

FSRAFinancial Services Regulatory
Authority of Ontario**ARSF**Autorité ontarienne de réglementation
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December 28, 2020

Attn: Ms. Karly Cummings kcummings@oxfordcounty.ca
Human Resources Officer
County of Oxford
21 Reeve Street, P. O. Box 1614
Woodstock, ON N4S 7Y3

and

Attn: Ms. Audrey Mak amak@omers.com
Vice-President, Pension Policy, Legal & Strategic Initiatives
OMERS Administration Group
100 Adelaide St. W., Suite 900
Toronto, ON M5H 0E2

**Re: OMERS Primary Pension Plan
Registration Number 0345983**

Enclosed, please find the Notice of Intended Decision with respect to the above noted pension plan.

Yours truly,

Mitzi D'Souza
Administrative Assistant, Pensions

Enclosure

c: JW
Jane Zhao, Financial Services Regulatory Authority of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the “Act”), in particular sections 19, 22, 62.1, 63, 87 and 89;

AND IN THE MATTER OF the OMERS Primary Pension Plan, Registration Number 0345983 (the “Plan”).

NOTICE OF INTENDED DECISION

TO: JW

Plan Member

AND TO: OMERS Administration Corporation
100 Adelaide Street West, Suite 900
Toronto ON M5H 0E2

Attention: Audrey Mak
VP, Pension Policy, Legal & Strategic Initiatives

Administrator

AND TO: County of Oxford
21 Reeve Street, P.O. Box 1614
Woodstock ON N4S 7Y3

Attention: Karly Cummings
Human Resources Officer

Participating Employer

TAKE NOTICE THAT pursuant to sections 87 and 89 of the Act, and by delegated authority from the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (the “Chief Executive Officer”), the Head, Pension Plan Operations and Regulatory Effectiveness (the “Head”) intends to refuse to make an order against the Administrator or the Participating Employer in respect of an overpayment of contributions to the Plan. Details of this intended decision are described below.

SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS, veuillez nous envoyer votre demande par courriel immédiatement à: contactcentre@fsrao.ca.

YOU ARE ENTITLED TO A HEARING BY THE FINANCIAL SERVICES TRIBUNAL

(THE “TRIBUNAL”) PURSUANT TO SUBSECTION 89(6) OF THE ACT. A hearing by the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing Form (Form 1) and delivering it to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you. The Request for Hearing Form (Form 1) must be mailed, delivered, faxed or emailed to:

Address: Financial Services Tribunal
5160 Yonge Street
14th Floor, Box 85
Toronto ON M2N 6L9

Attention: Registrar

Fax: 416-226-7750

Email: contact@fstontario.ca

TAKE NOTICE THAT if you do not deliver a written request for a hearing to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you, an order will be issued as described in this Notice of Intended Decision.

For additional copies of the Request for Hearing Form (Form 1), visit the Tribunal's website at www.fstontario.ca.

The hearing before the Tribunal will proceed in accordance with the *Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal* (“Rules”) made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. The 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 extension 7294.

REASONS FOR INTENDED DECISION

1. JW is an employee of the Participating Employer and a member of the Plan.
2. In 2016, the Participating Employer identified that it had mistakenly included overtime pay in calculating pensionable earnings for certain employees, including JW. This mistake resulted in the overpayment of contributions to the Plan.
3. The Participating Employer informed the affected employees and the Administrator about the error and took steps to correct the error and refund those employees accordingly.
4. The Participating Employer provided the Administrator with corrected information about contributory earnings for the affected employees.

5. JW's contributory earnings were overstated by \$1,041.91 for the year 2010, and by \$1,335.96 for the year 2016. As a result, JW overcontributed \$101.07 in 2010 and \$195.05 in 2016, i.e., a total of \$296.12 (the "Overpayment").
6. In addition to correcting its records with respect to JW, the Administrator provided the Participating Employer with a credit against future employer contributions in the amount of the Overpayment plus interest.
7. As part of the error correction process, the Participating Employer directly paid JW an amount equal to the Overpayment plus interest (\$321.06).
8. JW disputes the amount refunded to him and has made various allegations of improper conduct against the Administrator and the Participating Employer with respect to the steps they took to correct the error.
9. JW filed a complaint with the Administrator and followed its dispute resolution process without success.
10. JW has alleged that:
 - a. the Administrator and Participating Employer failed to refund the correct amount to him and failed to meet the standard of care imposed by sections 19 and 22 of the Act;
 - b. the Administrator made negligent misrepresentations to him and that the Administrator and Participating Employer were unjustly enriched by their conduct because JW was paid a rate of interest that was less than the pension fund rate of return; and
 - c. the Administrator should have sought to withdraw the Overpayment from the pension fund of the Plan in accordance with sections 62.1 and 63 of the Act.
11. JW has requested an order that the Administrator:
 - a. file an application for reimbursement of all overpayments made to the pension fund retroactive to 2003 under subsection 62.1(3) of the Act; and
 - b. refund to him the proper amount which would include the pension fund rate of return on the Overpayment and reimburse him for the loss of investment opportunity resulting from the Overpayment (e.g., decreased RRSP contribution room).
12. Subsection 62.1(3) of the Act applies to payments from a pension fund to reimburse an employer for an overpayment to the pension fund.

13. The Participating Employer did not receive a reimbursement from the pension fund. Instead, the Participating Employer received a credit against future employer contributions in the amount of contributions made in error, plus interest. Therefore, since there was no payment from the pension fund, subsection 62.1(3) of the Act does not apply.
14. The Overpayment was refunded to JW and the interest paid to him complied with the interest requirements of subsection 24(3) of Regulation 909 under the Act and the requirements of the Plan.
15. Subsection 87(1) of the Act states that the Chief Executive Officer may issue an order if the Chief Executive Officer is of the opinion, upon reasonable and probable grounds, that a pension plan is not being administered in accordance with the Act or the pension plan, that the pension plan does not comply with the Act, or that the administrator of the pension plan, the employer or other person is contravening the Act.
16. The allegations made by JW do not support a finding that the Plan was not administered in accordance with the Act, the regulations thereunder or the terms of the Plan.
17. The allegations made by JW do not support a finding that the Plan did not comply with the Act and the regulations thereunder.
18. The allegations made by JW do not support a finding that the Administrator or the Participating Employer contravened the Act.
19. Accordingly, the preconditions for the issuance of an order under subsection 87(1) of the Act have not been met in this case and the Head intends to refuse to issue an order.
20. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, December 28, 2020.



Jennifer Rook
Head, Pension Plan Operations and Regulatory Effectiveness

By delegated authority from the Chief Executive Officer