

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

v.

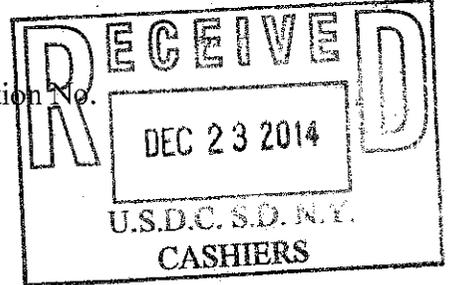
MATTI KON and the  
BLITZ SYSTEMS, INC. 401(k) PLAN,

Defendants.

COMPLAINT

Civil Action No.

14-cv-



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 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 against Matti Kon and the Blitz Systems, Inc. 401(k) Plan (the "Plan") to enjoin practices in violation of Title I and to obtain such further equitable relief as may be appropriate to redress violations of Title I of ERISA and to enforce the provisions of Title I of ERISA.

**JURISDICTION AND PARTIES**

2. The 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 Blitz Systems, Inc. (the "Company"). The Plan's last known address was 215 Lexington Avenue, Floor 17, New York, NY 10016.

3. Defendant Matti Kon at all relevant times to this action has been a trustee of the Plan and a fiduciary with respect to the Plan within the meaning of ERISA § 3 (21)(A), 29 U.S.C. § 1002(21)(A).

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 Southern District of New York, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan was administered in New York, NY, within the Southern District of New York.

6. The Secretary has the 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 October 10, 1997.

8. Upon information and belief, Matti Kon has served as the sole trustee of the Plan since it was established.

9. Matti Kon is 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 Matti Kon was the only fiduciary of the Plan with responsibilities for its administration and the distribution of its assets.

11. Matti Kon stopped performing his fiduciary duties on or about June 2003 when the Company ceased operations and did not ensure the appointment of a new fiduciary to manage the Plan or oversee the distribution of the Plan's assets. No individuals have come forward to assume any fiduciary responsibility for the Plan or to distribute its assets to the 10 remaining participants.

12. Mr. Kon has not responded to the Secretary's attempts to communicate with him.
13. The Plan has not been formally terminated.
14. T. Rowe Price Investment Services, Inc., located at 100 East Pratt Street, Baltimore, MD 21202 has been the custodian of the Plan assets at all times relevant.
15. As of June 26, 2014 the value of the Plan assets held with T. Rowe Price Investment Services, Inc., was \$42,612.64.
16. 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.

#### **VIOLATION**

17. By the conduct and circumstances described in paragraphs 6-16, 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**

- A. Removing Defendant Matti Kon as trustee to the Plan;
- B. Appointing an independent trustee and fiduciary to administer the Plan and distribute the Plan's assets to its participants and beneficiaries;
- C. Ordering that any expenses associated with the appointment of the independent fiduciary and subsequent administration and termination of the Plan be charged to Defendant Matti Kon;
- D. Requiring the offset of benefits due under the Plan against the amount Kon owes the Plan because of his breaches, including the expenses associated with the appointment of the independent fiduciary; and

E. Ordering such further relief that is appropriate and just.

DATED: December 22, 2014  
New York, NY

  
M. PATRICIA SMITH  
Solicitor of Labor

  
JEFFREY S. ROGOFF  
Regional Solicitor

  
DARREN COHEN  
Counsel for ERISA

U.S. Department of Labor,  
*Attorneys for Plaintiff, Thomas E. Perez,*  
*Secretary of Labor*

U.S. Department of Labor  
Office of the Regional Solicitor  
201 Varick Street, Room 983  
New York, NY 10014  
(646) 264-3684  
(646) 264-3660 (fax)  
Cohen.darren@dol.gov  
NY-SOL-ECF@dol.gov