

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

THOMAS E. PEREZ, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

:
:
:
:
: Civ. A. No.

Plaintiff,

Civ. A. No. 15-3316

HOWARD LAPENSOHN, LAPENSOHN
ACCOUNTING PROFESSIONALS, LLC, and
THE LAPENSOHN ACCOUNTING
PROFESSIONALS, LLC, SIMPLE PLAN,

:
:

Defendants.

FILED

JUN 30 2015

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

CONSENT JUDGMENT

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (“Secretary”), has filed a Complaint in this action pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, alleging certain violations by certain of the above-captioned defendants.

Counsel for the Secretary has engaged in settlement discussions with defendants Howard Lapensohn and Lapensohn Accounting Professionals, LLC, (“the Company”). The parties have agreed to resolve this case without further litigation. The defendants waive service, answering the Complaint, and consent to the entry of this Consent Judgment against them by this Court, the terms of which are set forth herein:

1. The Secretary’s Complaint alleges that defendants Mr. Lapensohn and the Company violated Sections 403, 404, and 406 of ERISA, 29 U.S.C. §§ 1103, 1104, and 1106 and are liable as co-fiduciaries under Section 405 of ERISA, 29 U.S.C. § 1105. The Lapensohn Accounting

Ⓜ 2/18/15

Professionals, LLC, SIMPLE Plan (“the Plan”) was included in the Complaint as a Rule 19 defendant only so that complete relief could be granted.

2. For purposes of this Consent Judgment, the defendants admit that the Court has jurisdiction over them and the subject matter of this action.
3. The Secretary has agreed to resolve all claims asserted in the Complaint against the defendants for the relief set forth below.
4. The Secretary, Mr. Lapensohn and the Company understand and agree that entry of this Consent Judgment is without prejudice to the Secretary’s right to investigate and redress violations of ERISA, if any, not alleged in the Complaint, including the Secretary’s right to institute future enforcement actions with respect to any other such matter or any other employee benefit plans. It is further understood that this paragraph shall not constitute a waiver by the defendants of any defenses, legal or equitable, to any such future action.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

- a. This Court has jurisdiction over this action and the defendants.
- b. Mr. Lapensohn and the Company are jointly and severally liable for the \$36,828.10 their breaches caused to the Plan and shall restore \$36,828.10 to the Plan as restitution within 10 calendar days of entry of this Order.
- c. The Plan shall redistribute the restitution to the Plan participants in amounts necessary to restore their losses incurred as a result of the fiduciary breaches alleged in the Complaint. Mr. Lapensohn waives his right to receive any restitution which may be owed to him as a result of the Defendants’ fiduciary breaches. No part of the restitution amount shall be redistributed to the individual account balance of Mr. Lapensohn.

- d. The Plan shall provide to the Regional Director of EBSA satisfactory proof of the restitution payment and allocation of such payment to affected participants and beneficiaries, within 7 days of such payment and reallocation. Satisfactory proof of the allocation shall include, at a minimum, copies of records maintained by a the Plan's third party record keeper before and after the allocation demonstrating the allocation of the restitution payment to the accounts of other participants, or (in the case of reallocation to former participants or their beneficiaries) checks written to those participants, or transfers of funds to IRAs established in their names, together with a statement in writing from the Plan Administrator that appropriate 1099Rs will be issued reflecting the reallocations. Satisfactory proof of the payments by the Defendants shall consist, at a minimum, of documentation obtained from a third party service provider that confirm that the Defendants have made payments to the plan in the form of wire transfers or checks that have cleared, and the amount of such payments. Such proof shall be sent to the Regional Director, EBSA, U.S. Department of Labor, 170 S. Independence Mall West Suite 870 West, Philadelphia, PA 19106.
- e. Upon receiving proof of the restitution payment, the Secretary shall assess a penalty against Mr. Lapensohn and the Company in the amount of \$7,365.62 which represents 20 percent of the applicable recovery amount of \$36,828.10 pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l). Mr. Lapensohn and the Company waive their right to contest the assessment of said penalty. *I do have Ability to request a hardship WAIVER after assessment.*
- f. Defendants are permanently enjoined from violating any provisions of ERISA in the future. *Ⓜ*

- g. If Mr. Lapensohn or the Company files for any form of bankruptcy prior to the full payment of restitution to the Plan, they will: (1) ensure that any assets of the Plan are segregated from and not commingled with the debtor's estate; (2) not oppose any proof of claim that the Secretary files in the bankruptcy proceeding for any amount still owing; and (3) not oppose an adversarial action that the Secretary may file against them to have the debt to the Plan declared non-dischargeable.
- h. The Secretary and the defendants shall each bear their own costs, expenses, and attorneys' fees incurred to date in connection with any stage of this proceeding, including but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.
- i. This Consent Judgment shall operate as a final disposition of all claims asserted by the Secretary against the defendants in the Complaint.
- j. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor.
- k. This Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment.
- l. The Court directs the entry of this Consent Judgment as a final order.

Date: 6/30/2015


United States District Judge

Defendants Howard Lapensohn, Lapensohn Accounting Professionals, LLC, and the Lapensohn Accounting Professionals, LLC, SIMPLE Plan waive service and answer of the Complaint and consent to entry of this Consent Judgment

Solicitor of Labor
Oscar Hampton III
Regional Solicitor

Joanne Roskey
Regional Counsel for ERISA

H C M 2/18/15
Howard Lapensohn

ASHTON S. PHILLIPS
Ashton S. Phillips
Attorney

For: Lapensohn Accounting Professionals, LLC

By: HOWARD C. LAPENSOHN

Title: MANAGING MEMBER

For: Lapensohn Accounting Professionals, LLC, SIMPLE Plan

By: H C M 2/18/15

Title: MANAGING MEMBER & TTE

U.S. Department of Labor
Office of the Solicitor
170 S. Independence Mall West
Suite 630 E, The Curtis Center
Philadelphia, PA 19147
(215) 861-5142 (t)
(215) 861-5162 (f)
phillips.ashton@dol.gov
roskey.joanne@dol.gov
zzsol-phi-docket@dol.gov

Attorneys for Plaintiff

H C M 2/18/15