U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 19 October 2006

In the Matter of

UNITED STATES DEPARTMENT OF LABOR,
EMPLOYEE BENEFITS SECURITY
ADMINISTRATION
Complainant

v.

MASCON INFORMATION
TECHNOLOGIES, LTD.
Respondent

Case No.: 2005-RIS-00115

Gail A. Perry, Esq.
Washington, D.C.
For the Complainant[1]

Before: JEFFREY TURECK
Administrative Law Judge

DECISION AND ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION

This matter concerns a $47,550.00 civil penalty assessed under §502(c)(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA" or "the Act") and its implementing regulations. *See* 29 U.S.C. §1132(c); 29 C.F.R. §§ 2560.502c-2 and 2570.60-71. Complainant, the United States Department of Labor, Employee Benefits Security Administration ("EBSA") assessed the penalty against respondent, the Plan Administrator of the Mascon Information Technologies, Ltd. 401(k) Profit Sharing Plan & Trust ("plan"), for failure to include the report and opinion of an independent qualified public accountant ("IQPA report") as part of its 2003 Form 5500 Annual Report as required by ERISA §103(a)(3)(A), 29 U.S.C. §1023(a)(3)(A). Respondent requested a hearing with this Office for waiver or reduction of the

[1] Respondent's counsel withdrew their representation on May 11, 2006 (Notice of Withdrawal of Counsel).

penalty. EBSA has filed the instant motion for summary decision with supporting documentation, which is currently pending before me.

Background

Factual History

The material facts in this case are essentially undisputed.[2] Although the parties may differ as to the effect of the plan administrator's belief that the plan had fewer than 100 participants, I find that the difference is not material in this case. As such, there is no genuine issue of material fact left for a hearing, and the case is ready for decision. *See* 29 C.F.R. §2570.67.

Arvind S. Nath, an assistant controller at Mascon, currently serves as administrator for the plan (Respondent's Reply to Order to Show Cause at 2). Mascon Information Technologies, Ltd. ("Mascon") serves as the plan's sponsor (EBSA Exhibit 1-Form 5500 at 1, line 2a). At the beginning of the 2003 plan year, the plan held assets in a trust and had in excess of 100 participants (*id.* at 1, 2, lines 6, 7(a)-7(g), and 9(a)-9(b)). On or about October 8, 2004, Mascon filed Form 5500, the 2003 Annual Return/Report ("annual report") for the plan with EBSA without attaching an IQPA report. Although the Form 5500 indicated that the opinion of an independent qualified public accountant was attached, no report was in fact included (*id*., Schedule H at 3, pt. III).

By letter dated November 19, 2004, EBSA notified respondent that EBSA had received the Form 5500, but that the accountant's opinion was missing (EBSA Exhibit 2 at 1). EBSA instructed respondent to send the report within 30 days (*id*.). The letter warned of the potential for Internal Revenue Service ("IRS") and Department of Labor ("Department") penalties for failure to supply the requested report and provided respondent with a toll-free telephone number and mailing address it could utilize should it have questions (*id.*) Having received no reply to the November 19 letter, EBSA again notified respondent by letter dated January 13, 2005 that it still had not received the accountant's opinion (EBSA Exhibit 3 at 1). EBSA again instructed respondent to send the opinion within 30 days (*id.*). The January 13 letter also warned of the potential for IRS and Department penalties for noncompliance and provided the same toll-free telephone number and mailing address for questions about the letter (*id.*). Respondent, however, did not respond to the January 13 letter.

On April 18, 2005, EBSA issued a Notice of Rejection ("NOR"), rejecting the 2003 annual report as deficient because (i) an accountant's opinion was not attached; and (ii) the plan did not meet any of the exceptions to the requirement of attaching an IQPA report (EBSA Exhibit 4 at 1). The NOR informed respondent that an annual report rejected under §104(a)(4) of ERISA, 29 U.S.C. §1024(a)(4), for failure to provide material information required to be part of the annual report is treated as a failure to file an annual report unless a revised, satisfactory report is filed within 45 days of the date of the NOR (*id.* at 2). The NOR also warned that the Secretary

[2] In response to complainant's motion for summary decision, respondent has made no reply setting forth any facts showing a genuine issue of fact for hearing. *See* 29 C.F.R. §2570.67(a).

of Labor ("Secretary") could assess civil penalties in an amount of up to $1,100.00 per day from the date on which the annual report was due (without regard for any extension for filing) should respondent fail to submit a revised annual report with the IQPA report attached within the 45-day time limit (*id.*). The NOR also warned that no extensions of time for such response were available (EBSA Exhibit 4 at 1, 3).

