

NARPM: Negotiating For Property Managers

A workshop for professional Management Company Owners and Brokers



Dilbert Cartoon | <http://www.dilbert.com/>

"In business as in life, you don't get what you deserve you get what you negotiate"

Dr. Chester L. Karrass
(Who is dead by the way)

Academic Materials Policy

Non-Retribution / Non-Retaliation

- **DISCLAIMER** –The information presented in this workshop represent negotiation concepts and ideas that can help individual BROKER and OWNER practitioners gain insight into better methods and techniques for successful negotiations. The information is provided in a conceptual and illustrative format in support of academic freedom where new and sometimes controversial perspectives are presented in the interest of furthering debate on key issues. The ideas and methods discussed are for ACADEMIC discussion and are not NARPM endorsed.

NARPM: Negotiating For Property Managers

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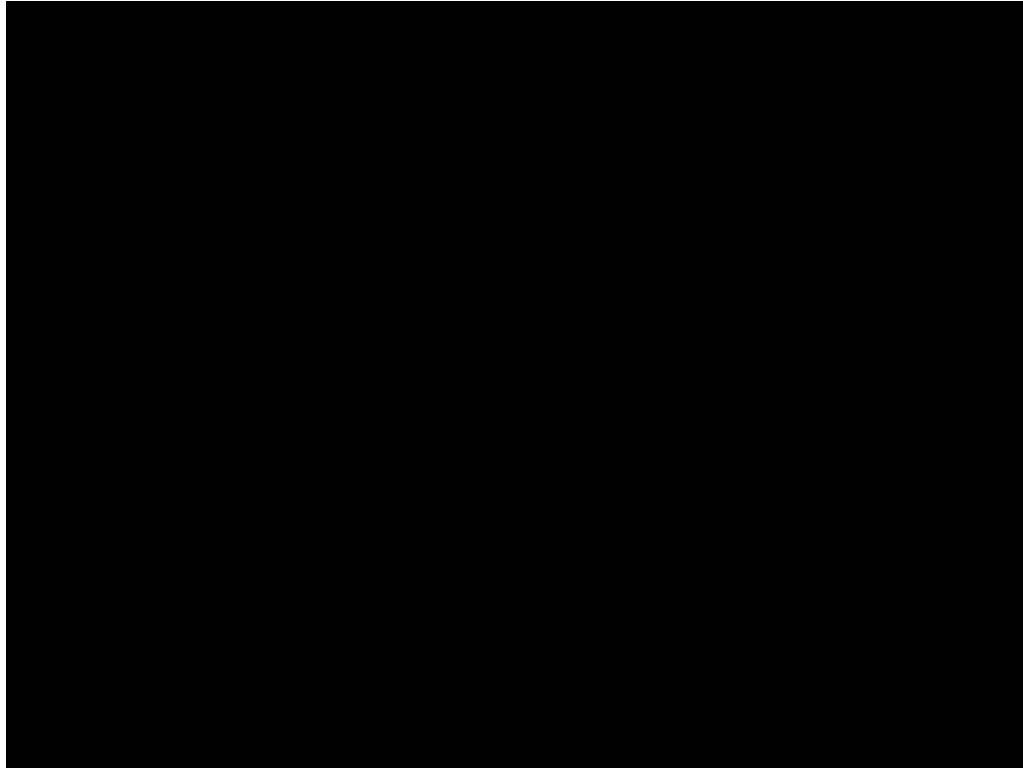
**“Grant graciously what you cannot refuse safely
and conciliate those you cannot conquer.”**

Charles Caleb Colton

**“My father said: “You must never try to make
all the money that’s in a deal. Let the other
fellow make some money too, because if you
have a reputation for always making all the
money, you won’t have many deals.”**

J. Paul Getty

Why is negotiating so hard?



<https://www.youtube.com/watch?v=2qsa66AqXTo>
link

Why people hate negotiating...

- It can be adversarial
- They think there has to be a winner and a loser. They don't want to be the loser.
- Fear of failure or embarrassment
- It can feel dishonest
- Threats / Escalation
- Court / Gov't Agency
- Yelp!



“I don't like confrontation!!”

Do Property Managers need to be good at negotiation?

- Owner Contracts
- Leases, Renewals
- Damage Deposit Disputes
- On-line reviews (BBB/Yelp! Reviews)
- Complaints / Disputes
- EPA LBP, HUD Complaints, ETC!
- Maintenance Vendor Quality Issues
- Business to Business
- Employee Salaries
- Dealing with Attorneys
- Get Better Deals FOR your Clients
- The list goes on and on... (and on, and on, and on!) and on!



OMG... YES, Negotiation is a required core competency!

Grains of sand add up over time

- Brokers & Owners negotiate multiple things every day. The sum of these negotiations add up over time and make one company significantly more competitive than another.
- There are one-time negotiations for specific issues; and there are negotiations for recurring services.
- Identifying which negotiations are the most important to your bottom line (NPV of future Cash flows) is important. Pick battles, maximize returns.
- Successful negotiation is an EVERY DAY event and a critical Core Competency.



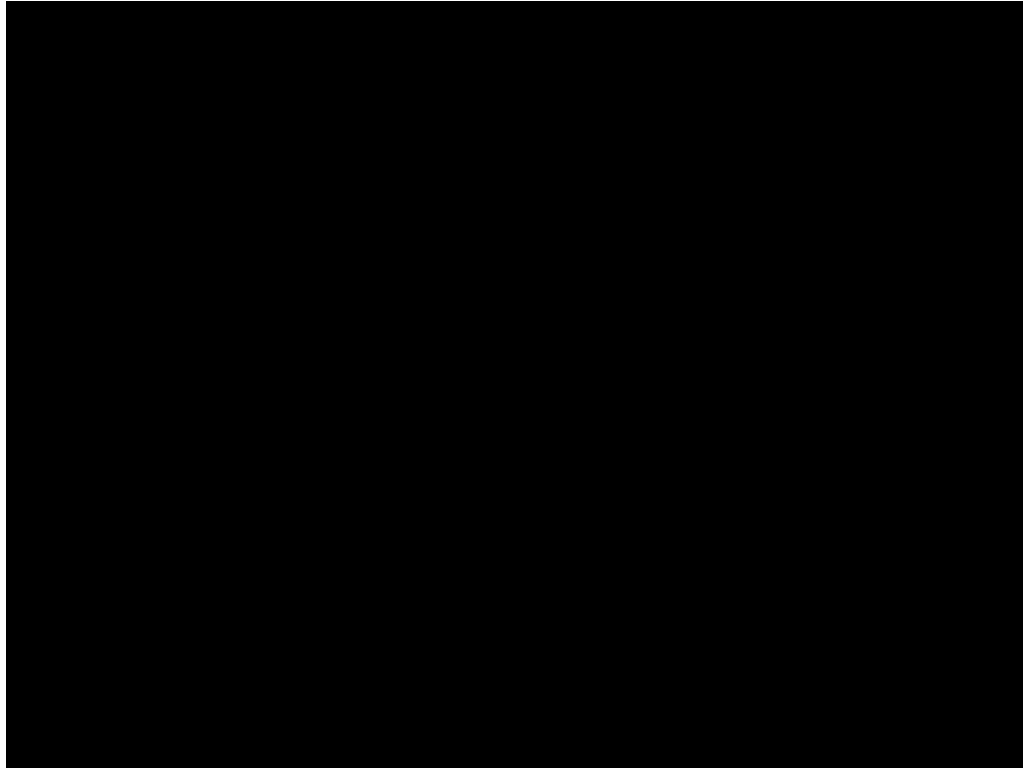
YOU NEED TO BE GOOD AT NEGOTIATING!

