

**AMERICAN ARBITRATION ASSOCIATION**

In the Matter of the Arbitration between:	)	
	)	
PENSION BENEFIT GUARANTY CORPORATION	)	
	)	
Claimant,	)	AAA CASE NO. 01-15-0004-4509
	)	
and	)	
	)	
BAPTIST HEALING HOSPITAL TRUST	)	
	)	
Respondent.	)	

**THE PENSION BENEFIT GUARANTY CORPORATION’S OPPOSITION  
TO THE HEALING TRUST’S MOTION FOR EXTENSION OF DISCOVERY  
DUE DATE AND MOTION TO COMPEL THE HEALING  
TRUST’S RESPONSES TO WRITTEN DISCOVERY**

Despite failing to obtain a stay twice—once in Arbitration and then in Federal District Court—the Baptist Healing Hospital Trust (the “Healing Trust”) has ignored deadlines set in this arbitration and has in effect granted itself a stay, which it now seeks to have ratified. For all the reasons argued previously and accepted here and by the United States District Court for the Middle District of Tennessee (the “District Court), the Pension Benefit Guaranty Corporation (“PBGC”) asks that the Healing Trust be forced to participate in preparing this case for the arbitration hearing set in December.

In January 2016, the Healing Trust requested a stay of this arbitration from the Arbitrator and, separately, from the District Court. In response, on February 26, 2016, the Arbitrator issued Procedural Order No. 3, extending the due date for responses to discovery requests to May 6, 2016, and denying the balance of the Healing Trust’s stay motion. The District Court has not issued a stay of this arbitration.

The arbitration hearing in this matter is scheduled to commence in seven months. Discovery must be completed by October 31, 2016. The Healing Trust has had PBGC's discovery requests for over three months. Now, the Healing Trust seeks to delay this arbitration by requesting an unspecified extension of the May 6, 2016, due date (the "Motion"). Without conferring with PBGC concerning an extension and without obtaining prior approval from the Arbitrator, the Healing Trust unilaterally violated Procedural Order No. 3. The Healing Trust's purposeful violation of Procedural Order No. 3 should not be excused. Any extension to respond to written discovery will further prejudice PBGC's ability to prosecute its claims against the Healing Trust at the upcoming arbitration hearing. Likewise, delaying the arbitration hearing will prejudice PBGC's ability to collect the approximately \$100 million of pension liabilities guaranteed by the Healing Trust. Accordingly, the Arbitrator should deny the Healing Trust's Motion and compel the Healing Trust to respond to PBGC's discovery requests immediately.

### **BACKGROUND**

On July 30, 2016, PBGC filed against the Healing Trust its demand for arbitration with the American Arbitration Association. In its demand, PBGC sought to enforce a guaranty by the Healing Trust of Baptist Hospital's obligations to the Baptist Hospital System, Inc. Pension Plan (the "Pension Plan") under an asset-purchase agreement from 2001 (the "APA"). The obligations guaranteed by the Healing Trust under the APA exceed \$100 million.

On September 4, 2016, the Healing Trust answered PBGC's demand. On October 9, 2015, the Arbitrator was appointed. Thereafter, an initial scheduling conference was held and the Arbitrator entered an order on December 10, 2015, setting forth the schedule of the arbitration (the "Scheduling Order").<sup>1</sup> In the Scheduling Order, the Arbitrator, among other

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<sup>1</sup> Procedural Order No. 1.

things: (a) required the parties to serve written discovery requests by February 1, 2016, with responses due 45 days from the date of service, unless an extension is agreed upon by the parties; (b) required all discovery to be completed by October 31, 2016; and (c) scheduled a hearing to commence on December 12, 2016.<sup>2</sup> In setting forth the Scheduling Order, the Arbitrator specifically noted the “expedited nature of arbitration.”<sup>3</sup>

On January 12, 2016, the Healing Trust filed a complaint against PBGC in the District Court seeking a judgment declaring that the Pension Plan is exempt under Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”) <sup>4</sup> as a “church plan.”<sup>5</sup>

On January 15, 2016, the Healing Trust filed with the Arbitrator a Motion to Hold the Scheduling Order in Abeyance (the “Stay Motion Before the Arbitrator”), and filed in the District Court a Motion to Stay Arbitration Involving the Same Parties (the “District Court Stay Motion”).<sup>6</sup>

On February 1, 2016, PBGC opposed the Stay Motion Before the Arbitrator and, in accordance with the Scheduling Order, served on the Healing Trust written discovery requests. Therefore, the Healing Trust’s response to PBGC’s written discovery was initially due no later than March 17, 2016. The Healing Trust did not serve PBGC with any discovery requests.

