

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOMAS E. PEREZ¹, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

NICHOLAS C. CARO, N.C. CARO M.D., S.C.,
and the **N.C. CARO M.D., S.C. DEFINED**
BENEFIT PLAN

Defendants.

Case No. 1:11-cv-06884

Judge Amy J. St. Eve

CONSENT ORDER AND JUDGMENT

Plaintiff Thomas E. Perez, 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 Nicholas C. Caro (“Defendant Caro”) and N.C. Caro M.D., S.C. (collectively, “Defendants”), alleging breaches of their fiduciary responsibilities under ERISA §§ 403, 404, 405, and 406 with respect to the N.C. Caro M.D., S.C. Defined Benefit Plan (“Plan”).

Defendants Caro and N.C. Caro M.D., S.C. have been served the complaint and have admitted to the jurisdiction of this Court over them and the subject matter of this action.

The Plaintiff and Defendants have agreed to resolve all matters in controversy in this action between them, and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

¹ By operation of law, Thomas E. Perez is substituted sub nom. for former Secretary of Labor Hilda L. Solis. *See* Fed. R. Civ. P. 25(d).

On July 21, 2016, Defendant Caro paid \$138,567.46 in restitution from non-bankruptcy estate assets² to the Clerk of the Court, who in turn will provide restitution directly to the Plan participants, pursuant to a Judgment entered in the criminal proceeding captioned *United States of America v. Nicholas C. Caro*, Case No. 12 CR 891 (N.D. Ill.) (Doc. #96). The restitution Defendant Caro paid in full to the Clerk of the Court pursuant to the Judgment in the criminal proceeding is sufficient to resolve his civil liability to the Plan with respect to the Secretary's complaint, which is \$113,898.90, representing \$76,366.91 in principal owed to the Plan and \$37,531.99 in lost opportunity costs (computed through August 12, 2016, using the Internal Revenue Code § 6621(a)(2) rates) owed to the Plan. Defendant Caro has provided the Secretary with satisfactory proof of his payment of the restitution ordered in the criminal proceeding.

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 that:

1. Defendants Nicholas C. Caro and N.C. Caro M.D., S.C. are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*
2. Defendant Caro, in his capacity as a named trustee of the Plan, from at least April 27, 2006, through February 29, 2008, liquidated in excess of \$263,951 from the Plan's investment accounts and transferred said funds to various accounts, including some accounts held by parties in interest. The \$263,951 liquidated from the Plan's investment accounts were assets of the Plan. Excluding the percentage amount of principal benefits owed to Defendant

² Defendant Caro filed a Chapter 7 bankruptcy petition on January 16, 2013, in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. (Case No. 11-29162). The Secretary filed a Complaint for Determination of Dischargeability of Debt in Defendant Nicholas C. Caro's bankruptcy case on October 13, 2011. (Adv. Case No. 11-02088). A Discharge of Debtor was entered in the bankruptcy case on January 16, 2013. (Doc. 47). The Secretary will file a joint motion to dismiss the adversary case on within ten (10) days of the entry of this Consent Order and Judgment. All recoveries were collected in accordance with the Bankruptcy Code.

Caro (\$111,162.09) and Patricia Galanis (\$76,423.00), who has received her benefit, the amount of principal benefits owed to the remaining participants is \$76,366.91.

3. The transfers of Plan assets, as described in paragraph 2 above, were used to pay for, among other things, Defendant N.C. Caro M.D., S.C.'s operating expenses and legal fees. The transfers of Plan assets, as alleged in paragraph 20 of the complaint, were not used to provide benefits to the Plan's participants or to pay Plan expenses.

4. By the conduct described in paragraphs 2 and 3 above, Defendant Caro:

a. failed to ensure that all assets of the Plan were held in trust and did not inure to the benefit of Defendant N.C. Caro M.D., S.C., in violation of ERISA § 403(a) and (c)(1), 29 U.S.C. § 1103(a) and (c)(1); and

b. failed to act solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and its beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

c. failed to discharge his 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 man 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 ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

d. caused the Plan to engage in transactions that he knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of assets of the Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

e. dealt with assets of the Plan in his own interest in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

f. acted on behalf of a party whose interests are adverse to the interests of the Plan or the interests of its participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

5. Defendants Caro and N.C. Caro M.D., S.C. shall be permanently enjoined from serving or acting as fiduciaries or service providers with respect to any employee benefit plan subject to ERISA.

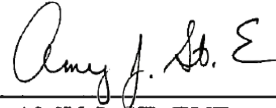
6. Each party agrees to bear his or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

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

8. The Secretary expressly waives, releases, and forever discharges all claims asserted against Defendants Caro and/or N.C. Caro M.D., S.C., or their successors in interest, in the complaint filed in this action. Notwithstanding the foregoing sentence, nothing in this Consent Order and Judgment shall be deemed to waive the Secretary's ability to enforce the provisions stated in paragraphs 1 and 5 above in this Consent Order and Judgment.

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

DATED December 8, 2016



HON. AMY J. ST. EVE
UNITED STATES DISTRICT JUDGE

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



KEVIN M. WILEMON
Attorney

DATED: 12-5-2016

P.O. ADDRESS:
Office of the Solicitor
U.S. Department of Labor
230 S. Dearborn St., Room 844
Chicago, IL 60604

FOR DEFENDANTS:



NICHOLAS C. CARO

DATED: 12.5.2016



N.C. CARO M.D., S.C.
By **NICHOLAS C. CARO**, President
and Sole Owner

DATED: 12.5.2016



**N.C. CARO M.D., S.C. DEFINED
BENEFIT PLAN**
By **NICHOLAS C. CARO**, Trustee

DATED: 12.5.2016