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**State of New York - Court of Appeals  
Supreme Court of the State of New York**

**Robert A. Ficalora as assignee of Montauk Friends of  
Olmsted Parks, inc., a not-for-profit corporation established  
under the laws of the State of New York**

*Plaintiff,*

- against -

**The town board government of East Hampton  
and  
Sunbeach Montauk II, inc., as claimant fee title holder to the  
Hither Plain Reservation and Bathing Reservation  
properties in Montauk.**

*Defendants.*

**Motion for  
Re-argument**

In re:  
**mo. no. 508/SSD 31**  
(bench motion and sua  
sponte dismissal of  
May 1st, 2001)

**Suffolk: 98-14806**

Return date 6/12/2001

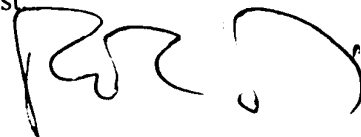
May it please the court: upon the ~~attached~~<sup>x</sup>/promised notice of withdrawal of Joel R. Kupferman, Esq., and the May 31st, 2001, affidavit of Robert A. Ficalora and the attachments thereunto, appellant Montauk Friends of Olmsted Parks corporation does hereby move for re-argument and reversal of this court's *sua sponte* dismissal of May 1st, 2001.

The question submitted for review is the legal authorized representation of the corporation before this court. The procedural history of the corporation's appeal has been considered by the court and requires no further treatment herein. This motion for re-argument is served within 30 days of the May 1st decision and order and is, therefore, timely.

Appellant admits that the record of the corporation's litigations in other matters contains a Notice of Appearance by attorney Joel R. Kupferman, Esq., that has not been withdrawn pursuant to CPLR 321(b) as required by law. Appellant does therefore now understand the court's decision and pray forgiveness and allowance that the irregularity may be corrected..

We do pray that the court accept that the belated formal withdrawal of attorney Kupferman leaves the authorized representative of the corporation as assigned according to law, that it will reverse its May 1st decision and allow this appeal to continue and be heard, and that it will grant such other and further relief as the court deems equitable and just.

\* NOT RECEIVED AC SF 3:02 P.M 5/21/01



**Supreme Court of the State of New York  
Court of Appeals**

---

**Robert A. Ficalora as assignee of Montauk Friends of  
Olmsted Parks, inc., a not-for-profit corporation established  
under the laws of the State of New York**

*Plaintiff,*

**- against -**

**The town board government of East Hampton  
and  
Sunbeach Montauk II, inc., as claimant fee title holder to the  
Hither Plain Reservation and Bathing Reservation  
properties in Montauk.**

*Defendants.*

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**Affirmation of  
Service**

Rargument of  
mo. no 508/SSD 31

Suffolk No.  
98-14806

Robert A. Ficalora does herewith affirm under the penalty of perjury that I did send three copies each of the Motion for Re-argument and supporting affidavit by enclosing said papers in a sealed postpaid envelope and depositing them with the United States Postal Service by PRIORITY MAIL delivery on this thirty first day of May, 2001 addressed to:

**ESSEKS, HEFTER & ANGEL, ESQS.**

**Attorneys for**

***Sunbeach Montauk Two, inc.***

**108 East Main Street - P.O. Box 279**

**Riverhead, New York 11901**

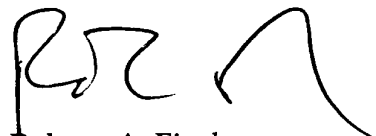
**CAHN, WISHOD & KNAUER**

**Attorneys for the *town board government of East Hampton,***

**425 Broad Hollow Road - Suite 315**

**Melville, N.Y. 11747**

**(516) 752-1600**



Robert A. Ficalora  
assignee, acting president  
MFOP/Montauk Trustee Corp.

**State of New York - Court of Appeals  
Supreme Court of the State of New York**

**Robert A. Ficalora as assignee of Montauk Friends of  
Olmsted Parks, inc., a not-for-profit corporation established  
under the laws of the State of New York**

*Plaintiff,*

**- against -**

**The town board government of East Hampton  
and  
Sunbeach Montauk II, inc., as claimant fee title holder to the  
Hither Plain Reservation and Bathing Reservation  
properties in Montauk.**

*Defendants.*

**Affidavit of  
R. A. Ficalora  
upon Motion  
for  
Re-argument**

In re:  
mo. no. 508/SSD 31

Suffolk: 98-14806

Suffolk County:    }  
                                  } sworn statement:  
State of New York }  
                                  }

Robert A. Ficalora, duly sworn, deposes and says

I am the founder and acting president of the Montauk Friends of Olmsted Parks (MFOP) corporation and am fully familiar with all of the facts and circumstances heretofore had herein. I appear on behalf of the corporation by assignment of the acting board of Trustees on November 7th, 2000 (attachment A).

An emergency board meeting of the corporation was held on May 24th, 2001, to consider the legal status of the corporation's former attorney Joel R. Kupferman with the belief that the court considers him attorney of record of the corporation. This new understanding of the court's consistent dismissals of our cases, led us to discover and admit our error.

