

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

 Thomas E. Perez, SECRETARY OF LABOR, *
 United States Department of Labor, *
 *
 Plaintiff, *
 *
 v. *
 *
 NORTHAMPTON MOTOR CLASSICS LLC * CIVIL ACTION NO.
 and ANDREW FEUERSTEIN, Individually, * 3:15-cv-30013
 *
 Defendants. *
 *

COMPLAINT

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (the “Secretary”), hereby alleges:

1. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA” or the “Act”), 29 U.S.C. §§ 1001 et seq., as amended, and the Secretary brings this action pursuant to ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5), to enforce the provisions of Title I of ERISA, obtain appropriate relief in order to redress violations, and enjoin acts and practices that violate the provisions of that Title.

JURISDICTION AND VENUE

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 District of Massachusetts pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

PARTIES

4. Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor, ("Secretary") is charged with the responsibility of protecting the interests of participants in, and beneficiaries of, employee benefit plans, pursuant to the ERISA.

5. Defendant Northampton Motor Classics, LLC (the "Company" or "Northampton") is a Massachusetts Limited Liability Corporation that functioned as an auto dealership at all relevant times from January 2011 to July 2012 (the "pertinent period") until going out of business in or about July 2012. During the pertinent period, Defendant Northampton had a place of business at 968 Bridge Road, Northampton, MA 01060, within the jurisdiction of this Court.

6. Defendant Andrew Feuerstein was the owner and President of Defendant Northampton at all relevant times during the pertinent period. Defendant Feuerstein is believed to currently reside in South Portland, Maine.

FACTS AND ALLEGATIONS

7. Defendant Northampton was, during the pertinent period, an employer within the meaning of ERISA § 3(5), 29 U.S.C. § 1002(5).

8. Defendant Northampton sponsored the Northampton Motor Classics Health Plan (the "Plan"), an employee welfare plan within the meaning of ERISA § 3(1)(A), 29 U.S.C. § 1002(1)(A), which is subject to coverage under the Act pursuant to § 4(a), 29 U.S.C. § 1003(a).

9. The Plan was designed to provide health benefits for the exclusive benefit of its participants, who were employees of Defendant Northampton, and their beneficiaries.

10. The Plan was funded through amounts withheld from employee paychecks as contributions to the Plan, as well as employer contributions.

11. The Plan provided health benefits through Health New England (“HNE”) and Fallon Community Health Plan (“Fallon”) at different points during the pertinent period, as described below in paragraphs 14 through 28.

12. Defendant Feuerstein, as owner and president of Defendant Northampton, exercised authority or control respecting management and disposition of the Plan’s assets. For example, Defendant Feuerstein signed checks tendering payment to HNE and Fallon, and made the decisions about whether or not funds should be transmitted to the Plan. He also signed HNE renewal statements, acknowledging receipt of the HNE Employer Group Agreement, which set forth Northampton’s obligation to pay the premium for each month of coverage by the first of the month for which coverage was being provided. In addition, he was the point of contact with HNE and Fallon regarding the Plan, and made all decisions relating to the Plan. As such, Defendant Feuerstein was a fiduciary with respect to the Plan within the meaning of ERISA §3(21)(A) (i) and (iii), 29 U.S.C. §1002(21)(A)(i) and (iii), and a party in interest to the Plan within the meaning of ERISA §§3(14)(A) and (H), 29 U.S.C. §§1002(14)(A) and (H).

13. Defendant Northampton was the Plan Sponsor as defined by ERISA § 3(16)(B)(i), 29 U.S.C. § 1002(16)(B)(i) and Plan Administrator under ERISA § 3(16)(A)(ii), 29 U.S.C. § 1002(16)(A)(ii). As Plan Administrator of the Plan, Northampton exercised discretionary authority and control respecting the management or disposition of the Plan’s assets. Therefore, Defendant Northampton was a fiduciary to the Plan within the meaning of ERISA § 3(21)(A) (i) and (iii), 29 U.S.C. § 1002(21)(A) (i) and (iii). As the employer, Plan Sponsor, and Plan Administrator, Defendant Northampton was a party in interest to the Plan within the meaning of ERISA §§ 3(14)(A) and (C), 29 U.S.C. §§ 1002(14)(A) and (C).