What makes a good negotiator?

- Negotiation competency is a combination of experience, knowledge of the law and the industry, your own contracts and processes, an ability to communicate, and a good understanding of PEOPLE.
- Good negotiators use this knowledge & experience to create legitimacy and leverage to shape outcomes with others.
- Make good negotiation a HABIT.
- Create a foundation that supports effective negotiation. Use a Disciplined & Process orientation.



Negotiation Picard Style.



<https://www.youtube.com/watch?v=iYCjqmbsmYA>
[link](#)

Success in Negotiations – Establishing a Framework

“SAVVY negotiators not only play their cards well, they design the game in their favor even before they get to the table.”

Anonymous

Successful negotiators manage people, processes, and sequence.

Design the game in your favor! Start with a **SOLID** Foundation.

- Good Contracts, Policies. Know them cold.
 - Better to have a Customer service issue than a Contract issue.
- Good Owners, Good Tenants, Good Properties
 - Retainer fee example to weed out bad owners
 - Published Screening Criteria
 - Avoiding Bad Properties
- Good Communication
- Good Reputation in the Industry.



Building a Solid Foundation

Build a Reputation of Trust in the industry

33rd company
Property Management

Your Premier Minnesota Property Management Source
Call Today! (651) 777-5500

Home | Vendors | Careers

Site search powered by FreeFind

HOME | PROPERTY OWNERS | RENTERS | REALTY SERVICES | REALTORS | HOA | CIC | LINKS | ABOUT | CONTACT US

HOMEOWNERS DEC

trust... simple really

33rd Company® is just another name for TRUST.

Integrity

The essence of all things successful is Integrity. Through integrity, trust, reliability and open communication we will establish a foundation of service, and performance that form life-long partnerships. We will provide the knowledge and skill for your unique, individual needs, or will refer you to someone that has those skills. We are dedicated to helping you find your mark in Real Estate, whether it is helping you buy a home, provide rentalway home...

33rd Company® prides itself on staying abreast of technology to provide the resources necessary for our loyal customers. We know what it takes to help you in the home buying and selling process.

Apply Online

DID YOU KNOW?
Renting from a professional property manager provides more protection for you and your security deposit.

Not only do we support the **Landlord-Tenant Laws of the State of Minnesota**, we also are members of a number of professional Property Management organizations, and adhere to the Ethical standards of these associations.

- » **Renting Can Be A Smart Investment!**
- » **For many, Renting makes sense.**
- » **View Our Associations**

NARPM MHA REALTOR.com

Building a Solid Foundation

Management Agreement Footer / Adding legitimacy

OWNER'S NAME:

SOC. SEC. NO. :

 E-MAIL ADDRESS

ADDRESS:

PHONE:

 CELL PHONE:

PROPERTY MANAGER: 33rd COMPANY INC. (A Minnesota Corporation), OFFICE (651) 777-5500
1800 Wooddale Drive, Suite 100, Woodbury, MN 55125

25. ACKNOWLEDGEMENT, RECEIPT OF DOCUMENTS: This Agreement shall become binding upon the heirs, successors and assigns of the parties hereto. OWNER hereby acknowledges that they have FULLY read the Agreement. OWNER'S, by their signatures below, acknowledging that they have read and received a complete copy of this REAL ESTATE PROPERTY MANAGEMENT SERVICE AGREEMENT. IN WITNESS WHEREOF, the said parties have executed this Agreement the day and year as set forth below;

OWNER(S)

Print Name

Signature

Date

Print Name

Signature

Date

33rd COMPANY, INC. :

Print Name

By:

Its President / Broker / Agent

Date

Standard Form Property Management Service Agreement. Revised 06/22/2012 © 2006-2012 33rd Company, Inc.

Owner Initials

Page 6 of 7

Building a Solid Foundation

Lease Agreement Header / Adding legitimacy



RESIDENTIAL LEASE

THE MINNESOTA ATTORNEY GENERAL'S OFFICE HAS CERTIFIED THAT THIS LEASE COMPLIES WITH THE MINNESOTA PLAIN LANGUAGE CONTRACT ACT.



Minnesota Multi Housing Association
Standard Form Residential Lease
REVISED January 2008

(Minnesota Statutes, Sections 325G.29-325G.36). Certification of a contract by the Attorney General under the plain language contract act is not otherwise an approval of the contract's legality or legal effect.

RESIDENT*: (list all persons, and their dates of birth, who will live in the apartment) _____

MANAGEMENT: (enter company name if applicable) 33rd Company, Inc. / www.33rdcompany.com

1800 Wooddale Drive, Suite 100, Woodbury, MN 55125 Office: (651) 777-5500 Fax: (651) 777-5501

STREET ADDRESS OF PREMISES ("Apartment") _____

APARTMENT NO. _____ DURATION OF LEASE (enter number of months or month-to-month) _____

STARTING DATE OF LEASE _____ DATE THIS LEASE ENDS (if appropriate) _____

NOTICE PERIOD Two (2) months

MONTHLY APARTMENT RENT \$ _____ SERVICE CHARGE 8% of Late Rent / \$50 (NSF)

OTHER MONTHLY RENT CHARGES (e.g. garage) \$ _____

TOTAL MONTHLY RENT \$ _____ SECURITY DEPOSIT \$ _____

Building a Solid Foundation

Professional Credentials / Adding legitimacy
Reality is Perception



Building a Solid Foundation

Good Communications – Setting proper expectations



MOVE-OUT INSTRUCTIONS

DEAR 33rd Company, Inc. RESIDENT,

Thank you for your tenancy! We appreciated your stay. This will acknowledge your vacating notice. Below please find a checklist for your benefit to help you make your move-out fast and efficient.

