

MARC D. CITRIN
30 Acoma Road
Tuxedo Park, New York 10987
(917) 295-0632
mde22257@aol.com

October 23, 2023

Ms. Meg Vaught
TPFYI
P.O. Box 681
Tuxedo Park, New York 10987

Re: Sean Madden Letter of 10/20/23

Dear TPFYI:

I am writing in response to Mr. Sean Madden's letter setting forth his position that I am not entitled to consult with "Conflict Counsel" at Village expense, with respect to the demands set forth in the letter of John A. Sarcone, Esq. on behalf of Claudio Guazzoni de Zanett, dated October 18, 2023, which is annexed hereto.

By way of background, sometime in September 2023, three of the four Village trustees, Mr. Kasker, Mr. Scherer and Ms. Shaw (Trustee Brooke was recused), authorized the retention of Elisa T. Gilbert, Esq. to act as Special Village Attorney to seek damages in the amount of **\$181,153.00**, which purportedly represents the attorneys' fees incurred by the Village and paid to the law firm of Santiago & Burger, against me for the litigation arising out of the Village election of June 20, 2023. This amount is in addition to the **\$99,073.00** that Ms. Gilbert is seeking from me for her representation of Trustees Scherer and Brooke during the course of the same litigation. This application for attorneys' fees is presently pending before Justice Maria Vazquez-Doles, the judge who has presided over the litigation since it was commenced in June. While I represented myself, *pro se* during the course of the litigation, I have retained an attorney, at my own expense, to defend against the claims of the Village, Trustee Scherer and Trustee Brooke.

On October 18, 2023, I received the above-referenced letter from Mr. Sarcone, in my capacity as Mayor of the Village of Tuxedo Park. The letter purports to cite the NYS Village Law as empowering me, as Mayor, as the only village official with authority to hire a Village Attorney or, in the case of Elisa T. Gilbert, Esq., a Special Village Attorney. Based upon that purported authority, Mr. Sarcone states that by allowing the three Trustees to hire Elisa T. Gilbert, Esq. to pursue a claim for attorneys' fee against me as well as Mr. Sarcone's client, Mr. Guazzoni, I may be held "personally liable" for "allowing...the hijacking of my legal and fiduciary responsibilities".

Ordinarily, I would consult with Jared Kasschau, Esq., the Village Attorney, upon receipt of such a letter to determine the appropriate course of action. However, in this case, Mr. Kasschau is working for, and providing legal advice, to the three Trustees who have authorized Elisa T. Gilbert, Esq. to pursue me for \$181,153.00 in attorneys' fees. As such, Mr. Kasschau has a conflict and cannot provide me with any advice as to my duties as Mayor.

It is under similar circumstances, where the mayor had no counsel, that the Appellate Division, Second Department, ruled in a decision in May 2023, that the mayor of the Village of Pomona in Rockland County was entitled to "Conflict Counsel" at Village expense. See, Matter of Village Board of Trustees v. Banks, Docket No. 2020-09329

Furthermore, Mr. Madden's protestations notwithstanding, at the conclusion of executive session on October 18, the Village Trustees; Mr. Kasker, Mr. Scherer, Ms. Shaw and even Mr. Brooke, voted unanimously to provide me with "conflict counsel" with Village reimbursement for "reasonable fees". As I deemed it appropriate, I did not vote on that resolution.

I hope that this letter has clarified the reason why, as Mayor, I require the advice of "Conflict Counsel" on how to respond to the correspondence of John A. Sarcone, Esq.

Sincerely,



Marc D. Citrin

THE SARCONE LAW FIRM, PLLC

Attorneys and Counselors at Law

19 Fox Run Road
Croton-on-Hudson, New York 10520

Telephone (914)-260-7582
jsarcone@sarconelaw.com

John A. Sarcone, III

October 18, 2023

VIA EMAIL

Hon. Mark D. Citrin
Mayor, Village of Tuxedo Park
80 Lorillard Road
Tuxedo Park, New York 10987

THIS LETTER SERVES AS AN OFFICIAL COMPLAINT BY THE PUBLIC ADVOCATE and FOIL DEMAND

Re: Illegal Hiring of Attorney to Represent the Village of Tuxedo Park in connection with a recent filing with the NYS Supreme Court in a case that was disposed of a month ago Index No. EF004013-2023

Dear Mayor Citrin,

This firm represents Claudio Guazzoni de Zanett, individually as a resident and taxpayer and in his capacity as the Public Advocate for Tuxedo Park. The Public Advocate for Tuxedo Park is a not-for-profit non-governmental organization and acts as a community watch dog which also publishes a periodic public affairs blog that is available to the entire community.

