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SOL: JC
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UNITED STATES DISTRICT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

v.

ASTRO COMMUNICATIONS
401(K) PLAN,

Defendant.

:
:
: Civil Action File
:
: No.
:
: COMPLAINT

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 to enjoin acts and practices which violate the provisions of Title 1 of ERISA, and to obtain other appropriate equitable relief to redress violations and enforce the provisions of that Title pursuant to section 502(a)(5).

Jurisdiction, Parties and Venue

2. Jurisdiction over this action is conferred upon the Court by section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

3. Astro Communications 401(k) Plan (hereafter “the Plan”) is an employee benefit plan within the meaning of § 3(3) of ERISA, 29 U.S.C. § 1002(3). The Plan was sponsored by Astro Communications (hereinafter “Astro”), an employer of employees covered by the Plan and the last known address was 79 Alexander Avenue, Bronx, New York 10454. On information and

belief, this Plan has been without an active trustee since about August 2008, when the Trustee abandoned the Plan and failed to terminate the Plan and effectuate the distribution of assets.

4. Venue for this action lies in the Southern District of New York where the plan sponsor was located, pursuant to § 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

Factual Allegations

5. To the best of the Secretary's knowledge, information and belief, Marvin Robbins Jr. (hereinafter "Trustee") was the Trustee of the Plan and was fiduciary to the Plan with responsibilities for its day-to-day management and operation.

6. To the best of the Secretary's knowledge, information and belief, the Trustee stopped performing his fiduciary duties without ensuring the appointment of a new fiduciary to oversee the distribution of the Plan's assets.

7. To the best of the Secretary's knowledge, information and belief, no individual or entity has taken fiduciary responsibility for the operation and administration of the Plan and its assets. As a result, the Plan's participants and beneficiaries have been unable to gain access to or information about their individual account balances.

8. The Plan has not been formally terminated.

9. On information and belief, no one has been actively managing the Plan or its assets. As a result, the Plan's participants and beneficiaries have been unable to gain access to or information about their individual account balances.

10. On information and belief, the custodian of funds is State Street Bank & Trust Company (hereinafter "State Street Bank Trust"). To the best of the Secretary's knowledge, information and belief, the assets of the Plan held by State Street Bank Trust have a value of approximately \$13,841.83 in assets as of May 20, 2015.

11. On information and belief, the custodian of records for the Plan was ADP Retirement Services.

Violations

12. Because of the facts and circumstances set forth in Paragraphs 5-11 above, the Plan does not have a named fiduciary or trustee with exclusive authority and discretion to manage and control its assets as required by ERISA § 402(a), 29 U.S.C. § 1102(a); and ERISA § 403(a), 29 U.S.C. § 1103(a); and there is no one other than this Court with the authority to appoint a new trustee.

13. Because of the facts and circumstances set forth in Paragraphs 5-11 above, participants are unable to access their account balances, either to reinvest them in other tax-qualified retirement savings vehicles before retirement, or to draw them down upon retirement. Because the basis upon which payments are made from the plan are not and cannot be specified without a trustee, the plan exists in violation of ERISA § 402(b)(4), 29 U.S.C. § 1112(b)(4).

Prayer for Relief

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

A. Appoint an independent fiduciary to administer the Plan, and effectuate the distribution of Plan assets to the participants and beneficiaries and the Plan's termination and,

B. Provide such other relief as may be just and equitable.

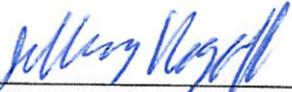
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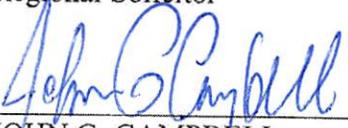
MAR 24 2016

New York, New York

Respectfully submitted,


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Solicitor of Labor


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