



***NEGOTIATING LIFE:
HOW TO RENEGOTIATE A "BAD" DEAL***

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Let's face it. We've all done deals that turn out to be worse than we thought they would be when we agreed to them. But a deal's a deal, right? Too bad. Buyer beware. End of story.

Maybe not. This month's reflection from the front lines of negotiation is about renegotiating the bad ones. As much as we cherish the great deals we have done, it's the bad ones that haunt us.

This month we'll take a look at how we get into bad deals and how to get out of them.

How we get ourselves into "bad" deals.

Obviously, we do not *try* to get ourselves into bad deals. If we think a deal is so bad that it makes more sense not to do the deal, then presumably we will not do that deal. But the truth is sometimes we do get ourselves into bad deals. So how exactly does this happen?

Most of the time we get ourselves into a bad deal it is because we make *bad assumptions*. Let me repeat that. By far the most common cause of our entering into bad deals is that we make bad assumptions. So what are bad assumptions?

They are usually assumptions that seem reasonable at the time we make them but later turn out to be erroneous. For example, in the context of a commercial real estate deal, if I make an assumption that the market will go up but it goes down, a seemingly good deal can turn into a bad deal in a hurry. Now it may be that I made an honest mistake. It may be that no one could have made a better assumption at the time. But more often than not, when we make bad assumptions that lead to bad deals, we do so out of ignorance. In other words, a better analysis would have led us at a minimum

to question our assumptions *prior* to making a deal that turns out to be bad based on those bad assumptions.

Now that we have identified bad assumptions generally as a cause of bad deals, let us look at one particular category of bad assumptions that causes more bad deals than all other types of bad assumptions combined. I am talking about assumptions about our *interests*. By interests, I am referring to what we need or want (as opposed to *positions* we may take in negotiations in an attempt to satisfy our underlying interests). Why are bad assumptions about our interests so damaging? Because when we do not understand our actual interests, we negotiate for things we do not actually want or need – and we forget to negotiate for other things that it turns out we do need.

This problem of making bad assumptions about our interests can occur when we negotiate in new or unfamiliar environments. For example, if I do not realize that I need to obtain certain protections in a distribution deal with a prospective channel partner in a new market, I may leave myself unprotected and find that the deal turns bad. The problem of making bad assumptions about our interests often occurs when we negotiate on behalf of an organization but do not check in effectively with other internal stakeholders to ensure that we are satisfying their interests in the deal. When this happens, you may hear from other internal stakeholders, "You agreed to *what?!*"

Another major category of bad assumptions that lead to bad deals is assumptions relying on data that is externally available and should be validated, such as market pricing and terms. When a market has developed certain norms over time, we should at a minimum investigate the reasons for those norms before we ignore or reject them. If we fail to do so, our ignorance is less likely to result in bliss than in a bad deal. For example, when I negotiated a television distribution deal for the first time in the entertainment industry, I consulted with an entertainment lawyer who had extensive experience negotiating television deals. He explained what I should look out for and what to be sure we obtained in our deal; had I not investigated my assumptions about market norms, I would have missed a number of key deal points relating to technical specs, term, and promotional activities.

In addition to bad assumptions, the other major cause of bad deals is of course bad negotiating. This one is ugly. There is no way to perfume this pig. You got in over your head and got taken for a ride. It's that simple. Or again, is it?

Before you beat yourself up and conclude you are a bad negotiator, you might be heartened to learn that almost all truly bad negotiating is caused by one of three things: 1) bad assumptions (discussed above); 2) fear of conflict; and 3) addiction to conflict. We have already looked in some detail at how bad assumptions lead to bad results. Let's consider briefly the other two major causes of bad negotiation outcomes.

How does fear of conflict cause you to agree to make bad deals? It generally happens in one of two ways: either you overstate in your mind the cost of not doing a deal – and therefore accept a deal you should not; or your negotiating counterpart senses that you are afraid of conflict – and exploits your fear by threatening conflict in order to get you to accept a bad deal. In short, you become a dove who fears hawks.

How does an addiction to conflict cause you to agree to bad deals? Most often, it happens when you push other people too hard and then miss opportunities that would otherwise have been presented by building more collaborative, productive relationships in negotiations. Another way it happens is you focus too much on pushing one particular position that turns out not to be a particularly effective way to satisfy your interests. Yet one other way an addiction to conflict can cause you to enter into bad deals is you are so focused on dominating your negotiation counterparts that you overlook or miss key information that you would have taken into account had you listened more effectively.

How to get yourself out of a "bad" deal.

