

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARTIN J. WALSH,

Plaintiff,

v.

Case No. 21-10932

Honorable Laurie J. Michelson

Magistrate Judge Kimberly G. Altman

ROBERT J. GIBSON, et al.,

Defendants.

CONSENT ORDER AND JUDGMENT

Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor (“Secretary”), pursuant to the provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001, *et seq.*, filed a complaint against Defendants Robert J. Gibson, David C. Gibson and Gibson Television Service, Inc. (“Gibson TV”), alleging breaches of their fiduciary responsibilities under ERISA §§ 104, 403, 404, 406 and 412, with respect to the Gibson Television Service, Inc. 401(k) Plan and Trust (the “Plan”)¹.

¹ The Plan is named as a defendant herein pursuant to Federal Rule of Civil Procedure 19(a) solely to assure that complete relief can be granted.

Defendants Robert J. Gibson, David C. Gibson, Gibson TV, and the Plan waived service of process of the complaint and admitted to the jurisdiction of this Court over them and the subject matter of this action.

The Secretary, Robert J. Gibson, David C. Gibson, Gibson TV, and the Plan have agreed to resolve all matters in controversy in this action between, and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

Defendants Robert J. Gibson, David C. Gibson, and Gibson TV expressly acknowledge and represent that they have read this Consent Order and Judgment and understand its provisions.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED, DECREED, and ADJUDGED that:

1. Defendants Robert J. Gibson, David C. Gibson, and Gibson TV are jointly and severally liable to the Plan in the total amount of \$50,764.20, including lost opportunity costs.

2. As authorized by Section 1502(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, Section 1502(a), 111 Stat. 788, 1058-59 (1997) (codified at 29 U.S.C. Section 1056(d)(4)), the Plan is amended to permit the set off of: 1) \$25,382.10 from Defendant Robert J. Gibson's Plan account and \$25,382.10 from

Defendant David C. Gibson's account representing losses incurred by the Plan resulting from fiduciary breaches; 2) \$1,785.00 from Defendant Robert J. Gibson's Plan account and \$1,785.00 from Defendant David C. Gibson's account for fees and expenses reasonably and necessarily incurred by the independent fiduciary in administering and terminating the Plan; 3) any losses owed by Defendants under paragraph 1 above to the Plan; and 4) any additional costs incurred by the independent fiduciary in connection with the administration and termination of the Plan.

3. Defendants Robert J. Gibson and David C. Gibson, pursuant to §1502(a) of the Taxpayer Relief Act of 1997, codified at 29 U.S.C. §1056(d)(4), authorize AMI Benefit Administrators, Inc. ("AMI") to reallocate: 1) \$25,382.10 from Defendant Robert J. Gibson's Plan account and \$25,382.10 from David C. Gibson's Plan account to the accounts of the remaining participants and beneficiaries of the Plan; and 2) \$1,785.00 from Defendant Robert J. Gibson's Plan account and \$1,785.00 from Defendant David C. Gibson's account for fees and expenses reasonably and necessarily incurred by the independent fiduciary in administering and terminating the Plan. At the same time Defendants Robert J. Gibson and David C. Gibson authorize the reallocation of their accounts as set forth above, they shall provide written allocation instructions to AMI to ensure the participants' individual plan accounts receive all amounts they were owed as a

result of the fiduciary breaches. The Plan shall credit the loss restoration monies to the investment accounts of all individuals, except Defendants Robert J. Gibson and David C. Gibson, who: (1) were employees of Gibson TV, (2) Plan participants during the period of January 1, 2016 through August 9, 2019, and (3) had voluntary employee contributions or participant loan repayments withheld from their pay for contribution to the Plan during this period and such contributions were remitted to the plan in an untimely manner,. The lost opportunity cost amount allocated to each participant shall be based on the percentage of the amount due for unremitted and untimely remitted employee contributions.

4. Defendants Robert J. Gibson, David C. Gibson, and Gibson TV are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. § 1001 *et seq.*

5. Defendants Robert J. Gibson, David C. Gibson are removed from all positions they currently hold as fiduciaries to the Plan.

