The legal system works

SLUGGING IT OUT IN LITIGATION YIELDS A WIN

By Jonathan Brickman

AMERICA'S LITIGIOUS SOCIETY SOMETIMES invites open season on skepticism. Stories of huge settlements, of the wealthy who succeed by hiring the best lawyers or "hired guns," easily demean the legal profession.

It's refreshing, then, to hear of outcomes that are fair and reinforce faith in the system of justice.

Lawyers do exist who, for a reasonable fee, represent clients that resolve disputes in a fair way. Such are the hard working, knowledgeable attorneys who represent their clients with energy and intelligence. Often their work is mundane, sometimes it is remarkable.

Take the case of a Greater Boston publishing company that faced a $500,000 lawsuit, which, with counsel at its side, won a victory, despite contractual language that on its face supported the claims against it. In this instance, the publishing firm had signed an onerous non compete agreement that was overly broad in its purview and, the lawyers argued, was against public policy.

Attorney Howard Goldman represented this party that was suffering from years of payments under the non compete agreement, which amounted to more than $100,000. The business was struggling to grow despite this drag that amounted to substantial proportion of its would-be profits. Not satisfied with these payments, the recipient of the money pressed further, announcing that the payments were late and not satisfactory. The matter could be resolved, however, by agreeing to demands to hand over part of the business and paying the past due with interest into perpetuity.

A history of mollifying this party had to end, Goldman advised. The appetite of the other party was endless and unreasonable. Take a stand, he advised.

"The signed non compete documents were overwhelmingly against the client. But contractural consideration was lacking and the non compete was broadly construed to apply to anywhere in the country. This could not be enforced as a matter of public policy. So here was a new business entangled in a detrimental agreement that was overly broad. In the end, the legal system did work."

This position resulted in binding arbitration between the parties based on language in the original agreement. It required long preparation and research that culminated in a two day hearing in front of an arbiter from the American Arbitration Association. The arbiter found for the defense in most of the issues in the case.

Entering such arbitration requires a prior understanding that the decision will be binding and final. The arbiter either can accompany his or her finding without comment, or write the decision with detailed and exhaustive reasoning, or, alternatively, with an "in between" adjudication that summarizes the reasoning behind the decision.

The "middle course" was agreed upon by the parties in this case. Should one of the parties wish to appeal the arbiter's decision, they may do so. The courts, however, rarely overturn the arbiter's decision, which needs to be based upon narrow, defined reasons.

In this case, the plaintiff did go to the unusual step of an appeal. The courts upheld the arbiter's decision.

The overall result was that the small business defendant in the case finally was free to pursue his business unfettered by royalty payments and legal entanglements.

"The non compete case was an interesting example of an alternative form of litigation, arbitration," Goldman said. "The signed non compete documents were overwhelmingly against the client. But contractural consideration was lacking and the non compete was broadly construed to apply to anywhere in the country. This could not be enforced as a matter of public policy. So here was a new business entangled in a detrimental agreement that was overly broad. In the end, the legal system did work."

Such cases do not come along every day, according to Goldman. Each case differs and often it is unclear in what way it may end. Goldman describes his law firm, Goldman and Pease, as a business and litigation "boutique." It means that his company handles a broad array of business issues for small and medium sized firms, always seeking "creative solutions to touch problems, exploring alternative dispute resolution through arbitration or mediation." Typical work range from helping to establish new businesses to be set up as a limited liability companies (LLC's) to litigation, such as contract disputes.

Another focus of the firm is representing condo associations who face issues of unpaid condo fees, as well as issues that arise in close living and privacy rights.

Condo associations today face new challenges as a result of the weak economy. In the case of one association, an owner abandoned his condo and failed to continue to pay condo fees. When the condo was finally opened, the pipes had burst and there was other damage.

"We interviewed three attorneys and chose Mr. Goldman," Joseph Puccia said. "We liked him the best and he seemed very experienced in the real estate and litigation field. It went quite well. He was very informative and kept the trustees up to date. In the end, the problem was solved."

Goldman moved to Needham in 1990 and has practiced there since 1995. He and his wife, Amy, who is director of Needham's after school and summer programs, have three sons. Nate, 17, Zack, 13 and Lucas, 10. The attorney has been an active coach to his children in baseball and basketball. ▮

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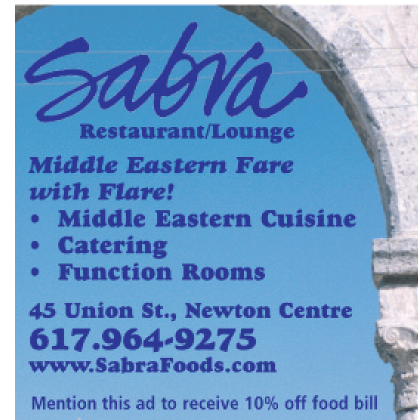

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