

STATE OF RHODE ISLAND  
KENT, SC.

SUPERIOR COURT

GIRARD BOUCHARD, in his capacity as :  
President of the Board of Directors of the :  
CENTRAL COVENTRY FIRE DISTRICT, :  
Plaintiff :

K.B. No.: 12-1150

v. :

CENTRAL COVENTRY FIRE DISTRICT, :  
Defendant :

**MEMORANDUM IN SUPPORT OF PAYMENT AND PRIORITY OF COMMERCIAL TAXPAYERS’  
CLAIM AGAINST THE CENTRAL COVENTRY FIRE DISTRICT FOR ILLEGALLY TIERED TAXES**

FACTS

Petitioners are seeking to recover an illegal tax that has been assessed against owners of commercial real estate located in the Central Coventry Fire District (hereinafter “CCFD”). Since 2009, the CCFD has been levying taxes in a tiered system, with residential landowners paying taxes at a rate of \$1.72 and \$1.82 per \$1,000 of assessed value, and commercial landowners paying taxes at the substantially higher rate of \$3.36 and \$3.62 per \$1,000 of assessed value. The CCFD lacked constitutional and statutory authority to tax in such a manner.

Starting on December 31, 2009, the CCFD assessed taxes using a tiered system that taxed commercial property at a higher rate than residential property. In 2009, commercial CCFD taxes were assessed at \$3.36 per \$1,000 of assessed value, while residential was assessed at \$1.72 per \$1,000. In 2010, 2011, and 2012, commercial real estate was assessed at \$3.62 per \$1,000 while residential real estate was assessed at \$1.82 per \$1,000. The tiered assessments of 2009, 2010, 2011, and 2012 are illegal, and resulted in the misappropriation of a substantial sum of money by the CCFD from commercial property owners during those years. Petitioners are seeking to recover the excess tax they were illegally required to pay. Petitioners are also seeking to have

the CCFD commercial taxpayers subject to the illegal tax certified as a class for the purposes of a class action. Finally, Petitioners are seeking to have the claims of the CCFD commercial taxpayers take priority over the claims of all other creditors of the CCFD in the receivership proceedings by way of a constructive trust.

#### JURISDICTION

This Honorable Court has equity jurisdiction to distribute the assets of the CCFD pursuant to R.I. Gen. Laws § 7-1.2-1316. Further, this Court has equity jurisdiction to remedy an illegal tax and certify a taxpayers' class action pursuant to R.I. Gen. Laws § 44-5-27 and Rule 23 of the Superior Court Rules of Civil Procedure. Finally, the Court has equity jurisdiction to award reasonable attorneys' fees pursuant to the common-benefit doctrine, common-fund doctrine, and R.I. Gen. Laws § 42-92-1 *et seq.*

#### ARGUMENT

##### **I. Petitioners are Entitled to Recover the Illegally Tiered Taxes That Were Assessed Against Them.**

There is no statutory or constitutional authority for the CCFD to assess commercial property at a higher rate than residential property through use of a tiered system. The CCFD is a governmental entity, which is separate and distinct from the Town of Coventry, created by the General Assembly in Rhode Island's 1959 Public Laws. The enabling legislation of the CCFD and the subsequent amendments thereto grant the CCFD the power to tax property owners within the district, but they do not authorize taxing using a tiered system.

R.I. Gen. Laws § 44-5-11.8(a) allows "any *city or town* [to] adopt a tax classification plan." (Emphasis added). The plain language of this statute does not extend the power to assess tiered taxes to fire districts. When a statute is "clear and unambiguous, [the Court] must enforce

it as written by giving the words of the [statute] their plain and ordinary meaning.” See Pierce v. Providence Retirement Bd., 15 A.3d 957, 963 (R.I. 2011) (internal quotation omitted). Further, courts “shall not interpret a statute to include a matter omitted unless the clear purpose of the legislation would fail without the implication.” See State v. Feng, 421 A.2d 1258, 1264 (R.I. 1980). Since § 44-5-11.8(a) only grants cities and towns the authority to assess tiered taxes, this statute cannot be read to extend such authority to a fire district. Since the CCFD has no constitutional or statutory authority to tax via a tiered system, it is illegal for it to do so, as “authority to tax is granted only by unequivocal instructions found in the Rhode Island Constitution and in statutes enacted by the Rhode Island legislature.” See Cabana v. Littler, 612 A.2d 678, 684 (R.I. 1992).

In a recent, nearly identical Rhode Island Superior Court case, Justice Stone ruled that the Albion Fire District was subjecting its commercial tax base to an illegally tiered tax. See Kirkbrae Glen, Inc. v. Albion Fire Dist., C.A. No. PC 09-5843 (R.I. Super. 2011). In that case, the Albion Fire District taxed commercial property at tiered rate without statutory or constitutional authority, from October of 2008 to approximately October 2010. Id. at \*1-2. Relying on the case law cited above, Justice Stone held that the Albion Fire District’s tiered tax system was illegal, and that the commercial taxpayer plaintiffs in the case were entitled to a refund of the illegally collected tax. Id. at 7. The decision of Justice Stone is persuasive authority for the Court in this matter, and demonstrates that Petitioners’ claim has a sound foundation in Rhode Island law.

Finally, it should be noted that Special Master Richard Land, appointed to CCFD in the receivership, has acknowledged that CCFD’s tiered tax system is illegal and could subject the CCFD to liability. See Lauren Costa, *CCFD Public Meeting Sheds Light on Financial Issues*,

Coventry Patch, Dec. 11, 2012 (“Land explained that the fire district’s charter has never legally allowed for multi-tiered taxation, essentially meaning that an illegal tax rate has been used up until now. Residential taxpayers who paid less than what they would have had to with the proper taxation will not be billed for the difference, but the issue of whether or not commercial property owners will be reimbursed for what they ‘overpaid’ may have to be presented to the court in the future.”) (available at <http://coventry.patch.com/articles/ccfd-public-meeting-sheds-light-on-financial-issues>). Additionally, in recognition of the absence of authority for the CCFD to assess tiered taxes, legislation has been introduced (2013-H 5176) to attempt to allow the CCFD to tax with a tiered system going forward.

It is clear that the CCFD has illegally taxed commercial property owners in the district at a higher tiered rate for the years 2009-2012. Therefore, the Petitioners and other CCFD commercial taxpayers should have the illegal assessment refunded to them in these receivership proceedings. See R.I. Gen. Laws § 44-5-27 (conferring equity jurisdiction on Superior Court to order refund of an illegally assessed tax).

**II. Petitioners’ Claim is Entitled to Priority in the Receivership Proceedings, as the Court Should Impose a Constructive Trust on the CCFD’s Assets in the Amount of the Illegally Obtained Taxes.**

It is a rare occurrence for a taxing authority to file for receivership. Accordingly, there is a dearth of case law directly addressing the priority of a taxpayer’s claim for an illegal assessment in the taxing authority’s receivership proceedings. However, relying on ancillary case law and the unique facts of this case, it is clear that Petitioners’ claim should be afforded the highest priority.

*i. This Court Should Liquidate the Assets of the CCFD According to the Course of Equity.*

R.I. Gen. Laws § 7-1.2-1316, which authorizes the Court to liquidate the CCFD in these receivership proceedings, “leave[s] with the court itself the authority to supervise and direct the receiver in the administration of his trust according to the course of equity.” See Anthony v. Anthony & Cowell Co., 99 A. 641, 644 (R.I. 1917) (internal quotation omitted); see also R.I. Gen. Laws § 7-1.2-1316(a) (“In proceedings to liquidate the assets and business of a corporation the court has general equity jurisdiction and power to issue any orders, injunctions, and decrees that justice and equity require.”). This Court has an obligation to liquidate the CCFD in a way that is fair and equitable. One tool a court of equity may use for the fair distribution of funds is a constructive trust. “[A] constructive trust is the equitable prevention of unjust enrichment of one party at the expense of another.” See Connor v. Schlemmer, 996 A.2d 98, 109 (R.I. 2010).

*ii. Equity Calls for this Court to Establish a Constructive Trust in Favor of Petitioners & Other CCFD Commercial Taxpayers on the CCFD’s Assets.*

“[A] constructive trust will arise if the plaintiff established first, that a fiduciary relationship exists between the parties and second, that a breach thereof occurred.” See Cahill v. Antonelli, 390 A.2d 936, 938 (R.I. 1978). Further, “[t]he actual existence of any fraudulent intent need not be shown because the breach of the fiduciary duty itself amounts to constructive fraud.” Id.

