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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Contractor Sued Over Employee Stock Deal Led By Now-Felon

By **Shayna Posses**

Law360 (May 10, 2018, 7:18 PM EDT) -- A government contractor that runs youth job-training centers was hit with a proposed class action in California federal court Wednesday accusing it of shorting employees through an unfair stock sale to an employee ownership plan that was implemented by a trustee who later pled guilty to stealing from other plans.

Adams and Associates Inc. violated the Employee Retirement Income Security Act with a September 2012 transaction that made the company employee-owned but not in the workers' best interests, employees Carol Foster and Theo Foreman claim, saying the plan paid more than the stock was worth and the deal was guided by a man who is now in jail for stealing from other employee stock ownership plans, or ESOPs.

"As a result of violations of ERISA's fiduciary rules by the fiduciaries entrusted with their plan, plaintiffs and the class have not received all of the hard-earned retirement benefits or the loyal and prudent management of the ESOP to which they are entitled," the complaint says.

Adams and Associates began in 1990 as a small family-owned business that operated job-training centers for young people under contracts provided by the U.S. Department of Labor's Job Corps program, the suit says.

The program's bidding process is competitive, and making it harder still, the department sets aside some of the contracts for small businesses, the employees say. As a result, the company's financial success largely depended on its ability to qualify as a small business for bidding purposes, according to the complaint.

In 2012, it became clear that Adams and Associates either no longer qualified or would stop qualifying soon, leaving two Job Corps contracts that were up for renewal in jeopardy and putting a substantial part of the company's business at risk, the suit says.

That, in part, is how the ESOP came to be, the employees say. The Adams family mistakenly thought that being an ESOP-owned company would allow it to compete for Job Corps contracts designated for small business, a belief that "has not proven correct and was not reasonable at the time," according to the complaint.

The ESOP bought the Adams family's stock in September 2012 for \$33.5 million, but in the end the company lost the two contracts anyway, the suit says. The market value of the stock tumbled to \$6.25 million by the end of the year and has stayed far below the purchase price since, according to the complaint.

Clearly, the employees claim, the transaction price was based on unrealistic financial projections that could have been avoided had a prudent fiduciary conducted an appropriate investigation. At the very least, the dramatic decline in value of the stock after the transaction should have prompted a probe into whether the ESOP had paid a fair price, but that didn't happen, the suit says.

Part of the problem was the company's choice of Alan Weissman as trustee for the ESOP, the employees contend. Had the directors done their due diligence, they would have chosen differently,

they say, noting that Weissman had been sued in 2012 for allegedly embezzling almost \$400,000 from an ESOP.

The allegations against Weissman continued to pile up, with the DOL alerting Adams and Associates of an investigation into his dealings in 2014 and his ultimate indictment in 2016, the complaint says. In the end, he pled guilty in March 2017 to embezzling nearly \$788,000 in ERISA plan funds and is in the midst of serving a 30-month prison sentence, according to the suit.

Yet, in an effort to avoid generating suspicion about the September 2012 sale, Adams and Associates and its directors never disclosed Weissman's criminal conduct to the ESOP participants, the complaint contends.

All in all, the conduct of Adams and Associates and its directors violated ERISA, the employees say, asking to represent a proposed class of all vested participants in the ESOP from September 2012 onward, as well as their beneficiaries. They seek to restore losses to the plan and disgorge any profits gained through the use of plan assets, among other sorts of equitable and remedial relief.

Representatives for the parties didn't immediately return requests for comment Thursday.

The employees are represented by Daniel Feinberg of Feinberg Jackson Worthman & Wasow LLP, and R. Joseph Barton of Block & Leviton LLP.

Counsel information for Adams and Associates, its directors and Weissman wasn't immediately available Thursday.

The case is Foster et al. v. Adams and Associates Inc. et al., case number 3:18-cv-02723, in the U.S. District Court for the Northern District of California.

--Editing by Adam LoBelia.

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