

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE

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IN THE MATTER OF: )  
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)  
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: C2011000036  
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 A. Griffin; Paula Adriance; John P. Bohenko; and )  
John Andrews )  
)  
RESPONDENTS )  
)

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**REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW**

NOW COMES Petitioner, the Bureau of Securities Regulation, a part of the Corporations Division within the Department of State, and submits this Request for Findings of Fact and Rulings of Law, stating in support thereof as follows:

**Findings of Fact**

1. On September 2, 2011, the New Hampshire Bureau of Securities Regulation filed a Staff Petition for Relief with the New Hampshire Secretary of State’s Office, accusing Respondents of violating N.H. RSA § 5-B and N.H. RSA § 421-B.
2. On September 2, 2011, the Secretary of State, William M. Gardner, issued an order to Cease and Desist, an Order to Show Cause, and a Hearing Order in response to the Staff Petition.

3. HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. were first incorporated as New Hampshire nonprofit corporation (under the umbrella of LGC, Inc.) pursuant to N.H. RSA § 292 on February 11, 1985 and June 3, 1986, respectively. Each functioned as a pooled risk management program (pool) in the state of New Hampshire, subjecting each entity to N.H. RSA § 5-B.
4. In 2003, a plan was proposed to the respective boards of trustees of HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. to house the nonprofits in limited liability companies (“LLCs”) with an umbrella corporation (LGC, Inc.) overseeing them. To effectuate this plan, a series of transfers were attempted. HealthTrust, Inc. attempted to merge with LGC-HT, LLC, a Delaware LLC and NHMA Property-Liability Trust, Inc. attempted to merge with LGC-PLT, LLC, another Delaware LLC. Then, LGC-HT, LLC was merged with LGC HealthTrust, LLC, a New Hampshire LLC, and LGC-PLT, LLC was merged with LGC Property-Liability Trust, LLC, another New Hampshire LLC.
5. When LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC were formed, Certificates of Formation were filed with the New Hampshire Secretary of State’s Office pursuant to N.H. RSA § 304-C:12. Pursuant to N.H. RSA § 304-C:12, II(e), as part of each Certificate of Formation, it was stated that management authority of each LLC was not vested in *managers*, and thus, by statutory default, vested in *members*. Each certificate was signed by each entity’s only *member*, John B. Andrews.
6. According to the 2004 “Notes to Financial Statements” provided as part of both LGC HealthTrust, LLC’s annual N.H. RSA § 5-B informational filing, “[o]n July 1, 2003, pursuant to a planned reorganization, the assets, liabilities, member’s balance, and business” of the HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. were merged into LGC HealthTrust, LLC and Property-Liability Trust, LLC, respectively.
7. As a result of this purported merger, neither HealthTrust, Inc. nor NHMA Property-Liability Trust, Inc. filed its 5-year renewal of registration in 2005 pursuant to N.H. RSA § 292:25, resulting in the administrative dissolution of both entities pursuant to N.H. RSA § 292:25, I.
8. In 2004 (and for every subsequent year), pursuant to N.H. RSA § 304-C:31, II, both LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC filed their annual report. Each 2004 annual report listed only alleged *managers* but not a single *member*. Each 2004 annual report was signed by each entity’s only claimed *manager*, John B. Andrews.

9. In the 2004, 2006, 2007, 2008, 2009, 2010, and 2011 annual reports of LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC, only individuals were listed as *managers* of each entity. Neither entity listed a single *member* in any of these annual reports, thus, according to these annual reports, neither entity had a single individual or entity with management authority. Thus, during these years, there was no way for either entity to exercise management authority over, for example, contracting with municipalities.
10. On August 31, 2011, LGC, Inc. admitted that each purported 2003 merger of HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. with Delaware LLCs (and thus the resulting New Hampshire LLCs) “had not been completed appropriately.” Subsequently, the former boards of both HealthTrust, Inc. and NHMA Property Liability Trust, Inc. purportedly voted to revive these defunct nonprofit corporations in an attempt to continue operating N.H. RSA § 5-B pools under the umbrella of these two entities.
11. On October 13, 2011, LGC filed with the Corporations Division a purported “correction” to all annual reports of LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC listing LGC, Inc. as *member* of both entities for the years 2004 through 2011. Further, LGC attempted to file an amendment to LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC’s Certificates of Formation, attempting to have LGC, Inc. as the party authorized each Certificate as each entity’s “sole *member*.”

