

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CARPENTERS HEALTH AND WELFARE : CIVIL ACTION
FUND OF PHILADELPHIA AND :
VICINITY, et al., : NO. 05-04858
: :
Plaintiffs, :
: :
v. :
: :
BOLD & CLAUSS CONSTRUCTION, INC., :
: :
Defendant. :

Stengel, J.

March 23, 2006

MEMORANDUM AND ORDER

Plaintiffs¹ move the Court to enter judgment by default pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure against defendant Bold & Clauss Construction, Inc. for its alleged failure to make sufficient union contributions on behalf of its employees. Plaintiffs' motion seeks unpaid contributions, liquidated damages, audit costs, interest, attorneys' fees, and costs. For the reasons described below, I will grant Plaintiffs' motion and enter default judgment against Defendant.

¹Plaintiffs in this case are (1) Carpenters Pension and Annuity Fund of Philadelphia and Vincinity, (2) Carpenters Savings Fund of Philadelphia and Vicinity, (3) Carpenters Joint Apprenticeship Committee, (4) National Apprenticeship and Health and Safety Fund, (5) Metropolitan Regional Council of Carpenters, Eastern Pennsylvania, State of Delaware and Eastern Shore of Maryland, (6) Carpenters Local No. 600, (7) Lehigh Valley Contractors Association, Inc., and (8) Edward Coryell (collectively "Plaintiffs"). Plaintiffs are entities, associations, and individuals that advance the interests of union members.

I. BACKGROUND

The Complaint alleges that Defendant is bound by one or more collective bargaining agreements (individually and collectively the "CBA") requiring the payment of contributions to Plaintiffs for Defendant's employees who perform work covered by the CBA. The CBA requires that bound employers make their required contributions to Plaintiffs no later than the fifteenth day of the month following the month in which their employees performed the work. Failure to remit the proper contribution results in a delinquency owed to Plaintiffs. The CBA also gives Plaintiffs the right to audit bound employers' payroll records to determine if the required contributions have been made.

Plaintiffs contend that Defendant failed to submit sufficient monthly contribution amounts for January of 2005 as well as for the months of June, July, and August of 2005. After analyzing the monthly remittance reports prepared by Defendants and auditing Defendant's payroll books, Plaintiffs allege that Defendant owes a total of \$42,932.24. This amount consists of (1) \$32,056.85 in unpaid employee contributions; (2) \$1,316.37 in interest on the unpaid contributions, calculated through March 22, 2006; (3) \$3,205.69 in liquidated damages; (4) \$913.13 in audit costs; and (5) \$5,440.20 in attorneys' fees and costs.

On September 9, 2005, Plaintiff filed the Complaint in this action. Defendant was served on September 17, 2005, but has not answered the Complaint or filed any other responsive pleadings throughout the litigation. Plaintiffs requested, and the Clerk of

Court entered, an entry of default on November 2, 2005. Plaintiffs filed the Motion for Judgment By Default presently before the Court (Docket No. 5) on November 22, 2005. Defendant has not opposed the motion. On March 22, 2006, the Court held a hearing for a rule to show cause why default should not be entered against Defendant. Defendant failed to appear at the hearing.

II. STANDARD FOR GRANTING JUDGMENT BY DEFAULT

Rule 55(b)(2) permits a district court to enter judgment by default against a defaulting party when default has been entered by the Clerk of Court. FED. R. CIV. P. 55(b)(2). The fact that default has been entered, however, does not automatically entitle the non-defaulting party to a judgment by default. Rather, the decision to enter a judgment by default is left to the sound discretion of the district court. Hritz v. Woma Corp., 732 F.2d 1178, 1180 (3d Cir. 1984) (citation omitted). This discretion is not unlimited, however, and the Third Circuit has enumerated three factors that control whether a default judgment should be entered: "(1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable defense, and (3) whether defendant's delay is due to culpable conduct." Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000) (citing \$55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984)).

III. DISCUSSION

Section 515 of the Employment Retirement Insurance Security Act ("ERISA") states in pertinent part that "[e]very Employer who is obligated to make contributions to a multiemployer plan . . . under the terms of a collectively bargained agreement shall . . . make such contributions in accordance with . . . such agreement." 29 U.S.C. § 1145. ERISA section 502(a) permits a plan fiduciary to sue an employer who fails to make the required contributions. 29 U.S.C. § 1132(a). If a court enters judgment in favor of the plan fiduciary, ERISA section 502(g)(2) requires the court to award (1) unpaid contributions; (2) interests on the unpaid contributions; (3) liquidated damages²; (4) reasonable attorneys' fees and costs; and (5) other relief the court deems appropriate. 29 U.S.C. § 1132(g)(2).

In the instant case, Defendant has not filed any responsive pleadings demonstrating why judgment by default should not be entered in Plaintiffs' favor. Defendant has failed to offer any excuse explaining its failure to respond, and the Court is therefore unable to determine whether Defendant has a litigable defense or whether its delay is due to culpable conduct. Thus, the only issue before the Court is whether Plaintiffs will be appreciably prejudiced if their motion is denied.

²Specifically, section 502(g)(2)(C) provides that the court "shall award the plan . . . an amount equal to the greater of (i) interest on the unpaid contributions, or (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent of the [unpaid contributions]." 29 U.S.C. § 1132(g)(2)(C).

ERISA requires that plans pay benefits and pension credits to vested participants regardless of whether an employer contributes to the plan. See 29 C.F.R. § 2530.200b-2; Sheetmetal Workers' Local 19 v. E.J. Deseta Co., Inc., No. Civ. A. 95-4297, 1995 WL 549070, at *3 (E.D. Pa. Sept. 12, 1995) (citing Benson v. Brower's Moving & Storage, Inc., 907 F.2d 310, 314 (2d Cir. 1990), cert. denied, 498 U.S. 982 (1990)). Moreover, one of Congress's principal purposes for enacting ERISA was to ensure that adequate funds would be available to pay benefits to employees who had been promised them upon retirement. See 29 U.S.C. § 1001 (Congress concerned that "owing to the inadequacy of current minimum [financial and administrative] standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered").

If the plan at issue is part of a multi-employer contribution system, as here, any delinquent contributions owed by a covered employer impairs the plan's ability to pay both the beneficiaries of the delinquent employer as well as employees of companies who have made their contributions. In other words, either non-delinquent employers must pay more or all employees must accept less when one employer in a multi-employer plan fails to make its contributions. Accordingly, I find that Plaintiffs will be prejudiced if default judgment is not entered in their favor.

IV. CONCLUSION

For the reasons described above, I will grant Plaintiffs' motion and enter a default judgment in their favor. An appropriate Order follows.

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BOLD & CLAUSS CONSTRUCTION, INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 23rd day of March, 2006, upon consideration of Plaintiffs' Motion for Judgment by Default (Docket No. 5) and after a hearing to show cause held on March 22, 2006, it is hereby **ORDERED** that Plaintiffs' motion is **GRANTED**.

It is further **ORDERED** that default judgment is entered in favor of Plaintiffs in the amount of \$42,932.24. The Clerk of Court is directed to mark this case as closed for statistical purposes.

BY THE COURT:

/s Lawrence F. Stengel
LAWRENCE F. STENGEL, J.