14. During the pertinent period, the Plan provided health benefits to participating employees through HNE until HNE terminated group coverage on February 13, 2012, effective November 30, 2011, as a result of the Defendants' failure to tender payment to fund coverage beyond this point. Northampton made its last payment to HNE on November 2, 2011.

15. Between November 2, 2011 and February 13, 2011, Northampton continued to withhold contributions from employees' paychecks, but did not use these withholdings to pay the premiums for health benefits through HNE. During this period of time, Northampton withheld a total of approximately \$3,536.38 in employee contributions from at least eleven employees. Northampton retained such funds, which became assets of the Plan pursuant to the operation of the ERISA plan asset regulation, 29 C.F.R. § 2510.3-102(a), as of the earliest date on which such contribution can reasonably be segregated from the employer's general assets, but in no event later than 90 days from the date on which the participant contributions were withheld from employee paychecks. 29 C.F.R. §2510.3-102(c). The Defendants diverted such Plan assets for the use of Northampton and Feuerstein.

16. The Defendants did not inform plan participants that Northampton had ceased making payments to HNE after November 2, 2011.

17. On February 13, 2012, HNE sent letters to Plan participants stating that their group coverage had been terminated, effective at midnight on November 30, 2011.

18. Between November 30, 2011, and February 13, 2012, six employees received health care services. Before receiving the letter described in paragraph 17, Plan participants were unaware that the Plan would not provide coverage for health care services received during this time period.

19. HNE denied claims submitted on behalf of the six Plan participants who sought health care services between November 30, 2011, and February 13, 2012. These six employees were subsequently billed for a combined total of \$10,580.85 in medical costs.

20. In light of the termination of insurance coverage, four participants incurred additional expenses to continue coverage in the total amount of \$11,170.50.

21. Beginning February 25, 2012, Northampton arranged for the Plan to provide health insurance benefits to participating employees through Fallon. Seven employees participated. Northampton made a final, partial payment to Fallon on March 14, 2012. On July 18, 2012, Fallon terminated group coverage, effective June 14, 2012, as a result of the defendants' failure to tender payment to fund coverage beyond this point.

22. From approximately March 14, 2012 to July 18, 2012, Northampton continued to withhold contributions from employees' paychecks, but did not use these withholdings to pay the premiums for health benefits through Fallon. During this period of time, Northampton withheld a total of approximately \$3,553.00 in employee contributions from seven employees. Northampton retained such funds, which became assets of the Plan pursuant to the operation of the ERISA plan asset regulation, 29 C.F.R. § 2510.3-102(a), as of the earliest date on which such contribution can reasonably be segregated from the employer's general assets, but in no event later than 90 days from the date on which the participant contributions were withheld from employee paychecks. 29 C.F.R. §2510.3-102(c). The Defendants diverted such Plan assets for the use of Northampton and Feuerstein.

23. The Defendants did not inform plan participants that Northampton had ceased making payments to Fallon after March 14, 2012.

24. On or about July 18, 2012, Fallon sent a letter to each of the seven Plan participants stating that their coverage been terminated, effective June 14, 2012.

25. Between July 12, 2012 and July 16, 2012 a Plan participant received health care services. Before receiving the letter described in paragraph 24, Plan participants were unaware that the Plan would not provide coverage for health care services received during this time period.

26. Fallon denied claims submitted on behalf of the Plan participant who received health care services between July 12, 2012 and July 16, 2012. This employee was subsequently billed for a total of \$2,468.00 in medical costs.

27. As described in paragraphs 15 and 22, Northampton withheld a total of at least \$7,089.38 in employee contributions and failed to forward these withholdings to the Plan. These employee elective deferral amounts became plan assets pursuant to the operation of the ERISA plan asset regulation, 29 C.F.R. § 2510.3-102.

