

2. Defendant, Borough of Penns Grove (hereinafter referred to as "Borough" or "Penns Grove"), is a municipal corporation created and existing by virtue of the laws of the State of New Jersey, located in Salem County, New Jersey. The Borough is empowered, *inter alia*, pursuant to statute, to create and maintain a governing body comprised of a Mayor and six-member Council.

3. On May 26, 2008, plaintiff responded to a fire alarm at or around 45 S. Penn Street, Penns Grove, Salem County, New Jersey, in a building known as Penn Towers. Penn Towers is an apartment building with multiple units.

4. Plaintiff arrived on the scene, and immediately implemented standard procedures to ensure the safety and security of the Penn Towers residents.

5. A Penns Grove Police Officer, Joseph Schultz, disagreed with the measures taken by plaintiff to ensure the safety of the residents of Penn Towers. Officer Schultz interfered with plaintiff's ability to perform his official duties. Officer Schultz's interference with plaintiff's official duties posed a threat to the safety and security of the residents of Penn Towers, the responding firefighters and other first responders. As a result, a dispute occurred between plaintiff and Officer Schultz. Plaintiff was subsequently arrested and charged with Aggravated Assault under *N.J.S.A. 2C:12-1B(5)(A)*, Resisting Arrest under *N.J.S.A. 2C:29-2A(3)(A)*, and two counts of Disorderly Conduct under *N.J.S.A. 2C:33-2A(1)*.

6. Plaintiff retained the firm of Klineburger & Nussey to defend against the charges brought by the Borough. Plaintiff paid Klineburger & Nussey \$7,500.00 (seven-thousand five hundred dollars) for the total cost of legal representation in all criminal matters related to the events of May 26, 2008. (See, Exhibit A.)

7. On July 31, 2008, the Salem County Grand Jury dismissed the Aggravated Assault and Resisting Arrest charges that the Borough brought against plaintiff. (See, Exhibit B.)

8. The two Disorderly Conduct charges were remanded to municipal court. In or about January 2009, following a brief trial, the Honorable J.R. Powell, J.M.C. of the Woolwich Municipal Court found plaintiff not guilty on both counts of Disorderly Conduct.

9. Following the successful defense against all of the criminal charges, plaintiff sought reimbursement for the expense of his legal fees from the Borough as a matter of right, pursuant to *N.J.S.A.* 40A:14-28.

10. In or about, January 2009, plaintiff first requested reimbursement from the Borough.

11. On or about, February 4, 2009, plaintiff requested reimbursement from the Borough. On that date, the Borough administrative staff generated a voucher for payment of \$7,500.00 (seven-thousand five hundred dollars) to reimburse plaintiff for the cost of the successful legal defense. The voucher required approval by the Borough finance committee (or similarly titled body), scheduled for mid-February 2009. (See, Exhibit C).

12. On or about February 5, 2009, plaintiff provided the Borough with a receipt for \$7,500.00 paid to the Klineburger & Nussey and requested reimbursement for same.

13. On or about, February 17, 2009, the Borough denied payment of the voucher submitted to reimburse plaintiff for the cost of legal services.

14. On or about, February 18, 2009, plaintiff contacted Steven Labb and Sharron Williams in the Borough administrative offices. Plaintiff was told that the Borough "policy" and "procedures" required plaintiff to submit a formal written request for reimbursement. Upon information and belief, the Borough has no such "policy," or "procedure" written or otherwise.

15. Between February 18, 2009 and March 25, 2009, plaintiff made multiple requests for reimbursement. Initially, the Borough, acting through its administrative offices, stalled and did not respond to plaintiff's repeated requests for reimbursement.

16. Between the February 18, 2009 and March 25, 2009, plaintiff provided the Borough with a written copy of *N.J.S.A. 40A:14-28*.

17. Plaintiff spoke with Penns Grove Mayor, John Washington, regarding his right to reimbursement. Mayor Washington acknowledged that plaintiff was entitled to full reimbursement of the legal expenses.

18. However, subsequent to plaintiff's discussion with Mayor Washington, the Borough, acting in bad faith, refused to honor its obligation to reimburse plaintiff. The Borough took the position that (1) plaintiff failed to follow the proper procedure for reimbursement; (2) the voucher that acknowledged the Borough's obligation to reimburse plaintiff was void; and (3) the plaintiff would not be reimbursed for the cost of his legal defense.

19. In or about, March 2009, plaintiff hired Samuel Bullock, Esquire, to represent him in negotiations with the Borough. Originally, Samuel Bullock, Esquire, agreed to handle the matter gratis, as a favor to plaintiff.

20. On or about, March 25, 2009, Samuel Bullock, Esquire, contacted the Mayor and Council of Penns Grove in writing and demanded that plaintiff be reimbursed for the cost of his successful legal defense. (See, Exhibit D). Prior to and subsequent to that letter, Mr. Bullock spoke with various members of the Borough government regarding reimbursement to the plaintiff.

