

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. :

v. :

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

Defendants. :

15 160

A TRUE COPY CERTIFIED FROM THE RECORD
DATED: JAN 14 2015
ATTEST: Steve Tanna
DEPUTY CLERK OF THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

COMPLAINT

Thomas E. Perez, Secretary of Labor, United States Department of Labor, hereby alleges:

Jurisdiction and Venue

1. This cause of action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*, and is brought by the Secretary under Sections 502(a)(2) and (5) of ERISA, 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 Section 409, 29 U.S.C. § 1109, and to obtain such other further relief as may be appropriate to redress violations and enforce the provisions of Title I of ERISA.

2. This Court has subject matter jurisdiction over this action pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

3. The Lisa A. Ferrari, DMD, LLC Retirement Plan (the "Plan") is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and is therefore subject to the coverage of the Act, pursuant to Section 4(a) of ERISA, 29 U.S.C. § 1003(a). The

Plan is administered in Douglassville, Pennsylvania.

4. Venue with respect to this action lies in Eastern District of Pennsylvania, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

The Parties

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

6. Lisa A. Ferrari, DMD, LLC is the Plan Sponsor and Plan Administrator of the Plan (“the Company”). At all relevant times, the Company exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan’s assets, and had discretionary authority or discretionary responsibility in the administration of the Plan. The Company is therefore a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14)(A) and (C) of ERISA, 29 U.S.C. §§ 1002(14)(A) and (C).

7. At all relevant times, Lisa A. Ferrari (“Ferrari”) was a corporate officer and president of the Company and a trustee of the Plan. At all relevant times, Ferrari exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan’s assets, and had discretionary authority or discretionary responsibility in the administration of the Plan. Ferrari is therefore a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. §

1002(21), and a party-in-interest as that term is defined in Sections 3(14)(A), (E), and (F) of ERISA, 29 U.S.C. §§ 1002(14)(A), (E), and (F).

8. At all relevant times, Clifton Casey (“Casey”) was the husband of Ferrari and an employee of the Company. Casey worked as the office manager and had signatory authority of the Company and Plan accounts. At all relevant times, Casey exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan’s assets, and had discretionary authority or discretionary responsibility in the administration of the Plan. Casey is therefore a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14)(A) and (F) of ERISA, 29 U.S.C. §§ 1002(14)(A) and (F).

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

General Allegations

10. The Company established the Plan on January 1, 2007. The Plan permitted participants to contribute a portion of their pay to the Plan as elective salary deferrals (“employee contributions”) through payroll deductions.

11. For payroll periods between January 15, 2009 and July 17, 2012, the Company deducted money from the participants’ pay as employee contributions to the Plan. During the relevant period, the Company, Casey, and Ferrari failed to remit employee contributions to the Plan.

12. Unremitted employee contributions are assets of the Plan within the meaning of

ERISA. Defendants Ferrari, Casey, and the Company failed to segregate the Plan assets from the general assets of the Company.

13. Ferrari and Casey participated knowingly in or knowingly undertook to conceal acts or omissions by the Company that they knew to be violations of ERISA.

14. Ferrari and Casey failed to comply with the Section 404(a)(1) of ERISA in the administration of their specific fiduciary responsibility and enabled the Company to commit a breach of ERISA.

15. Ferrari and Casey knew that the Company had violated ERISA, but did not make reasonable efforts under the circumstances to remedy the breaches.

Violations

16. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1-15 inclusive.

17. By the actions and conduct described in paragraphs 10-15, Defendants Ferrari, Casey, and the Company, as fiduciaries of the Plan:

- a. failed to ensure that all assets of the Plan were held in trust by one or more trustees, in violation of Section 403(a) of ERISA, 29 U.S.C. § 1103(a);
- b. failed to ensure that the assets of the Plan did not inure to the benefit of the Company in violation of Section 403(c)(1) of ERISA, 29 U.S.C. § 1103(c)(1);
- 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 and defraying

reasonable expenses of administering the Plan, in violation of Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);

- d. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B);
- e. caused the Plan to engage in transactions which they knew or should have known constituted the direct or indirect transfer of Plan assets to, or use of Plan assets by or for the benefit of a party-in-interest, in violation of Section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D); and
- f. dealt with assets of the Plan in their own interest or for their own account, in violation of Section 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1).

18. By participating knowingly in the fiduciary breaches of the Company, knowing such acts or omissions to be breaches of fiduciary duty, Ferrari and Casey are liable for the Company's breaches of fiduciary responsibility, pursuant to Section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1).

19. By failing to comply with Section 404(a)(1) of ERISA in the administration of their specific fiduciary responsibility and thereby enabling the Company to commit a breach of ERISA, Ferrari and Casey are liable for the Company's breaches of fiduciary responsibility,

pursuant to Section 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2).

20. Ferrari and Casey, as fiduciaries of the Plan, by failing to make reasonable efforts under the circumstances to remedy the breaches of which they had knowledge, are liable for the Company's fiduciary breaches, pursuant to Section 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3).

Prayer for Relief

21. WHEREFORE, the Secretary prays that this Court issue an order:
- a. Ordering the Defendants to restore to the Plan all losses, including interest or lost opportunity costs and the costs of an independent fiduciary, which were caused by their fiduciary misconduct;
 - b. Removing Ferrari, Casey, and the Company as fiduciaries of the Plan and of any employee benefit plan for which they act as fiduciaries;
 - c. Permanently enjoining Ferrari, Casey, and the Company from acting directly or indirectly, in any fiduciary capacity, with respect to any employee benefit plan subject to ERISA;
 - d. Permanently enjoining Ferrari, Casey, and the Company from exercising any custody, control, or decision making authority with respect to the assets of any employee benefit plan covered by ERISA;
 - e. Appointing an independent fiduciary with plenary authority and control with respect to the management and administration of the Plan, including the authority to marshal assets on behalf of the Plan and to pursue claims on behalf of the Plan, with all costs of the independent fiduciary to be borne by the Defendants;

- f. Ordering the Defendants, their agents, employees, service providers, banks, accountants, and attorneys to provide the Secretary and the independent fiduciary with all of the books, documents, and records relating to the finances and administration of the Plan, and to make an accounting to the Secretary and to the independent fiduciary of all contributions to the Plan and all transfers, payments, or expenses incurred or paid in connection with the Plan;
- h. Awarding plaintiff, Secretary of Labor, the costs of this action; and,
- i. Awarding such other relief as is equitable and just.

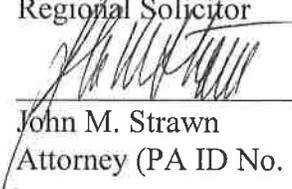
Respectfully Submitted,

Post Office Address:

Oscar L. Hampton III
Regional Solicitor
Office of the Solicitor
Suite 630 East, The Curtis Center
170 South Independence Mall West
Philadelphia, PA 19106-3306
Telephone: (215) 861-5145
Facsimile: (215) 861-5162
Strawn.john@dol.gov

M. Patricia Smith
Solicitor of Labor

Oscar L. Hampton III
Regional Solicitor



John M. Strawn
Attorney (PA ID No. 49,789)

U.S. DEPARTMENT OF LABOR

Date: January 14, 2015

Attorneys for Plaintiff