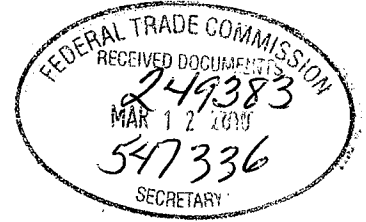


Original
William H. Isely, Respondent
964 Walnut Creek Rd.
Franklin, NC, 28734

b.isely@ftpmailbox.com
Tel/FAX 828-369-7590
March 10, 2010

ORIGINAL

Honorable D. Michael Chappell
Chief Administrative Law Judge (Acting)
Federal Trade Commission
H113
600 Pennsylvania Ave, NW
Washington DC, 20580



Re: Gemtronics, Inc and William H. Isely, FTC Docket No 9330

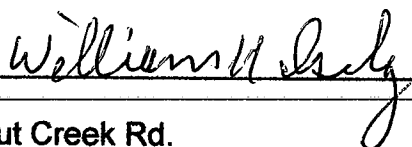
Enclosed is my:

RESPONDENT'S REPLY TO THE COMPAINT COUNSEL'S AMENDMENTS OF FEB 1 AND FEB 3 TO HER ANSWER IN OPPOSITION TO RESPONDENT'S APPLICATION FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

His Honor, Chief Judge Chappell, the ALJ, gave leave for this reply in his bench ruling during the teleconference of March 2, 2010, with reply to be filed by March 12, 2010

Your consideration will be greatly appreciated.

Respectively Submitted

William H. Isely  March 10, 2010

964 Walnut Creek Rd.
Franklin NC, 28734

828-369-7590 b.isely@ftpmailbox.com

CC: Ms. Barbara E. Bolton
Complaint Counsel

Honorable Donald S. Clark
Secretary FTC

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

**COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosc**

PUBLIC

In the Matter of
GEMTRONICS INC
a corporation and,
WILLIAM H. ISELY

DOCKET NO. 9330

RESPONDENT'S REPLY TO THE COMPLAINT COUNSEL'S AMENDMENTS OF FEB 1 AND FEB 3 TO HER ANSWER IN OPPOSITION TO RESPONDENT'S APPLICATION FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

1. BACKGROUND

Complaint Counsel had filed an Answer to Respondent's application for an award of Attorney's fees and expenses in opposition to the award on Jan 6th 2010 and Respondent had filed his Reply to the Answer on Jan 21st , 2010. On Feb 1st , 2010 Complaint Counsel filed for leave and simultaneously filed one Amendment to her Answer of Jan 6th , and another on Feb 3rd.

Respondent filed a motion for leave Feb. 2nd , 2010 to respond to the Complaint Counsel's motions and two motions in opposition to the Complaint Counsel's amendments, largely on the grounds that the Respondent had already filed his Reply. In the Teleconference of March 2nd , 2010, by bench ruling, the ALJ accepted the Complaint Counsel's motions and denied all of the Respondent's except the one asking for leave which was ruled due by March 12. Respondent filed a Motion On Feb 28th , 2010, for Sanctions against the Complaint Counsel, currently pending.

2. THE RESPONDENT DESERVES AN AWARD FOR ATTORNEY FEES AND EXPENSES

The Complaint Counsel was not Substantially Justified in bringing the Complaint because she knew from the beginning that another party was responsible for the actions she charged.

- ◆ The Complaint against the Respondent was dismissed.
- ◆ The Respondent's assets were less than two million dollars.
- ◆ The Complaint Counsel unreasonably protracted the proceedings rather than the Respondent by insisting he commit an unlawful act in exchange for a settlement. An award would not be unjust but rather the reverse.,
- ◆ In the discovery stage of the proceedings the Respondent did not withhold any discovery associated with the complaint, which alleged action Complaint Counsel says impeded the proceedings. Rather, the Complaint Counsel impeded the proceedings by insisting she be provided with discovery that did not exist or was not germane to the Complaint.

