

News Release



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Labor Department Sues to Restore Assets To N.Y. Retirement Plan and Appoint Independent Fiduciary

NEW YORK, N.Y. –The U.S. Department of Labor sued the trustees of the money purchase plan of Arch-Con Associates of Whitestone, N.Y., on July 25, 2003, for failing to forward approximately \$160,000 in employee contributions and abandoning the plan when the company went out of business.

“The law states that trustees have a fiduciary responsibility to manage the money set aside in retirement plans for the benefit of employees and their families,” said Secretary of Labor Elaine L. Chao. “The actions of this company were despicable and this case sends a clear message that the department will aggressively enforce the law to protect workers’ benefits.”

Plans become “orphan plans” when they are abandoned by fiduciaries designated to manage and operate the plans and their assets. Without plan fiduciaries, participants and beneficiaries are unable to receive distributions or make inquiries about their benefits.

The suit alleges that Joseph Bordonaro and Paul P. Cohen, the plan trustees and the owners of Arch-Con, violated the Employee Retirement Income Security Act (ERISA) by failing to collect about \$160,000 in employee contributions owed to the plan by the company during 1997 to 1999, and abandoned the plan when Arch-Con became defunct. The suit was filed in federal district court in Central Islip, N.Y.

The suit seeks to have the defendants restore to the plan all losses attributable to their fiduciary breaches, remove them as trustees and permanently bar them from serving as fiduciaries to any employee benefit plan covered by ERISA. The suit also seeks to appoint an independent trustee to administer the plan and distribute its assets.

In May 2003, the department filed adversary complaints against the defendants in U.S. bankruptcy courts in Central Islip and Poughkeepsie, N.Y., to prevent them from avoiding payment of money owed to the plan.

Arch-Con employed construction workers on job sites covered by prevailing wage contracts with state and local governmental units in metropolitan New York.

The case resulted from an investigation conducted by the New York regional office of the department’s Employee Benefits Security Administration. Employers and workers can contact the regional office at (212) 607-8600 or EBSA’s toll free number, 1-866-444-EBSA (3272), for help with problems relating to private-sector pension and health plans.

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(Chao v. Bordonaro) Civil Action No. 03-Civ-3643 (LDW)(WDW)

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