

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

TOM CLINTON, COMMISSIONER OF)
THE REVENUE FOR THE CITY OF)
FALLS CHURCH, VIRGINIA,)

Plaintiff,)

v.)

IDYLWOOD VILLAGE SECTION TWO)
LIMITED PARTNERSHIP,)

Serve:)

Culmore Realty Company, Registered Agent)
6031 Leesburg Pike)
Bailey's Crossroad, Virginia 22041)

PROVIDENCE APARTMENTS, LLC,)

Serve:)

John R. Brunner, Registered Agent)
6031 Leesburg Pike)
Bailey's Crossroads, Virginia 22041)

and)

IDYLWOOD GARDENS ASSOCIATES)
LLLP,)

Serve:)

Robert P. Holmes, Registered Agent)
5138 Heritage Lane)
Alexandria, Virginia 22311)

Defendants.)

CASE NO. CL10-2118

RECEIVED

DEC 27 2010

PAUL PERCUPON, CLERK
Arlington County Circuit Court
by _____ Deputy Clerk

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff, Tom Clinton, Commissioner of the Revenue for the City of Falls Church, Virginia, by counsel, pursuant to Va. Code § 8.01-184, et seq., requests this Court to issue a declaratory judgment and award injunctive relief against the Defendants, Idylwood Village Section Two Limited Partnership, Providence Apartments, LLC, and Idylwood Gardens Associates LLLP, and in support thereof states as follows:

1. Plaintiff is the Commissioner of the Revenue for the City of Falls Church (“the Commissioner”). All of the books and records of the Commissioner are located in the City of Falls Church.
2. Defendants, Idylwood Village Section Two Limited Partnership, Providence Apartments, LLC, and Idylwood Gardens Associates LLLP (“Defendants”), claim that they are customers of the water system operated by the City of Falls Church.
3. The Commissioner has received a letter dated December 22, 2010 (“the Demand Letter”), in which Defendants, through their attorney, demand that the Commissioner issue refunds of alleged “unconstitutional taxes paid by the [Defendants] and all others similarly situated” or “commence an action in court to secure such refunds for [Defendants] and all others similarly situated.” A copy of the Demand Letter is attached as Exhibit A. The Defendants threaten “to seek a writ of mandamus” against the Commissioner if he fails to comply with their demands. See Ex. A at 2.
4. The City’s water system serves residents of the City as well as a number of residents of Fairfax County who consent to receive public water from the City’s water system. Defendants imply in the Demand Letter that they are customers of the City’s water system and that they are non-residents of the City.

5. In the Demand Letter, Defendants rest their claim that they have paid “unconstitutional taxes” solely on a ruling by the Circuit Court of Fairfax County regarding the City’s future water rates (FY2009 and after) in a lawsuit styled “Fairfax County Water Authority v. City of Falls Church” (“the Water Authority Case”). The only parties in the Water Authority Case were the Fairfax County Water Authority and the City of Falls Church. Enclosed with the Demand Letter was a copy of the January 6, 2010, opinion letter (“the Opinion Letter”) of the Circuit Court of Fairfax County in the Water Authority Case. A copy of the Opinion Letter is attached as Exhibit B, although the Commissioner does not agree with or acquiesce in its purported statement of facts or legal analysis.

6. The ruling in the Water Authority Case was prospective only and did not require the refund of any money to any customer of the City’s water system. A copy of the Final Decree entered in the Water Authority Case (“the Final Decree”) is attached as Exhibit C.

7. In fact, the Fairfax County Water Authority, the only plaintiff in the Water Authority Case, did not request and was not awarded any monetary refund, and the Opinion Letter explicitly recognizes that: “Fairfax Water is not seeking disgorgement of fees.” See Exhibit B at 10.

8. Defendants were not parties to the Water Authority Case, and they have no right to assert a claim for any refund based on the Circuit Court’s ruling in that case.

9. By relying on the decision of the Circuit Court in the Water Authority Case, Defendants are effectively seeking greater rights than those held by the Fairfax County Water Authority, the only plaintiff in that case. Defendants are not entitled to any such rights, and the Commissioner is not required to grant rights to Defendants based on the ruling in the Water Authority Case.

10. Assuming, arguendo, Defendants could rely on the ruling of the Circuit Court of Fairfax County in the Water Authority Case, what that court found unconstitutional was the transfer of funds from the water system to the City's general fund. See Ex. B at 10. Thus, even if Defendants could properly rely on the ruling in the Water Authority Case, they would not be entitled to any refund, because the City could transfer any such refund amount from the general fund to the water fund in order to remedy the purported unconstitutionality relative to Defendants' alleged "taxes."

11. The Final Decree also provides that the FY2009 transfer from the City's water fund to the City's general fund was restrained. In a Consent Decree entered on January 27, 2010 ("the Consent Decree"), in the Water Authority Case, the parties agreed that the City could transfer funds for FY2009 from the water fund to the general fund, provided that the City was required to return that money to the water fund, plus interest at the amount of 6% from October 7, 2009, the date the FY2009 transfer was made to the City's general fund. On December 10, 2010, the City returned the foregoing FY2009 transfer to the City's water fund, plus interest at the amount of 6% from October 7, 2009. A copy of the Consent Decree is attached as Exhibit D.

