

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

IN THE MATTER OF:)
)
)
Local Government Center, Inc.;)
Government Center Real Estate, Inc.;)
Local Government Center Health Trust, LLC;)
Local Government Center Property-Liability Trust,)
LLC;)
Health Trust, Inc.;)
New Hampshire Municipal Association Property-Liability) Case No.: C-2011000036
Trust, Inc.:)
LGC – HT, LLC)
Local Government Center Workers’ Compensation)
Trust, LLC;)
And the following individuals:)
Maura Carroll; Keith R. Burke; Paul G. Beecher;)
Peter J. Curro; April D. Whittaker; Timothy J. Ruehr;)
Julia A. Griffin; and John Andrews)
)
RESPONDENTS)
)

ORDER DENYING MOTION TO PRECLUDE TESTIMONY

On January 10, 2012 the respondent Andrews filed a motion entitled “Motion to Preclude Legal Conclusion Testimony” seeking to limit testimony he anticipates may be offered at hearing by a witness for the Bureau of Securities Regulation (“BSR”), namely Richard Djokic. On January 20, 2012 the BSR filed its “Objection to Respondent Andrews’ Motion to Preclude Legal Conclusion Testimony.” On January 25, 2012, the respondent Andrews filed his “Objection to the BSR Response [to Andrews’ earlier motion].”

At this time there are no significant facts articulated that are contested between these parties in their filings. Both represent that Mr. Djokic may be called as a witness at the evidentiary hearing and may provide expert testimony regarding investment securities and related topics. Although characterizing anticipated testimony with slight differences, both parties acknowledge that Mr. Djokic’s testimony may include his

opinions or conclusions as to subject areas related to securities concepts, terms and practices and the relevancy of those issues to the law of this case. Respondent Andrews seeks to preclude this witness from testimony that would amount to “legal conclusions.”

The applicable law governing witness testimony in administrative proceedings generally and this administrative hearing specifically plainly provides the presiding officer with the discretion to make determinations as to the admissibility of testimony. (See generally RSA 421-B:26-a). Such determinations are best made when actual expert testimony is to be offered into evidence at the hearing and not prior to determining the qualifications of the expert and considering the accuracy of testimony. In the event that Mr. Djokic is called as a witness to provide testimonial or other demonstrative evidence at the evidentiary hearing the presiding officer will consider what testimony is admissible in the context of the hearing, with due consideration of the content of the witness’s testimony and the qualifications required of this, and any other witness. The presiding officer does not see that there is sufficient need at this time to make a determination as to whether or not actual testimony to be given at hearing constitutes a legal opinion or that such opinion should be found inadmissible now.

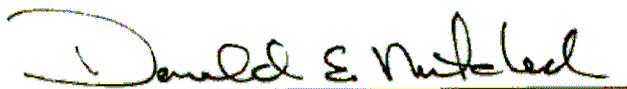
The law further provides that the presiding officer is empowered to “determine credibility or weight of evidence,” of any testimony provided at hearing. (See generally RSA 421-B:26-a, XIV and RSA 421-B:26-a, XIV (n)). It follows a determination of admissibility of Mr. Djokic’s testimony shall be made at the evidentiary hearing and its credibility and the weight to be assigned to it shall be considered in making the final decision in this matter. If particular testimony is determined at that time to be “irrelevant, immaterial, or unreliable” it will be excluded. (See RSA 421-B:26, XX). If not excluded his credibility and the weight to be assigned to his testimony will be appropriately weighed.

I do not find that the respondent has sufficiently shown that any undue burden befalls him by addressing his normal responsibilities related to the pre-hearing discovery being conducted in this matter. I do not find that

any prejudice has been shown to result to the respondent Andrews failing a pre-hearing restrictive ruling as to Mr. Djokic's potential testimony. I further do not find that the repeated characterization by the respondent Andrews that these administrative proceedings have been assigned an "expedited schedule" to be accurate as discovery has transpired in excess of four months to date and will not close for another three months an appropriate span of time.

Because there is no significant difference in the facts presented by the parties and because there is no ambiguity in the statutory provision assigning discretion and instruction to the presiding officer in these proceedings in the consideration of evidence, this decision is rendered without the necessity for a separate hearing. The delineation between professional opinion and legal conclusion expressed in Mr Djokic's future testimony or the determination of admissibility of such evidence presented as testimony in the context of a full evidentiary hearing lends itself to a more accurate determination than can or should be made at this time. The respondent Andrew's motion is denied at this time without prejudice to its later assertion as to the admissibility of any of Mr. Djokic's actual testimony when offered at the evidentiary hearing.

So ordered, this 25th day of January, 2012

A handwritten signature in black ink that reads "Donald E. Mitchell". The signature is written in a cursive style with a large initial "D".

Donald E. Mitchell, Esq.
Presiding Officer

SERVICE LIST

cc: Jeffrey D. Spill, Esq.
Earle F. Wingate, III, Esq.
Kevin B. Moquin, Esq.
Eric Forcier, Esq.
Adrian S. Larochelle, Esq.
William C. Saturley, Esq.
Brian M. Quirk, Esq.
David I. Frydman, Esq.
Michael D. Ramsdell, Esq.
Joshua M. Pantesco, Esq.
Mark E. Howard, Esq.
Jaye L. Rancourt, Esq.
Andru H. Volinsky, Esq.
Roy W. Tilsley, Jr., Esq.
Stephen M. Gordon, Esq.
Benjamin Siracusa Hillman, Esq.