

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

THOMAS E. PEREZ,  
SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

RICARDO SILVA, MARYLAND ASSOCIATION:  
OF CORRECTIONAL & SECURITY  
EMPLOYEES, INC., CHARLES EZRINE,  
STATE EMPLOYEE BENEFITS, INC.,  
AMERIGUARD SECURITY SERVICES, INC.,  
MARYLAND ASSOCIATION OF  
CORRECTIONAL & SECURITY EMPLOYEES  
HEALTH & WELFARE PLAN, and MARYLAND:  
ASSOCIATION OF CORRECTIONAL &  
SECURITY EMPLOYEES RETIREMENT PLAN,

Defendants.

Civil Action

No.

**COMPLAINT**

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

hereby alleges:

**Jurisdiction and Venue**

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 Sections 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 Section 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 Title I of ERISA.

2. This Court has subject matter jurisdiction over this action pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

3. During the relevant time period, the Maryland Association of Correctional & Security Employees, Inc. (“MACSE”) sponsored two employee benefit plans (the “Plans”) for its members. The Plans offered were the Maryland Association of Correctional & Security Employees Health & Welfare Plan (the “Health Plan”) and the Maryland Association of Correctional & Security Employees Retirement Plan (the “Retirement Plan”).

4. The Health Plan is an employee welfare benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3). It is sponsored by an employee organization within the meaning of Section 3(4) of ERISA, 29 U.S.C. § 1002(4). Security guards who work at The Centers for Medicare and Medicaid Services (“CMS”) in Woodlawn, Maryland and are members of MACSE participate in the Plan. The Health Plan is therefore subject to the coverage of the Act, pursuant to Section 4(a) of ERISA, 29 U.S.C. § 1003(a).

5. The Retirement Plan is an employee pension benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3). It is sponsored by an employee organization within the meaning of Section 3(4) of ERISA, 29 U.S.C. § 1002(4). Security guards who work at CMS and are members of MACSE participate in the Plan. The Retirement Plan is therefore subject to the coverage of the Act, pursuant to Section 4(a) of ERISA, 29 U.S.C. § 1003(a).

6. At all relevant times, the Plans have been administered in Maryland.

7. Venue with respect to this action lies in the District of Maryland, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

9. The relevant time period is August 8, 2010 to date.

Parties

10. The Secretary, pursuant to Sections 502(a)(2) and (5) of the Act, 29 U.S.C. § 1132(a)(2) and (5), has the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and others who commit violations of ERISA.

11. Defendant MACSE is the union which represented security guards that work at CMS for AmeriGuard Security Services, Inc. (“AmeriGuard”) from August 2010 through May 2013. MACSE maintains an office at 2517 N. Rolling Road, Windsor Mill, Maryland 21244. The Plans were established by MACSE and Ricardo Silva pursuant to the collective bargaining agreement and bridge agreement (collectively, the “CBA”) between MACSE and AmeriGuard. MACSE served as the Retirement Plan administrator and at all relevant times had discretionary authority and discretionary responsibility in the administration of the Retirement Plan. At all relevant times, MACSE had discretionary authority and control respecting management of the Plans and or exercised authority or control respecting management or disposition of the Plans’ assets. MACSE is therefore a fiduciary with respect to the Plans within the meaning of ERISA Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A) and a party-in-interest within the meaning of ERISA Section 3(14)(A), 29 U.S.C. § 1002(14)(A).

12. MACSE’s employees performed tasks related to the daily administration of the Retirement Plan. In addition, MACSE is an employee organization any of whose members are covered by the Plans. MACSE is therefore also a party-in-interest within the meaning of ERISA Section 3(14)(B) and (D), 29 U.S.C. § 1002 (14)(B) and (D).

13. Defendant Ricardo Silva (“Silva”) resides in Randallstown, Maryland. Silva is the President and Chief Executive Office of MACSE and of Ricardo Silva & Associates, Inc. Silva served

as trustee for the Plans. At all relevant times, Silva exercised discretionary authority or discretionary control respecting management of the Plans, exercised authority or control respecting management or disposition of the Plans' assets and had discretionary authority or discretionary responsibility in the administration of the Plans. Silva is therefore a fiduciary with respect to the Plan within the meaning of ERISA Section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A) and a party-in-interest within the meaning of ERISA Section 3(14)(A), 29 U.S.C. § 1002(14)(A).

