

UNITED STATES FEDERAL DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
AT DAYTON

**IRON WORKERS DISTRICT COUNCIL
OF SOUTHERN OHIO & VICINITY
BENEFIT TRUST, et al.,**

Plaintiffs,

v.

WORTMAN BROS. LLC, et al.,

Defendants.

CASE NO. 3:14-CV-148

JUDGE WALTER H. RICE

ORDER

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

This action came before the Court on Iron Workers District Council of Southern Ohio & Vicinity Benefit Trust, Iron Workers District Council of Southern Ohio & Vicinity Pension Trust, and Iron Workers District Council of Southern Ohio & Vicinity Annuity Trust's (collectively the "Trusts") Motion for Default Judgment against Defendants Wortman Bros. LLC ("Wortman"), Zachary B. Baxter, and Joshua K. Castle (collectively "Defendants"). This Court now grants the Plaintiffs' Motion for Default Judgment in its entirety.

I. BACKGROUND FACTS

The Trusts are three employee benefit plans. ECF #1, Complaint, 1. The Trusts entered into agreements with Defendant Wortman that required them to make contributions as stipulated in the agreements to the Trusts. *Id.*, at 6-8. The Trusts' allegations, which have now been adopted by the Court by virtue of the entry of default judgment, are that Defendant Wortman is delinquent with its contributions to the Trusts, in violation of the Employee Retirement Income

Security Act of 1974, as amended (“ERISA”), and that Baxter and Castle are jointly and severally liable for all amounts that Defendant Wortman owes to the Trusts for his violations of ERISA.

II. PROCEDURAL HISTORY

On May 14, 2014, Plaintiffs filed the instant action against the Defendants. ECF #1, Complaint. The summonses to the Defendants were issued on May 15, 2014. ECF # 2, Issuance. On May 21, 2014, service was executed on all three Defendants. ECF # 3-5, Summonses. Defendants had 24 days after service was executed to answer the Complaint pursuant to Rules 12(a)(1)(A) and 6(d) of the Federal Rules of Civil Procedure, meaning responsive pleadings were due June 16, 2014. On June 11, 2014, counsel for the Defendants contacted Plaintiffs’ counsel and asked for an extension until June 25, 2014 to file responsive pleadings. ECF #7, Application, Exh. 1, ¶ 5. That day, Plaintiffs’ counsel filed a Motion for the Extension of time until June 25, 2014 and the Motion was granted by this Court. ECF #6, Motion; Dkt. The Defendants did not file responsive pleadings within the required time and Plaintiffs filed an Application for the Entry of Default on June 26, 2014. ECF #7, Application. On Wednesday, July 2, 2014, the clerk entered default as to all three Defendants. ECF #8, Entry of Default. As of this date, no answer, motion, or responsive pleading has been filed. *See* Dkt.

III. ANALYSIS

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided in the Federal Rules of Civil Procedure, and that fact is made to appear by affidavit or otherwise, the Clerk shall enter the party’s default. *See Fed. R. Civ. P.* 55(a). Once the default has been entered, the well-pleaded facts of the complaint relating to liability must be accepted as true. *See Stooksbury v. Ross*, Case No. 12–5739, 2013 WL

2665596, *3 (6th Cir. June 13, 2013) (treating the factual allegations of a complaint on liability as true because defendant produced no timely responsive pleading). However, those allegations relating to the amount of damages suffered are ordinarily not accepted as true unless the amount claimed is capable of ascertainment from definite figures contained in detailed affidavits. *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983).

None of the Defendants filed an answer or responded to the entry of default. This failure to act makes clear that none of the Defendants have any intention of defending the current action. Therefore, default judgment and damages on the default judgment are warranted.

The Trusts provided a sworn affidavit from an employee, Peggy Gotthardt, who is responsible for monitoring employer contributions to the Trusts. Gotthardt indicated that the Defendant Corporations owe the Trusts a total of \$45,042.56 in known delinquent contributions and interest. Additionally, she states that the Trusts have paid or owe \$1,350.00 in attorneys' fees and costs.

The Court concludes that the specific monetary damages claimed are sums certain supported by an affidavit and therefore a hearing on damages is not required. The Court adopts as its own finding the sum certain of the monetary damages evidenced by Gotthardt's affidavit.

IV. CONCLUSION

Accordingly, based on the foregoing, this Court hereby **ORDERS**:

1. Plaintiffs' motion for default judgment and damages is **GRANTED**;

AS TO DEFENDANT WORTMAN:

1. A monetary judgment against Defendant Wortman and in the Trusts' favor for \$41,531.00 in unpaid contributions and \$3,511.56 in interest in accordance with Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2).
2. A monetary judgment against Defendant Wortman and in the Trusts' favor for the Trusts' for \$950.00 in attorneys' fees and \$400.00 in other costs of this action pursuant to Section 502(g)(2)(D) of ERISA, 29 U.S.C. § 1132(g)(2)(D).
3. That a permanent injunction be issued against Defendant Wortman pursuant to Section 502(g)(2)(E) of ERISA, 29 U.S.C. § 1132(g)(2)(E) prohibiting future violations of Section 515 of ERISA, 29 U.S.C. § 1145 with respect to the Trusts.
4. A declaratory order from this Court requiring Defendant Wortman to timely submit all missing contribution reports, and to timely submit all such reports in the future.
5. Judgment against Defendant Wortman for all unpaid contributions, interest, and liquidated damages owed for work hours performed and not reported, to the extent that such hours have been worked and unpaid.
6. A declaratory order from this Court requiring Defendant Wortman to comply with the Trusts' auditor's request to examine and review the documents necessary to complete a payroll audit, should the Trusts determine that such an accounting is necessary.
7. An order directing disgorgement of all ill-gotten gains by Defendant Wortman, including employer contributions that have been wrongfully withheld from the Funds.
8. Post-judgment interest in the Trusts' favor on all amounts awarded hereunder pursuant to 28 U.S.C. § 1961.
9. That is Court retains jurisdiction of this cause of action pending compliance with its orders.

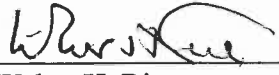
AS TO DEFENDANTS ZACHARY B. BAXTER AND JOSHUA K. CASTLE

10. A declaratory order finding that Baxter and Castle have breached their fiduciary duties owed to the Trusts.
11. A declaratory order finding that Baxter and Castle have engaged in prohibited transactions under ERISA.
12. A monetary judgment finding that Baxter and Castle are jointly and severally liable with Defendant Wortman to reimburse the Trusts for all losses resulting from each such breach pursuant to Section 409(a) of ERISA, 29 U.S.C. § 1109(a), including the \$45,042.56 in known delinquent contributions, interest, liquidated damages, and \$1,350.00 covering the Plaintiffs' reasonably attorneys' fees and costs.
13. An order directing an accounting of all of Defendant Wortman's delinquent contributions that have not been paid to the Trusts due to Baxter and Castle's orders or direction, and an accounting of all losses suffered by the Trusts and their participants as a result of their fiduciary breaches and prohibited transactions, with costs of such accounting to be paid by Baxter and Castle, should the Trusts determine that such an accounting is necessary.
14. An order directing Baxter and Castle to pay to the Trusts all amounts required to recover the losses suffered by the Trusts and their participants, including all rights and benefits to which such participants were entitled to under the Trusts' plans of benefits, as a result of his breaches of fiduciary duty and prohibited transactions.
15. An order directing disgorgement of all ill-gotten gains by Baxter and Castle, including employer contributions that have been wrongfully withheld from the Trusts.
16. An award of post-judgment interest in the Trusts' favor pursuant to 28 U.S.C. §1961.

17. That the Court retain jurisdiction over this cause pending the Defendants compliance with its orders.

IT IS SO ORDERED

Date: 2-11-14



Walter H. Rice
United States District Judge