Here, the CCFD, at the time the illegal tax was assessed, was governed by a seven-member Board of Directors that was elected annually by property owners within the district. It is well-settled that “a public officer, in holding a position of public trust, stands in a fiduciary relationship to the citizens that he or she has been elected to serve.” See Felkner v. Chariho Reg’l Sch. Comm., 968 A.2d 865, 874 (R.I. 2009); see also United States v. Silvano, 812 F.2d 754, 759 (1<sup>st</sup> Cir. 1987) (“a public official acts as trustee for the citizens and the State . . . and

thus owes the normal fiduciary duties of a trustee.”). The principle that a public official is a fiduciary of his or her electorate is fundamental to our republican form of governance:

The foundation of a republic is the virtue of its citizens. They are at once sovereigns and subjects. . . . The theory of our government is, that all public stations are trusts, and that those clothed with them are to be animated in the discharge of their duties solely by considerations of right, justice, and the public good. See Trist v. Child, 88 U.S. (21 Wall.) 441, 450 (1874), citing 1 Montesquieu, *Spirit of Laws*, 17.

The elected board members of the CCFD were in a fiduciary relationship with the commercial property owners of the district at the time the board members taxed the commercial property owners at an illegal rate. Black’s Law Dictionary defines “fiduciary relationship” as “[a] relationship requiring the highest duty of care.” In this case, the elected board members of the CCFD breached their fiduciary duty of care when they taxed the commercial property owners at an illegally excessive rate. The full extent of this breach is examined below.

First, the CCFD board had absolutely no statutory or constitutional authority to rely upon when taxing commercial property owners at the tiered rate. The board proceeded to tax at a tiered rate in absence of authority, despite well-settled Rhode Island law that “authority to tax is granted only by unequivocal instructions found in the Rhode Island Constitution and in statutes enacted by the Rhode Island legislature.” See Cabana, 612 A.2d at 684.

Second, the CCFD board made no attempt to obtain a legal opinion on whether or not it could legally tax at a tiered rate prior to implementing the tax. If the CCFD board had bothered to solicit even minimally competent legal advice, it would have known it did not have the authority to tax in such a manner.

Finally, Justice Stone decided the *Albion Fire District* case in 2011, finding that it was illegal for a fire district in a position identical to CCFD to tax at a tiered rate. And yet the CCFD continued to tax at an illegally tiered rate for the years of 2011 and 2012, before filing for

receivership. The fiduciary relationship between the elected CCFD board and the commercial tax payers imposed “the highest duty of care” upon the CCFD. When the CCFD taxed commercial property owners at a clearly excessive and illegal rate, it fell well below that high standard.<sup>1</sup>

Because the CCFD owed the commercial property owners of the district a fiduciary duty and because the district was unjustly enriched by a breach of that duty, this Court should use its equitable authority to establish a constructive trust of the CCFD’s assets in favor of the Petitioners and other affected commercial taxpayers for the amount of the unjust enrichment. The constructive trust arises even absent a showing of fraud on the part of the CCFD, as the CCFD has breached its fiduciary duty to the taxpayers and Petitioners. See Cahill, 390 A.2d at 938.

*iii. Because Petitioners & Other Affected Taxpayers are Beneficiaries of a Constructive Trust, and Because the Trust Res May be Equitably Traced, Petitioner Taxpayers are Entitled to their Claim Prior to All Other Secured and Unsecured Creditors.*

Petitioners and affected taxpayers, as beneficiaries of a constructive trust, are entitled to the trust res prior to all other creditors, whether secured or unsecured. See e.g. Connecticut General Life Ins. Co. v. Universal Ins. Co., 838 F.2d 612, 618 (1<sup>st</sup> Cir 1988) (“When a debtor is in possession of property impressed by a trust -- express or constructive -- the bankrupt estate holds the property subject to the outstanding interest of the beneficiaries.”); see also Coastal Finance Corp. v. Coastal Finance Corp. of North Providence, 387 A.2d 1373, 1378 (R.I. 1978) (unsecured creditor did not gain priority over secured creditor because he could not establish a legal basis for a constructive trust); Marandola v. Marandola Mech. Inc., 2004 R.I. Super. LEXIS

---

<sup>1</sup> It should be noted that on February 19, 2013, this Court entered an order requesting the CCFD board members to resign their post or else participate in an evidentiary hearing to determine if they should be removed for cause. All seven members chose to resign rather than have their stewardship of the district scrutinized by the Court.

