THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LOUISE BROGDON, et al., Plaintiffs, v. SUNGARD DATA SYSTEMS, INC., a Delaware Corporation, et al., Defendants.	HONORABLE JEROME B. SIMANDLE Civil Action No. 04-4388 (JBS) **OPINION**

APPEARANCES:

Alan H. Schorr, Esq.
LAW OFFICERS OF ALAN H. SCHORR, PC
Atriums at Greentree, Route 73
10,000 Lincoln Drive West, Suite 1
Marlton, NJ 08053
and
Stephen R. Bosin, Esq.
STEPHEN ROGER BOSIN, ESQ.
70 Grand Avenue
River Edge, NJ 07661-0201
Attorneys for Plaintiffs

Eric S. Lasky, Esq.
Richard G. Rosenblatt, Esq.
Amy R. Promislo, Esq.
MORGAN, LEWIS & BOCKIUS LLP
502 Carnegie Center
Princeton, NJ 08540
Attorneys for Defendants

SIMANDLE, District Judge:

Presently before the Court is the motion of Defendants to dismiss Plaintiffs' Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. This action arises out of a reduction in force by SunGard PowerPartner, Inc.

("PowerPartner") in November 2002, at which time PowerPartner terminated the employment of each of the Plaintiffs. In connection with their terminations from employment, PowerPartner provided each Plaintiff with a special separation benefit in exchange for a general release and waiver of claims. Plaintiffs allege that PowerPartner, its parent company, SunGard Data Systems, Inc. ("SunGard"), and various John Doe defendants (collectively "Defendants") violated various provisions of the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. ("ERISA").

BACKGROUND

Each Plaintiff in this action was terminated by PowerPartner on November 14, 2002. At that time, Defendant apparently had no severance pay plan in effect. Thus, in exchange for a general release and waiver of all claims, each terminated Plaintiff was provided between two to four weeks of salary as severance pay, with the majority receiving two weeks, by PowerPartner's President, Richard Snape.

On November 20, 2002, PowerPartner's Board of Directors filed a resolution that authorized the adoption of the SunGard Severance Pay Plan ("Pay Plan") effective retroactively to November 13, 2002, the day immediately prior to the day Plaintiffs were terminated. (Pls.' Ex. B.) This resolution states that the Pay Plan adopted "to provide severance benefits

on behalf of eligible employees" is intended to "supercede all prior severance pay plans or practices, whether formal or informal or written or unwritten." The resolution further provides that the company is to take action to implement this Pay Plan on behalf of its employees and directs that "each officer of the Corporation is authorized and directed to execute such documents and to take such other and further actions, in each case as the officers of the Corporation deem necessary or advisable to effectuate the intent of the foregoing resolutions." (Id.)

The parties are not in agreement as to the version of the Pay Plan that was made retroactive to the day before Plaintiffs were laid off. The version of the Pay Plan submitted by Defendants is not dated except as to month and year (i.e. November 2002), and no evidence has been submitted that this Pay Plan was in effect on November 14, 2002. Plaintiffs, meanwhile, offer a Pay Plan that has been, at some point, dated November 8, 2002. It may be that the undated Severance Pay Plan attached to Defendants' motion was put into effect, or it may be that the November 8, 2002 Pay Plan attached to Plaintiffs' opposition became the effective plan. There may be yet another plan which will be revealed during the course of discovery. Of the Pay Plan versions currently before the Court, the text of the "eligibility" and "plan benefits" sections are identical.

Plaintiffs bring an ERISA denied benefits claim (Count I), an ERISA breach of fiduciary duty claim (Count II), and a claim for violation of the Workers Adjustment and Retraining Notification ("WARN") Act (Count III) in their Complaint (which was subsequently withdrawn). Defendants filed a motion to dismiss for failure to state a claim on December 22, 2004 and this Court heard oral argument on April 12, 2005.

DISCUSSION

Motion to Dismiss Standard of Review

A Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief may be granted must be denied "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). A district court must accept any and all reasonable inferences derived from those facts. Unger v. Nat'l Residents Corp. v. Exxon Co., U.S.A., 761 F. Supp. 1100, 1107 (D.N.J. 1991); Gutman v. Howard Sav. Bank, 748 F. Supp. 254, 260 (D.N.J. 1990). Further, the court must view all allegations in the Complaint in the light most favorable to the plaintiff. See Scheuer, 416 U.S. at 236; Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994).