14. AmeriGuard is a security services company located in Fresno, California. AmeriGuard's employees at CMS were members of MACSE and participants in the Plans. At all relevant times, AmeriGuard had discretionary authority and discretionary responsibility in the administration of the Plans and had authority and control over the Plans' assets including, but not limited to, the forwarding of the Plans' contributions, the appointment of the Plans' trustees, and the monitoring of the Plans' trustees. AmeriGuard is therefore a fiduciary of the Plans pursuant to ERISA § 3(21), 29 U.S.C. § 1002(21)(A) and a party-in-interest within the meaning of ERISA Section 3(14)(1), 29 U.S.C. § 1002(14)(A).

15. AmeriGuard is an employer whose employees are covered by the Plans. AmeriGuard is therefore also a party-in-interest within the meaning of ERISA Section 3(14)(C), 29 U.S.C. § 1002(14)(C).

16. State Employee Benefits, Inc. ("SEBI") is a company owned by Charles Ezrine ("Ezrine"). SEBI was hired by Silva to help establish the Retirement Plan, to help establish the Health Plan, and to administer the Health Plan. SEBI and Ezrine provided day-to-day administrative services to the Health Plan. At all relevant times, SEBI exercised discretionary authority and discretionary

responsibility in the administration of the Health Plan and exercised authority and control over the Health Plan's assets. SEBI is therefore a fiduciary with respect to the Health Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A) and a party-in-interest within the meaning of ERISA Section 3(14)(A), 29 U.S.C. § 1002(14)(A).

17. SEBI's employees performed tasks related to the daily administration of the Health Plan. SEBI is therefore also a party-in-interest within the meaning of ERISA Section 3(14)(B), 29 U.S.C. § 1002(14)(B).

18. Ezrine is the owner of SEBI. Ezrine exercised control over Health Plan administration and the Health Plan's assets. At all relevant times, Ezrine exercised discretionary authority and discretionary responsibility in the administration of the Health Plan and had authority and control over the Health Plan's assets. Ezrine is therefore a fiduciary with respect to the Health Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A) and a party-in-interest within the meaning of ERISA Section 3(14)(A), 29 U.S.C. § 1002(14)(A).

18. Ezrine performed tasks related to the daily administration of the Health Plan. Ezrine is therefore also a party-in-interest for the Health Plan within the meaning of ERISA Section 3(14)(B), 29 U.S.C. § 1002(14)(B).

#### **Establishing the Plans**

19. On or about August 9, 2010, Silva and MACSE established the Retirement Plan and Health Plan.

20. The Plans were funded through employer contributions made by AmeriGuard pursuant to the CBA.

21. Since the establishment of the Retirement Plan, Silva has been the only trustee of the Plan.

22. Since the establishment of the Health Plan, Silva has served as the trustee of the Plan.

23. Since the establishment of the Retirement Plan, MACSE and Silva were this plan's administrator.

24. Since the establishment of the Health Plan, SEBI and Ezrine served as that plan's administrators.

25. The Health Plan has never had a plan document signed and executed by representatives of the AmeriGuard and MACSE. Thus, the Health Plan has never had documents that provide for:

- a. one or more named fiduciaries who jointly or severally have authority to control and manage the operation and administration of the Health Plan,
- b. a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of Title I of ERISA,
- c. any procedure under the Health Plan for allocation of responsibilities for the operation and administration of the Health Plan,
- d. a procedure for amending the Health Plan and for identifying the persons who have authority to amend the Health Plan,
- e. the bases on which contributions are made to and benefits and administrative expenses are paid from the Health Plan, and

- f. a trust document naming a trustee or trustees with exclusive authority and discretion to manage and control the assets of the Health Plan.

**AmeriGuard Failed to Participate in  
the Administration of the Plan**

26. AmeriGuard knew or should have known that Section 302 of the Taft-Hartley Act, codified at 29 U.S.C. § 186, generally prohibits employers from giving money to a union. One exception to this rule is the transfer of money from employer to a trust that is equally administered by employees and employers, has a written agreement providing the detailed bases on which payments are to be made, procedures when employers and the union are deadlocked, and provisions for an annual audit of the trust.

