


COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

IN RE: :
: :
CITY OF HARRISBURG : Request for Determination of
: Distress under Act 47
:

ORDER

AND NOW, this 15th day of December, 2010, upon consideration of the Certified Record, and the Proposed Findings of Fact and Conclusions of Law submitted by the Applicant, City of Harrisburg, and Intervener, Debt Watch Harrisburg, respectively, for the reasons set forth in the accompanying Findings of Fact and Conclusions of Law, it is hereby ORDERED that the City of Harrisburg has met the criteria set forth in Section 201(3) & (9) of Municipalities Financial Recovery Act, 53 P.S. § 11701.201(3), (9), and, therefore, a determination of municipal financial distress is hereby issued. Pursuant to the requirements of 53 P.S. § 11701.221(a), a coordinator shall be appointed to prepare a financial recovery plan to address the Applicant's financial distress.

By: 
Austin Burke,
Secretary

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FINDINGS OF FACT

1. On October 1, 2010, the City of Harrisburg, Dauphin County, Pennsylvania (“City”) filed an application for a determination of municipal financial distress under the Municipalities Financial Recovery Act (“Act 47”), 53 P.S. §§ 11701.101 – 11701.501. Record no. 1, Application.
2. The City’s application identified three (3) criteria under Section 201 of Act 47 to support a determination of municipal financial distress. *Id.*
3. Specifically, the City has alleged in its application that it has defaulted on debt obligations arising under certain guaranty agreements relating to the Harrisburg Incinerator, thereby meeting the criteria of Section 201(3) of Act 47. *Id.*
4. In addition, the City has alleged in its application that it has failed to make required payments to judgment creditors for 30 days beyond the recording of the judgment, thereby meeting the criteria of Section 201(5) of Act 47. *Id.*
5. Finally, the City has alleged in its application that it has failed to reach agreement with creditors with claims in excess of 30% against a fund or budget, thereby meeting the criteria of Section 201(9) of Act 47. *Id.*
6. Following the City’s application, and in accordance with the requirements of 53 P.S. § 1701.203(c), the Governor’s Center for Local Government Services conducted an

investigation into the financial affairs of the City by reviewing various financial reports and conducting interviews with City officials and employees. N.T. 11/17/10, pp 13-19.

7. On October 20, 2010, a public hearing was held to hear testimony regarding the City's application. N.T. 10/20/10.
8. At the October 20, 2010 public hearing, a citizen's group named Debt Watch Harrisburg and Harrisburg attorney, Neil A. Grover, Esq., orally requested to be granted intervener status in the instant proceedings. N.T. 10/20/10 pg. 148. The hearing officer granted the request of Debt Watch Harrisburg and Attorney Grover to participate in the proceedings as interveners.
Id.
9. At the October 20, 2010 public hearing, City Administrator Robert Kroboth testified that the City had defaulted on certain guarantee obligations on the Harrisburg Authority's Resource Recovery Facility revenue bonds and notes and other related Resource Recovery Facility debt since 2009. N.T. 10/20/10, pg. 20.
10. Mr. Kroboth further testified that the City was seeking forbearance for other obligations relating to the Resource Recovery Facility, and that these obligations exceeded 100% of the City's \$64 million general fund budget. N.T. 10/20/10, pp. 21-22.
11. At the October 20, 2010 public hearing, Marita Kelly, Local Government Policy Specialist testified regarding the investigation into the financial affairs of the City conducted by the Governor's Center for Local Government Services. N.T. 10/20/10, pg. 123.
12. The investigation into the financial affairs of the City conducted by the Governor's Center for Local Government Services is published as the Municipalities Financial Recovery Act Consultative Evaluation, October 20, 2010. N.T. 11/17/10, Exh. Dept. 3 ("Exh. Dept. 3").
13. Specifically, Ms. Kelley testified that the City had defaulted on various debt obligations totaling \$10,517,920.00. N.T. 10/20/10, pg. 124.
14. The October 20, 2010 public hearing was adjourned, N.T. 10/20/10, pg. 161, and subsequently reconvened on November 17, 2010. N.T. 11/17/10, pg. 7.

