

FILED
COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

2008 SEP 18 PM 4:51
CRIMINAL DIVISION

STATE OF OHIO, CLERK OF COURTS : **TERMINATED: NO. 12 BY KM**
Plaintiff, :
-v- : Case No. 08CR-08-6792
DENNIS SMALLEY, : **JUDGE CAIN**
Defendant. :

JUDGMENT ENTRY
(Community Control Imposed)

On September 15, 2008, the State of Ohio was represented by Assistant Attorney General Robert Cheugh and the Defendant was represented by Attorneys Bill Meeks, Dave Thomas and Chris Jones. The Defendant after being advised of his rights pursuant to Crim. R. 11, entered a plea of guilty to the **Bill of Information, Counts One and Two** to wit: **Submitting Fraudulent Data**, in violation of Sections 3746.20 and 3737.882(C), of the Ohio Revised Code, both being unclassified felonies.

The Court found the Defendant guilty of the charges to which the plea was entered.

The Court proceeded immediately to sentencing.

On September 15, 2008, a sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Assistant Attorney General Robert Cheugh and the Defendant was represented by Attorneys Bill Meeks, Dave Thomas and Chris Jones. The Assistant Attorney General and the Defendant's attorneys did not recommend a sentence.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording him an opportunity to make a statement on his own behalf in the form of mitigation and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12. In addition, the Court has

weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C. 2929.14. The Court further finds that a prison term is not mandatory pursuant to R.C. 2929.13(F).

The Court hereby imposes a period of Community Control for **five years under basic supervision**. In addition to the provisions of R.C. 2951.02 and the general requirements of the Franklin County Department of Community Control, as authorized by the Common Pleas Court and as given to the Defendant in writing, the Court imposes the following Community Control Sanctions (See R.C. 2925.15, R.C. 2929.16 and R.C. 2929.17.): **The defendant shall be on house arrest for 22 months; the defendant shall serve sixty (60) days at the Franklin County Correction Center to be enforced on January 2, 2009; the defendant shall pay full restitution in the total amount of \$300,000 to the Ohio Environmental Protection Agency, ATTN: Brenda Case, Lazarus Government Center, 122 South Front Street, P.O. Box 1049, Columbus, OH 43261-1049, to be distributed as follows: \$100,000 to Petroleum Underground Storage and Tank Release Compensation Board, to be paid within one year; \$50,000 to the Superior Fibers Company; \$20,000 to the Bureau of Underground Storage Tank and Regulations Corrective Action Program; \$60,000 to the Ohio Attorney General's Office; \$70,000 to the Ohio Environmental Protection Agency (\$35,000 to the Voluntary Action Program and \$35,000 to the Office of Special Investigations), through the Probation Department. All restitution is joint and severally with co-defendant, Smalley & Associates, Inc., Case No. 08CR-6803. Plea agreement is attached.**

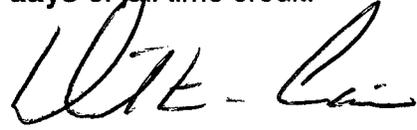
A fine in the amount of \$10,000 as to each count for a total of \$20,000 is to be offset by restitution of \$300,000.00. In the event the restitution is not paid in full the fines shall be imposed.

The Court has considered the Defendant's present and future ability to pay a fine and financial sanctions and, pursuant to R.C. 2929.18, hereby renders judgment for the following fine and/or financial sanctions: **No court costs imposed.**

After the imposition of Community Control, the Court, pursuant to R.C. 2929.19(B)(5) notified the Defendant, orally and in writing, what could happen if he

violates Community Control. The Court further indicated that if the Defendant violates Community Control he will receive a prison term of up to fourteen months as to each count to run concurrently at Ohio Department of Rehabilitation and Correction.

The Court finds that the Defendant has **zero days** of jail time credit.

A handwritten signature in black ink, appearing to read "D. E. Cain", written over a horizontal line.

David E. Cain, Judge

Case No. 08CR-08-6792

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

v.

DENNIS SMALLEY &
SMALLEY & ASSOCIATES, INC.,

Defendants.

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:

:

:

:

:

CASE NO. 08 CR 0792

JUDGE: CAIN 08CR 6803

PLEA AGREEMENT

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COMMON PLEAS COURT
FRANKLIN CO., OHIO
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CLERK OF COURTS

Pursuant to Rule 11 (F) of the Ohio Rules of Criminal Procedure and in consideration of the mutual promises set forth below, the State of Ohio, by and through the Attorney General of the State of Ohio and Dennis Smalley and as President of Smalley & Associates Inc., agree as follows:

1. Dennis Smalley personally and on behalf of the corporation by his signature hereto, acknowledges his right to remain silent and expressly waives that right with respect to this agreement;
2. Dennis Smalley acknowledges that he has had legal representation of Christopher Jones and William Meeks throughout this case and acknowledges that he has been advised of his rights and of the terms and conditions of this plea agreement.
3. Dennis Smalley understands that he has the right to plead not guilty and to persist in that plea at trial, in which he would be presumed innocent and

at which the State of Ohio would have the burden of proving him guilty beyond a reasonable doubt. Dennis Smalley further understands that at such a trial, he would have the following rights:

- A. The right to a trial by jury.
- B. The right to the assistance of counsel.
- C. The right not to be compelled to testify against himself.
- D. The right to confront and cross-examine the State's witnesses.
- E. The right to present his own witnesses and compel their attendance.

Dennis Smalley understands that by his plea of guilty, he waives these rights and acknowledges that no trial will, in fact, occur and that, following the Court's acceptance of this guilty plea, the only actions remaining in this case will be the determination and imposition of sentence. Dennis Smalley further understands that a plea of guilty expressly waives his right to appeal his conviction.

