

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

_____))
IN THE MATTER OF:))
))
Local Government Center, Inc.;))
Government Center Real Estate, Inc.;))
Local Government Center Health Trust, LLC;))
Local Government Center Property-Liability Trust,))
LLC;))
Health Trust, Inc.;))
New Hampshire Municipal Association Property-Liability)) Case No: C2011000036
Trust, Inc.;))
LGC – HT, LLC;))
Local Government Center Workers’ Compensation))
Trust, LLC;))
And the following individuals:))
Maura Carroll; Keith R. Burke; Stephen A. Moltenbrey;))
Paul G. Beecher; Robert A. Berry; Roderick MacDonald;))
Peter J. Curro; April D. Whittaker; Timothy J. Ruehr;))
Julia A. Griffin; and John Andrews))
))
RESPONDENTS))
_____)

MOTION TO EXTEND TIME TO CONDUCT ON-SITE EXAMINATION

NOW COMES Petitioner, the Bureau of Securities Regulation (BSR), a part of the Corporations Division within the Department of State, and submits this Motion to Extend Time to Conduct On-site Examination, stating in support thereof the following:

Background

1. On December 14, 2011, the Hearings Officer issued an Order on BSR Request for On-site Examination (Order). In this Order the Presiding Officer determined that the language of both N.H. RSA § 421-B and 5-B granted the BSR authority to conduct an on-site examination of LGC’s records.
2. Under paragraph B of the Order granting on-site examination of LGC’s records, the Presiding Officer required all parties to “meet and confer *on or before* December 19, 2011 to reach *mutual agreement* on scheduling and logistics” (emphasis added).

3. Further, the Presiding Officer ruled the BSR must complete its on-site examination on or before December 31, 2011 *or such other date as the parties agree to mutually* (emphasis added).

The Time Frame Outlined in the December 14th Order Renders On-Site Examination of LGC Records Ineffective

4. Clearly the on-site examination ordered could not begin until there was a “mutual agreement” between the parties as to the logistics of the examination.
5. Considering the short time frame of the Order, the BSR sought to begin the on-site examination of LGC books and records on December 15, 2011, a date *on or before* the 19th. This request was declined.
6. The BSR sought to meet on Friday, December 16, or Saturday, December 17. LGC remained adamant that it would only be available on December 19.¹
7. Given the unavailability of LGC and others to meet sooner than December 19, the BSR sought agreement to extend the time for completion of the examination into January, 2012, as authorized by the Order. There was no response. The parties met the morning of December 19 and spent several hours discussing the issues in the Presiding Officer’s Order. Clearly, this meant that the soonest the examination could begin was that afternoon.²
8. The BSR expressed concern that with the holidays, LGC would have vacation-plagued staffing problems and would be unable to give full attention to the examination.
9. At the meeting on December 19, LGC, in fact, expressed displeasure with conducting the on-site exam during the holidays. In an attempt to quell LGC’s concerns, the BSR again requested of LGC an agreement to extend the time to complete the examination into January, 2012. This request was immediately rejected despite LGC’s own objections to the current schedule.
10. LGC provided the BSR access to LGC’s premises at 1:00 p.m. the afternoon of December 19. LGC had set aside a small room with a computer. Minutes into the examination, Sandal Keefe, LGC’s Chief Financial Officer, complained that there were a “finite number of [LGC] people” available to work on the examination. Then, there were computer problems necessitating the attention of IT personnel. Ms. Keefe noted that some of the information

¹ By the time of this request, others involved in the process had made other plans. No attempt to obtain substitute counsel was evident.

² One difficulty repeatedly raised by LGC was the issue of “private health information” (PHI).

requested by the BSR was in the basement and reiterated that she had a finite number of staff to assist her in retrieving any requested documentation. She said she was “down three people.” She also noted that none of her staff was appropriately dressed at that time to go down to the basement to look for requested information. Some staff were simply out on vacation. Then, once again, the issue of PHI arose. LGC claimed that some of the information requested by the BSR was covered by HIPAA and therefore was unavailable for review. A solution was proposed to redact HIPAA information; counsel for LGC noted that they would have to check with their in-house HIPAA expert attorney before agreeing to such a proposal.³

