



# ENTREPRENEUR'S CORNER

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## Negotiating the Sale of a Technology Company

by Jack Roseman, Contributing Columnist

We have talked about negotiating before, but it's such an important part of operating a business that I am going to talk about it again. It's a subject I love, and it's something I find myself doing a lot of lately. Specifically, negotiating the sale of companies.

This column is not designed to prepare you to sell your own company. But it might help you pick a negotiator. And it might help you give him the kind of support it takes to conduct a successful negotiation.

First of all, how do you judge whether a negotiation has been successful or not? Is it how much you got the other guy to pay? Is it how much you beat him back from his original position? The way I judge whether a negotiation has been successful is when, within a year of the deal closing, both buyer and seller come to me and say, "Thank you, Jack Roseman."

How can I do that? I go into the negotiations trying to do both sides a favor. I strive for a win/win. I also keep my fee so low - one percent of sales - that it's easy for me to strive for a win/win.

Now does that mean I won't exaggerate? Of course not. I may try to mislead you, but I will not lie to you. And I won't stop you from arriving at some wrong conclusions - if they move the deal forward. That's negotiations. But in the final analysis, when it's all said and done we will have a win/win proposition.

So that's my frame of mind entering a negotiation. Win/win. Now I'd like to offer some tips that apply to any negotiation. The first one is about the role of your professional advisors, specifically your lawyers and accountants.

There is so much at stake when you enter into a negotiation to sell your company, and there are so

many details to attend to, that most owners' knee-jerk response is to bring in their lawyer and accountant too early in the discussions. That is the worst thing you can do.

The problem with lawyers is that they think legally. It means they think win/lose. It means that they are adversarial. It means they are focused on the detailed structure of the deal and not on the bigger picture.

Lawyers by nature tend to be conservative. They don't dream, they don't generate or feel the excitement that two businessmen do when they go back and forth with, "Well, how about it if we do this? All right then, let's do that. I'll give up on this, but what will you give in on?"

And in all fairness, do you want your lawyer to dream? I don't think so. But you want your negotiator to first and foremost be a businessman. It's his job to solve the businessman's problems.

Now I have heard lawyers say, “We are businesspeople.” I can’t tell you how many times I’ve heard that. But they are lawyers first, and so they try to resolve and negotiate the legal deal. A lawyer’s frame of mind is always legal.

What this means is that lawyers are more likely to kill deals than get one done. And I’ve seen lawyers kill deals. In fact, in one case the owner came to me when his lawyer had done just that and asked me what to do. He wanted the deal. I told him to ask the president of the other company to meet with us without lawyers. I said, “Tell him to come without his lawyers and we would come without our lawyers and spend the morning with us. Tell him that if at the end of that time he wanted to walk away, fine.”

In two hours, I had the company sold. We shook hands, went to Cafe Sam’s, and drank to the deal. I am convinced it was because there were no lawyers there.

I’ve also been in a negotiation where the accountants ruined the deal. The deal was a good deal until the accountant came around and said, “You know how much you’re improving the balance sheet? They should pay more.” As opposed to, “What’s your deal worth? And what is somebody willing to pay for it?”

In negotiations, it sure helps to have been on both sides of the table. I have bought eight companies in my time and I’ve sold two of my own and many for my clients/friends.

Because I’ve been on both sides, I know when it is reasonable for the buyer to want certain things and when it is fair for the seller to want certain things. And what is a reasonable compromise. That last question is what you as owner and your negotiator both have to stay focused on. That’s the key to getting a deal done.

*Jack Roseman is the Director of The Roseman Institute. He was the founder of two successful computer firms and was president of a third, On-Line Systems. Jack formerly was the associate director of the Donald H. Jones Center for Entrepreneurship at Carnegie Mellon University’s Graduate School of Industrial Administration (GSIA). This column was written with Steven N. Czetli, former Executive Editor of T.E.Q.*