

182

1 executive director would -- and his terms of his  
 2 original contract of 2005 specify that he needs  
 3 to keep accurate records for the association.  
 4 So he never turned them over to the board, per  
 5 the old board. So if that was his job, he must  
 6 still have those documents by default. There's  
 7 no one else that would have them.

8 Q. I see. That's your thinking?  
 9 A. That's my personal thinking, yes.  
 10 Q. But you have no facts that support that  
 11 other than your theory? That's what I want to  
 12 know.  
 13 A. That's correct. But the fact is, I  
 14 don't have the records.  
 15 Q. I understand that, sir.  
 16 A. The NATE board does not have the  
 17 records.  
 18 Q. You don't have the records --  
 19 A. And the previous board does not have the  
 20 records.  
 21 Q. You don't have the records, do you?  
 22 A. That is correct.  
 23 Q. That's all we need to know, sir. You  
 24 don't have them, right?  
 25 A. Correct.

183

1 Q. You looked through every single document  
 2 at Rick Selby's office?  
 3 A. Yeah, we did.  
 4 Q. Every single one?  
 5 A. Possibly missed one, but I would say  
 6 99 --  
 7 Q. How many documents did you look through?  
 8 A. Thousands.  
 9 Q. Thousands. How many boxes?  
 10 A. Fifteen.  
 11 Q. How long did it take you?  
 12 A. Day and a half.  
 13 Q. How many people were there?  
 14 A. Two.  
 15 Q. Who?  
 16 A. Me and Rachel.  
 17 Q. You and Rachel?  
 18 A. Yes.  
 19 Q. When was this?  
 20 A. Whatever I told you. I think it was,  
 21 like, May -- April, May -- no, it had to have  
 22 been after May. May or June.  
 23 Q. May or June of 2009?  
 24 A. Yes.  
 25 Q. For all that time they've been in the

184

1 possession of NATE's lawyer?  
 2 A. Correct.  
 3 Q. Now, what's the purpose of retaining any  
 4 cash, as far as you understand it, in the NATE  
 5 organization?  
 6 A. Well, that has been a topic of many  
 7 years of discussion between members, but as a

8 member, it was always there for legal reasons.  
 9 Q. Legal reasons?  
 10 A. Such as, you know, industry legal  
 11 matters.  
 12 Q. Not your legal matters?  
 13 A. No. No.  
 14 Q. New England Trade?  
 15 A. No. No. Members having legal issues,  
 16 let's say, with 1099 issues with the IRS or  
 17 something.  
 18 Q. And NATE would go in and defend the  
 19 member?  
 20 A. No, but they may use it if it's to  
 21 benefit the entire association. They may use it  
 22 as a, you know, a -- to benefit the whole  
 23 association. But, again, I was never in charge  
 24 of those monies and I don't know why all those  
 25 monies were there, but I do know it was 25 years

185

1 of money that was accumulated to well over a  
 2 quarter of a million dollars that is now gone.  
 3 Q. Well over a quarter of a million dollars  
 4 is now gone?  
 5 A. Yes.  
 6 Q. Where did it go?  
 7 A. Right there.  
 8 Q. Right where?  
 9 A. Tom McDowell's pocket.  
 10 Q. In his pocket?  
 11 A. Most of it.  
 12 Q. Tell me how it went to his pocket.  
 13 A. 50,000 -- 50,000 and change.  
 14 Q. And change. Okay.  
 15 A. Change. I don't know what the change  
 16 is.  
 17 Q. Is that cash or trade?  
 18 A. Cash.  
 19 Q. For what purpose was that?  
 20 A. I don't know. There's no notes, there's  
 21 no records.  
 22 Q. There's no notes?  
 23 A. Nothing.  
 24 Q. Okay. What else --  
 25 A. The money is gone.

186

1 Q. The money is just gone. All right.  
 2 What else?  
 3 **A. Miscellaneous of probably another ten**  
 4 **grand of just unknown items.**  
 5 Q. 10,000 in cash?  
 6 **A. Oh, yes.**  
 7 Q. Okay. That was payable by a check?  
 8 **A. I would think so, yes.**  
 9 Q. The other one was payable by a check,  
 10 too?  
 11 **A. I believe so, yes, he wrote himself.**  
 12 Q. He wrote it to himself. Okay.  
 13 **A. Yes.**  
 14 Q. Then the miscellaneous he wrote to  
 15 himself, too?  
 16 **A. Yes.**  
 17 Q. To Tom McDowell?  
 18 **A. Yes, or to one of his companies.**  
 19 Q. Which company?  
 20 **A. Possibly ATX or Tom or -- again, I'd**  
 21 **have to look at the checks. I don't know.**  
 22 Q. So we have a check for 50,000 to Tom; a  
 23 check for \$10,000 --  
 24 **A. Or to ATX.**  
 25 Q. What else?

187

1 **A. The 10,000.**  
 2 Q. We already said that.  
 3 **A. Yeah. Again, I'd have to look at the**  
 4 **exact records.**  
 5 Q. Well, you just made the accusation, so I  
 6 want --  
 7 **A. Another \$10,000 he wrote himself, a**  
 8 **check.**  
 9 Q. For what?  
 10 **A. The reason why I recall right now of**  
 11 **distributing all of NATE's assets, he paid**  
 12 **himself \$10,000 out of that.**  
 13 Q. He paid himself, Tom McDowell, or  
 14 himself, ATX?  
 15 **A. I don't know who the check was made out**  
 16 **to. It was either Tom or ATX.**  
 17 Q. Is that the same \$10,000 we just got  
 18 done --  
 19 **A. No, it's a different one.**  
 20 Q. It's a different one? Okay.  
 21 You have the canceled check for this?  
 22 **A. I believe we do, yes.**  
 23 Q. So I should be able to get canceled  
 24 checks from all three of these?  
 25 **A. Yeah, but the middle one of the ten,**

188

1 **that's assorted checks to approximately 10,000.**  
 2 Q. Assorted checks?  
 3 **A. Yes.**  
 4 Q. Oh, okay.  
 5 **A. Just to clarify.**  
 6 Q. But you could get me all assorted checks  
 7 showing the 10,000?  
 8 **A. Oh, yes.**  
 9 Q. Okay. Good.  
 10 What bank account was this drawn on?  
 11 **A. I don't recall which exact bank account.**  
 12 **I'd have to look at it.**  
 13 Q. That's all right. We'll just send you a  
 14 discovery request.  
 15 **A. Feel free.**  
 16 Q. Keep going. What else?  
 17 **A. I don't know off the top of my head.**  
 18 **I'd have to look at the records.**  
 19 Q. Stop and think and refresh your recall  
 20 and see what you can remember because that's why  
 21 we're here today.  
 22 **A. Well, I know there's discussion of quite**  
 23 **a bit of trade that Tom was trying to get as**  
 24 **part of his package, which is about 250,000.**  
 25 Q. \$250,000 in trade?

189

1 **A. Plus or minus, yes.**  
 2 Q. Plus or minus. Well, plus or minus how  
 3 much, a million or a dollar?  
 4 **A. Ten, 20,000.**  
 5 Q. Ten, 20,000, pretty soon you're adding  
 6 up real money here. Okay. As a part of his  
 7 package. Okay. What else?  
 8 **A. Again, I don't know. I'm not the**  
 9 **treasurer of the association.**  
 10 Q. Well, I know, but you made an allegation  
 11 that \$250,000 walked out with Tom. I need to  
 12 know what that was --  
 13 **A. I made the allegation that he took a**  
 14 **significant -- he was responsible for**  
 15 **liquidating the money.**  
 16 Q. That's different than telling me he took  
 17 it.  
 18 **A. Well, take the amount that I gave you**  
 19 **and that's fact.**  
 20 Q. That he took it?  
 21 **A. The stuff I just gave you right there,**  
 22 **those are all facts.**  
 23 Q. You said \$250,000 in trade.  
 24 **A. Yeah.**  
 25 Q. 10,000 in cash.

190

1 **A. Yeah.**  
 2 Q. 10,000 in cash and 50,000, he took it?  
 3 **A. No, two 50,000s.**  
 4 Q. Oh, 200 and --  
 5 **A. No. No. Two 50,000. One 50,000 and**  
 6 **another 50,000.**  
 7 Q. What was the first 50,000 for?

8 **A. I don't know. There's no records to**  
 9 **substantiate it.**  
 10 Q. Was there a check?  
 11 **A. There's just a check written out to**  
 12 **either him or one of his companies with nothing**  
 13 **at all. No documentation.**  
 14 Q. When was this check?  
 15 **A. I believe February.**  
 16 Q. February?  
 17 **A. You'd know.**  
 18 Q. Of '09?  
 19 **A. Yeah.**  
 20 Q. When was the second one written?  
 21 **A. I'd have to look, but I think one of**  
 22 **them may be in January, one was February, but**  
 23 **again --**  
 24 Q. January of '09? Okay.  
 25 **A. When you get the canceled checks in your**

191

1 **discovery --**  
 2 Q. We'll get the canceled checks from you  
 3 all. Because you're accusing someone of theft,  
 4 I need to have the details here.  
 5 **A. Oh, yeah.**  
 6 Q. That's 120 cash.  
 7 **A. And I didn't use the word "theft". I**  
 8 **used the word that he took.**  
 9 Q. Well, took, theft, I mean, if he took  
 10 it, I guess he's entitled to it. If he took it  
 11 and he wasn't entitled to it, isn't that theft?  
 12 **A. So go on. Where are we at?**  
 13 Q. Well, no, the question I'm asking you,  
 14 sir, is --  
 15 **A. Yeah.**  
 16 Q. -- if he took it and he wasn't entitled  
 17 to it, are you accusing him of theft?  
 18 **A. Yes, I am.**  
 19 Q. Okay. Did he take it and he wasn't told  
 20 he was allowed to take it?  
 21 **A. I was not on the board at the time, I**  
 22 **don't know.**  
 23 Q. So if the board told him he was allowed  
 24 to take it, your problem is with the board; is  
 25 that right?

192

1 **A. No.**  
 2 Q. Why is your problem with Tom if he was  
 3 authorized to take it?  
 4 **A. Because Tom hand picked his new board**  
 5 **members to do what Tom wanted to do, and it**  
 6 **wasn't a full board vote and it wasn't handled**  
 7 **properly by the board.**

8 Q. Tom hand picked the board members?  
 9 **A. Oh, yes.**  
 10 Q. Okay.  
 11 **A. Everybody knows that.**  
 12 Q. He forced them to vote?  
 13 **A. I wouldn't use the word "forced", but I**  
 14 **think we all know him today. Friends can have**  
 15 **friends do what they need to do to benefit**  
 16 **themselves. Who knows.**  
 17 Q. You're suggesting that they voted for  
 18 him merely because of their friendship?  
 19 **A. I don't know. Maybe there's more things**  
 20 **I don't know about.**  
 21 Q. Well, what's the basis of your  
 22 suggestion that these board members voted  
 23 anything other than their own best interest for  
 24 NATE?  
 25 **A. Again, you'd have to ask NATE that.**

193

1 Q. No. No. No. I want to know what the  
 2 basis of your suggestion is, yours, Gary Oshry's  
 3 suggestion.  
 4 **A. My suggestion is, is the bylaws state**  
 5 **that the -- they have a very clear and concise**  
 6 **dissolution clause of how the association will**  
 7 **be dissolved. And the day before Mr. McDowell**  
 8 **resigned, there was 250,000-plus cash in the**  
 9 **bank and approximately -- quite a bit of trade**  
 10 **in the account. When he wrote all his checks,**  
 11 **did everything that he did, that if I cashed the**  
 12 **check that I would have received, it would have**  
 13 **bounced. It would not have cleared.**  
 14 Q. The question I have for you is --  
 15 MS. KOESEL: Would you read it back  
 16 because he didn't answer it.  
 17 (The following question was read by the  
 18 reporter: "Well, what's the basis of  
 19 your suggestion that these board members  
 20 voted anything other than their own best  
 21 interest for NATE?")  
 22 **A. I thought I did answer. The bylaws**  
 23 **specifically state --**  
 24 Q. No. No. No. What is your suggestion  
 25 that these board members were not making a vote

194

1 based on what they believed, they personally  
 2 believed was best for NATE? Not what the bylaws  
 3 say.  
 4 What is the factual basis for your  
 5 suggestion that these members voted anything  
 6 other than what they thought was a proper vote?  
 7 **A. It was done over a weekend; it was done**  
 8 **out of the best interest of the association; it**  
 9 **was done with misinformation that all board**  
 10 **members were not allowed to discuss it, talk**  
 11 **about it, work through it. Again, I'm going to**  
 12 **refer back to the bylaws. The bylaws are pretty**  
 13 **clear in stating what can and cannot happen and**  
 14 **they went over their --**  
 15 Q. My question, sir, is --  
 16 **A. What their policies are.**  
 17 Q. -- the three people that voted for it --  
 18 **A. Well, I don't know if three people**  
 19 **voted. I don't know what the vote was.**  
 20 Q. The three people that voted for it, do  
 21 you have any factual basis for your suggestion  
 22 that they did not believe that what they voted  
 23 for was in the best interest of NATE?  
 24 **A. No.**  
 25 MS. KOESEL: Thank you. This is a good

195

1 time for a lunch break.  
 2 (Lunch recess.)  
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196

1 AFTERNOON SESSION  
 2 CONTINUED EXAMINATION OF GARY OSHRY  
 3 BY MS. KOESEL:  
 4 Q. We're back on the record.  
 5 Have the financial statements for NATE  
 6 been prepared for the period ending June 2009?  
 7 **A. No.**  
 8 Q. What's the status of those as far as you  
 9 know?  
 10 MR. OSMAN: Objection.  
 11 Q. You can respond.  
 12 **A. I don't know.**  
 13 Q. Is there a reason why they haven't been  
 14 prepared, as far as you know?  
 15 **A. We don't have any documentation from THE**  
 16 **previous board of directors.**  
 17 Q. Anything else?  
 18 Have you talked to the bank for  
 19 documentation, from the actual bank that NATE  
 20 used for its funds?  
 21 **A. I have not personally.**  
 22 Q. Have you directed anyone on the board to  
 23 do so?  
 24 **A. The treasurer has, yes.**  
 25 Q. Have you received documents from the

197

1 bank or has she, as far as you know?  
 2 **A. I know they've gone back and forth, but**  
 3 **I don't know the correct status of it.**  
 4 Q. So you have attempted to obtain the bank  
 5 records from the bank itself?  
 6 **A. Yes.**  
 7 Q. You have not been successful?  
 8 **A. I don't believe so.**  
 9 Q. Have you tried to subpoena?  
 10 **A. Have we? I don't know.**  
 11 MR. ALDRIDGE: Answer from your personal  
 12 knowledge.  
 13 Q. You don't know. Okay.  
 14 Who's Keith Nally?  
 15 **A. Past director, past treasurer.**  
 16 Q. Does he have anything to do with doing  
 17 your books and records now?  
 18 **A. Not anymore. He resigned last year.**  
 19 Q. He resigned after he did the financials  
 20 for 2008; is that right?  
 21 **A. I believe so, but I don't know.**  
 22 **(Deposition Exhibit 1 was marked for**  
 23 **identification.)**  
 24 **(Discussion held off the record.)**  
 25 Q. Who's presently preparing the financial

198	<p>1 statements for NATE?</p> <p>2 <b>A. The new treasurer.</b></p> <p>3 Q. And that is?</p> <p>4 <b>A. Rachel Taylor.</b></p> <p>5 Q. Has she, to your knowledge, retained an</p> <p>6 accountant?</p> <p>7 <b>A. No.</b></p>	200	<p>1 Q. This is off the financial statements?</p> <p>2 <b>A. Which is right there.</b></p> <p>3 Q. You can show me where it is on the</p> <p>4 financial statement when we get them.</p> <p>5 <b>A. That's fine. The \$42,000, the \$60,000</b></p> <p>6 <b>amount, that was actually told to me from Fred</b></p> <p>7 <b>Detwiler.</b></p>
<p>8 Q. Is she an accountant?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Are you an accountant?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Are you a lawyer?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Is she a lawyer?</p> <p>15 <b>A. Not that I know of.</b></p> <p>16 Q. Did you ever tell anybody you were</p> <p>17 serving as NATE's counsel?</p> <p>18 <b>A. No.</b></p> <p>19 <b>(Deposition Exhibit 2 was marked for</b></p> <p>20 <b>identification.)</b></p> <p>21 Q. I've handed you a document marked for</p> <p>22 identification as Exhibit 2.</p> <p>23 <b>A. Uh-huh.</b></p> <p>24 Q. It looks to me to be an email from you</p> <p>25 to Fred Detwiler; is that right?</p>	<p>8 Q. So Fred told you that?</p> <p>9 <b>A. Fred told me that.</b></p> <p>10 Q. Let me ask the question.</p> <p>11 You did not see a check for \$60,000?</p> <p>12 <b>A. I actually saw a check afterwards for</b></p> <p>13 <b>50,000 and change.</b></p> <p>14 Q. 50,000 and change, and do you know what</p> <p>15 that was for?</p> <p>16 <b>A. No.</b></p> <p>17 Q. It says management fee right here in the</p> <p>18 parentheses.</p> <p>19 <b>A. Right.</b></p> <p>20 Q. Was it for the management fee?</p> <p>21 <b>A. As far as we know, yes.</b></p> <p>22 Q. So the \$60,000 check --</p> <p>23 <b>A. Is actually 50,000.</b></p> <p>24 Q. Because it was net of taxes?</p> <p>25 <b>A. I don't know.</b></p>		
199	<p>1 <b>A. Yeah.</b></p> <p>2 Q. It says: "The attachment is from our</p> <p>3 attorney." Do you see that?</p> <p>4 <b>A. Yeah, but there's no attachment to this.</b></p> <p>5 Q. What attorney were you referring to?</p> <p>6 <b>MR. ALDRIDGE: Objection.</b></p> <p>7 Q. The name of the attorney is all I care</p> <p>8 about.</p> <p>9 <b>A. I don't know.</b></p> <p>10 Q. You don't know if it was NATE's attorney</p> <p>11 or New England Trade's attorney?</p> <p>12 <b>A. I don't know, nor do I know what the</b></p> <p>13 <b>attachment is because there's no attachments.</b></p> <p>14 Q. Then it says: "FYI, the board is</p> <p>15 liquidating our assets to themselves."</p> <p>16 Do you see that?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Did you prepare this?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. What are the documents that you used to</p> <p>21 support the statements you've made on this</p> <p>22 document?</p> <p>23 <b>A. Well, the executive director of the</b></p> <p>24 <b>\$35,000 was -- I believe that's off the</b></p> <p>25 <b>financial statements.</b></p>	201	<p>1 Q. Could it have been net of taxes?</p> <p>2 <b>A. I don't know.</b></p> <p>3 Q. But it was definitely, according to this</p> <p>4 document, and you've confirmed that it was for</p> <p>5 management fees?</p> <p>6 <b>A. Yeah, that's what Fred Detwiler told me,</b></p> <p>7 <b>yes.</b></p> <p>8 Q. So that's -- Fred told you that?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Then it says, \$50,000 1/09 cash for the</p> <p>11 buyout, right?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Then it says, executive director</p> <p>14 stimulus package.</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. The executive director, that check</p> <p>17 wasn't made out to Tom McDowell, was it?</p> <p>18 <b>A. It was to ATX, I believe.</b></p> <p>19 Q. So it's not to the executive director,</p> <p>20 it's to ATX?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. Then it says --</p> <p>23 <b>A. Same with some of the other checks. It</b></p> <p>24 <b>may have been made out to ATX, also.</b></p> <p>25 Q. Well, I need to know which were which,</p>