As will be shown in the body of this Reply, the Complaint Counsel's allegations that the documentation of the Respondents Attorney's Fees and Expenses are inadequate is a matter of judgment and use of a subjective measurement standard of adequacy of documentation.

- ◆ That Respondent's personal expenses in support of the proceedings should be allowed is an ongoing claim of the Respondent..
- ◆ In his claim, as a first gesture towards a negotiated settlement for an award, the Respondent has withdrawn his claim for destruction of his business by actions of the FTC, his claim for pre-complaint attorney fees and expenses, and his claim for an actual Attorney Fees rate.
- ◆ Respondents will be seeking Enhanced Attorneys Fees, justified by the significant increase in Attorneys Fees since the cap was established and the special factor for the Respondent's Attorney's understanding of the intricate aspects of the internet in order to prevail. Enhanced Attorneys Fees will be pursued by the Respondent in a separate action.

3. INTRODUCTION TO THIS REPLY

In his original Reply the Respondent countered the arguments the Complaint Counsel had made in her original Answer which used generalities against some items of Attorney Fees. In her amendments, the Complaint counsel; provided a 40 page table using the same generalities. and herein the Respondent will show that in large part her analyses are not valid.. Respondent will organize his response by types of criticism he finds to be faulty.

4. ATTORNEY'S FEES AND PARALEGAL COSTS

a Today's Computerized Office – Complaint Counsel's view of today's Attorney's office does not take into account that in the last 20 years computers have revolutionized office practice with regard to the near elimination of clerical labor. She would seem to think that clerical labor is involved in every step where it is now the exception. No longer do attorney's and paralegals start their products first with a longhand draft that goes through a number of typing steps before the finished product emerges. That when something is printed it is somehow a long clerical process, instead of the click on a computer mouse. It is no longer the case as before when a clerical had to attend a printing machine to watch for paper jams and dripping ink.

~~In today's law office, if there is a clerical person, she or he is probably shared by a number of attorneys, mainly to fill the function of a receptionist. (People are not yet comfortable being greeted by a computer). Very minor clerical tasks today may come at the end of a significant task such as typing a shipping label after composing a long legal document. After reviewing the Attorney's cost document, the Respondent estimates that the total of clerical tasks in terms of time might amount to no more than two percent.~~

b. Improper Definition of Block Billing – The Complaint Counsel has taken the attitude that when more than one phrase is used or if more than one element of a task is described that it becomes block billing. Most often the elements are inter-related and they cannot be treated as

separate tasks, like doing one but not the other. An example she has labeled block billing is an entry made on 3-11-2009 by MVH. The task is described adequately by the first five words with the remainder giving more detail of the elements. Had he stopped with the first five words she would probably have accepted it, but the added greater description makes it blocked billing in her mind. The item reads, "Prepared Motion for Summary Decision and Supporting Memorandum. Prepared Statement of Undisputed Facts". When continuing on different elements of the same basic task for the same client, it is not clear what is gained by not block billing where just the time to log each separate element would make the work less efficient.

There is also the situation where the person is multi-tasking and the only accurate description would be to list both tasks together. One might be composing a document and need a reference for a footnote. The efficient procedure would be to stop while the thoughts involved were clear in mind, and, without closing the document, switch the computer to a search mode and, on finding the reference, paste it into the document. An accurate description of the task would be both document generation and law research together. In prior times the tasks would be separated, one being making a trip to the library. There are many occasions of multi-tasking, such as composing and sending an email while waiting for a lengthy printout of a document

~~c. Send, Reviewing, and Receiving E-mail.~~ – From her objections, Complaint Counsel seems to view E-mail activity as objectionable and in this case excessive. E-mail as a form of communication is as valid as conferencing, phoning, and exchanging letters, and has the distinct advantage of being direct so as not to need a clerical component. It is probably the most efficient if real time interaction requiring simultaneous participation is not necessary.

