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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 Consent, under section 62.1(5) of the PBA, to a payment out of the pension fund for the Retirement Plan for Unionized Employees of Graphic Packaging Flexible Canada Inc., Registration Number 1084664 (the "Plan").

TO:

Graphic Packaging Flexible Canada Inc.
1500 Riveredge Parkway
Suite 100
Atlanta GA 30328
USA

Attention:

Brian A. Wilson
Director - Benefits

Applicant and Employer

NOTICE OF INTENDED DECISION

I INTEND TO CONSENT, under section 62.1(5) of the PBA, to the payment from the pension fund for the Plan to Graphic Packaging Flexible Canada Inc., in the amount of \$47,020 as at October 17, 2014, plus investment earnings thereon to the date of payment.

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 thirty (30) days after this Notice of Intended Decision is served on you.**[1](#)

Additional copies of the enclosed Form 1 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 thirty (30) days after this Notice of Intended Decision is served on you, subsection 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 of Financial Services (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 regulations, 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 thirty (30) days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the Consent pursuant to section 89(7) of the PBA.

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

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

Attention: The Registrar
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedures 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 DECISION:

1. Graphic Packaging Flexible Canada Inc. is the employer and administrator as defined in the Plan (the "Employer").
2. The Plan was wound up effective September 13, 2013.
3. The Plan had a liability under section 75 of the PBA on wind up.
4. The Employer made payments totalling \$46,900 (\$43,300 on April 9, 2014, and \$3,600 on October 17, 2014) to fund the deficit.
5. The latest report prepared by the Plan's actuary as at August 31, 2015, under section 32(1) of the Regulation 909, R.R.O. 1990, as amended (the "Regulation"), showed that there were assets in the amount of \$467,900 remaining in the Plan's pension fund after all benefits have been settled. These assets consist of \$420,880 in surplus assets and \$47,020 in overpayments to the pension fund. The surplus arose as a result of the actual annuity purchase price being lower than the assumed annuity price to settle certain benefits as part of the wind up of the plan.

6. In these circumstances, section 32(4) of the Regulation states that the Employer contributions with interest of \$47,020, as of October 17, 2014, be paid to the Employer in accordance with section 62.1 of the PBA, as if the money was an overpayment into the pension fund by the Employer within the meaning of section 62.1(1)(b) of the PBA.
7. Section 62.1(4) of the PBA states that if an employer makes an overpayment into the pension fund, the application to the Superintendent for reimbursement for the payment must be made before the later of: (a) 24 months after the date on which the employer made the overpayment; and (b) six months after the date on which the administrator, acting reasonably, becomes aware of the overpayment.
8. The Employer's application for reimbursement of the overpayment was made on September 28, 2015. This date is within six months after the date the Employer acting reasonably, became aware of the overpayment. Accordingly, the application has been filed within the time limits set out in section 62.1(4) of the PBA.
9. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, this 21st day of July, 2016.

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 PBA 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.

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