

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

IN THE MATTER OF:)
)
)

Local Government Center, Inc., et al.)
_____)

Case No: C2011000036

[PROPOSED] ORDER

Having considered the legal arguments of the parties as expressed in their written pleadings and oral arguments and the evidence introduced in this matter during the hearing on the merits held between April 30, 2012 and May 11, 2012, it is hereby ordered as follows.

Board of Directors and Bylaws

- 1.1 The Local Government Center, Inc., Local Government Center Health Trust, LLC, and the Local Government Center Property-Liability Trust, LLC (these three entities are collectively referred to in this order as the “Local Government Center”) are currently organized in a fashion that violates RSA 5-B:5, I, a and e in that the two risk pool management programs that are organized as the Local Government Center Health Trust, LLC and the Local Government Center Property-Liability Trust, LLC are not each directly supervised by its own board of directors and each risk pool management program does not have its own set of bylaws. It is therefore ordered that no later than 90 days from the date of this Order, the Local Government Center shall organize its two risk pool management programs into a form that provides each pool with an independent board and its own set of written bylaws. Failing timely re-organization, or as found in the alternative, the Local Government Center is found to have violated the standards set out in RSA 5-B:5 and the statutory exemption from the State’s insurance laws and the exemption from state taxation granted pursuant to RSA 5-B:6 and are deemed forfeited. The remainder of this order shall be construed to apply to the risk pool management programs currently known as Local Government Center Health Trust, LLC, and the Local Government Center Property-Liability Trust, LLC however they may be organized in the future;
- 1.2 The Local Government Center’s risk pool management programs, however they may be organized in the future, shall not require participating Members to join or participate in any organization that requires the payment of dues for membership in said organization, nor shall any of the risk pool management programs require members to pay fees, premiums or costs for services not specifically identified and approved in RSA 5-B;

Surplus and Return of Excess Net Assets

- 2.1 The parties have litigated this dispute by agreement based upon the 2010 year end audited financial statements and this Order is based upon those financial statements. To the extent the Bureau of Securities Regulation and the Respondents agree to update these findings based upon the 2011 year end audited financial statements, they may do so. However, absent express agreement, the figures and amounts stated herein shall govern;
- 2.2 The Local Government Center does not currently calculate with the assistance of a qualified actuary the net assets specifically required to meet its actual operational needs in violation of RSA 5-B:5, I(c). Based upon the 2010 financial statements, I find and order that the Local Government Center's Health Trust risk pool management program, consistent with RSA 5-B:5, I(c) requires surplus or net assets to be held in an amount calculated as either 2.1 RBC or at a 95% confidence level under the stochastic modeling methodology;
- 2.3 Based upon a calculation of net assets using either a 2.1 RBC or a 95% confidence level under the stochastic modeling methodology, I find that the Local Government Center's Health Trust risk pool management program holds approximately \$42.6 million in surplus that I order must be returned to Members in proportion to the contributions of Members to that surplus;
- 2.4 It is Ordered that the Bureau of Securities Regulation and the Local Government Center shall confer and within 30 days from the date of this Order shall submit to the undersigned hearings officer an agreed upon plan for the return of this \$42.6 million surplus in cash to Members who participated in the Local Government Center's Health Trust risk pool management program at any time after June 14, 2010. A negotiated plan may include prospective returns of cash or its equivalent. Failing agreement, the Local Government Center's Health Trust risk pool management program, in whatever form it may be organized, shall return the \$42.6 million surplus in cash to Members that participate in its insurance programs on the date of this order, no later than July 1, 2013 in proportion to the premiums paid by said Members;
- 2.5 It is further Ordered, in future years, the Local Government Center's Health Trust risk pool management program, however it may be organized, shall utilize either an RBC 2.1 or 95% stochastic modeling method of determining the net assets it retains and shall annually return assets surplus of that amount in the form of cash, dividends or similar cash equivalents to Members. The Bureau of Securities Regulation, consistent with its supervisory powers under RSA 5-B, may impose a higher limit or different methodology for calculating required net assets as long as it is specifically based upon a generally accepted actuarial analysis;
- 2.6 The parties did not propose a means of calculating the required net assets for the Local Government Center's other risk pool management programs except to the extent that the Local Government Center, through the testimony of its chief financial officer, admitted that it holds approximately \$3.1 million in excess surplus in its property and liability

program. The Respondents also did not attest to the use of an actuarially based means of determining the required net assets for this risk pool management program. It is Ordered that the Bureau of Securities Regulation and the Local Government Center shall confer and within 30 days from the date of this Order shall submit to the undersigned hearings officer an agreed upon plan for the return of the \$3.1 million surplus in cash to Members who participated in the Local Government Center's Property and Liability risk pool management program at any time after June 14, 2010. A negotiated plan may include prospective returns of cash. Failing agreement, the Local Government Center's Property and Liability risk pool management program, in whatever form it may be organized, shall return the \$3.1 million surplus in cash to current Members on the date of this order, no later than July 1, 2013 in proportion to the premiums paid by said Members;