15. At the November 17, 2010 public hearing, Debt Watch Harrisburg requested that official notice be taken of certain public documents filed with the Dauphin County Court of Common Pleas and docketed as follows: a) TD Bank, N.A., et al. v. Wambach, et al., 2010-CV-11738-CV; b) TD Bank, N.A., et al. v. Harrisburg Authority, et al., 2010-CV-11737-CV; c) Lahr v. Harrisburg Authority, et al., 2009-CV-9721-EQ; d) Covanta v. Harrisburg, 2010-CV-13120-CV; and, e) Dauphin County v. Harrisburg Authority, et al., 2009-CV-14921-EQ. N.T. 11/17/10, pp. 57-58.
16. Official notice is hereby taken that under docket no. 2010-CV-11738-CV, plaintiffs have asserted claims against the City in the aggregate amount of \$34,684,998.67 for failure to meet certain debt obligations.
17. Official notice is hereby taken that under docket no. 2010-CV-11737-CV, plaintiffs have asserted claims against the City in the aggregate amount of \$19,074,459.06 for failure to meet certain debt obligations.
18. Official notice is hereby taken that under docket no. 2009-CV-9721-EQ, plaintiffs have asserted claims against the City in the aggregate amount of \$17,540,409.12 for failure to meet certain debt obligations.
19. Official notice is hereby taken that under docket no. 2010-CV-13120-CV, plaintiff has asserted claims against the City in the aggregate amount of \$1,912,500.00 for failure to meet certain debt obligations.
20. Official notice is hereby taken that under docket no. 2009-CV-14921-EQ, plaintiff has asserted a claim against the City in the aggregate amount of \$34,684,998.67 for failure to meet certain debt obligations. This claim is for obligations also claimed by a separate plaintiff under docket no. 2010-CV-11738-CV.
21. Official notice is hereby taken that the aggregate sum of separate claims asserted against the City which are presently involved in litigation before the Dauphin County Court of Common Pleas equals \$73,212,366.85.

22. Official notice is hereby taken that plaintiffs in the foregoing matters have applied for the issuance of writs of mandamus to compel the City to apply all revenues to pay for the respective debt obligations before payment for any other claim or expense.

CONCLUSIONS OF LAW

At issue in the instant matter is whether the City of Harrisburg has met the criteria set forth in Section 201 of Act 47, and whether the City of Harrisburg should be determined to be in financial distress under Section 203 of Act 47. Based on the findings of fact recited above and the conclusions of law set forth below, it is hereby determined that the City of Harrisburg has satisfied Section 201(3) and (9) of Act 47, and is hereby determined to be in financial distress under Section 203 of Act 47.

To support a determination of municipal financial distress under Section 203 of Act 47, the Department of Community & Economic Development (“DCED”) is required to evaluate a municipality’s financial stability against certain criteria set forth in Section 201 of Act 47. In its application for determination of financial distress, the City alleges that it has satisfied the criteria set out in Section 201 (3), (5) & (9) of Act 47. Section 201(3) of Act 47 provides that it is a valid indication of municipal financial distress if a “municipality has defaulted in payment of principal or interest on any of its bonds or notes or in payment of rentals due any authority.” 53 P.S. § 11701.201(3). Section 201(5) of Act 47 provides that it is a valid indication of municipal financial distress if a “municipality has failed to make required payments to judgment creditors for 30 days beyond the date of the recording of the judgment.” 53 P.S. § 11701.201(5). Section 201(9) of Act 47 provides that it is a valid indication of municipal financial distress if a “municipality has sought to negotiate resolution or adjustment of a claim in excess of 30% against a fund or budget and has failed to reach agreement with creditors.” 53 P.S. § 11701.201(9).

