

## Deal Gone Bad

By Vahe Tazian

On a cold, gray, late January morning, I drove to work sipping my coffee and intermittently checking my BlackBerry. Resembling most commutes, the traffic was terrible and my anxiety was starting to build. We were entangled in a transaction to sell Maxi-Plas, Inc., a mid-sized consumer products packaging company, to a Chicago-based private equity firm for \$368 million. The deal wasn't going as smoothly as we'd hoped. Tensions were running high. Our client wanted the sale closed by the end of the year, but that deadline had long passed. As the most junior of the four lawyers on the deal, I was tasked with much of the less glamorous work—the due diligence, revising drafts of the stock purchase agreement, and working on the related schedules, which I'd done the previous night until 11:30 p.m. I didn't complain about the late nights, as did many of my peers. After all, it's largely what I signed up for when I embarked on a career as a lawyer. I wanted the intellectual challenge, the prestige, and the financial security. But what I didn't bargain for were the unpredictable personalities like Irwin Fallon.

I met Irwin while he was on a summer associate recruiting visit at Boston University—his alma matter. He was impressive to be sure: tall, thin, dark hair, handsome, impeccably dressed, and very personable. A year later, I joined White, Hawthorne & Cook—one of the largest firms in the city. Irwin was my mentor and he took pride in teaching me the basics. “They don't offer anything practical anymore in law school,” he'd frequently say. “Nowadays, they just take students' money and treat them like herds of sheep.”

What I learned relatively quickly was that no one would outwork Irwin. Regarded as a leading deal lawyer in the country, he'd pore over minute details on transactions and never concede

a contested issue without some debate. Amongst his bottles of Tums and aspirin, he'd neatly assemble and arrange documents, reports, and spreadsheets for review on his large, polished, mahogany desk, much the same way an engineer would take apart an engine and analyze its parts.

By the time I arrived each day, Irwin had looked at my work from the previous night and left additional work on my chair. Inevitably, attached to each file or document was at least one pink Post-It note with comments in Irwin's barely legible handwriting. As though the notes themselves weren't bad enough, once I got to the office, Irwin insisted on immediately discussing his terse corrections with me. He referred to our talks as "teaching sessions." They were not something I looked forward to.

"I'm just a third-year associate," I'd plead when he'd grow visibly irritated with what he perceived as mistakes.

"No more excuses," he'd counter. "You should know this stuff by now."

In reality, these sessions became 30-minute diatribes of condescending commentary. Why I sat there and took it is beyond me. Maybe it was because I only planned to work as a lawyer for three years and then pursue journalism—my life-long dream. Or perhaps it was because Irwin was so volatile that I knew if I challenged him, I could be shown the exit. So I usually just bit my tongue and took it. Two associates had recently been fired for alleged "performance issues" and nothing would prevent me from being the next out the door. After living with my mother the past several years, I'd recently moved into a one-bedroom loft outside the city and was leasing a 3-series BMW. Surely, I needed the paychecks to keep coming.

Although Irwin was married and fashioned himself as a family man (he had twin teenage sons), he spent inordinate hours toiling at the firm. In fact, he routinely missed his sons' after-school tennis matches, much to his wife's chagrin. He told me on more than one occasion that she'd

threatened him with divorce because of his placing work over family. His yearly billable hours were akin to that of a first-year associate, not a 61-year-old partner who had nothing to prove. As evidence of years of drinking six or more cups of black coffee a day (combined with periodic cigars) in order to keep pace, his teeth had turned a light shade of brown. I'd offer him gum and hope he'd accept to mask the horrendous coffee breath he'd have by mid-afternoon. He was a close talker, too, which only compounded the problem.

I hated getting up early in the morning.

My alarm would ring at 7 a.m., but I'd lie in bed until 8 a.m. As a result, arriving to work on time was always a struggle. That is, it rarely happened.

I hurriedly walked into the office at 9:15 a.m., knowing that my tardiness wouldn't be well received. Irwin, who was leading the deal, stood at his paralegal's cubicle, dressed in his typical white shirt, red tie, and navy pinstripe suit.

"Car trouble again this morning?" he asked sarcastically. "Or did you close down Zinger's Bar last night?"

"Horrible traffic," I countered, while almost out of breath. I looked uncharacteristically disheveled, too. I had spilled coffee on my blue shirt while driving in and hadn't shaved.

I put my briefcase on my desk and pulled out my laptop. As I turned and gently pushed the door to hang my coat and scarf, I heard the usual loud footsteps. The door abruptly stopped. Of course, it was Irwin. He walked into my office and slammed the door shut behind him, rattling the metal frame and glass of the two paintings on my wall: the abstract watercolors my mother had painted during her early years as an artist were the only things that detracted from the otherwise sterile, windowless office. My mother, with whom I was close, had taken up art after my parents got divorced. She blamed their breakup on my father's tireless work schedule.

