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the closer

By Michael Young

Art of Negotiation

With finesse, a lawyer can mediate a settlement to make even a mother proud.

Negotiate for a living, as do many of you. And, as many of you have already figured out, while negotiation tactics will always be part of the process, the slime, rancor, bullying, threats and raised voices that characterize the worst in negotiations need never see the light of day. Like anything else in life worth doing, it all depends on how you play.

I didn't grow up to become a negotiator, and I don't tell my mother that I am one. Negotiators, after all, are mean, tough, abusive and slimy. At least that's what my mother thinks. Negotiators are used car salesmen who play psychological games, like pretending to talk to the "manager" for an hour to "fight for your offer," when in fact they are yucking it up in the cozy salesman lounge. Negotiators can't be trusted. They withhold information and create false deadlines to pressure you. They play tricks on you, like sitting in the Big Guy chair while giving you the really short, dumpy one that faces the setting sun. They haggle and pressure and argue until they get every last dollar possible, leaving you feeling drained, maybe cheated and definitely ready for a shower.

And I'm going to tell my mother I do *that* for a living? I don't think so. She may not have much of an estate, but I'd like to stay in the will just the same.

Take the call that came in just last week:

Up until Thanksgiving, Hermione Granger was happy with her new job as senior vice president at Hogwarts, a worldwide supplier of educational materials. She was 59 years old and had been heavily wooed by the corporation to give up her Florida consulting business, sell her home and move her family out to the west coast to head the company's purchasing department. In fact, to further entice her to join the company and move to the better coast, Hogwarts provided her with an interest-free \$300,000 loan

to help finance a comparable home in lovely Manhattan Beach and included her in the corporation's generous "Executive Big Bucks Compensation Plan."

After Thanksgiving, though, it was a different story. Granger was on the street, another victim of "corporate restructuring." She called me full of emotion. She wanted to sue; she wanted to fight, and she wanted revenge. She needed to pay her mortgage. She had an accelerated loan on her back ("I'm sorry, Ms. Granger, but if you had read the really tiny print on the back of the loan document, you would have known that the entire loan becomes due and payable upon termination.") Her daughter's next tuition bill from USC would be coming due. She liked her old job. She liked her former colleagues where she lived, and she wanted her job back. She wanted any job. She wanted to wake up and have this all be a really crummy dream. "Can they do this?" she cried out. And finally, "What am I going to do?"

Enter the Negotiator. Option one: Send Hogwarts what we in the legal business affectionately call "The Nastygram." "Dear Hogwarts: You really messed up here. You violated Labor Code Section 970, Title VII, the Geneva Convention, the SALT treaty and the Rule in Shelly's Case, and you are going to pay big. Our demand: \$4.7 million, and forgive the loan. And a Jonathan Club membership." You may get a response, such as: "We didn't mess up. Your client should have been fired for incompetence. But to avoid the nuisance of going through old law school notes to figure out what the Rule in Shelly's Case is, we will offer Ms. Granger a generous \$25,000 severance and an extension on the loan. And a Costco membership." And the fight is on. The prize? Who will get how much of the \$4,975,000 that separates the two sides. And while the battle rages, poor Hermione Granger will need a magic spell to pay her bills.

Option two: Change the rules. Negotiate in a way that will make Hogwarts *want* to help Granger. How? It's all in where you start. I started with my client. Was she really interested in a long fight for a chance at a hefty money settlement? Not really. She wanted a job similar to the one she had at Hogwarts. She wanted to keep her nice house in the tree section of Manhattan Beach. She didn't mind paying for the house — or even the Hogwarts loan — so long as she had a job that would pay her enough to afford it. She wanted her daughter to stay at USC. She wanted her normal life back.

And what does Hogwarts want? Certainly not to throw \$5 million to every at-will executive who gets “downsized.” Nor, of course, would it want to face an employment lawsuit. It would prefer a clean separation with Hermione Granger, a signed release of all claims, with as little expenditure of company resources as possible. It might also have a small interest in being seen as a “good guy” in today's corporate world. The Granger/Hogwarts goals are not mutually exclusive.

I called Mr. Lupin, Hogwarts' in-house employment counsel and explained the problem. Granger trusted Hogwarts. She trusted the company when she pulled up a lifetime of roots and business contacts to cross the country at age 59. She trusted it when she agreed to the hefty mortgage and the company loan. As a result of that trust, she now finds herself in a precarious situation. I didn't threaten Lupin with the rule in Shelly's case or even a labor code violation (though I may have mentioned that I didn't

see any value in discussing those contentious, but viable, legal claims at this time). Instead, I began a discussion about how Hogwarts might help to make things better.

How about hiring her as a low-paying consultant. Prospective employers may look more favorably upon a recently terminated candidate if the former employer has so much trust and respect for her that it continues the relationship. How about letting Granger keep a phone and voice mail at the company and forgiving the loan for as long as she is out of a job? Does the company offer any college scholarships? And then there is the club membership. How about letting her keep her membership in that business club, where all the networking possibilities are. At least until she gets a new job.

All of these ideas help Granger with what she really wants and provide her with a benefit that greatly exceeds the actual cost to the company. This is not a fight over a limited supply of money, it's an exercise in creativity to which even Lupin can contribute. And when it's all over, Granger will be on her feet. And her feet will be welcome back at Hogwarts, if only for a visit with old friends.

And then I can tell my mother that, as a lawyer, I helped someone.

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