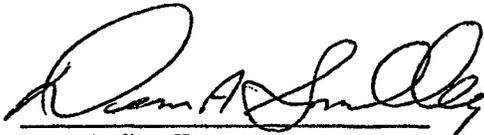
- 4. Dennis Smalley acknowledges that he has been advised that the maximum statutory penalty on Count One and Count Three is two to four years of incarceration and/or a fine between ten to twenty-five thousand dollars. As to Counts Two and Four, the maximum statutory penalty is fourteen months of incarceration and a twenty-five thousand dollar fine or both. The Defendant, Dennis Smalley has also been advised that, community control, court costs, restitution and other financial sanctions may be imposed by the Court at the time of sentencing.
- 5. The parties to this agreement, being fully cognizant of their respective rights, agree as follows:

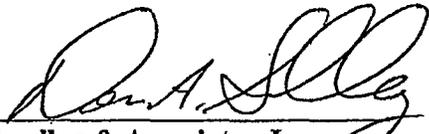
- A. Dennis Smalley and Smalley & Associates, Inc. shall enter pleas of guilty to violations of Ohio Revised Code Sections 3746.20 and 3737.882, both being unclassified felonies.
- a. Dennis Smalley understands that if he breaches any of the promises in this agreement, or if his plea is rejected by the Court, the State of Ohio will be released from its obligations under this agreement and may institute or maintain any charges, which would otherwise be prohibited under the terms of this agreement.
 - b. The State of Ohio will not bring any other criminal charges against Dennis Smalley or Smalley & Associates, Inc. with respect to the conduct charged in the Bill of Information or any other conduct known by the State of Ohio related to the charged conduct as of the date of this agreement.
 - c. The parties agree that the recommended sentence for Dennis Smalley and Smalley & Associates, Inc. shall be as follows:
On each Count, One and Two; Dennis Smalley shall be sentenced to sixty days of incarceration; twenty-two months of home incarceration with electronic monitoring, time served concurrently. On each Count, One through Four, Dennis Smalley and Smalley & Associates, Inc. shall each pay a fine of \$10,000, the fine being totally offset with the payment of restitution of \$300,000, said restitution being paid

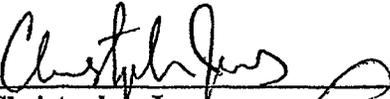
as follows: \$100,000 to the Petroleum Underground Storage and Tank Release Compensation Board; (The \$100,000 shall be paid within one year of the date of this agreement.) \$50,000 to the Superior Fibers Company; \$20,000 to the Bureau of Underground Storage Tank and Regulations Corrective Action Program; \$60,000 to the Ohio Attorney General's Office; \$70,000 to the Ohio Environmental Protection Agency (\$35,000 to the Voluntary Action Program and \$35,000 to the Office of Special Investigations). Except as stated above, all money shall be paid within three years of sentencing. Dennis Smalley and Smalley & Associates, Inc. each agree to five years of community control.

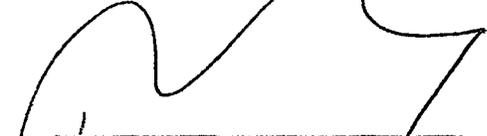
- d. The parties agree that Dennis Smalley will not reapply for professional certification under Chapter 3746.
- e. Dennis Smalley agrees to immediately list his current residence for sale and proceeds of that sale shall be used to satisfy the aforementioned restitution.
- f. Regardless of any change in circumstances subsequent to the execution of this plea agreement, Dennis Smalley or Smalley & Associates, Inc. will not object to this sentencing recommendation and agree not to ask the Court to impose a different sentence.

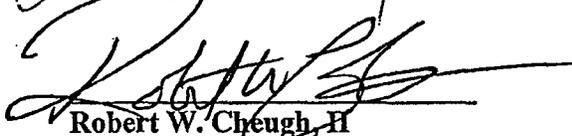
- g. Dennis Smalley or Smalley & Associates, Inc. and the State of Ohio understand that the recommendations made to the Court are not binding on the Court and that the sentence imposed is at the discretion of the Court. Dennis Smalley and Smalley & Associates, Inc. understands, that once the Court accepts the plea and finds Dennis Smalley and Smalley & Associates, Inc. guilty of the offense charged both Defendants will not have the right to withdraw that plea.
- h. Both Defendants state that this agreement constitutes the entire agreement between the parties and that no other promises or inducements have been made, directly or indirectly by any agent or representative of the State of Ohio concerning any plea to be entered in this case.
- i. Both Defendants state that no person has directly or indirectly threatened or coerced them to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty. Both Defendants affirm that they have entered this agreement after advice and counsel of their attorneys. Dennis Smalley certifies that he has the authority to sign this agreement on behalf of Smalley & Associates, Inc.


Dennis Smalley

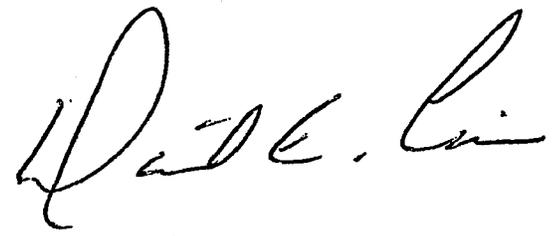

Smalley & Associates, Inc.
By Dennis Smalley, President


Christopher Jones
Attorney for Defendants


William Meeks
Attorney for Defendants


Robert W. Cheugh, II
Assistant Attorney General
Environmental Enforcement Section
Public Protection Division
30 East Broad Street, 25th Fl.
Columbus, Ohio 43215
(614) 466-2766

Date: 9/15/08


Judge
Sept. 15, 2008