202	<p>1 I'm so sorry.</p> <p>2 <b>A. I'd have to look at the checks.</b></p> <p>3 Q. Did you prepare this?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. What were you looking at when you</p> <p>6 prepared it?</p> <p>7 <b>A. I was looking at the financial</b></p> <p>8 <b>statements and information I received from the</b></p> <p>9 <b>other board of directors.</b></p> <p>10 Q. Were the checks made out to Tom or were</p> <p>11 they made out to --</p> <p>12 <b>A. I don't know.</b></p> <p>13 Q. You don't know. Okay.</p> <p>14 Now, just hold on to that for a minute.</p> <p>15 We'll get to it.</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. Now, this \$243,000 in media, what's</p> <p>18 that?</p> <p>19 <b>A. Those are media that the association</b></p> <p>20 <b>purchased from members to -- I don't know what</b></p> <p>21 <b>the old board wanted to do with it. We don't</b></p> <p>22 <b>know. We just know the old board bought the</b></p> <p>23 <b>media, but we don't know what the purpose was.</b></p> <p>24 Q. And you said \$243,000 cost NATE</p> <p>25 \$155,000.</p>	204	<p>1 Q. I don't know what -- I haven't showed</p> <p>2 you a single document.</p> <p>3 <b>A. Yes, you did. You --</b></p> <p>4 Q. I haven't marked a single document.</p> <p>5 <b>A. Yeah. That was the one I was looking at</b></p> <p>6 <b>and you asked me -- you showed me the things --</b></p> <p>7 Q. That was a document you produced.</p> <p>8 <b>A. Right.</b></p> <p>9 Q. I haven't shown you a single document</p> <p>10 today.</p> <p>11 <b>A. In that document that I produced, it</b></p> <p>12 <b>showed a profit on this transaction.</b></p> <p>13 Q. So Tom -- is that what this explanation</p> <p>14 is, Tom sold Travel Host Magazine credit at</p> <p>15 50 --</p> <p>16 <b>A. That's actually -- exactly. There you</b></p> <p>17 <b>go. That's exactly what it is right there.</b></p> <p>18 Q. So Tom sold to NATE some media that he</p> <p>19 had in his possession that was worth \$70,000?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. He gave it to NATE for \$35,000?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. Jerry sold In-Flight Magazine that he</p> <p>24 had in his possession for \$81,000, he gave it to</p> <p>25 NATE for 60.</p>
203	<p>1 <b>A. That is correct.</b></p> <p>2 Q. In actual cash or in trade dollars?</p> <p>3 <b>A. In trade dollars.</b></p> <p>4 Q. So \$155,000 in trade dollars --</p> <p>5 <b>A. Uh-huh.</b></p> <p>6 Q. -- NATE put out for this?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. So NATE put out \$155,000 in trade</p> <p>9 dollars to acquire this media; is that correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Where does the \$243,000 come from, then?</p> <p>12 <b>A. It was bought at a discount.</b></p> <p>13 Q. It was purchased by NATE at a discount?</p> <p>14 <b>A. At a discount.</b></p> <p>15 Q. Okay.</p> <p>16 <b>A. So that was the retail on it.</b></p> <p>17 Q. The retail value was established how?</p> <p>18 <b>A. When they bought the media, it was</b></p> <p>19 <b>bought at, you know, \$90,000 worth of media for</b></p> <p>20 <b>65 -- well, I don't know the exact figures, but</b></p> <p>21 <b>whatever the figures were, and it was</b></p> <p>22 <b>reiterated, a letter from Tom to the membership,</b></p> <p>23 <b>which you showed me earlier in your documents,</b></p> <p>24 <b>that he acknowledges making the profit for the</b></p> <p>25 <b>association.</b></p>	205	<p>1 <b>A. Right, and Jerry's told me since, I</b></p> <p>2 <b>believe, it's 80,000, not 81, just to clarify.</b></p> <p>3 Q. So we'll make a little note there that</p> <p>4 it's 80.</p> <p>5 Then ACX, Mark Tracey, Entrepreneur</p> <p>6 Magazine sold NATE \$40,000 worth of media for</p> <p>7 \$30,000?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. And Mark Hatch, Northwest Barter</p> <p>10 Entrepreneur Magazine sold NATE \$53,000 worth of</p> <p>11 media for \$30,000?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. So NATE's out-of-pocket expenses for</p> <p>14 this media were \$155,000?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Of which \$35,000 came directly out of</p> <p>17 Tom McDowell's pocket?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Well, did it not? He sold this media.</p> <p>20 <b>A. He got paid \$35,000.</b></p> <p>21 Q. For something he paid 70 for.</p> <p>22 <b>A. Well, I don't know what Tom paid for it.</b></p> <p>23 Q. Well, it says right here, value, 70,000.</p> <p>24 <b>A. Well, it doesn't mean he paid 70 for it.</b></p> <p>25 <b>It has a value of 70. I don't --</b></p>

206

1 Q. Then who establishes the value?  
 2 A. **Tom did when he sold it to the**  
 3 **association.**  
 4 Q. And Jerry did and the association  
 5 obviously accepted the value at 70,000 or the  
 6 value is at 35. Either way, I don't care. What  
 7 is it?  
 8 A. **The value of it is 70,000, 80, 40 and**  
 9 **53.**  
 10 Q. The value of it is established by the  
 11 person who sold this media at a discount.  
 12 A. **Correct.**  
 13 Q. So NATE benefited from having that in  
 14 its treasury at a discount; is that right?  
 15 A. **From what I understand, yes.**  
 16 Q. So when the executive director received  
 17 this media as part of the compensation, the only  
 18 cost to NATE had been \$155,000, right?  
 19 A. **Correct.**  
 20 Q. And the value of that media might have  
 21 been 243 by someone's standards, but the actual  
 22 out-of-pocket cost to NATE was 155?  
 23 A. **That is accurate.**  
 24 Q. So it's not really true that the  
 25 executive director got \$243,000 in media. He

207

1 got what cost NATE \$155,000.  
 2 A. **No, that is not true.**  
 3 Q. I see.  
 4 A. **That is not accurate.**  
 5 Q. Well, actually, he didn't get anything,  
 6 did he?  
 7 A. **He did. He got \$35,000 when he sold it**  
 8 **to the association.**  
 9 Q. Right, and then when he got it back, he  
 10 got \$35,000 worth of media back.  
 11 A. **No. He got \$70,000 worth of value of**  
 12 **media.**  
 13 Q. Well, that's the value you placed on it,  
 14 but that's not the value --  
 15 A. **I did not place that value. That's what**  
 16 **the association bought it --**  
 17 Q. Right, but the cost to the association  
 18 was \$35,000.  
 19 A. **Correct. However, if you read the**  
 20 **letter that we produced to you in discovery, it**  
 21 **was pretty clear to all of the members of the**  
 22 **association that it was only being bought at a**  
 23 **discount to benefit the association, and it**  
 24 **talks about how the association benefited from**  
 25 **this increased value.**

208

1 Q. Okay. And the association board, then,  
 2 voted to give that to Thomas, part of his  
 3 contract for a buyout, right?  
 4 A. **I do not believe that's accurate.**  
 5 Q. What is wrong -- inaccurate about my  
 6 statement?  
 7 A. **I don't believe the board ever voted on**  
 8 **it.**  
 9 Q. You don't believe it voted on it.  
 10 A. **Correct.**  
 11 Q. If I were to produce documents showing  
 12 that they voted on it three to five --  
 13 A. **I would love to see those documents.**  
 14 **I've never seen --**  
 15 Q. My question is: If I were to produce  
 16 the documents showing you that they voted three  
 17 to five, would you turn over the media to Tom  
 18 immediately?  
 19 MR. ALDRIDGE: Objection.  
 20 Q. You can respond.  
 21 MR. ALDRIDGE: Objection.  
 22 A. **I have no authority to do so.**  
 23 Q. I want to hear your answer. I  
 24 understand the objections. You may respond.  
 25 A. **I have -- can I respond?**

209

1 Q. You can respond unless you're told not  
 2 to.  
 3 MR. ALDRIDGE: As to your personal  
 4 knowledge on what you can personally do.  
 5 A. **I would not have the ability to make**  
 6 **that decision.**  
 7 Q. Would you vote for it?  
 8 A. **I don't know. I'd have to see the**  
 9 **documents.**  
 10 Q. Well, I'm telling you that the documents  
 11 say that. Now, assuming that that's true -- and  
 12 obviously, if it's not true, you're not bound by  
 13 the answer. But assuming that there are  
 14 documents that show that three members of the  
 15 board of directors voted to pay Tom \$155,000  
 16 worth of this media and this is the media  
 17 they're referring to, would you vote to give it  
 18 to Tom?  
 19 MR. ALDRIDGE: I'm going to object  
 20 again. You're asking him --  
 21 Q. You can respond.  
 22 MR. ALDRIDGE: You're asking him to  
 23 answer a question based on a fictional document.  
 24 MS. KOESEL: There's no fictional  
 25 document. I asked him to make an assumption.

210

1 **A. Without seeing that document, I could**  
 2 **not make a decision.**  
 3 Q. Why can't you make a decision if I tell  
 4 you what's on it?  
 5 **A. Because I'd have to see the document.**  
 6 Q. Are you calling me a liar? I'm  
 7 representing to you, as an attorney, okay, that  
 8 if that document exists -- my question is  
 9 hypothetical.  
 10 If that document exists and it shows  
 11 that there were three votes in favor of giving  
 12 Tom \$155,000 in trade dollars, okay, as part of  
 13 his buyout, would you vote to release the funds?  
 14 **A. No.**  
 15 Q. Why?  
 16 **A. Because Tom did not do the duties that**  
 17 **were assigned to him in his original contract in**  
 18 **2005, that we believe is the --**  
 19 Q. The 2005 contract?  
 20 **A. Right.**  
 21 Q. Okay.  
 22 **A. That, again, this is --**  
 23 Q. Who's "we believe," by the way?  
 24 **A. The NATE board of directors.**  
 25 MR. ALDRIDGE: I would object on --

211

1 MS. KOESEL: Well, he just said that.  
 2 I'm so sorry.  
 3 MR. ALDRIDGE: I know.  
 4 MS. KOESEL: You can object to his  
 5 answer, but his answer is of record.  
 6 **A. I'd have to see the documents.**  
 7 Q. No. No. Finish your answer.  
 8 **A. I personally do not believe that I would**  
 9 **vote yes, because I don't think the package is**  
 10 **fair to the association, so I would not have**  
 11 **voted for it.**  
 12 Q. But you weren't on the board at the  
 13 time, were you?  
 14 **A. That is correct.**  
 15 Q. So the board at the time had to make its  
 16 own independent decision; fair statement?  
 17 **A. If it was voted on properly, I would --**  
 18 **I would have to live with the way it was, but I**  
 19 **don't believe it was voted on properly.**  
 20 Q. What was improper about the vote, in  
 21 your opinion?  
 22 **A. There was no notice given to the board**  
 23 **members about a vote.**  
 24 Q. Okay.  
 25 **A. They were in the discussions with a NATE**

212

1 membership to have a mechanism to elect a new  
 2 board of directors.  
 3 Q. Okay.  
 4 **A. And it was done over a -- as I said,**  
 5 **over a Saturday morning, without notifying**  
 6 **anybody.**  
 7 Q. When you say without notifying anybody,  
 8 what do you mean by that?  
 9 **A. Any -- I'm sorry. Without giving notice**  
 10 **of the membership and the board that we're going**  
 11 **to have a board meeting on such an important**  
 12 **decision.**  
 13 Q. Anything else?  
 14 **A. No.**  
 15 Q. Now, you said that we believe that the  
 16 correct contract is the 2005 contract, just in  
 17 passing in your comments here. Who is we?  
 18 **A. That is a contract that we have from**  
 19 **records that we've seen.**  
 20 Q. Right. Who's we?  
 21 **A. The board.**  
 22 Q. Where did you locate this contract?  
 23 **A. I believe it was -- actually, that's a**  
 24 **great question. I don't know where it was**  
 25 **located, but I believe that was from probably**

213

1 **the '05, '06 board of directors.**  
 2 Q. Why do you believe that that's the  
 3 correct contract and the 2006 contract is not  
 4 the correct?  
 5 **A. Because nobody has ever seen, up until**  
 6 **recently, any copies of any other contracts.**  
 7 Q. I see.  
 8 **A. Any NATE member, including the NATE**  
 9 **board of directors.**  
 10 Q. Really?  
 11 **A. That is correct.**  
 12 Q. You've spoken to Fran Crumpton about  
 13 this?  
 14 **A. She may be one director, but many other**  
 15 **directors I've never seen.**  
 16 Q. Have you spoken to Jerry Howell about  
 17 this?  
 18 **A. He's seen it.**  
 19 Q. Okay. Have you spoken to Mike Krane  
 20 about this?  
 21 **A. Yeah. He never saw it.**  
 22 Q. Have you spoken to Fred Detwiler about  
 23 it.  
 24 **A. That's correct, I spoke to Fred.**  
 25 Q. Was Fred on the board of directors in

214	<p>1 2006 when that contract was approved?</p> <p>2 <b>A. No, he was not.</b></p> <p>3 Q. You've seen where it's approved in the</p> <p>4 minutes, haven't you?</p> <p>5 <b>A. No, there's no mentioning minutes of any</b></p> <p>6 <b>contract in '06.</b></p> <p>7 Q. You've never seen the minutes that</p>	216	<p>1 Q. Unfortunately, I did not copy it for</p> <p>2 everyone, so you'll just have to take a look at</p> <p>3 it, but I've got to find it. It's 17 pages of</p> <p>4 minutes. But you've read all these minutes, so</p> <p>5 you're positive it's not --</p> <p>6 <b>A. I'm not saying I'm positive. I don't</b></p> <p>7 <b>remember reading it.</b></p>
<p>8 approved that that were posted on the website?</p> <p>9 <b>A. No, they're not on there.</b></p> <p>10 Q. They're not?</p> <p>11 <b>A. No.</b></p> <p>12 Q. You're positive of that?</p> <p>13 <b>A. Pretty positiver.</b></p> <p>14 Q. You've read all the minutes?</p> <p>15 <b>A. I have read all the minutes and I don't</b></p> <p>16 <b>recall seeing anything in 2006 with a contract</b></p> <p>17 <b>extension with different terms, no.</b></p> <p>18 Q. No. No. That's not what I asked you.</p> <p>19 You never saw an approval by the board of Tom's</p> <p>20 contract?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Never?</p> <p>23 <b>A. I don't recall, no.</b></p> <p>24 Q. Well, that's different than never saw it</p> <p>25 versus I don't recall. Did you read the</p>	<p>8 Q. But if it's on there, then it's the</p> <p>9 correct contract; fair statement?</p> <p>10 <b>A. I'd like to talk to the secretary at the</b></p> <p>11 <b>time to confirm with the secretary at the time</b></p> <p>12 <b>in the association.</b></p> <p>13 Q. Who was the secretary?</p> <p>14 <b>A. I believe it was Dale Mardak at the</b></p> <p>15 <b>time.</b></p> <p>16 Q. I see. Dale Mardak is the son of Don</p> <p>17 Mardak, right?</p> <p>18 <b>A. Uh-huh.</b></p> <p>19 Q. Who's a Plaintiff in this case?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. I see. So he wouldn't have any bias,</p> <p>22 right?</p> <p>23 <b>A. I don't know. I can't speak for him.</b></p> <p>24 Q. Do you think he would have any bias?</p> <p>25 <b>A. I don't think so. He's a pretty honest</b></p>		
215	<p>1 minutes?</p> <p>2 <b>A. I have read minutes.</b></p> <p>3 Q. You read the minutes that were posted on</p> <p>4 the website, right?</p> <p>5 <b>A. In what year?</b></p> <p>6 Q. 2006.</p> <p>7 <b>A. I'd have to look. I don't remember</b></p> <p>8 <b>which year.</b></p> <p>9 Q. Well, you just told me you read them and</p> <p>10 you haven't seen it --</p> <p>11 <b>A. I have never seen minutes that I have</b></p> <p>12 <b>read that ever mentioned any new contract for</b></p> <p>13 <b>Tom.</b></p> <p>14 Q. No, I didn't ask you that. I asked you</p> <p>15 if you ever saw any contract that was approved.</p> <p>16 <b>A. Any contract, ever?</b></p> <p>17 Q. For Tom.</p> <p>18 <b>A. I'm sure in '05 that was on the website.</b></p> <p>19 Q. Do you think that there's one for '06?</p> <p>20 <b>A. I don't think so, no.</b></p> <p>21 Q. If I show you one, what are you going to</p> <p>22 tell me is wrong with the minutes?</p> <p>23 <b>A. I'd like to see it.</b></p> <p>24 Q. I'll be happy to.</p> <p>25 <b>A. Please do.</b></p>	217	<p>1 <b>guy.</b></p> <p>2 Q. Like you, right?</p> <p>3 <b>A. I have nothing to hide.</b></p> <p>4 Q. Not so far.</p> <p>5 Seventeen pages. We'll get a copy for</p> <p>6 you all later.</p> <p>7 (Deposition Exhibit 3 was marked for</p> <p>8 identification.)</p> <p>9 Q. I'm going to read over your shoulder so</p> <p>10 we're all on the same page here. I'm showing</p> <p>11 you a document marked for identification</p> <p>12 purposes as Exhibit 3. And let the record</p> <p>13 reflect that I'm standing over you because I</p> <p>14 only have one copy. This was printed from the</p> <p>15 NATE website yesterday, August 24th, 2009, and</p> <p>16 it shows NATE's board meeting minutes from</p> <p>17 August 3rd and 4th, 2008, all the way back to</p> <p>18 May 4th, 2005.</p> <p>19 Have I accurately described that?</p> <p>20 <b>A. Yeah.</b></p> <p>21 Q. We're going to now turn to Page 5 of 17,</p> <p>22 the Wednesday, August 9th, 2006 board meeting</p> <p>23 minutes. Do you see those?</p> <p>24 <b>A. Yeah.</b></p> <p>25 Q. Let's look through those, to old</p>

218	<p>1 business on the bottom of page 6 of 17.</p> <p>2 <b>A. Uh-huh.</b></p> <p>3 Q. I want you to read this sentence on the</p> <p>4 top of page 7 of 17, aloud.</p> <p>5 <b>A. "The board discussed the previous</b></p> <p>6 <b>approval of the extension of Tom McDowell's</b></p> <p>7 <b>contract through December 31st, 2012. A</b></p> <p>8 <b>suggestion was made that when the board members</b></p> <p>9 <b>vote by email that they copy the entire board."</b></p> <p>10 Q. I guess you missed that while reading</p> <p>11 the minutes.</p> <p>12 <b>A. May I please talk to my counsel?</b></p> <p>13 Q. No. There's no reason for you to talk</p> <p>14 to counsel.</p> <p>15 <b>A. I would like to. Yes, there is.</b></p> <p>16 Q. Why? Are you going to ask him for legal</p> <p>17 advice? Are you seeking legal advice?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Okay. You can seek legal advice, but</p> <p>20 that's it, and I'm going to ask you anything</p> <p>21 else you talked about when you get back.</p> <p>22 <b>A. That's fine.</b></p> <p>23 <b>(Brief recess.)</b></p> <p>24 Q. On the bottom of Exhibit 2 it says:</p> <p>25 "This was never voted on by the membership and</p>	220	<p>1 Q. Let's take a look at Exhibit 1, which is</p> <p>2 the November 13th, 2008 independent accountant's</p> <p>3 report for the-- year ending June 30th, 2008 for</p> <p>4 NATE's financial statements. Have I accurately</p> <p>5 described that?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. It also includes financial statements</p> <p>8 all the way back through 2007, doesn't it?</p> <p>9 <b>A. Yes -- actually, 2004, I think.</b></p> <p>10 Q. Well, I don't know. Maybe it does --</p> <p>11 oh, yeah, 2005 and 2004.</p> <p>12 It's a ten-page document I've put in</p> <p>13 front of you, right?</p> <p>14 <b>A. Yep.</b></p> <p>15 Q. It came off the NATE.org website on</p> <p>16 7/28/09, right?</p> <p>17 <b>A. That's what it says.</b></p> <p>18 Q. Do you have any reason to disagree with</p> <p>19 that?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Let's take a look at the statement of</p> <p>22 activities, income tax basis for years ending</p> <p>23 June 30th, 2008 and 2007, right?</p> <p>24 <b>A. Okay.</b></p> <p>25 Q. Page 2. On the bottom where it says,</p>
219	<p>1 few members benefited from this program." What</p> <p>2 program?</p> <p>3 <b>A. The board of directors had a meeting, I</b></p> <p>4 <b>believe in August of 2008, to purchase media for</b></p> <p>5 <b>some program that I, personally, was never</b></p> <p>6 <b>really clear about or understood. Many -- no</b></p> <p>7 <b>one that I ever talked to could ever figure out</b></p> <p>8 <b>what it was and I don't know what it is, so</b></p> <p>9 <b>that's --</b></p> <p>10 Q. Is there something in the bylaws that</p> <p>11 require a particular program to be voted on by</p> <p>12 the membership?</p> <p>13 <b>A. No, there's not.</b></p> <p>14 Q. So this is interesting, but not</p> <p>15 determinative.</p> <p>16 <b>A. Well, it is when the bylaws say that the</b></p> <p>17 <b>association has a budget and it was not a budget</b></p> <p>18 <b>item of making these purchases.</b></p> <p>19 Q. Is there a rule that they can't make a</p> <p>20 purchase outside the budget somewhere in the</p> <p>21 bylaws?</p> <p>22 <b>A. I'd have to look. I don't know. I'd</b></p> <p>23 <b>have to look at the documents.</b></p> <p>24 Q. We'll look at that in a minute.</p> <p>25 <b>A. Okay.</b></p>	221	<p>1 increased, decreased and unrestricted net</p> <p>2 assets, it shows the income and expenses, right?</p> <p>3 Shows unrestricted revenue and support for 2008</p> <p>4 of \$142,667, right?</p> <p>5 <b>A. Yep.</b></p> <p>6 Q. That's revenue and support, right?</p> <p>7 <b>A. That's what it says.</b></p> <p>8 Q. Then they have expenses of -- a total</p> <p>9 expenses of \$113,596. Do you see that?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. That exceeds the revenues by \$29,000</p> <p>12 right?</p> <p>13 <b>A. That's what it would appear.</b></p> <p>14 Q. Okay. Now, there are -- that does not</p> <p>15 appear to be a loss, then, does it?</p> <p>16 <b>A. Well, if you added in Tom's salary, it</b></p> <p>17 <b>would have been a loss.</b></p> <p>18 Q. But Tom --</p> <p>19 <b>A. And --</b></p> <p>20 Q. Wait a minute. It does not appear to be</p> <p>21 a loss on these records, right?</p> <p>22 <b>A. Because the salary is not in here.</b></p> <p>23 Q. Because he chose not to take it.</p> <p>24 <b>A. Because we would have had a loss.</b></p> <p>25 Q. Well, then, he worked for free for the</p>

222

1 benefit of the organization.  
 2 **A. No. He got paid.**  
 3 Q. The following year, but that year he  
 4 worked for free, right?  
 5 **A. Nothing's free.**  
 6 Q. Did he not work for free?  
 7 **A. No.**

8 Q. I see.  
 9 **A. He -- I'll quote.**  
 10 Q. He deferred it, right?  
 11 **A. It says: "The association owes Tom**  
 12 **McDowell \$30,000 in unpaid management fees for**  
 13 **January to June 2008."**  
 14 Q. Okay. So they lost just over \$900,  
 15 right?  
 16 **A. Okay, but it's a loss.**  
 17 Q. \$900, right?  
 18 **A. I'm not an accountant. I have not had**  
 19 **time to audit these, so I couldn't tell you.**  
 20 Q. Well, that's what the records say. Are  
 21 you telling me that this is inaccurate? You're  
 22 telling me that Ray, Foley, Hensley & Company,  
 23 PLCC would falsify accounting records to benefit  
 24 someone?  
 25 **A. That is not what I'm saying.**

223

1 Q. Well, this is what they produced.  
 2 **A. What I am saying is, the information**  
 3 **that was provided was put into ways that other**  
 4 **accountants may have done it differently.**  
 5 Q. But this accountant chose to do it this  
 6 way.  
 7 **A. That could be a point of view.**  
 8 Q. I beg your pardon?  
 9 **A. That could be a point of view.**  
 10 Q. Do you know whether or not that was a  
 11 violation of generally accepted accounting  
 12 principles?  
 13 **A. I don't know.**  
 14 Q. Now, in 2007 you also said they had a  
 15 loss.  
 16 **A. In 2007?**  
 17 Q. Yes. And I'm looking at the statement  
 18 of activities, net income tax basis for year  
 19 ending June 30th, 2007, and I see on the same  
 20 page, \$41,920 in profit.  
 21 **A. Where do you see that?**  
 22 Q. Right on the bottom of the same page we  
 23 were on, never moved off the second -- page 2 of  
 24 10.  
 25 **A. Oh, I'm sorry, right here. Yes. Okay.**

224

1 Q. \$41,920.  
 2 **A. Okay.**  
 3 Q. So that was a profit. You told me it  
 4 was loss in '07.  
 5 **A. Well, that's not accurate.**  
 6 Q. What's inaccurate about it?  
 7 **A. Again, I have to go back to the records,**

8 **but it appears the salary is only 50 percent of**  
 9 **the salary.**  
 10 Q. Maybe that's all he took.  
 11 **A. Again, I don't have records, so I don't**  
 12 **know.**  
 13 Q. So what we see on here is that he only  
 14 took -- it only shows 30, so why would you be  
 15 concerned about it? It's not in a note saying  
 16 he's getting more, is it?  
 17 **A. Again, I don't know.**  
 18 Q. You've got the record in front of you,  
 19 there's a note saying he got -- he deferred his  
 20 salary. Let's see it.  
 21 **A. I do not know.**  
 22 Q. Well, look at the records and show me  
 23 where it is.  
 24 **A. I don't know.**  
 25 Q. So there's no note in here is what

225

1 you're telling me?  
 2 **A. What I can say to you is, I have no**  
 3 **personal knowledge of any notes or no notes;**  
 4 **that I can read it, and what this says, if it is**  
 5 **accurate, it's accurate, and if it's not**  
 6 **accurate, it's not accurate. I have no way of**  
 7 **knowing whether it was or not.**  
 8 Q. So you have no way of knowing whether or  
 9 not these records are accurate; is that what  
 10 you're telling me?  
 11 **A. That is correct.**  
 12 Q. You're just assuming they're inaccurate  
 13 because you don't understand them; fair  
 14 statement?  
 15 **A. Say that again.**  
 16 MS. KOESEL: Read the question back.  
 17 (The following question was read by the  
 18 reporter: "You're just assuming they're  
 19 inaccurate because you don't understand  
 20 them; fair statement?")  
 21 **A. No, that's not true. I understand them.**  
 22 Q. Well, then what is it that you think is  
 23 inaccurate about the year ending June 2007's  
 24 statement of taxes?  
 25 **A. I would have to review the records from**

226

1 **those years. I was not on the board, I had no**  
 2 **knowledge of accounts.**  
 3 Q. So you have no reason, as you sit here  
 4 today, based on anything you have seen, okay, to  
 5 believe that the June -- year ending June 2007's  
 6 independent accountant's report is inaccurate?  
 7 **A. In this document? No.**  
 8 Q. Is there another document?  
 9 **A. No.**  
 10 Q. There's no other financial statement,  
 11 right?  
 12 **A. No, not that I know about.**  
 13 Q. So you have no reason to believe, as you  
 14 sit here today, that these documents that I've  
 15 placed in front of you marked as Exhibit 1, page  
 16 1 of 10, are inaccurate in any way?  
 17 **A. I do believe they're inaccurate.**  
 18 Q. Factual basis for that statement.  
 19 **A. The factual basis is, there are simple**  
 20 **math. If you add up the amount of members that**  
 21 **we have, times the revenue, you look at the --**  
 22 **as I mentioned earlier, the transactions we did**  
 23 **through the association, through the bank, I**  
 24 **look at convention revenue, it doesn't add up.**  
 25 Q. What doesn't -- you mean the numbers in

227

1 the columns don't add up?  
 2 **A. The numbers -- no. No. No. The**  
 3 **numbers of what we have --**  
 4 Q. Who's we?  
 5 **A. The association is not the same as these**  
 6 **numbers right here.**  
 7 Q. What numbers do you have and where did  
 8 you get them?  
 9 **A. I don't have them right now.**  
 10 Q. Where did you get the numbers?  
 11 **A. Well, it's simple math. I know how many**  
 12 **members we had.**  
 13 Q. Oh, you're doing it in your head?  
 14 **A. Right.**  
 15 Q. You're not doing it based on a set of  
 16 books and records that were kept  
 17 contemporaneous -- wait a minute. Wait until I  
 18 get my whole question out.  
 19 You're not doing it based on a set of  
 20 books and records that were kept  
 21 contemporaneously with the transactions? Yes or  
 22 no?  
 23 **A. I don't look at our books in that way,**  
 24 **but --**  
 25 Q. Excuse me. You're not doing it based on

228

1 books and records that were kept  
 2 contemporaneously with the transactions, yes or  
 3 no?  
 4 **A. We will be. Yes, we will be.**  
 5 Q. You have not done it so far --  
 6 **A. I have not done so, yes.**  
 7 Q. Yet you brought this lawsuit and have  
 8 asserted that my client did something nefarious  
 9 with these books and records; have you not?  
 10 **A. I didn't accuse that in my lawsuit.**  
 11 Q. You did not accuse Mr. McDowell of doing  
 12 something nefarious with these books and  
 13 records?  
 14 **A. No. In my lawsuit --**  
 15 Q. You never told anybody he was a thief?  
 16 **A. I may have told people that because**  
 17 **that's my belief.**  
 18 Q. You told Joan Herwith that, didn't you?  
 19 **A. No, I never told Joan Herwith that.**  
 20 Q. You told Ken Paer that, didn't you?  
 21 **A. No.**  
 22 Q. You told Debbie Lombardi that, didn't  
 23 you?  
 24 **A. Possibly Debbie.**  
 25 Q. So you told Debbie --

229

1 **A. In conversation, I might have.**  
 2 Q. -- that Tom was a thief, right?  
 3 **A. I don't even think I did, but I could**  
 4 **have and I believe it.**  
 5 Q. Cathy Vogle you told as well, didn't  
 6 you?  
 7 **A. No, absolutely not Cathy Vogle.**  
 8 Q. You told Scott Whitmere, didn't you?  
 9 **A. Nope.**  
 10 Q. You told Ron Unger, didn't you?  
 11 **A. Never talked to Ron Unger.**  
 12 Q. You talked to Mike Krane, didn't you,  
 13 and you told him --  
 14 **A. Talked to Mike Krane.**  
 15 Q. -- Tom was a thief, didn't you?  
 16 **A. I very well might have.**  
 17 Q. Yes or no, did you tell Mike Krane that  
 18 Tom was a thief?  
 19 **A. I don't recall.**  
 20 Q. Did you tell Mike Krane that the books  
 21 and records had been cooked?  
 22 **A. I don't recall.**  
 23 Q. You don't recall if you told anyone that  
 24 the books and records had been cooked?  
 25 **A. No, I don't.**

230	<p>1 Q. You don't?</p> <p>2 A. No.</p> <p>3 Q. So you don't believe the books and</p> <p>4 records have been cooked, do you?</p> <p>5 A. <b>I don't believe this is accurate, no.</b></p> <p>6 Q. That's based on your pencil and paper</p> <p>7 kind of running through the numbers, right?</p> <p>8 A. Yes.</p> <p>9 Q. But not based on a conversation with the</p> <p>10 accountant, right?</p> <p>11 A. No.</p> <p>12 Q. Not based on any accounting principles</p> <p>13 that you understand, right?</p> <p>14 A. No.</p> <p>15 Q. Not based on a review of the books and</p> <p>16 records that were kept at the time?</p> <p>17 A. No.</p> <p>18 Q. Not based on any anything other than</p> <p>19 your own speculation; isn't that right?</p> <p>20 A. <b>Correct.</b></p> <p>21 Q. Did you tell David Powers that Tom was a</p> <p>22 thief?</p> <p>23 A. <b>I don't think so.</b></p> <p>24 Q. Did you tell David Powers that Tom</p> <p>25 cooked the books?</p>	232	<p>1 <b>records to support them.</b></p> <p>2 Q. You would suggest that there's</p> <p>3 inaccuracies in these books, but you don't have</p> <p>4 any factual basis for that; is that right?</p> <p>5 A. <b>Yes, I do. A perfect example is 2008.</b></p> <p>6 <b>We lost money in 2008.</b></p> <p>7 Q. Is it possible to lose money, all of</p> <p>8 \$900, okay, in a nonprofit organization?</p> <p>9 A. <b>Again, I do not -- I'm not an</b></p> <p>10 <b>accountant, I don't have any other documents</b></p> <p>11 <b>other than what you're representing to me here</b></p> <p>12 <b>to make an accurate answer to your question.</b></p> <p>13 Q. Because the statements you're making are</p> <p>14 just pure speculation, right?</p> <p>15 A. <b>It's a theory.</b></p> <p>16 Q. I see. But you don't have any facts for</p> <p>17 it, or certainly none you can relate to me,</p> <p>18 right?</p> <p>19 A. <b>That is correct.</b></p> <p>20 <b>(Deposition Exhibit 4 was marked for</b></p> <p>21 <b>identification.)</b></p> <p>22 Q. Handing you a document marked for</p> <p>23 identification purposes as Exhibit 4. This is</p> <p>24 an email from you to Jerry Howell dated</p> <p>25 March 21st, 2008. Have I accurately identified</p>
231	<p>1 A. No.</p> <p>2 Q. Did you tell Richard Harris Tom cooked</p> <p>3 the books?</p> <p>4 A. No.</p> <p>5 Q. How about Keith Nally?</p> <p>6 A. No.</p> <p>7 Q. How about Patti Falus?</p> <p>8 A. No.</p> <p>9 Q. Did you tell anybody else that Tom was a</p> <p>10 thief?</p> <p>11 A. <b>I have maybe said to somebody, which I</b></p> <p>12 <b>couldn't tell you who, he is a thief, because</b></p> <p>13 <b>that's what I believe, personal belief, but I</b></p> <p>14 <b>don't think I've ever accused him of cooking the</b></p> <p>15 <b>books.</b></p> <p>16 Q. Well, that's what you just said, the</p> <p>17 books are inaccurate and --</p> <p>18 A. <b>I believe they're inaccurate.</b></p> <p>19 Q. -- are posted on the web page.</p> <p>20 A. <b>Hold on. I did not say Tom did. I'm</b></p> <p>21 <b>just saying I don't think these are accurate.</b></p> <p>22 Q. You didn't say Tom did it? Well, who</p> <p>23 else did it?</p> <p>24 A. <b>I don't know. As I said, you know, I</b></p> <p>25 <b>don't know. This is new to me. I don't have</b></p>	233	<p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. This was not produced by you to us in</p> <p>4 discovery. Why not?</p> <p>5 A. <b>Because this was a personal email that I</b></p> <p>6 <b>sent out to Tom before any litigation or</b></p> <p>7 <b>anything.</b></p> <p>8 Q. There was no date that said -- I said</p> <p>9 any time, from 2007 forward. This is 2008. Why</p> <p>10 didn't I get it?</p> <p>11 A. <b>Going that far back, I don't probably</b></p> <p>12 <b>have this anymore. But I mean, I definitely</b></p> <p>13 <b>sent this. I remember sending this email.</b></p> <p>14 Q. So this is one of those that got deleted</p> <p>15 or discarded?</p> <p>16 A. <b>I'm not saying it's deleted. I just</b></p> <p>17 <b>don't --</b></p> <p>18 Q. Well, either you deleted it or discarded</p> <p>19 it or you chose not to produce it. Which is it?</p> <p>20 A. <b>Neither. None of the above.</b></p> <p>21 Q. So you have it on your computer and --</p> <p>22 A. <b>Oh, I have no idea. I have no idea. No</b></p> <p>23 <b>idea.</b></p> <p>24 Q. I see.</p> <p>25 Who is Judy Rich?</p>

