

# Dealing for dollars

## Taking a full arsenal of negotiating skills to the table

By **BERNADETTE STARZEE**

The Long Island company was sitting on technology that was worthless to them but could be worth a lot to someone else. Stephen Young, counsel with Garden City's Scully, Murphy & Presser, representing the company owning the technology, found what he thought might be a prospective buyer.

Young's side was hoping to get \$10 million but would settle for less. "Within minutes it was obvious that the other attorney just wanted to get out of there and that he was looking for an excuse to kill the deal," Young said. But Young's side didn't pick up on it when the opposing buyer's lawyer said, "What do you want for it, \$10 million?" and we said yes right away," said Young, noting that the high amount gave the other side the out it was looking for.

"We should have put the burden on them to tell us what they thought it was worth to them," Young said.

A negotiating lesson learned, from a deal

gone sour, the one you never forget. But the art of negotiating isn't just jumping in and immediately showing your cards. It's picking up the opposition's clues, learning how to disarm bullies, knowing when to be a friend, when to take a vow of silence and when to impersonate Peter Falk that will provide firepower a negotiator can take to the table.

Can the delicate knack of legal horse trading be taught? Yes, according to Hal Abramson, a professor of law at the Touro College Jacob D. Fuchsberg Law Center in Central Islip. Even though negotiating comes more naturally to naturally creative people, the skills can be learned. Abramson should know: "I've been teaching them for more than 20 years."

One key to successful bargaining is to get the other side to want to settle the case, said Joseph Bavaro, a partner at Salenger, Sack, Kimmel & Bavaro in Woodbury, who defends plaintiffs in medical malpractice and personal injury cases.

If you show you can win the case in a courtroom, you're halfway home, Bavaro said. "By showing every step of the way that we're prepared and professional, the opposing attorneys will realize that if the case goes to trial, we will carry those strengths through to the courtroom, and they may not want to risk it," Bavaro said.

Any attorney can learn to do homework, but other negotiation skills are more challenging. "You need to learn when to stop talking," said Sandra Radna, a partner in the law firm Radna & Androsiglio, whose Smithtown office is moving to Fort Salonga

next month. According to Radna, keeping quiet is not as simple as it sounds.

"Sometimes, you just have to state what you require and your reasons and then wait for the other side to respond," she said. If you don't get an immediate answer, say nothing, because their silence might tempt you to start lowering your demands.

Facing an opponent who is screaming and yelling, it's easy to lose focus, said Joseph Campolo, a partner at Campolo, Middleton & McCormick in Bohemia. One way to neutralize a bully is ask disarming questions like, "Why is that term so important?" Or, "That's one option, what are the others?" Or just change players for the next go around.

Then there's the Columbo tactic. Bumbling around, appearing unprepared, the other side might take certain aggressive positions, Campolo said. This often opens the door for a skilled negotiator to step through and demonstrate the weakness of his adversary's position. "By overreaching, the opposing attorney might do worse for his client than if he had remained conservative," Campolo said.

In the small world of Long Island law, seeing the same faces over time, it's essential to establish credibility, integrity and respect, said Sandra M. Gumerove, a Jericho attorney. "Attorneys are so busy they often don't take the time to develop a rapport," she said.

Rather than seeing the opposition as an enemy, it's more constructive to think of the other attorney as a teammate working toward a common result. "Try to understand the other side's position almost as well as

you understand your own," said Lewis S. Meltzer, a partner in Meltzer, Lippe, Goldstein & Breitstone in Mineola. "Figure out their essential goals and what their fears are."

This often requires digging. "Sometimes emotions are running high and people act irrationally," Meltzer said. When the other side says no, probe deeper to find out why. "Very often, you can offer something that protects their interest while still meeting your objectives."

Meltzer represented a client who leased a building to an out-of-state Kmart. When the home office closed the store his client still had to pay rent for three years. The client found another potential tenant, Home Depot, which wanted to knock the building down and build a new one. Since there was a mortgage on the property, the lender's permission was needed.

"In a knee-jerk reaction, the lender said no," said Meltzer, who noted that the lender should have been "tickled pink" that Home Depot wanted to build a new building on the property, rather than have a shuttered store there.

Meltzer's team uncovered the reason: The lender considered the building its security in case the client defaulted on the loan. "We pointed out that the building was virtually worthless - it was 40 years old and out of repair - and that the real security was the rent that Kmart was paying," said Meltzer, who offered the lender a letter of credit equal to the amount of Kmart's remaining rent as collateral. Bottom line: The lender granted permission, and Home Depot built the new store.