

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HILDA L. SOLIS, Secretary of Labor,
U.S. Department of Labor,

Plaintiff,

v.

RAYMOND PALOMBO, et al.,

Defendants.

CIVIL ACTION FILE

NO. 1:08-CV-2017-BBM

ORDER

This matter is before the court on the Motion to Reopen Motion for Entry of Default Judgment Against Raymond Palombo [Doc. No. 30] filed by Plaintiff Hilda L. Solis (“Secretary Solis”).

I. Factual and Procedural Background

The court previously included an overview of the facts in its June 9, 2009 Order on Secretary Solis’s Motion for Entry of Default Judgment, and will only summarize the facts pertinent to this Order here.

This case involves claims for violations of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., arising out of the mismanagement of an employee benefits fund by Defendants Raymond Palombo (“Mr. Palombo”), Mitchel Coneley (“Mr. Coneley”), Leonard Steinberg (“Mr.

Steinberg”), Contractors and Merchants Association (“CMA”), and Small and Independent Business Associates (“SIBA”) (collectively “Defendants”).

Mr. Palombo operated two different employer associations, the Progressive Health Alliance (“PHA”) and CMA. Members of these associations previously participated in the International Union of Industrial and Independent Workers Fund (“IUIIW Fund”) and the International Union of Industrial and Independent Workers Fund (“IUPIW Fund”),¹ but the claims of Mr. Palombo’s association members overwhelmed both Funds. On January 1, 2005, Defendants moved over 880 association members into the Manufacturing and Industrial Workers Benefits Fund (“MIWU Fund”) without conducting any underwriting analysis to determine whether the group’s contribution rates would be adequate to fund its prospective liabilities. Messrs. Palombo, Coneley, and Steinberg were responsible for managing and disposing of the assets of the MIWU Fund, as well as administering and managing the Fund itself. After the association members’ benefit claims overwhelmed the MIWU Fund’s solvency, Defendants abandoned the Fund. The MIWU Fund has benefit claims pending against it in the amount of \$3,467,710, and no benefit claims have been processed or paid since 2005.

¹ The Secretary’s pleadings do not distinguish between the IUIIW and the IUPIW, describing both as the “International Union of Industrial and Independent Workers.”

The Secretary of Labor filed this suit on June 13, 2008, amending her Complaint on July 2, 2008. Defendants have not responded to this lawsuit, and the Clerk made an entry of default as to all five Defendants. Secretary Solis filed a Motion for Entry of Default Judgment on March 10, 2009. On June 9, 2009, the court granted the Motion with respect to Mr. Coneley, Mr. Steinberg, CMA, and SIBA, finding them liable for all claims against them and enjoining them from serving as fiduciaries or service providers for, or having control over the assets of, any ERISA covered employee welfare benefit plan. With respect to Mr. Palombo, however, the court denied the Motion in light of Mr. Palombo's September 3, 2008 Chapter 7 bankruptcy filing. The court noted that Secretary Solis could move to reopen the case against Mr. Palombo once she received relief from the bankruptcy stay.

On August 27, 2009, Secretary Solis filed the present Motion to Reopen Motion for Entry of Default Judgment Against Raymond Palombo.

II. Analysis

The U.S. Bankruptcy Court for the Central District of California, where Mr. Palombo filed his bankruptcy petition, has entered an Order granting relief from the automatic stay under 11 U.S.C. § 362(d)(1) and 11 U.S.C. § 362(b)(4). (See Br. in Supp. of Pl.'s Mot. for Entry of Default J. Attach. A.) The Bankruptcy Court's Order allows Secretary Solis to "proceed in the non-bankruptcy forum to final judgment

(including any appeals) in accordance with applicable non-bankruptcy law.” (Id.) This court will therefore proceed to consider the merits of Secretary Solis’s Motion for Entry of Default Judgment.

The same analysis that the court applied in Parts III.C, III.D, III.E, and III.G of its June 9, 2009 Order is also applicable against Mr. Palombo. The Motion is therefore granted with respect to the following claims against Mr. Palombo: violation of ERISA § 404(a)(1)(D) (Second Claim); violation of ERISA §§ 404(a)(1)(A), (B) (Third Claim); (4) violation of ERISA § 406(b)(2) (Fourth Claim); and (6) violation of ERISA § 502(l)(1)(B) (Sixth Claim).

Secretary Solis separately requests injunctive relief against Mr. Palombo. This court, having found Mr. Palombo liable for multiple violations of ERISA, grants injunctive relief as follows:

Mr. Palombo is hereby PERMANENTLY ENJOINED from: (1) serving or acting directly or indirectly, for compensation or otherwise through any person or entity, including, but not limited to, CMA or PHA, as a trustee, agent, consultant, representative, service provider or fiduciary with respect to any employee benefit plan subject to ERISA; (2) exercising any discretionary authority or control, directly or indirectly, with respect to the management or administration of any fund, plan, or arrangement offering employee benefits covered by ERISA; (3) occupying any

position that involves, directly or indirectly, decision-making authority with respect to, or custody or control over, the assets or administration of any employee benefit plan, fund, or arrangement subject to ERISA; (4) engaging in any further violations of Title I of ERISA.

As further relief and to ensure compliance with this Order, the court DIRECTS Mr. Palombo to: (1) provide Secretary Solis with the name and current address (or if unable to find current address with reasonable effort, the last known address) of any person or entity through whom he solicited participants for the MIWU Fund, the IUPIW Fund, or the IUIIW Fund; (2) provide a copy of this Order to the individuals or entities described above; (3) provide Secretary Solis with an affidavit and evidence showing that he has provided a copy of this Order to the identified persons or entities; and (4) post a copy of this Order on the CMA website found at www.contractorsandmerchants.com. These acts are to be completed within 60 days of the date of this Order.

In addition to Mr. Palombo, this Order is binding on those persons who have actual notice of it and who are (a) officers, agent, servants, employees, or attorneys of Mr. Palombo, or (b) in active concert or participation with Mr. Palombo regarding the conduct or practices described in this Order or the court's Order of June 9, 2009. See Fed. R. Civ. P. 65(d)(2)(B), (C).

III. Summary

For the foregoing reasons, Secretary Solis's Motion to Reopen Motion for Entry of Default Judgment Against Raymond Palombo [Doc. No. 30] is GRANTED. The court understands that all claims brought by the Secretary of Labor against the Defendants in this action to have now been fully adjudicated.

In this court's Order of June 9, 2009, Secretary Solis was directed to file support of her request for monetary relief once the court-appointed Independent Fiduciary completed the necessary calculations, but not later than October 10, 2009. (See Order, June 9, 2009, at 27.) The court now amends the June 9, 2009 Order to the extent that Secretary Solis is ORDERED to file such support on or before October 20, 2009.

IT IS SO ORDERED, this 8th day of October, 2009.

s/Beverly B. Martin
BEVERLY B. MARTIN
UNITED STATES DISTRICT JUDGE