21. On or about, May 19, 2009, Samuel Bullock, Esquire, spoke with Borough Solicitor Adam Telsey, Esquire, regarding the reimbursement due to plaintiff. The Borough offered, in bad faith, to partially reimburse \$1,500.00 (one-thousand five hundred dollars) of plaintiff's \$7,500.00 (seven-thousand five hundred dollars) in legal fees.

Superior Court of New Jersey
Cumberland/Chancery/Salem

DEC 08 2009

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Received

22. On or about, May 19, 2009, plaintiff rejected the Borough's bad faith offer of less than full reimbursement of the legal fees incurred in his successful defense. On or about, May 19, 2009, Samuel Bullock, Esquire, resigned as plaintiff's attorney.

23. On or about, May 19, 2009, plaintiff hired the law firm of Chance & McCann, L.L.C., to pursue full recovery of the legal fees, which the Borough is statutorily obligated to pay. Chance and McCann required a \$3,000.00 retainer to accept plaintiff's case.

24. Kevin P. McCann, Esquire, spoke with Solicitor Telsey regarding the reimbursement. Initially, Mr. Telsey denied that the Borough was liable for plaintiff's legal fees.

25. On or about, May 22, 2009, Mr. McCann, sent a written demand that plaintiff be reimbursed \$10,500.00 (ten-thousand five hundred dollars). This figure is comprised of the \$7,500.00 (seven-thousand five hundred dollars) for the successful defense of the criminal charges against plaintiff, and \$3,000.00 (three-thousand dollars), the amount paid to Chance & McCann, L.L.C., to pursue this matter on plaintiff's behalf. (See, Exhibit E).

26. On or about, June 2, 2009, Solicitor Telsey spoke with Mr. McCann and advised that the Borough refused to pay the full \$7,500.00 (seven-thousand five hundred dollars) and the \$3,000.00 (three-thousand dollars) owed to plaintiff.

27. On or about, June 3, 2009, Philip A. Davolos, III, Esquire, sent a demand letter to Solicitor Telsey. The demand letter explained the legal basis for the reimbursement owed to plaintiff. (See, Exhibit F).

28. Only after receiving the demand letter, dated June 3, 2009, did the Borough agree to pay the \$7,500.00 (seven-thousand five hundred) in legal fees owed to plaintiff.

29. The Borough had been made aware of its absolute duty to reimburse plaintiff as early as February 2009. The Borough intentionally, and in bad faith denied plaintiff's demands for reimbursement.

The Borough acted in bad faith when it attempted to settle the reimbursement owed to plaintiff for less than the entire amount.

30. The Borough acted specifically to punish plaintiff and to force him to incur additional legal fees in pursuit of the reimbursement to which he is absolutely entitled.

31. The Borough's bad faith denial of plaintiff's absolute right to reimbursement, pursuant to *N.J.S.A. 40A:14-28*, increased the total cost of representation related to the criminal charges against plaintiff by \$3,000.00 (three-thousand dollars).

WHEREFORE, plaintiff, Joseph Grasso, demands judgment against defendant, Penns Grove, as follows:

- a. monetary damages in the amount of \$10,500.00 (ten-thousand five hundred), in mandatory compliance with *N.J.S.A. 40A:14-28*
- b. awarding counsel fees and costs against the defendant for the necessity of the litigation involved herein; and
- c. such other relief as the Court shall deem equitable and fair.

JURY DEMAND

Plaintiff, Joseph Grasso, herein demands a trial by jury on all issues herein as provided by the Rules governing the Courts.

NOTICE OF TRIAL COUNSEL

PLEASE BE NOTIFIED, that pursuant to Rule 4:25-4, Kevin P. McCann, Esquire is hereby designated as trial counsel in the above-captioned litigation on behalf of the plaintiff, Joseph Grasso.

DEC 16 2009

CERTIFICATION

Pursuant to Rule 4:5-1, the undersigned hereby certifies that the above action is not the subject of any other lawsuit or arbitration proceeding, and that there are no other persons interested in the above action who have not been made a party to said action.

CHANCE & McCANN
Attorneys for Plaintiff

Dated: December 2, 2009

By: 
PHILIP A. DAVOLOS III

Superior Court of New Jersey
Camden County Courthouse
Camden, NJ 08102

DEC 08 2009

FINANCIAL DIVISION
Received



Klineburger & Nussey

Attorneys At Law
38 Haddon Avenue
Haddonfield, NJ 08033
Telephone (856) 428-7469
Facsimile (856) 428-7530

Richard F. Klineburger, III
*Certified by the Supreme Court of
New Jersey as a Criminal Trial Attorney*

D. Ryan Nussey
*Certified by the Supreme Court of
New Jersey as a Marimonial Attorney*

Admitted to practice in New Jersey & Pennsylvania

Maureen Steady (*Of Counsel*)
Nicole McCauley (*NJ Only*)

February 5, 2009

Joseph Grasso
4 North Virginia Avenue
Pennsgrove, New Jersey 08069

**RE: State of New Jersey v. Joseph Grasso
Complaint/Summons No.: 1708-S-2008-000348; 1708-S-2008-000349**

Dear Mr. Grasso:

This correspondence shall confirm that your matter has been dismissed and your balance in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) has been paid in full.

Very truly yours,


RICHARD F. KLINEBURGER, III

RFK/k
Enclosure

K & N
EXHIBIT A

OFFICE OF THE PROSECUTOR
COUNTY OF SALEM
SALEM COUNTY PROSECUTOR'S OFFICE
87 MARKET STREET, P.O. BOX 462
SALEM NJ 08079-0000
FAX: 856-935-8737
856-935-7510

JOSEPH A GRASSO
4 NORTH VIRGINIA AVENUE
PENNS GROVE NJ 080690000

PENNS GROVE BORO MUNICIPAL COURT
W MAIN AT STATE ST
PENNS GROV NJ 08069

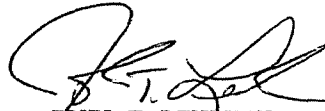
DATE OF LETTER : JULY 31 2008
STATE V : GRASSO
DATE OF BIRTH : SEPTEMBER 02 1950
CASE/DEFT # : 08-000460 001
POLICE CASE # : 2008007667
SBI # :
DATE OF ARREST : MAY 27 2008
AKA :

AFTER CONSIDERATION OF THE ABOVE CASE, THE SALEM COUNTY GRAND JURY DID NOT FIND SUFFICIENT EVIDENCE TO SUSTAIN THE RETURN OF AN INDICTMENT. THEREFORE, CRIMINAL PROSECUTION CANNOT BE PURSUED, AND THE CASE IS NOW CLOSED.

CDR NO	DOCKET NO	ORIGINAL CHARGE
S 20080003491708	001	2C:12-1B(5) (A)
S 20080003491708	002	2C:29-2A(3) (A)

RELATED DISORDERLY PERSONS COMPLAINTS AND/OR MOTOR VEHICLE SUMMONSES ARE BEING RETURNED TO THE PENNS GROVE BORO MUNICIPAL COURT FOR DISPOSITION.

ALL RECORDS SHOULD BE ADJUSTED ACCORDINGLY INCLUDING THE WITHDRAWING OF ANY WARRANTS PERTAINING TO THESE CHARGES. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE PENNS GROVE BORO MUNICIPAL COURT ADMINISTRATOR.


JOHN T LENAHAN
COUNTY PROSECUTOR

NB

DP CDRS: S 20080003481708

C.C.M.O. / CLERK'S OFFICE
DEFENDANT / ATTORNEY
COMPLAINANT / BONDSMAN
WARRANTS / INVESTIGATING OFFICER

BOROUGH OF PENNS GROVE

1 STATE STREET
P.O. BOX 527
PENNS GROVE, NJ 08069

Telephone: (856) 299-8816

PURCHASE ORDER
THIS NUMBER MUST APPEAR ON ALL INVOICES,
PACKING LISTS, CORRESPONDENCE, ETC.

NO. 09-00132

Pg. 1
SHIP TO: BOROUGH OF PENNS GROVE
1 STATE STREET, PO BOX 527
PENNS GROVE, NJ 08069

ORDER DATE: 02/04/09
REQUISITION NO:
DELIVERY DATE:
STATE CONTRACT:
F.O.B. TERMS:

VENDOR: KLINEBURGER AND NUSSEY
ATTORNEY AT LAW
38 NORTH HADDON AVE
HADDONFIELD NJ 08033

K0093

PAYMENT RECORD:
CHECK NO. _____ DATE _____
TAX EXEMPT UNDER PROVISIONS OF N.J. SALES & USE
TAX ACT (CHAPTER 30, LAWS OF 1966)
FEDERAL TAX NO. 21-6000999

THE CONDITIONS OF THIS ORDER ARE NOT TO BE MODIFIED BY ANY VERBAL UNDERSTANDING. ALL PRICES ARE F.O.B. DESTINATION, UNLESS NOTE

QUANTITY	UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00		LEGAL SERVICE JOE GRASSO	9-01-20-155-028	7,500.0000	7,500.00
				TOTAL	7,500.00

NOTICE TO VENDOR:

NO CHANGE MAY BE MADE IN ANY PROVISION OF THIS PURCHASE ORDER WITHOUT THE WRITTEN NOTICE TO THAT EFFECT ISSUED BY THE BOROUGH. SUBSTITUTIONS MUST NOT BE MADE, IF UNABLE TO FILL ORDERS EXACTLY IN ACCORDANCE WITH QUANTITY, DESCRIPTION AND PRICE, NOTIFY BOROUGH IMMEDIATELY.

