FILED
AUG 30 2011
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION

HILDA L. SOLIS, Secretary of Labor, United States Department of Labor, Plaintiff,	
v.	Case No. 10-cv-50113
JOSEPH M. PHELAN, individually and as fiduciary to the **PHEZER ENTERPRISES, INC. HEALTH PLAN**, and the **PHEZER ENTERPRISES, INC. HEALTH PLAN**, Defendants.	Hon. Philip G. Reinhard

CONSENT ORDER AND JUDGMENT

Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor, ("Secretary") by counsel, pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001 et seq., filed a Complaint against defendant Joseph M. Phelan alleging breaches of his fiduciary duties under ERISA §§403 (a) and (c)(1), 29 U.S.C. 1103(a) and (c)(1); 404 (a)(1)(A), 29 U.S.C. §1104 (a)(1)(A); 406 (a)(1)(D), 29 U.S.C. §1106(a)(1)(D); and 406(b)(1) and (2), 29 U.S.C. §1106 (b)(1) and (2) regarding the Phezer Enterprises, Inc. Health Plan ("Plan"). The Plan was named as a Defendant in this action solely to ensure complete relief under Rule 19(a) of the Federal Rules of Civil Procedure.

Defendant Joseph M. Phelan has waived service of the Complaint and has admitted to the jurisdiction of this Court over him and the subject matter of the action. Defendant Joseph M. Phelan neither admits nor denies the allegations contained in the Secretary's Complaint.

The Secretary and Defendant Joseph M. Phelan have agreed to resolve all matters in controversy in this action (except for the imposition by Plaintiff of any penalty pursuant to ERISA §502(l), 29 U.S.C. 1132(l)), and any proceedings related thereto), and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA §502(l) in connection with the violations alleged in this matter, the "applicable recovery amount" shall include all amounts paid in accordance with this Consent Order and Judgment.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Defendant Joseph M. Phelan is permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. sec.1001, *et seq.*

2. Defendant Joseph M. Phelan, in his capacity as a fiduciary to the Plan, failed to ensure that $10,470 in employee health premium contributions for the period from May 3, 2008 through July 12, 2008 was forwarded to the Plan.

3. Defendant Joseph M. Phelan is liable to the Plan and shall pay directly to the Plan's participants the total amount of $10,839, consisting of $10,470 in unremitted employee health premium contributions for the period from May 3, 2008 through July 12, 2008 and $369 in associated lost opportunity costs for the unremitted employee health premium contributions.[1]

4. Payments by Defendant Joseph M. Phelan to the Plan's participants pursuant to paragraph three above shall be made to the individuals, except for Defendant Joseph M. Phelan, who were (1) employees of Phezer Enterprises, Inc., (2) Plan participants during the period from May 3, 2008 through July 12, 2008, and (3) had voluntary employee health premium contributions withheld from their pay for contribution to the Plan during this period where such contributions were never remitted to the Plan. Defendant Joseph M. Phelan, on behalf of the Plan, shall allocate

[1] Defendant Joseph Phelan filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois, Western Division, case number 09-70398. That proceeding is still pending. Restitution of any monetary portion pursuant to this Consent Order and Judgment shall be consistent with the Bankruptcy Code. The bankruptcy court entered an order providing that Defendant Phelan's total debt of $10,839 to the Plan was non-dischargeable on May 20, 2010.

the aforementioned money to the individual Plan participants in an amount equal to each individual's unremitted employee health contributions and lost opportunity costs apportioned on a *pro rata* basis.

5. Within ten days of completion of payment as set forth in paragraphs 3-4 of this Consent Order and Judgment, above, Defendant Phelan shall provide proof of such payment to Steven L. Haugen, Regional Director of the Employee Benefits Security Administration ("EBSA") at 230 S. Dearborn St., Suite 2100, Chicago, IL 60604.

6. Defendant Joseph M. Phelan shall be permanently enjoined from serving or acting as a fiduciary or service provider with respect to any employee benefit plan subject to ERISA.

7. Each party agrees to bear his/her/its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding, including attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

8. The Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Judgment and Order.

9. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor.

DATED this 30th day of Aug., 2011.

HONORABLE PHILIP G. REINHARD
UNITED STATES DISTRICT COURT JUDGE

The undersigned apply for and consent to the entry of this Consent Order and Judgment:

FOR THE DEFENDANTS:
Defendants hereby consent to
the entry of this judgment
this 26 day of July, 2011.

JOSEPH M. PHELAN
Individually and as fiduciary for
the Phezer Enterprises, Inc. Health Plan

PATRICK JONES, ESQ.
Attorney at Law
Attorneys for Joseph M. Phelan
Smith Amundsen, LLC
150 N. Michigan Ave., Suite 3300
Chicago, Illinois 60601
Telephone: 312-894-3234

FOR THE SECRETARY OF LABOR:
Plaintiff hereby consents to
the entry of this judgment
this 15th day of August, 2011.

M. PATRICIA SMITH
Solicitor of Labor

JOAN E. GESTRIN
Regional Solicitor

MARLA J. HALEY
Trial Attorney
Attorneys for Hilda L. Solis
Secretary of Labor,
United States Department of Labor, Plaintiff
230 South Dearborn Street; Suite 844
Chicago, Illinois 60604
Telephone: (312)353-4455
Telefax: (312) 353-5698