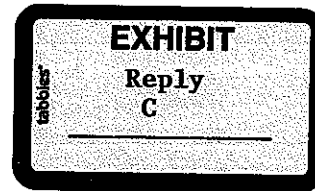


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO



The Direct Marketing Association,)

Plaintiff,)

vs.)

Roxy Huber, in her capacity as)
Executive Director, Colorado)
Department of Revenue,)

Defendant.)

Civil Action No:
10-CV-01546-
REB-CBS

DEPOSITION OF DIETER GEORGE GABLE

Phoenix, Arizona

November 17, 2010

Prepared by:
Meri Coash, RMR, CRR
Realtime Reporter
Certified Reporter #50327

(Copy)



1 A. I believe it's the California Corporation
2 Commission, and what it is, is a consumer or corporation
3 finance lender, is what CFL stands for.

4 When they cleared up who should do what and
5 under what license, that's when we relicensed ourselves
6 under DRE, and we had a DRE license, and the CFL issued a
7 desist and refrain to all CFL licensees to ensure they all
8 knew that nobody could operate with that anymore.

9 Q. Your recollection is it was the CFL that did
10 that?

11 A. Well, the thrust was that you could not use a CFL
12 license anymore. I don't know who ultimately issued that
13 order. Somebody at the state of California issued that
14 order.

15 Q. Let me make sure I understand by reframing the
16 question.

17 Have you ever been ordered by any state
18 agency to desist and refrain from soliciting borrowers
19 and/or performing services for borrowers or lenders in
20 connection with loans secured directly or collaterally by
21 one or more liens on real property?

22 A. Yes.

23 MR. SCHAEFER: And we'll mark as the next
24 exhibit --

25 (Deposition Exhibit 109 was marked for

1 identification.)

2 MR. SCHAEFER: -- this document which has
3 been marked as Exhibit 109. And for the record, I'll
4 represent that it is an order to desist and refrain
5 entered by the Department of Real Estate of the state of
6 California directed to you, Dieter Gable, a number of
7 other individuals, all of whom were listed as dba
8 IntelliChoice Mortgage Services, LLC.

9 BY MR. SCHAEFER:

10 Q. And have you seen that document before?

11 A. I have.

12 Q. On page 1 of the order, toward the middle of the
13 paragraph of text, it indicates that "Based on that
14 investigation, the Commissioner has determined that Gable,
15 Bard, Walker, Papike, Jacobson, and Sabarra have engaged
16 in acts or practices constituting a violation of
17 Section 10130 (engaging in the business of, advertising,
18 or assuming to act as a real estate broker without first
19 obtaining a real estate license), of the California
20 Business and Professions Code (Code) and/or Section 2970
21 (requirements for advance fee agreements) and
22 Section 2972 of Title 10, Chapter 6, California Code of
23 Regulations (Regulations)."

24 Did I read that right?

25 A. I believe so.

1 Q. The date of this order -- According to the last
2 page, the order is dated July 28th, 2009. Is that
3 correct?

4 A. That is correct.

5 Q. Page 2 sets forth the department's findings of
6 fact. Do you see that?

7 A. Yes.

8 Q. Did you submit anything to the department before
9 it entered its order to contest these findings of fact?

10 MS. SCOVILLE: Object to the form.

11 Sorry. Go ahead.

12 THE WITNESS: We did not.

13 BY MR. SCHAEFER:

14 Q. How about after the order was entered?

15 A. We did not.

16 Q. Page 3 sets forth the conclusions of law of the
17 department, including in the middle of paragraph 13 there,
18 the following: "Gable, Bard, Walker, Papike, Jacobson,
19 and/or Sabarra participated in charging, collecting, and
20 accounting of advance fees, as defined in Section 1026 of
21 the Code, in a manner that was not in compliance with
22 Section 2970 and 2972 of the Regulations."

23 Did I read that right?

24 A. Yes.

25 Q. Did IntelliChoice collect fees in advance from

1 customers for services to be provided?

2 A. Yes.

3 Q. Have you sought to contest or appeal the
4 conclusions of law?

5 A. We sought advice of counsel.

6 Q. Did you file any appeal or other request for
7 review of this decision?

8 A. It was not a worthwhile effort, given the passage
9 of the state bill that, essentially, made the entire
10 industry and approach moot, as far as we were concerned.
11 And the counsel also said that --

12 MS. SCOVILLE: I'm going to actually stop
13 you right there. You probably have an attorney-client
14 relationship with them, and it's up to you whether or not
15 to waive that privilege, but you just might think about
16 whether or not you want to waive your attorney-client
17 privilege with your counsel on this matter. It's fine.
18 Go ahead. I'm just --

19 THE WITNESS: Essentially, I mean, there was
20 nothing to be gained by contesting it.

21 BY MR. SCHAEFER:

22 Q. So you did not contest it?

23 A. We did not -- Well, we did not believe it was
24 something that you could win against the state in the
25 environment and the method by which the state was acting.

1 Q. So you did not contest the order or otherwise
2 appeal?

3 A. No.

4 Q. The order at page 4 sets forth the department's
5 specific desist and refrain order. And it orders
6 IntelliChoice and you, Mr. Gable, along with the other
7 individuals named, to "Immediately desist and refrain from
8 performing any acts within the State of California for
9 which a real estate license broker license is required."
10 Is that correct?

11 A. That is correct.

12 Q. In particular, the department orders you to
13 desist and refrain from "providing and participating in
14 property management services for others and for
15 compensation unless and until you, individually, obtain an
16 appropriate license issued by the Department." Is that
17 correct?

