

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL CIARLONE and : CIVIL ACTION
ROSE CIARLONE :
 :
v. :
 :
KENCOR, INC., J. DONALD KENNEDY, :
RICHARD KENNEDY, MAUREEN MUEHSAM :
and WILLIAM MUEHSAM : NO. 97-0296

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL JUDGMENT**

HUTTON, J.

December 17, 1998

In this action, Plaintiffs Michael and Rose Ciarlone sue Defendants Kencor, Inc., J. Donald Kennedy, Richard Kennedy, Maureen Muehsam, and William Muehsam under Employee Retirement Income Security Act of 1974 (ERISA) to recover pension benefits, medical benefits, and attorneys' fees. The Court held a bench trial on Plaintiffs' claims on September 21, 1998. Also before the Court is Plaintiffs' Motion for Counsel Fees (Docket No. 39).¹ In accordance with Federal Rule of Civil Procedure 52(a), the Court now enters the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Defendant Kencor, Inc. is an elevator repair company.

¹ At the conclusion of the September 21, 1998 hearing, the Court stated that the parties may submit proposed findings of fact and conclusions of law. Defendants submitted proposed findings of fact and conclusions of law. Plaintiffs submitted the motion for counsel fees.

2. Defendant Kencor employed Plaintiff, Michael Ciarlone, Sr. from June 1986 to March 1995.

3. Defendant Maureen Muehsam is the treasurer of Kencor and administrator of the Kencor pension plan.

4. Defendant Richard Kennedy is the president of Kencor.

5. Defendant J. Donald Kennedy was the vice president of Kencor during the time relevant to this proceeding.

6. Defendant William Muehsam was the secretary of Kencor during the time relevant to this proceeding.

7. Kencor sponsored a pension plan for the benefit of its employees.

8. Michael Ciarlone contributed \$1,487.00 to Kencor's pension plan.

9. Kencor did not remit the \$1,487.00 that Michael Ciarlone contributed to the pension plan.

10. Plaintiffs Michael and Rose Ciarlone filed a complaint in the Chester County Court of Common Pleas claiming unpaid wages, unfunded pension plan benefits, and unpaid medical bills pursuant to an alleged Kencor medical reimbursement program.

11. The Chester County Court of Common Pleas dismissed the claim for medical payments and pension plan payments ruling that ERISA preempted the state court from hearing these claims. The Chester County Court of Common Pleas held a non-jury trial on the

claim for unpaid wages and awarded \$3,681.97 in unpaid wages and attorneys' fees of \$1,390.00.

12. After the dismissal of the pension and medical claims, Plaintiffs Michael and Rose Ciarlone filed a complaint with this Court alleging that Kencor withheld funds from the pension plan in violation of ERISA and failed to make required medical insurance reimbursements.

13. On May 14, 1997, in Herman v. Muehsam, No 97-3395, the Department of Labor filed a separate action against Kencor alleging breach of fiduciary duties in violation of ERISA. The Honorable Robert F. Kelly entered a judgment of consent by which Kencor agreed to pay \$29,947.38 to the pension plan, terminate the pension plan, and distribute the assets.

15. Pursuant to the consent judgment, Plaintiffs Michael and Rose Ciarlone would receive \$1,487.00 plus interest in pension benefits.

16. At trial, the Plaintiff failed to produce evidence of a medical insurance program offered by Kencor under which Kencor would reimburse medical expenses.

17. The evidence at trial established that the Plaintiffs chose to participate in the Pennsylvania Blue Cross/Blue Shield plan. The evidence at trial also established that the Plaintiffs eventually chose not to participate in any medical insurance

program, but rather desired to have an increase in the amount of their weekly paycheck.

18. Competent state courts and federal district courts share concurrent jurisdiction over actions filed pursuant to 29 U.S.C. § 1132(a)(1)(B).

II. CONCLUSIONS OF LAW

1. The pension plan sponsored by Kencor is an "employee pension benefit plan" within the meaning of ERISA § 3(3). 29 U.S.C. § 1002(3) (1994).

2. Plaintiffs filed this action to "recover benefits due under the terms of a plan," specifically medical and pension benefits, pursuant to ERISA § 502(a)(1)(B). 29 U.S.C. § 1132(a)(1)(B) (1994).

