

The United States Bankruptcy Court

For the District of Delaware

Chapter 11

Case No. 09-12074 (KJC)

In re: BUILDING MATERIAL HOLDING CORPORATION, et al., Debtors

RESPONSE TO NOTICE OF REORGANIZED DEBTORS' TWELFTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY CODE, BANKRUPTCY RULE S 3003 AND 3007 AND LOCAL RULE 3007-1

2010 FEB 12 PM 1:58
CLERK
U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

FILED

1343

CLAIMANT: KENNETH J. PINEDA

CLAIM NUMBER: 2501

Docket No. 850/Date Filed – 11/10/2009

REQUESTING REFUND OF PAYROLL DEDUCTION CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN.

In response to the objection, I Kenneth J Pineda, a former employee of BMC West Corporation, request that the Disputed Claim should not be disallowed or modified for the following reason stated below:

On April 29, 2008, I did not terminate my employment with the Debtors; I was fired from BMC West. On April 30, 2008 I returned to BMC West to collect my final paycheck. At that time, the payroll personnel should have calculated my final paycheck to include the \$729.18 remaining in my benefit plan for the CoreSource account, since BMC West was in charge of retaining the monies collected from the employees for the plan. At that time, I was not aware that BMC had control of the money for the plan or I would have made my request at that time. It is my understanding to think that CoreSource received the money from BMC and distributed accordingly to pay the claims submitted. This is not correct. I was advised by CoreSource that BMC always kept the money for the plan in a bank account set up to handle this plan and that CoreSource paid the claims out of the BMC bank account. CoreSource only administered as a third party, never actually received money, but was aware of account balances for each member. I was also not aware nor was I notified that I had 90 days from my date of termination to request reimbursement of any remaining funds in the subject account.

I was not even notified that BMC West had terminated their contract with CoreSource. I believe that all active employees were made aware of the 90 days to request reimbursement at the time the contract was cancelled. I am not aware of the language stated in the governing documents for the Flexible Spending Account Plan, as I have not been presented with such documents, again they were probably presented to the employees at the time the contract was terminated. Since I was no longer with the company, I was not privileged to this information. I have included a copy of the documentation I received on the plan which was the step by step instructions on how to use the "Benny Card", the Master Card issued with the plan to use for doctor and prescription charges. At the time BMC chose to terminate the contract with CoreSource, I am sure BMC was given a complete list of all members listed on their contract with CoreSource along with balances in each account. My name had to be on the final documentation presented to BMC, since I am still able to retrieve my history information from CoreSource to this date. At that time, I should have been contacted with instructions to retain my available funds from the account. To this date I have not received any type of notice or documentation from BMC pertaining to the CoreSource account.

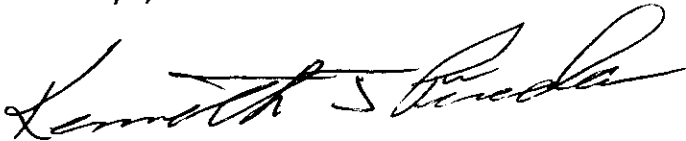
Since filing my first response with this court, I have received one telephone message from an attorney for the Debtors. The message was left on my cell phone voice mail with instructions to return the phone call. I did return the phone call only to leave a message on the attorney's voice mail. I left the message to please call me back so we could discuss this matter. To this date, I have not received a call back from the Debtors attorney, by direct phone contact or message on my voice mail.

It is my request to this court that the amount in question of \$729.18 is returned to me as it was money deducted from my wages, not money contributed by BMC. When I was terminated from my position at BMC West, I feel that the remaining balance in my CoreSource account, which, referring to the original documentation I submitted with my first claim to this court is titled: BMHC Flexible Spending Account should have been returned to me at that time. I feel that personnel in the payroll department failed to completely review my payroll information and did not complete the process when preparing my final paycheck. At that time, I should have been advised I needed to request any remaining funds within 90 days from that date. I was not given such notice. Prior to receiving the notices of bankruptcy, I attempted to resolve this matter, but was unable to make contact with anyone at BMC.

The address for Response is the same as presented in the Disputed Claim and the name, address and telephone number of the person possessing ultimate authority to reconcile, settle or otherwise resolve the Disputed Claim or Response is as follows:

KENNETH J. PINEDA
227 EAST 6TH STREET
WALSENBURG, CO 81089
719-989-7471

Dated: Walsenburg, Colorado
February 2, 2010

A handwritten signature in black ink, appearing to read "Kenneth J. Pineda", written in a cursive style.

Kenneth J. Pineda
227 E.6th Street
Walsenburg, CO 81089
Telephone: 719-989-7471