

United States District Court
for the
Southern District of Florida

Thomas E. Perez, Plaintiff)
)
v.)
) Civil Action No. 12-62428-Civ-Scola
Scott W. Rothstein, *et al.*,)
Defendants)

Order On Motion for Default Judgment

Plaintiff Thomas E. Perez, the Secretary of Labor, U.S. Department of Labor (the Secretary) initiated this lawsuit against three Defendants, Scott Rothstein, Rothstein Rosenfeldt Adler, P.A., and RRA 401(k) Profit Sharing Plan. All three Defendants waived service. (ECF Nos. 11, 14.) The Secretary filed stipulations of dismissal as Defendants to Rothstein Rosenfeldt Adler, P.A., and RRA 401(k) Profit Sharing Plan. (ECF Nos. 24, 34.) Rothstein has never filed an answer or otherwise appeared in this matter (other than to file the waiver of service), and a Clerk's Default was entered against him on June 9, 2014. (ECF No. 31.)

The Secretary now moves for entry of default judgment against Rothstein. (ECF No. 35.) A "defendant, by his default, admits the plaintiff's well-pleaded allegations of fact," as set forth in the operative complaint." *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009). In considering a motion for default judgment, a court must examine the sufficiency of the allegations in the complaint to determine whether the plaintiff is entitled to a default judgment. *Fid. & Deposit Co. v. Williams*, 699 F. Supp. 897, 899 (N.D. Ga. 1988). The Court has considered the Motion, the documents and affidavits accompanying the Motion, the Complaint, and the relevant law. Based on this information, the Court finds that the allegations are sufficient to establish that Rothstein is liable for violating ERISA, as alleged in the Complaint. The Court **grants** the Motion (ECF No. 35).

Following the entry of a default judgment, damages may be awarded "without a hearing [if the] amount claimed is a liquidated sum or one capable of mathematical calculation," so long as all essential evidence is a matter of record. *S.E.C. v. Smyth*, 420 F.3d 1225, 1231, 1232 n.13 (11th Cir. 2005) (quoting *Adolph Coors Co. v. Movement Against Racism & the Klan*, 777 F.2d 1538, 1544 (11th Cir. 1985)). Here, evidence demonstrates that the RRA 401(k) Profit Sharing Plan (the Plan) incurred lost opportunity costs of \$1,775.56 as of June 24, 2014 on the \$13,127.01 in contributions that were

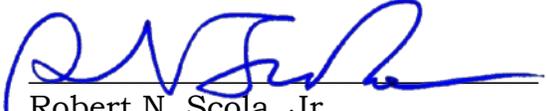
not restored to the Plan until August 2013. (ECF No. 35-3, at 4.) Evidence also demonstrates that the Plan has incurred fees and costs in the amount of \$79,384.50 for the Plan's independent fiduciary M. Larry Lefoldt to administer and terminate the plan, and will incur additional costs of approximately \$18,993.75 to allocate outstanding lost earnings, distribute the assets, and terminate the program. (ECF No. 35-8, at 3.) The Court also finds that the Secretary has established that he is entitled to the injunctive relief he seeks.

For the reasons above, the Court **grants** the Motion for Default Judgment (ECF No. 35), and awards the Secretary the following relief:

1. Scott Rothstein is enjoined from violating the provisions of Title I of ERISA;
2. Scott Rothstein is permanently enjoined from acting as a fiduciary, trustee, agent, or representative in any capacity to any employee benefit plan, as defined by ERISA;
3. Scott Rothstein must make restitution to the RRA 401(k) Profit Sharing Plan in the amount of \$1,775.56, with post judgment interest to be assessed against any remaining unpaid balance of such amount, in accordance with 28 U.S.C. § 1961, from the date of this order until paid in full;
4. Scott Rothstein shall pay \$79,384.50 to the RRA 401(k) Profit Sharing Plan, which represents the reasonable fees and costs of the Plan's independent fiduciary;
5. The Plan's independent fiduciary will set off the individual Plan account of Scott Rothstein against the \$1,775.56 restitution award, in accordance with 29 U.S.C. § 1056(d)(4), and reallocate those funds to individual Plan accounts of the remaining participants; and
6. The Plan's independent fiduciary will set off the individual Plan account of Scott Rothstein against the \$79,384.50 award identified above, in accordance with 29 U.S.C. § 1056(d)(4), and reallocate those funds to individual Plan accounts of the remaining participants.

The Court will separately enter final judgment. The Clerk will **close** this case.

Done and ordered in chambers, at Miami, Florida, on June 30, 2014.


Robert N. Scola, Jr.
United States District Judge