234	<p>1 <b>A. Rich Harris.</b></p> <p>2 Q. Who?</p> <p>3 <b>A. Rich Harris.</b></p> <p>4 Q. Who's Rich Harris?</p> <p>5 <b>A. A previous board member.</b></p> <p>6 Q. A previous board member, and what</p> <p>7 organization is he with?</p> <p>8 <b>A. NATE.</b></p> <p>9 Q. He's on NATE? Does he have a trade</p> <p>10 exchange?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. What's the name of his trade exchange?</p> <p>13 <b>A. NCE.</b></p> <p>14 Q. NCE. When was he a board member?</p> <p>15 <b>A. He's been a past president, a board</b></p> <p>16 <b>member almost every year forever, but I don't</b></p> <p>17 <b>know what month he resigned.</b></p> <p>18 MS. KOESEL: Would you read his answer</p> <p>19 back? I didn't understand it.</p> <p>20 (The following answer was read by the</p> <p>21 reporter: "He's been a past president, a</p> <p>22 board member almost every year forever,</p> <p>23 but I don't know what month he</p> <p>24 resigned.")</p> <p>25 <b>A. Forever, he's been always on the board,</b></p>	236	<p>1 a leader and not the joke of the industry. Who</p> <p>2 said it was a joke?</p> <p>3 <b>A. Almost everybody.</b></p> <p>4 Q. Well, name them.</p> <p>5 <b>A. I can't name them.</b></p> <p>6 Q. Name the ones you remember.</p> <p>7 <b>A. I can't name them.</b></p> <p>8 Q. You can't name a single person --</p> <p>9 <b>A. No.</b></p> <p>10 Q. -- who thought NATE was a joke except</p> <p>11 you?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Did you think NATE was a joke?</p> <p>14 <b>A. You're taking it out of context.</b></p> <p>15 Q. I'm reading right what it says here.</p> <p>16 <b>A. Yes, many people were extremely</b></p> <p>17 <b>dissatisfied and the word "joke" is probably --</b></p> <p>18 <b>just a word to mean that it's not going the way</b></p> <p>19 <b>everybody wanted it to go. And you can read --</b></p> <p>20 Q. Did you consider NATE to be the joke of</p> <p>21 the industry?</p> <p>22 <b>A. Yeah, it was kind of -- people were</b></p> <p>23 <b>pretty dissatisfied, yeah.</b></p> <p>24 Q. No. No. You --</p> <p>25 <b>A. Yeah, me.</b></p>
235	<p>1 <b>pretty much.</b></p> <p>2 Q. Is he on the board today?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Was he on the board --</p> <p>5 <b>A. He resigned in the spring of '08. I</b></p> <p>6 <b>don't know the exact month.</b></p> <p>7 Q. So he was on the board at the time?</p> <p>8 <b>A. He very well -- looks like that way, he</b></p> <p>9 <b>would have been.</b></p> <p>10 Q. Keith Nally was on the board in '08?</p> <p>11 <b>A. Yeah. He was the treasurer, I believe.</b></p> <p>12 Q. Patti?</p> <p>13 <b>A. Yeah.</b></p> <p>14 Q. And Frank Crumpton?</p> <p>15 <b>A. Yeah.</b></p> <p>16 Q. And Barter Trainer is Tom, right?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. He's not on the board?</p> <p>19 <b>A. He was the executive director.</b></p> <p>20 Q. He's not on the board?</p> <p>21 <b>A. No.</b></p> <p>22 Q. And you appreciate all the work because</p> <p>23 you love NATE, right?</p> <p>24 <b>A. Yeah.</b></p> <p>25 Q. So I want you -- you want to see NATE as</p>	237	<p>1 Q. You loved it, but you thought it was the</p> <p>2 joke of the industry?</p> <p>3 <b>A. Yeah, it was going downhill, correct.</b></p> <p>4 Q. Who else other than you thought it was</p> <p>5 the joke of --</p> <p>6 <b>A. You'd have to ask the membership.</b></p> <p>7 Q. To your knowledge --</p> <p>8 <b>A. You'd have to ask the membership --</b></p> <p>9 Q. Excuse me. To your knowledge, who else</p> <p>10 told you that they thought NATE was the joke of</p> <p>11 the industry?</p> <p>12 <b>A. I have no idea. It was over a year ago.</b></p> <p>13 <b>I don't recall.</b></p> <p>14 Q. So as far as you -- as you sit here</p> <p>15 today, you're the only person you can say</p> <p>16 thought NATE was the joke of the industry?</p> <p>17 <b>A. Sure. I'll send out a questionnaire for</b></p> <p>18 <b>you.</b></p> <p>19 Q. Now, it says: "Even though IMS has made</p> <p>20 many acquisitions over the last few years, there</p> <p>21 are still at least 50 viable trade exchanges</p> <p>22 that should belong to NATE," right?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Since you've been president of NATE, how</p> <p>25 many of this 50 have you brought into NATE?</p>

238	<p>1 <b>A. We haven't promoted it to anybody yet</b></p> <p>2 <b>because of our current problems.</b></p> <p>3 Q. So none is the answer?</p> <p>4 <b>A. None, that's correct.</b></p> <p>5 Q. Then you say: "I would like to discuss</p> <p>6 Tom's contract." This is in March of '08,</p> <p>7 right?</p>	240	<p>1 lead or even got a lead.</p> <p>2 <b>A. Well, I know he got leads, but I --</b></p> <p>3 Q. How do you know?</p> <p>4 <b>A. I know that from other directors who've</b></p> <p>5 <b>told me that.</b></p> <p>6 Q. Who?</p> <p>7 <b>A. I don't recall off the top of my head.</b></p>
<p>8 <b>A. Uh-huh.</b></p> <p>9 Q. "I've reviewed the association</p> <p>10 minutes" --</p> <p>11 <b>A. Yeah.</b></p> <p>12 Q. -- "and have seen no mention of it."</p> <p>13 <b>A. Uh-huh.</b></p> <p>14 Q. Well, we know that was a mistake now,</p> <p>15 don't we?</p> <p>16 <b>A. I must have missed it.</b></p> <p>17 Q. Now, number 2 is -- I've asked -- page 2</p> <p>18 of 6: "I've asked Fran for a NATE membership</p> <p>19 list and she said she didn't have it and has</p> <p>20 forwarded my request to Tom. I am not going to</p> <p>21 the website and clicking on 50 individual</p> <p>22 states."</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. Now, if you had gone to the website and</p> <p>25 clicked on 50 individual states, you would have</p>	<p>8 Q. Well, think. You're here to tell me all</p> <p>9 that you know.</p> <p>10 <b>A. I don't remember. I take it back, I</b></p> <p>11 <b>don't remember. You're talking about a year and</b></p> <p>12 <b>a half ago. I don't remember yesterday.</b></p> <p>13 Q. These allegations form the basis of your</p> <p>14 complaint, I assume at some point, and I need to</p> <p>15 understand them. Or, if you're going to tell me</p> <p>16 you don't have a problem with this anymore,</p> <p>17 we'll just X it off and move on.</p> <p>18 <b>A. Yes, I have a conflict of interest that</b></p> <p>19 <b>he used Barter Trainer and NATE to grow his own</b></p> <p>20 <b>business.</b></p> <p>21 Q. How?</p> <p>22 <b>A. By anybody that wants to start a trade</b></p> <p>23 <b>exchange, Tom would sell them a trade exchange</b></p> <p>24 <b>package or software, whatever Tom did, so he</b></p> <p>25 <b>used NATE's resources to get those leads.</b></p>		
239	<p>1 gotten a list of all the members of NATE, right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. So it was possible for you to get that,</p> <p>4 right?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. Number 3: "As far as the</p> <p>7 conflict of interest, I disagree with your</p> <p>8 position." This is Jerry's position, right?</p> <p>9 <b>A. Yeah.</b></p> <p>10 Q. "Tom should not and has no right to use</p> <p>11 NATE for his personal gain."</p> <p>12 Please explain to me how you allege that</p> <p>13 Tom used NATE for his personal gain in this</p> <p>14 email. What were you talking about?</p> <p>15 <b>A. Barter Trainer; getting leads from</b></p> <p>16 <b>people inquiring about trade and him doing</b></p> <p>17 <b>whatever he did with it, because no member has</b></p> <p>18 <b>ever benefitted from that.</b></p> <p>19 Q. I'm sorry, I don't know what you mean.</p> <p>20 <b>A. If potential clients called the</b></p> <p>21 <b>association, I want to know more about barter,</b></p> <p>22 <b>leads were not distributed to most of the</b></p> <p>23 <b>membership. I'm sure some of Tom's friends got</b></p> <p>24 <b>it, but I don't know who those people would be.</b></p> <p>25 Q. So you don't know that he distributed a</p>	241	<p>1 Q. How did he use NATE's resources to get</p> <p>2 those leads?</p> <p>3 <b>A. Because when somebody calls NATE and</b></p> <p>4 <b>says, hi, I want to start a trade exchange, Tom</b></p> <p>5 <b>would take the call and sell them his program</b></p> <p>6 <b>and the association never benefited from that.</b></p> <p>7 Q. Did anybody know that he was doing this?</p> <p>8 <b>A. I think his inner circle may have, but</b></p> <p>9 <b>the majority of the members, no.</b></p> <p>10 Q. Did the board know he was doing it?</p> <p>11 <b>A. I don't know what the board did or not</b></p> <p>12 <b>know.</b></p> <p>13 Q. Did you ever ask a board member if they</p> <p>14 knew about it?</p> <p>15 <b>A. No.</b></p> <p>16 Q. How does this hurt NATE?</p> <p>17 <b>A. Again, I mean, you have to ask NATE that</b></p> <p>18 <b>question.</b></p> <p>19 Q. No. No. From your perspective, how did</p> <p>20 it hurt NATE?</p> <p>21 <b>A. From my perspective?</b></p> <p>22 Q. Yes.</p> <p>23 <b>A. If NATE's building websites and building</b></p> <p>24 <b>software packages and building a currency and</b></p> <p>25 <b>everything else, and one person that is an</b></p>

242

1 employee of NATE is benefiting from those things  
 2 --  
 3 Q. Is NATE building a software package?  
 4 A. I believe NATE spent money, too, but  
 5 again, I don't know. I'd have to look at the  
 6 financials.  
 7 Q. So this is, again, speculation, you  
 8 really don't know, this is just what you think,  
 9 right?  
 10 A. Yes.  
 11 Q. So NATE didn't build any software  
 12 packages, as far as you know?  
 13 A. No.  
 14 Q. So what else is the conflict?  
 15 A. I think Barter Trainer was my biggest  
 16 issue.  
 17 Q. Well, what's your issue with Barter  
 18 Trainer?  
 19 A. I just told you.  
 20 Q. That he's building a software package?  
 21 A. No. No. That he's getting leads from  
 22 the association.  
 23 Q. To do what?  
 24 A. To have them set up barter companies to  
 25 compete with existing NATE members.

243

1 Q. Well, if he trained people --  
 2 A. I have a problem with you being Tom's  
 3 attorney and you guys doing notes back and  
 4 forth.  
 5 Q. We're allowed to do anything we want, so  
 6 don't worry about it.  
 7 A. So I can do notes with them?  
 8 Q. No. You're the deponent. That's the  
 9 sad part of being a deponent.  
 10 A. That's fine. We'll have our day, Tom.  
 11 Go ahead.  
 12 Q. So the people that are trained, right,  
 13 don't they join NATE?  
 14 A. Some have been forced to train NATE  
 15 against their -- because they thought there was  
 16 no other option.  
 17 Q. They were forced?  
 18 A. Yes.  
 19 Q. Who forced them?  
 20 A. Tom.  
 21 Q. Who was it that was forced?  
 22 A. I believe one example is Fair Trade  
 23 World.  
 24 Q. So if I call Fair Trade World up, which  
 25 I will do --

244

1 A. Please do.  
 2 Q. -- they're going to tell me that Tom  
 3 forced them to --  
 4 A. Well, I think forced is probably an  
 5 incorrect word, but made it as part of the  
 6 package that Tom presented to them.  
 7 Q. What package?  
 8 A. His barter trainer package.  
 9 Q. He presented a package, as the guy who  
 10 runs Barter Trainer, to these folks about  
 11 training and they bought it?  
 12 A. Uh-huh. Yes.  
 13 Q. So far I haven't seen any force, right?  
 14 A. Uh-huh.  
 15 Q. Is that yes?  
 16 A. Yes.  
 17 Q. Where's the detriment to NATE?  
 18 A. He's an employee of NATE, funding his  
 19 own business that NATE takes no benefit from.  
 20 Q. Did he have an exclusive services  
 21 contract?  
 22 A. No, but I believe his contract did state  
 23 in it that he needed to let NATE know of any  
 24 other projects, let's say, that he works on. I  
 25 don't know the exact terminology.

245

1 Q. You'll show that to me when we look at  
 2 the contract?  
 3 A. Yeah, it's in there.  
 4 Q. As far as you know, did he do that?  
 5 A. Not that I know of.  
 6 Q. But, of course, he could have talked to  
 7 a board member and you don't know --  
 8 A. He may have.  
 9 Q. So you're just speculating to think he  
 10 didn't talk to a board member?  
 11 A. Correct.  
 12 Q. So as far as you know, the board could  
 13 have approved anything he did, right?  
 14 A. It's possible.  
 15 Q. Is there some reason why you think they  
 16 didn't?  
 17 A. I've never seen any mention of it in any  
 18 minutes or anything.  
 19 Q. Well, that's unfortunate, but that  
 20 doesn't mean they didn't do it, right?  
 21 A. That's true.  
 22 Q. It wasn't a secret that Tom was Barter  
 23 Trainer, was it?  
 24 A. No.  
 25 Q. You reported to the board --

246	<p>1 A. Oh, yes.</p> <p>2 Q. -- on March 21st, 2008, if not sooner,</p> <p>3 how you felt about this, right?</p> <p>4 A. Correct.</p> <p>5 Q. So if the board didn't know then, they</p> <p>6 sure knew by then, right?</p> <p>7 A. Absolutely.</p>	248	<p>1 slap in the face.</p> <p>2 A. I'm more talking about the hypocrite, is</p> <p>3 what I'm saying. You know, you listen to</p> <p>4 somebody who was the past president, executive</p> <p>5 director of NATE for 20-plus years, stands up in</p> <p>6 front of the whole room, with everybody there to</p> <p>7 learn, and he makes fun of the company and how</p>
<p>8 Q. They didn't -- okay.</p> <p>9 Now, you have a P.S. here I wanted to</p> <p>10 ask you about. It says: "The fact that Tom's</p> <p>11 new website links to ITEX is a slap in the face</p> <p>12 of all of us."</p> <p>13 A. Uh-huh.</p> <p>14 Q. What's ITEX?</p> <p>15 A. ITEX is the company that Tom sold his</p> <p>16 business to.</p> <p>17 Q. Okay. Is there something wrong, immoral</p> <p>18 about selling his business to ITEX?</p> <p>19 A. No, I don't think so at all. He could</p> <p>20 sell his business to whoever he wants to.</p> <p>21 Q. So it wasn't illegal?</p> <p>22 A. No, I have no problem with him selling</p> <p>23 to ITEX.</p> <p>24 Q. It wasn't against the bylaws?</p> <p>25 A. No, not at all.</p>	<p>8 we all don't want to be like them and that's why</p> <p>9 we're NATE and we're not ITEX, and then he turns</p> <p>10 around, which he's free to do, sell to anybody</p> <p>11 he wants, but I think a lot of people may have</p> <p>12 been rubbed by that.</p> <p>13 Q. Nothing illegal about it?</p> <p>14 A. Oh, I don't think there's anything</p> <p>15 illegal. He can sell whatever he wants.</p> <p>16 Q. By the way, if you had an opportunity to</p> <p>17 sell your exchange, would you sell it to the</p> <p>18 highest bidder?</p> <p>19 A. Of course.</p> <p>20 Q. Any problem with that if it was Tom's --</p> <p>21 A. I have no problem --</p> <p>22 Q. Excuse me. Any problem with that if it</p> <p>23 was Tom McDowell who wanted to buy your</p> <p>24 exchange?</p> <p>25 A. If he wants to buy my exchange?</p>		
247	<p>1 Q. So how does it slap you in the face?</p> <p>2 A. Well, Tom for 20-plus years ridiculed</p> <p>3 ITEX at any chance he could get, from NATE</p> <p>4 updates, which I'm sure there are copies of</p> <p>5 floating around, to every seminar he ever put on</p> <p>6 of bashing ITEX, and then he turns around and</p> <p>7 sells his company to ITEX. He, you know,</p> <p>8 started -- you know, as I said, if you clicked</p> <p>9 on the NATE website and clicked on his company,</p> <p>10 it took you to the ITEX website, which I believe</p> <p>11 was fixed after this email went out, just so you</p> <p>12 know.</p> <p>13 Q. I'm sorry, what was fixed after --</p> <p>14 A. I believe it was fixed after this email</p> <p>15 went out.</p> <p>16 Q. What was fixed?</p> <p>17 A. The website linking.</p> <p>18 Q. Was taken off?</p> <p>19 A. Yeah, I believe it was.</p> <p>20 Q. So your complaint --</p> <p>21 A. Oh, yeah.</p> <p>22 Q. -- resolved an issue?</p> <p>23 A. Yes.</p> <p>24 Q. Thank you.</p> <p>25 But I still don't understand about the</p>	249	<p>1 Q. Yeah.</p> <p>2 A. If he has enough money, yeah.</p> <p>3 Q. Okay. Just wanted to know.</p> <p>4 A. I have no problem with any -- I have no</p> <p>5 problem with the fact that he sold.</p> <p>6 (Deposition Exhibit 5 was marked for</p> <p>7 identification.)</p> <p>8 Q. This is a further response, written by</p> <p>9 you on Wednesday, May 7th, 2008, to the same</p> <p>10 people as before, right?</p> <p>11 A. Uh-huh. Yes.</p> <p>12 Q. You said: "I am disappointed by your</p> <p>13 unprofessional actions with regard to NATE."</p> <p>14 What are their unprofessional actions that</p> <p>15 you're disappointed by?</p> <p>16 A. Well, first, I'd like to correct you.</p> <p>17 This went to Mike Krane, which I believe the</p> <p>18 last one didn't go to Mike Krane.</p> <p>19 Q. We'll check here. So now this is --</p> <p>20 A. Because Mike Krane was now on the board,</p> <p>21 where before he was not on the board.</p> <p>22 Q. So there was a change in board between</p> <p>23 March 21st, 2008 and May 7th, 2008?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Good. Thank you for pointing</p>

250

1 that out.

