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Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “PBA”);

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to Make an Order under section 69(1)(d) of the PBA that the Pension Plan for Richard Forster of Structform International, Registration Number 1159482, be wound up as at December 31, 2015;

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to Make an Order under sections 87(1)(a) and (c) of the PBA that Structform International take all actions necessary to wind up the Pension Plan for Richard Forster of Structform International, Registration Number 1159482, in accordance with the requirements of the PBA and the regulations made under the PBA.

NOTICE OF INTENDED DECISION

TO:

Structform International
PO Box 275
Gormley ON L0H 1G0

Attention:

Anita Shum
Employer and Administrator of the Plan

AND TO:

RF

Member

I INTEND TO MAKE AN ORDER that the Pension Plan for Richard Forster of Structform International, Registration Number 1159482 (the “Plan”), be wound up effective December 31, 2015, under section 69(1)(d) of the PBA and that, pursuant to sections 87(1)(a) and (c) of the PBA, the Plan administrator, Structform International, take all actions necessary to effect the wind up of the Plan in accordance with the requirements of the PBA and the regulations made under the PBA, including, but not limited, to the following:

- a. File a wind up report with an effective date of December 31, 2015, with the Superintendent of Financial Services (the “Superintendent”) which is prepared in accordance with the requirements of the PBA and Regulation 909 (the “Regulation”) within thirty (30) days of

the date of the order;

- b. Send RF an election option statement which complies with section 72 of the PBA and section 28 of the Regulation and that reflects his full entitlements under the Plan within sixty (60) days of receipt of notice of the Superintendent's approval of the wind up report;
- c. Subject to any applicable restrictions in section 29 of the Regulation, make payment to RF in accordance with his election within sixty (60) days after the later of,
 - i. the day on which RF's election is received or, if no election is made, the day on which RF is deemed to have made the election (i.e., ninety (90) days from the date RF receives the election option statement); and
 - ii. the day on which notice is received of the Superintendent's approval of the wind up report.
- d. If requested by RF, seek approval from the Superintendent pursuant to section 70(3) of the PBA to begin paying RF a pension prior to the Superintendent's approval of the wind up report;
- e. If the Superintendent approves the payment of the pension under section 70(3) of the PBA, send the election option statement in paragraph (b) above to RF within 60 days after receiving notice of the Superintendent's approval of the payment;
- f. If the Superintendent approves the payment of the pension under section 70(3) of the PBA, make payment to RF in accordance with his election within 60 days after the later of,
 - i. the day on which RF's election is received or, if no election is made, the day on which RF is deemed to have made the election (i.e., ninety (90) days from the date RF receives the election option statement); and
 - ii. the day on which notice is received of the Superintendent's approval of the payment under section 70(3) of the PBA.
- g. Make payments, calculated in accordance with the PBA and the Regulation, to the Plan fund in order to fully fund the Plan's wind up deficiency as follows:
 - i. Remit the first five-year amortization payment in respect of the year 2016, together with accrued interest, to the Plan fund within thirty (30) days of the date of the order;
 - ii. Remit the second five-year amortization payment in respect of the year 2017, together with accrued interest, to the Plan fund within sixty (60) days of the date of the order;
 - iii. Remit the third five-year amortization payment in respect of the year 2018, together with accrued interest, to the Plan fund within ninety (90) days of the date of the order;
 - iv. Remit the fourth five year amortization payment in respect of the year 2019 to the Plan fund on or before December 31, 2018; and
 - v. Remit the fifth five-year amortization payment in respect of the year 2020 to the fund on or before December 31, 2019.
- h. File with the Superintendent reports prepared pursuant to section 32 of the Regulation for each year until the Plan is fully funded on or before the following dates:
 - i. For the 2016 Plan year, within thirty (30) days of the date of the order;
 - ii. For the 2017 Plan year, June 30, 2018;

- iii. For the 2018 Plan year, June 30, 2019; and
- iv. For the 2019 Plan year, June 30, 2020.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the PBA. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you.**¹ **A copy of that form is included with this Notice of Intended Decision.** Additional copies can be obtained by visiting the Tribunal's website at www.fstontario.ca.

If a Request for Hearing (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you, sections 89(8) and 89(9) of the PBA provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the PBA and the Regulation, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the Order to wind up the Plan effective December 31, 2015, pursuant to section 69(1)(d) of the PBA and the Order for the Plan administrator to take all actions necessary to effect the wind up of the Plan in accordance with the requirements of the PBA and the regulations made under the PBA, as more particularly set out in paragraph (a) to (h) above, pursuant to sections 87(1)(a) and (c) of the PBA.