28. During the pertinent period, the Defendants, as fiduciaries of the Plan, were responsible for receiving, collecting, and transmitting any and all monies due to the Plan and properly managing the assets of the Plan, including withheld employee contributions. Despite these obligations, the Defendants did not forward the withheld employee contributions to the Plan in order to obtain the insurance coverage the employees believed they were receiving.

CLAIMS

29. By virtue of the acts described in paragraphs 15 to 28, the Defendants violated their fiduciary duties to Plan participants and beneficiaries under ERISA §§404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), in that they did not act solely in the interest of, and for the exclusive purpose of, providing benefits to participants. Instead, Plan assets were used to satisfy the

obligations of Northampton, which Defendant Feuerstein owned and controlled, or for Defendant Feuerstein's benefit. The Defendants also failed to act with "care, skill, prudence and diligence" under ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

30. By virtue of the acts described in paragraphs 15 to 28, the Defendants violated ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), in that they failed to forward withheld employee contributions to the Plan, and thus failed to act in accordance with plan documents.

31. By virtue of the acts described in paragraphs 15 to 28, Defendant Feuerstein violated ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), to the extent that he used the Plan assets described in paragraphs 15, 22, and 27 to satisfy other debts of Northampton, which was a party in interest with respect to the Plan, and an entity which he controlled.

32. By virtue of the acts described in paragraphs 15 to 28, Defendant Feuerstein violated ERISA §§ 406(b)(1), 29 U.S.C. § 1106(b)(1), and 406(b)(2), 29 U.S.C. § 1106(b)(2), in that he acted in either his own interest or that of Northampton and not in accordance with the interests of the Plan.

33. Pursuant to ERISA §409 (a), 29 U.S.C. §1109, Defendants are personally liable to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duty set forth above and to restore to the Plan any profits that were made through use of assets of the Plan by either or both of the Defendants, and are subject to such other equitable or remedial relief, including the removal of the Defendants from being fiduciaries.

34. By virtue of the acts described in paragraphs 15 to 28, the Defendants violated ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B), in that they did not fulfill their obligation to accurately convey material information to Plan participants. The Defendants continued withholding monies every pay period from employees' paychecks, which the

Defendants knew would induce continued reliance on health benefits in the absence of any information to suspect that these benefits were in jeopardy. In reliance upon the Defendants' misrepresentation and as a result of Defendants' omission to inform employees that Northampton had ceased making payments, seven Plan participants sought medical care in the absence of coverage. Had the participants known that their coverage had expired, they might have delayed seeking care and/or sought coverage from other sources. Because of this reliance on the Defendants' representations and material omissions, these seven employees experienced a detriment, in that they incurred the costs of the medical services they received, which totaled \$13,048.85.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays that this Court enter an order:

1. Permanently enjoining Defendants from violating or participating in any violation of ERISA §§ 404 and 406, 29 U.S.C. §§ 1104 and 1106;
2. Permanently enjoining Defendant Feuerstein from serving as a fiduciary to any ERISA-covered plan in the future;
3. Requiring Defendants to undo the prohibited transactions in which they engaged, to disgorge any profits made as a result of such prohibited transactions, and to restore to the Plan any and all losses incurred as a result of breaches of Defendants' fiduciary duties and the violations they committed or for which they are liable, including lost earnings and appropriate pre-judgment interest and disgorgement of unjust profits.
4. Requiring Defendants to compensate Plan participants for any medical expenses incurred as a result of their reliance on Defendants' representations through payroll deductions and their failure to disclose material information, plus any related penalties or accrued interest.

5. Appointing an Independent Fiduciary, if necessary, to administer the Plan.
6. Providing such other relief as is just and equitable, including but not limited to equitable estoppel and surcharge; and
7. Awarding the Secretary the costs of this action.

Respectfully submitted,

M. Patricia Smith
Solicitor for Labor

Michael D. Felsen
Regional Solicitor

/s/ Marjorie A. Butler

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United States Department of Labor
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Date: January 23, 2015

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