

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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

Plaintiff,

v.

SANDOR SZAJKOVICS,
PASSAGES HOSPICE, LLC, PASSAGES HOSPICE
LLC DENTAL PLAN, PASSAGES HOSPICE LLC
EMPLOYEE BENEFITS PLAN,

Defendants.

CIVIL ACTION

Case No.

COMPLAINT

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

JURISDICTION AND VENUE

1. This 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 which violate the provisions of Title I of ERISA, to obtain appropriate equitable 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. Passages Hospice, LLC (“Passages”) established the Passages Hospice, LLC Employee Benefits Plan (“Health Plan”) to provide health benefits to the Health Plan’s participants.

4. Passages established the Passages Hospice, LLC Dental Plan (“Dental Plan”) to provide dental and vision benefits to the Dental Plan’s participants.

5. The Health Plan is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

6. The Dental Plan is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

7. Venue for this action lies in the Northern District of Illinois, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because both the Health Plan and the Dental Plan (collectively “Plans”) were administered in Lisle, DuPage County, Illinois, within this district.

DEFENDANTS AND PARTIES IN INTEREST

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

9. From at least January 10, 2014, to February 7, 2014, Defendant Sandor Szajkovichs (“Szajkovichs”) was Passages’ Chief Financial Officer; exercised authority and control over Passages’ assets; exercised authority and control respecting management or disposition of the Plans’ assets; was a fiduciary to the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and was a party in interest to the Plans within the meaning of ERISA § 3(14)(A) and (H), 29 U.S.C. § 1002(14)(A) and (H).

10. From at least January 10, 2014, to February 7, 2014, Passages was the Plan Sponsor and Plan Administrator of both Plans; was a fiduciary to the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and was a party in interest to the Plans within the meaning of ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

VIOLATIONS

COUNT I - FAILURE TO REMIT EMPLOYEE SALARY REDUCTION CONTRIBUTIONS TO THE PLANS

11. Paragraphs 1 through 10 above are hereby re-alleged and incorporated herein.

12. During the period from January 10, 2014, to February 7, 2014, the Plans’ governing documents stated that participants could elect to defer a portion of their wages to be contributed to the Plans.

13. During the period from January 10, 2014, to February 7, 2014, Passages withheld \$15,428 from its employees’ pay as salary reduction contributions intended for the Dental Plan. Passages retained the withheld employee contributions in its general assets.

14. During the period from January 24, 2014, to February 7, 2014, Passages withheld \$44,826 from its employees' pay as salary reduction contributions intended for the Health Plan. Passages retained the withheld employee contributions in its general assets.

15. During the period from January 10, 2014, to February 7, 2014, Defendant Szajkovics had authority and control over whether Passages remitted withheld employee salary reduction contributions to the Plans.

16. During the period from January 10, 2014, to February 7, 2014, Defendant Szajkovics caused Passages to retain \$15,428 in employee salary reduction contributions intended for the Dental Plan and \$44,826 in employee salary reduction contributions intended for the Health Plan that had been withheld from its employees' pay, and to not remit such salary reduction contributions to the Plans.

17. Passages used the unremitted employee salary reduction contributions constituting the Plans' assets for its own benefit to pay other corporate expenses.

18. Based on the facts described in paragraphs 11-17 above, Defendant Szajkovics and Passages:

a. failed to discharge their duties with respect to the Plans solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. caused the Plans to engage in transactions that they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a

party in interest, of any assets of the Plans in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

c. dealt with the Plans' assets in their own interest or for their own account in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

d. acted in a transaction involving the Plans on behalf of a party whose interests were adverse to the interest of the Plans and to the interest of the Plans' participants and beneficiaries in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

16. As a direct and proximate result of Defendants Passages and Szajkovics' fiduciary breaches, the Plans have suffered injury and losses for which they are personally liable and subject to appropriate equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for a judgment:

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

B. Ordering the removal of Defendant Szajkovics from any positions that he now has as a fiduciary to the Plans;

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

D. Ordering Defendants Passages and Szajkovics to correct the prohibited transactions in which they engaged;

E. Ordering Defendants Passages and Szajkovics to restore to the Plans all losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;¹

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

P.O. ADDRESS:
Office of the Solicitor
230 South Dearborn St.
Room 844
Chicago, IL 60604
Tel. (312) 353-3271
Fax. (312) 353-5698
canetti.bruce@dol.gov
Illinois Bar No: 6285867

/s/ Bruce C. Canetti
BRUCE C. CANETTI
Trial Attorney
U.S. Department of Labor,
Attorneys for THOMAS E. PEREZ
Secretary of Labor, Plaintiff

¹ On October 26, 2016, defendant Passages Hospice filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois, Case No. 16-34142. Because the Secretary is prosecuting this civil action pursuant to the Department of Labor's police and regulatory power under Title I of ERISA, the Secretary's action will be "an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power," it is excluded from the operation of the automatic stay provisions of the Bankruptcy Code pursuant to 11 U.S.C. § 362(b)(4). The Secretary's efforts to enforce any monetary portion of any judgment obtained against defendant Passages will be consistent with the Bankruptcy Code.