CONTRACT ORDERS ARE SUBJECT TO ALL TERMS AND CONDITIONS OF THE ACCEPTED BID AND EXECUTED CONTRACT INFORMAL AWARDS (OPEN MARKET ORDERS RESULTING FROM ADVERTISED PROPOSALS) ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE ACCEPTED BID. ORDER VALID UNLESS SIGNED BELOW.

DO NOT ACCEPT THIS ORDER UNLESS IT IS SIGNED BELOW

CERTIFICATION OF FUNDS

I hereby certify that funds are available and encumbered.

SIGNATURE _____ DATE _____
FINANCE OFFICER

APPROVED FOR PAYMENT:

CHAIRPERSON _____
COMMITTEE _____
COMMITTEE _____

RECEIVER'S CERTIFICATION

I, having knowledge of the facts, certify that the materials and supplies have been received or the services rendered; said certification being based on signed delivery slips or other reasonable procedures.

SIGNATURE _____ TITLE _____

CLAIMANT'S CERTIFICATION & DECLARATION

I do solemnly declare and certify under penalties of the law that the within bill is correct in all its particulars; that the articles have been furnished or services rendered as stated therein; that no bonus has been given or received by any person or persons within the knowledge of this claimant in connection with the above claim; that the amount therein stated is justly due and owing; and that the amount charged is a reasonable one.

SIGNATURE _____ DATE _____
OFFICIAL POSITION _____

Law Office of
Samuel H. Bullock
Counselor at Law
121 West Jersey Avenue
Pitman, New Jersey 08071
shbullock@lawyer.com

OFFICE: 856-589-0022

FAX: 856-582-7653

March 25, 2009

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SUPERIOR COURT OF NEW JERSEY
SALEM COUNTY CIVIL PART

Mayor and Council
Borough of Penns Grove
1 State Street
P.O. Box 527
Penns Grove, NJ 08069

RE: Fire Chief Joseph Grasso

Gentlemen:

I am enclosing a copy of the voucher which you signed originally to pay the attorney fees for Mr. Grasso. I understand that, based upon comments from your attorney, you have decided you are not going to honor him by paying his bill. It would seem to me, since Mr. Grasso did call the Mayor and the Mayor did not take any further action on it the night that this thing came down, that he did follow the procedure. If the Mayor would be kind enough to advise you that he did speak to Mr. Grasso about this matter since maybe the ball was dropped at that point, maybe you should reconsider paying him.

It seems such a shame that he is a man that was in charge of the scene, has the keys and has to set up the procedure for vacating the premises if there is a fire, that you would now feel that he was remiss in his duties. With this in mind, I am sure that whoever handles your general minutes will be happy to read this into it and advise us as to whether or not you are going to pay him.

I further advise you that Fire Chief Grasso was acting in his capacity as a fire chief in attempting to handle the situation at the fire alarm. The charges that were brought against him by the police officer whereas a result of his acting in the line of duty. With this in mind, I think that the Mayor is well aware that Fire Chief should have his attorney fees paid.

For your edification, I am also enclosing a copy of the July 31, 2008 action taken by the Salem County Grand Jury. They found that there was not "sufficient evidence to sustain the return of an indictment. Therefore, criminal prosecution cannot be pursued, and the case is now closed." What was returned to Municipal Court were the two disorderly persons complaint. These complaints were heard in Municipal Court and Mr. Grasso was found not guilty of all charges. If you need proof of that, I will have the Court Administrator send you a copy of the court docket.

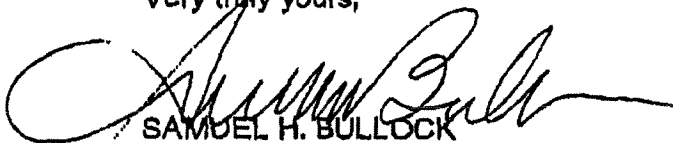
DEC 08 2009

EXHIBIT DFINANCE DIVISION
Received

Mayor and Council
Borough of Penns Grove
March 25, 2009
Page 2

If there is anything further you need to authorize payment of this fee, please contact me immediately.

