

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

JULIE A. SU, ACTING SECRETARY OF LABOR, :
UNITED STATES DEPARTMENT OF LABOR, :

Plaintiff, :

v. :

Civil Action No. 24-7170

JACOB FRYDMAN; AND IBUILT LLC GROUP :
HEALTH PLAN, :

Defendants. :

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COMPLAINT

1. Deluxe Building Solutions LLC (“DBS”) and iBuilt LLC (“iBuilt,” and, along with DBS, the “Companies”) were affiliated companies producing modular construction. When DBS was forced into bankruptcy, its workforce was transferred to iBuilt for several months before being laid off *en masse*.

2. Jacob Frydman was the “manager” of both Companies and controlled their operations.

3. Frydman failed to fund the iBuilt LLC Group Health Plan (the “Plan”), while continuing to withdraw funding from workers’ paychecks for health coverage and telling them that they were covered.

4. By the actions and omissions specified above, defendant Frydman breached his duties of exclusive purpose, prudence, and loyalty, caused the Plan to enter into non-exempt prohibited transactions, and engaged in self-dealing.

5. Because of these breaches, the Plan and its participants and beneficiaries have suffered losses, notably unpaid health claims, for which defendant Frydman is responsible.

6. Therefore, Julie A. Su, Acting Secretary of Labor, United States Department of Labor (the “Acting Secretary”) brings this action under the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, *et seq.*, against defendant Frydman to enjoin acts and practices which 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, seeking restitution, surcharge, and other appropriate relief for harms suffered by the Plan and its participants and beneficiaries, and to enforce the provisions of Title I of ERISA.

JURISDICTION AND VENUE

7. The Acting Secretary brings this action under ERISA §§ 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), to redress violations and enforce Title I of ERISA.

8. This Court has subject matter jurisdiction over this action under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and general federal question jurisdiction, 28 U.S.C. § 1331.

9. Venue with respect to this action lies in the United States District Court for the Southern District of New York under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because defendant Frydman is located within this district and his fiduciary breaches all occurred within this district.

PARTIES

10. Plaintiff the Acting Secretary has authority to enforce Title I of ERISA by, among other things, filing and prosecuting claims against fiduciaries who breach their duties under Title I of ERISA. 29 U.S.C. §§ 1132(a)(2), (5).

11. Defendant Frydman was the designated manager of iBuilt, which was the

administrator of the Plan.

12. Throughout the relevant time period, Defendant Frydman exercised discretionary authority or discretionary control respecting management of the Plan and authority or control respecting management or disposition of its assets, and defendant Frydman was thus a fiduciary to the Plan under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

13. The Plan is an employee benefit plan within the meaning of ERISA §§ 3(2) and (3), 29 U.S.C. §§ 1002(2) and (3). The Plan is joined as a defendant pursuant to Rule 19 of the Federal Rules of Civil Procedure solely to ensure that complete relief can be granted.

FACTUAL ALLEGATIONS

14. DBS was a manufacturer of modular buildings headquartered in Berwick, PA and incorporated in Delaware on August 17, 2017.

15. iBuilt was also a manufacturer of modular buildings headquartered in Berwick, PA, and also incorporated in Delaware on September 1, 2020.

16. Defendant Frydman was DBS's and iBuilt's "manager" and he controlled both Companies.

17. On March 18, 2021, an involuntary Chapter 7 bankruptcy was filed against DBS.

18. All DBS employees then became employees of iBuilt.

19. Employees were paid by DBS up until March 19, 2021 and, thereafter, they were paid by iBuilt.

20. The Plan was made effective March 1, 2021.

21. The Plan was a self-insured plan funded by employer and employee contributions.

22. The Plan had an administrative agreement with United HealthCare Services, Inc. ("United").

23. Over the period following March 2021, defendant Frydman withheld money from workers' paychecks to cover health coverage, but he did not forward that money to the Plan.

24. Defendant Frydman also did not collect employer funding for the Plan, even though iBuilt was a growing concern and such collections efforts would not have been futile.

25. During this time, defendant Frydman knew of the coverage issues but was not forthright about them.

26. Although at one point he acknowledged that there were issues with the Plan, he told employees that he was setting a "credit card account" to cover it.

27. Ultimately, on June 4, 2021, iBuilt's workers were told to look for other jobs.

28. On June 11, 2021, United retroactively terminated the Plans' health coverage to its effective date of March 1, 2021.

29. As a result of these acts and omissions, iBuilt's workers health claims remain unpaid.

**FIRST CLAIM FOR RELIEF
(Breaches of the Exclusive Purpose Requirement)**

30. ERISA § 403(c)(1) requires plan assets to be held only for the exclusive purposes of providing benefits to plan participants and defraying reasonable plan administration expenses. It expressly forbids plan assets inuring to any employer's benefit. 29 U.S.C. § 1103(c)(1).

31. Withheld employee contributions became Plan assets as soon they could have reasonably been segregated them from iBuilt's general assets, and at most seven days after the end of the month in which they would have been payable to the employee. 29 C.F.R. § 2510.3-102(a)(1), (b)(1).

32. During the relevant time period, the defendant Frydman was responsible to but failed to remit all employee contributions to the Plan after they could have reasonably segregated

them from iBuilt's general assets.

33. By his actions and omissions, defendant Frydman allowed the Plan's assets to inure to the direct benefit of iBuilt.

34. Defendant Frydman is therefore liable under ERISA § 409(a) for the harms suffered by the Plan and its participants and beneficiaries. 29 U.S.C. § 1109(a).

**SECOND CLAIM FOR RELIEF
(Breaches of Fiduciary Duties)**

35. As a fiduciary to the Plan, defendant Frydman had a duty under ERISA §§ 404(a)(1)(A) and (B) to act prudently and loyally in the sole interest of plan participants and beneficiaries. 29 U.S.C. §§ 1104(a)(1)(A) and(B).

36. During the relevant time period, defendant Frydman was responsible to but failed to promptly segregate and remit all employee contributions to the Plan and to collect employer contributions to the Plan.

37. Instead of doing this, defendant Frydman allowed the Plan's assets to commingle with iBuilt's general funds, which iBuilt could access for impermissible purposes such as paying everyday business expenses.

38. Diversion of employee contributions to iBuilt's general operating account was not in the interest of the Plan's participants or beneficiaries and, therefore, was imprudent and disloyal.

39. A prudent person acting in a fiduciary capacity in similar circumstances to those faced by defendant Frydman during the relevant time period would promptly segregate and remit all employee contributions to the Plan, monitor accounts, ensure that the iBuilt did not convert Plan assets to its own use, and collect employer contribution from iBuilt.

40. During the relevant time period, defendant Frydman was also responsible to share

honest information about the Plan with participants and beneficiaries. However he failed to warn participants and beneficiaries of the Plan's inability to fund claims and actively deceived them as to its status.

41. These actions were imprudent and disloyal because they were not in the interest of the Plan's participants and beneficiaries.

42. A prudent person acting in a fiduciary capacity in similar circumstances to those faced by the defendant Frydman during the relevant time period would have warned participants and beneficiaries that the Plan was at risk of being unable to pay claims.

43. By their actions and omissions, defendant Frydman:

a. failed to discharge his duties to the Plan solely in the interests of the Plan's participants and beneficiaries, in violation of ERISA § 404(a)(1)(A); and

b. failed to act 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 to conduct 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)(A)-(B).

44. Defendant Frydman is therefore liable under ERISA §§ 409(a) and 502(a)(5) for the harms suffered by the Plan and its participants and beneficiaries. 29 U.S.C. §§ 1109(a), 1132(a)(5).

**THIRD CLAIM FOR RELIEF
(Non-Exempt Prohibited Transactions)**

45. ERISA § 406(a)(1)(D) prohibits fiduciaries from causing a plan to engage in a transaction, if they have reason to know "that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of a party in interest, of any assets of the plan." 29 U.S.C. § 1106(a)(1)(D).

46. iBuilt, the Plan's sponsor, was a "party in interest" to the Plan. ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

47. During the relevant time period, defendant Frydman was responsible to but failed to segregate and remit all of the Plan's assets to the Plan's accounts, and instead allowed the Plan's assets to remain in general iBuilt accounts.

48. By his actions and omissions, defendant Frydman caused the Plan to enter into transactions that they knew or should have known constituted prohibited transaction of Plan assets to a party in interest in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

49. No exemption applies to these prohibited transactions.

50. Defendant Frydman is therefore liable under ERISA § 409(a) for the harms suffered by the Plan and its participants. 29 U.S.C. § 1109(a).

**FIFTH CLAIM FOR RELIEF
(Self-Dealing)**

51. ERISA § 406(b)(1) prohibits fiduciaries, such as defendant Frydman, from dealing with a plan's assets in their "own interest" or for their "own account." 29 U.S.C. § 1106(b)(1).

52. ERISA § 406(b)(2) prohibits plan fiduciaries, such as defendant Frydman, from acting in any transaction involving a plan on behalf of a party whose interests are adverse to the interests of the or its participants and beneficiaries. 29 U.S.C. § 1106(b)(2).

53. During the relevant time period, defendant Frydman allowed Plan assets to remain in iBuilt's general operating account, which benefitted the iBuilt's business interests, and therefore defendant Frydman's interests as iBuilt's manager, at the expense of the Plan and its participants and beneficiaries.

54. By his actions and omissions, defendant Frydman engaged in prohibited self-

dealing in violation of ERISA §§ 404(b)(1) and (2), 29 U.S.C. §§ 1106(b)(1), (2).

55. Defendant Frydman is therefore liable under ERISA § 409(a) for the harms suffered by the Plan and its participants and beneficiaries. 29 U.S.C. § 1109(a).

PRAYER FOR RELIEF

WHEREFORE, the Acting Secretary requests that the Court grant the following relief:

1. removing defendant Frydman from positions over the Plan and appointing an independent fiduciary to pay claims;
2. requiring defendant Frydman to restore all losses to the Plan;
3. requiring, by surcharge, that defendant Frydman fund the claims properly incurred by participants and beneficiaries during the Plan's operation;
4. granting pre-judgment interest to make injured participants and beneficiaries whole; and
5. providing such other relief as may be equitable, just, and proper.

DATED: September 22, 2024
New York, New York

Respectfully submitted,

SEEMA NANDA
Solicitor of Labor

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