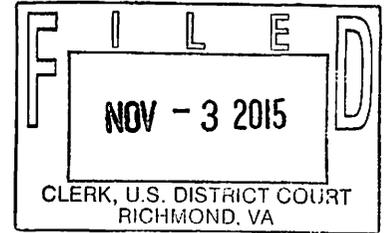


**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**



PENSION BENEFIT GUARANTY CORPORATION
1200 K Street, NW
Washington, DC 20005

Plaintiff,

v.

SHERMAN B. LUBMAN, CHAPTER 7 TRUSTEE
as Plan Administrator for the
DuVal Development Defined Benefit Keogh
4120 Bush Lake Drive
Glen Allen, Virginia 23060

Defendant.

Civil Action No. 3:15 cv 0659

COMPLAINT FOR PENSION PLAN TERMINATION

This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012 and Supp. I 2013) (“ERISA”). Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”), brings this action, pursuant to 29 U.S.C. §§ 1342 and 1348(a), seeking an order (a) terminating the DuVal Development Defined Benefit Keogh (the “Pension Plan”); (b) appointing PBGC as statutory trustee of the Pension Plan; (c) establishing November 23, 2010, as the termination date of the Pension Plan; and (d) directing the defendant and any other person or entity having possession, custody or control of any of the records, assets, or other property of the Pension Plans, to transfer, convey and deliver all such records, assets, and property to PBGC, as the statutory trustee upon request under 29 U.S.C. § 1342(d)(1).

JURISDICTION AND VENUE

1. This Court has exclusive jurisdiction of this action pursuant to 29 U.S.C. §§ 1303(e)(3) and 1342(e) and (f).

2. Venue lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g).

PARTIES

3. Plaintiff is a wholly owned United States government corporation established under 29 U.S.C. §1302(a) to administer the pension plan termination insurance program created under Title IV of ERISA. When an underfunded pension plan terminates, PBGC ensures the timely and uninterrupted payment of statutorily guaranteed pension benefits to plan participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

4. Defendant, Sherman B. Lubman, Chapter 7 Trustee (“Lubman”), is the Chapter 7 Trustee of William B. DuVal (“DuVal”). DuVal was the sole proprietor of DuVal Development, the contributing sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13). Pursuant to 11 U.S.C. § 704(a)(11), Lubman, as DuVal’s Chapter 7 Trustee, is the administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1002(16)(A) and 1301(a)(1). On information and belief, Lubman’s principal place of business is located at 4120 Bush Lake Drive, Glen Allen, Virginia 23060.

THE PENSION PLAN

5. The Pension Plan is a single-employer defined benefit pension plan and is covered under Title IV of ERISA. 29 U.S.C. §§ 1002(35), 1301(a)(15), 1321(a).

6. DuVal Development is the contributing sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13). Before November 23, 2010, DuVal Development was the Plan administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1003(16) and 1301(a)(1).

7. The Pension Plan provides pension benefits to certain present and former employees of DuVal Development and to their beneficiaries. On information and belief, the

Pension Plan has two participants. PBGC estimates the Pension Plan is underfunded by approximately \$799,321 on a termination basis as of November 23, 2010.

8. On information and belief, DuVal Development administered the Pension Plan at its offices in Richmond, Virginia.

CAUSE OF ACTION

9. On November 23, 2010, DuVal filed a voluntary petition for Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the Eastern District of Virginia. *In re William B. DuVal*, No. 10-38075-KLP (Bankr. E.D. Va.).

10. Upon information and belief, DuVal Development ceased operations and terminated all of its employees by November 23, 2010.

11. Lubman was appointed Chapter 7 Trustee of DuVal's bankruptcy estate. Under 11 U.S.C. § 704(a)(11), upon his appointment, Lubman became the plan administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1003(16) and 1301(a)(1).

12. Upon information and belief, DuVal's Chapter 7 bankruptcy proceeding remains open, and Lubman continues to be DuVal's Chapter 7 Trustee.

13. Under 29 U.S.C. § 1342(a), PBGC must commence proceedings to terminate a plan whenever PBGC determines that a covered pension plan does not have assets available to pay benefits which are currently due under the terms of the plan.

