ESOP TERMINATION GONE WRONG – PLAN FIDUCIARIES HELD PERSONALLY LIABLE

Perez v. California Pacific Bank (N.D. Cal. 2016)
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California Pacific Bank (the "Bank") is a privately-held bank that extends credit to small, minority-owned businesses. The Bank sponsored an employee stock ownership plan (ESOP), and certain officers and directors of the Bank were trustees of the ESOP. At the end of 2010, the Bank terminated the ESOP.

Under the terms of the ESOP, when the ESOP is terminated, payment to each affected participant was supposed to be made *in cash* as soon as practicable after liquidation of the trust assets, but not later than one year following the December 31, 2010 termination date. Instead of plan mandated cash distributions on termination, the ESOP distributed Bank stock held by the ESOP to the individual retirement accounts of the Plan participants. At some later point, some (but not all) participants were paid cash by the Bank's senior credit officer for the Bank shares they received in connection with the ESOP termination – some (but not all) of those payments included a small amount of interest. Some of the participants who exchanged their Bank shares for cash received cash based on the appraised value of the Bank stock at the time of termination ($12.75 per share), while others received less than $12.75 per share.

In light of the Bank's mishandling of the ESOP termination, the U.S. Department of Labor (DOL) brought an ERISA enforcement action against the ESOP and four ESOP trustees. The DOL's claims for relief included a claim that the ESOP failed to liquidate and distribute the Bank shares as cash upon termination of the ESOP. Based on the evidence and arguments presented at trial, the court held that the defendants violated ERISA and were therefore jointly and severally liable to pay principal and interest to the ESOP participants in an amount exceeding $700,000 as damages for their failure to liquidate and distribute bank shares held by the ESOP as cash in accordance with the terms of the ESOP. In support of that holding, the court ruled that the losses suffered by the individual ESOP participants should be deemed "losses to the Plan," and that the facts clearly provided a basis "to impose joint and several liability on all four individual fiduciary defendants." The defendants, in response to the DOL assertions, argued, in part, that certain participants had been "happy" to sell their Bank shares for less than the appraised value of $12.75 per share. The court specifically rejected that argument by stating that "[h]appiness is not a recognized exception to the plain terms of an ERISA plan, and defendants

failed to provide any basis in the case law or statute that would excuse compliance on that ground." The court also determined that the defendants also were jointly and severally liable to pay to the ESOP an additional amount approaching $160,000 for amounts that were improperly transferred from the ESOP to the Bank.

While the problems with the management of this ESOP termination may seem relatively obvious to many familiar with the operation of qualified retirement plans, this case serves as a good reminder that basic steps like understanding and following the terms of a plan document, and seeking the advice of knowledgeable advisors, can be important to avoiding missteps in the operation or termination of a plan. *Perez v. California Pacific Bank* (N.D. Cal. 2016)