

1 ARIZONA STATE BANKING DEPARTMENT

2 In the Matter of the Collection )  
Agency Licenses for: ) BHN 95-013  
3 ) BHN 95-014  
MILLIKEN & MICHAELS )  
4 OF ARIZONA, INC. ) CONSENT ORDER  
4400 East Broadway, Suite 112 )  
5 Tucson, Arizona 85711 )

6 Respondent. )  
\_\_\_\_\_ )

7 )  
TABJAA, INC., dba Metropolitan )  
8 Consumer Collection Services )  
7150 East Camelback Road )  
9 Scottsdale, Arizona 85251 )

10 Respondent. )  
\_\_\_\_\_ )

11  
12 On June 13, 1995, two Notices of Hearing were issued by the  
13 Superintendent of Banks for the State of Arizona ("Superintendent")  
14 wherein the Superintendent made certain allegations of violations of  
15 Arizona Revised Statutes, Title 32, Chapter 9, regulating collection  
16 agencies, against Milliken & Michaels of Arizona, Inc., BHN 95-013  
17 and against TABJAA, Inc. dba Metropolitan Consumer Collection  
18 Services, BHN 95-014 (collectively "Respondents"). On June 27,  
19 1995, Hearing Officer Michael M. Sophy ordered the consolidation of  
20 these two matters.

21 On September 26, 1995 and November 6, 1995, the consolidated  
22 Notice was amended and served upon Respondents. Respondents  
23 received copies of all Notices and filed an answer to the Second  
24 Amended Notice on November 27, 1995. On December 4, 1995, the  
25 hearing in this matter commenced and continued until March 28, 1996,  
26 when the parties stipulated to a stay pending resolution of a

1 federal action filed against the Superintendent on March 27, 1996,  
2 Milliken & Michaels of Arizona, Inc, et al v. Richard C. Houseworth,  
3 No. CIV 96-0737. On July 1, 1996, Federal District Judge Earl  
4 Carroll issued his order dismissing Respondents' lawsuit against the  
5 Superintendent. Respondents have appealed this Order to the U.S.  
6 Court of Appeals for the Ninth Circuit. On motion of the State  
7 Banking Department ("Department"), on July 24, 1996, Hearing Officer  
8 Sophy issued an order setting the resumption of the hearing in this  
9 matter for August 26, 1996, at 9:30 a.m.. Respondents have been  
10 advised of their rights to the continuation of the hearing in this  
11 matter and hereby waive the same.

12 Respondents admit the following Findings of Fact are true and  
13 consent to the entry of the following Conclusions of Law and Order.

14

15

FINDINGS OF FACT

16 1. Respondent Milliken & Michaels of Arizona, Inc.  
17 (hereinafter "M&M") is an Arizona corporation licensed to engage in  
18 the business of a collection agency within the State of Arizona,  
19 license number 7475.

20 2. Respondent TABJAA, Inc. dba Metropolitan Consumer  
21 Collection Services (hereinafter "TABJAA") is a corporation with its  
22 principal place of business in California and licensed to engage in  
23 the business of a collection agency within the State of Arizona,  
24 license number 14319.

25 3. On May 6, 1987, when M&M submitted its application for a  
26 license to the Department, it did not list Michael Sanderson as a

1 director, officer or shareholder. At the time, he held none of  
2 those positions. The sole shareholder of M&M was Milliken and  
3 Michaels, Inc. located in Metairie, Louisiana.

4 4. On or about September 23, 1987, the Department issued a  
5 license to M&M. On or about January 1, 1988, due to a subchapter S  
6 conversion, Michael Sanderson became the sole shareholder and  
7 director of M&M. At that time, the Department was not notified of  
8 the transfer of 100% of the shares of M&M to Michael Sanderson from  
9 Milliken & Michaels, Inc.

10 5. On or about December 29, 1988, M&M submitted its renewal  
11 application for the licensure year of 1989. The renewal application  
12 stated that the only change since the original application was a  
13 change in the "designated local resident active manager." There was  
14 no mention of a change in ownership or directors.

15 6. As of January 1, 1988, Michael Sanderson was the sole  
16 shareholder and director of M&M as well as its president. At that  
17 time, Michael Sanderson did not notify the Department of his  
18 positions as director and president nor did he submit a Personal  
19 History Statement or fingerprint card to the Department.

20 7. M&M's license renewal applications for the licensure years  
21 of 1990 through 1992 did not disclose Michael Sanderson's positions  
22 as director and president. During the 1992 licensure year, Wayne  
23 LeBlanc replaced Michael Sanderson as president and Mr. LeBlanc's  
24 Personal History Statement and fingerprint card were submitted to  
25 the Department. Michael Sanderson remained the sole shareholder and  
26 director; positions he currently holds.

1           8.     M&M's license renewal applications for the licensure years  
2 of 1993 through 1995 failed to disclose Michael Sanderson's position  
3 as director. As a result, Michael Sanderson, through March 1995,  
4 never submitted a Personal History Statement or fingerprint card to  
5 the Department.

6           9.     On or about December 30, 1994, the Department received  
7 M&M's license renewal application for the licensure year of 1995.  
8 For the first time, M&M indicated that Michael Sanderson holds 100%  
9 of its ownership interest.

10          10.    On January 20, 1995, the Department received Respondent  
11 TABJAA's new application for a license, since it failed to renew its  
12 license before December 31, 1994.

13          11.    On or about January 30, 1995, the Department sent a letter  
14 to M&M requesting a Personal History Statement from Michael  
15 Sanderson.

16          12.    On or about March 3, 1995, the Department received a  
17 Personal History Statement and fingerprint card from Michael  
18 Sanderson in response to the Department's January 30, 1995 request.

19          13.    The Personal History Statement of Michael Sanderson asked  
20 several questions about a criminal record and asked him to list any  
21 criminal offenses for which he was detained, held, arrested,  
22 indicted, summoned into court or convicted. Michael Sanderson  
23 answered "NO" to all questions and did not disclose his criminal  
24 history. He failed to answer these questions truthfully and omitted  
25 material information regarding his criminal record.

26

1           14. The Personal History Statement of Michael Sanderson asked  
2 several questions about any history of drug or excessive alcohol  
3 use. Michael Sanderson answered "NO" to all questions and did not  
4 disclose his history of alcoholism from which he recovered in  
5 October 1984. He failed to answer these questions truthfully and  
6 omitted material information regarding his alcohol use.

7           15. On April 13, 1995, the Department received the United  
8 States Department of Justice, Federal Bureau of Investigation  
9 report, indicating that Mr. Sanderson had been arrested on several  
10 occasions, some arrests for misdemeanors, resulting in conviction.

11           16. Michael Sanderson was not the owner of M&M's stock when it  
12 was first issued a license in 1987. M&M has never requested nor has  
13 the Superintendent approved a change of control pursuant to A.R.S.  
14 § 32-1026(B).

15           17. On or about April 6, 1995, TABJAA informed the Department  
16 that as of July 29, 1994, Michael Sanderson obtained a majority of  
17 the voting common stock.

18           18. TABJAA has never requested and the Superintendent has  
19 never approved any change of control pursuant to A.R.S. § 32-  
20 1026(B).

21           19. From 1992 through 1995, the Department, the Attorney  
22 General's Office and the Tucson Better Business Bureau received over  
23 40 written consumer complaints against M&M alleging  
24 misrepresentation and debtor harassment in the manner in which it  
25 conducts its collection agency business. During that time, M&M  
26

1 violated certain sections of Arizona Revised Statutes and the  
2 Arizona Administrative Code regulating collection activity.

3 20. One of the complainants, George Fehr, overpaid M&M \$4000.  
4 M&M refused to return the overpayment and, as a result, Mr. Fehr  
5 lost \$4000. M&M's client reimbursed him \$2000 of the \$4000 he  
6 overpaid to M&M. M&M still owes George Fehr \$2000.

7 21. M&M also has a Sales Division that engages in the  
8 solicitation of collection business. From 1992 through 1995, some  
9 sales representatives of M&M contacted their clients' debtors under  
10 the pretext that they were representatives of a company known as  
11 "Capital Resources Inc." This technique, known as the "CRI Talk-  
12 Off," "Bankruptcy Watch" or "Customer Profile Search" is described  
13 in M&M's sales handbook and other training materials as a technique  
14 sales representatives may use to obtain accounts and information  
15 regarding these accounts.

16 22. M&M's Sales Division representatives use a client  
17 promotion/service technique of mailing or faxing "free demand  
18 letters" to debtors of clients or prospective clients notifying the  
19 addressee that their account is past due and has been turned over to  
20 M&M for collection. If the debtor pays the amount due within a  
21 certain number of days (depending upon the mode of transmission),  
22 M&M will not collect a commission. Two former employees testified  
23 that they were encouraged to send the "free demand letters" to the  
24 client only, not the debtor. M&M denies these allegations.

