

Auspicious Beginnings

Lee Jay Berman resolved his first dispute before he heard of mediation

By Emma Knight

Special to the Daily Journal

LOS ANGELES — The first time Lee Jay Berman mediated a settlement, it was between two sisters in their 80s who had not exchanged a word in 20 years.

A dispute over their father's inheritance had calcified with time, and neither woman was willing to take the first step toward armistice. Berman, then 21, brought them together and brokered a deal that allowed both parties to save face.

The two women were his grandmother and his great-aunt.

At the time, Berman had just graduated from UCLA with a degree in economics and was following his father into the apparel business. His peacemaking abilities were instinctive; he did not know that there existed such a thing as a mediator.

A decade passed before he came across professional mediation while working for a real estate developer, and, despite not having gone to law school, made it his career.

Now 20 years into that career, Berman has mediated some 1,900 cases. He is the founder and president of the American Institute of Mediation, has trained neutrals across the nation and as far afield as India and Croatia, and mediates 80 to 100 cases of varying types each year, 20 to 30 of which are outside of California.

A youthful 52, with an assured presence and attentive blue eyes, Berman is disconcertingly good at reading and responding to the unspoken needs of the person sitting across from him. His effectiveness as a mediator, he explained, relies on this skill.

"It's really about reading the pulse and the flow, and taking the temperature in the rooms," he said. "That's what helps me move people toward what they want. And if they get what they want, then I've done my job well."

For Berman, all deals are not created equal; his idea of success is reaching an agreement that leaves all parties satisfied — and with their dignity intact.

"Too many mediators place the finish line at, 'Hey, I've got a deal,'" Berman said. "Isn't it better if they get a deal and everyone walks away feeling respected?"

This approach helps clients to "reach an emotional resolution as well as a legal one," said Marina Fraigun, a plaintiff's side em-

ployment attorney who has used Berman's services on several occasions. "I often take difficult cases to him, cases that are charged with emotion, because he's able to be very human about them," she said.

"He really does a great job of using his ability to connect with people to help them identify the key issues and interests in their favor," said Brenda K. Radmacher, a real estate, construction and environmental/toxic tort attorney at Wood, Smith, Henning & Berman LLP.

A trained mediator herself, Radmacher also highlighted Berman's talent for overcoming impasses, calling him "adept at helping people move beyond boundaries that they have artificially put up."

Part of this, said Berman, is convincing parties to view a point of contention from a different angle.

"One of my favorite expressions is, people don't change their mind, but given new information they'll often make new decisions," he said. "The new information or the new perspective helps them shift the way they're thinking about the problem, and that opens up a whole new bevy of solutions."

Berman grew up in and around New York and Seattle. He credits his mother with making sure her children were exposed to a wide range of people and experiences.

"Mom's thing was, you have to be able to drink beer with the Smiths and champagne with the Joneses," Berman said. "I think the ability to adapt, and to meet people where they are, has really informed who I am as an adult and a professional today."

Florida commercial attorney Peter W. Homer of Homer Bonner Jacobs attested to this ability. "I've dealt with him with plaintiffs from teenagers to folks in their 50s and 60s, both male and female, across ethnic lines, across racial lines. He has an uncanny ability to communicate to whoever the audience is, and to do that very effectively," he said.

Attorney William W. Bloch of Excelus Law Group said that Berman is "charming and pleasant," which helps to take the edge off of some of the "tougher messages" he has to convey.

Bloch pointed out, however, that some situations call for a different approach. "There are cases where you really need a tough mediator to sort of squash the expectations, and you're not worried as much about the feelings as you are changing the whole thinking of the plaintiffs about the case, so you might pick a more no-nonsense, brutal kind of a person," he said.

Bloch went on to praise Berman's ability to keep attorneys on task. "He's got a very



Juliane Backmann / Special to the Daily Journal

Lee Jay Berman
PMA Dispute Resolution
Century City

Areas of specialty:

business, employment, real property, construction, personal injury

good way of figuring out what the lawyers are saying or doing that might be impeding the process," Bloch said, citing Berman's skill in spotting and minimizing any "non-sense" or "posturing."

Jeffrey C. Briggs of Briggs Law in Hollywood said that Berman "gives the lawyers a lot of freedom to help design the process."

The willingness to take him up on this, said Berman, is what separates a great attorney from a good one. He appreciates it when lawyers "help to orchestrate the mediation process, rather than being on a rollercoaster ride, where they buckle in and let the ride take them where it goes."

Sometimes, the process continues well into the night.

Mark C. Edwards, a business and employment attorney with Mirau, Edwards, Cannon, Lewin & Tooke, said his first mediation with Berman lasted 23½ hours. Berman's "willingness to stick with it" was "very impressive," he said.

"When you're in a mediation and progress is being made, you hate to dismiss and come back at a later date," Edwards said.

Richard D. Marks, a real estate attorney who has used Berman's services repeatedly over a period of 13 years, said that two of their early cases together had been settled at 3 in the morning, and that his wife had taken note.

"When Mrs. Marks hears that I have a mediation with Lee Jay Berman, she always says 'oh no,'" Marks joked, "Because she knows I am going to be there for a long time."

Berman acknowledged these late nights are made easier by the fact that he and his wife — a music executive who also works long hours, and with whom he shares a passion for sports — do not have children.

While most cases do not need to go into the night, sometimes a second day of mediation can, for the clients, seem tantamount to a second day of surgery, he said. "No-body wants to be cut open a second time

to explore the same wound. Once it's open it needs to be completely cleaned out and healed, even if that's a bit painful," he said.

Several attorneys who have worked with Berman emphasized that his readiness to stay until the job is done is not a veil for inefficiency. "He pushes to get to the bottom line very quickly," said Briggs, who has worked with Berman twice. "He doesn't labor things."

A mediator's job is not to cast himself as the hero of a drama, Berman said.

As he learned in his very first mediation between his grandmother and his great-aunt, his time is better spent serving as a "lightning rod" for negative emotion, and letting the parties take center stage.

He compared a good mediator's work to that of retired basketball player John Stockton, who is the NBA career leader in assists.

"He didn't score the most points," said Berman, "but he helped his teammates score the most points."

Here are some attorneys who have used Berman's services:

Jeffrey C. Briggs, Briggs Law, Hollywood; Mark C. Edwards, Mirau, Edwards, Cannon, Lewin & Tooke, Redlands and Riverside; Kevin A. Spainhour, Spainhour Law Group, Huntington Beach; William W. Bloch, Excelus Law Group, Inc., Beverly Hills; Richard D. Marks, Richard D. Marks Professional Corporation, Westlake Village; Marina Fraigun, Fraigun Law Group, Sherman Oaks; Peter W. Homer, Homer Bonner Jacobs, Miami; Brenda K. Radmacher, Wood, Smith, Henning & Berman LLP, Glendale.