

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JULIE A. SU,
Acting Secretary of Labor, United States
Department of Labor,

Plaintiff,

v.

RIVERSEDGE ADVANCED RETIREMENT
SOLUTIONS, LLC., a Pennsylvania
Company, PAUL PALGUTA, an individual,

v.

MID ATLANTIC TRUST COMPANY dba
AMERICAN TRUST CUSTODY, a
corporation, SCHWAB RETIREMENT
TECHNOLOGIES, INC., a corporation, and
CHARLES SCHWAB TRUST BANK, a
corporation, *solely as Rule 19 defendants*,

Defendants.

Civil Action Case No. 2:24-cv-104

COMPLAINT

Julie A. Su, Acting Secretary of the United States Department of Labor (“Acting Secretary”), alleges as follows:

INTRODUCTION

1. The Acting Secretary is charged with enforcing the provisions of Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, *et seq.*, which establishes, among other things, standards of conduct, responsibility, and obligations for fiduciaries of employee benefit plans.

JURISDICTION AND VENUE

2. This action arises under ERISA and is brought by the Acting Secretary to obtain relief under ERISA sections 409 and 502(a)(2) and (5), 29 U.S.C. §§ 1109 and 1132(a)(2) and (5), to redress violations and enforce the provisions of Title I of ERISA.

3. This Court has subject matter jurisdiction over this action pursuant to ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1). The subject of the Secretary’s Complaint is ERISA covered employer-sponsored retirement benefit plans which provide retirement income to the plans’ participants and beneficiaries.

4. Venue is appropriate in this district under ERISA section 502(e)(2), 29 U.S.C. § 1132(e)(2), and 28 U.S.C. § 1391(d), which provide for jurisdiction in any district where a defendant resides or may be found. Defendant RiversEdge Advanced Retirement Solutions, LLC (“RiversEdge”) is a Pennsylvania limited liability company with its registered office in this Court’s jurisdiction. Defendant Paul Palguta resides in this District and several of the alleged breaches took place within this District.

PARTIES

5. The Acting Secretary is vested with the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of civil claims against fiduciaries and other parties who violate ERISA. ERISA § 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5).

6. Defendant RiversEdge is a third-party administrator (“TPA”) of retirement plans and acts as an agent to manage and administer plan assets for the plan sponsors. RiversEdge serves as a TPA for at least 240 retirement plans holding millions of dollars in plan assets. At least 229 of these retirement plans are covered by ERISA (the “ERISA Plans”). RiversEdge exercises discretionary authority and/or discretionary control respecting management of the ERISA plans and/or exercises authority or control respecting management or disposition of plans’ assets, and has discretionary authority or discretionary responsibility in the administration of the ERISA Plans and is therefore a fiduciary of the plans pursuant to ERISA section 3(21)(A)(i) and (iii), 29 U.S.C. § 1002(21)(A)(i) and (iii), and a party in interest pursuant to ERISA section 3(14)(A), (B) and (G), 29 U.S.C. § 1002(14)(A), (B) and (G).

7. Defendant Paul Palguta is the sole owner and President of RiversEdge and has authority over the assets of the ERISA Plans for which RiversEdge acts as a TPA. Palguta exercises discretionary authority and/or discretionary control respecting management of the plans administered by RiversEdge and/or exercises authority or control respecting management or disposition of its assets, and thus, is a fiduciary of the plans pursuant to ERISA section 3(21)(A)(i), 29 U.S.C. § 1002(14)(A)(i), and a party in interest pursuant to ERISA section 3(14)(A), (B) and (H), 29 U.S.C. § 1002(14)(A), (B) and (H).

8. Mid Atlantic Trust Company, doing business as American Trust Custody, (“MATC”) is a custodian of assets for many of the ERISA Plans involved in this case and is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure to assure that complete relief can be granted.