- Resident shall keep all utilities active until the end of the lease term, even if vacating in advance of the ending date of the lease. Call your utility provider for your final billing and meter reading on the last day of your Lease.
- Per your Lease agreement, Carpets must be Steam Cleaned AFTER final move-out using a TRUCK MOUNTED Vendor. We will be happy to help you arrange this service for your convenience. If you coordinate your own service, a receipt must be provided to 33rd Company, Inc.
- Resident must clean the home per the attached cleaning instructions AFTER final move out. We recommend the use of a professional maid service which can be very affordable and will greatly reduce your move-out stress!
- Resident shall leave ALL key's (Doors, mail box, garage, pool, storage, etc.) including additional copies, and garage door openers or other remotes issued for the home on the kitchen counter on the day Resident vacates. All appliance manuals, association documents, and other property related documents must also be placed on the kitchen counter on the day of vacating.
- MAINTENANCE ITEMS:
 - ✓ Yard should be mowed, weeded, trimmed, and leaves raked.
 - ✓ Snow & Ice shall be removed from all paved surfaces.
 - ✓ Patios and walk ways should be swept.
 - ✓ FURNACE filter shall be replaced and clean.
 - ✓ Water Softener shall be filled with Pellet SALT.
 - ✓ All burned-out bulbs shall be replaced.
 - ✓ ALL Trash and unwanted items should be removed from the property.
- Resident understands that per MN statute, the security deposit may not be applied toward payment of any rent due.

CONTACT US to help you coordinate low cost cleaning services for your home. We can take the stress out of moving and help you get your home ready!



CLEANING INSTRUCTIONS

necessary in order to receive your security and damage deposit back. If there is no damage beyond normal wear or unpaid late charges or delinquent rents, it will be forwarded to your new address.

clean. A mild solution of soap and water will remove ordinary dirt, grease and stains in walls or ceiling will be charged to resident. Kitchen walls must be sponged

absolutely clean. If we have to scrub floors and remove excess wax, vacuum or other labor will be charged to the resident. Carpets must be steam cleaned by a 33rd approved vendor AFTER move-out.

be washed and particular attention given to marks from luggage, etc. In closets and bi-fold doors should be wiped clean. ALL hangars shall be removed. Try to mark (use sparingly as this may also remove paint).

ing but not limited to cabinets & drawers which must be clean inside and out. All be cleaned. Sinks and faucets should be immaculate and be free from hard water scale.

FREEZER must be absolutely clean. **STOVE** must be clean inside and out and all parts free from grease and splash. Above the range must be cleaned and the filter washed out. Areas around stove top and splash. Over the range vent filters shall be cleaned in the dishwasher

mirrors and fixtures should be immaculate. Rinse thoroughly and dry all fixtures. Bathtub, showers, tubs and toilets shall be immaculate. Sinks, faucets, tubs, and showers should be immaculate and be free from hard water deposits and scale. Mirrors shall be

It be cleaned out and vacuumed to remove excess dust and dirt. Glass doors shall be free of dirt.

CHANDLIER chandeliers and light fixtures should be washed clean. **WASHER & DRYER** should be absolutely clean and the washer door left open. Remove lint from dryer screen. Shelves and utility sinks shall be cleaned.

Laundry area cabinets shall be cleaned.

K. **WINDOWS** should be washed on the inside. Sliding tracks, mini-blinds, and ledges shall be cleaned.

L. **STORAGE ROOMS** should be cleaned and swept.

M. **GARAGE** shall be cleaned, floors swept, work areas dusted and cleaned. Floors shall be scrubbed to remove grease or oil stains.



SAVE YOURSELF TIME AND EFFORT!!

Some great cleaning deals that will help you take the pain out of moving to a new house. With a full range of Carpet Cleaning, and Maid Services, we can turn your home around for A LOT LESS than you think!

YES! PLEASE SIGN ME UP FOR THE FOLLOWING SERVICES!!

MAINTENANCE SERVICE. Our cost effective vendor will perform all of the items listed on the Move-out Instructions sheet.

CLEANING using the 33rd Company Contract Vendor. We will provide standard contract services for your home. (Please note that irremovable or permanent stains will remain the liability of the tenant up to and including the cost of replacement.) Per your Lease agreement, Carpets must be Steam Cleaned AFTER final move-out using 33rd Company, Inc. approved TRUCK MOUNTED Vendor.

LANDSCAPE SERVICES. We can quote lawn services to include mowing, weeding, trimming, and leaves.

REMOVAL SERVICES. We will coordinate snow and ice removal from your home through the day of your lease.

SERVICES MUST BE REQUESTED NO LATER THAN 10 DAYS BEFORE YOUR VACATE DATE. CLEANING SERVICES WILL BE SCHEDULED ON THE DAY AFTER YOU VACATE THE HOME. A 10% MANAGEMENT FEE WILL BE ADDED TO ALL SERVICE ORDERS.

CALL US TODAY! We will be happy to help take the stress out of your move!

NAME: _____

Signature _____ Date _____

Signature _____ Date _____

60 Day Lease Expiration notice

Next – Think Collaboration

- Stop thinking of Negotiation as a contest with a winner and a loser, or that it is adversarial.
- Think of Negotiation as a Collaboration (Win Win). There is no loser, only winners.
- This approach takes the stress and dread out of negotiation, and makes it more fun.
- The only behavior you can control in a negotiation is your behavior – be gracious and understanding.
- Your opponent will be surprised and appreciate the approach, and hopefully will find solutions for your side as well, helping to create a larger pie.

Takeaway: Negotiation is a collaboration, not a contest

Game Theory in Negotiation – Mutual Gain

Game theory is a distinct and interdisciplinary approach to the study of human behavior. The disciplines most involved in game theory are mathematics, economics and the other social and behavioral sciences.

In "games" that allow mutual gain (or mutual loss) is it "rational" to:

- cooperate to realize the mutual gain (avoid mutual loss)
- or to act aggressively seeking individual gain regardless of mutual gain or loss?

