

Strictly Business

The School of Hard Knocks

by Denise David Baer

Like many small business owners, we have several cardboard file boxes that we use to stash old paperwork. In addition to boxes of tax records that we can't toss out for umpteen years in case of an IRS audit and documentation from really important jobs, we have one particular box that holds the records of our "job from hell." The box weighs 65 pounds (no joke), and that doesn't include oversized drawings and photos. Years from now, someone with a head for numbers and time to spare could piece together the entire ordeal by going through the thousands of pieces of paper in that box. But the contents wouldn't begin to tell the complete story: the sleepless nights, the frayed nerves, the premature gray hair, the months of living every day with the very real fear that neither the company nor our marriage would survive the legal battle and the cash hemorrhage.

But to me, the contents of that box represent a turning point for the remodeling and restoration business my husband and I operate. All of the forms and procedures we use today grew out of this one near disaster. I make no claim to having cornered the market on hard times, but I think we've done a better-than-average job of learning our lessons and pulling ourselves and our company out of the rubble. In future articles, I plan to discuss in detail most of the measures we took to prevent anything like this ordeal from happening again. But some of the steps we took to protect ourselves may seem like overkill unless I first tell the story of the job that caused us to rethink the way we do business.

Diamond in the Rough

Our tale of woe began in the winter of 1988-89. We were contacted by a couple who had just purchased and wanted to

restore a very old, derelict house. They had gone so far as to have a designer (not a registered architect) draw up floor plans, and they had gotten our name from a local preservation organization.

At the time, our company was only three years old, and we were hungry for restoration projects to add to our portfolio. We were the new kids on the block, and yet we were already making quite a name for ourselves. With the skill level of our crews, we knew there wasn't a restoration project out there that we couldn't handle. To us, this house was a diamond in the rough, and



we were already planning the advertising mileage we could get out of the before-and-after pictures.

After the usual presale consultations and many visits to the site, we sent a proposal to the clients, stating what we were including and not including in our estimate, based on their designer's drawings and their instructions, with an *approximate* cost of labor and materials. We proposed that the project be

done on a "time-and-materials" basis since there were so many unknowns, both in the walls and in the still nonexistent product selection sheets. We gave them a list of client references to call, making a point to highlight one whose project was similar to theirs in style, though not necessarily in content or scope.

Give and Take

The clients responded quickly, telling us that they would have to eliminate some of the proposed work to fit the project into their budget. We obliged by sending a second proposal reflecting the entire project again, minus the portions they elected to cut or do themselves.

A few days later, they asked that we eliminate another portion of the project, and once again, we obliged with a third proposal. This time we sent a cover letter, explaining that while we were proposing time-and-material billing, the approximate cost (which we stated in the letter) would be accurate within 5%, which was typical of our project histories.

The contract form we used was a typical three-part proposal form available through many mail-order companies. It included boiler-plate language with regard to the price, payment terms, and acceptance — we even included the Right of Rescission form.

Delays and Extras

Once we were on the job, we backed up the proposal with weekly meetings, which were attended by my husband, Gary (who does all our sales work), the project supervisor, and the clients; the designer was invited when necessary. After each meeting, we would type up the supervisor's notes and send a copy to both the job site and the clients. We also sent copies to any subcontractors who were affected by the decisions made at the meeting.

When the job started winding down and very few carpenters were on the job, we gave up the weekly meetings and note taking. After all, only minor details, like finishing the interior trim, remained — with two crucial exceptions. First, the clients were starting to

panic because they had to move out of their old house by a certain date, but the kitchen cabinets in the new house still weren't done. They had contracted separately for this work, but their cabinet-maker had fallen behind. Second, adding to their anxiety was the growing realization that all of the extras they had piled on throughout the project — like installing a new septic system, laying 500 feet of new driveway, and taking on the interior painting that they originally wanted to do themselves — meant they would have to dip into their savings to finish the job.

We sympathized with their plight, and kept one of our lead carpenters at the job to help get them in on time. In the meantime, we continued to send them monthly bills, which they paid but not without telling us how they were dipping into savings and having to refinance. Toward the end, they had trouble paying one of their bills, so we allowed them to make a partial payment, with assurances that the balance would be paid as soon as their financing was squared away.

Moving day finally came, and the new kitchen still wasn't complete. The clients were doing much of the moving themselves, counting on family members to assist. My husband, Gary, thought it would be a nice gesture to help out, so he spent an entire, exhausting day moving heavy furniture and coordinating people and trucks. We didn't even consider charging them for his time.

The Day the Earth Stood Still

A couple of days later, Gary personally delivered the final bill, which had accumulated to more than \$40,000. He was told they simply didn't have the money. We were dumbstruck. A Martian spaceship landing on the lawn would have been easier to comprehend.

Communication deteriorated rapidly, and we found ourselves calling our attorney. Less than a year after entering into a contract for what we thought was going to be our most impressive restoration job yet, we were entering into legal proceedings instead. We could hardly believe it.

Our clients responded with a counter-

suit, claiming all sorts of inadequacies. Even up to the day they told us they couldn't pay the final bill, they had been telling us we were doing an excellent job. Now, all of a sudden, they and their attorney were alleging all kinds of shortcomings.

When you get caught up in a legal suit, time does not move forward: It comes to a dead stop. You start to measure time by the tick of the attorney's time clock and the dread of another deposition. We started thinking twice about every decision we made, and prepared ourselves for the possibility of losing everything.

Three long years and more than \$60,000 in legal fees later, the case finally went to court. It took just three days (though it seemed an eternity) for the judge to call the attorneys into his chambers to tell them that he fully expected them to settle. He even told them roughly how much he thought the settlement should be.

And settle we did — for far less on the dollar than the judge suggested. But we were worn down by the way the clients' attorney distorted everything we had done. All we wanted to do was go home, get a good night's sleep, and pick up the pieces.

School of Hard Knocks

It's been a little over three years since our tale of woe came to a close. Now that I think about it, I really shouldn't call this Our Tale of Woe, but rather Our Four Years at Harvard Business School: We didn't set foot inside a classroom, but we paid about the same for tuition. Fortunately, we graduated *magna cum laude*. Our revenues are four times what they were then, and our profit (after our salaries) averages a healthy 12%.

The biggest change, of course, is in the way we conduct our business. In future columns, I'll show you exactly what we changed and why. The list includes:

Contracts. This was the very first thing we changed. We now use a seven-page document, drawn up initially by an attorney, which spells out specifically the responsibilities of each party. The contract requires the client to produce documents that attest to his or her

ability to pay, and spells out the consequences of failure to pay. It preserves our right to a mechanic's lien, and includes an arbitration clause. And on and on.

Job controls. We're even tougher now about documentation. To our weekly meetings and written meeting notes, we've added other controls, such as signed approvals before proceeding, and mandatory product selections before the job starts.

Budgeting. We put our company budget process in place while all the legal wrangling was still going on — it was the only way we could conduct business and pay our legal expenses without ending up bankrupt. We also changed the way we do job-costing, to ensure a healthy profit line while also protecting important expenses such as employee fringe benefits, marketing costs, and our retirement fund. Moreover, the budget helps us make decisions about hiring and pay raises, asset acquisitions, and cash flow.

Marketing. Our marketing efforts were haphazard at best, targeting the type of work we wanted without paying much attention to a particular type of client. After our job from hell, we realized that we didn't want to be at the mercy of "the unknown prospect," even when referred by a trusted organization or former client. Now our marketing is aimed squarely at the type of clientele that expects exceptional service and is willing and able to pay for it. Either our contract terms prove them out, or we reject them and their job. We work aggressively to get the clients that are referred by exceptional past clients, which makes it easier both to sell the job and to check out the prospect. Nowadays we get the kind of client we want; the work is usually interesting, but it's *always* profitable. ■

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