

Excerpts from the transcripts of the depositions of Elizabeth Popadiuk and of Patrick McDonald taken in this case on August 31, 2015 are attached as Exhibits 1 and 2 respectively.

Respectfully submitted,


BRENT L. ENGLISH
LAW OFFICES OF BRENT L. ENGLISH
820 West Superior Avenue, 9th Floor
Cleveland, Ohio 44113-1818
(216) 781-9917
(216) 781-8113 (fax)
benglish@englishlaw.com
Sup. Ct. Reg. 0022678
Attorney for Plaintiff, David A. Bentkowski

CERTIFICATE OF SERVICE

I certify that a true and complete copy of Plaintiff's Notice of Submission of Excerpts of the Depositions of Elizabeth Popadiuk and of Patrick McDonald were served by e-mail upon Randall Knutti, Esq., Assistant Attorney General, 150 East Gay Street, 25th Floor, Columbus, Ohio 43215, randall.knutti@OhioAttorneyGeneral.gov on this 18th day of October 2015.


BRENT L. ENGLISH
Attorney for Plaintiff, David A. Bentkowski

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

IN THE OHIO COURT OF CLAIMS

DAVID BENTKOWSKI,

Plaintiff,

Case No. 201400651

vs.

OHIO LOTTERY

COMMISSION,

Defendant.

DEPOSITION OF ELIZABETH POPADIUK

Taken on Monday, August 31, 2015, at 11:43 a.m.

At the Offices of:

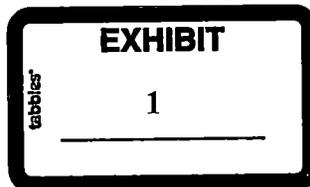
Ohio Lottery

615 West Superior Avenue

Cleveland, Ohio

Before Kathleen Davian, a Notary Public

in and for the State of Ohio



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 been checked?

2 A. No.

3 Q. Mr. Berg directed you to
4 hire Mr. Bentkowski as the labor
5 relations officer at the lottery?

6 A. Yes.

7 Q. What was that job? What did
8 it involve?

9 A. Labor relations work, acting
10 as a liaison with the union and
11 management.

12 Q. You're aware that Mr.
13 Bentkowski was a lawyer, correct?

14 A. Yes.

15 Q. So would you say that he
16 would be uniquely qualified for that
17 job?

18 A. It depends on the type of
19 law he practiced.

20 Q. Well, did he have a labor
21 law background?

22 A. I don't think so.

23 Q. Well, did you ask him?

24 A. Specifically, no.

25 Q. When he came to work for the



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 Q. Well, you're the director of
2 human resources, you know what reviewing
3 an employee is, don't you?

4 A. Could you be more specific
5 in what you mean by that?

6 Q. Is there a process you are
7 supposed to follow as the director of
8 human resources to review about an
9 employee under your direct supervision?

10 A. Are you asking if I prepared
11 a performance evaluation?

12 Q. If that's what you want to
13 call it, that's fine with me.

14 A. If by reviewing you mean did
15 I discuss when issues came up with them?

16 Q. No, ma'am, I'm asking about
17 a performance evaluation. Something you
18 put in writing. Something you think
19 about. Something you commit so that you
20 can talk with the employee about it.

21 A. I did not evaluate Mr.
22 Bentkowski's performance.

23 Q. So what were your
24 responsibilities with respect to
25 supervising Mr. Bentkowski? Were you

1 correct?

2 A. I don't.

3 Q. To this day you have not
4 read the self evaluations that he
5 performed?

6 A. No.

7 Q. Thank you. Let me hand you
8 what's been marked as Exhibit 2.

9 Before I ask you about that
10 exhibit, would you agree with me that as
11 soon as Mr. Benthowski finished his
12 final probationary review he got a three
13 percent raise?

14 A. I don't know what the
15 percentage was but all state employees
16 advanced to the second step at the end
17 of probation.

