

Negotiating to Win

By Jan Frankel Schau

As published in the Daily Journal
September 26, 2013

A funny thing happens to professionals who are natural born perfectionists: Confronted by an endless array of options, the perfectionist is so worried about making a suboptimal choice that even when they have agonized, evaluated, negotiated and finally acted, they are often left feeling regretful. Indeed, it is a challenge to live up to perfection in every decision. As a decision-maker, perfectionists can also be seen as "maximizers." Lawyers and their clients who are insistent upon getting the absolute win in litigation are typical representatives of this decision-making style.

There is another option that fewer lawyers or litigants may have considered: satisficing decision making. Defined as "a process through which an individual decides when an alternative approach or solution is sufficient to meet the individual's desired goals rather than pursue the perfect approach," the term was coined by Nobel laureate economist Henry Simon in 1971.

By way of example, consider the house hunting project that my daughter and son-in-law recently undertook. My daughter, an educational psychologist, made a list of all of her needs: three bedrooms and an office, in a good school district, with a new or modern kitchen and in a neighborhood that is primarily comprised of single family homes. A classic satisficer, she was ready to put an offer on the first (and second and third) home that met her criteria. Finding the "perfect home" was not her objective. My son-in-law, however, holds an MBA and is the classic maximizer. Before he made any offers, he needed to see every house on the market between Westlake and Long Beach, run comparable values for every neighborhood, consult with architects and lenders about loan-to-value and costs of upgrades, and assure himself that the investment he was about to make was absolutely optimal. (Of course, by the time the excel spread sheet was printed, the homes had sometimes been sold.)

In the new book, "Wonder Women: Sex, Power and the Quest for Perfection," by Debora Spar, president of Barnard College, the author candidly admits that "my generation made a mistake." Those of us who came of age after the feminist movement of the 1970s mistakenly believed we (women) could have it all and do it all. As Spar says in a recent interview in the New York Times, "we took the struggles and victories of feminism and interpreted them somehow as a pathway to personal perfection."

In her role as head of one of the most elite all women's universities in the country, Spar offers the alternative of "satisficing" as a means to achieve happiness, balance

and still make significant contributions to intellectual thought in business, law and the sciences. She suggests that going for "good enough" may be the best option. (For lawyers, I see this as giving you the green light to order take-out for your next family gathering or celebration and to decline that particular PTA committee appointment this year).

In mediation, the maximizers are easy to spot: They are the men and women who take a "strategic walk out" at the end of the day rather than accepting an offer that is sub-optimal. The maximizer needs to be certain that there are no better options if they wait, prevail on a risky motion, take that last deposition, etc...

In the case of a recently mediated alleged wrongful termination from employment case based upon a failed security clearance check, the maximizer demanded \$1 million and then walked away when the employer refused to pay less than two years of plaintiff's lost salary in damages (the optimal result of the negotiation or strike point) plus an adequate compensation to cover attorney fees, amounting to another 40 percent on top.

The satisficer, after hearing all of the employer's defenses, may have accepted an offer as a "second best" offer, even though there was a chance he could do better over the next few months. The offer of one year of salary may have been acceptable as the best available option, though not quite optimal. Where the former employer agreed to seal the personnel records and convert the termination to a voluntary resignation, the second option becomes "very good," though still suboptimal. While the satisficer could see that, the maximizer would turn down such an offer as insulting and consider it a loss, not merely second best.

To the satisficer, the offer, simply stated, would have been "good enough" and the client could have had the funds to get an apartment, retrain for another position and get back on his feet instead of continuing to stay with relatives and apply for jobs which included being compelled to admit he had been terminated from his last position for failure to pass a security test.

In other words, the satisficer in a mediation carefully evaluates the best option "on the table" against the risks and expenses and delays of rejecting that offer and proceeding with further negotiation after the mediation. In those instances where there is an option that is "good enough," the satisficer will accept the last and best offer, even if it may not have been the perfect choice or outcome. Ad studies have shown that typically the satisficer is more satisfied with his choices than the maximizer, who can't escape doubting himself and wondering whether he could have done still better.

Here lies the paradox of perfection: It's hard to be absolutely certain that you have achieved the optimal outcome, and because you are a perfectionist you will beat yourself up over it and second guess yourself even after a good decision is made.

Before making your next decision, consider your general approach to decision making and whether choosing the option that meets your goals, satisfies your Client's objectives and perhaps even pleases the person with whom you share joint tenancy is ultimately a better option, even if not the perfect one. It may put you on the road to both professional success and personal happiness.



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