

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION

IN THE MATTER OF:

Local Government Center, Inc; Local
Government Center Real Estate, Inc.;
Local Government Center HealthTrust,
LLC; Local Government Center
Property-Liability Trust, LLC;
Health Trust, Inc; New Hampshire
Municipal Association Property-Liability
Trust, Inc.; LGC-HT, LLC; Local
Government Center Workers'
Compensation Trust, LLC; and the
following individuals: Maura Carroll,
Keith R. Burke, Stephen A. Moltenbrey,
Paul G. Beecher, Robert A. Berry,
Roderick MacDonald, Peter J. Curro,
April D. Whittaker, Timothy J. Ruehr,
Julia N. Griffin, Paula Adriance, John
P. Bohenko, and John Andrews

Case No: C-2011000036

**RESPONDENT JOHN ANDREWS' MOTION FOR MORE DEFINITE
STATEMENT OR FOR CLARIFICATION**

Respondent John Andrews, by and through his counsel, Orr & Reno, P.A., moves for an Order directing the Bureau of Securities Regulation (the "BSR") to reform the Staff Petition to identify the statutory violations of which he is accused and the specific relief the BSR seeks against him. In support of his motion, Mr. Andrews states the following:

Due Process Requires Adequate Notice

1. It is axiomatic that the due process right ensured by the Fourteenth Amendment to the United States Constitution and Part I, Article 15 of the New Hampshire Constitution requires fair notice of the government's claims. *See Petition of*

Kilton, 156 N.H. 632, 638-39 (2007) (“For more than a century, the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.”). “[A]dequate notice is notice that is reasonably calculated to give the defendant actual notice of the issue to be decided at the hearing.” *Town of Swanzey v. Liebler*, 140 N.H. 760, 763 (1996) (citation omitted).

2. In *Liebler*, the Town of Swanzey served a cease and desist order on a property owner that alleged he was in violation of RSA 310-A because his building plans had not been prepared by a licensed architect. *Id.* at 761. At trial, the Town argued and the trial court found that the property owner also could be found liable for civil penalties pursuant to RSA 676:17 because “the cease and desist order, which informed the defendant of an alleged violation of RSA chapter 310-A, served as notice of a violation of the BOCA code, which is a ‘local ordinance, code or regulation’ under RSA 676:17, I(b).” *Id.* at 762.

3. The New Hampshire Supreme Court reversed the trial court’s decision. *Id.* at 763. The Court found the notice of a violation of RSA 676:17 inadequate, and therefore, violative of due process as follows:

The question is, therefore, whether the cease and desist order notifying the defendant of a violation of RSA chapter 310-A can reasonably be found to have given notice of a BOCA code violation. We hold that it can not. While we agree that the defendant may not be excused for lack of knowledge of local building codes, he may not be fined with civil penalties under RSA 676:17 unless given reasonable “written notice” that he is in fact in violation of a town ordinance. There is no evidence in the record that the defendant was notified that he was in violation of a BOCA code until the town filed its petition for injunction. Mere reference to RSA chapter 310-A in the cease and desist order is not sufficient notice. Therefore, we reverse the trial court’s award of civil penalties.

Id. at 763.

**The Staff Petition Does Not Adequately Notify Mr. Andrews
of the Alleged Statutory Violations of Which He is Accused
or the Relief Sought By the BSR Against Him.**

4. The original Staff Petition contains 103 numbered paragraphs alleged as “Statement[s] of Fact.” It contains 41 numbered paragraphs alleged as “Statement[s] of Law.” The original Staff Petition requests the following relief:

- a. find as fact the allegations set forth in paragraphs 1-108;
- b. accept the conclusions of law urged in the succeeding 41 paragraphs;
- c. “Order Respondents to cease and desist in accordance with RSA 5-B:4-a, VI and RSA 421-B:21, I”;
- d. “Order Respondents to pay administrative fines in accordance with RSA 5-B:4-a, VII(a), RSA 421-B:26:III, RSA 421-B:26, III-a, RSA 421-B:26, III-b, and RSA 421-B:26, VIII”;
- e. “Order Respondents to pay the cost of investigation of this matter in accordance with RSA 5-B:4-a, V, RSA 421-B:22, IV and RSA 421-B:23, II as appropriate”; and
- f. “Order the Respondents to pay restitution to member political subdivisions of its Pooled Risk Management Programs pursuant to RSA 5-B:4-a, VII(b) and RSA 421-B:26, V.”

5. Count 4 of the Staff Petition contains 33 numbered paragraphs. The paragraphs are not divided into allegations of fact and allegations of law. Count 4 does not contain a separate statement of the relief requested.

6. The Staff Petition names eight business entity Respondents. Mr. Andrews is one of thirteen individual named Respondents.¹ Despite the multiplicity Respondents, the Staff Petition does not identify the specific relief sought from Mr. Andrews or any other single Respondent. Instead, as quoted above, the Staff Petition broadly proclaims

¹ Two individual Respondents have been dismissed since the issuance of the Staff Petition.

that the BSR seeks administrative fines, investigative costs and restitution from all Respondents, including Mr. Andrews.

7. Based on the breadth and the most likely focus of the Staff Petition, it appears illogical, and therefore unlikely, that the BSR is seeking administrative fines for every alleged statutory violation from Mr. Andrews. It appears similarly illogical and unlikely that the BSR is seeking reimbursement for its investigative costs or “restitution to member political subdivisions” from Mr. Andrews.

8. However, the BSR’s broad use of “Respondents” in its requests for relief only allows Mr. Andrews to guess at the extent of the relief the BSR seeks from him if it prevails on any or all of its allegations. Consequently, the Staff Petition does not provide adequate notice as required by the Fourteenth Amendment and Part I, Article 15. *See Petition of Kilton*, 156 N.H. at 638-39; *Liebler*, 140 N.H. at 763.

9. Under some circumstances, inadequate notice in a request for relief can be cured by specific identification of the allegations in the body of the charging document. Here, the Staff Petition also fails to adequately identify the specific statutory violations and particular conduct of which Mr. Andrews is accused.

10. The Statement(s) of Fact for Count 1 – “Corporate Governance” allege conduct by various business entity Respondents between 1985 and 2011. Count 1 does not allege any particular conduct by Mr. Andrews. The Statement(s) of Law for Count 1 also do not mention Mr. Andrews. Accordingly, it appears that Mr. Andrews is not charged with any conduct or statutory violation alleged in Count 1. However, the Staff Petition does not state that the BSR is not seeking to hold Mr. Andrews liable for any

conduct or any statutory violation alleged in Count 1 and the BSR's broad requests for relief are inconsistent with such intent.

11. The Statement(s) of Fact for Count 2 – “Financial Mismanagement” allege multiple statutory violations related to various business entity Respondents' handling of funds. Like Count 1, Count 2 does not allege any particular conduct by Mr. Andrews. Like Count 1, the Statement(s) of Law for Count 2 do not mention Mr. Andrews. Accordingly, it appears that Mr. Andrews is not charged with any conduct or statutory violation alleged in Count 2. However, the Staff Petition does not state that the BSR is not seeking to hold Mr. Andrews liable for any conduct or any statutory violation alleged in Count 2 and the BSR's broad requests for relief are inconsistent with such intent.

12. The Statement(s) of Fact for Count 3 – “Violations of the New Hampshire Securities Act” appear to provide better notice than Counts 1 and 2. Section A of Count 3 specifically alleges violations of RSA 421-B:11, I, on behalf of certain business entity Respondents. Section C of Count 3 specifically alleges violations of RSA 421-B:3, I(b) and (c) on behalf of certain business entity Respondents. Section D of Count 3 specifically alleges violations of RSA 421-B:3, I(c) on behalf of certain business entity Respondents. By accusing particular Respondents of the specific statutory violations, Sections A, C and D exclude the unnamed Respondents including Mr. Andrews from liability for those accusations.

13. Section B of Count 3 specifically alleges that Respondent Andrews and others are subject to an enforcement action pursuant to RSA 421-B:26, III-a. Section E of Count 3 specifically alleges that Respondent Andrews and others have violated RSA

421-B:3, I(b).² Mr. Andrews does not contest that he has received adequate notice that he is accused of some of the statutory violations alleged in Sections B and E of Count 3.

14. As noted above, Count 4 – “Additional Issues Regarding Limited Liability Company Formation and Management” does not contain separate Statement(s) of Fact and Law or a request for relief. In addition to allegations regarding the formation and management of certain limited liability company Respondents, Section D of Count 4 contains six numbered paragraphs apparently seeking judicial dissolution of two limited liability company Respondents.

15. Mr. Andrews is mentioned in Count 4. However, it is impossible to discern whether the Staff Petition accuses Mr. Andrews of wrongdoing and seeks relief against him or whether the sole relief the BSR seeks in Count 4 is judicial dissolution of the relevant limited liability company Respondents.

16. For the foregoing reasons, Mr. Andrews cannot discern whether, and if so to what extent, Counts 1, 2 and 4 of the Staff Petition accuse him of statutory violations for which the BSR seeks relief from him if it prevails on any or all of these counts. Consequently, the Staff Petition does not provide adequate notice as required by the Fourteenth Amendment and Part I, Article 15. *See Petition of Kilton*, 156 N.H. at 638-39; *Liebler*, 140 N.H. at 763.

Prayer for Relief

Respondent John Andrews respectfully requests that Presiding Officer Mitchell grant Respondent John Andrews’ Motion for More Definite Statement or for Clarification, and thereby Order that the BSR reform the Staff Petition to identify the

² While the Statement of Facts incorrectly identifies the relevant statute as RSA 431-B:3, I(b), the error is corrected in the Statement of Law regarding Count 3.

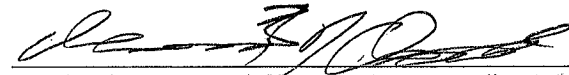
statutory violations of which he is accused and the specific relief the BSR seeks against him.

Respectfully Submitted,

JOHN ANDREWS

Date: 11/20/11

By:



Michael D. Ramsdell, Esq. (NH Bar #2096)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded this day via electronic mail to all counsel of record.



Michael D. Ramsdell, Esq.