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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 of the *PBA* that the **Staff Pension Plan for Employees of Murray Johnston (Oshawa) Limited, Registration Number 264986** be wound up as at April 30, 2013.

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to Make Orders under sections 20, 55, 56.1, and 87 of the *PBA* and sections 4, 6.2, 18, and 76 of Ontario Regulation 909, relating to the **Staff Pension Plan for Employees of Murray Johnston (Oshawa) Limited, Registration Number 264986**

TO:

Murray Johnston (Oshawa) Limited
163 Marica Avenue
Oshawa, ON L1G 3G9

Attention:

Peter McGill
President

Employer and Administrator of the Plan

NOTICE OF INTENDED DECISION

I INTEND TO MAKE AN ORDER that the Staff Pension Plan for Employees of Murray Johnston (Oshawa) Limited, Registration Number 264986 (the “Plan”), be wound up effective April 30, 2013 under section 69 of the *PBA*.

I ALSO INTEND TO MAKE ORDERS under sections 20, 55, 56.1, and 87 of the *PBA* and under sections 4, 6.2, 18, and 76 of Ontario Regulation 909, with respect to unremitted contributions and outstanding filings relating to the Plan.

REASONS:

1. Murray Johnston (Oshawa) Limited (the "Employer/Administrator") is the employer and administrator of the Plan.
2. The Plan is a single employer, contributory, defined contribution pension plan that was established on March 1, 1963. There are currently 2 active members in the Plan.
3. The Plan states that each Employee who is a Class A Employee (defined in the Plan as an employee nominated as an executive by the Employer's Board of Directors) shall contribute by regular payroll deduction the amount of \$3,500 per year as the Employee's contributions to the Plan. The Plan also states that each Employee who is a Class B Employee (defined in the Plan as an Employee who is not a Class A Employee) shall contribute by regular payroll deduction 3.0% of the Employee's Earnings as the Employee's contributions to the Plan.
4. The Plan states that the Employer shall contribute on behalf of each Employee an amount equal to the required contributions of the Employee, and that in any event the Employer shall contribute on behalf of each Member of the Plan at least 1% of the Member's Earnings.
5. The Plan also states that Employee contributions shall be paid into the Plan's fund within 30 days following the month in which the contributions were received or deducted, and that Employer contributions shall be paid into the Plan's fund in monthly instalments within 30 days following the month for which the contributions were payable.
6. No contributions have been paid into the Plan's fund since August 31, 2010.
7. The *PBA* provides in section 69(1)(a) that the Superintendent by order may require the wind up of a pension plan if there is a cessation or suspension of employer contributions to the pension fund. The *PBA* provides in section 69(1)(b) that the Superintendent by order may require the wind up of a pension plan if the employer fails to make contributions to the pension fund as required by the *PBA* and the regulations.
8. I therefore intend to make an Order that the Plan be wound up effective April 30, 2013.
9. The *PBA* also provides in section 55(2) that an employer required to make contributions under a pension plan shall make the contributions in accordance with the prescribed requirements for funding in the prescribed manner and at the prescribed times. Section 4(4) of Regulation 909 states that all sums received by an employer from an employee, including money withheld by payroll deduction, shall be paid within 30 days following the month in which the sum was deducted. Section 4(4) of Regulation 909 also states that employer contributions shall be paid in monthly instalments within 30 days after the month for which the contributions are payable.

10. Section 87(2)(c) of the *PBA* states 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 administrator or employer of the plan is contravening a requirement of the Act or the regulations.
11. No contributions have been made into the Plan's fund since August 31, 2010.
12. I therefore intend to make an Order that the Employer/Administrator remit all outstanding contributions to the Plan within 30 days from the date a final Order is issued.
13. The *PBA* states in section 56.1(1) that the administrator of a pension plan shall give the custodian a summary of the contributions required to be made in respect of the plan in the prescribed manner and within the prescribed period. Section 6.2(1) of Regulation 909 states that this summary must be given within 60 days after the beginning of the fiscal year of the plan.
14. The Plan's fiscal year commences on July 1.
15. The Employer/Administrator has not given the summary required under section 56.1(1) of the *PBA* to the custodian since 2005.
16. I therefore intend to make an Order under section 87(2)(c) of the *PBA* that the Employer/Administrator provide the summary required under section 56.1(1) of the *PBA* for the fiscal years of the Plan commencing July 1, 2005, July 1, 2006, July 1, 2007, July 1, 2008, July 1, 2009, July 1, 2010, July 1, 2011, and July 1, 2012.
17. The *PBA* states in section 20(1) that the administrator of a pension plan shall file an annual information return each year in respect of the pension plan in the form approved by the Superintendent. Section 18(1) of Regulation 909 states that the annual information return shall be filed by the administrator not later than 6 months after the end of the fiscal year of the plan.
18. The Employer/Administrator has not filed an annual information return for the Plan for the fiscal years ending June 30, 2006, June 30, 2007, June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2012, and April 30, 2013.
19. I therefore intend to make an Order under section 87(2)(c) of the *PBA* that the Employer/Administrator file the annual information returns for the Plan for the fiscal years ending June 30, 2006, June 30, 2007, June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2012, and April 30, 2013.
20. The *PBA* also states in section 20(2) that the administrator of a pension plan shall file additional reports at the times and containing the information prescribed by the

regulations. Section 76(1) of Regulation 909 states that the administrator shall file financial statements for the pension fund or plan as at the plan's fiscal year end.

Section 76(4) states that the financial statements shall be filed within 6 months after each fiscal year end of the plan.

21. The Employer/Administrator has not filed financial statements for the Plan for the fiscal years ending on June 30, 2007, June 30, 2008, June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2012, and April 30, 2013.
22. I therefore intend to order under section 87(2)(c) of the *PBA* that the Employer/Administrator file the financial statements for the Plan for the fiscal years ending on June 30, 2007, June 30, 2008, June 30, 2009, June 30, 2010, June 30, 2011, June 30, 2012, and April 30, 2013.
23. 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 **29th** day of **September, 2014**.

Original Signed By

Brian Mills
Deputy Superintendent, Pensions

¹NOTE - 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.