

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

JOHN BONNER, BONNER & BORHART,
LLP, and BONNER & BORHART, LLP
SIMPLE IRA PLAN,

Defendants.

Case No. 15-CV-37 (DWF/TNL)

Judge Donovan W. Frank

Magistrate Judge Tony N. Leung

CONSENT ORDER AND JUDGMENT

Plaintiff Thomas E. Perez, Secretary of Labor (the “Secretary”), United States Department of Labor, filed a complaint against John Bonner (“Bonner”), Bonner & Borhart, LLP (“Bonner & Borhart”), and Bonner & Borhart, LLP Simple IRA Plan (the “Plan”), alleging that Bonner and Bonner & Borhart (collectively “Defendants”) breached their fiduciary responsibilities under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§ 1001, *et seq.* with respect to the Plan.¹

Defendants have waived service of process of the complaint and have admitted to the jurisdiction of this Court over them and the subject matter of this action.

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

The Secretary and Defendants agree to resolve all matters in controversy in this action between them (except for the imposition by Plaintiff of any penalty pursuant to ERISA §502(l), 29 U.S.C. §1132(l), and any proceedings related thereto), and consent to entry of this Consent Order and Judgment (“Judgment”) by this Court in accordance therewith.

The parties agree that, if the Secretary of Labor assesses a penalty pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l), in connection with the violations alleged in this matter, the “applicable recovery amount” shall include all amounts paid in accordance with this Judgment.

The Secretary, in his complaint alleged that, Defendants were liable for approximately \$23,334.63 in employee salary reduction contributions not remitted to the Plan and an additional sum owed in lost opportunity costs as a result of their violations of ERISA §§ 403, 404, and 406, 29 U.S.C. §§ 1103, 1104, and 1106, with respect to the Plan.

Prior to April 15, 2016, Defendant Bonner restored \$23,334.63 in unremitted salary deferral contributions and \$9,658.98 in lost opportunity costs to the affected Plan participants.

Now, therefore, upon consideration of the record herein, and as agreed to by the parties hereto, the Court finds that it has jurisdiction to enter this Judgment, and being fully advised in the premises, it is

ORDERED, ADJUDGED AND DECREED that:

1. Defendants Bonner and Bonner & Borhart are permanently enjoined and restrained from violating the provisions of ERISA.

2. Defendants Bonner and Bonner & Borhart are permanently enjoined from serving or acting as a fiduciary or service provider with respect to any employee benefit plan subject to ERISA.

3. Nothing in this Judgment is binding on any government agency other than the United States Department of Labor.

4. Each party agrees to bear his/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.

5. The Court retains jurisdiction for purposes of enforcing compliance with the terms of this Judgment.

IT IS SO ORDERED THIS 5th DAY OF May 2016.


s/Donovan W. Frank
THE HONORABLE DONOVAN W. FRANK
U.S. District Judge, District of Minnesota

The parties hereby consent to the entry of this Consent Order and Judgment:

FOR THE SECRETARY OF LABOR:

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor


RACHEL L. GRAEBER
Trial Attorney
Office of the Solicitor
U.S. Department of Labor
230 S. Dearborn St. Rm 844
Chicago, IL 60604

DATED: 5/4/16

FOR THE DEFENDANTS:


JOHN F. BONNER III

DATED: 5/4/16


BONNER & BORHART, LLP

DATED: 5/4/16

By: John F. Bonner III

Its: partner


BONNER & BORHART, LLP

DATED: 5/4/16

SIMPLE IRA PLAN

By: John F. Bonner

Its: remaining member/participant