By letter dated May 31, 2005, Mascon's certified public accountant, Pradeep K. Gupta, responded to the NOR (EBSA Exhibit 5). Despite the NOR's notice that extensions of time were not allowed, the accountant requested a 30-day extension, until June 30, 2005, within which to file the amended 2003 annual report (*id.*).[3]

On June 13, 2005, at which time Mascon still had not filed an amended annual report containing the IQPA report, EBSA issued a Notice of Intent ("NOI") to assess a civil penalty against respondent in the amount of $47,550.00 (EBSA Exhibit 6 at 1). The NOI informed respondent that the 2003 annual report was deficient due to its original failure to ensure that an IQPA report was attached and that a revised annual report containing the IQPA report had not been submitted to the Department within 45 days of the date of the NOR (*id.* at 1-2). Accordingly, the NOI gave respondent notice of EBSA's intent to assess a penalty of $47,550.00 pursuant to §502(c)(2) of ERISA, 29 U.S.C. §1132(c)(2) (*id.* at 2). The NOI provided that the penalty accrued for 317 days, from August 1, 2004, the day following the due date of the plan's annual report, to June 13, 2005, the date of the NOI (*id.*). EBSA assessed a penalty of $150.00 per day for each of the 317 days in which the accountant's report was missing (*id.*). Finally, the NOI directed respondent to file a Statement of Reasonable Cause in which the respondent was to state that it complied with ERISA §101(b)(1), 29 U.S.C. §1021(b)(1), or state any mitigating circumstances regarding either the degree or willfulness of noncompliance and set forth facts as to why the penalty as calculated, should either not be assessed or reduced (*id*.).

In a letter dated July 15, 2005, plan administrator Nath finally responded to the NOI. He stated that he was informed that the plan had "fewer than 100 employees [with] payroll deductions" and, as such, would be exempt from ERISA's requirement to file an IQPA report (EBSA Exhibit 7). Mr. Nath also stated that Mascon had engaged an accountant and was working to obtain the accountant opinion so that it would be in "full compliance very shortly" (*id.*). On August 22, 2005, EBSA issued a Notice of Determination on respondent's Statement of Reasonable Cause ("NOD"), which determined that no reasonable cause to waive the penalty existed (EBSA Exhibit 8 at 2). The NOD stated that an amended annual report containing the IQPA report had not been filed and that respondent, who bears the burden of assuring that ERISA's reporting requirements are met, had presented no reasonable cause either for its original failure to file the 2003 annual report or for the failure to file an amended report in a timely manner (*id.*) The NOD also warned respondent that it had 35 days from the date of the NOD to

[3] The accountant stated that Mascon had recently engaged his services as an independent accountant to audit the plan for years 2002 and 2003 (EBSA Exhibit 5). The accountant requested the extension so that Mascon could gather the necessary documentation from the administrators and custodians of the plan funds, a process which the accountant stated in his letter "has taken more than the customary and usual time" for document retrieval (*id.*).

request a hearing with this Office or the penalty assessed would become the final order of the Secretary (*id.*).

Procedural History

On September 26, 2005, respondent requested a hearing with this Office (Letter from Arvind S. Nath, Sept. 26, 2005). A *Notice of Docketing* issued on September 27, 2005, required the parties to file a pre-hearing exchange within 30 days. Complainant EBSA filed its pre-hearing exchange on October 20, 2005; respondent failed to do so within the allotted time. On November 29, 2005, Associate Chief Judge Thomas M. Burke ordered respondent to show cause why a default judgment should not be entered.[4] Respondent's counsel then moved for an extension of time within which to respond to the show cause order, and the motion was granted on January 18, 2006. Respondent's counsel filed a reply to the show cause order and submitted its pre-hearing exchange on February 16, 2006. Associate Chief Judge Thomas Burke found respondent's response to the show cause order sufficient, and the case was then assigned to me for hearing and decision. A hearing was then scheduled to be held in Chicago, Illinois between the dates of June 13-16, 2006.

