

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

HILDA L. SOLIS,)	FILE NO.
Secretary of Labor, United)	
States Department of Labor,)	
)	
Plaintiff,)	
)	
v.)	
)	
KEITH VINSON, TRADITION, LLC, and)	
TRADITION, LLC, GROUP HEALTH PLAN)	
)	
Defendants.)	

COMPLAINT
(Injunctive Relief Sought)

This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA” or “the Act”), 29 U.S.C. § 1001, *et seq.*, and is brought to obtain relief under Sections 409 and 502 of ERISA, 29 U.S.C. §§ 1109 and 1132, in the form of remedies that will redress violations to obtain appropriate relief for breaches of fiduciary duty under ERISA Section 409, 29 U.S.C. § 1109, and to obtain such further relief as may be appropriate to enforce the provisions of Title I of ERISA.

JURISDICTION

1

Jurisdiction hereof is conferred upon the Court by section 502 (e) (1) of ERISA, 29 U.S.C. § 1132 (e) (1).

II

The Tradition, LLC Group Health Plan (“the Health Plan”) is or was at all times relevant to this action an employee benefit plan within the meaning of section 3(3) of ERISA, 29 U.S.C. § 1002(3).

VENUE

III

Venue of this action lies in the Western District of North Carolina, the district where the Defendant Keith Vinson resides, pursuant to section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

PARTIES

IV

A. Each of the following is a “fiduciary” with respect to the Plan within the meaning of section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A):

1. Defendant Keith Vinson (hereinafter “Vinson”), in that he exercised discretionary authority or discretionary control respecting the management of the Plan, exercised authority or control respecting management or disposition of the Plan’s assets, or had discretionary authority or discretionary responsibility in the administration of the Plan.

2. Tradition, LLC, (hereinafter “Tradition”), the Plan Sponsor and Plan Administrator, in that it had discretionary authority or discretionary responsibility in the administration of the Plan, exercised authority or control respecting management or disposition of the Plan’s assets, or had discretionary responsibility in the administration of the Plan.

B. Each of the following is a “party in interest” to the Plan within the meaning of section 3(14) of ERISA, 29 U.S.C. § 1002(14):

1. As a fiduciary to the Plan, an officer and majority owner of Tradition, Defendant Vinson is or was a party in interest with respect to the Plan within the meaning of sections 3(14)(A), (B), (E), and (H) of ERISA, 29 U.S.C. § 1002(14)(A), (B), (E), and (H).

2. As fiduciary to the Plan, an employer any of whose employees were covered by the Plan, and a service provider to the Plan, Tradition is or was a party in interest with respect to the Plan within the meaning of section 3(14)(A), (B) and (C) of ERISA, 29 U.S.C. § 1002(14)(C).

C. The Plan is joined as a party defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

THE HEALTH PLAN

V

A. The Health Plan was established by Tradition effective 2007.

B. The Health Plan was insured through Blue Cross and Blue Shield of North Carolina (hereinafter “BCBS-NC”).

C. Tradition is, or was, the Plan Sponsor and was responsible for deducting amounts from employees’ salaries and forwarding those amounts, along with Tradition’s contributions, to BCBS-NC on or before the due date to pay the Health Plan premiums, as required by the Health Plan documents.

D. Tradition possessed and exercised the responsibility and authority to administer the Health Plan and to collect premiums for the Health Plan.

E. Tradition deducted from payroll, but failed to remit to the Health Plan, at least \$10,944.88 of employee contributions for pay periods from October 24, 2009 through March 24, 2010.

F. As a result of the failure by Tradition to pay premiums to the Health Plan, the Plan was automatically terminated as of September 30, 2009.

G. Vinson knew, or reasonably should have known, of Tradition's withdrawal of amounts from employee payroll that represent Health Plan premiums and failure to remit such premiums.

H. Vinson failed to take action to prevent Tradition's withdrawal of amounts from employee payroll and failure to use such amounts to pay premiums to the Health Plan.

I. Tradition and Vinson caused or allowed employee payroll deductions, which were withheld by Tradition, to be used for purposes other than providing benefits in accordance with Health Plan documents.

J. Tradition failed to segregate payroll deducted employee contributions to the Health Plan from the assets of Tradition.

K. Tradition failed to ensure that the Health Plan received amounts deducted from employee payroll for payment of the Health Plan premiums.

L. After collecting Health Plan members' premiums, Tradition failed to "transmit such fees along with the Plan Sponsor's required contribution to BCBS-NC's principal office on or before the due date of such fees," as required by the Health Plan document.

M. Tradition also received \$6,009.18 for COBRA premiums from October 24, 2009 to March 24, 2010. Tradition did not reimburse Plan participants for the COBRA payments after the effective date of the cancellation of the Plan. Additionally, the COBRA payments were not used for Plan purposes.

N. Following the cancellation of the policy, Plan participants incurred at least \$64,461.89 in unpaid medical claims.

O. Vinson failed to monitor adequately the activities of Tradition in relation to the Health Plan, thus enabling Tradition to engage in the acts or omissions described above.

P. Tradition failed to monitor adequately the activities of Vinson in relation to the Health Plan, thus enabling Vinson to engage in the acts or omissions described above.

BREACHES OF FIDUCIARY DUTIES

VI

By the acts and omissions described in paragraph V, Defendant Vinson, as fiduciary of the Health Plan:

A. failed to discharge his duties solely in the interest of the participants and beneficiaries of the Health Plan and for the exclusive purpose of providing benefits and defraying reasonable expenses of plan administration, in violation of section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A).

B. failed to discharge his duties with the requisite degree of care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of § 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B).

C. failed to discharge his duties with respect to the Health Plan in accordance with the documents and instruments governing the Plan, in violation of section 404(a)(1)(D) of ERISA, 29 U.S.C. § 1104(a)(1)(D).

D. caused the Health Plan to engage in transactions that constituted direct or indirect transfers of the Plan's assets to, or use of the Plan's assets by or for the benefit of a party in interest, in violation of section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D).

E. dealt with the assets of the Health Plan in his own interest or for his own account, in violation of section 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1).

F. acted in transactions involving the Health Plan on behalf of a party whose interests were adverse to the interests of the Plan or the interests of its participants and beneficiaries, in violation of section 406(b)(2) of ERISA, 29 U.S.C. § 1106(b)(2).

G. failed to ensure that all assets of the Health Plan were held in trust, in violation of section 403(a) of ERISA, 29 U.S.C. § 1103(a).

H. failed to ensure that the assets of the Plan did not inure to the benefit of Tradition, in violation of section 403(c)(1) of ERISA, 29 U.S.C. § 1103(c)(1).

I. Vinson is liable for the fiduciary breaches of Tradition with respect to the Health Plan, pursuant to section 405(a) of ERISA, 29 U.S.C. § 1105(a), in that he (1) participated knowingly in an act of the other fiduciary (Tradition), knowing such act was a breach, in violation of section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1); (2) failed to comply with section 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary and thereby enabled such other fiduciary (Tradition) to commit a breach, in violation of section 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2); or (3) had knowledge of a

breach by the other fiduciary (Tradition) and failed to make reasonable efforts under the circumstances to remedy the breach, in violation of section 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3).

WHEREFORE, pursuant to section 502(a)(2) and (5) of ERISA, 29 U.S.C. § 1132(a)(2) and (5) Plaintiff prays that the Court:

A. Order Defendants to restore to the Health Plan all losses, including interest or lost opportunity costs, which occurred as a result of their respective breaches of fiduciary obligations and to correct all prohibited transactions, also turning over to the Health Plan any funds by which respective defendants may have been unjustly enriched;

B. Set off any restitution or other monetary recovery which Defendants may be ordered to pay against any claims which they may have against the Health Plan, including any claims for benefits;

C. Remove Defendants from their positions as fiduciaries with respect to the Health Plan, and permanently bar them from serving as fiduciaries for, or having control over the assets of, any employee benefit plan subject to ERISA;

D. Appoint a successor trustee and administrator to take over the operation of the Health Plan, distribute any proceeds which accrue to the Plan, and if necessary, to terminate the Plan;

E. Enjoin Defendants from engaging in any further violations of Title I of ERISA;

F. Award the Plaintiff the costs of this action; and

G. Provide such other relief as may be just and equitable.

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