

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

HILDA L. SOLIS, SECRETARY OF LABOR, :
UNITED STATES DEPARTMENT OF LABOR, :

Plaintiff, :

Civil Action No. 1:12-cv-00117

v. :

TOWSON REHABILITATION CENTER, LLC, :
HOWARD NEELS, AND THE TOWSON :
REHABILITATION 401(k) PLAN, :

Defendants. :

CONSENT JUDGMENT

Plaintiff, Hilda L. Solis, Secretary of Labor, United States Department of Labor (“Secretary”), has filed a Complaint in this action pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, alleging certain violations by Defendant Towson Rehabilitation Center, LLC (“Towson”) and Defendant Howard Neels (hereinafter, “Defendants”). The Towson Rehabilitation 401(k) Plan (“Plan”) was joined as a party defendant under Fed. R. Civ. P. 19(a) solely to assure that complete relief could be granted.

Counsel for the Secretary has engaged in settlement discussions with counsel for Defendants. The Secretary and Defendants have agreed to resolve this case without further litigation. Defendants admit to the jurisdiction of this Court over them and the subject matter of this action. Defendants further waive answering the Complaint, and consent to the entry of this Consent Judgment against them by this Court, the terms of which are set forth herein:

1. The Secretary’s Complaint alleges that Defendants violated Sections 403, 404 and 406 of ERISA, 29 U.S.C. §§ 1103, 1104 and 1106.

2. For purposes of this Consent Judgment, Defendants admit that the Court has jurisdiction over them and the subject matter of this action.

3. The Secretary has agreed to resolve all claims asserted in the Complaint against Defendants for the equitable relief set forth below.

4. The Secretary and Defendants understand and agree that entry of this Consent Judgment is without prejudice to the Secretary's right to investigate and redress violations of ERISA, if any, not alleged in the Complaint, including the Secretary's right to institute future enforcement actions with respect to any other such matter. It is further understood that this paragraph shall not constitute a waiver by Defendants of any defenses, legal or equitable, to any such future action.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

- a. This Court has jurisdiction over this action and the defendants.
- b. Defendants shall, jointly and severally, restore \$29,167.75 in pre-judgment interest to the Plan as restitution. The payment shall be made within 30 days of the entry of this Consent Judgment and shall be made payable to "Nicholas & Associates, Inc. FBO The Towson Rehabilitation 401(k) Plan" and sent to Nicholas & Associates, Inc., 5084 Dorsey Hall Drive, Suite 105, Ellicott City, Maryland 21042
- c. Defendants shall, jointly and severally, directly pay for any and all costs and expenses related to the hiring of Nicholas & Associates and/or any independent fiduciary for the Plan. Under no circumstances shall any of these costs of expenses be paid with Plan assets, even temporarily.

- d. The Plan shall redistribute the restitution to the Plan participants in amounts necessary to restore their losses incurred as a result of the fiduciary breaches alleged in the Complaint.
- e. Upon receiving proof of the restitution payment, the Secretary shall assess a penalty against Defendants in the amount of \$5,833.55 which represents 20 percent of the applicable recovery amount of \$29,167.75 pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l). Defendants waive their rights to contest said penalty but preserve their rights to request a penalty waiver. Unless Defendants apply for a waiver, Defendants shall pay the penalty within ten (10) days of receipt of the notice of assessment. If Defendants apply for a waiver to reduce or eliminate the penalty amount pursuant to ERISA § 502(l)(3), 29 U.S.C. § 1132(l)(3), and are denied such waiver by the Secretary, Defendants shall pay any applicable penalty amount within ten (10) days of the Secretary's denial.
- f. Towson is removed as the Plan Administrator of the Plan.
- g. Nicholas & Associates, Inc. is appointed as the independent fiduciary of the Plan with plenary authority over Plan administration, management and disposition of the Plan's assets, including termination of the Plan. Nicholas & Associates, Inc. shall be compensated in accordance with the proposal attached as Government Exhibit 1. That amount shall be paid directly by either or both of the Defendants and, at no time, shall be paid with Plan assets.
- h. Defendants and the Plan, their agents, representatives, servants and employees and all persons acting by or under their authority shall cooperate with the independent

fiduciary in the performance of its duties. Defendants and the Plan shall provide their full cooperation to the independent fiduciary relative to any need for participant or financial data that may exist with regard to any record of the Plan.

- i. Defendants are permanently enjoined from serving as trustee, fiduciary, advisor, or administrator to any employee benefit plan, as that term is defined at Section 3(3) of ERISA, 29 U.S.C. § 1002(3). Defendants are permanently enjoined from serving in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan.
- j. Defendants are permanently enjoined from violating any provisions of ERISA in the future.
- k. If either Defendant files for any form of bankruptcy prior to the full payment of restitution to the Plan, Defendants will not oppose any proof of claim that the Secretary files in the bankruptcy proceeding for any amount still owing.
- l. If Defendant Neels files for any form of bankruptcy prior to the full payment of restitution to the Plan, Defendant Neels will not oppose an adversarial action that the Secretary may file to have the debt to the Plan declared non-dischargeable.
- m. The Secretary and Defendants shall each bear their own costs, expenses, and attorneys' fees incurred to date in connection with any stage of this proceeding, including but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.
- n. This Consent Judgment shall operate as a final disposition of all claims asserted by the Secretary against Defendants in the Complaint.

- o. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor.
- p. This Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment.
- q. The Court directs the entry of this Consent Judgment as a final order for the Plaintiff Secretary of Labor and against Defendants.

Date: Jan. 17, 2013



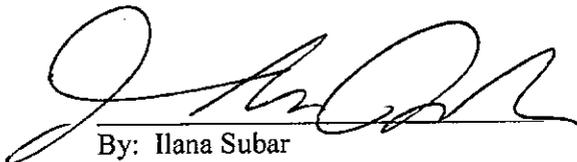
United States District Judge

Defendant Howard Neels and Defendant
Towson Rehabilitation Center, LLC
waive filing answer and
consent to entry of this Consent Judgment

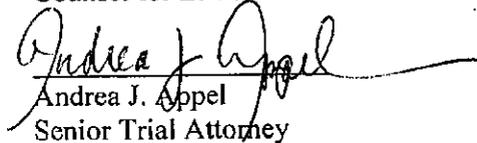
M. Patricia Smith
Solicitor of Labor

Catherine Oliver Murphy
Regional Solicitor

Joanne Roskey
Counsel for ERISA



By: Ilana Subar
Paul W. Madden
Whiteford, Taylor & Preston, L.L.P.
Counsel for Defendants

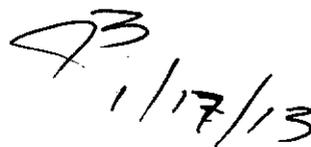


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U.S. DEPARTMENT OF LABOR

* Other pending motions (ECF No. 12413)
DENIED AS MOOT. Clerk directed to
close case.


1/17/13