

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SETH D. HARRIS, Acting Secretary of Labor,	:	
United States Department of Labor,	:	
	:	Civil Action File No.:
Plaintiff,	:	13-cv-01716 (RMB)(JS)
v.	:	CONSENT JUDGMENT
WILLIAM BOWMAN and WILLIAM BOWMAN	:	
ASSOCIATES, INC. PROFIT SHARING 401(K) PLAN,	:	
Defendants.	:	

This action was filed by the Acting Secretary of Labor (the “Acting Secretary” or “Plaintiff”) pursuant to Title I of the Employee Retirement Income Security Act of 1974 (“ERISA” or the “Act”), 29 U.S.C. § 1001 et seq., and by the authority vested in him by ERISA Section 502(a)(5), alleging that William Bowman (“W. Bowman”) violated ERISA Sections 402, 403, 404 and 406.

The Acting Secretary and Bowman wish to resolve this matter by entering into this Consent Judgment and Order and stipulate to all of the allegations in the Acting Secretary’s complaint and to each of the terms set forth below:

PARTIES, JURISDICTION AND VENUE

I. At all relevant times herein, William Bowman Associates, Inc. (the “Sponsor”) was an employer of employees which maintained its principal place of business at 551 Cooper Road, PO Box 330, West Berlin, New Jersey 08091.

II. At all relevant times herein, W. Bowman was the president and sole shareholder of the Sponsor and currently resides at 591 Sentinel Road, Moorestown, NJ 08057.

III. William Bowman Associates, Inc. Profit Sharing 401(k) Plan (the “Plan”) was and is an employee benefit plan within the meaning of ERISA §3(3), 29 U.S.C. §1002(3), and was established to provide benefits to employees of the Sponsor, who were covered by a plan subject to Title I of ERISA; and

IV. At all relevant times herein, (1) the Plan was an employee pension benefit plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2), and (2) W. Bowman was the trustee of the Plan and exercised authority and discretionary control respecting the management and disposition of the Plan’s assets, and was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21). The Plan was named as a defendant under Fed. R. Civ. P. 19 in order to afford complete relief; and

V. This Court has subject matter jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1); venue of this action lies in the District of New Jersey pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2); this Court has personal jurisdiction over the Plan and W. Bowman for all purposes relevant to this matter including the entry of this Order pursuant to ERISA Section 502(d)(1), 29 U.S.C. § 1132(d)(1); and

VI. W. Bowman admits that the Court has personal jurisdiction over him and the Plan for all purposes relevant to this matter including the entry and enforcement of this Consent Judgment; and

VII. The Acting Secretary has duly made service on the Plan as required by the provisions of ERISA §502(d)(1), 29 U.S.C. 502 (d)(1).

STATEMENT OF FACTS AND LIABILITY

VIII. By entering into this Consent Judgment, Bowman admits the following:

PARTIES-IN-INTEREST

1. As the Sponsor was an employer of one or more employees covered by the Plan, the Sponsor was a party-in-interest with respect to the Plan under ERISA § 3(14)(C), 29 U.S.C. § 1002(14)(C);
2. As W. Bowman was a fiduciary to the Plan, he was a party-in-interest with respect to the Plan under ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A);
3. As W. Bowman was the sole principal of the Sponsor, he was a party-in-interest with respect to the Plan under ERISA §§ 3(14)(E) and/or H, 29 U.S.C. §§ 1002(14)(E) and /or H;
4. At all relevant times herein, W. Bowman was a member of TRIAD III, LLC (“Triad”);
5. At all relevant times herein, W. Bowman owned at least 50% of the shares, capital interest and/or beneficial interest of Triad;
6. As 50% or more of Triad was owned by W. Bowman, the trustee and sole shareholder of the Sponsor, Triad was also a party-in-interest to the Plan under ERISA §§3(14)(G), 29 U.S.C. §§ 1002(14)(G);
7. At all relevant times herein, Anita Bowman (“A. Bowman”) was W. Bowman’s spouse;
8. At all relevant times herein, A. Bowman was doing business as Ambience Interiors (“Ambience”);
9. A. Bowman, as the spouse of a Plan fiduciary, both in her own name and in her assumed business name as Ambience, was also a party-in-interest to the Plan under ERISA §§3(14)(F) and (15), 29 U.S.C. §§ 1002(14)(F) and (15).

