



REPRESENT ME ... COMPETENTLY

The condemnation case against
Amazing Animal Carriers, Inc.



BY MICHAEL F. YOSHIBA, ESQ.

In 1997, plans for a state freeway-widening project through the City of Santa Ana, California included the need to acquire a property directly adjacent to the existing freeway. The property was improved with a small 2,500 square-foot single-story warehouse building built in 1955. The warehouse building was in fair condition with some deferred maintenance but was overall serviceable and still very functional for light manufacturing use.

The building occupant and lessee was Amazing Animal Carriers, Inc. (renamed for privacy) ("AAC, Inc."). AAC, Inc. designed, manufactured and sold small FAA-approved pet carriers for use by travelers wanting to safely and securely bring their pets onto commercial airplanes. The pet carriers were made of lightweight nylon woven mesh for the comfort and safety of the pets while traveling. The small pet-sized carriers could fit under an airline seat during a flight and then be folded flat while not in use. The business owner was an 80-year-old pet-loving woman who developed the idea for the pet carriers when she couldn't find any pet carriers that were both stylish and functional. She first made a few as gifts for family and friends who then encouraged her to turn her hobby into a business, thus AAC, Inc. was born. She sold her products at swap meets and pet shop supply retailers. She increased sales and moved from her home garage into the leased warehouse. Six (6) months into her business venture, the State condemned the property she leased for the project. She asked friends and family for attorney recommendations and retained Attorney Thompson. Attorney Thompson specialized in estate planning, wills and trusts.

Paradox in Opposing Inexperienced Legal Counsel

Representing clients requires attorneys to be zealous advocates including the exercise of diligence and a duty of loyalty in all aspects of handling client cases. Attorneys practicing law are governed by many rules with their duties both specifically and generally identified in the law. A basic tenet that all practicing attorneys must face at one time or another is whether they are professionally qualified to handle the legal issues brought by a potential client. Potential clients are those persons or entities who seek the consult of attorneys for handling of matters that involve situations requiring the interpretation and advice concerning rules and laws.

The Rules of Professional Conduct that govern and guide attorneys generally state that in representing clients, attorneys shall have the learning and skill necessary for the performance of such service. Law school graduates begin their legal careers with no experience representing clients. An attorney can become competent in representation by either associating with or professionally consulting with an already competent attorney, or by acquiring sufficient learning and skills before legal duties are required and provided. If neither option is available, the attorney must “just say no” and decline representing the potential client.

Attorneys can and occasionally do take on assignments whereby they have general legal knowledge and lack the expertise of a specialty law practice area but will acquire the necessary knowledge and skill as the case progresses. This was one case where Attorney Thompson was generally familiar with real estate transactions and litigation through her regular law practice; she had not previously represented any party in a condemnation case but was willing to acquire such knowledge and expertise in eminent domain litigation. Her unfamiliarity with eminent domain law created a paradox for the opposing State’s attorney.

In this instance, the State attorney’s representation of the agency against an inexperienced attorney for the condemnee created a decided disadvantage for the condemnee in this litigation. The more zealous the advocacy was by State’s attorney, the more likely the condemnee would receive little or no compensation through litigation. The condemnee’s attorney failed to retain an appropriate valuation expert, lacked necessary court procedural knowledge and took a very ineffective deposition of the State’s witness. These deficiencies very likely would have resulted in no compensation awarded to the condemnee for the taking of their property. This is directly contrary to the constitutional mandate for provision of just compensation in property-taking cases. The State’s attorney was left with the inexplicable choice of proceeding to prevail on the merits with the knowledge that it was due to the ineffectiveness of condemnee’s legal counsel, or notifying opposing counsel of the specific deficiencies in the condemnee’s case preparation — a seeming contradiction of the State attorney’s duty of loyalty and zealous advocacy in representing the State as his client.

Facts and Legal Process

In answering the Complaint in Condemnation, Attorney Thompson failed to make claims for leasehold bonus value or improvements to the realty, instead focusing on a claim for loss of business goodwill. By not seeking claims for the leasehold bonus value or improvements to the realty, AAC, Inc. waived and forfeited claims to those items. Litigation over the potential loss of business goodwill was challenging for both parties. Being in the leased space for only six months, AAC, Inc. made only \$25,000 in revenue over that period of time. Business revenues did not exceed business expenses and the business owner’s salary was not included in the listed expenses. The State’s business goodwill appraiser deemed this enterprise a hobby instead of a viable and salable for-profit business.

After the parties exchanged expert witness information, it was clear that the condemnee’s valuation expert was not well qualified to testify as on the topic of loss of business goodwill valuation. He didn’t understand the use of the dates of valuation in condemnation litigation; he did not evaluate market rents for the after-condition; and he did not adjust the owner’s salary to market conditions for similar businesses.

The State’s appraiser found no loss of business goodwill. AAC, Inc.’s appraiser opined that the loss of goodwill was \$100,000. The parties agreed to proceed to a voluntary mediation.

Resolution and Reflection

The parties reached a settlement at the mediation, despite the State being confident that it would prevail at trial on the State’s appraised value. Nonetheless, the State agreed to pay AAC, Inc. \$20,000 and reimburse them for court costs, with both sides paying their own attorney fees. Attorney fees for AAC, Inc. likely far exceeded the agreed settlement and in hindsight, Attorney Thompson may have been wise to decline representation of AAC, Inc. ☹



Michael Yoshida is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon.