

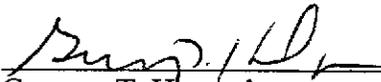
IN THE SUPREME COURT OF OHIO

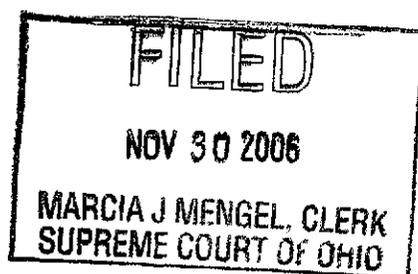
STATE OF OHIO, ex rel., : Case No. 03-1572
GREGORY T. HOWARD : Trial Court Case No. 97AP-860
: :
Appellant, : :
: :
-vs- : :
: :
SEAWAY FOOD TOWN, INC., et al., :
: :
Appellees.

APPLICATION FOR LEAVE TO FILE A RESPONSE TO THE SIXTH NOTICE OF
FAILURE OF PAYMENT AND ATTACHED MOTION TO INITIATE CONTEMPT
PROCEEDINGS AGAINST APPELLEE SPARTAN STORES ASSOCIATES;
MEMORANDUM IN SUPPORT CONSTRUED AS A RESPONSE TO SIXTH
NOTICE OF FAILURE OF PAYMENT; TO 12/14/2005 UNREASONABLE ORDER
INSTANTER

Appellant herein, Gregory T. Howard, pro-se asks for leave to file a response to
the sixth notice of failure of payment to which his attached motion to initiate contempt
proceedings against Appellee Spartan Stores Associates; memorandum in support with
supporting documents should be construed as a response to the notices *instante*; to
12/14/2005 unreasonable order *instante*.

Respectfully submitted,


Gregory T. Howard
P.O. Box 3096
Toledo, Ohio 43607-0096
Telephone: (419) 450-3408



Relator-Appellant, Pro-se

PROOF OF SERVICE

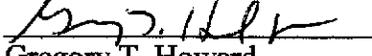
This is to certify that a copy of the foregoing of Gregory T. Howard was sent via ordinary U.S. Mail this 28th day of November, 2006 to:

Eastman & Smith, Ltd.
C/O Thomas A. Dixon, Esq.
One Seagate, 24th Floor
Toledo, Ohio 43699-0032

Governor Bob Taft
77 High Street, 30th Floor
Columbus, Ohio 43215-6117

Ohio Attorney General Office
Shawn M. Wollam, Esq.
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The Ohio Attorney General Chief of
Chief Counsel Staff-Atty Carney
State Office Tower
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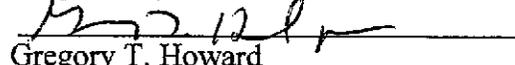

Gregory T. Howard
Appellant-Claimant, pro-se

**OHIO REVISED CODE SECTION 2705.02(A) MOTION TO INITIATE
CONTEMPT PROCEEDINGS AGAINST APPELLEE SPARTAN STORES
ASSOCIATE LLC**

Now comes the Appellant, Gregory T. Howard and hereby moves this Honorable Court to initiate contempt proceedings against Appellee Spartan Stores Associates, for failure to comply with this Court's August 24, 2006 order granting Appellant's motions for leave to file responses to the Appellee Seaway Food Town, Inc., notices *instanter* ; further ordering Appellant to continue to make payments toward the March 3, 2004 award of attorneys' fees to Appellee Seaway Food Town, Inc., in accordance with the payment schedule ordered by the Court on December 14, 2005 and ordering the parties to notify the court when the attorney fee award is paid in full. Such request is consistent with this Court's decision in *Cincinnati Bar Assn. v. Bailey*, 98 Ohio St. 3d 1499, 2003-Ohio-1341 (respondent ordered to appear and show cause why he should not be held in contempt for failing to comply with subpoena duces tecum); 98 Ohio St. 3d 1546, 2003-Ohio-2032 (respondent held in contempt for failing to show cause and ordered to pay sanctions and attorneys' fees); 99 Ohio St. 3d 1441, 2003-Ohio-3017 (respondent ordered to serve a sentence of no less than ten days for failing to pay sanctions and attorneys' fees); and 99 Ohio St. 3d 1446, 2003-Ohio-3305 (respondent's sentence vacated after respondent paid court ordered sanctions and attorneys fees). Contempt proceedings against a respondent for acting in bad faith does not preclude injunctive relief in the form of damages against the respondent nor does it preclude a statutory award of attorney fees generated in obtaining that injunctive relief. *Pulliam v. Allen* (1984), 466 U.S. 522, 541-544; *Borkowski v. Abood*, 2006-Ohio-4913. Spartan Stores Associates has a wanton disregard for the order of this Court by failing to obey this Court's order dated August 24,

2006 by filing a sixth frivolous notice when this Court expressly ordered the parties to notify it when the attorneys' fees award is paid in full. Appellant further asserts that the Appellee acted with a malicious purpose, in bad faith, in a wanton or reckless manner with regards to this Court's order dated August 24, 2006 by failing to obey this Court's order dated August 24, 2006 by filing a sixth frivolous notice when this Court expressly ordered the parties to notify it when the attorneys' fees award is paid in full and not before. A memorandum in support follows:

Respectfully submitted,


Gregory T. Howard
P.O. Box 3096
Toledo, Ohio 43607-0096
Telephone: (419) 241-9051

Plaintiff- Appellant, Pro-se

MEMORANDUM IN SUPPORT

Gregory T. Howard, an Ohio resident proceeding pro-se, appealed the 10th District Court of Appeals final order denying a motion for leave to file an attached pleading *instanter* filed August 26, 2003, pursuant to O.R.C. 2731.01, *et seq.* on September 2, 2003. On July 16, 1998, the Court of Appeals overruled Respondents objections to the magistrate's decision and approved and adopted the magistrate's 05-08-1998 decision as its own, and issued a judgment and order that a writ issue ordering Respondent Industrial Commission of Ohio to vacate the staff hearing officer's order of December 14, 1995, dismissing Relator's permanent total disability application, and to process that application according to the rules of the commission. No appeal was taken from this order. *Id.* When the Commission acted in bad faith by failing to comply with the Court of Appeals order with regard to processing Relator's PTD application

according to its rules, Appellant argued to the Court of Appeals that it had a wanton disregard for the Court of Appeals order of July 16, 1998 by delaying the processing of its valid PTD application for over two years on March 8, 2000-contrary to its rules and the Court of Appeals 07-16-1998 order. *Pulliam v. Allen* (1984), 466 U.S. 522, 541-544; *Borkowski v. Abood*, 2006-Ohio-4913. The court of appeals should have granted the Appellant's argument based upon his pleading, however, the Court of Appeals abused its discretion when the court denied Appellant's motion for leave to file an attached pleading because the vexatious litigator order had expired on August 22, 2003. Check Ohio Supreme Court website. Therefore, on September 2, 2003, the Appellant's appeal was proper and this court improperly dismissed it on October 31, 2003.

The Court of Appeals acted in bad faith in the underlying case by denying the Appellant's motion for leave to file an attached pleading with respect to the fact that the Commission acted in bad faith by failing to comply with the Court of Appeals order with regard to processing Relator's PTD application according to its rules, and by delaying the processing of his valid PTD application for over two years-contrary to its rules and the Court of Appeals 07-16-1998 order and with respect that the vexatious litigator order had expired on August 22, 2003 and leave of court was unnecessary to file the pleading in question. On August 22, 2000, the Lucas County Court of Common Pleas declared the Appellant a vexatious litigator under O.R.C. 2323.52. That order expired on August 22, 2003.

On September 2, 2003, Appellant appealed the final order of the Court of Appeals dated August 26, 2003 to this Court. On September 9, 2003, this Court placed filing restrictions on Appellant, for allegedly engaging in frivolous litigation. In addition, this

Court ordered that continued filing of frivolous actions or documents would result in additional sanctions.

On March 3, 2004, this Court ordered the Appellant to pay attorneys fees to including the Commission and **Seaway Food Town, Inc.**, in the amount of \$938.00 as sanctions for failing to allegedly follow the Court's order. On December 14, 2005, this Court ordered Appellant to first pay Appellee Industrial Commission of Ohio the amounts he owed to it and then to commence payment to **Seaway Food Town, Inc.**, at a rate of \$50.00 per month until the entire amount of \$938.00 is paid. This Court further held that Appellant remain in contempt until all attorney fees are paid and failure to comply with the payment schedule will result in further sanctions.

Appellant paid the court ordered amounts to the Industrial Commission of Ohio and then made court scheduled payments of \$50.00 from February through November, 2006. With respect to the required payments from February through November 2006, the Appellant tendered a money order to Appellee and hand-delivered the same to their office located at One Seagate, 24th Floor, Toledo, Ohio 43699-0032. Appellant notified Appellee that he contacted the money order company and that the money order company indicated that the Appellee must have not been cashing the money orders in question and that it would reissue the same for a fee of \$12.00. To date, the Appellee has not responded to the letter sent to it by regular mail regarding it not cashing the money orders but continues to serve and file frivolous notices of failure of the Appellant to comply with the Court's orders of March 3, 2004 and December 14, 2005 with this Court.

On August 24, 2006, this Court issued an order granting Appellant's motions for leave to file responses to the Appellee Seaway Food Town, Inc., notices *instanter* ;

further ordering Appellant to continue to make payments toward the March 3, 2004 award of attorneys' fees to Appellee Seaway Food Town, Inc., in accordance with the payment schedule ordered by the Court on December 14, 2005 and ordering the parties to notify the court when the attorney fee award is paid in full. The Appellee acted in bad faith by failing to obey this Court's order dated August 24, 2006 by filing a sixth frivolous notice when this Court expressly ordered the parties to notify it when the attorneys' fees award is paid in full and not before. Based upon this disobedience of this Court's order dated August 24, 2005 by Appellee, Appellant respectfully requests that this Court take appropriate action consistent with O.R.C. 2705.02(A) and as sanctions Appellant asks this Court to order the Appellee pay to him the amounts owed to him for his valid PTD application filed with the Industrial Commission of Ohio on 09-07-1995, any and all medical benefits including PTD compensation from September 7, 1995 to present, attorney fees and costs for failing to follow this Court August 24, 2006 order.

Appellant asserts that this Court acted in bad faith, (1) in the face of clearly valid statutes, rules or caselaw expressly permitting the Appellant to take an Appeal from a Court of Appeals decision by dismissing his appeal filed on September 2, 2003 from the Court of Appeals final order dated August 26, 2003 on October 31, 2003; See, Sup. Ct. Prac. R. II, Section 2; (2) by placing filing restrictions on him, (3) by ordering sanctions against him;(4) by ordering him pay attorneys fees to including the Commission and Seaway Food Town, Inc., in the amount of \$938.00 as sanctions for failing to allegedly follow the Court's order; (5) by ordering him to pay Seaway Food Town, Inc., at a rate of \$50.00 per month until the entire amount of \$938.00 is paid; and (6) by holding him in contempt until all attorney fees are paid and by directing that his failure to comply with

the payment schedule will result in further sanctions. As a result, this Court must reverse the court of appeals judgment dated 08-26-2003 in its entirety and order the Appellee pay to him the amounts owed to him for his valid PTD application filed with the Industrial Commission of Ohio on 09-07-1995, any and all medical benefits including PTD compensation from September 7, 1995 to present, attorney fees and costs for failing to follow this Court August 24, 2006 order. *Pulliam v. Allen* (1984), 466 U.S. 522, 541-544; *Borkowski v. Abood*, 2006-Ohio-4913.

Despite the efforts of this Court, the Appellee has failed to acknowledge the seriousness of its action. Furthermore, it continues to scoff at the order of this Honorable Court, by failing to obey this Court's order dated August 24, 2006 by filing a sixth frivolous notice when this Court expressly ordered the parties to notify it when the attorneys' fees award is paid in full and not before.

It is apparent that awarding the requested relief will do nothing to deter the abuse of process or disobedient behavior in which the Appellee engages. Instead, Appellant requests the Court to follow precedent, initiate contempt proceedings, and find Appellee in contempt of court. *Cincinnati Bar Assn. v. Bailey*, 98 Ohio St. 3d 1499, 2003-Ohio-1341; 98 Ohio St. 3d 1546, 2003-Ohio-2032; 99 Ohio St. 3d 1441, 2003-Ohio-3017; and 99 Ohio St. 3d 1446, 2003-Ohio-3305. In *Cincinnati Bar Assn. v. Bailey*, 98 Ohio St. 3d 1499, 2003-Ohio-1341, the Cincinnati Bar Association ("CBA") moved for an order to show cause why Bailey should not be held in contempt of court for failing to comply with a subpoena duces tecum. This Court found that respondent was in contempt, sanctioned him \$500, and ordered him to pay CBA costs. Having failed to comply, the Court ordered Bailey to appear in person and show cause why he should not be held in

contempt for failing to show cause for failing to pay the \$500 sanction and \$375 in attorneys' fees. The Court determined that Bailey failed to show cause, and held him in contempt. Further, the court ordered that Bailey be incarcerated in the Franklin County Jail for a period of ten days if he failed to pay the fine and reimbursement within three days.

Here, the Appellant moved this Honorable Court to order the Appellee to appear and show cause why it should not be held in contempt for failing to comply with this Court's order dated 08-24-2006. Appellant further asks this Court to find that the Appellee is in contempt, sanction it to pay to him the amounts owed to him for his valid PTD application filed with the Industrial Commission of Ohio on 09-07-1995, any and all medical benefits including PTD compensation from September 7, 1995 to present, including attorney fees and costs for failing to follow this Court August 24, 2006 order. *Pulliam v. Allen* (1984), 466 U.S. 522, 541-544; *Borkowski v. Abood*, 2006-Ohio-4913. Further Appellant asks this Court further hold that Appellee remains in contempt until all amounts owed to him for his valid PTD application filed with the Industrial Commission of Ohio on 09-07-1995, any and all medical benefits including PTD compensation from September 7, 1995 to present, including attorney fees and costs are paid for failing to follow this Court August 24, 2006 order and failure to comply with its order within 30 days of its entry will result in further sanctions to include a fine or incarceration. Appellee's failure to comply with the Court's August 24, 2006, order ordering the parties to notify it when the attorneys' fees award is paid in full constitutes bad faith and a wanton disregard of the Court's process and the rights of the Appellant.

RELIEF REQUESTED

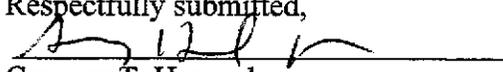
Therefore, the Appellant respectfully moves this Honorable Court to:

1. Issue an order directing Appellee to appear and show cause why it should not be held in contempt for failing to comply with this Court's order dated 08-24-2006 and to find Appellee is in contempt, sanction it to pay to him the amounts owed to him for his valid PTD application filed with the Industrial Commission of Ohio on 09-07-1995, any and all medical benefits including PTD compensation from September 7, 1995 to present, including attorney fees and costs for failing to follow this Court August 24, 2006 order.

2. To require Appellee to make prompt payment of the amounts owed to him for his valid PTD application filed with the Industrial Commission of Ohio on 09-07-1995, any and all medical benefits including PTD compensation from September 7, 1995 to present, including attorney fees and costs for failing to follow this Court August 24, 2006 order within a period of thirty days from the issuance of the Court's order. To Direct the Appellant to inform the Clerk whether payment has been promptly made within the required time period; and

3. If payment is not made within the required time period, issue an order for Appellee to appear before the Supreme Court of Ohio to show cause why it should not be found in contempt; and, if cause is not shown, the Appellant respectfully requests that the Court enter an order directing that Appellee be found in contempt and take any other appropriate action that it deems necessary.

