

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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

Plaintiff, :

v. :

SAMUEL McCUTCHIN, :
CYNTHIA LINDENMAN, :
SNYDER HEATING COMPANY, INC., AND :
SNYDER HEATING COMPANY 401(k) PLAN, :

Defendants. :

Civil Action

No. 2:13-cv-05492-CMR

FILED

APR 17 2014

MICHAEL KUNE, Clerk
By _____, Dep. Clerk

DEFAULT JUDGMENT

Plaintiff has filed her Complaint herein, and Defendants Samuel McCutchin, Cynthia Lindenman, and Snyder Heating Company, Inc., (“Snyder Heating”) failed to answer or otherwise defend against the Complaint. Plaintiff has moved the Court to enter a Default Judgment in favor of Plaintiff and against Defendants McCutchin, Lindenman, and the Snyder Heating for failure to answer or otherwise defend against plaintiff’s Complaint. Defendant Snyder Heating Company 401(k) Plan (“Plan”) is a Rule 19 defendant only and no violations are alleged against the Plan.

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED by the Court:

- A. That Defendants McCutchin, Lindenman, and Snyder Heating restore, jointly and severally, the loss of \$20,725.85 in missing employee contributions, \$8,225.97 in lost opportunity costs, and the costs of an Independent Fiduciary for the Plan.
- B. The Plan shall set off any participant accounts of McCutchin and Lindenman held in the Plan against the amount of losses enumerated in paragraph A, including lost opportunity costs and the cost of the Independent Fiduciary, resulting from the

Defendants' fiduciary breaches, as authorized by 29 U.S.C. § 1056(d)(4), if the previously identified losses are not otherwise restored to the Plan by Defendants.

- C. That in connection with the setoff referred to in paragraph B hereof, any spouse of McCutchin or Lindenman retains the right, if he or she has any, to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to 29 U.S.C. § 1055(a)(1) or under a qualified preretirement survivor annuity provided pursuant to 29 U.S.C. § 1055(a)(2), determined in accordance with 29 U.S.C. § 1056(d)(5).
- D. That the Plan shall redistribute any restitution paid by McCutchin or Lindenman and any amounts set off from their Plan accounts to the remaining participants in amounts necessary to restore their losses incurred as a result of the Defendants' fiduciary breaches. No part of the amounts restored or the forfeited individual account balances shall be redistributed to the individual Plan accounts of McCutchin or Lindenman.
- E. That Defendants McCutchin, Lindenman, and Snyder Heating are removed from their positions as fiduciaries with respect to Plan and are permanently enjoined from serving as trustees, fiduciaries, advisors, or administrators to any employee benefit plan, as that term is defined at Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and from serving in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan.

- F. That, in accordance with Exhibit B to the Secretary's Memorandum in Support of Motion for Default Judgment, Metro Benefits, Inc. is appointed as Independent Fiduciary over the Plan with plenary authority over the administration, management, and disposition of the assets of the Plan and is directed to marshal assets in behalf of the Plan, to pursue claims in behalf of the Plan, and to take all appropriate action for the liquidation of the Plan and the distribution of benefits to the Plan's participants and beneficiaries. Metro Benefits, Inc. is located at 8150 Perry Highway, Pittsburgh, Pennsylvania and its phone number is 412-847-7600.
- G. That for the services performed pursuant to this Default Judgment, Metro Benefits, Inc. may receive not more than \$6,100.00 in compensation for performing its duties as an Independent Fiduciary. This amount will be paid from the Plan but shall be included in the amount Defendants are required to restore to the Plan.
- H. That the Defendants McCutchin, Lindenman, and Snyder Heating, their agents, representatives, servants, employees and all persons acting by or under their authority shall cooperate fully with the Independent Fiduciary in its efforts to administer the Plan by delivering or otherwise making available to the Independent Fiduciary all books, records, bank accounts, brokerage statements, electronic hardware and software, and data files, however stored, relating in any manner to the management and operation of the Plan as well as all corporate records relating to employee elective salary deferrals to the Plan, including but not limited to payroll records, cancelled checks and W-2 forms.

- I. That Defendants McCutchin, Lindenman, and Snyder Heating are permanently enjoined from violating Title I of ERISA.
- J. That this Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Default Judgment.
- K. That the Court directs the entry of this Default Judgment as a final order as to Defendants McCutchin, Lindenman, and Snyder Heating.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that costs will be allowed the Plaintiff against Defendants McCutchin, Lindenman, and Snyder Heating

APPROVED:

Dated: 4-16-14


Honorable Cynthia M. Rufe
United States District Judge