

News Release



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U.S. Labor Department Settlement Restores Pension Funds To Scottsdale Employee 401(k) Plan

SAN FRANCISCO – The U. S. Department of Labor has obtained a consent judgment removing the owner of bankrupt Scottsdale Mechanical Services Inc. from his position as trustee of the company’s employee 401(k) plan and ordering the restoration of \$23,558 in plan assets. The Scottsdale firm, operated under the name Scottsdale Electric and Mechanical, serviced and repaired air conditioning systems.

“Trustees of a 401(k) plan have a responsibility to ensure that the assets of the plan are used solely to benefit participants. One of the most important responsibilities is putting money withheld from workers’ wages into 401(k) accounts,” said Billy Beaver, regional director of the Los Angeles office of the Labor Department’s Employee Benefits Security Administration (EBSA), which investigated the case.

In a lawsuit filed in federal district court in Phoenix, the Labor Department alleged that John Fischer, the company’s former president and owner, violated his responsibilities as a trustee of the employee 401(k) plan under the federal Employee Retirement Income Security Act (ERISA). According to the suit, Fischer failed to remit \$23,558 in employee contributions to the plan and delayed forwarding additional employee contributions.

The consent judgment removes Fischer as a trustee and fiduciary to the plan and permanently bars him from serving in any such position in any employee benefit plan covered by ERISA. Additionally, Fischer is ordered to surrender his own account balance in the plan and to repay \$23,558, plus interest. The judgment names an independent fiduciary to terminate the plan and distribute the assets to the employees who had participated in the plan. As of Dec. 31, 2003, the 401(k) plan had 17 participants and assets totaling \$44,341. The company filed for Chapter 7 bankruptcy on March 1, 2002.

Employers with similar problems may be eligible to participate in the department’s Voluntary Fiduciary Correction Program (VFCP). Participating employers must restore all funding to the workers’ accounts, but can avoid EBSA enforcement action and civil penalties, as well as any applicable excise taxes. Information about the VFCP is available at www.dol.gov/ebsa.

Employers and workers can reach EBSA at (626) 229-1000 or EBSA’s toll free number, **1-866-444-3272**, for help with any problems relating to private-sector pension and health plans.

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(Chao v. Scottsdale Electric & Mechanical)
Civil Action No. CV04-1069 PHX.