9. Charles Schwab Trust Bank, a custodian of assets for many of the ERISA Plans involved in this case, and Schwab Retirement Technologies, Inc. a software licensor and data hosting provider for many of the ERISA Plans involved in this case (collectively “Schwab”), are named as defendants herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure to assure that complete relief can be granted.

GENERAL ALLEGATIONS

10. The Acting Secretary initiated an investigation into RiversEdge and the plans for which RiversEdge acts as a TPA.

11. Paul Palguta, as the owner and President of RiversEdge, has authority over the assets of the plans for which RiversEdge acts as TPA. RiversEdge is the sponsor of its own RiversEdge 401(k) Profit Sharing Plan for its employees. RiversEdge and Palguta are fiduciaries to these plans.

12. MATC and Schwab serve as the asset custodians for RiversEdge’s clients by holding the plan assets for various retirement plans in trust accounts, subject to the direction of the plan sponsor and RiversEdge as the plan sponsor’s agent.

13. MATC enters into separate contracts with each plan, and each contract appoints RiversEdge as agent for the plan, authorizing MATC to take trade, cash activity, and tax reporting instructions from RiversEdge. At least eighty-six of MATC’s plans with RiversEdge

are ERISA Plans. As asset custodian, MATC provides custodial, cashiering, and tax reporting services to many of these ERISA-covered and non-ERISA covered retirement plans.

14. Each retirement plan also enters into Retirement Plan Services Agreements (“RPS Agreements”) with RiversEdge. These RPS Agreements authorize Palguta and others at RiversEdge to execute trades and give directions as to the disposition of the plans’ assets.

15. RiversEdge also established a “corporate paying agent account” with MATC. This account is a book entry account held under account “#RERREBTE.” The #RERREBTE account is a corporate custody account which can only hold cash awaiting further disbursement instructions as entered by authorized RiversEdge personnel.

16. Since at least January 2017, RiversEdge made multiple transfers of plan assets from the #RERREBTE account at MATC to an account at PNC Bank for FBO RiversEdge Advanced Retirement Solutions. RiversEdge made no transfers from the PNC account back to any account at MATC

17. On or about October 27, 2023, Palguta placed an order (the “Order”) to buy shares for a non-ERISA plan called the Beaver County Deferred Compensation Plan (“Beaver County Plan”). However, the Beaver County Plan did not have sufficient cash available to complete the Order.

18. MATC contacted Palguta about the insufficient cash, and Palguta stated that RiversEdge would correct the problem. On or about November 14, 2023, Palguta notified MATC that he had corrected the problem. MATC then confirmed that the Beaver County Plan had the cash needed to complete the Order but determined the cash had been transferred that day to the Beaver County Plan directly from RiversEdge’s #RERREBTE account in a transaction initiated by Palguta on November 13, 2023.

19. The assets to complete the Order had apparently been misappropriated from six plans, four of which were ERISA Plans. MATC found that on November 13, 2023, Defendants had transferred assets to RiversEdge's account #RERREBTE from the six unrelated plan accounts as follows: \$167,452.00 from Christian Aid Mission 403(b) Plan, a non-ERISA plan; \$539,682.00 from LCBC Church 403(b) Plan, a non-ERISA plan; \$126,967.00 from Elite Mechanical, Inc, 401(k) Profit Sharing Plan, an ERISA Plan; \$210,637.00 from Hawaiian Island Dental, Inc. 401(k) Plan, an ERISA Plan; \$223,123.00 from Hampton Technical Associates, Inc. 401(k) Profit Sharing Plan, an ERISA Plan; and, \$413,955.00 from The National Fruit Product Co., Inc. 401(k) Profit Sharing Plan, an ERISA Plan.

20. In sum, these transactions transferred \$1,681,816.00 from the plans to the #RERREBTE account. Palguta then transferred almost the same amount, \$1,679,086.74, from the #RERREBTE account into the Beaver County Plan to fulfill the Order.

21. This suspicious transfer of plan assets prompted MATC to begin an audit of RiversEdge's accounts. This audit revealed that RiversEdge's #RERREBTE account had not received any outside cash since at least 2017; all cash deposits were from plan accounts. MATC also found many instances of reverse cash flow, in which RiversEdge transferred cash from the #RERREBTE account into plan accounts. RiversEdge was transferring cash from one plan trust account to another, running the funds through the #RERREBTE account. MATC's internal audit found approximately 13 ERISA Plans and 4 non-ERISA plans had experienced suspicious transactions, including RiversEdge's own Profit Sharing Plan.

22. From October 2023 to the present, Defendants transferred \$1,812,487.77 from the RiversEdge #RERREBTE account to a RiversEdge bank account at PNC Bank through a series of transactions seemingly structured to evade MATC's review. During this period,

RiversEdge made 84 separate transfers of less than \$25,000. On December 27, 2023 alone, RiversEdge initiated 14 separate transfers totaling \$308,306.70.

23. For example, on November 22, 2023, Palguta initiated two fed wires to the RiversEdge corporate account at PNC for \$24,756 and \$23,975. Someone at RiversEdge used Jennifer Palguta's ID to approve both transactions. Jennifer Palguta is Paul Palguta's wife, but she had not worked at RiversEdge for over six years.

24. Also on November 22, 2023, the individual using Jennifer Palguta's ID entered a wire to the PNC account for \$23,250. Paul Palguta then approved this wire request.

25. Had RiversEdge and Paul Palguta entered a single wire request of \$71,981 on November 22, 2023, the transfer would have been pended for MATC's review and approval. However, by structuring the transactions to remain under MATC's \$25,000 threshold, and using Jennifer Palguta's old ID, the transactions remained solely under the control of RiversEdge and Paul Palguta.

26. The MATC audit determined that all transactions out of the plan accounts to PNC Bank were associated with the login IDs of either Paul or Jennifer Palguta.

27. From November 30, 2023 through January 4, 2024, RiversEdge accelerated its transfers of plan assets between various trust accounts, continuing to run the funds through its #RERREBTE account. Transfers into the #RERREBTE account during this period total \$2,362,118.05. Specifically: \$93,248.00 was transferred from the ERISA Plan, Hampton Technical Associates 401(k) Profit Sharing Plan; \$90,655.85 was transferred from the ERISA Plan, Elite Mechanical, Inc. 401(k) Profit Sharing Plan; \$217,466.00 was transferred from the ERISA Plan, The National Fruit Product Co., Inc. 401(k) Employee Savings Plan; \$1,494,969.20

was transferred from the non-ERISA plan, LCBC Church; and, \$465,769.00 was transferred from the non-ERISA plan, the Beaver County Plan.

28. During the same time period, Defendants transferred \$556,168.43 from the RiversEdge #RERREBTE account to the ERISA Plan, Max Environmental Technologies, Inc. 401(k) Savings Plan; and \$32,173.39 to the ERISA Plan, W.N. Tuscano Agency, Inc. 401(k) Savings Plan.

29. On or about January 2, 2024, Palguta transferred more than \$185,000 from PNC to himself in the form of cash ATM withdrawals or ACH transfers.

30. On or about January 3, 2024, RiversEdge attempted to change the user ID associated with Jennifer Palguta to “John Palguta.” Paul Palguta told MATC that the change was made in error and the name associated with the account should remain “Jennifer Palguta.” As stated above, Jennifer Palguta had not worked for RiversEdge for at least six years.

31. On or about January 10, 2024, RiversEdge made multiple attempts to reactivate the user ID of a former employee of RiversEdge. The attempts failed as the person attempting to reactivate the account did not have the requisite information to unlock the password. Due to these attempts to circumvent security and access accounts on MATC’s system, MATC removed RiversEdge’s access to MATC’s system for all of RiversEdge’s clients on or about January 10, 2024.