6. AMI Benefit Administrators, Inc. is hereby appointed as the independent fiduciary for the Plan. See Exhibit A, curricula vitae of AMI, attached hereto and made a part hereof. The independent fiduciary shall have the following powers, duties and responsibilities:

- a. Within 60 days of the entry of this Judgment, AMI shall reallocate \$25,382.10 from Defendant Robert J. Gibson's Plan account and

\$25,382.10 from David C. Gibson's Plan account in accordance with paragraphs 2 and 3 above.

b. Within 120 days of the entry of this Judgment, in accordance with ERISA and the Plan's governing documents, AMI will commence distribution of the Plan assets to the plan participants and termination of the plan;

c. The independent fiduciary shall have responsibility and authority to collect, liquidate, and manage such assets of the Plan for the benefit of the eligible participants and beneficiaries for the Plan who are entitled to receive such assets, until such time that the assets of the Plan are distributed to the eligible participants and beneficiaries of the Plan;

d. The independent fiduciary shall exercise reasonable care and diligence to identify and locate each participant and beneficiary of the Plan who is eligible to receive a payment under the terms of this Consent Order and Judgment and to disburse to each such eligible participant or beneficiary the payment to which he or she is entitled;

e. The independent fiduciary shall have full access to all data, information and calculations in the Plan's possession or under its control, including that information contained in the records of the Plan's custodial

trustees and other service providers, bearing on the distribution of benefit payments, participant account balances and current plan assets;

f. The independent fiduciary may retain such persons and firms including but not limited to accountants and attorneys, as may be reasonably required to perform his duties hereunder;

g. For the services performed pursuant to this consent judgment, the independent fiduciary shall receive compensation not to exceed \$3,570.00 for fees and expenses reasonably and necessarily incurred in administrating and terminating the Plan;

h. The independent fiduciary shall obtain bonding in an amount that meets the requirements of ERISA §412, 29 U.S.C. §1112. The costs incurred by the independent fiduciary in obtaining such bonding shall be paid pursuant to paragraph 2, through an equal set off from Defendants Robert J. Gibson and David C. Gibson' Plan account;

i. Within 60 days of the distribution of all of the Plan's assets, the independent fiduciary shall provide the Regional Director of the Cincinnati Regional Office of EBSA, with a report identifying the distributions made by the Plan since the independent fiduciary's appointment;

j. The independent fiduciary's appointment shall terminate upon the first to occur of: 1) removal by the Court; 2) its resignation after finding

an acceptable replacement, agreed to by all parties or the Court, providing notice to all parties to this matter, and approval by the Court to have the replacement independent fiduciary appointed; or 3) the liquidation and distribution of the Plan's assets and the completion of all related tasks.

7. Defendants Robert J. Gibson and David C. Gibson agree to fully cooperate with the independent fiduciary and all other service providers to the Plan that relate to the administration and termination of the Plan.

8. Defendants Robert J. Gibson, David C. Gibson and Gibson TV shall be permanently enjoined from serving or acting as fiduciaries or service providers with respect to employee benefit plans subject to ERISA.

9. Pursuant to paragraph 2, Defendants Robert J. Gibson, David C. Gibson and Gibson TV shall restore \$50,764.20 in losses to the Plan. Defendants Robert J. Gibson, David C. Gibson and Gibson TV shall be and hereby are assessed a total penalty under ERISA § 502(l), 29 U.S.C. § 1132(l), of \$10,152.84. For purposes of calculating the penalty, the parties agree that the applicable recovery amount as set forth above is \$50,764.20

a. Defendants hereby waive the notice of assessment and service requirements of 29 C.F.R. § 2570.83.

b. Defendants agree to pay the \$10,152.84 penalty assessed by the U.S. Department of Labor pursuant to ERISA §502(l), 29 U.S.C. §1132(l)

within 30 days of the entry of this Judgment. Defendants shall pay the penalty owed pursuant to this paragraph by remitting a check or money order payable to the United States Department of Labor. The check should be mailed to the following address:

Standard (Regular U.S. Mail)
ERISA Civil Penalty
P.O. Box 6200-36, Portland, OR 97228-6200

Express or Commercial Overnight Mail
U.S. Bank
Attn: ERISA Civil Penalty #6200-36
17650 NE Sandy Blvd., PD-OR-C1GL, Portland, OR 97230

The check or money order referenced in this paragraph shall reference EBSA Case No. 43-010981.

10. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor, Employee Benefits Security Administration.

11. Each party agrees to bear his or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

12. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

SO ORDERED.

Dated: January 20, 2022

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

The parties hereby consent to the entry of this consent order and judgment.

FOR THE SECRETARY OF LABOR: FOR GIBSON TELEVISION SERVICE, INC.:

SEEMA NANDA
Solicitor of Labor

By: /s David C. Gibson

CHRISTINE Z. HERI
Regional Solicitor

Title: President

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FOR DAVID C. GIBSON:

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DAVID C. GIBSON

FOR ROBERT J. GIBSON:

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FOR INDEPENDENT FIDUCIARY:

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**FOR GIBSON TELEVISION
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TRUST:**

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Title: President

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