

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF: Local Government Center, Inc., et al.))))))	Case No: C-2011000036
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**RESPONDENT MAURA CARROLL’S SUPPLEMENTAL ANSWER TO BSR’S
AMENDED PETITION**

Respondent Maura Carroll, by and through her counsel, Shaheen & Gordon, P.A., submits this Supplemental Answer to the Amended Petition (“Petition”) filed by the New Hampshire Bureau of Securities Regulation (“BSR” or “Bureau”) on February 17, 2012.

INTRODUCTION

This is an administrative proceeding to enforce RSA Ch. 5-B and RSA Ch. 421-B. The Bureau of Securities Regulation (“BSR”) commenced this proceeding by filing a Staff Petition on September 2, 2011. It subsequently filed an Amended Petition on February 17, 2012. Counts I and II allege violations of RSA Ch. 5-B, Counts III, IV, and V allege violations of RSA Ch. 421-B, and Count VI alleges civil conspiracy.

Prior to September 4, 2009, Ms. Carroll was General Counsel for the New Hampshire Municipal Association, in charge of providing legal advice to member municipalities and advocating on their behalf. Ms. Carroll served as the interim Executive Director of LGC, Inc. from September 4, 2009 until June 10, 2010, and the Executive Director of LGC, Inc., from June 10, 2010 to the present. The Petition charges Ms. Carroll in her individual capacity, and addresses conduct allegedly undertaken both before and after September 4, 2009, when she became interim Executive Director.

As stated more fully in Respondent Maura Carroll's Motion to Dismiss, all counts against her should be dismissed. Counts I and II, alleging violations of RSA Ch. 5-B, should be dismissed because (1) the Amended Petition does not allege any violations of RSA Ch. 5-B by Respondent Carroll individually; (2) RSA Ch. 5-B regulates risk pools, not individual employees of the pools, and does not make employees personally liable for violations of its provisions; (3) because the BSR was not given authority to enforce the statute until June 14, 2010, it is barred from remedying or enforcing alleged violations that took place before this time; (4) because the statute imposes only general standards on risk pools, Respondent Carroll had no notice that any of the alleged actions were violations of the statute; and (5) the BSR's attempt to promulgate detailed, industry-wide rules under RSA Ch. 5-B through an enforcement proceeding, and then to enforce those rules retrospectively, violates the New Hampshire Administrative Procedure Act and Separation of Powers Clause. Counts III, IV, and V, alleging violations of RSA Ch. 421-B, should be dismissed because (1) they rely on the faulty premise that membership interests in, and contracts with, the Local Government Center's risk management pools are "investment contracts" within the meaning of RSA 421-B:2, XX(a); (2) contracts for insurance, such as the participation agreements between the LGC, its trusts, and its members are statutorily exempt from the definition of "security" pursuant to RSA 421-B:2, XX(a); (3) they contradict decades of unanimous federal and state regulatory policy and judicial decisions, including the Bureau's longstanding, official policy; (4) the administrative gloss doctrine prevents the Bureau from pursuing these Counts; and (5) as a result of the myriad pleading deficiencies, the Amended Petition fails to state a claim against Ms. Carroll. Count VI, alleging civil conspiracy, should be dismissed because (1) the Department of State lacks subject matter jurisdiction to adjudicate common law tort claims such as civil conspiracy; (2) the Individual Respondents are incapable as

a matter of law of forming a civil conspiracy pursuant to the intracorporate conspiracy doctrine; (3) there is no allegation that the conspiracy injured the BSR, though injury to the petitioner is a required element of a civil conspiracy claim; and (4) the Amended Petition does not adequately state a claim of civil conspiracy.

Additionally, the Petition fails to allege or describe with particularity any acts committed by Ms. Carroll in support of the alleged violations. At all times, Ms. Carroll acted reasonably and in good faith with respect to the allegations in the Petition, and in the best interests of LGC, her employer. At all times, Ms. Carroll acted at the direction of and consistent with the directives of the LGC Board. Actions she undertook or recommendations she made were in reasonable reliance upon advice she received from legal counsel and industry consultants. Ms. Carroll at no time acted with scienter or committed either a knowing or negligent statutory violation. In addition, the principal acts alleged in the Petition that allegedly give rise to liability on the part of LGC and/or Individual Respondents took place before Ms. Carroll became interim Executive Director or Executive Director.

ANSWER

Introduction

1. Paragraph 1 contains introductory information to which no response is required. To the extent paragraph 1 alleges a legal violation, Ms. Carroll is not mentioned in paragraph 1, and therefore, no response to the paragraph is required.

The Parties

2-12. Paragraphs 2-12 identify the BSR and the entity respondents. Ms. Carroll is not mentioned in paragraphs 2-12, and therefore, no response to the paragraphs is required.

13. Paragraph 13 identifies Ms. Carroll. Ms. Carroll admits that she is a New Hampshire citizen, that she was interim Executive Director of LGC Parent from September 4, 2009 until June 10, 2010, and that she was subsequently appointed Executive Director of LGC Parent. Ms. Carroll denies that she held the title of General Counsel with respect to HealthTrust, NHMA Prop. Liab. Trust, and, subsequently, LGC Parent. Rather, Ms. Carroll was General Counsel for NHMA, and was employed to provide legal advice to member municipalities and to advocate on their behalf. Ms. Carroll did not provide legal advice to LGC Parent or the risk pools, and as General Counsel for NHMA, was not involved in risk pool administration.

14-21. Paragraphs 14-21 identify the other individual respondents. Ms. Carroll is not mentioned in paragraphs 14-21, and therefore, no response to the paragraphs is required.

Regulatory Authority

22-23. Paragraphs 22-23 contain statements regarding BSR's view of the history, purpose, and effect of RSA Ch. 5-B, and statements regarding the procedural posture of this matter. Ms. Carroll is not mentioned in paragraphs 22-23, and therefore, no response to the paragraphs is required.

Facts Common to All Claims

24-31. Paragraphs 24-31 contain statements regarding BSR's view of the creation, history, and past practices of LGC. Ms. Carroll is not mentioned in paragraphs 24-31, and therefore, no response to the paragraphs is required.

32-33. Paragraphs 32-33 contain statements regarding BSR's opinion as to why LGC Parent was formed, and allegations regarding certain financial transactions by and between LGC's pooled risk management programs. Ms. Carroll is not mentioned in paragraphs 32-33, and therefore, no response to the paragraphs is required.

34. Paragraph 34 addresses distributions to the Workers' Comp Pool and states that "at the suggestion of Ms. Carroll, the LGC Board characterized just over \$17 million of the \$18.3 million in transfers as a 'loan' by HealthTrust, LLC to the Workers' Comp Trust." It states that the amount of the distributions to Workers' Comp was \$18.3 million, that there is no requirement that Workers' Comp pay interest on the loan and that Workers' Comp is not financially capable of repaying the loan. In a footnote, it states that "It is not clear why Ms. Carroll recommended an amount to the Board for characterization as a 'loan' that was less than the amount transferred." The allegations in Paragraph 34 are incorrect in some respects and incomplete in others, and are therefore denied. First, Ms. Carroll acted at the suggestion of members in recommending a transfer to the Board of Directors, a fact omitted by the BSR in its Petition. Second, Ms. Carroll obtained an accounting of the prior distributions to Workers' Comp before recommending a transfer, and that amount was determined to be \$17.1 million, not \$18.3 million as the BSR alleges. Accordingly, the amount of the recommended transfer out of Workers' Comp was equal to the amount that had been previously transferred into Workers' Comp. Third, Ms. Carroll recommended to the Board that funds be transferred from Workers' Comp to HealthTrust in recognition of the support that HealthTrust offered to the Workers' Compensation Program, and that the transfer take place over time and include the payment of interest. The Board did not immediately adopt her suggestion, but instead undertook a lengthy discussion over the issue, which included consideration of whether to require payment of interest and whether to create a formal loan between the entities. Ultimately, the Board decided, in contrast to Ms. Carroll's original recommendation, to execute a note evidencing a loan between the programs that did *not* include payment of interest. Consistent with her duties and obligations, Ms. Carroll carried out the Board's direction, even though it was contrary to her original recommendation, a

suggestion that she offered on behalf of the members and not on her own personal behalf or that of LGC. Indeed, even if she had wanted to do so, Ms. Carroll had no independent authority to implement her original recommendation or to act contrary to the Board's direction on this issue.

See also Ms. Carroll's Motion for Summary Judgment.

35-38. Paragraphs 35-38 contain allegations regarding certain financial transactions by and between LGC's pooled risk management programs. Ms. Carroll is not mentioned in paragraphs 35-38, and therefore, no response to the paragraphs is required.

39-45. Paragraphs 39-45 contain statements regarding BSR's view of the corporate restructuring process. Ms. Carroll is not mentioned in paragraphs 39-45, and therefore, no response to the paragraphs is required.

46-65. Paragraphs 46-65 contain statements regarding BSR's allegations of LGC's failure to return surplus. Ms. Carroll is not mentioned in paragraphs 46-65, and therefore, no response to the paragraphs is required.

66-68. Paragraphs 66-68 contain statements regarding BSR's view of "LGC's *post hoc* corporate restructuring." Ms. Carroll is not mentioned in paragraphs 66-68, and therefore, no response to the paragraphs is required.

69-72. Paragraphs 69-72 contain statements of law characterizing the New Hampshire municipal budget laws. Ms. Carroll is not mentioned in paragraphs 69-72, and therefore, no response to the paragraphs is required.

CAUSES OF ACTION

COUNT I.

Operation of a Pooled Risk Management Program in Violation of R.S.A. 5-B:5 – Improper Corporate Structure –

73-87. Count I does not allege any specific conduct by Ms. Carroll. Consequently, no response is required to paragraphs 73-87. While paragraph 84 states that “the LGC Board members relied on the direction of Mr. Andrews, Ms. Carroll, legal counsel, and professional consultants when deciding how to manage Member funds held in the 5-B pools[,]” the only conduct alleged is that of the LGC Board and its members. In addition, Ms. Carroll was not involved in administration of the risk pools prior to becoming interim Executive Director on September 4, 2009, and it is specifically denied that LGC Board members relied on her “direction” with regard to managing risk pools prior to that date. *See also* Ms. Carroll’s Motion to Dismiss (Counts I and II); Ms. Carroll’s Motion for Summary Judgment.

COUNT II.

Operation of a Pooled Risk Management Program in Violation of R.S.A. 5-B:5 – Failure to Return Surplus Funds to Members –

88-104. Count II does not allege any specific conduct by Ms. Carroll. In essence, Count II alleges that LGC failed to return funds, misappropriated assets, and improperly transferred certain assets. BSR does not allege that these were acts of Ms. Carroll. Nor was Ms. Carroll empowered to take such actions. *See* LGC Bylaws, Article VIII, Duties and Powers of the Board of Directors, Section 8.2, Powers of the Directors, and Section 8.4 Powers of the Executive Director. Consequently, no response is required to Count II, paragraphs 88-104. *See also* Ms. Carroll’s Motion to Dismiss (Counts I and II); Ms. Carroll’s Motion for Summary Judgment.

COUNT III.

Sale of Unregistered Securities By Unlicensed Broker-Dealers, Issuer-Dealers, and Agents in Violation of R.S.A. 421-B:6 and 11

COUNT IV.

Knowing or Negligent Aid in the Sale of Unregistered Securities by Unlicensed Broker-Dealers, Issuer-Dealers, and Agents by the Individual Respondents in Violation of R.S.A. 421-B:26, III-a.

COUNT V.

Fraud, Deceit, and Material Omissions in Connection with the Offer or Sale of Securities in Violation of R.S.A. 421-B:3

105-135. Paragraphs 105-135 allege various violations of RSA Ch. 421-B, the New Hampshire Securities Act. Ms. Carroll denies the underlying premise common to all of the allegations in paragraphs 105-135, that membership interests in NHMA, LLC and the 5-B risk pool participation agreements are investment contracts and thus securities regulated by RSA Chapter 421-B. For all the reasons set forth in Ms. Carroll's Motion to Dismiss (Counts III, IV, and V), these interests are not investment contracts within the meaning of RSA Ch. 421-B.

