

**COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX, SS.**

**SUPERIOR COURT DOCKET  
NO. 08-04641-B**

**JOHNSON GOLF MANAGEMENT, INC.,  
PLAINTIFF  
V.**

**TOWN OF DUXBURY, ETAL  
DEFENDANTS**

**PLAINTIFF'S STATEMENT REGARDING DUXBURY'S MOTION TO COMPEL AND  
DUXBURY'S MOTION TO AUTHORIZE 3<sup>RD</sup> PARTY COMPLAINT**

1. Throughout this proceeding, the Plaintiff has steadfastly asserted that the actions of Duxbury and its officials has been to deprive the Plaintiff of the contract to operate the North Hill Golf Course through conduct tantamount to bad faith.
2. Pursuant to G.L.c.30B, §17( c), the Town of Duxbury is afforded a remedy to recover against those individuals "who causes or conspires with another to cause a contract to be solicited or awarded in violation of a provision of this chapter."<sup>1</sup>

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<sup>1</sup>**Chapter 30B: Section 17(c)** A person who causes or conspires with another to cause a contract to be solicited or awarded in violation of a provision of this chapter shall forfeit and pay to the appropriate governmental body a sum of not more than two thousand dollars for each violation. In addition, the person shall pay double the amount of damages sustained by the governmental body by reason of the violation, together with the costs of any action. If more than one person participates in the violation, the damages and costs may be apportioned among them.

3. When this case was originally filed, unknown to the Plaintiff, Attorney Troy had been instrumental in the adoption of and implementation of at least four key decisions relative to the bidding process at North Hill. The decisions were:

- a. Decision to utilize the expression “comparable business enterprise” as an alternative to actual experience in the operation of a municipal golf course
- b. The decision to reject all of the proposals in early December 2008 after it was learned that the proposal of CALM Golf was ineligible for an award due to a noncompliant percentage based price proposal.
- c. The decision to remove all the public records pertaining to the North Hill procurement process from Duxbury Town Hall and hold the records at Attorney Troy’s office on Cape Cod in violation of Massachusetts Public Records Laws.
- d. The decision to fabricate a story that the proposals had been rejected due to the Massachusetts Inspector General’s instructions to the Town of Duxbury to do so on or before December 2, 2008.

4. Despite Attorney Troy’s representation to this Court on January 27, 2009 that a “consultant” had drafted the RFP and the language “comparable business enterprise” it is now established that Attorney Troy was making a material misrepresentation to this Court. Not only was there no “consultant” drafting the RFP, but Attorney Troy authored the critical expression “comparable business enterprise” himself. Attorney Troy’s

representation to this Court is found at page 22, of transcript dated January 27, 2009<sup>2</sup>, (A full copy of the transcript is on file with this Court). Attorney Troy further represented to the Duxbury taxpayers that there could not be any conspiracy since a consultant had drafted the entire RFP and “no one in town hall had any input” in it. Multiple Duxbury officials were present at the hearing on October 4, 2010 when Attorney Troy made these statements and none of them corrected Attorney Troy, apparently all being willing participants in the deception. Excerpt of Attorney Troy’s statement is attached as Exhibit “A”.

5. The Town of Duxbury and attorney Troy both have admitted that in the October RFP Process they became aware that the proposal of CALM Golf was ineligible for consideration of an award due to the fact that the price proposal was not submitted as a “flat payment” as required by the RFP. Further, the failure of CALM Golf to name a superintendent effectively prevented its proposal from receiving any ranking other than unacceptable. Finally CALM Golf was out bid by the Plaintiff by \$140,000.00 in October 2008.
6. Attorney Troy and Town Manager and Chief Procurement Officer, MacDonald removed all records pertaining to the RFP Process an North Hill and transported them to Attorney

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<sup>2</sup> “We hired an outside consultant the consultant recommended the expression “comparable business enterprise.”[Transcript of hearing before Judge Herman Smith dated January 27, 2009, p. 22]

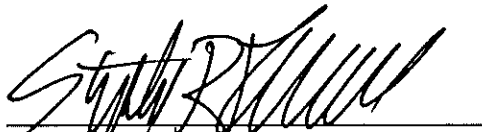
Troy's private office in sandwich, Massachusetts in direct violation of G.L. c. 30B, §6 which establishes that such documents are public records.

7. Despite Attorney Troy's representation to this Court on December 29, 2008 that the proposals were rejected due to specific directives from the Massachusetts Inspector General's Office, it is now established that the Massachusetts Inspector General's Office had no contact with any entity concerning the RFP Process at North Hill until December 9, 2008, one week after the decision was made by Attorney Troy and Town Manager MacDonald to reject all the proposals. A copy of a letter from Massachusetts Inspector General dated May 14, 2012 is attached hereto as Exhibit "B."

Attorney Troy's representation to this Court is found at page 17-18 of transcript dated December 29, 2008, copy attached as Exhibit "C" (A full copy of the transcript is on file with this Court).

