UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO: 15-61637-CV-UNGARO

THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor, Plaintiff, v. STEVEN J. WATKINS, OXFORD HOLDINGS, INC., and AETNA 401(K) PLAN, Defendants.	)	CASE NO. 0:15-CV-61637-UU

CONSENT JUDGMENT AND ORDER

Plaintiff, Secretary of Labor, United States Department of Labor, pursuant to his authority under §§ 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., ("ERISA") has filed a Complaint against Defendants Steven J. Watkins, Oxford Holdings, and Aetna 401(k) Plan (hereinafter "Defendants"). The Aetna 401(k) Plan ("the Plan") is a named defendant pursuant to Fed. R. Civ. P. 19(a) solely to assure complete relief may be granted. Defendants and the Secretary have agreed to resolve all matters in controversy in this action, and said parties do now consent to entry of a Judgment and Order by this Court in accordance herewith.

A. Defendants hereby admit to the jurisdiction of the Court over them and over the subject matter of this action. Defendants admit that this Court has the authority to enforce this Order and that this Court is the most appropriate venue for any enforcement action which may be required as a result of this Order.

B. The Secretary's Complaint alleges that Defendants breached their fiduciary duties with respect to the Plan by failing to discharge their duties under the Plan and by violating provisions of §§ 403, 404 and 406 of ERISA, 29 U.S.C. §§ 1103, 1104 and 1106, as set forth in the Complaint.

C. The Secretary alleges that as a result of their fiduciary breaches, Defendants Watkins and the Company caused the Plan total losses of $130,525.63, for which they are jointly and severally liable.

D. Since the Secretary's Complaint was filed, Defendants have made restitution to the Plan in the amount of $95,000.00. Defendants have provided Plaintiff's counsel proof that such payment was made to the Plan's account on October 8, 2015.

E. Defendant Watkins admits that he is, or was at all times relevant to this action, acting as a fiduciary within the meaning of 11 U.S.C. § 523(a)(4). Defendant Watkins further admits that he, as president of the Defendant Company, between April 12, 2010 and April 5, 2013, withheld employee contributions from employees' paychecks and failed to timely forward these contributions to the Plan as required but instead retained these contributions and used them for Company expenses, and further, that this conduct with respect to the Plan and with respect to Plan assets constitutes defalcation while acting in a fiduciary capacity within the meaning of 11 U.S.C. § 523(a)(4).

F. Defendants expressly waive any and all claims of whatsoever nature that they have or may have against the Secretary, or any of his officers, agents, employees, or representatives, arising out of or in connection with the filing, prosecution, and maintenance of this civil action or any other proceeding and investigation incident thereto.

G. This Order represents a complete settlement of all the Secretary's claims asserted in this action against Defendants. This Order is not binding upon any government agency other than the U.S. Department of Labor and only resolves claims arising out of this action as between the Secretary and Defendants.

H. The Secretary and Defendants expressly waive Findings of Fact and Conclusions of Law, except as otherwise set forth and addressed herein, and consent to the entry of this Order as a full and complete resolution of all claims and issues which were, or might have been, alleged in this action without trial or adjudication of any issue of fact or law raised in the Complaint.

Accordingly, it is ORDERED ADJUDGED AND DECREED that:

1. The Court has jurisdiction over the parties to this Order and the subject matter of this action and is empowered to provide the relief herein.

2. Defendants Watkins, Oxford Holdings, their agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of Title I of ERISA.

3. Defendants Watkins and Oxford Holdings are hereby permanently enjoined from acting as a fiduciary, trustee, agent, or representative in any capacity to any employee benefit plan, as defined by ERISA.

4. As a result of their fiduciary breaches, Defendants Watkins and Oxford Holdings caused the Plan losses of $117,167.83, plus interest on those funds of $13,357.80 through September 30, 2015, calculated pursuant to the rate set forth in Section 6621(a) of the Internal Revenue Code, for which they are jointly and severally liable.

5. Since the Secretary's Complaint was filed, Defendants have made restitution to the Plan in the amount of $95,000.00. Defendants have provided Plaintiff's counsel proof that such payment was made to the Plan's account on October 8, 2015.

