



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

AUG 11 2005



Re: [redacted] Case 131577, National
Business Journals Inc. Pension Plan ("Journals Plan")

Dear [redacted]

The Appeals Board has reviewed your timely appeal of PBGC's August 3, 2004 corrected determination that your client, [redacted] is not entitled to a PBGC benefit. As explained below, the Board changed PBGC's determination by finding that he is entitled to a PBGC benefit.

PBGC's Determination and Your Appeal

PBGC's letter said sufficient evidence has not been presented to PBGC to support payment of a benefit to [redacted]. PBGC also noted that a sworn affidavit asserting that an individual did not receive a benefit is not sufficient evidence. You said in your appeal that [redacted] has no recollection of receiving a lump-sum distribution from the Journals Plan. You also said that PBGC's failure to receive a timely Post-Distribution Certification from the former Journals Plan Administrator as required under the Employee Retirement Income Security Act casts doubt on the reliability of the Certification or the reliability of the mail service.

Discussion

PBGC files show that the Journals Plan terminated in a standard termination, effective April 4, 1989, with sufficient assets to provide all benefits. The files also include a copy of a Post-Distribution Certification on which the Plan Administrator certified that all distributions from this Plan were made to participants on August 28, 1989.

PBGC's technical procedures provide that when the records and certifications provided by a former administrator have been found reliable but PBGC does not have copies of cancelled checks or other proof of payment, a simple assertion of non-receipt does not constitute sufficient evidence that a lump-sum payment was not issued and received.

After receiving a response to your request for information under the Freedom of Information Act, you submitted additional information to the Appeals Board on November 19, 2004 and July 15, 2005. These included a sworn affidavit from [redacted] and a copy of a May, 1989 "Notice of Benefit Commitments" from the Journals Plan. You noted that, although [redacted] did sign his Notice of Benefit Commitments, he did not check either of the options presented. You further said [redacted] assumed he could not be paid until he reached normal retirement age.

You also submitted a copy of a transcript of [redacted] 1989 New York State income tax return provided by the State's Department of Taxation and Finance. You noted that PBGC had requested that he provide a copy of his 1989 Federal income tax return but IRS said they no longer have copies of 1989 returns. The Board also obtained, with [redacted] permission, a copy of his Social Security Itemized Statement of Earnings for the years 1987 through 1991.

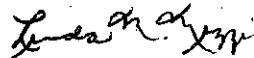
After reviewing the evidence available to the Appeals Board, we accepted [redacted] claim that he did not receive a lump-sum distribution of his Journals Plan benefit.

Decision

Based on the facts and circumstances of this case, the Appeals Board changed PBGC's determination by finding that [redacted] is entitled to a PBGC benefit.

PBGC's Benefits Administration and Payment Department will send [redacted] a new determination of the amount and form of his benefit. The new determination will include a new 45-day right of appeal for matters not decided in this letter. In the meantime, if you or he need other information from PBGC, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi
Member, Appeals Board

cc: [redacted]