2 The question remains: What are the

3 unprofessional actions with regard to NATE?

4 **A. Well, we asked them -- we asked the**

5 **board, as per my dates of emails, for questions.**

6 **Was there going to be an election, who the**

7 **members are, who's going to the convention. We**

8 **asked, you know, about Tom's contract because**

9 **after he sold his business in January, I guess**

10 **of '08, there were questions, is there a**

11 **conflict per the contract that I brought up**

12 **before and --**

13 Q. A conflict per what contract?

14 **A. Tom's contract talks about conflicts of**

15 **interest or doing -- I don't know the exact**

16 **terminology. I'd have to look at the document.**

17 Q. The 2006 contract, the one that was

18 approved --

19 **A. The 2005 contract.**

20 Q. Well, the 2006 one is the one that's

21 effective, though --

22 **A. I have never seen this 2006 contract.**

23 Q. I understand that, but that's the one

24 that was approved by the board. You just looked

25 at where it was approved by the board, didn't

251

1 you?

2 **A. I'll take what you're telling me now as**

3 **fact until I find it otherwise.**

4 Q. You have some reason to believe that the

5 board minutes are falsified?

6 **A. I do have reason to believe that.**

7 Q. Really?

8 **A. Yes.**

9 Q. Did you call that to anyone's attention?

10 **A. I have in the past, yes.**

11 Q. Did you call the fact that you believed

12 those minutes were falsified to anyone's

13 attention recently?

14 **A. No, I don't think I --**

15 Q. And for two, three years, you've had an

16 opportunity to call the August 2006 minutes to

17 the attention of someone and have you ever done

18 it?

19 **A. I had no one to do it to.**

20 Q. Oh, sure you did. There was a board of

21 directors in 2006, was there not?

22 **A. Yes, there was.**

23 Q. There was a board of directors in 2007,

24 wasn't there?

25 **A. That is correct.**

252

1 Q. There was a board of directors in 2008,

2 wasn't there?

3 **A. That's correct.**

4 Q. There's a board of directors now, right?

5 **A. Yes.**

6 Q. And you've never alleged --

7 MR. ALDRIDGE: What meeting are we

8 talking about?

9 MS. KOESEL: August '06.

10 MR. ALDRIDGE: You mean '08?

11 MS. KOESEL: '06.

12 **A. I was not there in August '06, but I can**

13 **tell you -- I'll give you a name. The previous**

14 **secretary told me his minutes were changed.**

15 Q. He told you?

16 **A. Yes.**

17 Q. Which secretary?

18 **A. Dale Mardak.**

19 Q. Dale Mardak was the secretary in what

20 year?

21 **A. I know '06. I don't know if it was**

22 **'05 and '04. I don't know.**

23 Q. When did Dale tell you that?

24 **A. I believe in '07, '08.**

25 Q. And you knew since '07 or '08 that Dale

253

1 Mardak believed the minutes had been changed

2 and --

3 **A. That is correct.**

4 Q. -- you called -- excuse me. And you

5 called it to whose attention?

6 **A. There was nobody to.**

7 Q. Sure. There was a board.

8 **A. The board was in Tom's back pocket.**

9 Q. That was your personal believe, right?

10 **A. That's a fact.**

11 Q. But you never called it to their

12 attention and gave them an opportunity to

13 correct it?

14 **A. We've asked questions --**

15 Q. Wait a minute. You never called that to

16 the board's attention and gave them an

17 opportunity to correct it, right?

18 **A. No.**

19 Q. All right. So these unprofessional

20 actions, they never answered you, you said,

21 right?

22 **A. That is correct.**

23 Q. You then said that they were unethical,

24 rude and inappropriate, right?

25 **A. That is correct.**

254

1 Q. I usually want to respond to somebody  
 2 who calls me that. Is that how you generally do  
 3 business with folks?  
 4 **A. Well, that's how they were doing**  
 5 **business with us.**  
 6 Q. That was my question to you, sir. Is  
 7 that how you do business with folks?

8 **A. Do I --**  
 9 Q. Call them unethical, rude and  
 10 inappropriate?  
 11 **A. If they are, I would.**  
 12 Q. I see. So Tom wants to have his friends  
 13 on the board, right?  
 14 **A. Yes.**  
 15 Q. And Tom went out of his way to call Mike  
 16 Krane to ask him to run for the board. What's  
 17 wrong with that?  
 18 **A. Mike Krane wasn't even at the meeting.**  
 19 Q. My question is: What's wrong with  
 20 having him calling Mike Krane and asking Mike  
 21 Krane to run for the board?  
 22 **A. What's wrong with it?**  
 23 Q. Yes.  
 24 **A. I don't think there's anything wrong**  
 25 **with asking anyone to run for the board.**

255

1 Q. What's the point about that? Then why  
 2 do you care?  
 3 **A. The point is that we asked specifically**  
 4 **if there were any board vacancies that possibly**  
 5 **myself or somebody else might have wanted to run**  
 6 **for, but we were never answered. In the**  
 7 **meantime, Tom was calling around to ask his**  
 8 **friends who would want to go to the board so --**  
 9 Q. Besides Mike Krane, who did he call?  
 10 **A. Mary Ellen Ruzinski, I believe.**  
 11 Q. Who else?  
 12 **A. I don't know.**  
 13 Q. So you know of two people he called,  
 14 right?  
 15 **A. That's what I've been told, yes.**  
 16 Q. Did you call up the board and say, hey,  
 17 I'd like to be on the board of directors?  
 18 **A. Yes. I talked to Rich Harris about it.**  
 19 Q. Well, Rich Harris is already off the  
 20 board at this --  
 21 **A. No. No. This is before. This is**  
 22 **before the board meeting.**  
 23 Q. I see. And Rich Harris said what?  
 24 **A. I don't know who's coming on the board,**  
 25 **who's coming off the board. I have no idea.**

256

1 Q. So you didn't call anybody else besides  
 2 Rich Harris?  
 3 **A. I did. I emailed Fran, Patti.**  
 4 Q. Where does it say in here, I would like  
 5 to be a member of the board of directors?  
 6 **A. I did not specifically say I wanted to**  
 7 **be. I just asked the question, you know, and --**

8 Q. And there's an election for this, right?  
 9 **A. There typically is, but some years it's**  
 10 **been canceled for no apparent reason.**  
 11 Q. Was it canceled in 2007?  
 12 **A. Afterwards we found out, no, it wasn't,**  
 13 **but we didn't know beforehand.**  
 14 Q. When was the election?  
 15 **A. It was at the convention in April of**  
 16 **'08.**  
 17 Q. Well, you could have gone there and  
 18 entered your name into the --  
 19 **A. I could have.**  
 20 Q. And you didn't.  
 21 **A. That is correct.**  
 22 Q. You could have, though, right?  
 23 **A. I could have.**  
 24 Q. So what's your problem?  
 25 **A. Because I didn't want to fly down there**

257

1 **if there was going to be no meeting.**  
 2 Q. But the meeting was scheduled, right?  
 3 **A. It was also in 2006, and Tom arbitrarily**  
 4 **canceled the meeting.**  
 5 Q. Canceled what meeting?  
 6 **A. The annual meeting, so there were no**  
 7 **elections.**  
 8 Q. I see. But 2007 you just didn't want to  
 9 take the chance to go?  
 10 **A. No. Now you're talking about 2008.**  
 11 Q. 2008?  
 12 **A. Yes.**  
 13 Q. I'm talking about 2007, did you go to  
 14 the meeting?  
 15 **A. No.**  
 16 Q. So you couldn't possibly run because you  
 17 weren't there.  
 18 **A. That's correct.**  
 19 Q. Okay. You can turn that over. You can  
 20 turn it over, sir. We're done with it.  
 21 **A. No problem.**  
 22 Q. Why don't you hand me those. I like to  
 23 keep things nice and neat and in order --  
 24 **A. No problem.**  
 25 Q. -- and I don't want to lose things.

258

1 2008, you've sent a number of emails to  
 2 folks at the board, okay, and then they sent a  
 3 letter to all members of NATE, including New  
 4 England Trade; isn't that right?  
 5 **A. Which letter?**  
 6 **Q. In May of 2008.**  
 7 **A. I'd have to see which letter you're**  
 8 **talking about.**  
 9 **Q. Well, I'll hand it to you in a moment,**  
 10 **but did you not receive a letter from the board**  
 11 **of directors on or about May 29th, 2008?**  
 12 **A. I'd have to see the letter. I don't**  
 13 **know.**  
 14 **Q. This is the letter.**  
 15 **A. Yes, I've seen that letter.**  
 16 **(Deposition Exhibit 6 was marked for**  
 17 **identification.)**  
 18 **Q. Did you receive this letter on or about**  
 19 **May 29th, 2008?**  
 20 **A. Yes.**  
 21 **Q. As a matter of fact, you produced it to**  
 22 **me. See those little letters in the bottom,**  
 23 **N-E-T?**  
 24 **A. Yeah.**  
 25 **Q. That's the document you produced to us,**

259

1 right?  
 2 **A. Yeah.**  
 3 **Q. Let's take a look at what it says. "We**  
 4 **apologize for using your time and ours to send**  
 5 **this letter," right?**  
 6 **A. Uh-huh.**  
 7 **Q. It appears that the board is concerned**  
 8 **about an attack on their executive director,**  
 9 **right?**  
 10 **A. That's what the letter says.**  
 11 **Q. It's also signed, although in type, by**  
 12 **Jerry Hollow, Fran Crumpton and Patti Falus; is**  
 13 **that right?**  
 14 **A. Yes. That's what it says.**  
 15 **Q. The majority of the board.**  
 16 **A. That's what it says.**  
 17 **Q. So no matter who wrote it, they signed**  
 18 **it. Fair enough?**  
 19 **A. You'd have to ask them.**  
 20 **Q. Well, my question was: No matter who**  
 21 **wrote it, they signed this letter, right?**  
 22 **A. I don't know that.**  
 23 **Q. You don't know that they signed it?**  
 24 **A. Well, no. Tom could have written the**  
 25 **letter, put it in an envelope and mailed it to**

260

1 **them. They might have never seen it. I don't**  
 2 **know. You'd have to ask them.**  
 3 **Q. Well, this letter has been out there**  
 4 **signed by the board; is that right?**  
 5 **A. Right. It's printed here, their names.**  
 6 **Whether they approved it, wrote it, I don't**  
 7 **know.**  
 8 **Q. I want you to assume for the moment that**  
 9 **they approved it.**  
 10 **A. Okay. Let's assume that.**  
 11 **Q. And we'll make sure that we have them**  
 12 **testify that they approved it.**  
 13 **A. Please do.**  
 14 **Q. First of all, there's a question about**  
 15 **Tom's contract, and it says, under number 2**  
 16 **here, it says: Tom has never asked for a**  
 17 **written contract. "The board insisted that he**  
 18 **have one." Do you see that?**  
 19 **A. Yes.**  
 20 **Q. As a matter of fact, the code of**  
 21 **regulations or the bylaws require that the**  
 22 **executive director have a contract, right?**  
 23 **A. I don't know.**  
 24 **Q. Then he didn't ask for an extension of**  
 25 **his contract, but the board wanted him to have**

261

1 one, according to this letter; have I read that  
 2 correctly?  
 3 **A. That's what it says.**  
 4 **Q. He's never asked for a raise, is that**  
 5 **right, that's what the board says?**  
 6 **A. I have no idea.**  
 7 **Q. But the letter here says they've**  
 8 **increased his salary based on his results,**  
 9 **right?**  
 10 **A. That's what it says.**  
 11 **Q. Do you have any reason to disagree with**  
 12 **that?**  
 13 **A. I do.**  
 14 **Q. What is your reason?**  
 15 **A. Board members in 2006, specifically Rick**  
 16 **Zampatti and Dale Mardak, told me on many**  
 17 **occasions that they never voted on a contract,**  
 18 **they never knew of any other terms, changes to**  
 19 **the contract --**  
 20 **Q. But there were changes in the contract**  
 21 **between '05 and '06?**  
 22 **A. Yes.**  
 23 **Q. Okay.**  
 24 **A. That nobody ever knew about.**  
 25 **Q. Okay.**

262

1 **A. And to this day, no one has ever seen**  
 2 **that contract from 2006.**  
 3 Q. You saw it.  
 4 **A. No. No. No. That's a 2008 contract.**  
 5 **The 2006 contract --**  
 6 Q. It's dated 2006.  
 7 **A. It was never signed until 2008. Nobody**  
 8 **has ever seen it.**  
 9 Q. So what?  
 10 **A. You play games, but that's a game.**  
 11 Q. So what? Is there a problem with it not  
 12 being signed until 2008?  
 13 **A. Yes.**  
 14 Q. Why?  
 15 **A. The board never approved on it. It was**  
 16 **never approved by the board of directors.**  
 17 Q. You saw the approval in the minutes.  
 18 **A. Okay. If that's what it shows right**  
 19 **now, that's fine. I'll see what I can come up**  
 20 **with.**  
 21 Q. See what you can do to change it. Okay.  
 22 **A. I'm not the one who changes anything.**  
 23 **That's your client.**  
 24 Q. Oh, okay. I want to make sure.  
 25 **A. That's your client that loves changing**

263

1 **things.**  
 2 Q. Are you suggesting my client has  
 3 falsified something?  
 4 **A. I'm not suggesting that, no.**  
 5 Q. Then what do you mean by changing  
 6 things?  
 7 **A. I must have misspoke.**  
 8 Q. So he hasn't changed anything?  
 9 **A. I don't know if he has or has not.**  
 10 **You'd have to ask him.**  
 11 Q. Then what's the basis of your statement  
 12 that my client changes things?  
 13 **A. I have noticed on websites, things**  
 14 **change.**  
 15 Q. Like what?  
 16 **A. I'd have to get back to you.**  
 17 Q. Well, no. Today is the day, so you'll  
 18 have to tell me what you know today.  
 19 **A. Today, I don't know right now.**  
 20 Q. You don't know?  
 21 **A. I don't know.**  
 22 Q. "Tom should resign," top of the next  
 23 page.  
 24 **A. Where is that, page 2?**  
 25 Q. Top of the next page, 004.

264

1 Clearly, three members of the board are  
 2 advising you in May 2008 that Tom has a contract  
 3 with NATE through December 31st, 2012, correct?  
 4 **A. That's what it says.**  
 5 Q. When you got this, did you jump up and  
 6 down and say, no way?  
 7 **A. Yes, I did.**  
 8 Q. How did you do that?  
 9 **A. What do you mean, how did I do that?**  
 10 Q. Who did you communicate it to?  
 11 **A. Oh, I have no idea.**  
 12 Q. Oh, you didn't call the board?  
 13 **A. No, because the board is Tom's buddies.**  
 14 **It was whatever Tom wanted to do. It was Tom's**  
 15 **show. Tom's dog and pony show.**  
 16 Q. The board members, you're telling me  
 17 Jerry Howell, Fran Crumpton and Patti Falus  
 18 cannot do anything other than -- even though  
 19 they've been elected president, past president  
 20 and president elect, by the membership they're  
 21 elected to this board --  
 22 **A. No.**  
 23 Q. -- they're incapable -- they're  
 24 incapable of making a decision for the  
 25 betterment of NATE?

265

1 **A. Oh, I'm not saying that whatsoever.**  
 2 Q. Well, then --  
 3 **A. What I'm saying is, is that Patti Falus**  
 4 **missed four or five board meetings, was not**  
 5 **present.**  
 6 Q. Really? Which ones?  
 7 **A. You'd have to go to the minutes.**  
 8 **They're clearly stated in the minutes of which**  
 9 **meetings she missed.**  
 10 Q. Which minutes?  
 11 **A. The minutes you showed me ten minutes**  
 12 **ago. The pile of minutes.**  
 13 Q. You read those?  
 14 **A. Yeah. Document --**  
 15 Q. No. No. No. You read that during the  
 16 time we were sitting here?  
 17 **A. No, but I know they've been there**  
 18 **before, unless he changed it.**  
 19 Q. Who changed it?  
 20 **A. I'm just saying unless it's changed from**  
 21 **when I read it --**  
 22 Q. Who changed it?  
 23 **A. I'm not saying anybody did. I said**  
 24 **unless it's changed, then it would be in there.**  
 25 Q. Is there a problem if Patti Falus is not

266

1 at a meeting?

2 **A. Yes, it says in the bylaws that after**

3 **two meetings, that the board should remove her,**

4 **so she didn't know what was going on.**

5 Q. Oh, I see. Nobody on your board has

6 missed a meeting?

7 **A. I'd have to look at the minutes.**

8 Q. We'll have to look at the bylaws to see

9 it really says, absolutely.

10 **A. You should.**

11 Q. Okay. We will.

12 But the question I had for you was: Are

13 you telling me that these individuals could not

14 vote for what they believed to be in the best

15 interest of NATE?

16 **A. No, I'm not telling you that.**

17 Q. Okay. Now, it says down here: "What

18 does NATE pay for rent monthly?" They answered

19 the question with, what would be a reasonable

20 rent for NATE to pay Tom's building. Is that

21 right?

22 **A. Yes, it says that.**

23 Q. Then it says: "If NATE is not paying

24 rent, I ask myself, why out of the goodness of

25 someone's heart is NATE getting a free ride?

