

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

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Thomas E. Perez, SECRETARY OF LABOR,	*	
United States Department of Labor,	*	
	*	
Plaintiff,	*	
	*	
v.	*	
	*	
SEAVEY’S FURNITURE & APPLIANCE, INC.,	*	CIVIL ACTION NO.
and TIMOTHY W. SEAVEY, Individually,	*	2:14-cv-00533-JDL
	*	
Defendants.	*	
	*	
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CONSENT JUDGMENT AND ORDER

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (the “Secretary”) and Defendants Seavey’s Furniture & Appliance, Inc. and Timothy W. Seavey (collectively, the “Defendants”), 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). 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 \$26,282.54, as set forth in paragraph 2 of this Consent Judgment.

Defendants were served the Summons and Complaint as Rule 4 of the Federal Rules of Civil Procedure requires. By consenting to this Consent Judgment, Defendants admit jurisdiction of this Court over them and 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 Timothy W. Seavey shall pay to the Seavey's SIMPLE IRA plan (the "Plan") the amount of \$26,282.54, representing principal and pre-judgment lost opportunity costs. Said amount shall be allocated among the Plan participants, whose employee contributions were withheld but never transmitted to the Plan and whose employer contributions were not collected to remit to the Plan, according to the amount each Plan participant is due, provided however, that none of said amount will be allocated to Defendant Timothy W. Seavey's Plan account or otherwise for the benefit of Defendants.

3. Payment of said amount shall be made to the Plan in forty-eight (48) monthly installment payments of \$581.75 per month, including post-judgment interest amortized annually at the rate of three-percent (3%). The first installment payment shall be due on July 1, 2015. Thereafter, Defendant Timothy W. Seavey 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. Defendant Timothy W. Seavey 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.

5. Defendant Timothy W. Seavey shall provide all instructions and documentation required to UBS Financial Services, Inc. to transmit the installment payments to the Plan including, but not limited to, the name and monthly allocation amount for each Plan participant receiving a payment.

6. If a Plan participant due an amount no longer has an account with the Plan, Defendant Timothy W. Seavey shall notify the Plan participant and enroll the Plan participant in the Plan, subject to the Plan participant's agreement. Defendant Timothy W. Seavey shall follow all appropriate steps to locate Plan participants. Defendant Timothy W. Seavey shall notify the Secretary of enrolling the Plan participant in writing. Defendant Timothy W. Seavey shall provide proof of notifying the Plan participant and enrolling the Plan participant pursuant to paragraph 9 of this Consent Judgment.

7. In the event that Defendant Timothy W. Seavey is unable to allocate a payment to any Plan participant due an amount for any reason, Defendant Timothy W. Seavey shall establish an interest-bearing federally insured bank account in the name of the Plan 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 Timothy W. Seavey shall notify the Plan participant of the bank account in writing. Defendant Timothy W. Seavey shall follow all appropriate steps to locate Plan participants. Defendant Timothy W. Seavey shall notify the Secretary of the establishment of the bank account in writing. Defendant Timothy W. Seavey shall provide proof of notifying the Plan participant and establishing the bank account pursuant to paragraph 9 of this Consent Judgment.

8. Within thirty (30) days of the entry of this Consent Judgment, Defendant Timothy W. Seavey shall provide Plan participants due amounts with a copy of this Consent Judgment. Defendant Timothy W. Seavey shall provide proof of transmitting such copies pursuant to paragraph 9 of this Consent Judgment. Defendant Timothy W. Seavey shall take all appropriate steps to maintain current addresses and contact information for Plan participants.

9. Defendant Timothy W. Seavey shall submit the following, setting forth evidence of compliance with the provisions of paragraphs 2 through 8 of this Consent Judgment:

a) Within twenty (20) days of making each monthly installment payment to the Plan, or to a bank account, Defendant Timothy W. Seavey shall provide proof of payment<sup>1</sup> to the Secretary, until such time as the full amount owed is restored;

b) Within twenty (20) days of enrolling a Plan participant due an amount in the Plan, Defendant Timothy W. Seavey 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 Timothy W. Seavey shall notify the Secretary in writing and provide proof of notifying the Plan participant due an amount and establishing the bank account;

d) Within thirty (30) days of completing payments to the Plan, or to a bank account, Defendant Timothy W. Seavey shall submit a written report to the Secretary showing a full accounting of the proceeds allocated to the accounts of Plan participants due amounts or otherwise allocated to Plan participants;

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<sup>1</sup> “Proof of payment” is defined as documentation verifying the allocation to, and receipt of, funds in each Plan participant’s account.

e) Within (30) days of transmitting copies of the Consent Judgment to Plan participants due amounts, Defendants shall provide proof of transmitting the copies to the Secretary; and,

f) Proof of payments, enrollments, notices, bank account, transmitting copies of the Consent Judgment, and the report of compliance, as required by paragraphs 9(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

10. Defendant Timothy W. Seavey is permanently enjoined from serving as a fiduciary to any employee benefit plan subject to ERISA, except to enroll Plan participants in the Plan pursuant to paragraph 6 of this Consent Judgment.

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

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

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

IT IS ORDERED.

Dated: June 1, 2015

/s/ Jon D. Levy  
U.S. District Judge

CONSENTED TO BY:

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

M. Patricia Smith  
Solicitor of Labor

Michael D. Felsen  
Regional Solicitor

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

05/21/2015  
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 Seavey's Furniture & Appliance, Inc.:

/s/Timothy W. Seavey  
Timothy W. Seavey  
President

05/18/2015  
Dated

Seavey's Furniture & Appliance, Inc.  
421 Roosevelt Trail  
Windham, Maine 04062

For Defendant Timothy W. Seavey

/s/Timothy W. Seavey  
Timothy W. Seavey

05/18/2015  
Dated

Timothy W. Seavey  
60 Lotts Drive  
Windham, Maine 04062