Since Respondent's Counsel and his paralegal were 300 miles distant and only one conference in the law office was held over a 20 month period, emailing was a significant way of communication. A check of Respondent's computer shows a total of 368 emails were exchanged

between himself and his lawyer's office in the first six months of year 2009, some between the Respondent and his Counsel, some with the paralegal.

d. Delaying And Impeding Proceedings – The Complaint Counsel has objected to all the charges in the time period from 12-16-2008 to 2-23-2009 due to undue delay by the Respondent which she claims occurred in this time period. Undue delay by Respondent is alleged to be from refusing in negotiations to settle and by not providing requested disclosure. Any delays were actually caused by actions of the Complaint Counsel. Every version of her proposed settlements required the Respondent to send a letter to his past customers containing fraudulent and misleading information which the Respondent could not accept. Regarding discovery, discovery was withheld that was not germane to the subject of the Complaint and also being requests for discovery that did not exist. The respondent actually provided some information in discovery which was outside the subject of the complaint as an incentive to get a reasonable settlement.

The delay charge is also not credible, considering that during the so called delay period there were at least 8 contacts between the Counsels, and Respondent's Counsel made it known, when he could, what was preventing the Respondent from Settling. These dates were 12-1-2008, 12-10-2008, 12-30-2008, 1-6-2009, 1-12-2009, 1-13-2009, 1-29-2009, & 2-6-2009.

~~**e. Declaring items out of scope**~~ – Complaint Counsel declared many cost items out of scope when they were actually properly charged. Respondent agrees with one such charge, corresponding with the FDA on 7-14-2008 and 7-15-2008. This occurred before the serving of the Complaint. Respondent's Attorney charged 2.1 hours for this action. Subsequent contacts with the FDA by Respondent's Attorney were proper charges since all other contacts with the FDA were attempts to arrange for Phillip Campbell of the FDA to be a witness for the Respondent.

The contact with the reporter of the Macon County News was for the purpose of determining whether he had information he had gained in his conversation with Phillip Campbell of the FDA which would be useful in Respondent's trial, possibly as a witness.

Contact with Respondent's son, Larry Isely, was for several purposes. Larry lives in Raleigh and did Respondent's Counsel. Early on it was to arrange a conference in Raleigh between the Respondent and Matthew Van Horn. Since Larry Isely is a Computer Engineer familiar with the internet, he was used as a resource by Respondent's Counsel regarding Website ownership. One of these contacts took place on 11-3-2008,, and another on 12-22-2008

f. Declaring Respondent's Counsel Expended Excessive Effort – The Complaint

Counsel states that the effort expended by Respondent's Counsel was excessive to achieve a favorable result. This is just a judgment call since she has not offered a standard as to what is enough effort or too much. The effort required will vary from one attorney to another depending on the attorney's previous experience with similar cases. It would also depend on the attorney's approach, whether to go for settlement or to win at trial. Then the effort needed will also vary with the effort brought to bear by the Complaint Counsel. A fairness judgment could more easily be made by comparing the resources expended by the Complaint Counsel to those on the record that were expended by the Respondent who was billed 284.7 Attorney hours and 164.2 paralegal hours. . For fairness, the Complaint Counsel's hours should be significantly less, since she has been involved in this type of litigation on a regular basis.

~~g. The Complaint Counsel Makes an Untenable "Reasonableness" Argument -- She~~

says in essence Respondent or his Counsel must prove they are not lying about the fee expenditures. They must prove that work charged was not devoted to another client. This is the reverse of what is generally accepted. Respondent's Counsel at the time the cost information was submitted was an officer of the court and submitted the figures under his signature. Without some evidence of corruption associated with his office, there is no reason to question the accuracy of the expenditures being allocated to the Respondent's case. An understanding of the use of reasonableness as cited from other cases would be to compare, for example, the effort to prepare for trial compared to other known cases. Reasonableness calls on the individual exercising it to

draw on his experience not beliefs or imagination. The Complaint counsel has not met the burden she is charged with. She has labeled costs excessive without giving any reason or comparison, just an unsupported judgment. If that is an accepted method of evaluating costs, no cost whatever could pass such criticism.

h. Complaint Counsel said Settlement Offers Were Generous When they Were Not.