On May 23, 2006, the parties submitted a joint motion to stay the proceeding, advising this Office that they were engaged in settlement negotiations.[5] On May 24, 2006, I ordered a continuance of the hearing and granted the parties until August 22, 2006 to file their pre-hearing statements. On August 22, 2006, complainant submitted its pre-hearing statement as well as the instant motion for summary decision. Respondent has filed neither a pre-hearing statement nor a response to complainant's motion for summary decision.

Discussion

Standard for Summary Decision

The Rules of Practice and Procedure for administrative hearings before the Office of Administrative Law Judges, found at Title 29 C.F.R. Part 18, provide that an administrative law judge "may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 29 C.F.R.

[4] The regulations provide that where a party fails to comply with any order of an administrative law judge, the judge may impose sanctions, which may include the striking of any submissions of the non-complying party and the issuance of a decision against the non-complying party. 29 C.F.R. §18.6(d)(2)(v). But complainant has not requested the issuance of a default judgment.

[5] Respondent's counsel had withdrawn its representation on May 11, 2006 and administrator Nath agreed to the joint motion (*see Joint Motion for Postponement*).

§18.40(d); *see also* Fed. R. Civ. P. 56(c) (upon which 29 C.F.R. § 18.40 is modeled).[6] In civil penalty proceedings under § 502(c)(2) of ERISA, where "no issue of a material of fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal … shall become a final order [of the Department of Labor]." 29 C.F.R. §§ 2570.67(a)(1) and 2570.61(g). The party who files a motion for summary judgment has the initial burden of demonstrating an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the moving party has properly supported its motion, the burden shifts to the non-moving party to show that there is a genuine issue of material fact left for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The opposing party may not "rest upon the mere allegations or denials" contained in the moving party's pleading, but must "set forth specific facts showing that there is a genuine issue of fact for the hearing." 29 C.F.R. §18.40(c). In evaluating a motion for summary decision, an administrative law judge is to review the factual evidence in the light most favorable to the non-moving party. *Stauffer v. Wal-Mart Stores, Inc.*, ALJ Case No. 99-STA-21, ARB Case No. 99-107, Decision and Order of Remand (Nov. 30, 1999). However, if respondent fails to make a showing sufficient to establish the existence of an element of his case, then complainant will be entitled to summary decision. *See Celotex*, 477 U.S. at 322-23.

EBSA's Penalty Assessment

ERISA protects the security of employees and dependents affected by employee benefit plans by requiring administrators of plans covered by the Act[7] to comply with extensive reporting and disclosure provisions. *See* ERISA §2, 29 U.S.C. §1001 (detailing Congressional findings) & ERISA §§ 101-05, 29 U.S.C. §§1021-25 (detailing reporting requirements). ERISA §101(b)(1) requires the administrator of a plan to file an annual report of the plan with the Secretary. 29 U.S.C. §1021(b)(1). The Act defines an administrator as either the person specifically designated by the terms of the plan's operating instrument or, in the absence of such designation, the plan's sponsor. ERISA § 3, 29 U.S.C. §1002(16)(i) and (ii). Section 101(b)(1) provides that the annual report is to include the information required by ERISA §103, 29 U.S.C. §1023. ERISA §103 provides that a plan administrator of an employee benefit plan "shall

[6] Summary judgment is appropriate when the record shows that there is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

[7] ERISA regulates both employee welfare and pension plans. An employee welfare benefit plan is defined as one providing employees or their beneficiaries with "medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability [or] death…." ERISA § 3, 29 U.S.C. §1002(1). An employee pension benefit plan is defined as one providing employees with retirement income, "regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan." *Id.* §1002(2)(A). Employee benefit plans include both welfare and pension plans. *Id.* § 1002(3). ERISA is applicable to any employee benefit plan "established or maintained by any employer engaged in commerce or in any industry or activity affecting commerce." ERISA § 4, 29 U.S.C. §1003(a)(1).

engage" an independent qualified public accountant to conduct an examination of the plan's books and records to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report "are presented fairly in conformity with generally accepted accounting principles." 29 U.S.C. §1023(a)(3)(A). The IQPA report "shall be made part" of the plan's annual report, which is to be filed with the Secretary not more than 210 days after the close of a plan year. *Id.* §§ 1023(a)(3)(A) and 1024(a)(1).

