

IDEAS

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ASK ALAN | BY ALAN FRIEDMAN

BANKRUPTCY IS RARELY THE ANSWER

Here's the blatantly obvious: The U.S. economy is struggling, and in 2008, U.S. retailers had their worst holiday season in 35 years. The Federal Government has reported that we've been in a recession since December 2007. No kidding.

But everything is relative. I don't think we're entering another Great Depression, as there are governmental systems and financial tools to prevent that. President Obama is attempting to improve our monetary and fiscal policies by bringing back the financial leaders who helped get us out of the recession in the early '90s. And the Federal Reserve has helped small- and medium-sized businesses by aggressively lowering the Fed Funds Rate over the past year and a half. Frankly, these measures needed to be taken, given the financial failure of several major lending institutions and the stock market's drop.

But the rate cuts and bailouts, in my opinion, won't be enough to stop the down-



ward spiral in the short-term. There will be more retail store closings, more layoffs and probably increased litigation due to loan defaults, fraudulent financial statements and bad investment advice. These troubles, coupled with people buying less or not buying at all, could keep our economy down for at least another year. But as with all bad economies that force out the weak, those who can hold on by improving their business operations and modifying or even overhauling their business models will flourish when our economy turns around. And it

will turn around.

So what can we do now? Even if we're able to reinvent ourselves over the next year, we probably need more capital, bank loans and/or supplier credit to get through the dark days ahead. These factors are causing many small business owners to freak out and jump to the conclusion that filing for bankruptcy is their only answer. This is misguided. I want to offer three things to consider before resorting to declaring bankruptcy — potentially the biggest mistake you could make.

Fact: Stress and worry don't make anything better, only worse. If you're like most small business owners, you're worried about running out of money to pay your employees on time. So you start thinking about solutions, and when answers don't come easily, you start asking yourself a million questions.

Is bankruptcy the right answer? Is your attorney and/or accountant giving the right advice? Should you pay payroll taxes before paying bank loans? What happens

when the Internal Revenue Service or another taxing authority padlocks the door? Should you tell vendors what's really going on with your cash flow and inability to pay them? Will they stop shipping to you?

The problem with worrying about all of these issues is that it's taking away time you could be spending on saving your company. It's a vicious cycle — the worrying stops you from being productive, which causes more things to worry about. This, in turn, causes your business to decline further, which causes even more worry and less action. So stop worrying!

Fact: Bankruptcy lawyers have some answers but not all of them. I once heard a client in Texas call bankruptcy lawyers "buzzards in three-piece suits." Of the companies that file for Chapter 11 bankruptcy, only one in 10 survives the process, and the one lucky company survives because it has a ton of cash.

But as you might guess, most companies that file for Chapter 11 don't have much cash, and what little they have

usually gets spent on attorney fees. With little cash, the business owner becomes tired of fighting creditors every day. Within the next few months, the company runs out of cash completely. The creditors' attorney, who the bankrupt company also has to pay for, then files a motion to convert the Chapter 11 into a Chapter 7 liquidation bankruptcy. The judge has no choice but to order the company's liquidation, as it has no cash in the bank.

But that's not all. Most small business owners have personally guaranteed some of the corporate debts, such as bank loans and vendor credit lines. So, angry bankers, creditors and investors sue the business owner until he or she has no choice but to file personal

bankruptcy. The moral of this story: Filing Chapter 11 is seldom the best choice.

Fact: Innocent mistakes often kill troubled companies. You're probably not an expert in crisis management, so you're certain to make honest but ultimately dumb mistakes while trying to bring your business above water. Do you know what to do, for instance, when a sheriff seizes office equipment or vehicles you're leasing? The bank calls your loan? You can't make the rent payment? The IRS padlocks your door? You're out of cash after depositing a big customer check? A creditor is asking you to make good on your personal guarantee? Your primary vendor won't ship you any more product and is now suing you for payment?

You can imagine all the problems for which you don't have answers. Unfortunately, when you decide wrong, you could get yourself in worse trouble and, ultimately, have to shut your doors and pay creditors out of your own pocket.

Now, you need to know who to call *before* the wolves start knocking at your door. Do call your corporate lawyer, your accountant, your banker and, yes, the credit managers of your largest suppliers for their advice and help. While it's always better to contact these people before you're in the thick of a cash-flow crisis, don't stick your head in the sand, even if you're in over your head. (That's the worst thing you can do.) You'd be surprised how much these people want to help

you. They often need your business to survive, too.

Stop worrying about things beyond your control. Don't immediately jump to the bankruptcy option when times get tough. Start seeking help for financial matters beyond your knowledge and experience. As my dad used to tell me, "What we all want in life is to be happy. Happiness comes from good judgment. Good judgment comes from experience, and experience comes from making mistakes." My addendum to my father's advice: While you're learning from the mistakes you're bound to make, at least try not to make big ones. **MI**

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