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.

COMPLAINT

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

JURISDICTION AND VENUE

1. This cause of action arises under 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 relief for breaches of fiduciary duty under ERISA §§ 405 and 409, 29 U.S.C. §§ 1105 and 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. E.L. Fasel & Sons, Inc. ("E.L. Fasel") established the E.L. Fasel & Sons, Inc. Profit Sharing Plan ("Plan") on January 1, 1997 to provide retirement benefits to eligible employees.

4. 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).

5. Venue of this action lies in the Northern District of Illinois, Eastern Division, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan was administered in Kane County within this district.

DEFENDANTS AND PARTIES IN INTEREST

6. 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.

7. At all relevant times, Orland Fasel was the President and 33% owner of E.L. Fasel, was one of the Plan's named trustees, exercised discretionary authority and control over the management and administration of the Plan, exercised authority and control over the Plan's assets, was a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and a party in interest within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

8. At all relevant times, Edward Fasel was one of the Plan's named trustees and a 67% owner of E.L. Fasel.

9. At all relevant times, Bernice Fasel was one of the Plan's named trustees.

10. The named Trustees to the Plan had the duty to hold and invest Plan assets for the participants' benefit pursuant to the Summary Plan Description.

11. Based on their status as named trustees of the Plan, Edward Fasel, and Bernice Fasel are fiduciaries to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

12. At all relevant times, Orland Fasel and Margaret Fasel were husband and wife, therefore, pursuant to ERISA § 3(15), 29 U.S.C. § 1002(15), Margaret Fasel is a party in interest to the Plan within the meaning of ERISA § 3(14)(F), 29 U.S.C. § 1002(14)(F).

13. E.L. Fasel is the plan sponsor and the plan administrator and an employer whose employees are covered by the Plan.

14. On or before September 2008, E.L. Fasel became a defunct entity that no longer engaged in any business.

VIOLATIONS

Count I: Improper Transfers of the Plan's assets to Orland Fasel and Margaret Fasel

15. Paragraphs 1 through 14 above are hereby re-alleged and incorporated herein.

16. From December 26, 2008 to February 12, 2009, Orland Fasel made the following eight transfers, totaling $21,000, to himself from the Plan's account with A.G. Edwards:

a. December 26, 2008 for $3,000.

b. December 26, 2008 for $4,000.

c. January 12, 2009 for $3,000.

d. January 21, 2009 for $3,000.

e. January 26, 2009 for $3,000.

f. February 3, 2009 for $2,000.

g. February 9, 2009 for $2,000.

h. February 12, 2009 for $1,000.

17. From February 20, 2009 to February 22, 2010, Orland Fasel made the following 23 transfers, totaling $42,500, to himself from the Plan's account with Wachovia Securities:

a. February 20, 2009 for $3,000.

b. February 23, 2009 for $4,000.

c. March 6, 2009 for $2,000.

d. March 11, 2009 for $3,000.

e. March 25, 2009 for $3,000.

f. March 26, 2009 for 3,000.

g. April 10, 2009 for $2,000.

h. April 13, 2009 for $2,000.

i. April 29, 2009 for $3,000.

j. May 28, 2009 for $2,500.

k. May 28, 2009 for $2,500.

l. May 29, 2009 for $2,500.

m. May 29, 2009 for $2,500.

n. June 1, 2009 for $2,500.

o. June 2, 2009 for $1,500.

p. June 23, 2009 for $1,000

q. September 1, 2009 for $700.

r. February 2, 2010 for $400.

s. February 22, 2010 for $400.

18. From December 15, 2006 to February 9, 2007, Orland Fasel made the following four transfers, totaling $28,500, to Margaret Fasel from the Plan's account with A.G. Edwards:

a. December 15, 2006 for $10,000.

b. December 23, 2006 for $5,000.

c. January 22, 2007 for $10,000.

d. February 9, 2007 for $3,500.

19. Currently, the Plan has little or no assets.

20. On information and belief, immediately before the first transfer to Orland Fasel on December 26, 2008, his vested Plan account balance was $0.00.

21. On information and belief, immediately before the first transfer to Margaret Fasel on December 15, 2006, her vested Plan account balance was $8,500 or less.

22. Bernice Fasel and Edward Fasel improperly allowed Orland Fasel to exercise sole control of the Plan's assets and made no inquiry as to his conduct as described in paragraphs 16 through 18 above, and thereby, enabled him to improperly transfer the Plan's assets to parties in interest.

23. By the conduct described in paragraphs 15 through 22 above, Orland Fasel, Bernice Fasel, and Edward Fasel (collectively "Fiduciaries") failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries, in violations of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

24. By the conduct described in paragraphs 15 through 21 above, Orland Fasel:

a. caused the Plan to engage in transactions that he knew or should have known constituted a direct or indirect transfer of the Plan's assets to a party in interest, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

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

c. acted in a transaction with the Plan on behalf of himself, and/or on behalf of a party, whose interests were adverse to the Plan's interests or the interests of the Plan's participants or beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

25. Defendants Bernice Fasel and Edward Fasel are liable, pursuant to ERISA § 405(a)(2); 29 U.S.C. § 1105(a)(2), for Orland Fasel's breaches of his fiduciary duties because they failed to comply with ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) in the administration of their specific responsibilities which gave rise to their individual status as a fiduciary of the Plan which enabled Orland Fasel to commit the breaches described in paragraphs 23 and 24.

27. Defendant Edward Fasel is liable, pursuant to ERISA § 405(b)(1); 29 U.S.C. § 1105(b)(1), for holding the plan's assets with Orland Fasel and failing to use reasonable care to prevent Orland Fasel's violations of ERISA described in paragraphs 23 and 24.

28. As a direct and proximate result of the Fiduciaries' breaches, the Plan has suffered injury and losses for which they are personally liable and 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 the Fiduciaries from violating Title I of ERISA;

B. Permanently enjoining the Fiduciaries from serving as a fiduciary or a service-provider to any ERISA-covered employee benefit plan;

C. Removing the Fiduciaries from any positions that they now have as a fiduciary to the Plan;

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

E. Ordering the Fiduciaries to correct the prohibited transaction in which they engaged or for which they are liable;

F. Ordering the Fiduciaries to restore to the Plan any losses, including lost opportunity costs, resulting from their fiduciary breaches;

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

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

Respectfully submitted,

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Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

/s/ Bruce C. Canetti
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