It is not necessary for the plaintiff to plead evidence, and it is not necessary to plead the facts that serve as the basis for the claim. Bogosian v. Gulf Oil Corp., 561 F.2d 434, 446 (3d

Cir. 1977); In re Midlantic Corp. Shareholder Litigation, 758 F. Supp. 226, 230 (D.N.J. 1990). The question before the court is not whether plaintiffs will ultimately prevail; rather, it is whether they can prove any set of facts in support of their claims that would entitle them to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Therefore, in deciding a motion to dismiss, a court should look to the face of the complaint and decide whether, taking all of the allegations of fact as true and construing them in a light most favorable to the nonmovant, plaintiff's allegations state a legal claim. Markowitz, 906 F.2d at 103. Only the allegations in the complaint, matters of public record, orders, and exhibits attached to the complaint matter, are taken into consideration. Chester County Intermediate Unit v. Pennsylvania Blue Shield, 896 F.2d 808, 812 (3d Cir. 1990).

Standard of Review in ERISA Cases

Generally, a claim for denied benefits under ERISA Section 502(a)(1)(B) is reviewed under an arbitrary and capricious standard, in which the court undertakes a review of the ERISA plan administrator's discretionary decision denying benefits. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101 (1989). This standard of review applies whether the administrator's decision was based on the interpretation of the plan or on factual determinations. Mitchell v. Eastman Kodak, Co., 113 F.3d

433, 438 (3d Cir. 1997). Moreover, though reviewing the administrator's claim determination under an arbitrary and capricious standard, this Court is limited to the record that was before that administrator at the time he rendered his final claim determination - that is, at the time of administrative appeal. See Eastman Kodak Co., 113 F.3d at 440 ("Under the arbitrary and capricious standard of review, the 'whole' record consists of that evidence that was before the administrator when he made the decision being reviewed.").

However, it is also well established that a denial of benefits challenged under 29 U.S.C. § 1132(a)(1)(B) must be reviewed under a de novo standard when the effective benefit plan does not expressly gives the plan administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the plan's terms. Firestone Tire and Rubber Co., 489 U.S. at 107-08. Because Plaintiffs allege here that no determination was ever made by Defendants under any such benefit plan, they are entitled to de novo review. For purposes of this motion, Defendants have addressed the issues raised under this standard.

Count I - ERISA Benefit Claim

Plaintiffs' first claim is for denied benefits under ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). ERISA Section 502(a)(1)(B) provides:

> A civil action may be brought - (1) by a participant or beneficiary - . . . (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

29 U.S.C. § 1132(a)(1)(B). As the express language of ERISA Section 502(a)(1)(B) makes clear, to prevail, Plaintiffs must establish "under the terms of the plan," that they have a right to the benefits they seek. See Burnstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found., 334 F.3d 365, 381 (3d Cir. 2003) ("Claims for ERISA plan benefits under ERISA § 502(a)(1)(B) are contractual in nature."). In adjudicating a claim for benefits, the written provisions of the plan control and cannot be modified or superceded by extrinsic evidence. See In re Unisys Corp. Retiree Med. Benefit "ERISA" Litg., 58 F.3d 896, 902 (3d Cir. 1995) (holding that a plaintiff's right to benefits under a plan "can only be found if it is established by the terms of the ERISA-governed employee benefit plan").

Defendants argue that Plaintiffs have not stated a claim for denied benefits under ERISA because the SunGard Plan clearly states that only an employee who an Executive Officer "determines, in its sole and exclusive discretion, is an eligible employee" may receive the benefits described in the SunGard Pay Plan. (Pay Plan at 2.) The Pay Plan reiterates the requirement

that an employee be affirmatively selected to receive benefits by providing that "[a]n employee who has been selected to receive a severance pay benefit, as determined by the Company, may be eligible for a benefit." (Id.) Plaintiffs have averred that "[n]o principal executive officer of SunGard ever made a determination as to whether or not, or in what amount, severance benefits were to be paid to any Plaintiff as required by the terms of the Plan." (Compl. ¶ 35.)

