

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

October 26, 2000

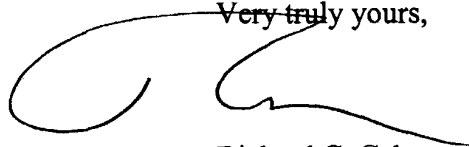
Mr. Robert A. Ficalora  
P.O. Box 2612  
Montauk, New York 11954

Re: Robert A. Ficalora v. The Town Board  
Government of The Town of East Hampton  
and Sunbeach Montauk II, Inc.  
Docket No. 99-02065

Dear Mr. Ficalora:

We serve herewith Decision and Order of the Appellate Division, Second Department, with notice of entry in connection with the above-entitled appeal.

Very truly yours,



Richard C. Cahn

RCC/pdm  
Enclosure

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND DEPARTMENT

Docket No. 99-02065

----- 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,

Plaintiff-Appellant,

**DECISION AND ORDER**  
**WITH NOTICE OF ENTRY**

- against -

The Town Board Government of East Hampton,

Defendant-Respondent,

- and -

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

Defendants.  
-----x

**S I R :**

**PLEASE TAKE NOTICE**, that the within is a true copy of a Decision and Order duly  
entered in the office of the Clerk of Appellate Division, Second Department on October 23, 2000.

Dated: Melville, New York  
October 26, 2000

Yours, etc.,

CAHN WISHOD & KNAUER, LLP  
Attorneys for Defendant-Respondent

By: 

Richard C. Cahn, Esq.

Office & P.O. Address  
425 Broadhollow Road, Suite 315  
Melville, NY 11747  
(631) 752-1600

October 23, 2000

FICALORA v TOWN BOARD GOVERNMENT OF EAST  
HAMPTON

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

2843B

U/hu

AD2d Argued - September 5, 2000

LAWRENCE J. BRACKEN, J.P.

LEO F. McGINITY

DANIEL F. LUCIANO

SANDRA J. FEUERSTEIN, JJ.

1999-02065

DECISION & ORDER

Robert A. Ficalora, etc., appellant, v Town Board Government of  
East Hampton,

respondent, et al., defendant.

Robert A. Ficalora, Montauk, N.Y., appellant pro se.

Cahn Wishod & Knauer, LLP, Melville, N.Y. (Richard C. Cahn of counsel), for respondent.

In an action, inter alia, for a judgment declaring that the title to certain property held by the defendant Sunbeach Montauk II, Inc., is invalid, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Underwood, J.), dated February 1, 1999, which denied his motion for the court to recuse itself, and granted the cross motion of the defendant Town Board Government of East Hampton to dismiss the complaint .

ORDERED that the order is affirmed, with costs.

Absent a legal disqualification under Judiciary Law § 14, a Trial Judge is the sole arbiter on the issue of recusal (see, *People v Moreno*, 70 NY2d 403, 405; *Fisk v Slye*, 234 AD2d 983; see also, *Colburn v Blum*, 233 AD2d 890). The plaintiff failed to demonstrate that the Supreme Court erred in refusing to recuse itself from the case. The plaintiff's dissatisfaction with the Supreme Court's act of striking two provisions for temporary restraining orders contained in a previous order to show cause, standing alone, is insufficient to demonstrate a basis for recusal.

The Supreme Court also properly dismissed the complaint. CPLR 321(a) provides, with exceptions not applicable here, that a corporation or voluntary association shall appear by an attorney. A corporation can validly assign a claim, even if the assignment is undertaken to circumvent the statutory prohibition against a corporation appearing for itself (see, *Traktman v City of New York*, 182 AD2d 814, 815; *Medical Facilities v Pryke*, 172 AD2d 338). In this case, however, there was no valid assignment, as the complaint expressly stated that the plaintiff, who is not an attorney, was designated to represent the corporation before the court for the purposes for which the corporation was established (see, CPLR 321 [a]; see also, *Montauk Friends of Olmstead Parks v Brooklyn Historical Socy.*, 95 NY2d 821; *Matter of Ficalora v Planning Bd. of Town of E. Hampton*, 94 NY2d 891; *Hilton Apothecary v State of New York*, 89 NY2d 1024).

BRACKEN, J.P., MCGINITY, LUCIANO and FEUERSTEIN, JJ.,  
concur.

ENTER:

James Edward Pelzer

Clerk

Index No. Docket No. 99-02065

Year 19

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND DEPARTMENT

*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-Appellant,  
-against-  
The Town Board Government of East Hampton,  
Defendant-Respondent,*

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

DECISION AND ORDER WITH NOTICE OF ENTRY

CAHN WISHOD & KNAUER, LLP

Attorney(s) for Town of East Hampton

Office and Post Office Address, Telephone

425 BROADHOLLOW ROAD, SUITE 315  
MELVILLE, NEW YORK 11747  
(516) 752-1600

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

.....

**Sir: Please take notice**

NOTICE OF ENTRY

that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within named court on

19

NOTICE OF SETTLEMENT

that an order  
settlement to the HON.

of which the within is a true copy will be presented for  
one of the judges

of the within named Court, at  
on the day of

19 at M.

Dated,

Yours, etc.

CAHN WISHOD & KNAUER, LLP

Attorney(s) for

Office and Post Office Address

425 BROADHOLLOW ROAD, SUITE 315  
MELVILLE, NEW YORK 11747  
(516) 752-1600

To

Attorney(s) for