

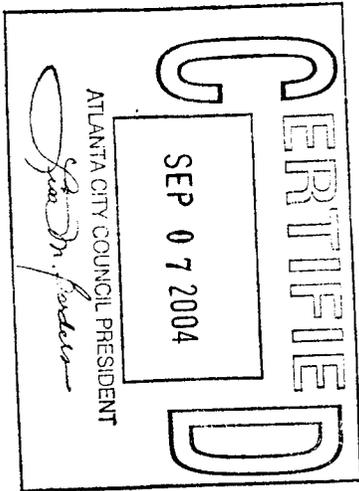
Entered - 05/07/04 - sb  
CL04L0341 - DIANNE C. MITCHELL

CLAIM OF: **SARKIS AGASARKISIAN,**  
through his attorney,  
**J. Stuart Teague**  
**110 Veterans Memorial Boulevard**  
**Suite 200**  
**Cumming, Georgia 30040**

**04-R -1544**

For damages alleged to have been sustained as a result of the enforcement of the Tree Preservation Ordinance on April 14, 2004 at 1175 West Conway Drive.

THIS ADVERSED REPORT IS APPROVED



BY:   
**JERRY L. DELOACH**  
**DEPUTY CITY ATTORNEY**

**ADVERSED BY**  
**CITY COUNCIL**

SEP 07 2004

### ADVERSE REPORT

PUBLIC SAFETY &  
LEGAL ADMINISTRATION COMMITTEE

DATE: 8/31/04

CHAIR: [Signature]

Joyce M. Sheperd

Wayne Harwood

C. T. [Signature]

Hunt Spurr

Carla Smith



DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 04L0341

Date: August 2, 2004

Claimant/Victim SARKIS AGASARKISIAN
BY: (Atty.) J. Stuart Teague
Address: 110 Veterans Memorial Boulevard, Suite 200, Cumming, Georgia 30040
Subrogation: Claim for Property damage \$ 50,000 Bodily Injury \$
Date of Notice: 05/07/04 Method: Written, proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 04/14/04 Place: 1175 West Conway Drive
Department PRCA Bureau: Parks
Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimant alleges he has been damaged due to the City's enforcement of the Tree Preservation Ordinance. However, the claimant has filed a lawsuit in the Superior Court of Fulton County to resolve the issues raised in his claim.

INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,

[Signature]
INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01 2P01
Claims Manager: [Signature] Concur/date 08/18/04
Committee Action: Council Action

BROCKMAN & TEAGUE, LLC

ATTORNEYS AT LAW

(770) 205-8887 (TELEPHONE)  
(770) 205-8879 (FACSIMILE)

http://www.brockmanteague.com

THE FORSYTH PROFESSIONAL BUILDING  
110 VETERANS MEMORIAL BOULEVARD  
SUITE 200  
CUMMING, GEORGIA 30040  
May 5, 2004

ENTERED - 5-26-04 - SB  
04L0341 - DIANNE MITCHELL

RECEIVED  
MAY 07 2004

*LAW*  
*to*  
*ID*  
*DM*

VIA CERTIFIED MAIL ARTICLE NO. 70022030000427396436

The Honorable Shirley Franklin  
Mayor of the City of Atlanta  
City Hall  
City of Atlanta  
55 Trinity Avenue  
Atlanta, Georgia 30303

*mtch*

VIA CERTIFIED MAIL ARTICLE NO. 70022030000427396450

The Honorable Ceasar Mitchell  
President Pro Tem of the City of Atlanta Council  
City Hall  
City of Atlanta  
55 Trinity Avenue  
Suite 2900  
Atlanta, Georgia 30303

*M. Teague*  
*05/24/04*  
*[Signature]*

RE: Property of Sarkis Agasarkisian located at 1175 West Conway Drive, Atlanta, Georgia 30327 (the "Property")

Dear Madam and Sir:

This firm represents Sarkis Agasarkisian. Mr. Agasarkisian is a homeowner and owner of the above-referenced Property located in the city limits of the City of Atlanta, Georgia (the "City"). On or about April 14, 2004, the City of Atlanta issued a Notice of Cash Recompense to Mr. Agasarkisian under the Tree Protection Ordinance directing payment of more than \$49,000. Please accept this letter as a notice precedent to suit pursuant to O.C.G.A. § 36-33-5(b). This claim is tendered respectfully within six (6) months of the City's issuance of the Notice of Cash Recompense for adjustment of a claim against the City and its officials. The client's injury occurred on or about April 14, 2004. The injury is occurring at the Property. The injury, as nearly as practicable, is measured by the deprivation of the cash recompense amount and attorneys' fees and expenses of litigation to challenge the application of the Tree Preservation Ordinance and defend against application of the Tree Preservation Ordinance. Accordingly, this firm's client herein demands the sum of Fifty Thousand (\$50,000.00) dollars in damages, plus attorneys' fees, costs, and expenses of

Mayor and Members of the City Council  
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5/5/2004

litigation to challenge the application of the Tree Preservation Ordinance and defend against application of the Tree Preservation Ordinance. Accordingly, this firm's client herein demands the sum of Fifty Thousand (\$50,000.00) dollars in damages, plus attorneys' fees, costs, and expenses of litigation. The governing authority has thirty (30) days from the date of receipt of this letter within which to pay this demanded sum, to otherwise adjust this claim, and/or take affirmative action to avoid causing damages and injury.

Please be advised that the continued enforcement or extension of the Tree Protection Ordinance and Chapter 158 of the City Code as applied against this firm's client is unconstitutional in that such decisions and ordinance are arbitrary, capricious, unreasonable, and are based upon improper considerations, and violate our client's rights to due process. The City's actions further were arbitrary, capricious, and without rational basis, and constitute an abuse of discretion. Such actions constitute a taking of property without due process in violation of Article 1, Section 1, Paragraph 1 and in violation of Article 1, Section 3, Paragraph 1 of the 1983 Constitution of the State of Georgia. The actions of the City unfairly discriminate between Mr. Agasarkisian and others, and constitute *de jure* and *de facto* discrimination against, and differentiation of, this firm's client in violation of Article 1, Section 1, Paragraph 2 of the 1983 Constitution of the State of Georgia, and Article 1, Section 1, Paragraph 1 of the 1983 Constitution of the State of Georgia.

The circumstances further constitute illegal retaliation against this firm's client for appealing a decision of the City Arborist concerning administration of cash recompense requirements. Such retaliatory acts violate the due process, equal protection, and freedom of speech and freedom of petition provisions of the Georgia Constitution of 1983, Article 1, Section 1, Paragraph 1, Article 1, Section 1, Paragraph 2, Article 1, Section 1, Paragraph 5, and Article 1, Section 1, Paragraph 9. Any contemplated civil action to enjoin or seek relief against Mr. Agasarkisian in return for contesting the Tree Preservation Ordinance will be subject to O.C.G.A. § 9-11-11.1.

Mayor and Members of the City Council  
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5/5/2004

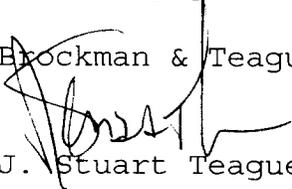
The Tree Protection Ordinance provisions pertaining to imposition of remediation fees are further unconstitutional, illegal, and null and void on their face and as applied, under the Georgia Development Impact Fee Act, O.C.G.A. § 36-71-1, et seq., including each of the requirements for implementing impact fees in O.C.G.A. § 36-71-4, § 36-71-10(b), and § 36-71-12. This law was enacted to ensure that permit fees and exactions conform with requirements of the due process and equal protection provisions of the Georgia Constitution of 1983, Article 1, Section 1, Paragraph 1 and Article 1, Section 1, Paragraph 2 and equivalent provisions of the Federal Constitution. See Nollan v. California Coastal Commission, 483 U.S. 825, 837 (1987).

The actions described in this Complaint have been taken under color of state law, ordinance, regulation, custom, and/or usage, and said actions are in violation of the rights, privileges, and immunities secured by the Constitution of the United States in addition to the 1983 Constitution of the State of Georgia. In addition, the actions and ordinance provisions identified herein constitute a violation of the First, Fifth and Fourteenth Amendments of the United States Constitution and are in violation of the provisions of Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983. Attorneys' fees, expenses of litigation, and costs may be awarded pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

Denial of the permit and application of the exactions constitute separate violations of rights. This notice is tendered pursuant to *Ashkouti v. City of Suwanee*, 271 Ga. 154 (1999), and O.C.G.A. § 36-33-5 as an ante litem notice. The notice given by this letter is not intended to be specific or particular in scope.

Sincerely yours,

Brockman & Teague, LLC

  
J. Stuart Teague, Jr.

Cc: Mr. Sarkis Agasarkisian  
Frank Mobley, City Arborist

Mayor and Members of the City Council

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5/5/2004

Tree Conservation Commission

Carla Smith, Council Member District 1

Debi Starnes, Council Member District 2

Ivory Lee Young, Jr., Council Member District 3

Cleta Winslow, Council Member District 4

Natalyn M. Archibong, Council Member District 5

Anne Fauver, Council Member District 6

Howard Shook, Council Member District 7

Clair Muller, Council Member District 8

Felicia Moore, Council Member District 9

C.T. Martin, Council Member District 10

Jim Maddox, Council Member District 11

Mary Norwood, Council Member Post 2 at large

H. Lamar Willis, Council Member Post 3 at large



## OFFICE OF MUNICIPAL CLERK

RHONDA DAUPHIN JOHNSON, CMC  
MUNICIPAL CLERK

September 14, 2004

55 TRINITY AVENUE, S.W.  
SECOND FLOOR, EAST  
SUITE 2700  
ATLANTA, GEORGIA 30335  
(404) 330-6033  
FAX (404) 658-6103

J. Stuart Teague  
Attorney at Law  
110 Veterans Memorial Boulevard  
Suite 200  
Cumming, Georgia 30040

**04-R-1544**

RE: Sarkis Agasarkisian

Dear Attorney Teague:

I sincerely regret that your client has been adversely affected by the circumstances raised in his/her claim for damages against the City of Atlanta. Your time and patience in this matter has been greatly appreciated.

However, I must notify you that the Atlanta City Council Adopted an Adverse Report on your client's claim at its regular meeting on September 07, 2004. In consultation with the City's Law Department, who conducted an investigation of the situation, the Council has determined that the City cannot accept responsibility for this matter and therefore cannot pay this claim.

If you desire any further information, please contact the **City Attorney's Office/Claims Division** at (404) 330-6400.

Yours very truly,

Rhonda Dauphin Johnson, CMC  
Municipal Clerk

cc: **Claims Division/Law Department**