25 23. Since the commencement of the hearing on December 4, 1995,  
26 the Department has received additional complaints against M&M in

1 which similar allegations are made regarding collectors' threats of  
2 third party disclosure, actual third party disclosure and  
3 misrepresentations to debtors that collectors are lawyers or members  
4 of a law firm.

5  
6 CONCLUSIONS OF LAW

7 1. Pursuant to Titles 6 and 32, Arizona Revised Statutes, the  
8 Superintendent has jurisdiction over this matter.

9 2. The conduct set forth in the Findings of Fact constitutes  
10 violations of the following collection agencies statutes and rules:  
11 A.R.S. §§ 32-1051(4)-(7), 32-1026(B) & 32-1055(D); A.A.C. §§ R20-4-  
12 1507 to R20-4-1509; R20-4-1511 to R20-4-1514; R20-4-1516; R20-4-1520  
13 to 1521.

14 3. In 1987, when M&M was issued a license, A.R.S. § 32-  
15 1026(B) prohibited the transfer of a license issued under Title 32,  
16 Chapter 9. The transfer of 100% of the shares of M&M to Michael  
17 Sanderson in 1988 was a transfer of the license within the meaning  
18 of A.R.S. § 32-1026(B).

19 4. In 1991, A.R.S. § 32-1026(B) was amended to allow the  
20 transfer, assignment or change of control of a collection agency  
21 license, but only after prior written consent of the Superintendent.  
22 A.R.S. § 32-1026(B) also mandates that the Superintendent shall not  
23 give his consent until after finding that the person acquiring  
24 control meets all of the qualifications of the licensing statutes.

25 5. TABJAA's failure to obtain the Superintendent's approval of  
26 the transfer of the majority of its voting common stock to Michael

1 Sanderson before the transaction is a violation of A.R.S. § 32-  
2 1026(B).

3 6. Michael Sanderson's failure to submit truthful answers on  
4 his Personal History Statement is a material misstatement or  
5 omission on any document required to be filed with the  
6 Superintendent in connection with an application for a license  
7 within the meaning of A.R.S. § 32-1053(A)(6). Each instance of  
8 nondisclosure is a violation of A.R.S. § 32-1051(4).

9 7. It is sufficient cause for the denial, suspension or  
10 revocation of Respondents' licenses pursuant to A.R.S. § 32-1053(B),  
11 if an officer, director, partner, employee or controlling person has  
12 acted or failed to act in a manner that would be cause for the  
13 denial, suspension or revocation of the collection agency license.

14 8. Michael Sanderson's failure to provide truthful answers to  
15 the questions on his Personal History Statement is sufficient  
16 grounds for the suspension or revocation of Respondents' licenses  
17 pursuant to A.R.S. § 32-1053.

18 9. M&M's failures to disclose the transfer of stock from  
19 Milliken & Michaels, Inc. to Michael Sanderson on its renewal  
20 applications from 1988 to 1995 are material omissions on a document  
21 required to be filed with the Superintendent within the meaning of  
22 A.R.S. § 32-1053(A)(6) and each instance of nondisclosure is a  
23 violation of A.R.S. § 32-1051(4).

24 10. The conduct described in the Findings of Fact is  
25 sufficient grounds for the suspension or revocation of Respondents'

26

1 licenses and for the imposition of a civil money penalty pursuant to  
2 A.R.S. §§ 6-132 and 32-1053.

3 11. The conduct described in the Findings of Fact provide  
4 grounds for the issuance of an order pursuant to A.R.S. § 6-137,  
5 directing Respondents to cease and desist from unsafe and unsound or  
6 violative conduct and to take the appropriate affirmative action,  
7 within a reasonable period of time prescribed by the Superintendent,  
8 to correct the conditions resulting from the unlawful acts,  
9 practices and transactions, including restitution, if appropriate.

10  
11 ORDER

12 1. Respondents shall cease and desist from engaging in any  
13 activity in violation of the rules or statutes regulating collection  
14 agencies in Arizona and, in particular:

15 a) the use of any company name other than the name under  
16 which Milliken & Michaels of Arizona, Inc. or TABJAA, Inc. is  
17 licensed in its contact with any persons or entities, except the  
18 Sales Division of Milliken & Michaels of Arizona, Inc. may use the  
19 name of "Milliken & Michaels" and TABJAA may use the name "MCCS."

