

**Discrimination Plaintiffs with High Expectations  
Negotiation  
Shelby Murdock-Kempf**

Note: Details of this case, including the names of individuals, have been omitted or changed to protect the confidentiality of the data. Monetary amounts are expressed as a function of the amount of the landlords' first offer, indicated as "X." Subsequent references to amounts are reflected as multiples of this amount. For example, the amount twice as much as X is indicated as 2X.

I interviewed a Missouri attorney to gain insight into how negotiation works in the real legal world. This attorney, who I will call David, has been practicing law for the last seven years. He has focused his practice on residential law, such as landlord/tenant, and has dedicated a lot of time to pro bono work. He has extensive experience in negotiation and was more than happy share the story of a particularly difficult mediation he was involved in last year.

Last fall, David took on two clients, a husband and wife, who were in a legal battle with their landlord. The landlords were in the process of evicting the tenants for having a dog. As David explained it, one spouse had a disability and would be benefitted by a service animal. The clients called their landlords, to tell them that they would be getting a service dog. The landlords told the clients no, they could not get a service dog. The clients got the service dog anyway and the landlords filed an eviction claim, as well as leaving them a message to inform them they were being evicted because of the dog.

It is illegal under the Fair Housing Act to discriminate against someone because of a disability, including the use of service animals. On behalf of the clients, David filed a counterclaim under the Fair Housing Act for discrimination. Upon seeing the counterclaim, the attorney for the landlords suggested mediation.

Before the mediation took place, David talked with his clients to get an idea of what their goals were. Right away, David realized that his clients were unrealistic about settlement. The clients wanted a six-figure payment from the landlord. David knew that there was absolutely no way that the landlords would pay six figures. In prior talks with the landlords' attorney, the landlords had offered \$X -- in the low four figures -- as a settlement. The distance between the two figures was disheartening to the clients. David said that he did not believe that an agreement would be reached through negotiation but thought it would be worth a try since the case had been going on for many months and trial was set a few weeks away.

Both of the parties had very firm goals. David's clients wanted money, first and foremost. They wanted to get as much as they could to punish the landlord. To the husband and wife, this case was personal. They felt victimized by the landlords and wanted to make him pay for discriminating against them for the spouse's disability. A secondary goal for the clients was to keep the eviction off their record so they wouldn't have a difficult time trying to find another rental.

David made an educated guess on the landlord's goals. He figured the landlords would like to take care of the discrimination claim as cheaply as possible. The landlord's insurance company was involved in the case in what is known as a

reservation of right capacity. This means that the insurance company was undecided on whether or not the landlord's policy covered the discrimination counterclaim. To keep from liquidating their assets to pay for the settlement on their own, the landlords would want to keep the insurance coverage. Besides settling at the cheapest amount possible, the landlords likely wanted to keep the discrimination claim quiet. They didn't believe that they had done anything wrong and they wanted to keep their reputation clean.

Before the mediation, David spend about 10 hours preparing. He did a lot of research to put a value on the case. He looked up the HUD guidelines to bolster his client's case. He also used Lexis and Google to get an idea of what juries in the state and the particular circuit that the case was in awards for this type of case.

Another important part of research that David conducted was on the landlords. He found information on their assets and liabilities. This was crucial to know because if mediation failed and went to litigation, the clients can collect only the money that the landlords have. As David explained, if they went to trial and the clients were awarded \$100,000, but the landlords had only \$20,000, then the clients would only get the \$20,000. He also considered the tendencies of the landlords' insurance company. Their insurance would provide an attorney and pay out if it found that the lawsuit was covered by the insurance policy. This meant that the insurance company would only pay if they decided they covered the lawsuit and the settlement was approved by an adjuster. David feared that if the award to his clients was high, the insurance company would withdraw and would not kick in any money. With these things weighing on his mind, David entered the mediation.

David said that the mediation was extremely tense at first. The mediator did not have the parties meet face to face; instead, they were placed in separate rooms and the mediator went back and forth. David thought this was a good idea because the parties had been very hostile toward each other and having them in the same room would have caused the mediation to break down quickly. The mediator began by breaking the ice with the clients and setting guidelines. The mediator then told the clients that he didn't believe their six figure offer realistic. David says that hearing that from the mediator instead of from him probably got through to the clients.

Over the next six hours, the mediator went back and forth between the two sides. The mediator had the landlords make the first offer, which was a little less than \$2X. David talked with his clients and had them make a more realistic offer of \$15X. After eight rounds of back and forth, the mediator told David's clients that the landlords' final offer was \$5X. David's clients were less than thrilled. At this point, David brought all the factors at play to his client's attention.

