

the most inexperienced person a chance to negotiate effectively.

The chapter is divided into three parts, Philosophy of Negotiating, Twenty-one Basic Rules of Negotiating, and Negotiating the Acme Widget Corporation Price and Terms.

## **PART 1: PHILOSOPHY OF NEGOTIATING**

This philosophy is to explain what negotiating is, why it is necessary, why it is ethical, and why it is good.

Negotiating is a form of communication in which two or more parties are helped to clarify and understand each other's needs and desires so as to reach agreement on the issue at hand. In the sense that it is a communication towards reaching agreement, negotiating the price and terms of a business for sale is the same as such everyday activities as arranging a time and place for a meeting. The parties involved simply propose and counter-propose until an agreement is reached. In other ways it is completely different. One difference is that buying and selling a business is not an everyday activity and neither (in America) is bargaining over the price. Another difference is that the price of a business is enormously more difficult to determine than a time and place to meet, and still another is that the stakes are fearfully high. Since neither a purchase nor a sale is possible without settling the price and terms, negotiating is both necessary and constructive. It does not matter that one or both parties may negotiate with hostility born of rancor rather than spontaneous cooperation born of good will. Negotiating is still necessary and it is still constructive even if geniality does not prevail. Since it is necessary and especially since it is constructive, it is good.

Negotiating is often marked by spontaneous cooperation but even when it is, it is still an adversarial contest. It is like a war fought by armies on a battlefield but with an important difference: soldiers use guns to shoot bullets of heavy metal intended to cause physical destruction. Negotiators use words to deliver packets of influence intended to cause mental deterioration.

Physical or mental, both are wars of attrition to one degree or another.

Note that negotiating is both constructive and destructive even while leading to agreement. Thus is revealed another view of the treacherous dichotomy of motives. It is treacherous because neither side has to agree to settle. If the damage becomes too great, either side may withdraw from the war, in which case both sides have lost.

Negotiating is ethical when done in good faith. Good faith means making and accepting only those offers and counter-offers one intends to abide by. Good faith means honoring one's concessions once they have been made and accepted. Good faith also means the seller having told the whole truth (within reason) during fact-finding and the buyer having told the whole truth (within reason) when describing his or her qualifications to the seller. Least high ethics degrade into misguided altruism, good faith does not exclude keeping two appraisals, one to show to one's adversary to coax a lower or higher price, and one for private viewing to set the limits of bidding. Good faith does not exclude accentuating the positive when one is a seller or the negative when one is a buyer. Good faith also does not exclude probing for weakness or exploiting it in hopes of obtaining an enticingly favorable settlement.

One may contend that an honest seller will state a firm price and stand by it while a seller who lowers the price concedes that the price was too high to begin with. No such seller is ethical, and negotiating therefore is unethical, or so the thinking goes. The problem with such thinking is that it fails to account for the enormous subjectivity and complexity of appraising leading to honest differences of opinion and to honest mistakes. It also fails to realize that all values (like all truths) are provisional pending the discovery of additional insights and knowledge. The purpose of negotiating is to explore the subjectivity and complexity of appraising for the purpose of reviewing and adjusting values. That is part of what makes negotiating constructive. Negotiating therefore is ethical.

Negotiating is both beautiful and ugly. It is beautiful when disparate opinions come together, when problems find solutions, and when goals are realized and dreams come true. It is ugly when greed provokes unwillingness to compromise, when irrationality and fear reign supreme, and when incom-

petence kills the deal.

Finally, negotiating is a mode of truth. It is the truth of competing skills motivated by ethical self-interest which says that the value of a business is based not only on the earnings of the business but also on the skill of the negotiator to emphasize those earnings or any other aspect which contributes to the price and terms. It is the truth of the marketplace where the law of supply and demand is part of the terrain on which the war is fought. It is the truth of the whole myriad of circumstances in an imperfect world that affects one's mind and one's pocketbook and, thereby, one's offer, counter-offer, or acceptance thereof in the heat of battle. And it is the truth of the highest order which transcends all other appraisals because it is the all-inclusive appraisal of finality.

With the prerequisite philosophy accounted for, the basic rules of negotiating now follow.

## **PART 2: TWENTY-ONE BASIC RULES OF NEGOTIATING**

The 21 basic rules which follow are designed to maximize one's effectiveness in reaching settlement and closing the deal, as well as effectiveness in getting the best price and terms. These rules are neither rules of law nor rules of etiquette although etiquette contributed to their formulation and always should to their application. The rules are based on reason plus experience. One almost could say that they are based on common sense except that some of them require too much insight for most people to determine informally. The value of knowing these rules is partly to be able to apply them as the occasion demands but also to be able to recognize when they are being applied by one's adversary. The rules are easier to understand than the methods of appraising but much more difficult to apply. If appraising is an art, which it is, even more so is negotiating.