20 b) the use of the pretext "Capital Resources, Inc." when  
21 contacting debtors for any reason;

22 c) the technique commonly known as the "CRI Talk-Off,"  
23 "Bankruptcy Watch" or the "Customer Profile Search," implemented by  
24 any employees, representatives or agents of Respondents ("Agents"),  
25 whereby the Agents contact a person or debtor, without disclosing  
26 that the Agents are employees of a collection agency, and obtain

1 information about that person's or debtor's financial condition that  
2 will be disclosed to the creditor client to help the creditor client  
3 decide whether to place the account for collection with Respondents;

4           d) the use of any sales handbooks, pamphlets or other  
5 training or marketing materials that promote, instruct or market the  
6 above described techniques and pretext. Respondents shall destroy  
7 all such materials upon service of this Order and provide proof of  
8 such destruction;

9           e) threatening to have debtors arrested;

10           f) threatening to attach debtors' assets;

11           g) threatening to place debtors in involuntary  
12 bankruptcy;

13           h) threatening to make third party disclosures by  
14 contacting debtors' vendors, suppliers, banks, or any other third  
15 party as a means of intimidation;

16           i) sending private investigators to debtors' homes or  
17 places of business for the purpose of taking pictures and  
18 intimidating, by harassing, acting unprofessionally, demeaning or  
19 threatening the debtor or the debtor's family or staff;

20           j) making more than two unsolicited phone calls to  
21 debtors in one day;

22           k) using vulgarity;

23           l) using insulting or demeaning language with debtors;

24           m) misrepresenting the identity of a collector as an  
25 investigator or an attorney or insinuating the same;

26

1 n) misrepresenting to anyone that collectors are attorneys  
2 or that Respondents are a law firm or insinuating the same.

3 2. M&M shall cease all collection activity in Arizona but  
4 retain an Arizona license for the sole purpose of soliciting  
5 commercial collection accounts. M&M salespersons shall not contact  
6 debtors to collect money on behalf of M&M's clients.

7 3. The M&M Sales Division shall limit its operation solely to  
8 sales activities and shall not expand its operation to any other  
9 type of business venture or collection activity, including but not  
10 limited to, a corporate headquarters; an investigative arm of any  
11 Affiliates; or an extension of Milliken and Michaels Credit  
12 Services, Inc. In the event M & M obtains an account requiring  
13 contact with an Arizona debtor, M & M shall transfer the collection  
14 of that account to TABJAA who shall collect the account under the  
15 name of TABJAA, not M & M. TABJAA collectors shall not be employed  
16 by M&M Sales Division and shall not engage in collection activity  
17 from within this State. TABJAA's collection activity shall be  
18 limited to its California location. TABJAA shall disclose to Arizona  
19 debtors, through its written correspondence, that it is licensed by  
20 the Department and its license number.

21 4. The M&M Sales Division and TABJAA may send free demand  
22 letters of any type only by certified or registered mail that will  
23 provide evidence that such letter was so mailed to the debtor. If  
24 the addressee does not accept service of the letter, Respondents may  
25 deem such a return as the addressee's refusal to pay the account  
26 within the time specified by the demand.

1           5. To provide M&M with a reasonable period to wind down its  
2 collection operation in this state, so that it may assist its  
3 collectors and their families in finding other positions, M&M will  
4 have a transition period until December 31, 1996, to eliminate its  
5 collection division in its entirety. Since this interim transition  
6 period is permitted solely for the benefit of M&M collectors with  
7 families, the transition period is conditioned upon M&M's compliance  
8 with the following:

9           a) M&M's diligent and good faith efforts to eliminate  
10 its collection division as expeditiously as possible;

11           b) by November 30, 1996, M&M shall eliminate 23 of the  
12 38 collector positions. These positions are currently held by  
13 collectors who have families without school age children;

14           c) no M&M collector will be assigned to, employed by or  
15 affiliated with TABJAA;

16           d) M&M shall cease collection efforts on the following  
17 debtor accounts and confirm by letter to these debtors of the  
18 cessation of collection efforts: Quentin Yeager complaint  
19 #0737(95/96), Edward C. Robertson complaint #0799(95/96), C-Comm of  
20 Kalamazoo complaint #0788(95/95), Drue Allen, complaint #0022(96/97)  
21 and Construction Resource Group, Inc. complaint #0922(95/96).

22           e) M & M shall submit to the Department by September 3,  
23 1996, a copy of each letter sent to the individuals listed in  
24 subparagraph (d) above.

25  
26

1           6.    By September 3, 1996, Respondents shall submit a list of  
2 all collectors employed by M&M since July 1, 1996, with the  
3 following information:

- 4           a)    present position;
- 5           b)    status of employment with M&M;
- 6           c)    date or proposed date of termination or relocation to  
7 another M&M branch, or other collection agency, if known;
- 8           d)    if relocated, the name and address of the branch to  
9 which the collector is assigned.

10           7.    By September 15, 1996, M&M shall distribute to each of its  
11 collection employees a letter notifying each of their termination or  
12 relocation to another branch and provide copies of each letter to  
13 the Department.

14           8.    To enable the Department to verify compliance with this  
15 Order and with Arizona law, Respondents shall allow the Department  
16 unrestricted access, during normal business hours, to inspect  
17 Respondents' premises, books, papers, and training materials.

18           9.    Respondents' licenses shall be subject to immediate  
19 summary suspension if any of the following events occur:

- 20           a)    Respondents engage in any of the deceptive sales  
21 conduct that they have agreed to cease and desist in paragraph One,  
22 subsections (a) through (d) of this Order;

- 23           b)    Respondents fail to comply with paragraph 5 of this  
24 Order;

25  
26

1           c)     between the date of this Order and December 31, 1996,  
2 the Department receives 3 complaints against Respondents alleging  
3 collector misconduct;

4           d)     Respondents violate any Arizona rule or statute;

5           e)     Respondents omit pertinent information on any  
6 document required to be filed with the Superintendent;

7           f)     the Department receives one complaint and discovers  
8 through an examination that Respondents failed to mail a free demand  
9 letter of any type to a debtor, while representing to their clients  
10 they had mailed or otherwise sent such letter. Respondents shall  
11 have the burden to show proof of mailing the letter in question.

12           g)     any M&M Affiliate has attempted to collect a debt in  
13 Arizona or to act as a collection agency in Arizona. For purposes of  
14 this Order, an M&M Affiliate is any collection agency with any  
15 association with 1) Michael Sanderson or 2) Milliken & Michaels,  
16 Inc.

17           h)     after December 31, 1996, the Department receives 3  
18 complaints against Respondents in any license period;

19         10.     Within ten days after the summary suspension is issued,  
20 Respondents shall provide written evidence of cure satisfactory to  
21 the Department. If, after a review of Respondents' written  
22 evidence, the Department is not satisfied, Respondents' licenses  
23 will be revoked. In no event will there be a hearing. By entering  
24 into this Consent Agreement, Respondents waive their right to a  
25 hearing.

26

1           11.    Upon notice of the occurrence of any of the events  
2 described in paragraph 9, subsections (c)-(e) and (g)&(h), the  
3 Department shall notify Respondents of its intent to summarily  
4 suspend Respondents' licenses. Respondents shall have two working  
5 days to provide written evidence of cure satisfactory to the  
6 Department. In the event Respondents' evidence of a cure is  
7 unsatisfactory, the Department shall proceed with summary suspension  
8 as set forth in paragraph 10. Simple cessation of collector  
9 misconduct will not be considered a satisfactory cure in all  
10 circumstances.

11           12.    Respondent M&M shall pay two thousand dollars (\$2,000.00)  
12 restitution to George Fehr.

13           13.    Respondents shall pay a civil money penalty of two hundred  
14 and fifty thousand dollars (\$250,000.00) and shall reimburse the  
15 Department its attorneys fees and costs in the amount of two hundred  
16 and fifty thousand dollars (\$250,000.00).

17           14.    Respondents shall provide the above amounts in a cashier's  
18 check at the time of execution of the Consent to Order.

19           15.    Respondents shall pay the fees of an examiner from the  
20 Department who shall visit their offices periodically and  
21 unannounced to review M&M's winding down of its collection  
22 operation and to make sure Respondents are complying with the above  
23 deadlines and conditions.

24 . . .  
25 . . .  
26 . . .



1 with respect to any conduct, from instituting other civil or  
2 criminal proceedings as may be appropriate now or in the future.

3 5. Michael Sanderson represents that he is the sole  
4 shareholder and director of Respondent Milliken & Michaels of  
5 Arizona, Inc. and, as such, has the authority to enter into this  
6 Consent to Order for and on behalf of Respondent Milliken & Michaels  
7 of Arizona, Inc.

8 6. Terry Boyer represents that he is the President of  
9 Respondent TABJAA, and as such, has been authorized by Respondent  
10 TABJAA to enter into this Consent to Order for and on behalf of  
11 Respondent TABJAA.

