

P R E S E N T :  
HON. E. MICHAEL KAVANAGH

ERNIE RENN, On Behalf of Himself and  
all other Paid Members of the Fire  
Department of the City of Kingston  
similarly situated, et al.,

Plaintiffs,

- against -

ORVAL KIMBARK, CHARLES REIS, FRED REIS,  
CHARLES ALECCA, JOHN DITTUS, EDGAR  
HARLOW, EUGENE PERRY AND HERBERT WOLF,  
in their Individual Capacities and as  
Members of the Board of Trustees of the  
Kingston Fire Department Fund, Inc.

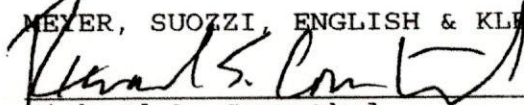
Defendants.

NOTICE OF ENTRY

Index No.75-2056

PLEASE TAKE NOTICE that a Stipulation and Order, of which  
the within is a copy, was duly entered in the office of the County  
Clerk, County of Ulster on April 3, 2001.

Dated: New York, New York  
April 9, 2001

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.  
By:   
Richard S. Coenthal  
Attorneys for Plaintiffs  
1350 Broadway  
New York, New York 10018  
(212) 239-4999

TO: Glen P. Doherty, Esq.  
DeGraff, Foy, Holt-Harris & Kunz, LLP  
Counsel for Defendants  
90 State Street  
Albany, New York 12207

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ULSTER

ERNE RENN, on behalf of himself and all other paid members of the Fire Department of the City of Kingston similarly situated, et al.,

Plaintiffs,

-against-

ORVAL KIMBARK, CHARLES REIS, FRED REIS, CHARLES ALECCA, JOHN DITTUS, EDGAR HARLOW, EUGENE PERRY and HERBERT WOLF, in their individual capacities and as members of the Board of Trustees of the Kingston Fire Department Fund, Inc.,

Defendants.

**STIPULATION and ORDER**

Index No. 75-2056

FILED  
APR 03 2001  
ALBERT SPADA  
ULSTER COUNTY CLERK

WHEREAS, plaintiffs filed an Order to Show seeking a temporary restraining order returnable on August 7, 2000;

WHEREAS, the Court signed the Order to Show Cause and a Temporary Restraining Order on July 17, 2000 and

WHEREAS, defendants opposed plaintiffs' application and cross-moved to vacate the Temporary Restraining Order;

WHEREAS, by Decision dated October 4, 2000, the Court resolved certain issues leaving others for hearing to be conducted by a Court-appointed referee;

WHEREAS, the parties have conferenced the remaining issues before both the Court and the referee on numerous dates;

WHEREAS, the parties to this Stipulation desire to resolve and settle in full all claims that they had, have or may have against each other as of the effective date of this Stipulation:

NOW, THEREFORE, in order to avoid time consuming and costly litigation with respect to the foregoing issues, the parties hereby agree as follows:

1. Defendants shall pay to the plaintiffs by checks payable to the "Kingston Professional Fire Fighters Association Local 461" the following amounts under the following deadlines:

- (a) \$29,536.87 (representing 50% of the total 2% tax proceeds received by defendants in 2000 plus a partial payment of refunds for the years 1998 and 1999) within ten (10) days of this Court's approval of this Stipulation and signing of this Order; and
- (b) \$5,000.00 (representing a partial payment of refunds for the years 1998 and 1999) within thirty (30) days of defendants' receipt of 2% tax proceeds from the State of New York in 2001; and
- (c) \$5,000.00 (representing a partial payment of refunds for the years 1998 and 1999) within thirty (30) days of defendants' receipt of 2% tax proceeds from the State of New York in 2002; and
- (d) \$5,000.00 (representing a partial payment of refunds for the years 1998 and 1999) within thirty (30) days of defendants' receipt of 2% tax proceeds from the State of New York in 2003; and
- (e) \$3,756.69 (representing the final payment of refunds for the years 1998 and 1999) within thirty (30) days of defendants' receipt of 2% tax proceeds from the State of New York in 2004;

