

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION

IN THE MATTER OF:

Local Government Center, Inc; Local
Government Center Real Estate, Inc.;
Local Government Center HealthTrust,
LLC; Local Government Center
Property-Liability Trust, LLC;
Health Trust, Inc; New Hampshire
Municipal Association Property-Liability
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 N. Griffin, Paula Adriance, John
P. Bohenko, and John Andrews

Case No: C-2011000036

**RESPONDENT JOHN ANDREWS' RESPONSE TO BSR'S MOTION TO
EXTEND TIME TO CONDUCT ON-SITE EXAMINATION**

Respondent John Andrews, by and through his counsel, Orr & Reno, P.A., responds to the New Hampshire Bureau of Securities Regulation's (the "BSR") Motion to Extend Time to Conduct On-Site Examination as follows:

1. The BSR's motion highlights the practical impossibility of the regulatory agency contemporaneously investigating and prosecuting the allegations raised in the Staff Petition filed against the Respondents almost four months ago. The extension of time sought by the BSR without additional relief also afforded to the Respondents, particularly the individual Respondents, is highly prejudicial and violative of the Respondents' right to due process pursuant to the Fourteenth Amendment and Part I,

Article 15. See *Petition of Kilton*, 156 N.H. 632, 638-39 (2007); *Town of Swanzey v. Liebler*, 140 N.H. 760, 763 (1996).

2. As a preliminary matter, the BSR shamelessly likens its conduct to that expected of Caesar's wife ("Delays have been endemic. But they have not been caused by BSR."), when in fact, the conduct of Lady Macbeth is a more apt analogy. While the BSR attempts to pass the blame for its inability to comply with Presiding Officer Mitchell's Orders because of events over the last ten days, no one is responsible for the BSR's inability to comprehensively and timely examine the Local Government Center's (the "LGC") books and records other than the BSR.

3. The BSR has exclusive control over the timing of its Staff Petition. It chose not to conduct an examination of the BSR's books and records during the two years between the original complaint and the issuance of the Staff Petition.

4. On September 15, 2011, two weeks after issuing the Staff Petition, the BSR served a subpoena on the LGC. By at least October 5, 2011, the BSR knew the LGC was unwilling allow an on-site inspection. Again, the BSR chose to sit on its hands for a significant period of time rather than attempt to immediately seek enforcement of the subpoena.

5. On November 15, 2011, the BSR sent a document request to the LGC. The BSR now expresses indignation over the delay it attributes to the LGC's refusal to comply with the subpoena ("This alone has caused a 40-day delay in these proceedings."), when it was obvious that the subpoena was a fruitless effort destined to spawn further litigation.

6. During a telephonic, informal discussion and again at an informal discovery conference with the Presiding Officer, the BSR discussed its “need” for, and the mechanics of, the on-site inspection. The BSR never suggested that the on-site inspection might take more time than the two weeks afforded it by the Presiding Officer. Now, the BSR claims that because of delays during December 15¹ through December 26, it needs an additional thirty (30) days to complete the on-site examination.²

7. Extricating the BSR from its self-created dilemma without affording the Respondents corresponding relief would be unfairly prejudicial to them and a violation of their due process rights pursuant to the Fourteenth Amendment and Part I, Article 15. *See Petition of Kilton*, 156 N.H. at 638-39; *Liebler*, 140 N.H. at 763. The BSR seeks to extend its examination period into the period of time already agreed upon for depositions.³ In fact, the depositions of some of the Respondents, including Mr. Andrews, have been requested for dates that would precede the BSR’s production of its expert financial report and the deadline for its amendment to the Staff Petition.

8. The BSR’s desired extension is prejudicial for another reason. The deadline for the production of the Respondents’ expert reports is only seventeen (17) days later, February 17, 2012. As it is, the February 17 deadline is difficult, but perhaps

¹ The BSR’s claim of readiness on December 15 is a red herring. The parties were ordered to confer about the on-site inspection by December 19, and complied with the order. Moreover, the BSR is aware that Respondent Andrews’ counsel was out of state, and therefore, unavailable to meet or make arrangements for representation to be present at the on-site inspection from December 14 through December 16. December 19 was the first business day after December 16.