As a result, subsequent to discussions with attorney Kupferman and deliberation on how we might correct our position before the court, board members Steven Corwin, Richard Monahan and Helen Ficalora did approve a resolution accepting Mr. Kupferman's formal withdrawal as attorney of record for the corporation (attachment B). Mr. Kupferman has determined that he will serve his notice of withdrawal upon all parties herein and the court. We do, therefore, believe that the corporation has met the requirements of CPLR § 321 (b) for the change or withdrawal of attorney.

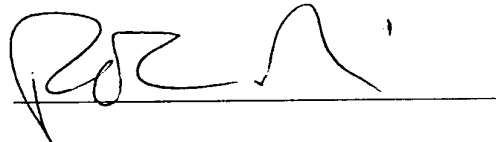
We now move this court for re-argument on the ground that the only remaining authorized representative of the corporation according to law is myself, Robert A. Ficalora, pursuant to a resolution of assignment dated November 7th, 2000.

The law that established that a corporation may appear by assignee is:

Apart from the fact that the affidavits failed to supply facts sufficient to support the finding that the assignments were made to circumvent the provisions of CPLR 321 preventing a corporation from appearing in person, the motive for the assignments is immaterial (citations omitted). The assignments, patently valid, transferred all of the interests of the assignor to the plaintiff and he thereby acquired the right to enforce the claims by action (GENERAL OBLIGATIONS LAW, § 13-105). Nor does public policy require us to invalidate the assignments. Significantly, the statute (CPLR 321, subd. [a]), does not extend the prohibition against a corporation appearing for itself in our courts to an assignee (cf. General Corporation Law, § 218). The objection to a corporation appearing in person is that it is not a natural person and must act through its agents; therefore, in legal matters it must act through licensed attorneys. But when it assigns its cause of action to a natural person, for whatever reason, the statute authorizes the latter to prosecute the action in person. *dissenting opinion Herman A. Kamp as Assignee of AAA Stretch Inc., Appellant, v. In Sportswear, Inc., Respondent, Supreme Court, Appellate Term, First Department, 1972. 70 Misc. 2d 898-9 Full citation: 39 A.D.2d 869, 332 N.Y.S.2d 983, reversed. on dissenting opinion at Appellate Term, 70 Misc. 2d 898, 335 N.Y.S.2d 306. Emphasis added.*

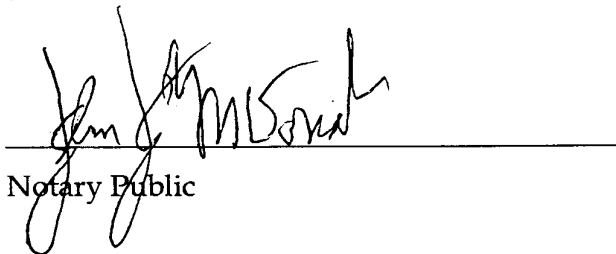
Repeated assignments of its causes by the Montauk Friends of Olmsted Parks corporation have been made to its founder and acting president, Robert A. Ficalora. We assert that an obligation was legally created and acted upon in good faith and that the corporation's failure to secure a formal notice of withdrawal of attorney Joel Kupferman should be deemed by this court to be a non-critical irregularity that has now been corrected.

We do, therefore, move this court to grant this motion for re-argument finding that the corporation has corrected the irregularity in the record of it's legal representation, to reverse its decision and order of May 1st, 2001, allowing the perfecting of this appeal, and to provide such other and further relief as it may deem equitable and just.



Robert A. Ficalora

Sworn to before me this 31st day of May, 2001



Notary Public

JOHN J. MCDONALD  
NOTARY PUBLIC, State of New York  
No. 01MC5037839, Suffolk County  
Commission Expires 2013

A

Montauk Friends of Olmsted Parks, Inc.  
P.O. Box 2612  
Montauk, NY 11954  
(631) 668-3119  
email: trustees@montauk.com

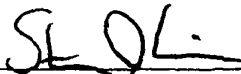


### Resolution of Assignment

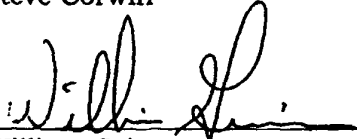
11/7/2000

On November 7<sup>th</sup>, 2000, we, the undersigned board of directors of the Montauk Friends of Olmsted Parks/Montauk Trustee corporation, having convened and considered the common law of the State of New York as established by in Kamp as assignee of AAA Stretch, inc., Appellant v. In Sportswear, inc., Respondent 39 A.D.2d 869, 332 N.Y.S.2d 983, reversing on dissenting opinion of Mr. Justice Lupiano, 70 Misc 2d 898, 899; 335 N.Y.S.2d 306, our past assignment of corporate causes before the Supreme Court of the State of New York to our acting president Robert A. Ficalora in attempted conformity with the law, and the decision and order of the Appellate Division of the Supreme Court of the State of New York entered on October 23<sup>rd</sup>, 2000, which dismissed our past assignments as invalid, do herewith attest our

Resolve: that Mr. Ficalora is and for the present shall continue to be assigned the power and responsibility to represent this corporation in all of the corporation's matters before the court including and especially its pending cause in the matter of Robert A. Ficalora as Assignee of the Montauk Friends of Olmsted Parks corporation vs. the town board government of the Town of East Hampton, et. ano., filed with the Suffolk County Clerk as cause no. 98-14806, and that he shall do so in return for one dollar and other good and valuable consideration.

  
\_\_\_\_\_  
Steve Corwin

  
\_\_\_\_\_  
Helen Ficalora

  
\_\_\_\_\_  
William Grimm

  
\_\_\_\_\_  
Daniel Grimm

  
\_\_\_\_\_  
Richard Monahan



B

**State of New York - Court of Appeals  
Supreme Court of the State of New York**

---

**Robert A. Ficalora as assignee of Montauk Friends of  
Olmsted Parks, inc., a not-for-profit corporation established  
under the laws of the State of New York**  
*Plaintiff,*

- against -

**The town board government of East Hampton  
and  
Sunbeach Montauk II, inc., as claimant fee title holder to the  
Hither Plain Reservation and Bathing Reservation  
properties in Montauk.**

*Defendants.*

---

Corporate  
Resolution  
A. D. Case No.  
99-02065

**To the honorable magistrates of the court:** on this twenty-fourth day of May, 2001, the board of directors of the Montauk Friends of Olmsted Parks corporation did resolve that:

Whereas, this matter was commenced and maintained by this corporation by its assignee, Robert A. Ficalora, according to it's common law right to appear by a non-attorney and upon the belief that he was the only authorized representative of the corporation before this court, and

Whereas, this court has repeatedly held, most recently by its decision of May 1st, 2001, and without a supporting decision by the Appellate Division, that Mr. Ficalora is not the authorized representative of the corporation, and

Whereas, the language of the decision and the consistency with which it has been applied indicates that the court believes that an authorized representative other than Mr. Ficalora actually exists, and



Whereas, by resolution 25 October 1997 this board did retain attorney Joel Kupferman, Esq., to represent it in a matter against the Brooklyn Historical Society together with our assignee Mr. Ficalora, and

Whereas, by resolution dated 05 June 1998 this corporation did determine that Mr. Kupferman had become unavailable, and that its assignee would continue the matter on behalf of the corporation *pro se*, and

Whereas, Mr. Kupferman did on 15 June 1998 notice his appearance on the corporation's behalf in the cause against the Brooklyn Historical Society, and

Whereas, on June 30th 1998 our assignee Mr. Ficalora did then file the complaint in the matter *sub judice*, and

Whereas, on 15 October 1999 Mr. Kupferman did reappear at defendant Brooklyn Historical Society's insistence and did sign a substantially amended, un-agreed upon surprise preliminary conference agreement that would have effectively ended the action, and upon which our assignee did file a timely motion to strike; and

Whereas, on 26 October 1999 this board did determine to not renew its agreement with Mr. Kupferman, and

Whereas, in considering the high court's consistent determination in all of the corporation's actions before the court that Mr. Ficalora is not "the" authorized representative, and upon information and belief a corporation cannot be concurrently represented by both an attorney and an assignee without permission of the court and no such permission has been obtained, and that Mr. Kupferman has never filed a notice of withdrawal nor has the corporation noticed the court of Mr. Kupferman's dismissal, it has been considered that Mr. Kupferman remains the authorized representative to the court, and

Whereas, as a result of the corporation's apparent situation, Mr. Kupferman has chosen to formally withdraw from representation retroactive to 26 October 1999, and

Whereas, the Easthampton Trustee corporation currently receives approximately 5% of Montauk tax dollars in violation of an 1851 order of this court (see accompanying book "MONTAUK"), has facilities and a full-time attorney, and we do assert that we are due at least equivalent resources in order to continue this and other requisite actions to the satisfaction of this court, and

Whereas, we retain full confidence in this court and will continue to seek due process of law as a matter of lawful right,

It is, therefore, resolved that the formal withdrawal of Mr. Joel Kupferman, Esq., is accepted and that he is not in any way authorized to represent this corporation or to be considered as attorney of record for the corporation.

ALL REFERENCED DOCUMENTS ARE ATTACHED.

State of New York, County of Suffolk

On this day of ~~MAY 25, 2001~~ before me personally came Richard Monahan to me known, who, being by me duly sworn, did depose and say that he resides in Montauk, Long Island, New York, that he is a member of the board of directors of the Montauk Friends of Olmsted Parks corporation described in and which executed the foregoing instrument, that he knows the seal of the corporation, that the seal affixed to said instrument is such corporate seal, that the seal was affixed by order of the board of directors of said corporation and that he did sign his name hereto by like order.

JOHN J. MCDONALD  
NOTARY PUBLIC, State of New York  
No. 01MCS037839, Suffolk County  
Commission Expires 2005

3

**State of New York,  
Court of Appeals**

*At a session of the Court, held at Court of  
Appeals Hall in the City of Albany  
on the.....first.....day  
of.....May..... 2001*

**Present,** HON. JUDITH S. KAYE, *Chief Judge, presiding.*

---

Mo. No. 508 SSD 31  
Robert A. Ficalora, &c.,  
Appellant,  
v.  
Town Board Government of East  
Hampton,  
Respondent,  
et al.,  
Defendant.

---

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is ORDERED, that the appeal, as taken on behalf of Montauk Friends of Olmsted Parks, Inc. by Robert A. Ficalora, be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that Robert A. Ficalora is not appellant's authorized legal representative (see, CPLR 321(a))

*Stuart M. Cohen*  
\_\_\_\_\_  
Stuart M. Cohen  
Clerk of the Court

# Resolution

**The Montauk Friends of Olmsted Parks Corporation** (Corporation), recognizing and supporting the actions at law brought on behalf of its acting president to stop illegal land use adjoining the Hither Plain Reservation property, this 25th day of October, 1997, does hereby and herewith

**Resolve**, the resolution of this board of October 10th, 1997, is hereby affirmed and attorney Joel R. Kupferman, Esq., is retained to represent the corporation in matters currently before the court together with corporate assignee Robert A. Ficalora; and

**Resolve**, that the Corporation will become an Associate Member of the New York Environmental Law Project, inc., for a two year period at an agreed upon monthly rate of \$100 with the understanding that the Corporation is in formation and that the balance may accrue to an amount not greater than \$600 unless otherwise agreed upon.

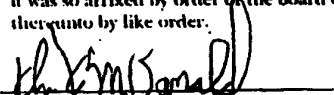
**Resolve**, that legal work in excess of the membership privileges will be paid at a rate of \$150 per hour, to be billed monthly, with the understanding that the balance may accrue to an amount not greater than \$600 unless otherwise agreed upon.

**Resolve**, that this resolution is to be affixed with the corporate seal of the Corporation and filed with the County Clerk of the County of Suffolk.

  
Robert A. Ficalora  
acting president, MFOP inc.

State of New York, County of Suffolk

On this day of October 28th, 1997, before me personally came Robert A. Ficalora to me known, who, being by me duly sworn, did depose and say that he resides at 6755 Bellevista Pl NW, Olympia Washington, 98502, that he is the acting president of the Montauk Friends of Olmsted Parks corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.

  
JOHN J. McDONALD  
Notary Public, State of New York  
No. 01MC503738, Suffolk County  
Commission expires 10/31/97

**FILED**  
OCT 29 1997  
EDWARD P. ROMANE  
CLERK OF SUFFOLK COUNTY

6/29/98 Affidavit of Robert A. Ficalora  
Att C - Resolutions of Assignment


**Resolution of Assignment**

The directors of the Montauk Friends of Olmsted Parks corporation, in considering its position before the Supreme Court of the State of New York at this time, does resolve that:

- 1.) The attorney retained by our resolution of October 25<sup>th</sup>, 1997, has relocated and is unavailable, and
- 2.) The corporation has insufficient funds to hire or otherwise retain council, and
- 3.) Our acting president, Bob Ficalora, does continue the act before the court on behalf of the corporation *pro se*, and
- 4.) Mr. Ficalora is competent to represent the corporation in these matters and has been successful in obtaining important orders from the court on the corporation's behalf, and
- 5.) We have full faith and trust in Mr. Ficalora to uphold both the purposes for which the corporation was established and the trust which the corporation has taken action to assume,

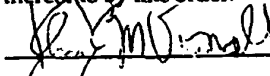
**FILED**  
 JUN 05 1998  
 EDWARD P. ROMANE  
 CLERK OF SUFFOLK COUNTY

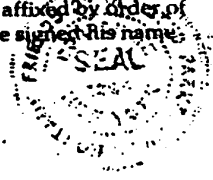
It is, therefore, resolved that this board does continue to assign to Robert A. Ficalora the power to represent this corporation before the courts of the State of New York with full indemnity by the corporation.

  
 \_\_\_\_\_  
 Robert A. Ficalora, acting president, MFOP

State of New York, County of Suffolk

On this day of June 5th, 1998, before me personally came Robert A. Ficalora to me known, who, being by me duly sworn, did depose and say that he resides at 6753 Bellevista Pl NW, Olympia Washington, 98502, that he is the acting president of the Montauk Friends of Olmsted Parks corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation dated 6/3/98, and that he signed his name thereon by like order.

  
 \_\_\_\_\_  
 JOHN J. McDONALD  
 NOTARY PUBLIC, State of New York  
 No. 01MC5037739, Suffolk County  
 Commission Expires 12/31/99



6/29/98 Affidavit of Robert A. Ficalora  
Att C - Resolutions of Assignment

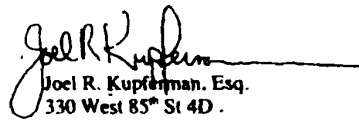
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**Notice of Appearance by Joel R. Kupferman, Esq., 6/15/98**  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

<p>MONTAUK FRIENDS OF OLMSTED PARKS, INC., a not-for-profit corporation established under the laws of the State of New York.</p> <p style="text-align: right;">Plaintiff.</p> <p style="text-align: center;">-against-</p> <p>THE BROOKLYN HISTORICAL SOCIETY, INC., a not-for-profit corporation established under the laws of the State of New York (formerly the Long Island Historical Society); and Ms. Irene Tichenor as director thereof.</p> <p style="text-align: right;">Defendants.</p>
--

<p>Index No. 97-14076</p> <p>Justice</p> <p style="text-align: center;"><b>NOTICE OF APPEARANCE</b></p>
---

Joel R. Kupferman, Esq., an attorney duly licensed to practice law under the laws of the State of New York, hereby and herewith notices his appearance on behalf of the Montauk Friends of Olmsted Parks corporation.

