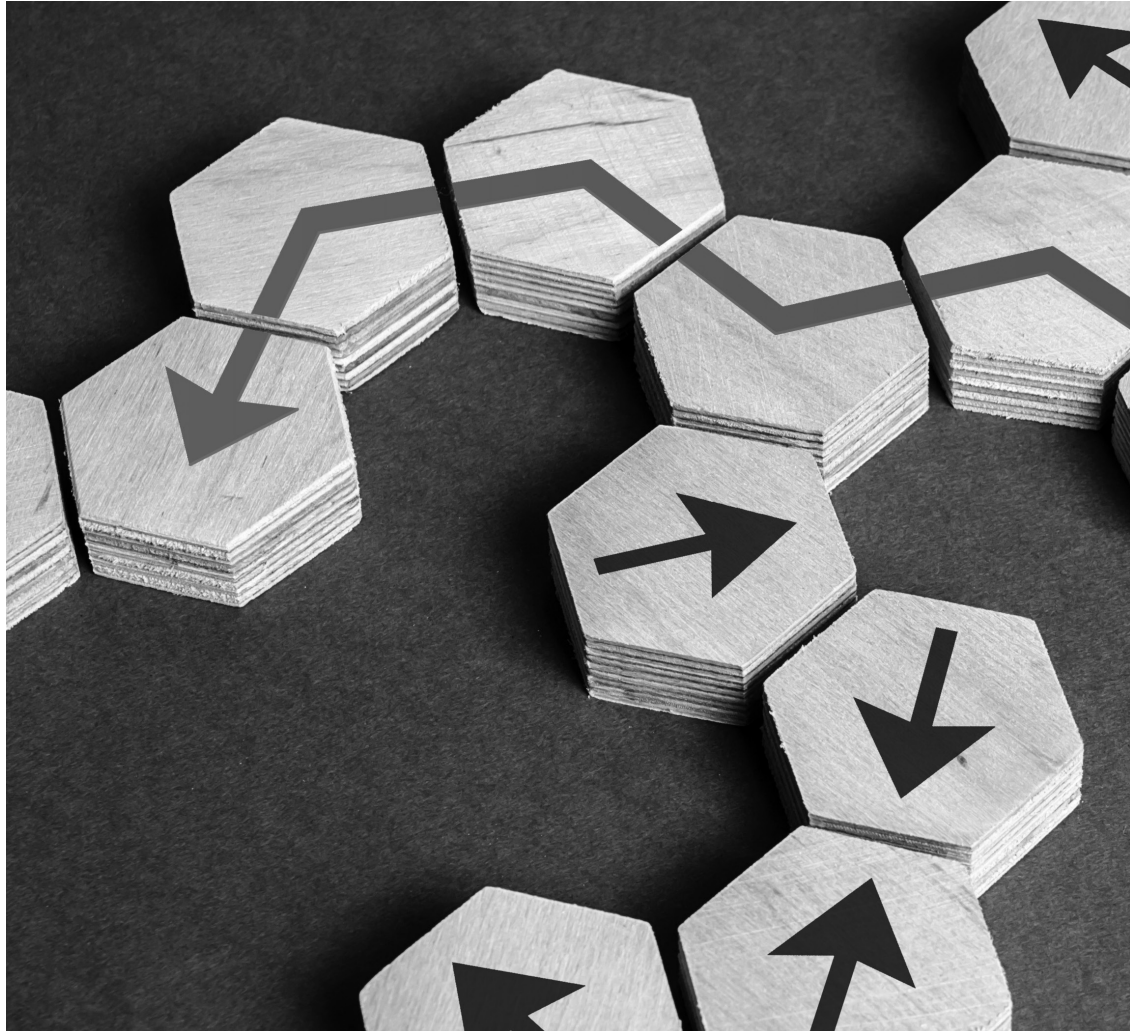


CASE STUDY





CASE

Two brothers, partners, in a collection of family businesses, came to an impasse over the operation and possible division of the family business.

How were they able to resolve their dispute and move forward?



BACKGROUND

Two brothers, each with different lifestyle and financial needs, were equal business partners. The businesses were founded by their father, who bequeathed them to his sons. Under the brothers' management and active involvement, the enterprises thrived, but serious disagreements arose regarding their respective salaries, perks, distributions, and strategic plans.

The conflict escalated to the point that one of the brothers filed suit against the other, which in turn prompted a counterclaim, with both brothers alleging claims of purported breach of fiduciary duties and shareholder oppression.

CONSIDERATIONS

Ownership of the various businesses proved to be complicated:

- While each brother operated specific entities independently from the other, they both owned each entity equally.
- The entities run by the younger of the two were successful, and he felt that his hard work and business acumen deserved greater compensation.
- The older brother, seen as their father's favorite son, worked closely with their father in starting the business, and was more actively involved in operations.
- Each of the brothers' wives and children worked in the business and received many perks, causing them to become equally immersed in the feud.
- Both brothers were amassing significant legal and accounting fees, and much of their attention and energies were diverted away from the needs of the business.
- Counsel for both sides recognized that they were on a course that would destroy the business that had supported the family for two generations
- If the brothers did not stop the blood feud, the financial drain as well as the potential effect on the family relationships would have disastrous consequences.





HOW DID WE HELP?

Counsel for the brothers agreed that it was in their clients' respective best interests to determine a better system for running the companies, and the court ordered the case to be brought to the mediation table. Counsel selected us to designate two co-mediators with extensive experience and a creative approach to resolving complex issues. We then:

- Conducted a pre-mediation conference with counsel and the two brothers.
- Suggested that the parties agree on a form of binding arbitration to settle their disputes if mediation was unsuccessful.
- Agreed to serve as both mediator and arbitrator for the proceedings at the request of both sides, after fully disclosing the benefits and ethical issues associated with this process.



The co-mediators proceeded to conduct several sessions during which the various problem areas that existed in running the business were identified. They were able to get the parties to agree upon and implement temporary operational measures, and called for a short hiatus.

When the co-mediators called the parties back for an update on progress, the parties reported that they were surprised at their ability to address some of the operational problems, but advised that they still needed to resolve the financial hurdles, ownership issues, and other disparities between them.

- Following several more mediation sessions, it became apparent that the older brother was not interested in running the business and would instead prefer to retire. The parties then agreed that the younger brother would buy out the older brother's interests, but they disagreed on price and terms. Based on the Med/Arb model, the mediator stepped into the prescribed arbitrator role and had the parties submit written pre-hearing briefs and schedule the subsequent arbitration phase of the proceedings.
- The mediators then developed several possible resolutions, with some options left open for future consideration. They also signed a Memorandum of Understanding (MOU) submitted to revision attorneys who formalized a binding agreement that was approved by the court and allowed parties to move on feeling they got a respective fair conclusion of this conflict. Within one week after this resolution, an award was issued and the parties were able to close the purchase and sale agreement approximately 30 days thereafter.





TESTIMONIALS

"I thought we would never get to the end of this. A litigation between brothers is the ugliest situation anyone can ever imagine. Mediation allowed us to communicate with respect and consideration. The co-mediators were focused and knowledgeable rapidly understanding all the opportunities we had to reach an agreement. They coached us, listened to each party with empathy and total neutrality. This was an exceptional outcome and made the challenge much easier to process." – Brother #1

"Many details had to be discussed and I also was involved trying to appease each one of my sons. The mediators were exceptional agents to make this happen and conclude nicely, kudos for allowing us to remain a family with a future for our children."
– Father of Both Brothers

OUR MEDIATORS/CONFLICT RESOLUTION SPECIALISTS



Ana-Lisa Gertner is an experienced Family Mediator and Coach. She works towards helping parties find mutually satisfying solutions to solve their conflicts. In addition she coaches individual clients going through mediation, arbitration or litigation. She is affiliated with Center for Mediation and Training in NYC, a founder of Manhattan Mediators, and is a member of the APFM and the FDMC. Ana-Lisa has a BA from the American College of London, a Masters in Marketing Communications from the University of Westminster in London, and a Coaching Certificate from NYU.



Ken Neumann is a family mediator, mediation trainer and founder of the Center for Mediation & Training in New York. In addition, Ken is trained as both a family therapist and as a Clinical School Psychologist. He has been working with parents and children, helping them navigate family conflict for over 35 years. Ken is a founding board member of the Academy of Professional Mediators and a founding member and past president of the New York State Council on Divorce Mediation.



Steven Spector is an insurance authority who specializes in the design and implementation of advanced financial planning strategies. His clients include high net worth individuals and families, institutions, and charitable organizations. He is experienced in a wide spectrum of areas including planning strategies, business and family succession, executive compensation, and estate planning. He is often called in to help parties in conflict find a mutually satisfying solution to their conflicts.

Our team of mediators and experts can expand to major cities within the US, Canada and internationally when local actions and representation is needed.

Contact us for a free, confidential consultation: 845.406.3006 • mediators@ascentmediation.com

OUR MEDIATORS/CONFLICT RESOLUTION SPECIALISTS



Donna Petrucelli is a founding member of the Academy of Professional Family Mediators and a Co-Director of the Center for Mediation & Training. She has been a professional negotiator for over 20 years, having honed her skills as a medical malpractice defense litigator, general counsel to a large not-for-profit, and employment lawyer.



Ivy Menchel is a Business Family Advisor at Sagemark Consulting. In addition to consulting and advising her clients on how to best maximize their financial situations; she also works to bring confidence and financial independence for families facing life-changing events, i.e. transfer of a business, divorce, death or retirement. In addition she is a trained mediator and has worked as an advisor on many litigated, mediated and collaborative cases.



André Politzer is the founder of Ascent Mediation and an adept Conflict Resolution and Business Consultant, Professional Leadership Development Certified Coach (PCC) and an experienced Mentor & Mediator resolving partnership disputes and other family & business/commercial issues simplifying complex cases and bringing parties to mutual agreements efficiently.

Our team of mediators and experts can expand to major cities within the US, Canada and internationally when local actions and representation is needed.

Contact us for a free, confidential consultation: 845.406.3006 • mediators@ascentmediation.com