12 7. The Undersigned waive all rights to challenge the  
13 foregoing Findings of Fact, Conclusions of Law and Order on appeal  
14 or otherwise to the Superintendent or any court or other tribunal  
15 and agree to be bound by the Order.

16 DATED this 25<sup>th</sup> day of August, 1996.

17

18

By: 

Michael Sanderson duly authorized  
representative of Respondent  
Milliken & Michaels of Arizona Inc.

19

20

21

By: 

Terry Boyer  
Duly Authorized Representative of  
Respondent TABJAA, Inc.

22

23

24

25

26

ORIGINAL filed this 26<sup>th</sup> day  
of August, 1996, with:

1 Richard C. Houseworth  
2 Superintendent of Banks  
3 Arizona State Banking Department  
4 2910 North 44th Street, Suite 310  
5 Phoenix, Arizona 85018

6 COPY of the foregoing mailed this  
7 26<sup>th</sup> day of August, 1996, to:

8 Michael M. Sophy  
9 845 North Third Avenue  
10 Phoenix, Arizona 85003  
11 Hearing Officer

12 Robert D. Charlton, Division Manager  
13 Financial Services Division  
14 2910 North 44th Street, Suite 310  
15 Phoenix, Arizona 85018

16 Felecia A. Rotellini  
17 Assistant Attorney General  
18 Consumer Protection & Antitrust Section  
19 Office of the Attorney General  
20 1275 West Washington  
21 Phoenix, Arizona 85007  
22 Attorneys for the Department

23 Peter M. Wittekind  
24 SNELL & WILMER  
25 One Arizona Center  
26 400 East Van Buren  
Phoenix, Arizona 85004-0001  
Attorneys for Respondent

David Israel  
LAW OFFICES OF DAVID ISRAEL  
3850 N. Causeway Blvd., Suite 305  
Metairie, Louisiana 70002  
Attorneys for Respondent

21

22

June Beerwirth  
CPAPHX-5351; CPA95-151

23

24

25

26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26


ARIZONA STATE BANKING DEPARTMENT

In the Matter of the Collection )  
Agency Licenses for: ) BHN 95-013  
) BHN 95-014  
MILLIKEN & MICHAELS )  
OF ARIZONA, INC. ) ADDENDUM TO  
4400 East Broadway, Suite 112 )  
Tucson, Arizona 85711 )  
)  
Respondent. )

TABJAA, INC., dba Metropolitan )  
Consumer Collection Services )  
7150 East Camelback Road )  
Scottsdale, Arizona 85251 )  
)  
Respondent. )

Notwithstanding the second sentence of paragraph 5(b) on page 12 of the Consent Order, M&M has the sole discretion to determine which employees it will terminate to reach the required level of positions by November 30, 1996.

SO ORDERED this 25<sup>th</sup> day of August, 1996, by Richard C. Houseworth, Superintendent of Banks.

  
RICHARD C. HOUSEWORTH  
Superintendent of Banks

ORIGINAL filed this 26<sup>th</sup> day of August, 1996, with:  
Richard C. Houseworth  
Superintendent of Banks  
Arizona State Banking Department  
2910 North 44th Street, Suite 310  
Phoenix, Arizona 85018

1 COPY of the foregoing mailed this

2 26<sup>th</sup> day of August, 1996, to:

3  
4 Michael M. Sophy  
5 845 North Third Avenue  
6 Phoenix, Arizona 85003  
7 Hearing Officer

8 Robert D. Charlton, Division Manager  
9 Financial Services Division  
10 2910 North 44th Street, Suite 310  
11 Phoenix, Arizona 85018

12 Felecia A. Rotellini  
13 Assistant Attorney General  
14 Consumer Protection & Antitrust Section  
15 Office of the Attorney General  
16 1275 West Washington  
17 Phoenix, Arizona 85007  
18 Attorneys for the Department

19  
20 Peter M. Wittekind  
21 SNELL & WILMER  
22 One Arizona Center  
23 400 East Van Buren  
24 Phoenix, Arizona 85004-0001  
25 Attorneys for Respondent

26  
27  
28  
29  
30 David Israel  
31 LAW OFFICES OF DAVID ISRAEL  
32 3850 N. Causeway Blvd., Suite 305  
33 Metairie, Louisiana 70002  
34 Attorneys for Respondent

35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

## SETTLEMENT AGREEMENT

This agreement is entered into this 25<sup>th</sup> day of August, 1996, between Plaintiffs MILLIKEN & MICHAELS OF ARIZONA, INC. AND TABJAA, INC. DBA METROPOLITAN CONSUMER COLLECTION SERVICES (collectively "M & M") and Defendants THE STATE OF ARIZONA, *EX REL.* RICHARD C. HOUSEWORTH, SUPERINTENDENT OF BANKS AND THE ARIZONA STATE BANKING DEPARTMENT (collectively, the "Superintendent").

