

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Thomas E. Perez, SECRETARY OF LABOR,
United States Department of Labor,

Plaintiff,

v.

COUNSELING AND EDUCATIONAL CONSULTANTS *
d/b/a RUMFORD DAY NURSERY, INC., *
and DEBORAH VERY-KING, Individually, *

Defendants. *

CA 13- 763 ✓

CIVIL ACTION NO.

CONSENT JUDGMENT AND ORDER

Defendant Counseling and Educational Consultants d/b/a Rumford Day Nursery, Inc. and Defendant Deborah Very-King (collectively, the "Defendants"), and Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (the "Secretary"), have agreed to resolve all matters in controversy in this action (not including the imposition by Plaintiff of any penalty pursuant to Title I of the Employee Retirement Income Security Act of 1974 ("ERISA" or the "Act") Section 502(l), 29 U.S.C. § 1132(l), and any proceedings related thereto), and said parties do now consent to the entry of a Consent Judgment and Order ("Consent Judgment") by this Court in accordance therewith.

The parties agree, for purposes of any future assessment of any penalty pursuant to ERISA Section 502(l), 29 U.S.C. § 1132(l), that the "applicable recovery amount" shall be the amount of \$52,945.96, as set forth in paragraph 2 of this Consent Judgment, except that Defendant Very-King shall be given credit for any payments made prior to the entry of this

Consent Judgment, subject to providing proof of payment pursuant to paragraph 8 of this Consent Judgment.

Defendants have waived the requirements of Rule 4 of the Federal Rules of Civil Procedure as to service of summons and acknowledge receipt of Plaintiff's Complaint. By consenting to this Consent Judgment, Defendants admit jurisdiction of this Court over them and over the subject matter of this action.

Now therefore, by consent of the parties hereto, and with due consideration,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Defendants are permanently enjoined from violating Title I of ERISA, 29 U.S.C. § 1001, et seq.

2. Defendant Very-King shall pay to the Rumford Day Nursery, Inc. SIMPLE IRA Plan (the "Plan") the amount of \$52,945.96, representing principal and pre-judgment lost opportunity costs. Said amount shall be allocated among the Plan participants listed in Attachment A, whose employee contributions were withheld but never transmitted to the Plan and/or were untimely transmitted to the Plan, and whose employer contributions were not collected to remit to the Plan, according to the amount each participant is due, provided however, that none of said amount will be allocated to Defendant Very-King's Plan account or otherwise for the benefit of Defendants.

3. Payment of said amount shall be made to the Plan in fifty-three (53) monthly installment payments of \$1,067.89 per month, including post-judgment interest amortized annually at the rate of three-percent (3%). The first installment payment shall be due on January 1, 2014. Thereafter, Defendants shall make successive installment payments on a monthly basis. Said successive installment payments shall be due on the first (1st) day of each month following

the month in which the preceding payment was due. If an installment payment is more than fifteen (15) days late, the remaining balance of the Consent Judgment amount becomes immediately due and payable.

4. A copy of this Consent Judgment shall constitute instructions to Invesco Investment Services, Inc. ("Invesco") to accept the installment payments to the Plan, as provided in paragraphs 2 and 3 of this Consent Judgment. Defendant Very-King shall send each monthly installment payment to Invesco Investment Services, Inc. at P.O. Box 219078, Kansas City, Missouri 64121, or if using overnight and/or certified mail to Invesco Investment Services, Inc. c/o DST Systems, Inc., 430 West 7th Street, Kansas City, Missouri 64105. Defendant Very-King shall include a statement of instruction with each monthly installment payment. The statement of instruction shall include the Plan name, Plan Identification Nos. 48272 and/or 119106, along with the name, social security number, and monthly allocation amount for each Plan participant receiving a payment.

5. If a Plan participant in Attachment A is not enrolled in the Plan, Defendant Very-King shall notify the Plan participant and enroll the Plan participant in the Plan, subject to the Plan participant's agreement. Defendant Very-King shall follow all appropriate steps to locate Plan participants. Defendant Very-King shall notify the Secretary of enrolling the Plan participant in writing and provide proof of notifying the Plan participant and enrolling the Plan participant pursuant to paragraph 8 of this Consent Judgment.