18 A. Yes.

19 Q. Again, this is the Department of Real Estate.

20 It also orders you to desist and refrain
21 from "soliciting borrowers and/or performing services for
22 borrowers or lenders in connection with loans secured
23 directly or collaterally by one or more liens on real
24 property." Is that correct?

25 A. That is correct.

1 Q. And finally, it orders you to "Immediately desist
2 and refrain from collecting advance fees, as that term is
3 define in Section 10026 of the Code, in any form;
4 particularly with respect to loan modification, loan
5 refinance, principal reduction, foreclosure abatement or
6 short sale services, unless and until you demonstrate and
7 provide evidence satisfactory to the Commissioner that you
8 have," and then there are two conditions listed on page 5
9 of the order. Is that correct?

10 A. That is correct.

11 Q. Have you complied with or otherwise attempted to
12 provide evidence to the California Department of Real
13 Estate indicating you have complied with the two
14 conditions on page 5?

15 A. We shut down the business, so --

16 Q. So you did not?

17 A. Did not.

18 Q. Now, does this order from the Department of Real
19 Estate change your recollection at all regarding the
20 nature of the events in California or your licensure in
21 California?

22 MS. SCOVILLE: Object to the form.

23 THE WITNESS: Not at all.

24 BY MR. SCHAEFER:

25 Q. So you believe that you obtained a license in

1 California in the spring of 2009 to act as a mortgage
2 broker, a DRE license?

3 A. Yes. Honestly, you would have to -- There's a
4 whole lot of documentation you would have to look at to
5 understand how this doesn't make sense to people who were
6 going through it at the time, which is why, essentially, I
7 think the legislature finally passed that bill and said,
8 "You know what? We're not allowing it in any form with or
9 without license, with or without advance fee agreement."

10 Q. If you'll look at the first finding of fact on
11 page 2, it indicates, "At no time herein mentioned has
12 IMS" -- that's IntelliChoice Mortgage Services -- "been
13 licensed by the Department in any capacity."

14 Does that change your recollection about
15 your licensure status with the Department of Real Estate?

16 A. No. There are material errors in all of this,
17 including -- Well, like I said, you would have -- you
18 would have to have a whole bunch of information to go
19 along with this. These were churned out by the department
20 when they were shutting everything down, so there are
21 material errors throughout this.

22 Q. Did you receive a request from the Department of
23 Real Estate to submit information in connection with this
24 investigation?

25 A. I don't believe so, or I am certain we would have

1 provided facts.

2 Q. It's your belief that if we contact the
3 Department of Real Estate of the state of California, they
4 will have on file for you a DRE license number?

5 A. Probably not anymore, but they should have some
6 historical record.

7 Q. Other than this order entered by the Department
8 of Real Estate of the state of California, have you been
9 ordered by any other state agency to discontinue offering
10 any financial service in the state?

11 A. Not that I know of.

12 Q. More specifically, have you ever been ordered by
13 any state agency to discontinue the practice of offering
14 loan modification services or otherwise conducting the
15 business of a mortgage broker or loan originator in the
16 state?

17 A. Not that I know of.

18 MR. SCHAEFER: Mark as the next exhibit --
19 (Deposition Exhibit 110 was marked for
20 identification.)

21 MR. SCHAEFER: And that's Exhibit 110. The
22 document entitled "Final Order," issued by the State of
23 Washington, Department of Financial Institutions, Division
24 of Consumer Services, in the matter determining whether
25 there has been a violation of the Mortgage Broker

1 Practices Act of Washington by IntelliChoice Mortgage
2 Services, LLC; Dieter Gable, member; and Shannon Bard,
3 member.

4 BY MR. SCHAEFER:

5 Q. Have you ever seen this document before?

6 A. I don't believe so. I saw materials leading up
7 to it.

8 Q. Okay. And, in fact, if you look at the bottom
9 of -- in the middle of the paragraph on page 1, there's a
10 sentence which begins, "On May 17, 2010, the Director,
11 through Consumer Services Division Director Deborah
12 Bortner, entered a Statement of Charges and Notice of
13 Intention to Enter an Order to Cease and Desist, Prohibit
14 from Industry, Impose Fine, Order Restitution, and Collect
15 Investigation Fee (Statement of Charges)." And a little
16 further on --

17 Did I read that right?

18 A. I believe so.

19 Q. A little further on, it says that "The Statement
20 of Charges was accompanied by a cover letter dated May 18,
21 2010, a Notice of Opportunity to Defend and Opportunity
22 for Hearing, and blank Applications for Adjudicative
23 Hearing for All Respondents." Do you see that?

24 A. Yes.

25 Q. It goes on to indicate that the department sent

1 those documents by both United States first-class mail and
2 by Federal Express overnight delivery and that both the
3 Federal Express package was delivered and the first-class
4 mail was not returned. Do you see that?

5 A. Uh-huh. Yes.

6 Q. Did you receive a copy of the statement of
7 charges?

8 A. I did.

9 Q. Now, on page 2 of this order, the director of
10 financial institutions for the state of Washington entered
11 a final order in five parts. Is that correct? Do you see
12 that on page 2?

13 A. Sorry. I don't. Where are you?

14 Q. Under Final Order.

15 A. Gotcha.

16 Q. There are five parts to the Final Order. Is that
17 correct?

18 A. Yes.

19 Q. First, you and IntelliChoice Mortgage
20 Services, LLC, are ordered to cease and desist offering
21 loan modification services or otherwise conducting the
22 business of a mortgage broker or loan originator in the
23 state of Washington. Is that correct?