  
 Joel R. Kupferman, Esq.  
 330 West 85<sup>th</sup> St 4D  
 NYC, NY 10024  
 (917-414-1983)

**FILED**  
 JUN 15 1998  
 EDWARD P. ROMANE  
 CLERK OF SUFFOLK COUNTY

Correspondence/Notices  
Notice of Appearance by Joel R. Kupferman, Esq., 6/15/98  
125

Complaint

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
Robert A. Ficalora as assignee of Montauk Friends of  
Olmsted Parks, Inc., a not-for-profit corporation established  
under the laws of the State of New York

Complaint

Plaintiff,

Index

- against -

No. 98-14806

The town board government of East Hampton  
and,

Hon. \_\_\_\_\_

Sunbeach Montauk II, Inc., as claimant fee title holder to the  
Hither Plain Reservation and Bathing Reservation properties  
in Montauk.

Defendants.

**FILED**  
JUN 30 1998  
EDWARD P. ROMAINE  
CLERK OF SUFFOLK COUNTY

-----X  
Parties

1 Robert A. Ficalora is founder and acting president of the Montauk Friends of  
2 Olmsted Parks corporation designated by resolution of assignment by its board of  
3 directors to represent the corporation before this court for the purposes for which it  
4 was established.

5 The town board government of the Town of East Hampton (Town) asserts the  
6 powers of a municipal corporation and operates under the Town Law of the State of  
7 New York.

8 Sunbeach Montauk II, inc., (Sunbeach) is a corporation established under the  
9 laws of the State of New York.

10 **Claims**

11 At all times mentioned defendant Sunbeach has asserted the unsettled claim  
12 of valid title in fee simple to two Reservation properties in Montauk shown and

Preliminary Conference Stipulation and Order, 10/15/98

SUPREME COURT, <sup>1</sup> COUNTY OF Suffolk  
INDIVIDUAL ASSIGNMENT PART [or JUSTICE] D. J. E.

Masterpiece Records of Unsettled Claims, Inc.  
Plaintiff(s)  
  
- against -  
Beedley Historical Society & Gene Tichauer  
Defendant(s)

INDEX NO. 14076-97

PRELIMINARY CONFERENCE STIPULATION AND ORDER  
(§§ 202.8 and 202.12 of the Uniform Rules)

[All items on the form must be completed unless inapplicable.]

It is hereby STIPULATED and ORDERED that disclosure shall proceed as follows:

- (1) **Insurance Coverage:** If not already provided, shall be furnished by N/A on or before \_\_\_\_\_.
- (2) **Bill of Particulars:**
  - (a) Demand for a bill of particulars shall be served by 10/30/98 on or before \_\_\_\_\_.
  - (b) Bill of particulars shall be served by 11/30/98 on or before \_\_\_\_\_.
  - (c) A supplemental bill of particulars shall be served by N/A as to Items \_\_\_\_\_ on or before \_\_\_\_\_.
- (3) **Medical Reports and Authorizations:** N/A  
Shall be served as follows: \_\_\_\_\_
- (4) **Physical Examination:**
  - (a) Examination of N/A shall be held \_\_\_\_\_.
  - (b) A copy of the physician's report shall be furnished to plaintiff within N/A days of the examination.

<sup>1</sup> Substitute County Court where applicable.

31-101a-200ps



(5) Depositions: Depositions of  Plaintiff(s)  Defendant(s)  All Parties shall be held at office of TRACU, Seat 1, Court 40 US 57 St, NY, NY. Continuance from day to day until completed in accordance with giving of notice.

(6) Other Disclosure: (a) All parties, on or before N/A, shall exchange names and addresses of all witnesses, statements of opposing parties and photographs, or, if none, provide an affirmation to that effect. (b) Authorization for plaintiff(s)' employment records for the period shall be furnished on or before N/A. (c) Demand for discovery and inspection shall be served by Plaintiff on or before 10/30/98. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before 11/30/98. (d) Other [interrogatories, etc.] N/A

(7) End Date for All Disclosure (must be within 12 months): 10-11-98

(8) ~~Interrogatories~~: Add necessary party 12-30-98. Shall be completed on or before

(9) Motions: Any dispositive motions(s) shall be made on or before 7/15/99

(10) Note of Issue: ~~12/30/98~~ shall file a note of issue/certificate of readiness on or before. A copy of this stipulation and order, an affirmation stating that the terms of the stipulation and order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

(11) If a motion relating to disclosure has raised additional disclosure issues, the parties agree as follows: to respond, move or object within 30 days + consult with assigned judge's law secretary by conference call to resolve these issues

(12) Compliance conference shall be held on ~~11/15/98~~. Defendants reserve their rights to assert a defense & nothing in this order is or should be construed to constitute an admission, confession or admissions that Plaintiff has standing to bring or maintain this action or that Plaintiff has the right to take discovery.

91-1516-37000

Failure to comply with any of these directives may result in the imposition of costs or sanctions or other action authorized by law.

Dated: 10-15-98

Joel R. Kupferman  
Attorney for Plaintiff(s)

Carmelo Alder Vargas  
Attorney for Defendant(s)

\_\_\_\_\_  
Attorney for Defendant(s)

Dated:

SO ORDERED:

Robert W. Jones  
J.S.C. (or J.C.C.)