THE TRIAD PROPERTY TRANSACTION

10. In September of 2007, W. Bowman caused the Plan to purchase real estate from Triad, identified as Block 110, Lot 12, Hainesport Township, Burlington County, NJ (the “Triad Property”);
11. Pursuant to the terms of the sale, the Plan purchased the Triad Property for \$50,000.00 cash and a \$295,000.00 loan owed to the Plan by Crowfoot Associates;
12. The purchase of the Triad Property by the Plan constitutes a sale of property (i.e. the Triad Property) between the Plan and a party-in-interest (i.e. Triad, as per paragraph VIII.6 above), and is therefore a prohibited

transaction within the meaning of ERISA §406(a)(1)(A), 29 U.S.C. §1106(a)(1)(A);

13. The Plan's payment of the purchase price for the Triad Property constitutes a direct transfer of Plan assets (i.e. \$50,000.00 in cash and the \$295,000.00 Crowfoot Loan note) to a party-in-interest (i.e. Triad), and is therefore a prohibited transaction within the meaning of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);

THE TRIAD LOAN TRANSACTION

14. Between March 7, 2007 and August 14, 2007, W. Bowman, in his capacity as the Plan's trustee, caused the Plan to loan \$125,000 to Triad (the "Triad Loan") at a rate of 12% interest.
15. The Triad Loan was payable in full on December 31, 2007.
16. To date, Triad owes the Plan a total of \$82,935.62 under the Triad Loan, representing \$65,000 in outstanding principal and \$17,935.63 in accrued interest;
17. The Triad Loan constitutes a direct lending of money (i.e. \$125,000.00) between the Plan and a party-in-interest (i.e. Triad), and is therefore a prohibited transaction pursuant to ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B);
18. W. Bowman's failure to collect or demand payment of the balance due under the Triad Loan after it became payable in full (i.e. December 31, 2007) constitutes an extension of credit between the Plan and a party-in-interest (i.e. Triad), and is therefore a prohibited transaction pursuant to ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B);
19. The Triad Loan constitutes a direct transfer of Plan assets (i.e. \$125,000.00) for the benefit of a party-in-interest (i.e. Triad), and is therefore a prohibited transaction pursuant to ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);
20. W. Bowman's failure to collect or demand payment of the balance due under the Triad Loan after it became payable in full (i.e. December 31, 2007) constitutes an indirect use of Plan assets (i.e. the balance due under the Triad Loan) to a party-in-interest (i.e. Triad), and is therefore a prohibited transaction pursuant to ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

THE AMBIENCE LOAN TRANSACTION

21. On April 2, 2007, W. Bowman in his capacity as the Plan's trustee caused the Plan to loan \$200,000 to Ambience (the "Ambience Loan").

22. The Ambience Loan was secured with real estate located at 591 Sentinel Road, Moorestown, NJ 08057 (the “Moorestown Property”).
23. A. Bowman d/b/a Ambience transferred \$200,000.00, representing the full amount of the Ambience Loan, to the Sponsor (the “Sponsor Kickback”), consistent with W. Bowman’s full knowledge at the time he caused the Plan to execute the Ambience Loan;
24. The Ambience Loan was payable in full on December 31, 2007.
25. To date, A. Bowman d/b/a Ambience owes the Plan a total of \$105,389.44 under the Ambience Loan, representing \$75,000 in outstanding principal and \$30,389.44 in accrued interest;
26. The Ambience Loan constitutes a direct lending of money (i.e. \$200,000.00) between the Plan and a party-in-interest (i.e. A. Bowman d/b/a Ambience, as per paragraph VIII.9 above), and is therefore a prohibited transaction pursuant to ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B);
27. W. Bowman’s failure to collect or demand payment of the balance due under the Ambience Loan after it became payable in full (i.e. December 31, 2007) constitutes an extension of credit between the Plan and a party-in-interest (i.e. A. Bowman d/b/a Ambience), and is therefore a prohibited transaction pursuant to ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B);
28. The Ambience Loan constitutes a direct transfer of Plan assets (i.e. \$200,000.00) for the benefit of a party-in-interest (i.e. the Sponsor, as per paragraph VIII.1, above), and is therefore a prohibited transaction pursuant to ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);
29. As a result of the Sponsor Kickback (paragraph VIII.23), W. Bowman was aware that \$200,000.00 would inure to the benefit of the Sponsor, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);
30. The Sponsor Kickback constitutes a transfer of Plan Assets (i.e. \$200,000.00) to a party-in-interest (i.e. the Sponsor, as per paragraph VIII.1), and is therefore a prohibited transaction pursuant to ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);
31. In causing the Plan to execute the Ambience Loan with the knowledge that \$200,000.00 of the proceeds would be funneled to the Sponsor, W. Bowman dealt with the assets of the Plan in his own interest and for his own account, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1);

PLAN DOCUMENT

32. At all relevant times herein, the administration of the Plan and the authority of the Plan fiduciaries such as W. Bowman, to the extent not inconsistent with ERISA, was set forth in the Stipulation of Amendment and Restatement to the Plan (the “Plan Document”).