2.7 It is further Ordered, in future years, the Local Government Center's Property and Liability risk pool management program, however it may be organized, shall utilize a generally accepted actuarial analysis to determine its required net assets and shall annually return any excess surplus in cash, dividends or their equivalents to Members. The generally accepted actuarial analysis must be agreeable to the Bureau of Securities Regulation consistent with its supervisory authority which it shall exercise in good faith;

2.8 It is further Ordered, in future years, the Local Government Center's Workers Compensation Insurance Program and Unemployment Compensation Insurance Program, which are currently part of the Property and Liability Trust risk pool management program, shall fully comply with the requirements for maintenance of net assets as required by the New Hampshire Departments of Labor and Employment Security, respectively, as required by RSA 5-B:4. To the extent that those agencies do not supervise or require the return of net assets in excess of an actuarially determined required amount, the Bureau of Securities Regulation, consistent with its supervisory powers under RSA 5-B and in good faith, may impose a methodology for calculating required net assets and excess net assets shall be returned to contributing Members each year in the form of cash, dividends or their equivalents.

Workers Compensation Subsidy

3.1 The Local Government Center Health Trust, LLC, illegally paid subsidy payments to the benefit of the Local Government Center's workers compensation program from 2004 until 2010. Although the amount of the subsidy may actually have been higher, the Local Government Center, through its testimony and conduct, admits the aggregate amount of the subsidy to be no less than \$17.1 million. The workers compensation program, through the date of this order, benefitted from the payment of this subsidy, and no matter its current financial standing, could not have existed in its current form absent the payment of the subsidy. The Local Government Center, through its testimony and conduct, admits that the subsidy in the amount of \$17.1 million must be re-paid to the Local Government Center's Health Trust risk pool management program;

3.2 In 2007, limited liability corporations housing the Local Government Center's risk pool management programs for workers compensation and property liability were merged

into the current Local Government Center Property Liability Trust, LLC. The assets of the merged limited liability corporation are available to satisfy the debts of the workers compensation line of coverage. Combining the assets of the two programs to enhance the financial capacities of each program was described in testimony as a primary reason for the merger of the two limited liability corporations. It is therefore ordered that the Local Government Center Property Liability Trust, LLC, however it may be organized in the future, shall re-pay the \$17.1 million subsidy to the Local Government Center Health Trust risk pool management program, however it may be organized, no later than July 1, 2013. The funds to make this re-payment may be borrowed from an independent entity at commercially reasonable terms in consultation with the Bureau of Securities Regulation in the exercise of its supervisory powers which shall be exercised in good faith;

3.3 Funds received in re-payment of the subsidy, to the extent they constitute surplus, excess of actual operational needs by the Local Government Center Health Trust risk pool management program, shall be returned to Members consistent with RSA 5-B:5, I(c).

Real Estate

4.1 In 2003, at the time of the re-organization, real estate owned approximately 75% by the Local Government Center Health Trust risk pool management program and 25% by the Local Government Center Property Liability risk pool management program was transferred without compensation to Local Government Center Real Estate, Inc. Additionally, subsequent to the transfer, the Local Government Center Health Trust risk pool management program contributed millions of dollars to the Local Government Center, Inc. for the purposes of expanding and renovating the building located at 25 Triangle Park Drive and for acquiring related realty. The Local Government Center, Inc., through its ownership of Local Government Center Real Estate, Inc. through the date of this order, benefitted from the contributions of the percentage ownerships of the risk pool management programs and the payments made by the Local Government Center Health Trust risk pool management program, and no matter the current financial condition of the real estate holdings and said holdings could not have existed in their current form absent the contributions and payments;

4.2 Within 90 days of the date of this order, the Local Government Center, Inc. shall cause Local Government Center Real Estate, Inc. to convey to the Local Government Center Health Trust risk pool management program and the Local Government Property Liability risk pool management program shares in the ownership of the real estate corporation in proportion to their initial in kind contributions and subsequent cash contributions. To the extent the parties agree to consider a decision by the Local Government Property Liability risk pool management program to forego ownership of its proportionate shares in deference to the repayment of the subsidy, *see* § 3.2, *supra*, they may do so by agreement. The realty corporation, in proportionate share, will then be managed by the respective boards of directors of the risk pool management programs for the benefit of those program.