A completed Request for Hearing form must be received by the Tribunal within 30 days after this Notice is served on you. They may be mailed, faxed, or delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto ON M2N 6L9

Attention: The Registrar
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. Those Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

REASONS FOR INTENDED DECISION:

1. Structform International ("Structform") is the employer and administrator of the Plan.
2. The Plan is a single employer, contributory, defined benefit individual pension plan that was established effective January 1, 2006, for RF, who is the only member of the Plan.

3. RF was a management employee for Structform and at no time was a shareholder of Structform.
4. On or about March 30, 2007, RF entered into an agreement with Structform purporting to permit Structform to cease making contributions to the Plan should it choose to do so (the "Agreement").
5. RF terminated his employment from Structform in or about December 2015.
6. From inception of the Plan to the termination of RF's employment, Structform made periodic lump sum contributions to the Plan fund, which appear to be in respect of the normal cost of the Plan.
7. It does not appear that Structform ever made any special payments to liquidate either the going concern or solvency deficiencies of the Plan.
8. No contributions of any kind were made to the Plan fund in respect of periods after December 31, 2015.

Termination Statement

9. RF was provided with a document entitled "Individual Pension Plan (IPP) Retirement & Termination Estimate" dated November 29, 2016, which reflected a retirement date of December 31, 2015. This document does not comply with the requirements for termination statements set out in section 28 of the PBA or section 44 of the Regulation because, *inter alia*, it proposes to reduce the commuted value of RF's pension benefits to the value of the assets in the Plan fund.
10. Despite repeated requests, to date, Structform has refused to provide RF with a termination statement that complies with the requirements of the PBA and Regulation.

Plan Funding

11. The last actuarial valuation report that was filed with FSCO for the Plan was prepared as at December 31, 2014. That report indicated a solvency ratio for the Plan of approximately 85%.
12. Section 55(2) of the PBA states that an employer required to make contributions under a pension plan shall make the contributions in accordance with the prescribed requirements for funding and in the prescribed manner and at the prescribed times to the pension fund.
13. Following his termination from employment, Structform advised RF that it did not wish to make any further contributions to the Plan to fund RF's full entitlements under the Plan in accordance with its obligations as the employer under section 55 of the PBA and as the administrator of the Plan under section 56 of the PBA.
14. The Agreement between Structform and RF purports to contract out of minimum standards in sections 55 and 56 of the PBA and is therefore unenforceable and, in any event, is not binding on the Superintendent.
15. Because RF was never a shareholder of Structform, section 48 of the Regulation does not apply to permit RF and Structform to enter into an agreement to reduce RF's accrued benefits under the Plan.

Wind up of the Plan

16. Section 69(1)(d) of the PBA provides that the Superintendent may require the wind up of a pension plan where all or substantially all of the members of the pension plan cease to be employed by the employer pursuant to section 69(1)(d) of the PBA.
17. As a result of RF's termination of employment with Structform, all of the members of the pension plan have ceased to be employed by the employer. There are therefore grounds to wind up the Plan pursuant to section 69(1)(d) of the PBA.

Non-Compliance

18. Sections 87(1)(a) and (c) of the PBA state that the Superintendent may make an order requiring an administrator or any other person to take any action in respect of a pension plan or a pension fund if the pension plan or pension fund is not being administered in accordance with the PBA, the regulations made under the PBA or the pension plan, or if the administrator or employer of the plan is contravening a requirement of the PBA or the regulations made under the PBA.
19. Structform has failed to provide RF with a termination statement that complies with the provisions of the Plan, the PBA and the Regulation, in that it purports to reduce the value of RF's entitlements under the Plan by the amount the Plan is underfunded. Structform has also indicated that it has no intention of funding the Plan as required by the PBA and the Regulation. As a result, RF has not received his pension entitlements despite the passage of two years since his termination.
20. The Superintendent is therefore of the view that Structform has failed to administer the Plan and Plan fund in accordance with the PBA, the regulations made under the PBA and the terms of the Plan and has contravened a requirement of the PBA or the regulations. As such, there are grounds for the Superintendent to order Structform to take all actions necessary to effect the wind up of the Plan and to ensure all benefits are fully funded both in accordance with the requirements of the PBA and the regulations made under the PBA, as more particularly set out in paragraphs (a) to (h) on pages 1-3 of this Notice.
21. Such further and other reasons as may come to the attention of the Superintendent.

DATED at Toronto, Ontario, this this 13th day of April, 2018.

Original Signed By

Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

1 NOTE - Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.