

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

**JOHN ANDREWS' OBJECTION TO BSR'S REQUEST FOR FINDINGS OF
FACT AND RULINGS OF LAW**

NOW COMES Respondent John Andrews, by and through his counsel, Orr & Reno, P.A., and objects to the Bureau of Securities Regulation's (the "BSR") untimely Request for Findings of Fact and Rulings of Law (the "Request") as violative of his right to due process guaranteed by the Fourteenth Amendment to the United States Constitution and Part I, Article 15 of the New Hampshire Constitution. In support of his objection, Mr. Andrews states the following:

1. During the October 4, 2011 pre-hearing conference the BSR "indicated that they may have an issue regarding representation of some counsel of multiple parties." Pre-hearing Order Addressing Certain Administrative and Procedural Issues

(the “Pre-hearing Order”), ¶5. The BSR was ordered to file a motion challenging any party’s representation on or before October 10, 2011. Pre-hearing Order, ¶C.

2. While the BSR failed to timely file such a motion or to seek an extension of time prior to the deadline established in the Pre-hearing Order, its failure subsequently was excused. *See* Order on Bureau of Securities Regulation Request Extension to File.¹ Given the BSR’s untimely filing, the deadline for responding to the BSR’s motion was extended to October 21, 2011. *Id.* at ¶A.

3. The BSR’s Motion to Determine Status of Counsel (the “Motion”) contains eighteen numbered paragraphs under the heading “Legal Capacity to Retain Counsel on Behalf of Certain Named Respondents.” The Motion contains five numbered paragraphs under the heading “Joint Representation of Respondents Is Prohibited Due to a Current Conflict of Interest.”

4. Most importantly, the Motion contains the following two specific requests for relief:

- A. Grant Petitioner’s Motion to Determine Status of Counsel and order that, for the aforementioned reasons, Preti Flaherty, PLLP be prevented from jointly representing corporate and company Respondents due to the presence of a concurrent conflict of interest and the inability of certain corporate and company Respondents to waive the conflict; [and]
- B. Order that, for the aforementioned reasons, Preti Flaherty, PLLP be prevented from representing Maura Carroll in her capacity as manager or [sic] LGC Health Trust, LLC and Property-Liability Trust, LLC due to the fact that Maura Carroll has never been a member or [sic] either entity and was unlawfully admitted as a manager of both

¹ The Order incorrectly states that the BSR filed a motion to extend the deadline on October 10, 2011, which would have been timely. However, the BSR did not file its motion until approximately 3:40 p.m. on October 11, 2011, the day after the deadline had expired.

The Motion requests no factual findings and no rulings of law. The Motion does not request that the Presiding Officer adjudicate alleged statutory violations. Instead, it seeks only an order disqualifying Preti Flaherty from representing certain Respondents.

5. At approximately 4:49 p.m. on October 21, 2011, the BSR filed the Request. The Request does not state that it is related to the Motion. In fact, the Motion is not mentioned in the Request. However, contemporaneous with its eleventh hour filing of the Request, the BSR filed an “Exhibit List in Support of Petitioner’s Motion to Determine Status of Counsel and Request for Findings of Fact and Rulings of Law” (the “Exhibit List”). Accordingly, the Exhibit List announces that the Request is related to the Motion.

6. Although the Motion requests no factual findings and no rulings of law, and seeks only an order disqualifying Preti Flaherty from representing certain Respondents, the Request is much broader and prejudicial to Mr. Andrews. In stark contrast to the Motion, the Request seeks the following specific relief:

- A. Find as fact, paragraphs 1 through 11 of [the Request][;]
- B. Rule as law, paragraphs 12 through 19 of [the Request][; and]
- 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.

Paragraphs A and B seek specific findings of fact and rulings of law regarding at least eight alleged violations of RSA 5-B, *see* ¶¶12-19, and paragraph C seeks payment of the costs of the investigation.

7. The Request must be denied. At a bare minimum, 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 and the evidence the government intends to introduce in support of its claims. *See Petition of Kilton*, 156 N.H. 632, 638-39 (2007). The BSR has failed on both counts.

8. Service of the Request at the end of the last business day before a scheduled hearing, particularly when the Motion fails to request similar relief, is inadequate notice. Moreover, the BSR's disregard for due process is exemplified by its reliance on exhibits that are not within Mr. Andrews' possession or control, and its failure to produce the exhibits in response to Mr. Andrews' discovery requests. Mr. Andrews served discovery requests on the BSR on October 11 and 13, 2011. The BSR has not yet produced a single page of discovery in response to Mr. Andrews' discovery requests or notified him that it objects to the requests.²

9. The Exhibit List is ninety-five (95) pages in length including copies of thirty (30) proposed exhibits. Exhibit 9 consists of nine pages of notes to the LGC's financial statements. Exhibit 24 is a press release dated August 31, 2011. Exhibit 27 is a three-page letter from the LGC to its members dated November 15, 2010. Exhibit 30 is the LGC's response to a discovery request made by the BSR that is not identified by date or proceeding.

10. None of the exhibits identified in the preceding paragraph are within Mr. Andrews' possession or under his control. The BSR has not produced them in response to Mr. Andrews' timely discovery requests. To allow the BSR to rely on evidence

² Mr. Andrews' discovery requests seek production of the documents and information by October 18, 2011. While the BSR has not produced documents or otherwise responded to the requests, Mr. Andrews has not moved to compel discovery because the Pre-hearing Order requires production of requested discovery on or before November 4, 2011. Consequently, Mr. Andrews would have not taken issue with the BSR's failure to produce discovery in response to his requests at this time except that the BSR now seeks to gain an unfair advantage in the proceeding by relying on documents that have not been produced by the SBR and are responsive to Mr. Andrews' requests.

requested and in its possession, but not produced to Mr. Andrews would violate Mr. Andrews' Fourteenth Amendment and Part I, Article 15 right to due process. *See Petition of Kilton*, 156 N.H. at 638-39.

Prayer for Relief

For the foregoing reasons, Respondent John Andrews respectfully requests that the BSR's Request for Findings of Fact and Rulings of Law be denied.

Respectfully Submitted,

JOHN ANDREWS

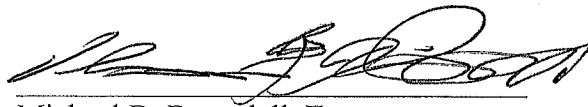
Date: 10/22/11

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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.