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SOL:JC

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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

:

COMPLAINT

:

Plaintiff,

:

Civil Action No.

v.

:

LILY POND NURSING HOME SAVINGS PLAN

:

Defendant.

:

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor
(the “Secretary”), to the best of his knowledge, information and belief alleges:

1. This action arises under Title 1 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 against Lily Pond Nursing Home Savings Plan (the “Plan”); to enjoin practices in violation of Title 1 and to obtain such further equitable relief as may be appropriate to redress violations of Title 1 of ERISA and to enforce the provisions of Title 1 of ERISA.

Jurisdiction, Parties and Venue

2. Defendant Plan is an employee pension benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3) and is covered by ERISA, pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a). The Plan was sponsored by Lily Pond Nursing Home (the “Company”). The Plan’s last known address was 150 Lily Pond Avenue, Staten Island, New York 10305.

3. Miriam Rosenberg was the sole trustee of the Plan and a fiduciary with respect to the Plan within the meaning of ERISA Section 3 (21)(A), 29 U.S.C. § 1002(21)(A). Miriam Rosenberg died in July of 2013. No successor Trustee was named.

4. Jurisdiction over this action is conferred by ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

5. Venue for this action lies in the Eastern District of New York, pursuant to ERISA 502(e)(2), 29 U.S.C. § 1132(e)(2), because the plan was administered within the Eastern District of New York.

6. The Plaintiff, Secretary of Labor, has authority to bring this action under ERISA §§ 502(a)(2) & (5), 29 U.S.C. §§ 1132(a)(2) & (5).

Allegations

7. The plan was established on or about January 1, 1990.

8. On information and belief, Miriam Rosenberg served as the sole trustee of the plan since it was established.

9. Miriam Rosenberg was the only individual with signatory authority and the only trustee of the plan, pursuant to ERISA § 3(21), 29 U.S.C. § 1002(21).

10. At all times relevant during this action Miriam Rosenberg was the only fiduciary to the Plan with responsibilities for its administration, distribution of assets and day to day management.

11. Miriam Rosenberg stopped performing fiduciary duties on or about January 2007 and did not ensure the appointment of a new fiduciary to manage the Plan or oversee the distribution of the Plan's assets. The Company ceased operations in 2012, and Ms. Rosenberg died in 2013. No individuals have come forward to assume any fiduciary responsibility for the Plan or to distribute its assets to the 7 remaining participants.

12. The plan has not been formally terminated.

13. AXA Equitable Life Insurance Company, located at 1290 Avenue of the Americas, New York, NY 10104 has been the custodian of the Plan assets at all times relevant to this litigation.

14. As of December 31, 2014 the value of the Plan assets held with AXA Equitable Life Insurance Company, the Plan custodian, totaled \$129,223.36.

15. Without a duly appointed Trustee or other fiduciary of the plan to instruct an asset custodian to distribute the Plan's assets, the Plan's participants are unable to obtain distributions of funds from the Plan.

Violations

16. By the conduct and circumstances described in paragraphs 7-15, the Plan exists without a named fiduciary and without its assets being held in trust by a trustee in violation of ERISA §§ 402 and 403, U.S.C. §§ 1102 and 1103.

Prayer for Relief

WHEREFORE, pursuant to section 502(a)(5) of ERISA, 29 U.S.C. § 1132(a)(5), plaintiff prays that the Court issues an order:

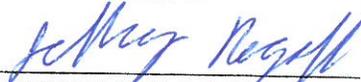
- A. Appointing an independent trustee and fiduciary to administer the plan and distribute the Plan's assets to its participants and beneficiaries;
- B. Ordering such further relief that is appropriate and just.

DATED:

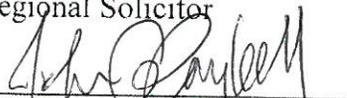
New York, New York



M. PATRICIA SMITH
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