Dated this 2<sup>nd</sup> day of October, 2012

The Plaintiff  
By its attorneys,



Stephen R. Follansbee, Esquire  
BBO # 173820

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**CERTIFICATE OF SERVICE**

I, Stephen R. Follansbee, hereby certify that a true copy of the attached pleading was served upon counsel of record by means of hand delivery and first class mail to:

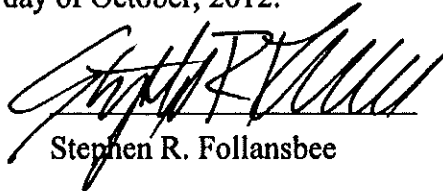
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Signed under the pains and penalties of perjury this 2nd day of October, 2012.

  
Stephen R. Follansbee

## **EXHIBIT "A"**

**Attorney Troy repeated his assertion that there was a consultant again before the Duxbury selectmen on October 4, 2010 when he stated**

**"P. 64-65            "We actually went outside Town Hall. It was decided that            this matter was so specialized that we hired a procurement company. I know            they're in Plymouth.....The honest answer is that Town Hall had nothing to do with the entire procurement document. It was sent out to a vendor who had expertise as we understood it, in the field of golf course procurements. That company designed the RFP completely.... There was no input here at Town Hall....."**

**[Transcript of Hearing before Duxbury Selectmen dated October 4, 2010]**

"B"



GREGORY W. SULLIVAN  
INSPECTOR GENERAL

*The Commonwealth of Massachusetts*  
Office of the Inspector General

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May 14, 2012

Leonard H. Kesten, Esquire  
Brody, Hardoon, Perkins & Kesten, LLP  
One Exeter Plaza  
699 Boylston Street  
Boston, Massachusetts 02116

RE: Duxbury Golf Course Service Contract

Dear Mr. Kesten:

This will confirm our telephone conversation of today regarding contacts made to this Office by the Town of Duxbury and Johnson Golf Management, Inc. (JGM) in connection with a golf course services request for proposals (RFP) which was cancelled by the town in late 2008.

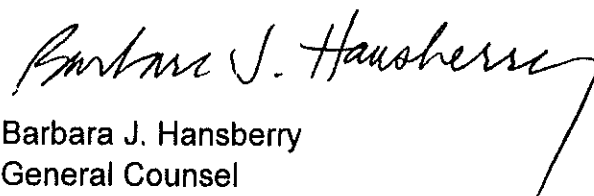
Our records show that the first contact made to this Office by JGM was a letter of protest and request for investigation made by JGM's counsel and received on December 9, 2008. The town's first contact was made the same day, December 9, 2008, by a call to our 30B Line made by attorney Jessica Burgess representing the town. Ms. Burgess had a question about the public records law; our records show that as of that

Leonard H. Kesten, Esquire  
Brody, Hardoon, Perkins & Kesten, LLP  
May 14, 2012  
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date the town had already decided to cancel the RFP and do a new procurement.

I hope this is responsive to your question.

Sincerely,



Barbara J. Hansberry  
General Counsel

cc: Stephen K. Follansbee, Esquire (by facsimile)



"C"

1                   And then it goes on to proceed: We  
2                   recommend providing evaluators with a  
3                   uniformed evaluation sheet to assist in the  
4                   evaluation of each proposal. This was done.  
5                   They were given copies of, actually, this very  
6                   document.

7                   When the bids were examined, Your  
8                   Honor, only Mr. Gordon Cushing provided a  
9                   composite rating. The others did not provide  
10                  a composite rating consistent with the  
11                  requirements, and so it was left to the  
12                  awarding authority the determination of trying  
13                  to figure out what that composite could be.  
14                  At this time, we turned to guidance from the  
15                  Inspector General and the town contacted the  
16                  Inspector General's office. The Inspector  
17                  General advised the town that if the composite  
18                  ratings were not made by the evaluators, the  
19                  town did not have the right to, in effect,  
20                  interfere with the process and create them for  
21                  them.

22                  And at that point, we were advised  
23                  that the town had not complied with 30B, as  
24                  the Inspector General believes that it should

1 be applied, and for that reason the town  
2 rejected all of the bids because it was in the  
3 public interest to comply with the  
4 requirements of the statute, that's the law of  
5 the Commonwealth.

6 Now, let's look at this particular  
7 complaint that you have before you. You hear  
8 that Johnson Golf didn't know the reasons.  
9 Well, there's no statutory requirement that  
10 the different vendors be told anything. All  
11 we're required to do is what the law requires,  
12 that we put in the documents that we reserve  
13 the right to reject all bids if it were in the  
14 public interest.

15 The town manager, as the chief  
16 procurement officer, made that determination,  
17 all bids were rejected. The proposal went out  
18 immediately again, and the town has appointed  
19 a new evaluation team. Mr. Cushing, who was  
20 the one person who was apparently able to  
21 correctly fill out the form, stays on the  
22 evaluation team.

23 There are new people. We have a new  
24 procedure in which we are not only going to