The United States Attorney's Office

Southern District of New York

Owner Of Long Island Produce Distributor Charged In Manhattan Federal Court With Embezzling Money From Company Profit-Sharing Plan

Defendant Allegedly Stole More Than $800,000 From His Company's Retirement Plan To Pay For Corporate And Personal Expenses

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NEW YORK - Preet Bharara, the United States Attorney for the Southern District of New York, Jonathan Kay, Phyllis C. Borzi, the Assistant Secretary of Labor for Employee Benefits Security ("DOL"), and Shantelle P. Kitchen, the Special Agent-in-Charge of the New York Office of the Internal Revenue Service's Criminal Investigation Division ("IRS"), announced today the return of an indictment charging THOMAS HOEY JR. with embezzling assets from his company's profit-sharing plan. As alleged in the Indictment, HOEY, the owner and president of a Long Island-based produce distributor (the "Company"), and trustee for the Company's profit-sharing plan (the "Plan"), an employee benefit plan set up for the benefit of the Company's employees, transferred more than $800,000 from the Plan to the Company's corporate accounts. HOEY then allegedly unlawfully used the money to cover significant negative balances in the Company's accounts, to purchase, among other things, hundreds of thousands of dollars of produce for the Company, and for HOEY's personal expenses. As a result of the defendant's conduct, he is charged with embezzlement from an employee benefit plan, interstate transportation of stolen money, wire fraud, and money laundering. The defendant, who is in custody following convictions for federal narcotics, perjury, and obstruction charges, was presented and arraigned in Manhattan federal court today before Judge Jesse Furman.

Manhattan U.S. Attorney Preet Bharara said: "Thomas Hoey Jr.'s alleged crime is the nightmare of any employee: the theft of a company-sponsored pension plan. Thanks to the dedicated investigative work of the Department of Labor and the IRS, Hoey will have to answer for his alleged behavior in the court of law."

DOL Assistant Secretary Phyllis C. Borzi said: "Let this indictment remind fiduciaries that we will not tolerate benefit plan assets being misused to subsidize a lifestyle. They must conduct themselves with undivided loyalty to safeguarding the retirement security of the plan's participants, and we will vigorously pursue all legal remedies when our investigations uncover such betrayals of trust."

IRS Special Agent-in-Charge Shantelle P. Kitchen said: "This indictment demonstrates the government's commitment to investigate allegations of impropriety relating to ERISA qualified pension plans. Employees who will one day rely on their account balances expect their plan's trustee to protect their interests and not exploit their plan for personal use. IRS Criminal Investigation will work with our law enforcement partners on all kinds of corporate fraud allegations, including embezzlement from employee benefit plans."

According to the allegations contained in the Indictment:

The Plan was set up as an employee pension benefit plan under the Employee Retirement Income Security Act of 1974 (“ERISA”), for the benefit of certain employees of the Company. As an ERISA qualified pension plan, there were strict statutory and regulatory limitations on the use of money contributed to the Plan. In particular, Plan proceeds could only be used to pay for employee disbursement and employee loans, which, in no circumstances, could be greater than $50,000. Moreover, the Company, which was the sponsor for the Plan, was not allowed to receive any money from the Plan.

Between June 2009 and July 2012, however, HOEY transferred almost all of the assets in the Company’s Plan to corporate accounts that he controlled. Specifically, in three transactions on one day in June 2009, the defendant transferred $350,000 from the Plan to the Company’s corporate bank account. In May 2010, the defendant transferred $415,000 from the Plan to the Company’s corporate bank account. Finally, in July 2012, the defendant transferred $73,000 from the Plan to the Company’s corporate bank account. As a result of these withdrawals from the Plan as well as fees on the account, the Plan, which at one point was worth more than $900,000 in employee benefits, was almost entirely depleted.

The Plan money was transferred to corporate accounts to cover significant negative balances as well as for additional corporate expenses and HOEY’s personal expenses. For example, hundreds of thousands of dollars of Plan money was used to pay the Company’s produce suppliers. Plan money was also used to pay for automobile insurance on a policy that covered, among other vehicles, numerous luxury cars that HOEY used for his personal use. During the period of time that HOEY was using Plan money to fund the Company’s corporate accounts, the corporate accounts were also being used to pay for HOEY’s personal expenses, including international travel for HOEY and his family, limousine service, and hotels in Manhattan.

In order to cover up his embezzlement of Plan assets, HOEY caused plan statements to be created that reflected the employees’ full account balances as if no money had been taken out of the Plan. A 2012 account statement for one employee, for example, reflected an individual benefit total of approximately $140,000. At that time, however, the total amount of money left in the Plan was only approximately $15,000.

HOEY, 47, of Garden City, New York, is charged with one count of embezzlement from an employee pension plan, one count of interstate transportation of stolen money, one count of wire fraud, and one count of money laundering. The embezzlement count carries a maximum sentence of five years in prison. The interstate transportation of stolen money and money laundering counts each carry a maximum sentence of 10 years in prison. The wire fraud count carries a maximum sentence of 20 years in prison. The maximum potential sentences in this case are prescribed by Congress and are provided here for informational purposes only, as any sentencing of the defendant will be determined by the judge.

HOEY is scheduled to be sentenced by Judge P. Kevin Castel on unrelated charges this Thursday, April 23, 2015, at 2:00 p.m.

Mr. Bharara praised the work of the DOL and the IRS.

This case is being handled by the Office’s Complex Frauds and Cybercrime Unit. Assistant U.S. Attorney Daniel B. Tehrani is in charge of the prosecution.

The allegations contained in the Indictment are merely accusations, and the defendant is presumed innocent unless and until proven guilty.