32. The U.S. Department of Labor’s Employee Benefits Security Administration (“EBSA”) investigated these issues. Reviewing the #RERREBTE ledgers, EBSA determined RiversEdge and Palguta had transferred a total of \$23,635,176.16 in assets from the ERISA and non-ERISA plans to the #RERREBTE account from October 2022 through January 2024. During the same time period, RiversEdge and Palguta transferred \$18,753,862.20 to different

retirement plans. Finally, EBSA determined that RiversEdge and Palguta had transferred at least \$5.5 million in ERISA and non-ERISA plan assets from the #RERREBTE account to PNC Bank from October 2022 through January 2024.

33. On January 11, 2024, the U.S. Department of Justice issued preservation letters to MATC and PNC asking them to freeze RiversEdge's accounts because they likely contained proceeds of a crime. While DOJ is in the process of obtaining a final warrant to freeze the accounts, they have not notified the DOL of having obtained such a warrant yet.

34. EBSA found that RiversEdge also services at least 170 plans that have assets held by Schwab on a custodial basis. EBSA has not been able to confirm whether Schwab has terminated RiversEdge's or Palguta's access to these accounts.

35. For many plans, RiversEdge produced reports that overstated the assets that the plans held at MATC by approximately the same amounts that were involved in transactions initiated by Palguta and involving the #RERREBTE account. Form 5500 is a document that certain ERISA plans must file annually with the DOL to report information about the plan, including the amount of the plans' assets. Palguta confirmed to EBSA's investigator that none of the plans with custodial accounts at MATC held funds anywhere else. Therefore, the account balances should have conformed to the amounts reported to the government on the Form 5500s. They do not and plan assets are missing.

36. For example, Family Medicine of Albemarle 401(k) Plan, an ERISA Plan, has a deficiency of \$591,269.00 when its year 2022 Form 5500's reported balance is compared to its MATC account balance. In that plan year, RiversEdge transferred \$569,798 from that plan's account to the RiversEdge #RERREBTE account.

37. The Form 5500 reported balance for 2022 for the Hampton Technical Associates 401(k) Profit Sharing Plan, an ERISA Plan, was \$752,576 higher than the account value from the MATC statement. That year, RiversEdge made nine transfers out of the Hampton Technical Associates 401(k) Profit Sharing Plan account to RiversEdge's #RERREBTE account totaling \$749,358.00

38. W.N. Tuscano Agency ("Tuscano") sponsors an ERISA plan called the W.N. Tuscano Agency, Inc. 401(k) Savings Plan and used RiversEdge as its TPA from April 1, 2013 through December 1, 2023. During this period, MATC was the plan's sole asset custodian. MATC held the plan assets in a trust account and provided quarterly statements to the plan showing the account balances. RiversEdge also provided quarterly statements showing the account balances. Comparing the MATC statements with the RiversEdge statements, Tuscano plan fiduciary Susan Crary noticed that there were fewer assets shown on the MATC statement than the RiversEdge statement, totaling more than \$5 million. Crary identified multiple unauthorized transfers of plan assets into RiversEdge #RERREBTE account. Specifically: June 30, 2021, \$1,294,935.00; September 30, 2021, \$453,892.50; December 30, 2021, \$525,872.00; June 30, 2022, \$312,457.35; September 30, 2022, \$266,457.35; October 12, 2022, \$453,892.50; November 14, 2022, \$916,174.08; January 3, 2023, \$1,349,712.00; and, March 31, 2023, \$1,130,467.20.

39. Crary repeatedly asked Palguta to explain the missing \$5 million. Palguta replied that it was due to a "system trading error" and would be corrected. When the Tuscano plan terminated its relationship with RiversEdge, Palguta finally returned the \$5 million. The source of that \$5 million was transfers of money from several other unrelated plans.