18 Q. If you felt he wasn't doing
19 a good job you wouldn't have permitted
20 that to happen, right?

21 A. It's not that simple.

22 Q. Well, as a probationary
23 employee if you don't like the way
24 someone is functioning and they are a
25 probationary employee, what is your



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787 www.cefgroup.com fax:216.687.0973
Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161
Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 period of a year?

2 A. I'm sure I did.

3 Q. How would you have done
4 that?

5 A. Verbally.

6 Q. So you never --

7 A. Perhaps an e-mail depending
8 on the situation.

9 Q. We have asked for all the
10 e-mails in this case and there's not a
11 single e-mail that relate to your
12 criticism or even questions about --

13 A. I try not to criticize my
14 staff in e-mail and writing.

15 Q. And why is that?

16 A. Because I don't think it's
17 proper.

18 Q. You think it's proper to --

19 A. I prefer face-to-face. No,
20 sending an e-mail criticizing, I don't
21 do that as practice.

22 Q. Do you recall Mr. Bentkowski
23 frequently asking you for responses and
24 you not responding to him?

25 A. If Mr. Bentkowski asked me



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 for a response, I would respond.

2 Q. So if there are e-mails that
3 have been produced that show you
4 apologizing for not having done things
5 when he specifically requested
6 information, how would you explain that?

7 A. There must have been a
8 circumstance.

9 Q. Did Mr. Bentkowski ever tell
10 you that he needed the Ohio Lottery
11 Commission job so that he could get
12 three years of a high salary with the
13 PERS system?

14 A. I've heard that.

15 Q. Did he tell you that?

16 A. I don't know if he told just
17 me that. I don't recall where I heard
18 it or what the setting was. I have
19 heard him say it.

20 Q. Is it your testimony you did
21 not encourage Mr. Bentkowski to get a
22 human resources labor relations Master's
23 degree from Cleveland State?

24 A. I did not encourage him. It
25 was not my suggestion.



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787 www.cefgroup.com fax:216.687.0973
Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161
Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 Q. And you did have to approve
2 the expenditure of funds in order for
3 him to get this degree?

4 A. I don't think so. That
5 comes out of the executive professional
6 development fund. That's dealt with at
7 DAS.

8 Q. So you didn't have to
9 approve it before DAS approved it?

10 A. Not that I -- not that I am
11 aware of. That's between an employee and
12 DAS.

13 Q. You know that Mr. Bentkowski
14 completed his Master's degree, correct?

15 A. I did not know that.
16 Congratulations.

17 Q. In June of 2012, did you
18 authorize Mr. Bentkowski to start
19 getting access to the statewide
20 arbitration summary?

21 A. I don't know what that
22 means. I'm not sure.

23 Q. You don't know what
24 arbitration summaries are?

25 A. I do know, yes.



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax: 216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 Q. And so you didn't
2 specifically have to authorize him in
3 order to get these things?

4 A. I'm not sure.

5 Q. Well, did you have access to
6 these?

7 A. Yes.

8 Q. And was it important for Mr.
9 Bentkowski, the labor relations officer,
10 to have access to them?

11 A. It would be helpful.

12 Q. So if he was doing such a
13 bad job why would you authorize him to
14 have such access?

15 A. I don't know what the access
16 is. If I recall correctly it was
17 simply an L-RACK e-mail where they --
18 OCB, the Office of Collective
19 Bargaining, sent a group e-mail out and
20 I added him to the list. If that's
21 what we're talking about, a distribution
22 list.

23 Q. In August of 2012 did you
24 authorize Mr. Bentkowski to have access
25 to the OAKS system, O A K S system?



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax: 216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 Q. Are you saying there wasn't?

2 A. I don't know that it ever
3 really became functional. But it was in
4 the works at that time so, yes, we
5 would have requested that David be
6 granted access to that.

7 Q. There's something called the
8 collective bargaining academy, is that
9 correct?

10 A. Yes.

11 Q. What is that?

12 A. It's a series of courses put
13 on by staff at OCB or the Office of
14 Collective Bargaining for a certificate
15 in that academy. Labor relations and
16 classes that fall under that including
17 an arbitration school.

18 Q. And have you ever been
19 through that?

20 A. I have.

21 Q. Did you pass?

22 A. Yes.

23 Q. Did you recommend that Mr.
24 Bentkowski go to it?

25 A. I did.



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 Q. -- or problematic?

2 A. No.

3 Q. Was there ever a time when
4 Mr. Bentkowski refused to do something
5 that you directed him to do?

6 A. I don't recall.

7 Q. Was there ever a time when
8 he was late?

9 A. I don't recall.

10 Q. Was there ever a time when
11 he left early?

12 A. I don't recall.

13 Q. Was there ever a time when
14 he used any personal electronic devices
15 for his own purposes while at work?

16 A. I don't know.

17 Q. Did he abuse his computer
18 privileges at the lottery commission?

19 A. I don't know.

20 Q. Was there ever any other
21 performance issue with Mr. Bentkowski
22 other than what you have told us about?

23 A. No, they all fall under that
24 umbrella.

25 Q. The umbrella of what, of

1 being argumentive and condescending?

2 A. Not a good fit.

3 Q. Not a good fit. Did you
4 ever speak with Mr. Bentkowski about
5 personal matters in your life?

6 A. Yes.

7 Q. On Ohio Lottery Commission
8 time?

9 A. Mr. Bentkowski asked me a
10 question --

11 Q. Ma'am, was it on Ohio
12 Lottery Commission time, yes or no?

13 A. I don't remember when it was
14 exactly.

15 Q. You told --

16 A. I believe I was only with
17 him at work.

18 Q. You told him about your
19 divorce, correct?

20 A. Mr. Bentkowski asked a
21 question --

22 Q. Ma'am, did you tell him
23 about your divorce?

24 A. Yes.

25 MR. MILTNER: You can answer the



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 Q. He never yelled at you?

2 A. He raised his voice.

3 Q. He raised his voice with
4 you?

5 A. Yes.

6 Q. Did he ever talk about his
7 personal life with you?

8 A. Yes.

9 Q. Such as what?

10 A. He would talk about how --
11 his engagement with his wife. He talked
12 about his -- how he didn't want to have
13 children. He shared that with a number
14 of staff members. He talked about other
15 things that he was engaged in outside of
16 the lottery with friends, who his friend
17 were so yes.

18 Q. Was there anything
19 inappropriate about this that you
20 directed him not to have those
21 conversation?

22 A. No.

23 Q. When Mr. Bentkowski was
24 discharged it's my understanding that
25 you attended a meeting with Pat McDonald



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 connected?

2 A. Of course.

3 Q. Would that include Mr. Berg?

4 A. No, Mr. Berg has been here
5 longer than me.

6 Q. So you would not be a
7 political employee?

8 A. I am not.

9 Q. Would Mr. Bentskowski have
10 been one of those people?

11 A. Knowing what I know now,
12 yes.

13 Q. There were other people at
14 the agency who were discharged as a
15 result of their political connections,
16 correct?

17 A. Changes in --

18 MR. MILTNER: Objection.

19 A. -- transition.

20 Q. You have a good friend name
21 Pam DeGeeter, correct?

22 A. Yes.

23 Q. She was council for the
24 agency, correct?

25 A. Yes.



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 remarks you were making about fellow
2 employees were inappropriate?

3 A. No.

4 Q. He told you that firing a
5 gay man in Dayton and calling him a
6 faggot was inappropriate, is that
7 correct?

8 A. No, and I resent that.

9 Q. You resent the fact that he
10 told you that or you resent the fact
11 that he claims you said it?

12 A. I resent that he claims that
13 I said that.

14 Q. Well, you did, in fact, call
15 this man a faggot, right?

16 A. No. I don't even know who
17 you're talking about.

18 Q. You don't?

19 A. No.

20 Q. You don't know anyone in
21 Dayton who happened to be gay that you
22 called a faggot?

23 A. A guy man, no. No, I never
24 said that. I would never say that.

25 Q. Did Mr. Bentkowski tell you



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

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

I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28 (D).

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of September, 2015.



Kathy Davian

Kathy Davian, Notary Public
within and for the State of Ohio

My commission expires August 23, 2017.



1.800.694.4787 www.cefgroup.com fax:216.687.0973
Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161
Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics



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

IN THE OHIO COURT OF CLAIMS

DAVID BENTKOWSKI,

Plaintiff,

Case No. 201400651

vs.

OHIO LOTTERY

COMMISSION,

Defendant.

DEPOSITION OF PATRICK MCDONALD

Taken on Monday, August 31, 2015, at 9:22 a.m.

At the Offices of:

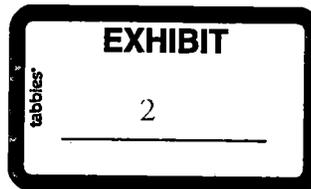
Ohio Lottery

615 West Superior Avenue

Cleveland, Ohio

Before Kathleen Davian, a Notary Public

in and for the State of Ohio



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 position that he thought that would
2 adversely affect him politically in the
3 future?

4 A. No.

5 Q. You had no conversation with
6 him about that?

7 A. Not that I can recall. I
8 remember him just talking about
9 resigning and the amount of time he
10 would need for his PERS. But it was my
11 understanding or recollection now is
12 that he -- that he doesn't want -- it
13 was just assumed he was going to resign.

14 He didn't want to keep the
15 mayor's position if he got the full time
16 job and he was only worried about his
17 PERS at the time, not about maintaining
18 the mayor's position.

19 Q. Did you ever speak to the
20 governor of Ohio, John Kasich, regarding
21 Mr. Bentkowski?

22 A. No.

23 Q. Did you ever have any
24 conversation with anyone regarding
25 publicity that Mr. Bentkowski may have



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics

1 received regarding his position as mayor
2 of Seven Hills?

3 A. Not until after -- well,
4 yes, I did.

5 Q. When was that?

6 A. It was after Bentkowski was
7 making claims that he was terminated for
8 the publicity reasons, negative
9 publicity reasons.

10 Q. Do you remember sending a
11 text to Mr. Bentkowski where you said
12 just heard back from Jai, J A I, that's
13 Jai Chabria, correct?

14 A. Correct.

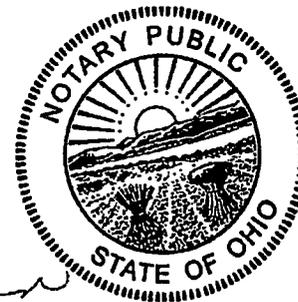
15 Q. And he likes the direction I
16 recommended. Will sign off with Berg
17 tonight and they will be calling you in
18 the morning. Do you remember ever
19 saying that to Mr. Bentkowski?

20 A. I don't recall but I could
21 have.

22 Q. So why would you talk with
23 Jai Chabria in the governor's office
24 about Mr. Bentkowski if this was not a
25 political appointment?

1 I am not, nor is the court
2 reporting firm with which I am
3 affiliated, under a contract as defined
4 in Civil Rule 28 (D).

5 IN WITNESS WHEREOF, I have
6 hereunto set my hand this 9th day of
7 September, 2015.



8
9
10 Kathy Davian
11

12 Kathy Davian, Notary Public
13 within and for the State of Ohio
14

15
16
17
18 My commission expires August 23, 2017.
19
20
21
22
23
24
25



Cefaratti Group
THE LITIGATION SUPPORT COMPANY

1.800.694.4787

www.cefgroup.com

fax:216.687.0973

Cleveland: 4608 St. Clair Avenue, Cleveland, Ohio 44103 • 216.696.1161

Akron: One Cascade Plaza, Suite 905, Akron, Ohio 44308 • 330.253.8119

Court Reporting • Video Conferencing • Legal Video Production • Investigations
Claims Services • Process Service • Record Retrieval • Document Management • Trial Graphics