

Dealing With Struggles And Failures As A 401(k) Plan Provider

By Ary Rosenbaum, Esq.

One of my favorite characters of all time is Rocky Balboa. I remember seeing Rocky III in the movie theaters as a 10-year-old and then renting the first two films on our brand new VHS (which cost \$750 and the owner of the video rental store gave us free lifetime membership since we bought the RCA video cassette recorder from them. I like all the Rocky films, even Rocky V. However, I joke that Rocky Balboa (the sixth film) was made by Sylvester Stallone as reparations for Rocky V. In the movie, Rocky has a great discussion with his son, Robert where he says: “You, me, or nobody is gonna hit as hard as life. But it ain’t about how hard you hit. It’s about how hard you can get hit and keep moving forward; how much you can take and keep moving forward. That’s how winning is done.” As a retirement plan provider, as a business, and as an individual, you’re going to have difficulties, disappointments, and failures. This article is all about handling the troubles that you may be going through, personally, and in business.

Believe in yourself

2007 through 2010 were years that were not easy for me. In 2007, I quit being the head attorney of a third-party administration (TPA) to take a job as an associate at a union law firm. I left the position at that TPA, not because the union law firm job was so much better (it was only \$17,000 more), but because the guy running the TPA was a miserable person who just wanted to get me in trouble with his partner, the one who really owned the business. Less than a year at that union law firm, I moved to that semi-prestigious law firm I joke about that is headquartered

where I have been getting my allergy shots for the past 13 years (I never see their attorneys in the elevators). I was there for 2 years and it was the worst experience of my career. I joined, with the idea of starting a national ERISA law practice. Thanks to my late co-worker and friend, Rich Laurita, I had enough connections to be successful. The problem was that unlike working in my practice, I had to deal with a law firm bureaucracy that was the main stumbling block in my potential success. I couldn’t



cross-sell to our existing clientele because the clients’ originating attorneys didn’t want to synergize with me, even if they were getting 50% of whatever I billed. I then decided the way to drum up business was to write articles that plan providers could use to generate business, which would endear me to plan providers who would make ERISA attorney referrals to me as thanks. The problem was that each article required 3 levels of partnership approval and six months. If you’re not allowed to succeed, you’ll fail, and I did. I can blame it all on

the bureaucracy all I want, but I still failed. The managing attorney at the firm (sorry, Lois) was a narcissist who knew best that my ideas about social media were the future of client recruitment. She disliked me from day one, belittled my views on social media (even though her husband was doing it successfully for his practice), and wrote me off as some type of failure. When the opportunity at that law firm ended, I could see my demise about two months earlier. Since I believed in myself and I had enough of working for clueless, arrogant attorneys, I started my practice. I believed in myself that I could succeed even when others close to me, didn’t. My grandmother was a Holocaust survivor and she told me of her time at Auschwitz. My grandmother was 19 and there was another woman in the bunk around the same age, who convinced herself she would die. My grandmother was adamant that she, herself would live. My grandmother survived (even with typhoid at liberation) and the other woman did not. Half the battle is not being discouraged. I remember being very discouraged about things in law school, and the negative thinking didn’t help me. It’s far better to be an optimist and a pessimist. Whatever you do in your career and your business, you need to bet on yourself.

Stop making excuses, learn from your mistakes

Again, I have a lot of reasons for why my stint at that law firm failed, in building a national ERISA practice. I just know in the end, I failed. So when I started my law firm in 2010, I was out of any excuses if I failed with that. My two uncles by marriage,

failed miserably in the indoor amusement park business. They said they failed because they weren't thieves and only thieves can survive in that business. That was a cop-out. They had poor business partners and opened too many parks, too quickly. They built one down the road by Sesame Place in Langhorne, Pennsylvania. It should have been a home run, but it was too big (an old Postal Service depot), and Sesame Place was closed during the winter months. I knew they'd failed when I saw carpeting in the kitchen area (who puts carpet in a kitchen) that was forced to be removed by the Department of Health. You fail, don't make excuses. Find out what you did wrong and learn from your mistakes. You don't learn unless you're willing to accept the truth and the mistakes you made in causing that negative outcome. You probably think that's simple, but there are people with narcissistic personality disorders who in their mind, never did anything wrong.

Great ideas fail too

If the better idea wins, then we'd have been using Betamax and Apple Macs instead. VHS and the PC were inferior technological systems, but won out, simply because were more widely adopted. Sony learned their mistake as being the only purveyor of Betamax, by joining with Panasonic and Phillips in pushing for Blu-ray instead of the rival format, HD-DVD. Thanks to the collaboration and the use of PlayStation 3 as a Blu-Ray player, HD-DVD is doomed. I know I like to talk about business history too much, but the point is the better product doesn't always win. I've had a lot of great ideas in the past and a lot of them have failed. The \$750 Retirement Plan Tune-Up is a legal plan review that I've been pushing for the past 15 years, even when I was an associate at that Fakakta law firm. I can count on two hands how many plan sponsors have hired me to do that. It's cheap, it can be paid from plan



assets, and the problem why it's unpopular because most plan sponsors are reactive, not proactive. The same with my \$1,000 annual legal service called Legal-Ease. Plan sponsors, for most times, only contact ERISA attorneys when something in the plan "breaks." Over the years, I've seen a lot of great ideas fail because of many reasons, including the lack of funding. I've worked with two TPAs who had great ideas that were going to make me rich and failed to do so. The TPA that was going to make a name for itself in the Open Multiple Employer Plan (MEP) space and make me rich by drafting adoption agreements, waited too long to come to the market and the Department of Labor (DOL) shut down the door with that TAG MEP opinion in 2012. So you can have great ideas that fail after execution, for so many reasons. There is no sure thing in this business.

You can't take it easy

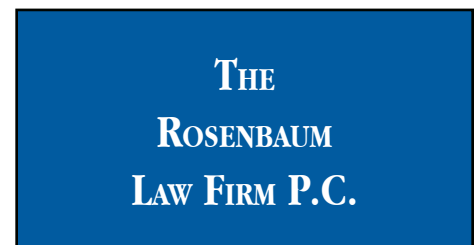
Some days are better than others and some days are more productive than others, but I can't afford to take it easy. There is a lot of work out there and a lot of relationships with clients and plan providers that need to be maintained. Even after your greatest successes, you can't rest on your laurels. The competition in the retirement business is fierce as competitors are buying the rest of the competition to get big-

ger. I'm not saying you can't take vacations or weekends off, but you can't forget that you need to work hard.

Always think of what's next

The managing attorney of that law firm didn't see the future of social media, I did. With an average partner age of 66 in 2010, I thought my future was bright and the law firm's future was not. They've lost offices in Albany and Melville, and most of the New York City office, they're less than half the size they are now. Other firms in Long Island have grown substantially, they understand how techno-

logical achievements can help grow a law practice to become more successful and efficient. Tomorrow is promised to no one. You need to be aware of the changes in the retirement plan business and take advantage of it. How many plan providers I know succeeded or failed because they understood or didn't understand that fee disclosure in the retirement plan business was inevitable? The business has changing waves, it is best to be in front of those waves, riding them, instead of letting those waves drown you.



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