24 A. That is correct.

25 Q. Next, ". . . IntelliChoice Mortgage Services LLC

1 and Dieter Gable are prohibited from participation in the
2 conduct of the affairs of any mortgage broker subject to
3 licensure by the Director, in any manner, for a period of
4 five years." Is that correct?

5 A. Yes.

6 Q. Next, IntelliChoice and you are jointly and
7 severally ordered to pay a fine of \$4,000. Is that
8 correct?

9 A. As it reads here, yes.

10 Q. Has that fine been paid?

11 A. No. I have not seen this final order.

12 Q. Next, IntelliChoice and you were jointly and
13 severally ordered to pay an investigation fee of \$648. Is
14 that correct?

15 A. As it reads.

16 Q. Was that fee paid?

17 A. I have not seen this order, so no.

18 Q. And last, "Respondents IntelliChoice Mortgage
19 Services LLC and Dieter Gable are ordered to maintain
20 records in compliance with the Act and provide the
21 Department with the location of the books, records and
22 other information relating to Respondent IntelliChoice
23 Mortgage Services LLC's business, and the name, address
24 and telephone number of the individual responsible for
25 maintenance of such records in compliance with the Act."

1 participate in the call?

2 A. No.

3 Q. Did an individual named Phil Horwitz participate
4 in the call?

5 A. Roxy I would have recognized. I know that to be
6 no. You can probably throw a lot of other names at me
7 that I'm not going to know. I apologize.

8 Q. Okay. Why is it that you would be familiar with
9 Roxy Huber participating in the call?

10 A. I know her to be the executive director of the
11 Department of Revenue. Plus, obviously, she's the
12 defendant in her capacity.

13 Q. Are you -- Have you ever met Ms. Huber?

14 A. Yes.

15 Q. When was the first time you met her?

16 A. Summer of 2008.

17 Q. And in what capacity did you meet Ms. Huber?

18 A. She was at a state of Colorado lottery all-hands
19 meeting.

20 Q. Is the state of Colorado lottery administered by
21 the Department of Revenue?

22 A. It is.

23 Q. And I believe you mentioned earlier that you have
24 done work in connection with the Colorado lottery.

25 A. Yes.

1 Q. Did you have reason to interact with Ms. Huber in
2 connection with your work for the Colorado lottery?

3 A. Casually. Not in any substantive manner.

4 Q. How many times have you met her since the summer
5 of 2008?

6 A. It would have been one more all-hands meeting and
7 a number of lottery board meetings. She is one of the
8 board members, so I don't know what the number would be.
9 But, again, none of those would have been of any
10 substantive interaction.

11 Q. Why did you attend the lottery board meetings?

12 A. Because they discussed things of interest and
13 we're a significant vendor to the lottery.

14 Q. Were these public meetings that anyone could
15 attend, or were you on the agenda?

16 A. No. They were public meetings.

17 Q. Did you speak at any of these board meetings?

18 A. I don't believe so.

19 Q. Do you have an ongoing relationship with the
20 Colorado lottery?

21 A. We do -- TB Consulting does.

22 Q. What do you do for them?

23 A. We implemented our proprietary back office system
24 and provide ongoing support and services.

25 Q. Do you actually operate the back office for the

1 Colorado lottery?

2 A. No.

3 Q. Is that done by the employees of the Department
4 of Revenue?

5 A. They are lottery employees. I don't know if they
6 are technically Department of Revenue employees or not.
7 We interact with the lottery. We really, other than the
8 contract being through the Department of Revenue, don't
9 have much interaction there. So I don't know what the --
10 if there is a separation of Department of Revenue versus
11 their state employees.

12 Q. The ongoing support services that you provide,
13 are those in the nature of IT support?

14 A. Primarily.

15 Q. When you say "back office system," this is the
16 management of the lottery administration, not of the
17 lottery itself or --

18 A. So this is the lottery core functions except for
19 the online terminals and systems that are at the retailer
20 and the network that goes with it. So with respect to
21 Powerball, Mega Millions, Lotto, and all those games,
22 those are administered by Scientific Games using their
23 system. We handle all the scratch ticket, accounting,
24 inventory control, distribution, marketing, the retailer
25 licensing, security, billing, accounting.

1 Q. How is that contract with the Colorado lottery
2 structured in terms of compensation for TB -- is it
3 TB Consulting?

4 A. Yes.

5 It's a time and materials, with a
6 not-to-exceed, I believe.

7 Q. Is the not-to-exceed set on an annual basis?

8 A. On a contract basis.

9 Q. What's the term of the contract?

10 A. It is up October of 2011.

11 Q. When did it go into effect?

12 A. Would have been October 2008.

13 Q. So this is a three-year?

14 A. Three-year contract.

15 Q. What's the not-to-exceed for the three-year
16 contract?

17 A. I don't have that number handy. It's in the
18 neighborhood of probably \$4 million. That includes
19 hardware, third-party, and so forth, TB Consulting
20 professional fees.

21 Q. Are you familiar with any other officials of the
22 Colorado Department of Revenue?

23 Actually, before I ask that, who is the
24 point person with Colorado lottery that you interact with,
25 if there is one?

1 A. Yes.

2 Q. -- or meaning --

3 A. Both.

4 Q. Did you also review the statute?

5 A. I did not review the statute.

6 Q. Did you do anything else to prepare?

7 A. No.

8 Q. How long in total did you spend preparing for
9 this deposition?

10 A. Two hours.

11 MR. SCHAEFER: Off the record for a moment.

12 (An off-the-record discussion ensued.)

13 BY MR. SCHAEFER:

14 Q. With regard to Exhibit 116, your report, if you
15 will turn to page 2, the Statement of Opinions,
16 opinion A -- it's cap A -- you state, "Based on the
17 minimum threshold of \$100,000 in gross annual Colorado
18 sales, the relatively small number of retailers are
19 subject to the Requirements." Did I read that correctly?

20 A. Yes.

21 Q. The report elaborates, to a certain extent, on
22 these opinions. With regard to opinion A, there's
23 additional material on pages 5 and 6. Is that correct?

24 A. That's correct.

25 Q. Right at the bottom of the page on page 5, last

1 few words, you indicate that "the number of affected
2 retailers should be in the low thousands." Is that
3 correct?

4 A. I do.

5 Q. What do you mean by the "low thousands"?

6 A. If I draw a -- or extrapolate from the numbers
7 that are provided on sales data and see that we're going
8 from somewhere north of a billion, excluding outlying data
9 points like Amazon, but retailers with north of a billion
10 dollars of sales down to 10 million in sales -- so down to
11 1 percent of that -- and that encapsulates 500, that would
12 suggest to get down to 6 million is not going to be an
13 overly significant number of retailers. So there are no
14 stats that track every possible retailer, but I would
15 extrapolate out that it would be reasonable to say that
16 the number we're talking about is, as I stated, low
17 thousands and not a significant number of the entire
18 retailer base that exists in the United States or
19 elsewhere.

20 Q. So -- But how many do you mean when you use the
21 word "low thousands"? What number?

22 A. I don't have a number for you. I think you can
23 statistically extrapolate and the argument would then be
24 whether or not that's statistically valid, because there's
25 really no data. But I think it's a minority of

1 retailers -- a small minority of retailers.

2 Q. Can you provide a range? When you say "low
3 thousands," what's the range of numbers you're talking
4 about?

5 A. I would hesitate to give a range, but I would say
6 we can be reasonably certain that it's closer to 10,000
7 than any other much larger number.

8 Q. The affected retailers that we are talking about
9 and that you're mentioning here are all those having
10 annual gross sales in Colorado in excess of a hundred
11 thousand dollars. Is that right?

12 A. That's correct.

13 Q. And I think you, on page 5, in paragraph 1 of
14 opinion A, indicate that a hundred thousand in gross sales
15 in Colorado translates into approximately \$6 million in
16 total nationwide sales?

17 A. If we assume that there is a proximate
18 relationship between population and sales, it came out to
19 be just north of \$6 million in sales.

20 Q. That's the assumption you've made for purposes of
21 this report?

22 A. Yes.

23 Q. So when you refer to "affected retailers," you
24 are referring to retailers having sales in excess of
25 \$6 million that do not collect Colorado sales tax. Is

1 that right?

2 A. Not necessarily.

3 Q. Okay.

4 A. I think I'm referring to retailers that have more
5 than a hundred thousand in gross sales. The 6 million
6 comes into play merely to point to the fact that the
7 number of retailers should be low.

8 Q. Fair enough.

9 In estimating the number of affected
10 retailers, you're using the \$6 million benchmark. You're
11 talking a moment ago in your answer extrapolating downward
12 from annual -- from annual sales figures that were
13 nationwide.

14 A. Yes.

15 Q. So for purposes of approximating, you're using
16 that \$6 million annual sales on a nationwide basis
17 benchmark?

18 A. I think that's the best benchmark I could come up
19 with to approximate how big of an issue this would be.

20 Q. So we know that we have the 500 potentially
21 affected retailers in the Internet, top 500 that you
22 identified, and of course some of them report Colorado
23 tax. So it's not going to be all 500. Is that a fair --

24 A. I think that's -- Nothing would suggest
25 otherwise.

1 Q. So the challenge is to identify those between
2 6 million and 10 million, in essence?

3 A. Essentially.

4 Q. On page 6, you indicate there are certainly
5 hundreds of thousands, at least, of total retailers,
6 because as you cite, there are even just two Internet
7 sales software -- strike that -- Two e-commerce platform
8 software vendors that you're aware of have more than
9 160,000 customers between them.

10 A. Yes.

11 Q. So we know there are at least hundreds of
12 thousands of retailers.

13 A. I agree. If I can add one more facet to this, is
14 if we look at the customer base for Succeed, which was an
15 e-commerce platform, the relative number of merchants that
16 opened a web front or storefront or start selling their
17 wares to whoever they sell them to, the number that reach
18 a meaningful level of -- I would argue even six-figure
19 sales in aggregated total, forget about what locale -- is
20 a very small percentage. So, again, everything leads me
21 to believe we're talking a very small number here.

22 Q. Relative to the total number?

23 A. Relative to the total.

24 Q. Are you aware that there are some estimates that
25 place the number of e-commerce sellers total from zero on

1 up, that's something like 5 million?

2 A. I think when you add in the hobby e-commerce
3 seller, who might be selling purely through eBay and
4 doesn't even have their own storefront, I would suspect
5 that's probably a good number as any.

6 Q. Okay. So you think 5 million is a reasonable
7 estimation?

8 A. Sure.

9 Q. And as you say, even if it were only -- I can do
10 the math -- even if there were only .2 of 1 percent of all
11 of those retailers above 6 million in sales, that would be
12 10,000 retailers?

13 A. Am I allowed to use my calculator?

14 Q. Absolutely.

15 A. You say .2 of 1 percent?

16 Q. Yes, of the 5 mil.

17 A. .2 of 1 percent.

18 Q. That's right.

19 If it were half of a percent of all online
20 retailers above 6 million, then we would be at 25,000
21 potentially affected retailers?

