

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. ALAN WALKER, in his capacity as)	
Secretary for the Department of Community)	
and Economic Development,)	
)	
<i>Petitioner</i>)	
)	Docket No. 569 MD 2011
v.)	
)	
CITY OF HARRISBURG,)	
)	
<i>Respondent</i>)	

**NOTICE OF NON-COMPLIANCE BY HARRISBURG CITY COUNCIL
AND HARRISBURG CITY CONTROLLER WITH
COURT-CONFIRMED RECOVERY PLAN**

AND NOW, comes Frederick Reddig, in his capacity as Acting Administrator of the Office of the Receiver for the City of Harrisburg, by and through McKenna, Long & Aldridge, LLP, counsel to the Office of the Receiver, to provide Notice to this Honorable Court of non-compliance with the Recovery Plan confirmed by the Court on March 9, 2012 of which the Department of Community and Economic Development (DCED) has become aware by the Harrisburg City Council and the Harrisburg City Controller. In support thereof, it is submitted as follows:

1. On April 10, 2012, in the wake of the resignation of the former Receiver, resolute in the Commonwealth's pursuit of fiscal recovery for the City of Harrisburg and in furtherance of the Declaration of Fiscal Emergency issued on October 24, 2011, Governor Corbett temporarily assigned DCED the responsibility of administering the Office of the Receiver, such assignment to expire concurrently, and without further notification, upon this Honorable Court's appointment of a new Receiver. In assigning DCED the temporary responsibility of monitoring

the ongoing implementation of the Recovery Plan, Governor Corbett mandated that the DCED be strictly guided by the Recovery Plan approved by this Court on March 9, 2012 and prohibited any action that was not consistent with the Court-confirmed Plan. The Governor's action included the following directive: **"In the event that DCED should become aware of noncompliance with the Court-confirmed Recovery Plan, it should notify the Commonwealth Court immediately through the legal counsel of record representing the Office of the Receiver."** See Exhibit "A" attached to the Status Report filed on behalf of the Office of the Receiver on April 11, 2012 (emphasis added).

2. Following the Governor's action to stabilize the Office of the Receiver and ensure the ongoing implementation of the Recovery Plan for the benefit of the citizens of Harrisburg, the Secretary of Community and Economic Development, C. Alan Walker, designated Frederick Reddig, Executive Director of the Governor's Center for Local Government Services, to fulfill the temporary assignment of administering the Office of the Receiver, pending the appointment of a new Receiver. See Exhibit "B" attached to the Status Report filed on behalf of the Office of the Receiver on April 11, 2012.

3. In fulfillment of his temporary assignment with respect to the Office of the Receiver, Mr. Reddig has monitored ongoing implementation of the Recovery Plan. In this role, Mr. Reddig has observed general compliance with implementation of the Court-confirmed initiatives contained within the Recovery Plan, however, several instances of non-compliance with the Recovery Plan, both actual and threatened, by the Harrisburg City Council and the Harrisburg City Controller have been observed and are reported herein in accordance with Governor Corbett's directive contained in his April 10, 2012 letter.

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4. Recovery Plan Provision: Schedule 2 of the Recovery Plan requires budget amendments providing for Director of Communications – salary \$75,500, and Assistant City Solicitor – salary \$55,000.

City Council's Non-Compliance: The Administration developed and sent to City Council a 2012 Budget Reallocation Plan #1 Resolution providing for, amongst other action items, the addition of Director of Communications (salary \$75,500 + FICA) and Assistant City Solicitor (salary \$55,000 + FICA) positions. These two positions were to be added to the 2012 Budget and funded from an increase in estimated Earned Income Tax collections according to Schedule 2 of the Recovery Plan as determined by the Office of the Receiver. City Council tabled a vote on this Resolution and has refused to enact the budget amendments required by Schedule 2 of the Court-confirmed Recovery Plan.

5. Recovery Plan Provision: Schedule 2 and the Operating Budget Structural Deficit provisions of the Recovery Plan (see pp. 9-13) require an increase of the City's Earned Income Tax (EIT) Rate from .5% to 1.5%. Annual estimated revenues to be generated from this initiative are approximately \$6.8 million.

City Council's Non-Compliance: City Council has failed to move this initiative out of Committee, or even schedule a Committee meeting to advance this vital revenue-generating initiative. City Council President, Wanda Williams, has indicated that City Council is “not comfortable” with the increase of the EIT, forecasting the Council’s continued refusal to advance this Court-confirmed initiative. In addition, despite indicating that Committee sessions have been scheduled concerning the increased EIT and other initiatives, Mayor Thompson and the City Clerk have confirmed that they have received no notice of any such scheduling.

6. Recovery Plan Provision: Schedule 1 of the Recovery Plan requires an increase in the number of staff attorneys to add a Deputy Solicitor and Assistant City Solicitor. Mayor Thompson's Proposed 2012 Budget included funding requests for a total of three staff attorneys, including the City Solicitor and the additional Deputy City Solicitor and Assistant City Solicitor as called for by the Recovery Plan.

City Council's Non-Compliance: City Council eliminated the Assistant City Solicitor position and has refused to initiate the increased EIT, the proceeds of which were calculated to fund the additional attorney positions, including the position eliminated by City Council.

7. The failure of City Council to advance the initiatives outlined above and set forth in the Court-confirmed Recovery Plan compromises the overall fiscal Recovery Plan and process initiated by the Office of the Receiver, particularly refusal or inaction on those initiatives that are desperately needed revenue-producing measures designed to maintain the City's cash-flow and contribute to the ongoing provision of vital and necessary services to the citizens of Harrisburg.

