

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

RECEIVED

JANET and SCOTT BRUNERMER,

Petitioner/Plaintiffs,

vs.

APOLLO BOROUGH,

Respondent/Defendant.

No. 2020-00779-CIVIL

SEP 03 2020

OFFICE OF OPEN RECORDS

MOTION TO COMPEL ANSWER

Filed on behalf of Plaintiffs/Petitioners,

JANET and SCOTT BRUNERMER

Counsel of Record for this Party:

Zachary N. Gordon

PA ID No. 318808

DEL SOLE CAVANAUGH STROYD LLC

3 PPG Place, Suite 600

Pittsburgh, PA 15222

Tel: (412) 261-2393

Fax: (412) 261-2110

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

JANET and SCOTT BRUNERMER,)	No. 2020-00779-CIVIL
)	
Plaintiffs/Petitioners,)	
)	
vs.)	
)	
APOLLO BOROUGH,)	
)	
Defendant/Respondent.)	

To: Scott J. Andreassi
Charlton Law
617 South Pike Road
Sarver, PA 16055
Counsel for Defendant/Respondent Apollo Borough

TAKE NOTICE that the attached **Motion to Compel Answer** will be duly presented to the Motions Judge in Motions Court on the second floor of the Armstrong County Courthouse, Kittanning, Pennsylvania, on **Friday, September 4, 2020, at 8:30 A.M.** The Motions Judge will be asked to sign an order granting the prayer for relief. You may appear and be heard at that time if you wish.



Zachary N. Gordon

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

JANET and SCOTT BRUNERMER,)	No. 2020-00779-CIVIL
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Plaintiffs/Movants,)	
)	
vs.)	
)	
APOLLO BOROUGH,)	
)	
Defendant/Respondent.)	

CERTIFICATE OF SERVICE
(Civil Division Matter)

I, the undersigned, hereby certify that I caused a true and correct copy of the forgoing

Motion to be served upon:

<u>Name of Person</u>	<u>Method of Service</u>	<u>Date of Service</u>
Scott J. Andreassi Counsel for Defendant/ Respondent Apollo Borough	U.S. Mail to: Charlton Law 617 South Pike Road Sarver, PA 16055	August 26, 2020
	Email to: scott@charltonlawyers.com	August 26, 2020



Zachary N. Gordon

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

JANET and SCOTT BRUNERMER,)	No. 2020-00779-CIVIL
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Plaintiffs/Movants,)	
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vs.)	
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APOLLO BOROUGH,)	
)	
Defendant/Respondent.)	

MOTION TO COMPEL ANSWER

AND NOW, comes the Plaintiffs/Petitioners, Janet and Scott Brunermer, by and through their attorneys, Zachary N. Gordon, Esquire and Del Sole Cavanaugh Stroyd, LLC, and respectfully request that this Court compel the Borough to answer the Complaint and provide other relief as requested herein:

1. Plaintiffs Janet and Scott Brunermer ("Requesters") submitted a Right-to-Know-Law ("RTKL") request to the Defendant, Apollo Borough ("Borough") on February 28, 2020.
2. After Requesters prevailed before the Office of Open Records ("OOR"), the Borough did not appeal the OOR's June 5, 2020 Final Determination at OOR Docket AP 2020-0642.
3. On July 13, 2020, Requesters then filed a Complaint in Mandamus with this Court alleging that the Borough had not complied with the disclosure required by the Final Determination.
4. On July 14, 2020, this Court agreed to treat the Complaint as a Petition and entered an Order requiring the Borough to Answer within 20 days of service. (Exhibit 1)
5. The Borough accepted service through its solicitor, Scott J. Andreassi, Esquire on July 22, 2020. Mr. Andreassi executed an acceptance of service indicating he was authorized by

the Borough to accept service. The acceptance of service was docketed with this Court on July 29, 2020 (Exhibit 2).

6. On July 31, 2020, the Borough solicitor asked for an extension of time to file the Answer. Due to Requesters' attorney being on vacation, Requesters' attorney responded on August 10, 2020, where counsel for the parties agreed that the Borough would have until August 19, 2020 for the Borough to file their Answer. (Emails between counsel are attached as Exhibit 3).

7. On August 19, 2020, the Borough's solicitor emailed Requesters' counsel indicating the Borough would be filing the Answer that afternoon as agreed. (Exhibit 4).

8. Despite the representation from counsel that the Answer would be filed on August 19, 2020 as agreed, Requesters' counsel never received the Answer.

9. On August 25, 2020, Requesters' counsel checked this Court's docket, which revealed that despite the Borough's Solicitor's promise that the Answer would be filed on August 19, 2020, no Answer had been filed. (Docket report attached as Exhibit 5).

