

State of New Hampshire Supreme Court

APPEAL OF THE
LOCAL GOVERNMENT CENTER, INC, &a.

N.H. Sup.Ct. No. 2012-0729

BRIEF MEMORANDUM REGARDING WHETHER REMAND IS NECESSARY

NOW COME the Towns of Durham, Northfield, Peterborough, and Salem, by and through their attorney, Joshua L. Gordon, and submit this brief memorandum regarding whether a remand might be necessary.

As Grounds it is stated:

1. The Towns filed a petition to intervene, to which the Bureau of Securities Regulation objected, and then to which the Towns responded. On March 7, 2013 this Court issued an order requesting a brief memoranda regarding whether, if this court affirms that portion of BSR's decision requiring return of excess monies to members, "will a remand then be necessary for the BSR to determine the amount of 'excess' monies to which each member and former member is entitled."

2. The short answer is: yes.

3. In the Towns' response to BSR's objection, they wrote:

While an equitable distribution might require further fact-finding, it would be minimal. The information necessary consists mainly of the dates municipal institutions were members of the risk pools, and the amount of their contributions. Most of this is already available in the LGC-developed spreadsheets affixed to the affidavits which the Towns have provided this Court. Such additional factfinding would not be burdensome and could be carried out in a short remand proceeding.

REPLY TO BUREAU OF SECURITIES REGULATION'S OBJECTION TO TOWNS' PETITION TO INTERVENE ¶ 11 (Feb. 7, 2013).

4. It should be pointed out that in the BSR hearings that gave rise to this appeal, the hearings officer heard at length the testimony of Ms. Sandal Keefe, who was then and still is the Deputy Executive Director and Chief Financial Officer of the Local Government Center. She confirmed that LGC possessed information and documents which would “accurately describe the contributions in so that a distribution out might be computed accurately.” *Trn. Day 7* at 1556-57. She testified:

Within the information that we have available at Local Government Center, we would certainly have reports that we could run that would show by participating member group how much they have contributed to HealthTrust for purchasing health coverage or other coverage, whatever coverage they might be purchasing, how much they have been invoiced, if you will.

Trn. Day 7 at 1557. She further testified that she could assemble the information from the current enrollments and previous enrollments, and that she would be able to calculate “contributions by member,” including the net of any money that was distributed forward. *Trn. Day 7* at 1558-59.

5. After this testimony, pursuant to right-to-know requests, LGC released several spreadsheets, copies of which have already been submitted to this Court as part of the Towns’ initial Petition to Intervene. *See* PETITION TO INTERVENE, AFFIDAVITS OF TODD SELIG, GLENN SMITH, PAMELA BRENNER, AND KEITH HICKEY (Jan. 17, 2013).

6. Accordingly, although the short answer given above regarding whether a remand would be necessary is “yes,” it is apparent that as the Towns noted in their response to BSR’s objection, the remand proceeding would be neither long nor burdensome.

WHEREFORE, the Towns of Durham, Northfield, Peterborough, and Salem respectfully answer this Court's question in the affirmative, but point out that any remand proceeding would be short and uncontroversial.

Respectfully submitted
for the Towns of Durham, Northfield
Peterborough, and Salem,
by their attorney,

Dated: March 22, 2013

Joshua L. Gordon, Esq.
NH Bar No. 9046
Law Office of Joshua Gordon
75 South Main Street # 7
Concord, NH 03301
(603) 226-4225
JLGordon@AppealsLawyer.net

I hereby certify on this 22th day of March 2013, a copy of the foregoing is being forwarded to William C. Saturley, Esq. & Brian M. Quirk, Esq., Preti Flaherty, PLLP; to David I. Frydman, Esq., Local Government Center, Inc.; to Michael D. Ramsdell, Esq., Ramsdell Law Firm, PLLC; to Jeffrey D. Spill, Esq. & Adrian S. LaRochelle, Esq., New Hampshire Bureau of Securities Regulation; and to Andru H. Volinsky, Esq., Roy W. Tilsley Jr., Esq., & Christopher G. Aslin, Esq., Bernstein Shur Sawyer & Nelson PA.

Dated: March 22, 2013

Joshua L. Gordon, Esq.