

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CITY OF PITTSBURGH,

Plaintiff,

v.

INTERGOVERNMENTAL
COOPERATION AUTHORITY FOR
CITIES OF THE SECOND CLASS;
HENRY SCIORTINO, Executive Director;
NICHOLAS D. VARISCHETTI, Chairman
of the Board; ELISE ROBY YANDERS,
Vice Chair of the Board; and MICHAEL I.
DANOVITZ, Secretary of the Board,

Defendants.

CIVIL DIVISION

No. GD15-

Code No. 020

COMPLAINT IN EQUITY

Filed on Behalf of Plaintiff

Counsel of Record for this Party:

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Defendants.

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219
Telephone: (412) 261-5555

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COMPLAINT IN EQUITY

AND NOW, comes Plaintiff, City of Pittsburgh (“the City”), by and through its counsel, Brian P. Gabriel of Campbell Durrant Beatty Palombo & Miller, P.C., and Lourdes Sánchez-Ridge, City Solicitor and Chief Legal Officer, and files the within Complaint in Equity, and in support thereof avers the following:

PARTIES

1. Plaintiff is the City of Pittsburgh, a city of the Second Class, a political subdivision of the Commonwealth of Pennsylvania, with offices located at 414 Grant Street, City-County Building, Pittsburgh, Allegheny County, Pennsylvania 15219.

2. The Mayor of the City of Pittsburgh is William Peduto, who was sworn in as Mayor on January 6, 2014.

3. Defendant, Intergovernmental Cooperation Authority for Cities of the Second Class (“ICA”), created by an act of the General Assembly of the Commonwealth

of Pennsylvania and signed into law on February 21, 2004, has a mailing address of Four North Shore Center, 106 Isabella Street, Suite 105, Pittsburgh, Allegheny County, Pennsylvania 15212.

4. Defendant Henry Sciortino is the Executive Director of ICA, and has a mailing address in care of ICA, Four North Shore Center, 106 Isabella Street, Suite 105, Pittsburgh, Allegheny County, Pennsylvania 15212.

5. Defendant Nicholas D. Varischetti is the Chair of ICA Board, and has a mailing address in care of ICA, Four North Shore Center, 106 Isabella Street, Suite 105, Pittsburgh, Allegheny County, Pennsylvania 15212.

6. Defendant Elise Roby Yanders is the Vice Chair of ICA Board, and has a mailing address in care of ICA, Four North Shore Center, 106 Isabella Street, Suite 105, Pittsburgh, Allegheny County, Pennsylvania 15212.

7. Defendant Michael I. Danovitz is the Secretary of ICA Board, and has a mailing address in care of ICA, Four North Shore Center, 106 Isabella Street, Suite 105, Pittsburgh, Allegheny County, Pennsylvania 15212.

BACKGROUND

8. On December 29, 2003, the Commonwealth of Pennsylvania Department of Community and Economic Development (DCED) declared the City of Pittsburgh to be financially distressed under the Municipalities Financial Recovery Act (Act 47), Act of July 10, 1987, P.L. 246, *as amended*, 53 P.S. §§ 11701.101—11701.501.

9. Act 47 is designed “to ensure fiscal integrity of municipalities while leaving principal responsibility for conducting the governmental affairs of a municipality, including choosing the priorities for and manner of expenditures based on available

revenues, to the charge of its elected officials, consistent with the public policy set forth in this section.” See 53 P.S. § 11701.102(b)(1)(ii).

10. Act 47 prescribes detailed procedures to be followed with respect to the preparation, adoption, contents, implementation and amendment of a recovery plan. See 53 P.S. §§ 11701.221, 11701.241-249.

11. The financial plan is designed to alleviate the financially distressed status of the municipality by considering “[p]rojections of revenues and expenditures for the current year and the next five years, both assuming the continuation of present operations and as impacted by the measures in the plan” and is to include recommendations for paying debt, balancing the budget and improving the fiscal condition of the City. See 53 P.S. § 11701.241.

12. Additionally, Act 47 sets forth the procedures to be followed with respect to the Annual Budget for a financially distressed municipality. See 53 P.S. §§ 11701.247.1.

