

State of New Hampshire  
Supreme Court

NO. 05-\_\_\_\_\_

SYNCOM INDUSTRIES, INC.

d/b/a SYNCOM SERVICES

v.

WILLIAM HOGAN

NOTICE OF MANDATORY APPEAL OF WILLIAM HOGAN  
Pursuant to Supreme Court Rule 7(1)(A)

By: Joshua L. Gordon, Esq.  
Law Office of Joshua Gordon  
26 S. Main St., #175  
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# State of New Hampshire Supreme Court

## NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court, district court, probate court or family division court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; or (6) a probation revocation proceeding.

1. COMPLETE CASE TITLE AND DOCKET NUMBERS IN TRIAL COURT

*Syncom Industries, Inc. d/b/a Syncom Services*

v.

*Eldon Wood, Fabio Flores, and William Hogan*

Rock. Cnty. Super. Ct. No. 02-E-188

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

Rockingham County Superior Court (*Kenneth R. McHugh, J.*)

3A. NAME & ADDRESS OF APPEALING PARTY

William Hogan  
23 Ocean View Dr.  
Middletown, RI 02842

3B. NAME, FIRM, ADDRESS & TELEPHONE  
NUMBER OF APPELLANT'S COUNSEL

Joshua L. Gordon  
Law Office of Joshua Gordon  
26 S. Main St., #175  
Concord, N.H. 03301  
(603) 226-4225  
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4A. NAME & ADDRESS OF OPPOSING PARTY

Syncom Industries, Inc.  
PO Box 2533  
Salem, NH 03079

4B. NAME, FIRM, ADDRESS, & TELEPHONE  
NUMBER OF OPPOSING COUNSEL

William S. Gannon  
William S. Gannon, PLLC  
889 Elm St., 4<sup>th</sup> Floor  
Manchester, NH 03101  
(603) 621-1833

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

Eldon Wood

represented by:

James R. Davis, Esq.  
Sheldon, Davis & Wells, P.C.  
20 Main St., Suite 1  
Keene, NH 03431  
(603) 357-0117

Fabio Flores

- filed no appearance below
- \$3.6 million default judgment entered
- subsequently testified against remaining defendants

William Hogan

represented in lower court by:

Mark F. Sullivan, Esq.  
27 Front St.  
Exeter, NH 03833  
(603) 778-8183

and by:

James J. Flynn, Esq.  
105 Thaxter Rd.  
Portsmouth, NH 03801  
(603) 430-9540

6. DATE OF CLERK'S NOTICE OF DECISION  
OR SENTENCING

December 13, 2004

DATE OF CLERK'S NOTICE OF DECISION  
ON POST-TRIAL MOTION

January 21, 2005.

7. CRIMINAL CASES: DEFENDANT'S  
SENTENCE AND BAIL STATUS

n/a

8. APPELLATE DEFENDER REQUESTED?

No.

9. IS ANY PART OF CASE CONFIDENTIAL? IDENTIFY WHICH PART AND CITE AUTHORITY

There no known basis for confidentiality.

10. IF ANY PARTY IS A CORPORATION, NAMES OF PARENTS, SUBSIDIARIES & AFFILIATES

The Plaintiff, Syncom Industries, Inc. is a corporation. William Hogan has no information about any possible parents, subsidiaries or affiliates. Such information is known by the plaintiff.

11. DO YOU KNOW ANY REASON WHY ONE OR MORE SUPREME COURT JUSTICE WOULD BE DISQUALIFIED FROM THIS CASE?

There is no known basis for recusal.

IF YES, FILE MOTION FOR RECUSAL, SUPREME COURT RULE 21A

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY?

Yes.

IF YES, COMPLETE TRANSCRIPT ORDER FORM

A transcript order form is not attached because counsel does not yet have the information necessary to complete it. Counsel has written to the trial court seeking the information, and will soon forward a completed transcript order form to the court and parties.

