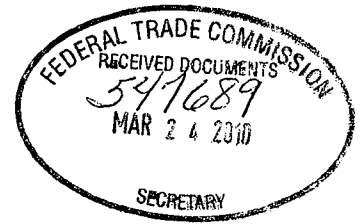


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

ORIGINAL



In the Matter of

**GEMTRONICS, INC.,
a corporation, and**

**WILLIAM H. ISELY,
individually and as the owner
of Gemtronics, Inc.**

PUBLIC

DOCKET NO. 9330

COMPLAINT COUNSEL'S STATUS REPORT REGARDING EAJA SETTLEMENT

Pursuant to the Court's the status hearing on March 2, 2010, Complaint Counsel herein reports on the status of the settlement of Respondents' Equal Access to Justice Act ("EAJA") Application.

The parties have held substantive settlement discussions, but have failed to reach a final settlement. Although the parties did not arrive at a final settlement figure, as set forth in detail herein, the two figures proffered by each party are not that divergent – less that \$30,000 apart. Complaint Counsel is confident that this matter is capable of being settled beyond the current impasse. At this juncture, however, Complaint Counsel believes that mediation by a third party would facilitate a final resolution of the EAJA claim. To that end, Complaint Counsel respectfully requests that this Court appoint a mediator to facilitate further discussion and settlement of this claim.

I. SETTLEMENT DISCUSSIONS TO DATE

A. Respondents' Offer

During the parties' discussions, Respondents offered to settle their EAJA claim for

\$ 62,458.91. Respondents' settlement amount is broken down as follows:

Fees

\$	57,971.00	The EAJA-capped post-complaint attorney's fees
	-903.00	5% deduction from attorney's charges for secretarial functions ¹
	-1,751.83	5% deduction from attorney's charges that were block billed
	-1,613.04	5% deduction from attorney's charges that were vague or contained no subject matter

Expenses

\$	6,347.72	Total post-complaint attorney expenses comprised of:
		\$ 2,533.02 Trial, deposition transcripts
		715.20 Attorney's travel expenses
		1,425.00 7126 copies @ \$.20/page
		47.00 158 fax copies @ \$.30/page
		1,627.50 Postage, Fed Ex, offsite printing
	1,161.83	Reimbursement for Isely's travel to trial in DC (in addition to attorney's travel expenses billed above)
	1,246.23	Reimbursement for Isely's personal home office expenses
<u>Total</u>	\$ 62,458.91	Respondents' settlement of EAJA claim

B. Complaint Counsel's Counter Offer

In settlement discussions, Respondents represented to Complaint Counsel that they were not willing to entertain any other settlement figure but the one that they proffered. Nonetheless, Complaint Counsel offered the settlement figure of \$35,000, which was rejected by

¹ These deduction figures in the parties' separate offers are derived as a percentage off of the total aggregate figures found for these categories of objections by Complaint Counsel as listed in Complaint Counsel's Amended Attachment to its Response in Support of its Answer in Opposition to Respondents' Application for an Award under the Equal Access to Justice Act, deemed submitted per this Court's Order Confirming Bench Rulings on Pending Motions issued March 4, 2010.

Respondents. Complaint Counsel's settlement amount is broken down as follows:

Fees

\$	57,971.00	The EAJA-capped post-complaint attorney's fees
	-5,800.00	Approximate 50% deduction from attorney's charges for secretarial functions
	-3,550.00	Approximate 50% deduction from attorney's charges related to undue discovery delay and obstruction of discovery
	-2,200.00	Approximate 75% deduction from attorney's charges related to excessive client conferences
	-8,900.00	Approximate 75% deduction from attorney's charges that were block billed
	-8,200.00	Approximate 75% deduction from attorney's charges that were vague or contained no subject matter

Expenses

\$	6350.00	Total post-complaint attorney expenses (rounded up from Respondents' figure)
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Total \$ 35,000.00 Complaint Counsel's settlement of EAJA claim

II. COMPLAINT COUNSEL'S REQUEST FOR MEDIATION

As this Court is aware, Respondents are now *pro se*. The settlement discussions have, unfortunately, become acrimonious at various times and have now reached an impasse. As noted above, there is less than \$30,000² between Respondents' offer and Complaint Counsel's offer. A supervised settlement conference presided over by a qualified, certified, and neutral mediator could provide a needed alternative mechanism for the resolution of this dispute. Introducing a neutral third party has the potential to promote conciliation, compromise, and the ultimate

² \$27,458.91 is the exact difference between the parties' settlement figures.

settlement of this EAJA action. A mediator could readily facilitate the settlement of this matter by suggesting alternatives, analyzing issues, conducting private caucuses, and, especially, keeping order. Given the small gap in settlement figures between the parties, this matter may be resolved expeditiously through the introduction of a mediator, and thus, Complaint Counsel respectfully requests an order of this Court invoking mediation in this matter.

III. CONCLUSION

The EAJA settlement discussions have reached an impasse and the parties have failed to reach a final settlement. However, the settlement figures proffered by each party are less than \$30,000 apart. Accordingly, Complaint Counsel respectfully requests that this Court appoint a mediator to facilitate the final resolution of this matter.

Respectfully submitted,



Barbara E. Bolton
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Dated: March 24, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this date, I filed and served the attached:

COMPLAINT COUNSEL'S STATUS REPORT REGARDING EAJA SETTLEMENT

The original and one (1) paper copy via overnight delivery and one (1) electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, D.C. 20580
email: secretary@ftc.gov

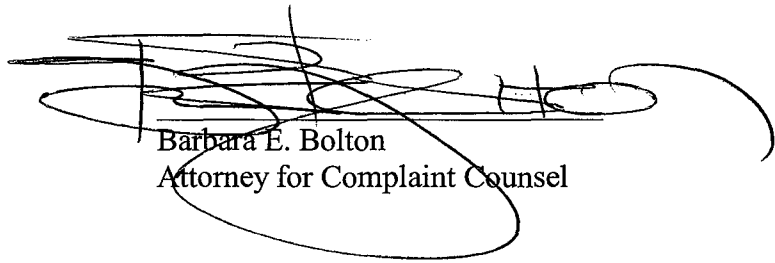
One (1) electronic copy via email and four (4) paper copies via overnight mail delivery to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., N.W. Room H-112
Washington, D.C. 20580
email: oalj@ftc.gov

One (1) electronic copy via email and one (1) paper copy via overnight delivery to:

William H. Isely
964 Walnut Creek Rd.
Franklin, NC 28734
email: b.isely@ftpmailbox.com

Dated: March 24, 2010



Barbara E. Bolton
Attorney for Complaint Counsel