8. Members of the City Council have expressed an intention, or otherwise forecasted their intention, to refuse compliance with the Court-confirmed Recovery Plan and have signaled their mistaken belief that initiatives within the Plan are merely proposals or requests with which they can refuse compliance, notwithstanding this Honorable Court's confirmation of the Recovery Plan on March 9, 2012. For example:

(a) In a May 16, 2012 report authored by reporter Jack Sherzer and published on the website of the Harrisburg Patriot News, pennlive.com (PennLive), a verbatim statement issued by Councilman Brad Koplinski was quoted in which Mr. Koplinski criticized the Mayor's support for the Court-confirmed Recovery Plan, referring to the Recovery Plan as "ill-conceived" and merely a "**proposed** remedy" (emphasis added) to the City's fiscal distress. Mr.

Koplinski further stated: “The state's **proposal** is less of a plan than it is a plot to force the city to divest assets while at the same time protecting the guilty.” (emphasis added).

(b) In further criticizing the Mayor’s compliance with the provisions of the Court-confirmed Recovery Plan, Mr. Koplinski’s statement referenced above further provided: “[The Mayor’s] support of the recovery plan as written ignores former receiver David Unkovic's appeal for more concessions as well as his admonition about political pressure to accept it as is.... I and most of my colleagues continue to believe that many questions remain unanswered and that any **proposed** remedy must follow a satisfactory conclusion to an investigation.” (emphasis added).

(c) Mr. Koplinski’s statements recited above were preceded by an April 30, 2012 PennLive article authored by Eric Veronikis in which it was reported that Mr. Koplinski “suggested the council not vote on any matters pertaining to the receiver's recovery plan for Harrisburg until a state or federal investigation of the incinerator retrofit project...takes place.”

(d) A May 16, 2012 article authored by Nick Malawskey, posted on PennLive following a meeting of the Municipal Financial Recovery Advisory Committee held the same day, addressed Council President Williams’ reaction to the increase to the Earned Income Tax required by the Court-confirmed Recovery Plan as follows: “Williams said the council **was not prepared to approve the increase because it is not in the best interest of city residents**. She also said the council wasn’t being kept informed about what was happening with the city’s recovery plan.” (emphasis added). The report quoted Ms. Williams as follows: “**At this point, we are not comfortable doing what the commonwealth requests we do...**” (emphasis added).

(e) In the same article authored by Mr. Malawskey, and in response to a reference to the statutory authorization under Act 47 for the Office of the Receiver to compel City Council’s compliance with the Court-confirmed Recovery Plan through a mandamus action brought before

this Honorable Court, Ms. Williams reportedly goaded such action by saying “So be it.” In addition, at the meeting held on the same day as the media report referenced herein, Ms. Williams commented that the Commonwealth would “have to do what it has to do” with respect to fostering litigation to compel the City Council’s compliance with certain initiatives included in the Court-confirmed Recovery Plan that City Council is refusing to advance.

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9. Recovery Plan Provision: Revenue initiative 13 (see p. 162) of the Recovery Plan requires the sale of certain historical artifacts, also commonly referred to as “wild west artifacts”, purchased as potential display items for the planned City museums contemplated by the prior mayoral administration.

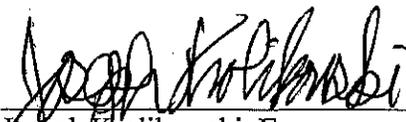
City Controller’s Non-Compliance: City Council approved a Resolution submitted by the Administration authorizing the auction of the said historical artifacts in 2011. A public bid process was subsequently undertaken and a successful bidder ultimately was chosen. However, the City Controller failed, and has continued to refuse, to approve the auctioneer contract. As a result, the auction cannot proceed as otherwise required by the Court-confirmed Recovery Plan.

10. Like City Council’s failures to advance certain initiatives required by the Court-confirmed Recovery Plan, the City Controller’s obstruction of the sale/auction of the historical artifacts owned by the City compromises the overall fiscal Recovery Plan and process initiated by the Office of the Receiver, depriving the City of revenue-producing initiatives designed to maintain the City’s cash-flow and contribute to the ongoing provision of vital and necessary services to the citizens of Harrisburg.

Respectfully submitted this 11th day of May, 2012.

MCKENNA LONG & ALDRIDGE LLP

By:


Joseph Krolikowski, Esq.
Pennsylvania Bar No. 26300
303 Peachtree Street, NE, Suite 5300
Atlanta, Georgia 30308
Tel: (404) 527-4000
Fax: (404) 527-4198
jkrolikowski@mckennalong.com

OF COUNSEL:

Thurbert Baker, Esq.
Georgia Bar No. 033887
Mark Kaufman, Esq.
Georgia Bar No. 409194
Gregory Brow, Esq.
Georgia Bar No. 086422
303 Peachtree Street, Suite 5300
Atlanta, GA 30308
Phone: 404.527.4000
Fax: 404.527.4198
tbaker@mckennalong.com
mkaufman@mckennalong.com
gbrow@mckennalong.com

**Attorneys for the Office of the Receiver for the
City of Harrisburg**

VERIFICATION

The undersigned, Frederick Reddig, in his official capacity as Acting Administrator of the Office of the Receiver for the City of Harrisburg, hereby verifies that the facts set forth in the foregoing Notice are true and correct to the best of his knowledge, information and belief and further states that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Date: 5/23/12

Frederick A Reddig
FREDERICK REDDIG, in his official capacity as Acting Administrator of the Office of the Receiver for the City of Harrisburg

MCKENNA LONG & ALDRIDGE LLP

Date: May 24, 2012

By:



Joseph Krolikowski, Esq.
Pennsylvania Bar No. 26300
303 Peachtree Street, NE, Suite 5300
Atlanta, Georgia 30308