

Source: Pension & Benefits Daily: News Archive > 2016 > August > 08/31/2016 > Legal News > Fiduciary Responsibility: Severstal Fiduciaries Can't Escape \$15M ERISA Judgment

Fiduciary Responsibility

Severstal Fiduciaries Can't Escape \$15M ERISA Judgment



By Carmen Castro-Pagan

Aug. 30 — A New York-based investment management company and its sole executive officer failed to convince an appeals court to set aside a \$15 million judgment for mismanaging assets of Severstal Wheeling Inc.'s 401(k) plans (*Severstal Wheeling, Inc. v. WPN Corp.*, 2016 BL 281947, 2d Cir., No. 15-2725, unpublished 8/30/16).

The U.S. Court of Appeals for the Second Circuit affirmed Aug. 30 a district court decision that held liable WPN Corp. and its executive officer, Ronald LaBow, for breaching their fiduciary duties under the Employee Retirement Income Security Act. The district court's finding of liability wasn't based solely on the transfer of plan assets, but in the fact that LaBow exclusively selected for the transfer assets previously managed by Neuberger Berman LLC, didn't give notice of the transfer and failed to ensure the prudent management of those assets, the appeals court said.

The unpublished opinion could mean a win for the secretary of labor, who is pursuing a parallel lawsuit against WPN and LaBow under similar theories of ERISA fiduciary status and breach in another federal court. Because an adverse decision by the Second Circuit could affect the secretary's case, earlier this year, he urged the court to hold that WPN and LaBow were ERISA fiduciaries with respect to the investments at issue.

Controversial Assets Transfer

The case stemmed from a transfer of plan assets conducted per WPN's and LaBow's instructions. The assets, which were maintained in an account managed by Neuberger, were transferred to another trust. Later, they performed poorly in relation to the original trust, causing losses to Severstal's retirement plans.

The district court awarded \$9.6 million in damages for losses to the plans, \$5.3 million in prejudgment interest and \$110,730 in investment manager fees to be repaid to the plans. The court also awarded \$2.6 million in attorneys' fees and costs against WPN and LaBow.

Because WPN and LaBow failed to assert arguments that suggest that the district court's factual findings were "clearly erroneous," the appeals court declined to set aside the lower court's ruling.

The unpublished opinion was joined by Judges Rosemary S. Pooler, Gerard E. Lynch and Susan L. Carney.

In a separate unpublished opinion, the appeals court upheld the district court's ruling that dismissed the complaint against trustee WHX Corp., because Severstal failed to adequately allege WHX's fiduciary status.

Cohen Milstein Sellers & Toll PLLC represented Severstal. Daniel Cobrinik P.C. represented WPN and LaBow.

To contact the reporter on this story: Carmen Castro-Pagan in Washington at ccastro-pagan@bna.com

To contact the editor responsible for this story: Jo-el J. Meyer at jmeyer@bna.com

Snapshot

- Second Circuit upholds \$15M judgment against investment management company and its sole executive
- Opinion could mean a win for secretary of labor, who is pursuing similar claims against company and executive

For More Information

Text of the opinion is at

http://www.bloomberglaw.com/public/document/Severstal_Wheeling_Inc_v_WPN_Corp_No_152725_2016_BL_281947_2d_Cir.

Contact us at <http://www.bna.com/contact-us> or call 1-800-372-1033

ISSN 1523-5718

Copyright © 2016, The Bureau of National Affairs, Inc.. Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy.