

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THOMAS E. PEREZ, Secretary of Labor, : Civil Action File No.
United States Department of Labor, :

Plaintiff, :

v. :

ROGER RAMSAY and COMPENSATION :
PLANNING CORPORATION OF :
ROCHESTER, INC., :

Defendants. :

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”), 29 U.S.C. § 1001, *et seq.*, as amended, and is brought by the Secretary under ERISA § 502(a)(2) and (5) to obtain relief for breaches of fiduciary duty under ERISA §§ 404, 406, and 409, 29 U.S.C. §§ 1104, 1106, and 1109, and to enjoin acts and practices that violate the provisions of Title I of EIRSA. The Secretary also seeks to obtain other equitable relief in order to redress violations and enforce the provisions of Title I of ERISA.

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

3. Venue with respect to this action lies in the Western District of New York pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

PARTIES

4. The Secretary, pursuant to ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5), has authority to enforce the provisions of Title I of ERISA by, among other things, the filing and prosecution of claims against persons who violate ERISA.

5. Defendant Roger Ramsay (hereinafter “Ramsay”), a New York resident, was an investment advisor to ERISA Plan clients at all times relevant to this action. Ramsay provided services through SAR Services, Inc. (hereinafter “SAR”), an investment consulting firm he owned and operated.

6. Defendant Compensation Planning Corporation of Rochester, Inc. (hereinafter “CPC”) is a New York corporation with its principal place of business in Rochester, New York. CPC was a service provider to ERISA Plans at all relevant times.

FACTUAL ALLEGATIONS

7. At all relevant times, Ramsay provided investment advisory services as a fiduciary as defined in ERISA § 3(21)(A)(ii), 29 U.S.C. § 1002(21)(A)(ii), to at least nine employee benefit plans subject to ERISA (the “Plans”).

8. At all relevant times, Ramsay was the sole owner and President of Compensation Planning Corporation of Rochester, Inc. (“CPC”), a third party administrator to the Plans. As a service provider to the Plans, CPC was a party in interest to the Plans within the meaning of ERISA § 3(14)(B), 29 U.S.C. § 1002(14)(B).

9. At all relevant times, Ramsay was the sole owner and President of SAR, a company providing investing advisor services to the Plans. As a named fiduciary and service provider to

the Plans, SAR was a party in interest to the Plans within the meaning of ERISA § 3(14)(A) and (B), 29 U.S.C. § 1002(14)(A) and (B).

10. From at least 2006 through 2011, Ramsay caused himself, CPC, or SAR to be paid certain commissions and fees, the amounts of which were not properly disclosed to or specifically authorized by Plans or Plan fiduciaries independent of Ramsay, CPC or SAR, thereby using his fiduciary authority to affect his own compensation.

11. In particular, Ramsay, as an individual investment advisor and through his affiliate SAR, advised Plans to place funds that would pay various fees, which would then be kicked back to CPC, on their investment menus, thereby enabling Ramsay to profit through CPC's receipt of these fees, the amounts of which were not disclosed to or approved by Plans or Plan fiduciaries independent of Ramsay, SAR and CPC.

12. Ramsay indirectly received fees through CPC from third parties in connection with certain Plan investments, without the knowledge or consent of Plans or Plan fiduciaries independent of Ramsay, SAR or CPC. Ramsay and CPC retained those fees, thereby increasing Ramsay's own compensation at the Plans' expense.

13. As a result of his conduct, Ramsay not only enriched himself but also prevented the Plans from having all of the facts necessary to make prudent decisions about whether to retain CPC. Ramsay's conduct prevented the Plans from accurately assessing the true cost of CPC's services and negotiating with CPC at arm's length over CPC's fees for its services.

14. As CPC's President and sole owner, Ramsay used his authority as a plan advisor to set his own compensation.

15. Ramsay did not use fees received through CPC on a dollar-for-dollar basis to offset fees the Plans would have been obligated to pay.

16. Ramsay and CPC used some of the fees received to offset the “Headcount Fee” charged by ExpertPlan, a trading platform and recordkeeping company. Many of the services provided to CPC by ExpertPlan under the Headcount Fee were services the Plans were already paying SAR/CPC to provide. By failing to disclose that the fees would be used to offset the “Headcount Fee”, Ramsay and CPC obscured their real rates of compensation for services.

17. From on or about March 2008 through on or about August 2010, Ramsay failed to advise Plans invested in the Manning and Napier Pro-Blend S-Class fund to switch to the I-Class fund. The two classes had the same portfolio of investments, but the S-Class fund charged fees which were forwarded to CPC, while the I-Class fund did not charge these fees.

FIRST CLAIM FOR RELIEF

(Defendants’ Receipt of Undisclosed and Unauthorized Compensation)

18. Pursuant to Rule 10(c), Fed. R. Civ. P., the Secretary adopts and incorporates by reference the averments and allegations of paragraphs 1 through 17 inclusive.