Where an employee benefit plan has fewer than 100 participants at the beginning of the plan year, the Act and its implementing regulations provide for "simplified" annual reporting. *See id*. §1024(a)(2)(A); 29 C.F.R. §2520.103-1(c). An administrator of such a plan is still required to file the Form 5500 and any applicable statements or schedules, but is not required to file an IQPA report. 29 C.F.R. §2520.103-1(c). Otherwise, the regulations provide that the administrator of a plan required to file an annual report in accordance with ERISA §104(a)(1) shall include the information required by ERISA §103, 29 U.S.C. §1023 (which mandates the filing of an IQPA report), or the information required by 29 C.F.R. §2520.103-1(a)(2), should the administrator elect an alternative method of compliance. 29 C.F.R. §2520.103-1(b).[8]

If the Secretary determines that the annual report submitted by the plan administrator is either incomplete or contains a material qualification in the accountant's opinion, she is empowered to reject the annual report. ERISA §104(a)(4), 29 U.S.C. §1024(a)(4). If the Secretary rejects an annual report as incomplete or containing a material qualification in the accountant's opinion, and a revised filing is not made within 45 days after the Secretary makes this determination, she is further empowered to retain an independent qualified public accountant to perform the required audit and to bring an action for appropriate legal or equitable relief. ERISA §104(a)(5), 29 U.S.C. §1024(a)(5).

In 1987, Congress amended ERISA, adding §502(c)(2), 29 U.S.C. §1132(c)(2), which grants the Secretary the discretionary enforcement authority to assess civil penalties up to $1,000.00 per day[9] from the date of a plan administrator's failure or refusal file an annual report required to be filed with the Secretary for reports due after December 31, 1987. When the Secretary rejects an annual report under ERISA §104(a)(4), that rejected annual report is to be treated as if it had not been filed. ERISA §502(c)(2), 29 U.S.C. §1132(c)(2).

[8] The technical requirements of the IQPA report to be filed with an annual report under this alternative method of compliance are listed at 29 C.F.R. §2520.103-1(b)(5).

[9] While the text of the Act provides a limit of $1,000.00 per day, this amount is subject to inflation-based adjustments. Section 31001(s) of the Debt Collection Improvement Act of 1996 amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require that the head of each Federal agency adjust civil monetary penalties subject to its jurisdiction for inflation. 29 C.F.R. §2575.100. The regulations now provide that the maximum civil penalties assessed under ERISA §502(c)(2) are increased from $1,000.00 per day to $1,100.00 per day for violations occurring after July 29, 1997. *Id.* §2575.502c-2.

Assessment of the penalty under §502(c)(2) is guided by the regulations set forth at 29 C.F.R. §2560.502c-2. The plan administrator is responsible for filing an annual plan report meeting the requirements of ERISA §101(b)(1) and bears the liability for civil penalties assessed by EBSA[10] for failure or refusal to file a compliant annual report. 29 C.F.R. §2560.502c-2(a); EBSA is to consider "the degree and/or willfulness" of the administrator's failure or refusal in filing the annual report. *Id.* §2560.502c-2(b)(1); *see also* H.R. Conf. Rep. 100-495, at 889 (1987) (providing that penalties reflect the "materiality" of the failure). EBSA must provide the plan administrator with written notice indicating its intention to assess a penalty and inform the administrator of the amount, the period of time to which the penalty applies, and the reason or reasons for the penalty. *Id.* §2560.502c-2(c).

Upon the issuance of the notice of intention, part or all of a penalty may be waived upon a showing by the plan administrator, within 30 days of the service of the notice, that there was reasonable cause for the failure to file a compliant annual report. 29 C.F.R. §2560.502c-2(e). Although the regulations provide that the statement of reasonable cause must be made in writing, under penalty of perjury, and must "set forth all the facts alleged as reasonable cause for the reduction or non-assessment of the penalty," they are flexible and do not define particular circumstances under which reasonable cause may exist. *See id.* Such flexibility ensures that "appropriate consideration is given to the *good faith* and *diligent* efforts by the [plan] administrator to comply with the annual reporting requirements." *Dep't of Labor, EBSA v. Callaghan & Callaghan, Inc.*, 2005-RIS-00099, at 3 (ALJ Apr. 24, 2006) (emphasis added).