Okay, so we have looked at various ways we can get into a bad deal. Now we have to figure how to get ourselves out of a mess. And unfortunately, while it may have been easy to get ourselves into a bad deal – particularly if we were negotiating with a ruthless person who took advantage of our mistakes – it is not so easy to get out of a bad deal. On the other hand, it is often worth trying to renegotiate a bad deal, particularly when you have an ongoing relationship with the other party or when you can pursue "fighting alternatives" that may damage the critical interests of the other

party if the other party refuses to renegotiate your bad deal. So how do you renegotiate?

The first step is to recognize how you got into the bad deal. What mistakes did you make? Did you make bad assumptions? Did you fail to look at key data? Were you afraid of conflict or communicate a fear of conflict that your counterpart exploited? Did you force conflict in a manner that resulted in a deal worse than if you had been more collaborative? Look at what you did. Then figure out what role, if any, your negotiating counterpart had in helping you agree to that bad deal.

Why should you look at the other party's role in negotiating you into a bad deal? Because it can help you understand how resistant or open the other party may be to helping you renegotiate your way out of that bad deal. For example, if your counterpart knew you were making bad assumptions but did nothing to inform you of your mistakes and instead profited from them, then that tells you the renegotiation may have to be somewhat hard-edged. If, on the other hand, you made bad assumptions and your counterpart did not perceive your mistakes, then he or she may be more open to a renegotiation.

Once you have a sense of what mistakes you made to get into the bad deal and what role, if any, your negotiating counterpart played in getting you there, it is time to figure out how to go about trying to renegotiate your bad deal. This is where you have to do the heavy lifting. You need to look at the following three things:

- 1) What are your critical interests and the critical interests of other stakeholders and how have those interests been affected by the current deal?
- 2) What (new) options can you come up with to satisfy your own interests and the interests of other stakeholders as part of a renegotiated deal?
- 3) What "fighting alternatives," if any, might you (and other stakeholders) pursue if you are unable to renegotiate your bad deal?

The above three-step analysis will tell you what you have to do and whether you will have the leverage to renegotiate your bad deal. That way, if you made bad assumptions previously, you will not waste time "begging" others to let you out of the bad deal. Nor will you negotiate from your knees if the other party has ruthlessly taken advantage of your previous mistakes. You will be able to explain 1) why you made a bad deal; 2) how your interests and, if applicable, the interests of others are being harmed by your bad deal; 3) what you are prepared to offer as part of a renegotiated "package" deal that is better for others than your current bad deal; and/or 4) what you are prepared to do unilaterally to harm the interests of others and satisfy your own interests if they do not agree to renegotiate your "bad" deal.

As you decide whether and how to try to renegotiate a bad deal, you should also consider relationships. Is the bad deal part of an ongoing relationship or is it a one-time transaction? The answer to this question matters a lot. If the bad deal is part of an ongoing relationship, you are almost always better off trying to renegotiate it than suffering in silence.

There are many reasons for this. First, do not assume that just because you made bad assumptions, the other party will remain forever unaware of your bad assumptions; you do not generally want to be in an ongoing relationship with someone who thinks you make bad assumptions and therefore bad decisions. Second, you may be surprised to learn that the other party has also made the same (or other) bad assumptions and is quite willing to renegotiate the deal for that reason. Third, if you are dealing with a reasonably sophisticated party, he or she will grasp that you are unlikely to make the same mistakes next time and that you will become much more assertive on the next deal so as to recoup your "losses" from the previous bad deal.

What I am really saying is that in an ongoing relationship, we are always "negotiating." In some cultures, I have found that the real "negotiation" begins the moment the contract is signed! Sounds a bit like marriage.

If you have determined that it is both possible to renegotiate a bad deal and worth attempting to do so, my experience is that you should be straightforward when you approach the other party about renegotiating. For example, if you got yourself into

the bad deal by making bad assumptions, 'fess up and take responsibility for your mistakes; then explain what new proposals you have so that a renegotiated deal will be better for the other party than sticking with the deal you have already made. If the other party misled you or otherwise tricked you into the bad deal, then you should be open about that (without being unprofessional or nasty yourself). You should also be clear what "fighting alternatives" you are prepared to impose on that party if the bad deal is not renegotiated.

Conclusion

As you can see, there is no "magic bullet" for renegotiating a bad deal. On the other hand, if you look at how you got yourself into the bad deal and what role, if any, your negotiation counterparts played in getting you there, then you can use a three-step approach to develop a sound analysis of the key assumptions and determine whether you may be able to renegotiate a better deal. And even if it turns out that you cannot renegotiate a bad deal, your disciplined analysis of what got you into the situation will make it far less likely that you will make the same mistakes in the future.

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