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Nigro Files Class Action Against Center City District

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The Legal Intelligencer
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When former Pennsylvania Supreme Court Justice Russell M. Nigro purchased a Washington Square condo in April 2009, he paid an annual assessment of more than \$1,000 to the organization charged with keeping Center City's streets and sidewalks clean.

As he got to know his neighbors, Nigro also learned that some of them didn't have to pay the assessment to the city's Center City District. On Feb. 12, Nigro filed a class action lawsuit against the CCD and the City of Philadelphia on behalf of himself and any other condo owners within the district who are required to pay the assessment.

According to the complaint in *Nigro v. City of Philadelphia*, condo owners who purchased their property after Sept. 13, 2005, have to pay the assessment while

those who purchased prior to that date can sign an annual affidavit voluntarily waiving the payment.

The CCD was created in 1990 with the goal of making Center City a more desirable place to live and work. The funds raised through the annual assessments are primarily used to keep "downtown streets clean, safe and attractive," according to the complaint, which cited the CCD's latest operating budget.

During the formation process of the CCD, condo owners complained they could have 350 units all paying for maintenance of the same few feet of sidewalk in front of their building while the business next door has to make only one payment each year for the same sidewalk space. A compromise was struck and residential owners were permitted to sign the annual waivers. Nigro's attorney, George Bochetto of Bochetto & Lentz, said was his understanding of the history of these residential assessments.

"Where we stand now, with the way in which the Center City 'assessment' is imposed, there is a hodgepodge of extractions of tax money that bear no rhyme or reason and certainly cannot pass not only constitutional muster but doesn't even get past the enabling legislation's very requirement of uniformity," Bochetto said in an interview Thursday.

In his suit, filed in Philadelphia Common Pleas Court, Nigro alleges the CCD and the city have violated Article 8, Section 1 of the Pennsylvania Constitution regarding the levying of taxes, the Equal Protection Clause of the U.S. Constitution and the CCD's own enabling statute that requires "each benefitted property be assessed."

"The disparities between who pays and who does not give rise to violations of the Pennsylvania Constitution, the United States Constitution and the Pennsylvania statutes under which the CCD was created and from which it derives its power and authority," the complaint alleges.

Nigro said in the complaint that the assessments are taxes "in both fact and law," and therefore must be levied and collected uniformly. Assessments are exempt from uniformity provisions if they are used to finance a one-time improvement to the real property being assessed, according to the complaint. Nigro argued in the complaint the CCD's basic mission is not to make one-time improvements such as street lights or sewer lines, but to provide continuing maintenance — particularly cleaning.

"To try to pass off the extractions as assessments rather than taxes is not only a ludicrous attempt to call a pig a horse, but equally as untenable constitutionally," Bochetto said.

The complaint also takes issue with the fact that those condos immediately outside of the CCD boundaries but within the city are not forced to pay the assessments even though they enjoy some of the benefits of the CCD's work. Nigro estimated in the complaint that the class size is about 4,000 people.

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Nigro paid \$1.35 million for his condo at 210 West Washington Square in April 2009. Under the CCD's assessment method, he was charged \$1,176 for the portion of the year he lived in the district. He has since received another bill "in like amount," according to the complaint.

A spokesman for the Center City District said he couldn't comment on pending litigation. A call to the city's Law Department wasn't returned by press time. •

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