

JEFFREY C ROSENTHAL BSc (Econ) FCCA FCI Arb MAE
CHARTERED CERTIFIED ACCOUNTANT
CHARTERED ARBITRATOR ACCREDITED MEDIATOR

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Business Background

March 2011

During the past 15 years I have been extensively involved in dispute resolution work, acting as an arbitrator and expert witness, and since 2000 as a mediator. This work has been as much of a legal nature as accountancy, and I have increased my working knowledge of contract law and consumer law, as well as maintaining my professional knowledge in accountancy and related financial matters.

My background as the principal of my own accountancy practice and understanding of business and consumer problems, sprinkled with a good measure of common sense, has been of considerable value in dealing with a wide range of problems.

My earlier work as a practising accountant and consultant covered a wide range of business activities and trade association work, as well as all of the usual functions associated with accounting practices in the Small to Medium sized Enterprise field (SME's). I held an Insolvency Licence until the end of 1998, and was a Registered Auditor until the end of 1999.

My consultancy activities included the independent valuation of businesses; advising on business mergers and break-up; preparing prospectuses and negotiating the sale of businesses; advising vendors on the sales of minority interests; advising the purchasers in a management buy-out; a substantial individual voluntary arrangement; negotiating finance facilities for numerous clients; assisting clients in resolving a wide range of disputes.

My dispute resolution experience covers the following areas:

- Partnership dissolution disputes
- Directors disputes and minority shareholders claims
- Shareholding and business valuations
- Professional negligence claims
- Professional fee disputes
- Investment advice complaints
- Consumer complaints regarding holidays, mortgages, finance and leasing, and home improvements
- Losses arising from personal injuries
- Neighbour disputes relating to high hedges and boundaries

9 of my last 10 mediations resulted in settlement.

Please see my website www.jeffreyRosenthal.com for details of appointments.

Mediation Experience From September 2009

<u>Name</u>	Address and contact details
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Accredited by:	Centre for Dispute Resolution (CEDR) March 2000 Assoc of Midlands Mediators (AMM) September 2001 The Chartered Institute of Arbitrators October 2006 Effective Dispute Solutions April 2008 U K Mediation May 2010 Clerksroom December 2010
CPD Status and whether Registered as a Practicing Mediator with an Accrediting Body	CPD kept up to date. Registered as a practicing mediator with AMM, The Chartered Institute of Arbitrators, CEDR 125, U K Mediation, Effective Dispute Solutions and Clerksroom.
Date and Role i.e. Mediator, Assistant Mediator or Advocate	Latest 10 Appointments Brief Description of Dispute
March 2011 Mediator	<p>This should have been a simple dispute as it was a claim for £17,500 for laying a substantial paved driveway in early 2008 following oral negotiations and variations. The Respondent maintained that the work was unsatisfactory but the Claimant refused to rectify it. Unfortunately both parties took the problem to Solicitors, and it escalated with costs of over £20,000 on each side!</p> <p>Both parties demanded compensation and a contribution to their legal costs. Settlement was achieved at £13,000 payable to the contractor following a one to one (plus Mediator) full and frank discussion. Both parties will deal with the legal costs separately.</p>
March 2011 Mediator	<p>This case related to a second hand 4x4 vehicle with 60,000 miles on the clock at the time of purchase. The engine failed on a remote road whilst being driven by the Claimant's wife and carrying her three children. The Claimant asserted that he had been misled into the purchase as the vehicle had no service history. The Defendant (vendor) denied that any service history was to be provided. The Claimant retained the courtesy car provided by the Defendant for a prolonged period, and refused to pay for or share the cost of a replacement engine.</p> <p>The warranty provider had refused the claim on the grounds that the failure was due to ongoing wear and tear due to the age and mileage of the vehicle. An expert report said that this should not have been the case. A delay was caused while waiting for a specialist engineer to examine the vehicle engine and determine the cause of the breakdown.</p> <p>The claim was for the cost of the vehicle £11,500, together with expenses incurred at the time of the breakdown, a disproportionate sum of costs on a "no win no fee" basis, and interest. A sum of £38,000 was indicated.</p> <p>The Defendant maintained that it should offset half of the cost of the replacement engine and charge for the extended use of the courtesy car and the depreciation in value of the vehicle whilst in storage. The Claimant would not accept the Defendant's final offer of £14,000 on the day of the mediation, but did so on reflection a few days later.</p>

February 2011
Online Mediator

Following oral negotiations, the Claimant developed a website for the Respondent, which did not include a mapping link that the Respondent said should have been included. There was no written agreement.

