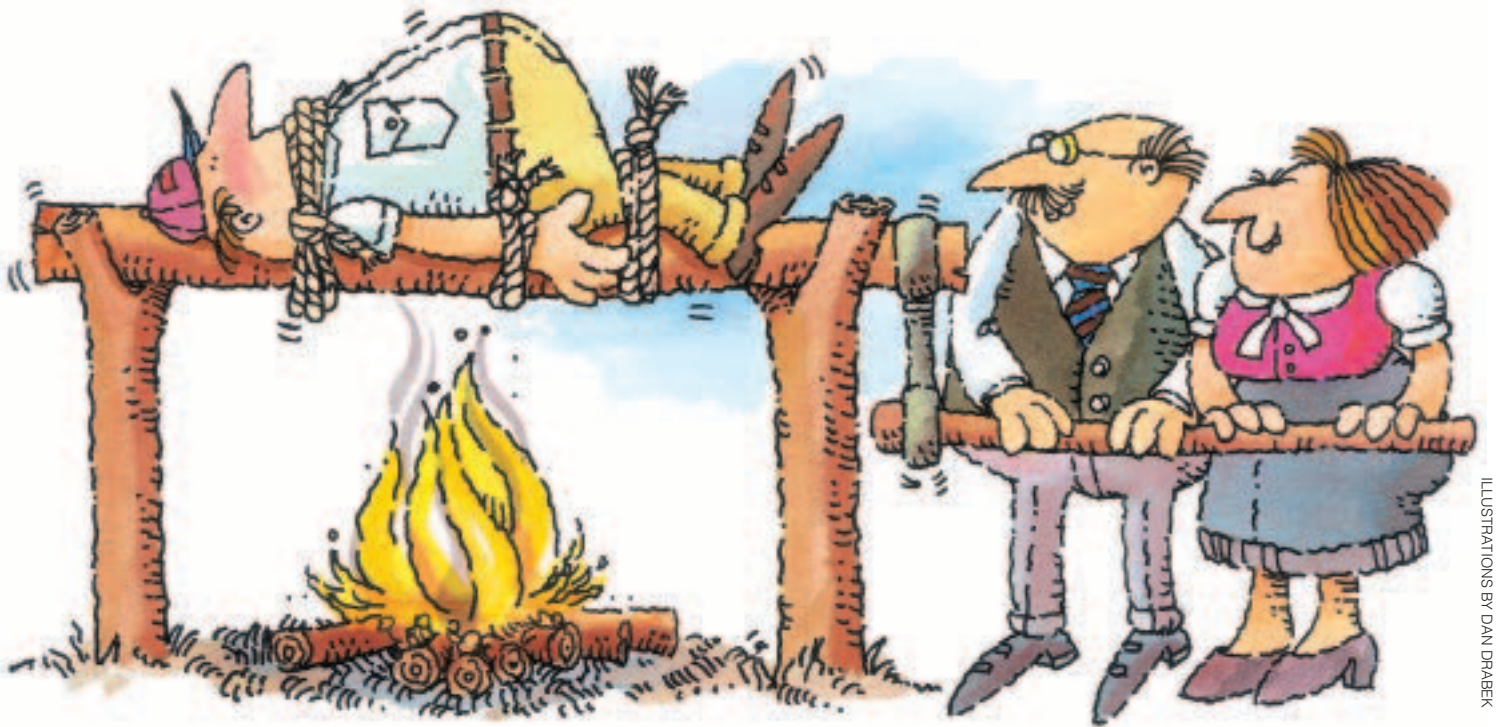


by Chuck Green

# GETTING BURNED BY A CLIENT: LESSONS LEARNED



ILLUSTRATIONS BY DAN DRABEK

A couple of years ago when I had a customer refuse to pay a lot of money he owed me, my area chapter of the National Association of the Remodeling Industry (NARI) served as a support group. Several NARI members shared their horror stories with me, some far worse than I was facing, and I gained a lot of badly needed perspective and some hard-won advice. The stories that follow document my experience and those of four other residential contractors (names have been changed to protect the innocent). What we learned and what we do differently now to keep from getting burned again may help you avoid a similar experience.

## POWER TRIP

*Chuck Green, Ashland, Mass.*

In 1993, I encountered my most difficult customers to date on a \$120,000 time-and-material remodeling job on an unoccupied house. She was a super-demanding, high-powered executive who screamed at everyone during her rare visits to the site; he was a semi-retired dentist with a very large ego and too much time on his hands. Both knew exactly what they wanted, for all of a day — the next day it was something else, definitely. Some of the changes just wasted my time; others cost real money. One day, for example, we added a 12-foot structural beam per his sketch to accommodate a skylight opening; the next day we replaced it with an 18-foot-long beam when he decided he wanted a larger skylight. They both understood that this kind of extra work took time and cost them money, but they kept coming up with major changes.

