

Negotiator Cohen Steps in When Parties Stop Talking

Creativity, Tenacity Key for Negotiator of Real Estate Disputes

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Windsor Hospitality Group and **Kemper Corp.** were mired in a \$140 million dispute that had dragged on for more than five years.

Windsor had an outstanding loan with Kemper that was secured by hotels. But the two sides disagreed over how much was owed, when it was owed and how to interpret certain formulas for payment based on cash flow. The two sides were millions of dollars apart and had stopped communicating except through their lawyers.

Then Michael Cohen came on the scene.

"We told him to go away," recalled Rick Stephens, president of **ZKS Real Estate Partners**, which was servicing the Windsor note. "He's the most persistent man on the planet. I said, 'I will humor the other side and have breakfast with him.'"

So they met one morning at the Bel Air Country Club before Stephens' golf date. "He said, 'We have nothing to talk about, you're wasting your time,'" Cohen recalled.

Cohen persisted and eventually resolved the dispute. It was just one of several disputes that Cohen has resolved in his career to date. Since moving here from Chicago in 1996, he has resolved \$400 million worth of L.A.-area real estate disputes.

With a background in law, real estate and finance, Cohen delves into the most contentious battles on behalf of one party and swiftly works out a solution using "shuttle diplomacy."

There's a key ingredient to all this: persistence.

Nowhere was that more on display than in the Windsor-Kemper dispute. (While Cohen agrees to keep the details of disputes confidential, several parties agreed to discuss the cases.)

After Stephens politely told Cohen to get lost after their breakfast meeting, Cohen was undeterred. He assured Stephens he had an idea and just needed an hour more of his time. That hour came during Stephens' five-mile walk near his office in the Bay Area. Cohen flew up from Los Angeles wearing a business suit and dress shoes. It was a very hot day.

"His suit was soaked. He came up with an idea," Stephens said. They talked more by phone over the coming weeks, with the deadline for trial fast approaching, as well as Stephens' upcoming trip to Europe.

"We literally settled it an hour before I got on the plane. The only reason was due to his creative thinking and persistence," Stephens said. "Everyone compromised and without Michael, it wouldn't have happened. He gave us ideas and we rejected them. He kept going."

Said Patrick Nesbitt, chairman of L.A.-based Windsor Hospitality: "If I had to characterize Michael in one word, it's tenacity. He doesn't take 'no' for an answer. He's very bright and intuitive as to where there's a possible opening.

The people for the other side said 'no' (several) times and he found something they wanted."

Nesbitt said Cohen emphasized to the other side that they could settle now or they'd be "open to a bigger piece of litigation in the future." "He was able to exploit that to the point they thought of maybe settling now," Nesbitt said.

Cohen arranged new financing at an attractive interest rate that gave Windsor the ability to pay down \$30 million of the debt. As to the other technical issues under dispute, Cohen convinced the parties to let those go.

The 40-year-old Cohen moved to California in the mid-'90s after realizing that the real estate market here was still having problems. He started by opening an office for **Cohen Financial**, his family's real estate investment banking firm.

As the conflict-resolution business continued to expand, he formed **M.A. Cohen & Co.** in 1997. He cold-called people and introduced himself through contacts from previous work, becoming a "respectful, pleasant pester," he said.

"If a guy doesn't want to meet with me, I'm not going to accept that position," he said.

Cohen set up shop on Sepulveda Boulevard in West L.A. and despite the size of the deals he's worked on, the firm still consists of just himself and a secretary.

He typically gets involved when two parties — one of whom usually owes a huge sum of money to the other — stop talking, except through their lawyers.

After resolving more than \$1.75 billion worth of disputes, the same issues tend to repeat themselves. "(That backlog of experience) provides me with a significant supply of potential solutions," Cohen said.

One thread running through virtually all the disputes is the role that human nature plays.

"When both parties feel they've been wronged, they tend to maintain a more adversarial posture," he said. "The litigation takes on a life of its own. People are more focused on winning than resolving the matter and moving to things that are more constructive."

He said part of what he does is remind each side to "be pragmatic," and consider the strength of the other's argument, since often each side only hears the strengths of its own side.

In the Windsor-Kemper dispute, things got so contentious that Windsor tried to block **Zurich Insurance Group's** \$2 billion acquisition of Kemper Corp.

"It was a costly and debilitating experience," said Cohen, who represented Windsor. "It was no different than any other dispute. As they're fighting, the parties tend to get entrenched in their own positions. A law firm is focused on beating the other law firm."

Cohen said his background in legal, real estate and financial issues are all assets. He practiced real estate law in Chicago at two major firms, then co-founded a law firm. He no longer practices law, which actually works to his advantage in dispute-resolution work. It means he can talk



Cohen: Refuses to take 'no' for an answer, clients and their opponents say.

to the principals in a dispute, while the lawyers can only talk to the lawyers for the other side.

He got his first huge lesson in working through real estate disputes thanks to **Westinghouse Credit Corp.**, which in the early '80s funded a finance company that made \$350 million worth of "extraordinarily aggressive loans all over the country in amounts that exceeded the value," as well investments in troubled real estate, Cohen said.

In 1988, he took over the finance company and increased the value of the assets at a time when lawsuits were being filed or threatened by creditors and borrowers.

By the early 1990s, Cohen had liquidated all Westinghouse's real estate assets and he went to work for his family's real estate business, doing advisory work as well as investments.

The first dispute he resolved in Los Angeles was between the owners of the Westwood Marquis Hotel and the holders of a \$50 million-plus loan. The hotel was operating under Chapter 11 bankruptcy protection for about two years and within less than 30 days, Cohen had orchestrated a solution.

Late last year, he helped **Kennedy-Wilson Inc.** resolve a dispute with a borrower after it acquired a \$15 million loan from a Japanese bank. Currently, he's helping resolve a \$200 million dispute between a Japanese borrower and lenders, and various other parties in Colorado and Arizona.

"When he was inserted into the equation on the borrower's behalf, it was more of a role of a facilitator, or mediator, than as a complete advocate of the borrower," said Stuart Cramer, managing director of residential investments for Kennedy-Wilson.

Cohen said he only succeeds when both sides are happy with the outcome — or equally unhappy.

"If a judge decides the case, at least one side is unhappy. If I customize a solution, everyone is happy," Cohen said. "If I come in on behalf of a borrower, why would the lender listen? I say, 'If I come up with a solution, you have nothing to lose.'"