3. The action brought by the Department of Labor did not foreclose Plaintiffs from bringing suit in their individual capacity. See Secretary of Labor v. Fitzsimmons, 805 F.2d 682, 688 (7th Cir. 1986).

4. Plaintiffs are entitled to recover \$1,487.00 in pension benefits, including interest.

5. Maureen Muehsam shall immediately distribute to Plaintiffs the balance of Plaintiff Michael Ciarlone's pension plan account. However, Plaintiffs shall be precluded from recovering any sums pursuant to the consent judgment entered into between the

Department of Labor and Kencor Inc. in Herman v. Muehsam, No 97-3395.

6. Plaintiffs alleged but failed to prove that Defendants J. Donald Kennedy, Richard Kennedy or William Muehsam could be held individually liable in this action.

7. Pursuant to ERISA § 502(g)(1), it is within the discretion of the Court to award costs and attorney's fees to either party. See 29 U.S.C. § 1132(g).

8. The Third Circuit promulgated a five factor test to determine whether or not attorneys' fees should be awarded under ERISA. See Ursic v. Bethlehem Mines, 719 F.2d 670, 675 (3d Cir. 1983). Those factors are: (1) the offending parties' culpability or bad faith; (2) the ability of the offending party to satisfy an award of attorneys' fees; (3) the deterrent effect of an award of attorneys' fees against the offending parties; (4) the benefit conferred on members of the pension plan as a whole; and (5) the relative merits of the parties' position. See id.; see also Ellison v. Shenango Inc. Pension Bd., 956 F.2d 1268, 1273 (3d Cir. 1992).

9. Kencor acted in bad faith by improperly withholding Plaintiff Michael Ciarlone's contributions to the pension plan.

10. Kencor has the ability to satisfy an award of costs and fees in Plaintiffs favor.

11. While Plaintiffs' claims initially had merit because they have an absolute right to bring suit in their individual capacities, once the Department of Labor stepped in, there was no need for Plaintiffs to continue with this suit. Plaintiffs would have recovered their pension benefits by the terms of the consent decree, albeit, at a later time.

12. Plaintiffs' claims conferred no benefit on members of the pension plan as a whole and will have little deterrent effect on the conduct of Kencor.

13. Out of the five factors, factors one and two weigh in favor of Plaintiffs, the factors three and four weigh in favor of Defendant. The fifth and final factor, the relative merits of the parties, leads to the conclusion that Plaintiffs should not collect attorneys' fees and costs. "Plaintiffs' attorney prosecuted this action in piecemeal fashion by filing three actions when only one was necessary, wasting valuable judicial resources in both state and federal court. This behavior should not be rewarded." Ahern v. Kencor, Inc., No. CIV.A.97-295, at *4 (E.D. Pa. Feb. 5, 1998).

This Court's Final Judgment follows.

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FINAL JUDGMENT

AND NOW, this 17th day of December, 1998, as required by Fed. R. Civ. P. 52, IT IS HEREBY ORDERED that this Court enter the attached Findings of Fact and Conclusions of Law.

IT IS FURTHER ORDERED that

(1) **JUDGMENT** is hereby entered in favor of Plaintiffs, Michael and Rose Ciarlone and against Defendant Kencor Inc. as to the return of unpaid pension benefits in the amount of \$1,487.00 plus interest;

(2) Maureen Muehsam, as trustee of the Kencor pension plan, shall distribute the balance of Plaintiff Michael Ciarlone's pension plan account, plus interest, within thirty (30) days of the date of this Order;

(3) Plaintiffs are precluded from recovering any sums pursuant to the consent judgment entered by this Court in the matter known as Herman v. Muehsam, No 97-3395;

(4) **JUDGMENT** is entered in favor of Defendant Kencor Inc. as to all remaining counts;

(5) **JUDGMENT** is hereby entered in favor of the individual Defendants, J. Donald Kennedy, Richard Kennedy, Maureen Muehsam, and William Muehsam, and against Plaintiffs on all counts;

(6) All parties are to bear their own costs; and

(7) Plaintiffs' Motion for Counsel Fees is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.