33. The Plan Document, p. 74, ¶7.9(j) provides that the trustee will not, inter alia, deal with the assets of the Plan in his own interest or for his own account;
34. The Plan Document, p. 74, ¶7.12, provides that all contributions made by the Sponsor to the Plan will be used for the exclusive benefit of all participants and their beneficiaries, and will not be diverted to any other purpose except the payment of the costs of maintaining the Plan

VIOLATIONS OF ERISA

35. As a result of the transactions described in paragraphs VIII.10 through VIII.31, above, W. Bowman breached his fiduciary duties by causing the Plan to enter into transactions that were prohibited under either ERISA §§ 406(a)(1)(A), (B), (D) and/or ERISA §406(b)(1), 29 U.S.C. § 1106(b)(1);
36. As a result of the transactions and conduct described in paragraphs VIII.21 through VIII.31, W. Bowman breached his fiduciary duties by causing Plan Assets to inure to the benefit of the Sponsor and by failing to hold the Plan's assets for the exclusive purpose of providing benefits to the Plan's participants and beneficiaries and defraying reasonable expenses of administering the Plan, as required by ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1).
37. As a result of the transactions and conduct described in paragraphs VIII.10 through VIII.31, W. Bowman breached his fiduciary duties by failing to administer the Plan's assets for the exclusive purpose of providing benefits to the Plan's participants and beneficiaries and defraying reasonable expenses of administering the Plan, as required by ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);
38. As a result of the transactions and conduct described in paragraphs VIII.10 through VIII.31, W. Bowman breached his fiduciary duties by failing to administer the Plan's assets with the care, skill and diligence that a prudent fiduciary would have used in like circumstances, as required by ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).
39. As a result of the transactions and conduct described in paragraphs VIII.21 through VIII. 31, defendant W. Bowman failed to administer the Plan's assets in accordance with the documents and instruments governing the Plan (as set forth in paragraphs VIII.32-34, above), as required under ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

PLAN LOSSES

40. As a result of the transactions and conduct described in paragraphs VIII.10 through VIII.31, the Plan has suffered losses of at least \$188,325.06 (representing the amounts due and owing to the Plan under the Triad Loans and the Ambience Loans, as set forth in paragraphs VIII.16 and 25), and continues to suffer losses in the form of lost the opportunity to realize reasonable interest and an effective rate of return for those sums (the “Plan Loss”).
41. As set forth above, while engaging in the transactions in violation of ERISA more specifically described in paragraphs VIII.14 through VIII.31, W. Bowman acted with conscious misbehavior and extreme recklessness, sufficient to constitute defalcations while acting in a fiduciary capacity within the meaning of 11 U.S.C. § 523(a)(4).

IX. W. Bowman acknowledges that he is personally liable pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a) to restore the Plan Loss to the Plan in full.

X. W. Bowman represents that the Sponsor is now defunct and devoid of assets.

XI. W. Bowman represents that he personally lacks sufficient assets or income that would allow him to restore the Plan Loss to the Plan in full.

XII. The Acting Secretary has agreed to the terms of payment contained in this Consent Judgment based on the sworn asset affidavits submitted by W. Bowman disclosing his financial condition, which shows that W. Bowman is without sufficient financial assets to make complete and immediate restitution to the Plan for the Plan Loss as a result of the ERISA violations set forth above. A true and correct copy of W. Bowman’s financial representations to the Acting Secretary is attached hereto as Exhibit A.

XIII. W. Bowman agrees that if he or the Sponsor files for any form of bankruptcy prior to the full payment of the Plan Loss as more fully set forth in paragraph H below, neither he nor the Sponsor will oppose any proof of claim that the Acting Secretary files in the bankruptcy proceeding for any amount still owing, and neither W. Bowman nor the Sponsor will oppose an

adversarial action that the Acting Secretary may file to have the debt to the Plan declared non-dischargeable.

XIV. The Acting Secretary and W. Bowman expressly waive any further Findings of Fact or Conclusions of Law and consent to the entry of this Consent Judgment and Order as a full and complete resolution of all of the civil claims and issues raised against W. Bowman by the Acting Secretary in this matter, without trial or adjudication of any issue of fact or law.

