



Being a Plan Fiduciary in Turbulent Times

About a month ago, U.S. District Judge Patrick J. Duggan ruled in favor of the plaintiff in a case regarding plan contributions. According to Fred Schneyer at planadviser.com, the plaintiff, Paul Safran, sued his former employer LDS Contractors, Inc., owned by Frank Donagrandi, because Donagrandi "misled participants into thinking LDS was making its required annual contributions despite his responsibilities as a plan fiduciary". The court found that "LDS's business began to decline and no contributions were made to the plan between 2002 and 2006. The court noted that Donagrandi used funds from the plan in his own individual account to pay LDS debts, and that the unpaid contributions were listed as unfunded liabilities on LDS's books". Obviously, Donagrandi did not fulfill his ERISA fiduciary responsibility and was ruled to pay 10% of Safran's salary to a defined contribution plan, which is approximately \$24,900, and pay Safran's attorneys' fees.

This event is a good reminder on the importance of fulfilling plan fiduciary responsibilities. According to the Department of Labor, fiduciary responsibilities include:

- Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them
- Carrying out their duties prudently
- Following the plan documents (unless inconsistent with ERISA)
- Diversifying plan investments; and
- Paying only reasonable plan expenses

Plan fiduciaries should not take their duties lightly, especially in turbulent times when participants are extremely sensitive about their retirement accounts. Here are some tips to help limit plan fiduciary liabilities:

- Follow your Plan's Investment Policy Statement
 - An investment policy statement is essential for the proper operation of a plan and the proper fulfillment of the fiduciary duties for selection and monitoring of investments
- Remember to document everything
 - ERISA is concerned with a prudent process and the best way to demonstrate this is to carefully document your actions and decisions.
- Reinforce basic investment principals
 - Don't forget about the value of diversification and investing for long term gains
- Remember to keep plan participants informed
 - With the uncertainties in the market, participants probably have a lot of questions regarding their investments. It is very important to communicate with participants. Ask your advisor for some materials that can help explain the current market to plan participants and their options in such volatile times.

For more information regarding the *Safran v. Donagrandi* case, please go to <http://www.planadviser.com/compliance/article.php/3630>

For more information regarding the DOL Fiduciary Guidelines, please go to <http://www.dol.gov/ebsa/publications/fiduciaryresponsibility.html>