

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF SOUTH CAROLINA
CHARLESTON DIVISION

THOMAS E. PEREZ,)
Secretary of Labor,) CIVIL ACTION NO.
United States Department of Labor,) 2:15-cv-406
)
Plaintiff)
)
v.)
)
CAROLINA CRAWLER & EQUIPMENT OF)
CHARLESTON, INC; GLENN PERRY MILLS;)
SUSAN B. MILLS; and CAROLINA CRAWLER &)
EQUIPMENT SIMPLE IRA PLAN,)
)
Defendants.)

CONSENT JUDGMENT AND ORDER

Plaintiff, Secretary of Labor, United States Department of Labor, pursuant to his authority under Sections 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., (“ERISA”) has filed a Complaint against Defendants Carolina Crawler & Equipment of Charleston, Inc. (hereinafter “the Company”), Glenn Perry Mills, Susan B. Mills and Carolina Crawler & Equipment Simple IRA Plan (hereinafter “the Plan”). Defendants Susan B. Mills and Glenn Perry Mills (hereinafter “Defendants”) and the Secretary have agreed to resolve all matters in controversy in this action, 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 Judgment and Order by this Court in accordance herewith.

A. The Secretary's Complaint alleges that Defendants breached their fiduciary duties with respect to the Plan by failing to discharge their duties under the Plan and by violating provisions of Sections 403, 404, 405 and 406 of ERISA, 29 U.S.C. §§ 1103, 1104 and 1106, as set forth in the Complaint.

B. Defendants admit to the jurisdiction of the Court over them and over the subject matter of this action. Defendants admit that this Court has the authority to enforce this Order and that this Court is the most appropriate venue for any enforcement action which may be required as a result of this Order.

C. Defendants admit each and every allegation in the Complaint.

D. Defendants expressly waive any and all claims of whatsoever nature that they have or may have against the Secretary, or any of his officers, agents, employees, or representatives, arising out of or in connection with the filing, prosecution, and maintenance of this civil action or any other proceeding and investigation incident thereto.

E. This Order represents a complete settlement of all the Secretary's claims asserted in this action against Defendants, with the exception of any potential civil money penalties that may be assessed under § 502(l) of ERISA, 29 U.S.C. § 1132(l). This Order is not binding upon any government agency other than the U.S. Department of Labor and only resolves claims arising out of this action as between the Secretary and Defendants Glenn Perry Mills and Susan B. Mills.

F. The Secretary and Defendants expressly waive Findings of Fact and Conclusions of Law, except as otherwise set forth and addressed herein, and consent to the entry of this Order as a full and complete resolution of all claims and issues which were, or might have been, alleged in this action without trial or adjudication of any issue of fact or law raised in the

Complaint.

Accordingly, it is ORDERED, ADJUDGED AND DECREED that:

1. The Court has jurisdiction over the parties to this Order and the subject matter of this action and is empowered to provide the relief herein.
2. Defendants and their agents, servants, employees and all persons in active concert or participation with them are hereby permanently enjoined and restrained from violating the provisions of Title I of ERISA. Defendants are permanently enjoined from acting as fiduciaries, trustees, agents, or representatives in any capacity to any employee benefit plan, as defined by ERISA.
3. As a result of their fiduciary breaches, Defendants have caused the Plan losses of \$39,732.42 plus interest of \$9,002.36 calculated at the higher of the applicable Internal Revenue Code section 6621 Rate or the Plan's rate of return, as of February 4, 2016, for which Defendants are jointly and severally liable. Of this amount \$24,934.43 is owed to participants other than Defendants and Glenn Perry Mills, Jr.
4. Defendants Susan B. Mills and Glenn Perry Mills shall make restitution to the Plan in the sum of \$48,734.78 to be allocated to the accounts of all the participants and beneficiaries and former participants and beneficiaries, with the exception that none of said sum shall be allocated to the accounts of Defendants Glenn Perry Mills and Susan B. Mills. Defendant Glenn Perry Mills agrees to waive \$10,164.50 of Plan monies including interest owed to him, Susan B. Mills agrees to waive \$7,683.20 of Plan monies including interest owed to her and Glenn Perry Mills, Jr agrees to waive \$5,952.65 of Plan monies including interest owed to him by his signature below.

5. The restitution hereunder shall be payable as follows: (a) \$18,500.00 five (5) days upon entry of this Order; and (b) \$2,144.81 on the first day of each month for each successive month thereafter for 3 months. In the event that Defendants fail to make restitution in the amount ordered, post judgment interest shall be assessed against any remaining unpaid balance of such amount, in accordance with 28 U.S.C. § 1961, from the date hereof until paid in full.

6. A full executed copy of this Consent Judgment and Order shall be maintained by the Plan administrator with all other documents and instruments governing the Plan.

7. Defendants shall pay to the Department of Labor the civil money penalty assessed pursuant to ERISA § 502(1)(2), 29 U.S.C. § 1132(1)(2), in the time and manner prescribed by 29 C.F.R. § 2570.84, subject to any waiver or reduction of such penalty that Defendant may seek and obtain pursuant to 29 C.F.R. § 2570.85.

8. This Consent Judgment resolves all claims of Plaintiff's Complaint with the following exceptions:

a. This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under § 502 (1) of the Act.

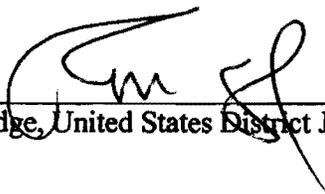
b. This Judgment does not affect or bind any governmental agency other than the United States Department of Labor.

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

9. Each party shall bear its own costs and expenses, including attorneys'

fees, arising in connection with any stage of the above-referenced proceeding including but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

This 17th day of March, 2016.



Judge, United States District Judge

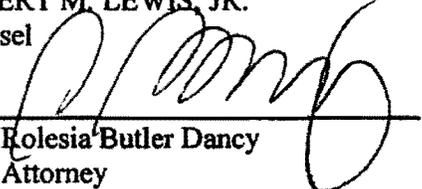
Plaintiff moves for entry of the foregoing judgment:

Attorneys for Plaintiff:

M. PATRICIA SMITH
Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor

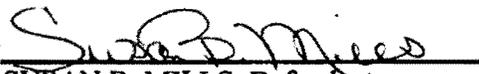
ROBERT M. LEWIS, JR.
Counsel

By: 

Rolesia Butler Dancy
Attorney

Office of the Solicitor
U. S. Department of Labor
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303
Telephone: 404-302-5457
404-302-5438 (FAX)

Defendants:

By: 
SUSAN B. MILLS, Defendant

By: 
GLENN PERRY MILLS, Defendant

RELEASE AND WAIVER OF RIGHT TO RECOVERY

The undersigned, Glenn Perry Mills, Jr, knowingly and voluntarily waives any interest in and entitlement to his right to recover employee contributions which were not properly remitted to his participant account in the Carolina Crawler & Equipment Simple IRA Plan between January 2008 and December 2012.

By: Glenn P Mills Jr
GLENN PERRY MILLS, Jr,