I failed to set limits, failed to assert from the start that either they were in charge (and would be held responsible) or I was. I took directions orally, and though I kept notes in my job notebook, I did not work from a formal plan, nor did I get signed change orders along the way.

**End game.** Late in the job, they became slow with payments. Then two big incidents happened. First, they decided to redo the kitchen skylight a third time, and due to the unavailability of a plasterer, we were pushed irrevocably behind schedule. Then, two weeks before moving into their new place, her company gave her a weekend's notice of her transfer to Asia. She left me a phone message, crying hysterically, begging me to help her family, to take care of everything, to finish and get them in. I phoned with reassurance, but the next day she focused all her anger on me — and I became the scapegoat for her suffering.

He took over at that point. He said he would pay the subcontractors directly, but not me; I was still the contractor, the

guy responsible for creating — and now for solving — the problems. At the time, I had an outstanding bill for about \$5,000. Instead of stopping work and cutting my losses, I continued to work, and my final bill rose to \$9,500 at completion. Predictably, they stonewalled me on final payment.

**Expensive justice.** Still unpaid a month or more after completion, I conferred with an attorney. He knew their type and warned me that they would probably be willing to spend more money than I could fighting in court, even if they thought they had no chance of recovery. He explained that of the construction suits his firm had handled, the average cost for attorney's fees, depositions, and other activities was \$4,000 — *before* entering court. He estimated that my case would cost two or three times that much, and as a business owner I would stand no chance of recovering attorney's fees. He was sorry to say that I probably couldn't afford the justice I deserved.

At that month's NARI meeting, the consensus was to avoid going to court, and thus save the massive drain of finances, emotion, and time — none of which my small company's limited resources could afford. (I have an arbitration clause in my contracts, but all agreed that arbitration could still be quite involved and equally draining.)

Knowing what I faced on the other side of a dispute-resolution process, I decided to negotiate for as much as I could get. I got a meeting with the mad doctor, and I told him that on advice of counsel I would accept 50¢ on the dollar. He wrote me a check on the spot. I lost more than \$4,500, but the relief was immense.

## TEMPER TANTRUM

*John Denton, Dayton, Ohio*

Denton's company was formed with three other partners and grew fast — too fast. After three years, the company was doing \$1.5 million a year in remodeling work. Despite an emphasis on service, the company made some business mistakes that left it weakened. Then, one \$45,000 job pulled the company down.

The project was finished, except for a

punchlist. Both parties had signed and dated the punchlist, and \$2,200 was held back. Denton's company proceeded to work on the list, and was two to three hours from completion when he was locked out — the customer told him not to enter the property again. Denton followed up with calls and letters, but was unable to resolve anything.

The contract contained a standard notice of lien, which Denton filed. The customer went ballistic, got a powerful attorney, and sued. Denton countersued. The customer asked for *all* his money back, based on workmanship and timeliness. The conflict escalated rapidly, and they headed to court. There, a home inspector brought in from more than 100 miles away testified that it would cost \$18,000 to correct the alleged problems. Denton countered that the alleged problems would cost, at most, \$4,000 to redo; but his expert witness was hospitalized shortly before the case began and was unable to testify. Near the end of the trial, the customer's attorney asked for triple damages plus attorney's fees, citing the Customer Sales Practices Act.

Denton lost, big time: \$54,000 damages (three times \$18,000), plus \$35,000 for the customer's attorney's fees, plus \$32,000 for his own attorney. The company went down in Chapter 7, and because Denton was a personal guarantor of some of the company's debts, he was forced into personal bankruptcy as well.

## NO PAPER TRAIL

*Peter Kinnel, Madison, Wis.*

Kinnel's problems began on an \$18,000 T&M job involving a basement remodel and construction of a new deck. His crew performed most of the work while he was out of state, and billings and payments lagged while he was away. When Kinnel presented the final bill for \$9,000, he was told that he hadn't built what was in the contract. There had been lots of change orders, but all were oral, even though his contract stated that all change orders would be in writing. "I'm a straight guy," Kinnel explained, "and I thought they'd be straight with me." It was a bad assumption.

