

# Tales Of A Former Law Associate Nothing

By Ary Rosenbaum, Esq.

**T**hey often say that success has many parents, but failure is an orphan. April 2020 marks 10 years since I started my law practice after a 2-year run as a law firm associate, trying to start a national ERISA practice. I'm a father to that failure, but that failure had a lot of aunts and uncles (that law firm) that made it happen. Despite all my success on my own and the happiness that I have in my practice (especially now during this pandemic), I'm still bitter over my experience because I failed and I was doomed to fail and I hate failure.

## The road to hell is paved with good intentions

When I was hired by that semi-prestigious Long Island law firm, I was hired for the New York office. I was already one step behind because the New York office was dominated by labor law and any ERISA matters there dealt with multiemployer union plans. My goal was to build a national ERISA practice for single-employer plans, based on my experience as an attorney for a leading New York City third party administrator (TPA). The idea in my head is that I could reach out to my former clients and I could also work on the retirement plans for the law firm's current clients. The problem is that the law firm was controlled by a bureaucracy led by the managing attorney, Lois. For anything, there was a committee for it. I have joked since that if Lois wanted to put the kibosh on something, she would create a committee for it (as she did with creating one for social media). Anything dealing with any form of advertising had to be approved by the advertising committee. The problem with that advertising committee is that it had one member who was an associate attorney like me and he brought in no business. Also, he knew nothing about social media. When he opined that social media was advertising and I couldn't post anywhere as a member of the firm because he considered social media was advertising, he clearly didn't understand

what social media is. The idea for a social media presence and writing articles came as a result of the problem of selling my services to our existing clientele.

## Where capitalism comes to die

The law firm had this unique bonus program for its partners. Partners would get 50 cents on the dollar for all legal services performed for their originating clients. For all of the originating clients I procured, I'd get



nothing as an associate attorney, but that wasn't told to me when I was first recruited for the firm. When you think about it, it's a no brainer for the partners to refer me to their clients because it's money in their pocket and I believe with my services, it would be a no brainer. Unfortunately, logic and law firm partners at a mid-sized law firm don't always go hand in hand. I could get no traction with selling my ERISA legal services because the law firm partners had zero interest in promoting my services. Of course, Lois thought that was my fault (more on that later), but the fault lies with the structure of the firm. The law firm was built on absorbing many solo law practices and these solo lawyers still acted as if they were solo and treated their client list as

some sort of fiefdom. Cross-selling in the retirement plan business has always been something that has always been hard to do, but cross-selling within the same law firm would make a lot of sense, especially when a partner could get a nice bonus by referring their clients to other lawyers at the firm. What makes sense for all of us didn't make sense there. Imagine if you got a bonus of 50% of the clients you brought in, you'd probably sell them everything but the kitchen sink. Just not at the firm I was at, there is where capitalism came to die.

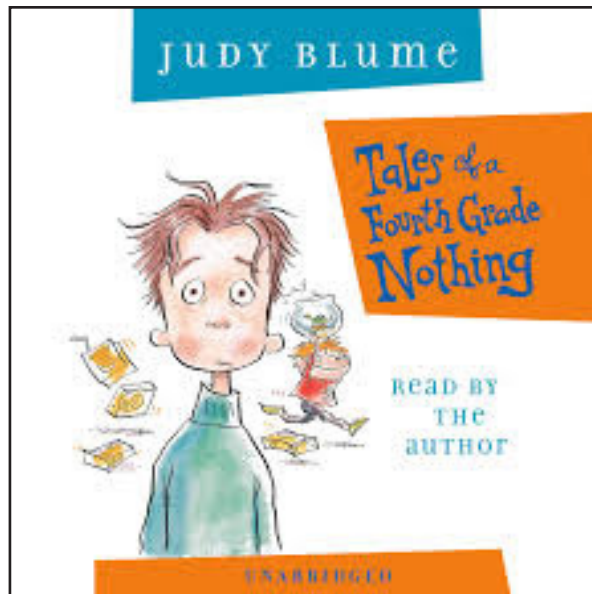
## The bottleneck at the marketing department

