

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Gregory R. Massey and James Mortenson, as Trustees of the Minnesota Cement Masons Pension Fund; Arland B. Anderson and Gregory R. Massey, as Trustees of the Minnesota Cement Masons Health and Welfare Fund; Gregory R. Massey and Steven L. Kilmer, as Trustees of the Minnesota Cement Masons – Plasterers - Shophands Journeyman and Apprentice Training Fund; and Robert Ridge and Timothy Worke, as Trustees of the Minnesota Cement Masons – Plasterers – Shophands Local 633 Savings Trust Fund,

Plaintiffs,

vs.

Jeremiah J. Archambault, individually and d/b/a JaCo Concrete Construction,

Defendant.

Civil File Number: 08-cv-3398 RHK/SRN

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER FOR JUDGMENT**

Rosene, Haugrud & Staab, Chartered, by STEPHEN C. KELLY, Esq., of St. Paul, Minnesota, appeared for Plaintiffs.

No one appeared for Defendants.

This matter came on for hearing before the Court on October 16, 2008, on Plaintiffs' motion for entry default judgment against Defendant in the amount of \$6,330.89.

Upon all files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. Default was entered against Defendants on July 30, 2008.

2. Defendant is signatory to the Rochester Area Independent Builders 9A Acceptance Agreement (“Rochester Independent Agreement”), which binds Defendant to the Rochester Area Builders Agreement between Independent Cement Mason Contractors of Minnesota and Cement Masons, Plasterers, and Shophands Local No. 633 of Minnesota, North Dakota, and Northwestern Wisconsin (Expires April 30, 2010) (“Rochester Area Agreement”).
3. Defendant is signatory to the Independent Addendum to the Metro Builders 9A Agreement (“Metro Builders Independent Agreement”), which binds Defendant to the Metro Area Agreement between Independent Cement Mason Contractors and Cement Masons, Plasterers, and Shophands Local No. 633 of Minnesota, North Dakota, and Northwestern Wisconsin (Expires April 30, 2010) (“Metro Area Agreement”).
4. Pursuant to the Rochester Area Agreement and the Metro Area Agreement, Defendant is obligated to submit to Plaintiffs' Third-Party Administrator (“TPA”) monthly fringe benefit contribution Report Forms indicating the fringe benefit contribution payment amounts due for the prior month.
5. Plaintiffs' TPA conducts periodic fringe benefit payroll audits to determine the veracity of employer monthly reporting of fringe benefit contribution payments.
6. Plaintiffs' TPA conducted a fringe benefit payroll audit of Defendant’s books and records for the time period of May 1, 2007 through December 31, 2007.
7. The fringe benefit payroll audit summary shows under-reported and unpaid fringe benefit contributions in the amount of \$3,865.14, plus liquidated damages in the amount of \$386.51, for a subtotal of \$4,251.65.

Based on its review, the Court reaches the following:

CONCLUSIONS OF LAW

That Plaintiffs' motion for entry of Defendant's judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure is granted.

Based on the foregoing, IT IS HEREBY ORDERED:

ORDER

That Plaintiffs are entitled to judgment against Defendant for delinquent fringe benefit contribution payments in the amount of \$3,865.14, liquidated damages in the amount of \$386.51, attorney fees in the amount of \$662.70, and costs in the amount of \$1,416.54, for a total of \$6,330.89.

Dated: October 16, 2008

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge