

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE

\_\_\_\_\_) )  
IN THE MATTER OF: ) )  
Local Government Center, Inc., et al. ) C-2011000036  
RESPONDENTS ) )  
\_\_\_\_\_)

**RESPONDENT PROPERTY-LIABILITY TRUST, INC.’S  
MOTION TO DISMISS FOR LACK OF JURISDICTION**

Respondent Property-Liability Trust, Inc. (“PLT”), by and through its attorneys, McLane, Graf, Raulerson & Middleton, Professional Association, hereby files this Motion to Dismiss for Lack of Jurisdiction of the Motion for Entry of Default Order filed by Petitioner New Hampshire Bureau of Securities Regulation (“BSR”). In support hereof, PLT states as follows:

1. PLT agrees with the facts and legal positions set forth in the Motion to Dismiss and supporting Memorandum of Law filed by Respondent HealthTrust, Inc. (“HealthTrust”) as they relate to PLT and are relevant to the BSR’s motion. Thus, rather than restating those facts and legal positions, PLT incorporates them for the purposes of this Motion to Dismiss as if fully set forth herein.

2. Without limiting the foregoing in Paragraph 1, the Presiding Officer does not have jurisdiction over the BSR’s motion and claim that the Agreement does not comply with RSA ch. 5-B or the Final Order dated August 16, 2012 (“Final Order”). The BSR is presenting new allegations and claims that occurred more than one year after the Final Order, and neither RSA 5-B:4-a nor RSA 421-B:26-a provide the Presiding Officer with the authority to exercise jurisdiction over conduct that occurred only after the administrative proceeding has concluded or for the purpose of enforcing the Final Order. Instead, to comply with due process, the Secretary

of State, not the BSR, is required to bring a new administrative proceeding commenced by a petition or a cease and desist order. *See* RSA 5-B:4-a, I(a), VI.

3. The BSR is presenting new allegations and claims that relate to a contingent Agreement between PLT and HealthTrust that became effective and made public on January 10, 2014, only after the New Hampshire Supreme Court (“Supreme Court”) rendered its decision to affirm the provision of the Final Order, requiring PLT to repay \$17.1 million to HealthTrust. *Appeal of Local Gov’t Ctr., Inc. et al.*, No. 2012-729, slip op. at 18–19 (N.H. Jan. 10, 2014). The only remaining issue that the Supreme Court remanded in the underlying and concluded administrative proceeding related to attorney’s fees. *Id.* at 21–22.

4. By contrast, the Agreement was not part of the underlying and concluded administrative proceeding, and thus, it was not part of or contemplated in the Final Order. The parties entered into the Agreement as of October 29, 2013, a full 14 months after the issuance of the Final Order, and the Agreement became operational only after the Supreme Court’s January 10, 2014 decision. There is nothing in RSA ch. 5-B, and in particular RSA 5-B:4-a, or in RSA ch. 421-B, or in particular RSA 421-B:26-a, which grants the Presiding Officer jurisdiction to reopen a proceeding to hear the BSR’s new allegations and claims that are based on conduct that occurred only after the underlying proceeding has concluded and was remanded solely to address the issue of attorney’s fees. There also is nothing in these statutes that grants the Presiding Officer with the authority to enforce the Final Order.

5. Moreover, the BSR does not dispute the fact that PLT and HealthTrust took steps to comply with Paragraph 1 of the Final Order, initially by having the limited liability companies establish separate governing boards and adopt separate bylaws, and then by transferring certain assets and liabilities to revived voluntary corporations, PLT and HealthTrust, each of which had its own board of directors and set of bylaws. (Pet’r Mot. ¶ 11.) In addition, there can be no

dispute that PLT has taken steps, consistent with its financial position, to address the \$17.1 million repayment obligation to HealthTrust, which was affirmed by the Supreme Court. Thus, PLT and HealthTrust cannot be in “default” of the Final Order.

6. Accordingly, the Presiding Officer should dismiss the BSR’s motion for lack of jurisdiction because the motion presents new allegations and claims that occurred more than one year after the Final Order. To comply with due process, the Secretary of State, not the BSR, must initiate a new administrative proceeding, either by petition or a cease and desist order, because neither RSA 5-B:4-a nor RSA 421-B:26-a authorize the Presiding Officer to exercise jurisdiction over conduct that occurred only after the administrative proceeding has concluded or to enforce the Final Order.

**WHEREFORE**, for the reasons set forth above and in Respondent HealthTrust’s Motion to Dismiss and supporting Memorandum of Law, Respondent PLT respectfully requests the Presiding Officer to issue an Order dismissing Petitioner’s Motion for Entry of Default Order for lack of jurisdiction.

Respectfully submitted,

PROPERTY-LIABILITY TRUST, INC.

By its attorneys,

MCLANE, GRAF, RAULERSON & MIDDLETON  
PROFESSIONAL ASSOCIATION

Dated: March 26, 2014

By: /s/ Bruce W. Felmly  
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**Certificate of Service**

I hereby certify that on March 26, 2014, I forwarded a copy of this Motion to Dismiss to counsel of record via electronic mail.

*/s/ Joel T. Emlen*

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Joel T. Emlen, NH Bar #17102