115 at \*25 (R.I. Super. 2004) (same); FTC v. Crittenden, 823 F.Supp. 699, 701 (C.D.Cal.1993), aff'd 19 F.3d 26 (9th Cir.1994) (when constructive trust is established, interest of trust beneficiaries takes priority over federal tax lien); Reliance Insurance Co. v. Brown, 40 B.R. 214 (W.D.Mo.1984) (same).

To obtain priority over other creditors by way of a trust, the claimant must meet two requirements: “first, the claimant must prove the existence and legal source of a trust relationship; second, the claimant must identify the trust fund or property and, where the trust fund has been commingled with general property of the [debtor], sufficiently trace the property or funds.” See Connecticut General Life Ins., 838 F.2d at 618.

First, for the reasons stated above, Petitioners and affected taxpayers have a constructive trust on the funds that were illegally taken from them. Second, tracing the funds is a matter of simple computation, as the CCFD and the taxpayers retain thorough records of the amount of illegally excessive tax taken and the times at which it was taken. Further, the CCFD should have records of how all of its funds were allocated when the illegal taxes were assessed. The fact that the illegal and legal taxes were assessed at the same time in no way hinders tracing the funds, as “mere commingling of the trust property with other property of the [debtor] . . . does not defeat [the trust beneficiary]’s claim.” Id. at 619.

The policy behind granting priority to the beneficiaries of a constructive trust was well enunciated by a California Federal District Court in *FTC v. Crittenden*. In that case, an insolvent company had been defrauding its customers, and a constructive trust was imposed on the company’s assets in favor of the defrauded customers. The court ruled that the customers were entitled to the constructive trust res prior to satisfaction of a federal tax lien, even though such



liens are afforded the highest priority pursuant to 26 U.S.C. § 6321. In giving the customers first priority, the court held that:

The Court need not determine whether the IRS is entitled to statutory priority over the receivership funds because those funds belong to [the defendant's] customers under a constructive trust, not to [the defendant] himself. Since the funds do not belong to [the defendant], the IRS lien does not attach to the receivership funds. See Crittenden, 823 F.Supp. at 701.

Here, the CCFD never legally obtained the excess tax from the commercial property owners. Since the CCFD never owned the tax, but merely held it in constructive trust, the claims of the CCFD's creditors cannot attach to it, and the Petitioners and affected taxpayers should be given first priority to obtain their property.

Because the illegal tax is subject to a constructive trust, and because the illegal tax can be traced, the Petitioners and other affected taxpayers are entitled to receive the money illegally taken from them prior to all other creditors, secured and unsecured.

*iv. Other Equitable Considerations Call for the Petitioners' & Affected Taxpayers' Claim to Receive Priority.*

As noted earlier, this Court should liquidate the CCFD "according to the course of equity." See Anthony, 99 A. at 644. There are several additional equitable factors this Court should consider that lead to the conclusion that Petitioners' and affected taxpayers' claim should be given priority.

First, "courts must assiduously protect the people from abuse of the government's taxing authority." See West v. McDonald, 18 A.3d 526, 535 (R.I. 2011), quoting Cabana, 612 A.2d at 684. If the taxpayers are not given priority to recoup the illegal tax, not only will they not be protected, but the CCFD and its creditors will be unjustly enriched by the CCFD's flagrant abuse of authority. While the CCFD's creditors may not be at fault for the collapse of the CCFD, they did choose to invest money in the CCFD, and took the calculated risk that they would not see a

return on investment. The taxpayers, however, did not choose to invest their money in the CCFD, but rather had their money illegally taken from them. Since this Court has a duty to remedy the CCFD's abuse of its taxing authority, the taxpayer claim should be given priority.

Second, the illegal tax wrongfully provided the purchase money for much of the CCFD's assets. If the CCFD had complied with the law, and never collected the excessive tax, the CCFD would have significantly less assets for creditors to attempt to collect. As such, Petitioners and affected taxpayers should be entitled to priority over the assets for which their illegally appropriated taxes wrongfully provided the purchase money.

Finally, if the situation was reversed, and a taxpayer became insolvent, the taxing authority would be entitled to priority for their claim to any uncollected taxes. See R.I. Gen. Laws § 44-7-10. Equity requires that like situations be treated alike. Therefore, a taxpayer's claim against an insolvent taxing authority should be given at least the same priority of a taxing authority's claim against an insolvent taxpayer. As such, Petitioners' and affected taxpayers' claim against the CCFD should be given the same priority that the CCFD would be given under R.I. Gen. Laws § 44-7-10 in a like claim.