13. The Intergovernmental Cooperation Authority Act (Act 11) for Cities of the Second Class was signed into law on February 12, 2004. 53 P.S. §§ 28102-28707.

14. The purpose and legislative intent are described in 53 P.S. §§ 28201-28103.

15. Under Act 11, the ICA has a governing board comprised of five (5) members, 53 P.S. § 28202, and its powers and duties are described in 53 P.S. § 28203.

16. Act 11 prescribes detailed procedures with respect to the preparation, adoption, contents, implementation and amendment of a financial plan. 53 P.S. § 28209.

17. Section 209 includes a requirement that the City adopt a balanced budget each year consistent with applicable law. 53 P.S. § 28209(f).

18. Additionally, Section 209 sets forth procedures and standards for the ICA's review of the financial plan for two scenarios: review and approval or review and disapproval. 53 P.S. § 28209(g) and (h).

19. In the case of review and approval, the ICA must determine that: "(i) the financial plan projects balanced budgets, based upon prudent, reasonable and appropriate assumptions . . . for each year of the plan; and (ii) the proposed operating and capital budget are consistent with the proposed financial plan." 53 P.S. § 28209(g).

20. In the case of review and disapproval, the City is required to submit a revised financial plan and, if the ICA finds the statutory criteria satisfied, it "shall approve such financial plan by majority vote." If the ICA does not approve, it must "certify" the City's "noncompliance with the financial plan to the Secretary of Budget, the President pro tempore of the Senate and the Speaker of the House of Representatives." 53 P.S. § 28209(h).

21. At all times relevant to this Complaint, the City of Pittsburgh has adhered to and complied with the procedures and requirements of Act 47, including those relating to the recovery plan and annual budget.

22. At all times relevant to this Complaint, the City of Pittsburgh has adhered to and complied with the procedures and requirements of Act 11, including those relating to the financial plan and annual budget.

23. In October 2013, the ICA approved the City's proposed operating and capital budgets.

24. On May 30, 2014, the Municipal Financial Recovery Act Amended Recovery Plan was filed with the City Clerk.

25. The Amended Recovery Plan was subsequently revised and adopted by City Council on June 24, 2014. Appendix B of the Plan outlines the revenue projections with Amended Recovery Plan Initiatives Applied. Page 167 of the Plan includes \$10,000,000 annually from 2015-2018 (the term of the Plan) for 2% Local Share of Slots Revenue.

26. In accordance with Section 209 of Act 11, the City submitted the 2015 Budget to the ICA on September 22, 2014.

27. On October 8, 2014 (revised October 14, 2014), the Act 46 Recovery Coordinator issued its 2015 Budget Review to Fred Reddig, Special Assistant for Act 47 and Local Government Affairs, DCED and Henry Sciortino, Executive Director of the ICA. The primary purpose of this review is to identify and highlight variances with the 2014 Amended Recovery Plan. The communication did not identify any variances between the 2015 Budget and the 2014 Amended Recovery Plan related to the 2% Local Share of Slots Revenue, as both assume \$10 million in annual revenue from the local share assessment of gaming funds.

28. At its October 20, 2014 Board meeting, the ICA voted to disapprove of the City's budget and communicated the reasons in writing via the letter dated October 21, 2014.

29. On November 3, 2014 the City submitted a ten page response with attachments to the ICA.

30. On November 10, 2014, the Mayor submitted the 2015 Budget to City Council in accordance with the Home Rule Charter.

31. On November 11, 2014, the ICA voted to disapprove the proposed financial plan in an effort to reset the 15-day cure period and in its November 14, 2014 letter to the City, the ICA established a new resubmission deadline of December 4, 2014.

32. The list of 25 issues cited by the ICA as “Summary of Reasons for Operating Budget Disapproval” in the November 14, 2014 letter from Chairman Varischetti reflected the same list of 25 issues cited by the ICA in its October 21, 2014 communication to the City.

33. Based upon discussions between the Executive Director Sciortino and the City’s finance team on December 2, 2014, the City provided an updated response where necessary.

34. On December 4, 2014, the City of Pittsburgh submitted a response to the ICA.

35. On December 15, 2014, the 2015 Budget was approved by City Council. The budget projects \$10 million annually for the 2% Local Share of Slots Revenue.

