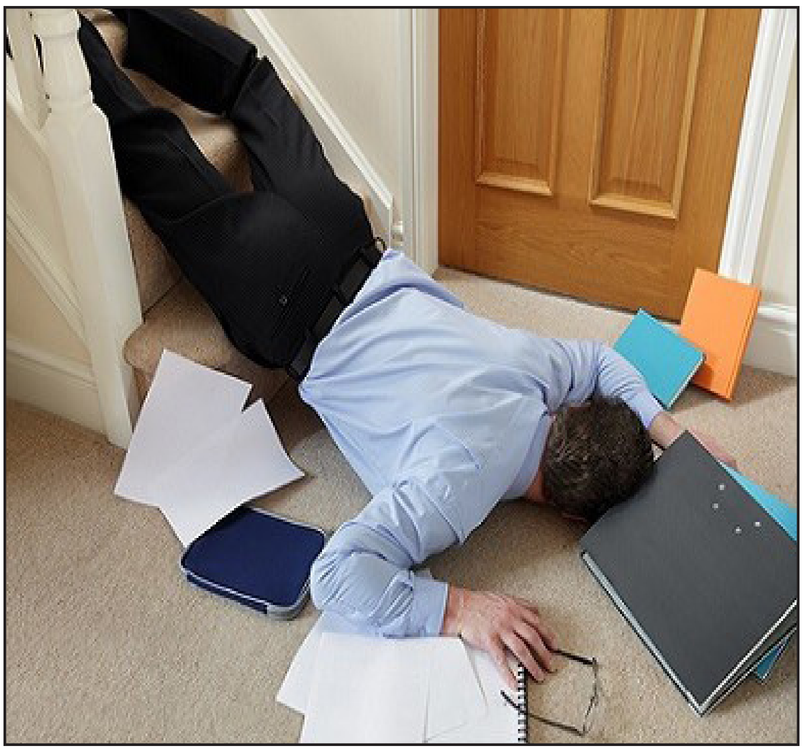
When Good 401(k) Plan Providers Stumble

By Ary Rosenbaum, Esq.

I'm a fan of business history. There are so many successful businesses that eventually stumble and fail. I remember when Sears was such a huge factor in retail sales and it's at death's door. Other successful companies have been dead for a while, such as Montgomery Ward, Blockbuster Video, and Toys 'R Us. There are many great plan providers that eventually go bad and are headed for a long-term goodbye. The problem is there are certain characteristics that you can see a mile away, but they can't. These are some of the ways where a good plan provider stumbles and becomes a bad provider.

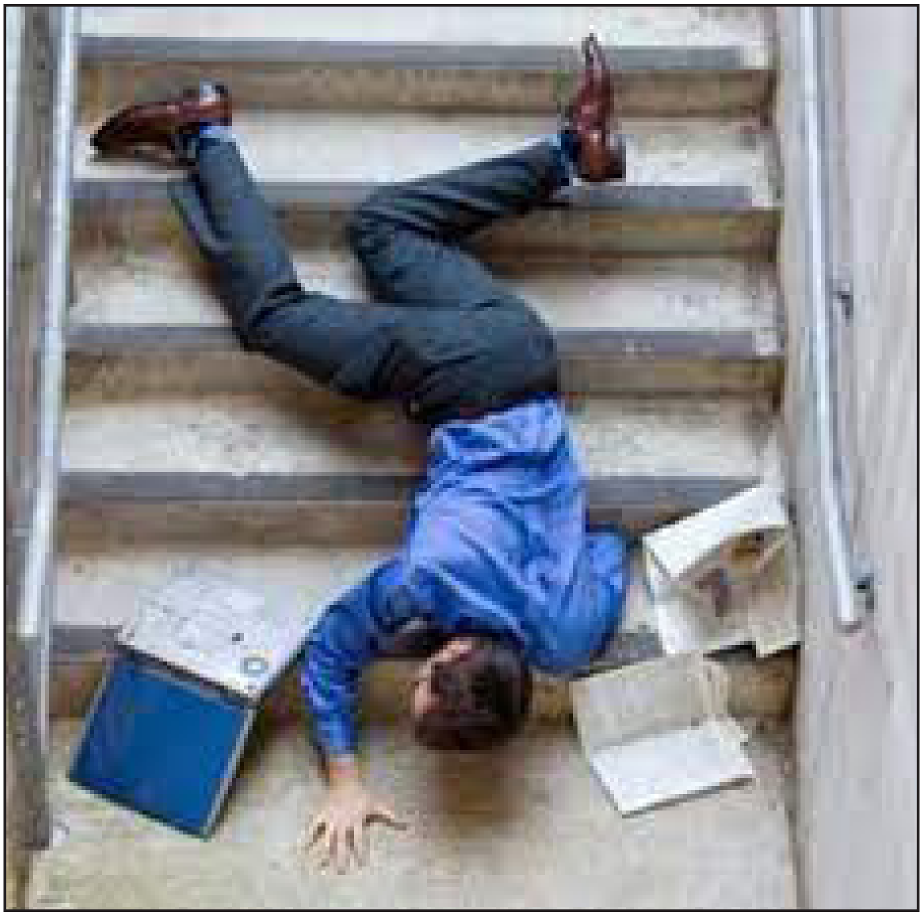


They were good at one point

I had a client who started his own registered investment advisory (RIA) practice after leaving his non-advisory job and his business was dead within 6 months. Plan providers fail all the time and you're probably not aware of small businesses that were too small to be remembered. Like a shooting star, we remember successful third-party administrators (TPAs) and RIA firms that flamed out after having successful runs. I always joke about that semi-prestigious law firm that I worked at. They were a pretty big deal on Long Island, so much that this was a firm I was dreaming about working for when I was in law school. Over my two years, there over a decade ago, I saw a law firm that was going to have tough times ahead. They are less than half the size when I was there, but that downturn into oblivion doesn't happen overnight. Even Sears has been dying for decades, hastened over the last 10 years by the mismanagement of Eddie Lampert. Good plan providers that have gotten bad, have done because of atrophy and a lack of leadership, but the dying takes a long time.

