



HOW EIGHT EXPENSIVE LAWYERS MISSED ONE WORD THAT COST TENS OF THOUSAND OF DOLLARS

The Transaction

Negotiating the lease of an 80,000 square foot commercial building.

The Setting

Eight lawyers sat along one side of a very long oak conference table.

On the other side were eight real estate specialists. All 16 were employees of a very large Savings and Loan (S&L) institution.

At one end of the table was the septuagenarian matriarch of the Savings & Loan.

At the other end sat Stan, a salesman who didn't finish high school. He was the sole negotiator for the building owner, Jerry, who was also Stan's mentor.

Lacking the patience for serious negotiation, Jerry was off to the side, where he could maintain eye contact and guide Stan with hand signals.

Knowing what he was getting into, Stan had built in numerous stipulations that he knew the other side would never approve. These stipulations were "throwaways" – they looked important, but they weren't.

As the discussion progressed, Stan let the lawyers and real estate specialists puff up their feathers in front of their boss, the matriarch. He acted like he was out of his league, and they took his bait. Anyone watching would have agreed: the S&L employees were beating Stan soundly on every aspect of the negotiation.

For example, Stan had limited the number of parking spaces the tenant could use. Understandably S&L wanted all of the parking spaces.

After relenting to give the tenant every parking spot Stan complained, "Oh no, that's more rental income we're going to lose."

The negotiations continued, with Stan losing his position on every condition. Finally the negotiators arrived at the Cost of Living Adjustment (COLA). At which point Stan stood, gathered his things, and walked over to where he'd left his briefcase.

"You haven't agreed to anything I wanted, so you sure as heck aren't going to give me Cost of Living," he said, resignedly.

"Wait a minute," said the lawyers and real estate specialists. "We understand Cost of Living. We're willing to do something. It's only fair. Let's see what we can do."

Having won every point, they were feeling magnanimous. At the time COLA was between 5 and 8%.

Stan reluctantly dragged himself back to the table. “Well, okay, you’ve already taken away everything I wanted, so what kind of a bone are you going to throw me on this?”

“We’ll do three percent” said one lawyer, and the others agreed. So the negotiations continued for a bit longer, and the two sides settled at three percent for COLA. The deal was agreed to, and the final document sent for preparation and eventual signing.

Not quite two months later Stan received a call from the S&L lead lawyer.

“I was expecting your call,” said Stan.

Conclusion

“You were? Okay, good,” the lawyer said. “If you look on page 37, paragraph 2b, about the Cost of Living. It could possibly be construed that is compounded yearly, and we need to straighten that wording out.”

Now it was Stan’s turn. By appearing to lose on more than a dozen points during the negotiation, he had won the only point that mattered.

“Well, we’ve already cashed your check, we have a signed agreement, and that wording was there for a reason: it IS compounded.”

Eight real estate specialists and eight lawyers had missed “Compounded Cost of Living” until AFTER it was too late to change.

Multiply 3% x 100 and you get 103. Multiply 103 by 3% and... I’m sure you get the idea. And you also understand why every year on the anniversary of the lease commencement date Jerry called Stan to say, “Thank you” and the two would laugh about the entire affair.

If those eight lawyers had used [Amicus Attorney](#), they could have discovered the compounded cost of living adjustment Stan had hidden in the lease.

In the same way you use Amicus Attorney to perform a thorough conflict of interest check across your entire office, Amicus can also search for any word, phrase or sentence in any document.

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You can use this feature to prevent you and your clients from being taken advantage of by smart and talented negotiators like Stan.

Epilogue

To get out of the annually increasing COLA payment, the S&L eventually bought the building. That S&L has not existed for some time.

Stan passed away May 11, 2015. To his last day he maintained the story is true, although as a master salesman small details changed every time he told the story.



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