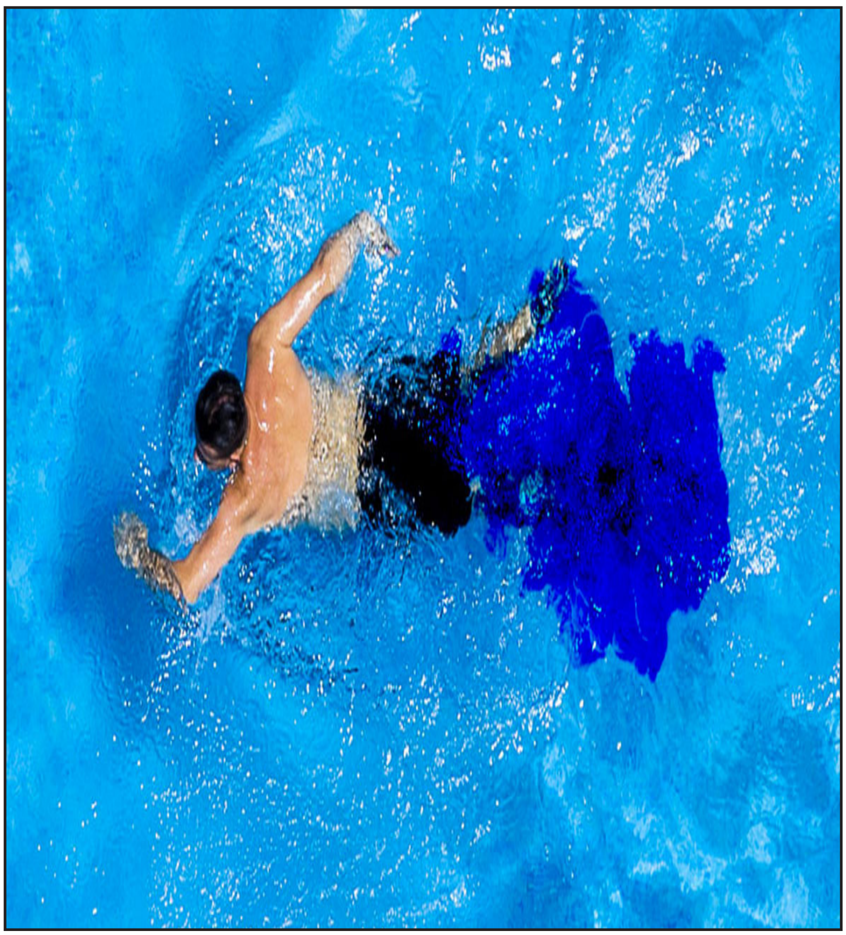
Bad Business Choices To Avoid As A 401(k) Plan Provider

By Ary Rosenbaum, Esq.

I'm a big fan of business history when it comes to brilliant business moves, as well as some pretty awful ones. In terms of bad business decisions, I always find it amusing when I can spot one when it's made and I could see the failure a mile away (Keurig Kold, Sear refusing to upgrade stores to save money, etc.). In my own business as an attorney and a retirement plan provider, I've been able to spot some really poor decisions that I could see a mile away and you can avoid as a retirement plan provider.



Bad decision-makers never think they should step aside

The very first third-party administrator (TPA) I was affiliated with, was doomed to fail because we were "top-heavy", too many former owners at the top who did more harm than good. One of them, Dan, was the Chief Executive Officer and he worked banker's hours (when banks used to close at 3 pm). Every six to nine months, there would be some reorganization, which reminded me of Joseph Stalin's constant five-year plans. During one of these reorganizations, Dan proclaimed he would fire himself if things didn't work out. They didn't and he didn't fire himself. Executives make bad decisions and some executives consistently make bad decisions and either don't see it and/or won't step aside. Most organizations that I have been a part of and frustratingly left were usually led by people who always made bad decisions. Not everyone can lead, not everybody has the talent to make consistent good business decisions. When I look at someone who I saw make consistently poor decisions, I always say that if it was me, I'd have the decency to step aside and let someone else make the decisions. I was once the Vice President of a synagogue with no power, surrounded by the real decision-makers who took the place from 750 members down to 250. In publicly traded companies, these are the types of people who get ousted by the Board of Directors. Yet when it comes to privately-owned companies and close-knit organizations, they usually stay at the top until they run it into the ground as Dan did with the TPA that ended up folding back in 2002.