SI-121c-2459e

Preliminary Conference  
Preliminary Conference Stipulation and Order, 10/15/98  
103

### Resolution of Assignment

On this 26th day of October, 1999, we, the undersigned directors of the Montauk Friends of Olmsted Parks corporation, in considering the pressing issue of representation of the corporation by its acting president and assignee Robert A. Ficalora, does herewith resolve that:

Whereas, attorney Joel R. Kupferman, Esq., had been retained by resolution of this board dated 10/25/97 for a two year period together with our assignee, a period which has now expired, and

Whereas, Mr. Kupferman has failed to return phone calls or deliver promised affidavits and other papers, and

Whereas, in any event, Mr. Ficalora has been representing the corporation as assignee under our resolutions made on 10/25/97, 6/3/98 and 8/17/98, and,

Whereas, we are without funds to retain or hire an attorney, and

Whereas, there are multiple actions before the court which require immediate attention, and

Whereas, we have full faith and trust in Mr. Ficalora to uphold both the purposes for which the corporation was established and the trust which this corporation has taken action to assume, it is hereby

Resolved, that our resolution of 10/25/97 retaining Mr. Kupferman is not renewed and that our resolutions assigning Mr. Ficalora the power to represent this corporation are affirmed and amended to the extent that there be no question that Mr. Ficalora is our sole representative before the courts, and

Resolved, that this resolution is to be affixed with the corporate seal of the Montauk Friends of Olmsted Parks corporation and filed with the clerk of the County of Suffolk.

Helen Ficalora  
Helen Ficalora, director

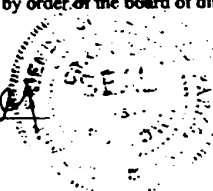
Louise Nielsen  
Louise Nielsen, Director

On this day of October 26th, 1999, before me personally came Robert A. Ficalora to me known, who, being duly sworn, did depose and say that he resides at 6753 Belle Vista Place NW, Olympia WA, 98502, that he is the acting president of Montauk Friends of Olmsted Parks corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereunto by like order

John J. McDonald  
Notary Public

Robert A. Ficalora  
Robert A. Ficalora

JOHN J. McDONALD  
NOTARY PUBLIC/State of New York  
No. 01MC5037839, Suffolk County  
Commission Expires 2001



Montauk Friends of Olmsted Parks, Inc.  
P.O. Box 2612  
Montauk, NY 11954  
(631) 668-3119  
email: [trustees@montauk.com](mailto:trustees@montauk.com)

---



Friday, May 25<sup>th</sup>, 2001  
Mr. Joel Kupferman, Esq.  
315 Broadway, 2<sup>nd</sup> Floor  
New York, NY 10007-1160  
BY CERTIFIED PRIORITY MAIL

In re: Our discussion; MFOP/Montauk Trustee board meeting.

Dear Mr. Joel,

Thank you for scheduling time for me this morning. After we ended our discussion the board meeting was held and it was resolved to accept your formal withdrawal as attorney of record of the corporation (see attached).

As we discussed please forward an original signed copy of your notice of withdrawal for delivery to the court.

Robert A. Ficalora  
Acting supervisor  
MFOP/Montauk Trustee Corporation

cc: Stewart M. Cohen, Clerk of the Court, Court of Appeals.  
Richard Cahn, Esq., attorney for town board government

Defendant Town's answer to Motion to Reargue - June 4th, 2001

CAHN WISHOD & KNAUER, LLP

ATTORNEYS AT LAW

425 BROADHOLLOW ROAD, SUITE 315  
MELVILLE, NEW YORK 11747

(631) 752-1600

FAX: (631) 752-1555

E-MAIL: [info@cahnwishod.com](mailto:info@cahnwishod.com)

RICHARD C. CAHN  
EUGENE L. WISHOD  
TODD A. KNAUER

BRIAN T. EGAN

June 4, 2001

Court of Appeals  
State of New York  
Court of Appeals Hall  
20 Eagle Street  
Albany, New York 12207-1095

Attention: Stuart M. Cohen  
Clerk of the Court

Re: Robert A. Ficalora, as Assignee v. Town of East Hampton  
Appellate Division Docket No. 99-02065

Dear Mr. Cohen:

We are the attorneys for the Town Board of the Town of East Hampton, sued herein as "the town board government of East Hampton." We are in receipt of two copies of a purported motion for reargument which apparently has been filed by Robert A. Ficalora, assertedly on behalf of the corporation, "Montauk Friends of Olmstead Parks, Inc." The stated return date of this motion is June 12, 2001.

We also received a copy of a letter from Assistant Deputy Clerk Laurene L. Tacy to Mr. Ficalora dated May 29, 2001, returning earlier papers to him.

Although the Town Board of the Town of East Hampton vigorously opposes this purported motion for reargument, unless definitively instructed by you we do not intend to submit any separate papers in opposition thereto. We believe that all that we could have said has been previously submitted by this office to the Court in connection with the Court's consideration of the *sua sponte* dismissal of Mr. Ficalora's appeal.

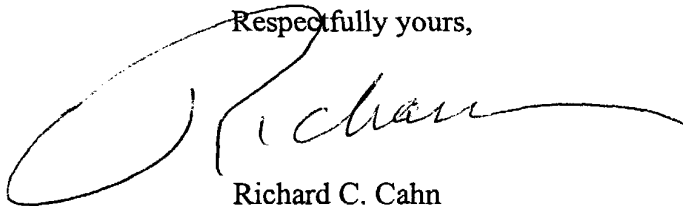
CAHN WISHOD & KNAUER, LLP

Stuart M. Cohen, Clerk  
New York Court of Appeals  
June 4, 2001  
Page 2

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As far as the undersigned knows, Mr. Ficalora is still not a lawyer admitted to the Bar of the State of New York and suffers from the same disqualification that led to the *sua sponte* dismissal of the appeal pressed by him on behalf of the corporation.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Richard C. Cahn". The signature is fluid and cursive, with a large initial "R" and a long horizontal flourish at the end.

Richard C. Cahn

RCC/pdm  
✓ cc: Robert A. Ficalora, *pro se*

Montauk Friends of Olmsted Parks, Inc.  
P.O. Box 2612  
Montauk, NY 11954  
(631) 668-3119  
email: [trustees@montauk.com](mailto:trustees@montauk.com)



June 6th, 2001  
Ms. Suzanne Aiardo, Esq.  
Motions Clerk  
New York State Court of Appeals  
Eagle Street  
Albany, New York 12207

In Re: Appellant's reply upon motion for reargument, ommitted attachments

Dear Ms. Aiardo,

Enclosed please find ten copies of my affidavit in support of the MFOP/Montauk Trustee corporation's reply to the defendant town of East Hampton's answer to its motion for reargument of the court's May 1st *sua sponte* dismissal of our appeals.

Also enclosed are ten copies of the book entitled MONTAUK first published by authority voted at a Town Meeting held in Easthampton in 1925. This document was referenced in attachment B of the affidavit in support of the original motion for reargument but was inadvertently ommitted. As per our discussion of yesterday, three copies were also served upon each of the other defendants joined herein.

Thank you for your attention to this matter. This filing completes submission upon the motion for reargument returnable before the court on June 12th.

Robert A. Ficalora, *pro se*  
acting president and assignee  
MFOP/Montauk Trustee Corp

Cc: Cahn, Wishod & Knauer, Esqs.(Town)  
Esseks, Hefter and Angel, Esqs.(Sunbeach)

**Supreme Court of the State of New York  
Court of Appeals**

**Robert A. Ficalora as assignee of Montauk Friends of  
Olmsted Parks, inc., a not-for-profit corporation established  
under the laws of the State of New York**

*Plaintiff,*

**- against -**

**The town board government of East Hampton  
and  
Sunbeach Montauk II, inc., as claimant fee title holder to the  
Hither Plain Reservation and Bathing Reservation  
properties in Montauk.**

*Defendants.*

Reply Affidavit  
Re-argument of  
mo. no 508/SSD 31  
Suffolk No.  
98-14806

State of New York }

} sworn statement:

Suffolk County }

Robert A. Ficalora, duly sworn, deposes and says:

I am in receipt of the answer of defendant town board government made by letter of attorney Richard Cahn, Esq., dated June 4th,2001, and attached hereto as attachment A.

Although included in all service and court process and despite the fact that no stipulation or order of the court has discontinued this action against defendant Sunbeach Montauk II, Inc., it remains silent.

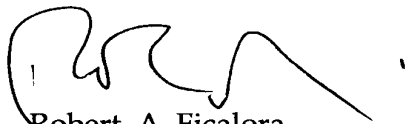
I am not an attorney admitted to practice law. My experience in litigation is derived from the administering the litigation against Sunbeach Montauk II, inc., on behalf of the Breakers Motel and other personal matters. I am currently under legal obligation to the Montauk Friends of Olmsted Parks corporation as its assignee to represent it before the court according to the rules of the court and our best understanding of the law. (General Obligations Law §13-105)



The corporation has admitted error in proceeding by assignee contemporaneous with an unwithdrawn attorney of record but pleads that the court consider this irregularity to now be corrected in order that it may proceed *nunc pro tunc* to a determination of this matter upon the merits of the causes and complaints presented.

A belated notice of withdrawal has been obtain from former corporate counsel Joel R. Kupferman, Esq., that has been affirmed by the corporation is attached hereto as attachment B in satisfaction of the requirements established in law (CPLR §321(b)).

I do pray on behalf of the corporation that this motion for reargument be granted and the relief sought therein be granted in order that this appeal made as a matter of right be allowed to continue and for such other and further relief as this court deems equitable and just.



Robert A. Ficalora  
assignee, acting president  
MFOP/Montauk Trustee Corp.

