

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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JAMES E. SWEENEY, F. WARREN BENTON, SAM  
ORANS, BRIAN PAYNE, RAY MALDONADO, DAN  
HEUBEL, PAUL J. ABRAHAMSEN, CHRISTOPHER  
MACDONALD, and MICHAEL WEINER,

Plaintiffs,

-against-

ELIZABETH N. FELD, Mayor, MARLENE KOLBERT,  
Trustee, ANNE McANDREWS, Trustee, JIM  
MILLSTEIN, Trustee, RICHARD WARD, Trustee,  
constituting the Village of Larchmont Board of Trustees  
and RICHARD HEINE, "Chief" of the Fire Department of  
the Village of Larchmont,

Defendants.  
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Index No.

**SUPPLEMENTAL  
AFFIDAVIT OF  
MICHAEL P. WIENER**

STATE OF NEW YORK            )  
                                          ) ss.:  
COUNTY OF WESTCHESTER )

MICHAEL P. WIENER, being duly sworn, deposes and says:

1. I am Michael Wiener and I live at 47 Pinebrook Drive in Larchmont, New York.
2. My previous affidavit in this case was sworn on May 28, 2007. The accuracy of one aspect of that affidavit was challenged in writing by one of the defendants in this case, Mr. Millstein, and I make this affidavit to respond to that challenge.
3. On May 30, 2007 at 6:55 pm I received an email from defendants Millstein accusing me of perjury and threatening to bring a lawsuit as follows:

*mike:*

*having practiced law, i know that people sometimes get so wound up in a litigation that they remember what they want to remember rather than what actually occurred, but sanctions for perjury generally act as a restraint on outright lying. for god's sake, how could you sign an affidavit saying that when you were on the board we didn't discuss the appointment of a paid chief? i was*

*there, you were there, jim staudt was there on at least three different occasions when this came up.*

*please file a corrected affidavit so that we don't have to make an issue of this. and in the same vein, please make sure that the guys are not using FD funds (whether from the companies or otherwise) to finance your lawsuit. it just creates another potential sideshow in which we have to sue you for conversion of FD property. but in all events please correct your affidavit.*

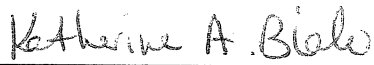
*jim*

4. Mr. Millstein has apparently not read my May 28 affidavit. Paragraph 5 states: “*The Village Board waited until after my term as trustee ended, at the end of March 2007, before springing their idea of appointing a paid Chief on the Fire Department and the residents of Larchmont.*”
5. There is no statement whatever in my May 28 affidavit about whether the Village Board discussed in executive session the subject of refusing to accept the Chief elected by the volunteer firefighters, as required by New York State law and the Fire Department By-Laws, and instead appointing a fire chief of its own choosing from among the Village’s paid firefighter staff.
6. I can recall one instance where that subject was discussed in a Village board executive session. It was in early 2007, after the caucus, I believe. Defendant Millstein was present, along with me and all the other Trustees, and Jim Staudt, who is Village Attorney and was referred to in Defendant Millstein’s email. There was a long and heated discussion, and I believed at the time that the issue was put to rest. Other items covered during this meeting also included the need for additional staffing during the day, as well as how to suggest to the volunteers that nomination of Tom Broderick as Chief would be unacceptable to the Mayor.
7. On a subsequent occasion I was asked to leave an executive session meeting, even though I was a duly elected Trustee, because fire department matters were to be discussed. I was told that as a member of the fire department I had a conflict. I was not privy to the agenda for that meeting.
8. I had been a Trustee for almost five years, including four years when Ken Bialo was mayor, and I had never before been excluded from an executive session meeting, nor had any other Trustee (even in the case where one had admitted publicly she had a conflict because she was a neighbor).
9. No taxpayer funds have or will be expended in this case.
10. I wish to reaffirm the observations of my May 28 affidavit submitted in these proceedings, and in particular my testimony that as a former Chief of the Department and 29-year volunteer, fire protection in the Village of Larchmont is currently deficient and

has been since May 16, 2007, when the Village Board passed the resolutions that are the subject of this proceeding. Similarly, fire protection in surrounding communities has been degraded as well because Larchmont cannot meet its responsibilities to assist in dealing with their emergencies, as it is currently required to do under the county-wide mutual aid agreement. The Larchmont Village Board has decided to pay with fire, literally.

  
\_\_\_\_\_  
MICHAEL WIENER

Sworn to before me this  
24 day of June, 2007

  
\_\_\_\_\_  
Notary Public

**KATHERINE A. BIALO**  
Notary Public, State of New York  
No. 02BI4841554  
Qualified in Westchester County  
Commission Expires Feb. 6, 2010