

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

**FILED**

AUG 31 2010

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY KR, DEPUTY

FLOYD SEIBERT )  
Plaintiff )  
vs )  
Central Home Care Services, Inc. )  
and Affiliates 401(K) Plan Et. Al. )  
Defendants )

Case No. 5:06-cv-01330-F

PLAINTIFF'S OPPOSITION TO SUCCESSOR FIDUCIARY'S  
REPORT AND PROPOSAL TO DISTRIBUTE ASSETS OF THE TRUSTEE-  
DIRECTED PORTION OF THE CENTRAL HOME CARE SERVICES, INC.  
AND AFFILIATES 401 (K) PLAN

COMES NOW, Floyd Seibert, Plaintiff in the above styled case now before this Honorable Court, to OBJECT to the Successor Fiduciary's Report and Proposal to distribute assets. Plaintiff's opposition is based on relevant and material facts which are presented below.

A. Necessary Information:

This report and Plan comes some three (3) years and four (4) months after the Successor Fiduciary's appointment. During this period of time participant's have had little or no idea as to balances of the corpus of the Plan, earnings of the Plan or expenses of the Plan. In fact those critical parts of information have been completely left out of this report to the Court. While the Successor Fiduciary's powers are wide, one would not think it would excerpt the provisions of 29 USC Sec. 1025 "... reporting of participant's rights..." or 29 USC Sec. 1024 "... filing and furnishing of information...". Numerous efforts, through this Court and discovery in the Florida Case (Solis v. Seibert Case No. 8:09-cv-1726-T-33 AEP) to produce information has proven to be fruitless.

1. Time of Distributions: The Proposal does not specify when Participant's balances will be paid out. While a specific date may be difficult to forecast, at least a target date range should be expected.

2. Future Distributions: Page 12, paragraph f indicates that "additional distributions" are anticipated. It is reasonable to think there would be future distributions, when the Successor Fiduciary has been charging fees that can average up to \$10,000 per month? Would this be economically feasible for the Plan? How long would it take to complete the distributions?
3. Amounts of Distributions in real dollars. Page 11, item b indicates that payment would be made at pro-rata payment of 49.91%. Exhibit 4 is not the reduced amount. This seems to be extremely misleading whereby the Exhibit compares one set of numbers against another set of numbers, but neither is the amount to be paid out. Participants should have some reasonable expectation of the amount to be received. Please see EXHIBIT A - Financial recap - attached.
4. The Proposal does not indicate if the Participants will be paid out with appropriate income taxes withheld in accordance with 26 USC Sec. 61(a)(11) or will the Participant be able to "roll over" to another Plan of IRA or annuity or such other investment as he or her may choose. Will Receivership Management charge a fee to Participants for any such transactions?

B. Forfeiture Action:

As pointed out on page 12 item #9, the best possibility for the Plan to recover a large amount of cash was through the Seibert plea agreement for the Plan to receive amounts from the sale of forfeited property in accordance with 28 USC Sec. 3301 and 3304. These forfeiture actions by Seibert and the Department of Justice were for the Sole Benefit of the Plan. Before said agreement for the forfeiture expired, the U.S. Dept. of Justice turned the property over to the U.S. Marshals Service in San Antonio, Texas. The U.S. Marshals Service in turn placed the parcel of property for sale with a local realtor. Said realtor seems to have a monopoly on all Government seized property in this particular area known as the "Texas Hill Country". Seibert, in accordance with the terms of the

agreement , had used a well known realtor to market the property throughout the United States and foreign countries. Seibert had a contract for sale on May 2006 for \$6.5 million and another as late as June 2007 for \$5.5 million. The actual terms, conditions, and amounts of the eventual sale remain unknown to Seibert at this date, except that the Justice Dept. delivered \$1.3 million to the Successor Fiduciary for the Plan. Seibert does not have any documentation or is aware of any Executions and Judicial Sales in accordance with 28 USC Sec. 2001, 2002, 2004, and 2005. Seibert maintains that the above transactions were hardly transparent and are actions directly related to this Report and Proposal. While the property had a mortgage of about \$1 million and owed property taxes of \$40-\$50,000, even after closing cost, the property should have netted \$4 to \$4.5 million for the Plan. It would seem incumbent upon the Successor Fiduciary, knowing this money was for the Plan to "marshal the assets" as she states are her specifically vested right. For the Successor Fiduciary not to monitor such a sale, even after Seibert filed a Motion to Show Cause with this very Court on January 15, 2008 and attached as EXHIBIT B would not seem prudent, if not border on negligence.

#### C. FIDUCIARY LIABILITY POLICIES AND FIDELITY BONDS

As pointed out on page 4, item number 6, the Plan carried a fidelity bond through Travelers, with policy limits of \$250,000 which was claimed and received by the Plan. The Plan also carried fiduciary liability coverage through different insurance companies over the period of time 1999 through 2004. U.S. Specialty Insurance Company happen to be the company from 5/17/05 through 5/17/06 and was the first to be filed on. As has come to light through duplicitous litigation, it is now known that Seibert purchased bonds for the Plan through a company he did not own, in compliance with Plan documents, and used these funds, not for his personal use, but to loan the funds to the sponsor corporations for operating capital. The loans were fully secured by the sponsor companies Medicare accounts receivable, equipment, inventories, and even the stock shares owned by Seibert. In addition Mr. Seibert was required to maintain life insurance policies, with the noteholder as beneficiary. When the sponsor companies went out of business in 2005,

with millions of dollars in Medicare disallowances that were incurred through administrative appeals, including disallowances of the Plan contributions and administrative cost, they were unable to pay the loans. With the default of the loans, the bonds became worthless and thus the loss. An event that would have seemed impossible in 1999 and 2000. Please EXHIBIT C Medicare disallowances.

