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UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF NEW JERSEY

In re WILLIAM P. BOWMAN,	:	
	:	
Debtor,	:	Case No. 15-29403 (ABA)
	:	
THOMAS E. PEREZ, Secretary of	:	Chapter 7
Labor, United States Department of	:	
Labor,	:	Adv. Proc. No.
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WILLIAM P. BOWMAN,	:	
	:	
Defendant.	:	

COMPLAINT TO ESTABLISH NON-DISCHARGEABILITY OF DEBT

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

1. This action is an adversary proceeding under §§ 523(a)(4) and (c)(1) of the Bankruptcy Code, 11 U.S.C. §§ 523(a)(4) and (c)(1), to establish the non-dischargeability of a debt. The defendant debtor, William P. Bowman, is the subject of a bankruptcy proceeding in the District of New Jersey under Chapter 7 of the Bankruptcy Code, Case No. 15-29403, filed on

or about December 4, 2015.

2. On March 20, 2013, the Secretary filed a complaint in the District Court for the District of New Jersey under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.* That action was brought to secure equitable relief under § 502 of ERISA, 29 U.S.C. § 1132 -- namely, to redress violations of ERISA, to obtain restitution from employee benefit plan fiduciaries, and to enforce the provisions of Title I of ERISA. The action named Bowman, *inter alios*, as a defendant.

3. The action was settled by Consent Judgment on April 25, 2013. Defendant Bowman agreed to undertake certain payment obligations to an ERISA plan as part of that Consent Judgment. The action was styled Harris v. Bowman et al., bearing civil action number 13-cv-01716 (RMB)(JS) (the "Underlying Action").

JURISDICTION

4. The Court has jurisdiction over this proceeding under 28 U.S.C. § 157(b)(1).

5. This action is a "core proceeding" as defined by 28 U.S.C. § 157(b)(2)(I).

The Secretary, pursuant to §§ 502(a)(2) and (5) of the Act, 29 U.S.C. §§ 1132(a)(2) and (5), has the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and others who commit violations of ERISA.

Debtor's Fiduciary Status

6. At all relevant times herein, William Bowman Associates, Inc. (the "Sponsor") was an employer of employees which maintained its principal place of business at 551 Cooper Road, PO Box 330, West Berlin, New Jersey 08091.

7. At all relevant times herein, Bowman was the president and sole shareholder of the Sponsor.

8. At all relevant times herein, the William Bowman Associates, Inc. Profit Sharing 401(k) Plan (the "Plan") was and is an employee pension benefit plan within the meaning of ERISA section 3(2), 29 U.S.C. §1002(2), and was established to provide benefits to employees of the Sponsor, who were covered by a plan subject to Title I of ERISA.

9. At all relevant times herein, Bowman was the sole trustee of the Plan and exercised authority and discretionary control respecting the management and disposition of the Plan's assets, and was a fiduciary of the Plan within the meaning of ERISA section 3(21), 29 U.S.C. § 1002(21).

10. As an ERISA fiduciary, Bowman was also a fiduciary within the meaning of Bankruptcy Code section 523(a)(4), 11 U.S.C. § 523(a)(4).

Purchase of the Triad Property

11. At all relevant times herein, Bowman was the majority owner of Triad III, LLC ("Triad").

12. Triad was therefore a "party in interest" as defined by ERISA section 3(14)(G), 29 U.S.C. §1002(G).

13. On or about September of 2007, Bowman, in his capacity as the Plan's trustee, knowingly caused the Plan to purchase real estate from Triad, identified as Block 110, Lot 12, Hainesport Township, Burlington County, New Jersey (the "Triad Property").

14. Pursuant to the terms of the sale, the Plan purchased the Triad Property for \$345,000, payable in \$50,000 cash and a \$295,000 loan owed to the Plan by Crowfoot Associates.

The Triad Loan

15. Between March 7, 2007 and August 14, 2007, Bowman, in his capacity as the

Plan's trustee, knowingly caused the Plan to loan \$125,000 to Triad (the "Triad Loan") at a rate of 12% interest.

16. Of the \$125,000 loaned to Triad, Bowman documented only \$95,000 by means of a promissory note.

17. The Triad Loan was payable in full on December 31, 2007.

18. Triad has only repaid the Plan a total of \$82,935.62 under the Triad Loan, representing \$65,000 in outstanding principal and \$17,935.63 in accrued interest.

19. Bowman failed to collect the amounts due on the Triad Loan on behalf of the Plan.

20. Bowman failed to assert a claim on behalf of the Plan against Triad for the amounts due on the Triad Loan.

21. Bowman failed to investigate the feasibility of means to secure the Plan's claims against Triad for the amounts due on the Triad Loan.

The Ambience Loan

22. At all relevant times, herein, Ms. Anita Bowman was the spouse of defendant Bowman.

23. Ms. Bowman was therefore a "party in interest" as defined by ERISA section 3(14)(F), 29 U.S.C. §1002(F) and ERISA section 3(15), 29 U.S.C. §1003.