On the surface the settlement offer of no admission of liability and no monetary relief appeared very attractive and the Respondent wanted to accept them since his legal fees only totaled \$7,000 at the time of the Complaint. (see Fig 2) It was obvious they would be much greater even if he prevailed at trial. Even his counsel urged acceptance. Settlement came with a bitter pill the Complaint counsel does not mention. Respondent was required to send a letter to all his past customers which contained information making it an unlawful act, making it appear that he was a partner of the company Takesun and signing for them. While still a very high price, the Respondent was not prepared to commit an unlawful act in exchange for a settlement.

5. ATTORNEY EXPENSES

The Complaint Counsel has dismissed some Attorney Expenses as unallowable because ~~she states they can't be associated with the tasks that were being performed at the time.~~ This is not true, because Attorney Expenses are shown by month and the Attorney fees and Paralegal costs are shown by specific days, so the Attorney costs can be related to the tasks performed in the month they are listed. For the convenience of analysis, the Attorney costs are repeated by month in association with major tasks being performed. For overall tasks also see Figure 1.

Fig 1. Respondent Counsel's Monthly Invoiced Legal Fees and Expenses

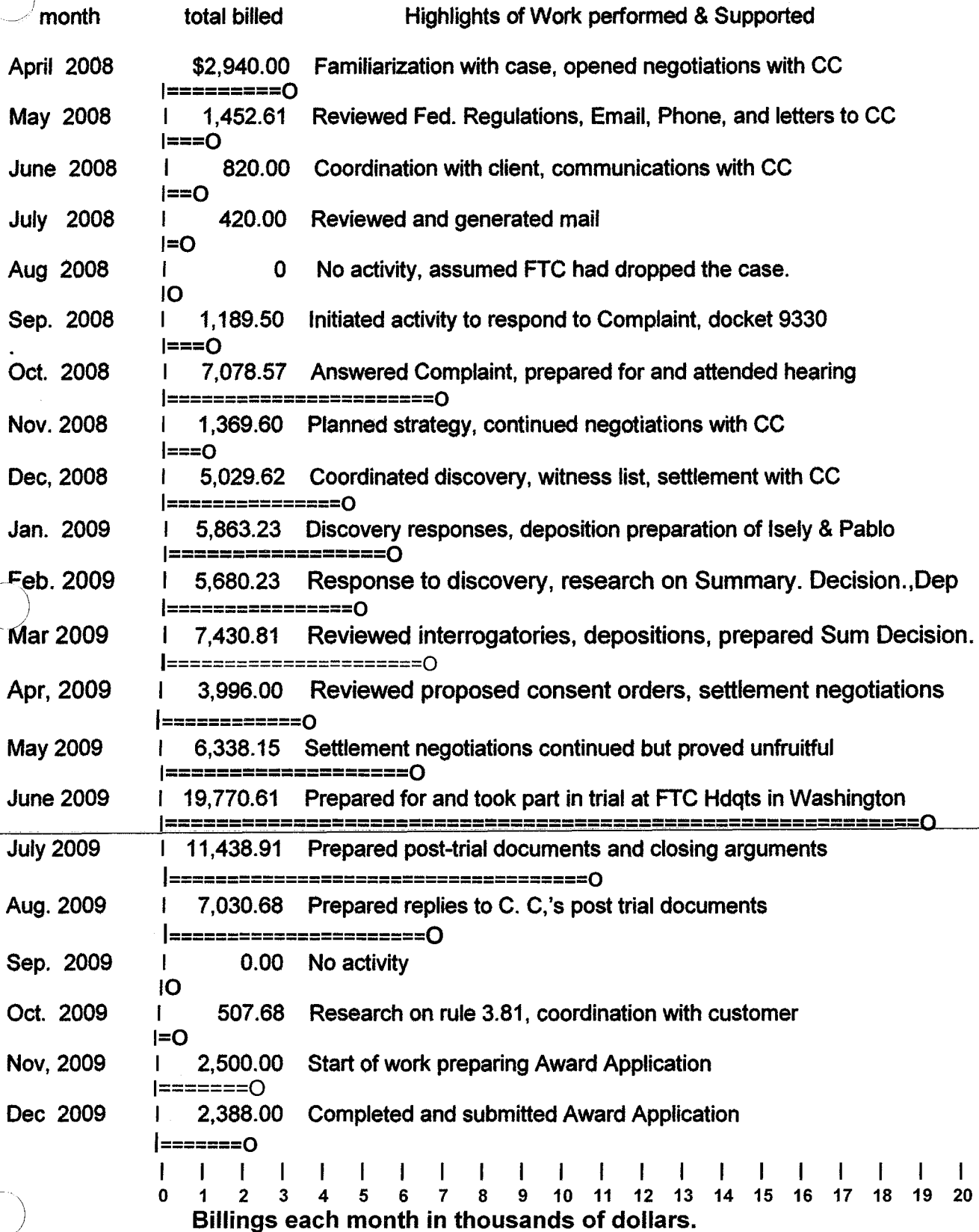
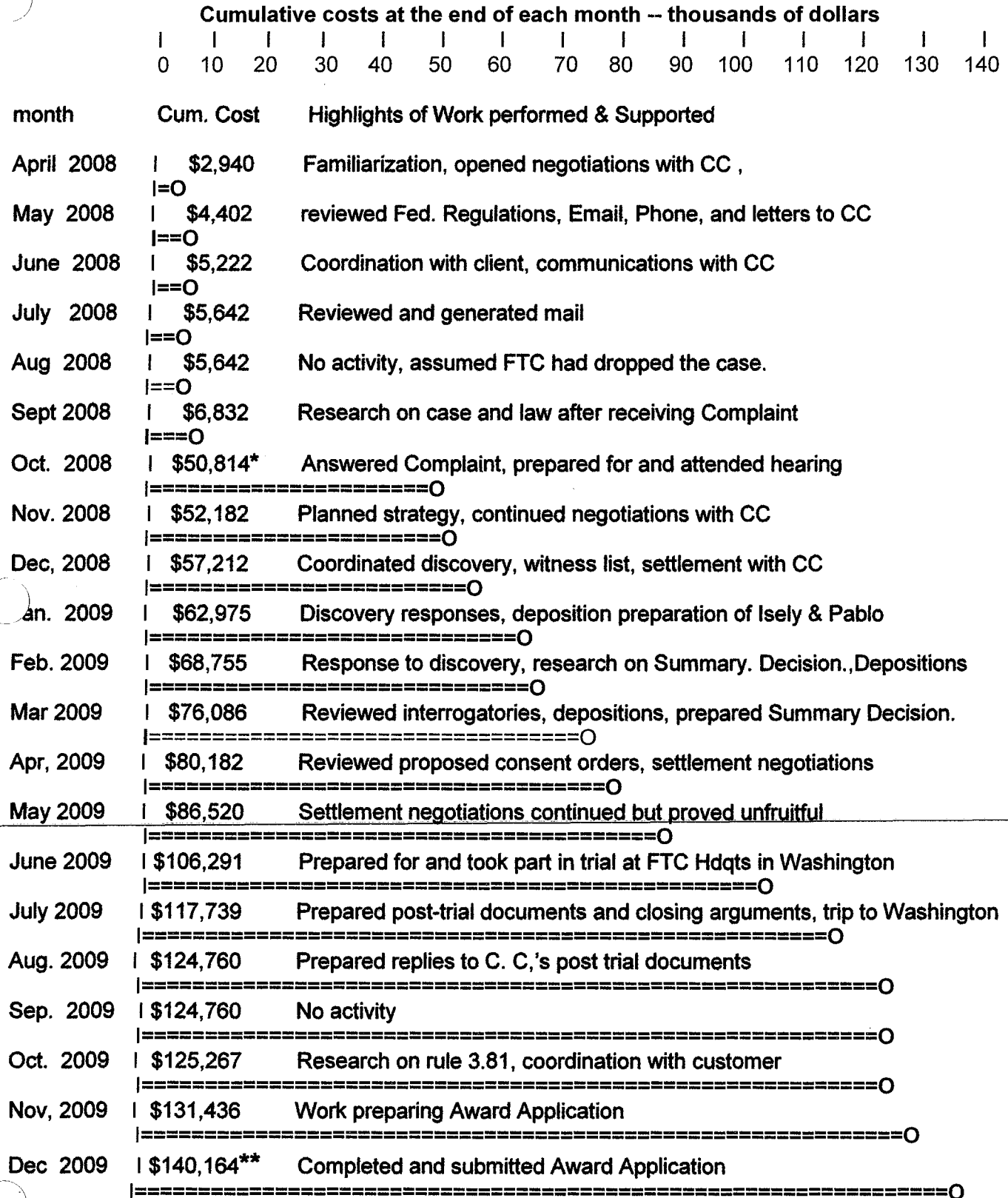


