UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

MARGARET T. STORROW,
STORROW KINSELLA ASSOCIATES INC.,
STORROW KINSELLA ASSOCIATES INC. SIMPLE IRA PLAN,

Defendants.

CASE NO. 1:13-CV-1437

COMPLAINT

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor (the "Secretary"), alleges:

JURISDICTION AND VENUE

1. This action arises under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, et seq., and is brought by the Secretary under ERISA §§502(a)(2) and (5), 29 U.S.C. §§1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate equitable relief for breaches of fiduciary duty under ERISA §409, 29 U.S.C. §1109, and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

2. This court has jurisdiction over this action pursuant to ERISA §502(e)(1), 29 U.S.C. §1132(e)(1).

3. The Storrow Kinsella Associates, Inc. SIMPLE IRA Plan (the "Plan") is an employee benefit plan within the meaning of ERISA §3(3), 29 U.S.C. §1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA §4(a), 29 U.S.C. §1003(a).

4. Venue of this action lies in the Southern District of Indiana, Indianapolis Division, pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because the Plan was administered in Indianapolis, Marion County, Indiana, within this district.

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

DEFENDANTS

6. During the relevant time period, Storrow Kinsella Associates, Inc. ("Storrow Kinsella"), was the Plan's Administrator, exercised authority and control over the disposition of assets of the Plan; was a fiduciary to the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A); and was a party in interest to the Plan within the meaning of ERISA §§3(14)(A) and (C), 29 U.S.C. §§1002(14)(A) and (C).

7. During the relevant time period, Margaret T. Storrow was a 51% owner, president and chief financial officer of Storrow Kinsella; exercised authority and control over assets of the Plan, was a fiduciary of the Plan, within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A); and was a party in interest to the Plan within the meaning of ERISA §§3(14)(A), (E), and (H), 29 U.S.C. §§1002(14)(A), (E), and (H).

ALLEGATIONS

Count I
(Failure to remit participant contributions to the Plan)

8. Paragraphs 1 through 7 above, are realleged and hereby incorporated in these allegations.

9. During the relevant period, the Plan document provided that participants could elect to defer a portion of their wages to the Plan.

10. During periods from January 1, 2007 through November 21, 2012, Storrow Kinsella withheld from employees' wages $26,498.81 in contributions to the Plan.

11. The Plan participant contributions withheld by Storrow Kinsella from employees' wages during periods from January 1, 2007 through November 21, 2012, were retained in Storrow Kinsella's general operating account and used by Margaret Storrow and Storrow Kinsella to pay the general operating expenses of Storrow Kinsella.

12. During periods from January 1, 2007 through November 21, 2012, Margaret Storrow and Storrow Kinsella caused Storrow Kinsella to retain the participants' contributions to the Plan that had been withheld from their wages and failed to ensure that the amounts withheld from employees' wages were deposited into the Plan's account.

13. Based on the facts described in paragraphs 9 through 12 above, Margaret Storrow and Storrow Kinsella:

a. failed to ensure that the assets of the Plan were held in trust and did not inure to the benefit of Storrow Kinsella in violation of ERISA §§403(a) and (c)(1), 29 U.S.C. §§1103(a) and (c)(1);

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

c. caused the Plan to engage in transactions which they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of assets of the Plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);

d. dealt with assets of the Plan in their own interest in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and,

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

14. As a direct and proximate result of the Defendants Margaret Storrow and Storrow Kinsella's fiduciary breaches, they are personally liable for the losses to the Plan, and they are subject to appropriate equitable relief pursuant, to ERISA §409, 29 U.S.C. §1109.

Count II
(Failure to timely remit participant contributions to the Plan)

15. Paragraphs 1 through 7 above, are realleged and hereby incorporated in these allegations.

16. During periods from January 1, 2007 through November 21, 2012, Storrow Kinsella withheld money from its employees' wages for contribution to the Plan.

17. During periods from January 1, 2007 through November 21, 2012, Storrow Kinsella failed to timely remit to the Plan the money it withheld from its employees' wages for

contribution to the Plan and retained this money in its general operating account until it was remitted.

18. During periods from January 1, 2007 through November 21, 2012, Margaret Storrow and Storrow Kinsella caused Storrow Kinsella to retain the employees' contributions to the Plan that had been withheld from the employees' wages and failed to ensure that these withholdings were timely remitted to the Plan.

19. Based on the facts described in paragraphs 16 through 18 above, Margaret Storrow and Storrow Kinsella:

a. violated ERISA §403(a) and (c)(1), 29 U.S.C. §1103(a) and (c)(1), failed to ensure that the assets of the Plan were held in trust and did not inure to the benefit of Storrow Kinsella;

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

c. caused the Plan to engage in transactions which they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of assets of the Plan, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);

d. dealt with assets of the Plan in their own interest in violation of ERISA §406(b)(1), 29 U.S.C. §1106(b)(1); and,

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

20. As a direct and proximate result of the Defendants Margaret Storrow and Storrow Kinsella's fiduciary breaches, they are personally liable for the losses to the Plan, and they are subject to appropriate equitable relief, pursuant to ERISA §409, 29 U.S.C. §1109.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Margaret Storrow and Storrow Kinsella from violating the provisions of Title I of ERISA;

B. Ordering Margaret Storrow and Storrow Kinsella to make good to the Plan all losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;

C. Ordering Margaret Storrow and Storrow Kinsella to correct the prohibited transactions in which they engaged relating to the Plan;

D. Permanently enjoining Margaret Storrow and Storrow Kinsella from serving as a fiduciary or service provider to any ERISA-covered employee benefit plan;

E. Appointing an independent fiduciary to ensure the proper administration of the Plan;

F. Awarding the Secretary the costs of this action; and

G. Ordering such further relief as is appropriate and just.

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

s/ Carla M. Casas
CARLA M. CASAS
Trial Attorney

Attorneys for **THOMAS E. PEREZ**,
Secretary of Labor, United States
Department of Labor

P.O. Address:
U.S. Department of Labor
Office of the Solicitor
8th Floor
230 S. Dearborn St.
Chicago, IL 60604
Telephone: (312) 886-5260
Fax: (312)353-5698
E-mail: casas.carla@dol.gov