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THE STATE OF NEW HAMPSHIRE

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NEW HAMPSHIRE  
SUPREME COURT

SUPREME COURT

2018 JUL 20 P 3 35

No. 2018-0035

Curtis S. Ridlon

v.

New Hampshire Bureau of Securities Regulation

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APPEAL PURSUANT TO A FINAL JUDGMENT OF THE MERRIMACK COUNTY  
SUPERIOR COURT

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REPLY BRIEF FOR THE APPELLANT NEW HAMPSHIRE BUREAU OF SECURITIES  
REGULATION

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NEW HAMPSHIRE BUREAU OF  
SECURITIES REGULATION

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## ARGUMENT

### **I. RIDLON STILL MISTAKENLY MAINTAINS THAT *HENNIKER V. HOMO* WAS DECIDED UNDER PART I, ARTICLE 20, IGNORING THE FACT THAT THE COURT MERELY APPLIED *STATE V. MORRILL* TO DEFENDANTS THAT WERE FOUND “GUILTY OF A VIOLATION” OF A DISTINCTLY CRIMINAL STATUTE.**

In his brief, Ridlon agrees that *State v. Morrill* was a criminal case decided under Part I, Article 15 of the New Hampshire Constitution. He states that “*Morrill* may have limited its ruling to criminal defendants charged with offenses under our penal code” and that “no one disputes” that *Morrill* was “a criminal case.” Ridlon br. at 23. But the trial court did. It held that “[b]oth [*Morrill* and *Homo*] are premised upon the right to jury trial in civil cases guaranteed by Part I, Article 20 of the State Constitution,”—not Part I, Article 15. BSR br. at 56. The trial court’s erroneous holding flows from this fundamental misapprehension. Having now conceded that the trial court erred in its interpretation of *Morrill*, Ridlon is essentially left with an argument that somewhere in the two-page *Henniker* decision is the sweeping novel proposition that the holding of *Morrill* applies to every civil lawsuit brought by the State in which a fine exceeds \$1,500.

In support of this expansive interpretation of *Henniker*, Ridlon argues that the Court in that case: (1) uses the adjective “civil” in describing words like “fines” and “action”; and (2) “makes no reference to Article 15, but does cite Article 20.” Ridlon br. at 22-23. With regard to the latter, Ridlon ignores that Part I, Article 20 is only referenced in *Henniker* during its discussion of *Morrill*. See *Town of Henniker v. Homo*, 136 N.H. 88, 89 (1992). Given the fact that *Morrill* is the lone case cited in *Henniker*, and that the parties agree that *Morrill* was interpreting Part I, Article 15, *Henniker*’s reference to Article 20 in the context of *Morrill* cannot

implicitly mean that the Court was interpreting a completely separate constitutional provision and doing so in a novel and far-reaching manner. *Morrill* cited to Part I, Article 20 too, and for the same reason—simply to identify the provision in which it based its analogy. *See State v. Morrill*, 123 N.H. 707, 713 (1983).

With regard to the former, although as previously stated, violation-level offenses are by statute not criminal (although once the penalty exceeds those applicable to a “petty offense,” they become criminal nonetheless), Ridlon continually disregards that they are still offenses under Part I, Article 15. *See* BSR br. at 14-15; *State v. Miller*, 115 N.H. 662, 664 (1975) (“While for purposes of the Criminal Code a ‘violation’ is an ‘offense’ but not a ‘crime’, no such distinction exists outside the Code.”). For instance, defendants must be found guilty of an offense rather than liable as in a civil action. Just like *Morrill*, *Henniker* concerned violation-level offenses of which the defendants were found “guilty.” *Henniker*, 136 N.H. at 90. Specifically, the defendants were found guilty under RSA 236:127. *Id.* (“Therefore, pursuant to RSA 236:127, the defendants were guilty of 606 separate violations . . . .”). RSA 236:127 states in its entirety: “Any person who is in violation of any provisions of this subdivision shall be *guilty of a violation* and each day or fraction thereof shall constitute a separate *offense*.” (Emphases added). The very next section of the statute specifically identifies the offense in RSA 236:127 as “criminal.” *See* RSA 236:128 (“In addition to the criminal penalty in RSA 236:127, enforcement may be by the following . . . .”). With this in mind, Rildon’s unjustified reliance on the use of the word “civil” cannot support the conclusion that *Henniker* involved anything other than the application of *Morrill* to another violation-level offense.

## **II. THE USA'S *DE NOVO* SUPERIOR COURT APPEAL DID NOT INCLUDE THE RIGHT TO A JURY TRIAL.**

Both the trial court and Ridlon's assertion, that, prior to 2009, the USA's *de novo* appeal provision to the superior court allowed for a jury trial, is unsupported. *See* BSR br. 45 ("Until 2009, the predecessor statute permitted a *de novo* trial by jury after a determination by the BSR."); Ridlon br. at 2-3. Before 2009, the statute at issue stated: "Any person ordered to make rescission, restitution, disgorgement, or repurchase pursuant to paragraph V or VI of this section shall be entitled to a trial *de novo* in the Merrimack county superior court." RSA 421-B:26, VII (2006). The statute did not state that the *de novo* trial in the superior court was before a jury, and BSR is not aware of any defendant receiving a jury trial in superior court for state-securities violations. Thus, even pre-amendment, any assertion to the right to a jury necessarily would have been limited to a claim of a constitutional right, and analyzed through *Hair Excitement*, to which no jury-trial right can be found. *Cf. Hair Excitement, Inc. v. L'Oreal U.S.A., Inc.*, 158 N.H. 363, 367 (2009) (plaintiff only entitled to a bench trial in superior court for a claim brought under the New Hampshire Consumer Protection Act).

### **CONCLUSION**

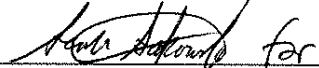
For the forgoing reasons, and for the reasons set forth in BSR's previously filed brief, BSR respectfully requests that this Court reverse the decision of the trial court.

Respectfully submitted,

New Hampshire Bureau of Securities Regulation  
By its attorney,


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July 20, 2018

  
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**CERTIFICATE OF SERVICE**

I hereby certify that two copies of the foregoing were sent on July 20, 2018, postage prepaid, to Brian M. Quirk, Esq.; Nathan R. Fennessy, Esq.; Preti Flaherty Beliveau & Pachios PLLP; 57 North Main Street; P.O. Box 1318; Concord, NH 03302-1318; *Counsel for Mr. Ridlon*

  
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