

## Federal judge clears former Chimes executives in ERISA suit

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A federal judge ruled in favor of two former executives for Chimes International Ltd. last week in a lawsuit filed by the U.S. Department of Labor accusing the nonprofit of failing to adequately monitor its employee health plan.

U.S. District Judge Richard D. Bennett granted a summary judgment motion for former President Martin Lampner and former Chief Operating Officer Albert Bussone on Dec. 10, finding they were not de facto fiduciaries and cannot be found liable as non-fiduciaries.

Bennett also ruled Chimes District of Columbia Inc. and Chimes International were plan administrators but factual disputes exist as to whether they are de facto fiduciaries. Bennett allowed the remaining issues in the case to proceed to trial.

“After a career involving decades of helping people with disabilities through his work at the Chimes, Marty Lampner did not deserve to be part of this litigation,” said Martin S. Himeles Jr.,

managing partner at Zuckerman Spaeder LLP in Baltimore and attorney for Lampner. “He did not do anything other than work very hard to see that Chimes employees had the best benefits possible and for that he was rewarded with years of litigation continuing into his retirement. He deserved to have these claims thrown out, and I am delighted with the ruling as is he.”

An attorney for Bussone was not immediately available for comment.

In its lawsuit, the Labor Department claims that, based on financial reports, the Chimes defendants knew or should have known about excessive plan expenses but instead paid millions of dollars run up by its corporate representative, Benefits Consulting Group, and third-party administrator, FCE Benefit Administrators Inc.

The government alleged Chimes and the executives engaged in prohibited transactions when they hired and retained BCG and FCE, caused an employee’s salary to be repaid

from the plan, and took monetary donations from the defendants.

In their pleadings, Lampner and Bussone argued they exercised no authority or control over the plan and were not fiduciaries.

The government contended they had decision-making authority related to the retention of BCG and FCE.

Bennett held that though the executives made recommendations for the appointment and retention of BCG and FCE, “nothing in the record indicates that their influence was so great that they had an actual decision-making power or exercised discretionary authority in making the appointments.”

Bennett granted summary judgment for BCG last month and denied summary judgment for FCE Thursday. An attorney for FCE declined to comment on the litigation.

Chimes and FCE are the remaining entities scheduled to go to trial next month.

The case is *R. Alexander Acosta, Secretary of Labor v. Chimes International Ltd. et al.*, No. 15-cv-3315-RDB.