22 MS. SCOVILLE: Object to form. I'm not
23 sure -- Could you say that again?

24 MR. SCHAEFER: Sure.

25

1 BY MR. SCHAEFER:

2 Q. Based on the same estimate of 5 million total
3 e-commerce sellers, if a half a percent of those total
4 e-commerce sellers had annual sales in excess of
5 6 million, it would approximately mean 25,000 potentially
6 affected retailers.

7 A. From a pure mathematical standpoint, I can do the
8 math and get to 25,000. From a legitimate likelihood of
9 that being the real number, I think that's without any
10 foundation I can find, at least in the statistics I looked
11 at.

12 Q. So you think something more like 10,000 is more
13 reasonable?

14 A. I would have no reason to believe it would be
15 over 10,000.

16 Q. Now, that estimate is just e-commerce vendors
17 that I mentioned. Is it your understanding that the
18 Colorado law applies to other types of remote sellers?

19 A. The catalog and everything I think would be, yes.
20 Anybody selling into the state of Colorado, yes.

21 Q. So that would be potentially other types of
22 remote sellers affected by the law, potentially?

23 A. Absolutely.

24 Q. That would include not only catalog vendors but,
25 for example, direct-to-consumer television vendors.

1 that a fair statement?

2 A. Well, I think to extrapolate from that, whenever
3 you do business anywhere, you have to know what to do in
4 that state. So it always causes you to read and amend and
5 append and keep up current with whatever it is.

6 Q. Okay. And that takes some time and some level of
7 expense?

8 A. That's business, yes.

9 Q. Would you agree with me that if other states
10 beyond Colorado and Oklahoma adopted a transactional
11 notice requirement with different elements, from either
12 Colorado or Oklahoma, retailers would incur additional
13 costs to comply with those state requirements?

14 MS. SCOVILLE: Object to the form.

15 Go ahead and answer.

16 THE WITNESS: To the extent that everybody
17 wants to have their own unique set of terms and
18 conditions, potentially. If it's like Colorado, then you
19 would have a minimal, if no, cost to implement additional
20 states.

21 BY MR. SCHAEFER:

22 Q. Okay. If other states were to do something more
23 like Oklahoma and have other requirements specific to
24 their state, there would be some additional time and
25 expense for affected retailers?

1 Q. So for example -- That is one that I didn't see
2 cited.

3 Number 2, the Forrester Research, The
4 Forrester Wave, I don't recall it being cited. Is that
5 one you reviewed or relied upon?

6 A. Reviewed for the same purposes.

7 Q. Item 4, the Forrester Research. Market Overview,
8 October 31, 2008, also I don't believe it was cited. Is
9 that one you reviewed or relied upon?

10 A. All of these you're talking about, essentially,
11 helped to guide our research and the building of
12 appendix B.

13 Q. Okay. Same as item 5 -- D5?

14 A. Yes. Although I do believe that I quoted that --
15 or one of -- I don't know which one of these with respect
16 to retailers not developing their own custom solutions and
17 that not being a viable alternative.

18 Q. With regard to the smaller sellers that you
19 described in your report and we've talked about here today
20 that was outside the Internet 500, I take it that it is --
21 you had stated that it's your opinion that the first-year
22 costs for that group will range from \$2,571 to \$6,000. Is
23 that correct?

24 A. Yes.

25 Q. And with regard to the same group, it is your

1 opinion that the first-year cost -- Sorry.

2 Starting again, with regard to the same
3 group of small sellers, it's your opinion that the ongoing
4 costs will be between \$589 and \$1,000 per year?

5 A. Yes.

6 Q. Again, were someone to have a different opinion
7 about certain of the components of your calculations, be
8 it the hours or hourly rate, cost of materials, those
9 costs would go up as a result?

10 A. Yes.

11 MR. SCHAEFER: I have no further questions.

12 MS. SCOVILLE: Okay. I think we're done.

13 (The deposition was concluded at 2:23 p.m.)

14

15

DIETER GEORGE GABLE

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DIETER GABLE

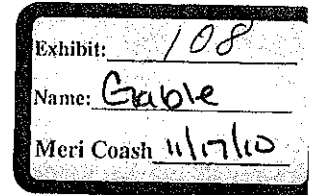
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SUMMARY

Highly involved and action oriented senior executive experienced in working with "C-Level" executives to understand business challenges and define well founded strategic initiatives and business solutions with focus on measurable outcomes. Proven ability to build and inspire teams to solve problems and reach strategic business goals. Over 20 years experience both domestically and internationally, with deep experience in state & local government and financial services. Specific strengths include:

- Corporate & Board Governance
- Organizational Restructuring
- Complex Program Management
- Business & IT Transformation
- Structured Systems Development Methods
- Large Client Development
- Financial / P&L Management
- Capital and Debt Structuring
- Complex Negotiations
- International Work / Multi-lingual



EXPERIENCE

TB Consulting, LLC, Scottsdale, AZ
CEO, Director

2007 – Present

Technical Services and Software Development firm focused on SMB marketplace including State & Local Government. Select client experiences:

- Multi-year, multi-million dollar contract for client with \$500m revenue
- Multi-year contract with Court Trustee for applications management and infrastructure support
- Customer focused solutions to upgrade technology yielding immediate measurable benefits
- Identified opportunities for streamlining and reducing work flow/efforts up to 80%

AZ Merchant Partners, LLC, Scottsdale, AZ
Founder, Director

2003 – Present

Consultancy founded to address the needs of mid-sized, mainly Arizona based, businesses leveraging four key components (Strong Corporate Governance, Strategy Development, Experienced Management and Capital Formation) to deliver meaningful and quantifiable results. Select client experiences:

