



How to Resolve Contract Disputes by Using an Accounting Expert

by Chris Hamilton, CPA, CFE, CVA, DABFA

Contracts are the backbone of the business world. Goods and services are supplied in exchange for compensation of one form or another, in accordance with terms with which both parties presumably agree. The vast and overwhelming majority of these arrangements (contracts) either work in accordance with all parties' understanding or, if they don't, no legal dispute arises.

When a dispute does arise, it is typically due to either (a) the amount of money involved in the transaction, or (b) the level of personal angst between the participants. There are several variations of a contract dispute:

- The service was not provided or goods delivered in the timing, condition, or quantity that was expected
- The agreed upon consideration (e.g., money) for the services or goods was not delivered
- There was no writing to memorialize the terms of the contract
- The written contract was confusing, ambiguous, or contrary to the understanding of one or more of the participants.

Evaluating the facts

The forensic accountant generally can assist with the evaluation of any of those variations. Accounting records can be used to: (a) prove whether goods were delivered, (b) determine the valuation of the transactions in dispute, (c) identify the sequence of the transactions, (d) the source and use of cash, and (e) to establish other facts that occurred and that are under dispute. An experienced accountant can explain accounting terms which are used in contracts, as well as the application of those terms to the facts and circumstances of the case.

If it is determined that one party has been damaged, then the next issue becomes how to quantify the damages in monetary terms. This process requires collaboration between the law firm and the accountant. The law firm provides an understanding of legal precedent or statutory definitions that provide guidance for the calculation of damages. An experienced accountant should be able to demonstrate a calculation of damages that is rational, reasonable, and easily understood.

The role of the forensic accountant

Ambiguity is the mother of litigation. Disputes abound when there is no written contract, or it is incomplete or unclear. The role of the forensic accountant in contract disputes can be summarized as a three-fold process: (a) assistance in obtaining the relevant financial evidence to prove what happened, (b) explaining the evidence in understandable terms, and (c) to assist the trier of fact (Judge, Jury, Arbitrator, etc.) in interpreting the evidence.

It must be noted, that a forensic accountant should be used in the process of settling a case before incurring the costs of trial. Very often, a meeting between opposing experts can resolve many of the areas of potential disagreement. At worst, the scope of issues to be litigated can be greatly reduced. The result is not a greater chance of success but elimination of unnecessary legal and accounting costs for the client.

About the author:

Chris Hamilton is a partner with the CPA firm of Arxis Financial, Inc., in Simi Valley. He is a member of the California Society of Certified Public Accountants (Litigation Services Committee), and the American Institute of Certified Public Accountants. Mr. Hamilton is a Certified Public Accountant, a Certified Fraud Examiner, a Certified Valuation Analyst, and a Diplomat of the American Board of Forensic Accounting. He can be reached at ph. 805-306-7890 or chamilton@arxisgroup.com.