

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CHICAGO REGIONAL COUNCIL OF	)	
CARPENTERS PENSION FUND, et al.,	)	CASE NO. 08CV6639
	)	
Plaintiffs,	)	
vs.	)	JUDGE LINDBERG
	)	
PHD CORP. and PH DRYWALL, INC.	)	
	)	
	)	
Defendants.	)	

**MOTION FOR ENTRY OF ORDER OF JUDGMENT**

Plaintiffs, by their attorney, Amy Elizabeth Paluch Epton of Whitfield, McGann & Ketterman, move this Honorable Court to enter Judgment by Default according to Fed. R. Civ. P. 55 for Defendants, PHD CORP. and PH DRYWALL, INC.'S, failure to appear, answer or otherwise plead. Further, in support of this Motion the Plaintiffs state:

1. Plaintiffs filed their complaint on November 19, 2008 and the summons and complaint were served on Defendant, PHD CORP., on November 24, 2008 via the Process Server. The summons and complaint were served on Defendant, PH DRYWALL, INC., on November 24, 2008. **(Exhibit A, Affidavit of Service)**

2. The Defendants, PHD CORP. and PH DRYWALL, INC., have failed to appear, answer or otherwise plead within the time allowed by the Fed. R. Civ. P.

3. At all times relevant to this action, the Defendant, PHD CORP., has been bound by the provisions of a Collective Bargaining Agreement and the Trust Agreements which created the Trust Funds. Pursuant to the provisions of the Trust Agreements and the Collective Bargaining Agreement, the Defendant is required to submit monthly reports to the Trust Funds which list the number of hours worked by the Defendant's employees and to pay

the ERISA contributions based on those hours.

4. The Plaintiffs audited the books and records of the Defendant, PHD CORP., to verify that all contributions were submitted. The audit revealed that the Defendant breached the provisions of the Collective Bargaining Agreement by underpaying contributions that are owed to the Trust funds based upon the hours worked by employees and/or measured by the hours worked by subcontractors during the period of June 2005 through December 2006. The contributions owed to the Trust Funds as a consequence of this breach are \$142,898.47.

**(Exhibit B, Affidavit of John Libby)**

5. The Court ordered Defendants to produce further books & records. Defendants produced those books and records. Plaintiffs reviewed them.

6. The Defendant owes liquidated damages on the unpaid ERISA contributions in the amount of \$28,579.69 for the period June 2005 through December 2006 pursuant to the Collective Bargaining Agreements, the Trust Agreements and 29 U.S.C. §1132(g)(2)(C)(ii).

**(Exhibit B)**

7. The Defendant, PHD CORP., owes interest on the unpaid ERISA contributions in the amount of \$25,023.34 pursuant to the Trust Agreements and 29 U.S.C. §1132(g)(2)(B).

**(Exhibit B)**

8. The Defendant, PHD CORP., owes the sum of \$9,631.00 for necessary and reasonable attorney fees, and audit fees of \$7,524.10 and costs of \$430.00 which are collectible under the terms of the Collective Bargaining Agreement, the Trust Agreements and 29 U.S.C. §1132(g)(2)(D). **(Exhibit C, Affidavit of Amy Elizabeth Paluch Epton)**

9. The Defendant, PHD CORP., breached the provisions of the Collective Bargaining Agreement by failing to allow Plaintiffs to complete an audit of Defendant's books and records for the period June 2005 through December 2006 after demand for audit was made upon Defendant.

WHEREFORE, Plaintiffs pray that their motion for judgment by default be granted in the amount of \$214,086.60.

Respectfully Submitted,

/s/ Amy Elizabeth Paluch Epton  
Attorney for Plaintiffs

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