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## SUZANNE BESSETTE- SMITH

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# SUZANNE BESSETTE- SMITH

## Balancing Intensity and Composure in Complex Real Estate Transactions

by Mike Bailey



Blessed with clarity of thought and the critical ability to formulate a winning strategy, Suzanne Bessette-Smith has reached the pinnacle in the practice of real estate law.

Those who know her are not surprised. She has always demonstrated a clear vision of what she wants, both for herself and her clients, and she fashions a clear path to get there.

Bessette-Smith, a co-chair of the real estate group at Barack Ferrazzano Kirschbaum & Nagelberg LLP, Chicago, knew at an early age what she wanted in life.

“I decided when I was 12 that I was going to law school. I don’t know why,” she says. “But I never wavered from that. This was 1968, and people thought it was ‘cute’ that I wanted to be a lawyer. But my parents said I could be anything I wanted to be, and I wanted to be a lawyer. No one ever tried to talk me out of it.”

Judging by how her career has unfolded, by the time any such conversation ended, she would have thoroughly convinced any doubter.

“I have a law degree from Georgetown,” says

Richard Previdi, operating managing partner for the Alliance HSP group, a \$500 million boutique real estate operating company. “I can’t fix a car, but I know a good lawyer when I see one. And Suzanne is the best I have ever worked with.”

Previdi, with degrees in economics, law and business, has had the opportunity to work with a lot of lawyers throughout his career. He says Bessette-Smith’s professionalism and high ethical standards set her apart.

“She worked with my founding partners, and they wanted me to work with her so they could assess whether I knew what I was doing,” he laughs. “She is loyal, responsive, very smart and ethical.”

Many lawyers are, but what really sets her apart, Previdi says, is her calm demeanor.

“Suzanne is fair and reasonable, and that reflects well on us as a buyer. She is meticulous as a drafter, and she will hold to positions aggressively but fairly. She never alienates the buyer.

“We did a loan with someone one time and I said I would never work with them again because of their lawyer. If we reach an impasse, she will make suggestions about how we might be able to get the deal done. She makes sure we are protected and that we understand the risks. From there, it’s a business decision. She’s a dealmaker.”

Once committed to the legal profession, Bessette-Smith wasted no time. She graduated from Schaumburg High School in three years, having entered as a member of the school’s first freshman class.

“I just went straight through,” she remembers. “I knew what I wanted to do with my life, so why waste time in high school?” Her parents agreed to the expedited high school graduation only if she would commute to college for her first year. She agreed and chose North Central College in Naperville.

“I’ve always been more comfortable being a big fish in a small pond,” she says, adding that she loved the closeness and enriching



experience North Central offered. She met her husband, David, there during her senior year. The couple later married in the college chapel. She moved on to the University of Illinois at Champaign-Urbana for law school.

Once there, she began to explore the areas of law that interested her. “We would study cases, and many of the people wanted to litigate. I was one of those. If you had suggested real estate law to me, I would have said it sounded boring.” But her interests began to evolve because of the lengthy and frustrating nature of litigation.

#### **PARTNERING WITH HOWARD NAGELBERG**

After graduation, she took a job in a small general practice law firm in Chicago. “So, it was 1980 and the judge would call me ‘sweetie’ or ‘honey.’ I am petite in stature, and I looked very young. I did not like the way cases dragged on forever. And you could have the law on your side and still lose the case.”

One of her partners had a small real estate practice that was growing, and she did some work with him and enjoyed it. Howard Nagelberg became her partner for her entire career.

“He was a mentor and friend. He believed in me and put me out there to do deals. I miss him,” she says of Nagelberg who no longer practices.

Did clients balk at having a young female attorney fashion complex, multimillion-dollar deals? “I’m not really sure if there was any resistance,” she says. “I was too naïve to wonder. But Howard didn’t really give the clients any choice. He would tell them Suzanne would take care of them.”

Kimberly Wachen has worked both as co-counsel and opposing counsel with Bessette-Smith and came to admire her on many levels. “She’s just fantastic,” she says. “She can take a complex problem, solve it and explain it all in plain English. She just sees how to get to the endgame.”

But that clarity is only one of her many attributes, Wachen says. “These are deals worth hundreds of millions of dollars and can involve some testy people. She always keeps her cool and wins them over with this can-do attitude. She’s the kind of person you want to do a deal with. It’s unusual to be at her level and not be abrasive. She is super smart, professional and the go-to attorney for a lot of people. Her repeat business reflects that. She does it in a way that people appreciate—on time and on budget.”

Angst, Bessette-Smith says, is the internal fire that drives her. “I have a lot of angst, and I think that is a good attribute for a lawyer. That’s how I’m made. I care and I worry and I feel pressure that way, not because I’m a woman.”

After Bessette-Smith had worked about 1½

years at her initial firm, Nagelberg decided to start his own boutique real estate firm; she left with him in the early 1980s. By the early ’90s, real estate was in the doldrums and so was the practice of real estate law.

“We were doing bankruptcies and loan workouts, and we knew we needed to merge with a firm that had a fuller practice,” she says. Although the merger did not work out, she and Nagelberg stayed long enough to complete an initial public offering (IPO) for a client (First Industrial Realty Trust) and then left to join what became Barack Ferrazzano Kirschbaum & Nagelberg, LLP.

“That worked out very well,” she says. “This firm has a very strong real estate group with about 40 lawyers. There are a lot of very smart people here. We have a national practice, and we can do anything for our clients.”

#### **MOST COMPLEX DEAL OF CAREER**

That complex IPO work, while nettlesome with multifaceted legal requirements and layers of bureaucracy, was so well done that First Industrial followed Nagelberg and her to Barack Ferrazzano Kirschbaum & Nagelberg, LLP and has remained a client for 25 years.

The initial development of the trust was complicated and multidimensional, involving not just property acquisition, but corporate tax law, Securities and Exchange Commission regulations, and a variety of qualifiers before the company could issue an initial public offering. It was the most complex and difficult deal of her career to date.

“To be a publicly traded company, you have to own a lot of properties,” she says. “The client had a portfolio of properties in the Midwest which created a basis for a rust belt industrial real estate investment trust (REIT). But it lacked enough properties to go public. So, they had to buy up a lot more to get that critical mass they needed.”

And so, through Bessette-Smith and her team, the company purchased portfolios of properties from multiple sellers, including one in Minneapolis-St. Paul from the Opus Group, which sold them 20 different properties. For purposes of the IPO, First Industrial also purchased properties in Detroit, some of which had tenants with long-term leases, as well as properties in Illinois, Missouri and Wisconsin.

“They got that critical mass by purchasing hundreds of properties,” a balancing act that only a critical thinker like Bessette-Smith could resolve since First Industrial did not have the financing to buy all the properties until the IPO.

“We had to juggle the properties to keep them under contract while we were trying to create and finance the public company,” she recalls. “We managed to buy them all on the same day that the company went public. It

was amazing.”

It was not, however, without problems. “We had (to stall, extend agreements and in some cases, put up more earnest money) while we were finishing everything. A few had contingencies, some were seller loans and some were new financing. There were literally hundreds of loans to be repaid out of the closing process. At the end, payoff letters were incorrect. Some sellers got no money. Some got more than they were supposed to receive. There were lots of mistakes made that we had to sort out and correct.”

She calls it the most complicated transaction she has ever been involved in. Additionally, the company received loans from large banks that were then securitized on Wall Street (sold in bundles to pension funds and hedge funds, for example), which required a whole other layer of legal work. Much of this was performed by New York law firms coordinating with Bessette-Smith.

“I remember we went to New York and met with the senior partner (of the firm that was handling that aspect of this mammoth transaction.) He would ask me about this property or that property, and I would have the information off the top of my head. Finally, he stopped and looked at me and said, ‘How in the (heck) do you do that?’ I didn’t think anything of it. It was my job.”

#### **STEEP PRICE OF SUCCESS**

Today, First Industrial Realty Group has 66 million square feet of industrial space spread across the country. Nearly 1,200 clients from Fortune 500 companies to small commercial businesses lease property in one or more of their 472 buildings. The company has a market cap of \$6.5 billion, and it all started with Suzanne Bessette-Smith and her team’s uncanny ability to unravel complicated issues and find resolutions to multilayered problems.

Kim Aquino, managing partner of The Shidler Group in Honolulu, Hawaii, has overseen investments of more than \$1.3 billion in real estate acquisitions. She still marvels at the job Bessette-Smith and her team did 25 years ago to pull together the First Industrial IPO. The Shidler Group was a founding investor who helped form the company and installed one of its partners as the company’s first CEO with an office in Chicago.

“We owned or controlled about 20 properties. To form this REIT, we had to acquire 200 more,” she recalls.

Because the REIT was not yet public and they did not want to close on the properties until it was, the partnership used letters of intent, earnest money and other methods to keep them under control, including offering partnership units and cash at closing, she says.

“It is unheard of to keep control of

200 properties for a year in order to close concurrently with the IPO of a publicly traded REIT. Suzanne helped us with every aspect of the acquisitions, including due diligence. Frankly, the chances of failure were much higher than the chances of success. It was Suzanne's detail management that held all this together."

For Bessette-Smith, success often comes at a steep price. "Everyone wants to finish deals by the end of the year because many of these firms have to report quarterly numbers. So, in December 1995, I was doing significant deals for three clients. Throughout that month, I flew in circles between Dallas, New York, Philadelphia and Chicago. It was the craziest December ever. Now, a lot of that work can be done electronically or through emails, but we didn't have that back then."

Although she still travels for her clients, that aspect of her job has eased somewhat. But the time away from home and family, coupled with the long hours and pressure to perform, led her to discourage her daughter from pursuing a career in law.

"It's a hard life. I talked both my daughter and son-in-law out of going into law. It's a very demanding job. It's great if you want that kind of life, but not everybody does. It seems like if someone can't decide what to do, they go to law school. My husband, David, practiced for 1½ years and did not enjoy it. Plus, kids today come out of law school with so much debt."

#### FOUNDATIONS OF HER PRACTICE

Still, for her, it is a life she loves. "There is a huge adrenaline rush when you close a deal," she says. "I view the whole transaction as a puzzle, and I really enjoy solving problems. All the client wants is to close the deal. In litigation, both sides are mad at each other. In transactional work, if the deal closes, everyone is happy."

Bessette-Smith knows she has not reached the pinnacle of her profession all on her own. In addition to Nagelberg, whose faith in her was an inspiration and an opportunity to prove herself, her husband of 39 years was the foundation of her success.

"David was a stay-at-home dad. He put his career aspirations aside to be home with our children. He has always given me such tremendous support. When you have two practicing lawyers in a family, it is very hard to make it work. It is demanding at home, and it is difficult to decide whose career should advance."

She and David built their family through adoption, with children Zoe and Ari just weeks apart in age. Like many parents who travel for work, she developed a system to compensate for the absences.

"If I'm gone one or two nights, I don't bring home gifts. Three or more nights, I got them



At the June 2019 wedding of her daughter. From left: husband David Smith, Bessette-Smith, daughter Zoe Smith, her husband Logan Konkel, son Ari Smith

something. A lot of times I would be running through the airport at the last minute trying to find something to bring home. One time, Ari asked me if I could make the presents not be something from the airport. So, I got smart and followed the advice of other people in the firm. I bought a lot of presents and kept them at the house, and that way I had something nice for them," she laughs.

In addition to navigating the intricate challenges of taking a REIT public, Bessette-Smith also does extensive work in hotel acquisitions for a variety of clients.

"In the last three years, my practice has included a concentration in buying and financing franchised hotels," she says, "as well as office and industrial buildings and multifamily projects."

Her team structures ground leases, as well as layers of financing, including mortgage loans with institutional lenders as well as those lenders that will securitize their loans, and secondary mezzanine financing, a riskier proposition for a lender because it is in second position to the mortgage loan and thus requires a higher interest rate. But it can allow a client to maximize financing opportunities.

#### PROVIDING WHAT CLIENTS WANT

Her skill and reputation have put her in such great demand that in 2019 she completed deals in California, Texas, Arizona, Colorado, Minnesota, Florida, Maryland, Virginia, Missouri, Ohio, Georgia, Pennsylvania and Washington.

Today, her primary clients are based in Chicago, Boston, the Philadelphia area, New York and Honolulu, owning hotels, office and industrial buildings, and multifamily projects.

"Oftentimes, clients will purchase a building that is fully leased and are thus looking for cash flow or the opportunity to increase cash flow. So, they want to know how much they can borrow and what kind of loan they can get. Other times, they may be looking at generating additional income from a management fee," she says.

While she did not engage in many multifamily transactions for the past 20 years, her clients have asked for the service, so she now works on the huge transactions involving large apartment complexes.

Multifamily complexes are strong right now, she says, because buyers can often get financing through the Federal National Mortgage Association (known as Fannie Mae) or the Federal Home Loan Mortgage Corporation (known as Freddie Mac) at lower rates for much longer terms.

Despite the increasing pace of loan activity for investors and in some cases, speculators, Bessette-Smith does not see a parallel with the 2008–2009 crisis because lenders are more careful in how they underwrite these loans. Despite the caution, there does not seem to be a lull in investment activity.

"As long as there is money to borrow, these deals are going to happen."

Hotel purchases have ramped up in recent years as travel and occupancy rates have increased. Some of her hotel deals involve more established properties like one she completed involving a downtown Philadelphia full-service hotel. Others are limited-service chain hotels like Homewood Suites, Marriott Courtyards or Hampton Inns. Some of the hotels are acquired in joint ventures between an operating partner and an investor partner.



The joint venture may then engage a third-party property manager.

In addition to those clients, she represents others who look for build-to-suit lease opportunities involving the purchase of property, the construction of a building to certain specifications, and then a leaseback agreement. The transaction can be very difficult to put together because of a lot of moving parts and various financing components.

Besette-Smith finds a lot of satisfaction in solving problems so a deal can close. While she likes the puzzle-solving aspect, she also appreciates the relatively short life cycle of her work. She finishes projects in a few months instead of the years that civil and criminal litigation can take.

Through the stress, complications and high-powered negotiations, her demeanor never changes, says Lucy Burns, Aquino's assistant. "Suzanne is one of the most responsive, even-tempered and emotionally intelligent people I have ever known," she says. "No matter how much she manages, she's always pleasant and never loses her temper. She has the ability to

stay calm and be constructive no matter what. I have worked with a lot of lawyers and that quality is rare. She also has extraordinary integrity."

Despite the travel and long hours, Besette-Smith enjoys a satisfying family life that included watching her children grow to become productive, happy people with lives of their own. Their family enjoyed a second home in Hilton Head for years and took family vacations. Now that her children are 27, she has time for herself.

"I'm in two book clubs, and I practice yoga here at the office at 7 a.m. I have a yoga instructor who comes here to work with me. It gets me going for the day."

But her true love, despite all the thousands of miles she logged for clients, is travel.

"David doesn't like to travel, so we have an agreement. I am going and he can certainly come along if he wants to. I want to travel as much as I can for as long as I can. But I have no interest in beach vacations. I've been to China, Iceland, South Africa, Prague, Budapest, Vienna, Portugal, Paris and the Galapagos. I've

been doing this for the last seven years, and I love it. Sometimes, I go with friends. Once in a while, I can get Zoe to go with me."

#### FIGHTING FOR INSURANCE MANDATE

While her achievements in the field of real estate law are enviable, one of her most satisfying accomplishments came in another area. She was part of a national infertility organization whose acronym is RESOLVE where she met two other lawyers who fashioned a statewide push in Illinois to force insurance companies to cover infertility treatments.

Vicky Bush-Joseph, now retired, recalls the arduous but ultimately rewarding drive to provide infertility treatment insurance coverage for infertile couples trying to conceive.

"Suzanne, myself and another attorney lobbied legislators and drafted legislation to force insurance companies to provide that coverage. Retiring state senator John Cullerton was our sponsor, and he really kept it going against a lot of opposition. He'd tack it on to another bill to keep it alive, and he worked behind the scenes for us," she recalls.

"The insurance industry was really opposed to this, and we found out later that they referred to us as the three b\*\*\*\* lawyers from Illinois."

Legislators were eventually won over even though some of them initially declined to support it because "it isn't life-threatening." The Illinois Department of Insurance eventually came around, she says, but she and Besette-Smith had to remain active in crafting the regulations to implement the law. Initially, the law would have been gutted because of the way those regulations were written.

"What is the saying?" Bush-Joseph asks. "You should never watch laws or sausages being made."

With Cullerton's help, the bill eventually overcame opposition both from the insurance industry and the state chamber of commerce.

"The insurance industry and the state chamber of commerce were not happy about this," Besette-Smith remembers. "The chamber opposed it because businesses would be required to include it in their company's insurance, and it would cost more money. There was a lot of political gamesmanship. It was quite an experience."

Then-Gov. Jim Edgar signed it into law in 1991, calling it the biggest grassroots effort he had ever seen. He also included it in benefits for state employees, and he and his wife, Brenda, came to the celebration when it was finally, officially a state mandate.

"I've been very lucky. I've had a wonderful career. I've enjoyed the people, my family and my clients. I've been so fortunate.

"But," she says with a mischievous grin, "I have no plans to retire." ■