Game Theory in Negotiation

The impact of Taking a Hard Strategy in Negotiations

		Player #2		
		Negotiation Strategy		
		Hard	Medium	Soft
Player #1	Hard	-2, -5	3, 1	2, 0
	Medium	1, 3	2, 2	1, 0
	Soft	0, 2	0, 1	0, 0

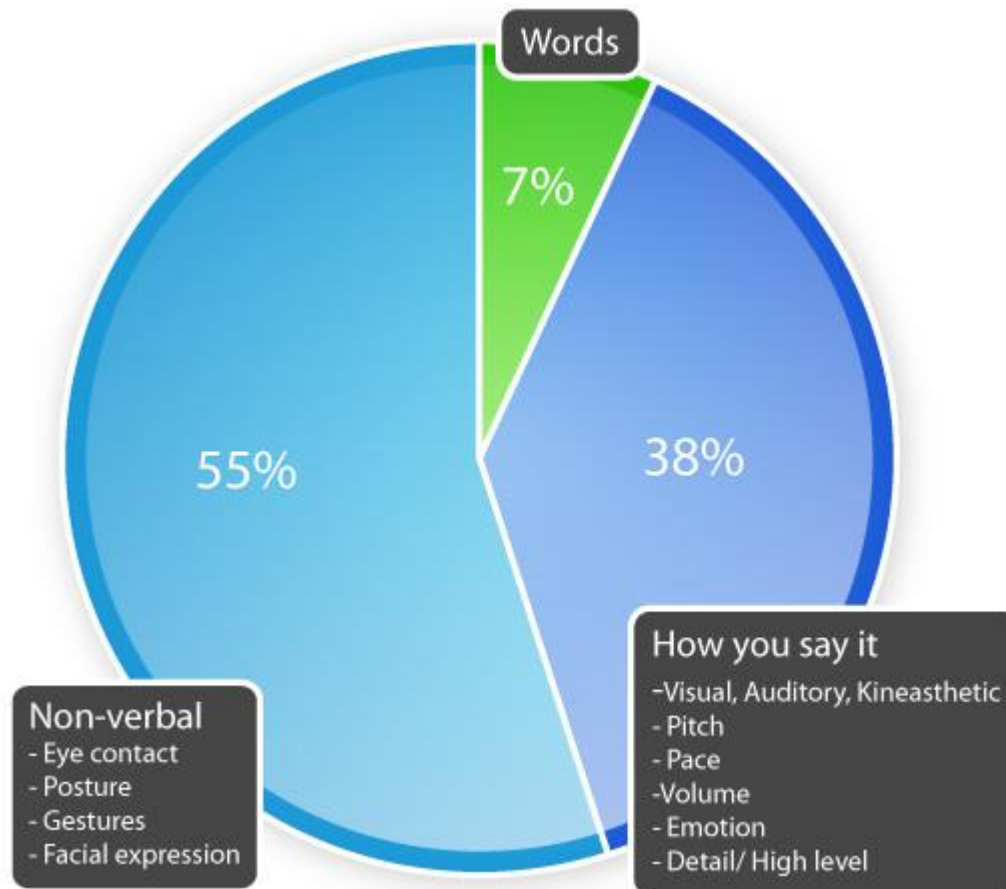
Taking a hard line is a losers game.

Honesty does NOT mean full disclosure

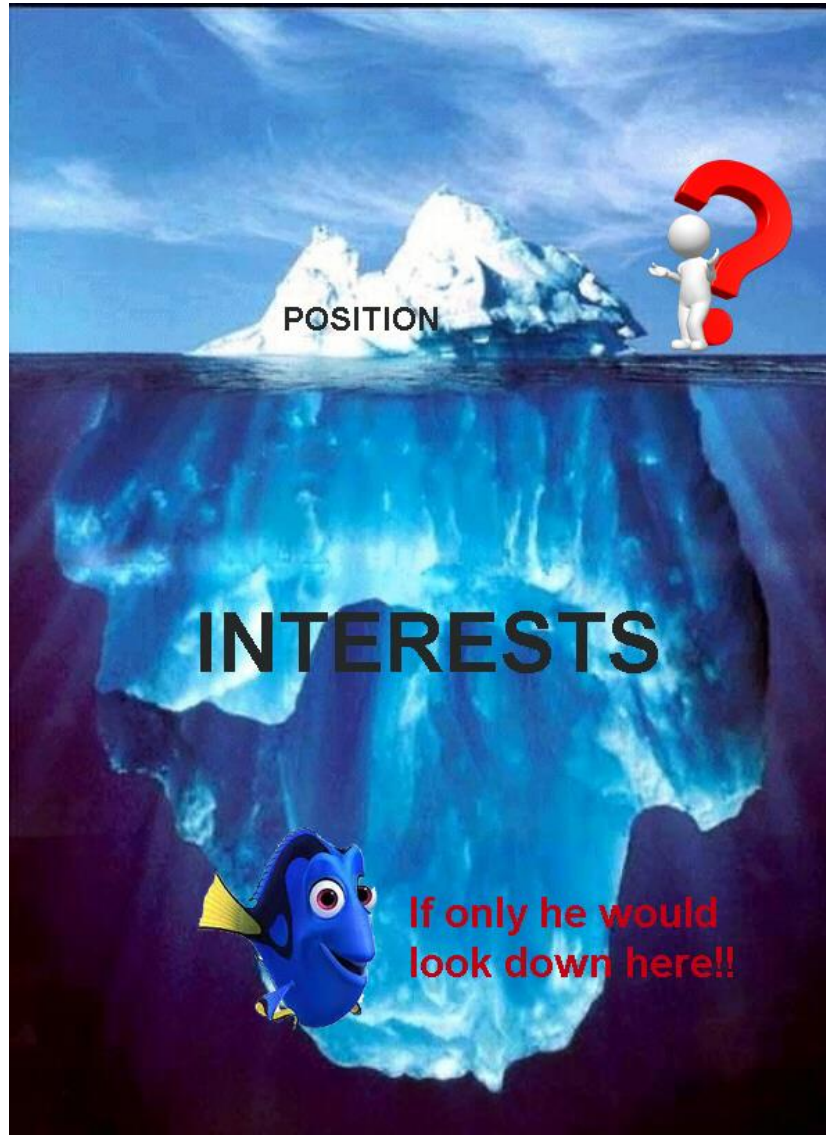
- Part of what makes negotiating hard is knowing that you have your own interests or motives that you may or may not want to disclose.
- It can feel like you are being dishonest.
- Ex. You don't tell the other party that you have to get the sale to meet your end of quarter sales quota. Or, that you have already printed 3 Million Pamphlets.
- You should never lie about your interests, needs, or priorities, but you also do not have to disclose them either.

Example – Office suite purchase / Assignment at closing.

It's not just "What" you say, but "How" you say it...



Breaking the ice on your Opponents Interests, Needs & Priorities...versus their position



Don't Guess...

Find out your opponents interests by asking for directions:

“What is it that you are looking for?”

Interests, Needs & Priorities

- **Owners** – Risk Aversion (Damage to Home), Cost of Repairs, Monthly Cash flow, Quality of Repairs, Pictures, Trust.
- **Tenants** – Safe, Clean, Good Working Order, Trust with Security Deposit, Fast Maintenance, No reason to leave.
- **Vendors** – Constant flow of work, no advertising or marketing hassle, ability to fit work in between other jobs (Flexibility), fast payment of invoices.
- **Service Providers** – Steady business, reliable partner, cross-referral potential.
- **Competitors** – Some honest, some not. Some want to contribute to the industry, some just want to take from the industry. Watch you back. Famous Quote *“Entrepreneurs tend to lie occasionally, Entrepreneurs in trouble tend to lie a lot!”*
- **Employees** – Job Security, Pay, Benefits, Career Growth, Opportunity, Fun.

