UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor, Plaintiff, v. **ORLAND FASEL, BERNICE FASEL, EDWARD FASEL, E.L. FASEL & SONS, INC. PROFIT SHARING PLAN,** Defendants.	:	CIVIL ACTION Case No. 1:13-cv-06439 Judge Amy J. St. Eve

<u>CONSENT ORDER AND JUDGMENT</u>
<u>WITH RESPECT TO DEFENDANT ORLAND FASEL</u>

Plaintiff Thomas E. Perez, Secretary of Labor ("Secretary"), United States Department of Labor, filed a complaint against Defendants Orland Fasel, Bernice Fasel, Edward Fasel, and the E.L. Fasel & Sons, Inc. Profit Sharing Plan ("Plan") alleging that Orland Fasel ("Defendant"), Bernice Fasel, and Edward Fasel[1] breached their fiduciary responsibilities under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1001, *et seq.* with respect to the Plan.[2]

Defendant Orland Fasel has waived service of process of the complaint and has admitted to the jurisdiction of this Court over him and the subject matter of this action.

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[1] The Secretary entered into a separate Consent Order and Judgment with defendants Bernice Fasel and Edward Fasel that was entered by the Court on September 10, 2013. (Doc. No. 5).

[2] The Plan was only named as a defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

The Secretary and Defendant have agreed to resolve all matters in controversy in this action between them (except for the imposition by Plaintiff of any penalty pursuant to ERISA § 502(*l*), 29 U.S.C. § 1132(*l*), and any proceedings related thereto), and said parties do now consent to entry of a Consent Order and Judgment by this Court.

Now, therefore, upon consideration of the record herein, and as agreed to by the parties hereto, the Court finds that it has jurisdiction to enter this Consent Order and Judgment, and being fully advised in the premises, it is

ORDERED, ADJUDGED AND DECREED that:

A. Defendant is permanently enjoined from violating the provisions of Title I of ERISA;

B. Defendant is removed from any position that he now has as fiduciary to the Plan;

C. Defendant is permanently enjoined from serving as fiduciary or service-provider to any ERISA-covered employee benefit plan;

D. Defendant is jointly and severally liable to the Plan in the amount of $83,500, for engaging in or failing to prevent or take corrective action for prohibited transactions involving the transfer of plan assets from the Plan to Orland Fasel and Margaret Fasel from December 15, 2006, to February 22, 2010.

E. In reliance on Defendant’s representation, in the documents provided by him to the Secretary, including executed Declarations of Financial Status and his last three years of U.S. tax returns, that he is presently unable to pay the amounts owed to the Plan, the Secretary agrees to forbear immediate collection of the restitution amount referenced in paragraph D of this Consent Order and Judgment.

F. In return for the Secretary's forbearance, Defendant will provide copies of his tax filings for 2013 through 2019 within seven days of his tax filing. In addition the Defendant will provide financial disclosure statements signed under penalty of perjury annually at the same time copies of his annual tax returns are due. The copies of the tax filings and financial disclosure statements shall be sent directly to the Regional Director, United States Department of Labor, Employee Benefits Security Administration, 230 S. Dearborn Street, Suite 2160, Chicago, Illinois 60604 ("Regional Director").

G. If any of the Defendant's annual income[3] exceeds $60,000, he shall restore a percentage of his income, as set forth below, to the participants in the Plan, until the liability to the Plan is paid in full:

10% of all income, at such time as his income exceeds $60,000, but is less than $70,000;

20% of the portion of income that exceeds $70,000, but less than $90,000; and

30% of the portion of income that exceeds $90,000.

H. If the Defendant receives any lump-sum award,[4] he shall forward 100% of the award to the participants in the Plan to satisfy the amounts owed and outstanding pursuant to this Consent Order and Judgment, within 14 days of receiving the lump-sum award.

I. In restoring the amounts set forth in paragraph D, pursuant to paragraphs G and H, Defendant shall make payments to the individual Plans' participants on a pro rata basis, based on the losses set forth in Exhibit A. Payments shall be made annually on or before December 31st of each year in which the Defendant's income exceeds $60,000 or as specified in Paragraph

[3] Income is defined as all income reported on IRS Form 1040/1040A (U.S. Individual Income Tax Return) before adjustments and credits.

[4] The term "lump-sum award" is defined as a single payment of money, excluding salary and wages, in excess of $5,000 received from any source, including monies received as a bonus, lottery/gambling winnings, bequests, or insurance proceeds.

H. Within 10 days of any payments made to participants, the Defendant shall provide written proof of payment, copies of checks, and contact information for the individual participants to the Regional Director.

J. The Defendant shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive a payment under the terms of this Consent Order and Judgment and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled. Defendant shall comply with the guidance in EBSA Field Assistance Bulletin 2004-02, Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans (Sept. 30, 2004) available at http://www.dol.gov/ebsa/regs/fab2004-2.html, in attempting to locate participants and handling missing participants.

K. If the Defendant fails to comply with the requirements of this Consent Order and Judgment or if it is found that the documents he provides or have provided are incomplete or falsified, the full amount of losses owed to the Plan in paragraph D (minus any payments made by any party towards these amounts) shall immediately become due and payable together with post-judgment interest pursuant to 28 U.S.C. § 1961.

L. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor.

M. Each party agrees to bear his own attorneys' fees, costs, and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

N. The Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Order and Judgment.

IT IS SO ORDERED THIS 9TH DAY OF JUNE 2014.

Amy J. St. E

THE HONORABLE AMY J. ST. EVE
UNITED STATES DISTRICT COURT JUDGE

The undersigned apply for and consent to the entry of this Consent Order and Judgment this 2nd of June , 2014.

For the Defendant:

/s/ Orland Fasel

For the Secretary of Labor:

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

/s/ Bruce C. Canetti
Bruce C. Canetti
Attorneys for THOMAS E. PEREZ
Secretary of Labor, Plaintiff