**1. Decide at the Outset Which Is More Important, Getting the Best Price or Closing the Deal.** If the former, an adversarial mind-set may prevail, though not overtly. If the latter, a spontaneously cooperative spirit should prevail, though not unguardedly. Apply the remainder of these rules in accordance with your decision.

Any number of factors will come into play, such as how well the business matches the buyer's dream, how well the buyer matches the seller's dream, the chances of finding something or someone better in the near future, the economic, physical, or emotional need to make the purchase or sale, and so on. If getting a good price seems more important, concessions will be relatively few and small, but the chance of actually making the deal will also be relatively small. If making the purchase or sale seems more important, concessions will increase in size and number and the chances for closing the deal will also increase.

For most small business transactions, closing the deal is far more important than getting a great price. The reasons are the mutual need of the buyer and seller to get on with their lives, and the overriding fact of illiquidity, that good matchups of buyers and sellers are so hard to find. (See section on illiquidity, page 52.)

The following two examples offer some insight into applying this basic rule. At least part of that insight will come from the vicarious experience they provide.

**Example 8.1** A doughnut shop is offered for sale at \$35,000. The shop was opened just three years earlier with all new equipment. Both the shop and the shopping center in which it is located are attractive. The neighborhood is middle- to upper-middle-income and still growing. Sales have risen slowly but steadily to where the owner draws a \$26,000 salary and the business shows a profit of about \$6,000. The owner has kept a record of monthly sales and expenses which shows that sales are still rising. The owner tells the broker that the shop cost about \$35,000 for equipment and leasehold improvements, that it would easily fetch

around \$55,000 if he were willing to wait for the right buyer, but that he set a low price to encourage a quick sale and cover his original investment so that he can invest in another, more lucrative opportunity. The broker knows from his own experience with other doughnut shop listings that the seller's claim of a low price is true with no exaggeration.

The broker finds a likely buyer in the person of a young man with an engineering degree who decided to switch careers and who is presently employed as the manager of another doughnut shop. They go on a showing and the buyer expresses strong satisfaction with the location, the layout, the hours of operation, and especially the quality (all stainless steel) and newness of the equipment. Two days later he meets with the broker to make an offer of \$21,000 with \$16,000 down and \$5,000 seller financing. The broker informs the buyer that the shop is a bargain at \$35,000 and that his offer is much too low to be seriously considered. The buyer insists that he wants to make the offer as stated. The broker tries to discover the buyer's reasoning but the buyer is guarded and refers obliquely to some advice he has received with no further elaboration. The broker warns him again to no avail, then apologetically carries the offer to the seller. The seller is very polite and states that his offering price is fair and that he will not counter-offer. The seller's message is passed back to the buyer who says he will think it over. The buyer returns two days later and raises his offer to \$23,000 with \$17,000 down and \$6,000 seller financing. The broker warns the buyer again to no avail, then carries to the seller with further apologies. The seller rejects with the comment that if the buyer needs to feel that he was able to negotiate a lower price, the seller might concede one or two thousand dollars just to be done with it but the buyer's offer is so unrealistic that it merits no counter-offer and no further discussion. The rejection is carried to the buyer who politely expresses disappointment and exits.

One day about eight months later, the broker is alone in his office sitting at his desk when a figure appears in the doorway. It is the young engineer with something to say. He has since bought a business in an entirely different field which is hardly making a living for him and which is not nearly as nice or as enjoyable as the doughnut business was. He now realizes that the shop was offered at a fair price and he regrets not having made a decent offer. He concludes by saying to the broker, "I just thought you would like to know." He thereupon exits and is not heard from again.

**Example 8.2** A tavern in a lower-income neighborhood is listed for sale at \$70,000, real estate included. The tavern is in a freestanding building with an apartment on the second floor. The broker takes a prospective buyer on a showing and the buyer states that this is just what he has been looking for. They return to the broker's office where the buyer signs an offer for the full \$70,000. The seller immediately accepts and they have got a deal. The next day the buyer returns to the broker's office and states that when he told his friends what he had done, they all told him he should have offered a few thousand dollars less. Nevertheless, the buyer says, he loves the place and did not want to risk losing it. He feels that the price is fair and he has no regrets.

**2. Use an Intermediary if the Negotiation Is Adversarial or Hostile.** The intermediary who delivers and receives verbal messages is a buffer who absorbs any abuse given by the principals and who, with good rhetoric and gentle ego, can soften the mistakes being made. Also, an intermediary is a third party who alters the personal chemistry, usually for the better, when hostility prevails. If the skill of the intermediary is not the highest but merely clerical, his or her mere presence will still provide emotional relief to both principals. If the negotiation breaks down for reasons of hostility, however, a skill level greater than clerical is probably required to save the deal, as shown in Example 8.3.