After a review of all of the facts alleged in support of penalty waiver, EBSA is to notify the administrator in writing of its determination. 29 C.F.R. §2560.502c-2(g). The determination notice becomes the final order of the Secretary within 45 days of the notice service date unless, within 30 days of the service date,[11] the administrator requests an administrative hearing with this Office in accordance with the procedures outlined at 29 C.F.R. §§2570.61-.71 and 29 C.F.R. §18.4. *Id*. §2560.502c-2(h).

As the chronology of undisputed material facts makes clear, EBSA followed the applicable procedures in assessing the penalty and even afforded respondent two additional 30-day periods within which to make an amended annual report filing prior to the issuance of the NOR. Mascon's 401(k) plan is an employee benefit plan subject to the requirements of ERISA. Although Arvind S. Nath currently serves as the plan's administrator, EBSA has produced no evidence showing that the plan's operating instrument names Mr. Nath as plan administrator. Indeed, in its brief accompanying the motion for summary decision, EBSA identifies Mascon as the plan administrator (EBSA Memorandum in Support of Motion for Summary Decision at 2). I conclude that Mascon is the plan administrator within the meaning of ERISA § 3, 29 U.S.C. §1002(16)(A)(ii) (s*ee* EBSA Exhibit 1-Form 5500 at 1). Accordingly, it was responsible for engaging an independent qualified public accountant to provide an opinion of the plan and for

[10] Secretary of Labor Order 1-2003 delegated the Department's ERISA enforcement responsibilities to EBSA.

[11] Pursuant to 29 C.F.R. §2560.502c-2(i)(2), the NOD provided 35 days for response.

attaching the IQPA report to the 2003 annual report.[12] Although administrator Nath stated in his statement of reasonable cause that he believed than an IQPA report was not required as he understood that fewer than 100 participants took part in Mascon's plan during the 2003 plan year, this statement is belied by the fact that the Form 5500 that Mr. Nath and the plan sponsor signed listed 473 as the number of plan participants at the beginning of the 2003 plan year (EBSA Exhibit 1-Form 5500 at 2, line 6). As Mascon's plan had, by its own filing, over 100 participants at the beginning of plan year 2003, I conclude than an IQPA report was required to be attached to the 2003 annual report.

Additionally, as Mascon's original annual report did not contain the IQPA report and respondent made no amended filings containing the IQPA report in response to the November 19 and January 13 letters, the annual report was incomplete under ERISA and properly rejected by the Secretary. Since the Act provides that an annual report rejected by the Secretary as incomplete is to be treated as if it had not been filed, civil penalties in the amount of up to $1,100.00 per day[13] may be assessed against the plan administrator. The Secretary, acting through EBSA, followed the applicable procedures, providing respondent with the appropriate written notices, an opportunity for waiver, and even afforded two 30-day periods within which to file an amended report before the issuance of the NOR.

Unless EBSA has acted in an arbitrary, capricious, or unreasonable manner, an administrative law judge generally will not disallow a penalty assessed for failure to file an IQPA report in a timely manner. *See Dep't of Labor, PWBA v. Sociedad Para Asistencia Legal Money Purchase Plan*, 1994-RIS-00062, at 3 (ALJ Mar. 29, 1995); 5 U.S.C. §706(2); *see also Northwestern Inst. of Psychiatry v. Martin*, No. CIV. A. 92-0321, 1993 WL 52553, at * 3 (E.D. Pa. Feb. 24, 1993) (citing *Revak v. Nat'l Mines Corp.*, 808 F.2d 996, 1002 (3d Cir. 1986) for the proposition that courts must defer to an agency's "consistent interpretation" of its own rules unless such interpretation is either "plainly erroneous" or "inconsistent with the regulation.")). I conclude that ESBA did not act in an arbitrary, capricious, or unreasonable manner in assessing the $47,550.00 penalty against respondent.

Several factors support this conclusion. First, as ERISA places the responsibility for an accurate and timely filing of the annual report on the plan administrator, respondent had an original responsibility to file a compliant annual report and a subsequent responsibility to correct the deficient filing. The EBSA notices of November 19 and January 13 should have alerted respondent of the need to file an amended annual report with the IQPA opinion attached, or, at the very least, of the need to contact EBSA for further clarification. There is no evidence in the record that respondent either followed up with EBSA in response to these requests or filed an

[12] The record makes clear that respondent did engage two independent accountants: i) an unnamed accounting firm in Downers Grove, Illinois and ii) Pradeep K. Gupta (Reply to Order to Show Cause at 2; EBSA Exhibit 5). The unnamed accounting firm is no longer in the employ of Mascon (Reply to Order to Show Cause at 2). Although accountant Gupta requested an extension of time within which to file the IQPA report, the report has yet to be filed with EBSA.

