

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' SUPPLEMENTAL ANSWER TO BSR'S
AMENDED PETITION**

Respondent John Andrews, by and through his counsel, Orr & Reno, P.A., submits the following Supplemental Answer to the New Hampshire Bureau of Securities Regulation's ("BSR") Amended Petition (the "Petition"):

Respondent Andrews' Introductory Summary

The Petition generally accuses Mr. Andrews of violations of the Pooled Risk Management Programs statute, RSA Ch. 5-B, and the New Hampshire Securities Act, RSA Ch. 421-B. Mr. Andrews is the former Executive Director of the Local Government Center, Inc. ("LGC Parent") (Respondent LGC business entities collectively "LGC"). He retired from that position in September 2009.

All of the claims against Mr. Andrews should be dismissed. Allegations of violations of RSA Ch. 5-B based on conduct prior to June 14, 2010, the effective date of RSA 5-B:4-a, should be dismissed because: (1) BSR lacked enforcement authority, and therefore jurisdiction, over RSA Ch. 5-B claims prior to that date; and (2) retrospective application of RSA 5-B:4-a to conduct that occurred before the statute's effective date violates Article 1, Section 10 of the United States Constitution and Part 1, Article 23 of the New Hampshire Constitution. Allegations of violations of RSA Ch. 421-B should be dismissed because none of the interests referenced in the Petition are securities.

Additionally, the Petition fails to allege or describe with particularity any acts committed by Mr. Andrews in support of the alleged violations of RSA Ch. 5-B. At all times, Mr. Andrews acted reasonably and in good faith with respect to the allegations in the Petition, and in the best interests of LGC, his employer. Mr. Andrews at no time acted with scienter or committed either a knowing or negligent statutory violation. Mr. Andrews, on behalf of LGC, solicited and received legal advice from an outside law firm regarding the central allegations in the Petition, and recommended to LGC that it follow outside counsel's advice. Mr. Andrews or LGC also retained outside industry consultants to provide advice and assistance to LGC in making its decisions.

Introduction

1. Paragraph 1 contains introductory information to which no response is required.

The Parties

2-21. Paragraphs 2-21 identify the Respondents. Mr. Andrews does not object to the description of him contained in paragraph 14.

Regulatory Authority

22-23. Paragraphs 22-23 contain statements regarding BSR's view of the history, purpose, and effect of RSA Ch. 5-B, and statements regarding the procedural posture of this matter. Mr. Andrews is not mentioned in paragraphs 22-23, and therefore, no response to the paragraphs is required.

Facts Common to All Claims

24-31. Paragraphs 24-31 contain statements regarding BSR's view of the creation, history, and past practices of LGC. Mr. Andrews is not mentioned in paragraphs 24-31, and therefore, no response to the paragraphs is required.

32-38. Paragraphs 32-38 contain statements regarding BSR's opinion as to why LGC Parent was formed, and allegations regarding certain financial transactions by and between LGC's pooled risk management programs. Mr. Andrews is not mentioned in paragraphs 32-38, and therefore, no response to the paragraphs is required.

39. Paragraph 39 states that "Mr. Andrews and the boards of HealthTrust, Inc., NHMA Prop. Liab. Trust, Inc., and NHMA, Inc. devised a plan to restructure the entities through a convoluted process requiring the creation of Delaware shell companies" Mr. Andrews answers that the corporate restructuring that took place in 2003 was the end result of a lengthy, and healthy, decision-making process. Legal counsel advised LGC entities with respect to the restructuring, and implemented the restructuring process. The restructuring was vetted by numerous people before it was presented to the boards of directors of three involved entities for approval. While Mr. Andrews acknowledges that he was involved in "planning" the restructuring as BSR alleges, he did not, is not alleged to have, and was not empowered to approve the restructuring, as that power was held solely by the boards of directors of the three entities involved.

40-45. Paragraphs 40-45 contain statements regarding BSR's view of the corporate restructuring process. Mr. Andrews is not mentioned in paragraphs 40-45, and therefore, no response to the paragraphs is required.

46. Paragraph 46 contains allegations of LGC's failure to return surplus. The paragraph mentions that Mr. Andrews was among a group of people who "assisted the legislature in drafting RSA Ch. 5-B" Mr. Andrews acknowledges that he participated in the legislative process surrounding the enactment of RSA Ch. 5-B, but denies that the sole aim of RSA Ch. 5-B was to "permit[] the then existing practices of risk pools." None of

the conduct alleged to have violated RSA Ch. 5-B is attributed to Mr. Andrews, and thus, no further response to this paragraph is required.