24. At all relevant times herein, Ms. Bowman did business as Ambience Interiors ("Ambience").

25. On April 2, 2007, Bowman, in his capacity as the Plan's trustee knowingly caused the Plan to loan \$200,000 to Ms. Bowman d/b/a Ambience (the "Ambience Loan").

26. The Ambience Loan was secured with real estate located at 591 Sentinel Road,

Moorestown, NJ 08057 (the "Moorestown Property").

27. Shortly after Ms. Bowman d/b/a Ambience received the proceeds of the Ambience Loan from the Plan, she transferred the full \$200,000.00 amount of the Ambience Loan, to the Sponsor (the "Sponsor Kickback").

28. At the time that defendant Bowman caused the Ambience Loan to be made, Bowman fully expected and intended that the Sponsor Kickback would be made by Ms. Bowman d/b/a Ambience.

29. The Ambience Loan was payable in full on December 31, 2007.

30. Ms. Bowman d/b/a Ambience owes the Plan a total of \$105,389.44 under the Ambience Loan, representing \$75,000 in outstanding principal and \$30,389.44 in accrued interest.

31. To date, Bowman has failed to collect the amounts due on the Ambience Loan on behalf of the Plan.

32. To date, Bowman has failed to assert a claim on behalf of the Plan against Ms. Bowman d/b/a Ambience for the amounts due on the Ambience Loan.

33. To date, Bowman has failed to investigate the feasibility of means to secure the Plan's claims against Ms. Bowman d/b/a Ambience for the amounts due on the Ambience Loan.

Violations Related to Triad Property

34. The purchase of the Triad Property by the Plan as set forth in paragraphs 11 through 14 above constitutes a sale of property (i.e., the Triad Property) between the Plan and a party-in-interest (i.e., Triad), and is therefore a prohibited transaction within the meaning of ERISA section 406(a)(1)(A), 29 U.S.C. § 1106(a)(1)(A).

35. The Plan's payment of the purchase price for the Triad Property as described in

paragraphs 11 through 14 above constitutes a direct transfer of Plan assets (i.e., \$50,000.00 in cash and the \$295,000.00 Crowfoot Loan note) to a party-in-interest (i.e., Triad), and is therefore a prohibited transaction within the meaning of ERISA section 406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D).

36. Defendant Bowman knew of the circumstances that rendered the purchase of the Triad Property illegal under ERISA sections 406(a)(1)(A) and (D), 29 U.S.C. §§1106(a)(1)(A) and (D) -- including those set out at paragraphs 9, 11, 13, and 14 above -- at the time he caused the Plan to enter into that transaction.

37. By causing the Plan to transfer its assets (i.e., \$50,000.00 in cash and the \$295,000.00 Crowfoot Loan note) to his other company (i.e., Triad), as set forth in paragraphs 11 through 14 above, Bowman knowingly caused assets of the Plan to inure to his own benefit and failed to hold the Plan's assets for the exclusive purpose of providing benefits to the Plan's participants and beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA section 403(c)(1), 29 U.S.C. § 1103(c)(1).

Violations Related to Triad Loan

38. The Triad Loan as described in paragraphs 15 through 21 above constitutes a direct lending of money (i.e., \$125,000.00) between the Plan and a party-in-interest (i.e., Triad), and is therefore a prohibited transaction pursuant to ERISA section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B).

39. The Triad Loan as described in paragraphs 15 through 21 above constitutes a direct transfer of Plan assets (i.e., \$125,000.00) for the benefit of a party-in-interest (i.e. Triad), and is therefore a prohibited transaction pursuant to ERISA section 406(a)(1)(D), 29 U.S.C. §

1106(a)(1)(D).

40. Defendant Bowman knew of the circumstances that rendered the Triad Loan illegal under ERISA sections 406(a)(1)(B) and (D), 29 U.S.C. §§1106(a)(1)(B) and (D) -- including those set out at paragraphs 9, 11, and 15-21 above -- at the time he caused the Plan to enter into that transaction.

41. Bowman's failure to collect or demand payment of the balance due under the Triad Loan after it became payable in full (i.e., December 31, 2007), as described in paragraphs 18 through 21 above constitutes an extension of credit between the Plan and a party-in-interest (i.e., Triad), and is therefore a prohibited transaction pursuant to ERISA section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B).

42. Bowman's failure to collect or demand payment of the balance due under the Triad Loan after it became payable in full (i.e., December 31, 2007), as described in paragraphs 18 through 21 above, constitutes an indirect use of Plan assets (i.e., the balance due under the Triad Loan) to a party-in-interest (i.e., Triad), and is therefore a prohibited transaction pursuant to ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

43. By causing the Plan to transfer its assets (i.e. \$125,000.00) to Bowman's other company (i.e., Triad), as set forth in paragraphs 15-21 above, Bowman caused assets of the Plan to inure to his own benefit and failed to hold the Plan's assets for the exclusive purpose of providing benefits to the Plan's participants and beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA section 403(c)(1), 29 U.S.C. § 1103(c)(1).