Consequently, the New Hampshire Securities Act has no application to the conduct alleged in Counts III, IV, and V. As these statements constitute legal conclusions and statements, no response is required;

105-115. Paragraphs 105-115 allege violations of RSA 421-B:6 and 11, related to the alleged sale of unregistered securities by unlicensed broker-dealers and issuer-dealers. The paragraphs also offer BSR's view of New Hampshire law on the subject matter and as they constitute legal conclusions and statements, no response is required. Ms. Carroll is not specifically mentioned in paragraphs 105-115, and therefore, no response to the paragraphs is required. By way of further Answer, Ms. Carroll responds that to the extent any of these allegations can be construed as

applicable to her and constitute statements of fact, requiring a response, Ms. Carroll denies the allegations.

116-117. Paragraphs 116-117 allege violations of RSA 421-B:6 related to the alleged failure of LGC's officers and employees, including Ms. Carroll, to have been licensed by BSR as agents of securities-dealers and broker-dealers. Ms. Carroll denies the underlying premise common to the allegations in paragraphs 116-117, that membership interests in NHMA, LLC and the 5-B risk pool participation agreements are investment contracts and thus securities regulated by RSA Chapter 421-B. For all the reasons set forth in Ms. Carroll's Motion to Dismiss, these interests are not investment contracts within the meaning of RSA Ch. 421-B. Consequently, the New Hampshire Securities Act has no application to the conduct alleged in Count III. By way of further Answer, Ms. Carroll responds that to the extent any of these allegations can be construed as applicable to her and constitute statements of fact, requiring a response, Ms. Carroll denies the allegations.

118-122. Count IV, Paragraphs 118-122, alleges violations of RSA 421-B:26, III-a, specifically, that the Individual Respondents, including Ms. Carroll, knowingly or negligently aided LGC in selling unregistered securities in violation of RSA 421-B:11. Ms. Carroll denies the underlying premise common to the allegations in paragraphs 118-122, that membership interests in NHMA, LLC and the 5-B risk pool participation agreements are investment contracts and thus securities regulated by RSA Chapter 421-B. For all the reasons set forth in Ms. Carroll's Motion to Dismiss, these interests are not investment contracts within the meaning of RSA Chapter 421-B. Consequently, the New Hampshire Securities Act has no application to the conduct alleged in Count IV. By way of further Answer, Ms. Carroll responds that to the extent any of these

allegations can be construed as applicable to her and constitute statements of fact, requiring a response, Ms. Carroll denies the allegations.

123-127. Paragraphs 123-127 allege violations of RSA 421-B:3, related to alleged fraud, deceit, and the omission of material facts in connection with the offer and/or sale of securities. Ms. Carroll denies the underlying premise common to the allegations in paragraphs 123-127, that membership interests in NHMA, LLC and the 5-B risk pool participation agreements are investment contracts and thus securities regulated by RSA Chapter 421-B. For all the reasons set forth in Ms. Carroll's Motion to Dismiss, these interests are not investment contracts within the meaning of RSA Chapter 421-B. Consequently, the New Hampshire Securities Act has no application to the conduct alleged in Count IV. By way of further Answer, Ms. Carroll responds that to the extent any of these allegations can be construed as applicable to her and constitute statements of fact, requiring a response, Ms. Carroll denies the allegations.

128. Paragraph 128 alleges that LGC violated RSA 421-B:3, I(c) by failing to notify members of its use of member funds for non-pool purposes, and failing to obtain written authorizations from Members to use their funds. Ms. Carroll is not mentioned in paragraph 128, and therefore, no response to the paragraph is required. By way of further Answer, Ms. Carroll responds that to the extent any of these allegations can be construed as applicable to her and constitute statements of fact, requiring a response, Ms. Carroll denies the allegations.

COUNT VI.

