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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 Refuse to Consent under section 62.1(5) of the *PBA* to a payment out of the pension fund for the Pension Plan for Employees of The Cartwright Group Ltd. and Affiliated Companies, Registration Number 0983809 (the “Plan”)

TO:

The Cartwright Group Ltd
240 Edward Street
Aurora, ON L4G 3S9

Attention: Kent Milford
Vice President, Finance

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO CONSENT, under section 62.1(5) of the *PBA*, to the payment out of the pension fund for the Plan to The Cartwright Group Ltd. in the amount of \$ 15,318.52 plus investment earnings to the date of payment.

REASONS:

1. The Cartwright Group Ltd. is the employer and administrator of the Plan.
2. The Plan is funded on a money purchase basis through a Group Retirement Solutions contract.
3. In 2011, the Cartwright Group Ltd. sold off its Dye & Durham Division and as a result a number of members of the Plan were terminated including 14 members who at the date of termination had not completed a continuous period of two years of membership in the Plan.
4. At the date of termination of the members' employment, the Plan indicated that on termination members who at the date of termination had not completed a continuous period of two years of membership were not entitled to the value of employer contributions to the pension fund because they were not vested in their pension benefits. Specifically,

the Plan provided that while such members were entitled to receive a cash refund of the value of their member contributions to the pension fund or a deferred annuity for the amount of pension which could be purchased by the value of their member contributions, the part of the value of employer contributions not vested upon termination of employment would be forfeited by members.

5. The Plan was in compliance with the *PBA*. At the date of the termination of the members' employment, the *PBA* provided that an employee was entitled to a vested pension on termination of employment or membership only if the employee had completed two years' continuous membership in the plan (*PBA*, sections 36 (1)-(3)).
6. Despite the fact that the Plan provided that the members were not entitled to the part of the value of employer contributions not vested upon termination of employment, Cartwright Group Ltd. (the "Employer") paid the members the value of its (the employer's) contributions to the pension fund of the Plan out of its own funds. The payments were deposited by the Employer directly into the members' personal registered retirement savings plans pursuant to the members' directions. The Employer submits that it did so because "...the non-vesting was no fault of the employee we thought it only fair that we voluntarily offer to pay these funds back to the employees via transfers to their financial institutions". The Employer now seeks, under s. 62.1 of the *PBA*, the Superintendent of Financial Services' consent to the payment from the pension fund to reimburse the Employer for the amount that the Employer paid to the members that was forfeited under the terms of the Plan.
7. Section 62.1 of the *PBA* permits an employer to apply to the Superintendent of Financial Services (the "Superintendent") for consent to payment from the pension fund to reimburse the employer in the following circumstances: (a) if an employer pays an amount in respect of a pension plan that should have been paid out of the pension fund (section 62.1(a)); or (b) if an employer makes an overpayment into the pension fund (section 62.1(b)).
8. In this case, the Employer did not pay an amount in respect of the Plan that should have been paid out of the pension fund. On the contrary, as noted above, the Plan provided that the value of employer contributions not vested upon termination of employment was forfeited by the members. Therefore, section 62.1(a) of the *PBA* does not apply.
9. The term "overpayment" in section 62.1 of the *PBA* is not defined in the *PBA* but in its ordinary sense means a payment of more than is due. The Employer has not over-contributed to the pension fund of the Plan. The amount that was forfeited under the terms of the Plan was paid by the Employer directly to the members. It was not paid into the pension fund. Further, the Plan indicates that the value of employer contributions not vested upon termination of employment is not an overpayment. Paragraph 6 of the Plan provides that that part of the value of employer contributions not vested upon termination of employment forfeited by the members and all earnings of the Plan that are reasonably attributable to the forfeited amounts could, if not kept within the Plan, be returned to the Employer as surplus. Therefore, section 62.1(b) of the *PBA* does not apply.
10. Since sections 62.1(a) and (b) of the *PBA* do not apply, the Superintendent cannot consent to the payment from the pension fund to the Employer, under section 62.1(5) of the *PBA*.
11. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the *PBA*. **To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you.**¹

YOUR WRITTEN NOTICE must be delivered to:

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

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416- 590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE INTENDED DECISION AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this **11th** day of **February, 2014**.

Original Signed By

Brian Mills
Deputy Superintendent, Pensions

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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