

# Homicide: The Game

Presents

## Painseeker

### “Tracking Terror Trax”

by David Vanderhoff

At Hinshaw & Grunthal, many of my contemporaries each serve a dozen or so clients while assisting in various research-related projects for the partners. I, on the other hand, have the luxury of serving only three clients. Two of my clients are minor companies with minimal maintenance requirements. They are not glamorous projects nor were they intended to be. They are actually a cover so other attorneys at H&G cannot question my workload based on my client count. Having three clients is enough to stay under the corporate radar. Not that it could be called into question. The partners have chosen to award me these two easy clients as a sign of respect for my third client.

That third client is Cain International. In 1995, when their new president announced he would be looking for new representation for his company, the partners at H&G put out dozens of feelers through several intermediaries. They viewed it as an appropriate and time-tested strategy for first contact with a potential new client. When I learned of their interest, I walked into Larry Hinshaw’s office and volunteered to bring in Cain International by myself. I was immediately rebuffed and informed of his efforts, but I persisted. I noted that their new president, Henry Cain, II, was not a conventional CEO. He would appreciate candor and a reliance on people with an ability to quickly and accurately assess situations and plot a course of action. He preferred to think of corporations as military operations, aggression was rewarded and subtlety was a sign of weakness. If he received our communications through intermediaries, we would be perceived as weak and dismissed out of hand. When questioned by Mr. Hinshaw how I could so easily evaluate a CEO who had not been on the job for three months, I told him. Henry Jr. and I were college roommates. If I was given the proper authority by H&G, I could bring in a Fortune 100 company without entering into a furious bidding war. Immediately, my work load was distributed among my co-workers and I was dispatched to acquire Cain International as a client.

Henry Jr. was more than happy to utilize my services. After drinks and negotiations, I was invited to become part of his personal advance strategy team. His idea was to take all reasonable ideas from Cain's Board of Directors and senior management and subject them to his advance strategy team. The team, under Henry Jr.'s direct supervision, would evaluate all ideas and recommend specific action. The objective was to allow Henry Jr. to rapidly determine a complete course of action after receiving a good suggestion. It required a team of experts in several different departments. My responsibility was to evaluate potential new acquisitions. The research requirements would be massive. It was more than I had intended to accept. My bosses noted that my role in the company would be greatly enhanced. I was encouraged. At the time I wasn't even thirty and I had been given the "fast track to partner" tease. I accepted Cain's invitation and sealed a bond between our companies. H&G instantly gained wealth and status through my alliance with Cain International. I worked extended hours in a prized position for a good friend. As contract attorneys go, it was a dream job.

In the second quarter of 1999, Henry Jr. was determined to enter the entertainment industry. When he first suggested it, many of us in the advance team wondered if he was serious. Everyone knew that the instability of the industry and the high cost of development could cause a company-wide avalanche. If an expensive venture went south, it would have an effect on the rest of Cain's enterprises, which would in turn cause the stock to plummet unnecessarily. We all knew an investment in entertainment was a high-risk situation. Unfortunately for us, Henry Jr. knew it, too. It was bad because once he had evaluated a project and made his decision, further discussion was futile. This was the first instance with Henry Jr. where he had brought us his decision first, then asked us to fulfill the request. It was clearly a personal choice for him. He wanted to be able to say that he was in the entertainment industry. His pride was responsible for this decision.

Rather than obstruct his determined decision, the advance team recommended an approach calculated to minimize initial risk. Our recommendation was calculated to be won on the spreadsheet. We would not have to fight Henry Jr. We left that to the Board of Directors. Our recommendation was to phase in our entertainment venture by making

calculated and limited investments in undervalued or outright failing companies with significant assets. It required less capital to purchase a current company than it would to start up our own ventures. In addition, if Cain chose to divest itself of its entertainment holdings, the ventures could be sold or completely liquidated with a minimal loss or perhaps even a minor profit.

There was one hole in our logic and Henry Jr. tore into it immediately. He challenged us to find companies which fit our limited scope. We accepted his challenge with a heavy heart. We knew it could be a catch-22. The companies to be purchased had to be good enough for Henry Jr., but bad enough to be acquired with a minimal investment. For a company to meet this criteria, it had to have a base level name recognition and had to be known to be mismanaged while not overtly so. Getting a company that was obviously bleeding cash was a financial tiger trap. The company would drag any white knight into the hole with the tiger.

The advance team began shuffling through different possible ventures. Movies were out of the question due to the expense. Radio offered little upside per investment dollar. Television and production areas were lucrative, but would require time to develop it into a profitable venture. In the end, we decided upon the recording industry. Specifically, we believed that a mismanaged independent record company would be the most suitable target for an initial raid into the entertainment industry. The principal reason was the ready-made liquidity of the companies. If we decided to liquidate the company, we could attempt to sell the contracts of the talent already signed to the labels. This way the talent could also double as an insurance policy. Emboldened by this strategy, we began looking for a match.