27. AmeriGuard have never appointed or even attempted to appoint a separate employer trustee to administer the Plans.

28. AmeriGuard never took any actions to monitor the Health Plan trustee or administrators.

29. AmeriGuard never took any actions to monitor the Retirement Plan trustee or administrators.

**Funding the Plans**

30. During the relevant period, AmeriGuard sent MACSE three checks on a monthly basis: one for union dues; one for Health Plan contributions; and one for the Retirement Plan contributions.

**The Plans Assets Were Coominged with MACSE's Assets**

31. From August 2010 until approximately October 2012, MACSE deposited all three checks into MACSE's general operating account, commingling the Plans assets with the funds of MACSE. As a result, those Plan assets were not held in trust.

32. In approximately October 2012, MACSE began depositing the Retirement Plan contributions into a trust account (hereinafter, the "MACSE Pension Fund" account).

**Administration of the Plans and Authority of Plan Assets**

33. During the relevant period, after its receipt of Retirement Plan contributions, MACSE would generally write a check to the Retirement Plan asset custodian for the amount owed the Retirement Plan.

34. During the relevant period, Ezrine provided the Retirement Plan's third-party administrator with Retirement Plan participant contribution information.

35. During the relevant period, after its receipt of Health Plan contributions, MACSE would generally write a check to the SEBI for the amount owed the Health Plan.

36. Silva had signatory authority over both the MACSE general operating account and the MACSE Pension Fund account.

37. Ezrine had signatory authority over the Health Plan account.

38. From the establishment of the Plans, employees that could demonstrate alternate health coverage were allowed to opt out all or some Health Plan coverage and have all or a portion of their Health Plan contributions instead forwarded to the Retirement Plan. This right was expanded in August 2011 with an addendum to the collective bargaining agreement.

**The Health Plan Was Improperly Charged Administrative Fees by  
MACSE, Silva, Ezrine, and SEBI**

39. When the Health Plan was established, Silva determined on behalf of both MACSE and the Plan that MACSE would charge the Health Plan a fee that was 5% of the monthly Health Plan contributions ("5% fee") for its administrative services.

40. There was no written contract for the administrative services provided by MACSE or for the fees charged by MACSE to the Health Plan.

41. Between approximately August 2010 and May 2013, MACSE received payments from the Health Plan that were in excess of the 5% fee.

42. There was no contract or agreement justifying the payments to MACSE that were in excess of the 5% fee.

43. When the Health Plan was established, Silva, on behalf of the Plan, and Ezrine, on behalf of himself and SEBI, determined SEBI would charge the Health Plan a 5% fee for its administrative services.

44. There was no contract for the administrative services provided by SEBI or for the fees charged by SEBI to the Health Plan.

45. Between August 2010 and May 2013, SEBI received payments from the Health Plan that were in excess of the 5% fee.

46. There was no contract or agreement justifying the payments to SEBI that were in excess of the 5% fee.

47. Ezrine and Becker Benefit Group selected insurance plans which provided benefits to Health Plan participants. Ezrine received a brokerage commission in payment for this.

**Health Plan Assets Were Improperly Used To  
Pay Retirement Plan Expenses**

48. On multiple occasions during the relevant period, Health Plan assets were used to pay the cost of the third-party administrator for the Retirement Plan.

49. During the relevant period, Health Plan assets were used to pay a fee to the Internal Revenue Service for a Retirement Plan expense.

**Health Plan Assets Were Improperly Used to  
Pay MACSE's Expenses**

50. On multiple occasions during the relevant period, Silva directed SEBI and Ezrine to transfer plan assets from the Health Plan to MACSE to pay for MACSE's activities involving arbitrations and grievances.

51. On multiple occasions during the relevant period, Ezrine authorized the transfer of Health Plan assets to MACSE. These assets were then used by MACSE to repay a loan made by Ricardo Silva & Associates, Inc. to MACSE.

**MACSE Improperly Kept Health Plan Contributions**

52. During the relevant period, MACSE did not forward all of the Health Plan contributions it received from AmeriGuard to the Plan.

**Administration and Operation of The Retirement Plan**

53. During the relevant period, no Retirement Plan assets were used to pay any Retirement Plan administrative fees.

**Retirement Plan Assets Were Improperly  
Transferred to MACSE**

54. On multiple occasions during the relevant period, Silva and MACSE authorized the transfer of plan assets from the MACSE Pension Fund to the MACSE general operating account.

**Excess Funds from the Health Plan Were Not All  
Forwarded to the Retirement Plan**

55. During the relevant period, as permitted by the collective bargaining agreement some employees opted out of the Health Plan and demanded that the eligible portion of their Health Plan contributions be deposited in the Retirement Plan. Defendants Silva, MACSE, SEBI, and Ezrine did not

deposit those contributions into the Retirement Plan. Instead, these Retirement Plan assets remained in the Health Plan.

**Defendants Silva, MACSE, Ezrine, and SEBI Each Knew of  
the Other Defendants' Actions**

56. During the relevant period, Silva, as CEO of MACSE and Ricardo Silva Associates, Inc., knew the facts described in Paragraphs 1 through 55 above.

57. During the relevant period, Ezrine, as the owner of SEBI, knew the facts described in Paragraphs 1 through 52 above.

58. During the relevant period, Silva, as CEO of MACSE and Ricardo Silva Associates, Inc., took no steps to stop or remedy the fiduciary breaches of MACSE, Ezrine, SEBI, or AmeriGuard, as described in Paragraphs 1 through 55 above.

59. During the relevant period, Ezrine, as the owner of SEBI, took no steps to stop or remedy the fiduciary breaches of Silva, MACSE, SEBI, or AmeriGuard as described in Paragraphs 1 through 52 above.

**Violations**

60. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by referenced the averments and allegations of paragraphs 1 through 59, inclusive.

**Health Plan Violations**

61. By the actions and conduct described in Paragraphs 1 through 52, 56 through 59, Defendants MACSE, Silva, and AmeriGuard:

a. failed to execute a plan document that properly appointed Plan fiduciaries and failed to execute written procedures for the administration of the Health Plan and its assets and amendments to the Plan in violation of ERISA Section 402, 29. U.S.C. § 1102 and

b. failed to ensure that all assets of the Health Plan were held in trust by one or more trustees, in violation of Section 403(a) of ERISA, 29 U.S.C. § 1103(a).

62. By the actions and conduct described in Paragraphs 1 through 52, Defendants MACSE, Silva, SEBI, Ezrine, and AmeriGuard:

a. failed to discharge their duties with respect to the Health 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 Health Plan, in violation of Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A) and

b. failed to discharge their duties with respect to the Health 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 Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B).

63. By the actions and conduct described in Paragraphs 1 through 52, Defendants MACSE, Silva, SEBI, and Ezrine:

a. caused the Health Plan to engage in transactions which involved the furnishing of services between parties-in-interest, in violation of ERISA Section 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C);

b. caused the Health Plan to transfer plan assets to parties-in-interest, in violation of ERISA Section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D); and

64. By the actions and conduct described in Paragraphs 1 through 52, Defendants MACSE and Silva caused the Health Plan to engage in prohibited transactions in violation of ERISA Section 406(b)(1), 29 U.S.C. § 1106(b)(1).

65. By the actions and conduct described in Paragraphs 1 through 52, Defendants MACSE and Silva caused the Health Plan to engage in prohibited transactions in violation of ERISA Section 406(b)(2), 29 U.S.C. § 1106(b)(2).

66. By the actions and conduct described in Paragraphs 1 through 52, Defendants Silva and Ezrine caused the Health Plan to engage in prohibited transactions in violation of ERISA Section 406(b)(3), 29 U.S.C. § 1106(b)(3).

67. By the actions and conduct described in Paragraphs 1 through 52, Defendants Ezrine and SEBI knowingly participated in MACSE and SEBI's prohibited transactions relating to the administrative fees SEBI was paid. Because Defendants Ezrine and SEBI participated in these prohibited transactions, they are subject to appropriate relief, including disgorgement of unjust enrichment, pursuant to Section 502(a)(5).

68. By the actions and conduct described in Paragraphs 1 through 52, Defendants MACSE and Silva knowingly participated in Ezrine's prohibited transaction relating to the brokerage commissions Ezrine received for selecting insurance providers for Health Plan participants. Because Defendants MACSE and Silva knowingly participated in this prohibited transaction, they are subject to appropriate relief, including disgorgement of unjust enrichment, pursuant to Section 502(a)(5).