40. An investment advisor to seven RiversEdge client plans audited the plans' transactions. The investment advisor found that at least two of his clients' accounts had less in their accounts at MATC than the amounts reported to be in the plans by RiversEdge in 2022 and 2023. The shortfalls for these two ERISA Plans totaled approximately \$2 million.

41. The Acting Secretary now brings this suit for relief. The Acting Secretary seeks to enjoin RiversEdge and Palguta from serving as fiduciaries and service providers of the plans they administer. The Acting Secretary seeks to have an independent fiduciary appointed to secure plan records, assist with recordkeeping transition activities, and perform an accounting of suspicious asset transfers. In addition, the Secretary seeks to have RiversEdge and Palguta removed as fiduciaries to their own RiversEdge 401(k) Profit Sharing Plan and replaced by an independent fiduciary. The Acting Secretary also seeks a final judgment to undo RiversEdge's and Palguta's fiduciary breaches and prohibited transactions, to recover any residual losses to the plans, to permanently bar RiversEdge and Palguta from acting as ERISA fiduciaries or service providers in the future, and to provide for other remedial and equitable relief.

ERISA VIOLATIONS

42. Because of the facts and circumstances set forth in paragraphs 1 to 41, above:

a. Defendants RiversEdge and Palguta, acting in their fiduciary capacities, failed to act solely in the interest of the participants and beneficiaries of the ERISA Plans and for the exclusive purpose of providing benefits to participants and their beneficiaries, in violation of ERISA section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

b. Defendants RiversEdge and Palguta, acting in their fiduciary capacities, failed to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct

of an enterprise of a like character and with like aims as required by ERISA section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

d. Defendants RiversEdge and Palguta, acting in their fiduciary capacities, engaged in prohibited transactions, specifically transferring ERISA Plan assets from the Plans to RiversEdge, a party in interest, in violation of ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

e. Defendants RiversEdge and Palguta, acting in their fiduciary capacities, engaged in prohibited transactions by dealing with ERISA Plan assets in their own interests in violation of ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1).

f. Defendants RiversEdge and Palguta, acting in their fiduciary capacities, engaged in prohibited transactions by engaging in transactions involving ERISA Plans on behalf of a party whose interests were adverse to the interests of the ERISA Plans or the ERISA Plans' participants and beneficiaries in violation of ERISA section 406(b)(2), 29 U.S.C. § 1106(b)(2).

g. Defendants RiversEdge and Palguta participated knowingly in the breaches of fiduciary duty of other fiduciaries and/or had knowledge of such breaches by a co-fiduciary and failed to take reasonable efforts to remedy such breaches, in violation of ERISA section 405(a), 29 U.S.C. § 1105(a).

PRAYER FOR RELIEF

WHEREFORE, pursuant to ERISA sections 409 and 502(a)(5), 29 U.S.C. §§ 1109 and 1132(a)(5), Plaintiff prays that the Court:

- a. Preliminarily and permanently remove Defendants RiversEdge and Palguta, and issue a permanent injunction barring them, from serving as fiduciaries or service providers of any ERISA-covered benefit plan;
- b. Require Defendants RiversEdge and Palguta to restore ERISA plan losses, including lost opportunity costs, resulting from RiversEdge's and Palguta's co-fiduciary breaches and prohibited transactions;
- c. Require Defendants RiversEdge and Palguta to disgorge to the ERISA Plans all profits and fees and other monies earned in connection with their violations;
- d. Issue a permanent injunction barring RiversEdge and Palguta from violating applicable ERISA provisions;
- e. Appoint an independent fiduciary with the authority to: secure plan records; assist with recordkeeping transition activities; perform an accounting of ERISA Plans that have been identified as having had suspicious transfers of assets; and, replace RiversEdge and Palguta as fiduciaries of their own RiversEdge 401(k) Profit Sharing Plan;
- f. Impose civil penalties on the applicable recovery amount; and,
- g. Provide such other relief as may be just and equitable.

Respectfully submitted,

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