267

1 Nothing in life is free." Is that your

2 question?

3 **A. No.**

4 Q. Do you know whose questions that was?

5 **A. No, I don't.**

6 Q. So you think it was okay for Tom to give

7 rent to NATE?

8 **A. I mean, it was nice of him to do.**

9 Q. Nice of him, okay.

10 I want to go to the next page, NET 005.

11 **A. Yes.**

12 Q. It says: "Once our complainers figured

13 out that NATE isn't losing money every month,

14 they had another grievance. NATE is either

15 paying Tom McDowell to be the BANC administrator

16 or the BANC is paying \$30,000 (minimum) to

17 operate the BANC, more than the revenue the BANC

18 is generating."

19 Was that a complaint you had?

20 **A. It may have been or it may have been**

21 **someone else's. I don't recall.**

22 Q. Do you have that complaint as we sit

23 here today?

24 **A. No, I don't have that complaint.**

25 Q. So you didn't think that they were

268

1 overpaying that. Okay.

2 **A. Maybe at the time I did, but I don't**

3 **feel that way.**

4 Q. You no longer think that. Why don't you

5 feel that way now?

6 **A. Because the rate we're paying for the**

7 **BANC right now, which I believe was the same**

8 **rate as the board, was a fair rate.**

9 Q. What's the rate?

10 **A. I don't have --**

11 Q. How about \$2400?

12 **A. Yeah.**

13 Q. Sound right? 30,000, 24, a little

14 different, huh?

15 **A. Yeah.**

16 Q. All you had to do was ask a question,

17 right?

18 **A. Well, we did ask questions. You could**

19 **see --**

20 Q. Yes, and you got the answer, right?

21 Right?

22 **A. That's not the -- I'd like to -- again,**

23 **I don't know where that came from. I'd have to**

24 **look at documents to know.**

25 Q. Well, these three people signed this

269

1 letter. Do you think that they were lying when

2 they signed it?

3 **A. I don't believe these three people ever**

4 **signed the letter, no. Do I think they read it**

5 **before it went out? No. Do I think they**

6 **actually wrote the letter? No. Do I believe**

7 **that Tom wrote the letter? Yes, I believe Tom**

8 **wrote the letter.**

9 Q. What's the factual basis for all those

10 beliefs you just said?

11 **A. I've read letters from these three**

12 **people and they don't write this way. I've read**

13 **letters that Tom writes and Tom writes this way.**

14 Q. So you think it's Tom's writing style.

15 Okay.

16 **A. Yes.**

17 Q. My question is: Do you think that these

18 three individual people allowed a letter that

19 was inaccurate to go out over their names?

20 **A. I don't know.**

21 Q. Do you have any factual basis for

22 believing that these three --

23 **A. No, I have no basis, no factual basis.**

24 Q. Thank you. You can just set that aside.

25 (Deposition Exhibit 7 was marked for

270

1 identification.)  
 2 Q. Showing you a document marked for  
 3 identification purposes as a September 11th,  
 4 '08, email from you to Keith Nally asking for  
 5 the current financial statements, balances,  
 6 total cash revenue, total cash expenses, a  
 7 description of the transactions between NATE and

8 Midwest Barter, and a copy of the 2008 budget.  
 9 Do you see that?  
 10 A. **Yeah.**  
 11 Q. The 2008 year ending financial statement  
 12 was posted online, right?  
 13 A. **It wasn't until, I believe, November,**  
 14 **but it was eventually.**  
 15 Q. It wasn't done until November, right?  
 16 A. **Yeah, but I believe the bylaws state it**  
 17 **needs to be done within 90 days of the year end,**  
 18 **which would have been August 31st.**  
 19 Q. So you guys are going to be in violation  
 20 of the bylaws if you don't get something posted  
 21 by August 31st, too, right?  
 22 A. **Again, I believe there's an extension,**  
 23 **but we don't have any records because the**  
 24 **previous board never turned it over to us.**  
 25 Q. So the question I have for you is: They

271

1 could have gotten an extension here, then,  
 2 right?  
 3 A. **They may have. I don't know if they did**  
 4 **or not.**  
 5 Q. So that would have been perfectly  
 6 legitimate for them to have gotten an extension,  
 7 right?  
 8 A. **Right. Well, I'm not threatening, I'm**  
 9 **just asking.**  
 10 Q. You're asking. Okay.  
 11 A. **Right.**  
 12 Q. What's the description of the  
 13 transaction between NATE and Midwest Barter for  
 14 60,000?  
 15 A. **That, we later found out, was one of the**  
 16 **media transactions.**  
 17 Q. Who's we that later found out?  
 18 A. **I found out later.**  
 19 Q. What was your question about it?  
 20 A. **We didn't understand why NATE was**  
 21 **purchasing \$60,000 from one of the largest**  
 22 **debtors to the association.**  
 23 Q. Okay.  
 24 A. **And that was before -- and no one knew**  
 25 **what the media program --**

272

1 Q. And you're not unhappy with it now?  
 2 A. **Personally, yes, I am unhappy because I**  
 3 **don't think it's -- I don't think NATE had any**  
 4 **right to buy media.**  
 5 Q. Why? Is there some rule that you can't  
 6 buy media?  
 7 A. **Well, there's no benefit to the**

8 **association.**  
 9 Q. What if somebody buys it?  
 10 A. **If someone buys it, great, but that's**  
 11 **not our business. That's not in the mission**  
 12 **statement I gave you earlier.**  
 13 Q. I guess I just don't understand this. I  
 14 mean, if it's in the NATE system, can't somebody  
 15 barter for it?  
 16 A. **Somebody could, yes.**  
 17 Q. So what's the problem?  
 18 A. **Because NATE has never before that**  
 19 **bought that large of inventories from people and**  
 20 **the inventory they bought was just something**  
 21 **that the association wouldn't used for its own**  
 22 **purposes.**  
 23 Q. Well, I understand the association  
 24 wouldn't use it for its own purposes, but there  
 25 was potentially a customer out there that would

273

1 use that; is that right?  
 2 A. **Potentially there could be a customer.**  
 3 Q. Right. Okay.  
 4 A. **However, when the appearance is that the**  
 5 **president of the association and executive**  
 6 **director have funky accounting going on and**  
 7 **people don't know, that's why we ask the**  
 8 **question.**  
 9 Q. Funky accounting?  
 10 A. **Well, when you see a \$60,000 transaction**  
 11 **between a NATE house account and the president**  
 12 **of the association --**  
 13 Q. Midwest Barter is the president of the  
 14 association?  
 15 A. **He was.**  
 16 Q. Who's he?  
 17 A. **Jerry Howell.**  
 18 Q. Okay.  
 19 A. **That's the name of his business.**  
 20 Q. That's the one he sold to NATE at a  
 21 25 percent discount, right?  
 22 A. **Yeah, whatever the discount was.**  
 23 Q. So he discounted something --  
 24 A. **Yeah.**  
 25 Q. -- and sold it to NATE?

274

1 A. Right.

2 Q. So it sounds like to me NATE got a

3 benefit out of that.

4 A. Again, the whole program was conspired

5 by two or three individuals of the board that

6 most of the NATE members would not have agreed

7 on with a vote today, if you asked the members

8 to vote. The transactions happened between Tom

9 selling his media and Jerry selling his from

10 50 percent of the media, with something that

11 would never -- it's never happened before this,

12 and even now that, as my role as president, we

13 would never do the board, so it was just kind of

14 a strange transaction. However, they did

15 clarify this transaction later on. I don't know

16 when that was clarified.

17 Q. You're happy with the clarification?

18 A. Well, I'm happy for the answer I got. I

19 disagree with the answer, but again, some things

20 I'm going to have to live with and that may be

21 one of them.

22 Q. You said they conspired. What's the

23 conspiracy here?

24 A. Well, maybe that's the wrong choice of

25 words; however, they decided on this program,

275

1 three of the board members.

2 Q. Which three?

3 A. Actually, I want to say only -- I want

4 to say three board members had a meeting with a

5 quorum of two people and two people decided to

6 make all these things happen.

7 Q. Who?

8 A. I believe Jerry and Fran.

9 Q. Jerry and Fran. You don't think anybody

10 else was present?

11 A. No. It's in the minutes, if you'd like

12 to look at the August of 2008 minutes.

13 Q. August '08 minutes?

14 A. Yeah.

15 Q. But --

16 A. And I believe Mike Krane was there.

17 Q. Excuse me. Mike Krane was there?

18 A. Yes.

19 Q. He voted no?

20 A. I don't know what Mike's vote was.

21 Q. So he could have voted yes.

22 A. He could have.

23 Q. So it was Fran and Jerry and Mike Krane

24 was present?

25 A. And Tom.

276

1 Q. Well, Tom was present, yes, but he's the

2 executive director. He doesn't have a vote,

3 right?

4 A. Yeah, that's correct.

5 Q. So these three directors -- and three is

6 a quorum, right?

7 A. Yes.

8 Q. So you have a quorum, and you don't know

9 who voted for what?

10 A. No, I don't know.

11 Q. So it could be this is a fully approved

12 transaction, right?

13 A. It could be.

14 Q. You have no reason right now to believe

15 it isn't? You have no factual basis, correct?

16 A. Correct.

17 Q. But you called it a conspiracy, so I

18 wanted to clarify that. Right?

19 A. Yes.

20 Q. You also said there was some funky

21 accounting going on. That accounting is clear

22 on the books and records of NATE, isn't it?

23 A. The funky accounting I was referring to

24 was when a transaction of \$60,000 was shown

25 without any other documentation, that is when I

277

1 called it funky accounting.

2 Q. Well, it was clear enough for you to be

3 able to figure it out in an email you sent to

4 Fred, wasn't it?

5 A. Well, this was way after this came out.

6 Q. Yes or no, clear enough for you to be

7 able to figure it out?

8 A. No. Not this time, no.

9 Q. I didn't ask you at this time. You said

10 it was funky today. I'm asking you, was it

11 clear enough for you to figure it out, yes or

12 no?

13 A. Yes.

14 Q. Turn it over. We're done with that one.

15 Don't throw it at me, though.

16 A. I didn't throw it at you. It was in the

17 pile.

18 Q. I don't want anything thrown at me, and

19 let the record reflect that he threw it at me.

20 MR. ALDRIDGE: We object to that.

21 A. I was not throwing something at you.

22 MR. ALDRIDGE: We're not going to

23 discuss it anymore. Let the objection show.

24 (Deposition Exhibit 8 was marked for

25 identification.)

278	280
<p>1 Q. Gary, this is a document marked for 2 identification purposes as Exhibit 8. This is 3 an email sent from you on September 18th, 2008 4 to Keith Nally, making your second request for 5 the financial statements, right? 6 <b>A. Yes.</b> 7 Q. Still wasn't posted after September 8th, 8 right? 9 <b>A. Yes.</b> 10 Q. Then I don't know why this is attached 11 to it, but it's all part of your same email. 12 This is, by the way, another email I didn't get 13 from you in response to discovery. 14 <b>A. Which email is this?</b> 15 Q. The one on the top, page 1 of 1, from 16 Gary Oshry to Keith McNally. 17 <b>A. Well, it didn't involve Tom in any way.</b> 18 Q. Doesn't have to involve Tom. It has to 19 involve NATE and it involved Jerry Howell, the 20 then president of NATE, and it discussed NATE's 21 financial information. 22 So the question is -- and the answer to 23 my question is, yes or no, did you produce this 24 document in discovery? 25 <b>A. Yes.</b></p>	<p>1 <b>A. The annual meeting.</b> 2 Q. Were they notified at the annual meeting 3 in 2004. 4 <b>A. Right, but I believe a 60 days' notice 5 is required of any bylaw changes.</b> 6 Q. Did anybody at the meeting object to the 7 absence of 60 days' notice? 8 <b>A. I don't know because I was not there.</b> 9 Q. Okay. So you don't even know about this 10 as a personal matter. You know this from 11 hearsay; is that right? 12 <b>A. I know the bylaws were changed without 13 proper notice to the membership. That's a fact.</b> 14 Q. But no one raised a notice objection at 15 the meeting, as far as you know? 16 <b>A. I don't know.</b> 17 Q. You didn't raise one? 18 <b>A. No, I wasn't there.</b> 19 Q. You could have raised one if you went, 20 though, right? 21 <b>A. Right.</b> 22 Q. But you didn't go. 23 <b>A. Correct.</b> 24 Q. 2008, what bylaw change was made? 25 <b>A. That was changing the membership</b></p>
279	281
<p>1 Q. You did? 2 <b>A. No. No. No. I don't know. I did do 3 this letter.</b> 4 Q. Then we have this email here that's 5 attached to it. If you go to page 3 of 9, to 6 Jerry Howell from Gary Oshry, NATE update from 7 the NATE Reform Committee, October 3rd, 2008; do 8 you see that? 9 <b>A. Yes.</b> 10 Q. Let's go to the topics of the 11 discussions that you wanted to have at the 12 meeting. 13 It says: "Bylaw changes made without 14 proper notification to the general membership." 15 When was there a bylaw change that was made 16 without proper notification to the general 17 membership? 18 <b>A. 2007 and 2008.</b> 19 Q. 2007 and 2008. What's the factual basis 20 for those statements? 21 <b>A. The 2007 bylaw change, changing the 22 board size, nobody was ever notified of that. 23 When I say nobody, the NATE membership was not 24 notified of that before the meeting.</b> 25 Q. Before what meeting?</p>	<p>1 <b>qualifications, I believe.</b> 2 Q. When was this 2008 change? 3 <b>A. April.</b> 4 Q. April? 5 <b>A. Yes.</b> 6 Q. That was not proper notification to the 7 general membership, you said? 8 <b>A. That is correct.</b> 9 Q. Were you at that meeting? 10 <b>A. No, I was not.</b> 11 Q. You don't know if anybody asked if 12 anybody waived the 60-day requirement? 13 <b>A. I do know people were there and they 14 said there was no mention at all about waiving 15 the 60-day requirement. Even to this day, 16 there's never been anything with those bylaw 17 changes, like the terminology has never been 18 submitted to the membership.</b> 19 Q. The terminology has never been submitted 20 to the membership? 21 <b>A. Yeah, the bylaw change.</b> 22 Q. Isn't it posted on the website? 23 <b>A. I think it's just the draft of it still 24 is, but not the actual bylaw change.</b> 25 Q. So the bylaw change is shown on the</p>

282

1 website?

2 **A. Uh-huh.**

3 Q. It's been there since May of '07, right?

4 **A. Yeah.**

5 Q. So if anybody had a problem with that

6 bylaw change, they had an opportunity to bring

7 it to the membership?

8 **A. Well, that's what we're doing right now.**

9 **That's why I'm here.**

10 Q. Well, I understand that, but it's a

11 little late now. It's been on the website since

12 May of '07.

13 **A. You just asked me a question --**

14 Q. My question is: It's been on the --

15 didn't anybody bring it up at the meeting in

16 '08, how come these bylaw changes haven't been

17 finished?

18 **A. Again, I wasn't at the meeting. I don't**

19 **know.**

20 Q. So you don't know. Okay. We'll move

21 on.

22 You say: "Change existing bylaws so

23 membership controls the organization." What

24 have you proposed to change the bylaws so that

25 the membership will control the organization?

283

1 **A. We just put a bylaw change out to the**

2 **membership yesterday to vote at the convention.**

3 **I do not know off the top of my head exactly the**

4 **terminology.**

5 Q. What do you remember?

6 **A. Again, it was so many things that were**

7 **discussed, you'd have to look at the bylaws that**

8 **are posted on the NATE -- the new NATE website.**

9 Q. What's the email address for that?

10 **A. NATEbarter.com.**

11 Q. NATEbarter?

12 **A. Yes.**

13 Q. B-a-r-t-e-r?

14 **A. Yes.**

15 Q. One word?

16 **A. Yes.**

17 Q. Dot c-o-m?

18 **A. Yes.**

19 Q. W-w-w?

20 **A. Yes.**

21 Q. The question I have for you, give me

22 your best recollection of what that NATE bylaw

23 change is.

24 **A. There's a bunch of them.**

25 Q. No, the one that goes to that existing

284

1 bylaws so the members control the organization.

2 **A. I do not know off the top of my head.**

3 **I'd have to look at the document. I don't want**

4 **to speculate.**

5 Q. You don't want to speculate. Okay. I'd

6 like you to speculate.

7 **A. I can't speculate.**

8 Q. Please speculate, and it's clear that

9 you're speculating, so please go ahead.

10 **A. Clarifying membership qualifications,**

11 **clarifying the rules that some of the officers**

12 **and/or executive directors would have within the**

13 **organization.**

14 Q. Okay.

15 **A. Things along those lines.**

16 Q. You can turn that over.

17 (Deposition Exhibit 9 was marked for

18 identification.)

19 Q. Please turn to page 4 of 6 of Exhibit

20 Number 9, which is a collection of emails.

21 **A. 4?**

22 Q. 4 of 9, yes. On page 2 of 6 there's an

23 email from you. Again, not one I was provided

24 for in discovery.

25 **A. I don't see where I sent an email.**

285

1 Q. Page 2 of 6.

2 MR. ALDRIDGE: You said 4.

3 MS. KOESEL: I did say 4 and then I went

4 back to page 2 of 6.

5 Q. You're reviewing the bank's balance

6 sheet, and last month you're talking about the

7 purchase of these products. So this is now

8 October '03, you're still talking about that,

9 right?

10 **A. Well, the week after.**

11 Q. Right. You're still talking about it.

12 **A. Yeah.**

13 Q. If you want to go to October 2nd, 2008,

14 a special message to the NATE board members from

15 the NATE Reform Committee on page 4 of 6.

16 You're a member of the NATE Reform

17 Committee, right?

18 **A. Yes.**

19 Q. Did you participate in writing this

20 special message to the NATE board of directors?

21 **A. I knew of it, but I did not write it.**

22 Q. Did you participate in preparing it in

23 any way?