² The tone of the BSR’s motion is remarkable. It absolutely denies any responsibility for its inability to complete the on-site examination by December 31. The BSR fails to point out that during the past week its personnel have failed to arrive at the LGC at agreed-upon times to re-commence the examination. Moreover, the BSR decries amazement that it has “[only] *eight and a half days*, less the 3 hours for the LGC’s holiday party” to conduct the examination when it never articulated to the Presiding Officer that “this examination of these multi-hundred-million-dollar operations” might take a longer period of time. Now, mid-way through the time afforded for the on-site inspection, the BSR seeks to extend the time by a month without so much as a suggestion that such an extension would be prejudicial to the Respondents.

³ The parties agreed to conduct depositions during the three weeks commencing on January 23, some three weeks after the BSR was to conclude its examination.

manageable because the Respondents could rely on knowing the identity of the documents reviewed by the BSR and the questions asked of the LGC personnel not later than December 31. If the Presiding Officer grants the relief requested by the BSR, the Respondents will not possess the information until seventeen (17) days before its deadline to produce an expert report. Plainly, if the BSR, with the cadre of attorneys and financial analysts it has devoted to the on-site inspection, requires from December 19, 2011 to January 31, 2012 to review the LGC's books and records, and to inquire of LGC personnel as necessary to understand the financial data, it would violate the Respondents' rights to due process to require their experts to review, comprehend and opine on the same information in seventeen days.

9. Equally importantly, if the Presiding Officer affords the BSR the relief it seeks, Respondents will not possess the BSR's financial report until seven (7) days before the deadline for their production of their expert reports. It is beyond credible dispute that the imposition of such a hasty deadline for such voluminous and critical expert work would violate the Respondents' rights to due process.

10. Accordingly, Respondent Andrews respectfully requests that if Presiding Officer Mitchell grants the relief requested by the BSR, he also afford the Respondents an identical amount of time to prepare their defense to the BSR's work and its Staff Petition. Absent such concordant relief, Respondent Andrews will be prejudiced and his right to due process pursuant to the Fourteenth Amendment and Part I, Article 15 will be violated. *See Petition of Kilton*, 156 N.H. at 638-39; *Liebler*, 140 N.H. at 763.

Prayer for Relief

Respondent John Andrews requests that Presiding Officer Mitchell:

A. Deny the BSR's Motion to Extend Time to Conduct On-Site Examination;
or, alternatively,

B. Amend the Scheduling Order as follows:

4. The BSR's deadline for completion of its on-site examination of the LGC shall be January 31, 2012. The BSR shall produce its forensic accountant's report not later than February 10, 2012. Absent the discovery of new evidence that the BSR could not have discovered earlier, the BSR is precluded from amending the Staff Petition after February 10, 2012.

6. The deadline for the production of the Respondents' expert disclosures and production of their expert reports shall be March 18, 2012.

7. All discovery shall be completed no later than April 8, 2012.

8. All dispositive motions shall be filed no later than April 13, 2012. Any objection thereto shall be filed within ten (10) days.

9. Each party's final witness list and exhibit list shall be filed by April 13, 2012.

10. The final pre-hearing informal conference of counsel shall be conducted on April 20, 2012.

11. The evidentiary hearing regarding the merits and defenses of the issues remaining in controversy shall commence on May 9, 2012, and continue from day-to-day until completed.

Respectfully Submitted,

JOHN ANDREWS

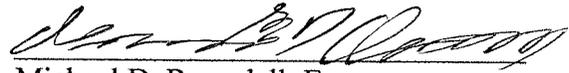
Date: 12/24/11

By:


Michael D. Ramsdell, Esq. (NH Bar #2096)
Joshua M. Pantesco (NH Bar # 18887)
ORR & RENO, P.A.
One Eagle Square
P.O. Box 3550
Concord, NH 03302-3550
(603) 223-9185
mramsdell@orr-reno.com
jpantesco@orr-reno.com

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.