

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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**AFFIDAVIT OF PAUL J.
ABRAHAMSEN**

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

PAUL J.ABRAHAMSEN, being duly sworn, deposes and says:

1. I am Paul J. Abrahamsen and I live at 2 Harrison Drive in Larchmont, New York. I have been a member of the Larchmont Fire Department for more than ten years. I was elected by the members as Second Deputy Chief in April 2004, 2005, and 2006, and as First Deputy Chief in April 2007. In each year I was subsequently appointed by the Village Board, which followed the process specified in Village Law and in the Department Bylaws.

2. My understanding of state law and the Larchmont Fire Department Bylaws is that until a new Chief is sworn in, the old Chief remains in office. On April 5, 2007, the Fire Department members elected Tom Broderick as Chief. However, the Board of Trustees has not acted on his election yet, and therefore, according to the Department Bylaws, Christopher MacDonald is the Chief of the Larchmont Fire Department.

3. I am aware that the Village Board passed two resolutions on May 16, 2007.

Resolution #1 purported to appoint Richard Heine as Chief of the Larchmont Fire Department. Resolution #2 purported to a) abolish the position of elected volunteer chief in the Department, b) abolish the process of electing a chief by the members, c) abolish the Fire Council as it is in the Bylaws and substitute a new arrangement that would be worked out in discussions between the Chief and the members of the old Fire Council, and then recommended to the Village Board for approval.

4. Both resolutions are inconsistent with the Department Bylaws.

5. I consider the current situation to be dangerous, because I am aware that most of the volunteer members of the department are not responding to the orders or instructions of Richard Heine. For example, I am aware that Heine attempted to organize a training drill on Monday evening May 21, 2007, and very few members attended.

6. I am also aware that very few members are currently responding to alarms.

7. I have attempted to be cooperative with Richard Heine so as to not make the situation any worse than it is.

8. Today, May 28, 2007, Chris MacDonald is away from Larchmont. According to the Bylaws, as First Deputy Chief I assume the powers and responsibilities of Chief. I am not, however, responding to alarms because of the potential for conflict, confusion and disruption. I am monitoring alarms and would respond to a working fire, but I would still be concerned in the event of such an incident about conflict, confusion and disruption.

9. The Fire Council members have maintained information about the status of volunteer membership in the Department. For example, based on information developed and maintained by Fire Council members, Chief MacDonald provided a report to the Mayor and Trustees on May 24, 2007, presenting the communications received by Fire Council by the members.

10. That report stated the following: *"You have 30 members resigning from the Department as active members (these responding to alarms) as of June 19, 2007. You have 10 members who have not stated their intentions, of those 10, 1 is an active member (15% attendance or higher). You have 10 members remaining in the Department, 5 are active, (making 15% attendance or better, based on year to date totals). I hope this information is helpful to you in accessing the level of fire protection you wish to provide for the residents in the immediate future, after June 19."*

10. The Chief's report was based, in part, on a report which is attached as Exhibit A. I am today aware of two additional members, not included in the MacDonald report, who have subsequently reported to Council that they intend to resign from active firefighter as of June 17th.

11. Most of the resignations are by interior firefighters who have the highest levels of attendance. Many of the remaining firefighters are qualified for exterior or support roles and many have very low levels of attendance.

12. The normal way that a firefighter resigns is to inform an officer or inform the Fire Council. There is no requirement, expectation or practice that a member must write a letter to the Mayor or the Board of Trustees.

13. I am aware that Plaintiff Benton submitted an affidavit on May 18 stating (See paragraph 11) that he believed that there were “at least a dozen other volunteer firefighters who are considering resignation” in addition to himself. He may have been accurate as of May 18, but as of today the situation has worsened considerably: 32 volunteer firefighters have formally communicated to the Fire Council their intention to resign.

14. It is my belief, based on regular communications with the members, that if the Village would withdraw their resolutions and return the department to the organization that has previously existed, or if the Court entered an order which had this effect, that many of the volunteer firefighters would not resign.

15. I also believe that, unless the Board withdraws its resolutions, the majority of the active firefighters will not cease firefighting. They will join the other nearby fire departments where volunteer governance structures remain in place. Trained and experienced volunteer firefighters are in demand.

16. I consider this situation to be very dangerous for the Village. The Larchmont Fire Department is a combination volunteer/paid department. To respond to an alarm, particularly a potential working fire, we need the three or four paid firefighters typically on duty, as well as nine or more volunteers, in order to initiate fire suppression operations. With the number of volunteers remaining, the Department will not be able to engage in fire suppression without a high level of assistance from nearby fire departments. Assistance from nearby fire departments will take longer to arrive in the critical first minutes when a fire progresses in a structure. In time the nearby departments will object to providing essential fire services for Larchmont - services which Larchmont should provide for itself.

