

## **Case study 1: Shareholding split in an accounting firm**

This is a fictional case study that Wellington mediator Bill Rainey gives of a mediation between a disaffected shareholder (“James Smith”) and a professional services firm (“AccountsRUs”) that he has left.

From Bill’s experience in mediating these types of disputes, the concerns raised in the case study are fairly typical.

AccountsRUs is based in Wellington, and the firm has a national reputation for its specialist expertise in the public sector. The firm was established a decade before by Charles Adams, a dominant, larger-than-life character. The firm has been incorporated, and Charles continues to be the major shareholder (30 percent). There are seven other partners with the remaining 70 percent shareholding.

After eight years, there is growing personal acrimony between the business partners/ shareholders. There are personality clashes, accusations of individuals not pulling their weight and counter accusations of individuals taking too much money out of the business.

James Smith departed the firm six months earlier, and has since established a sole “boutique” practice in the same city.

However, the remaining owners continue to hold him responsible for a range of ongoing financial commitments, in particular a lease liability. He left in the third year of a five-year lease agreement for the firm’s premises, a sum of \$140,000 pa. They hold him liable for a 10 percent portion of the lease for each of the remaining years.

In addition to this unpaid rent, the partners hold James liable for a 10 percent share of an ongoing fitout loan, a \$30,000 sponsorship of a public sector auditing conference, vehicle leasing costs, computers, furniture, library, and sundry other items.

At the insistence of its bank, AccountsRUs has initiated court proceedings against James to recover the outstanding monies, which it claims amount to more than \$85,000.

James denies he owes AccountsRUs anything. To the contrary, he argues that the value of his shareholding should have been \$50,000 more than the sum he has been offered by the firm. He bases this amount on an independent valuation of the firm’s assets, brand and goodwill, and his own capital account within the firm. He says the firm has withheld important files of clients who have moved with him to his new practice – despite the clients’ repeated requests for their files to be handed over.

Each party has engaged its own lawyer, and it is two days before a pre-hearing conference with a Judge. The parties agree to mediation to try to avoid further legal costs.

Once the mediator is agreed on, a hearing time and place is set up quickly. The parties are asked to provide the mediator with a brief outline (one page) of their respective concerns, and how they think these might be resolved.

At the mediation hearing, for the first time in many months, the parties are able to tell each other directly what it is that concerns them, and they listen to each other’s responses face-to-face.

The mediator helps them to identify options for moving forward, allows them to reflect on what will happen if they continue fighting, and gradually the essence of an agreement takes shape.

After starting the mediation at 9am, with a quick break for lunch, all the details are sorted out by 3pm. The terms of the agreement are reasonably straightforward, providing a pragmatic solution, and reflecting exactly what the parties wanted.

They include:

1. As a gesture of goodwill, AccountsRUs releases James from the 10 percent lease liability, and agrees to cover the other financial outgoings with the bank.
2. For his part, James backs down from his demand for \$50,000.
3. Each party agrees that their other claims against each other had become inflated, and that although they owed the other a small sum, no money actually needs to change hands.
4. The parties agree that some of AccountsRUs' client files will remain with the firm but that James will continue to provide his expertise on these files. Also, the firm will be open to offering James' particular VFM auditing expertise with some of its other clients.
5. Likewise, James still respects the way AccountsRUs manages its client relationships, and is willing to forward any general enquiries he receives to the firm.
6. The court proceeding can be discontinued immediately with the parties filing a consent memorandum.

What is significant in this mediation, is that the previously held respect amongst business colleagues returns. The relationship between the parties is put back onto a professional and amicable basis.

"Principals of professional services firms are generally not good at communicating with each other," says Bill Rainey. "They tend not to deal well with conflict, and disagreements often grow as a result."

Mediation offers a constructive way to address issues that have festered for a long time.

"Mediation is a magic process. It helps you get to the heart of the matter under dispute. What's really concerning the parties? In my experience, there is almost nothing that is unresolvable.

"Usually disputes arise between people who have stopped listening to each other – so the main thing mediation does is get them talking sensibly to each other again."