### **III. CCFD Commercial Taxpayers Should be Certified as a Class Pursuant to Rule 23 of the Superior Court Rules of Civil Procedure, and Petitioners Should be Awarded Reasonable Attorneys' Fees.**

#### *i. A Class Should be Certified.*

Rule 23 of the Rhode Island Superior Court Rules of Civil Procedure sets out a number of elements that must be met for a class to be certified. First, subsection 23(a) sets out four requirements, all of which must be met for a class to be certified. They are:

1. The class is so numerous that joinder of all members is impracticable,
2. There are questions of law or fact common to the class,

3. The claims or defenses of the representative parties are typical of the claims or defenses of the class, and
4. The representative parties will fairly and adequately protect the interests of the class.

Here, all four elements of subsection 23(a) are clearly met. First, the number of commercial property owners is large enough where it would be impracticable for every commercial property owner, both large and small, to hire counsel and join these receivership proceedings as a petitioner. Second, the questions of law and fact are nearly identical for each of the commercial property owners- i.e. the tiered assessment against all CCFD commercial property owners was illegal, and all of the CCFD commercial property owners' claims are entitled to priority. Likewise, the claims of the Petitioners who have filed a proof of claim in these proceedings are identical to that of the CCFD commercial taxpayers. Finally, the Petitioners who have filed a proof a claim will fairly, adequately, and zealously represent the claims of the class, as the Petitioners' success in recovery is intimately tied to the success of the class.

Next, subsection 23(b) sets out three requirements, only one of which needs to be met for a class to certified. Those requirements are:

1. The prosecution of separate actions by or against individual members of the class would create a risk of:
  - a) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
  - b) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
2. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

3. The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Here, the class of CCFD commercial taxpayers meets the requirements of subsection (b)(1), (b)(2), and (b)(3). First, treating commercial taxpayers as a class would lead to a more consistent result in regard to priority of the taxpayers' claims. Also, it would lead to a more efficient administration of claims if a class is certified. Second, the CCFD, the party opposing the class, acted on grounds generally applicable to the class. The CCFD assessed an illegal tax against the commercial property owners equally, and as such it is appropriate to grant relief to the class as a whole. Finally, as demonstrated above, common questions of law and fact predominate over the CCFD commercial taxpayers' claims, and a class action is clearly the superior means to handle these claims.

It should be noted that there is significant Rhode Island precedent for certifying a class action for groups of taxpayers subject to an illegal tax. In *Johnston Businessmen's Ass'n v. Aarussillo*, the Rhode Island Supreme Court upheld the class certification of taxpayers subject to the same illegal assessment. See 274 A.2d 433, 435 (R.I. 1971). In that case, the Court noted that R.I. Gen. Laws § 44-5-27 provides that "in a proper case the taxpayer may invoke the equity jurisdiction of the superior court." The Court went on to hold that "[a] taxpayers' class action certainly was an appropriate matter for equity's jurisdiction." Id. In ruling that a taxpayer class action could be brought under § 44-5-27 and a court's equity jurisdiction, the Court noted "the long standing judicial policy in this state to allow this type of suit." Id.; see also Cabana, 612 A.2d at 686 ("[A] taxpayer suit can be maintained as a class action despite the exclusive statutory remedy for an illegal tax provided in § 44-5-26 and § 44-5-27.").

Because all of the necessary requirements of Rule 23 are met, and because of Rhode Island's long standing policy to allow taxpayer class actions, a class should be certified in this case.

*ii. Petitioners Should be Awarded Reasonable Attorneys' Fees, as They are Providing a Common Benefit to the Class.*

In *Malinou v. Powers*, the Rhode Island Supreme Court recognized the doctrine that a party may be awarded reasonable attorneys' fees "in equity proceedings . . . where a plaintiff has successfully maintained a class action of benefit both to himself and to the members of the class." See 333 A.2d 420, 423 (R.I. 1975), citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970); *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 718-19 (1967); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 166 (1939). The Rhode Island Supreme Court reaffirmed this common-benefit doctrine a year later. See *Malinou v. Rhode Island Hosp. Trust Nat'l Bank*, 359 A.2d 43, 45 (R.I. 1976).