I write to you concerning a serious matter of grave concern to the Public Advocate that may also be of concern to the taxpaying citizens of Tuxedo Park regarding the conduct of an attorney who has improperly and without legal authority filed legal papers in State Supreme Court stating under oath that she represents the Village of Tuxedo Park which is referenced above ("Ms. Gilbert").

Please be advised that pursuant to New York State Village Law, only you as Mayor have the legal right to hire and fire not only, *inter alia*, the Village Attorney, but also anyone who is hired to represent the interests of the Village of Tuxedo Park. You should be aware that the highest court in the state of New York has opined on this matter and the law is clear. Additionally, a "Consent to Change Attorney" does not carry over from one mayor to another.

If you wish to proceed with allowing what amounts to be a high jacking of your legal and fiduciary responsibilities by allowing anyone other than you to appoint an attorney to represent the interests of the Village, you can be held not only liable personally but also accountable for any actions taken on behalf of the government and for any expenditures made to anyone in furtherance to the illegal representation.

I am hereby putting you on notice as well as the Trustees and Treasurer for the Village (who should be bonded) that you must direct this individual to cease and desist from further perpetrating that she acts for the Village as an attorney in the above subject matter or any other capacity unless and until you Mayor appoint her, and a majority of the Board agrees.

In the event you decide to follow the law as I have outlined above (I am not going to write an "Opinion Letter" which you should be wise to hire a competent counsel to do so) (or provide a legal brief on the subject unless forced to in an Article 78 proceeding to force you to comply with the law) you leave my client no choice but to commence an action pursuant to CPLR Article 78 and other statutes to compel you to comply with the law and also to seek a stay of any further action by this or any other individual who is without legal authority to act on behalf of the government.

Having said that, if you choose to appoint Ms. Gilbert to act as an outside attorney to the Village Attorney, Trustees Brooke and Scherer would be barred from casting a vote and must recuse themselves due to unwaivable conflicts of interest.

For starters, the relationship between Ms. Gilbert and Trustee Brooke possesses the most obvious conflict of interest. Mr. Brooke is predisposed for quid-pro-quo when considering upon information and belief, that they share a greater than personal relationship, that Brooke purchased a seasonal home for her, and she also represented him in the same litigation she most recently appeared on behalf of the government which is the subject of my clients claim herein. How much did Mr. Brooke pay her for her legal services in that matter? Did he not pay her and now its payback time from the Taxpayers?

Mr. Scherer is also conflicted as Ms. Gilbert similarly represented him and we do not know who paid his bill for her legal services? His vote would also be a quid pro quo, especially was not paid or if she waived her fee for him, represents an unwaivable conflict of interest.

Given these unwaivable conflicts of interest, and in the event, you did not appoint her, that leaves less than a majority of the Board. There is simply no way that Ms. Gilbert can represent the Village of Tuxedo Park in the above referenced litigation.

In the event we are mistaken as to whether or not she was retained or was retained without proper authority, **we respectfully demand you exercise your power as Mayor under Village Law and terminate her services immediately.** In addition, you are well advised to direct the Village Attorney to withdraw the pending application to the court before my client is forced to seek dismissal which will include an application for costs, legal fees, and sanctions.

Accordingly, I demand under the New York State Freedom of Information Law (FOIL) that

- 1. A copy of any resolution appointing Ms. Gilbert to act on behalf of the Village of Tuxedo Park prior to the date of this letter be provided; and**
- 2. A copy of all emails and text messages between all Trustees including you as elected officials of the Village on your Village and personal email and phones if it related to official government business between any trustee, you, and Ms. Gilbert, between September 20 and October 18. Keep in**

mind that there cannot be attorney client privilege invoked as Ms. Gilber cannot and should not have that protection nor should you or any of the Trustees as she has not been legally appointed or retained; and

3. Please also provide a copy of any retainer agreement Ms. Gilbert or her law office submitted to the Village; and
4. A statement of any monies that were expended to her for this dubious role.

My client shall be monitoring this situation closely and I intend to appear this evening at your meeting to address any questions from you and the Trustees and to assist the public with understanding the law and how taxpayer dollars cannot be used in this manner. I am certain the State Comptrollers office would be interested in the financial workings of a Village that does not comply with the law.

I am also advising that your Village Treasurer contact the bonding company and the Villages Insurance Carrier and provide a copy of this correspondence so that the bonding company and Insurance Company for the Village will have notice of a claim in the event the Village Treasurer has issued funds to Ms. Gilbert for her unfortunate portrayal as being authorized to represent the Village in the above referenced matter.

Thank you in advance for your anticipated courtesy and cooperation,

Yours most respectfully,



John A. Sarcone III

Cc: Claudio Guazzoni de Zanett via email
Elizabeth Doherty (Treasurer)
Hon. Paul Brooke via email
Hon. Josh Scherer via email
Hon. Christopher Kasker via email
Hon. Anna Tinka Shaw via email
Jared Kasschau via email