

In this section we're going to talk about negotiating collaboratively and when to walk away.

Clint: How would an entrepreneur figure out if a deal is just so bad that they have to walk away?

Brad: Walking away is one that you use only when things are bad and it's important to know what your alternative is. There's a concept called BATNA, Best Alternative To a Negotiated Agreement, which is what your plan B is, what your other fallback options are. Do you have an alternative?

If you don't have an alternative, using a walk away threat in a negotiation is a very dangerous thing. If you come back voluntarily then you've lost all of your negotiating leverage. If you walk away and the other party comes back and tries to counter and compromise, then the walk away threat was effective.

If you don't have a BATNA well defined before you execute the walk away threat, you're in a very risky position. The dynamics of when the terms are so bad that you should walk away really come back down to your own sense of what you are willing to accept.

When you enter a negotiation, you should always know what your worst accepted point is going to be. If you define what you want in your mind and you define what your line is, at which if anything crosses the line you're done, before you start negotiating it's much easier to understand when you're reaching that point clearly.

Clint: What would be some examples of BATNAs that entrepreneurs could develop in this situation?

Brad: The most important thing is to have multiple options. If you're negotiating with someone to lead an investment in your company, having other term sheets on the table or having other investors who are expressing interest in investing in your company are key.

A bad case would be if you have a lead investor and you've got two other investors who potentially could have been lead investors, but you've now introduced them all to each other before you've gotten to a deal.

All of a sudden, if you walk away from the lead investor, who you signaled to the other investors was going to be the lead, and you go back to the other two investors and say, "Well, we're not going to use that person for the lead, but we want you to lead." while you have a potential to get to a good place, you're stacking the deck against you.

The best way to protect yourself in a negotiation and give yourself the most leverage is to have multiple alternatives.

Clint: Let's say I'm an entrepreneur and I'm in a situation where I just need to walk away. What advice would you have for me so that I walk away in a quality way that allows for a future deal down the road?

Brad: I think the most important thing is to be direct and be transparent when you're walking away. Be as non-emotional as you can, recognizing that lots of deals just don't work out. If you get to a place where you have decided you don't want to do something, articulating that to the investor in a way that is clear and direct gets you there.

Let me give you an example of that. I was involved in an early-stage financing as one of the investors. I was not the lead investor. There was another investor who was the lead investor. That lead investor and the co-lead investor invited me into the financing.

The lead investor negotiated the term sheet with the entrepreneur. My comment to the entrepreneur and to the lead investor was I was basically comfortable of supporting the negotiation. The lead investor asked for some terms that were very overreaching in the context of a seed investment. The CEO didn't want to accept those terms. He pushed back.

The lead investor came back and said, "Well, we have to have these terms for us, even if the other investors don't have to have these terms." At which point, the entrepreneur reached out to the co-investors, the other investors including me, and said, "I don't feel good about this. I don't want to do this deal."

My reaction as a co-investor was, "I'm happy to do this investment without those terms. Those terms aren't important to me." The entrepreneur went back to the lead investor and said, "The other investors are willing to do this deal without those terms. I can't accept those terms."

The lead investor said, "Well, I can't do the deal without those terms, so if you have to have those terms I don't want to participate." The entrepreneur said, "Okay." and we went on and closed the deal with the other two investors.

In that particular case, the entrepreneur knew that his back-up case was that the two of us would invest instead of all three of us. He was very clear with the lead investor about what was objectionable and he gave the lead investor multiple chances to back off what was objectionable. The lead investor in this

case chose not to, in which case the entrepreneur said, “Okay, I don’t want you involved.”

The relationship was preserved. It was clear. It was direct. It was relatively unemotional. There was a little bit of heat around the discussion as there often are, but it was relatively unemotional. In the end, I think everyone respected each for the dynamics. I don’t fault the lead investor for insisting on the terms that, again my, for this kind of a deal were overreaching.

I don’t think that investor holds any reservation about potentially doing something with the other investors again. That investor has been supportive of the entrepreneur even though he wasn’t an investor. That openness in the context of the negotiation when you walk away from something, and how you comport yourself is really playing a multiplayer game in this case.

The entrepreneur could have easily said, “I’m offended by your terms. I don’t want to work with you. Goodbye.” and then gone and closed the deal with the other two of us, but instead he was very clear about what path he was going down with this investor before he decided to go down that path.

Clint: Questions?

Student: From the entrepreneur’s perspective, how do you know if walking away is worth the risk?

Brad: I think it’s hard to ever know specifically. This is why having a BATNA is so important, knowing what your plan after you walk away is before you walk away. By the way, the plan after you walk away is, “I’m done. I don’t have a deal. I can’t do anything.”

I think the worst thing you could do is forget when you’re doing an investment, it’s the beginning of a long-term relationship. If you don’t feel good about things at the beginning of the long-term relationship, you’re not setting a good tone for the relationship. The time at which you should walk away is less the theatrics of trying to win a negotiating point and more the case that simply what is being asked is unacceptable to you. You just don’t want to live with it.

It breaks into two things. One is around the specific negotiating point where you are basically saying, “I can’t do it this way, but I’d still like to work with you.” The other is, “No, actually I just don’t want to work with you anymore.” Those are both valid perspectives. It’s important to know which one of those you’re doing.

If you're negotiating and you're using the walk away threat as part of the negotiation, it's a very different dynamic than if you're really walking away. An example that I would give of this is recently in a completely different context, I was involved in a conversation where I basically said, "I don't want to do this."

I made a decision that I wasn't going to do it and I was done before I entered into the discussion. I still have a relationship with the people that I communicated that with and that relationship is one where I was as clear as I could have been about why I didn't want to engage going forward.

They were interested in continuing to engage going forward and that's fine. I'm happy to have the conversation, but I was very clear about why I was walking away from the long term relationship in that dynamic.

It's useful to always leave the door open because you never know where that goes in the context of the negotiation, but at the same time it's important to have clarity yourself.