the seller thinks he's giving it away.*

Attorneys and CPAs, like brokers, need to be emotional buffers. From offer through closing, the broker provides the greatest value to everyone involved as he or she manages the emotional ups and downs of the process. Attorneys and CPAs can make a huge contribution to that effort, if they will remember the strain that their clients are experiencing and understand that, regardless of the personalities of the parties and the nuances of the deal, emotional volatility goes with the territory. As I concluded long ago, when the parties are telling each other to go to hell at the same time, they're finally starting to think like each other.