36. On December 19, 2014, the City Controller certified the revenues in accordance with Act 11, stating “The opinion of this office regarding the budgetary assumptions and estimates of the Mayor’s submission was developed in accordance with generally accepted auditing standards.”

37. The budget reviewed and certified by the City Controller included \$10 million in revenue from the local share assessment of gaming funds.

38. On December 19, 2014, the ICA voted unanimously to approve the City's 2015 Budget, which included \$10 million in revenue from the local share assessment of gaming funds.

39. At all times relevant to this Complaint, the City of Pittsburgh has acted in good faith by communicating and compromising with the ICA throughout and beyond the budgetary review and approval process.

40. Despite its approval of the City's budgets for 2014 and 2015, the ICA has withheld outstanding local share assessment of gaming funds throughout 2014 and 2015.

41. The amount of withheld gaming funds to date for 2014-15 is approximately \$11,383,976.20.

42. The amount of withheld gaming funds will increase to more than \$20,000,000.00 for 2014-15 if Defendants continue to improperly withhold same.

43. The Defendants' withholding of funds is in direct conflict with their approval of the City's budget.

44. The Defendants' withholding of funds is contrary to and in violation of their statutory obligations, including those set forth in 53 P.S. § 28209.

45. The City has submitted repeated requests to the ICA for the release of the outstanding funds, including letters to the ICA dated May 14, 2014, December 8, 2014, January 29, 2015, May 6, 2015, and June 25, 2015.

46. Defendants, however, have ignored and refused to take formal action to the financial detriment of the City.

47. The ICA has not accounted for the funds withheld throughout 2014 and 2015, while the City has been deprived of substantial funds relied upon in the budgets.

48. The ICA's withholding of funds is without a reasonable or statutory basis.

49. While refusing to take action, Defendants have proffered only the excuse that the withholding is tied to their dissatisfaction with the implementation of a payroll project engineered by the ICA and the prior City administration.

50. The proffered excuse is illegitimate and improper from both a factual and legal standpoint.

51. Defendants' proffered excuse is factually untenable because of their role with respect to the payroll project and the current City administration's substantial and effective efforts to rectify the problems associated with the payroll project.

52. The proffered excuse is legally untenable because Defendants have no legal authority to withhold the outstanding funds following the ICA's approval of the City's budget.

53. Moreover, the ICA's conduct is contrary to their statutory role and purpose, which is supposed to enhance the City's fiscal condition.

EQUITABLE RELIEF

54. The City of Pittsburgh incorporates by reference Paragraphs 1 through 53 above as though fully set forth.

55. The City has relied to its detriment upon the representations and official actions of the ICA, including the formal approval of the 2014 and 2015 budgets.

56. Defendants' course of conduct has impaired and will continue to impair and prevent the City from meeting its fiscal obligations.

57. Defendants' actions have and will continue to usurp the City's right to direct its financial affairs and conduct business in accordance with the approved budget and applicable law.

58. Defendants' actions have caused and will continue to cause irreparable financial harm by preventing the City from operating within and in accordance with the approved budget and recovery plan.

59. The City has no adequate legal remedy and can only avoid further financial harm through the issuance of an injunction that requires the release of the outstanding funds and the additional funds that will be received in 2015.

WHEREFORE, Plaintiff, City of Pittsburgh, respectfully requests that this Honorable Court enjoin the Defendants' conduct and grant the following relief:

- A. Order Defendants to immediately release and remit all outstanding local share of gaming funds plus interest;
- B. Order Defendants to promptly release and remit all local share of gaming funds received by the ICA for 2015 subsequent to the date of the Court's Order; and
- C. Grant such other and further relief which the Court deems just and appropriate.

Respectfully submitted,

CAMPBELL DURRANT BEATTY
PALOMBO & MILLER, P.C.

By: _____

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Counsel for Plaintiff,
City of Pittsburgh

VERIFICATION

I, Paul Leger, Director of the Department of Finance of the City of Pittsburgh, verify that the facts set forth in the foregoing **COMPLAINT IN EQUITY** are true to the best of my knowledge, information and belief. These averments of fact are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

Date

Paul Leger, Director
Department of Finance of the
City of Pittsburgh