Soon, attorneys exchanged letters, and a suit and countersuit followed. The customers offered some justifications for their position in this new battleground. Some were beauties: The one-year-old pressure-treated deck was rotting and needed replacement; foam pipe wrap on the water lines above a drop ceiling should have been mitered at the corners — you get the idea.

A clerk, not a judge, heard the case, during which an "independent" contractor provided expert testimony in favor of the homeowners. Kinnel lost. In addition to the unrecovered \$9,000, Kinnel's cost





## FIGHTING BACK

While most reasonable disputes can be resolved, the stories told here are not about reasonable disputes. Some homeowners plan to get something for nothing — even if they are satisfied with your work, they will find an excuse for not paying. Others take offense during a project without ever telling the contractor — then set out to get even. Still others will offer various reasons for nonpayment — poor workmanship, scheduling problems, poor communication problems, and so on — only after attorneys are involved. Emotional issues can also cause a customer to displace their fury onto contractors, whether or not it's related to the work.

**What can be done?** All of the bloodied contractors I spoke with agreed, as did several attorneys, that it is important to avoid going to court. Financial costs are high, the likelihood of full financial recovery is low, and the psychological toll can be severe.

Fortunately, there are steps you can take before, during, and after con-

struction to avoid getting burned.

- Prequalify customers. Ask subs and other contractors about the track record of your prospective customers. Weed out the jobs — and the customers — you don't want.
- Ask all customers for a down payment and schedule regular progress payments. Collect draws at the start of each phase of work, not at completion. Actively pursue collections.
- Write contracts that include detailed descriptions of what is included and what is not. Have an attorney who is well-versed in construction law develop and review contracts and other crucial documents before you use them.
- Do nothing based on trust — write everything down, formally. Get the owners to sign change orders, meeting notes, and other job documentation.
- Keep clear lines of authority on the job site. Don't allow the owners to make an end run around you to get to your subs. Insist that any subs who are working directly for

the owners coordinate their work with you.

- Stop working when a customer falls behind on payments, and actively pursue collections.
- Have policies in place before trouble comes up. Once the opening salvo is fired, emotions run high, making it difficult to think clearly and calmly.
- Do not tolerate abuse, oral or otherwise, from any customer towards anyone on the job, employee or sub.
- Document all change orders. Conduct regular meetings with customers to discuss small problems and mounting costs.
- Know your state's lien laws. A mechanics lien is a valuable negotiating tool, particularly when a project has been financed by a bank (see *The Legal Column*, 11/95).
- Check out any arbitration firms carefully before you agree to use them. Ask to see summaries of past cases and judge for yourself how well the contractor fared.

— C.G.

included a \$1,500 settlement for alleged damages plus \$5,000 in attorney's fees. Kinnel's attorney suggested later that the customer had planned it all along: The original builder of the house had also been stiffed.

## WRETCHED EXCESS

*Chris and Tom Silbers  
Appleton, Wis.*

The Silberses' downfall was a small addition and remodeling job. The customers spent wildly — more than 30 change orders pushed the job way over the initial budget — but had no complaints about work quality or timeliness. At completion, the customers asked to make installment payments on the balance owed, and the Silberses agreed.

No money was received, however, for the next eight months. Then, the Silberses received a notice of the cus-

tomers' bankruptcy. Somehow, the customers managed to salvage their mortgage, but their creditors got nothing.

## FAILED ARBITRATION

*George and Karen Wilson  
Monkton, Md.*

A \$98,500 second-story addition and remodel led to three years of hell for the Wilsons. Due to bad weather, exterior work had to be temporarily halted, and the crew moved inside. With the reshuffling of work, three draws came due at one time, totaling about \$35,000. At about the same time, the customer, who had made top-of-the-line product selections from showrooms and dealers, suddenly decided she was being ripped off. The Wilsons found her irrational: On Friday, everyone was on great terms; at Saturday's meeting, the Wilsons were called SOBs, liars, and cheats. The evidence: a few splits and poor cuts in the

siding. The customer told them not to come back, that they would hear from her attorney.

The ensuing arbitration was a very bad experience for the Wilsons. They were pursued repeatedly through the state licensing board, charged with abandonment of the job, though the Wilsons' detailed paper trail proved they had been fired. All change orders were in writing, but the customer insisted they were not authorized. The judge said he believed the Wilsons, but had to find them guilty of deviation from plans and specifications without the owner's consent. They received a temporary letter of reprimand on their license. Hearings went on for two more years, during which the owner appealed the Wilsons' victories, and the battles are not over yet. An attorney postulates that the customer sought to oust the Wilsons so an unlicensed contractor friend could finish the job. ■

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