11. The next day, December 20, 2011, the BSR arrived at LGC at 8:30 a.m. to continue its on-site examination. During this work session at LGC the BSR’s forensic accountant Mr. Bannon sought assistance with “mapping” the trial balances obtained from LGC to LGC’s audited financial statements. Ms. Keefe said she would assist Mr. Bannon but counsel for LGC interjected stating that all LGC was required to do, under the Order, was to provide the information, not assistance in organization or mapping. LGC counsel then indicated Mr. Bannon should do it on his own, not to tie up the LGC CFO in this process and to return to them with any issues to resolve the next day. Counsel then dismissed Ms. Keefe.⁴ Mr. Bannon then had to go without a mapping key and perform the mapping procedures on his own, necessitating extra time and effort.
12. Further, on December 20, during the review of the information he had obtained, Mr. Bannon found he was missing a page (Property-Liability trial balance for a specified year, Page 10). Mr. Bannon went back to Ms. Keefe and requested the missing page. Although Mr. Bannon received the missing page, the issue took a day to resolve. In addition, BSR has found that among the information produced, there are missing bank statements.
13. LGC noted it was closing its facility between 12:00 and 3:00 on December 21, to accommodate a holiday party. BSR thus suspended its examination until 3:00 that day.

³ Here, 5 days later, the HIPAA issue remains unresolved.

⁴ The “mapping” function was specifically mentioned in paragraph 2 of BSR’s initial information request.

14. The BSR asked to extend the hours of the examination but were told LGC facilities would only be open from 8:30 a.m. to 5:30 p.m.⁵ Since the financial examination began the afternoon of December 19, regardless of the delays and interruptions the BSR has encountered, in order to complete this examination of these multi-hundred-million-dollar operations, the BSR has *eight and a half days*, less the 3 hours for LGC's holiday party.
15. The timeframe in which the ordered on-site examination of LGC books and records must occur spans multiple holidays resulting in staff scheduling conflicts and a reduction in LGC's hours of operation. Specifically, Sandal Keefe was not available on Friday, December 23.
16. Despite the fact that state offices are closed on December 26, 2011, the BSR stands ready, willing and able to continue the examination evenings and weekends. LGC has refused to allow BSR to continue the examination on Saturday, December 24 and Monday, December 26.
17. Delays have been endemic. But they have not been caused by BSR. For example, BSR served a subpoena on LGC on September 15, in which BSR requested on-site examination of the records. BSR sought compliance within 20 days. LGC responded on October 5, the last day, declining to permit on-site examination. Subsequently, BSR sent a document request on November 15, 2011 requesting records that would be required by the Bureau were an on-site examination not to occur. Again, LGC waited the full twenty-day period, ultimately objecting to the request in full. In both instances, LGC could have responded in the negative by return mail. This alone has caused a 40-day delay in these proceedings. The lack of full cooperation by LGC in this examination again demonstrates this tactic. BSR needs time to complete the examination ordered by the presiding officer. Without adequate time, the resulting product stands to be incomplete or inaccurate.
18. Counsel for Respondents Moultenbrey and McDonald indicated these respondents would defer to LGC's position. Counsel for Respondent Andrews indicated no objection to extending the time for examination, provided the balance of the hearing schedule was extended.

⁵ The final paragraph of the refusal reads, "We have already suffered a great disruption of LGC's year-end operation, and discomfort and disruption to its staff. I suggest you use the rest of the time between now and 5:30 Friday, December 30 wisely, because we will not willingly extend the time further."

WHEREFORE, the Petitioner respectfully requests that the Presiding Officer:

- A. Extend the BSR's time for on-site examination of LGC, requiring that on-site examination of LGC be completed no later than January 31, 2012;
- B. Require that the BSR's expert report on the on-site examination be completed no later than ten days thereafter;
- C. Require that LGC have available the appropriate senior personnel for this examination, and
- D. Grant such other and further relief as may be deemed proper and just.

Dated this 23rd day of December,
2011



Earle F. Wingate, III
Staff Attorney
N.H. Bureau of Securities Regulation
Bar #2763

cc: Jeffrey D. Spill, Esq.
Eric Forcier, Esq.
Roy Tilsley, Esq.
Adrian S. LaRochelle, Esq.
William C. Saturley, Esq.
Brian M. Quirk, Esq.
David I. Frydman, Esq.
Michael D. Ramsdell, Esq.
Joshua M. Pantesco, Esq.
Mark E. Howard, Esq.
Jaye L. Rancourt, Esq.