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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

| | | |
|-------------------------------|---|----------------------------------|
| |) | Agency No. _____ |
| |) | |
| IN RE: |) | Request for Determination |
| |) | of Distress Under Act 47 |
| THE CITY OF HARRISBURG |) | |
| |) | |

**MOTION TO ISSUE
SUBPOENA TO COMPEL
TESTIMONY OF AGENCY DESIGNEE(S)
OF THE HARRISBURG PARKING AUTHORITY**

1. On or about October 1, 2010, the City of Harrisburg (hereinafter “the Applicant”), upon the signatures of its Mayor, the Honorable Linda D. Thompson and the Acting City Solicitor, Philip Harper, Esquire, filed a *Request for Determination of Distress* (hereinafter “the Application”) with the Commonwealth of Pennsylvania through the Department of Community and Economic Development (hereinafter “DCED” or “the Agency”), seeking acceptance into certain programs administered by the Agency under the Financially Distressed Municipalities Act, Act of July 10, 1987, P.L. 246, No. 47, 53 P.S. §§ 11701.101 -- 11701.501 (hereinafter “Act 47”).

2. The Application is a form provided by the Agency, which it was statutorily mandated to create and furnish to applicants. 53 P.S. § 11701.203.

3. Consistent with the mandates of Act 47, the Agency’s application requires that the applicant report and explain why the manifestation of the criteria for distressed status is both imminent and inevitable.

4. On October 20, 2010, an Act 47 administrative hearing was commenced. That hearing is not yet concluded.

5. There was testimony from City Councilman Brad Koplinsky that he had learned at roughly 7:00 p.m. on October 19 of a public action taken by the Harrisburg Parking Authority (hereinafter “HPA”) to refinance their financial obligations, with a purpose of providing funding to the City of Harrisburg, with financial assistance potentially up to \$75 million in the near term.

6. This information is consistent with the HPA document provided as Exhibit 1 to this party’s pending *Motion to Dismiss Without Prejudice and Other Relief in the Alternative*, filed on October 20, 2010 and the informational news article of that same date that was Exhibit 2 to that motion. Those Exhibits are already part of the record and are incorporated herein by reference.

7. The Presiding Officer of an administrative hearing is authorized to take Judicial Notice of a public act. The vote of the Board of the HPA on the evening of October 19, 2010 to refinance and restructure its debt and to monetize its assets was a public act occurring within the same judicial district as the present administrative proceeding, making the HPA action a proper subject of Judicial Notice. A copy of this action must be made available to the Presiding Officer, either through an Agency investigative function or in some other manner.

8. Under both the federal and state constitutions, there exists a fundamental right of due process of law for all parties to a proceeding, including administrative proceedings.

9. Under Pennsylvania law, the process due a party to protect and insure those fundamental rights are set forth in Administrative Agency Law, 2 Pa.C.S.A. §101. et seq. and bolstered by the General Rules of Administrative Practice and Procedure, as well as any given Agency’s own properly promulgated procedural regulations for hearings and appeals. DCED has not promulgated any specific regulations for hearings and appeals, other than 12 Pa Code 115.10, which requires the Agency to follow the procedures set forth in GRAPP.

10. The right to be heard has been universally held to require that a hearing must provide each party with meaningful right.

11. No representative for HPA voluntarily appeared to offer testimony at the proceedings on October 20, 2010.

12. The close proximity in time of the public action of the HPA on refinancing and the commencement of this proceeding – all of which occurred within a 24 hour period – provided no reasonable opportunity to request, have issued and serve a subpoena for testimony on HPA for the evening of October 20.

13. The single document from HPA and public reports indicate that HPA is shedding financial guarantees from the City of Harrisburg equaling roughly \$86 million and also providing the City of Harrisburg with significant cash infusions, which will range from \$30 million to \$75 million available this year.

14. As the imminent and inevitable manifestation of statutory criteria for municipal distress is a factual issue for this Act 47 hearing, the testimony of a proper designee of the HPA in these matters is material, relevant and of great probative value on this issue.