10. Requesters, therefore, request that this Court require the Borough to file its Answer within 7 days of the date of this Court's Order.

11. Pursuant to Rule 206.7, if there are disputed facts in the Borough's Answer the parties need time to take discovery before the October 20, 2020 hearing. If the Borough files an Answer on the eve of the hearing, Requesters will not have adequate time to pursue discovery.

12. Prompt disclosure of records is a fundamental purpose of the RTKL. Levy v. Senate of Pennsylvania, 618, 65 A.3d 361, 381 (Pa. 2013) ("The legislative intent for efficient resolution is justifiable given that the public's interest in government documents is often time dependent.")).

13. It would, therefore, be prejudicial to delay the hearing due to the Borough's non-compliance with this Court's deadlines.

14. Requesters ask that this Court require the Borough to file and serve its Answer within 7 days or that the Borough be deemed to have not filed an Answer pursuant to Rule 206.7(a) and therefore, "all averments of fact in the petition may be deemed admitted for the purposes of this subdivision and the court shall enter an appropriate order."

15. Requesters also seek counsel fees for having to present and prepare this Motion because of the Borough's non-compliance with this Court's July 14, 2020 Order and the parties' agreement for an extension of time. Requesters ask that the counsel fee claim be heard as part of the October 20, 2020 hearing.

WHEREFORE, Plaintiffs respectfully request that this Court enter the attached Order.

DEL SOLE CAVANAUGH STROYD LLC

By:



Zachary N. Gordon
PA ID No. 318808

3 PPG Place, Suite 600
Pittsburgh, PA 15222
Phone: 412-261-2393

Counsel for Plaintiffs/Petitioners

Dated: August 26, 2020

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

JANET and SCOTT BRUNERMER,

Plaintiffs/Petitioners,

vs.

APOLLO BOROUGH,

Defendant/Respondent.

) No. ~~2019~~-CIVIL
) 2020-0779
)
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2020 JUL 14 PM 2:56
CLERK OF COURT
ARMSTRONG COUNTY

ORDER OF COURT ON ISSUANCE OF A RULE TO SHOW CAUSE

AND NOW, this 14th day of July, 2020, upon consideration of the foregoing Complaint in Mandamus, it is hereby ORDERED that:

- 1) A rule is issued upon the respondent to show cause why the Petitioners are not entitled to the relief requested;
- 2) The respondent shall file an Answer to the Petition within twenty 20 days of service upon the respondent;
- 3) The petition shall be decided under Pa. R.C.P. No. 206.7;
- 4) An evidentiary hearing on disputed issues of material fact shall be held on the 20th day of October, 2020 at 9:00 (a.m)/p.m. in Courtroom No. 2 of the Armstrong County Courthouse in Kittanning, Pennsylvania;
- 5) Notice of the entry of this Order shall be provided to all parties by the Prothonotary.

BY THE COURT:

[Signature] P. J.

14 Certified from the Record
this 14 day of July, 2020 A.D.
[Signature]
Brenda C. George,
Prothonotary and Clerk of Courts
Armstrong County, Pennsylvania



NOTICE OF ENTRY OF ORDER
JULY 14, 2020

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

JANET and SCOTT BRUNERMER,

Petitioner/Plaintiffs,

vs.

APOLLO BOROUGH,

Respondent/Defendant.

No. 2020-00779-CIVIL

ACCEPTANCE OF SERVICE OF COMPLAINT IN MANDAMUS AND ORDER OF COURT

Filed on behalf of Plaintiffs/Petitioners,

JANET and SCOTT BRUNERMER

Counsel of Record for this Party:

Zachary N. Gordon

PA ID No. 318808

DEL SOLE CAVANAUGH STROYD LLC

3 PPG Place, Suite 600

Pittsburgh, PA 15222

Tel: (412) 261-2393

Fax: (412) 261-2110

WRENDA C. GEORGE
PROTHONOTARY AND
CLERK OF COURTS
ARMSTRONG COUNTY, PA

2020 JUL 29 AM 9:58

LEFT FOR ENTRY
OR FILING



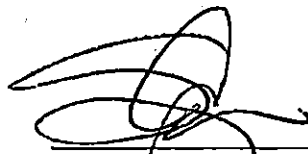
IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

JANET and SCOTT BRUNERMER,)	No. 2020-00779-CIVIL
)	
Plaintiffs/Petitioners,)	
)	
vs.)	
)	
APOLLO BOROUGH,)	
)	
Defendant/Respondent.)	

ACCEPTANCE OF SERVICE OF COMPLAINT IN MANDAMUS
AND ORDER OF COURT

I hereby accept service of the Complaint in Mandamus and July 14, 2020 Order of Court in the above-captioned matter on behalf of Defendant, Apollo Borough, and certify that I am authorized to do so.