Owners & Tenants

The Positions they take

- **Property Owners are CLIENTS.** Service based Customers – patch defects in service with credits, free month of management etc., or additional services.
- **Tenants are CUSTOMERS.** Product & Rights based - Is home clean, working, good color, good location, etc. They have laws that protect them as renters. Most renters know the laws better than the average Attorney. Deficiencies in the product should be addressed by fixing the product, not so much with fee or rent concessions. Disputes can and should be taken to court as required (Eviction, Small Claims, Collections, etc.)

Negotiate differently with Owners and Tenants – they have different INTERESTS, PRIORITIES, and NEEDS.

Creating Overlap



OWNERS

TENANTS



Examples

- Monthly Rent (Use a Range or “Market” in Owner Contract)
- Move-in Date flexibility
- Rent Ready authorization / solicit conditional improvements authorization
- Owner Handbook / Lease – “subject to reasonable changes”
- Owner Contract – PM authorized to settle “disputes”
- POA to perform more as a Principle in Lease, not just Agent.

Working with Attorneys

- Attorneys sometimes tend to ESCALATE and EXPAND issues. (i.e. Divorce Attorney Strategy – Throwing Stones at the other Attorneys Client.)
- Attorneys have strengths and weaknesses both personally, and professionally. It is not wise to delegate completely to an attorney. (HUD Example)
- Think of your Attorney as another employee on the team, not the leader of the team.
- A Win-Win approach should REDUCE Fees and IMPROVE outcomes.

Takeaway: A good Attorney should be ON your bus,
But not DRIVING the bus.

Negotiation in Court

- Conciliation Court – You may NOT want the Judge to decide.
- An agreement made just before the court hearing outside the courtroom has advantages:
 - ✓ Lower amount due - offers tenant an incentive to agree and pay. – Settles dispute.
 - ✓ Payment schedule that tenant can accommodate. Don't have money now, but can pay over time.
 - ✓ Tenant will AVOID getting judgment on record (if they pay on schedule).
 - ✓ Agreement should say the entire claim amount would be due if tenant misses payment schedule. (Then judgment can be obtained on court request).

Tenant has INCENTIVE to pay off agreed amount. If they don't pay – you are no worse off.

Negotiation in Court

Conciliation Court Example. Tenant missed Payment

33rd Company, Inc.
 1800 Woodhale Drive Suite 100
 Woodbury, MN 55125
 (612) 777-5500 Fax (612) 777-5501

**SECURITY DEPOSIT
 DISPUTE RESOLUTION AGREEMENT**

This form represents a Security Deposit dispute Agreement by and between 33rd COMPANY, INC. Property Management, or Assigned, hereinafter referred to as "MANAGEMENT" and the RESIDENT or OWNER at the below property: (RESIDENT or OWNER) MICHELLE [REDACTED]
 for the Premises located at (ADDRESS) 7487 DEARBORN LANE, STAMPAEC, MN 55371

The undersigned RESIDENT(s) or OWNER dispensed the Security Deposit Settlement and hereby have met with MANAGEMENT and have settled ALL claims, past present and Future with regard to the Lease and the Security Deposit.

RESIDENT AGREES TO PAY MANAGEMENT AN ADDITIONAL \$1250 TO SETTLE ANY AND ALL FUTURE CLAIMS. PAYMENTS SHALL BE MADE ON THE FOLLOWING SCHEDULE:

DATE	AMOUNT
APRIL 15, 2012	\$200
MAY 15, 2012	\$200
JUNE 15, 2012	\$200
JULY 15, 2012	\$200
AUG 15, 2012	\$200
SEP 15, 2012	\$250
TOTAL	\$1250

PAYMENTS TO BE MADE BY CHECK TO 530 CONSUM.

The total Final settlement is: \$1250 which has been paid in full to the RESIDENT or OWNER. NON-PAYMENT OF THE ABOVE WILL RESULT IN THE FULL AMOUNT OF \$972.25 BE TO ALL undersigned parties hereby agree that 33rd COMPANY, INC. has settled its complete satisfaction ALL claims for damages, injury, missing or broken items, or any other damages, both real and consequential RESIDENTS/OWNER, agrees to waive, hold harmless, indemnify and release 33rd COMPANY, INC., its agents, independent contractors, and employees, from ALL past, present, or future liabilities, claims or suits arising from the original Residential Lease in connection with the management of said property including but not limited to RESIDENTS and GUESTS liability, personal property, representations made, or any other damages including consequential damages, whether known or unknown at the time of settlement, and agree not to disparage any other party.

Applicable Parties: NA NA AK

Signature: [REDACTED] [REDACTED] Thomas R. Scorse
 Date: 3-23-12 3-23-12

33rd Company, Inc. MANAGEMENT
 Member National Real Estate Referral Service, Inc.

33rd Company, Inc. 1800 Woodhale Drive, Suite 100, Woodbury, MN 55125 (612) 777-5500 www.33rdcompany.com

State of Minnesota
 Scott County

Conciliation Court
 First Judicial District
 Court File Number: 70-CO-11-28162
 Case Type: Conciliation

33rd Company, Inc. vs [REDACTED]

PAID
Order for Judgment on Claim and Counterclaim

Appearance: Plaintiff Defendant Neither Party Contested Default

Upon evidence received, IT IS ORDERED:

Plaintiff is entitled to judgment against Defendant for the sum of \$ 2247.94, plus fees of \$, disbursements of \$ and conditional costs of \$, for a total of \$ 2247.94.

Judgment shall be entered in favor of (without damage).
 's claim is dismissed without prejudice.
 's claim is dismissed without prejudice.
 's claim is dismissed with prejudice.
 shall immediately return to the and that the Sheriff of the county in which the property is located is authorized and directed to effect repossession of such property according to Minn. Stat. § 49A.01, subd. 5, and turn the property over to

Other: Defendant defaulted on 3/23/12 agreement. Judgment for full amount less 2 payments made.

Dated: 6/25/12 Judge: [Signature]
 Hon. Catherine H. Lewandowski

JUDGMENT is declared and entered as stated in the Court's Order for Judgment set forth above, and the Judgment shall be FILED PAID and fully reflective on the date specified in the notice of judgment set forth below.
 Dated: 6/27/12 Court Administrator/Deputy: [Signature] JUN 27 2012
 SCOTT COUNTY COURT

NOTICE: THE PARTIES ARE NOTIFIED that Judgment has been entered as indicated above, but the Judgment is entered by law until p.m. (to allow time for an appeal, if desired).