Fig 2. Respondent's Cumulative Costs in Support of Settlement Discussions



Loss of Business added on Oct 15, 2008

X Estimated debt when Application was submitted

** Respondent's expenses added on Dec 1, 200

(ATTORNEY TASKS AND EXPENSES BY MONTH CONTINUED)

September, 2008

Tasks performed: Reviewed Complaint and Code of Federal Regulations

Attorney costs: Copies (58 @ .25) \$14.50

Subtotal \$14.50

b. October. 2008.

Tasks performed: Prepared & mailed draft of Response to Complaint to FTC

Prepared Initial Disclosure Filing

Prepare for and attended Conference at FTC

Attorney costs:

Copies (24 @ .25)	\$ 6.00
Copies (79 @ .25)	\$ 19.75
UPS Delivery Charges	\$ 35.90
Postage	\$.59
Copies (26 @ .25)	\$ 6.50
Postage	\$ 2.36
Fax (15 @ \$1.00)	\$ 15.00
Postage	\$ 1.18
Copies (15 @ .25)	\$ 3.75
Fax (7 @ 1.00)	\$ 7.00
Postage	\$.59

SUB-TOTAL: \$ 98.62

Travel to Washington, D.C. – October 27-28, 2008:

Roundtrip Mileage to Washington, D.C. (524 miles @ .37)	\$ 193.88
Taxicab	\$ 22.50
Computer Services (Lincoln Square, Washington, D.C.)	\$ 22.00
Gasoline (Washington, D.C.)	\$ 67.88
Food	\$ 28.92
Ramada Inn—South	\$ 130.77

SUB-TOTAL: \$ 465.95

c. November 2008

Tasks Performed: Planned strategy with Client

Began work on Motion for Summary Decision

Attorney costs:

\$ 0.00

d. December 2008

Tasks Performed: Created Witness List for Customer Review

Coordinated financial Questionnaire With Client

Prepared and Delivered Discovery Request

Telecon with Barbara Bolton re: Settlement

Attorney costs:

Copies (5 @ .25)	\$ 1.25
Facsimile (6 pp. @ 1.00)	\$ 6.00
Postage	\$.42
Copies (64 @ .25)	\$ 6.00
Postage	\$ 1.68
Facsimile (15 pp. @ 1.00)	\$ 15.00
Copies (45 @ .25)	\$ 11.25
Postage	\$.76
Postage	\$.76

SUB-TOTAL:

\$ 53.12

e. January 2009

Tasks Performed: Discovery Responses

Deposition Preparations for Isely and Velasco

Attorney Costs:

Fax (1 @ 1.00)	\$ 1.00
Fax (11 @ 1.00)	\$ 11.00
Fax (1 @ 1.00)	\$ 1.00
Postage	\$.42
Copies (42 @ .25)	\$ 10.50
UPS Charges	\$ 72.08
Copies (270 @ .25)	\$ 67.50
Copies (240 @ .25)	\$ 60.00
UPS Charges	\$ 95.41
Postage	\$ 2.11
UPS Charge	\$ 41.33
Postage	\$.59
Copies (90 @ .25)	\$ 22.50
Fax (6 @ 1.00)	\$ 6.00

Fax (1 @ 1.00)	\$	1.00
Postage	\$.42

SUB-TOTAL: \$ 392.86

f. February 2009

Tasks Performed: Response to Discovery Requests Finalized
Further Prepared for Summary Decision
Attended Depositions of Isely and Velasco

Attorney Costs:

Postage	\$	1.60
Copies (24 @ .25)	\$	6.00
Facsimile (37 @ 1.00)	\$	37.00
Copies (74 @ .25)	\$	18.50
Copies (50 @ .25)	\$	12.50
Postage	\$	3.27
Facsimile (4 @ 1.00)	\$	4.00
Postage	\$	3.27
Copies (46 @ .25)	\$	11.50
Postage	\$.59
UPS Charges	\$	48.28
UPS Charges	\$	74.63

SUB-TOTAL: \$ 221.14

Trip to Ashville, NC:

Hotel:	\$	99.53
Travel: 318 miles @ .42	\$	133.56
Gasoline	\$	80.00
Food	\$	40.00

SUB-TOTAL: \$ 353.09

g. March 2009

Tasks Performed: Reviewed Depositions
Reviewed Answers to Interrogatories
Prepared Motion for Summary Decision and Memorandum

Attorney costs:

UPS Charge	\$	4.83
Copies (1655 @ .25)	\$	413.75
Federal Express	\$	120.85
International Minute Press (Exhibits -- PDF CD-Roms)	\$	43.97
UPS Charge	\$	9.40
Copies (74 @ .25)	\$	18.50
Copies (11 @ .25)	\$	2.75
Postage	\$.76

SUB-TOTAL: \$ 614.81

h. April 2009

Tasks Performed: Reviewed Proposed Consent Orders

Negotiated Proposed Settlement With Complaint Counsel

Coordinated Potential Settlement with Client

Attorney costs \$ 0,00

i. May 2009

Tasks Performed: Prepared Final Proposed Exhibit and Witness List

Continued Settlement Negotiations

Prepared and Transmitted Opposition to FTC's Summary Decision

Attorney costs:

Facsimile (5 @ 1.00)	\$	5.00
UPS Charges	\$	46.80
Copies (27 @ .25)	\$	6.75
UPS Charges	\$	67.05
Copies (36 @ .25)	\$	9.00
UPS Charges	\$	67.05
Copies (48 @ .25)	\$	12.00
Copies (54 @ .25)	\$	13.50

SUB-TOTAL: \$ 227.15

j. June 2009

Tasks Performed: Prepared Pre-Trial Brief

Prepared Respondents Trial Exhibits and Other Documents

Prepared for and Participated in 2 Day Trial in Washington DC

Attorney costs:

Copies (165 @ .25)	\$ 41.25
UPS Charges	\$ 67.72
Copies (383 @ .25)	\$ 95.75
Copies (1,118 @ .25)	\$ 279.50
Fax (3 @ 1.00)	\$ 3.00
International Minute Press (Trial Exhibits)	\$ 365.39

SUB-TOTAL: \$ 852.61

Travel Costs:

Raleigh, NC to Washington, D. C. Round Trip: \$ 120.00

SUB-TOTAL: \$ 120.00

k. July 2009

Tasks Performed: Prepared Post Trial documents

Prepared Closing Arguments and Participated in them

Attorney costs

Fax (6 @ 1.00)	\$ 6.00
Copies (6 @ .25)	\$ 1.50
Copies (174 @ .25)	\$ 43.50
Fedex-Kinkos	\$ 12.68
UPS Charges	\$ 68.73
Fedex-Kinkos	\$ 70.00
Copies (288 @ .25)	\$ 72.00