Since I could get nowhere with the law firm partners in selling my ERISA legal services to current law firm clients, I realized I needed to ramp up a way to get client referrals. I developed a way to offer my legal services for a flat fee. Of course, I got pushback from the advertising committee of one, which made zero sense. I knew the amount of work it would take me to draft plan amendments and restatements. When I was told that my former TPA was charging \$600 for an ancillary plan amendment that I used to charge \$450 when I was working there, I wanted to offer to do the same amendment to my old clients for \$300. Again, the advertising committee of one said I couldn't do that because it would run counter to the New York state lawyer advertising rules (such as using social media). The advertising committee of one said that I couldn't specify the \$300 fee in my correspondence to my old clients, but I could claim I could do that for a reasonable fee. If a TPA says they will draft the amendment for \$600 and a mid-sized law firm will say they will do it for a reasonable fee, who will plan sponsors think is cheaper? Needless to say that after sending out hundreds of letters to former clients, none of them hired me. So after that debacle, I realized I needed another way to solicit clients. So I decided to write articles

that TPAs and financial advisors could use for their client recruitment, which would engender enough goodwill with these plan providers that I would get referrals when their clients needed an ERISA lawyer. The problem was a bottleneck at the marketing department, which was caused by the law firm administrator, who wasn't even a lawyer. The law firm administrator named Fred was considered the Chief Operating Officer of the law firm and he was probably the most disliked man in the office. He would often talk about law firm administration but did very little of it. Instead, he forced the marketing department to publish his articles about law firm administration. These articles were for his gain and drew no money for the law firm, yet the marketing department had no choice but to publish because they didn't want to risk the ire of Fred, who was considered Lois' righty hand man. The funny thing is that after I left the firm for my practice and wrote articles about Fred's unprofessional use of the marketing department, Fred's articles stopped. Even when I would get through Fred's bottleneck, every article I wrote needed to be approved by the advertising committee, the ERISA partner, and Lois/management committee. One article took six months to approve and I wrote 3 articles in two years. In my practice, I write 4 articles a month.

### Sorry Lois

I am very opinionated and I can certainly rub certain people the wrong way. When I offend, I have enough self-awareness to understand why. From the very first day, I started at the law firm, I had a very strange feeling that Lois didn't like me and 10 years after I left the firm, I still don't know what I did to make her dislike me so much. I think some of it has to do with the fact that I'm a tough Jew from Brooklyn and not some polished Ivy Leaguer. I'm not suggesting that anti-semitism was an issue (because it wasn't), but I felt like she treated me like the Rodney Dangerfield character in Caddyshack, and Lois was Judge Elihu Smalls. Lois was a snob and a name-dropper. Lois was infatuated with big names. I remember her name dropping the fact that one partner's son was the Governor of New York (worst Governor in my lifetime, by the way) and one of the named partners' son was the County Executive (who then lost re-election by 430 voted with \$2 million in the bank). Another



partner she named dropped was a former Clinton official who was called the "garbage man" and it wasn't because he was in sanitation. Lois also brought in the former County Executive of a neighboring county as a partner and it was such a failure, the former County Executive found refuge as President of a floundering college. Despite all the awards she would receive from publications that the firm advertised in, I knew the law firm was doomed under Lois' watch. She was very indecisive and more importantly, she had complete disdain for social media, which I believed was a necessary avenue in the future for lawyers to get clients. When Lois heard about my interest in social media, she developed a committee for it and didn't include me. That committee stifled any social media initiative for the firm. Lois mentioned that her husband (also an attorney) was big in social media, and she looked down on that. I joke that she saw an attorney like me using social media as the same as someone selling fish out of the trunk of my car on the side of the road.

### The problem of mid-sized law firms

From my experience at that law firm, I believe that the mid-sized law firm is one of the worst run businesses out there, slightly above an airliner. The problem of a mid-sized law firm is that they see themselves on the level as a large-sized law firm. The problem is they don't have the clientele to support them. Mid-sized law firms have delusions of grandeur, so they have high overhead with fancy offices and a bloated staff that draws no money. No mid-sized law firm needs 5 people in human resources and billing. When I was leaving the firm (or asked to leave) I in-

quired about another mid-sized law firm in Manhattan. When I told them I was making \$150,000 as an associate, this Manhattan firm said I needed to draw in \$400,000 worth of business to sustain my \$150,000 salary. If I could draw in \$400,000 worth of business, why would I need any law firm to turn it into \$150,000?

### 10 years in

When I left the law firm (or asked to leave), I decided that at age 38, I had enough of working for others. I was tired of the 2-5 year change of jobs and believed that I had the skill set to properly promote myself and bring in clients. I also knew that my old law firm was doomed. The prestigious law firm I wanted to join before I ever entered law school was slowly becoming irrelevant as a well-known law firm on Long Island. In the 10 years, I've been on my own, I have become of the leading national ERISA lawyers. I've developed my line of 401(k) events, I've twice been named one of the 100 most influential in 401(k) by 401k Wire. Yet my law firm has shed 40% of its staff of partners and lawyers. The New York office that employed about 12 lawyers is down to 3 and the Albany office is no more. Yet despite all my success and all their failures, I'm still bitter about my experience is because I failed and that failure was not within my control. I was doomed to fail from the day I started and that's something I won't forget. When I went on my own, success or failure was within my control.

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