THE PARTIES ARE FURTHER NOTIFIED that if the case is removed to District Court and the removing party does not prevail as provided in Rule 524 of the Minnesota General Rules of Practice for the District Courts, the opposing party will be awarded \$50 in costs.

Dated: Court Administrator/Deputy:

Transcript of Judgment: I certify that the above is a correct transcript of the Judgment entered by this Court.
 Dated: Court Administrator/Deputy:

MCS-001-110 STATE Order for Judgment on Claim and Counterclaim CCT001 Rev. 3/09, Page 1 of 3

Sent copy of judgment and demand letter to co-signer
 – Co-signer paid in full immediately.

5 Steps to Successful Negotiation

1. Good Planning / Good Foundation
2. Make the pie BIGGER
3. Understand your opponent
4. USE an established PROCESS
5. Lock down the Deal in writing

STEP 1 – Good Planning

Good Planning –

- Successful negotiators make detailed plans. They know their priorities — and alternatives, should they fail to reach an agreement.
- Review your position, strengths, weaknesses, leverage, and goals.
- Analyze your opponent: What are their interests, needs and priorities? (money, principle, time, etc.). Look for Win – Win strategies.
- Understand time constraints and the potential for diminishing returns.
- Create a negotiation plan / process that will move you closer to your goal.

STEP 1 – Good Planning

Example #1 – Trademark Dispute Negotiation / Tom Sedlack

Possible Course of Action	Likely Response	Cost	Possible Result
Consent Agreement	Lots of Back& forth	Probably \$10K in Attorneys Fees	A consent agreement would dilute our Trademark
Accept Offer	Agreement	\$8500 (ouch!)	TM withdrawn, \$\$\$
Counter	They could Accept or Reject	?	TM Withdrawn, or Alternate mark is used, <u>application is continued</u>
Reject Offer	Counter or Continue with Registration	Deposition, Opposition Costs. TTAB Trial	TTAB Decides, Loss of control and outcome. Still lose \$1500 in Admin.

What did I do? ... See next page

STEP 1 – Good Planning

RE: Answer to Notice of Opposition 91206460 HANDY-QUICK - Message (HTML)

File Message

From: Thomas Sedlack Sent: Thu 1/10/2013 9:09 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Answer to Notice of Opposition 91206460 HANDY-QUICK

Message Cease and Desist to Oberfields.pdf (53 KB)

[REDACTED]

Thank you so much for your note below. We hope you had a pleasant holiday as well.

We were surprised to learn that actual use of your client's mark has occurred and that there is additionally a planned marketing campaign scheduled as well. As such, attached please find our response.

With regards to our opposition proceeding, we remain fully committed to seeing this issue go to the TTAB.


If you wish to discuss alternate or modified proposals associated with your client's rebranding, feel free to give me a ring.

Warmest Regards,

Tom

Tom Sedlack, MBA, RMP[®]
email: tomsedlack@33rdcompany.com
phone: 651-777-5500 x115 fax: 651-777-5501

CRMC[®] - A NARPM Certified Management Company

	33rd Company, Inc. 1800 Wooddale Drive Suite 100 Woodbury, MN 55125 www.33rdcompany.com
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STEP 1 – Good Planning

RE: Answer to Notice of Opposition 91206460 HANDY-QUICK | CONFIDENTIAL SETTLEMENT COMMUNICATION - Message (HTML)

File Message

You replied to this message on 1/21/2013 8:49 AM.

From: [REDACTED] Sent: Fri 1/18/2013 2:47 PM
To: Thomas Sedlack
Cc: [REDACTED]
Subject: RE: Answer to Notice of Opposition 91206460 HANDY-QUICK | CONFIDENTIAL SETTLEMENT COMMUNICATION

Tom,
I've talked to my client and they are agreeable to your proposal. I will draft a short settlement agreement consistent with your email and send to you ASAP.

Thanks,
[REDACTED]

From: Thomas Sedlack [mailto:tomsedlack@33rdcompany.com]
Sent: Wednesday, January 16, 2013 3:15 PM
To: [REDACTED]
Subject: RE: Answer to Notice of Opposition 91206460 HANDY-QUICK | CONFIDENTIAL SETTLEMENT COMMUNICATION

CONFIDENTIAL SETTLEMENT COMMUNICATION

[REDACTED]

Thank you for your call yesterday regarding the trademark issue. As we discussed, rebranding seems certainly to us to be the logical path forward. While you indicated that there is a cost to rebranding, our view is that your client's use of the mark in advance of registration was a risk undertaken by your client. As such we do not feel an inclination to address this cost directly.

As you know, the matter is being handled pro se, so our real cost to proceed to the TTAB with this matter is pretty low (I estimate \$1500 in my time). Since you requested a counter proposal, we would be willing to offer this amount to your client as a courtesy in conjunction with the withdraw of their application.

So if your client can agree to the below, we would be willing to move forward in closing out this dispute if:

- Oberfields will withdraw their TM Application for "HANDY-QUICK", and provide PTO confirmation.
- 33rd Company will provide estimated opposition costs of \$1500 to Oberfields that they can use to support their rebranding.
- 33rd Company will agree to sign a mutual general release, that is mutually agreed to, and such agreement will also contain a

STEP 2 – Make the pie BIGGER

Make the pie BIGGER –

- **Think win-win, how can the pie be made BIGGER.**
 - It may not be just about money, or service.
 - Tenants in a SD dispute are usually ONLY looking at the money. Property Manager is looking at wasted time in court, a bad YELP review, or a BBB complaint. Could we use a positive testimonial if we agree... Could we use it on-line?
 - Negotiators who pay attention exclusively to price or their own priority can turn potentially cooperative deals into adversarial ones. Hard ball negotiations often leave potential joint gains unrealized.

STEP 2 – Make the pie BIGGER

Example #2 – Tenant prospect wants to negotiate lower rent

- Screened / Qualified
- Completed Application
- Would the tenant accept: longer lease with escalation in 1 year? Win-Win.
- Is it January in Minnesota?? How about a 6 month fixed term lease at a discount. Renegotiate everything in June.
- Ask them specifically, “What are you looking for, what is it that you want, or need?”.
- Improvements needed or desired – Short/Long Term ROI

STEP 3 – Understand your Opponent

Understand your opponent –

- Neglecting the Other Side's Problem can prevent you from a successful outcome.
- Since the other side will say yes for its reasons, not yours, agreement requires understanding and addressing your counterpart's problem as a means to solving your own. LISTEN! Hear them out.
- Ask them specifically, "What are you looking for, what is it that you want". You would be surprised to find out their needs (beyond a simple price or term request...

Know their INTERESTS, NEEDS & PRIORITIES.