A lack of leadership

The first job I ever got was working for a law firm that was on the premises of a TPA. The TPA was owned and led by five partners (who merged about 2 years earlier), who had a tough time transitioning from a balance forward business to a daily 401(k) practice. About a year after I joined, the TPA was bought by a national company that was buying benefits consulting practices, payroll companies, and TPAs around the country. Instead of taking over these companies and installing new management, this national company decided to let the people who had mismanaged their own company to continue in their roles, without an ownership stake. Organizations are paralyzed when they have ineffectual leadership. Leadership sets up everything, including culture. When the national company decided they no longer wanted to be in the daily 401(k) business and sold our plans to the company that eventually became Ascensus, I asked the boss who hired me whether he regretted selling the business. He told me that they had no choice, they would have gone out of business otherwise. That was an eye opener because it meant that the people who almost brought their TPA business to the brinks of failure were the same people that this national company wanted to continue in their role as the day-to-day leaders of this TPA. The problem with a lack of leadership is that if the business isn't publicly traded and is privately owned, there is almost no accountability if the people leading the business are also owners, they're not going to fire themselves. Long-term ineffective leadership is a danger because these ineffective leaders suffer from tunnel vision and atrophy that stops them from changing with the times. Too often past success is a hindrance because it allows these leaders to rest on their laurels. Paul Heyman said it best: "Experience is the greatest inhibitor of creativity and innovation because you learn from experience what not to do. But it is the unbridled passion and the fearlessness to just go into something with a reckless abandon that allows you to create something from nothing, that allows you to innovate." Ineffective leaders don't change because they don't recognize the need for change, they just think whatever is successful will be in the past will mean success in the future. But that's just not accurate in a retirement plan business that is always changing. They are plenty of TPAs who probably went out of business because their leaders didn't see 401(k) plans being a big thing, because defined benefit plans were their bread and butter. Same with TPAs who had hidden fees and didn't understand the impact of fee disclosure. They often say that you can't teach an old dog new tricks, but you can't teach old leaders something new if they think they know it all.



The provider is bought

I know a well know ERISA §3(38) fiduciary firm that was purchased. When I was told by a person working there, I sent them my condolences. While many people would take that as sarcasm, I just know too many plan providers that have been destroyed when they were bought. That happens because of the opposite of ineffective leadership, the people you liked, who worked there and/or owned the company slowly are part of a mass exodus of the talent you cared about. We had a great TPA out by me that I really liked and after they were purchased, great, long-term employees slowly left. It eventually became a shell of its former self. While not every purchase of a practice is a disaster, many have been. Purchasers sometimes forget what they're buying and a benefits practice is more than just the plans they handle. What makes a practice are employees, which brings up another point in the next paragraph. I worked for two TPAs that were bought and I didn't have a good feeling about either deal. In the first one, the main boss claimed we had nothing to worry about. I knew then, that I had something to worry about. Within 3 years, we were dead. I will say that a certain national TPA that has bought several well-known local TPAs has done a terrific job of maintaining the effective leaders of the TPAs they bought, as well as the bulk of the tremendous staff underneath them. However, I've seen most of these deals go south and I've seen many good plan providers stumble because of a sale.

Mistreating employees

I'm always impressed when I hear that someone has been working for a plan provider for a long tenure, something like 20 years. I never had that luxury as my longest tenure at a job is this one. I went on my own because I was dissatisfied as an employee. Perhaps I'm the type of employee who could never be satisfied, but I felt I was treated more like an asset and less as a human being. I worked at one TPA where I felt we should have instituted a revolving door for our front door. What was sad was that if you look at the brain drain of people that left or survived the forced merger, you could stack two or three TPAs with some of the best talents in the industry. There were two men who preceded me and left to start their own successful TPA practice. The biggest reason for the brain drain was because of the chief operating officer who was a minority partner in the business. Anyone competent who was an All-Star was seen as a threat and surrounding himself with minions who were incompetent to give the appearance, he knew what he was doing. The chief operating officer was a miser, especially when it came to salaries and benefits. I still contend that he would lose 5 dollars to save a dollar and be happy about it. His incompetence and lack of focus on details eventually forced the end of this company. Outside of the job I have now, it was the best job I ever had and it was unfortunate I had to leave because of the acts of one man, but that man was the day-to-day boss. People are human beings and human beings have feelings. Too often, the people in charge of a plan provider have zero empathy. I don't know if there ever was an employee who felt they were paid well enough, but I assure you that people want to be valued. My wife, who is also an attorney and is now in private practice after spending 15 years as a government employer tells me daily of the dysfunction at her place of work and her unhappiness over the way she's treated. Too often, plan providers forget that one of their most important resources is their employees because good help is hard to find. Replacing people takes time and takes money and most of the time, the replacement isn't as good.

The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
(516) 594-1557

http://www.therosenbaumlawfirm.com
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