

# COMPANY OWNER FOUND PERSONALLY LIABLE FOR UNPAID CONTRIBUTIONS TO UNION BENEFIT FUNDS

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**Practices & Industries**

Employee Benefits

A woodworking company in the Bronx participated in union benefit plans (the “Funds”). Following a series of audits and an arbitration, it was determined that company employees performed covered work during relevant audit periods but the company made no contributions for those periods. The company’s owner disputed the dollar amount of the contribution shortfall, but agreed that the company had not paid any portion of the relevant contribution delinquencies. In connection with the audits and arbitration, the company owner acknowledged that he was the “only person currently or previously employed or engaged by [the company] who has or had authority to withdraw funds...from one or more of [the company’s] bank accounts,” and that he used company funds “to pay parties other than the Funds; his own personal expenses; and undocumented immigrant employees.” Following the company’s filing for bankruptcy protection, the Funds commenced a lawsuit against the company’s owner in which it alleged a breach of fiduciary duties under the Employee Retirement Income Security Act of 1974 (“ERISA”).

The significant issues considered by the federal district court, as it ruled on the parties’ cross-motions for partial summary judgment, were whether the company’s unpaid contributions constitute plan assets of the Funds, and whether the company’s owner exercised sufficient control over those plan assets to make him an ERISA fiduciary. While some federal courts have found that unpaid plan contributions are not plan assets, the court in this instance ruled that the unambiguous language found in the Funds’ trust agreements “clearly demonstrates the parties’ contractual agreement that any unpaid [company] contributions constitute plan assets.” Because the company’s owner had exclusive control over the withdrawal of funds from the company’s bank accounts, the court also ruled that the company owner “possessed sufficient discretionary ‘authority or control over the management of ...plan assets’” to be an ERISA fiduciary with respect to the Funds. And because the company’s owner used the “plan assets” that were within his control “for other purposes than to make [the company’s] requisite contributions to the Funds,” the court concluded that he breached his ERISA fiduciary duties which made him personally liable for those contributions. *Trustees of N.Y. City District Council of Carpenters Pension Fund v. Nguyen*, SDNY 2017.