

By Daniel M. Isard

Don't Get Blindsided

When looking to purchase another firm, a SWOT analysis is a critical step in evaluating your firm's and your market's strengths, weaknesses, opportunities and threats.

Dear Dan,

I recently bought a funeral home in the next town. I think I did everything right. For years, I clipped your articles, and they helped prepare me for the big purchase. I got a business valuation (from a competitor of yours), secured financing by using my existing real estate and the new real estate, and got a Covenant Not to Compete (CNC) with the owner. I assigned the key man who had been there to a CNC as part of his employment agreement and am paying him an extra \$10,000 a year for 10 years to promise not to compete. Everything was locked up tight at closing.

Since the closing, however, a new competitor, who is the county coroner, started in a neighboring town. He is converting some calls that are in my town to his funeral home. I told the key guy to run for coroner, but he didn't want to. Dan, I have lost 30% of my calls! I cut the budget, converted some full-time people to part time, and since the key guy is "exempt," I had him filling in on our staffing needs.

Well, it went from bad to worse. The key guy quit! He was only 68, so I thought he would work a few more years. After a few months, I was able to find a replacement to manage that business, but I pay him almost \$20,000 more than the former manager. The insult is, I am still paying him not to compete!

I am going to stop paying the CNC payments to the former manager, as his decision not to run for coroner and to then quit has cost me a lot of money. Am I right?

Covenant Cash Collector in Colorado

Dear 4C,

Thanks for clipping my articles. Send them to me if you want them autographed. At some point, when I build the Isard Memorial Library, feel free to donate them. Take a tax deduction if you want for the value of the donation. The library will be nonprofit because no one in their right mind will pay a fee to enter it.

It sounds like you did everything right except for a SWOT analysis. SWOT is an acronym for strengths, weaknesses, opportunities and threats. It seems you were focused only on the cash flow without asking the question, "What could make the cash flow dry up?"

It's not unusual for two things to take place. First, in states with county coroners, it is very common for funeral directors to run for that position. Why? Well, it's good for

business! Many families do not have a preference when it comes to what funeral home they use. When the county coroner says, "Your loved one is at XYZ Funeral Home now. Do you want them to serve you or would you like me to call another funeral home?" Many consumers will respond, "No, we'll use XYZ." Voilà! Lost call!

The county coroner position often pays a very nominal amount, but I have seen people spend up to five times the salary when running for this elected position. Consider, in your case, for example, you lose 30 calls. That's about \$150,000 to \$200,000 in revenue. Furthermore, if the 30 calls are gained by the coroner's funeral home, that's about \$75,000-\$100,000 of new profit to the coroner. The final component of the fiscal math is that the value of the coroner's funeral home could rise \$300,000 or more! Your loss is almost the inverse of the coroner's gain. You lost revenue, earnings and value.

A SWOT analysis would have identified the coronership as a threat. Did you look at who was the coroner in the past, before the acquisition? Did you think to run for the position yourself?

Another factor is the manager. You are blaming him. But first, think about how we invent managers in this business. If you have the longest tenure and are willing to work an unlimited number of hours, you become the new manager. But being a manager is not an assignment. It takes a well-rounded personality to manage any business. Managing a business is not just locking and unlocking the doors at the right time. It's not solely getting a service started on time. No, it takes a degree of entrepreneurship and a vested interest. In fact, the actual word is "intrapreneurism," as you are running a business within a business.

Funeral service generally does not attract people who want to be entrepreneurs. And in the next 20 years, there won't be enough entrepreneurs graduating from mortuary schools to fill the 10,000 privately owned funeral businesses. There will be a void in managers, just as we will have in funeral directing staff.

I don't think we will have a shortfall of embalmers, as embalming is a declining service. Thirty years ago, about 95% of all bodies were embalmed; today, I estimate about 60% or less are embalmed.

You say you want to default on the CNC payments be-

cause you think the manager's resignation cost you money, but you have no idea how much money you can lose if you choose to do this. Legal fees defending this bonehead move, plus the judgment that will be awarded, will teach you how much money you can lose. The only good result is that funeral service will remember your name for many generations, as we all talk about the "4C Case." In the mergers and acquisitions world, we will be discussing *Texaco v. Pennzoil* and the 4C as cases that have taught us what not to do.

The ability of an employee to stop working is their right. Even with an employment agreement, we have not had indentured servitude in this country for the last 200 years. You won't prevail trying to enforce this. You have "at will" employment, as does the employee.

I like using CNCs, but not a lot of states will enforce

them. You need to show that the CNC is not to disable the employee but to protect your investment. Most lawyers don't like trying to get CNCs enforced, but most lawyers are not litigators. Make sure you have the right lawyer for the right job.

Employees can lose their CNC if they compete, but upsetting you is not grounds for defaulting. You can fire them, but you will still owe them the CNC payments. Typically, a CNC is written to show its largest value. The agreement says, "I will pay you \$100,000 to not compete. Payment will be \$10,000 per year for 10 years in equal monthly payments." Thus, you owe the \$100,000 unless the employee defaults, and in this case, he didn't!

Now, 4C, since you have clipped so many articles and since my readers are LOYAL TO ME, my opinion did not change when you bragged that you used a competitor of mine. I might have been a bit prejudiced against you since the opening paragraph, but I did not use my Cap Shift key to signal that. That was an involuntary twitch.

A NOTE FROM DAN

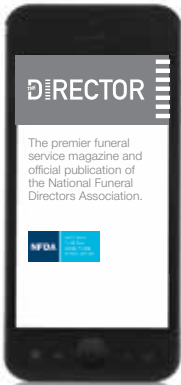
Dear readers, my editor wishes to take a different approach to this column and others for 2019. In preparation for the year 2020, he wants to focus more on getting ready for the year of vision (get it? 20/20). So, the Q&A style will change to a focused approach of "how to." Beginning in the February issue, look for my insights on the steps necessary to get ready for a clear vision to maximizing your profit. In this column, I'm going to lead you to understand all of the steps we go through in our practice to help clients get things accomplished. And don't worry, I will find a way to use my Cap Shift key somehow.

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