47-65. Paragraphs 47-65 contain statements regarding BSR's allegations of LGC's failure to return surplus. Mr. Andrews is not mentioned in paragraphs 47-65, and therefore, no response to the paragraphs is required.

66-68. Paragraphs 66-68 contain statements regarding BSR's view of "LGC's *post hoc* corporate restructuring." Mr. Andrews is not mentioned in paragraphs 66-68, and therefore, no response to the paragraphs is required.

69-72. Paragraphs 69-72 contain statements of law regarding the New Hampshire municipal budget laws, and thus, no response to these paragraphs is required.

Furthermore, Mr. Andrews is not mentioned in paragraphs 69-72.

CAUSES OF ACTION

COUNT I.

Operation of a Pooled Risk Management Program in Violation of R.S.A. 5-B:5 -- Improper Corporate Structure --

73-87. Count I does not allege any specific conduct by Mr. Andrews. While paragraph 84 states that "the LGC Board members relied on the direction of Mr. Andrews, Ms. Carroll, legal counsel, and professional consultants when deciding how to manage Member funds held in the 5-B pools[,]” the only conduct alleged is that of the LGC Board and its members. Consequently, no response is required to paragraphs 73-87. *See also* Mr. Andrews' Motion to Dismiss Him from Counts I and II for Failure to State a Cause of Action.

COUNT II.

Operation of a Pooled Risk Management Program in Violation of R.S.A. 5-B:5

-- Failure to Return Surplus Funds to Members --

88-104. Count II does not allege any specific conduct by Mr. Andrews. In essence, Count II alleges that LGC failed to return funds, misappropriated assets, and improperly transferred certain assets. BSR neither alleges that these were acts of Mr. Andrews, nor was Mr. Andrews empowered to take such actions. *See* LGC Bylaws, Article VIII, Duties and Powers of the Board of Directors, Section 8.2, Powers of the Directors, and Section 8.4 Powers of the Executive Director. Consequently, no response is required to Count II, paragraphs 88-104. *See also* Mr. Andrews' Motion to Dismiss Him from Counts I and II for Failure to State a Cause of Action.

COUNT III.

Sale of Unregistered Securities By Unlicensed Broker-Dealers, Issuer-Dealers, and Agents in Violation of R.S.A. 421-B:6 and 11

COUNT IV.

Knowing or Negligent Aid in the Sale of Unregistered Securities by Unlicensed Broker-Dealers, Issuer-Dealers, and Agents by the Individual Respondents in Violation of R.S.A. 421-B:26, III-a.

COUNT V.

Fraud, Deceit, and Material Omissions in Connection with the Offer or Sale of Securities in Violation of R.S.A. 421-B:3

105-135. Paragraphs 105-135 allege various violations of RSA Ch. 421-B, the New Hampshire Securities Act. The underlying premise common to all of the allegations in paragraphs 105-135 is denied; the premise being that membership interests in NHMA, LLC and the 5-B risk pool participation agreements are investment contracts and thus

securities regulated by RSA Chapter 421-B. For all the reasons set forth in Mr. Andrews' Motion to Dismiss Counts III, IV, and V of the Amended Petition, Securities Claims, these interests are not investment contracts within the meaning of RSA Ch. 421-B. Consequently, the New Hampshire Securities Act has no application to the conduct alleged in Counts III, IV, and V.

105-115. Paragraphs 105-115 allege violations of RSA 421-B:6 and 11, related to the alleged sale of unregistered securities by unlicensed broker-dealers and issuer-dealers. The paragraphs also offer BSR's view of New Hampshire law on the subject matter. Mr. Andrews is not mentioned in paragraphs 105-115, and therefore, no response to the paragraphs is required.

116-117. Paragraphs 116-117 allege violations of RSA 421-B:6 related to the alleged failure of LGC's officers and employees, including Mr. Andrews, to have been licensed by BSR as agents of securities-dealers and broker-dealers. The underlying premise common to the allegations in paragraphs 116-117 is denied; the premise being that membership interests in NHMA, LLC and the 5-B risk pool participation agreements are investment contracts and thus securities regulated by RSA Ch. 421-B. For all the reasons set forth in Mr. Andrews' Motion to Dismiss Counts III, IV, and V of the Amended Petition, Securities Claims, these interests are not investment contracts within the meaning of RSA Ch. 421-B. Consequently, the New Hampshire Securities Act has no application to the conduct alleged in Count III.

118-122. Count IV, Paragraphs 118-122, alleges violations of RSA 421-B:26, III-a, specifically, that the Individual Respondents, including Mr. Andrews, knowingly or negligently aided LGC in selling unregistered securities in violation of RSA 421-B:11.