14. PBGC has determined, pursuant to 29 U.S.C. §§ 1342(a), that the Pension Plan does not have assets available to pay benefits which are currently due under the terms of the Plan. PBGC also has determined that the Pension Plan's termination date should be November 23, 2010.

15. On May 15, 2015, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination (the "Notice") to Lubman, as plan administrator of the Pension Plan, notifying Lubman that PBGC had determined that the Pension Plan does not have assets available to pay benefits which are currently due under the terms of the Pension Plan. The Notice stated that the Pension Plan's termination date is November 23, 2010. A copy of the Notice is attached hereto as Exhibit 1.

16. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination of a pension plan if necessary to protect the interests of participants, to avoid any unreasonable deterioration of the financial condition of the plan, or to avoid any unreasonable increase in liability to the PBGC insurance fund.

17. PBGC has determined that termination of the Pension Plan is necessary to protect the interests of participants and to avoid any unreasonable increase in liability to the PBGC insurance fund.

18. Pursuant to 29 U.S.C. § 1348(a)(4), a district court establishes the date of termination of a pension plan covered by Title IV when PBGC and the plan administrator have not agreed on a date of termination.

19. As of the filing of this Complaint, PBGC and the Pension Plan administrator have not agreed on a date of plan termination.

20. November 23, 2010, should be established as the date of plan termination of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4), because as of that date, the Pension Plan's participants received constructive notice of the Pension Plan termination, and they no longer had any justifiable expectations of the Pension Plan's continuation.

21. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(c) provides that PBGC may request that it be appointed as trustee of a plan in any case.

22. The PBGC is ready, willing, and able to serve as statutory trustee of the Pension Plan.

RELIEF REQUESTED

WHEREFORE, PBGC respectfully requests that this Court grant judgment for PBGC and issue an order granting the following relief:

1. Adjudicating the Pension Plan terminated pursuant to 29 U.S.C. § 1342(c);
2. Appointing PBGC statutory trustee of the Pension Plan pursuant to 29 U.S.C. § 1342(c);
3. Establishing November 23, 2010, as the termination date of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4);
4. Directing Lubman, DuVal, and any other person or entity having possession, custody or control of any records, assets or other property of the Pension Plan, to transfer, convey and deliver all such records, assets, and property to PBGC as statutory trustee upon request under 29 U.S.C. § 1342(d)(1); and

5. Granting such other relief as this Court deems just and proper.

Dated: November 3, 2015

Respectfully submitted,

PENSION BENEFIT GUARANTY
CORPORATION

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United States Attorney



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EXHIBIT 1



Pension Benefit Guaranty Corporation
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MAY 15 2015

April 20, 2015

William B. DuVal, d/b/a/ DuVal Development EIN/PN: 541343172/001
Mr. Sherman B. Lubman PBGC Case Number: 22212800
Chapter 7 Trustee Plan Name: DuVal Development
4120 Bush Lake Drive Defined Benefit Keogh
Glen Allen, VA 23060

NOTICE OF DETERMINATION

PLEASE TAKE NOTICE that the Pension Benefit Guaranty Corporation ("PBGC") has determined, under section 4042(a) of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"), 29 U.S.C. § 1342(a), that the DuVal Development Defined Benefit Keogh ("Plan") does not have assets available to pay benefits which are currently due under the terms of the Plan. PBGC has further determined, under ERISA § 4042(c), 29 U.S.C. § 1342(c), that the Plan must be terminated in order to protect the interests of the Plan's participants. Accordingly, PBGC intends to proceed under ERISA § 4042, 29 U.S.C. § 1342, to have the Plan terminated and PBGC appointed as statutory trustee, and under ERISA § 4048, 29 U.S.C. § 1348, to have November 23, 2010, established as the Plan's termination date.

PBGC has completed its decision-making process in this matter; accordingly, this determination is effective on the date it is issued.

PENSION BENEFIT GUARANTY CORPORATION


Andrea E. Schneider
Chairperson, Trusteeship Working Group