

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION

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**IN THE MATTER OF:** )  
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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 and John Andrews )  
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Case No: C-2011000036

**RESPONDENT JOHN ANDREWS' MOTION TO DISMISS HIM FROM  
COUNTS 1, 2 AND 4, AND SECTIONS A, C AND D OF COUNT 3  
FOR FAILURE TO STATE A CAUSE OF ACTION**

Respondent John Andrews, by and through his counsel, Orr & Reno, P.A., moves for an Order dismissing him from Counts 1, 2 and 4, and Sections A, C and D of Count 3 of the Staff Petition for failure to state a cause of action and states the following:

**Procedural History**

1. On or about September 2, 2011, the New Hampshire Bureau of Securities Regulation ("BSR") issued the Staff Petition in which it named eight business entity Respondents and thirteen individual Respondents,<sup>1</sup> including Mr. Andrews. On or about October 3, 2011, the BSR moved to amend the Staff Petition to add Count 4.

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<sup>1</sup> Two individual Respondents have been dismissed since the issuance of the Staff Petition.

2. On November 18, 2011, Mr. Andrews moved for a more definite statement or for clarification of the Staff Petition because it does not comport with due process and provide adequate notice as required by 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). Mr. Andrews specifically requested an “Order that the BSR reform the Staff Petition to identify the statutory violations of which he is accused and the specific relief the BSR seeks against him.”

3. At the hearing held on November 21, 2011, Presiding Officer Mitchell queried Mr. Andrews’ counsel and the BSR about the motion. The BSR objected to providing a more definite statement or clarifying the Staff Petition. Instead, the BSR argued that any obligation it may have to clarify the accusations that have been pending against Mr. Andrews for more than three months should await Presiding Officer Mitchell’s ruling on the BSR’s recently filed motion for authorization to further investigate the Local Government Center.

4. At a recent “meet and confer,” Mr. Andrews agreed that he would withdraw the motion for more definite statement or for clarification if the BSR provided him with a “grid” that identified the specific charges alleged against him in the Staff Petition. On December 2, 2011, the BSR provided a grid to all counsel. While the grid does not identify either the specific counts pursuant to which the BSR alleges liability against Mr. Andrews or the specific relief it seeks against him, it identifies the statutes the BSR claims the Staff Petition alleges he violated. Consequently, contemporaneous with the filing of this motion, Mr. Andrews has withdrawn the motion for more definite statement or for clarification.

**The BSR's Grid**

5. The BSR's grid includes the following statutes after Mr. Andrews' name: RSA 5-B:3, I; RSA 5-B:5, I(c); RSA 421-B:6, I; RSA 421-B:11; RSAs 421-B:3(b) and 421-B:26, III(a); and RSAs 421-B:3(c) and 421-B:26, III(a).<sup>2</sup> The statutes listed after Mr. Andrews' name appear in the respective counts of the Staff Petition as follows:

**Count 1:** None

**Count 2:** RSA 5-B:5, I(c)  
RSA 5-B:3, I

**Count 3:**

*Section A* - RSA 421-B:11, I

*Section B* - RSA 421-B:6, I  
RSA 421-B:26, III-a

*Section C* - RSA 421-B:3, I(b)<sup>3</sup>

*Section D* - RSA 421-B:3, I(c)

*Section E* - RSA 421-B:3, I(b)<sup>4</sup>

*Section F* - RSA 421-B:3, I(c)  
RSA 421-B:3, I(b)  
RSA 421-B:26, III-a

**Count 4:** None.

**Legal Standard for Dismissal for Failure to State a Cause of Action**

6. The standard of review for consideration of a motion to dismiss for failure to state a cause of action is "whether the plaintiff's allegations are reasonably susceptible

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<sup>2</sup> While the grid includes "RSA 421-B:3(b)" and RSA 421-B:3(c)," it appears that the entries should be "RSA 421-B:3, I(b)" and RSA 421-B:3, I(c)." Additionally, it appears that "RSA 421-B:26, III(a)" should be "RSA 421-B:26, III-a"

<sup>3</sup> The caption of Section C also includes RSA 421-B:3, I(c). However, the allegations only include reference to RSA 421-B:3, I(b). Allegations related to RSA 421-B:3, I(c) are stated in Section D.

<sup>4</sup> Section E actually twice identifies "RSA 431-B:3, I(b)" and does not identify RSA 421-B:3, I(b).

of a construction that would permit recovery.” *Beane v. Beane & Co., P.C.*, 160 N.H. 708, 711 (2010) (citation omitted). “This threshold inquiry involves testing the facts alleged in the pleadings against the applicable law.” *Id.* (citation omitted).

7. The decision-maker need not accept allegations in a complaint that are merely conclusions of law. *Id.* “Dismissal is appropriate ‘[i]f the facts pled do not constitute a basis for legal relief.’” *Id.* (quoting *Hobin v. Coldwell Banker Residential Affiliates*, 144 N.H. 626, 628 (2000)).

### **Staff Petition, Its Causes of Action and the BSR’s Grid**

8. The original Staff Petition contains 103 numbered paragraphs alleged as “Statement[s] of Fact.” It contains 41 numbered paragraphs alleged as “Statement[s] of Law.” Count 4 of the Staff Petition contains 33 numbered paragraphs. The paragraphs in Count 4 are not divided into allegations of fact and allegations of law.

#### **Count 1**

9. The Statement(s) of Fact for Count 1 – “Corporate Governance” allege conduct by various business entity Respondents between 1985 and 2011. Count 1 does not allege any specific conduct by Mr. Andrews. The Statement(s) of Law for Count 1 also do not mention Mr. Andrews. Accordingly, “the facts pled do not constitute a basis for legal relief[.]” *see Beane*, 160 N.H. at 711 (quoting *Hobin*, 144 N.H. at 628), and Count 1 is not “reasonably susceptible of a construction that would permit recovery.” *See Beane*, 160 N.H. at 711 (citation omitted).

10. Additionally, none of the statutes identified by the BSR related to Mr. Andrews appears in count 1. Count 1 should be dismissed against Mr. Andrews for failure to state a cause of action against him.

## Count 2

11. While Count 2 – “Financial Mismanagement” includes at least two statutes the BSR includes in its grid following Mr. Andrews’ name, RSA 5-B:3, I and RSA 5-B:5, I(c), it does not allege a cause of action against him. The Statement(s) of Fact allege multiple statutory violations related to various business entity Respondents’ handling of funds. However, like Count 1, Count 2 does not allege any specific conduct by Mr. Andrews. Moreover, the Statement(s) of Law for Count 2 do not mention Mr. Andrews.

12. Absent any allegation of conduct by Mr. Andrews and given his exclusion from the Statement(s) of Law, ““the facts pled do not constitute a basis for legal relief[,]”” *see Beane*, 160 N.H. at 711 (quoting *Hobin*, 144 N.H. at 628), and Count 2 is not “reasonably susceptible of a construction that would permit recovery.” *See Beane*, 160 N.H. at 711 (citation omitted). Count 2 should be dismissed against Mr. Andrews.

## Count 3

13. The Statement(s) of Fact for Count 3 – “Violations of the New Hampshire Securities Act” are separated into Sections A through E. Section A alleges violations of RSA 421-B:11, I, by certain business entity Respondents. Section C alleges violations of RSA 421-B:3, I(b) and (c) by certain business entity Respondents. Section D alleges violations of RSA 421-B:3, I(c) by certain business entity Respondents.

14. Like Counts 1 and 2, Sections A, C and D of Count 3, do not allege any specific conduct by Mr. Andrews. Given the absence of any alleged conduct by Mr. Andrews and the specific accusations against other identified Respondents for particular statutory violations, ““the facts pled do not constitute a basis for legal relief[,]”” *see*

*Beane*, 160 N.H. at 711 (quoting *Hobin*, 144 N.H. at 628), and Sections A, C and D of Count 3 are not “reasonably susceptible of a construction that would permit recovery.” See *Beane*, 160 N.H. at 711 (citation omitted). Sections A, C and D of Count 3 should be dismissed against Mr. Andrews.<sup>5</sup>

#### **Count 4**

15. Count 4 – “Additional Issues Regarding Limited Liability Company Formation and Management” alleges statutory violations regarding the formation and management of certain limited liability company Respondents. The sole relief sought by the BSR is judicial dissolution of two limited liability company Respondents. Additionally, none of the statutes identified by the BSR related to Mr. Andrews appears in count 4.

16. Thus, Count 4 does not allege a cause of action against Mr. Andrews. It is not “reasonably susceptible of a construction that would permit recovery [against him,]” see *Beane*, 160 N.H. at 711 (citation omitted), and “the facts pled do not constitute a basis for legal relief.” *Id.* (quoting *Hobin v. Coldwell Banker Residential Affiliates*, 144 N.H. at 628). Count 4 should be dismissed against Mr. Andrews for failure to state a cause of action against him.

#### **Prayer for Relief**

Respondent John Andrews requests an Order dismissing him from Counts 1, 2 and 4, and Sections A, C and D of Count 3 of the Staff Petition for failure to state a cause of action.

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<sup>5</sup> Mr. Andrews does not seek dismissal of Sections B and E of Count 3. While Mr. Andrews contests the allegations in Sections B and E, the sections can be construed as alleging statutory violations against him.

Respectfully Submitted,

JOHN ANDREWS

Date: 12/3/11

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.