STEP 3 – Understand your Opponent

Example #3 – Lead Paint Claim & Resolution / Tom Sedlack

Understand your Opponent –

- Sometimes “This” isn’t about “That”.
- Review your position, strengths, weaknesses, and goals.
- Communicate your strengths so it is clear why you have the position.
 - Legitimacy (Signed EPA disclosure, Move-in checklist, no reports)
 - MDH notice, LBP Inspection report obtained by company
 - Offer to end lease early
- Then ask your opponent what are you looking for. What is it that you want. What documents do you have... What is the legal basis for claim. Surprisingly, they just want to move, and have moving expenses covered, but had “consulted” with Attorney.
- Understand the marginal return for investing in a dispute or negotiation effort & the implications of a failed negotiation. Lock in a deal (Even if it is an agreement in principal).
- Create a negotiation plan / process that will get you to your goal.

STEP 4 – Use an established PROCESS

USE an established PROCESS –

- Know & Leverage your Foundation (contracts, law, communications, etc.).
- Anchors are good for establishing initial positions. Let the opponent be the first to state a “number”.
- Be disciplined and methodical in your negotiations, have a strategy.
- Know when you need to walk away.
- Don’t disclose your cards all at once, or accept a deal too quickly.
- Set a BATNA Best Alternative to Negotiated Agreement (i.e. worst case outcome... It can only get better from there, helps put the issue in perspective).

STEP 4 – Use an established PROCESS

Case Study #4 – Security Deposit Dispute Resolution / Tom Sedlack

1. Good Communication – i.e. Cleaning checklist sent 60 days prior to lease expiration. (Includes discounts for scheduled cleaning & handyman services.)
2. At Move-out – send disposition summary, note detailed documentation, disclose a dispute process to follow. (Legitimacy)
3. Dispute Meeting: Provide tenant the invoices, pictures, disposition summaries. Honest and Ethical. Let's take a look together, and make sure this was done fairly. (More Legitimacy).
4. Don't ask or attempt to negotiate anything until all the FACTS are on the table. (You want the tenant to set a low initial anchor based upon their new realization of their “weak” position)
5. “Unfortunately the documentation does not support your position... But, as a courtesy, we can offer a \$50 credit as a courtesy just for stopping by... (have them sign a settlement form - includes non-disparagement clause).
6. Charge Owner for Settlement amount, then negotiate with owner the same way if required.

Principled Concessions are better

A concession without reason is of no value.



When a Principled Concession not only has a business rationale, but also is tied to a business value change, it becomes a more powerful motivator.

When an opponent asks for a concession, ask for a Rationale.

A principled concession should be tied to a value change.

Takeaway: Provide a rationale when offering concessions.

STEP 5 – Lock it down in writing

Lock down the Deal in writing after it is negotiated-

- All too often people spend time hammering out a great deal, only to fail to write it down into an executable agreement. Agreements can back-fire if the other party has remorse. Verbal agreements can be difficult or impossible to enforce.
- Get a settlement form, contract, or other amendment signed immediately once an agreement is reached.
- Use Docusign. **(Strike while the iron is hot!)**
- Use a standard form that also has pre-packaged extra terms and conditions (i.e. liability release, non-disparagement clause, etc.).

STEP 5 – Lock it down in writing

Case Study #5 – Self Help for YELP! / Tom Sedlack



33rd Company, Inc.
1800 Wooddale Dr. Suite 100
Woodbury, MN 55125
(651) 777-5500 Fax (651) 777-5501

ACKNOWLEDGEMENT AGREEMENT OF MANAGEMENT TRANSFER

This Property Management Transfer agreement transfers or assigns the Lease agreement between 33rd COMPANY, INC. Property Management, and undersigned Resident dated, 24th day of May, 2013.
(RESIDENT) _____, for the Property at:
(ADDRESS) _____, and Property Owner
(OWNER) _____

33rd COMPANY, INC. and the undersigned RESIDENT and OWNER acknowledge and agree that the above Lease has been (Check Boxes that apply):

- TERMINATED and REPLACED with a new Lease agreement by OWNER.
- TERMINATED and ASSIGNED to OWNER or NEW MANAGER. Rents current thru 01/31/13 All Security and Pet Deposits shall be transferred to Owner.
- RESIDENT is not current and owes NEW MANAGER \$ _____ for:

New Authorized Manager of Apartment (NEW MANAGER): _____

Owner of premises or new agent authorized to accept service of process and receive or give receipts for notices and demands including all rent payments due after this agreement is signed is: _____

Mutual Release of all claims: All undersigned parties hereby agree that MANAGEMENT has settled in complete satisfaction ALL claims for damages, injury, missing or broken items, or any other damages, both real and consequential. ALL undersigned Parties agree to save, hold harmless, indemnify and release MANAGEMENT, its agents, independent contractors, and employees, from ALL past, present, or future liabilities, claims or suits arising from the original Residential Lease in connection with the management of said property including but not limited to RESIDENTS and GUESTS liability, personal property, representations made, or any other damages including consequential damages, whether known or unknown at the time of settlement. All parties further agree that this agreement shall remain confidential and agree not to disparage any other party whether publicly, electronically, through social media or written review services, or through any other means of any kind. All Parties agree to remove any such existing disparagements or reviews immediately upon the execution of this agreement. ALL undersigned Parties further authorize MANAGEMENT to appear on behalf of any party at any social media, electronic or written review services, the Better Business Bureau or similar agency, to remove any and all reviews or disparagements of MANAGEMENT. This Limited Power of Attorney shall survive the terms of this settlement. The transfer of management shall be effective the below date of execution by all parties.

RESIDENT Name _____ _____ _____	Signature _____ _____ _____	Date _____ _____ _____
OWNER Name _____ _____	Signature _____ _____	Date _____ _____
NEW MANAGER/NEW OWNER Thomas R. Sedlack, GM	Signature _____	Date _____
33 rd Company, Inc. MANAGEMENT <small>Member of 33rd Company, Inc.</small>	Signature _____	Date _____

SECURITY DEPOSIT DISPUTE RESOLUTION AGREEMENT

This form represents the Security Deposit dispute Agreement by and between 33rd COMPANY, INC. Property Management, an Assigned, benefits referred to as "MANAGEMENT" and,

the RESIDENT : ("RESIDENT") _____
(If the Premises located at (ADDRESS) _____

The undersigned RESIDENT(s) have disputed the actual Security Deposit Statement and hereby have acted with MANAGEMENT and have settled ALL claims, Past, Present and Future, with regard to the Lease and the Security Deposit.

The total Final statement is: _____ which shall be paid in Full in the MANAGEMENT/RESIDENT within 30 days of this statement agreement.

Additional Agreements (if any):

Mutual Release of all claims: All undersigned parties hereby agree that 33rd COMPANY, INC. has settled in complete satisfaction ALL claims for damages, injury, missing or broken items, or any other damages, both real and consequential. RESIDENTS, agree to save, hold harmless, indemnify and release 33rd COMPANY, INC., its agents, independent contractors, and employees, from ALL past, present, or future liabilities, claims or suits arising from the original Residential Lease in connection with the management of said property including but not limited to RESIDENTS and GUESTS liability, personal property, representations made, or any other damages including consequential damages, whether known or unknown at the time of settlement. All parties further agree that this agreement shall remain confidential and agree not to disparage any other party whether publicly, electronically, through social media or written review services, or through any other means of any kind. All Parties agree to remove any such existing disparagements or reviews immediately upon the execution of this agreement. RESIDENT further authorizes MANAGEMENT to appear on behalf of RESIDENT at any social media, electronic or written review services, the State Business Bureau or any similar agency, to remove any and all reviews of Management services or RESIDENT disparagements. This Limited Power of Attorney shall survive the term of this settlement.

Applicable Parties:

RESIDENT Name _____ _____	Signature _____ _____	Date _____ _____
RESIDENT Name _____ _____	Signature _____ _____	Date _____ _____
33 rd Company, Inc. MANAGEMENT <small>Member of 33rd Company, Inc.</small>	Signature _____	Date _____

It all adds up...

33rd Company, Inc. 2013 Negotiation Tracker



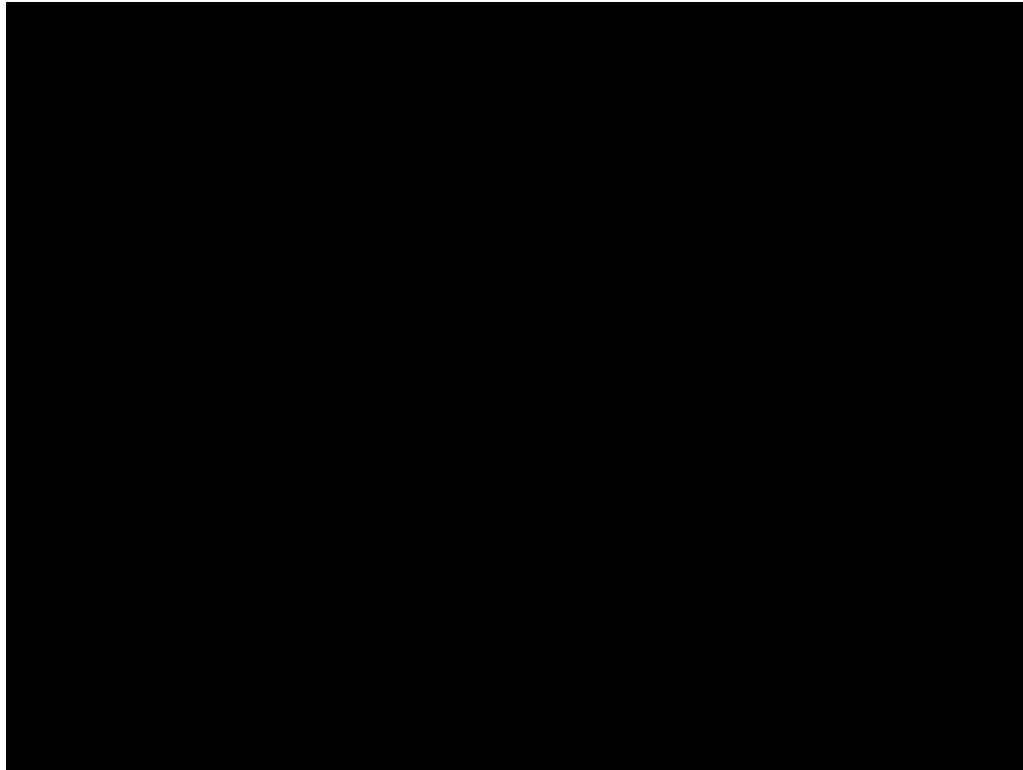
Issue	Description	Initial Offer from Other Party	My Counter	Cash Settlement Amount	Non Cash Terms	Net Improvement from Negotiation
Trademark	HANDYQUICK TM Opposition - USPTO (33rd Company v. Oberfields)	\$8500 or consent agreement	Cease and Desist Letter (A good one!)	-1500	Application withdrawn (Trademark Strength)	\$7000 + ® Value
MN UMNIRate	DEEDS gave new company a default Contractor Rate (10.43%). NAICS Codes in system wrong - Called Census B.	10.43%	NAICS Codes in system wrong - Called Census B.	N/A	3.00%	7.43% * \$100K (first year savings)
Office Lease	Expires in Sept - Need to renew at 6 month minimum left or loss of leverage.	TBD	To include extra space, 3rd Party Sublease			

The Biggest Negotiation Mistakes

- Not being prepared
- Rushing the process
- Ultimatums
- Getting emotional / adversarial
- Offering the first number
- Breaking the silence
- Focusing on “What” instead of “Why”
- Looking for only 1 solution
- Failing to document the agreement
- Failing to listen to the other party
- Not be willing to walk away from a negotiation.
- Addressing the opponents position instead of their interests or needs. Ask them what they want !!
- Lack of use or understanding of Leverage



If an 8th Grader can do it...
So can YOU!

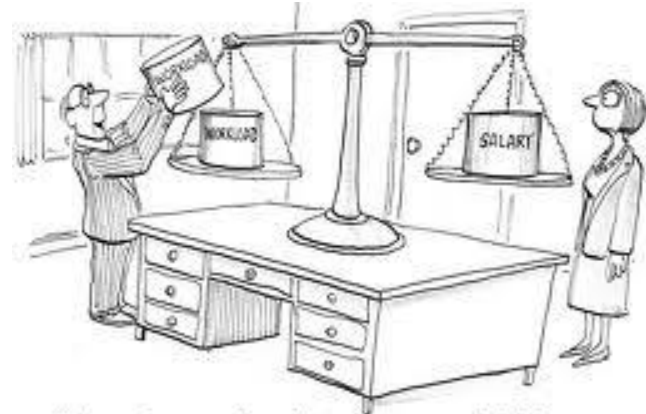


<https://www.youtube.com/watch?v=898OUCyBuIM>
[link](#)

Take Away's

Good Negotiation Skills will:

- Improve your net return
- Provide better conflict resolution
- Improve your reputation
- Reduce Liability
- Reduce the time and effort needed to resolve issues
- Demonstrate effective management in front of employees
- Help you understand that when it is best to walk away from a negotiation.
- Make EVERYONE Happier! **MORE SUCCESSFUL!**



"Now that we've hired you, we'd like to 'restructure' the position."

Thanks!

Tom Sedlack, RMP®

33rd Company, Inc., CRMC®



"Don't let it throw you — It's just a negotiating tactic."