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When good partnerships go bad

LIKE MARRIAGES, BUSINESS RELATIONSHIPS SOMETIMES WIND UP IN COURT

Breaking up is hard to do. Denver attorney Rehan Hasan remembers the first time he sat between two partners who were breaking up. Emotions ran high. Accusations flew. And Hasan felt like a referee trying to calm everyone down.

Hasan isn't a divorce lawyer; he's a corporate attorney who works with business owners. And a "business divorce" is not unlike a marriage that comes to an end. It's emotional, contentious and it isn't always pretty.

"It happens more often than people think," he said. "It's a lot more painful than people expect."

"The most experienced business owners always know that it 'isn't just business' – it's intimate and emotional. Inherently, you are putting your blood, sweat and tears into that business," Hasan said.

In a recent case, a federal court jury in Denver awarded \$2 million to Charles Leone, a businessman who wanted out of the company but felt his partners did not make a fair offer for the buyout.

Leone sued his partners Ste-



Rehan Hasan is a corporate attorney in Denver who helps business owners "divorce."



KATHLEEN LAVINE, BUSINESS JOURNAL

From left: Zonies Law LLC paralegal Julie Reebel with attorneys Sean Connelly and Tony Giacomini. Connelly said valuation is one of the key issues business owners who are parting ways fight about.

ven Owsley and Drew Hayworth. They had been partners in the hedge fund, Madison Street Partners LLC, a Delaware limited liability company with its principal place of business in Denver.

In 2012, Leone wanted out and, per the company's operating agreement, Owsley and Hayworth would buy out his 19.75 percent interest. The agreement called for the purchase price to be set at fair market value, as determined in good faith by Owsley and Hayworth, according to court documents.

Leone was offered \$135,850. He rejected the offer, saying it was far below market value, which he believed, using a third-party valuation firm, to be \$2.1 million. Further, he argued that information given to the valuations firm hired by his former partners was incorrect, and low-balled the company's financial outlook.

The partners ended up in court. The case was filed in 2012, thrown out, appealed to the U.S. 10th Circuit, then was heard by a jury in July in district court. Leone wound up with a \$2 million judgment in his favor.

There was tension among the partners, said Sean Connelly, an attorney with Zonies Law LLC, one of the attorneys who represented Leone. That's why Leone wanted out.

The Leone case is common in business divorce, Connelly said. Among the key issues partners fight over is valuation.

"The key is fair market value determined in good faith," he said. "The case talks about in a business divorce, when a company has a right to buy out a minority interest who is depending on and entitled to good faith – that obligation holds even if there are bad feelings."

Brett Painter, partner at Davis

Graham & Stubbs LLP and the defendants' attorney, said: "We were disappointed with the outcome of this case at the trial level and do not agree with the verdict, which we intend to appeal. Our client treated Mr. Leone more than fairly during his tenure at Madison, and upon his departure."

Hasan, who is not involved in the Leone case, said he recommends a business prenuptial agreement – a contract that spells out all of the possible endings to the business. For example, some buy-sell provisions tend to be broad, he said. And most of the fights in the business break up are over the valuation.

"I would build in a mechanism, not so say the value is \$5,000 a share, but to determine fair market value; the hiring of a third-party valuation expert. If the partners don't agree with the valuation, then the hiring of a second expert."

The prenups help, he said.

"It sets boundaries around the emotions," Hasan said. "It limits the shenanigans people can get into. It brings about the rules of the game and narrows the perimeters in which those shenanigans can take place."

All of the beginning business partnership documents should reflect the ending, he said.

"It's not about being a Debbie downer. It's about taking a proactive approach that continues to be positive – empowering the clients in a way that they know as they build a business, they are protected."

Of course, he said, the default is litigation.