19. By using his fiduciary authority as an investment advisor to affect his own compensation and obtaining undisclosed compensation not authorized by Plans or Plan fiduciaries independent of Ramsay, CPC or SAR, Defendant Ramsay:

a. failed to act solely in the interest of the participants and beneficiaries for the exclusive purpose of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. failed to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person 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 ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

c. caused Plans to engage in transactions that he knew or should have known constituted transfers of the Plans' assets to, or for the benefit of, a party in interest (CPC) in violation of ERISA § 406(a)(1)(D); 29 U.S.C. § 1106(a)(1)(D);

d. dealt with assets of Plans in his own interest or for its own account, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

e. received consideration for his own account from third parties in connection with transactions involving Plans in violation of ERISA § 406(b)(3), 29 U.S.C. § 1106(b)(3).

20. As a result of his breaches of fiduciary duty described above, Ramsay caused the Plans to suffer financial losses for which he is liable pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a).

21. CPC knew about Ramsay's breaches of his fiduciary obligations to the Plans described above and knowingly participated in Ramsay's breaches by receiving undisclosed fees, failing to disclose the amount of fees it received to Plans and passing some fees to Ramsay.

22. By knowingly participating in Ramsay's breaches of his fiduciary obligations, CPC received unjust profits which it must disgorge pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a).

SECOND CLAIM FOR RELIEF

(Defendants' Failure to Offset)

23. Pursuant to Rule 10(c), Fed. R. Civ. P., the Secretary adopts and incorporates by reference the averments and allegations of paragraphs 1 through 17 inclusive.

24. By failing to use all fees received to offset fees the Plans would otherwise have had to pay, Defendant Ramsay:

a. failed to act solely in the interest of the participants and beneficiaries for the exclusive purpose of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

b. failed to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person 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 ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

c. caused Plans to engage in transactions that he knew or should have known constituted transfers of Plan assets to, or for the benefit of, parties in interest (CPC and Ramsay) in violation of ERISA § 406(a)(1)(D); 29 U.S.C. § 1106(a)(1)(D); and

d. received consideration for his own personal account from parties dealing with the Plans in connection with transactions involving assets of the Plans, in violation of ERISA § 406(b)(3), 29 U.S.C. § 1106(b)(3).

25. As a result of his breaches of fiduciary duty described above, Ramsay caused the Plans to suffer financial losses for which he is liable pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a).

26. CPC knew about Ramsay's breaches of his fiduciary obligations to the Plans described above and knowingly participated in Ramsay's breaches by failing to offset fees against expenses the Plans would have otherwise been obligated to pay, receiving fees and passing some fees to Ramsay rather than offsetting them.

27. By knowingly participating in Ramsay's breaches of his fiduciary obligations, CPC received unjust profits which it must disgorge pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a).

THIRD CLAIM FOR RELIEF

(Ramsay's Failure to Advise Plans to Move Assets to Lower Fee Fund)

28. Pursuant to Rule 10(c), Fed. R. Civ. P., the Secretary adopts and incorporates by reference the averments and allegations of paragraphs 1 through 17 inclusive.

29. By using his fiduciary authority as an investment advisor to cause Plans to remain invested in a higher fee fund class when the same fund portfolio was available in a lower fee class, Defendant Ramsay:

- a. failed to act solely in the interest of the participants and beneficiaries for the exclusive purpose of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);
- b. failed to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person 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 ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);
- c. caused Plans to engage in transactions that he knew or should have known constituted transfers of the Plans' assets to, or for the benefit of, a party in interest (CPC) in violation of ERISA § 406(a)(1)(D); 29 U.S.C. § 1106(a)(1)(D);
- d. dealt with assets of Plans in his own interest or for its own account, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and
- e. received consideration for his own account from third parties in connection with transactions involving Plans in violation of ERISA § 406(b)(3), 29 U.S.C. § 1106(b)(3).

30. As a result of his breaches of fiduciary duty described above, Ramsay caused the Plans to suffer financial losses for which he liable pursuant to § 409(a), 29 U.S.C. § 1109(a).

PRAYER FOR RELIEF

WHEREFORE, the Secretary respectfully requests that this court enter an Order:

1. Requiring Defendants to correct the prohibited transactions in which Defendants engaged;

2. Requiring Defendant Ramsay to restore to the Plans all losses suffered by the Plans as a result of his fiduciary breaches plus interest;
3. Requiring Defendants to disgorge any and all plan assets obtained and to disgorge any and all enrichment resulting from participating in the above described breaches;
4. Permanently enjoining Defendants from violating ERISA §§ 404, 405 and 406, 29 U.S.C. §§ 1104, 1105, and 1106;
5. Permanently enjoining Defendants from serving as a fiduciary or service provider to any employee pension benefit plan or employee benefit plan covered by the provisions of ERISA; and
6. Granting such other relief as may be equitable, just, and proper.

DATED: December 29, 2014
New York, NY

Respectfully submitted,



M. PATRICIA SMITH
Solicitor of Labor



JEFFREY S. ROGOFF
Regional Solicitor



DARREN COHEN
Counsel for ERISA
MICOLE ALLEKOTTE
Trial Attorney
U.S. Department of Labor,
Attorneys for THOMAS E. PEREZ,
Secretary of Labor, Plaintiff
U.S. Department of Labor
Office of the Regional Solicitor
201 Varick Street, Room 983
New York, NY 10014
(646) 264-3697
(646) 264-3660 (fax)
Allekotte.micole.a@dol.gov
NY-SOL-ECF@dol.gov