#### **Rulings of Law**

12. LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC have violated N.H. RSA § 5-B:5, I(a) as LGC has admitted the purported 2003 merger “had not been completed appropriately” and LGC has attempted to correct these errors by reviving the defunct nonprofits. Thus, LGC has admitted to a direct violation of N.H. RSA § 5-B:5, I(a) which requires a Pool be housed within an entity established pursuant to New Hampshire law.
13. LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC have violated N.H. RSA § 5-B:5, I(a) and (b) as neither entity ever attempted to file an amendment to its Certificate of Formation until October 13, 2011. Under N.H. RSA § 304-C:13, an LLC’s Certificate of Formation may be amended in order to change the individuals or entities in whom LLC management authority is vested. This is accomplished by “filing a certificate of amendment with the secretary of state.” All that is required as part of this Certificate of Amendment is the name of the entity and the amendment. At no time prior to the attempt by both entities to

do so on October 13, 2011, had either LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC filed such a certificate. Thus, management authority has remained vested only in each entity's *members*, none of which have ever been properly listed on either entity's annual reports prior to October 13, 2011 meaning neither entity during that time was governed by a "board" pursuant to N.H. RSA § 5-B:5, I(b).

14. LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC have violated N.H. RSA § 5-B:5, I(a) and (b) because neither entity has ever filed a properly authorized annual report listing a *member* with management authority as every annual report of both LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC, from 2004 until 2010, was signed by an alleged LLC *manager* or some other "authorized party" and not a *member* (as the only party having management authority or agency power).

15. LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC have violated N.H. RSA § 5-B:5, I(a) and (b) as neither entity has ever executed an LLC agreement, let alone one that outlines some contractual deviation from the letter of New Hampshire law. Under N.H. RSA § 304-C:31, I, "[a] limited liability company agreement may provide for the management, in whole or in part, of a limited liability company by a *manager* or *managers*, who shall be chosen by the *members* in the manner provided in the limited liability company agreement." (emphasis added) The statute further states, "[a] *manager* shall hold the offices and have the responsibilities accorded to him by the *members* and set forth in a limited liability company agreement. A *manager* shall cease to be a *manager* as provided in a limited liability company agreement." (emphasis added) Thus, since each entity's inception, management authority of both LGC HealthTrust, LLC and Property-Liability Trust, LLC has remained vested in each entity's sole *member*, none of whom have been properly listed on either entity's annual reports and none of whom may act as a "board" as required by N.H. RSA § 5-B, I(b).

16. LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC have violated N.H. RSA § 5-B:5, I(b) as LGC, Inc., HealthTrust, Inc., and NHMA Property-Liability Trust, Inc. were not and have never been lawfully admitted as *members* or *managers* of LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC, and thus, none of these entities and not one member of their respective boards of directors have ever had management authority over either LLC. Thus, LGC, Inc., HealthTrust, Inc. (or its successor LGC HealthTrust, Inc.), and NHMA Property-Liability Trust, Inc. never had title to or authority over any of the assets transferred

to LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC as part of the purported 2003 merger. Because neither LGC HealthTrust, LLC nor LGC Property-Liability Trust, LLC had a single *member* (the only group with management authority over the assets of each LLC) and no LLC agreement to the contrary, no individual or entity, let alone LGC, Inc. or its affiliates or board of directors may currently manage the assets of either LGC HealthTrust, LLC or LGC Property-Liability Trust, LLC as the “board” of either entity.

17. LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC have violated N.H. RSA § 5-B:5, I(a) and (b) as no LLC agreement exists, for either entity, providing for the appointment of *managers* or the granting of agency power to any individual or entity other than the listed *member* or *members*. N.H. RSA 304-C:26 provides:

Except as provided in paragraph II, every *member* is an agent of the limited liability company for the purpose of its business or affairs, and the act of any *member*, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company, binds the limited liability company, unless the *member* so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the *member* is dealing has knowledge of the fact that the *member* has no such authority. (emphasis added)

There exists no other provision of N.H. LLC law that provides for the appointment of officers or agents except via the provisions of an LLC agreement. In the case of a *member*-managed LLC (such as LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC), *managers* may act as officers or agents of the LLC being that they are non-*members* and may be granted agency power pursuant to the LLC agreement.

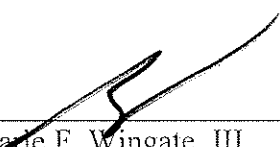
18. LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC have violated N.H. RSA § 5-B:5, I(b) as both entities, at least temporarily, were owned and operated by a single individual. At the time of the purported 2003 merger and the subsequent transfer of all HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. assets into Delaware LLCs and then New Hampshire LLCs, according to each LLC’s Certificate of Formation, each was owned and operated by a single individual, John B. Andrews. This is a direct violation of N.H. RSA § 5-B:5, I(b) as a single individual is not a “board” under N.H. RSA § 5-B:5, I(b).
19. LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC have violated N.H. RSA § 5-B:5, I(b) because the alleged October 13, 2011 “corrections” do not remedy the rampant errors in LLC formation and governance of both LLCs. First, an amendment to an LLC

Certificate of Formation years after the fact may not be used to undo an error such as the improper vesting of management authority at the time of the LLC's creation. Although perhaps true that John B. Andrews should not have been the sole *member* of LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC, it is a fact that John B. Andrews, at least temporarily, owned and operated both entities and was the sole *member* of both entities when all assets of HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. were transferred to them. At the time of each entity's creation and at the time of asset transfer, neither pool was managed by a "board" but rather a single individual, which is a direct violation of N.H. RSA § 5-B:5, I(b). Second, the "corrections" attempted by LGC on October 13, 2011 say nothing about the unlawfully admitted *managers* listed on LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC's annual reports from 2004 through 2011. Thus, even if these amendments were effective, they would have no effect on the unlawful admission of *managers* and the listing of those unlawfully admitted *managers* on each entity's annual reports. It seems that in an attempt to make "corrections" to these previous filings a correction to such an apparent error would also be attempted, but that is not the case. Thus, even if these amendments were effective, significant errors would still exist in each entity's 2004 through 2011 annual reports. Third, the effect of LGC's admission that the 2003 mergers "had not been completed appropriately" and the subsequent revival of the administratively dissolved nonprofits LGC HealthTrust, Inc. and NHMA Property-Liability Trust, Inc. remains apparent. If the purported 2003 merger "had not been completed appropriately" and LGC revived the defunct nonprofits in an attempt to remedy these errors but has subsequently tried to correct errors in the filings of LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC, the effect of the inappropriate merger continues to plague both N.H. RSA § 5-B pools. Admittedly, LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC were unlawfully formed and funded yet LGC seeks to continue to house two N.H. RSA § 5-B pools within these LLCs. This is a direct violation of N.H. RSA § 5-B, I(a). WHEREFORE, the Petitioner respectfully requests that the Hearings Officer:

- A. Find as fact, paragraphs 1 through 11 of Petitioner's Request for Findings of Fact and Rulings of Law.
- B. Rule as law, paragraphs 12 through 19 of Petitioner's Request for Findings of Fact and Rulings of Law.

- C. Order that LGC shall pay Petitioner's costs of investigation as they pertain to the above violations as required by N.H. RSA § 5-B:4-a, V.
- D. Grant such other and further relief, as may be deemed proper and just.

Dated this 21th day of October, 2011



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Earle F. Wingate, III  
Staff Attorney  
N.H. Bureau of Securities Regulation

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