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.
- I. Did the court err in hearing any cause against Mr. Hogan as it had no *in personam* jurisdiction over him, he had *de minimus* contacts with New Hampshire, and no business of either party was conducted in New Hampshire?
  - II. Did the court err in allowing the plaintiff-party to be substituted and have standing when Mr. Hogan never worked for the eventual plaintiff, had no contract with the eventual plaintiff, and there was no assignment of rights from the initial plaintiff to the eventual plaintiff?
  - III. Was the covenant-to-not-compete imposed by the employer-plaintiff too broad and restrictive, given its enormous geographical scope, its three-year length, the low barriers to entry into the cleaning business, and Mr. Hogan's short tenure of employment?
  - IV. Did the court err in not allowing Mr. Hogan to present evidence of, and to not consider in its decision-making, promises made and broken by the plaintiff, which would have established that the plaintiff was the breaching party?
  - V. Was the court's finding that Mr. Hogan breached his employment contract in error when by failing to comply with its own employee handbook the employer was the breaching party, Mr. Hogan was fired by the employer-plaintiff and forced to resort to judicial process to get paid, Mr. Hogan joined the competing company over a year after he was fired and only after a period of unemployment, and when unlike his co-defendant there was no credible evidence that Mr. Hogan participated in establishing the competing company or engaged in any bad acts?
  - VI. Did the court err in denying Mr. Hogan his right to a trial by jury pursuant to both the Federal and New Hampshire Constitutions when the action against him included claims for significant money damages?
  - VII. Did the court err in allowing the testimony of Fabio Flores when he had been deposed by the plaintiff without notice to the other parties, and when his testimony did not meet minimum standards of reliability given the plaintiff's \$3.6 million judgment against him?
  - VIII. Was the evidence insufficient to show that Mr. Hogan was a fiduciary and that he breached a fiduciary duty?
  - IX. Did the court err in finding that Mr. Hogan's actions were malicious, contemptuous, reckless, willful, fraudulent, or otherwise in bad faith, when any such bad intent was on the part of Mr. Hogan's co-defendant, and not Mr. Hogan?

13. LIST SPECIFIC QUESTIONS (continued)

- X. Did the court err in granting a total damage award of nearly \$1.5 million when damages were improperly calculated using the plaintiff's gross receipts rather than net profits, were based on insufficient data not reliably proven, were measured against a standard not existing in the law, were based on accounts in which Mr. Hogan had no participation, involved the loss of only potential and not actual customers, and when the award is excessive and oppressive?
- XI. Did the court apply an improper standard for enhanced damages, and err in awarding enhanced damages based on its characterization of Mr. Hogan's conduct during trial, his unspecified "premeditated actions," and his "open defiance" of what he believed was an already-breached contract?
- XII. Did the court err in awarding attorneys fees when Mr. Hogan did nothing vexatious or in bad faith, and did nothing beyond simply defending against the plaintiff's allegations?
- XIII. Did the court err in awarding the full amount of damages against Mr. Hogan when the evidence showed that Mr. Hogan's co-defendant was the instigator of the scheme to compete against the plaintiff, and Mr. Hogan played (at most) a minor role for a very short time; Mr. Hogan is merely a paycheck employee of the competing company and not a principle; and Mr. Hogan believed his actions were justified for a variety of reasons, including the amount of time that had gone by, the breach of his employment contract by the plaintiff, and the nature of his employment with the competitor?
- XIV. Did the court err in granting an injunction that is 1) vague by not sufficiently defining the territory in which he cannot compete, 2) overly restrictive because the geographical scope of the non-compete territory is defined by private companies to which Mr. Hogan's access is barred by the injunction, 3) overly broad because it encompasses potential customers with which the plaintiff had no contracts, 4) too long because it extends far beyond the time envisaged even by the plaintiff-employer's non-compete covenant, 5) is not warranted because the plaintiff did not seek a temporary restraining order or a preliminary injunction, and 6) penalizes Mr. Hogan twice for the same conduct because the money judgment presumably compensates the plaintiff for past conduct?

14. CERTIFICATIONS

I hereby certify that, upon information and belief, every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

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Joshua L. Gordon, Esq.

I hereby certify that on or before the date below copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

February 22, 2005

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Joshua L. Gordon, Esq.

**ATTACHMENTS**

(1)	CLERK’S NOTICE OF DECISION (Dec. 13, 2004) .....	7
(2)	FINAL ORDER (Dec. 13, 2004) .....	8
(3)	CLERK’S NOTICE OF DECISION DENYING POST TRIAL MOTION (Jan 21, 2005) .....	22