

JLS

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

Plaintiff, :

Civil Action No. 5:15-cv-00160-JLS

v. :

LISA A. FERRARI, CLIFTON CASEY, LISA A. :
FERRARI, DMD, LLC, LISA A. FERRARI, DMD, :
LLC RETIREMENT PLAN, :

Defendants. :

FILED

OCT - 8 2015

MICHAEL E. KUNZ, Clerk
U.S. District Court
Eastern District of Pennsylvania

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 Defendants Lisa A. Ferrari (“Ferrari”), Clifton Casey (“Casey”), and Lisa A. Ferrari, DMD, LLC (“Company”) (collectively the “Defendants”). Lisa A. Ferrari, DMD, LLC Retirement Plan (“Plan”) is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3). The Plan was joined pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

The Secretary, through counsel, has engaged in settlement discussions with Defendants’ counsel. The parties have agreed to resolve this case without further litigation. Defendants 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 Ferrari, Casey, and the Company violated Sections 403, 404, and 406 of ERISA, 29 U.S.C. §§ 1103, 1104, and 1106.
2. For purposes of this Consent Judgment, Defendants agree that the Court has jurisdiction over them and the subject matter of this action.
3. The Secretary and Defendants have agreed to resolve amicably all claims asserted in the Complaint against Defendants for the equitable relief set forth below.
4. Defendants agree that they are jointly and severally liable to make full restitution to the Plan in the amount indicated below.
5. Defendants agree that they will pay the appropriate civil penalty pursuant to Section 502(l) of ERISA, 29 U.S.C. § 1132(l).
6. The Secretary and Defendants 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. It is further understood that this paragraph shall not constitute a waiver by 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 Defendants.
- b. Defendants shall, jointly and severally, restore \$19,771.00 in Plan assets, representing missing employee contributions, \$17,480.26 in missing

employer contributions, and interest in the amount of \$7,734.82 to the Plan for restitution totaling \$44,986.08.

- c. Defendants shall pay the restitution described above to the Plan in 22 monthly payments of \$2,000.00 and a final payment of \$986.08 which includes post-judgment interest at the applicable Internal Revenue Code rate of 3%. The first such payment is due on the first of the month not less than thirty-five (35) days from the date the Court approves this Consent Judgment. Each succeeding payment will be due on the first of the month *in seriatim*.
- d. The Plan shall immediately allocate this restitution to the Plan participants' accounts in amounts necessary to restore their losses incurred as a result of Defendants' breaches. No part of the restitution amount shall be redistributed to the individual account balance of Defendant Casey until the amounts due to the other Plan participants have been paid in full.
- e. The Plan shall apply this restitution to missing employer contributions and associated lost earnings first. After all missing employer contributions have been made, then the Plan shall apply the restitution to missing employee contributions and associated lost earnings.
- f. Defendants shall provide to the Regional Director of EBSA satisfactory proof of each payment to the Plan, within ten (10) days of each payment. Satisfactory proof of the payments by Defendants shall consist of at a minimum a copy of all bank statements, checks, and Plan account statements within ten (10) days of the date the entity acting as the trustee

of Plan assets makes such statements available. Upon request, Defendants will provide any other information and documents deemed necessary by EBSA to confirm compliance with this Consent Judgment within sixty (60) days of such request. Such proof shall be sent to the Regional Director, EBSA, U.S. Department of Labor, 170 South Independence Mall West, Suite 870 West, Philadelphia, PA 19106.

- g. In the event that Defendants fail to make any installment payment within ten (10) days of its due date, the entire balance then owing, plus interest to be calculated at the post-judgment rate of interest in effect at the time of the entry of this Consent Judgment and reasonable attorneys' fees, shall become immediately due and payable. No further notice or demand by the Secretary to Defendants will be required
- h. Defendants shall pay all Plan expenses. No Plan expenses shall be paid out of the restitution amount described above.
- i. Upon receiving proof of the final restitution payment, the Secretary shall assess a penalty against Defendants in the amount of 20 percent of the applicable recovery amount pursuant to Section 502(l) of ERISA, 29 U.S.C. § 1132(l). The applicable recovery amount shall include all amounts paid to the Plan in accordance with paragraphs (b) and (c) of this Consent Judgment. Defendants agree to pay any penalty assessed by the Department of Labor under Section 502(l) of ERISA, 29 U.S.C. § 1132(l), except to the extent that they seek and are granted a waiver as a result of financial hardship pursuant to Section 502(l)(3)(B) of ERISA, 29 U.S.C. §

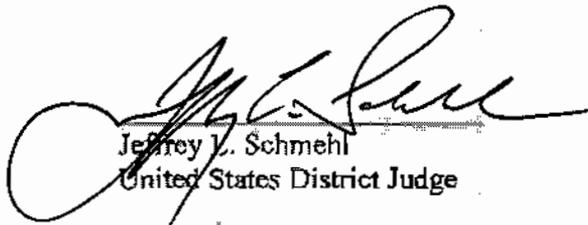
1132(l)(3)(B) in the Secretary's sole discretion, and if Defendants agree to waive any other defenses or appeals if any such financial hardship waiver is denied or if Defendants fail to seek said waiver within the time set forth in the assessment letter; and this document or a copy thereof can be used as evidence of Defendants' waiver of further defenses or appeals pursuant to Section 502(l)(3) of ERISA, 29 U.S.C. § 1132(l)(3). Notwithstanding the foregoing, the Secretary agrees to waive the 502(l) penalty based on financial hardship if Defendants provide proof that they have restored to the Plan the aggregate amount of \$44,986.08 within 23 months, pursuant to paragraph (c) of this Consent Judgment.

- j. Defendants will comply with ERISA in the future while serving as fiduciaries of the Plan or any other ERISA-governed Plan.
- k. Defendants are permanently enjoined from violating any provisions of ERISA in the future.
- l. If Defendants Ferrari, Casey, or the Company file for any form of bankruptcy prior to the full payment of restitution to the Plan, Defendants will not oppose any proof of claim that the Secretary files in the bankruptcy proceeding for any amount still owing.
- m. If Defendants Ferrari or Casey file for any form of bankruptcy prior to the full payment of restitution to the Plan, Defendants will not oppose an adversarial action that the Secretary may file to have the debt to the Plan declared non-dischargeable.

- n. In the event Defendants Ferrari or Casey file for bankruptcy protection in the future, any amount of unpaid liability set forth in paragraph (b) above, which resulted from their breach of fiduciary duties, is, and shall be treated as, a nondischargeable debt under § 523(a)(4) of the Bankruptcy Code, 11 U.S.C. § 523(a)(4).
- o. Except to the extent otherwise provided herein, the Secretary and Defendants shall each bear their own costs, expenses, and attorneys' fees incurred in connection with any stage of this matter, including but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.
- p. This Consent Judgment shall operate as a final disposition of all civil claims asserted by the Secretary against Defendants in the Complaint.
- q. Nothing in this Consent Judgment is binding on any governmental agency other than the United States Department of Labor.
- r. This Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment.

s. The Court directs the entry of this Consent Judgment as a final order.

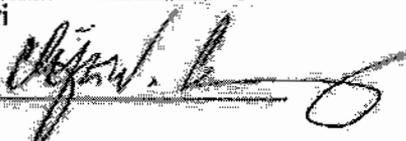
Date: 10/6/2015


Jeffrey L. Schmehl
United States District Judge

Defendants Lisa A. Ferrari,
Clifton Casey, Lisa A. Ferrari, DMD, LLC,
and Lisa A. Ferrari, DMD, LLC Retirement
Plan consent to the entry of this Consent
Judgment individually and through counsel.



Lisa A. Ferrari



Clifton Casey

Lisa A. Ferrari, DMD, LLC

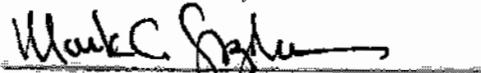
By: 

Lisa A. Ferrari, President

Lisa A. Ferrari, DMD, LLC Retirement Plan

By: 

Lisa A. Ferrari, Trustee



Mark C. Stephenson, Esquire
PA Bar ID No. 20625
Counsel for Defendants

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Solicitor of Labor

Oscar L. Hampton III
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 10/6/15

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U.S. DEPARTMENT OF LABOR

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2015, a true and correct copy of the foregoing Plaintiff's Motion To Approve and Enter Consent Judgment of Defendants Lisa A. Ferrari, Clifton Casey, Lisa A. Ferrari, DMD, LLC, and the Lisa A. Ferrari, DMD, LLC Retirement Plan, was filed electronically and made available for viewing and downloading on the Court's ECF system.

/s/ John M. Strawn
John M. Strawn
Attorney

FILED

OCT -8 2015

MICHAEL E. KUNZ, Clerk
By  Dep. Clerk