Very truly yours,



SAMUEL H. BULLOCK
Attorney for Joseph Grasso

SHB:ias
Enc.

cc: Mr. Joseph Grasso

Law Offices
CHANCE & McCANN

Limited Liability Company
Email: chancemccann@chancemccann.com
www.chancemccann.com

201 WEST COMMERCE STREET
P. O. BOX 278
BRIDGETON, NEW JERSEY 08302
(856) 451-9100
Fax: (856) 455-5227

8 NORTH MAIN STREET
P. O. BOX 10
WOODSTOWN, NEW JERSEY 08098
(856) 769-9001
Fax: (856) 769-9007

RECEIVED & FILED

DEC 07 2009

SUPERIOR COURT OF NEW JERSEY
SALEM COUNTY CIVIL PART

KEVIN P. McCANN

CERTIFIED BY THE SUPREME COURT OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY
CERTIFIED BY THE NATIONAL BOARD OF TRIAL ADVOCACY AS A CIVIL TRIAL ADVOCATE
MEMBER OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF TEXAS
LLM TAXATION
K140 QUALIFIED MEDIATOR

SHIRLEY NAYLOR *
ROBERT D. FISCHER *
SHANNA McCANN *
* ALSO A MEMBER OF THE PA BAR

Reply to Bridgeton

May 22, 2009

Sharon Williams, Municipal Clerk
Penns Grove Borough
P.O. Box 527
W. State and Main Streets
Penns Grove, NJ 08069

Dear Ms. Williams:

Our firm represents Penns Grove Fire Chief Joseph A. Grasso. I write to demand that the Borough of Penns Grove immediately reimburse Chief Grasso in the amount of \$10,500.00. That amount represents the total cost of legal representation that Chief Grasso incurred as a result of the criminal charges brought by the Borough of Penns Grove. Unfortunately, there has been some unnecessary confusion over the Borough's absolute duty to reimburse Chief Grasso. New Jersey Statute 40A:14-28 entitles officers of municipal fire departments or forces to reimbursement for the cost of legal representation in criminal proceedings arising out of or incidental to the performance of their duties. New Jersey Statute 40A:14-28, states in relevant part that:

Whenever a member or officer of a municipal fire department or force is a defendant in any action or legal proceeding arising out of or incidental to the performance of his duties, the governing body of the municipality shall provide said member or officer with counsel and costs incidental to such representation for the defense of such action or proceeding, other than for [...] his defense in a criminal proceeding instituted as a result of a complaint on behalf of the municipality. If any such [...] criminal proceeding instituted by or on the complaint of the municipality shall be dismissed or determined in favor of the member or officer, he shall be reimbursed for the expense of his defense. (Emphasis supplied).

Thus, an officer of a municipal fire department is entitled to reimbursement for the cost of legal representation in criminal proceedings instituted by the municipality that he serves, provided that such criminal proceedings are dismissed or determined in favor of the officer. N.J.S.A. 40A:14-28. The reimbursement of such legal expenditures is mandated by statute and is not discretionary or subject to procedural restriction.

In *Township of Edison v. Mezzacca*, New the Jersey Superior Court, Appellate Division interpreted the term "reimbursement" as follows:

When a statute speaks in terms of reimbursement, it focuses on costs already incurred and contemplates **governmental liability for expenditures**, reasonable in amount, for services rendered by **counsel of the employee's own choice**. [...] [I]t is provided that a public officer against whom disciplinary or criminal proceedings are instituted by the municipality 'shall be reimbursed for the expense of his defense' if he prevails. Obviously, this would include the reasonable fees of counsel selected by the officer, for the municipality could have no say in the choice of counsel to defend against charges made by it, *147 N.J. 9 (App. Div. 1977)*. (Emphasis supplied.)

Based on the foregoing statute and case law, it is clear that Chief Grasso is entitled to complete reimbursement for all of the costs associated with his legal defense.

The facts here are very straightforward. On May 26, 2008, Chief Grasso responded to a fire alarm at Penn Towers in Penns Grove, New Jersey. A dispute occurred between Chief Grasso and Penns Grove Police Officer Joseph Schultz. This dispute occurred while Chief Grasso was in the process acting to ensure the safety of the residents of Penn Towers. Chief Grasso was subsequently arrested and charged with Aggravated Assault under N.J.S.A. 2C:12-1B(5)(A), Resisting Arrest under N.J.S.A. 2C:29-2A(3)(A), and two counts of Disorderly Conduct under N.J.S.A. 2C:33-2A(1).

Chief Grasso retained the law firm of Klineburger and Nussey to defend against the charges brought by the Borough of Penns Grove. On July 31, 2008, the Salem County Grand Jury dismissed the Aggravated Assault and Resisting Arrest charges. Please find a copy of the July 31, 2008 Disposition Report from Salem County Prosecutor's Office attached. Following the dismissal of the two more serious charges, the Disorderly Conduct charges were remanded to Woolwich Township Municipal Court. The Woolwich Municipal Court heard the Disorderly Conduct complaints and found Chief Grasso not guilty of both counts. Klineburger and Nussey charged a fee of \$7,500.00 to represent Chief Grasso. As of February 5, 2009, Klineburger and Nussey was paid in full.

Superior Court of New Jersey
County of Salem

DEC 08 2009

Unfortunately, the Mayor and Borough Council have taken the legally unjustifiable position that the Borough of Penns Grove is not liable for the expense of Chief Grasso's successful defense. Chief Grasso requested that the Borough reimburse him on multiple occasions. Chief Grasso completed the appropriate written reimbursement request and submitted it to the Office of the Treasurer. Chief Grasso spoke to Stephen Lab, Penns Grove Chief Financial Officer and Treasurer, regarding reimbursement for his criminal defense. Chief Grasso spoke to Marie Danks regarding reimbursement. Chief Grasso eventually received a voucher signed by two councilpersons, for the amount due to Klineburger and Nussey, but the Office of the Treasurer refused to honor the voucher. Chief Grasso asked Borough Clerk Sharon Williams why the Borough refused to reimburse him. Clerk Williams informed Chief Grasso that, according to the Borough Solicitor, he did not follow the proper procedure for reimbursement. Specifically, the Borough refused reimbursement because Chief Grasso selected his own defense counsel without first consulting the Borough. This "reasons" is not a legitimate basis for denying reimbursement to Chief Grasso. Chief Grasso is entitled to reimbursement in full.

As such, Chief Grasso retained this firm for the purpose of compelling the Borough of Penns Gove to reimburse him for the costs of his criminal representation. Chief Grasso paid Klineburger and Nussey \$7,500.00. Chief Grasso has paid this firm \$3,000.00, which we consider to be included in the overall cost of litigation associated with the criminal charges. The purpose of New Jersey Statute 40A:14-28 is to make wrongly accused municipal fire department officers whole. The Borough of Penns Grove may not frustrate the purpose of that statute by denying reimbursement for the expense of Chief Grasso's criminal defense or by denying reimbursement for the costs associated with compelling reimbursement. The purpose of the statute would be substantially frustrated, if the Borough were to now saddle Chief Grasso with the costs of civil representation. Thus, please make immediate payment to Chief Grasso in the amount of \$10,500.00. If you do not respond to this letter with prompt payment to Chief Grasso, appropriate action will follow.

Very truly yours,

CHANCE & McCANN


KEVIN P. McCANN

KPM/dls
Enclosure

CC: Joseph Grasso
Samuel Bullock, Esq.
Adam Telsey, Esq.

Superior Court, County of Cumberland
Cumberland County Courthouse
P.O. Box 1000
Cumberland, NJ 07832

DEC 08 2009

Law Offices
CHANCE & McCANN

Limited Liability Company
 Email: chancemccann@chancemccann.com
www.chancemccann.com

201 WEST COMMERCE STREET
 P. O. BOX 278
 BRIDGETON, NEW JERSEY 08302
 (856) 451-9100
 Fax: (856) 455-5227

8 NORTH MAIN STREET
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 WOODSTOWN, NEW JERSEY 08098
 (856) 769-9001
 Fax: (856) 769-9007

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DEC 07 2009

SUPERIOR COURT OF NEW JERSEY
 SALEM COUNTY CIVIL PART

KEVIN P. McCANN

CERTIFIED BY THE SUPREME COURT OF NEW
 JERSEY AS A CIVIL TRIAL ATTORNEY
 CERTIFIED BY THE NATIONAL BOARD OF TRIAL
 ADVOCACY AS A CIVIL TRIAL ADVOCATE
 MEMBER OF THE UNITED STATES DISTRICT
 COURT OF THE SOUTHERN DISTRICT OF TEXAS
 LL.M. TAXATION
 AND QUALIFIED MEDIATOR

SHIRLEY NAYLOR *
 ROBERT D. FISCHER *
 SHANNA McCANN *
 * ALSO A MEMBER OF THE PA BAR

Reply to Bridgeton

June 3, 2009

Via Facsimile (856) 935-1121 & Regular Mail

Adam I. Telsey, Esquire
 107 W. Broadway
 Salem, NJ 08079

RE: Fire Chief Joseph A. Grasso
 Reimbursement pursuant to N.J.S.A. 40A:14-28

Dear Mr. Telsey:

I am writing to reiterate the previous demand that the Borough of Penns Grove immediately reimburse Fire Chief Joseph A. Grasso in the amount of \$10,500.00. Pursuant to New Jersey Statute 40A:14-28, the Borough of Penns Grove is absolutely obligated to reimburse Chief Grasso for the cost of his successful criminal defense and all legal fees incurred in compelling said reimbursement. The relevant portion of New Jersey Statute 40A:14-28 reads as follows: "If any such disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense." The purpose of New Jersey Statute 40A:14-28 is to make wrongly accused municipal fire department officers whole. The Borough of Penns Grove acted in direct violation of New Jersey Statute 40A:14-28 by repeatedly denying Chief Grasso's persistent requests for reimbursement.

Chief Grasso paid Klineburger and Nussey \$7,500.00 to present his criminal defense. All of the criminal charges against Chief Grasso were dismissed. Thus, Chief Grasso is statutorily entitled to reimbursement for the cost of legal representation arising out of or incidental to the criminal charges.