IPSA (Financial investigations & risk advisory firm), Phoenix, AZ

Structured acquisition of company and formation of Fortune 100 level board

- Structured acquisition with no cash up-front and no outside equity or debt
- Restructuring of operations for increase in value of company by ~\$10 million within first year

Succeed (eCommerce solution provider), Tempe, AZ

Restructured overall operations, cost structure and focus of struggling company

- Year 1 cost savings of nearly 25%/\$1 million; provided for capital to invest in product development
- Increased sales and positioned company as #1 fastest growing software company in AZ (2007)

Champion College Solutions (School loan default prevention), Mesa, AZ

Restructured operations, aligned staff and reengineered processes with updated technology under budget

- Implemented new management and sales team to deliver major accounts (20% annual growth)
- Decreased headcount by over 50% with improved throughput and customer satisfaction

NeoSurg (Laparoscopic device manufacturer), Houston, TX

Led capital campaign with unique investment structure providing company needed funds and flexibility

- Jointly developed the go-to-market strategy aimed at positioning company for acquisition
- Positioned for acquisition by rival (Cooper Surgical) within 24 months at substantial multiple

FI Race Factory (Indoor karting & entertainment), Phoenix, AZ

Co-founded company with focus on providing corporate meeting & team building capabilities

- Developed into leading US track hosting US indoor karting finals since inception in 2003
- Restructured cost structure during economic downturn yielding highest single year profitability

ACCENTURE, LLP, Phoenix, AZ

1989 – 2003

Partner, Financial Services (State & Local Government until 1996)

A \$23B Management Information, Technology Consulting and Outsourcing Company, providing service to FORTUNE 100/500 and large Corporations internationally in a variety of industries and governments.

Specialized in large programs with focus on 'metrics & measurements.' Select client experiences:

Chase Bank (WaMu)**Optis Program Development Director**

Directed \$300 million plus dollar program to streamline home loan originations

- Integrated numerous internal and 3rd party systems enabling significant increase in market share
- Implemented technology to improve speed of decision by ~80% and speed of close by ~35%

American Express (US & UK)**Triumph Program Development Director**

Directed software development effort for \$500 million dollar plus program over 3 years (200+ team)

- Enabled leading credit card products -- Blue Card US/Europe, Black Card and Affinity cards
- Eliminated tens of thousands of hours of unwarranted software development backlog and costs

JusticeLink™ Justice Product**Practice Lead**

Assumed leadership of stalled project and delivered working solution within 9 months

- Implemented first of kind electronic filing capability at no cost to Prince George's County (MD)
- Project and benefits featured on national news; product spun off to venture group & Lexis Nexis.

ACCLAIMS™ Lottery Product**Practice Lead**

Directed group in providing systems and services to US state and foreign lotteries

- Increased market share of back office systems to over 25% of US States' market
- Improved market place positioning with international presence in Canada and Europe

EDUCATION/PROFESSIONAL CERTIFICATIONS

Bachelor of Science, Finance

University of Arizona, Tucson, Arizona

Bachelor of Science, Real Estate

University of Arizona, Tucson, Arizona

AFFILIATIONS AND RECOGNITION

- Project Management Institute, Member
- Ryan House Children's Health Charity, Chairman of Board, Board of Directors
- Luke Air Force Base, Honorary Commander, Fighter Country Partnership
- University of Arizona, MIS National Board of Advisors
- University of Arizona, Presidents Club

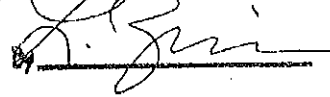
1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED

JUL 29 2009

DEPARTMENT OF REAL ESTATE

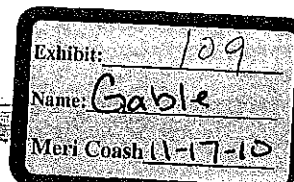


8 STATE OF CALIFORNIA

9 DEPARTMENT OF REAL ESTATE

10
11 TO:)
12) NO. H-3995 SD
13 DIETER GABLE,)
14 SHANNON BARD,) ORDER TO DESIST AND REFRAIN
15 STEVE WALKER,) (B&P Code Section 10086)
16 ZACK PAPIKE,)
17 JOHN JACABSON, and)
18 RANDY SABARRA,)
19 dba INTELLICHOICE MORTGAGE,)
20 SERVICES, LLC, and/or any other)
21 names or fictitious names)
22)

23 The Commissioner (Commissioner) of the California Department of Real Estate
24 (Department) caused an investigation to be made of the activities of DIETER GABLE (GABLE),
25 SHANNON BARD (BARD), STEVE WALKER (WALKER), ZACK PAPIKE (PAPIKE),
26 JOHN JACABSON (JACABSON) and RANDY SABARRA (SABARRA), doing business as
27 INTELLICHOICE MORTGAGE SERVICES, LLC. (IMS). Based on that investigation, the
Commissioner has determined that GABLE, BARD, WALKER, PAPIKE, JACABSON, and
SABARRA have engaged in acts or practices constituting a violation of Section 10130 (engaging
in the business of, advertising, or assuming to act as a real estate broker without first obtaining a
real estate license), of the California Business and Professions Code (Code) and/or Section 2970
(requirements for advance fee agreements) and Section 2972 of Title 10, Chapter 6, California



1 Code of Regulations (Regulations). Furthermore, based on the investigation, the Commissioner
2 hereby issues the following Findings of Fact, Conclusions of Law, and Desist and Refrain Order
3 under the authority of Section 10086 of the Code.