24 **A. Define participate.**

25 Q. Did you have input into what was put

286

1 into this letter?  
 2 **A. I read the letter before it went out. I**  
 3 **don't remember if I had any comments to it or**  
 4 **not. It's definitely not my style of writing,**  
 5 **so I don't see anything that I added to it, but**  
 6 **who knows. Maybe -- this was a year and a half**  
 7 **ago, but I don't recall having any --**

8 Q. Is there anything in this letter, this  
 9 October 2nd, 2008 special message to the NATE  
 10 board of directors with which you disagree?  
 11 **A. No, I don't disagree with anything.**  
 12 Q. You can turn that over.  
 13 (Deposition Exhibit 10 was marked for  
 14 identification.)  
 15 Q. You don't need to do anything with that  
 16 just yet. If you just want to leave it alone  
 17 for the moment.  
 18 Did you ask Fred Detwiler to become a  
 19 member of the NATE Reform Committee?  
 20 **A. I don't think we ever discussed it, no.**  
 21 Q. So yes or no?  
 22 **A. No.**  
 23 Q. You did not ask him to become a member?  
 24 **A. I mean, the NATE Reform Committee was**  
 25 **never a bona fide committee of NATE per the**

287

1 bylaws we all know, but it was really the  
 2 collection of people that were unhappy with the  
 3 direction of the association. So if I asked  
 4 Fred, hey, join us, you know, on our side kind  
 5 of thing, yes, that's possible. Did I  
 6 physically say to him, Fred, join the NATE  
 7 Reform Committee? I don't think I ever used  
 8 that terminology with him.  
 9 Q. This group of people that held  
 10 themselves out to others as the NATE Reform  
 11 Committee, did you ask Fred to participate in  
 12 this group of people who held themselves out to  
 13 others as the NATE Reform Committee?  
 14 **A. Yes, it's very possible I did.**  
 15 Q. Okay. Tell me about your conversations  
 16 with Fred asking him to be part of this group.  
 17 **A. I mean, I don't remember specifically**  
 18 **doing that.**  
 19 Q. Tell me about your conversations.  
 20 **A. I do remember telling Fred of the issues**  
 21 **that NATE faced and that we could really use**  
 22 **somebody like him to support us. And, you know,**  
 23 **really, we were NATE. We were the majority of**  
 24 **NATE, our group.**  
 25 Q. So you say --

288

1 **A. We were well over 50 percent of the**  
 2 **members of NATE.**  
 3 Q. So you told Fred that you could use  
 4 someone like him to support you, the group,  
 5 right?  
 6 **A. Well, I think really to support NATE**  
 7 **more than us, the group, because we were NATE.**

8 Q. Well, that's how you viewed yourselves,  
 9 I understand that, but the group called  
 10 themselves the NATE Reform Committee, yes?  
 11 **A. Okay.**  
 12 Q. So you, the group, asked Fred to  
 13 participate and asked him for support; is that  
 14 right?  
 15 **A. Again, I don't know. You know, the way**  
 16 **you're wording it to me does not sound right.**  
 17 Q. Well, what's wrong with it?  
 18 **A. I just don't talk that way to Fred.**  
 19 Q. How do you talk with Fred? You're the  
 20 one who said you could use someone like him to  
 21 support you guys.  
 22 **A. What I'm saying is that Fred is a very**  
 23 **well-respected barter/trader/operator who is**  
 24 **probably the most successful person in our**  
 25 **entire industry, and if you -- with somebody**

289

1 **like Fred, you know, his experience and his**  
 2 **ideas would really help the association, so Fred**  
 3 **is definitely somebody, you know, that would**  
 4 **benefit the association as a whole.**  
 5 Q. Do you have a personal relationship with  
 6 Fred?  
 7 **A. No more than I do with Rachel or Don or**  
 8 **anybody else.**  
 9 Q. Well, describe that relationship,  
 10 because I think you have a decent relationship  
 11 with Don and Rachel, right?  
 12 **A. Just like any other peer in my industry.**  
 13 **I go to conventions with them every year. I've**  
 14 **never hung out with them personally. I've never**  
 15 **done any of those things, you know, which I know**  
 16 **Fred does -- I mean, sorry, what Tom does with a**  
 17 **lot of the board members on his fishing trips**  
 18 **and everything else. I don't do those types of**  
 19 **things.**  
 20 Q. You don't go on fishing trips?  
 21 **A. Not with the members of the board.**  
 22 Q. Why not?  
 23 **A. I just haven't.**  
 24 Q. You could, though.  
 25 **A. I could.**

290

1 Q. Sure.

2 **A. I'm just saying that I --**

3 Q. You could be invited on one of these

4 trips.

5 **A. It's a professional relationship. It's**

6 **nothing more than a professional --**

7 Q. Did you ask Fred to join you in this

8 lawsuit?

9 **A. No. Fred actually volunteered for -- to**

10 **do his testimony and affidavit because he was so**

11 **furious at what the board was doing.**

12 Q. He volunteered?

13 **A. Oh, absolutely.**

14 Q. Did he tell you about conversations that

15 the NATE board had with the NATE board's

16 counsel, Rick Selby?

17 MR. OSMAN: Objection.

18 MS. KOESEL: He can respond to this. It

19 doesn't ask what the conversation was. It asked

20 if he revealed that he had conversations.

21 **A. No, I don't think Fred did, actually.**

22 Q. You don't think Fred ever told you

23 anything that the NATE board of directors was

24 advised to do by their counsel, Rick Selby?

25 **A. The only thing I've seen was an email, I**

291

1 **want to say from Mike Krane, not from Fred, with**

2 **an email about Tom's stimulus package or**

3 **whatever the case is, but Fred and I never**

4 **discussed specific cases on the thing, other**

5 **than him being, like, let me talk to the other**

6 **board members, let me talk to the attorney just**

7 **to try to come to a resolution without getting**

8 **all the attorneys involved. But we never**

9 **discussed what their motives were or anything**

10 **else or what our motives were. We always kept**

11 **that separately. It was very professional.**

12 Q. It wasn't motives that I asked you

13 about. I asked you if Fred ever told you --

14 **A. No.**

15 Q. You don't even know what I'm going to

16 say, so don't --

17 **A. Well, I'm answering your question.**

18 Q. You can't answer my question if you

19 don't know what the question is.

20 Did Fred ever tell you about any counsel

21 that he, as a member of the board of directors

22 of NATE, received from NATE's counsel, Rick

23 Selby?

24 **A. No.**

25 Q. Did Fred ever tell you about the legal

292

1 strategies involved in the case brought by NATE

2 against the NATE reform group?

3 **A. No.**

4 MR. OSMAN: Objection.

5 Q. Did you ever tell Fred -- strike that.

6 Did Fred ever tell you anything about

7 the legal strategies that NATE had for defending

8 the lawsuit that you brought?

9 MR. ALDRIDGE: Objection.

10 Q. You can respond.

11 **A. No.**

12 Q. When did you last have any discussions

13 with Fred?

14 **A. When's the last time I talked to him on**

15 **the phone?**

16 Q. The last time you had any discussions

17 with Fred.

18 **A. I talked to him last week.**

19 Q. What was the topic of your discussions?

20 **A. His fishing trip.**

21 Q. Did you have any business conversation

22 with him?

23 **A. No. I didn't even ask him anything at**

24 **all, actually.**

25 Q. Have you ever had a conversation with

293

1 Fred about this lawsuit?

2 MR. ALDRIDGE: Objection.

3 Q. Strike that. Excuse me.

4 Other than to obtain the affidavit.

5 **A. We may have chatted as members of NATE**

6 **between, what was it, February and now, but I**

7 **can't recall any specific conversations we've**

8 **had. I know we talked before the vote, before**

9 **the new board and he told me, you know,**

10 **basically, he wanted to resign, you know, but it**

11 **was -- it was -- he's a very straightforward**

12 **guy. He doesn't --**

13 Q. I'm not asking your opinion about him.

14 I just want to know if you had a conversation

15 with him --

16 **A. No.**

17 Q. -- about --

18 **A. I don't recall. I mean, is it possible**

19 **any time we've talked about something briefly?**

20 **Yes. Do I recall anything specific? Absolutely**

21 **no.**

22 Q. Now you can turn to the complaint on the

23 first page. This looks to me to be an amended

24 complaint filed by New England Trade,

25 International Monetary Systems and Alamo Barter

294	<p>1 against NATE, Tom McDowell, American Trade                  2 Association, Barter Network, Bizxchange;                  3 Business Trade Exchange, Gulf Coast Trade                  4 Exchange, NCE St. Louis, TradeFirst.com and VIP                  5 Barter.                  6 Have I accurately described them?                  7 <b>A. Yes.</b></p>	296	<p>1 resolution that disposes of substantially all of                  2 its property outside the usual and regular                  3 course of its business?                  4 <b>A. Fred and/or Mike, because I spoke to                  5 both of them, told me that the board is passing                  6 some sort of stimulus package to liquidate about                  7 \$110,000 in cash to a handful of NATE members;</b></p>
<p>8 <b>Q. Did you have an opportunity to review                  9 this complaint or the original complaint before                  10 it was filed?</b>                  11 You can't ask your lawyer for the                  12 answer.                  13 <b>A. I don't know if it was --</b>                  14 <b>MR. ALDRIDGE:</b> I'll object to                  15 attorney-client privilege.                  16 <b>Q. Did you have an opportunity to review                  17 this complaint at any time?</b>                  18 <b>A. Any time? Yes. Afterwards, yes.</b>                  19 <b>Q. Okay. So as a Plaintiff I need to ask                  20 you a couple of questions about this.</b>                  21 <b>A. Okay.</b>                  22 <b>Q. Let's go to page -- well, there are no                  23 page numbers on the amended complaint, so let's                  24 go to paragraph 19. Take a few moments and read                  25 that to yourself and let me know when you</b></p>	<p>8 <b>that about 100,000-plus was going to Tom.</b>                  9 <b>Q. Cash?</b>                  10 <b>A. Cash. And that approximately 250,000,                  11 240, whatever the number was, of media is being                  12 given to Tom, and that based on Jerry Howell's                  13 email to them, it would leave NATE with only a                  14 handful of dollars in the bank.</b>                  15 <b>Q. So it was based on Fred Detwiler's and                  16 Mike Krane's statements to you?</b>                  17 <b>A. Yes. Correct.</b>                  18 <b>Q. So that hearsay forms -- is that all the                  19 evidence that you had to support your                  20 allegations in paragraph 19?</b>                  21 <b>A. At this time or now?</b>                  22 <b>Q. Well, yes, the time that you --</b>                  23 <b>A. At this time?</b>                  24 <b>Q. Yes, when you filed it in court.</b>                  25 <b>A. Yes.</b></p>		
295	<p>1 finished reading.                  2 <b>A. (Witness reviewing document.)</b>                  3 <b>Okay.</b>                  4 <b>Q. Paragraph 19 says that upon information                  5 and belief, you allege that the board of                  6 directors has purported to pass a resolution                  7 that disposes of substantially all or its                  8 property outside the usual and regular course of                  9 business. And I skipped a few words, but did I                  10 read that, essentially, in substance correctly?</b>                  11 <b>A. Yes.</b>                  12 <b>Q. What was the information or belief that                  13 you had, the factual information that you had to                  14 support this allegation on the day that it was                  15 filed, which was this spring sometime?</b>                  16 <b>A. It's what Fred Detwiler, as a board                  17 member, told me.</b>                  18 <b>Q. Hearsay from Fred. What did Fred tell                  19 you?</b>                  20 <b>A. And Mike Krane, another board member.</b>                  21 <b>Q. What did Fred tell you that formed the                  22 factual basis for your belief --</b>                  23 <b>A. That --</b>                  24 <b>Q. Wait a minute.</b>                  25 <b>-- that the board of directors passed a</b></p>	297	<p>1 <b>Q. What do you mean by disposed of?</b>                  2 <b>A. Where do you see disposed of?</b>                  3 <b>Q. It says, disposes of. I just used the                  4 past tense.</b>                  5 <b>A. I'm sorry, I don't see that.</b>                  6 <b>Q. Second line, end of the sentence.</b>                  7 <b>A. Spends.</b>                  8 <b>Q. Spends. Okay.</b>                  9 <b>And substantially all of its property.</b>                  10 <b>What's the factual basis for your statement that                  11 it was substantially all of its property?</b>                  12 <b>A. The association would have almost no                  13 cash in the bank and almost no trade in our                  14 trade accounts, and that was all of the assets                  15 the association has.</b>                  16 <b>Q. We already know that the association has                  17 few expenses, right?</b>                  18 <b>A. Now it does. I don't know about                  19 previous boards or what they did, but I'm                  20 talking today.</b>                  21 <b>Q. At that time, you're not aware of any                  22 expenses they had that are different than the                  23 expenses that you have, are you?</b>                  24 <b>A. Oh, yeah, I don't know what the expenses                  25 were back then. We'd have to --</b></p>

298

1 Q. We just looked at the expenses, though,  
 2 didn't we, on the --  
 3 **A. Yeah.**  
 4 Q. They're no different than the expenses  
 5 you have today, are they?  
 6 **A. Well, they're considerably higher on**  
 7 **that document.**  
 8 Q. Well, that's because they're somebody's  
 9 management expenses, but you don't have anybody  
 10 managing anymore, right?  
 11 **A. Yes, that's correct.**  
 12 Q. So what other expenses will you be  
 13 concerned about them having cash or trade for?  
 14 **A. Okay. Go on.**  
 15 Q. The question is for you: What other  
 16 expenses were you worried about them having cash  
 17 or trade dollars for?  
 18 **A. Again, I don't have that information. I**  
 19 **don't know.**  
 20 Q. What were you -- you have what you were  
 21 worried about. Only you could have that.  
 22 **A. Well, I'm worried about the fact that we**  
 23 **had \$250,000 in the bank, cash, and the money is**  
 24 **gone. That's --**  
 25 Q. Well, the money went to members, right?

299

1 **A. A handful of members, mostly board**  
 2 **members.**  
 3 Q. You were one of the people that got a  
 4 check, right?  
 5 **A. Yeah.**  
 6 Q. So was International Monetary Systems,  
 7 right?  
 8 **A. That's true.**  
 9 Q. So was Alamo Barter, right?  
 10 **A. Uh-huh.**  
 11 Q. And Barter Network got it?  
 12 **A. It's a board member.**  
 13 Q. Business Exchange?  
 14 **A. Okay.**  
 15 Q. Yes?  
 16 **A. He got a check.**  
 17 Q. Business Trade Exchange?  
 18 **A. He got a check.**  
 19 Q. NCE St. Louis?  
 20 **A. Past board member.**  
 21 Q. He's not a board member now, right?  
 22 **A. No, but was a few months earlier.**  
 23 Q. Doesn't matter. He's not a board member  
 24 then, right?  
 25 **A. Uh-huh.**

300

1 Q. VIP Barter?  
 2 **A. Yes.**  
 3 Q. Not a board member, right?  
 4 **A. Not now, no.**  
 5 Q. Wasn't then, either, right?  
 6 **A. No.**  
 7 Q. You weren't a board member then, either,  
 8 were you?  
 9 **A. That's correct.**  
 10 Q. Neither was IMS, right?  
 11 **A. Correct.**  
 12 Q. Neither was Alamo Barter then?  
 13 **A. Correct.**  
 14 Q. So some board members, but not mostly  
 15 board members.  
 16 **A. Right.**  
 17 Q. So did you have any documents, were you  
 18 shown any documents at the time?  
 19 **A. I was shown a few emails that went back**  
 20 **and forth.**  
 21 Q. Where are those emails?  
 22 **A. I don't think I have them anymore. It**  
 23 **was just --**  
 24 Q. You were shown emails by whom?  
 25 **A. My gosh, I couldn't even tell you who**

301

1 **sent it to me, but I know many members within**  
 2 **the association were unhappy.**  
 3 Q. That's not my question.  
 4 **A. I don't know which member sent me**  
 5 **emails.**  
 6 Q. But members sent you email --  
 7 **A. Yes.**  
 8 Q. -- about this January 31st, 2009  
 9 transaction --  
 10 **A. Correct.**  
 11 Q. -- about which you then brought a  
 12 lawsuit?  
 13 **A. Well, I knew from Fred --**  
 14 Q. Members sent you emails about this  
 15 January 31st, 2009 transaction. They sent you  
 16 emails, yes or no?  
 17 **A. Yes.**  
 18 Q. And you didn't save them?  
 19 **A. I could have them somewhere, but I don't**  
 20 **think I do.**  
 21 Q. You destroyed them?  
 22 **A. I didn't destroy them.**  
 23 Q. Well, you discarded them, didn't you?  
 24 **A. Yeah.**  
 25 Q. And I can't get them, can I?

302

1 A. No.  
 2 Q. So I don't know what those members said,  
 3 do I?  
 4 A. Right.  
 5 Q. And I'll never be able to know that  
 6 because you did not save them.  
 7 A. Right. Well, why would I?

8 Q. But you knew this lawsuit was pending.  
 9 A. No, there was no lawsuit yet.  
 10 Q. Well, sure you did.  
 11 A. This was before the lawsuit.  
 12 Q. How long after you filed this lawsuit  
 13 did you get these email messages?  
 14 A. I have no idea.  
 15 Q. A week, a month, an hour?  
 16 A. No idea.  
 17 Q. You don't know if it was a week later or  
 18 a month later?  
 19 A. Well, there was a lot of misinformation  
 20 going around, so what was fact or fiction with,  
 21 you know, some members, I just took as kind of  
 22 hearsay. I really believed what Mike Krane and  
 23 Fred Detwiler were telling me because they were  
 24 the only board members in the know, and what  
 25 Patti Falus was telling me, who was also a board

303

1 member.  
 2 Q. And Patti Falus, you had a conversation  
 3 with her about this before this lawsuit was  
 4 filed?  
 5 A. I don't know what timing, but I talked  
 6 to Patti around that time.  
 7 Q. That isn't the question. Before or  
 8 after the lawsuit was filed?  
 9 A. No idea.  
 10 Q. So you had a conversation with Patti,  
 11 Fred and Mike Krane --  
 12 A. Yes.  
 13 Q. -- and you got emails from people that  
 14 you think contained misinformation, but we don't  
 15 know what that was?  
 16 A. Well, I'm not even saying it was  
 17 misinformation. It was just rumors going  
 18 around.  
 19 Q. But you destroyed or discarded those  
 20 emails, yes or no?  
 21 A. No. I don't know.  
 22 Q. You don't know where they are?  
 23 A. Yeah, I have no idea where they are.  
 24 Q. You didn't produce them to us, though,  
 25 in response to our request for any --

304

1 A. No, because I don't think I have them  
 2 because I probably just deleted them because  
 3 they were irrelevant.  
 4 Q. So you --  
 5 A. As I said, I only cared about the people  
 6 that were part of the involvement --  
 7 Q. Well, that's what you cared about,

8 right?  
 9 A. That was Patti, Fred -- because anybody  
 10 else was not there and no one else would have  
 11 information on it.  
 12 Q. Number 20: "That this resolution was  
 13 purportedly passed without votes by all members  
 14 of the board of directors." This purportedly,  
 15 what does that word mean to you?  
 16 A. Supposedly.  
 17 Q. Okay. So you don't know for sure if it  
 18 was passed without votes by all members of the  
 19 board of directors?  
 20 A. I do know that Mike Krane and Fred  
 21 Detwiler did not vote on this.  
 22 Q. They did not vote on it or they did not  
 23 vote for it?  
 24 A. On it.  
 25 Q. So if they didn't vote on it and the

305

1 vote is had by other members and they are on the  
 2 emails with the votes, they're voting  
 3 abstention, right?  
 4 A. I don't know. You'd have to ask them.  
 5 Q. Right. But not voting on it means they  
 6 either chose to vote by abstention, they  
 7 abstained, or they voted no without saying  
 8 anything.  
 9 A. You'd have to ask what their votes were.  
 10 I don't know.  
 11 Q. Right. But we know for sure, then, some  
 12 members voted for it, right?  
 13 A. I would assume, but I don't know.  
 14 Q. Well, if the checks were cut, right, and  
 15 only Mike Krane and Fred Detwiler told you they  
 16 didn't vote for it, do you have any reason to  
 17 believe that the other three members did not --  
 18 A. There are no minutes, so I have no  
 19 reason to believe there was ever a vote or not a  
 20 vote.  
 21 Q. My question is --  
 22 A. There is no way for me to know.  
 23 Q. Well, you probably don't know that you  
 24 have emails of this in the records, but that's  
 25 your problem. So the question I have for you

306

1 is: If there are votes of three members, what  
 2 is the issue?  
 3 **A. It is against the bylaws of the**  
 4 **association.**  
 5 Q. Why?  
 6 **A. Because the bylaws strictly say that the**  
 7 **association cannot deficit spend, and we'd be**  
 8 **deficit spending.**  
 9 Q. How are you deficit spending?  
 10 **A. We're spending more money than we're**  
 11 **taking in.**  
 12 Q. I don't understand how you're spending  
 13 more money than you're taking in.  
 14 **A. Again, you're asking me NATE questions**  
 15 **that I don't know --**  
 16 Q. No, you're the president of NATE. You  
 17 should understand deficit spending.  
 18 **A. I'm not being deposed --**  
 19 Q. It doesn't matter how you're being  
 20 deposed. You're being deposed here as Gary  
 21 Oshry.  
 22 **A. No, I'm not. I was never a Gary Oshry**  
 23 **anything.**  
 24 Q. Well, you know, I can walk out and get a  
 25 notice. If you think that's going to make a big

307

1 difference here, Gary, I'd be happy to do so.  
 2 **A. I should have gotten my partner to come,**  
 3 **made it real simple for you.**  
 4 Q. Well, you could have, but the question I  
 5 have for you, I expect an answer to.  
 6 MS. KOESEL: Read my question back.  
 7 (The following question was read by the  
 8 reporter: "I don't understand how  
 9 you're spending more money than you're  
 10 taking in.")  
 11 Q. How were you spending more money at this  
 12 time than they were taking in?  
 13 **A. Our expenses exceeded our income.**  
 14 Q. By \$900, and that's -- and really, it  
 15 didn't because --  
 16 **A. No, that is in 2008.**  
 17 Q. How did your --  
 18 **A. This is in 2009.**  
 19 Q. You have no records in front of me. How  
 20 did your expenses exceed your income in 2009?  
 21 **A. I'd have to get you those records, I**  
 22 **don't have those records.**  
 23 Q. Why weren't they produced?  
 24 **A. Because they don't exist yet.**  
 25 Q. So only you know that and it's in your

308

1 head, right?  
 2 **A. No. The treasurer of the association**  
 3 **has told me that it appears that we're losing**  
 4 **money.**  
 5 Q. Oh, you're losing money now.  
 6 **A. No. Throughout the year because our**  
 7 **year just ended June 30th, so from July 1st of**  
 8 **2008 until June 1st -- I'm sorry, June 30th of**  
 9 **this year, we were losing money.**  
 10 Q. How were you losing money?  
 11 **A. Because our expenses exceeded our**  
 12 **income.**  
 13 Q. What were your expenses that were  
 14 greater than your income?  
 15 **A. Tom's salary.**  
 16 Q. Okay. He took care of that, though.  
 17 He's gone now. So what other things --  
 18 **A. Now I don't know if that's the case, but**  
 19 **I'm talking at this time. You're asking about**  
 20 **this time and place.**  
 21 Q. Well, he was entitled to a salary  
 22 whether your expenses exceeded your income or  
 23 not, right?  
 24 **A. I'm not disputing Tom's original**  
 25 **contract salary.**

309

1 Q. Right.  
 2 **A. No one is.**  
 3 Q. Well, then he was entitled to it, so  
 4 what's the question?  
 5 **A. Well, his salary was like \$42,000 a**  
 6 **year.**  
 7 Q. No, it's 60.  
 8 **A. No, it's 42.**  
 9 Q. How did it get to be 42?  
 10 **A. Well, that's what it was from 2005 to**  
 11 **2010.**  
 12 Q. But there's a new contract that's --  
 13 **A. Nobody knows about this other than Tom.**  
 14 Q. Well, that's not true. It's in the  
 15 minutes that's been posted on the website since  
 16 August of 2006.  
 17 **A. Again, we'll have to depose the other**  
 18 **board members at the time because I was not**  
 19 **there.**  
 20 Q. I guess we will.  
 21 **A. We will need to, yes.**  
 22 Q. Yeah.  
 23 **A. Yeah.**  
 24 **I like her, good job.**  
 25 Q. Let the record reflect the comment made

310	<p>1 by the witness.</p> <p>2 MR. ALDRIDGE: Be good.</p> <p>3 Q. Who is, I can't think of his name now.</p> <p>4 James Maxwell?</p> <p>5 A. <b>He is an attorney in Missouri.</b></p> <p>6 Q. Whose attorney is he?</p> <p>7 A. <b>He is Harold Rice's attorney.</b></p>	312	<p>1 <b>assets other than the trade account, and that</b></p> <p>2 <b>would have been almost zeroed out, also, after</b></p> <p>3 <b>this.</b></p> <p>4 Q. Almost zeroed out. How much was in the</p> <p>5 trade account after --</p> <p>6 A. <b>I have no idea.</b></p> <p>7 Q. So what was the factual basis for that</p>
<p>8 Q. Harold Rice?</p> <p>9 A. <b>A NATE member.</b></p> <p>10 Q. What is the name of the exchange for</p> <p>11 Harold Rice?</p> <p>12 A. <b>American Exchange Network.</b></p> <p>13 Q. Now, paragraph 24, it says that the</p> <p>14 board purportedly resolved to distribute \$50,000</p> <p>15 and other assets at \$155,000 to its executive</p> <p>16 director, Thomas McDowell. Do you see that?</p> <p>17 A. <b>Uh-huh.</b></p> <p>18 Q. You didn't tell the Court that there was</p> <p>19 a contract for this, did you?</p> <p>20 A. <b>I don't think there is a contract for</b></p> <p>21 <b>this.</b></p> <p>22 Q. Sir, did you or did you not tell the</p> <p>23 Court that there was a contract for this?</p> <p>24 A. <b>No.</b></p> <p>25 Q. Okay. And you did not tell the Court</p>	<p>8 statement?</p> <p>9 A. <b>The factual basis is, is that if all the</b></p> <p>10 <b>checks were cashed, there'd be no money in the</b></p> <p>11 <b>bank.</b></p> <p>12 Q. No, I'm asking about all the other</p> <p>13 assets. What was the factual basis for that?</p> <p>14 A. <b>That the trade account would be almost</b></p> <p>15 <b>zero, also.</b></p> <p>16 Q. Well, not almost zero. I want to know</p> <p>17 how much.</p> <p>18 A. <b>I'd have to look at the records.</b></p> <p>19 Q. You didn't know that at the time?</p> <p>20 A. <b>Again, you'd have to ask my counsel.</b></p> <p>21 Q. Did you know, you, Gary Oshry --</p> <p>22 A. <b>No, I did not know exactly what it was.</b></p> <p>23 Q. New England Trade, at the time you knew</p> <p>24 nothing about this?</p> <p>25 A. <b>No.</b></p>		
311	<p>1 that these other assets of \$155,000 were trade</p> <p>2 dollars, right?</p> <p>3 A. <b>I don't think so.</b></p> <p>4 Q. I want you to explain to me what you</p> <p>5 were saying in paragraph 27, that the proposed</p> <p>6 distributions under the board's resolution of</p> <p>7 January 31st, 2009 will dispose of substantially</p> <p>8 all of the Defendant's assets.</p> <p>9 A. <b>That after all the checks were written,</b></p> <p>10 <b>then NATE would have no money in the bank.</b></p> <p>11 Q. No money?</p> <p>12 A. <b>Very minimal money, substantially --</b></p> <p>13 Q. They would have money.</p> <p>14 A. <b>Very little bit --</b></p> <p>15 Q. A little money --</p> <p>16 A. <b>-- because the few money remaining was</b></p> <p>17 <b>deposits held for members, so there would have</b></p> <p>18 <b>been almost no money in the bank.</b></p> <p>19 Q. But there was money in the bank.</p> <p>20 A. <b>Minimally, yes.</b></p> <p>21 Q. Yes or no, there was money in the bank?</p> <p>22 A. <b>Yes.</b></p> <p>23 Q. What other assets did the Defendant</p> <p>24 have?</p> <p>25 A. <b>I don't believe NATE has any other</b></p>	313	<p>1 Q. And you had never looked?</p> <p>2 A. <b>I looked. I just don't know what the</b></p> <p>3 <b>number is.</b></p> <p>4 Q. You knew it then?</p> <p>5 A. <b>Well, yeah, I read it then. It was</b></p> <p>6 <b>very -- almost nothing.</b></p> <p>7 Q. Almost nothing, but it wasn't nothing.</p> <p>8 A. <b>Correct.</b></p> <p>9 Q. Now, paragraph 34 says: "A real</p> <p>10 controversy exists between Plaintiffs and</p> <p>11 Defendants, who are adverse parties."</p> <p>12 Now, are you adverse, you, New England</p> <p>13 Trade, IMS and Alamo Barter, are you adverse to</p> <p>14 NATE today?</p> <p>15 A. <b>No. Excuse me, I can only speak for New</b></p> <p>16 <b>England Trade. I cannot speak for them. But</b></p> <p>17 <b>New England Trade is not adverse to NATE.</b></p> <p>18 Q. New England Trade is not adverse.</p> <p>19 A. <b>Right.</b></p> <p>20 Q. As president of NATE's board of</p> <p>21 directors, do you personally consider NATE</p> <p>22 adverse to New England Trade --</p> <p>23 MR. OSMAN: Objection.</p> <p>24 Q. -- in this lawsuit? You can respond.</p> <p>25 A. <b>I consider the past board members of</b></p>

314

1 **NATE a problem, but the current association, I**  
 2 **have no issues with.**  
 3 Q. Why haven't you sued the past board  
 4 members?  
 5 **A. Again, that's not my decision. That is**  
 6 **the board of the -- the members of NATE and the**  
 7 **board of directors, I don't know.**  
 8 Q. As the president of the board of  
 9 directors of NATE, have you made any suggestion  
 10 that they sue the past board members of NATE?  
 11 MR. ALDRIDGE: Objection.  
 12 **A. I have not because --**  
 13 Q. You can respond.  
 14 **A. I have not because I am right now a**  
 15 **party of New England Trade and I am not involved**  
 16 **in that. You'd have to ask the other board**  
 17 **members.**  
 18 Q. You never made a suggestion to the other  
 19 board members at any time?  
 20 **A. We may have discussed it as**  
 21 **purely discussing, but no decisions have been**  
 22 **made, no votes have been made and no action has**  
 23 **been taken.**  
 24 Q. Tell me what you discussed.  
 25 **A. I have no idea what I discussed.**

315

1 Q. Well, you said you may have discussed  
 2 it, and you're going to have to tell me what you  
 3 discussed with the NATE board members.  
 4 **A. I discussed -- really, I told them that**  
 5 **I really can't take part of any of this.**  
 6 Q. Well, what did they say to you?  
 7 **A. We dropped it.**  
 8 Q. You said -- you said, let's talk about  
 9 it; oh, never mind, let's not?  
 10 **A. No. No. No.**  
 11 Q. Well, tell me about the conversation,  
 12 then.  
 13 **A. One of the members brought up --**  
 14 Q. Which one?  
 15 **A. I have no idea.**  
 16 Q. Okay.  
 17 **A. That, you know, should we explore**  
 18 **looking into the other directors, and it was**  
 19 **very quickly just dismissed for now and we**  
 20 **tabled it because there were more other**  
 21 **important things we needed to do. I and Rachel**  
 22 **have told the board members that, you know, we**  
 23 **don't want to discuss our particular case with**  
 24 **NATE, and we'd be keeping it very separate.**  
 25 Q. How long have you done that?

316

1 **A. Since I've been on the board.**  
 2 Q. You said the members said we should  
 3 explore. What member? Was it a board member or  
 4 a NATE member?  
 5 **A. I believe it was a board member, but**  
 6 **we've also had individual members that I have**  
 7 **not talked to, and I don't know who they are,**  
 8 **talk to other members and/or board members,**  
 9 **saying, what are we doing about this current**  
 10 **problem.**  
 11 Q. Name one person that you can remember.  
 12 The board member or an individual, you're  
 13 telling me you can't remember one of these  
 14 people whose brought this serious issue to your  
 15 attention?  
 16 **A. I am not involved in it because of my**  
 17 **current situation.**  
 18 Q. I understand you're not involved --  
 19 **A. So I don't want to know, so I don't**  
 20 **know.**  
 21 Q. Sir, you have already told me that a  
 22 NATE board member brought it to your attention.  
 23 There's only three other board members besides  
 24 you and --  
 25 **A. I do not know because we've tabled it**

317

1 **completely --**  
 2 Q. You didn't even let me get my question  
 3 out.  
 4 **A. Go for it.**  
 5 Q. Which of the three other board members  
 6 mentioned looking at or exploring suing the past  
 7 board members?  
 8 **A. Don't know.**  
 9 **(Brief recess.)**  
 10 MS. KOESEL: Let the record reflect that  
 11 the parties are going to adjourn today's  
 12 deposition while they engage in some settlement  
 13 discussions. If we are unable to resolve the  
 14 case, Mr. Oshry has agreed to reappear for the  
 15 conclusion of his deposition at some date we  
 16 will agree upon jointly in the future.  
 17 MR. ALDRIDGE: Additionally, on behalf  
 18 of Plaintiffs, we're willing to stipulate to an  
 19 extension. The Court had recently granted on  
 20 behalf of Defendant American Trade Exchange an  
 21 extension given until August 30th to respond to  
 22 the motion to dismiss filed by Defendants.  
 23 We are stipulating that we're in  
 24 agreement to an extension of 30 days to file  
 25 that response.

318

1 MS. KOESEL: Which would take that to  
 2 the 25th of September.  
 3 (Deposition adjourned at 4:24 p.m.)  
 4 -----  
 5  
 6  
 7

320

1 AFFIDAVIT OF NOTARY PUBLIC  
 2  
 3 The State of Ohio, )  
 4 ) SS:  
 5 County of Cuyahoga )  
 6  
 7 Before me, a Notary Public in and for said  
 8 County and State, personally appeared GARY  
 9 OSHRY, who acknowledged that he did read his  
 10 transcript in the above-captioned matter, listed  
 11 any necessary corrections on the accompanying  
 12 errata sheet, and did sign the foregoing sworn  
 13 statement and that the same is his free act and  
 14 deed.  
 15 In the TESTIMONY WHEREOF, I have hereunto  
 16 affixed my name and official seal at this \_\_\_\_\_  
 17 day of \_\_\_\_\_ A.D 2009.  
 18  
 19 \_\_\_\_\_  
 20 Notary Public  
 21  
 22 \_\_\_\_\_  
 23 My Commission Expires:  
 24  
 25

319

1 CERTIFICATE  
 2 The State of Ohio, )  
 3 ) SS:  
 4 County of Cuyahoga. )  
 5  
 6 I, Jaci R. Traver, RPR, CRR and Notary  
 7 Public, duly commissioned and qualified, do  
 8 hereby certify that the within named witness,  
 9 GARY OSHRY, was by me first duly sworn to  
 10 testify the truth, the whole truth and nothing  
 11 but the truth in the cause aforesaid; that the  
 12 testimony then given by the above-referenced  
 13 witness was by me reduced to stenotypy in the  
 14 presence of said witness; afterwards  
 15 transcribed, and that the foregoing is a true  
 16 and correct transcription of the testimony so  
 17 given by the above-referenced witness.  
 18  
 19 I do further certify that this  
 20 deposition was taken at the time and place in  
 21 the foregoing caption specified and was  
 22 completed without adjournment.  
 23  
 24 I do further certify that I am not a  
 25 relative, counsel or attorney for either party,  
 or otherwise interested in the event of this  
 action.  
 IN WITNESS WHEREOF, I have hereunto  
 set my hand and affixed my seal of office at  
 Cleveland, Ohio, on this 12 day of  
October, 2009.  
 \_\_\_\_\_  
 Jaci R. Traver, Notary Public  
 within and for the State of Ohio  
 My commission expires July 23, 2013.

321

1 SIGNATURE PAGE  
 2  
 3 Re: New England Trade, et al., vs.  
 4 National Association of Trade  
 5 Exchanges, et al.  
 6 Case Number: 09-CV-00358  
 7 Deponent: GARY OSHRY  
 8 Deposition Date: August 25, 2009  
 9  
 10 To the Reporter:  
 11 I have read the entire transcript of  
 12 my Deposition taken in the captioned matter or  
 13 the same has been read to me. I request that  
 14 the following changes be entered upon the record  
 15 for the reasons indicated. I have signed my  
 16 name to the Errata Sheet and the appropriate  
 17 Certificate and authorize you to attach both to  
 18 the original transcript.  
 19  
 20  
 21  
 22  
 23  
 24 GARY OSHRY  
 25

1 ERRATA SHEET

2 Page Line Change

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24 \_\_\_\_\_ NO CHANGES

25 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

