

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

DRUG AND ALCOHOL TREATMENT
ASSOCIATION OF RHODE ISLAND
(D.A.T.A.)

VS.

PAUL TAVARES, in his official
Capacity as General Treasurer for
The State of Rhode Island

DECLARATORY JUDGMENT COMPLAINT

1. Plaintiff, Drug and Alcohol Treatment Association of Rhode Island (D.A.T.A.) is a corporation organized and existing under the laws of the State of Rhode Island and is a non-profit membership organization, established in 1984 to represent public and private alcohol and drug treatment, behavioral, health, prevention and student assistance programs.

2. One of the Plaintiff's major goals is to educate youth, adults and the general public about substance abuse risks, resources and to reduce the stigma associated with the disease of addictions.

3. The Defendant, Paul Tavares, is the elected Rhode Island General Treasurer, a constitutional office, whose powers are created by Article 9, Section 12 of the Rhode Island Constitution.

4. The instant action is brought in accordance with the Administrative Procedures Act, RIGL §42-35-1, et seq., and the Uniform Declaratory Judgment Act, §9-30-1, et seq.

5. Pursuant to the Criminal Injuries Compensation Act (RIGL §12-25-16 et seq.) the Defendant, General Treasurer, is authorized to administer a program to pay claims to victims of crimes under certain conditions imposed by statute and regulation.

6. In accordance with the powers granted to him by RIGL §12-25-18(b) and the Administrative Procedures Act (§42-35-1, et seq.), the Defendant, General Treasurer, promulgated many regulations to implement the provisions of the Criminal Injuries Compensation Act.

7. In 2005, the Defendant, General Treasurer, promulgated an amendment to Section 1.08 to allow him to deny or reduce victims' awards for criminal injuries compensation if the victims were ever convicted of misdemeanors of driving under the influence/driving while intoxicated.

8. In 2006, the Defendant, General Treasurer, promulgated another amendment to Section 1.08 to allow him to deny or reduce a victims' awards for criminal injuries compensation if the victims had ever been convicted of the illegal manufacture, sale or delivery of a controlled substances, or possession with intent to deliver a controlled substance pursuant to Title 21, Chapter 28 of the Rhode Island General Laws.

9. The resulting regulation (Section 1.08) after the 2005 and 2006 amendments promulgated by the Defendant, General Treasurer, allows his office, in evaluating the claims of otherwise eligible crime victims, to "deny or reduce an award to a victim if that victim had pled nolo contendere or been convicted of violent felonious criminal conduct, or DUI/DWI (2005 Amendment), or the illegal manufacturer, sale or delivery of a controlled substance, or possession with intent to manufacture, sell, or deliver a controlled substance pursuant to Title 21, Chapter 28 of the Rhode Island General Laws (2006 Amendment), within five (5) years or subsequent to their compensable injury." (Emphasis added)

10. Defendant, General Treasurer's office is included in definition of "agency" in the Administrative Procedures Act, specifically by RIGL §42-35-1(a).

11. Defendant, General Treasurer's office promulgated rules are subject to challenge under RIGL §42-35-7 of the Administrative Procedures Act.

12. The Defendant, General Treasurer's adoption of the 2005 and 2006 amendments to Rule 1.08 as described above, "interferes or impairs or threatens to interfere or impair the legal rights or privileges" of the Plaintiff, as a substance abuse treatment and rehabilitative organization as envisioned by RIGL §42-35-7.

13. The Defendant, General Treasurer's adoption of said twice amended Rule 1.08 was arbitrary and capricious in violation of the Administrative Procedures Act's rule making standards.

14. The Defendant, General Treasurer's adoption of said amended Rule 1.08 violated RIGL §12-25-19(d) of the Criminal Injuries Compensation Act since it authorized the Defendant, General Treasurer, to consider the crime victim's non-violent criminal background in making an award of compensation.

15. The Defendant, General Treasurer's adoption of the twice revised Section 1.08 operates to chill participation in the Plaintiff's programs and, thus, correspondingly in their opportunity to aid the recovery of substance abusers.

16. As a result of 2005 and 2006 amendments to Rule 1.08, substance abuse victims may be hesitant and deterred from making otherwise valid applications for criminal victim compensation counter to the clear intent of the Criminal Injuries Compensation Act.

WHEREFORE, Plaintiff prays that this Honorable Court enter judgment as follows:

- A. Amended Regulation Section 1.08 of the Defendant, General Treasurer's Rules and Regulations, pertaining to the Crime Victim Compensation Program be declared null, void and unenforceable.
- B. Plaintiff be awarded costs of prosecution of this complaint.
- C. Plaintiff be awarded attorney's fees pursuant to RIGL §42-92-3.
- D.
- E. Plaintiff be awarded such other relief that this Court deems just under the circumstances.

Plaintiff
By its attorney,

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Dated: