

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(ALLENTOWN DIVISION)**

PENSION BENEFIT GUARANTY
CORPORATION

Plaintiff,

v.

AMOS EBY COMPANY, INC.

Defendant.

Civil Action No. 5:13-cv-06977-MSG
Honorable Mitchell S. Goldberg

**MOTION FOR DEFAULT
JUDGMENT**

Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”), respectfully moves this Court to issue an order granting PBGC Judgment by Default against Defendant, Amos Eby Company, Inc., (“Amos Eby”), pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. In support of its motion, PBGC states as follows:

PBGC is an agency and wholly owned corporation of the United States government established under 29 U.S.C. § 1302(a) to administer and enforce the defined benefit pension plan termination insurance program created under the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012) (“ERISA”). When an underfunded pension plan terminates, PBGC pays statutorily guaranteed pension benefits to plan participants. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

DISCUSSION

Defendant, AMOS EBY, is the Plan administrator of the AMOS EBY Company, Inc. Defined Benefit Plan (the "Pension Plan") within the meaning of 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A). Defendant is incorporated under the laws of Pennsylvania.

The Pension Plan provides pension benefits to certain former employees of AMOS EBY and to their beneficiaries. On information and belief, the Pension Plan has approximately 7

participants, and PBGC estimates that the Pension Plan is underfunded by approximately \$178,368.00 on a termination basis.

PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to terminate a plan whenever PBGC determines, *inter alia*, that a pension plan has not met the minimum funding standard required under sections 412 and 430 of the Internal Revenue Code, 29 U.S.C. § 1342(a)(1), or the pension plan will be unable to pay benefits when due, 29 U.S.C. § 1342(a)(2).

On April 8, 2013, under 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination to AMOS EBY, as plan administrator of the Pension Plan, notifying AMOS EBY that PBGC determined the Pension Plan had not met the minimum funding standard required under section 412 of the Internal Revenue Code; that the Plan will be unable to pay benefits when due; that the Plan must be terminated in order to protect the interests of the Plan's participants; and that PBGC must be appointed as statutory trustee. (*See* Motion, Docket No. 5-1).

On November 29, 2013, Plaintiff filed a Complaint with the United States District Court for the Eastern District of Pennsylvania pursuant to 29 U.S.C. §§ 1342(a)(1) and (2), 1342(c) and 1348(a), seeking an order (a) terminating the AMOS EBY Pension Plan, (b) appointing PBGC as the statutory trustee of the Plan, (c) establishing September 30, 2012, as the termination date for the Plan, and (d) directing the Defendant and any other person or entity having possession, custody or control of any records, assets or other property of the Plan, to transfer, convey and deliver all such records, assets and property to the PBGC. (*See* Complaint, Docket No. 1)

AMOS EBY maintains an "active" status in the Pennsylvania Department of State database. The officers listed are Robert E. Ranck, President, and Lawrence Amway, Vice President, both at P.O. Box 26, Paradise, Pennsylvania 17562-0026. On information and belief,

both Robert E. Ranck and Lawrence Amway are deceased. On information and belief, AMOS EBY ceased all business operations on or before September 30, 2003. (*See* Motion, Docket No. 5)

PBGC attempted multiple methods to serve AMOS EBY with the Complaint, Summons, and required documentation pursuant to Fed. R. Civ. P. 5(b) and 231 Pa. Code § 424. (*See* Motion, Docket No. 5)

On July 25, 2014, this Court granted PBGC's Motion for Alternative Service allowing PBGC to effect service of the Complaint and related documents upon the Secretary of State of the Commonwealth of Pennsylvania. (*See* Order, Docket No. 7)

On August 11, 2014, PBGC filed an Affidavit of Service of the Summons and Complaint upon the Secretary of the Commonwealth of Pennsylvania with a certified mail return receipt indicating the documents were received by the Secretary of the Commonwealth of Pennsylvania on August 1, 2014. (*See* Affidavit, Docket No. 8)

On August 25, 2014, this Court entered an Order allowing PBGC to file a request with the Clerk for entry of default in accordance with Fed. R. Civ. P. 55. (*See* Order, Docket No. 9)

On September 4, 2014, PBGC filed a Request for Entry of Default by the Clerk of the Court against AMOS EBY. (*See* Request, Docket No. 10)

On or about September 5, 2014, a default was entered against AMOS EBY for failure to appear, plead, or otherwise defend.

The Plan has been abandoned. Absent the relief sought herein, the Plan does not have a sponsor to provide funding, if needed, and does not have an administrator to manage assets and assure continuity of benefits. Therefore, there is a substantial risk that retirees under the Plan will not be paid benefits unless a new trustee is appointed. Similarly, participants in the Plan

who now desire to start receiving benefits will have no way to do so until a new trustee is appointed.

Upon issuing a termination decree under 29 U.S.C. § 1342(c), a United States District Court may appoint PBGC as a statutory trustee. 29 U.S.C. § 1342(b)(1). PBGC is prepared to serve as statutory trustee of the Plan.

WHEREFORE, PBGC moves this honorable Court for an order (a) terminating the AMOS EBY Pension Plan, (b) appointing PBGC as the statutory trustee of the Plan, (c) establishing September 30, 2012, as the termination date for the Plan, and (d) directing the Defendant and any other person or entity having possession, custody or control of any records, assets or other property of the Plan, to transfer, convey and deliver all such records, assets and property to the PBGC.

Dated: Washington, D.C.
September 11, 2014

Respectfully submitted,

/s/ Thea D. Davis TDT8778

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Chief Counsel

CHARLES L. FINKE

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PENSION BENEFIT GUARANTY

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**DECLARATION IN SUPPORT OF
MOTION FOR DEFAULT
JUDGMENT**

I, Thea D. Davis, make this declaration pursuant to Fed. R. Civ. P. 55(b) in support of the Pension Benefit Guaranty Corporation's ("PBGC") Motion for Default Judgment against Defendant AMOS EBY Company, Inc.

1. I am an attorney with PBGC's Office of the Chief Counsel.
2. I am personally familiar with the records that PBGC maintains related to this case.
3. Based on my personal knowledge of these records, AMOS EBY Company, Inc. ("AMOS EBY") established the AMOS EBY Company, Inc. Defined Benefit Plan (the "Pension Plan"). The Pension Plan is a single-employer defined benefit pension plan and is covered under the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012) ("ERISA"). AMOS EBY is the contributing sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13).
4. On August 1, 2014, service was completed on AMOS EBY in accordance with the Order entered by this Court to effect service on AMOS EBY by serving the Secretary of the Commonwealth of Pennsylvania. (*See* Order, Docket No. 7) (*See* Affidavit, Docket No. 8)
5. As of the date of this Declaration, AMOS EBY has failed to appear, plead, or otherwise defend in accordance with the Default entered by this Court on or about September 5, 2014.

6. Based on my personal knowledge of the records in PBGC's possession, neither AMOS EBY, nor any person known to be associated with AMOS EBY, is an infant, incompetent, officer or agency of the United States, or a member of the United States armed forces.

7. No damages are sought in the civil action, and no attorney's fees are requested.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: Washington, D.C.
September 11, 2014

Respectfully submitted,



ISRAEL GOLDOWITZ

Chief Counsel

CHARLES L. FINKE

Deputy Chief Counsel

MICHAEL C. MILLER

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ORDER

This Court has considered Pension Benefit Guaranty Corporation's ("PBGC") Motion for Default Judgment against the defendant, AMOS EBY Company, Inc. ("AMOS EBY"), together with the papers submitted in connection with said motion and other relevant papers on file in this action, and finds as follows:

1. The Clerk of the Court has entered default against AMOS EBY.
2. AMOS EBY was a corporation and is therefore not covered by the restrictions on entry of default judgment against infants and incompetent persons (under Fed. R. Civ. P. 55) or against service members in military service (under section 201 of the Servicemembers Civil Relief Act, codified at 50 App. U.S.C. § 521).
3. The allegations in the Complaint support the relief sought by PBGC.

THEREFORE, IT IS ORDERED that:

- a. Default judgment is granted against AMOS EBY in this action pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure;

- b. The AMOS EBY Company, Inc. Defined Benefit Plan (the “Pension Plan”), a defined benefit pension plan of which AMOS EBY was the contributing sponsor and plan administrator, must be terminated in order to protect the interests of the participants in the Pension Plan;
- c. PBGC is appointed trustee of the Pension Plan pursuant to 29 U.S.C. § 1342(c);
- d. PBGC is authorized to and shall terminate the Pension Plan pursuant to 29 U.S.C. § 1342(c);
- e. September 30, 2012, is established as the termination date of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4); and
- f. AMOS EBY and any other person or entity having possession, custody or control of any records, assets or other property of the Pension Plan, shall transfer, convey and deliver all such items to PBGC.

Dated: _____

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2014, a copy of the Pension Benefit Guaranty Corporation's Motion for Default Judgment was filed electronically and is available for viewing and downloading from the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Thea D. Davis TDT8778
Thea D. Davis