In the Municipalities Financial Recovery Act Consultative Evaluation prepared by the Governor’s Center of Local Government Services, it was noted that the City failed to make payment on various debt obligations due and owing during calendar year 2010, in the aggregate total of \$10,517,920. Exh. Dept.

3., pp. 5-6. A review of the litigation filed at TD Bank, N.A. v. Wambach, et al., 2010-CV-11738-CV reveals that the City was further obligated to pay the sum of \$34,684,998.67 no later than August 15, 2010, and has failed to make payment to this date. Thus, the record supports the conclusion that the City has failed to meet its financial obligations to various counter-parties. Therefore, the City has met the criteria of Section 201(3) of Act 47.

In the Consultative Evaluation, it was further noted the City was a judgment debtor in two matters, with \$300,000.00 due and owing one (1) judgment creditor, and \$660,000.00 due and owing a second judgment creditor. Exh. Dept. 3, pg. 6. The Consultative Evaluation further determined that while the City initially failed to make payment to judgment creditors when required, the City and the judgment creditors subsequently agreed upon a repayment schedule with which the City has complied. *Id.* Thus, the record supports the conclusion that the City is currently meeting its financial obligations to judgment creditors. Therefore, the City has failed to satisfy the criteria of Section 201(5) of Act 47.

The Consultative Evaluation confirmed that the City's 2010 budget was adopted at \$64,710,368. Exh. Dept. 3, pg. 6. The Consultative Evaluation reported that the City had unpaid debt obligations due in calendar 2010 in the amount of \$10,517,920, and unpaid vendor invoices totaling \$1,939,818.00. *Id.* At the November 17, 2010 public hearing, Intervener Debt Watch Harrisburg, requested the Presiding Officer take official notice of various claims filed against the City in the Dauphin County Court of Common Pleas. As set forth above, official notice has been taken that there exist an additional \$73,212,366.85 in claims against the City, including \$34,684,998.67 due August 15, 2010. City Administrator Kroboth testified that the City had attempted to negotiate a resolution or adjustment of these claims but was unable to do so. N.T. 10/20/10, pg. 21-22. Official notice is further taken of the fact that a trial on these claims is presently scheduled for December 16-17, 2010, wherein certain plaintiffs are demanding that the City apply all revenues to the payment of certain bond debt to the exclusion of all other debts, including payments for city administrative workers, policemen and firemen. See, Lahr v. City of Harrisburg, et al., 2009-CV-9721-EQ. The claims against the City presently exceed the City's \$64,710,368.00 2010 budget by 114%. Thus, the record supports the conclusion that the City has claims

exceeding 30% of its budget and the City has been unable to negotiate a resolution or adjustment of these claims. Therefore, the City has met the criteria of Section 201(9) of Act 47.

Having determined that the City has met two (2) criteria of Section 201 of Act 47 which are a valid indication of municipal financial distress, the question becomes whether the financial affairs of the City warrant a determination of municipal financial distress. A determination of municipal financial distress is not mandatory even if all of the criteria of Section 201 of Act 47 are present. See, Dupont v. Dep't. of Community Affairs, 114 Pa.Comm.w. 234 (1991). A determination of municipal financial distress lies within the exclusive administrative discretion of DCED. *Id*

In Dupont, *supra*, the Borough of Dupont petitioned the Department of Community Affairs (predecessor to DCED) for a determination of municipal financial distress under Act 47. The department's investigation into the financial affairs of the borough revealed that the borough met four (4) of the criteria of Section 201 of Act 47. Notwithstanding multiple indicia of municipal financial distress, the department denied the borough's request for a determination of municipal financial distress on the grounds that sufficient evidence existed that the borough would be able to alleviate its financial difficulties without resort to the remedies of Act 47. Specifically, the department found that the borough tax base was showing annual growth, the borough was able to increase tax revenues without the need for Act 47 authority, the borough was not experiencing any diminution of municipal services, and had ready access to capital. In the case at present, there is no evidence that the City can alleviate its financial crises without a determination of municipal financial distress.