6. In the event that Invesco is unable to allocate a payment to any Plan participant in Attachment A for any reason, Defendant Very-King shall establish an interest-bearing federally insured bank account in the name of the Plan participant and shall remit such payment and future payments to the bank account, unless otherwise notified by the Plan participant. Within twenty

(20) days of establishing the bank account, Defendant Very-King shall notify the Plan participant of the bank account in writing. Defendant Very-King shall follow all appropriate steps to locate Plan participants. Defendant Very-King shall also notify the Secretary of the establishment of each bank account in writing and provide proof of notifying the Plan participant and establishing each bank account pursuant to paragraph 8 of this Consent Judgment.

7. Defendant Very-King shall have the right to make greater payments toward the balance due without penalty, but shall pay at least the monthly installment payment amount described in paragraph 3 of this Consent Judgment. Any greater payments towards the balance due shall be applied to the final payments. Defendant Very-King shall also be given credit for any payments made prior to the entry of this Consent Judgment, subject to providing proof of payment pursuant to paragraph 8 of this Consent Judgment.

8. Defendant Very-King shall submit the following, setting forth evidence of compliance with the provisions of paragraphs 2 through 7 of this Consent Judgment:

a) Within twenty (20) days of making each monthly installment payment to the Plan, or to a bank account, Defendant Very-King shall provide proof of payment¹ to the Secretary, until such time as the full amount owed is restored;

b) Within twenty (20) days of enrolling a Plan participant in Attachment A in the Plan, Defendant Very-King shall notify the Secretary in writing and provide proof of notifying and enrolling the Plan participant;

c) Within twenty (20) days of establishing a bank account, Defendant Very-King shall notify the Secretary in writing and provide proof of notifying the Plan participant and establishing the bank account;

¹ "Proof of payment" is defined as documentation verifying the allocation to, and receipt of, funds in each Plan participant's account.

d) Within thirty (30) days of completing payments to the Plan, or to a bank account, Defendant Very-King shall submit a written report to the Secretary showing a full accounting of the proceeds allocated to the accounts of Plan participants or otherwise allocated to Plan participants;

e) Within thirty (30) days of the entry of this Consent Judgment, Defendant Very-King shall provide to the Secretary proof of any payments made prior to the entry of this Consent Judgment; and,

f) Proof of payments, enrollments, notices, and bank accounts, and the report of compliance, as required by paragraphs 8(a) through (e) of this Consent Judgment, shall be sent to the following address:

Regional Director
Employee Benefits Security Administration
U.S. Department of Labor
JFK Federal Building, Room 575
Boston, Massachusetts 02203

9. Defendant Very-King is permanently enjoined from serving as a fiduciary for any employee benefit plan subject to ERISA, except to enroll Plan participants in Attachment A in the Plan pursuant to paragraph 5 of this Consent Judgment.

10. Each party shall bear its own fees and expenses with respect to this action.

11. This Court shall retain jurisdiction of this matter for purposes of enforcing this Consent Judgment.

12. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor.

IT IS ORDERED THIS 17th day of DEC, 2013.

Ronald R. Laguerre
United States District Judge

CONSENTED TO BY:

For the Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor:

M. Patricia Smith
Solicitor of Labor

Michael D. Felsen
Regional Solicitor

Celeste C. Moran
Celeste C. Moran
Trial Attorney
Massachusetts BBO No. 682937

12/03/2013
Dated

U.S. Department of Labor
Office of the Solicitor
JFK Federal Building, Room E-375
Boston, Massachusetts 02203

Telephone: (617) 565-2500
Facsimile: (617) 565-2142
moran.celeste@dol.gov

For Defendant Counseling and Educational Consultants d/b/a Rumford Day Nursery, Inc.:

Noelle K. Clapham
Noelle K. Clapham, No. 5338

11/27/13
Dated

Robinson & Clapham
24 Salt Pond, Suite A #8
Wakefield, Rhode Island 02879

Telephone: (401) 783-3600
Facsimile: (401) 783-3670

For Defendant Deborah Very-King:

Noelle K. Clapham
Noelle K. Clapham, No. 5338

11/27/13
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