17. I also consider the situation to be dangerous because neither the Mayor, nor the other Board members, nor Richard Heine seem to recognize the actual situation that we face. Situation awareness is the key to effective emergency management. Larchmont faces a dangerous emergency, but the Mayor, Trustees and Richard Heine seem to be unwilling to recognize the situation.

WHEREFORE, it is respectfully requested that this Court grant Plaintiffs' application in its entirety together with such other and further relief as this Court deems just and proper.

PAUL J. ABRAHAMSEN

Sworn to before me this
____ day of May, 2007

Notary Public

Exhibit A

Membership Status Report as of May 24, 2007

Grey = Resign Active Firefighting by end of June

Bold = Stay and continue as before

Total Alarms/Functions for March **32** Average Vols per Event: 11.8
 Total Alarms/Functions LFD Year **441** Average Vols per Event: 10.0
 Estimated Ave Vols/Event if all undecideds remain in FD 2.6

	# Month	% Month	# YTD	% YTD	Designation
1 HIBBARD, G	23	72%	327	74%	Interior
2 BRODERICK, T	15	47%	246	56%	Interior
3 MACDONALD, C	15	47%	240	54%	Interior
4 ABRAHAMSEN, P	11	34%	230	52%	Interior
5 MANCINO, A	13	41%	202	46%	Interior
6 CARR-SMITH, B	18	56%	191	43%	Interior
7 SWEENEY, J	15	47%	178	40%	Interior
8 VIAZZO, E	10	31%	178	40%	Interior
9 HEUBEL, D	9	28%	168	38%	Interior
10 PORTILLO, M	0	0%	161	37%	Interior
11 DELBORGO, D	0	0%	157	36%	Interior
12 KAPLAN, G	6	19%	154	35%	Interior
13 PAYNE, B	11	34%	150	34%	Interior
14 HUDDERS, C	16	50%	144	33%	Interior
15 ARMINIO, F	11	34%	140	32%	Interior
16 WIENER, M	14	44%	120	27%	Interior
17 BENTON, N	11	34%	105	24%	Interior
18 WILLIAMS, M	13	41%	102	23%	Interior
19 GALLIN, R	10	31%	98	22%	Interior
20 MALDONADO, R	6	19%	84	19%	Interior
21 RYAN, S	12	38%	84	19%	Interior
22 CARRARA, J	7	22%	82	19%	Interior
23 ROBINSON, G	5	16%	82	19%	Interior
24 SEITZ, R	6	19%	80	18%	Interior
25 DUELL, H	13	41%	73	17%	Exterior
26 ORANS, S	9	28%	72	16%	Interior
27 DUGGAN, M	24	75%	65	15%	Interior
28 GONZALEZ, S	26	81%	60	14%	Interior
29 JACKSON, P	6	19%	59	13%	Support
30 CACCIOLA, C	1	3%	54	12%	Interior
31 YEE, D	3	9%	40	9%	Exterior
32 RAHMAN, R	1	3%	39	9%	Interior
33 CLIFTON, J	10	31%	34	8%	Interior
34 HOLDEN, R	0	0%	30	7%	Support
35 BUDETTI, E	1	3%	29	7%	Interior
36 KECK, D	3	9%	28	6%	Exterior
37 KOMAR, J	7	22%	28	6%	Interior
38 CARNEY, J	11	34%	21	5%	Interior
39 STACKPOLE, J	2	6%	15	3%	Interior
40 MANNIX, M	0	0%	14	3%	Interior
41 RANDALL, R	0	0%	12	3%	Exterior
42 MCGINLEY, K	1	3%	10	2%	Interior
43 JOSEPH, M	1	3%	6	1%	Interior
44 DUFORT, R	0	0%	4	1%	Support
45 WHITTEMORE, J	1	3%	4	1%	Interior
46 SIEGEL, W	0	0%	3	1%	Interior
47 CONNELL, T	1	3%	2	0%	Support
48 RASHKOVER, D	0	0%	2	0%	exterior
49 STEIGERWALD, J	0	0%	2	0%	Exterior
50 GIUNTA, C	1	3%	1	0%	Exterior
51 ROBB, W	0	0%	1	0%	Support
52 PRYOR, J	0	0%	0	0%	Exterior