Defendants contend, first, that Plaintiffs' lawsuit merely complains about the fact that Plaintiffs were not selected to receive benefits under the guideline calculation outlined in the Plan, which would result in a severance payment of one week's pay for each year of employment. Moreover, Defendants maintain that even assuming that Plaintiffs had met the SunGard Plan's eligibility requirements, Plaintiffs' claim for additional severance benefits fails because the SunGard Plan expressly grants the company the "sole and exclusive" discretion to decide whether and how much to pay an eligible employee. (See Pls.' Ex. A, p. 2.) The SunGard Pay Plan provides that those Business Units that adopt the Plan have discretion to determine which employees will received severance payments under that Plan and how much those employees will receive. (Id. at 1-2.) Specifically, the Pay Plan states that each participating Business Unit "has the sole discretion to determine whether an

employee may be considered eligible for benefits under the Plan" and that "[n]othing in the Plan will be construed to give any employee the right to receive severance payments." (Id. at 1.) With respect to eligibility, the SunGard Pay Plan provides that:

> The Business Unit may make severance payments to any employee who such Executive Officer determines, in its sole and exclusive discretion, is an eligible employee and who has a termination of employment for any reason, except as specified below; provided such employee signs and does not revoke a waiver/release in a form provided by the Company of all claims arising out of their employment relationship with the Company and the termination of that relationship.

(Id. at 2.)

Although the SunGard Pay Plan specifies that a Business Unit may pay an eligible employee one week of salary for each year of completed service, it further states:

> Notwithstanding any provision of the Plan to the contrary, the Business Unit, in its sole discretion and acting on behalf of the Plan sponsor and not as a fiduciary, reserves the right . . . (c) to deny benefits to any employee otherwise eligible, (d) to award benefits to any terminated employee in a greater or lesser amount than provided for in the Plan, or (e) to pay out benefits in a manner or on a schedule other than provided for in the Plan.

(Id.) (emphasis added). Thus, Defendants maintain that even if Plaintiffs were eligible for benefits under the SunGard Plan, PowerPartner had complete discretion to decide whether to pay Plaintiffs benefits at all and, if so, to determine the amount of

that benefit. Defendants therefore conclude that their motion to dismiss must be granted.

There was, however, a default provision expressed in the alleged Plan, whereby the benefits would be paid in the event no determination was made under the Plan, stating: "In the absence of any other determination, the amount of severance pay will be determined in accordance with the following formula: 1.0 x Weekly Base Pay x Completed Years of Service." (Id.)

Defendants' argument must therefore fail. At the time Plaintiffs were terminated and subsequently offered between two to four weeks of severance pay in return for their signing waivers and releases of any claims they might have against their employer, Plaintiffs allege that the Pay Plan was not in effect. Indeed, the termination letters provided to each Plaintiff by SunGuard President, Richard Snape, dated November 14, 2002, make no mention of any determination having been made under the Plan. (See Defs.' Ex.) In order to receive this severance pay, Plaintiffs were required to execute waivers and releases. Subsequently, Defendants' Board of Directors signed and filed a resolution on November 20, 2002 that made the Pay Plan retroactive to November 13, 2002. Because the Plan was retroactively effective as of November 13, 2002, the day prior to the day Plaintiffs were terminated, those Plaintiffs allege they were entitled to have a severance pay determination made under

the Plan.[1] However, they allege no such determination was ever made. Thus, Plaintiffs have stated a viable claim for denied benefits. The case must be further developed through discovery in order to determine whether the actual facts support Plaintiffs' allegations.

Count II - ERISA Breach of Fiduciary Duty Claim

In addition to their claim for alleged denial of benefits, Plaintiffs also bring a claim for an alleged breach of fiduciary duty pursuant to ERISA Section 502(a)(3). Plaintiffs allege that Defendants, through trickery, led them to waive their rights to a severance benefit determination under the Pay Plan that was subsequently made effective as of November 13, 2002. Under this claim, Plaintiffs would presumably seek reinstatement as participants in their former employer's ERISA Plan for the purpose of availing themselves of their right to a determination under that Plan.

Defendants, however, contend that this claim is barred because Plaintiffs have available a claim for denied benefits under ERISA Section 502(a)(1)(B), which they assert in Count I.

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[1]This Court does not mean to suggest that Plaintiffs would automatically be entitled to the amount of severance pay calculated in accordance with the formula contained in the Plan. Indeed, the terms of the Plan give the Business Units great discretion in determining eligibility and amount of benefits to be paid. However, at the very least, the Plan requires that a determination be made as to each employee under the terms set forth in that Plan. This is precisely what Plaintiffs allege they were denied.

Where an adequate remedy is made available under other subsections of ERISA's civil enforcement provisions, a plaintiff cannot bring a claim for breach of fiduciary duty under ERISA Section 502(a)(3). See Vanity Corp. v. Howe, 516 U.S. 489, 512 (1996). In Vanity Corp., the Supreme Court noted that where an alleged breach of fiduciary duty relates to "the interpretation of plan documents and the payment of claims," ERISA Section 502(a)(1)(B) already provides a remedy "that runs directly to the injured beneficiary" and a remedy under ERISA Section 502(a)(3) is thus inappropriate. Id. at 512. The Court further acknowledged that "where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be 'appropriate'." Id. at 515. In addition, in Ogden v. Blue Bell Creameries U.S.A., Inc., 348 F.3d 1284 (11th Cir. 2003), the court explained that "an ERISA plaintiff could not state a valid claim for equitable relief [under Section 502(a)(3)] when Section 502(a)(1)(B) afforded her with an adequate remedy, even though her Section 502(a)(1)(B) claim was subsequently lost on the merits." Id. at 1287.

Alternatively, Defendants argue that Plaintiffs' breach of fiduciary duty claim should be dismissed because it seeks a legal remedy not cognizable under ERISA Section 502(a)(3). ERISA Section 502(a)(3) provides that a plan participant may seek

recovery of "appropriate equitable relief" for a breach of fiduciary duty under ERISA. In Mertens v. Hewitt Assocs., 508 U.S. 248, 255-60 (1993), the Supreme Court interpreted ERISA Section 502(a)(3) as precluding a recovery of money damages because it is not "appropriate equitable relief." Moreover, in Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204 (2002), the Court explained that "[a]lmost invariably, . . . suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money to the plaintiff are suits for 'money damages,' as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendants' breach of legal duty." Id. at 210 (internal citation and quotation omitted). Defendants maintain that the relief sought by Plaintiffs would "ultimately require Defendants to pay out a sum of money," and is therefore not within the scope of "appropriate equitable relief" authorized by ERISA Section 502(a)(3).

This Court, however, reads Count II as seeking equitable relief in the form of equitable estoppel and rescission. Here, Plaintiffs allege they were misled into signing releases of any claim against their employer based on the assumption that they had no right to even be considered for additional severance pay because there was no severance plan in effect at the time of their termination. Plaintiffs were allegedly never informed that

a severance plan had been retroactively adopted when they were considering whether to sign the releases presented to them, in violation of 29 U.S.C. § 1104(a)(1). The failure to disclose an ERISA covered plan is generally recognized as a breach of fiduciary duty. Hudson v. General Dynamics Corp., 118 F. Supp. 2d 226 (D. Conn. 2000); Jensen v. Sipco, Inc., 867 F. Supp. 1384 (N.D. Iowa 1993), aff'd 38 F. 949 (8th Cir.), cert. denied 514 U.S. 1050 (1994). Plaintiffs further maintain that Defendants' breach of fiduciary duty is demonstrated by their intent to deceive Plaintiffs by concealing the existence of the Plan until after the Plaintiffs signed releases, and then enacting the Plan retroactively. If such a breach of fiduciary duty can be demonstrated, Plaintiffs may very well prevail on their attempts to rescind the waivers they signed which released their former employer from any future claim and to have a determination made in accordance with the default provisions of the Pay Plan.

Moreover, this Court acknowledges the apparent tension between Count I and Count II of Plaintiffs' Complaint and recognizes that the two may not ultimately be maintained in the instant lawsuit. The question of which claim is proper, however, cannot yet be answered at this early stage. The inconsistency of allegations is permitted by Rule 8(e)(3), Fed R. Civ. P. Indeed, discovery is necessary for Plaintiffs to determine and for this

Court to clarify what alleged claim may proceed under established legal principles.

It would be premature, however, at this time, without any discovery having taken place, for this Court to determine the fate of the claims currently plead. Thus, the Court finds it appropriate to deny Defendants' instant motion.

CONCLUSION

For the reasons discussed above, this Court will deny Defendants' motion to dismiss. The accompanying Order is entered.

April 18, 2005
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
United States District Judge