Respectfully submitted,


Gregory T. Howard
P.O. Box 3096

Toledo, Ohio 43607-0096
Telephone: (419) 241-9051

Plaintiff- Appellant, Pro-se

PROOF OF SERVICE

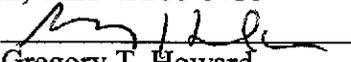
This is to certify that a copy of the foregoing of Gregory T. Howard was sent via ordinary U.S. Mail this 28th day of November, 2006 to:

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One Seagate, 24th Floor
Toledo, Ohio 43699-0032

Ohio Attorney General Office
Shawn M. Wollan, Esq.
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215

Governor Bob Taft
77 High Street, 30th Floor
Columbus, Ohio 43215-6117

The Ohio Attorney General Chief of
Chief Counsel Staff
State Office Tower
30 East Broad Street, 17th Floor
Columbus, Ohio 43266-0410


Gregory T. Howard
Appellant-Claimant, pro-se

MEMORANDUM IN OPPOSITION

For the reasons stated at the hearing by Appellant/Ohio Attorney General and the record, a copy of which is attached hereto, in this case the Ohio Supreme Court rulings are unconstitutional and unfair because they not only inflict cruel and unusual punishment on him and the public as it provides no provision or time period for him or an individual as he was determined to be rehabilitated from the entries or statute but the Appellant was not afforded legal counsel in the criminal contempt proceedings held before this Court on November 29, 2005 as provided for under the U.S. Constitution. Once determined a vexatious litigator in a case or action always a vexatious litigator, even on a first offense. This act violates public policy. There is simply no provision to restore a party or individual to a useful and constructive place through therapy, job training, and other counseling methods. Even Ohio has promulgated the three strike law by statute for individuals who have violated the statute or rule not only once, or twice but three times and then their out. Thus, in this regard the vexatious litigator rule/statute is just plain unconstitutional and unfair.

In the U.S. Constitution Sixth Amendment, there is a provision that "in all criminal prosecution ..." a party is entitled "to have the assistance of counsel for his defense." This Court is bound by oath or affirmation to support that provision of the U.S. Constitution. The undersigned was deprived of the assistance of such legal counsel for his defense at the November 29, 2005 criminal contempt proceedings. For the reasons stated herein, this Court's unreasonable 12/14/2005 order is unconstitutional, unfair and must be vacated as it is precisely the type of act that the U.S. Constitution 6th Amendment is meant to prohibit.

In the U.S. Constitution Eighth Amendment, there is a provision that “cruel and unusual punishment” shall not be inflicted on the people of the United States. The Constitution employs the mandatory directive: “shall.” This Court is bound by oath or affirmation to support that provision of the U.S. Constitution. Appellant submits as set forth above, the Ohio Supreme Court rulings are unconstitutional and unfair because they not only inflict cruel and unusual punishment on him and the public as it provides no provision or time period for him or an individual as he was determined to be rehabilitated from the entries or statute (e.g., theft, embezzlement, rape and the like) but the Appellant was not afforded legal counsel in the criminal contempt proceedings held before this Court on November 29, 2005 as provided for under the U.S. Constitution. Thus, because this Response to this Court’s 12/14/2005 order is properly supported by evidence or otherwise and there are no genuine issue of material fact that there are no provisions to restore a party or individual to a useful and constructive place through therapy, job training, and other counseling methods in place, the Appellant is legally entitled to judgment as a matter of law, and therefore, the Court must also vacate or cancel its September 24, 2004 vexatious litigator order as it is unconstitutional, unfair and against the manifest weight of public policy as well.

