

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

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

Plaintiff,

v.

**TIMOTHY J. CLIFFORD, JR.,
PATRICK D. CLIFFORD, CLIFFORD
REPLACEMENT WINDOWS & SIDING, INC., and
CRW, INC. 401(K) PLAN,**

Defendants.

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: CIVIL ACTION
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: FILE NO.

COMPLAINT

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor (the "Secretary"), alleges:

JURISDICTION, PARTIES AND VENUE

1. This action arises under Title I of 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 equitable 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. Venue of this action lies in the Northern District of Illinois, pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the CRW, Inc. 401(k) Plan (the “Plan”) is administered in Cook County, Illinois, within this district.

DEFENDANTS

4. Clifford Replacement Windows & Siding, Inc. (“CRW”), an Illinois corporation incorporated in 1988, installed windows, doors, and siding.

5. On or about January 1, 1997, CRW established the Plan for the benefit of its employees. The purpose of the Plan was to provide benefits to its participants and beneficiaries in the event of retirement, death, or disability. The Plan was amended and restated effective January 1, 2004.

6. Since at least March 31, 2004, through September 1, 2006, Timothy J. Clifford, Jr. (“T. Clifford”) was the President and owner of CRW.

7. Since at least March 31, 2004, Patrick D. Clifford (“P. Clifford”) was a named trustee under the Plan documents.

8. Since at least January 1, 2004, CRW was the Plan Administrator of the Plan; and was a fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A).

9. Since at least March 31, 2004, T. Clifford was the Plan Administrator and trustee of the Plan; and was a fiduciary of the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A).

10. Since at least March 31, 2004, P. Clifford was trustee of the Plan; and was a fiduciary within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A).

11. 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).

12. 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.

FAILURE TO TERMINATE PLAN AND DISTRIBUTE PLAN ASSETS

13. Paragraphs 1 through 12 above are realleged and are hereby incorporated in these allegations.

14. According to the Plan's governing documents, T. Clifford, as trustee, P. Clifford, as trustee, and CRW, as the Plan's Administrator, are the only legal persons authorized to direct the disbursement of the Plan's assets.

15. The Third Party Administrator for the Plan was American Pension Advisors Ltd. ("American"). American suspended its services due to non-payment of its fees in 2006.

16. CRW was involuntarily dissolved by the Illinois Secretary of State on September 1, 2006. Upon information and belief, CRW ceased operations in 2006.

17. Under the terms of the Plan, separated participants with vested account balances not exceeding \$5,000 are entitled to benefits immediately upon separation of service, no later than sixty days following the close of the Plan Year in which the Participant Separates from Service. The Plan Year closes on December 31.

18. When the company ceased operating in 2006, Plan participants were terminated.

19. As of July 29, 2013, the Plan had seven (7) participants and one (1) forfeiture account and \$33,033.90 in Plan assets.

20. The Plan's last known fiduciaries have not administered the Plan since October of

2012.

21. The Plan has not been terminated.

22. Since the individuals and entities designated to act on behalf of the Plan failed to administer the Plan, participants and beneficiaries of the Plan have not been able to obtain distributions from the Plan of their individual account balances.

23. By the facts described in paragraphs 14 through 22 above, T. Clifford, P. Clifford, and CRW:

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 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 participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matter 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); and

c. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and in accordance with the documents and instruments governing the Plan, in violation of ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

- A. Permanently enjoining Defendants T. Clifford, P. Clifford, and CRW from violating provisions of Title I of ERISA;
- B. Ordering the removal of Defendant T. Clifford from his position as Plan Administrator and trustee;
- C. Ordering the removal of Defendant P. Clifford from his position as trustee;
- D. Ordering the removal of Defendant CRW from its position as Plan Administrator;
- E. Permanently enjoining Defendants T. Clifford, P. Clifford, and CRW from serving as fiduciaries or service providers to any ERISA-covered plan;
- F. Appointing an independent fiduciary to terminate the Plan consistent with the Plan's governing documents, the Internal Revenue Code, and ERISA, distribute its assets to the participants and beneficiaries, and conclude any Plan-related matters connected with the proper termination of the Plan;
- G. Ordering Defendants T. Clifford and P. Clifford to pay all reasonable fees and expenses incurred by the independent fiduciary in administering and terminating the Plan;
- 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

CHRISTINE Z. HERI
Regional Solicitor

/s/ Brooke E. Worden
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Attorney

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