4 FINDINGS OF FACT

5 1. At no time herein mentioned has IMS been licensed by the Department in
6 any capacity. GABLE, BARD, and WALKER are the owners, officers, and/or partners of IMS.

7 2. During the periods of time set below, IMS has solicited consumers and
8 provided loan modification services to consumers in exchange for the payment of an advance fee
9 without having first obtained a real estate license, in violation of Section 10130 of the Code.

10 3. At no time herein mentioned has JACABSON or SABARRA been
11 licensed by the Department in any capacity.

12 4. PAPIKE has been licensed by the Department as a real estate salesperson
13 affiliated with Cabrillo Mortgage and Realty. PAPIKE's license expires on February 8, 2010.

14 5. During the period of time set out below, PAPIKE, JACABSON, and/or
15 SABARRA solicited borrowers and negotiated to do one or more of the following acts for
16 another or others, for or in expectation of compensation: negotiate one or more loans for, or
17 perform services for, borrowers and/or lenders in connection with loans secured directly or
18 collaterally by one or more liens on real property; and charge, demand or collect an advance fee
19 for any of the services offered.

20 6. For an unknown period of time beginning no later than September 15,
21 2008, and continuing to the present time, GABLE, BARD, WALKER, PAPIKE, JACABSON,
22 and/or SABARRA advertised and/or continue(s) to advertise services under one or more
23 business names including, but not limited to, "Intellichoice Mortgage Services, LLC." in various
24 print and electronic media. Those advertisements solicited, and continue to solicit, borrowers by
25 offering loan modification services.

26 ///

27 ///

- 1 (i) an advance fee agreement which has been submitted to the Department
2 and you are in full compliance with all requirements of Sections 2970 and
3 2972 of the Regulations relating to charging, collecting, and accounting
4 for advance fees, and
5 (ii) placed all previously collected advance fees into a trust account for that
6 purpose and are in compliance with Section 10146 of the Code.

7 DATED: 7/28/09

8 JEFF DAVI
9 Real Estate Commissioner

10 By 
11

12 **Notice:** Business and Professions Code Section 10139 provides that "Any person acting as a
13 real estate broker or real estate salesperson without a license or who advertises using words
14 indicating that he or she is a real estate broker without being so licensed shall be guilty of a
15 public offense punishable by a fine not exceeding twenty thousand dollars (\$20,000), or by
16 imprisonment in the county jail for a term not to exceed six months, or by both fine and
17 imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars
18 (\$60,000)."

19 cc: Intellichoice Mortgage Services, LLC
20 7975 Raytheon Road, Suite 350
21 San Diego, CA 92111
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STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

Exhibit: 110
Name: Gable
Meri Coash 11-17-10

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

INTELLICHOICE MORTGAGE SERVICES LLC,
DIETER GABLE, Member, and SHANNON BARD,
Member,

Respondents.

NO. C-10-095-10-FO01

FINAL ORDER

INTELLICHOICE MORTGAGE
SERVICES LLC AND DIETER GABLE

I. DIRECTOR'S CONSIDERATION

A. Default. This matter has come before the Director of the Department of
Financial Institutions of the State of Washington (Director), through his designee, Consumer Services
Division Director Deborah Bortner, pursuant to RCW 34.05.440(1). On May 17, 2010, the Director,
through Consumer Services Division Director Deborah Bortner, entered a Statement of Charges and
Notice of Intention to Enter an Order to Cease and Desist, Prohibit from Industry, Impose Fine,
Order Restitution, and Collect Investigation Fee (Statement of Charges). A copy of the Statement of
Charges is attached and incorporated into this order by this reference. The Statement of Charges was
accompanied by a cover letter dated May 18, 2010, a Notice of Opportunity to Defend and Opportunity
for Hearing, and blank Applications for Adjudicative Hearing for all Respondents. The Department
served the Statement of Charges, cover letter, Notice of Opportunity to Defend and Opportunity for
Hearing, and blank Applications for Adjudicative Hearing on Respondents Intellichoice Mortgage
Services LLC and Dieter Gable, on May 18, 2010 by United States Postal Service First-Class mail
(First-Class mail) and Federal Express overnight delivery. On May 20, 2010, the documents sent via
Federal Express overnight delivery were delivered. The documents sent via First-Class mail were not
returned to the Department by the United States Postal Service.

FINAL ORDER -
INTELLICHOICE MORTGAGE SERVICES INC AND
DIETER GABLE
C-10-095-10-FO01

DEPARTMENT OF FINANCIAL INSTITUTIONS
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200

1 Respondents Intellichoice Mortgage Services LLC and Dieter Gable did not request an
2 adjudicative hearing within twenty calendar days after the Department served them with the Notice of
3 Opportunity to Defend and Opportunity for Hearing, as provided for in WAC 208-08-050(2).

4 B. Record Presented. The record presented to the Director's designee for her review and
5 for entry of a final decision included the Statement of Charges, cover letter dated May 18, 2010, Notice of
6 Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for
7 Intellichoice Mortgage Services LLC and Dieter Gable, with documentation of service.