On February 9, 2016, PBGC filed a Motion to Dismiss Plaintiff’s Complaint or, in the Alternative, Transfer Venue to the District of Columbia (the “Motion to Dismiss”), and filed an opposition to the District Court Stay Motion.<sup>7</sup> PBGC’s Motion to Dismiss seeks to dismiss the complaint because: (i) the declaratory-judgment action is an impermissible collateral attack on

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 3.

<sup>4</sup> 29 U.S.C. §§ 1301-1461 (2012 & Supp. II 2014).

<sup>5</sup> *Baptist Healing Hospital Trust v. Pension Benefit Guaranty Corporation*, No. 3:16-cv-0022 (M.D. Tenn. Jan. 12, 2016).

<sup>6</sup> Case No. 3:16-cv-0022 (M.D. Tenn. Jan. 15, 2016), ECF No. 5.

<sup>7</sup> Case No. 3:16-cv-0022 (M.D. Tenn. Feb. 9, 2016), ECF No. 11.

the final order of the bankruptcy court, barred by the doctrine of res judicata; (ii) the declaratory-judgment action is equitably moot; (iii) the complaint fails to plausibly allege that the Pension Plan is a church plan and thus exempt from coverage under Title IV of ERISA; and (iv) venue is improper in the District Court under ERISA.<sup>8</sup>

On February 26, 2016, the Arbitrator entered Procedural Order No. 3, which extended to May 6, 2016, the due date for discovery responses and denied the balance of the Stay Motion Before the Arbitrator.

On March 15, 2016, Magistrate Judge Brown heard oral argument on the PBGC's Motion to Dismiss and the District Court Stay Motion.<sup>9</sup> During the hearing, Magistrate Judge Brown made the following comment from the bench: "I'm not at this point planning to order a stay of the arbitration at this point. I'm going to stay from that until I can work on this other [the Motion to Dismiss] a bit."<sup>10</sup>

On March 23, 2016, the District Court requested supplemental briefing from the parties concerning recent court decisions defining "church plan" under ERISA,<sup>11</sup> and the parties filed those requested supplemental briefs on March 30, 2016.<sup>12</sup> The District Court has not yet issued a final ruling on PBGC's Motion to Dismiss or the District Court Stay Motion.

On May 6, 2016, the Healing Trust failed to provide responses to PBGC's written discovery requests. Instead, the Healing Trust, without meeting and conferring with PBGC, filed its Motion for Extension of Discovery Due Date in Procedural Order No. 3 (defined above as the "Motion").

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<sup>8</sup> *Id.*

<sup>9</sup> Case No. 3:16-cv-0022 (M.D. Tenn. Mar. 15, 2016), ECF No. 23.

<sup>10</sup> Case No. 3:16-cv-0022 (M.D. Tenn. Mar. 15, 2016).

<sup>11</sup> Case No. 3:16-cv-0022 (M.D. Tenn. Mar. 23, 2016), ECF No. 24.

<sup>12</sup> Case No. 3:16-cv-0022 (M.D. Tenn. Mar. 30, 2016), ECF Nos. 25, 26.

## ARGUMENT

The Arbitrator has already denied a stay of the arbitration hearing. The District Court, despite having been fully briefed on the circumstances of the arbitration, has not granted a stay, either. Unless and until the District Court is somehow convinced that a preliminary injunction of this proceeding is warranted in light of the ongoing declaratory judgment action, this arbitration proceeding should continue in accordance with the revised Scheduling Order.<sup>13</sup>

The Healing Trust argues that discovery in the arbitration and discovery in the District Court litigation would be “substantially duplicative,” should the District Court deny PBGC’s motion to dismiss.<sup>14</sup> The Healing Trust provides no support for this conclusory statement. In fact, the issues raised in the arbitration and those in the litigation do not overlap. In the former, PBGC seeks to enforce a provision of the APA under Tennessee contract law. In the latter, the Healing Trust seeks a declaratory judgment declaring the Pension Plan exempt from coverage under federal law, Title IV of ERISA.

Considering the approaching December 12, 2016, arbitration hearing, any further stay of discovery will unfairly inhibit PBGC from prosecuting its claims. The Healing Trust has raised multiple defenses to the arbitration demand based on events that transpired circa 2001, when the APA was negotiated and executed. PBGC, unlike the Healing Trust, did not participate in the negotiation and execution of the APA, and was not provided notice prior to or during the relevant timeframe of the APA transaction. Without sufficient time to conduct discovery to investigate the Healing Trust’s asserted defenses, PBGC is at a decided disadvantage.