Penalties, Fees, Costs and Individual Liability for Violations of RSA 5-B

5.1 The Respondent entities, the Local Government Center Health Trust, LLC and the Local Government Center Property Liability Trust, LLC are found to have violated RSA 5-B and are each assessed a fine of \$1000.00 pursuant to RSA 5-B:4-a, VII(a);

5.2 To the extent that this order requires the return of funds or property, *see* §§ 2.3, 2.6, 3.2, 4.2, *supra*, in the alternative, this order requires compliance with these provisions as restitution or disgorgement pursuant to RSA 5-B:4-a, VII(b);

5.3 Respondents Carroll and Curro are found to have personally violated the provisions of RSA 5-B and are each assessed a fine of \$500.00 pursuant to RSA 5-B:4-a, VII(a);

5.4 The Local Government Center, Inc., Local Government Center Health Trust, LLC and the Local Government Center Property Liability Trust, LLC are found jointly and severally liable for the costs of the investigation in this matter, and all related proceedings, including reasonable attorney fees, pursuant to RSA 5-B:4-a, V and are ordered to pay same. The Bureau of Securities Regulation and these respondents shall concur within 30 days of the date of this order to determine an agreed upon amount of costs to be paid. Failing agreement, the Bureau of Securities Regulation shall submit its itemization of costs for which it seeks reimbursement to the hearing officer within 45 days of the date of this order and further hearings as appropriate shall be conducted.

5.5 In light of the foregoing, the Secretary of State's September 2, 2011 Cease and Desist Order is hereby made permanent.

Securities

6.1 The Bureau of Securities Regulation's administrative determination that Participation Agreements issued and/or offered by the Local Government Center Health Trust, LLC and the Local Government Center Property Liability Trust, LLC are securities under New Hampshire's Uniform Securities Act, R.S.A. ch. 421-B, is affirmed. It is ordered that the Respondents shall immediately take action to comply with all requirements related to the issuance, offer, sale and/or purchase of securities as set forth in the Uniform Securities Act, with respect to Participation Agreements in any of the risk pool management programs, and shall remain in compliance with all applicable securities laws in the future;

6.2 The Respondent entities, Local Government Center, Inc., the Local Government Center Health Trust, LLC and the Local Government Center Property Liability Trust, LLC are found to have negligently failed to register their Participation Agreements as securities as required by R.S.A. 421-B:11, I;

6.3 The Respondent entities, Local Government Center, Inc., the Local Government Center Health Trust, LLC and the Local Government Center Property Liability Trust, LLC are found to have negligently issued, offered, sold and/or purchased securities without being licensed as broker-dealers, issuer-dealers, or agents, as required by R.S.A.

421-B:6, I;

6.4 The Respondent entities, Local Government Center, Inc., the Local Government Center Health Trust, LLC and the Local Government Center Property Liability Trust, LLC, and the employees thereof are found to have made material omissions in connection with the offer, sale, and/or purchase of securities in violation of R.S.A. 421-B:3, I(b);

6.5 Respondents Carroll and Curro are found to have had direct and/or indirect control over Local Government Center, Inc., the Local Government Center Health Trust, LLC, the Local Government Center Property Liability Trust, LLC, and the employees thereof, and to have negligently and materially aided these entities in the sale of unregistered securities; the issuance, offering, sale and/or purchase of securities by entities not licensed as broker-dealers, issuer-dealers, and/or agents; and the omission of material information in connection with the offer, sale, and/or purchase of securities.

Penalties, Fees, Costs and Individual Liability for Violations of RSA 421-B

7.1 The Respondent entities, Local Government Center, Inc., the Local Government Center Health Trust, LLC and the Local Government Center Property Liability Trust, LLC are found to have negligently violated RSA 421-B:11, I, and are each assessed a fine of \$1500.00 pursuant to RSA 421-B:26, III;

7.2 The Respondent entities, Local Government Center, Inc., the Local Government Center Health Trust, LLC and the Local Government Center Property Liability Trust, LLC are found to have negligently violated RSA 421-B:6, I, and are each assessed a fine of \$1500.00 pursuant to RSA 421-B:26, III;

7.3 The Respondent entities, Local Government Center, Inc., the Local Government Center Health Trust, LLC and the Local Government Center Property Liability Trust, LLC are found to have negligently violated RSA 421-B:3, I(b), and are each assessed a fine of \$1500.00 pursuant to RSA 421-B:26, III;

7.4 Respondents Carroll and Curro are found to have personally, negligently and materially aided in the violations of RSA 421-B found, *supra*, §§ 6.2, 6.3 and 6.4, and are each assessed a fine of \$1500.00 pursuant to RSA 421-B:26, III-a.

7.5 The Local Government Center, Inc., Local Government Center Health Trust, LLC and the Local Government Center Property Liability Trust, LLC are found jointly and severally liable for the costs of the investigation in this matter, and all related proceedings, including reasonable attorney fees, pursuant to RSA 421-B:22, IV and are ordered to pay same. The Bureau of Securities Regulation and these respondents shall concur within 30 days of the date of this order to determine an agreed upon amount of costs to be paid. Failing agreement, the Bureau of Securities Regulation shall submit its itemization of costs for which it seeks reimbursement to the hearing officer within 45 days of the date of this order and further hearings as appropriate shall be conducted.

7.6 In light of the foregoing, the Secretary of State's September 2, 2011 Cease and Desist Order is hereby made permanent.

Entered this ____ day of June, 2012.

Donald E. Mitchell, presiding hearing officer