Prior to retaining this firm, Chief Grasso independently made multiple attempts, through the proper channels, to enforce his right to reimbursement. Indeed, Chief Grasso even provided the Borough of Penns Grove with a copy of New Jersey Statute 40A:14-28. For whatever reason, the Borough of Penns Grove refused to honor its obligation to Chief Grasso.

Page 1 of 2

EXHIBIT F

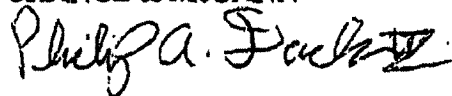
Had the Borough of Penns Grove acted properly in the first instance, and reimbursed Chief Grasso, this letter would be entirely unnecessary. The continued denial of reimbursement left Chief Grasso no choice but to seek legal representation. As such, Chief Grasso retained the services of this firm for the fee of \$3,000.00. Thus, to date the Borough of Penns Grove has forced Chief Grasso to expend a total of \$10,500.00 on legal representation. The entire sum of \$10,500.00 arises out of or is incidental to the criminal charges ultimately resolved in favor of Chief Grasso.

In *Township of Edison v. Mezzacca*, the Appellate Division held that the purpose of the reimbursement language in New Jersey Statute 40A:14-28, and similar statutes, is to provide "officers with a defense at municipal expense," *147 N.J. Super 9 (App. Div. 1977)*. Clearly, New Jersey Statute 40A:14-28 would be of limited or even no effect were a municipality permitted to (1) deny reimbursement for successful criminal representation, and (2) then deny payment of attorneys fees incurred for the purpose of compelling the municipality to honor its obligation to the successful criminal defendant.

Here the cost of civil representation (\$3,000.00) is almost half as much as the cost of the criminal representation (\$7,500.00). The Borough of Penns Grove may not reimburse only the cost of the criminal representation, but must reimburse the entire cost of legal representation arising out of or incidental to the criminal charges. Chief Grasso would incur a net loss of \$3,000.00 were the Borough of Penns Grove permitted to reimburse only the cost of the criminal representation. Such a result would be identical to imposing a punitive fine on Chief Grasso, which New Jersey Statute 40A:14-28 is specifically designed to prevent. Chief Grasso is not seeking anything more than the money that he has spent as a result of the criminal charges brought against him by the Borough of Penns Grove. Chief Grasso must be made whole. Thus, please make immediate payment to Chief Grasso in the amount of \$10,500.00. If you do not respond to this letter with prompt payment to Chief Grasso, appropriate action will follow.

Very truly yours,

CHANCE & McCANN



PHILIP A. DAVOLOS III

PAD/fb

cc: Joseph Grasso
Samuel Bullock, Esq.
Sharon Williams, Municipal Clerk

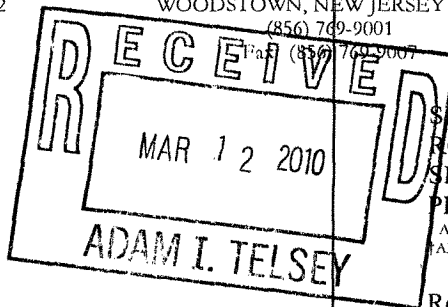
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Law Offices
CHANCE & McCANN

Limited Liability Company
Email: chancemccann@chancemccann.com
www.chancemccann.com

201 WEST COMMERCE STREET
P.O. BOX 278
BRIDGETON, NEW JERSEY 08302
(856) 451-9100
Fax: (856) 455-5227

8 NORTH MAIN STREET
P.O. BOX 10
WOODSTOWN, NEW JERSEY 08098
(856) 769-9001



KEVIN P. McCANN

CERTIFIED BY THE SUPREME COURT OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY
CERTIFIED BY THE NATIONAL BOARD OF TRIAL ADVOCACY AS A CIVIL TRIAL ADVOCATE
MEMBER OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF TEXAS
LL.M. TAXATION
R.I.-30 QUALIFIED MEDIATOR

SHIRLEY NAYLOR *
ROBERT D. FISCHER *
SHANNA McCANN *
PHILIP A. DAVOLOS III*†
ALSO A MEMBER OF THE PA BAR
ALSO A MEMBER OF THE NY BAR

Reply to Bridgeton

March 10, 2010

Adam I. Telsey, Esquire
Puma, Telsey & Rhea
107 West Broadway
Salem, NJ 08079

RE: Joseph A. Grasso v. Borough of Penns Grove
Docket No.: SLM-L-439-09

Dear Mr. Telsey:

Enclosed please find Release with respect to the above-referenced matter, which has been signed by my client, Joseph Grasso. Please forward the settlement proceeds at your earliest opportunity.

I am also enclosing a copy of a Notice of Voluntary Dismissal, which I will file with the court upon receipt of the settlement check.

Thank you for your attention to this matter.

Very truly yours,

CHANCE & McCANN

PHILIP A DAVOLOS III

PAD/dls
Enclosure
Cc: Joseph Grasso

RELEASE

This Release, dated *March 9*, 2010, is given

BY: the Releasor **JOSEPH GRASSO**, referred to as "I",

TO: **BOROUGH OF PENNS GROVE, NEW JERSEY**, referred to as "You".

If more than one person signs this Release, "I" shall mean each person who signs this Release.

I. RELEASE. I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims:

Any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has or which I may hereafter acquire on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen damages and the consequences thereof resulting from and arising out of an incident which occurred in Penns Grove Borough, New Jersey on or about May 26, 2008 which is the subject of a lawsuit brought in the Salem County Superior Court, Law Division, bearing Docket No. SLM-L-409-09. In addition to the foregoing, this release shall include any and all claims I may have pursuant to 42 U.S.C. § 1983, as well as claims for false arrest and malicious prosecution.

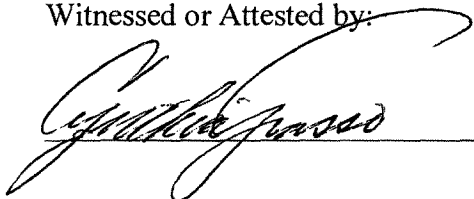
It is expressly understood and agreed that the acceptance of the said amount is in full accordance, satisfaction and compromise of all my claims against the above-mentioned and that payment is not an admission of liability but, rather, is made for the sole purpose of terminating litigation between the parties.

2. PAYMENT. I have been paid a total of **TEN THOUSAND FIVE HUNDRED (\$10,500.00) DOLLARS** in full payment for making this Release. I agree that I will not seek anything further including any other payment from you.

3. WHO IS BOUND. I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. SIGNATURES. I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:




_____ **JOSEPH GRASSO**

STATE OF NEW JERSEY, COUNTY OF *Salem*

SS:

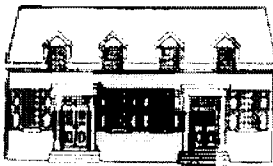
I CERTIFY that on *March 9*, 2010, *Joseph Grasso*

Personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

Philip A. Davalos, Esq.
Notary Public
Philip A. Davalos, III, Esquire
Attorney at Law

#2



Puma, Telsey & Rhea, P.A.
Attorneys at Law

David J. Puma
Adam I. Telsey
Andrea Rhea

Of Counsel
Diane Telsey

107 West Broadway
Salem, NJ 08079
856.935.2244
Telecopier 856.935.1121
E-mail address:
atelsey@pumalaw.com

June 4, 2009

Via Regular Mail and Fax 455-5227

Philip A. Davolos, III, Esquire
CHANCE & McCANN
201 West Commerce Street
Post Office Box 278
Bridgeton, New Jersey 08303

RE: Fire Chief Joseph A. Grasso

Dear Mr. Davolos:

Please be advised that the Penns Grove Borough Council discussed Chief Grasso's claim for \$7,500.00 in attorney's fees in relation to the defense of criminal charges brought against him as well as an additional \$3,000.00 in attorney's fees incurred as a result of attempting to collect the original \$7,500.00. Upon further consideration of this matter, the Borough of Penns Grove has agreed to reimburse Chief Grasso the \$7,500.00 upon its receipt of a cancelled check from Chief Grasso evidencing payment thereof. The Borough has refused to pay the additional \$3,000.00 claimed by Chief Grasso for attorney's fees incurred in collecting the original \$7,500.00. There is no legal basis to justify the payment of the additional \$3,000. In furtherance of this position, I draw your attention to Van Horn v. City of Trenton, 80 N.J. 528 (1979). In that matter, the Court specifically denied the award of counsel fees to the Plaintiff that were incurred as the result of litigation to enforce reimbursement under the statute. In particular, the Court stated, "counsel fees are not a traditional element of damages in an action such as the Plaintiff's, and there has been no showing that the City's refusal to reimburse Van Horn was made in bad faith."

At no time has the Borough of Penns Grove acted in bad faith in relation to reimbursement of the \$7,500.00, which is evidenced by the fact that the Borough has agreed to reimburse these monies without a lawsuit.

Philip A. Davolos, III, Esquire

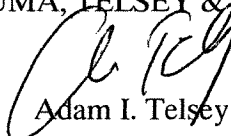
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June 4, 2009

Therefore, kindly provide my office with a copy of Chief Grasso's cancelled check(s) so that payment can be processed for \$7,500.00.

Very truly yours,

PUMA, TELSEY & RHEA, P.A.



Adam I. Telsey

AIT:mcc

Cc: Sharon Williams, Borough Clerk