69. By participating knowingly in the fiduciary breaches of one another, knowing such acts or omissions to be breaches of fiduciary duty, MACSE, Silva, SEBI, and Ezrine are each liable for the

other's breaches of fiduciary responsibility to the Health Plan, pursuant to Section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1).

70. By failing to comply with the Section 404(a)(1) of ERISA in the administration of their specific fiduciary responsibility and each thereby enabling the other to commit a breach of MACSE, Silva, SEBI, Ezrine and AmeriGuard are liable for each other's breaches of fiduciary responsibility to the Health Plan, pursuant to Section 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2).

71. MACSE, Silva, SEBI, and Ezrine, as fiduciaries of the Health Plan, by failing to make reasonable efforts under the circumstances to remedy the breaches of which they had knowledge, are each liable for the other's Health Plan fiduciary breaches, pursuant to Section 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3).

#### **Retirement Plan Violations**

72. By the actions and conduct described in Paragraphs 1 through 38 and 53-55, Defendants MACSE and Silva failed to ensure that all assets of the Retirement Plan were held in trust by one or more trustees, in violation of Section 403(a) of ERISA, 29 U.S.C. § 1103(a).

73. By the actions and conduct described in Paragraphs 1 through 38 and 53-55, Defendants MACSE, Silva, and AmeriGuard:

a. failed to discharge their duties with respect to the Retirement 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 Retirement Plan, in violation of Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A) and

b. failed to discharge their duties with respect to the Retirement 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 Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B).

74. By the actions and conduct described in Paragraphs 1 through 37 and 53-55, Defendants MACSE and Silva:

a. caused the Retirement Plan to engage in prohibited transactions in violation of ERISA Section 406(b)(1), 29 U.S.C. § 1106(b)(1) and

b. caused the Retirement Plan to engaged in prohibited transactions in violation of ERISA Section 406(b)(2), 29 U.S.C. § 1106(b)(2).

75. By participating knowingly in the fiduciary breaches of one another, knowing such acts or omissions to be breaches of fiduciary duty, MACSE and Silva are each liable for the other's breaches of fiduciary responsibility to the Retirement Plan, pursuant to Section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1).

74. By failing to comply with the Section 404(a)(1) of ERISA in the administration of their specific fiduciary responsibility and each thereby enabling the other to commit a breach of MACSE, Silva, and AmeriGuard are liable for each other's breaches of fiduciary responsibility to the Retirement Plan, pursuant to Section 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2).

76. MACSE and Silva as fiduciaries of the Retirement Plan, by failing to make reasonable efforts under the circumstances to remedy the breaches of which they had knowledge, are each liable for the other's Retirement Plan fiduciary breaches, pursuant to Section 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3).

**Prayer for Relief**

WHEREFORE, the Secretary of Labor prays that this Court enter an Order:

1. Requiring Defendants MACSE, Silva, SEBI, Ezrine, and AmeriGuard to jointly and severally restore all losses caused to the Plans as a result of their fiduciary breaches;
2. Permanently removing Defendants MACSE, Silva, SEBI, and Ezrine as a fiduciary of the Plans;
3. Barring Defendant MACSE, Silva, SEBI, and Ezrine from becoming a fiduciary for any ERISA plan in the future;
4. Appointing an independent fiduciary, appropriately bonded pursuant to ERISA § 412, 29 U.S.C. § 1112, with control over the Plans and its assets at the expense of the Defendants AmeriGuard, MACSE, Silva, SEBI, and Ezrine;
5. Requiring Defendants AmeriGuard, MACSE, Silva, SEBI, and Ezrine to, in cooperation with the independent fiduciary, distribute the current assets of the Plans to the participants and beneficiaries, and remedy the administrative and regulatory consequences of the failure to jointly administer the Plans;
6. Barring the Defendants AmeriGuard, MACSE, Silva, SEBI, and Ezrine from engaging in any future violations of ERISA;
7. Awarding, plaintiff, Secretary of Labor, the costs of this action; and

8. Granting such other relief as may be equitable, just, and proper.

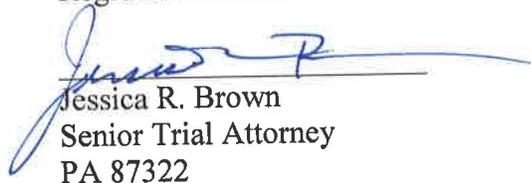
Respectfully Submitted,

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