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<sup>13</sup> To determine whether to grant a preliminary injunction, a district court must consider: (1) the plaintiff’s likelihood of success on the merits; (2) whether the plaintiff may suffer irreparable harm absent the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of an injunction upon the public interest. *Deja Vu of Nashville, Inc. v. Metro. Gov’t of Nashville & Davidson Cty.*, 274 F.3d 377, 400 (6th Cir. 2001).

<sup>14</sup> Mot. at 2.

Likewise, a stay of this entire arbitration proceeding, or a postponement of the December 12, 2016, hearing, should not be granted. PBGC has sought to resolve this matter with the Healing Trust since early 2013. The Healing Trust owes PBGC in excess of \$100 million. The longer this matter is delayed, the longer the Healing Trust can dilute its assets to the detriment of PBGC. In the fourth quarter of 2013 alone, the Healing Trust distributed \$1.7 million in grants.<sup>15</sup>

The fact that the District Court is yet to rule on PBGC's Motion to Dismiss should be of no consequence. In January 2016, the Healing Trust requested the District Court to stay this arbitration. By brief and oral argument, the District Court has been fully apprised of the Healing Trust's arguments for a stay. Despite these arguments, the District Court has not stayed this proceeding.

Lastly, PBGC served on the Healing Trust its written discovery requests by the deadline set forth in the Scheduling Order. According to the Scheduling Order, responses were due within 45 days "unless an extension is agreed upon by the parties."<sup>16</sup> As a result of Procedural Order No. 3, the Healing Trust has had over three months to respond to PBGC's discovery requests. The parties have not agreed to an extension. Without conferring with PBGC in advance, the Healing Trust disregarded its obligation to respond to PBGC's discovery and violated Procedural Order No. 3. Instead of reviewing and analyzing the Healing Trust's discovery responses and further developing its case, PBGC is now needlessly spending its time and resources, for the second time in less than four months, explaining why the arbitration should not be stayed. The Healing Trust should not be rewarded for its delay tactics.

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<sup>15</sup> Case No. 3:16-cv-0022 (M.D. Tenn. Jan. 12, 2016), ECF No. 1 at ¶26.

<sup>16</sup> Procedural Order No. 1 at 3.

## **CONCLUSION**

Without conferring with PBGC and without obtaining prior approval from the Arbitrator, the Healing Trust filed its Motion seeking an extension of the due date to respond to PBGC's discovery requests and unilaterally violated Procedural Order No. 3. Any further extension for the Healing Trust to respond to PBGC's discovery requests will prejudice PBGC's ability to prosecute its claims against the Healing Trust. Any postponement of the December 12, 2016, arbitration hearing will prejudice PBGC's ability to collect the approximately \$100 million of pension liabilities guaranteed by the Healing Trust. Therefore, the Healing Trust should be compelled to respond immediately to PBGC's discovery requests.

**WHEREFORE**, PBGC respectfully requests that the Arbitrator:

1. DENY the Healing Trust's Motion for Extension of Discovery Due Date in Procedural Order No. 3;
2. COMPEL the Healing Trust to serve on PBGC its responses to PBGC's written discovery requests within 10 days; and
3. GRANT any additional relief that the Arbitrator deems appropriate.

Dated: May 13, 2016

Respectfully submitted,

	<p><u>/s/ Damarr M. Butler</u> C. CREWS TOWNSEND DAVID M. BARNES <b>MILLER &amp; MARTIN, PLLC</b> 832 Georgia Avenue Chattanooga, TN 37402 Telephone: (423) 785-6600 Facsimile: (423) 321-1571 Email: ctownsend@millermartin.com           david.barnes@millermartin.com</p> <p>MERRILL STONE SARAH L. REID <b>KELLEY DRYE &amp; WARREN LLP</b> 101 Park Avenue New York, NY 10178 Telephone: (212) 808-7800 Facsimile: (212) 808-7897 Email: sreid@kelleydrye.com</p> <p>ISRAEL GOLDOWITZ Chief Counsel CHARLES L. FINKE Deputy Chief Counsel JOEL W. RUDERMAN Assistant Chief Counsel DAMARR M. BUTLER MARC S. PFEUFFER MARY A. PETROVIC Attorneys Telephone: (202) 326-4020, ext. 6883 Facsimile: (202) 326-4112 Email: butler.damarr@pbgc.gov and       efile@pbgc.gov</p> <p><i>Counsel for the Claimant, PBGC</i></p>
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