SUB-TOTAL \$274.41

Traveled to Washington DC, Round Trip

Food & Gas to Washington, D.C \$ 150.00

SUB-TOTAL: \$ 150.00

l. Aug 2009

Tasks Performed: Evaluated Post Trial Situation with Client

Reviewed Transcripts From Trial

Prepared and Replied to Complaint Counsel's Post Trial Brief

Attorney costs:

UPS Charges (8/4/2009)	\$	71.42
FedEx Kinko's Binding/Copy charges	\$	64.51
Copies (320 @ .25)	\$	80.00
Copies (31 @ .25)	\$	7.75

SUB-TOTAL: \$ 223.68

m. September 2009 No activity

n. October 2009

Tasks Performed: Researched Possible FTC subsequent Procedures

Researched Specific Process for Application for Award

Engaged in Planning Strategy With Client

Attorney costs:

Copies (186 @ .25)	\$	46.50
Postage	\$	2.58
Fax (31 @ 1.00)	\$	31.00
Fax (9 @ 1.00)	\$	<u>9.00</u>

SUB-TOTAL: \$ 89.08

o. November & December 2009

Tasks Performed: Obtained Personal Data From Client For Use in Application

~~Researched Fed. Regulations Re: Application for An Award~~

Began Application for Award for Attorney's Fees and Expenses

Completed and Delivered Award for Attorney's Fees and Expenses

Attorney costs:

Copies (34 @ .25)	\$	8.50
Copies (8 @ .25)	\$	2.00
Postage	\$	1.56
Copies (54 @ .25)	\$	13.50
Copies (54 @ .25)	\$	13.50
Turner Printing Service	\$	41.89
UPS Charges	\$	81.36
Staples Charges	\$	20.33
Copies (970 @ .25)	\$	<u>242.50</u>

UPS Charges \$ 66.88

SUB-TOTAL \$ 492.02

Proceeding Transcripts

For the Record Inc charge for Isely and Velasco dep. \$ 744.10

For the Record Inc charge for copy of trial transcript \$ 1,497.76

For the Record Inc charge for closing arguments trans. \$ 291.36

SUB-TOTAL \$ 2,552.22

Total of Attorney expenses billed to Respondent \$7,186.69

Total billed to Respondent of Attorney Fees and Expenses from April 2, 2008 \$97,403.30

Respectfully Submitted:

GEMTRONICS, INC &

WILLIAM H. ISELY, Respondents

By William H. Isely This 10th day of March, 2010

William H. Isely
964 Walnut Creek Rd.
Franklin, NC, 28734

Respondent Isely certifies that to his best knowledge all the information contained in this document is correct and truthful.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this

RESPONDENT'S REPLY TO THE COMPLAINT COUNSEL'S AMENDMENTS OF FEB 1 AND FEB 3 TO HER ANSWER IN OPPOSITION TO RESPONDENT'S APPLICATION FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

In the above entitled action upon all other parties to this cause by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the attorney or attorneys for the parties as listed below.

One (1) e-mail copy and two (2) paper copies served by United States mail to

Honorable D. Michael Chappell
Chief Administrative Law Judge (Acting)
Federal Trade Commission, H113
600 Pennsylvania Ave., NW
Washington, D.C. 20580

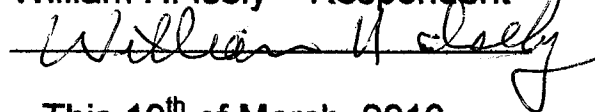
the original and one (1) paper copy via United States mail delivery and one (1) electronic copy via e-mail:

Honorable Donald S. Clark
Secretary
Federal Trade Commission H135
600 Pennsylvania Ave., NW
Washington, D.C. 20580

One (1) electronic copy via e-mail and one (1) paper copy via United States mail delivery to:

Ms. Barbara E. Bolton-
FTC, .. Suite 1500
225 Peachtree Street, N.E
Atlanta, GA 30303

William H. Isely – Respondent



This 10th of March, 2010