

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
In re: Contract Controversy of)	
State of South Carolina)	
)	
<i>Claimant,</i>)	
)	
vs.)	<u>RESPONDENT'S</u>
)	<u>MOTIONS TO RECUSE</u>
)	
New Venue Technologies, Inc.)	
)	
<i>Respondent and Counter-Claimant</i>)	
_____)	

RESPONDENT’S MOTIONS TO RECUSE

Respondent, New Venue Technologies, Inc., ("NVTI") by and through its undersigned counsel, hereby moves for the recusal of Michael B. Spicer as the Chief Procurement Officer and decisional officer for purposes of this case, Case No. 2014-205, and in the case seeking New Venue's suspension, Case No. 2014-206. The reasons for these motions are that the CPO, Mr. Michael B. Spicer is a potential witness in the contract controversy case, having been involved in various activities connected with the contract at issue, including a number of the activities that will be the subject of testimony in this matter. Further, Mr. Spicer reports, as an employee, either directly or indirectly, to a potential witness in the case, Mr. Delbert Singleton. Finally, and importantly, Mr. Spicer has already issued a formal notice in Case No. 2014-206, in which he improperly asserted that NVTI has breached the contract in question, which is the very subject of this controversy.

South Carolina’s Code of Judicial Conduct states, “A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.” Canon 2 of the Code of Judicial Conduct, Rule 501, SCACR. The Code requires a judge to “disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned” Canon 2 of

the Code of Judicial Conduct, Rule 501, SCACR. A judge's impartiality might reasonably be questioned when the Judge expresses unfavorable opinions about a party to the cause, in regard to a matter related to the cause. See In re Campbell, 379 S.C. 593, 666 S.E. 2d 908 (2008). Likewise, when the Judge is in some manner personally involved in materials aspects of the matter at hand, there can be no question that recusal is necessary, as one cannot be both judge and witness.

Here, there can be no doubt that because Mr. Spicer was personally involved in communications, activities and decisions that will be the subject of testimony and dispute in this case, he is a likely or possible witness, and he cannot serve as the quasi-judicial officer to decide the very matter in which he was involved. Likewise, because Mr. Spicer directly or indirectly reports to Mr. Delbert Singleton, who was personally involved in communications, activities and decisions that will be the subject of testimony and dispute in this case, and who is a likely or possible witness, and he cannot serve as the quasi-judicial officer to sit in unbiased and neutral judgment of his own boss. Finally, on October 10, 2013, Mr. Spicer issued an Official Hearing Notice to the parties in In Re: Suspension / Debarment of NewVenue Technologies, Inc.. – Breach of Contract No. 4400003161, Software Acquisition Manager - Case No. 2014-206. In that Notice, Mr. Spicer specifically states :

Please be advised that *based on the breach of contract 4400003161 for a Software Acquisition Manager*, a hearing in regards to the possible suspension of. NewVenue Technologies, Inc.; Terris S. Riley, Chief Executive Officer and President of NewVenue Technologies, Inc.; and Jacque P. Riley, Vice President of NewVenue Technologies, Inc., will be held on Monday, November 25, 2013, at 10:00 AM, in the Information Technology Management Office conference room, 1201 Main Street, Suite 600, Columbia, South Carolina, 29201.

See Exhibit A, Hearing Notice dated October 10, 2013 (emphasis added). From this Hearing Notice, it appears clear and evident that Mr. Spicer has prejudged Case No. 2014-205, which has yet to be heard, having already concluded that a breach has been committed.

Further, at a minimum, the statement by Mr. Spicer in the Hearing Notice it is well more than enough under the relevant authorities to call for immediate recusal. Specifically, for example, South Carolina's Code of Judicial Conduct states, "A judge shall avoid impropriety and the *appearance of impropriety* in all of the judge's activities." Canon 2 of the Code of Judicial Conduct, Rule 501, SCACR. It is a plain appearance of impropriety to issue a formal Hearing Notice in which an unequivocal statement is made that draws a conclusion ("...based on the breach of contract...") about the very matter yet to be heard. Further, the Code requires a judge to "disqualify himself or herself in a proceeding in which *the judge's impartiality might reasonably be questioned*" Canon 2 of the Code of Judicial Conduct, Rule 501, SCACR. Where a judge may be a witness in the case, where he reports to another likely witness as his own boss, and where the judge has pronounced a conclusion of breach before the very breach of contract case has even been heard, are all individually and collectively strong reasons for recusal because under such circumstances, the judge's impartiality is reasonably in question. Likewise, the CPO's statement of "breach" in the notice is clearly the CPO's expression of a significant, material and unfavorable opinion about a party to the cause, in regard to a matter related to the cause. See In re Campbell, 379 S.C. 593, 666 S.E. 2d 908 (2008). At a minimum, New Venue is entitled to have every reason, at this stage, to believe that it has not been prejudged, but under the circumstances, it cannot, and the "bell cannot be unrung."

For these reasons and such others as may be advanced at any hearing on this motion, New Venue requests that Mr. Michael B. Spicer promptly recuse himself from Case Nos. 2014-205 and 2014-206 forthwith, so that a hearing before an impartial CPO, or a CPO without any appearance of partiality, may be promptly set.

RESPECTFULLY SUBMITTED,



Consumer Protection, Environmental,
and Regulatory Law Group, LLC
Geoffrey K. Chambers
S.C. Bar No. 78415
1201 Main Street Suite 985
Columbia, SC 29201
geoffrey@CPERLGroup.com
(864) 508-0899

Schmidt & Copeland LLC
John E. Schmidt, III
S.C. Bar No. 4973
John.schmidt@thesclawfirm.com
Melissa J. Copeland
S.C. Bar No. 5904
Missy.copeland@thesclawfirm.com
1201 Main Street, Suite 1100
P.O. Box 11547(29211)
Columbia, SC 29201
803.748.1342 (phone)
803.748.1210 (fax)

ATTORNEYS FOR RESPONDENT AND COUNTER-
CLAIMANTS

Columbia, South Carolina
October 30, 2013