“You’ve got to start showing that you’re serious about working here,” Irwin said, pointing his index finger toward my chest, holding his coffee mug in the other hand. “That means showing greater commitment.”

“Are you suggesting I’m not committed to my job?” I asked. “I’ve worked late every night of this deal, Irwin.”

“That’s not the issue. It’s a generational difference. You think you know hard work, but you really haven’t seen anything. Your generation wants the easy route to everything. A light workload, your own schedule, three vacations a year, and a hefty paycheck, too.” He paced back and forth in the room. “It doesn’t work that way. You can’t just do the bare minimum and think you’re going to excel in this profession.”

“Bare minimum? Far from it. I meet my hourly requirement almost every month.” I sat down in my chair and took a deep breath. “I’ll be more punctual.”

Irwin slowly walked closer to my chair, to the point where I was about eye level with his waist. “We have a client that’s on the verge of firing us from the deal and you’re acting as if you could care less,” he said, as his voice escalated. “We’re getting hammered on this thing. I’ve got my reputation on the line and I’m not going to let a reckless associate ruin it overnight.” He turned, opened my office door, and walked out. He spoke to Ingrid, our legal assistant, in mid-stride: “Tell him we’ve got a call with the buyer’s counsel at 10 a.m. in my office, but I’d like to see him before the call. I’ll take some more coffee, too.”

Irwin’s behavior that morning was not totally uncharacteristic. Having worked on several transactions with him, I was accustomed to seeing his fiery emotional side. On our last deal, he became so enraged with opposing counsel that he threw a file across the room, over my head, knocking down a plant. It was high-stakes drama and exciting for me to observe. But in so many

ways, that's why Irwin was the ideal lawyer you'd want in your corner serving as your advocate: tough, smart, passionate, and dedicated.

The buyer of Maxi-Plas was represented by Fielding Brown, the preeminent Chicago-based corporate law firm. Irwin relished being matched against the blue-chip New York and Chicago firms. From the beginning of the deal, the tone was decidedly harsh and adversarial. The summary sheet of open issues seemed half as long as the stock purchase agreement itself. But given Irwin's stance of not conceding any point without getting something in return, the current state of affairs was no surprise.

As any skilled deal lawyer would know, allocating risk in an asset sale transaction is the most important negotiated point aside from the price. The interests of the seller and buyer are always at odds on this element: the seller wants to take its profits and walk away, while the buyer wants some recourse for undisclosed liabilities and misrepresentations. In other words, the seller is looking to cash out and keep it all, and the buyer wants an out if he finds skeletons in the closet of what was purchased. Irwin was particularly adept at getting a buyer to agree on a liability cap and resist an indemnification requirement. "Never leave your client exposed," he'd mutter to me. "And don't agree to a clawback. They always come back to haunt you."

At 9:20 a.m., there was a knock on my door. It was Ingrid. Like most days, her black hair looked oily. On more than one occasion, I was tempted to recommend a certain shampoo and conditioner, but she was so difficult to engage in conversation. "Irwin wants to see you in his office," she said quietly while removing her eyeglasses.

"Right now?" I asked.

"I think so."

"Do you know what he wants to discuss?"

“I think your changes to the SPA,” she said. Meanwhile, I couldn’t help but look at her feet, as she routinely walked around the office without shoes.

“OK. I’ll be there in a minute. Is he in a good mood?”

“It’s hard to tell.”

A part of me assumed Irwin was going to fire me, that I’d be the sacrificial lamb for the deal going south. My palms were starting to sweat. But I also thought if he was going to terminate me, I wasn’t going to take it lightly. I’d confront him head on. Missing a paycheck or two would be painful and I’d have to curb my sushi habit and have a moratorium on buying shoes, but I’d find another job in town. I felt as though I’d been in an abusive relationship the past few years and had continued to subject myself to more pain.

Long before things started to falter on the Maxi-Plas deal, I noticed Irwin tending to demonstrate strange behavior of late. His demeanor seemed distant at times. His pace had noticeably slowed. Could he be ill, I wondered. Perhaps his late-night cigar smoking had caught up with him or his marriage was in jeopardy. Other associates shared similar observations. None of us, however, had an inclination to ask him or another partner. It seemed awkward. Or it could be an overreaction.

The latest draft of the SPA contained a clawback provision. I remembered discussing how we should treat the clause with Meredith, a senior associate also working on the deal who I fantasized about regularly. She was 31, witty, petite, and sexy—the complete package. “We’re not going to close this sale without giving them a clawback,” she told me. “Just leave it in the agreement.”

“Are you sure?” I asked. “There are too many conditions in this deal that would trigger a clawback.”

“It doesn’t matter,” she replied, grabbing her long, blond ponytail in her hand. On more than one instance I had to catch myself from grabbing it too. “If we strike it again from the agreement, we’re going to crater the entire deal. Just explain the rationale to Irwin. He’ll get it.”

