

News Release



U.S. Department of Labor
Office of Public Affairs
Chicago, Ill.
Release Number: 04-592-CHI

For Immediate Release
Date: April 5, 2004
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Labor Department Sues Michigan Firms, Owner and Plan Trustee For Misusing 401(k) Plan Assets

GRAND RAPIDS--The U.S. Department of Labor sued Kalamazoo, Mich.-based companies Magic P.I. & Security, Inc., and Magic Civil Process, Inc., the companies' owner and the 401(k) plan trustee of Magic P.I. for misusing \$511,157 in plan assets.

"The department will aggressively enforce the law to protect the retirement funds of the hardworking men and women of this company," said Secretary Elaine L. Chao. "Our legal action will ensure that these workers receive the future benefits owed to them. This Administration has a strong track record of protecting the benefits promised to America's workers. Last year we achieved record monetary results totaling \$1.4 billion for retirement, 401(k), health and other programs."

The suit alleges that the owner, Donald Magett, and 401(k) trustee Brenda Mackerel violated the Employee Retirement Income Security Act (ERISA) by misusing \$511,157 in plan assets from December 1998 through February 2002. The defendants allegedly withdrew \$283,983 from the Magic P.I. 401(k) plan and illegally transferred the assets to Magic Civil's employees who were not plan participants. They also failed to transmit \$226,746 in contributions to the plan and accumulated \$428 in overdraft fees for the plan. In addition, the defendants did not maintain a fidelity bond or correctly calculate participant benefit distributions.

The suit seeks a court order to require Magett, Mackerel and Magic P.I. to restore plan losses and correct any prohibited transactions and accounting irregularities. Magic Civil also would be asked to correct the prohibited transactions in which it knowingly participated and restore any losses. In addition, the suit asks the court to appoint an independent fiduciary to administer the plan and permanently bar the defendants from serving any employee benefit plan governed by ERISA.

The suit, filed in the federal district court in Grand Rapids, resulted from an investigation conducted by the Detroit district office of the Employee Benefits Security Administration (EBSA).

Magic P.I. provides guard and armed security services to private and governmental entities in Michigan, Illinois, Indiana, Iowa, Ohio, Minnesota, Nevada, North Dakota and Georgia. The plan held approximately \$500,000 as of Jan. 2, 2002.

Employers with similar problems, who are not yet the subject of an investigation by EBSA, may be eligible to participate in the department's Voluntary Fiduciary Correction Program (VFCP). Participation in the VFCP requires employers to make workers whole but allows them to avoid EBSA enforcement actions and civil penalties as well as any applicable excise taxes. For more information about the VFCP, see www.dol.gov/ebsa.

Employers and workers can reach EBSA toll-free at 1-866-444-EBSA (3272), for help with problems relating to private-sector retirement and health plans.

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(Chao v. Magic P.I. & Security, Inc.)
Civil Action No. 1:04CV0205

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