ORDER

It is therefore, upon joint motion and for good cause shown, **ORDERED ADJUDGED AND DECREED** that:

INJUNCTIVE RELIEF

A. W. Bowman is permanently enjoined from all future violations of Title I of ERISA, as amended.

B. The Court hereby removes W. Bowman from any and all fiduciary positions with respect to the Plan, and appoints Metro Benefits, Inc. as sole fiduciary of the Plan with authority to administer the Plan. In performing his or her duties, the Fiduciary shall have and exercise full authority and control with respect to the management or disposition of the assets of the Plan. The Independent Fiduciary shall collect, marshal, and administer all of the Plan's assets, evaluate all claims outstanding against it, and pay the assets out to participants and other creditors of the Plan; and take such further actions with respect to the Plan as may be appropriate.

C. Upon entry of this order, W. Bowman shall be permanently enjoined from serving as an administrator, fiduciary, trustee, custodian, agent, adviser, provider of goods or services, consultant, or representative in any capacity, or serving in any capacity that involves decision

making authority or custody or control of the monies, funds, property, or assets, of any employee benefit plan, including but not limited to any entity whose activities are in whole or in substantial part devoted to providing goods or services to any employee benefit plan.

D. The Plan Document is hereby amended to permit the Plan Fiduciary to make distributions to all remaining participants according to the method of allocation set forth in Sections 3.2 and 3.3 of the Plan Document, as follows:

- (1) an initial distribution to all Plan participants based on the value of those Trust Fund assets that consist solely of cash, cash equivalents, marketable securities, and/or other assets that can be readily converted to cash;
- (2) one or more subsequent distributions to all Plan participants based on the value of any additional cash obtained by the Trust Fund, including but not limited to (i) loan repayments (and late fees) collected on the Triad Loan, Ambience Loan and/or any other loan made by the Plan; (ii) net proceeds collected from the sale of the Triad Property; (iii) net proceeds collected from the sale of any properties which secure or which may in the future be used to secure any loans made by the Plan; and/or (iv) any amount paid to the Plan by W. Bowman as set forth in paragraphs G and J, below.

E. The Acting Secretary may bring a civil contempt action if W. Bowman violates any provision of paragraph C above at any time. No action or inaction on the part of the Acting Secretary shall constitute a waiver of this paragraph.

RESTITUTION AND MONETARY DAMAGES

F. W. Bowman acknowledges that, by reason of the fiduciary breaches set forth in VIII.35. through VIII.39, above he is liable to immediately pay the amount of \$188,325.06 to the Plan, representing the Plan Loss.

G. Because W. Bowman has represented in his sworn asset affidavit (attached as Exhibit A) that both he and the Sponsor are impecunious and unable to make full and immediate restitution of the Plan Loss, and the Acting Secretary expressly relies upon such representations

in agreeing to this Consent Judgment and Order, W. Bowman shall not make restitution to the Plan, except as stated in paragraph H below.

H. W. Bowman shall pay the sum of \$188,325.06 as restitution to the Plan, in one hundred and twenty six (126) monthly installments. The first monthly installment shall be due no later than ten (10) days after entry of this Consent Judgment by the Court. The 126th and final installment payment shall be made no later than September 15, 2023. Each of the first 125 installment payments shall be in the amount of \$1,500.00, and the 126th and final installment payment shall be in the amount of \$825.06. Each installment payment shall be made pursuant to the schedule set out in Exhibit B, which sets forth the amounts payable and the dates by which each installment payment is to be made. W. Bowman shall tender each installment payment in the amount and within the time specified in Exhibit B to Metro Benefits, Inc. at the following address:

Metro Benefits, Inc.
8150 Perry Highway, Suite 311
Pittsburgh, PA 15237

I. Prior to obtaining payment for services and expenses authorized pursuant to this consent judgment, Metro Benefits, Inc. shall present to the Acting Secretary an itemized statement of work, including hourly rates of pay, fees charged, and dates and hours of work, accompanied by a description of work performed, as well as an itemized statement of expenses by mailing or faxing a copy to the address or fax number below. If the Acting Secretary determines that the fees requested constitute a diversion or imprudent use of plan assets, the Acting Secretary shall so notify the Court within fifteen (15) days of receipt of Metro Benefits, Inc.'s statement of work, and the Court will decide whether the fees requested shall be granted. Unless the Acting Secretary notifies the Court of his objections to Metro Benefits, Inc.'s fees within fifteen (days),

Metro Benefits, Inc. may apply available plan assets to satisfy the fees charged without further action by any party.