“Are you kidding? He’s not rational, Meredith. He’s going to tell me just because something is considered ‘standard’ doesn’t mean you concede the point. Remember, according to Irwin, everything is subject to negotiation.”

“Yeah, that’s usually true,” she said, with a slight grin. “But not in this deal.”

Before I circulated the latest draft of the SPA, I read it three times, to the point where it all sounded like a jumbled mess. But I was certain all of the changes were consistent with what we’d discussed internally. Still, Irwin would find something to hang me with. At a minimum, he’d point to a “drafting error,” which was a frequent notation on the Post-It notes I’d encounter in the mornings. I was the journalism major in college who had interned two summers at *Vanity Fair*, yet he’d fashion himself as the editor-in-chief of *The New York Times*.

With my files under my arm, I walked into Irwin’s office. I was ready to tackle anything. Whether it was my dismissal or his nonsensical charges of “malpractice”—which he commonly directed at associates for alleged poor drafting—I was ready for it. I’d come to the realization that I was working too hard to be treated like a second-class citizen. I took a seat in front of him. “So, how’s it going?” I asked, gently placing the files on his desk.

Shifting in his chair, Irwin clasped his hands over his head. “I took a look at what you circulated last night,” he noted, then paused. “We’ve got some more work to do, but I think we’re getting there.”

“Well, that’s a good sign,” I responded.

“Yes, but I’m still noticing some sloppiness in your work. The same mistakes are reappearing and we can’t have it happen anymore. Details matter in this business.” He stood up and leaned over his desk. “I realize that you’re working hard, but if the client’s not happy, we’re not doing our job. You got that concept? We need to bring this deal to closure.”

“I’m doing everything that you’ve asked of me, Irwin,” I countered.

“I just spoke with Phil Carvelle from Maxi-Plas. He needs to update his board tomorrow on the status of the sale. This has to come to an end.” He hastily picked up the phone and started dialing.

The call with the buyer’s counsel lasted three hours. My attention span for such calls usually tapered within two hours. By the end, we’d reached agreement on nearly every open point. Given the extensive list of issues, it seemed everyone on the call was surprised that a deal was within sight. Even more surprising, though, was Irwin’s demeanor. The resolute man who had routinely battled with opposing counsel on issue after issue had softened his stance. A rare conciliatory tone dominated the call. “Okay, I’m willing to concede that point” was his retort several times. Surely, that wasn’t the Irwin Fallon I’d seen in action the past three years.

Two days later on a Friday afternoon, I had lunch with Irwin in his office. I sat across from him at his desk. “Well, that was a surprise,” I said, prior to taking a bite from my pastrami sandwich.

He smirked. “In the end, we got a decent outcome, didn’t we?”

“We did,” I said, “but I think we could’ve pushed them farther on the liability cap.”

“Maybe so,” he countered. “But at that point, we’d be haggling back and forth for two more weeks and probably would’ve been fired from the deal.”

Rising from his chair and yawning, Irwin stretched his arms. “You can’t win all the time on every issue,” he said. “I thought I could, but I can’t. Not even close. But it took me an awfully long

time to realize that reality.” Sitting down, Irwin tossed his tie over his left shoulder and placed his split pea soup in front of him. “Let me explain something, my friend,” he said, holding his spoon and waving it gently. “Sometimes we like to justify our worth and at other times it’s our DNA taking charge, but everything doesn’t have to be a battle. It’s not always about winning or losing. I leave the house in the mornings hyperventilating about the work that I need to tackle for the day. I deal with problems all day long and then I leave 14 hours later thinking about them some more.”

He took a sip of water and rocked back and forth in his chair. I wasn’t sure how to respond, but I was nervous. He had more to add—I could sense it. He looked defeated and tired. “You know, I go home exhausted each night. My marriage is in the gutter and I feel as though I don’t know my kids anymore because I spent their childhood at the office. For what, I’m not exactly sure.”

“Come on, Irwin,” I said. “Everyone knows you in the M&A world. You’ve proved your value.”

“I’m not totally sold on that. Even when you’ve delivered great results, some client will still find a reason to think you could’ve done more.”

On Monday morning, I arrived at the office actually looking forward to new work. But something was odd. Strangely, there were no Post-It notes to greet me and no files on my chair. As I checked my e-mail, relishing the fact that, for a change, I didn’t have to spend my weekend in the office, I thought about my conversation with Irwin. I also thought about whether my journalism career should start sooner than I’d planned. Could I possibly throw in the towel after only three years with White, Hawthorne & Cook? My father would be disappointed. He’d tell me I gave up too easily. He’d also say that the next deal would be easier and I’m getting wiser in the process. Maybe

so. And perhaps my anxiety would subside too. Then again, I'd have to hope that my next deal also included Meredith.