

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HILDA L. SOLIS, Secretary of Labor,
U.S. Department of Labor,

Plaintiff,

v.

RAYMOND PALOMBO, et al.,

Defendants.

CIVIL ACTION FILE

NO. 1:08-CV-2017-BBM

ORDER

This matter is before the court on the Motion for Entry of Judgment Awarding Monetary Relief [Doc. No. 32] filed by Plaintiff Hilda L. Solis (“Secretary Solis”).¹

I. Factual and Procedural Background

The court previously included an overview of the facts in its June 9, 2009 Order on Secretary Solis’s Motion for Entry of Default Judgment, and will only summarize the facts pertinent to this Order here.

¹ The docket also shows another pending motion: Secretary Solis’s Motion for Entry of Default Judgment [Doc. No. 26], which the court previously permitted Secretary Solis to renew with respect to Raymond Palombo. (See Order, Oct. 8, 2009, at 6 (granting Secretary Solis’s Motion to Reopen Motion for Entry of Default Judgment Against Raymond Palombo).). The October 8, 2009 Order also proceeded to consider the merits of Secretary Solis’s Motion for Entry of Default Judgment against Raymond Palombo. (See *id.* at 4-5.) For the reasons stated in the October 8, 2009 Order, Secretary Solis’s Motion for Entry of Default Judgment [Doc. No. 26] is GRANTED.

This case involves claims for violations of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001 *et seq.*, arising out of the mismanagement of an employee benefits fund by Defendants Raymond Palombo (“Mr. Palombo”), Mitchel Coneley (“Mr. Coneley”), Leonard Steinberg (“Mr. Steinberg”), Contractors and Merchants Association (“CMA”), and Small and Independent Business Associates (“SIBA”) (collectively “Defendants”).

Defendants were fiduciaries with respect to the Manufacturing and Industrial Workers Benefits Fund (“MIWU Fund”). The MIWU Fund holds the assets of several “employee welfare benefit plans” within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1). On January 1, 2005, Defendants transferred 880 of Mr. Palombo’s association members and their existing claims liability from the International Union of Public and Industrial Workers Fund (“IUPIW Fund”) to the MIWU Fund without conducting any underwriting analysis to determine whether the group’s contribution rates would be adequate to fund its liabilities. Defendants also failed to conduct any formal process to establish contribution rates or benefit schedules. After the association members’ benefit claims overwhelmed the MIWU Fund’s solvency, Defendants abandoned the MIWU Fund. The MIWU Fund ceased processing benefit claims after March 31, 2005.

The Secretary of Labor filed this suit on June 13, 2008, amending her Complaint on July 2, 2008. Defendants have not responded to this lawsuit, and the Clerk made an entry of default as to all five Defendants. Secretary Solis filed a Motion for Entry of Default Judgment on March 10, 2009. On June 9, 2009, the court granted the Motion with respect to Mr. Coneley, Mr. Steinberg, CMA, and SIBA, finding them liable for all claims against them. With respect to Mr. Palombo, however, the court denied the Motion in light of Mr. Palombo's September 3, 2008 Chapter 7 bankruptcy filing. The court noted that Secretary Solis could move to reopen the case against Mr. Palombo once she received relief from the bankruptcy stay. Secretary Solis obtained the necessary relief, and this court granted Secretary Solis's Motion to Reopen Motion for Entry of Default Judgment Against Raymond Palombo on October 8, 2009. At that time, the court also found Mr. Palombo liable for all claims against him.

On October 9, 2009, Secretary Solis filed the present Motion for Entry of Judgment Awarding Monetary Relief.

II. Analysis

Under ERISA § 502(a)(2), the Secretary may bring a civil action "for appropriate relief under section 409" against a plan fiduciary. 29 U.S.C. § 1132(a)(2). ERISA § 409, in turn, makes plan fiduciaries who breach their fiduciary duties

personally liable for “any losses to the plan resulting from each such breach.” 29 U.S.C. § 1109(a).

Secretary Solis seeks to hold Defendants jointly and severally liable for the MIWU Fund’s losses. In support of her Motion, Secretary Solis has offered a declaration from Kristine M. Williams and the Independent Fiduciary’s Report of Claims and Recommendations Thereon. (See Br. in Supp. of Secretary’s Mot. for Entry of J. Awarding Monetary Relief Ex. 1 (“Williams Decl.”); Independent Fiduciary’s Mot. to Approve Claims Adjudication Process [Doc. No. 116 in Case No. 1:05-cv-3053-BBM] Ex. F (“IF’s Report of Claims”).) Even in the default judgment context, “[a] court has an obligation to assure that there is a legitimate basis for any damage award it enters.” Anheuser Busch, Inc. v. Philpot, 317 F.3d 1264, 1266 (11th Cir. 2003). However, the court is not required to hold a hearing under Federal Rule of Civil Procedure 55(b)(2) where, as here, the Secretary’s Motion is sufficiently supported by affidavits and documentary evidence. See Adolph Coors Co. v. Movement Against Racism & the Klan, 777 F.2d 1538, 1543–44 (11th Cir. 1985) (noting that damages may be awarded in a default judgment “if the record adequately reflects the basis for award via a hearing or a demonstration by detailed affidavits establishing the necessary facts.” (citation and internal quotations omitted)).

The Independent Fiduciary has calculated that the current outstanding claims against the MIWU Fund total \$2,958,681.36. (Williams Decl. ¶ 7; IF's Report of Claims 56.)² Of this amount, \$1,987,025.57 was incurred prior to December 31, 2004, which is when Defendants imprudently allowed the MIWU Fund to assume responsibility for the 880 association members and their existing claims liability. (Williams Decl. ¶ 7.) The remaining \$971,655.79 in claims were incurred during the three months that the MIWU Fund was operational, and resulted from Defendants' failure to establish prudent contribution rates or benefit schedules. (Id.) Defendants' breach of their fiduciary duties thus caused the MIWU Fund to incur a total of \$2,958,681.36 in losses.

Under ERISA § 409(a), a person who breaches his fiduciary duties with respect to a plan is personally liable for "any losses to the plan resulting from each such breach." 29 U.S.C. § 1109(a); see also Donovan v. Walton, 609 F. Supp. 1221, 1231 (S.D. Fla. 1985) ("If a breach occurs, the fiduciary may be held jointly and severally liable to the plan for any losses resulting therefrom during his tenure as trustee . . ."); Donovan v. Bierwirth, 754 F.2d 1049, 1056 (2d Cir. 1985) (noting that

² In the related case of Chao v. International Union of Public & Industrial Workers Canadian Benefit Fund, Case No. 05-cv-3053-BBM, the court is today entering an Order granting the Independent Fiduciary's Motion to Approve Claims Adjudication Process and to Report on Progress Regarding Claims Determination. The Order specifically finds that the claims against the IUPIW Fund total \$4,155,122.13, a sum which includes \$2,958,681.36 in claims against the MIWU Fund.

one way to deter fiduciary abuses is “to impose personal liability upon trustees for losses sustained by pension plans as a result of such abuses”). The court holds that Defendants are jointly and severally liable for the \$2,958.681.36 in losses incurred by the MIWU Fund.

III. Summary

For the foregoing reasons, Secretary Solis’s Motion for Entry of Judgment Awarding Monetary Relief [Doc. No. 32] is GRANTED. The clerk is DIRECTED to enter judgment against Defendants, jointly and severally, in the total amount of \$2,958.681.36. This case is DISMISSED.

IT IS SO ORDERED, this 26th day of October, 2009.

s/Beverly B. Martin
BEVERLY B. MARTIN
UNITED STATES DISTRICT JUDGE