Just because it's always done that way doesn't make it right and doesn't mean it won't change

One of the things that used to annoy me in law school was when fellow students, professors, and the administration, claiming that something was a certain way was because that's the way it's always been. I always find that to be a cop-out because what if the way it's always been done is wrong? It reminds me when Thornton Melon's son in Rodney Dangerfield's movie Back to School wanted to buy used textbooks that were highlighted, well what if those books were highlighted by a maniac? When I started my own practice 10 years ago, I was very opinionated (nothing has changed) about the problems that I saw with the 401(k) industry. I was always for fee disclosure and I was always against revenue sharing. I once predicted to a former TPA co-worker that revenue sharing was going to be a thing of the past, another former co-worker thought I lost my mind. Fee disclosure was inevitable because when 401(k) plan sponsors were being targeted for litigation for excessive costs, it only stood to reason that they should know the true cost of their plan's administration when it was their fiduciary duty to pay only reasonable plan expenses. There were people in the industry who thought what I was saying and people like James Holland were saying, was heresy. These people suggested that fee disclosure would either lead

plan sponsors to a race to zero in fees or lead to plan sponsors terminating their plans. Well, the sky never fell for these chicken littles. Dealing with criticism of the 401(k) industry and addressing the problems is the only way for the industry to ever improve. I'm so glad that the industry cleaned up its act in terms of disclosing all fees, but obviously it took the Department of Labor (DOL) to implement regulations to make it so. Plan providers who were fully transparent in fees before regulations were implemented did a lot better than those who were trying to fight disclosing fees left and right. How many expensive and less than transparent plan providers went out of business or decided on their own to leave the business? No industry is static, even the legal business (despite what my old managing attorney Lois thought) goes through substantial change. The worst thing you can do in business is not paying attention to any possible change and/or dismissing any chance. Either you get ahead of the wave or you get toppled by it, the choice is yours.

Taking advantage of employees

I always joke that the reason I never have hired an employee is that I was an employee once too. The problem with employer-employee relations is what I put in a nutshell: no employer thinks they pay their employee too little and no employee think their employer pays them too much. One of the most important assets that way too many plan providers never pay attention to is their employees. There was one TPA I worked for, that if you took the top stars who worked for them at one point or another (before leaving in a huff), you would have an all-star TPA. If you show your employees that you value them through salary, benefits, and a little empathy, you will keep them long term. Good help in the retirement plan business is hard to come by and losing valued and well-trained employees are bad because comparable replacements aren't easy to come by. When it comes to being an employee, I was always sensitive because I never felt that I was valued and felt minimized by the adulation placed on fellow employees who didn't deserve it. As a retirement plan provider, you're only good as your worst employee and if you have way too many sub-par employees, you're going to be in trouble. I worked for employers who provided minimal benefits, pay increases that were few and far between, and zero bonuses. If you have a track record like my former employers, you need to step up your game if you want to retain your employees.

Taking advantage of clients

I recently resigned as a member of another local synagogue. It's difficult to pay $3,000 in annual dues and feel that you're just not part of the community and like the fraternity in Animal House, they only need you for the dues. I've seen way too many plan providers take advantage of their clients because of a lack of communication or because they have zero empathy. When I announced my resignation as a member of the synagogue, not one fellow member or someone in leadership, bothered to contact me. Out of sight, out of mind as they say. Your clients may feel the same way if they never hear from you or when their complaints are met by a shrug. The nature of people is that they don't want to feel ignored or that their needs aren't being met. When dealing with a situation in business, I try to see things from the other side. It's a form of game theory, but you gain a little empathy, a lot of insight, and the ability to temper your response that won't be misunderstood. Communication with clients is key because when you talk to them, they don't feel ignored. If you have something bad to tell them, don't sugarcoat and be upfront and honest. If you make a mistake (we're all human), don't make excuses or shift blame back to the plan sponsor client or another plan provider. From experience, clients love honesty and hate when they know their plan provider is trying to dupe them.

Developing a bad reputation in this industry

No matter what your parents might have told you, there is no magic chemical that exists that when added to a swimming pool will reveal the presence of urine in the water by producing a brightly-colored cloud that follows you. However, in the 401(k) plan business, I assure you that developing a bad reputation with plan sponsor clients and other plan providers will follow you. Whether you're a TPA that makes too many compliance mistakes or you steal clients from people who refer you business, just know that people talk. The thing about bad reputations is that it causes your reputation to suffer in the eyes of people you may never have had the opportunity to work with. It's bad enough to cause harm to someone that was a client or fellow plan providers, it's quite the other story when people spread word you're terrible to plan providers or plan sponsors you've never been connected with. To steal a line from broadcasting Jim Ross: your bad reputation will be spread by telephone, telegraph, tell a plan provider.

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