

News Release



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U.S. Labor Department Obtains Judgment Barring Fiduciaries of West Virginia 401(k) From Serving Plans

Charleston, W.Va.—The U.S. Department of Labor has obtained a consent judgment permanently barring the former owners of defunct Fleshman's Inc. of Oceana, West Virginia, from service as fiduciaries to employee benefit plans governed by the Employee Retirement Income Security Act.

The department's lawsuit alleged that trustee Timothy Fleshman violated the Employee Retirement Income Security Act (ERISA) by using approximately \$41,000 of plan assets to pay state taxes owed by the company. The department alleged in a lawsuit filed simultaneously with the judgment that the company's 401(k) plan was harmed when he used plan assets to pay taxes owed by the employer.

The department also alleged that Michael Fleshman failed to perform his duties as the plan's trustee and enabled Timothy Fleshman to misuse plan assets. He allegedly failed to take sufficient action to prevent the improper use of the plan's assets. The judgment was entered in federal district court in Charleston, W. Va.

Based on information available to the department, the Fleshman Inc. 401(k) plan had \$17,000 in assets and covered seven participants as of July 2003. The company ceased operations in February 2003.

"Plan fiduciaries need to understand that they have a duty to protect the assets in retirement plans and to act responsibly," said Mabel Capolongo, director of the department's Philadelphia regional office of the Employee Benefits Security Administration.

Employers and workers can reach EBSA's Washington district office at (301) 713-2000 or through its toll-free number, **1-866-444-EBSA (3272)**, for help with problems relating to private-sector retirement and health plans.

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(Chao v. Fleshman)
Civil Action No. CA 5:04-0539

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