Civil Conspiracy

129-135. Paragraphs 129-135 allege a civil conspiracy by and between the Individual Respondents, including Ms. Carroll. Ms. Carroll denies that the Department of State has subject matter jurisdiction to adjudicate a cause of action for civil conspiracy. In addition, two faulty

premises underlie all of the allegations in paragraphs 129-135: (1) that agents of the same business entity are capable of forming a civil conspiracy, and (2) that a civil conspiracy claim can proceed even if the petitioner does not allege it was damaged by the conspiracy. The premises are denied as contrary to law. Ms. Carroll also denies that the Amended Petition has adequately alleged that Ms. Carroll joined the conspiracies alleged in the Amended Petition, or that it has adequately alleged what statements she uttered, or decisions she made, that reflected an intent to join them. Ms. Carroll also denies that the Amended Petition has adequately alleged that she undertook an overt act in furtherance of the conspiracy. In addition, Ms. Carroll was neither a board member nor Executive Director when the alleged conspiracies commenced and when many of the alleged actions allegedly took place. With regard to acts allegedly done while serving as Executive Director, Ms. Carroll denies that she was empowered to have taken any such actions. *See* LGC Bylaws, Article VIII, Duties and Powers of the Board of Directors, Section 8.2, Powers of the Directors, and Section 8.4 Powers of the Executive Director. Finally, Ms. Carroll specifically denies that she acted in bad faith or in breach of her duty to act in the best interests of her employer. For all the reasons set forth in Ms. Carroll's Motion to Dismiss (Count VI), and Respondent Andrews' Motion to Dismiss Count VI, Count VI should be dismissed.

DEFENSES

Ms. Carroll intends to rely on the following defenses to the allegations stated in the Amended Petition:

- A. Lack of subject matter jurisdiction.
- B. Failure to state a claim pursuant to which relief can be granted.
- C. Failure to state a claim to relief that is plausible on its face.

- D. Failure to allege specific instances of conduct by Ms. Carroll sufficient to state a claim.
- E. Failure to allege fraud with sufficient particularity.
- F. At all times, Ms. Carroll acted in good faith and in the best interests of her employer.
- G. At all times, Ms. Carroll acted without scienter.
- H. At all times, Ms. Carroll acted in good faith upon the advice of counsel and other professionals retained by her employer.
- I. At all times, Ms. Carroll acted at the direction of the LGC Board.
- J. RSA Ch. 5-B does not provide for liability of individual employees of risk pools.
- K. Allegations of violations of RSA 5-B:5, I should be dismissed because the statute is vague and indefinite, and therefore, it violates the due process protections of the Fourteenth Amendment to the United States Constitution and Part 1, Article 15 of the New Hampshire Constitution.
- L. Allegations of violations of RSA 5-B based on conduct prior to June 14, 2010, the effective date of RSA 5-B:4-a, should be dismissed because the retrospective application of RSA 5-B:4-a to conduct that occurred before the statute's effective date violates Article 1, Section 10 of the United States Constitution and Part 1, Article 23 of the New Hampshire Constitution.
- M. Allegations based on conduct alleged to have occurred prior to September 2, 2005, should be dismissed on statute of limitations grounds.
- N. Allegations related to the formation of various business entities in 2003 should be dismissed based on the equitable doctrine of laches.
- O. The Petition must be dismissed for selective and improper prosecution.
- P. Ms. Carroll re-asserts as if set forth in full herein all the defenses raised in her Motion to Dismiss and Motion for Summary Judgment.

Q. Ms. Carroll reserves the right to assert additional or other defenses upon the discovery of additional information.

Prayer for Relief

Ms. Carroll requests that the Presiding Officer dismiss the Amended Petition as against her. Alternatively, Ms. Carroll requests that the Presiding Officer deny BSR's allegations, claims and requests for relief.

Respectfully submitted,

MAURA CARROLL

By Her Attorneys:
SHAHEEN & GORDON, P.A.

Dated: March 23, 2012

/s/ Steven M. Gordon
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CERTIFICATE OF SERVICE

I hereby certify that I have, this 23rd day of March 2012, forwarded copies of this pleading *via* E-mail to counsel of record.

/s/ Steven M. Gordon