

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

PENSION BENEFIT GUARANTY)	
CORPORATION,)	
445 12 th Street, SW)	
Washington, D.C. 20024)	
)	
Plaintiff,)	
)	
v.)	Case No. <u>1:24-cv-1608</u>
)	
Sheltering Arms Children and Family Services, Inc.)	
as Plan Administrator of the Sheltering Arms)	
Children and Family Services, Inc. Defined Benefit)	
Plan)	
)	
Defendant.)	

COMPLAINT FOR PENSION PLAN TERMINATION

1. This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, (29 U.S.C. §§ 1301-1461 (2018 & Supp. III 2021)) (“ERISA”). Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”), files this complaint, pursuant to 29 U.S.C. §§ 1342(a)(2), 1342(c), and 1348(a) seeking an order (i) terminating the Sheltering Arms Children and Family Services, Inc. Defined Benefit Plan (“Plan”); (ii) appointing PBGC as statutory trustee of the Plan; (iii) establishing March 31, 2023, as the termination date of the Plan; and (iv) 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 Plan, 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

2. This Court has exclusive jurisdiction over this action, without regard to the amount in controversy, pursuant to 29 U.S.C. § 1303(e)(3).
3. Venue lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g) because the Defendant is located and the Plan is administered in Jamaica, New York.

PARTIES

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

5. Defendant, Sheltering Arms Children and Family Services, Inc. (“Defendant” or “Sheltering Arms”) is the plan administrator of the Plan within the meaning of 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A). On information and belief, Defendant is a not-for-profit corporation organized under the laws of New York, with its principal place of business located in Jamaica, New York.

THE PENSION PLAN

6. The Plan is a tax-qualified, single-employer, defined benefit plan that is covered by Title IV of ERISA. 29 U.S.C. § 1321(a).

7. The Plan provides benefits to certain former employees of Sheltering Arms and to their beneficiaries. On information and belief, the Plan has approximately 273 participants.

PBGC estimates that the Plan is underfunded by \$2.9 million on a termination basis as of March 31, 2023.

8. Sheltering Arms is the contributing sponsor of the Plan within the meaning of 29 U.S.C. § 1301(a)(13).

9. Sheltering Arms administers the Plan.

10. Sheltering Arms froze benefit accruals under the Plan on June 30, 2008.

COMPANY BACKGROUND AND CESSATION OF BUSINESS

11. Sheltering Arms is a non-profit organization that served low-income children and families in New York City, New York.

12. In February, 2023, Sheltering Arms announced that it would shut down and transfer its programs, along with its employees, to other organizations that served the community.

13. The Sheltering Arms' Board of Directors voted on March 13, 2023, to transfer all programs to other entities. While Sheltering Arms still exists as a legal entity, only a few employees remain and are employed primarily to help transition the Defendant's programs to other organizations and perform billing and collections operations related to previously provided non-profit services.

14. In October, 2023 and January, 2024, Sheltering Arms missed its minimum required contributions to the Plan of \$129,240 each, citing "financial challenges" as the reason.

CAUSE OF ACTION

15. Paragraphs 1 through 14 are incorporated as if stated fully herein.

16. PBGC is authorized by 29 U.S.C. § 1342 to commence proceedings to terminate a plan whenever PBGC determines, *inter alia*, that the plan will be unable to pay benefits when due, 29 U.S.C. § 1342(a)(2).

17. PBGC has determined, pursuant to 29 U.S.C. §§ 1342 (a)(2), that the Plan will be unable to pay benefits when due. PBGC will file an administrative record with respect to its determination, if necessary.

18. On December 18, 2023, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination to Sheltering Arms (“Notice”), as Plan administrator of the Plan, notifying Sheltering Arms that PBGC had determined that the Plan will be unable to pay benefits when due. The Notice further stated that PBGC intends to proceed to seek termination of the Plan, have PBGC appointed as trustee of the Plan, and establish March 31, 2023, as the date of the termination for the Plan. A copy of the Notice is attached hereto as Exhibit A.

19. 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.

20. PBGC has determined that termination of the Plan is necessary to protect the interests of Participants. *See* Exhibit A.

21. 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 of ERISA when PBGC and the Plan administrator have not agreed on a date of termination.

22. On December 18, 2023, PBGC sent Sheltering Arms an agreement to terminate the Plan and appoint PBGC as statutory Trustee. To date, Sheltering Arms has not signed the agreement allowing PBGC to trustee the Plan and has not agreed on a date of termination.

23. March 31, 2023, should be established as of the date of Plan termination pursuant to 29 U.S.C. § 1348(a)(4), because as of that date, all of the Plan participants had constructive notice that Sheltering Arms planned to cease operations and transfer its programs to other entities, at which point the participants no longer had any justifiable expectation of the Plan's continuation. Establishment of that date also furthers the interests of PBGC.

24. 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(b)(1) provides that PBGC may request that it be appointed as trustee of a plan in any case.

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

RELIEF REQUESTED

WHEREFORE, PBGC respectfully requests that the Court grant judgment to PBGC and issue an Order granting the following relief:

1. Adjudicate that the Plan is terminated pursuant to 29 U.S.C. § 1342(c);
2. Appoint PBGC statutory trustee of the Plan pursuant to 29 U.S.C. § 1342(c);
3. Establish March 31, 2023, as the termination date of the Plan pursuant to 29 U.S.C. § 1348(a)(4);
4. Direct Sheltering Arms and any other person or entity having possession, custody, or control of any records, assets, documents, or other property of the Plan, to transfer, convey, and deliver all such records, assets, and property to PBGC pursuant to 29 U.S.C. § 1342(d)(1); and
5. Grant any and all other relief that this Court deems just and proper.

Dated: March 4, 2024
Washington, D.C.

/s/ Zoe C. Wadge
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