Fidelity Dodges New Jersey ERISA Lawsuit

by Gary S. Young on September 12, 2012

Fidelity Management Co. recently obtained a dismissal of a New Jersey class-action lawsuit over the fees that it charged to divide the proceeds of 401(k) accounts during divorce. The court's decision, in *Danza v. Fidelity Management Trust Co.*, 11-cv-2893, hinged entirely on whether Fidelity was considered a fiduciary under the Employee Retirement Income Security Act (ERISA).

The Facts of the Case

Nicholas Danza was a participant in a 401(k) plan offered by the Great Atlantic and Pacific Tea Co. Fidelity Management Trust Co. served as the plan's trustee and provided certain administrative services to the 401(k) plan, including those related to domestic relations orders (DRO). Pursuant to ERISA, Danza was required to obtain a DRO in order to divide his plan account as part of his divorce proceedings.

Although Fidelity provided plan participants with a "DRO generator" on its website for a fee of only $300, Danza elected to obtain his DRO through a third-party at a cost of $475. Fidelity, as the Plan Trustee, subsequently charged Danza $1,200 to review and qualify the DRO, which he claimed was unreasonable.

In the lawsuit brought by Danza, Fidelity was alleged to have breached its fiduciary duties under ERISA by "failing to defray reasonable expenses of administering the plan." Fidelity moved to dismiss the suit on the grounds that it was not a fiduciary with respect to the service fees.

The Court's Ruling

The court ultimately granted Fidelity's Motion to Dismiss, finding that it did not serve as a plan fiduciary with regard to the fees at issue. The court pointed to existing precedent that held that a party is only a fiduciary "to the extent it exercises control over the particular activity at issue."

In this case, the court noted that Fidelity negotiated the fee with Danza's employer at arm's length before it became the trustee of the plan. As such, it had no duty regarding the reasonableness of the DRO service fees charged. The court further suggested that, as the employer was the fiduciary responsible for such fees, any claim of fiduciary breach should be brought against it as the proper defendant. However, the court was quick to caution that it not offering an opinion about the merits of such any such claim.

This case underscores that all Plan Sponsors must be vigilant in reviewing fees and expenses as they have the ultimate ERISA responsibility to assure that fees and expenses are reasonable. Further, even when working with a big business organization such as

Fidelity, it cannot be assumed that this will necessarily provide cover from ERISA claims.

If you have any questions about this ERISA lawsuit or would like to discuss this topic, please contact me, Gary Young, or the Scarinci Hollenbeck attorney with whom you work.