



Montauk's Trustee Corporation
Township of Montauk
Est. 1986/1992/2000

**RETAINER AGREEMENT OF STEPHEN G. COURT, ESQ.
with and by THE MONTAUK FRIENDS OF OLMSTED
PARKS / MONTAUK TRUSTEE CORPORATION (v. 2/27)**

***Re: matter of Town of Montauk, Inc. v. Pataki, et al. under Suffolk
Index no. 04-27553 and Appellate Division Second Department
Docket no. 2005-339.***

1. This agreement for legal services is between Stephen G. Court, Esq., of 50 Danes Street, Patchogue, Long Island, New York 11772 (Attorney) and the Montauk Friends of Olmsted Parks / Montauk Trustee Corporation (Client) at P.O. Box 2612 Montauk, Long Island, New York, 11954.
2. Mr. Robert A. Ficalora, CEO of Client, will assist in the preparation of documents and has the corporate power to control and direct the above referenced proceeding; all motions or other court documents must be reviewed and approved by him prior to their use, with this contract to be presented to the court by Attorney upon noticing his appearance/substitution.
3. Client will pay \$5,000 for this contract establishing the contingency compensation arrangement set forth below.
4. Attorney will provide Client accurate time and expense records upon clients request and seven (7) days notice.
5. Attorney will bill Client in at an hourly rate of \$150/\$200 per hour out of/in court .1 hour (6 minute) increments for any day when work is performed upon Client's file with billable hours and bonuses in excess of the \$5,000 to be paid only contingent upon the recovery of Montauk's taxes to Client for this use.

RAE

6. In order to accomplish #5 (above) Attorney will present the instant Order to Show Cause (OSC) to the Appellate Division Second Department in Brooklyn for entry by a motion pursuant to CPLR §5704.
7. Client will pay all expenses incurred by attorney including but not limited to costs of filing papers, long distance telephone calls, corporate administration services, travel, parking, courier service, photocopies, postage and faxes made by attorney; Client will provide equipment/software for Attorney to maintain and use an Efax account to FAX all documents received or filed to Client at (631) 614-4319.
8. Should Attorney, upon his own initiative terminate the Attorney-Client relationship prior to the OSC and Petition papers having been fully submitted for the court's determination, attorney agrees to return the \$5,000 to Client, but the \$5,000 is otherwise non-refundable.
9. Client has the right to terminate this agreement at any time and to obtain copies of all correspondence, filings and receipts but will have no claim to a refund of the \$5,000 retainer.
10. Attorney may seek to withdraw from this agreement and cause of action in any of the following occur:
 - a. Client fails to pay any statement of services rendered according to this agreement within thirty(30) days after it is submitted to Client for payment
 - b. Client (i) engages in improper or illegal conduct, (ii) refuses to cease and desist from same; (iii) after attorney discovers said conduct, and (iv) requests that Client cease and desist; or
 - c. The relationship between Client and Attorney deteriorates to the point where neither can work together.
11. Should a dispute arise concerning Attorney's fee, Client may seek arbitration which will be binding upon both Client and Attorney. Information regarding arbitration will be provided to Client in the event of such a dispute or upon client's request.
12. This \$5,000 payment plus contingent fee and bonus agreement covers the below specified scope of work (excluding expenses) through the obtaining of decisions upon the instant Order to Show Cause and Petition.

Scope of work covered:

- A. Attorney will serve second notices of Petition upon respondents together with notice of the CPLR §5704 motion to be argued on a Friday with at least twenty-four hours of service by FAX upon parties. (The CPLR §5704 motion was previously dismissed on January 10th, 2005 by the Appellate Division due to failure of

corporate petitioner to appear by attorney when the court retained the record under file no. 2005-339 and is expecting Client to return with an attorney.

- B. Attorney will answer all pending or submitted motions by other parties. In appearing before the Appellate Division for the OSC, our major focus will be on assignment of the case to the Suffolk Commercial Division and obtaining the restraining order upon East Hampton's claim to issue building permits in Montauk.
- C. After having the OSC entered, Attorney will argue the orders requested in the OSC, hopefully before the Suffolk County Commercial Division of Judge Emerson in Riverhead, to get an orders recognizing Montauk as an Incorporated Township and ordering its revenues.(including taxes) into court pursuant to statute (CPLR 2701).
- D. Should we fail to recover Montauk's revenues for use in litigation it will be assumed that there is no probability of success in pursuing this litigation and, after consultation with Client, attorney will be directed to "fold up" the litigation and stipulate discontinuance against respondents in the manner most beneficial to the Incorporated Township of Montauk with mutual releases of liens to be entered by both Client and Attorney.
- E. When Montauk is successful in obtaining its taxes for use in litigation, Attorney will receive a \$30,000 bonus and compensation for all hours worked in excess of the \$5,000 retainer at the rate of \$150 or \$200 per hour (out of or in court) and the following other compensation and bonus incentives.
- F. BONUSSES – Upon success in recovering Montauk's taxes to the Montauk Trustee Corporation in litigation, Attorney will receive:
 - a. A \$6,000 per month non-accruing monthly retainer to be used at the hourly rate of \$150 or \$200 per hour in/out of court, with billable hours in excess of the retainer to be paid by Client
 - b. Whereas upon receiving access to its funds Client expects to retain staff attorneys and assistants, additional incentive bonuses for Attorney appear appropriate to the extent that a.) a \$2 million bonus will be paid to Attorney by Client upon its receiving \$50 million or more in financial recovery or damages for the unlawful taking of taxes, and b.) a \$2 million bonus will be paid upon Client receiving \$50 million or more in recovery or damages for the unlawful taking of or injury to real property.
 - c. The opportunity is for a total of \$4 million dollars in bonuses in addition to ongoing compensation at a favorable rate.