In addition to the indicia of municipal financial distress discussed above, there exists ample evidence of record that a determination of municipal financial distress is both necessary and appropriate. As is set out in detail in the Consultative Evaluation, with a "junk bond" credit rating, the City has very limited access to financial capital, Exh. Dept. 3, pp. 11-12, and is forecast to accumulate a cash flow deficit of \$19.2 million through 2015. *Id.*, pg. 14. With a high percentage of tax exempt real estate, *id.*, pg. 16, and a declining population base with a high poverty rate, *id.*, pg. 30, the City has little ability to grow revenues necessary to meet its financial obligations. *Id.*, pg. 14. The City has already made


significant reductions in the size of its workforce, *id.*, pp. 27-28. Finally, and perhaps most significantly, there exists multiple lawsuits against the City, each seeking writs of mandamus to compel the City to apply all revenues received to its bonded debt obligations. The net effect of the issuance of writs of mandamus against the City would be to prevent the City from paying its administrative employees, its police personnel, and fire fighters. Such an action would not simply diminish the City's ability to provide municipal services, it would eliminate the City's power to provide for the health, safety and welfare of its residents and workers.

It is the public policy of the Commonwealth, as stated in Act 47, "to foster the fiscal integrity of municipalities so that they provide for the health, safety and welfare of their citizens; pay principal and interest on their debt obligations when due; meet the financial obligations to their employees, vendors and suppliers; and provide for proper accounting procedures, budgeting and taxing practices." 53 P.S. § 11701.102. Based on the testimony presented at the public hearings including evidence gathered through the Consultative Evaluation, the City meets the criteria for a determination of distressed status under Section 201 and 203 of Act 47. Furthermore, based on the testimony presented at the public hearing, the City will be unable to fulfill the policy objectives of Act 47 identified above, without the remedies afforded by Act 47. Therefore, it is hereby determined that the City is in municipal financial distress pursuant to Act 47.

At hearing, and again in its brief, Intervener Debt Watch Harrisburg, has requested that DCED enter an order directing and authorizing the City to file for federal bankruptcy protection under Chapter 9. N.T. 11/17/10 pg. 57; Corrected Post-Hearing Brief of Debt Watch Harrisburg, pp. 12-13. Intervener Debt Watch Harrisburg misinterprets the powers conferred on the Secretary and DCED by Act 47. Act 47 empowers DCED and its Secretary to, *inter alia*, make determinations of municipal financial distress, 53 P.S. § 11701.203, and to appoint a coordinator tasked with developing a financial recovery plan. 53 P.S. § 11701.221. The coordinator's proposed financial recovery plan may include a recommendation that the City file for Chapter 9 relief, 53 P.S. § 11701.241(6); however, any decision to file for Chapter 9 municipal bankruptcy relief rests exclusively with the City. 53 P.S. § 11701.261.

Section 261 of Act 47 provides authority for the City to file for Chapter 9 relief if any one of the five statutory conditions set out in Section 261 is met. Specifically, the City is authorized to file for federal bankruptcy protection: 1) if the coordinator recommends such action; 2) if there is imminent jeopardy of creditor action which will negatively affect the City's ability to provide health and safety services; 3) if creditors reject a proposed recovery plan; 4) if federal bankruptcy relief can potentially solve the City's financial distress; or 5) if the City fails to adopt or carry out a financial recovery plan. 53 P.S. § 11701.261. Nothing within Act 47 empowers DCED or the Secretary to grant Intervener Debt Watch Harrisburg an order directing or authorizing the City to file for Chapter 9 protection.

As a final matter, because Intervener Debt Watch Harrisburg has withdrawn its Motion to Dismiss without Prejudice, Corrected Post-Hearing Brief of Debt Watch Harrisburg, pg. 12, that motion is dismissed as moot.

By: 
Austin Burke,
Secretary