

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

THOMAS E. PEREZ,)
Secretary of Labor,)
United States Department of Labor,)
)
Plaintiff,)
)
v.)
)
STEVEN J. WATKINS, OXFORD HOLDINGS,)
INC., and AETNA 401(K) PLAN,)
)
Defendants.)

FILE NO.

COMPLAINT
(Injunctive Relief Sought)

Plaintiff THOMAS E. PEREZ, Secretary of Labor, UNITED STATES DEPARTMENT OF LABOR (“Secretary”) alleges as follows:

1. This cause of action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, et seq., and is brought by the Secretary under §§ 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and to obtain such other further relief as may be appropriate to redress violations and enforce the provisions of that Title.
2. This court has subject matter jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).
3. Venue lies in the Southern District of Florida, Fort Lauderdale Division, pursuant to § 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

4. The Aetna 401(k) Plan (hereinafter “the Plan”) is an employee benefit plan within the meaning of § 3(3) of ERISA, 29 U.S.C. § 1002(3), subject to coverage under ERISA pursuant to § 4(a), 29 U.S.C. § 1003(a), and is joined as a party defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to ensure that complete relief may be granted.

5. Oxford Holdings, Inc. (“Oxford” or “the Company”), a Florida corporation, and the Plan Sponsor and Plan Administrator, was at all relevant times a “fiduciary” to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and a “party in interest” to the Plan within the meaning of ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

6. Steven J. Watkins, an individual, the Company’s President and the Plan Trustee, was at all relevant times a “fiduciary” to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and a “party in interest” to the Plan within the meaning of ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

7. Aetna Construction, Inc. (“Aetna”), a Florida corporation, is a participating employer in the Plan. Watkins was the President of Aetna until September 2014, when it filed an amended annual report indicating that Paul Goodwin is the president of Aetna.

8. The Plan was established by the Company in 2007.

9. The Plan permitted participants to contribute a portion of their pay to the Plan through payroll deductions.

10. In accordance with 29 C.F.R. § 2510.3-102, participant contributions were required to be forwarded to the Plan on the earliest date on which such contributions could reasonably be segregated from the employer’s general assets.

11. For payroll periods between April 12, 2010 and April 5, 2013, Defendants Watkins and the Company withheld employee contributions to the Plan in the amount of \$139,144.81, failed to segregate the contributions from Company assets as soon as they reasonably could do so and failed to timely forward them to the Plan in accordance with ERISA and the governing Plan documents.

12. For payroll periods between April 12, 2010 and April 5, 2013, Defendants Watkins and the Company withheld employee contributions to the Plan in the amount of \$117,167.83, failed to segregate the contributions from Company assets as soon as they reasonably could do so and never forwarded them to the Plan.

13. During the periods that participant contributions were not remitted to the Plan as required, Defendants Watkins and the Company caused or allowed the contributions to be commingled with the general assets of the Company.

14. Defendants Watkins and the Company caused or allowed the commingled funds referred to in the preceding paragraph to be used for Company purposes and obligations rather than for the exclusive benefit of the Plan and the participants.

15. Defendants Watkins and the Company have failed to take action to restore to the Plan the full amount of the un-remitted contributions, plus lost interest in the total amount of \$12,321.35 as of June 30, 2015, that would have accrued but for the actions described in the preceding paragraphs.

16. Defendants Watkins and the Company failed to monitor, control or attempt to rectify the acts of one another with respect to the Plan.

17. As of December 17, 2014, the Plan had approximately 11 participants and assets of approximately \$131,900.

18. The Plan assets are being held by John Hancock.

19. The Company and Aetna ceased operations in or around April 2013.

20. When the Company and Aetna ceased operations, Defendants Watkins and the Company failed to terminate the Plan and ensure that the funds in the Plan were appropriately distributed to participants.

21. Defendants Watkins and the Company have failed to administer the Plan and have effectively abandoned it, as a result of which participants are unable to receive information about their funds and are unable to gain access to their funds.

22. By the actions described in paragraphs 10 through 21, Defendants Watkins and the Company, as fiduciaries of the Plan,

(a) failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

(b) failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

(c) failed to discharge their duties with respect to the Plan in accordance with the documents and instruments governing the plan, insofar as such documents and instruments are consistent with ERISA, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D);

(d) failed to ensure that the assets of the Plan did not inure to the benefit of the Company, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);

(e) caused the Plan to engage in transactions which they knew or should have known constituted the direct or indirect transfer of Plan assets to, or use of Plan assets by or for the benefit of a party in interest, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

(f) dealt with assets of the Plan in their own interest or for their own account, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

(g) acted in the transactions described involving the Plan on behalf of a party whose interests were adverse to the interests of the plan or the interests of its participants and beneficiaries in violation of § 406(b)(2) of ERISA, 29 U.S.C. § 1106(b)(2).

23. Defendants Watkins and the Company are each liable for the breaches of the other, pursuant to § 405(a) of ERISA, 29 U.S.C. § 1105(a), in that they either (1) participated knowingly in an act of the other fiduciary, knowing such act was a breach, in violation of § 405(a)(1) or ERISA, 29 U.S.C. § 1105(a)(1); (2) failed to monitor or supervise the other fiduciary and thereby enabled the breach, in violation of § 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2); or (3) had knowledge of a breach by the other fiduciary and failed to make reasonable efforts under the circumstances to remedy the breach, in violation of § 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3).

24. Defendants Watkins and the Company failed to maintain an adequate fidelity bond, in violation of § 412(a) of ERISA, 29 U.S.C. § 1112(a).

WHEREFORE, pursuant to § 502(a)(2) and (5) of ERISA, 29 U.S.C. § 1132(a)(2) and (5), Plaintiff prays that the Court:

A. Order Defendants to restore to the Plan all losses, including interest or lost opportunity costs, which occurred as a result of his breaches of fiduciary obligations;

B. Order that the Plan set off the individual Plan accounts of any Defendant against the amount of losses, including lost opportunity costs, resulting from their fiduciary breaches, as authorized by § 1502(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1502(a), 111 Stat. 788, 1058-59 (1997) (codified at 29 U.S.C. § 1056(d)(4)), if the losses are not otherwise restored to the Plan by the Defendants and reallocated to the non-breaching participants;

C. Remove Defendants as the Plan fiduciaries and appoint an Independent Fiduciary at the Defendants' expense, to arrange for termination of the Plan and distribution of its assets;

D. Permanently enjoin Defendants from serving as fiduciary, administrator, officer, trustee, custodian, agent, employee, representative, or having control over the assets of any employee benefit plan subject to ERISA;

E. Enjoin Defendants from engaging in any further action in violation of Title I of ERISA;

F. Award Plaintiff the costs of this action; and

G. Provide such other relief as may be just and equitable.

Submitted this 7th day of August, 2015.

ADDRESS:

Office of the Solicitor
U. S. Department of Labor
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303

Telephone:

(404) 302-5465

(404) 302-5438 (FAX)

E-Mail:

moukalif.monica.r@dol.gov

Atl.fedcourt@dol.gov (Primary)

M. PATRICIA SMITH
Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor

ROBERT M. LEWIS, JR.
Counsel

By: s/ Monica R. Moukalif
MONICA R. MOUKALIF
Attorney
Special Bar Number: A5501714

Attorneys for the Secretary of Labor,
United States Department of Labor.

Office of the Solicitor
U. S. Department of Labor
Attorneys for Plaintiff

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