7/22/20
Date



Scott J. Andreassi, Esquire
Charlton Law
617 S. Rike Road
Sarver, PA 16055
724-540-1161

IN THE COURT OF COMMON PLEAS OF ARMSTRONG COUNTY, PENNSYLVANIA

JANET and SCOTT BRUNERMER,)	No. 2020-00779-CIVIL
)	
Plaintiffs/Movants,)	
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vs.)	
)	
APOLLO BOROUGH,)	
)	
Defendant/Respondent.)	

CERTIFICATE OF SERVICE
(Civil Division Matter)

I, the undersigned, hereby certify that I caused a true and correct copy of the forgoing

Acceptance of Service to be served upon:

<u>Name of Person</u>	<u>Method of Service</u>	<u>Date of Service</u>
Scott J. Andreassi Counsel for Defendant/ Respondent Apollo Borough	U.S. Mail to: Charlton Law 617 South Pike Road Sarver, PA 16055	July 17, 2020 + July 27, 2020 (w/ fully executed document)




Zachary N. Gordon

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Counsel for Plaintiffs/Petitioners

Signature: 

Name: Zachary N. Gordon

Attorney No.: 318808

Zachary Gordon

From: Scott Andreassi <scott@charltonlawyers.com>
Sent: Monday, August 10, 2020 9:58 AM
To: Zachary Gordon
Subject: RE: Complaint in Mandamus, No. 2020-0779-Civil

Zach,

Glad to hear that you were able to get away. I hope you had an enjoyable time with your family.

I appreciate the extension. I will work to have the search completed and the answer filed before that date. Once I have a better idea of where we are on the searches, I will give you a call.

Scott

Scott J. Andreassi, Esq.
Charlton Law
617 S. Pike Road
Sarver, PA 16055
724-540-1161
www.charltonlawyers.com



From: Zachary Gordon <zgordon@dscslaw.com>
Sent: Monday, August 10, 2020 9:44 AM
To: Scott Andreassi <scott@charltonlawyers.com>
Subject: RE: Complaint in Mandamus, No. 2020-0779-Civil

Scott,

I apologize for the delay in responding to you. I took a vacation staying in a cabin with my family in a state park, and unfortunately the service there was virtually non-existent. As a house-keeping matter, now that this matter is no longer before the OOR, I do not believe it is appropriate to copy the appeals officer on all communications (I do believe the OOR is entitled to courtesy copies of filings, however).

As for your request for an extension, my clients are agreeable to giving you until August 19. We would also greatly appreciate appropriate affidavits or sworn statements from those searching the email accounts. Since this case arises from a February 28th Request, I hope you understand my clients desire to have the case proceed on a prompt timeline.

I am always open to trying to resolve matters amicably. I am back in the office this week, so please feel free to give me a call or email me with the details of what the Borough had in mind so that I can discuss it with my clients.

Sincerely,



Zach

From: Scott Andreassi <scott@charltonlawyers.com>

Sent: Friday, July 31, 2020 3:13 PM

To: Zachary Gordon <zgordon@dscslaw.com>

Cc: Secretary, Borough <boroughmanager@apollopa.org>; sloppysoap@windstream.net; Burlew, Erin <eburlew@pa.gov>

Subject: Complaint in Mandamus, No. 2020-0779-Civil

Zach,

I have requested that the Borough to conduct a search of the email accounts you have listed in paragraph 62 of the complaint for any responsive records. I do not anticipate that this will be complete by the deadline to file the Borough's response. Would you agree to extend the deadline for filing the response in order to complete a search of the email accounts listed? In addition, I would request the opportunity to speak with you with regard to resolving the issues contained in the complaint to determine if a resolution is possible

I look forward to your response and thank you, as always, for your consideration.

Scott

Scott J. Andreassi, Esq.

Charlton Law

617 S. Pike Road

Sarver, PA 16055

724-540-1161

www.charltonlawyers.com



CHARLTON LAW
we've got this

Zachary Gordon

From: Scott Andreassi <scott@charltonlawyers.com>
Sent: Wednesday, August 19, 2020 3:35 PM
To: Zachary Gordon
Cc: Apollo Borough Manager
Subject: 2020-0779

Follow Up Flag: Follow up
Flag Status: Flagged

Good Afternoon Zach,

I believe the follow up email searches have been completed. Per our agreement, I will be filing the answer to the complaint this afternoon along with the exhibits containing the additional emails. I am awaiting some affidavits, and will provide them to you and file the same as soon as they are received. If anything else is discovered, I will contact you. When you've had the chance to review the exhibits, perhaps we can talk further.

