

KUTZTOWN BOROUGH and  
KUTZTOWN MUNICIPAL AUTHORITY,  
*Claimants,*

v.

TOWNSHIP OF MAXATAWNY and  
MAXATAWNY TOWNSHIP MUNICIPAL  
AUTHORITY,  
*Respondents.*

AMERICAN ARBITRATION  
ASSOCIATION

Reference No. 01-14-0000-0401

**CLAIMANTS' REMEDIES AND DAMAGES STATEMENT**

Pursuant to Paragraph 5 of the Arbitrators' Scheduling Order, Claimants present the following statement of remedies and damages sought in this matter from Respondents ("Maxatawny"), recognizing the multiple admissions by Respondents that they breached the Intermunicipal Agreement, as amended, and the Escrow Agreement:

1. Before addressing the remedies sought by Claimants directly under the Intermunicipal Agreement, Claimants seek immediate relief with respect to the executed and recordable documents currently held in escrow by the Berks County Court of Common Pleas. Specifically, Kutztown intends to seek in Court delivery of the documents returning the property from Maxatawny to Kutztown, as well as the other re-conveyance, termination and sale documents. If and to the extent that the Court determines further proceedings are necessary in front of the Arbitration Panel before granting such relief, Claimants will seek such relief from this Panel. Alternatively, Claimants will seek an Order from the Panel to Maxatawny, directing Maxatawny to consent in the Court of Common Pleas of Berks County to the release of the documents from escrow to Claimants.

2. In addition to the relief sought in Paragraph 1 (where appropriate) or otherwise in the alternative to the relief sought in Paragraph 1, money damages to Kutztown for the value of the land it conveyed to Maxatawny, as well as for the value of all other property, property rights, goods and services provided or contributed by Kutztown to Maxatawny and/or to the construction of the Treatment Facility as described in the Intermunicipal Agreement including, but not limited to, in Article III of the Intermunicipal Agreement. These claims will be submitted under the theories of breach of contract and unjust enrichment. Claimants have not yet calculated the extent of these monetary damages. With respect to the value of the Claimants' land which has been conveyed to Maxatawny, Claimants will likely present expert testimony from a real estate appraiser and, if necessary, an expert in eminent domain. With respect to value of the other property, goods or services provided by Kutztown, Claimants will likely present evidence through representatives of Claimants' professionals (e.g., testimony from SSM on the value of use of the 20 inch pipe and other property rights granted by Kutztown). Additionally, Claimants may present damage testimony through a forensic accounting expert or other valuation expert.
3. In the alternative to the relief sought in Paragraph 1, but in addition to the money damages sought in Paragraph 2, payment to Kutztown for the loss of a key real estate site for a future sewage treatment plant through the testimony of an expert in real estate development.
4. In addition to the relief sought in Paragraphs 1 through 3 above (where appropriate) or otherwise in the alternative to the relief sought in Paragraph 1,

payment to Kutztown for the value to Kutztown of the loss of all contractual rights granted Kutztown under the Intermunicipal Agreement including, but not limited to, the loss of Kutztown's right to participate in the management of SCRA and its right to be involved in the decision-making process of determining allocation of the sewer capacity of the SCRA plant; for the loss of miscellaneous contractual rights under this Intermunicipal Agreement, including but not limited to: a) the loss of the right to flow sewage through existing sewer lines; b) the loss of the capacity in the Treatment Facility (Section 2.02 of the Intermunicipal Agreement); c) the loss of the right to provide utility services in certain areas as depicted in the Intermunicipal Agreement (Section 2.02 of the Intermunicipal Agreement); d) the right to require economical expansion of the Treatment Facility (Section 2.02 of the Intermunicipal Agreement); e) the right to reallocate existing capacity (Section 2.03 of the Intermunicipal Agreement); f) the right to specific service areas (Section 2.04 of the Intermunicipal Agreement); g) the right to receive payment for use of its interceptor mains (Section 2.05 of the Intermunicipal Agreement); h) to the rights granted to Kutztown under Article IV of the Intermunicipal Agreement; i) for the rights granted to Kutztown under Article V of the Intermunicipal Agreement; j) for the rights granted to Kutztown under Article VI of the Intermunicipal Agreement; k) for the rights granted to Kutztown under Article VII of the Intermunicipal Agreement; l) for the rights granted to Kutztown under Article VIII of the Intermunicipal Agreement; m) for the rights granted to Kutztown under Article IX of the Intermunicipal Agreement; n) for the rights granted to Kutztown under Article X of the Intermunicipal

Agreement; o) for the loss of the right to connect to and use the SCRA Sewer Treatment Plant; p) for the loss of the Township's commitment to protect Kutztown's water supply and wells; and q) for the loss of the ability to address regulatory compliance at sewage treatment plants in close proximity. See Paragraph 2 for the legal theories and evidence regarding these losses.


5. In addition to the relief sought in Paragraphs 1 through 4 above, a declaratory judgment that any rights granted to the Respondents under the Intermunicipal Agreement are terminated, including, without limitation, any rights to use of the Claimants' transmission lines, as well as a declaratory judgment that any obligations of Claimants to Respondents under the Intermunicipal Agreement are terminated.
6. In addition to the relief sought in Paragraphs 1 through 4 above, Claimants seek indemnity from the Respondents under Section 10.01(c) of the Intermunicipal Agreement, to include payment of Claimants' attorney's fees resulting from the negligence and/or misconduct of the Respondents related to the Intermunicipal Agreement.

Dated: \_\_\_\_\_

7-15-16

BARLEY SNYDER

By: \_\_\_\_\_

  
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