

Lead Report

Multiemployer Plans

CEO Personally Liable for Plan Losses After Breaching Fiduciary Duties, Court Says

A company's chief executive officer breached his fiduciary duties under the Employee Retirement Income Security Act by underreporting hours that union employees worked to avoid laying off workers and is personally liable for \$216,132 in unpaid fringe benefit contributions, the U.S. District Court for the Southern District of New York ruled Sept. 27 (*Trustees of Sheet Metal Workers Int'l Ass'n Local No. 38 Vacation Fund v. Hopwood*, S.D.N.Y., No. 7:09-cv-05088, 9/27/12).

The executive and other corporate officers were sued by multiemployer employee benefit plan trustees after the employer failed to remit employer contributions to the plan on behalf of its union employees.

Judge Edgardo Ramos determined that the chief executive officer became an ERISA fiduciary after failing to transfer the employer contributions to the plan when they became due.

Corporation Falls Behind on Contributions. Martin Hopwood was the chief financial officer and CEO of Richards Conditioning Corp. (RCC), which was a member of the Sheet Metal and Roofing Contractors Association of Southeastern New York. Martin was a co-principal of RCC, along with his brothers Lawrence and Richard.

The association entered into a collective bargaining agreement on behalf of its members with the Sheet Metal Workers' International Association Local Union 38. The CBA required employers to make fringe benefit contributions to several multiemployer benefit plans.

RCC paid at least \$25,000 in fringe benefit contributions for its employees to the funds from 1999 to 2008 and made some payments in 2009 and 2010. RCC fell behind in its fringe benefit obligations in 2009 and a payment agreement was entered into between the union and RCC that set out a payment schedule to restore \$101,298 in delinquent contributions to the funds. The agreement was personally guaranteed by Martin and Richard Hopwood.

The benefit plan trustees sued Martin, Richard, and Lawrence Hopwood in June 2009 after no payments were made under the payment agreement. Martin Hopwood was deposed during the litigation and admitted that he "underreported the hours that union employees had worked" to reduce benefit obligations instead of terminating several employees.

Payment Agreement Breached. The trustees moved for summary judgment on their claims that Martin and Richard breached the payment agreement by failing to make fringe benefit payments and their claim that Martin breached his ERISA fiduciary duties. The Hopwoods argued that they owed nothing under the payment agreement because RCC did not sign the CBA, and were not obligated to make fringe benefit contributions under it.

The court determined that RCC was obligated under the CBA regardless of whether it signed the CBA. RCC was obligated to perform under the CBA because it manifested intent to be bound by the CBA's terms, the court said.

According to the court, RCC made substantial fringe benefit contributions to the funds for more than a decade, submitted contributions using CBA required forms, acknowledged in the payment agreement that it was a CBA signatory, and indicated a belief that benefit payments were owed under the CBA. The court concluded that RCC was a party to the CBA and that no genuine dispute of material fact existed that Martin and Richard Hopwood breached the payment agreement's terms.

Fiduciary Status Imposed. The court next addressed the funds' claim that Martin breached his fiduciary duties under ERISA Section 409(a). The court explained that ERISA Section 409(a) imposes personal liability on plan fiduciaries that breach any responsibility, obligation, or duty imposed.

Persons become ERISA plan fiduciaries when they exercise control over the management and disposition of plan assets, the court said. According to the court, the unremitted contributions became plan assets once they were due and Martin became an ERISA fiduciary when he failed to make the fringe benefit contributions.

Martin "admitted under oath that he knowingly underreported the hours that union employees had worked," the court said. The court determined that Martin breached his fiduciary duties by "knowingly provid[ing] fewer benefits to plan participants," which reduced the benefits to which they were entitled.

The court concluded that Martin Hopwood was personally liable for \$216,132 in plan losses, which would be reduced by any amount that the fund trustees recovered due to Martin and Richard Hopwood's breach of the payment agreement.

The trustees were represented by David J. Selwocki and Matthew I. Henzi of Sullivan Ward Asher & Patton in Southfield, Mich. The Hopwoods were represented by James M. Skelly of Marks O'Neill O'Brien & Courtney in Elmsford, N.Y.

Text of the opinion is available at <http://op.bna.com/pen.nsf/r?Open=mmaa-8ykgpf>.