

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2011-0318, Lebanon Hangar Associates, Ltd. v. City of Lebanon, the court on July 13, 2012, issued the following order:

Having considered the City's motion to reconsider and the response thereto, the court modifies the slip opinion dated June 12, 2012, by amending footnote 3, which appears on page 5 of the slip opinion. Footnote 3 is amended by adding a new third paragraph, so that footnote 3, as amended, shall state as follows:

³ We note here that the City's brief misquotes both letters. The City quotes its own June 2008 letter to LHA as stating that the issue was "whether LHA is liable for taxes on the leased land based on the terms of the lease." (Emphasis in original.) In fact, that letter states that the City intended to argue, more generally, that "the lease agreement requires [LHA] to pay all taxes . . . on the leased premises and property it owns." Similarly, the City quotes the September 2008 letter from LHA to the City as formulating the issue as "whether, under the terms of the lease, the parties agreed that the City could assess and impose upon LHA real estate taxes for the City land leased to LHA." (Emphasis in original.) In fact, that letter states the issue, more generally, as "whether the City is permitted under the Lease to impose real estate taxes on the value of the land LHA leases from the City."

These erroneous references to the record are troubling because they go to the very heart of the issue in this case – the scope of the arbitrator's authority. The language in the misquoted versions arguably implies that the scope of the issue was limited to the terms contained within the four corners of the lease, rather than the lease agreement.

In a motion for reconsideration filed with this court after this opinion was issued, counsel for the City represents that these erroneous quotations were done inadvertently and without any intent to mislead. Based on the fact that the City accurately described the content of the letters elsewhere in its brief and provided accurate copies of the letters in its appendix, we accept this representation. We hope that this occurrence will serve to highlight the importance of ensuring that factual references to the record are accurate.

In all other respects the motion for reconsideration is denied.

Slip opinion modified;
reconsideration otherwise
denied.

Dalianis, C.J., and Conboy and Lynn, JJ., concurred.

**Eileen Fox,
Clerk**