The Respondent ultimately agreed to pay a small additional sum for the mapping link, provided that the Claimant developed a second site for the same price.

January 2011
Mediator/Arbitrator

This was an unusual appointment as the parties decided at the outset that, should they not reach a settlement during the mediation, I had their permission to utilise the information given to me in order to proceed to make a binding Award as arbitrator, and this is what happened.

The dispute was in connection with contracts for the improved performance of the Respondent's website by search engine optimisation, and reducing the conversion cost of site visits into business enquiries. The Respondent maintained that the Claimant had failed to fulfil these functions satisfactorily and was in breach of contract. The claim was for £26,700. The parties did not settle, and I proceeded to make a confidential Arbitration Award.

August 2010
Mediator

Party A claimed £40,000 plus £23,000 interest as damages from Party B for illegal disconnection of the electricity supply to his dairy farm in 1995, resulting in the need to hire generators for a two year period. Court proceedings had been commenced, and the mediation was instigated as a result of pressure from the Court.

The production of bank statements by Party A proved that he was in a position to pay the initial claim for outstanding supplies by Party B before the disconnection. However, Party B had sent a Legal Assistant to the mediation with limited authority to make a minimal settlement offer. On seeing Party A's evidence, he realised that this was insufficient, but was unable to make a decision.

No agreement was reached on the day, as Party B's representative had no authority to negotiate a settlement. The mediation continued by email and telephone, resulting in some movement by both parties (Party A £40,000 – Party B £9,000), but as no settlement was reached after two weeks, I closed the mediation.

March 2010
Mediator

The claim was for £5,500 for alleged loss of goods in transit on a shipment to Africa, with damages and costs making £7,000. The loss was part of a consignment of mixed new and second hand household goods valued at £13,000. The Defendant denied that there had been any loss and maintained that the Claimant had no evidence. There was no detailed shipping list, and no receipts for the purchase of the goods. The Claimant reluctantly accepted an equally reluctant offer of £2,200 by the Defendant.

February 2010
Mediator

The husband and wife Claimants were marginally minority shareholders in a Water Conditioning Company. They were dismissed from employment in 2006 and ultimately petitioned the Court for the Defendants to buy their shareholding and repay £21,000 of dividends that had been wrongfully withheld from them. High Court proceedings had been commenced and pleaded under a CFA; a five-day Hearing was due at the end of February 2010.

The major problems were that both parties had incurred substantial costs to date; an independent Accountants Report on the value of the company had only been received two days before the Mediation; neither party was aware of the insurance premium for "After the Event" cover under the CFA. This was ascertained during the mediation as £55,000, and then reduced to £40,000.

	<p>Negotiations were difficult. The Defendants accepted liability to pay for the shares and repay the dividends, but considered the costs and insurance premium to be grossly excessive. The Claimants' Solicitors accepted responsibility for delays, and waived their CFA uplift entitlement to secure a settlement.</p> <p>Provisional agreement was reached for payment of £170,000 by the Defendants. This comprised £90,000 for the shares and dividend issues and £80,000 towards the Claimants' costs. However, only £50,000 could be paid immediately, and £120,000 by instalments over five years. This settlement was subject to completion of an Affidavit of Means by the Defendants within the following week.</p>
<p>December 2009 Mediator</p>	<p>The Claimant had provided IT support services for the Defendant firm of Accountants. The system ran into problems, which the Claimant asserted were due to the incorrect installation of software. The Defendant counterclaimed for reinstatement costs and loss of staff chargeable time. The claim was for £11,000, and the counterclaim £14,000. Settlement was agreed with a payment of £5,000 from the Defendant to the Claimant, with both parties to pay their own costs.</p>
<p>September 2009 Mediator</p>	<p>The Claimant had sold her Dental Practice to a larger organisation. The sales contract included an unquantified payment of 10 per cent of a newly negotiated specialist NHS contract. The Claimant considered that the payment should be £35,000, based on the expected level of activity, whereas the Respondent assessed the payment at £8,000, based on the actual activity in the first year. New information was produced during the Mediation that showed the anticipated level to be between £125k and £175k. Settlement was agreed based on a median figure of £15,000, with both parties to pay their own costs.</p>
<p>September 2009 Mediator</p>	<p>The Claimant was suing for £9,100, plus costs and interest of £1,500, for goods supplied to a former customer who was no longer in business due to the destruction of his premises by fire. The Defendant maintained that the Claimant had refused to accept returned goods to the value of approximately £2,500, and had also refused discounts and similar credits in excess of £1,000. The parties agreed a last minute settlement of £5,500, with both parties to pay their own costs.</p>

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