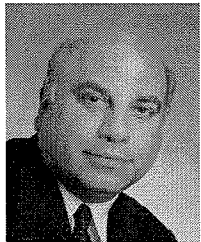


MORE NEWS



Lou DiLorenzo

Faithless Servant

Our firm, Bond Schoeneck & King, recently won a complete legal victory for our client William Floyd Union Free School District in an action against its former assistant superintendent and its former treasurer under the little known doctrine of "faithless servant." New York Courts adhere to the "faithless servant" doctrine in

which employees who have engaged in acts of disloyalty towards their employers may be required to return or abandon claim to employment compensation received during the period of disloyalty.

Both employees plead guilty to various counts of grand larceny, including embezzling money from the school district. The school district sought to **recover** the money stolen by the defendants and any deferred compensation paid to the defendants in retirement. The essence of the first cause of action was that the employees breached their fiduciary duty to the district by "committing egregious acts of disloyalty, disobedience, fraud and other misconduct" entitling the district to recover all compensation paid and benefits conferred. In the second cause of action, the district sought a declaratory judgment under the **faithless servant doctrine** that it would **not have to continue to pay** the defendants any deferred compensation benefits, health, life and dental insurance premiums, pursuant to employment and post employment contracts "based upon their materially disloyal and egregious conduct."

The Supreme Court noted the record had "clearly and unequivocally" established the defendants were guilty of stealing and laundering school district monies. "It is a well established principle under New York law," stated the court, "that an agent is obligated to be loyal to his employer and is prohibited from acting in any manner inconsistent with this agency or trust and is at all times bound to exercise the utmost good faith and loyalty in the performance of his duties." New York law regarding disloyal or faithless performance of employment duties, which has been developed over a century, allows the principal to recover "from its unfaithful agent any commission paid," and "an employer is entitled to the return of any compensation that was paid to the employee during the period of his disloyalty." The court found that the "calculated larcenous conduct" warranted the forfeiture "of any and all obligations by the plaintiff school district for payments to them with respect to live, health, dental and any other insurance for a period of ten years." However, the Appellate Division, did not agree in limiting the defendant's forfeiture of insurance benefits to a period of ten years. It found "[w]here, as here, defendants engaged in repeated acts of disloyalty, complete and permanent forfeiture of compensation, deferred or otherwise, is warranted under the faithless servant doctrine." The New York faithless servant doctrine can be a powerful weapon in the hands of a wronged employer. As seen in this case, proof that an agent or employee has been

disloyal and acted against an employer's interest, means that the employee must return not only illegal profits, but also any compensation earned since the time of the misconduct.

Be Careful Out There!

¹ Mr. DiLorenzo is a senior partner at Bond, Schoeneck & King, PLLC, Chair of its Labor & Employment, Employee Benefits & Executive Compensation and Immigration Practice Group. He is also Managing Partner of the Firm's New York City and Long Island Offices. He divides his time between the Syracuse and New York City offices.