

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

**RESPONDENT JOHN ANDREWS' RESPONSE TO BSR'S MOTION
REQUESTING HEARING OFFICER TO FIND WAIVER OF ATTORNEY
CLIENT PRIVILEGE THROUGH ASSERTION OF "ADVICE OF COUNSEL"
DEFENSE AND FOR RELATED RELIEF AGAINST ALL LGC RESPONDENTS
AND RESPONDENTS CARROLL AND ANDREWS**

Respondent John Andrews, by and through his counsel, Orr & Reno, P.A., responds to the Bureau of Securities Regulation's (the "BSR") motion to find a waiver of the attorney/client privilege as follows:

1. Mr. Andrews does not dispute that a party must waive his attorney/client privilege on a particular issue if "the privilege-holder injects privileged material itself into the case, such that the information is actually required for resolution of the issue." *Bennett v. ITT Hartford Group, Inc.*, 150 N.H. 753, 761 (2004) (citation omitted). While Mr. Andrews may be in that position after the BSR amends the Staff Petition and the Presiding Officer rules on relevant dispositive motions, the BSR's request for a waiver prior to that time is premature.

2. When the BSR requested that Mr. Andrews waive his attorney/client privilege and produce files relevant to the issues upon which he intends to rely on an "advice of counsel" defense, Mr. Andrews responded in a letter to the BSR's counsel that: (a) the privilege over the limited number of documents in his possession was not his alone; and (b) he had not determined whether he would pursue such a defense, and if so,

whether he intended to rely on privileged documents to advance the defense. Attachment A. Specifically, Mr. Andrews addressed the premature nature of the request as follows:

I understand your desire to resolve the issue. I suggest that we target February 24, 2012, seven days after the last date upon which BSR is allowed to amend the Staff Petition, as the deadline for Mr. Andrews to determine whether he will pursue an advice of counsel defense, and if so, to produce copies of any responsive documents in his possession. I think we can agree that Mr. Andrews should not be in a position whereby he could waive the attorney/client privilege, request that his fellow Respondents also waive the privilege, produce documents that are relevant only in pursuit of the particular defense, and subsequently have BSR amend the Staff Petition to eliminate the only claims to which the documents are relevant.

Attachment A.

3. Moreover, while Mr. Andrews understands that a privilege waiver is necessary if he injects privileged material into the case and the information is necessary to resolve the relevant issue, *see Bennett*, 150 N.H. at 761, he should not be in a position where: (a) he is forced to disclose privileged information regarding a charge that is dismissed prior to the hearing;¹ or (b) his disclosure of privileged information could lead to the introduction of additional allegations by the BSR. Such a compelled disclosure is inconsistent with due process.

Prayer for Relief

Respondent John Andrews respectfully requests that the Presiding Officer hold the BSR's motion to find a waiver of the attorney/client privilege in abeyance until the later of February 24, 2012 or a ruling on the dispositive motions on charges to which an "advice of counsel" defense would necessitate an attorney/client privilege waiver.

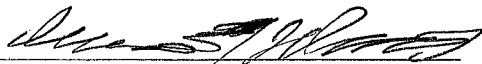
Respectfully submitted,

John Andrews

¹ Mr. Andrews already has filed two dispositive motions and additional dispositive motions are anticipated.

February 2, 2012

By and through his attorneys,

By: 
Michael D. Ramsdell, Esq. (Bar No. 2096)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded this day via electronic mail to all counsel of record.


Michael D. Ramsdell, Esq.

ATTACHMENT A



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Direct Dial 603.223.9185
Direct Fax 603.223.9085

January 19, 2012

VIA EMAIL ONLY

Andru H. Volinsky, Esquire
Bernstein Shur
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670 North Commercial Street
Suite 108
P.O. Box 1120
Manchester, NH 03105-1120

Re: *In the Matter of: Local Government Center, Inc., et al.*
Case No. C-2011000036

Dear Andy:

This letter responds to your letter dated January 16, 2012, in which you request that my client John Andrews produce all "legal and professional files" relevant to the defense stated in his Answer to the New Hampshire Bureau of Securities Regulation ("BSR") Staff Petition that he "acted in good faith upon the advice of counsel and other professionals retained by his employer." As a preliminary matter, Mr. Andrews has not determined whether he will rely on the defense, and if so, whether he intends to waive the attorney/client privilege to pursue the defense. However, since the BSR requested, and Presiding Officer Mitchell ordered, that the Respondents file Answers, Mr. Andrews asserted the defense in his Answer.

As a practical matter, Mr. Andrews does not possess any files belonging to any of the attorneys, law firms, other professionals or other professional entities retained by the Local Government Center, Inc. or its related entities (collectively "LGC"). However, Mr. Andrews possesses copies of a small number of documents that appear responsive to your request. Given the voluminous discovery produced by LGC in this matter, I cannot be certain whether the documents in Mr. Andrews' possession are exact duplicates of documents previously produced by LGC.

Even if Mr. Andrews already had decided to pursue the defense and to waive the attorney/client privilege in support of the defense, I do not believe I am entitled to produce copies of any privileged documents at this time. I am unaware whether you have made similar requests to LGC and the other individual Respondents, and if so, I am unaware of their responses. Until I am aware that the other attorney/client privilege holders have assented to the

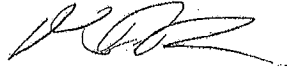
Andru H. Volinsky, Esquire
January 19, 2012
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production of documents over which they possess attorney/client privileges, I do not believe I am able to produce copies of the responsive documents regardless of Mr. Andrews' position.

I understand your desire to resolve the issue. I suggest that we target February 24, 2012, seven days after the last date upon which BSR is allowed to amend the Staff Petition, as the deadline for Mr. Andrews to determine whether he will pursue an advice of counsel defense, and if so, to produce copies of any responsive documents in his possession. I think we can agree that Mr. Andrews should not be in a position whereby he could waive the attorney/client privilege, request that his fellow Respondents also waive the privilege, produce documents that are relevant only in pursuit of the particular defense, and subsequently have BSR amend the Staff Petition to eliminate the only claims to which the documents are relevant.

Please let me know if the foregoing plan is acceptable to you. I look forward to your reply.

Sincerely,



Michael D. Ramsdell

MDR/erg

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