

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

QUALITY TOOL AND MACHINE, INC.,
JERRY FREIMUTH, individually and as fiduciaries
to the Quiltiy Tool and Machine, Inc. SIMPLE IRA Plan
QUALITY TOOL AND MACHINE, INC.
SIMPLE IRA PLAN;

Defendants.

CIVIL ACTION

Case No. 10-CV-708

COMPLAINT

Plaintiff, HILDA L. SOLIS, Secretary of Labor, United States Department of
Labor (“Secretary”), alleges:

JURISDICTION AND VENUE

1. This cause of action arises under the Employee Retirement Income
Security Act of 1974 (ERISA), as amended, 29 U.S.C. §§ 1001, et seq., and is brought by
the Secretary under ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5), to
enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain
appropriate relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. §1109,

and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

2. This court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

3. The Quality Tool and Machine, Inc. SIMPLE IRA (“Plan”) is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

4. Venue of this action lies in the Western District of Wisconsin, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan was administered in Sparta, Wisconsin in Monroe County, within this district.

DEFENDANTS

5. The Plan is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

6. At all relevant times, Defendant Quality Tool & Machine Inc. (“Quality Tool”) served as the Plan Sponsor for the Plan; and Quality Tool had the duty to monitor the Plan’s operation and to collect participant contributions.

7. Based on Quality Tool’s status as the named Plan Sponsor and by exercising discretion over the administration of the Plan, Quality was a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and 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).

8. At all relevant times, Defendant Jerry Freimuth (“Freimuth”) served as the President of Quality Tool and was its sole owner, had signatory authority over Quality Tool’s operating account, the authority to authorize the remittance of participant contributions to the Plan, and had discretionarily authority concerning the administration of the Plan.

9. Based on Freimuth’s authority, control, and responsibility for the administration of the Plan and the remittance of the employee contributions to the Plan, Freimuth was a fiduciary to the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A); and 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).

FAILURE TO REMIT EMPLOYEE CONTRIBUTIONS TO PLAN

10. Paragraphs 1 through 9 above are hereby re-alleged and incorporated herein.

11. During the period from March 10, 2003 through December 30, 2008, Quality Tool and Freimuth (“Defendants”) failed to ensure that a total of \$9,672.00 in employee contributions was remitted to the Plan.

12. By the conduct described in paragraphs 10 through 11 above, Defendants:

- a. permitted the assets of the Plan to inure to the benefit of an employer in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);
- b. failed to ensure that plan assets were held in trust in violation of ERISA § 403(a), 29 U.S.C. § 1103(a);
- c. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing

benefits to participants and their beneficiaries in violations of ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1);

d. caused the Plan to engage in transactions that they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of any assets of the Plan in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

e. dealt with assets of the Plan in their own interest or for their account, in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

f. acted in a transaction involving the plan on behalf of a party whose interests were adverse to the interest of the Plan and to the interest of the Plan's participants and beneficiaries in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Permanently enjoining Defendants from violating the provision of Title I of ERISA;

B. Permanently enjoining Defendants from serving as fiduciaries to any ERISA-covered employee benefit plan;

C. Removing Defendants from any positions that they now have as fiduciaries to the Plan;

D. Appointing an independent fiduciary to ensure the proper administration of the Plan.

E. Ordering Defendants to correct the prohibited transaction in which they engaged;

F. Ordering Defendants to restore to the Plan any losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;

G. Awarding the Secretary the costs of this action; and

H. Ordering such further relief as is appropriate and just.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

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