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Client Update

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BUSINESS OWNER THAT FAILED TO REMIT CORPORATIONS'S FUND CONTRIBUTIONS EXCUSED FROM OWING LIQUIDATED DAMAGES

The United States Court of Appeals recently decided that the owner of a business was not liable for liquidated damages for his corporation's failure to remit multi-employer fund payments as a contributing employer (Bricklayers & Allied Craftworkers Local 2, Albany, N.Y. Pension Fund v. Moulton Masonry & Constr., LLC, 2015 BL 50161, 2d Cir., No. 14-295, 2/26/15).

Moulton Masonry was signatory to the Bricklayers collective bargaining agreement. A dispute arose over the owner's failure to cooperate with a payroll audit and the funds sued both the corporate employer and the owner who was responsible for reporting hours and interfacing with the funds' auditors. Neither the employer nor its owner responded to the lawsuit and the trial court entered default judgments against both. The audit findings were arrived at while the lawsuit was pending because the owner decided to start cooperating with the audit even though he ultimately disagreed with some of the findings.

In October 2013, after the findings of the audit were completed, the funds secured default judgments against both Moulton Masonry and the owner, seeking $451,301 in unremitted contributions, $104,629 in prejudgment interest, $99,204 in liquidated damages and $7,002 in attorneys' fees and costs. While this process was ongoing, the defendants never moved to vacate the default judgment. Eventually, the defendants hired a new lawyer who was too late to remove the default.

On appeal, the Court of Appeals upheld the judgment in its entirety against the signatory corporate employer. However, the Court reversed the findings against the individual owner with respect to liquidated damages, interest and attorneys' fees.

Liability against the owner was based on his being a "fiduciary" under ERISA section 409 as he failed to remit employer contributions under his control. He was not found however to be an "employer" as defined under ERISA section 515. According to the Court of Appeals, the trial court erred in assigning liability for the liquidated damages to the owner because a fiduciary is only responsible for making the plan whole and thus for the contributions and potentially for interest and attorneys' fees. Thus, liquidated damages were set aside against the owner since they are not the plans' actual losses.

In terms of takeaways from this case, it is important to take audit requests and any resulting claims seriously and not ignore them. Here the employer and its owner lost some of their rights to defend themselves including the right to contest the findings of the audit. Second, it is crucial to engage specialized legal counsel as this is a very complex area of the law. It is likely that the failure of the business to remit contributions was caused by cash flow issues and while the owner was held liable, his counsel on appeal understood and argued that he could not be held liable for the liquidated damage award. Many competent lawyers might have missed this point.