

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

DARRYL J. GRANDY and the SYRACUSE
LITHOGRAPHING CO. EMPLOYEES
PROFIT SHARING RETIREMENT PLAN,

Defendants.

File No. 5:13-CV-1318 (GLS)(TWD)

CONSENT ORDER AND
JUDGMENT

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (the "Secretary") and Defendants Darryl J. Grandy ("Grandy") and the Syracuse Lithographing Co. Employees Profit Sharing Retirement Plan (the "Plan") agree to the entry of this Consent Order and Judgment as a complete resolution of all issues in contention between them in this matter.

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 was brought by the Secretary pursuant to ERISA § 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5), to obtain relief for alleged breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and to enjoin acts and practices which the Secretary alleged violate the provisions of Title I of ERISA.

The Secretary filed a complaint on October 23, 2013 against Defendant Grandy. The Plan was named as a Defendant for the purpose of ensuring complete relief among the parties under Rule 19 of the Federal Rules of Civil Procedure. Defendant Grandy filed an answer on December 24, 2013.

The Secretary has authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and other parties who are in violation of Title I of ERISA pursuant to ERISA § 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5).

The Plan is and was at all relevant times an employee pension benefit plan within the meaning of ERISA § 3(2) and (3), 29 U.S.C. § 1002(2) and (3). Grandy was at all relevant times to this action the Trustee of the Plan and a fiduciary with respect to the Plan because he exercised authority or control respecting the management or disposition of the assets of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

Grandy neither admits nor denies the allegations in the Secretary's complaint except that Grandy admits that this Court has subject matter jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), that venue of this action lies in the Northern District of New York pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), and that this Court has personal jurisdiction over him for all purposes relevant to this matter including the entry of this Consent Order and Judgment.

The Secretary and Grandy have agreed to resolve all remaining matters in controversy in this action (except for the imposition by the Secretary 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 Consent Order and Judgment by this Court.

Upon consideration of the record herein, and as agreed to by the Secretary and Grandy, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Grandy is liable to the Plan in the total amount of \$22,688.03. This figure is comprised of the following:
 - a. \$20,063.03, representing the amount due to individual Plan participants and beneficiaries; and
 - b. \$2,625.00, representing lost opportunity costs on the amount due to individual Plan participants and beneficiaries.
2. Grandy agrees to repay the Plan in this total amount according to the following schedule:
 - a. a payment of \$2,500.00 within 5 days following the entry of this Consent Order and Judgment; and
 - b. a payment of \$20,188.03 within 120 days following the entry of this Consent Order and Judgment.
3. The payments to the Plan as required by Paragraph 2 shall be allocated to the individual Plan accounts of the Plan participants in accordance with the following schedule:
 - a. \$8,728.77 to the individual participant account of Michael Clough;
 - b. \$1,721.10 to the individual participant account of Christopher Grandy;
 - c. \$1,484.21 to the individual participant account of Joanna Hiltz;
 - d. \$1,474.49 to the individual participant account of Timothy Mazzye;
 - e. \$3,988.85 to the individual participant account of Eric Miller;
 - f. \$3,900.68 to the individual participant account of Patricia Simmons-Clough;
 - g. \$984.93 to the individual participant account of Keith Thomas;
 - h. \$219.69 to the individual participant account of Randall Flath; and

i. \$185.31 to the individual participant account of David Thomas.

4. Grandy agrees that if the Secretary assesses a penalty pursuant to ERISA § 502(l) in connection with the violations alleged in this matter, the "applicable recovery amount" shall include all amounts paid in accordance with this Consent Order and Judgment. Grandy reserves his right to seek a waiver of assessment under ERISA § 502(l)(3), 29 U.S.C. § 1132(l)(3).

5. Any participant interest Grandy may have in any existing or future assets of the Plan shall be applied as an offset against the amount that the Secretary has alleged is due to the Plan, as authorized by ERISA § 206(d)(4), 29 U.S.C. § 1056(d)(4). The spouse of Grandy consents to such forfeiture pursuant to ERISA § 206(d)(4), 29 U.S.C. § 1056(d)(4), as demonstrated by the execution of a Spousal Consent form provided to the Secretary upon execution of this Consent Order and Judgment.

6. Pursuant to the Court's power to provide appropriate equitable relief pursuant to ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5), the Plan is hereby deemed amended to allow for such forfeiture of Grandy's individual Plan account.

7. Grandy agrees that upon payment of the restitution described in Paragraph 2, he will immediately distribute or cause the distribution of the assets of the Plan in accordance with applicable Plan documents, ERISA, and other applicable federal law.

8. Upon completing such distribution, Grandy shall terminate the Plan in accordance with applicable Plan documents, ERISA, and other applicable federal law.

9. After payment of the restitution described in Paragraph 2, Grandy will provide updates regarding the distribution of the Plan's assets and the termination of the Plan to the Secretary on a monthly basis. Grandy will continue to send monthly status updates until the Plan is terminated. Grandy will send the monthly status updates to the following address:

U.S. Department of Labor
Employee Benefits Security Administration
Boston Regional Office, Attn: Regional Director
JFK Federal Building
15 New Sudbury Street, Room 575
Boston, MA 02203

10. Grandy's failure to send monthly status updates to the Secretary or failure to diligently act to distribute the assets of the Plan to participants will be considered a violation of this Consent Order and Judgment.

11. Grandy is permanently enjoined and restrained from engaging in any further action in violation of Title I of ERISA.

12. Upon termination of the Plan, Grandy will be permanently enjoined from serving or acting as a fiduciary or service provider to any employee benefit plan subject to Title I of ERISA.

13. Each party agrees to bear his, her or its own attorneys' fees, costs and other expense incurred by such party in connection with any stage of this proceeding to date, including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

14. The parties agree that this document may be executed via counterpart signatures and that a signature via facsimile or PDF and electronic mail will be deemed an original signature and will be binding upon the party transmitting the signature by facsimile or PDF and electronic mail.

15. The Court directs the entry of this Consent Order and Judgment as a final order.

16. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

17. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor.

Darryl J. Grandy
Darryl J. Grandy

1/9/14
Date

M. PATRICIA SMITH
Solicitor of Labor

Darryl J. Grandy
Syracuse Lithographing Co.
Employees Profit Sharing
Retirement Plan
(by Darryl J. Grandy)

1/9/14
Date

PATRICIA M. RODENHAUSEN
Regional Solicitor

Darren Cohen
DARREN COHEN
Counsel for ERISA

1/9/14
Date

U.S. Department of Labor
Attorneys for Plaintiff
Thomas E. Perez, Secretary of Labor

Dated: January 21, 2014

SO ORDERED:

Jerry L. Sharpe
UNITED STATES DISTRICT JUDGE