

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1584CV03703-BLS

LUSTIG, GLASER & WILSON, P.C.,

Plaintiff,

v.

DAVID J. COTNEY, in his capacity as the
Commissioner of Banks, and
MASSACHUSETTS DIVISION OF BANKS,

Defendants.

**DEFENDANT'S EMERGENCY MOTION FOR ENLARGMENT OF TIME TO FILE
OPPOSITION TO PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS**

This lawsuit was filed by the law firm of Lustig, Glaser, & Wilson ("LGW") to challenge the Division of Banks's ("the Division") interpretation of the scope of the attorney-at-law exemption in the Massachusetts debt collector statute, as set forth in a November 2, 2015 Opinion Letter addressed to LGW. On April 1, 2016, the Division withdrew the November 2, 2015 Opinion Letter. Exhibit A. In the withdrawal notice, the Division informed LGW that it had "reconsidered its recent interpretation of the attorney-at-law exemption," and that the Division would not require LGW to obtain a debt collector's license solely because the firm was "primarily engaged in consumer debt collection or regularly collects consumer debt." Id.

In light of this recent change in circumstances, the Division seeks an enlargement of time to file its opposition to the plaintiff's pending motion for judgment on the pleadings. In further support of this motion, the Division states the following:

- (1) LGW filed a motion for judgment on the pleadings directly with the court on or about February 24, 2016. Rather than require LGW to withdraw its motion to comply with Rule 9A of the Rules of the Superior Court, the parties agreed the Division would file a response directly with the court on March 18, 2016. This deadline was later extended by agreement to April 1, 2016.
- (2) Because the Division has reconsidered its recent interpretation of the scope of the attorney-at-law exemption and has withdrawn the disputed opinion letter requiring LGW to obtain a license, “no live rights of the parties in this case would be settled by a decision” on the merits of LGW’s motion for judgment on the pleadings, and the case should be dismissed as moot. Russell v. Sec’y of Commonwealth, 304 Mass. 181, 186 (1939).
- (3) The Division intends to serve a motion to dismiss under Mass. R. Civ. P. 12(b)(1), on the grounds that the case is moot.
- (4) Where changed circumstances warrant this court’s consideration of a motion to dismiss on jurisdictional grounds, an enlargement of time for the Division to file its opposition to LGW’s motion for judgment on the pleadings is appropriate.
- (5) In the event that LGW does not voluntarily dismiss its Complaint, the Division requests the opportunity to serve a motion to dismiss on or before May 15, 2016.
- (6) The Division further requests that this Court establish a new deadline for filing an opposition to LGW’s motion for judgment on the pleadings that is contingent upon this Court’s denial of the Division’s motion to dismiss. Should the motion be denied, the Division seeks entry of a deadline of thirty (30) days from the date of the denial.

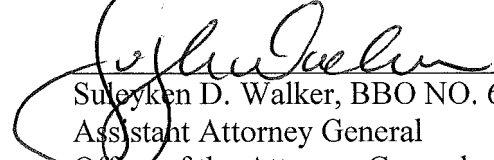
WHEREFORE, the Division requests that this court ALLOW its emergency motion for enlargement of time to respond to LGW's motion for judgment on the pleadings in light of changed circumstances.

Respectfully submitted,

DAVID J. COTNEY, in his capacity as the
Commissioner of Banks, and the
MASSACHUSETTS DIVISION OF
BANKS

By their attorney,

MAURA HEALY
ATTORNEY GENERAL


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April 1, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above
document was served upon the attorney of
record for each other party by mail (by hand and pdf).

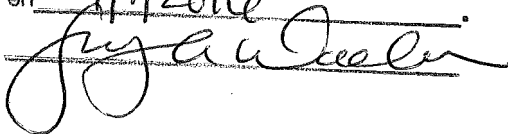
on 4/1/2016


EXHIBIT A



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF BANKS
1000 Washington Street, 10th Floor, Boston, Massachusetts 02118

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

JOHN C. CHAPMAN
UNDERSECRETARY

DAVID J. COTNEY
COMMISSIONER OF BANKS

April 1, 2016

Kenneth C. Wilson
Managing Attorney/President
Lustig, Glaser & Wilson, P.C.
P.O. Box 549287
Waltham, MA 02454-9826

Dear Mr. Wilson:

This letter is in further response to your correspondence dated September 19, 2013 and October 21, 2013 to the Division of Banks (Division) in which you requested an opinion relative to whether the law firm of Lustig, Glaser and Wilson, P.C. (LGW) would be required to obtain a debt collector license from the Division in order to engage in consumer debt collection activity in the Commonwealth. As you know, the Division responded on November 2, 2015 and determined that LGW would need to be licensed as a debt collector based on the activities specified.

Since the issuance of the November 2nd letter, the Division has reconsidered its recent interpretation of the attorney-at-law exemption set forth at Mass. Gen. Law ch. 93, § 24. As a result of the Division's further consideration of the statutory language of ch. 93, § 24, the Division has determined that it will withdraw its November 2nd opinion (and its related follow up opinion dated February 11, 2016) as of today's date. Therefore, the Division will not require LGW, or other similarly situated law firms, to become licensed solely because LGW is primarily engaged in consumer debt collection or regularly collects consumer debt. As this appears to be the question you presented in your September and October of 2013 correspondence, the Division has determined that this is responsive to your request.

Sincerely,

Merrily S. Gerrish
Deputy Commissioner of Banks
and General Counsel

cc: Suleyken Walker, Assistant Attorney General

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