

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESCHESTER

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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-	:	AFFIDAVIT IN SUPPORT
	:	
	:	
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.	:	
-----	X	

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

JAMES E. SWEENEY, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in this action. I live at 20 Shadow Lane in Larchmont, New York, and have lived there since 1996. I submit this Affidavit to ask the Court to resolve promptly an emergency and dangerous situation created by the action of the Village of Larchmont Board of Trustees.

2. I have served as an active member of the Village of Larchmont Fire Department for the past thirty years and am the longest-serving, currently active member. I was elected to serve as Chief of the Department in 1991-92 and again in 2000, having served as Deputy Chief in the years 1988-1990, and 1997-1999. I was elected as Treasurer of the department during the period January 2006 - April 2007. I have served on the Village of Larchmont Fire Department Fire Council a period of 20 years.

3. The Fire Department of the Village of Larchmont is organized under New York State law in the Fire Council format, and has been so organized for as long as I have served as a volunteer. The Department is operated by a large corps of volunteers, and has 15 in paid staff as well.

4. Generally, under the Fire Council system, the Fire Department is run by a Chief, subject to direction by the Fire Council. Fire Council is composed of two Wardens from each of the four volunteer fire companies, the two Deputy Chiefs, and the Chief. The duties of the Chief and the Fire Council are set out specifically in New York State law and in the By-Laws of the Fire Department of the Village of Larchmont. (Similarly, the duties of the other officers and elected officials of the Fire Department are also described in New York State law and in the By-laws.) A copy of the By-laws is attached for the Court's convenience.

5. The position of Chief is an elected position. Here is how a person can become Chief, in practice. In the Larchmont Fire Department there are four companies, which have the traditional designation of Hose Company, Engine Company, Hook & Ladder Company, and Patrol Company. In order to become a member of the Fire Department, a person must be nominated for membership in one of the Companies and seconded by a current member, and then approved by the Village Board of Trustees. This is a huge commitment because there is, of course, a great deal of training for anyone who volunteers to become a firefighter, from basic skills to advanced skills, as well as constant refresher and update programs. A member of one of the companies who wishes to progress to an officer position, or even Chief, makes known to the officers his interest in doing so. If the member is an enthusiastic participant in response to fire alarms and in

other community activities over an extended period of time, the member can generally stand for election to a company position. The membership of the Fire Department will then decide based on the individual's skills whether he is suited to serve as an officer. Persons who have served as officers may then decide to stand for election as Deputy Chief. Once a member is elected Deputy Chief, it is likely that he will progress over time to be elected Chief.

6. The election process works like this. The Fire Department of the Village of Larchmont holds an Annual Meeting at which all members of the Village Fire Department are entitled to vote if they have obtained the required attendance at fires and drills. The members vote to elect a Chief and two Deputy Chiefs. Also at the annual meeting each of the four Companies elects two members from its membership to represent their Company at Fire Council. These 11 people serve as the Fire Council. The slate of Fire Council officers is then submitted to the Village Board of Trustees for approval.

7. This year a slate of officers was submitted to the Village Board of Trustees on April 6, 2007. Tom Broderick has been duly nominated chief by the membership of the Fire Department. Although the officers nominated by the membership were approved by the Board, for the first time in my memory, the Board did not approve the individual elected to serve as Chief. The approval of Mr. Broderick was "held in abeyance" and since April 6, 2007, the incumbent Chief from 2004-2007, Christopher MacDonald, has continued to serve as Chief, in accordance with New York State law, as I understand it.

8. As to the position of Chief, the Board adopted two resolutions on May 17, 2007. In its first resolution, the Board purported to appoint Richard Heine a Chief. Mr. Heine currently serves as a paid fireman in the Department and he is not a member of any of the Companies of the Fire Department. He was never nominated as Chief by any of the members nor was his name submitted by the Department for approval by the Board. Consequently, there are now two persons having the title of Fire Chief at the same time -- Chief MacDonald who was duly elected last year, and the person newly-designated by the Board of Trustees.

9. In its second resolution, the Board determined that as a result of their first resolution resulting in the purported appointment of Richard Heine as Chief, delegates or members of the Fire Department shall no longer nominate a person to be Chief, but shall only nominate "Assistant" Chiefs.

10. I understand that under New York State law and other authorities the Village Board of Trustees does not have the power to appoint a Chief of the Village of Larchmont Fire Department from the ranks of the Village's paid firemen. Further, I understand that the Village Board of Trustees does not have the authority to overrule or circumvent Village Law by providing that the Department may not nominate the Chief. I ask that the Court decide these questions promptly because this two-Chief situation creates dangerous uncertainty on a fire ground and unacceptable for other operations reasons as well.

11. Incident command with firefighters. Having two Chiefs will create great uncertainty in the command and control structure of the Fire Department, adversely affecting our residents as well as our firefighters. Where an order is given on the fire

ground, as in a military battle, it must be carried out swiftly and efficiently. It goes almost without saying that a fireground has its own inherent confusion and commotion. There can be no hesitation, no deliberation, no lack of conviction or confidence on the part of the firefighters in carrying out an order. Yet this is exactly the problem presented if the Village Board's attempt to appoint a Chief is not authorized by law. Are his orders to be followed? What if his orders are erroneous? What if Chief MacDonald's Orders are to the contrary?

12. Incident command with related agencies. The Village of Larchmont Fire Department is part of a mutual aid program in Westchester County. Which of the two Chiefs can issue official communications calling for mutual aid? In addition, on any fireground there are other agencies such as police and utility companies, county fire personnel, etc. Uncertainty as to the proper chain of command on the part of these organizations, or potential conflict in command, again, has potentially profound consequences.

13. It is absolutely fundamental -- as recognized by The Federal Emergency Management Administration, The New York State Emergency Services Office and the National Fire Protection Association -- that there is no room for doubts and uncertainty in an emergency situation. Effective management can only be achieved through adherence to a strict incident command structure for which only one person can be in charge. I have attached copies of excerpts of relevant materials from each of these agencies.

14. We cannot face a preventable loss of life or property to our residents or our firefighters because of uncertainty in command created by the two-Chiefs situation.

15. Legal responsibility for a fire scene. The two-Chief situation will also expose the Village to unwarranted liabilities. The Fire Chief, under New York State fire law, takes temporary possession from the owner of the structure involved in an active fire in order to take the steps necessary for fire suppression. In such an emergency there would be added to other uncertainties described above the additional complication and risk of who has legal custody of the property during a fire. Confusion on this point not only may provoke strong property owner concern or objection, but has the potential adversely to effect legal immunities that the Village of Larchmont may have for measures taken during management of a fire. This is even more critical when considering that there are approximately twice as many volunteers as paid firemen and only three or four firemen are on duty at any one time.

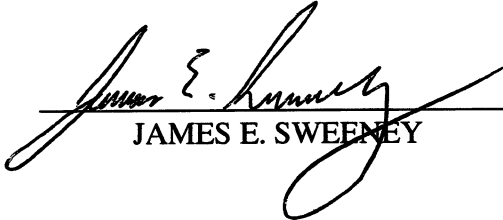
16. Personnel management. Aside from the fireground, the two-Chiefs circumstances present potential disciplinary problems. Should it become necessary to deal with improper behavior by a paid firefighter or volunteer member, a whole host of questions would be raised. Who has the authority to initiate an action? Who speaks for the Fire Department? Can disciplinary action be contested (for example, through the union grievance procedures) and possibly invalidated as a result of the two-Chief uncertainty? Worse still, any impairment of disciplinary authority during an actual emergency would create even more dangerous circumstances.

17. Official representation of the Department. The Chief is the official representative of the Fire Department in all activities -- execution of administrative decisions of the Fire Council, and representation of the Fire Department, dealing with finances, personnel, grant applications, mutual aid to other communities, and perhaps

most importantly, leadership by example. Any question of authority across the board can affect essential Fire Department functions in ways that cannot be foreseen precisely, but any of which can adversely affect readiness of the Fire Department to fulfill its critical purpose.

18. For all of the above reasons, I believe that any uncertainty or conflict is dangerous for our firefighters, for the owner of any property involved in an active fire, for the other agencies participating in incident response, and for our public at large. I ask the Court to prevent any steps from being taken to implement the Village Board's actions unless and until the Court can decide whether the Village Board's attempt to appoint Richard Heine as Chief and to strip the Department of its authority under law to nominate a Chief, is legally authorized.

WHEREFORE, this Court should grant Plaintiffs' application in its entirety, together with such other and further relief as this Court deems just and proper.


JAMES E. SWEENEY

Sworn to before me this
18th day of May, 2007


Notary Public

KATHERINE ZALANTIS
Notary Public, State of New York
No. 02ZA5067359
Qualified in Westchester County
Commission Expires 10/15/10