WHEREAS, on June 13, 1995, the Arizona State Banking Department ("Department") commenced license disciplinary proceedings against M & M, In the Matter of the Collection Agency Licenses of Milliken & Michaels of Arizona, Inc. and TABJAA, Inc., d.b.a. Metropolitan Consumer Collection Services, consolidated cases, numbers BHN 95-013 and BHN 95-014 ("Administrative Action");

WHEREAS, the Superintendent is the defendant and M & M are plaintiffs in the United States District of Arizona, Milliken & Michaels of Arizona, Inc. and TABJAA, Inc. dba Metropolitan Consumer Collection Services v. Richard C. Houseworth, in his official capacity as Arizona State Banking Department, No. CIV 96-0737 PHX EHC (the "Federal Lawsuit") in which M & M has asserted claims that its civil and due process rights have been violated in the Administrative Action currently pending before the Superintendent;

WHEREAS, in the Federal Lawsuit, M & M asserts that it cannot obtain a fair and impartial hearing in the Administrative Action due to the alleged pecuniary interest of the Superintendent, the Department and its employees, and the hearing officer in the Administrative Action, Michael M. Sophy and the Superintendent denies all liability;

WHEREAS, on July 1, 1996, the Honorable District Judge Earl H. Carroll, issued an order in the Federal Lawsuit, dismissing M & M's complaint. M & M has filed its notice of appeal and

that matter is pending before the United States Court of Appeals for the Ninth Circuit, Docket No. 96-16458 ("Federal Appeal");

WHEREAS, M & M are also plaintiffs in a complaint for special action filed in the State Superior Court of Maricopa County, Arizona, against the Superintendent and his designated hearing officer in the Administrative Action, Michael M. Sophy: Milliken & Michaels of Arizona, Inc. and TAJAA, Inc. d.b.a. Metropolitan Consumer Collection Services v. Michael M. Sophy, in his official capacity as Hearing Officer for the Arizona State Banking Department, and Richard C. Houseworth, in his official capacity as the Arizona State Banking Department Superintendent, No. CV96-14851 ("State Lawsuit"). The Superintendent was served on Wednesday, August 21, 1996, and the Superintendent on behalf of himself and Hearing Officer Sophy denies all liability;

WHEREAS, in the State Lawsuit, M & M seeks a Temporary Restraining Order ("TRO") enjoining Hearing Officer Sophy and the Superintendent from proceeding with the Administrative Action; disqualifying the assistant attorneys general representing the Department in the Administrative Action and requiring Hearing Officer Sophy to recuse himself. In the State Lawsuit, M & M asserts claims of a violation of due process because of the same pecuniary interest alleged in the Federal Lawsuit;

WHEREAS, there has been no determination by any court that a violation of law has occurred;

WHEREAS, the Superintendent and M & M, desiring to avoid the expense of further litigation and to resolve their disputes without trial or adjudication of any issues of law or fact asserted in the State Lawsuit and the Federal Appeal described in the above paragraphs, agree to the entry of the attached Consent Order;

NOW THEREFORE, in consideration of the covenants and undertakings here set forth, and intending this agreement to be legally binding, it is agreed by and between the Superintendent and M & M as follows:

1. The terms of the Consent Order and Settlement Agreement ("Agreement") shall apply to M & M and to M & M's officers, directors, partners or controlling persons who shall have received actual notice of the Consent Order by personal service or otherwise.

2. M & M agrees that the Superintendent may issue the Consent Order in the form attached to this Agreement as Exhibit A and incorporated herein by this reference, may be issued.

3. M & M agrees to forever release and discharge all past and present claims, asserted or contemplated, against the Superintendent, the Department and Hearing Officer Michael M. Sophy relating to the Administrative Action and arising out of the allegations set forth in M & M's complaints filed in the State and Federal Lawsuits.