The United States Supreme Court stated the policy behind the common-benefit doctrine as follows:

While the general American rule is that attorneys' fees are not ordinarily recoverable as costs, both the courts and Congress have developed exceptions to this rule for situations in which overriding considerations indicate the need for such a recovery. A primary judge-created exception has been to award expenses where a plaintiff has successfully maintained a suit, usually on behalf of a class, that benefits a group of others in the same manner as himself. . . . To allow the others to obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff's expense. See *Mills*, 396 U.S. at 391-392.

These policy considerations apply perfectly to the case at hand. Here, Petitioners have borne the expense of litigation in order to preserve funds for the class of CCFD commercial taxpayers and confer a benefit on said taxpayers. Therefore, it is equitable to set aside a small portion of the funds so preserved to pay for the reasonable attorneys' fees that Petitioners have

borne, and that have benefitted the entire class. Accordingly, the Court, pursuant to its equity powers, should provide Petitioners with an award of reasonable attorneys' fees.

*iii. Even if a Class is not Certified, Petitioners Should be Awarded Reasonable Attorneys' Fees.*

Even assuming, *arguendo*, that a class is not certified, Petitioners should be awarded reasonable attorneys' fees for two reasons. First, attorneys' fees should be awarded pursuant to the common-fund doctrine. Second, attorneys' fees should be awarded pursuant to the Rhode Island Equal Access to Justice for Small Businesses and Individuals Act. See R.I. Gen. Laws § 42-92-1 *et seq*

In *Sprague v. Ticonic Nat'l Bank*, the United States Supreme Court held that a party was allowed to recover attorneys' fees, even though "petitioner neither avowed herself to be the representative of a class nor did she automatically establish a fund in which others could participate." See 307 U.S. at 166. Petitioner was allowed to recover attorneys' fees because "in view of the consequences of *stare decisis*, the petitioner by establishing her claim necessarily established the claims of fourteen other trusts pertaining to the same bonds." Id. Here, when Petitioners establish their claim to CCFD funds and establish their priority to the claim, by operation of *stare decisis*, the claim and priority for all CCFD commercial taxpayers will be established. As such, this Court should exercise its equity powers to award Petitioners reasonable attorneys' fees even if a class is not certified.

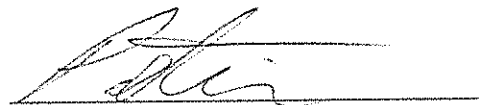
Finally, R.I. Gen. Laws § 42-92-1 states that "by contesting an unjust agency action and prevailing, the individual or small business often performs an important service to the public." Further, R.I. Gen. Laws § 42-92-3 allows a court to award an individual or small business reasonable attorneys' fees if they contest an agency action that is not "substantially justified." Here, the CCFD is a governmental agency that acted without substantial justification when it

taxed commercial property owners at an illegally tiered rate. As such, Petitioners are entitled to an award of reasonable attorneys' fees in challenging the unjustified agency action pursuant to § 42-92-3.

CONCLUSION

For the reasons stated above, Petitioners respectfully request this Honorable Court to grant their claim against the CCFD for the recovery of illegally assessed taxes. Further, Petitioners respectfully request this Honorable Court to grant priority to said claim over the other creditors of the CCFD. Finally, Petitioners respectfully request that all affected CCFD commercial taxpayers be certified as a class for these receivership proceedings, and that Petitioners be awarded reasonable attorneys' fees.

Petitioners, by their attorneys,



Anthony DeSisto #3146

Stephanie Federico #6839

Peter Skwirz #8809

Anthony DeSisto Law Associates, LLC

450 Veterans Memorial Parkway, Suite 103

East Providence, Rhode Island 02914

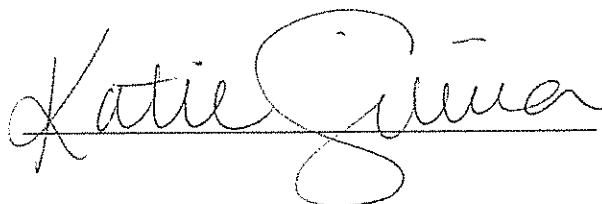
Tel: (401) 421-0170

Fax: (401) 270-4878

**CERTIFICATION**

I hereby certify that a true copy of this Motion was sent via first class mail, postage pre-paid on this 23<sup>rd</sup> day of April, 2013 to:

Richard J. Land, Esq.  
Chace, Ruttenberg, & Freedman, LLP  
One Park Row  
Suite 300  
Providence, RI 02903

A handwritten signature in cursive script, reading "Katie Guina", written over a horizontal line.