6. Defendants Watkins and Oxford Holdings shall, on or before 7 calendar days from the effective date of this Consent Judgment and Order, make restitution to the Plan the sum of $35,525.63 (representing an outstanding principal amount of $22,167.83 and lost earnings of $13,357.80 owed to the Non-Fiduciary participants as of September 30, 2015) to be allocated to the accounts of all the participants and beneficiaries and former participants and beneficiaries. In the event that Defendants fail to make restitution in the amount ordered, post judgment interest shall be assessed against any remaining unpaid balance of such amount, in accordance with 28 U.S.C. § 1961, from the date hereof until paid in full.

7. Defendants expressly agree to waive any interest that they have in the Plan.

8. Defendants Watkins and Oxford Holdings are removed from any position either holds as a named or functional fiduciary to the Plan.

9. The appointment of an independent fiduciary to the Plan, for the purposes of receiving funds from the Defendants and distributing the Plans' assets is authorized. The successor fiduciary shall be entitled to receive reasonable fees and expenses for his or her services, payable from the assets of the Plan. Defendants Watkins and Oxford Holdings shall be responsible for reimbursing the Plan for the entire successor fiduciary's reasonable fees and expenses with respect to services performed for the Plan.

10. AMI Benefit Plan Administrators, Inc., 100 Terra Bella Drive, Youngstown, Ohio 44505 is appointed as successor fiduciary for the Plan and:

a. The successor fiduciary shall collect, marshal, and administer all of the Plan's assets and take such further actions with respect to the Plan as may be appropriate.

b. The successor fiduciary shall have all the rights, duties, and responsibilities of any fiduciary or trustee described under the Plan documents or the applicable law, with respect to the successor fiduciary's duties.

c. The successor fiduciary is authorized to delegate or assign fiduciary duties as appropriate and allowed under the law.

d. The successor fiduciary shall be entitled to receive reasonable fees and expenses for his services, payable from the assets of the Plan. Defendant shall be responsible for reimbursing the Plan for the entire successor fiduciary's reasonable fees and expenses with respect to services performed for the Plan. Prior to obtaining payment for services and expenses authorized pursuant to this consent judgment, the successor fiduciary shall file with the Court, with copies to all parties, invoices for such fees and expenses at such times and on such a schedule as the successor fiduciary, in his sole discretion, deems appropriate. The Defendants acknowledge and agree that the invoice will be considered properly delivered if it is deposited in the United States mail, addressed to: Steven J. Watkins, 360 Club Drive, Sapphire, North Carolina 28774.

e. If no party or the Court objects within 15 days of service of any invoice, full payment of such invoice shall be made by Defendants to the Plan, and received by the successor fiduciary, not later than the 16th day following the date of the invoice. Interest shall accrue on any past due amount at the rate of 18% per annum, compounded daily. The Defendants shall be responsible, jointly and severally, for all costs, including reasonable attorneys' fees and expenses, incurred by the successor fiduciary and/or the Plan in the course of collecting such past due amounts. If any party or the Court objects to any payment, the matter should be resolved by the Court prior to payment.

f. Defendants shall deliver or otherwise make available to the successor fiduciary any information, documents, files or other compilations, wherever and however stored; that are reasonably necessary to perform the duties of the successor fiduciary.

g. The successor fiduciary is authorized to give instructions respecting the disposition of assets of the Plan.

h. The successor fiduciary in the performance of his duties may retain such assistance as he may require, including attorneys, accountants, actuaries and other service providers;

i. The payment of administrative expenses and all fees to the successor fiduciary, his assistants, attorneys, accountants, actuaries and other necessary service providers are to be considered priority administrative expenses of the Plan;

j. The successor fiduciary or his agents, employees or representatives may not be held personally responsible for any claims against the Plan which existed, arose, matured or vested prior to the appointment of the successor fiduciary;

k. The successor fiduciary is to comply with all applicable rules and laws.

11. This Consent Judgment resolves all claims of Plaintiff's Complaint with the following exceptions:

a. This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under § 502 (l) of the Act.

b. This Judgment does not affect or bind any governmental agency other than the United States Department of Labor.

c. This Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Order and Judgment.

Defendants Steven J. Watkins, Oxford Holdings, and Aetna 401(k) Plan consent to entry of the foregoing Judgment:

By: *s/ Edward P. Guttenmacher*
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Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor, moves for entry of the foregoing Judgment:

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STANLEY E. KEEN
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ROBERT M. LEWIS, JR.
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12. Each party shall bear its own costs and expenses, including attorneys' fees, arising in connection with any stage of the above-referenced proceeding including but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

This 19 day of Oct., 2015.

Ursula Ungaro
URSULA UNGARO
UNITED STATES DISTRICT JUDGE