Finally, on November 7, 2005, this Court issued an order permitting Appellant to file a Motion to Recuse the Ohio Supreme Court, to file a Motion to Reinstate appeal and request for sanctions. On November 8, 2005, Appellant filed a Motion to Reinstate appeal and request for sanctions, those motions speak for themselves. Neither the Ohio Attorney General nor Seaway Food Town, Inc., have filed responses to Appellant’s motions which clearly set forth the relief sought and the reasons justifying the granting of

such motions. Those motions still remain pending. This Court has deliberately, unreasonably or arbitrarily delayed proceeding to judgment on these motions. Appellant hereby gives notice regarding his petition for writ of mandamus filed in the U.S. Supreme Court on May 31, 2006, Supreme Court Case No. 05-11216 (Response is due 6/30/2006) and such will be distributed on September 25, 2006. Further Appellant says that the petition for a writ of mandamus in case No. 05-9049 was denied on April 17, 2006 and that rehearing of that decision was denied on June 12, 2006 by order of the U.S. Supreme Court. Appellant submits, as set forth in his November 8, 2005 and May 8, 2006 pleadings, that the reasons stated therein justifies the granting of the motions/filings as this is precisely the type of case that supports a finding of PTD compensation and other requested relief herein.

For the reasons set forth herein, Appellant respectfully requests that this Court vacate or cancel all of its previous entries as they are unconstitutional and unfair; and further to permit this case to proceed to judgment on the merits of the motions at issue.

Additionally, Appellant hereby informs this Court that he has made \$50.00 payments for and including April, June, July, August, September, October, and November 2006 as ordered by this Court.. Specifically, at a November 29, 2005 hearing Chief Justice Moyer stated that:

CHIEF JUSTICE MOYER: "Well, we have an attorney at Eastman & Smith, a firm that's shown as of record representing them [Food Town], whoever they are. So-and we've-and they've-you know, they've given us information as to what their costs and legal fees are. So there's an entity here that-that we've determined is owed-two entities, Industrial Commission and Food Town, whoever-I mean, it's not for us to decide who Food Town's successor is. They've been represented here ..." [Transcript at Page 22:14-25].

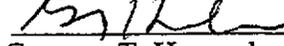
The attorney at Eastman & Smith, Thomas A. Dixon (0017879), has misrepresented to this Court that they are owed costs and legal fees on behalf of Food Town because Spartan Stores purchased Food Town in August of 2000 and Appellant was terminated by Food Town on March 25, 1999. Appellant was not an employee of Spartan Stores. Appellant commenced this action in September of 2003 by filing a notice of appeal from a final August 26, 2003, Entry of the 10th District Court of Appeals in Case No. 97AP-860. Appellant's prior vexatious litigator order expired on August 22, 2003.

Appellant paid the Industrial Commission of Ohio the amounts owed to it as ordered by this Court. Appellant made payments of \$50.00 in February of 2006, March of 2006, April of 2006, May of 2006, June of 2006, July, August, September, October, and November of 2006 as ordered by this Court even though the attorney at Eastman & Smith, Thomas A. Dixon (0017879), had misrepresented to this Court that they are owed costs and legal fees on behalf of Food Town as evidenced herein.

Based upon the fact that an attorney at Eastman & Smith, Thomas A. Dixon (0017879), had misrepresented to this Court that they are owed costs and legal fees on behalf of Food Town in an Affidavit that in "preparing a motion to dismiss corresponding with the Court and with the Company [a non-existing company]; and preparation of this Affidavit and corresponding memorandum..." in violation of the Code Of Professional Responsibility DR7-102(A)(1) through (8), Appellant Gregory T. Howard, pro-se respectfully requests that this Court take appropriate action consistent with **Gov. Bar R. IV and Gov. Bar R. V** because of the attorney at Eastman & Smith, Thomas A. Dixon (0017879), had misrepresented to this Court that they are owed costs and legal fees on

behalf of Food Town or otherwise breach of the **Code Of Professional Responsibility**
DR7-102(A)(1) through (8) as evidenced herein.

Respectfully submitted,



Gregory T. Howard
P.O. Box 3096
Toledo, Ohio 43607-0096
Telephone: (419) 450-3408

Plaintiff- Appellant, Pro-se

PROOF OF SERVICE

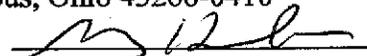
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Gregory T. Howard
Appellant-Claimant, pro-se