

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. ALAN WALKER, in his capacity as :
Secretary for the Department of Community :
And Economic Development, :

Petitioner :

v. :

Docket No. 569 MD 2011

CITY OF HARRISBURG, :

Respondent :

**RESPONSE OF THE CITY OF HARRISBURG TO THE "OBJECTIONS
TO PLAN OF RECOVERY" OF DANIEL C. MILLER**

AND NOW, comes the City of Harrisburg and its Mayor, Linda D. Thompson, by and through their attorneys, Post & Schell, P.C., who files this Response to the "Objections To Plan of Recovery" filed by Daniel C. Miller, and in support thereof states:

1. On or about September 20, 2013, Daniel C. Miller filed "Objections to Plan of Recovery" (hereinafter "Miller Objections")¹ to the "Harrisburg Strong Plan" filed by William B. Lynch, Receiver for the City of Harrisburg on or about August 26, 2013..

2. Though Daniel C. Miller does not provide any address or telephone information for him on the signature line of the Miller Objections, an exhibit and the Certificate of Service attached thereto indicate that Mr. Miller is filing the Miller Objections as Controller of the City of Harrisburg: "10 N. 2nd Street, Suite 403, Harrisburg, PA 17101, 717-234-2250" as set forth on the Certificate of Service being the office and phone number of the Controller of the City of Harrisburg.

¹ The details as to the filing and docketing of the Miller Objections are set forth in the Receiver's Response thereto.

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3. The City of Harrisburg is the sole respondent in this proceeding.

4. As Controller of the City of Harrisburg, Mr. Miller lacks standing to file the Miller Objections because the Optional Third Class City Charter law vests authority solely in the Mayor to initiate or respond to legal actions on behalf of the City of Harrisburg. 53 P.S. §§ 41411, 41412; In re City of Harrisburg, 465 B.R. 764-765 (M.D. Pa. Bankcty. 2011), appeal denied; City of Erie v. D.E.P., 844 A.2d 586, 591 (Pa. Commw. 2004)

5. As Controller of the City of Harrisburg, Mr. Miller is neither an indispensable party nor a party meeting the criteria of an intervenor pursuant to Pa.R.C.P. 2327. Further, Mr. Miller has neither appropriately or timely sought intervention nor requested any opportunity to participate in accordance with the applicable rules or this Court's Case Management Order of September 4, 2012.

6. As Controller of the City of Harrisburg, Mr. Miller may, pursuant to 53 P.S. § 11701.709(b) (Supp. 2013), only seek "to enjoin any action of the receiver that is contrary to [53 P.S. § 11701.710 – 11701.712 (Supp. 2013)]", and the Miller Objections do not meet this procedural requirement.

7. Pursuant to 53 P.S. § 11701.703(a) (Supp. 2013), Mr. Miller, as Controller of the City of Harrisburg, is neither part of the governing body nor the chief executive officer of the City of Harrisburg and thus, Mr. Miller is not required to be served with any recovery plan or modification thereto, thereby further demonstrating his lack of standing in the proceedings.

8. The Miller Objections were filed one day after the hearing before this Court on September 19, 2013, on the "Harrisburg Strong Plan" and are therefore, untimely.

9. The Miller Objections were filed twenty-five (25) days after the filing on August 26, 2013, of the "Harrisburg Strong Plan", and are untimely pursuant to:

- a. This Court's Case Management Order entered September 4, 2012; and/or
- b. Pa.R.A.P. 123(b); and/or
- c. Pa.R.C.P. 1026(a),

all of which required any responses to the relief requested in the "Harrisburg Strong Plan"² to be filed within twenty (20) days of August 26, 2013, at the latest, or within fourteen (14) days thereof at the earliest.

10. Mr. Miller has furnished no adequate explanation as to the late filing of the Miller Objections, except to say he believed objections could be filed within a different time period, and thus, no excusable neglect is present justifying an extension of time periods applicable hereto. See, In re City of Harrisburg, 462 B.R. 510, 513-514 (M.D.Pa. Bankcty. 2011) (party's belief that filing period was different than the period mandated by rules does not constitute excusable neglect so as to extend filing period); City of Harrisburg v. AFSCME Dist. Council 90, 2012 U.S. Dist. Lexis 12237, 2012 WL 315403 (M.D.Pa. 2012).

11. Substantial prejudice shall result to the parties, particularly the City of Harrisburg, through delays in consummating the "Harrisburg Strong Plan" should the untimely filed Miller Objections be entertained by this Court.

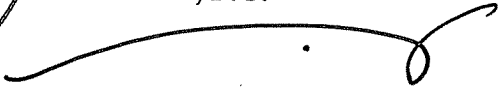
12. In accordance with this Court's Order of October 4, 2013, the City of Harrisburg reserves its right to address the merits of the Miller Objections in the event this Court denies the relief requested herein.

² The relief requested therein being the approval by this Court of a "modification" pursuant to 53 § 11701.703(e) (Supp. 2013).

WHEREFORE, the City of Harrisburg requests this Court to deny or overrule the Objections To Plan of Recovery filed by Daniel C. Miller with prejudice.

Respectfully submitted,

POST & SCHELL, P.C.



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Dated: _____

10/4/13

Counsel for the City of Harrisburg and its
Mayor, Linda D. Thompson

CERTIFICATE OF SERVICE

I, Kenneth W. Lee, Esquire, an attorney at the law firm of Post & Schell, P.C., does hereby certify that on the date set forth below, I did cause to be served a true and correct copy of the foregoing document which service satisfies the requirements of Pa.R.A.P. 121 and Pa.R.A.P. 2187(a) upon the following individual(s) via email, facsimile and/or U.S. Mail, First Class, postage prepaid, as follows:

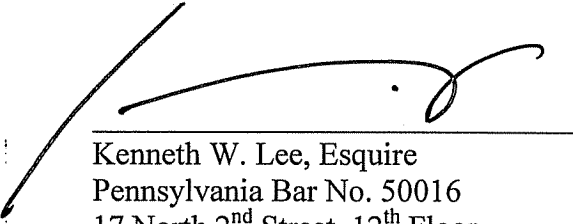
<p>Neil Anthony Grover, Esquire Attorney at Law 2201 N 2nd St Harrisburg, PA 17110 groverlaw@ix.netcom.com neilgroveresq@gmail.com <i>(Attorney for the Harrisburg City Council)</i></p>	<p>Daniel C. Miller 10 N. Second Street, Suite 403 Harrisburg, PA 17101 Facsimile: (717)-255-3073 Dan@HarrisburgCityController.com</p>
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