

ADR War Stories: When it Really is All About the Money



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As a full-time mediator of litigated matters, I often hear one, or both, of the parties proclaim, “It’s not about the money, it’s about the principle of the matter!” Sometimes that’s true; the dispute may have been brought in search of vindication: I’m right and they’re wrong. It may be about retribution, in the sense of reprisal, a need to “punish” the offender. It may be about publicity, the need for everyone to know that the wrongdoer is a bad person (and I’m just the one to take him/her to task). It may be about humility, the need for an apology. But sometimes, it really is about the money.

I recently mediated an attorney-

client fee dispute. The client had paid the attorney an hourly rate for her services in asserting a property damage claim against a building owner’s insurer. The attorney worked up the case in the usual fashion, deposed the key witnesses, attended a couple of court hearings and retained an expert witness.

The matter was referred to mediation with a well-respected Bay Area mediation specialist. During the course of the mediation, the mediator provided her opinion as to the challenges confronting the client and the unlikelihood of success at trial.

The mediator employed the standard “shuttle diplomacy” customary in these matters, and at the end of the day was only successful in garnering a settlement offer from the insurance carrier that barely covered the legal expenses incurred by the plaintiff.

Plaintiff feared that she would continue to incur legal expenses through trial, with little prospect for a financial recovery, and hence settled the underlying dispute. Thereafter, she filed a “Client Request for Resolution of a Fee Dispute” with The Bar Association of San Francisco.

As expected, I was advised by the attorney that she fully discussed with her client the difficulties with the underlying case; hence, “That’s why I took it on an hourly basis as opposed to on a contingency fee basis.” Equally expected, the client advised me that the attorney told her at the outset that she had “a good case,” and “if she hadn’t, I would have sought a second opinion.”

Understandably, the client felt betrayed and taken advantage of, “Everyone made money on this (attorney, expert witness and mediator) except for me, and I’m the

one who went through hell losing my property and getting worked-over by the legal profession!”

In this case, it really was about the money.

Fred Carr is an international, AV® rated attorney-mediator, with over 20 years of legal experience. His litigation and negotiation experience, leadership skills and extensive mediation process training make him highly successful in negotiations and facilitating resolution of disputes. He has been a member of BASF’s mediation panel since 2013. For more information about the Bay Area Mediation Services of BASF, visit www.sfbbar.org/mediation.