David started by explaining the time value of money. Although \$5X is a lot less than they originally wanted, it was a guaranteed amount right now. Yes, they could reject the offer and go to trial but the outcome is uncertain. There is no guarantee that a jury would find in their favor and if they did, there is no way of controlling how much money they would award. Maybe they could award the clients \$30X or perhaps they might give them \$1. And the insurance company may not cover the landlords, so it could take years to get the money or they may never get it. David also brought up the fact that going to trial would mean the clients would have to testify. David said that both of the clients were very private people and would not want to get on the stand to tell

their life stories. After considering these aspects, the clients decided to take the landlord's settlement offer of \$5X. In the end, the settlement was that each party dismissed their lawsuits, both the eviction and discrimination proceedings would be taken off the internet, and the clients would receive \$5X (about \$3X from the insurance company and \$2X from the landlords).

When I asked David if he and the clients were satisfied with the outcome, he replied that they were mostly satisfied. The clients wanted more money but they were happy to get something, not have to testify at trial, and not have the eviction against them on the internet. David said that he might have been able to get his clients more money but having the mediator as the go-between caused him not to push it. Without the face-to-face contact, David was unable to determine whether or not the landlord's "final offer" was actually the final offer. The lack of body language that can be observed by face to face negotiation was missing and the only information he had to go on was what the mediator told him.

### Possible Alternative Explanations of the Events

This account seems like a very plausible reflection of the various parties' perspectives, though perhaps some of them might describe them differently.

### Analysis and Insights About Dispute Resolution Derived from the Case

This interview has given me great insight how negotiations work in the legal world. For starters, most of our negotiations in class were between two parties with limited outside factors. In this instance, David had to not only worry about the landlords, but also the insurance company. It was important to keep the insurance company in because that's where the money was. To best serve his clients, he had to keep the insurance company in mind. It seems to be a lot more difficult to get the best deal for your client when there are other influences that you need to keep in mind.

I also learned that sometimes your client's number one goal isn't always the best option. In this case, David's clients' biggest goal was a large amount of money. It wasn't realistic for the landlords to pay a huge amount but there were other nonmonetary things that made the lesser amount of money palatable. In our negotiations, sometimes it's best to think outside the box. There will be instances when clients just can't get exactly what they want but if we expand the pie and add in other things that would benefit the clients, they might be willing to accept it.

It's important to recognize that sometimes clients can be so wrapped up in their ideal end goal that they don't realize the other factors at play. As we discussed in class, there are social and economic factors that influence negotiations. I think that David did an excellent job at explaining all the factors present and how they would play a role in negotiation. I think that this strategy will come in handy in the future. Sitting the client down and thoroughly explaining things in layman's terms will help them understand the entirety of the situation and allow them to think about your suggestions (if they are not liking your advice on their case). It might also be helpful to give the client time to think about your analysis of the factors and allow them to voice any questions or thoughts they may have.

As we learned in class, emotions can cloud the decisions of clients. When parties are very set in their positions and passionate about the issue, coming to an agreement can be difficult. Emotions were a huge part of the Orca View exercise and I think they played a significant role in David's case. David's clients were upset at the landlords and wanted to punish them for their actions. Sometimes you have to use logic to diffuse the tense emotions can be extremely helpful in practice. You have to be empathetic to the client but explain to them how things are likely to work out.

The effectiveness of negotiation can depend on the situation. In class, we have learned that meeting the other party face-to-face can be extremely helpful in facilitating negotiation. It's harder to dehumanize or discount the other party when you are negotiating in person. Also, being face-to-face allows you to gain information from the other side. A lot can be learned from someone's body language. You might be able to tell if they are interested in what you are saying or if they are not partial to it. These clues can help you gauge the other party and adjust your tactics, if need be. In some situations, such as in David's case, face-to-face contact is not a good option. Sometimes party's emotions can be too strong toward one another and having them meet face to face would cause problems. It could drive the parties farther apart and completely diminish any chance of reaching an agreement. Having attorneys or a third party, such as a mediator, can be beneficial when personal contact during negotiation is not applicable.

David's case has also shown me that having a mediator can be extremely helpful during negotiation. His clients knew that the mediator was a neutral third party that was present to help facilitate the settlement. The clients seemed to listen to the mediator when he told them their expectations for settlement were unrealistic. Although that's the same thing that David told them, hearing it from another person seemed to help. The mediator's opinion likely gave the clients the impression they wouldn't get anywhere being unrealistic and they needed to come down to make a deal. This seemed to be really helpful in settling this case and will definitely be something I would consider using in the future.

I was able to learn a lot from my interview with David. He taught me that negotiations are not always clear cut between two parties and there are multiple factors to consider before making a deal. He also taught me that clients are real people, with emotions and goals. Sometimes those goals are a little unrealistic, so we must work to bring our clients down a realistic goal in order to reach a settlement. All in all, clients are real people with real problems and we must do our best to get them best results we can.