

Jack A. Berenato, Esquire
1410 Shore Road
Northfield, NJ 08225
(609) 645-2727
Attorney for Plaintiffs

KERRY HIGGS, JONATHAN	:	SUPERIOR COURT OF NEW JERSEY
WINSETT, JAMES NANOS,	:	CHANCERY PART- GENERAL EQUITY
JOHN DAVIS, GARY DEMARZO,	:	CAPE MAY COUNTY
WILLIAM COOPER, KENNETH	:	DOCKET NO.:
PHILIPS and ROLAND ROY,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION
	:	
STEVEN LONG, SHAWN YUHAS,:	:	
CHRISTOPHER WOOD, CITY OF :	:	
WILDWOOD, jointly, severally :	:	
and/or in the alternative,	:	VERIFIED COMPLAINT
	:	
Defendants.	:	
	:	
	:	

Plaintiffs Kerry Higgs, Jonathan Winsett, James Nanos, John Davis, Gary DeMarzo, William Cooper, Kenneth Philips and Rolland Roy (collectively “Plaintiffs”), allege as follows:

INTRODUCTION

1. This is an action demanding a full accounting of the Wildwood Police Benefit Fund (the “Fund”) and to recover damages for breach of fiduciary duty in connection with the systematic mismanagement of the Fund and intentional disenfranchisement of the Plaintiffs. Defendants have failed to manage the fund in a way that would maximize value for Plaintiffs, negligently distributed monies from the Fund for purposes other than intended when created, intentionally misled Plaintiffs and failed to provide them with any information regarding the Fund. In doing so, Defendants breached various fiduciary duties owed to Plaintiffs causing damages.

PARTIES

2. Plaintiff, Kerry Higgs, is a retired member of the Wildwood Police Department who contributed significant monies to the Wildwood Police Benefit Fund (the “Fund”) during his career.
3. Plaintiff, Jonathan Winsett, is a retired member of the Wildwood Police Department who contributed significant monies to the Wildwood Police Benefit Fund during his career.
4. Plaintiff, James Nanos, is a retired member of the Wildwood Police Department who contributed significant monies to the Wildwood Police Benefit Fund during his career.
5. Plaintiff, John Davis, is a retired member of the Wildwood Police Department who contributed significant monies to the Wildwood Police Benefit Fund during his career.
6. Plaintiff, Gary DeMarzo, is a retired member of the Wildwood Police Department who contributed significant monies to the Wildwood Police Benefit Fund during his career.
7. Plaintiff, William Cooper, is a retired member of the Wildwood Police Department who contributed significant monies to the Wildwood Police Benefit Fund during his career.
8. Plaintiff, Kenneth Philips, is a retired member of the Wildwood Police Department who contributed significant monies to the Wildwood Police Benefit Fund during his career.
9. Plaintiff, Roland Roy, is a retired member of the Wildwood Police Department

who contributed significant monies to the Wildwood Police Benefit Fund during his career.

10. Defendant, Steven Long, (“Long”) is a current member of the Wildwood Police Department and upon information and belief is the principle party or head of the Wildwood Police Benefit Fund.

11. Defendant, Shawn Yuhas, (“Yuhas”) is a current member of the Wildwood Police Department and upon information and belief is the administrator of the Wildwood Police Benefit Fund.

12. Defendant, Christopher Wood, (“Wood”) is Municipal Clerk for the City of Wildwood as such he is the custodian of all minutes, books, deeds, bonds, contracts and archival records of the municipality and is charged with responding to requests made pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

13. Defendant, City of Wildwood (the “City”) is a municipal entity within Cape County, New Jersey, with a principal place of business located at 4400 New Jersey Ave., Wildwood New Jersey 08260 and which operates under the Faulkner Act, Commission Form of Government.

FIRST COUNT

14. In 1983 the City of Wildwood and members of the Wildwood Police Department created a benefit fund known as the “Wildwood Police Benefit Fund” or “Police Trust” that was intended to assist retired personnel with prescription costs that were not covered by other benefits or insurance available.

15. By agreement with the City of Wildwood members of the Wildwood Police Department would have five, \$5.00, dollars taken directly out of their pay check for

deposit into the fund. Some time thereafter the contribution from each paycheck increased to ten, \$10.00, dollars. Plaintiffs have each contributed between \$2,000.00 and \$7,000.00 to the Fund during their service on the Wildwood Police Department.

16. Upon information and belief in 1993 the City of Wildwood instituted a program where they would match the employee's contribution to the fund. The duration and amounts of this matching program is unknown to Plaintiffs as Defendants refuse to provide Plaintiffs with any information regarding the administration of the Fund.

17. Plaintiffs have made numerous requests for information regarding the existence of the account where the Fund is deposited, an explanation of how the Fund is administered, i.e. payment and non-payment of claims, and a full accounting of the Fund. Defendants have failed and refused to provide any information regarding the Fund. (Exhibit A)

18. As directors and/or administrators of the Fund, each of the Defendants owes fiduciary duties of care, loyalty and good faith to the members of the Fund, specifically the Plaintiffs. Defendants' fiduciary duties include obligations to exercise good business judgment, to act prudently in the administration of the Fund, to discharge their actions in good faith and to act in the best interests of the Fund and its contributing members.

19. Defendants breached their fiduciary duty of care by, among other things, routinely mismanaging the Fund, failing to comply with the stated purpose of the Fund and refusing to provide Plaintiffs with any information regarding the Funds establishment and administration.

20. Defendants breached their duties of loyalty and good faith by, among other things, intentionally making distributions from the Fund for other than its stated purpose and refusing to provide the Plaintiffs with any information regarding the administration and

status of the Fund.

21. As a result of Defendants actions Plaintiffs have been irreparably harmed and have been substantially damaged.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally, as follows:

A. Directing the Defendants undertake a full audit/accounting of the Fund to be distributed to Plaintiffs;

B. Enjoining Defendants from making any further distributions from the Fund until such time as the accounting has been distributed and this matter has been resolved;

C. Directing Defendants to produce all documents that establish the Fund and explain how the Fund is to be administered;

D. Awarding plaintiffs compensatory and punitive damages;

E. Awarding Plaintiffs attorneys' fees together with costs of suit;

F. Granting such other relief as the Court deems equitable and just.

SECOND COUNT

22. Plaintiffs repeat the allegations of the preceding paragraphs as if set forth at length herein.

23. The Open Public Records Act, N.J.S.A. 47:1a-1 et seq., ("OPRA") states that government records shall be readily accessible for inspection, copying, or examination by citizens of the State.

24. Plaintiff Higgs made a request to Defendants under OPRA seeking information regarding the establishment and administration of the Fund. (Exhibit B)

25. Defendants did not legally and properly respond to this request and failed to provide any information concerning the Fund.

26. Defendants actions in failing to respond to a legitimate OPRA request is a direct violation of OPRA and has damaged Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally, as follows:

A. Directing Defendants to immediately respond to Plaintiffs OPRA request and produce all documents related to the establishment and administration of the Fund;

B. Awarding Plaintiffs compensatory and punitive damages;

C. Awarding Plaintiffs attorneys' fees together with costs of suit;

D. Granting such other relief as the Court deems equitable and just.

Date: March 21, 2013

Jack A. Berenato, Esquire
Attorney for Plaintiffs

CERTIFICATION

I hereby certify that the matter in controversy herein is not subject to any other pending action in any other court or arbitration forum of which the undersigned is aware. The undersigned is not aware of any other parties that should be joined in this matter and no other action or arbitration process is contemplated.

Date: March 21, 2013

Jack A. Berenato, Esquire
Attorney for Plaintiffs