

CLIFTON PARK TRUSTEES  
TRUSTEES OF LAND RESERVED FOR PARK PURPOSES

***Trustees***

Warren P. Coleman  
Charles Drumm  
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August 28, 2013

Ross M. Babbitt, Esq.  
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Dear Mr. Babbitt:

This will reply to your letter of August 19, 2013, regarding claims that the Trustees are holding monies belonging to your client, the Clifton Beach Improvement Association, Inc. ("CBIA, Inc."), or that the Trustees expended those monies without authority to do so. Those claims are totally unfounded.

Before responding to your letter, we would like to recite the history of this matter. Beginning in 1999 the Clifton Beach Improvement Association ("CBIA") deposited from time to time funds it had raised for Beach improvements in a First Federal of Lakewood interest-bearing savings account. Because CBIA was an unincorporated association, it could not open a bank account and thus asked the Trustees to open the savings account on behalf of CBIA. The CBIA funds were deposited and held in a separate account and were not commingled with trust funds. The balances in the account were publicly reported to our beneficiaries in our annual reports. The funds in the account were properly disbursed and the account was closed in 2010.

During the eleven-year period the CBIA funds were held in the account, CBIA and the Trustees worked closely together and collaboratively on Beach projects. The CBIA funds were expended for a variety of projects at Clifton Beach, and CBIA and the Trustees acting as fiduciaries of the funds took care that the expenditures were approved by CBIA and spent for the purposes agreed upon by both parties. To our knowledge, no one ever raised a concern or question about the arrangement or the expenditure of funds.

Thus, the Trustees were completely surprised to receive an April 2, 2013 letter from CBIA, Inc., a company incorporated in 2011 which had replaced

the unincorporated CBIA, alleging that according to CBIA, Inc.'s records, which it said it had "verified", \$73,854.03, plus interest, remained in the savings account. CBIA, Inc. requested that the Trustees return these funds to CBIA, Inc.

The Trustees prepared a detailed year-by-year accounting of the funds deposited by CBIA with the Trustees, beginning in 1999 and ending in 2010, which demonstrated that all the funds had been fully disbursed. The accounting included 56 entries with year-end balances, which matched exactly with the year-end balances that the Trustees had been reporting each year to our beneficiaries. The Trustees sent the accounting to CBIA, Inc. on April 26, 2013.

Constance Mansell, President of CBIA, Inc., responded three days later, demanding copies of the approved authorizations for all the disbursements and stating that she expected to receive them in ten days. The Trustees replied on May 8 that if every expenditure required CBIA approval, CBIA, Inc. should look to its records and the past Presidents and Treasurers of CBIA for that information.

After you were retained by CBIA, Inc. to pursue its claims, you sent us a May 22, 2013 letter requesting Trustee records relating to the savings account, including the First Federal of Lakewood records of the account. In a May 29 reply the Trustees offered to provide the bank account records on two conditions: the Trustees would be reimbursed their copying costs and CBIA, Inc. would provide detail of the accounting for the \$73,854.03 allegedly held by the Trustees. Instead of a detailed accounting, you sent with your June 12 letter a summary of certain transactions, and advised that the amount allegedly held by the Trustees had increased by \$5,299.52 to \$79,153.55.

After the Trustees on June 20 provided copies of the First Federal of Lakewood statements for the savings account, totaling approximately 80 pages, you replied on August 19 that your client was still concerned that the "Trustees spent CBIA funds without authority to do so." Your letter did not include reimbursement for the copying costs, as promised. With your August 19 letter you furnished another summary of transactions and concluded that the amount allegedly held by the Trustees had again increased and now totaled \$79,238.92. You demanded that the Trustees either document the authorization for each disbursement or deliver the amount equal to the disbursement to CBIA, Inc.

Let us begin to respond to your August 19 letter by noting that your statements about "CPT's core responsibility" and CBIA's duty to make improvements to the Trust property are not accurate in terms of the Trust Deed under which the Trustees operate and are not consistent with the past practices of the Trustees and the unincorporated CBIA.

The Clifton Park Trustees are the owners of record of the common property, including the beach. As the owners the Trustees alone have all of the rights and responsibilities of ownership concerning those properties and have authority under the trust and trust law to make improvements to the properties owned by the Trust. CBIA/CBIA, Inc. has no legal or integral role in the management of the affairs of the beach and other common properties.

In reply to your client's concerns that "the Trustees spent CBIA funds without authority to do so..." the Trustees hereby advise that all withdrawals from the bank account were authorized and were expended on agreed purposes. The Trustees have confirmed these statements with past Presidents and Treasurers of the unincorporated CBIA for a majority of the years in question and with past and present Trustees. Among all the individuals who were involved with the transactions, no one other than your client has a concern or doubt about legitimacy. Moreover, the records available to your client should also confirm these facts. Finally, we have records relating to the authorizations and purposes; for example, with regard to the last item in your spreadsheet, a \$232.38 disbursement in November, 2010, we have in our records a copy of a November 6, 2010 email from Connie Mansell authorizing that disbursement for the purchase and planting of a tree.

If you were to pursue your client's meritless claims, we would consider asserting a number of defenses, including your client's rights to assert the claims of an unrelated predecessor association and applicable statutes of limitation.

Attorney Babbitt, your client and you have sent us a total of five letters regarding these claims over a period of four months. The Trustees have responded promptly and furnished accountings and documents, but you and your client persist. During this time you and your client continue to ignore the Trustees' requests with respect to two matters. In a January 28, 2013 letter to the Trustees, CBIA, Inc., referring to a January letter to our beneficiaries, accused the Trustees of making "defamatory misstatements" that damaged CBIA, Inc. The CBIA, Inc. allegations were a matter of great concern to the Trustees, and we have requested that CBIA, Inc. identify the statements that it asserts are defamatory in nature. Secondly, CBIA, Inc. published electronically a history of CBIA on May 1, 2013. The Trustees in a May 3 letter to CBIA, Inc. pointed out two manifestly erroneous statements in the history that describe the Trustees' authorities under its governing Trust Deed, and requested a public correction in order to eliminate public confusion. CBIA, Inc. has ignored both Trustee requests.

We can only conclude that your client's continuing effort to create substantive issues where none exist amounts to bullying and harassment of the Trustees. This conclusion is buttressed the fact that the Board members

of CBIA, Inc. have served extensive discovery requests of each of the Trustees in connection with a lawsuit captioned Dueck, et al. v. The Clifton Club Company, et al., which go considerably beyond requests for information relevant to the lawsuit.

We will post on the Trustees' website ([cliftonparktrustees.org](http://cliftonparktrustees.org)) this letter, our accounting of the activity in the savings account and our summary of our records of the authorizations for and purposes of the disbursements from the account so that there is full transparency of the Trustees' actions in this matter. We think CBIA, Inc. should follow this example.

Very truly yours,  
The Clifton Park Trustees