

PUBLIC SUBMISSION

As of: 7/23/15 9:57 AM
Received: July 21, 2015
Status: Pending_Post
Tracking No. 1jz-8k3y-ympq
Comments Due: July 21, 2015
Submission Type: Web

Docket: EBSA-2014-0016
Fiduciary - Conflict of Interest Exemptions

Comment On: EBSA-2014-0016-0004
Prohibited Transaction Exemptions; Proposed Amendments and Proposed Partial Revocations:
Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance
Companies, and Investment Company Principal Underwriters

Document: EBSA-2014-0016-DRAFT-0081
Comment on FR Doc # 2015-08837

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General Comment

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

July 21st, 2015

Dear Secretary Perez:

I am writing to you as the owner of a successful small business with just a few employees & as an investor who I feel was exploited & manipulated by wire house brokers who were masquerading as advisers & as a person who had to figure out what the financial (dis)services industry did to me & to my employees. I, however, was the big money they desired. My business acquired a 401(k) plan when I purchased another business that also had just a few employees. I fit the mark of being a plan sponsor who was an accidental fiduciary, as none of my so-called trusted advisers or COI (centers of influence) as the financial (dis)services industry refers to them--tax attorney/CPA, another CPA, TPA which was DST, or the guy that

never described himself or defined his roll but that handed me and one of my employees a investment funds brochure & said pick something out--ever explained the important role that I would be playing in this 401(k) retirement plan. When handed the funds brochure my employee & I looked at each other, & I said to her something like--Do you know how to pick something out? She said no. We basically made guesses. Even though the guy that handed us the brochure knew that we were clueless, he didn't mention anything about prospectuses or fees. He provided absolutely no guidance other than to hand us the brochure. From my self-schooling I now understand that there is a benefit to him for keeping all savers with money to invest ill-informed. We are more valuable to him ill-informed; we are less time consuming to him if we are ill-informed, as we ask no questions when we are ill-informed. We don't know the questions to ask, & even if we did, we would not know how to evaluate the answers that we would receive. I've learned that this is described as information asymmetry.

Within a year or so we left that CPA firm with the unhelpful guy, and we went to Edward Jones because their folks were described as financial advisers/consultants and that's what we needed was advice--help. The TPA for the 401(k) plan was still DST. An employee at the new company I acquired had been "managing" all the 401(k) duties, so I had gained no experience at "managing" it. I lost that employee, and not understanding that a 5500 tax return needed to be filed by July 31st, I received a letter from the IRS in October that my 401(k) plan's 5500 was late. I quickly contacted my tax attorney and said I need help. Another attorney in his office wrote a letter to the IRS explaining the situation. I was required to pay a fine which I did. It was at this point that my tax attorney called me with a former business consultant of mine on the phone. My tax attorney said to my business consultant "Don't you think that a 401(k) is the best thing for _____?" and the business consultant said, "Yes." I was a bit confused, because I thought I already had a 401(k) plan. I, however, trusted both of these men, and they had much more business experience than I. The next thing I knew I had a new TPA, a new 401(k) plan and the new TPA recommended that I use 2 advisers (he did not use the term brokers) at Smith Barney.

To this day I do not understand the relationships and conflicts of interest that exist between all these centers of influence --my tax/estate attorney, my business consultant, the attorney that wrote the letter to the IRS and the TPA, and all of them knew that I was inexperienced and unsophisticated in financial matters. That is why I found myself at the place that I was. I had not understood that I needed to file what was called a 5500 by July 31st. Yet knowing that, the TPA recommended that I, an inexperienced, unschooled investor, use a couple of advisers (he did not use the term brokers) at Smith Barney. At the time I thought that this was a good thing. My employees and I were now going to have real advisers. Little did I realize we were being led to the lions' den. We were sent to a B/D that masqueraded as an RIA to a couple of brokers who masqueraded as advisers and whose sales pitches were disguised as advice.

Now, if I understand things correctly, we were placed in self-directed brokerage accounts, so what we really had were a couple of brokers who were pretending to be advisers. My employee and I even said to that guy's face that it was nice to have a real adviser now picking out our investments for us. We described how the guy with the investment funds brochure acted, yet the Smith Barney "adviser" did not tell us that he was acting in a broker capacity & not an adviser capacity. He did not explain that we were in brokerage accounts and what a self-directed brokerage account even was. We did not know the nomenclature. We thought that we were receiving advice that was in our best interest. We were actually being sold crap. The 2 advisers we had were nothing more than sales reps.