2. In addition to the payments described in paragraph "1" above, defendants agree to pay plaintiffs 50% of the total 2% tax proceeds received by defendants in 2001, and at least 50% of the total 2% tax proceeds received by defendants in each succeeding year within

thirty (30) days of defendants' receipt of such 2% tax proceeds. Defendants agree that plaintiffs' share of 2% tax proceeds shall be increased on the following conditions:

- (a) Plaintiffs' 50% share of 2% tax proceeds shall be increased permanently by 8% of the total amount of the 2% tax proceeds received by defendants for each volunteer fire company which fails to have at least one certified Firefighter <sup>EMK</sup> ~~(to be decided by the Court as being either a certified firefighter [as advanced by plaintiffs] or a certified firefighter or certified member [as advanced by defendants])~~ on any day during the calendar year (January 1 to December 31) preceding the year that 2% tax proceeds are received by defendants. Such additional 8% increase in plaintiffs' share shall remain even if a volunteer company has a member who is a certified Firefighter in a subsequent year. For example, if the Excelsior Hose Company fails to have a member who is a certified Firefighter on any day in 2002, the plaintiffs' share of the total 2% tax proceeds received by defendants in 2003 shall be increased by 8% permanently of the total 2% tax proceeds received by defendants in 2003 (i.e., 58% of the total 2% tax proceeds to plaintiffs). Plaintiffs' share shall not be subsequently reduced by 8% even if the Excelsior Hose Company has a member who is a certified Firefighter in 2003 or in any subsequent year. Plaintiffs' share of the 2% tax proceeds shall be permanently increased by an additional 8% for each additional volunteer company which fails to have a member who is a certified Firefighter in any calendar year preceding defendants' receipt of the 2% tax proceeds. Thus, plaintiffs' share of the 2% tax proceeds shall be permanently increased by 16% (i.e., 66% of the total 2% tax proceeds) if a second volunteer company fails to have a member who is a certified Firefighter in any calendar year preceding defendants' receipt of the 2% tax proceeds, increased by 24% (i.e., 74% of the total 2% tax proceeds) if a third volunteer company fails to have a member who is a certified Firefighter in any calendar year preceding defendants' receipt of the 2% tax proceeds, increased by 32% (i.e., 82% of the total 2% tax proceeds) if a fourth volunteer company fails to have a member who is a certified

<sup>1</sup> Defendants stipulate that there are currently five (5) volunteer companies (John N. Cordts Hose Company, Excelsior Hose Company, Union Hose Fire Company, Rapid Hose Company and the A. H. Wicks Engine & Truck Company) currently in existence in the City of Kingston.

~~Firefighter~~ <sup>FMK</sup> in any calendar year preceding defendants' receipt of the 2% tax proceeds, and increased by 40% (i.e., 90% of the total 2% tax proceeds) if a fifth volunteer company fails to have a member who is a certified ~~Firefighter~~ <sup>FMK</sup> in any calendar year preceding defendants' receipt of the 2% tax proceeds; and

- (b) plaintiffs' 50% share of 2% tax proceeds shall be increased permanently by 8% of the total amount of the 2% tax proceeds received by defendants for each volunteer company which is voluntarily disbanded, voluntarily consolidated with another company, consolidated with another company by the City of Kingston Common Council or closed by the City of Kingston Common Council in the year following the closing, consolidation or disbanding of such volunteer company. A consolidation of two or more volunteer companies shall result in a pro rata increase in the share of plaintiffs' 2% insurance monies. For example, if any two volunteer companies consolidate, plaintiffs' share of 2% insurance monies shall increase by 8% (i.e., 58% of the total 2% tax proceeds to plaintiffs). If three volunteer companies consolidate, plaintiffs' share of 2% insurance monies shall increase by 16% (i.e., 66% of the total 2% tax proceeds to plaintiffs). If four volunteer companies consolidate, plaintiffs' shall increase by 24% (i.e., 74% of the total 2% tax proceeds to plaintiffs). If five volunteer companies consolidate, plaintiffs' share of 2% tax monies shall increase by 32% (i.e., 82% of the total 2% tax proceeds to plaintiffs). If all five volunteer companies close or are voluntarily disbanded, plaintiffs' share shall be increased by 40% to a total of 90% of 2% tax proceeds received by defendants each year.

