COMPANY SUED FOR INVESTING 401(K) FUNDS IN FRAUDULENT SCHEME

The U.S. Department of Labor (DOL) has filed a lawsuit against a construction company for misappropriation of funds from a 401(k) plan. Allegedly more than 775,000 dollars was lost from the employees' retirement benefits. The company in question was Dynasty Construction, Inc., based in Bethesda, MD, which ceased operations in 2007. The company's 401(k) plan and the company's owner, John J. Barrett III, were also named in the suit, which was filed in January. The cause for litigation is "breach of fiduciary duty." Fiduciary duty is essentially the trust placed upon a person who invests other people's money. A breach would occur whenever deceitful or fraudulent investments are exploited. The money from the plan, including the finances of all 19 plan participants at that time, was invested in a duplicitous scheme in 2006. The lawsuit states that the company did not adequately or sensibly research the credentials of the financial representative of the 401(k) and likewise failed in properly researching or scrutinizing investments with the Transcontinental Airlines Employee Investment Savings Account. The person responsible for the fraudulent investment plan, Louis Pearlman, is currently serving 25 years in federal prison. The company's failure in protecting its employee's 401(k) benefits is a violation of the Employee Retirement Income Security Act (ERISA). This law, signed in 1974, was intended to safeguard those participating in retirement plans as well as the participants' beneficiaries. The suit, which was filed in the U.S. District Court for the District of Maryland, was the result of an investigation by the DOL's Employee Benefits Security Administration. This agency was created for the purpose of enforcing the provisions and regulations of the ERISA. The investigation was conducted by the agency's Washington District Office in Silver Spring, MD, and filed by the regional solicitor in Philadelphia. "These acts have jeopardized the retirement security of former Dynasty employees by those charged with the responsibility of protecting workers' benefits," said Phyllis C. Borzi, Assistant Security of Labor for Employee Benefits Security Administration. "The Labor Department will not stand for it, and we will take all actions necessary to make sure workers receive their hard-earned benefits." The DOL hopes that the suit will restore all financial losses, including interest and lost opportunity costs. Furthermore, the defendants would be required to supply all books, documents and records pertaining to the finances and administration of the plan, and would be removed as fiduciaries of that particular plan and any additional employment benefit plan for which they act as fiduciaries. The defendants would also be permanently enjoined (prohibited by law) from any direct or indirect involvement as fiduciary of any employee benefit plan, and permanently enjoined from any custody, control or decision making relating to the finances of any employee benefit plan covered by the ERISA. The lawsuit stipulates that an independent fiduciary be appointed to manage and administer the plan.