

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHEET METAL WORKERS LOCAL 98
PENSION FUND, *et al.*,

Plaintiffs,

vs.

Civil Action 2:10-CV-594
Magistrate Judge King

CENTRAL OHIO SHEET METAL CO.,
INC., *et al.*,

Defendants.

OPINION AND ORDER

Plaintiffs, ERISA-qualified employee benefits plans, seek recovery of allegedly unpaid contributions to the plans. Plaintiffs assert claims under 28 U.S.C. §§ 185, 1132. This matter is before the undersigned, with the consent of the parties, *see Rule 26(f) Report*, Doc. No. 15, and pursuant to an order of reference, *Order*, Doc. No. 37, on *Plaintiffs' Request for Entry of Default Judgment by the Clerk*, Doc. No. 36 [*"Motion for Default Judgment"*].

The *Complaint* names as defendants Central Ohio Sheet Metal Co., Inc. [*"Central Ohio Sheet Metal"*], signatory to a collective bargaining agreement with Sheet Metal Workers Local Union No. 24, *Complaint*, Doc. No. 2, ¶ 4, and Mark Judy [*"Judy"*], the owner and chief executive officer of Central Ohio Sheet Metal and a fiduciary with respect to plan assets within the meaning of 29 U.S.C. §§ 1002(21)(A)(i). *Id.* ¶ 13. Defendants are no longer represented by counsel. *Order*, Doc.

No. 23. After defendants failed to appear at two conferences scheduled by the Court, *see Order*, Doc. No. 29; *Order*, Doc. No. 32, the fact of defendants' default was entered. *Clerk's Entry of Default*, Doc. No. 35. Plaintiffs thereafter filed the *Motion for Default Judgment*. Although defendants were expressly provided the opportunity to respond to the motion, *Order*, Doc. No. 38, there has been no response to the motion.

In support of the *Motion for Default Judgment*, plaintiffs offer the affidavit of their Administrator, Michael R. Keller. *Affidavit of Michael R. Keller*, attached as Exhibit B to *Motion for Default Judgment*. According to Mr. Keller, records of the plaintiff funds and the plan indicate that Central Ohio Sheet Metal is delinquent in payment of contributions to the Welfare Fund, the Pension Fund and the Retirement Savings Plan for the months of August 2010 through January 2011. *Id.* ¶ 5. According to the parties' collective bargaining agreement, an employer who fails to pay contributions is liable for the unpaid contributions, interest on the unpaid contributions and liquidated damages in the amount of 20% of the unpaid contributions.¹ *Id.* ¶12. As of September 9, 2011, the unpaid contributions, interest and liquidated damages owed to the plaintiff funds, rounded to the nearest dollar, are as follows:

Pension Fund: \$89,090.00
Welfare Fund: \$112,013.00
Retirement Savings Plan: \$39, 236.00

for a total of \$240,339.00. *Id.* Moreover, defendant Judy, as a fiduciary within the meaning of 29 U.S.C. § 1002(21)(A)(i), is personally liable

¹Also recoverable are reasonable attorney's fees and, in some circumstances, punitive damages. *Id.* Plaintiffs do not request such recovery in their *Motion for Default Judgment*.

for the losses to the plans caused by the breach of his fiduciary duty to pay and deliver contributions to the plaintiff plans. *Id.* ¶ 13. See 29 U.S.C. § 1109.

These facts are uncontroverted by defendants.

WHEREUPON plaintiffs' *Motion for Default Judgment*, Doc. No. 36, is **GRANTED**. The Clerk is **DIRECTED** to enter **FINAL JUDGMENT** against defendants, jointly and severally, as follows:

in favor of Plaintiff Pension Fund: \$89,090.00

in favor of Plaintiff Welfare Fund: \$112,013.00

in favor of Plaintiff Retirement Savings Plan: \$39, 236.00.

Plaintiffs are also awarded the filing fee of \$350.00 associated with the initiation of this action. The total amount awarded to plaintiffs is therefore \$240,689.00.

IT IS SO ORDERED.

October 14, 2011

 s/ Norah McCann King
Norah McCann King
United States Magistrate Judge