Scott

Scott J. Andreassi, Esq.
Charlton Law
617 S. Pike Road
Sarver, PA 16055
724-540-1161
www.charltonlawyers.com



CHARLTONLaw
we've got this



Case No. 2020-00779 JANET BRUNERMER AL (vs) APOLLO BOROUGH

Reference No.
Case Type. MISCELLANEOUS - MANDAM
Judgment. \$.00
Judge Assigned.
Disposed Desc.
----- Case Comments -----

Filed. 7/13/2020
Time. 12:03
Execution Date. 0/00/0000
Jury Trial.
Disposed Date.. 0/00/0000
Higher Crt 1...
Higher Crt 2...

++ GENERAL INDEX ++

Indexed Party

BRUNERMER JANET
APOLLO, PA 15613

PLAINTIFF

Attorney Info

GORDON ZACHARY N
DEL SOLE CAVANAUGH STROYD LLC
3 PPG PLACE, SUITE 600
PITTSBURGH, PA 15222

BRUNERMER SCOTT
APOLLO, PA 15613

PLAINTIFF

GORDON ZACHARY N
DEL SOLE CAVANAUGH STROYD LLC
3 PPG PLACE, SUITE 600
PITTSBURGH, PA 15222

APOLLO BOROUGH
APOLLO, PA 15613

DEFENDANT

++ DOCKET ENTRIES ++

<u>Date</u>	<u>Entry Text</u>
	----- FIRST ENTRY -----
7/13/2020	COMPLAINT IN MANDAMUS FILED BY ZACHARY GORDON, ESQ ON BEHALF OF THE PLAINTIFFS. THREE CERTIFIED COPIES OF ORDER MAILED TO ZACHARY GORDON, ESQ ON 07/14/20 AT 3:45 PM. ORDER DATED JULY 14, 2020; EVIDENTIARY HEARING SHALL BE HELD ON OCTOBER 20, 2020 AT 9:00 AM IN COURTROOM NO. 2. S/JAMES J. PANCHIK, PJ.
7/29/2020	ACCEPTANCE OF SERVICE OF COMPLAINT IN MANDAMUS AND ORDER OF COURT DATED JULY 22, 2020 SIGNED BY SCOTT J. ANDREASSI, ESQ. FILED BY ZACHARY N. GORDON, ESQ. ON BEHALF OF PLAINTIFFS.
	----- LAST ENTRY -----

++ Escrow Information ++

<u>Cost / Fee</u>	<u>Beg. Balance</u>	<u>Pymts/Adjmts</u>	<u>End. Balance</u>
TAX ON CMPLT	\$.50	\$.50	\$.00
JCS/ATJ FEE	\$40.25	\$40.25	\$.00
AUTOMATION FEE	\$5.00	\$5.00	\$.00
COMPLAINT FILED	\$99.50	\$99.50	\$.00
	-----	-----	-----
	\$145.25	\$145.25	\$.00

End of Case Information



VERIFICATION

Plaintiff verifies that the foregoing Motion is based upon information which she has furnished to her counsel and information which has been gathered by her counsel. The language of the Motion is that of counsel and not of Plaintiff. Plaintiff has read the Motion and to the extent that the Motion is based upon information which she has given to her counsel, it is true and correct to the best of her knowledge, information and belief. To the extent that the content of the Motion is that of counsel, she has relied upon counsel in making this verification. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.


Janet Brunner


Date

VERIFICATION

Plaintiff verifies that the foregoing Motion is based upon information which he has furnished to his counsel and information which has been gathered by his counsel. The language of the Motion is that of counsel and not of Plaintiff. Plaintiff has read the Motion and to the extent that the Motion is based upon information which he has given to his counsel, it is true and correct to the best of his knowledge, information and belief. To the extent that the content of the Motion is that of counsel, he has relied upon counsel in making this verification. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.



Scott Brunermer



Date

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Counsel for Plaintiffs/Petitioners

Signature: 

Name: Zachary N. Gordon

Attorney No.: 318808

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)	
APOLLO BOROUGH,)	
)	
Defendant/Respondent.)	

ORDER OF COURT

AND NOW, this ____ day of _____, 2020, upon consideration of Plaintiffs' Motion to Compel Answer in the above captioned cases, it is hereby, ORDERED, ADJUDGED, and DECREED the Plaintiffs' Motion is **GRANTED** as follows:

1. Apollo Borough shall file its Answer to the Complaint within 7 (seven) days of the date of this Order. If no Answer is filed and served on Plaintiffs in the time directed, then the Borough shall be deemed to not have filed an Answer pursuant to Rule 206.7(a), and all averments of facts in the Complaint will be deemed admitted.
2. The Plaintiffs' request for counsel fees for the Borough's non-compliance with this Court's July 14, 2020 Order is hereby consolidated for resolution with the hearing on October 20, 2020.

BY THE COURT:

_____, J.