

# The Case of the Dueling Appraisers

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We have been involved in dozens of disputes in which each side retained a business appraiser and the two resulting opinions differed sufficiently that no negotiated settlement was immediately feasible. Some of these cases involved actual litigation, some involved arbitration or mediation, and others were handled outside of these processes.

Through long experience with such situations, we have found that the best practice is for each appraiser to receive and have the opportunity to review and critique in writing the report of his or her counterpart. They then exchange critiques and are given the opportunity to revise their opinions. Sometimes this is sufficient for them to reach agreement, or to reduce the valuation difference to an amount small enough to facilitate resolution. In other cases, the valuations will still differ greatly because they rest on different assumptions, some of which may be outside the purview of the appraiser's expertise (as an example, whether discounts for lack of control and lack of marketability apply according to state statute. This is an issue for attorneys and judges.) In still other cases, the services of a third appraiser can be utilized: the third appraiser may mediate or arbitrate the valuation dispute according to the desires of the parties.

What we have found most unproductive is for the disputants to, in effect, simply ask the appraisers to negotiate a compromise. This is because credentialed, ethical appraisers have a responsibility to act independently, and to advocate only for the validity of their opinions, not their clients' causes. By negotiating, they are being asked to do the latter, and to disavow their independence. This may work with two appraisers who know, respect, and trust each other and can negotiate in strictest confidence, but it is highly risky absent those conditions. Another contributing complexity may be differing levels of expertise; a highly qualified appraiser may not be willing to cooperate with one whose ability, as demonstrated by an inferior work product, is questionable.

Valuations play a part in transactions, taxation, and litigation. For additional information or advice on a current situation, please do not hesitate to call.