4. M & M agrees that upon the issuance of the Consent Order, M & M shall dismiss with prejudice all claims against the Superintendent and Hearing Officer Michael M. Sophy asserted against them in the Federal Appeal and the State Lawsuit with all parties to bear their own costs and attorneys' fees. Upon personal service of the issued Consent Order, M & M shall file executed stipulations for dismissal attached and incorporated herein as Exhibits B and C.

5. In the event, this matter is resolved and M & M dismisses the State Lawsuit and Federal Appeal, the Superintendent forever discharges and releases any potential counterclaims that he could assert in those actions.

6. Upon execution of the Consent Order, M & M shall deliver to the Superintendent a cashier's check in the amount of \$502,000.00 (Five Hundred and Two Thousand Dollars) for his review along with this Agreement and the Consent Order.

7. Immediately upon issuance of the Consent Order, M & M, at their own expense, shall return to the Department all confidential documents the Superintendent produced in response to discovery requests in the Federal Lawsuit or, at the Superintendent's election, certify to counsel for the Department that such documents have been disposed of in a manner mutually agreed upon by counsel for the parties.

8. The parties may sign this Agreement at different times for convenience sake. This Agreement shall not be effective until after all parties or their lawful agents have signed this Agreement, after which the effective date shall revert back to the date that is first set forth above.

9. This Agreement shall be construed and enforced in accordance with the laws of the State of Arizona.

10. This Agreement constitutes the entire agreement of the parties with respect to the matters dealt with herein and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. No representations, warranties, inducements, or oral agreements have been made by any of the parties, except as expressly set forth herein or in other contemporaneous written agreements. This Agreement may not be modified or amended orally or in any other manner than by an agreement in writing, signed by all of the parties

11. All prior oral or written agreements, commitments, or understandings with respect to the matters provided herein are hereby set aside and no evidence of such shall be admissible in any proceeding for any purpose absent written consent of all parties to this Agreement.

12. The proper venue for any proceeding at law or in equity or under the provisions for arbitration shall be Maricopa County, Arizona, and the parties waive any right to object to the venue.

13. If any proceeding or action shall be brought to recover any amount under this Agreement, or for or on account of any breach of, or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party shall be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court, and shall be made a part of any award or judgment rendered.

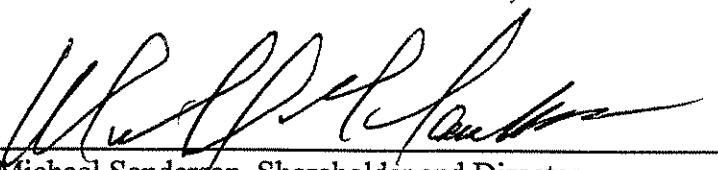
14. Each of the parties to this Agreement represents and warrants that:

- a. It has the power and authority to enter into this Agreement and to perform its obligations thereunder;
- b. It has taken all action and has secured the consents of all persons necessary to authorize the execution, delivery and performance of this Agreement; and
- c. This Agreement has been duly executed and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its term.


15. Nothing contained herein has been agreed to for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement as of this 25th day of August, 1996.

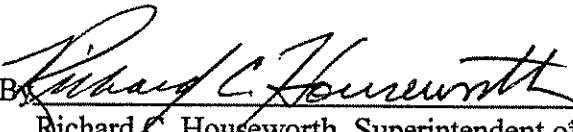
MILLIKEN & MICHAELS OF ARIZONA, INC.

By   
Michael Sanderson, Shareholder and Director

TABJAA, INC. D.B.A. METROPOLITAN CONSUMER  
COLLECTION SERVICES

By   
Terry Boyer, President

ARIZONA STATE BANKING DEPARTMENT

By  Aug. 25, 1996  
Richard C. Houseworth, Superintendent of Banks

cpaplx-5484



STATE BANKING DEPARTMENT

RICHARD C. HOUSEWORTH  
SUPERINTENDENT OF BANKS

FIFE SYMINGTON  
GOVERNOR

August 26, 1996

Peter M. Wittekind  
Snell & Wilmer  
One Arizona Center  
400 East Van Buren  
Phoenix, AZ 85004-0001

Dear Mr. Wittekind:

Reference: Milliken & Michaels of Arizona, Inc./Tabjaa, Inc. Hearing File No. BHN95-013 and 95-014

Enclosed is a copy of the executed Consent Order, the Addendum to Consent Order and the Settlement Agreement in the above reference matter.

Please call Assistant Attorney General Felecia Rotellini at (602) 542-3702 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "V. John Coyle".

V. John Coyle  
Deputy Superintendent of Banks

VJC:jb

enclosure