It would again seem incumbent upon the Successor Fiduciary to at least file claims with all the different Fiduciary liability policies in force over the stated period of time. The limits of these policies were generally in excess of \$1 million. As we all know, filing insurance claims can be a long and tedious process, but could be a large benefit to the participants. It would certainly seem like a small effort with the potential of very large returns.

D. PARTICIPANTS VESTING AND PLAN BALANCES

Each year and specifically 1999-2004 the Plan hired an independent Third Party Administrator (TPA) to process the plan reports and records including form 5500 for the Dept of Labor. The home office accounting staff would keep the books and records throughout the year, just as it had done since 1986 in the same manner. These books and records were for the sponsor companies as well as for the Plan. Each year the TPA was furnished: 1) all payroll records with a) Hire date b) termination date, c) yearly wages, d) number of hours worked that year, e) social security numbers, f) home address or changes in address. Early on this was done by hand, but later via computer disk or zip files. 2) in addition the TPA was furnished contributions by the sponsor if any, expenses of the Plan - if any and gains or losses on investment transactions during the year. 3) The market value of any securities held as at the end of the year. The TPA would then review all the material and test for certain items in their criteria ie: highest paid workers for "top Heavy Plans" ect. The TPA after satisfying themselves would run all the information through their software systems. While some of the TPA's data was arranged differently, each produced the same information in total and in certificates to be distributed to the Plan Participants. Mostly noted was 1) their

beginning balances, 2) their employee directed portions, 3) their portion of the sponsor contributions - if any, 4) forfeited balances that they shared in, 5) earnings or losses generated by the Plan. With all this information, of which is now in the hands of the Successor Fiduciary, both raw information and TPA reports, there is NO WAY Seibert could have manipulated vesting schedules.

Had the Successor Fiduciary spent a little more time reviewing the Plan Documents rather than hypothecating some devilish escapades of spitefulness by Seibert, it would be very clear that a MAJOR AMENDMENT regarding vesting and forfeitures was made on August 10, 2001 to be effective January 1, 2001. Please see EXHIBIT D attached. With the new amendment the Plan could show only their vested balance as though it was 100% vested. Needless to say this eliminated many participants and their nonvested balances which had been sitting on the books waiting for the five (5) years of one year breaks in service to expire. As the companies went out of business in 2005 and today's date is five years thereafter, one should not have any problem identifying those that will have nonvested amounts.

It is for this reason and the fact that the loyal employees that stayed with Central Home Care from 2001 until the end, endured some very hard times and justly deserve their full share of benefits. Their share of the benefits SHOULD NOT be reduced to 100% vest all employees that are listed on the Plan in 2001.

Therefore the Plaintiff vehemently OPPOSES this Proposal to 1) adopt a termination date of 12-31-01. 2) distribute participants account balances from 12-31-2001. 3) Not to distribute any funds to participants who came into the Plan in 2002, 2003, or 2004.

WHEREFORE, Plaintiff request this Honorable Court to grant the following relief:

- 1) Order the Successor Fiduciary to produce an updated accounting and answer questions raised in A. Necessary Information.
- 2) Order the Successor Fiduciary to produce all documents concerning the forfeiture sale of the Texas property.
- 3) Order the Successor Fiduciary to review files and documents for any possible filing of claims for Fiduciary liability.


- 4) Order the Successor Fiduciary to review Plan participants balances and vesting amounts, either by updating from the 2001 TPA report or by using the latest TPA report from the Matthews Benefit Group.
- 5) Order the Successor Fiduciary to pay out by 12-31-10 at least 25% of those participants with vested balances that are undisputed.
- 6) Order the Successor Fiduciary to bill time spent on request from the Department of Labor for information to support their prosecution of the Florida case, to the Department of Labor, as the Department of Labor should not be financing their case on the backs of the Plan participants.
- 7) Order an evidentiary hearing, once the preceding work has been accomplished and at the Courts schedule.
- 8) Order such other relief as this Court may feel is just and equitable.


Respectfully submitted,



Floyd Seibert, Pro Se #07260-030  
Federal Correctional Institution  
P.O.Box 1500  
El Reno, OK 73036

Certificate of Service

I hereby certify that this document was mailed, U.S. Mail, via Federal Bureau of Prisons to the Clerk of the Court, Western District of Oklahoma on August 25, 2010 

I also certify that this document was mailed by U.S. Mail, via Federal Bureau of Prisons to the following on August 26, 2010 

Jeanne Bryant  
Successor Fiduciary  
783 Old Hickory Blvd. Suite 255  
Brentwood, TN 37027