UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOMAS E. PEREZ,[1] Secretary of Labor, United States Department of Labor, Plaintiff	
v.	File No. 10-CV-00123
BRUCE HARTMANN, TERRY HARTMANN, MID-STATES EXPRESS, INC. 401(k) PLAN, and MID-STATES EXPRESS, INC. EMPLOYEE BENEFIT PLAN, Defendants	**Judge Zagel**

CONSENT JUDGMENT AND ORDER WITH RESPECT TO BRUCE HARTMANN, THE 401(k) PLAN, AND THE HEALTH PLAN

Thomas E. Perez, Secretary of Labor, United States Department of Labor ("Secretary"), pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1001, *et seq.*, filed a complaint on January 8, 2010, against Bruce Hartmann, Terry Hartmann, Mid-States Express, Inc. 401(k) Plan ("401(k) Plan"), and Mid-States Express, Inc. Employee Benefit Plan ("Health Plan"), alleging breaches of their fiduciary obligations under Title I of ERISA.

Defendants Bruce Hartmann, the 401(k) Plan, and the Health Plan, having waived service of process and answer, admit to the jurisdiction of this court over them and the subject matter of this action.

In accordance with this Court's Memorandum Opinion and Order entered on August 31,

[1] By operation of law, Thomas E. Perez is substituted for former Secretary of Labor, Hilda L. Solis, Civ.R. 25(d).

2012, the Secretary and Bruce Hartmann, the 401(k) Plan, and the Health Plan agree to resolve all claims and issues between and among them regarding the captioned matter (except for the imposition by the Secretary of any penalties pursuant to ERISA §502, 29 U.S.C. §1132, and any proceeding related thereto), and do now accordingly consent to the entry of this Consent Judgment and Order ("Judgment") by the Court.

Defendant Bruce Hartmann is jointly and severally liable to the Plan in the total sum of $75,416.72 for losses as a result of his violations of ERISA.

Defendant Bruce Hartmann filed a Chapter 7 Petition on November 18, 2011, in the U.S. Bankruptcy Court for the Northern District of Illinois, Eastern Division (Case No. 12-00222). In accordance with the Bankruptcy Code and pursuant to an Order dated December 11__, 2013, by the Bankruptcy Court in Case No. 12-00222, the automatic stay was modified to permit Bruce Hartmann to use non-bankruptcy estate assets to restore $50,000 to the 401(k) Plan. Defendant Bruce Hartmann restored $20,000 to the 401(k) Plan on _December 9, 2013, by electronic transfer to Ron Peterson (the appointed bankruptcy trustee in the Mid-States Express, Inc. Bankruptcy proceeding) on behalf of the Mid-States Express, Inc. 401(k) Plan and provided written allocation instructions to the 401(k) Plan. Defendant Bruce Hartmann's written allocation instructions directed the 401(k) Plan asset custodian to allocate a pro-rata share of the $20,000 to individual investment accounts of the 401(k) Plan participants/beneficiaries, excluding Bruce Hartmann, who: (1) were employees of Mid-States Express, Inc.; (2) were 401(k) Plan participants during the period January 1, 2009 through February 28, 2009; (3) and had voluntary employee contributions and participant loan repayments withheld from their pay for contribution to the 401(k) Plan during this period and such contributions were not remitted to the 401(k) Plan. The pro-rata amount allocated to each account shall be based on the percent of

the total unremitted employee contributions and participant loan repayments owed to the 401(k) Plan participants/beneficiaries. Further, the instructions provided for any participant/beneficiary who is owed losses pursuant to the Judgment and has previously received a distribution of his 401(k) Plan account, that the asset custodian open an investment account for that participant with the 401(k) Plan's asset custodian and place the participant/beneficiary's pro-rata share in the account.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Judgment.

WHEREAS, the plaintiff and defendants Bruce Hartmann, the 401(k) Plan, and the Health Plan, having agreed to the terms of this Judgment, subject to its approval by the Court, and with due consideration and being fully advised of the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Bruce Hartmann is enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §§1001, *et seq*.

2. Defendant Bruce Hartmann is liable for $50,000 in losses owed to the 401(k) Plan as a result of his violations of ERISA §§404 and 406 with respect to the 401(k) Plan.

3. As Defendant Bruce Hartmann, on December 9, 2013, restored $20,000 directly to the 401(k) Plan, and it is anticipated that the 401(k) Plan will be terminated within the next year, Defendant Bruce Hartmann shall restore the remaining $30,000 he owes the 401(k) Plan directly to the 401(k) Plan participants that suffered losses in five consecutive annual installments as follows:

August 1, 2014 = $6,000;
August 1, 2015 = $6,000;
August 1, 2016 = $6,000;

August 1, 2017 = $6,000; and
August 1, 2018 = $6,000.

Within thirty (30) days after each annual payment, Defendant Bruce Hartmann shall provide the Employee Benefits Security Administration Regional Director, 230 South Dearborn, Room 2160, Chicago, Illinois 60604 ("Regional Director"), with cancelled checks verifying the payments made to each participant.

4. In making annual payments as set forth in paragraph 3 above, defendant Bruce Hartmann shall issue checks directly to 401(k) Plan participants/beneficiaries, excluding Bruce Hartmann, who: (1) were employees of Mid-States Express, Inc.; (2) were 401(k) Plan participants during the period January 1, 2009 through February 28, 2009; (3) and had voluntary employee contributions and participant loan repayments withheld from their pay for contribution to the 401(k) Plan during this period and such contributions were not remitted to the 401(k) Plan. Each annual payment shall be divided into a pro-rata amount. The pro-rata amount shall be based on the percent of the total unremitted employee contributions remaining owed to the 401(k) Plan participants/beneficiaries. Then a check in the pro-rata amount shall be issued to each of those participants/beneficiaries.

5. Defendant Bruce Hartmann is liable to the Health Plan in the amount of $3,983,980 in losses incurred by the Health Plan as a result of his violations of ERISA §§404 and 406 with respect to the Health Plan, as identified in Exhibit A (attached hereto and made a part hereof), schedule of losses, as of June 11, 2013.

6. In reliance on the representations made by defendant Bruce Hartmann, including the Chapter 7 Bankruptcy Petition he filed in Case No. 12-00222, which show that he is currently unable to immediately pay the total restitution amount to the Health Plan, the Secretary agrees to

forbear immediate collection of the restitution amount owed to the Health Plan and accept payments in full satisfaction of this debt as set forth in paragraphs 3 and 7 herein.

7. In accordance with the Bankruptcy Code, restoration of the losses identified in paragraph 5 above will be made in the following manner.

a. After the close of defendant Bruce Hartmann's bankruptcy proceeding, Case No. 12-00222, defendant Bruce Hartmann shall remit directly to the Health Plan participants and beneficiaries, in accordance with paragraph 5 above, all money he receives as a lump-sum award on or before June 1, 2023, to restore the losses he owes to the Health Plan until such time as the entire $3,983,980 has been paid. The term "lump-sum award" is defined as a single payment of money (excluding salary/wages) in excess of $5,000 that defendant Bruce Hartmann receives from any source including monies received as a bonus, lottery/gambling winnings, bequests, or insurance proceeds. Defendant Bruce Hartmann agrees that within thirty days of receipt of any lump-sum award he shall immediately use these monies to pay down any outstanding amount owed the Health Plan pursuant to paragraph 5.

b. Within thirty (30) days of any restoration of monies to the participants or beneficiaries of the Health Plan pursuant to this Judgment, defendant Bruce Hartmann shall provide copies of the canceled check(s) or wire transfer(s) verifying the restorations to the Regional Director.

8. Excluding the unpaid claims of defendant Bruce Hartmann and his spouse and children, any money restored to the Health Plan shall be sent directly by defendant Bruce Hartmann to any individual who: (a) was an employee or former employee of Mid-States; (b) was a participant or beneficiary of the Health Plan during the period November 1, 2006 through

July 31, 2008; (c) and had monies withheld from his/her pay for contribution to the Health Plan or remitted COBRA premiums to the Health Plan. Restoration of monies shall be distributed in the following order:

a. First, distributed in a pro-rata fashion to participants/beneficiaries who suffered losses for unpaid claims in excess of $5,000.

b. Second, distributed in a pro-rata fashion to participants/beneficiaries who suffered losses for unpaid claims between $1,000 and $4,999.99.

c. Third, distributed in a pro-rata fashion to participants/beneficiaries who suffered losses for unpaid claims between $1.00 and $999.99.

d. Fourth, distributed to individuals whose employee salary deferrals or COBRA payments were not remitted for Health Plan benefits.

Each group above shall be satisfied in full before restoration to the next group is commenced.

9. Bruce Hartmann shall take appropriate actions to locate each participant and beneficiary of the Health Plan identified in Exhibit A and to disburse to each such participant or beneficiary the payment(s) to which he or she is entitled.

10. In return for the Secretary's forbearance, defendant Bruce Hartmann agrees to submit to the Regional Director a current completed annual financial declaration and his annual federal tax return for each calendar year between 2013 and 2023 on or before May 15th of the year that the return is to be filed in.

11. If defendant Bruce Hartmann fails to comply with the terms of this Judgment, the entire sum set forth in paragraphs 3 and 5 above, plus accrued interest from August 1, 2013 (minus payments made pursuant to this Judgment) shall immediately become due and payable together with post-judgment interest pursuant to 28 U.S.C. §1961.

12. Defendant Bruce Hartmann agrees that he will notify the Regional Director within seven (7) days of any change of his name, residence, telephone number, mailing address or employment until the amounts recited in this Judgment are repaid.

13. Each party agrees to bear his or its own attorneys' fees, costs, and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

14. Upon the entry of this Judgment, defendant Bruce Hartmann shall be permanently enjoined from serving or acting as a fiduciary or service provider with respect to any employee benefit plan subject to ERISA, except for the purposes of restoring the monies owed to the Health Plan participants and beneficiaries, as described herein.

15. Nothing in this Judgment is binding on any government agency other than the United States Department of Labor.

16. Upon receipt of satisfactory documentary proof that Defendant Bruce Hartmann has complied with all paragraphs relating to monetary restoration to the Plans and reporting requirements the Secretary shall file a notice of such compliance of the monetary terms of this Judgment with the court.

IT IS SO ORDERED THIS 29th DAY OF January 2014.

JAMES B. ZAGEL
U.S. District Court Judge

Defendants hereby move for entry of this Judgment:

__s/Bruce Hartmann Dated: _11/15/13_
BRUCE HARTMANN

__s/John Ruddy Dated: __12/19/13_
JOHN RUDDY
Counsel for Bruce Hartmann
2631 Ginger Woods Parkway, Ste. 101
Aurora, IL 60502-7429

__s/Bruce Hartmann Dated: _11/15/13_
Fiduciary for Mid-States Express, Inc. 401(k) Plan

__s/Bruce Hartmann Dated: _11/15/13
Fiduciary for Mid-States Express, Inc. Employee Benefit Plan

Thomas Perez, Secretary of Labor, hereby moves for entry of this Judgment:

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

_s/ Ruben R. Chapa___ Dated: _1/8/14_____
RUBEN R. CHAPA
ERISA Counsel

U.S. Department of Labor
Attorneys for Plaintiff
Office of the Solicitor
230 S. Dearborn, Rm. 844
Chicago, IL. 60604
Tel: (312) 353-6993
Fax: (312) 353-5698