Sworn to me this sixth day of June, 2001



Notary

**PATRICK CARPENTER**  
Notary Public, State of New York  
No. 01CA0039643  
Qualified in Suffolk County  
Commission Expires April 3, 2002

Defendant town of East Hampton's answer

A

CAHN WISHOD & KNAUER, LLP

ATTORNEYS AT LAW

425 BROADHOLLOW ROAD, SUITE 315

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FAX: (631) 752-1555

E-MAIL: info@cahnwishod.com

RICHARD C. CAHN  
EUGENE L. WISHOD  
TODD A. KNAUER

BRIAN T. EGAN

June 4, 2001

Court of Appeals  
State of New York  
Court of Appeals Hall  
20 Eagle Street  
Albany, New York 12207-1095

Attention: Stuart M. Cohen  
Clerk of the Court

Re: Robert A. Ficalora, as Assignee v. Town of East Hampton  
Appellate Division Docket No. 99-02065

Dear Mr. Cohen:

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We also received a copy of a letter from Assistant Deputy Clerk Laurene L. Tacy to Mr. Ficalora dated May 29, 2001, returning earlier papers to him.

Although the Town Board of the Town of East Hampton vigorously opposes this purported motion for reargument, unless definitively instructed by you we do not intend to submit any separate papers in opposition thereto. We believe that all that we could have said has been previously submitted by this office to the Court in connection with the Court's consideration of the *sua sponte* dismissal of Mr. Ficalora's appeal.

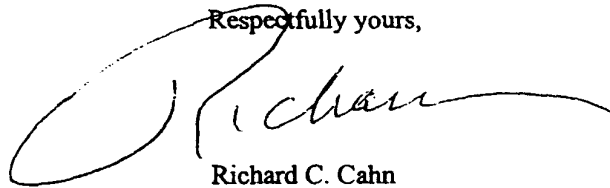
CAHN WISHOD & KNAUER, LLP

Stuart M. Cohen, Clerk  
New York Court of Appeals  
June 4, 2001  
Page 2

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As far as the undersigned knows, Mr. Ficalora is still not a lawyer admitted to the Bar of the State of New York and suffers from the same disqualification that led to the *sua sponte* dismissal of the appeal pressed by him on behalf of the corporation.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Richard C. Cahn". The signature is fluid and cursive, with a large initial "R" and a long horizontal flourish at the end.

Richard C. Cahn

✓RCC/pdm  
cc: Robert A. Ficalora, *pro se*

JUN-06-01 10:08 PM

P. 01

**State of New York - Court of Appeals  
Supreme Court of the State of New York**

Robert A. Ficalora as assignee of Montauk Friends of  
Olmsted Parks, Inc., a not-for-profit corporation established  
under the laws of the State of New York

*Plaintiff,*

- against -

The town board government of East Hampton  
and  
Sunbeach Montauk II, Inc., as claimant fee title holder to the  
Hither Plain Reservation and Bathing Reservation  
properties in Montauk.

*Defendants.*

**Notice of  
withdrawal**

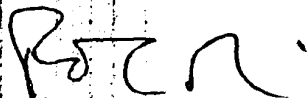
Mtn# 508 (SD 31

**Honorable Magistrates of the Court:**

The corporate appellant herein has considered that my formal notice of  
withdrawal as attorney of record is requisite in order that it might obtain its desired  
relief from this court. By my signature and the acknowledgment of the corporation  
as given below I ask that the court accept my withdrawal as the authorized  
representative of the MFOF/Montauk Trustee Corporation in satisfaction of CPLR §  
321(b) effective October 26th, 1999. As a favor to the corporation and its officers, I do  
further ask that the assigned representative of the corporation be acknowledged as  
the authorized representative of the corporation according to law.



Joel Kupferman, Esq.  
Attorney at law  
385 Broadway  
New York, NY 10007-1160  
phone: (212) 766-9910; cellular: (917) 414-1983



Robert A. Ficalora  
acting president, MFOF  
Acknowledgment



*State of New York  
Court of Appeals*

*Stuart M. Cohen  
Clerk of the Court*

*Clerk's Office  
Albany, New York 12207-1095*

May 29, 2001

Robert A. Ficalora  
P.O. Box 2612  
Montauk, New York 11954

Re: Ficalora v East Hampton


Dear Mr. Ficalora:

This will acknowledge receipt on May 29, 2001 and return herewith of the enclosed papers.

Your appeal was dismissed by the Court on May 1, 2001.

Very truly yours,

STUART M. COHEN

  
Laurene L. Tracy  
Assistant Deputy Clerk

LLT/ml  
enc.

cc: Hon. Eliot Spitzer  
Cahn Wishod & Knauer, LLP  
Esseks Hefter & Angel, Esqs.

Letter to Joel R.Kupferman in re: withdrawal as corporate attorney of record.

Montauk Friends of Olmsted Parks, Inc.  
P.O. Box 2612  
Montauk, NY 11954  
(631) 668-3119  
email: [trustees@montauk.com](mailto:trustees@montauk.com)



Friday, May 25<sup>th</sup>, 2001  
Mr. Joel Kupferman, Esq.  
315 Broadway, 2<sup>nd</sup> Floor  
New York, NY 10007-1160  
BY CERTIFIED PRIORITY MAIL

RECEIVED  
MAY 29 2001  
NY COURT OF APPEALS

In re: Our discussion; MFOP/Montauk Trustee board meeting.

Dear Mr. Joel,

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As we discussed please forward an original signed copy of your notice of withdrawal for delivery to the court.

Robert A. Ficalora  
Acting supervisor  
MFOP/Montauk Trustee Corporation

cc: Stewart M. Cohen, Clerk of the Court, Court of Appeals.  
Richard Cahn, Esq., attorney for town board government