In July of 1999, Cain's West Coast Headquarters found Terror Trax sitting under their noses in Los Angeles. Terror Trax was a haven for what we hoped would be the next phase of alternative music. At the time, their evaluation of Terror Trax was that it was being mildly mismanaged. Terror Trax was talent heavy and product light. Based on some innuendoes, they also suspected that the head of the company, Ken Kincaid, was bluffing his way through the company's financials. However, we did not follow up on it at the time because doing so would have alerted him of our interest before we were

ready to propose a buyout. Cain was satisfied because it met our parameters. The advance team was satisfied because it would not jeopardize the company's long-term financial status.

When we pitched the complete package to him, Henry Jr. went for it from the start. He liked the name. We recommended our price and he was on even harder. He took the project back to the West Coast Headquarters and had them pitch a buyout to Ken Kincaid.

A week later I received a call from an irate Henry Jr. Ken Kincaid was not interested in selling his company under any circumstances. Henry Jr. kept yelling at me, "Didn't you check THAT out? Isn't that part of YOUR job?" While it did get under my skin, I was angry with the West Coast offices. They had come at Ken Kincaid with the maximum offer, leaving no room for negotiation. Apparently, once Kincaid realized he was talking to Cain International, he took our offer as an insult. Everyone knew he was posturing for a higher price. Henry Jr. had even OK'd an increase of 20% over our maximum recommended bid to get the deal done. Kincaid balked at that, too. Kincaid told the Cain representative that he had no reason to sell. He believed that he was sitting on a gold mine with one of his acts. He accused Cain International of industrial sabotage. He said that we learned about his discovery and were trying to buy him off before his price would escalate. The whole idea had been botched and everyone on the advance team was being held accountable by Henry Jr. In an effort to get our credibility back, I asked Henry Jr. to let me look deeper into the project. I hoped that Ken Kincaid was overplaying his hand. If I could find something to confirm my suspicions, Cain could regain the upper hand.

While everyone considered the purchase of Terror Trax a dead deal, I maintained a discreet distance. I used contacts at Cain's West Coast Headquarters to begin discreet conversations with several banks in the area. I let slip that Cain International was looking to purchase a small recording company. I was sure not to mention which one. It was enough to chum the water, I did not need to engage in any financial chicanery. Bankers began calling me with information about many of the independent labels. They would call me to let me know that Company X had applied for a loan for new offices or

something along those lines. I would receive the news and move on. I kept waiting for one piece of news, and in October I received it.

I received a call from one of my informants, telling me that Ken Kincaid of Terror Trax had applied for a short-term loan to maintain operating expenses. He was looking to repay a six-month loan until his latest acquisition could begin recording and complete a guaranteed gold album. The banker noted Mr. Kincaid's desperation. He also noted that his demeanor was "less than professional" and that he may have entered the bank in "an altered state." The banker informed me that due to the combination of these circumstances and a critical review of his company's assets, he could not recommend a loan. I thanked him and asked that he keep me informed if he heard anything else. When I hung up the phone, I knew we would acquire Terror Trax. Rather than leap into action, however, I held firm at my discreet distance. Three months earlier, Ken Kincaid chose to screw with Cain International. Now it was my opportunity to return the favor.

The first week of November brought another call from another banker. She informed me that Mr. Kincaid was now looking for a one-year loan for operating expenses for Terror Trax. Now I was ready to respond. I went back to Henry Jr. and reminded him of the initial Terror Trax fiasco. Before he could get angry, I informed him of the current situation. As I expected, Henry Jr. was pleased. He was pleased in a way that let me know how personally he had taken Ken Kincaid's negotiating tactics. He thanked me and we updated the previous offer to reflect the date change.

A week later I received a call from Henry Jr. He asked me to revise the contract to reflect a new price. I asked him how much more he had agreed to pay.

"More?, " he asked, "Why on earth would you think I would pay more? I got him for 70% of our original offer."

My jaw dropped open, "70%?"

“I originally offered him 80%, but he wants to stay on as a figurehead. No real power. So I knocked him down another 10%. If he stays with the company long enough, he’ll make it back. Besides, it smooths the transition for us. None of the talent is going to abandon a label where the previous management is still on the job. He’s powerless, but still on the job.”

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That is how I helped Cain International acquire Terror Trax. It is also how I can claim, as I previously stated, that I do not know Ken Kincaid. I never met him, but I have heard about him. I know that he is untrustworthy, but to this day I still do not know one thing: Why did Terror Trax become financially insolvent just after my sister signed with Terror Trax? At the time I did not know that she was part of their talent roster, and maybe it is entirely coincidental, but I have to ask the question. I have seen his bravado on this site for far too long. Now I want to see him answer something straight for once.

I am waiting.