[13] *See* discussion *supra* note 9.

amended annual report within either of the time periods afforded by the letters. After the annual report was rejected, respondent retained an independent accountant, but the record contains no evidence that an amended filing was made within the timeframe provided by the NOR. Further, there is no evidence in the record that respondent ever followed up, either with its accountant or with EBSA, to insure that the amended report was filed, even in an untimely manner.

Second, although Mr. Nath stated in his statement of reasonable cause that he was informed that the plan had fewer than 100 participants and an IQPA report was not required, reliance on this mistaken information and advice would not excuse respondent from his responsibility to file the report. *See*, *e.g.*, *Dep't of Labor, PWBA v. Schneiderman's Furniture, Inc.*, 2000-RIS-00040, at 5 (ALJ Mar. 23, 2001); *Dep't of Labor, PWBA v. Compgraphix, Inc.*, 1999-RIS-00053, at 6-7 (ALJ Oct. 14, 1999). Further, Mascon's filing on the Form 5500 shows that the plan did have 100 or more participants at the beginning of plan year 2003. Even assuming that the plan did in fact have fewer than 100 participants at the beginning of plan year 2003, there is no evidence in the record that respondent attempted, at any time, to amend or correct its Form 5500 to reflect the correct number of plan participants. As the number of participants would bear on the issue of whether an IQPA report was required to be filed, respondent had a duty to list the correct number of participants on the annual report or correct any error. EBSA gave respondent the opportunity to do so with the two initial request letters, the NOR and the NOI, all of which afforded respondent opportunities either to amend the original annual report or to explain the circumstances regarding any mistaken number of plan participants. Respondent declined to take these opportunities.

Third, EBSA states that the penalty it imposes for a missing or deficient accountant's report is $150.00 per day for the total number of days the accountant's report was missing, which, in this case, amounts to $47,550.00 (EBSA Memorandum in Support of the Motion for Summary Decision at 11). This per diem penalty is well below the statutory maximum of $1,000.00 per day[14] that the Secretary is authorized to assess under §502(c)(2) of ERISA. To the date of complainant's motion for summary decision, respondent has not filed even a *late* amended annual report containing the IQPA report. Respondent's continued assurances that Mascon has retained an independent qualified public accountant still have not resulted in an amended filing. "ERISA places the responsibility for accurate, complete, and timely reporting on the plan administrator. [Respondent's] failure to take steps to ensure that the IQPA report was properly filed does not demonstrate good faith or diligence in the performance of a plan administrator." *Callaghan & Callaghan*, 2005-RIS-00099 at 4. EBSA, therefore, has acted reasonably in not reducing the penalty amount below $150.00 per day. *Contra Callaghan & Callaghan, Inc.*, 2005-RIS-00099, at 3 (concluding that a 95% penalty reduction was not unreasonable once the plan administrator filed the IQPA report); *Schneiderman's Furniture, Inc.*, 2000-RIS-00040, at 6 (similarly concluding that a 95% penalty reduction was not unreasonable once Schneiderman's eventual compliance was taken into account).

Based on the foregoing, I conclude that Mascon has failed to properly file its 2003 annual plan report, and the civil penalties imposed by the complainant are reasonable. EBSA is therefore entitled to summary decision in its favor.

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[14] *See*, however, discussion *supra* note 10.

ORDER

IT IS ORDERED that within 45 days of the date this Decision and Order is issued, the respondent shall pay to the U.S. Department of Labor a civil penalty in the amount of $47,550.00. Respondent's payment shall be sent to the U.S. Department of Labor, ERISA Civil Penalty Collections, P.O. Box 100240, Atlanta, GA 30384-0240.

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JEFFREY TURECK
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 29 CFR §2570.69, a notice of appeal must be filed with the Secretary of Labor within 20 days of the date of issuance of this Decision and Order or the decision will become the final agency action within the meaning of 5 U.S.C. §704.