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Donald W. Kramer
Editor and Publisher
Lisa T. Chatburn
Managing Editor

Nonprofit Issues ®
P.O. Box 482
Dresher, PA 19025-0482
Phone (215) 542-7547
1-888-NP-Issue
Fax (215) 542-7548
E-mail
info@nonprofitissues.com
www.nonprofitissues.com

Court Says Contributions To Foundation By Broker, TPA of ERISA Plan Are Not Illegal

The charity offering the health plan had no influence over use of funds or benefit from the gifts, and payments were not prohibited transactions

The U.S. Department of Labor has lost a more than three year battle to impose liability on a charity and the broker and third party administrator of its health and welfare plan. The DOL charged that the charity breached its fiduciary duty in overseeing the plan and permitting excessive administrative charges. A key part of its case was that contributions to a fundraising foundation that was part of a larger system that included the operating charity were essentially illegal kickbacks which caused the vendors' fees to be too high. After an 11-day trial, a federal District Court in Maryland has rejected all of the claims.

Chimes District of Columbia ("Chimes DC") has been operating janitorial and other services for blind and disabled employees since 1993. In 2010 it provided services under about 34 contracts with facilities in the District of Columbia. Another group of affiliates provided similar services in other areas of the Middle Atlantic states.

Chimes DC provided an extensive health and welfare plan for its employees. Benefits Consulting Group ("BCG") was its broker and plan representative and FCE Benefit Administrators ("FCE") was the third party administrator. Between 2007 and 2014, FCE made contributions totaling $476,950 to the Chimes Foundation, and BCG made contributions totaling $292,500. The DOL argued that the Chimes administrators had breached their duty of loyalty and prudence under section 1104 of ERISA and that the contributions were prohibited transactions under section 1106.

The DOL argued that a violation could be found without a specific quid pro quo transaction. It argued that it was "unrealistic to expect a trustee to ignore his personal interests when they are potentially at odds with his fiduciary obligations."

But the Court said "for this very reason, the Chimes entities established the Governance Committee and a Conflict of Interest Policy, which required advance approval of any transactions between a Chimes organization and a donor to the Chimes Foundation. FCE and BCG retention decisions were made by the Governance Committee pursuant to the Conflict of Interest Policy. The evidence does not support the Secretary's contention that the Governance Committee's decisions to continue with FCE and BCG as the Plan's TPA and Plan Representative were improperly influenced by either Chimes DC's executives or the Chimes Foundation."

The Court also found that "the charitable donations made to Chimes Foundation did not benefit Chimes DC, and Chimes DC's board was not in a position to influence Chimes Foundation's decisions on the use of funds donated to it. The Chimes Foundation is a separate legal entity from Chimes DC and is not its alter ego. Therefore, the charitable contributions were not consideration to Chimes DC for its own personal account, so the contributions were not prohibited transactions (or 'kickbacks') under" ERISA. "Neither the payment nor receipt of the contributions was dealing with Plan assets by Chimes DC or FCE in their own interest or for their own accounts or in exchange for a guarantee to FCE or BCG for continued service."

The Court also found that Chimes DC had adequately monitored the contracts and assured that the fees were reasonable. In an earlier decision, it had thrown out cases against Chimes executives individually. (See *Nonprofit Issues*®, Vol. XXXIX, No. 1.) (*Acosta v. Chimes District of Columbia*, D. MD, No. 15-3315, 2/26/19.)

YOU NEED TO KNOW

The charitable system in this case had taken elaborate steps to establish independent members of its governance committee to mitigate against charges such as those raised by the Department of Labor. Without such steps, the DOL may continue to be suspicious of significant gifts from vendors to ERISA plans.