Regional Director
U.S. Department of Labor - Employee Benefits Security Administration
Philadelphia Regional Office
170 S Independence Mall West
Ste 870 West
Philadelphia, PA 19106-3317
Fax 215-861-5347

J. The Acting Secretary agrees that, pursuant to Prohibited Transaction Class Exemption 79-15: (1) the payment terms set forth in paragraph H above and the payment schedule attached as Exhibit B, and (2) the Plan's continued retention or disposition to third parties of the Triad Property, the Triad Loan and the Ambience Loan, in accordance with this Consent Judgment and Order, or any amendment thereto, agreed to by the Acting Secretary in writing, shall not be deemed a prohibited transaction within the meaning of ERISA § 406, 29 U.S.C. § 1106.

K. If W. Bowman fails to make any payment described in paragraph H and the payment schedule attached as Exhibit B within 10 days of the due date of such payment, the entire balance shall be due and payable immediately, and the Acting Secretary may at any time thereafter seek recovery of the entire outstanding Plan Loss. No action or inaction on the part of the Acting Secretary shall constitute a waiver of this paragraph.

L. Notwithstanding the payment terms set forth in paragraph H above and the payment schedule attached as Exhibit B, if at any time during the ten (10) year period following the entry of this Consent Judgment and Order, W. Bowman obtains more than \$25,000.00 at any time as a result of any prize, award, lottery, sweepstakes, or bequest or earns per annum at least \$25,000.00 more than his current annual earnings as set forth in Exhibit A, W. Bowman will

immediately notify the Regional Director, Employee Benefits Security Administration, Philadelphia Regional Office, in writing, at the following address, by mail or fax:

Regional Director
U.S. Department of Labor - Employee Benefits Security Administration
Philadelphia Regional Office
170 S Independence Mall West
Ste 870 West
Philadelphia, PA 19106-3317
Fax 215-861-5347

W. Bowman shall restore 50% of such assets (net of any current and back taxes paid to federal, state, or local taxing authorities, or monies paid pursuant to a criminal restitution order) to the Plan, up to the full Plan Loss, and the payment schedule shall be amended accordingly.

M. Nothing contained herein shall preclude the Acting Secretary from executing on this Consent Judgment and Order if the Acting Secretary learns that any representation contained in W. Bowman's asset affidavit (attached as Exhibit A) is false or if W. Bowman violates its terms. No action or inaction on the part of the Acting Secretary shall constitute a waiver of this paragraph.

N. The Acting Secretary's right to assess penalties pursuant to ERISA §502(1), 29 U.S.C. §1132(1), is expressly preserved. Said penalties shall be assessed on the basis of the "applicable recovery amount" within the meaning of ERISA §502(1)(2), 29 U.S.C. §1132(1)(2). The "applicable recovery amount" shall be deemed to be any amounts actually paid into the Plan pursuant to paragraphs H and L of this Judgment. Nothing herein shall be construed to prohibit W. Bowman from seeking a waiver or reduction of such penalties pursuant to ERISA §502(1)(3), 29 U.S.C. §1132(1)(3).

O. Each party shall bear its own costs and fees incurred in the course of this investigation and the litigation. W. Bowman specifically waives any and all claims arising under

the Equal Access to Justice Act (“EAJA”), Pub. L. No. 96-481 (1980), reenacted at Pub. L. No. 99-80 (1985), and amended at Pub. L. No. 104-121 (1996).

P. The Acting Secretary has not conducted an investigation of the current activities of W. Bowman, and, accordingly, makes no representations, express or implied, as to whether any such activities are permitted by the Consent Judgment and Order. W. Bowman shall immediately discontinue any current activities, contacts, or engagements that violate the terms of this Consent Judgment and Order.

Q. This Consent Judgment and Order does not affect or bind any governmental agency other than the United States Department of Labor.

R. This Court retains jurisdiction for the purpose of enforcing compliance with the terms of this Consent Judgment and Order and for further action as may be necessary to enforce its terms.

S. This Consent Judgment and Order may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

DATED: April 15, 2013
Philadelphia, PA

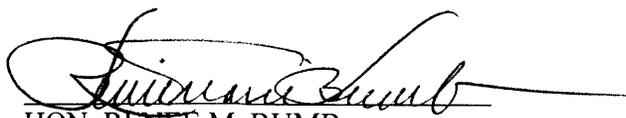
M. PATRICIA SMITH
Solicitor of Labor

PATRICIA M. RODENHAUSEN
Regional Solicitor

By: 
WILLIAM BOWMAN

By: 
ANDREW KARONIS

IT IS SO ORDERED:


HON. RENEE M. BUMB,
UNITED STATES DISTRICT JUDGE

Dated: April 25, 2013