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Go with Your Gut

By: Julie R. Rubin, Esq.

My heart fell as I cut into the pie only to see the interior ooze in to fill the void. The recipe said to take it out of the oven after 30 minutes, but it didn't look quite done to me. The surface of the cake jiggled too much, but the recipe (as though reading my mind) assured me it would "firm up." I didn't want to overcook it, so I followed the instructions and took it out against my intuition to give it another 10 minutes in the oven. I should have trusted my instincts. Dammit. What a waste of beautiful Valrhona chocolate. And what was I going to serve for dessert at tonight's party? My husband picked at the cooked edges as the dogs looked on with their "I haven't eaten for days" faces when the phone rang.

It was Ron Bixby. Ron is the CEO and president of a small Minority Business Enterprise that he owns together with Lena, his wife of 7 years. The business, which had been growing nicely since it was incorporated in 2005, derives most of its revenue from city and state contracts for HVAC construction services. Ron is an engineer and Lena has a masters in business. He runs the front room; she runs the back room.

When I first spoke to Ron on my way home from work on Friday evening, we made an appointment for him to come see me the following Tuesday to discuss the problem he was having with his business. Tuesday apparently wasn't soon enough. "I'm sorry to bother you on a Saturday," he began, "but I just cannot believe this is happening to me." Exhaustion and disbelief resonated in his voice. "And after all I did to try to help her."

About six months ago, Ron and Lena were looking to hire another secretary. One of their managers, Bonnie, said she had an acquaintance, Sandra, who had worked as a secretary a few years back and was in need of a job. Ron and Lena interviewed Sandra and liked her well enough, but Ron had some reservations about her lack of work history. And there was something about Sandra he found a little off-putting. After Ron and Lena asked her to sign off on a background check, Sandra told them that her record would show she had been convicted of drug possession a long while back. Sandra explained that she had been clean for five years and just needed a fresh start.

Ron was against hiring her. Lena wanted to give her a chance. Sandra had been clean for a good stretch, she had a young son, and needed a job. Lena assured Ron she would keep a close watch on Sandra and felt strongly they ought to help the community by giving the

people they serve a second chance at life. Ron was overruled (as happens occasionally when one's wife is also one's business partner. Just ask my husband).

About 6 months into Sandra's new job at the company, she started coming in late a few times a week. Not 15 or 20 minutes late. An hour or two late. When Lena confronted her about it, Sandra apologized and explained she'd been having trouble with her son's day care. But lateness turned into absenteeism, which was plain unacceptable. Ron told Lena he thought maybe Sandra was into drugs again and that he wanted to fire her, but Lena persuaded him to give Sandra one more shot. So he did. Lena and Ron sat Sandra down and told her that, if she didn't get her act together, they were going to have to let her go. They also told her that they could not tolerate drug use by employees, but offered to help get her into drug treatment if she needed it. Sandra assured them she was not using, that she needed the job and promised she would straighten up.

Six weeks later, when preparing to call in payroll, Lena discovered that Sandra had been manipulating her timecards. Either she was coming in early and staying late, or she was having another employee punch her timecard for her to make it appear as though she was working more than she was. As a result, her timecards showed she worked well over 40 hours a week for each week in the last pay period. Not only was Sandra not scheduled to work those hours, the company has a clear, written policy that employees are not entitled to work more than 40 hours per week unless expressly pre-approved or requested by Lena or Ron. This was it for Ron.

Ron called Sandra into his office. He told her he was not paying her the bogus hours she clocked and told her not to come back. Sandra started to cry and explained that she had gotten back into trouble with drugs and begged for another chance to make things right, so she could earn a living and take care of her son. Ron told her he was sorry, but he could not risk his company and the welfare of other employees. He terminated her employment effective immediately and told her he would help get her into treatment, but that was the best he could do. Sandra got explosively hostile. She started banging her fist on Ron's desk, stomped out of his office, and, while slamming the glass door, hollered at the top of her lungs, "You'll be sorry!"

The Saturday that Ron called me, the police had served a warrant for his arrest for assault. The following Monday, the company was served with a civil complaint suing the company and Ron personally for failure to pay overtime and for battery (arising out of the same allegations that formed the basis for the criminal assault charge) and, following that, Ron received a notice from the EEOC that Sandra had filed charges of sexual harassment against the company, alleging that he had fired her when she wouldn't comply with his demands for sex. Ron was sorry all right. He was sorry he'd hired her in the first place.

Sandra wove a gruesome tale. She claimed Ron and Lena knew she struggled with drug addiction when they hired her and that Ron used her addiction as leverage to harass her – promising her drugs and money if she would sleep with him. She claimed he forced her to work long hours when Lena was not there, during which he would corner her and force her to perform sex acts. In one fell swoop, she justified her fake timecards and launched an all out attack on Ron's liberty and reputation, and on the company's status as a government contractor.

They were outraged and scared, but Ron and Lena didn't want to fight it. They wanted to settle and move on. The risk of a judgment against the company (and Ron personally) was too great. Ultimately, the criminal charges against Ron were dismissed when Sandra failed to appear in court. The civil suit and EEOC charge, however, did not die such quiet deaths. Although I was able to settle these claims fairly quickly – she wanted money, of course, and had no interest in sticking it out for the 18 months most cases take to work through the courts and the EEOC – Ron and Lena had to pay her to go away. They also had to pay my fees. And, on top of that, they risked their MBE status and the contracts that keep their business alive and food on their table.

Just the other day, after staying late at work, I got into a garage elevator alone with a creepy looking guy, because I didn't want to be rude. Stupid. Following your gut instinct in life and in business can be tough. Your partner tells you you're wrong. You don't want to be mean. You want people to like you. Respected sources tell you to do the opposite of what you feel is right. In cooking as it is in business. Trust your instinct. Go with your gut.

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