The underlying premise common to the allegations in paragraphs 118-122 is denied; the premise being that membership interests in NHMA, LLC and the 5-B risk pool participation agreements are investment contracts and thus securities regulated by RSA Ch. 421-B. For all the reasons set forth in Mr. Andrews' Motion to Dismiss Counts III, IV, and V of the Amended Petition, Securities Claims, these interests are not investment contracts within the meaning of RSA Chapter 421-B. Consequently, the New Hampshire Securities Act has no application to the conduct alleged in Count IV.

123-127. Paragraphs 123-127 allege violations of RSA 421-B:3, related to alleged fraud, deceit, and the omission of material facts in connection with the offer and/or sale of securities. The underlying premise common to the allegations in paragraphs 123-127 is denied; the premise being that membership interests in NHMA, LLC and the 5-B risk pool participation agreements are investment contracts and thus securities regulated by RSA Chapter 421-B. For all the reasons set forth in Mr. Andrews' Motion to Dismiss Counts III, IV, and V of the Amended Petition, Securities Claims, these interests are not investment contracts within the meaning of RSA Chapter 421-B. Consequently, the New Hampshire Securities Act has no application to the conduct alleged in Count IV.

128. Paragraph 128 alleges that LGC violated RSA 421-B:3, I(c) by failing to notify members of its use of member funds for non-pool purposes, and failing to obtain written authorizations from Members to use their funds. Mr. Andrews is not mentioned in paragraph 128, and therefore, no response to the paragraph is required.

COUNT VI.

Civil Conspiracy

129-135. Paragraphs 129-135 allege a civil conspiracy by and between the Individual Respondents, including Mr. Andrews. Two premises underlie all of the allegations in paragraphs 129-135: (1) that agents of the same business entity are capable of forming a civil conspiracy, and (2) that a civil conspiracy claim can proceed even if the petitioner does not allege it was damaged by the conspiracy. The premises are denied. Mr. Andrews also denies that the Department of State has subject matter jurisdiction to adjudicate a cause of action for civil conspiracy. For all the reasons set forth in Mr. Andrews' Motion to Dismiss Count VI of the Amended Petition, Civil Conspiracy, Count VI should be dismissed. Finally regarding these paragraphs, Mr. Andrews denies the actions attributed to him and asserts that he was not empowered to have taken any such actions. *See* LGC Bylaws, Article VIII, Duties and Powers of the Board of Directors, Section 8.2, Powers of the Directors, and Section 8.4 Powers of the Executive Director.

Brief Statement of Defenses

Mr. Andrews intends to rely on the following defenses to some or all of the allegations stated in the Amended Petition:

- A. Failure to state a cause of action pursuant to which relief can be granted as described in the Answer above.
- B. Failure to allege specific instances of conduct by Mr. Andrews sufficient to state a cause of action as described in the Answer above.
- C. Failure to allege fraud with sufficient particularity as described in the Answer above.

- D. At all times, Mr. Andrews acted in good faith and in the best interests of his employer.
- E. At all times, Mr. Andrews acted in good faith and without scienter.
- F. At all times, Mr. Andrews acted in good faith upon the advice of counsel and other professionals retained by his employer.
- G. Allegations of violations of RSA 5-B:5, I(c) should be dismissed because the statute is vague and indefinite (“Return all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions.”), and therefore, it violates the due process protections of the Fifth Amendment to the United States Constitution and Part 1, Article 15 of the New Hampshire Constitution.
- H. Allegations of violations of RSA 5-B based on conduct prior to June 14, 2010, the effective date of RSA 5-B:4-a, should be dismissed because the retrospective application of RSA 5-B:4-a to conduct that occurred before the statute’s effective date violates Article 1, Section 10 of the United States Constitution and Part 1, Article 23 of the New Hampshire Constitution.
- I. Allegations based on conduct alleged to have occurred prior to September 2, 2005, should be dismissed on statute of limitations grounds.
- J. Allegations related to the formation of various business entities in 2003 should be dismissed based on the equitable doctrine of laches.
- K. Mr. Andrews re-asserts as if set forth in full herein all the defenses raised in his dispositive motions.

L. Mr. Andrews reserves the right to assert additional or other defenses upon the discovery of additional information.

Prayer for Relief

Mr. Andrews requests that the Presiding Officer dismiss the Amended Petition as against him. Alternatively, Mr. Andrews requests that the Presiding Officer deny BSR's allegations, claims and requests for relief.

Respectfully Submitted,

JOHN ANDREWS

Date: March 23, 2012

By:



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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.

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