12. Based on the return of the City's FY2009 transfer to the City's water fund, Defendants have no basis to make any claim for any refund of water fees covered by the FY 2009 transfer under the Final Decree in the Water Authority Case. In addition, the Commissioner has no control over the water fund.

13. There was no transfer for FY2010 from the City's water fund to the general fund. Thus, Defendants have no basis to make any claim for any refund of FY2010 water fees under the ruling in the Water Authority Case.

14. Assuming, arguendo, that Defendants could stand in the shoes of the Fairfax County Water Authority based on the ruling in the Water Authority Case, they would be barred by the doctrine of res judicata because asserting a right to a refund now, after failing to do so in the earlier case, would constitute claim-splitting.

15. The Commissioner was also not a party to the Water Authority Case; therefore, the Commissioner is not bound by the Final Decree in that case.

16. Under these circumstances, the Demand Letter wrongly asserts that the Commissioner is “obligated” under Va. Code § 58.1-3984(B) “to either correct the assessments or petition the court for relief of the [Defendants] and any other affected persons.”

17. In addition, even if Defendants were entitled to rely on a ruling of the Circuit Court of Fairfax County in a case in which they were not parties, the Demand Letter omits any essential details, such as the amount of the claimed tax refunds, the period for which such refunds are allegedly due and owing, the manner in which the Commissioner is required to calculate any such refund, and any basis upon which Defendants have been authorized to or are entitled to request refunds for any other parties.

18. Contrary to the assertions in the Demand Letter, the Commissioner is not bound by the decision of the Circuit Court of Fairfax County in the Water Authority Case and is not legally obligated to issue any tax refunds under these circumstances or to “commence an action in court to secure such refunds for [Defendants] and all others similarly situated, before the end of calendar year 2010.”

19. The provisions of Title 58.1 of the Virginia Code do not apply to the collection of water fees paid to the City for public water service. In fact, the Commissioner plays no role and has no duty with respect to such fees.

20. The Commissioner disputes the assertions of Defendants that they are entitled to any tax refunds based on the ruling of the Circuit Court of Fairfax County in the Water Authority Case. At the very least, the Commissioner is not certain that the assessment of any tax is improper or is based on obvious error. He is unwilling, therefore, to issue any tax refunds or file suit under Va. Code § 58.1-3984(B) as demanded in the Demand Letter.

21. Assuming, arguendo, that Defendants could rely on the ruling of the Circuit Court in the Water Authority Case, that the Commissioner were bound by that ruling, and that Defendants had provided sufficient detail in the Demand Letter to delineate the amount of taxes they claim were unconstitutional, the Commissioner is not certain that any refund to Defendants or any other parties would be appropriate. Even in that hypothetical situation, for example, the City could take the amount claimed by Defendants and remedy their claim by transferring that amount from the City's general fund to its water system fund.

22. Defendants state in the Demand Letter that, in the event the Commissioner refuses before January 1, 2011, to either issue tax refunds to them and "all others similarly situated" or commence an action in court to secure such refunds, they "intend to seek a writ of mandamus to require that compliance." See Ex. A at 2.

23. The Commissioner disputes Defendants' assertion that he has any authority or statutory duty to issue the requested tax refunds or to file suit to secure such refunds.

24. The Commissioner is entitled to use his discretion in determining whether to issue any tax refunds such as those requested by Defendants in the Demand Letter, and he is authorized to decline Defendants' demands relating to the requested tax refunds.

25. The Commissioner is also entitled to use his discretion in determining whether to commence an action in court to issue any tax refunds such as those requested by Defendants in

the Demand Letter and he is authorized to decline the demands of Defendants in the Demand Letter relating to the commencement of an action in court to secure the requested refunds.

26. There exists an actual controversy between the Commissioner and Defendants regarding the authority and duty of the Commissioner either to issue the tax refunds requested by Defendants or to commence an action in court to secure such refunds as alleged by Defendants in the Demand Letter.

27. Venue in this Court is proper pursuant to Va. Code § 8.01-261, as this suit concerns the Commissioner, a constitutional officer who regularly and systematically conducts his business in the City of Falls Church, and seeks to enjoin a threatened mandamus action relating to records or proceedings in the City of Falls Church. See Va. Code §§ 8.01-185 and -261.

REQUESTED RELIEF

WHEREFORE the Commissioner, by counsel, respectfully requests that the Court:

- A. Issue a declaratory judgment that
- (i) Defendants are not entitled to rest any claim for a tax refund on the ruling of the Circuit Court of Fairfax County in the Water Authority Case;
 - (ii) The Commissioner is not required to rely upon and is not bound by the decision of the Circuit Court of Fairfax County in the Water Authority Case with regard to the claims and demands of Defendants in the Demand Letter;
 - (iii) The Commissioner is not obligated to issue any tax refunds based on the claims in the Demand Letter; and/or
 - (iv) The Commissioner is not obligated to commence an action in court to secure the tax refunds demanded in the Demand Letter.

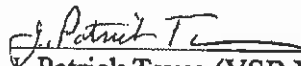
B. Enjoin Defendants from filing and/or maintaining any action for a writ of mandamus or other action against the Commissioner regarding the claims asserted in the Demand Letter.

C. Grant the Commissioner such other and further relief as the Court may deem appropriate.

Respectfully submitted,

**TOM CLINTON, COMMISSIONER OF
THE REVENUE FOR THE CITY OF
FALLS CHURCH, VIRGINIA**

By Counsel



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