

## Collect to Survive

Let's look in on John Smith, our example small contractor. John had a good business until the recession hit. He started small, did good work, had good crews, repeat business, and grew – fast but not too fast. Now John's backlog is gone. The few new jobs he has won recently he had to bid at cost just to compete. If something doesn't change – and soon, John will lose his business.

"If we could just collect what's owed to us, we might be able to survive. We've got over \$500,000 in receivables but none of these outstanding invoices are big enough to take someone to court." John told his wife Martha as they were looking at the books last night. "We just have to find a way to turn these receivables into cash soon. Let's talk to Harry tomorrow."

Harry, John and Martha's attorney looked at their claims and subcontracts and said "Look, you don't want to take these to court but there are some other ways to go after these guys. Let's take this claim with Acme Contractors. Your subcontract with them has an arbitration clause and the claim is less than \$75,000, so it qualifies for the American Arbitration Association Fast Track program. Once we file our intent to arbitrate, the case is heard within 75 days and we have a decision or award fourteen days after the hearing. The arbitration is a flat fee of \$1,500 and since the discovery process is pretty limited, the legal fees should be pretty reasonable too. I will start the ball rolling tomorrow."

"We have some of these other claims that don't have an arbitration clause but we can try and get the other party to agree to mediation." Said Harry.

"What's mediation? How is it different than arbitration?" asked Martha.

"Mediation is a voluntary, non-binding facilitated negotiation where we try and reach a settlement with the help of a neutral third party called a mediator. We can both agree to a mediator who has expertise in construction issues. And while the mediator doesn't make a binding decision he can make suggestions, ask questions and generally lead the parties toward an agreement. I have settled a lot of cases in mediation that I didn't think we would ever reach agreement outside the courtroom. I'm a big believer in the process." Said Harry.

"Let's go for it" John and Martha said together. "I know the other guys aren't going to like it but it's better than taking them to court."

Harry said. "I agree. Nobody likes to be in a claim dispute but I have found both parties are generally pretty satisfied with mediation. I have seen a lot of relationships come out of mediation stronger and the parties continue to do business. A dispute doesn't have to mean you burned your bridges."

In our little example, in just sixty days Harry was able to arrange mediation sessions and reach agreements on over \$200,000 of John and Martha's claims. In addition, two Fast Track arbitration

hearings were scheduled and Harry felt they had a good chance of prevailing in those and they totaled almost \$150,000. New work was still painfully slow in coming in but John and Martha feel they have are at least keeping their heads above water and should be able to survive until business picks up.

It is important to know and consider all your alternatives to collect outstanding invoices, claims and uncollected balances. Your attorney and accountant can help you implement a strategy for your business. Call them today.

*Roger Harper, Principal, Creative Dispute Resolutions is a mediator and arbitrator in Nashville, TN. He has over 25 years in the construction and development industry and specializes in resolving disputes related to the industry. He may be contacted at [rharper@rharperadr.com](mailto:rharper@rharperadr.com).*