15. The witness for the City, Mr. Kroboth, testified under oath that despite being in charge of financial matters for the City, he only became aware of the HPA vote and report of resultant economic aid to Harrisburg through a media inquiry and what he read in the newspaper, so the City itself could not speak to how this influx of funds would impact its situation.

16. Act 47 requires a hearing be commenced within 30 days of the Notice of Hearing, which must be issued within 10 days of the filing of Application.

17. The implementation and carrying out of the mandates of Act 47 does not and simply cannot permit or authorize the Secretary or his designee to strip from any party their fundamental rights to due process of law .

18. Act 47 is silent as to when a hearing must be concluded, indicating only that it must be initially held within 30 days. Held does not mean completed but commenced. Just as a speedy trial requirement is recognized to mean that the trial of a person charged with a criminal offense must be commenced within 180 days, but not concluded therein, the same legal application of principles and analysis applies to the 30-day hearing requirement under Act 47. See Pa. R. of Cr P. 100 and its progeny. Otherwise, the 30-day requirement itself would violate due process and thereby be unconstitutional construct on its face.

19. Neither the grant or denial of the Application will provide the Applicant with immediate funds to address current financial obligations. Any funds available to them now will be available to them whether the application is merely pending or is in fact granted. Therefore, there is no urgency or emergency that justifies the premature closing of the hearing record

20. Accordingly, the Presiding Officer should hold the record of these proceedings open for the additional taking of testimony and issue a Subpoena to an Agency Designee(s) of the Harrisburg Parking Authority qualified to testify to the following:

- (1). The scope, nature, amounts and any special conditions of the current HPA debt.
- (2). The scope, nature, amounts and any special conditions of the City Guaranty(ies) on any of that debt.

- (3) The full contents of an actions taken by HPA at their public meeting on October 19, 2010 and thereafter to refinance the debt.
- (4) The process and timetables of the refinancing.
- (5) The intent of HPA regarding any economic aid or assistance to the City of Harrisburg related to the refinancing.

21. It is respectfully requested this testimony be ste for a publicly Noticed reconvened hearing date, or, in the alternative, via a deposition of said Designee(s).

22. In accordance with the general requirements of the Administrative Agency Law of this Commonwealth (hereinafter the AAL), see 2 Pa.C.S.A. §101, et seq., and the related administrative regulations, the presiding hearing officer designated for these proceedings has the power and authority to issue subpoenas to compel testimony, see 1 Pa Code 35.187 (3) and the power to take or cause to be taken depositions, .see 1 Pa Code 35.187 (5).

23. Accordingly, it is respectfully requested that a subpoena for the testimony of the Harrisburg Parking Authority, by producing as a witness or witnesses, the qualified and knowledgeable person(s) as an Agency Designee(s) to fully address each of that factual categories cited herein.

24. This and other motions were lawfully and properly presented orally at the hearing and now a written form of the motion is being filed as mandated by the presiding officer with a noon filing deadline the day after the proceedings ended at approximately 9:00 p.m.

25. For all the foregoing reasons, the requested relief should be granted herein

Respectfully submitted,.

LAW OFFICE OF NEIL A. GROVER

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Pro se and as Counsel for DEBT WATCH
HARRISBURG and its members

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CERTIFICATE OF SERVICE

I hereby certify that I have this 21th day of October 2010, served a true and correct copy of the foregoing Motion via facsimile transmission and United States Postal Service, first class postage prepaid and properly addressed to the following:

Steven J. Fishman, Esquire
Charles Brown, Esquire
Department of Community &
Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
Fax No. 717-783-1402

Philip Harper, Esquire
Solicitor for the City of Harrisburg
Rev. Dr. Martin Luther King, Jr. City
Gvn't Center
10 North Second Street, Suite 402
Harrisburg, PA 17101
Fax No: 717-255-3056

Respectfully submitted,

LAW OFFICE OF NEIL A. GROVER

By _____
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