

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

Docket No. C-2011000036

IN THE MATTER OF:

Local Government Center, Inc., et al.

BUREAU OF SECURITIES REGULATION'S PROPOSED ORDER

This matter has been remanded by the New Hampshire Supreme Court to determine the appropriate penalty for HealthTrust's violations of RSA 5-B:5,(I)(c). It has previously been determined that HealthTrust violated RSA 5-B:5, I(c) by "improperly accru[ing] and retain[ing] unnecessary surplus funds, improperly transferr[ing] assets, and improperly expend[ing] funds for purposes beyond those permitted in the statute, and fail[ing] to return excess funds to political subdivisions who are members of each individual pooled risk management program." Final Order (Aug. 16. 2012) at 6. These violations included "the continuous practice of taking funds from the health and property liability programs to subsidize the operation of a workers compensation pooled risk management program that was financially deficient, i.e. insufficient premiums were paid to cover all claims and administration of claims costs." Final Order at 40. These illegal subsidies, made during the years of 2003-2010 amounted to a total of \$17,111,804.35. Final Order at 40-1.

The Intervenors' request to receive their proportionate shares of the \$17.1 million in funds was denied because the Presiding Officer found that RSA 5-B:5, I(c) provides only for returns to "participating political subdivisions," not any past or former political subdivisions. Omnibus Order (Aug. 4, 2014) at 5-6.

In 2014, at its own risk during the pendency of the Intervenors' appeal of the Omnibus Order, HealthTrust distributed the \$17.1 million in funds to 352 of HealthTrust's then-current members based on each member's proportional payments to HealthTrust's medical and dental coverage lines during the 2014 fiscal year (September 1, 2013 -June 30, 2014), as provided for a return of surplus under HealthTrust's by-laws. Statement of Stipulated Facts, ¶¶ 2-3 and Exhibit A.

On February 18, 2016, the New Hampshire Supreme Court issued a decision on the Intervenors' appeal, finding in part that:

RSA 5-B:5, I(c) is the provision the LGC defendants violated; it does not circumscribe the remedy. RSA 5-B:4-a authorizes the secretary of state to impose penalties for violations of the statute's provisions - here violation of RSA 5-B:5, I(c) - by means including 'recission, restitution, or disgorgement.' RSA 5-B:4-a, I(b)(2).

...

Either of the remedies purportedly used could involve repayment of the wrongfully held funds to the parties from whom the defendants obtained those funds.

...
Thus, to the extent the presiding officer concluded that he lacked authority to penalize a violation of RSA 5-B:5, I(c) by ordering payment to former members of a pooled risk management program as either restitution or disgorgement, he committed an error of law.

Appeal of Salem, 168 N.H. 572, 581 (2016) (internal citations omitted). The Supreme Court vacated the Presiding Officer's decision in the Omnibus Order and remanded the matter to the Presiding Officer for further proceedings. Id. The Court expressed "no opinion as to what penalty should be ordered." Id.

After conducting an evidentiary hearing on remand to address the nature of the error or issues identified by the Court, the Presiding Officer finds that the appropriate penalty for HealthTrust's violation of RSA 5-B:5, I(c) is restitution, wherein the HealthTrust members who were forced to contribute to the unlawful \$17.1 million subsidy of the Workers Compensation program from 2003-2010 are entitled to participate in the distribution of the \$17.1 million in proportion to their overall contributions to the HealthTrust medical and dental programs that funded the subsidy from 2003-2010. The parties have agreed that the amount due to each underpaid member, if distributions are to be made on a proportional basis, is the amounts set forth on Exhibits B and C to the Statement of Stipulated Facts submitted by the parties.

Furthermore, the Hearings Officer finds that the scope of the remand is not limited to only former members who did not participate in any HealthTrust program when the \$17.1 million was repaid in 2014. Both the Supreme Court's decision and the fact that the Intervenor consist of both former members and 2014 members support this conclusion. There are a class of 2014 members who were former members of either the medical or dental lines of coverage who received less than their proportional share based on 2003-2010 contributions, for example members of the medical and dental pools from 2003-2010 who were only members of the dental pool in 2014. There is also a class of 2014 members who received none of the \$17.1 million repayment as their participation in 2014 was limited to disability or other programs that did not participate in the return of the \$17.1 million. To the extent that any 2014 HealthTrust member received either none of the \$17.1 million or less than their proportional share, said members, as identified in Exhibits B and C, are entitled to receive any monies due to them in order to receive their full proportional share.

Finally, to the extent that HealthTrust may be required to repay its members a total exceeding \$17.1 million, the Hearings Officer finds that such repayment is an appropriate penalty for HealthTrust's long-standing violations of RSA 5-B:5, I(c) in funding the \$17.1 million Workers Compensation subsidy. Moreover, HealthTrust repaid the \$17.1 million at its own risk, at a time when the issue of the scope of this Hearings Officer's ability to penalize HealthTrust for its violations was pending and subject to appeal.

Therefore, it is ORDERED that HealthTrust shall pay those members identified in Exhibits B and C their proportionate share of the unlawful \$17.1 million Workers Compensation subsidy, as follows:

- A. HealthTrust shall pay to the 26 HealthTrust members identified in Exhibit B of the Stipulation of Facts their proportionate shares, as set forth in the column entitled "Return amount based on reallocation methodology", for a total amount of \$1,271,439.99;
- B. HealthTrust shall pay to the 48 HealthTrust members identified in Exhibit C of the Stipulation of Facts the unpaid portion of their proportionate shares, as set forth in the column entitled "Amount reallocation exceeds 2014 distribution" for a total amount of \$1,036,542.30;
- C. HealthTrust shall account for the \$2.3 million payment as a liability in FY 2016 and shall pay the entirety of the liability on or before October 1, 2016.

So ordered, this ____ day of September, 2016.

Donald E. Mitchell, Esq. NH Bar # 1773
Presiding Officer