

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

**RICHARD J. JURCZYKOWSKI,
RICHARD A. LINDAHL, GUARDIAN
GRAPHICS, LTD., and GUARDIAN GRAPHICS
LTD. 401(K) PROFIT SHARING PLAN,**

Defendants.

CIVIL ACTION

Case No.

COMPLAINT

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor (“Secretary”), alleges:

JURISDICTION AND VENUE

1. This cause of action arises under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. §§ 1001, et seq., and is brought by the Secretary under ERISA §§ 502(a)(2) and (5), 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 further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

2. This court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

3. Guardian Graphics, Ltd. (“Guardian”) established the Guardian Graphics, Ltd. 401(k) Profit Sharing Plan (“Plan”) to provide retirement benefits to the Plan’s participants.

4. The Plan is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

5. Venue for this action lies in the Northern District of Illinois, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan was administered in Chicago, Cook County, Illinois within this district.

DEFENDANTS AND PARTIES IN INTEREST

6. The Plan is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

7. From January 23, 2008 to present, Guardian was: the Plan Sponsor and Plan Administrator of the Plan; 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).

8. On or around May 10, 2013, Guardian ceased operations.

9. From January 23, 2008 through May 10, 2013, Defendant Richard J. Jurczykowski (“Jurczykowski”) was Guardian’s vice-president, secretary, treasurer, and a joint-owner of Guardian and performed the functions of the president since 2009.

10. From January 23, 2008 to present, Jurczykowski was a named trustee of the Plan; exercised authority and control over Guardian and its assets; exercised authority and control over the management of the Plan and the assets of the Plan; was a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and was a party in interest to the Plan within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

11. From January 23, 2008 through May 10, 2013, Defendant Richard A. Lindahl (“Lindahl”) was Guardian’s president until 2009 and a joint owner of Guardian.

12. From January 23, 2008 to present, Lindahl was: a named trustee of the Plan; 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 (E), 29 U.S.C. § 1002(14)(A) and (E).

VIOLATIONS

UNREMITTED EMPLOYEE CONTRIBUTIONS TO THE PLAN

13. Paragraphs 1 through 12 above are hereby re-alleged and incorporated herein.

14. During the period from January 23, 2008 through May 10, 2013, the Plan documents stated that participants could elect to defer a portion of their wages to be contributed to the Plan.

15. During the period from January 23, 2008 through May 10, 2013, Jurczykowski had the authority and control over whether Guardian remitted withheld employee contributions to the Plan and exercised such authority.

16. During the period from January 23, 2008 through May 10, 2013, Guardian withheld \$55,538.83 from its employees' pay as contributions to the Plan. Guardian retained the withheld employee contributions in its general assets.

17. During the period from January 23, 2008 through May 10, 2013, Defendant Jurczykowski caused Guardian to retain employee contributions to the Plan that had been withheld from its employees' pay and failed to ensure that the \$55,538.83 in withheld employee contributions was remitted to the Plan.

18. Based on the facts described in paragraphs 13 through 17, Defendant Jurczykowski and Guardian:

- a. failed to ensure that Plan assets were held in trust in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);
- b. permitted the assets of the Plan to inure to the benefit of an employer in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);
- c. 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 in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);
- d. caused the Plan to engage in transactions that they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of the Plan in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);
- e. dealt with the Plan assets in their own interest or for their own account in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

f. acted in a transaction involving the Plan on behalf of a party whose interests were adverse to the interest of the Plan and to the interest of the Plan's participants and beneficiaries in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

19. Lindahl failed to ensure that Jurczykowski and Guardian remitted employee contributions to the Plan and made no inquiry as to Jurczykowski's conduct as described in paragraphs 15 through 18, and thereby, enabled Jurczykowski to breach his fiduciary duties.

20. By the conduct in paragraph 19, Lindahl as a trustee of the Plan failed to discharge his 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 in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

21. By the conduct in paragraphs 19 and 20, Lindahl is liable, pursuant to ERISA § 405(a)(2); 29 U.S.C. § 1105(a)(2), for his co-fiduciaries' breaches of their fiduciary duties, as described in paragraphs 15 through 18, because Lindahl failed to comply with ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A) in the administration of his specific responsibilities which gave rise to his individual status as a fiduciary of the Plan and enabled his co-fiduciaries to commit the breaches described in paragraph 18.

22. Lindahl is liable, pursuant to ERISA § 405(b)(1)(A), 29 U.S.C. § 1105(b)(1)(A), for the breaches of fiduciary responsibility by a co-trustee, as described in paragraphs 15 through 18, because he failed to use reasonable care to prevent a co-trustee from committing a breach.

23. As a direct and proximate result of Defendants Jurczykowski, Lindahl, and Guardian's fiduciary breaches, the Plan has suffered injury and losses for which they are

personally liable and subject to appropriate equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

- A. Permanently enjoining Defendants Jurczykowski, Lindahl, and Guardian (“Defendants”) from violating the provisions of Title I of ERISA;
- B. Ordering Defendants Jurczykowski and Guardian to correct the prohibited transaction in which they engaged;
- C. Ordering Defendants to restore to the Plan any losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;
- D. Permanently enjoining Defendants from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan;
- E. Removing Defendants from any positions that they now have as fiduciaries to the Plan;
- F. Appointing an independent fiduciary to ensure the proper administration and termination of the Plan;
- G. Ordering Defendants to pay the fees and expenses of the independent fiduciary;

- H. Awarding the Secretary the costs of this action; and
- I. Ordering such further relief as is appropriate and just.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

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