8 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(1), the
9 Director's designee hereby adopts the Statement of Charges, which is attached hereto.
10

11 II. FINAL ORDER

12 Based upon the foregoing, and the Director's designee having considered the record and
13 being otherwise fully advised, NOW, THEREFORE:

14 A. IT IS HEREBY ORDERED, That:

- 15 1. Respondents Intellichoice Mortgage Services LLC and Dieter Gable cease and desist
16 offering loan modification services or otherwise conducting the business of a
mortgage broker or loan originator in the state of Washington; and
- 17 2. Respondents Intellichoice Mortgage Services LLC and Dieter Gable are prohibited
18 from participation in the conduct of the affairs of any mortgage broker subject to
licensure by the Director, in any manner, for a period of five (5) years; and
- 19 3. Respondents Intellichoice Mortgage Services LLC and Dieter Gable jointly and
20 severally pay a fine of \$4,000; and
- 21 4. Respondents Intellichoice Mortgage Services LLC and Dieter Gable jointly and
22 severally pay an investigation fee of \$648; and
- 23 5. Respondents Intellichoice Mortgage Services LLC and Dieter Gable maintain records
24 in compliance with the Act and provide the Department with the location of the
books, records and other information relating to Respondent Intellichoice Mortgage
25 Services LLC's business, and the name, address and telephone number of the
individual responsible for maintenance of such records in compliance with the Act.

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B. Reconsideration. Pursuant to RCW 34.05.470, Respondents have the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondents. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter.

A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

C. Stay of Order. The Director's designee has determined not to consider a Petition to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

D. Judicial Review. Respondents have the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

E. Non-compliance with Order. If you do not comply with the terms of this order, the Department may seek its enforcement by the Office of Attorney General to include the collection of the fines and fees imposed herein.

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F. Service. For purposes of filing a Petition for Reconsideration or a Petition for
Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
attached hereto.

DATED this 20th day of July, 2010.



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS


DEBORAH BORTNER
DIRECTOR
DIVISION OF CONSUMER SERVICES

CHAPTER 65. SALES AND USE TAX

SUBCHAPTER 21. USE TAX

710:65-21-8. Out-of-state retailers or vendors not registered in Oklahoma

(a) Definitions. For the purposes of this Section:

(1) "Non-collecting retailer" means a retailer, not currently registered to collect and remit Oklahoma sales and use tax, who makes sales of tangible personal property from a place of business outside of Oklahoma to be shipped to Oklahoma for use and who is not required to collect Oklahoma sales or use taxes.

(2) "Oklahoma purchaser" means a purchaser that requests goods be shipped to Oklahoma.

(3) "Online auction website" means a collection of web pages on the Internet that allows persons to display tangible personal property for sale which is purchased through a competitive process where participants place bids with the highest bidder purchasing the item when the bidding period ends.

(4) "De minimis retailer" means any non-collecting retailer that made total gross sales in Oklahoma in the prior year of less than \$100,000.00 and reasonably expects Oklahoma sales in the current year will be less than \$100,000.00.

(5) "De minimis online auction website" means any online auction website that facilitates total gross sales in Oklahoma in the prior year of less than \$100,000.00 and reasonably expects Oklahoma sales in the current year will be less than \$100,000.00.

(b) Requirements for notice. Effective October 1, 2010, every non-collecting retailer must give notice that Oklahoma use tax is due on nonexempt purchases of tangible personal property and should be paid by the Oklahoma purchaser.

(1) Notice contents. The notice must be readily visible and contain the information set forth as follows:

(A) The non-collecting retailer is not required, and does not collect Oklahoma sales or use tax;

(B) The purchase is subject to Oklahoma use tax unless it is specifically exempt from taxation;

(C) The purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means;

(D) The State of Oklahoma requires Oklahoma purchasers to report all purchases that were not taxed and pay tax on those purchases. The tax may be reported and paid on the Oklahoma individual income tax return [Form 511] or by filing a consumer use tax return, [Form 21-1]; and

(E) The referenced forms and corresponding instructions are available on the Oklahoma Tax Commission website, www.tax.ok.gov.

(2) Website and/or catalog notice. Notice on a website shall occur on a page necessary to facilitate the applicable transaction. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the state of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section. Notice in a catalog shall be part of the order form. It shall be sufficient if the non-collecting retailer provides a prominent reference to a

Exhibit:	117
Name:	Cable
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supplemental page that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the state of Oklahoma on page _____", if such page includes the principal notice required by this Section.

(3) **Invoice notice.** For internet purchases, the invoice notice must occur on the electronic order confirmation. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the state of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section. If the non-collecting retailer does not issue an electronic order confirmation, the complete notice must be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement. For catalog purchases, the complete notice must be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(4) **Exceptions.**

(A) For internet purchases, notice on the check-out page fulfills both the website and invoice notice requirements simultaneously. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the state of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section.

(B) If a retailer is required to provide a similar notice for another state in addition to Oklahoma, the retailer may provide a consolidated notice so long as such notice includes the information contained in (b) of this Section, specifically references Oklahoma and meets the placement requirements of this Section.

(c) **Prohibition from advertising no tax due.** A non-collecting retailer may not state or display or imply that no tax is due on any Oklahoma purchase unless such display is accompanied by the notice required by (b) of this Section each time the display appears.

(1) For example, a summary of the transaction including a line designated "sales tax" and showing the amount of sales tax as "zero" or "0.00" would constitute a "display" implying that no tax is due on the purchase. Such a display must be accompanied by the notice required by (b) of this Section every time it appears.

(2) Notwithstanding the limitation in this subsection, if a non-collecting retailer knows that a purchase is exempt from Oklahoma tax pursuant to Oklahoma law, the non-collecting retailer may display or indicate that no sales tax is due even if such display is not accompanied by the notice required by (b) of this Section.

(d) **Invoice notification exception for online auction websites.** With the exception of notification on invoices, the provisions of this Section shall apply to online auction websites as defined in (a) of this Section.

(e) **De minimis exception.** A de minimis retailer and a de minimis online auction website, as defined in (a) of this Section, shall be exempt from the notice requirements in (b) of this Section.