

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

THOMAS E. PEREZ , Secretary of Labor,	:
United States Department of Labor,	:
	:
Plaintiff,	:
	:
v.	:
	:
MARTIN R. BOTHWELL III , and	:
THREESOURCE, INC. 401(k) PLAN ,	:
	:
Defendants.	:

CIVIL ACTION
Case No. 15-cv-2044
Equitable Relief Is Sought

COMPLAINT

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor (Secretary), alleges:

JURISDICTION AND VENUE

1. This cause of action arises under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. § 1001, et seq., and is brought by the Secretary under ERISA § 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5), to enjoin acts and practices that violate the provisions of Title I of ERISA, to obtain appropriate relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

2. This court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

3. The ThreeSource, Inc. 401(k) Plan (Plan) is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3). For this reason, it is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

4. Venue for this action lies in the Central District of Illinois, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). This is because the Plan was administered in Manteno, Kankakee County, Illinois, within this district.

5. The Plan's Adoption Agreement originally named ThreeSource, Inc. as the Plan Administrator. According to the Illinois Secretary of State, ThreeSource, Inc. was involuntarily dissolved on September 13, 2013 and is no longer in business.

DEFENDANTS

6. The Plan was originally effective on January 1, 1996 and restated and amended on December 1, 2009.

7. Defendant Martin R. Bothwell III (Bothwell) was appointed as the Plan Administrator on March 7, 2013; therefore, Defendant Bothwell is a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

8. The Plan is named as a defendant herein pursuant to Federal Rule of Civil Procedure 19(a) solely to assure that complete relief can be granted.

FAILURE TO ISSUE PLAN DISTRIBUTIONS

9. Paragraphs 1 through 8 above are realleged and incorporated herein by reference.

10. Frontier Trust Company serves as the Plan's asset custodian.

11. ThreeSource, Inc. closed on June 30, 2012.

12. ThreeSource, Inc. was involuntarily dissolved by the State of Illinois on September 13, 2013.

13. On May 23, 2013, Defendant Bothwell instructed Ascensus Inc., the third party administrator, to terminate the Plan.

14. The Summary Plan Description stated that upon termination of the Plan, participants were required to take their entire account balance from the Plan.

15. The Plan Adoption Agreement stated that the fiduciary will roll over Plan participants' accounts with a vested balance of \$5,000 or more to an individual retirement account at the time of termination.

16. The Summary Plan Description stated that if an employee's vested account balance is between \$1,000 and \$5,000 at the time of termination, the employer will roll the balance over to an individual retirement account unless the employee takes the balance in the form of a distribution.

17. The Summary Plan Description stated that if an employee's vested account balance is \$1,000 or less at the time of termination, the employer will distribute the balance as a lump sum unless instructed otherwise.

18. As of July 16, 2014, the Plan had 19 participants with vested account balances totaling \$65,723.00.

19. In 2013, at least two plan participants submitted requests to Defendant Bothwell asking for distributions of their plan accounts.

20. Defendant Bothwell failed to distribute Plan assets to either of the plan participants.

21. Defendant Bothwell failed to distribute plan assets to the other 17 plan participants or roll the assets over as identified by the Summary Plan Description.

22. Defendant Bothwell has failed to administer the Plan since approximately June 10, 2013.

23. By the facts described in paragraphs 11-22 above, Defendant Bothwell:
a. failed to discharge his duties solely in the interest of the participants and beneficiaries of the Plan and for the exclusive purpose of providing benefits to participants and

their beneficiaries and defraying reasonable expenses of Plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. failed to discharge his duties 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 ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B); and

c. failed to discharge his duties solely in the interest of the participants and beneficiaries of the Plan in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of ERISA, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Defendant Bothwell from violating the provisions of Title I of ERISA;

B. Removing Defendant Bothwell from serving as a fiduciary for the Plan;

C. Permanently enjoining Defendant Bothwell from serving as a fiduciary or service provider to any ERISA-covered plan;

D. Appointing an independent fiduciary to terminate the Plan consistent with the Plan's governing document, the Internal Revenue Code, and ERISA, distribute the Plan's assets to the participants and beneficiaries, and conclude any plan-related matters connected with the proper termination of the plan;

E. Ordering Defendant Bothwell to pay all reasonable fees and expenses incurred by the independent fiduciary in administering and terminating the Plan;

F. Awarding the Secretary the costs of this action; and

G. Ordering such further relief as is appropriate and just.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

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