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Just Walk Away

By Andrew M. Apfelberg, Esq.

The best way for someone to be saved from a failed transaction is to be on the alert for the warning signs of a bad deal, and if discovered, to be willing to walk away. When the parties to the deal focus almost exclusively on maintaining momentum or the adrenaline rush of a closing, they tend to ignore the red flags that pop up from time to time as well as their own inherent reaction to what is uncovered.

In my experience I have encountered significant warning signs and red flags. They usually appear when the —

- Deal seems too good to be true.
- Insistence on an overly quick closing or execution of the transaction documents.
- Requests for due diligence items result in hesitancy or delay in responding to transaction documents.
- Records or documents reviewed in the due diligence process are incomplete or materially disorganized.
- Negotiations don't result in a change in the necessary business terms or language of the agreements.
- Negotiations include insistence on an "as is" sale and there is refusal to give any material representations or warranties.
- Other side or a broker/finder exerts significant pressure to close despite the existence of open items or outstanding questions.
- Discussions reveal instances—even if they seem minor—where the other side was less than honest with others or failed to follow corporate formalities or the applicable rules and regulations.

The best indicator that I have found of the significance of one or more of those items is the party's word choice in discussing them. I always know that something is wrong when I hear things from such as:

- "I do not trust the seller, but ..."
- "That does not seem right to me, but . . ."
- "Those are legitimate issues, but . . ."
- "That is a huge risk, but . . ."

Also Consider the Unspoken Words

The words that the parties use unintentionally are the best indicators of their

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Words from the Wise

"Destiny is not a matter of chance, but of choice. Not something to wish for, but to attain."

- William Jennings Bryan

gut-level reaction to the warning signs and red flags that are observed. Accountants, attorneys, bankers and insurance brokers are in a unique position to help identify the warning signs and empower their clients to make good decisions based upon this new information. The client is likely to be less guarded when talking with members of this team.

Professionals often stay quiet or only make subtle comments because of the fear of being perceived as a deal killer or because of a strong deference to the client's ability to make the tough business decisions. But most people want their professionals to be equal participants in the process and to share openly their perceptions and suggestions. The headiness of the deal and the momentum may prevent the party from being objective about the transaction. Personally for me, it is vital for many of my clients to have me and their other professionals carefully observe them and be candid about what was seen. This honesty will justify for them the hourly rates these professionals charge. These clients feel that they are paying for another set of eyes and ears and deserve to receive the results of clear vision.

By continuously looking out for warning signs and red flags, you will be able to slow the momentum of a deal just enough to analyze carefully the information and issues presented without jeopardizing the pacing of the negotiations. You should feel empowered to listen to your own instincts; this will help you to avoid a bad deal; be able to make better decisions; inherently know what is right and what is wrong; and evaluate what makes sense and what does not.

You should not be afraid to walk away from a deal that does not feel right. There is almost always another opportunity just around the corner. Whenever someone is having difficulty with this, I share a story about a real estate developer I know. I asked the developer once what his most profitable transactions were, and he responded, "The ones that I didn't do."

About the Author

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