44. Bowman has previously stipulated that in causing the Plan to enter into the Triad Loan as set forth in paragraphs 15 through 21 above, he acted with conscious misbehavior and

extreme recklessness, sufficient to constitute defalcations while acting in a fiduciary capacity within the meaning of 11 U.S.C. § 523(a)(4).

Violations Related to the Ambience Loan

45. The Ambience Loan as described in paragraphs 22 to 33 above constitutes a direct lending of money (i.e. \$200,000.00) between the Plan and a party-in-interest (i.e. Ms. Bowman d/b/a Ambience), and is therefore a prohibited transaction pursuant to ERISA section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B).

46. Defendant Bowman knew of the circumstances that rendered the Ambience Loan illegal under ERISA section 406(a)(1)(B), 29 U.S.C. §§ 1106(a)(1)(B), -- including those set out at paragraphs 7, 9, and 22-23 above -- at the time he caused the Plan to enter into that transaction.

47. Bowman's failure to collect or demand payment of the balance due under the Ambience Loan after it became payable in full (i.e., December 31, 2007), as described more fully in paragraphs 29 through 33 above constitutes an extension of credit between the Plan and a party-in-interest (i.e. Ms. Bowman d/b/a Ambience), and is therefore a prohibited transaction pursuant to ERISA section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B).

48. The Sponsor Kickback, as set forth more fully in paragraphs 27 through 28 above, constitutes an indirect transfer of Plan assets (i.e., \$200,000.00) for the benefit of a party-in-interest (i.e. the Sponsor), and is therefore a prohibited transaction pursuant to ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

49. In causing the Plan to execute the Ambience Loan with the knowledge that \$200,000.00 of the proceeds would be funneled to the Sponsor as described in paragraphs 27 through 28 above, Bowman dealt with the assets of the Plan in his own interest and for his own

account, in violation of ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1).

50. As a result of the Sponsor Kickback, as set forth more fully in paragraphs 27 through 28 above, Bowman was aware that \$200,000.00 would inure to the benefit of the Sponsor, in violation of ERISA section 403(c)(1), 29 U.S.C. § 1103(c)(1).

51. In causing the Plan to execute the Ambience Loan with the knowledge that \$200,000.00 of the proceeds would be funneled to the Sponsor as described in paragraphs 27 and 28 above, Bowman failed to administer the Plan's assets for the exclusive purpose of providing benefits to the Plan's participants and beneficiaries and defraying reasonable expenses of administering the Plan under ERISA section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

52. Bowman has previously stipulated that, in causing the Plan to enter into the Ambience Loan with the expectation and intention that the proceeds of the Ambience Loan would be redirected to the Sponsor as set forth in paragraphs 27 through 28 above, he acted with conscious misbehavior and extreme recklessness, sufficient to constitute defalcations while acting in a fiduciary capacity within the meaning of 11 U.S.C. § 523(a)(4).

Consent Judgment and Debt Outstanding

53. As of the filing of the complaint in the Underlying Action, the losses to the Plan resulting from the prohibited transactions described above to be \$188,325.06.

54. On April 25, 2013, Bowman entered into a Consent Judgment with the Secretary in the Underlying Action, in which he stipulated to the allegations that are now set forth in paragraphs 6 through 53 of this complaint.

55. Pursuant to the terms of the Consent Judgment in the Underlying Action, the Court ordered Bowman to restore \$188,325.06 through one hundred and twenty six (126) monthly installment payments.

56. To date, Bowman has restored only \$57,000 to the Plan.

56. Bowman still owes \$131,325.06 to the Plan (the "Debt").

CLAIM FOR RELIEF

58. The Secretary hereby incorporates by reference the allegations of paragraphs 1 through 57.

59. Bowman's violations of ERISA constitute defalcation as that term is used in section 523(a)(4) of the Bankruptcy Code, 11 U.S.C. § 523(a)(4).

60. Because Bowman's Debt to the Plan arises from defalcation while he was acting in a fiduciary capacity, the Debt is non-dischargeable pursuant to section 523(a)(4) of the Bankruptcy Code, 11 U.S.C. § 523(a)(4).

PRAYER FOR RELIEF

WHEREFORE, the Secretary requests this Court to enter an Order:

1. Establishing that the Debt owed to the Plan is non-dischargeable;
2. Awarding the Secretary the costs of this action; and
3. Awarding such other relief as is equitable and just.

DATED: June 13, 2016
New York, New York

Respectfully Submitted,

M. PATRICIA SMITH
Solicitor of Labor

JEFFREY S. ROGOFF
Regional Solicitor

/s/ Michael R. Hartman
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