3. Defendants agree that within ten (10) days of the Court's approval of this Stipulation and signing of this Order, and at all times thereafter, at least two paid fire fighters chosen by the Kingston Professional Fire Fighters Association Local 461 shall serve as trustees to the defendant Kingston Fire Department Fund, Inc. Defendants further agree that paid fire fighters appointed as trustees to the Kingston Fire Department Fund shall enjoy the same rights and privileges as all other trustees to the Fund. Defendants agree to immediately take whatever

steps necessary to amend the by-laws of the Kingston Fire Department Fund in order to comply with this Stipulation and Order.

4. Defendants agree to provide the Kingston Professional Fire Fighters Association Local 461 with copies of all correspondence, copies of payments or other materials received by them from State of New York, the New York State Insurance Department and the New York State Comptroller's Office with respect to payment of 2% insurance monies within ten (10) days of receipt of such correspondence or materials.

5. Defendants agree to respond fully to any request for information by plaintiffs and/or by the Kingston Professional Fire Fighters Association Local 461 regarding defendants' compliance with the terms and conditions of this Stipulation and Order and payment of 2% insurance monies within 10 days of such request.

6. The parties understand and agree that any and all expenses related to the administration of the Kingston Fire Department Fund, Inc. and any and all expenses related to the administration of this Stipulation (collectively not to exceed \$500.00), shall be deducted and paid to defendants prior to making any calculations required under this Stipulation. For example, if the 2% money paid by the State in 2002 totals \$40,000, and the Fund incurred \$500 in administration expenses in 2001, the plaintiffs would receive one-half of \$39,500 plus the \$5,000 owed under paragraph "2" above.

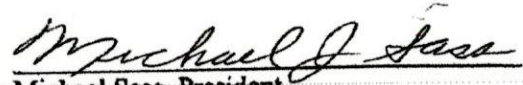
7. The Kingston Professional Fire Fighters Association Local 461 ("Local 461") agrees to indemnify the Kingston Fire Department Fund, Inc. ("Fund") against any and all claims made against the Fund by the City of Kingston or any official or representative of the City

of Kingston regarding distribution of the 2% tax proceeds. The Fund agrees to indemnify Local 461 against any and all claims made against Local 461 by any Kingston volunteer fire company, any member of any Kingston volunteer fire company, the Kingston Exempt Firemens' Association, or any member of the Kingston Exempt Firemens' Association regarding disbursement of the 2% tax proceeds.

8. The parties understand and agree that a violation of any term or provision of this Stipulation and Order, may be punishable as a Contempt of Court, in addition to any other appropriate relief.

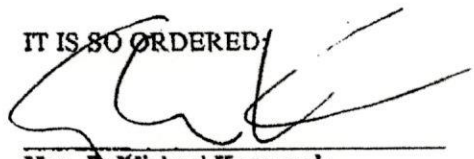
  
Lawrence Bigando, President  
Defendant Kingston Fire Department Fund, Inc.

3/19/01  
Dated

  
Michael Sass, President  
Kingston Professional Fire Fighters  
Association Local 461 - Representative of Plaintiffs

3/16/01  
Dated

Dated: Kingston, New York  
March 33, 2001

IT IS SO ORDERED:  
  
Hon. E. Michael Kavanagh  
Justice Supreme Court  
255 Wall Street  
Kingston, New York 12401



Index No. 75-2056

Year 2000

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ERNIE RENN, On Behalf of Himself and  
all other Paid Members of the Fire  
Department of the City of Kingston  
similarly situated, et al.,

Plaintiffs,

- against -

ORVAL KIMBARK, CHARLES REIS, FRED REIS, CHARLES ALECCA, JOHN  
DITTUS, EDGAR HARLOW, EUGENE PERRY AND HERBERT WOLF, in their  
Individual Capacities and as Members of the Board of Trustees of  
the Kingston Fire Department Fund, Inc.

Defendants.

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**NOTICE OF ENTRY**

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**MEYER, SUOZZI, ENGLISH & KLEIN, P.C.**

*Attorneys for* **PLAINTIFFS**

**Office and Post Office Address**  
1350 Broadway - Suite 501  
New York, New York 10018  
(212) 239-4999  
Facsimile (212) 239-1311

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**To:**

**Attorney(s) for**

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**Service of a copy of the within  
is hereby admitted.**

**Dated:** 2000

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*Attorney(s) for*

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