

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOEL M. LEVY and JUDITH W. LYNN,

Plaintiffs,

v.

YOUNG ADULT INSTITUTE, INC., d/b/a YAI
NATIONAL INSTITUTE FOR PEOPLE WITH
DISABILITIES, *et al.*,

Defendants.

13-CV-2861 (JPO)(SN)

**FINAL JUDGMENT
IN A CIVIL ACTION**

For the reasons stated in the Report and Recommendation, dated October 9, 2015 (dkt. 282); the Opinion and Order on the Report and Recommendation, dated December 2, 2015 (dkt. 313); the Opinion and Order, dated October 18, 2016 (dkt. 527), the Court's bench ruling on November 22, 2016, following a trial held on November 15 through November 22, 2016, the Order, dated December 22, 2016 (dkt. 605), and the Opinion and Order, dated May 9, 2017 (dkt. 621) –

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' benefits and rights under the Supplemental Pension Plan and Trust for Certain Management Employees of YAI (the "SERP") shall be determined in accordance with this Judgment and, to the extent not inconsistent with this Judgment, the terms of the (1) the Supplemental Pension Plan and Trust for Certain Management Employees of Young Adult Institute, dated July 1, 1985 (the "Original SERP"), (2) Section 4(e) of the employment agreement, dated September 23, 2008, between Levy and YAI (the "Employment Agreement"), (3) the Amendment to the Supplemental Pension Plan and Trust for Certain Management Employees of Young Adult Institute, dated December 18, 2008, (the "Amended SERP") with the exception of (a) Section 10.2.5(c) of the Amended SERP and (b)

those portions of Section 10.2.1 of the Amended SERP providing for (i) the offset of benefits payable under The Young Adult Institute Defined Benefit Target Plan, (ii) a change to the cost-of-living adjustment from the Consumer Price Index for Urban Wage Earners and Clerical Workers (“CPI-W”) to the Consumer Price Index – All Urban Consumers (CPI-U), and (iii) the calculation of a SERP benefit inconsistent with the calculations set forth herein. Notwithstanding the foregoing, this Judgment does not prohibit or otherwise limit YAI’s right to amend the SERP in accordance with the terms of the SERP and/or applicable federal law, except to the extent that such amendment would be inconsistent with the benefits, rights and obligations described below.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to the Court’s decisions and orders described above and the sums stipulated to by the parties in the Joint Pretrial Order (dkt. 563), Defendants Young Adult Institute, Inc. d/b/a YAI National Institute for People with Disabilities (“YAI”) and the SERP are jointly liable to Plaintiffs pursuant to ERISA § 502(a)(1)(B) to make the benefit payments set forth in (a) – (g) below. Defendants the Board of Trustees of YAI and the Pension Retirement Committee of the Board, in their representative and plan administrative capacities (not in their personal capacities), shall take such action as necessary for such benefit payments to be made by YAI and/or the SERP.

- (a) Payment of a lump sum to Plaintiff Joel M. Levy (“Levy”) in the amount of \$3,390,388.11, representing the retirement benefits due and owing under the SERP from July 15, 2011 through May 19, 2017, inclusive of prejudgment interest at the federal prime rate;
- (b) If this Judgment is not entered on May 19, 2017, payment of additional interest accruing at \$299.82 per day for each day after May 19, 2017 and before the date the Judgment is entered;

- (c) Beginning on June 1, 2017, payment of a semi-monthly annuitized benefit of \$22,438.69 to Levy for his lifetime. Such payment of \$22,438.69 shall be made to Levy on the 1st and 16th day of each month;
- (d) In the event that the Judgment is not entered by June 1, 2017, then interest on each semi-monthly payment (including the payment due on June 1, 2017) shall accrue at a rate of \$4.36 per day for every day following the due date of such semi-monthly payment, and such interest shall cease to accrue upon the date this Judgment is entered;
- (e) Each semi-monthly benefit that shall become due on or after July 1, 2017 shall be subject to an annual cost-of-living adjustment calculated based on the CPI-W on July 1, 2017, and on July 1 of each year thereafter, and any interest arising from the non-payment of such benefit shall be calculated based upon this adjusted sum;
- (f) In the event Levy predeceases Judith Lynn (“Lynn”) while Levy and Lynn are married, payment of a semi-monthly annuitized benefit to Lynn for her lifetime in the amount of \$22,438.69 on the 1st and 16th day of each month, where each such payment shall be subject to an annual cost-of-living adjustment based on the CPI-W on July 1 of each year thereafter;
- (g) In the event Levy and Lynn both die before receiving a total of 120 months of payments from the SERP, including the 24 months of payments Levy already received beginning effective July 1, 2009, and any payments made pursuant to this Judgment, payment of a semi-monthly annuitized benefit of \$22,438.69 on the 1st and 16th day of each month, subject to an annual cost-of-living adjustment based on the CPI-W on July 1 of each year, to Levy’s and Lynn’s respective surviving children, per stirpes, until a total of

120 months of payments have been made to Levy, Lynn, and their surviving children, collectively.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to the terms of the SERP, in the event the Bureau of Labor Statistics utilizes a different index in lieu of the CPI-W, such successor index shall be substituted in place and stead of the CPI-W in this Judgment.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the acknowledgement and release by and between Levy and Lynn, on behalf of themselves, and Eliot P. Green, on behalf of YAI, as executed in December 2009, (the “A&R”) is null and void due to YAI’s material breach of that agreement and that, therefore, Lynn’s right of survivorship under the SERP shall be unreduced.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Levy is the insured and sole owner of the following four whole life insurance policies: American General Life Insurance Company Life Insurance for Joel M. Levy, Policy No. 5005189310; Metropolitan Life Insurance Company Policy for Joel M. Levy, Policy No. 920650590; the Colonial Life Insurance Company of American Life Insurance Policy for Joel M. Levy, Policy No. 612001967; and the Guardian Life Insurance Company of America for Joel M. Levy, Policy No. 3704954 (collectively, the “1992 Life Insurance Policies”).

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the 1992 Life Insurance Policies are independent of, and do not offset, any benefits due to Plaintiffs under (i) the SERP, (ii) the Life Insurance Plan and Trust for Certain Management Employees of YAI (the “LIPT”), or (iii) any other contract or plan.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Levy's (and any designated beneficiaries') benefits and rights under the LIPT shall be determined in accordance with this Judgment and, to the extent not inconsistent with this Judgment, the terms of the LIPT.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the death benefits payable to Levy's designated beneficiaries under the LIPT are \$3,172,762, which are independent of, and do not offset, any benefits due to Plaintiffs under the SERP or any other contract or plan.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction to enforce this judgment.

The Clerk of Court is directed to enter this Final Judgment, with costs pursuant to Fed. R. Civ. P. 54(d)(1), forthwith and without further notice.

Dated: June 1, 2017

The Honorable J. Paul Oetken, U.S.D.J.