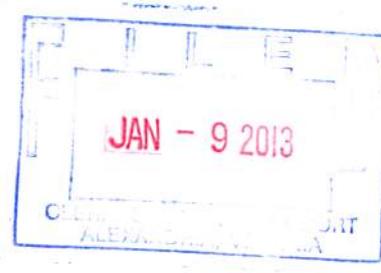


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA



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

Plaintiff, :

v. :

Civ. A. No. 1:13CV12-TSE/JFA

RICHARD YANEK, :
CARDSERVICE OF VIRGINIA, INC., AND :
CARDSERVICE OF VIRGINIA, INC. 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 Richard Yanek and Defendant Cardservice of Virginia, Inc. (“Cardservice”). The Cardservice of Virginia, Inc. 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 Defendant Yanek on behalf of himself and Defendant Cardservice (hereinafter, “Defendants”). The Secretary and Defendants have agreed to resolve this case without further litigation. Defendants waive service of process of the Complaint and 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 \$21,904.10 in plan assets and \$51,725.27 in pre-judgment interest to the Plan as restitution, and shall further restore \$3,877.50 to the Plan for the costs and expenses related to the hiring of an independent fiduciary for the Plan. The total amount Defendants shall, jointly and severally, restore to the Plan is \$77,506.87.
- c. Payment of restitution required by paragraph (b) shall be made payable to "Lefoldt & Co., P.A. FBO Cardservice of Virginia, Inc. 401(k) Plan" and sent to Lefoldt & Co.,

P.A., 690 Towne Center Boulevard, P.O. Box 2848, Ridgeland, MS 39158-2848. The payment shall be made within 45 days of the entry of this Consent Judgment.

- 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 \$15,501.37 which represents 20 percent of the applicable recovery amount of \$77,506.87 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. Cardservice is removed as the Plan Administrator of the Plan.
- g. Lefoldt & Co., P.A. 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. Lefoldt & Co., P.A. shall be compensated an amount not to exceed \$3,877.50 for the performance of its duties and costs incurred in accordance with the proposal attached as Government Exhibit 1. That amount shall be

paid from Plan assets but Defendants shall reimburse the Plan in that same amount as provided in paragraph (b) herein.

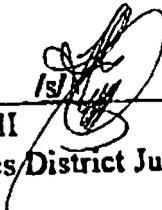
- h. Defendants and the Plan, their agents, representatives, servants and employees and all persons acting by or under their authority shall cooperate with the independent fiduciary in the performance of its duties. Defendants and the Plan shall provide their full cooperation to the independent fiduciary 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 Yanek files for any form of bankruptcy prior to the full payment of restitution to the Plan, Defendant Yanek 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: 1/9/13



T. S. Ellis, III
United States District Judge

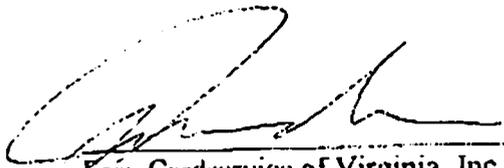
Defendant Richard Yanek and Defendant
Cardservice of Virginia, Inc.
waive service and answer and
consent to entry of this Consent Judgment

United States District Judge

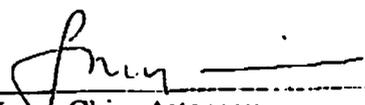
M. Patricia Smith
Solicitor of Labor

Catherine Oliver Murphy
Regional Solicitor

Joanne Roskey
Regional Counsel



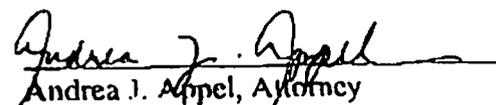
For: Cardservice of Virginia, Inc.
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