RAF

G. The process covered by this agreement is as follows:

- a. Upon entering into this contract Attorney will become the attorney authorized to represent the Montauk Friends of Olmsted Parks / Montauk Trustee Corporation and will notice appearance and substitution of counsel.
- b. Attorney will handle all motion practice under direction of Mr. Ficalora as CEO of Client and file a motion according §670.5 of rules of the Appellate Division for a CPLR §5704 hearing for entry of an OSC.
- c. Attorney will concurrently serving a "Second Notice of Petition" upon respondents.
- d. Attorney will appear to present the OSC before the Appellate Division and argue forcefully for the restraining order and assignment to the Suffolk County Commercial Division.
- e. Attorney will appear before the Court of Hon. Elizabeth H. Emerson, J.S.C., or such other judge who may be assigned the case, to argue strongly that Montauk is an Incorporated Township and that it's revenues (including taxes) must be ordered into court pursuant to CPLR §2701.
- f. Attorney will then move the court for funds from Montauk's revenues to cover legal and other expenses in order continue this contract and to properly bring this important matter most fully and properly before them.
- g. Upon success, Attorney will continue under the above described compensation plan.
- h. Upon failure, Attorney will work with Client to discontinue the proceeding in a manner most favorable to the Incorporated Township of Montauk and will then exchange a mutual release of liens with Client.

13. ATTORNEY DOES NOT GUARANTEE. Attorney shall represent Client zealously with due diligence and to the best of his ability however it is specifically acknowledged by Client that Attorney has made no representations to Client, expressed or implied, concerning the outcome of the litigation presently pending or hereafter to be commence. Client further acknowledges that Attorney has not guaranteed and cannot guarantee the success of any action taken by the firm on Client's behalf during such litigation with respect to any matter therein.


14. CLIENT DOES NOT GUARANTEE - Client and Attorney have reviewed the above agreement, understand the scope of work and accept assertions of MFOP/Montauk Client as unsettled in the law and are therefore not guaranteed.

RAE

15. This agreement may be executed in one or more counter parts, each of which when so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. In lieu of the original, a facsimile transmission of copy of the original shall be as effective and enforceable as the original.
16. By our signatures and the conveyance of the above specified retainer amount of \$5,000, we do agree to work together in accordance to the above specified terms to bring the matter in re: Town of Montauk, Inc. to its fullest and most just and proper conclusion before the courts of the State of New York..



Stephen G. Court, Esq.
Attorney
MFOP/Montauk Trustee Corp.



Robert A. Ficalora
Chief Executive Officer
MFOP/Montauk Trustee Corp.

Dated: 2/28/05

LAW OFFICES OF
STEPHEN G. COURT

50 DANES STREET
PATCHOGUE, NY 11772

Phone: (631) 758-2352
Facsimile: (631) 730-5480
E-Mail: courtlan@optonline.net

FACSIMILE TRANSMITTAL

DATE: 2/27/05
TO: MFOP / Montauk Trustee Corp.
Attn: Robert Ficalora
FAX: 631 614-4319
SENDER: Stephen Court
MATTER: Town of Montauk, Inc. v. Pataki, et al

Following please find the proposed retainer agreement with my signature.

Please read my most recent email correspondence.

Regarding paragraph F(b), is there any bonus in the event there is substantial financial recovery but less than \$50 million? Maybe that paragraph can be amended to include a bonus percentage capped off at \$2 million? Let me know. Either way the agreement is signed.

I should be back in the office between 1:30 and 2 p.m today

We are transmitting 5 pages in addition to this cover sheet.

The information contained in this transmission is attorney privileged and confidential information intended only for the use of the individual named above. If the reader of this message is not the recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone, and return the original transmission to us at the above address via the U.S. Postal Service. Thank you.