

ADR Insights on Business Divorces: You Lost that Lovin' Feelin'
(Part 6 of 9)

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You lost that lovin' feelin'
Whoa, that lovin' feelin'
You've lost that lovin' feelin'
Now it's gone ... gone ... gone...woah.
(The Righteous Brothers' You've Lost that Lovin' Feeling')
(Written by Phil Spector, Barry Mann, and Cynthia Weil)

This is the sixth in the “*Breaking Up is Hard to Do*” nine-part series on exploring dispute resolution for business divorces.

In any legal dispute, two parallel processes are underway: the legal process and the emotional one. This is particularly true in a business divorce where grief is very often the elephant in the room. With the loss of that lovin' feeling', the co-owners may be grieving the end of their shared vision, loss of their relationship, financial losses, lost employment, or business failure.

Whatever the reason, their grief is often a barrier to resolution in a business divorce. Grief clouds judgment. Grief results in irrational behavior. Grief can emotionally incapacitate decision-makers. As a result, where there is grief, there is a need to understand the process of grieving.

Grief is neither linear nor uniform. Instead, each individual's grieving process is unique to them. However, in 1969, Swiss psychiatrist Elisabeth Kübler-Ross identified five emotional stages often experienced by those who are grieving. These are commonly referred to as the five stages of grief: denial, anger, bargaining, depression, and acceptance. These five stages are evident in most business divorces and particularly in business divorce mediations.

Denial.

Denial, which is often the first step in the grief process, is a coping mechanism. It allows us to survive in the moment. It is a temporary fix that puts off the inevitable. It is akin to putting a Band-Aid on a gaping wound. Denial may ebb and flow over time.

In a business divorce, denial takes many forms. Maybe one owner refuses to accept that the co-owners no longer share a vision and need to part ways. Perhaps denial led to the crisis when one owner ignored the challenges the business faced. Or one owner refuses to even engage in dialog about the future.

Whatever form denial takes, in the denial stage, a co-owner may be hindered in their ability to negotiate a resolution as they cannot accept and adjust to the new situation.

Anger.

Anger is a powerful emotion. It can become all-consuming and may impede progress. In business divorces, anger frequently presents as blame. Blaming the other for their actions or inactions. Blaming the other for the loss or shame or failure. Blaming the other for some form of betrayal.

When in the anger stage, a desire to hurt or penalize the one blamed may underlie a party's settlement proposals.

Bargaining.

The bargaining stage is internal. Instead of blaming the other, the bargaining stage is a series of "what if's" – what if I had agreed to this, what if I had insisted on that, what if I had offered to do things differently, etc. Guilt often drives this mindset.

Sometimes, in the bargaining stage, a party may offer options for resolution that are unrealistic or impractical as they try to compensate for their guilt.

Depression.

Depression can be paralyzing. In the depression stage, an owner may feel that all is lost. They feel hopeless. In this stage, a party may struggle to even frame a settlement proposal or see any viable options for resolution.

Acceptance.

Acceptance occurs when emotions stabilize, and the individual has accepted the new situation. Acceptance may bring a sense of relief. Acceptance may bring clarity. Acceptance may be empowering. In the acceptance stage, parties are able to adapt and adjust to the new situation. It is when parties become receptive to resolution.

Griefs' Impact on Mediation

So how do the five stages of grief factor into the mediation of a business divorce? Processing grief takes time, a safe space, and a nonjudgmental and empathic listener. Mediation offers this. The back and forth and back and forth in mediation provide time and the opportunity for parties to cycle through their grief and reach acceptance. Acceptance then allows the parties to find their path to resolution.

Disclaimer: "You're So Vain, You Probably Think This Song is About You" (written and sung by Clary Simon). Please note that this series is drawn from over 30 years of experience as counsel or neutral in business separations, reconciliations, and divorces. Nothing in this series is based on any specific dispute in which I have been involved. In addition, nothing contained herein constitutes legal advice nor does it create a professional relationship.