One-Time Crusader Breaks Bad

By Editor Test *Tue, Apr 17, 2012*

Matthew Hutcheson, who portrayed himself as a champion of fuduciary responsibility, was indicted by a federal grand jury last week in Boise, Idaho, on charges of stealing millions of dollars from a multi-employer retirement plan of which he was the trustee.

Matthew Hutcheson always said he wanted to establish a new standard of conduct for retirement plan fiduciaries. If he's guilty of the crimes with which he was charged last week, he has succeeded in setting a new low for fiduciary behavior, not a new high.

On April 11, a federal grand jury in Boise, Idaho, indicted Hutcheson, 41, on 17 counts of wire fraud and 14 counts of theft from the employee pension plans for which he was the trustee and fiduciary. The alleged theft involved more than $5 million. The FBI and local officers arrested Hutcheson at his home in Eagle, Idaho, the following day.

Hutcheson's attorney, Dennis Charney, told an AP reporter that his client wasn't stealing the retirement plan assets, he was investing them, and the investments hadn't panned out. "As a fund manager, he has full discretion to make investments," Charney said. "Sometimes those investments turn out positive and sometimes negative. There is no fund manager out there who hasn't made an investment that didn't go south."

Hutcheson, who had testified before Congress on fiduciary matters and created a training program for would-be fiduciaries, was widely known in the retirement industry. After the indictment was announced, a chain of comments about the case appeared on the LinkedIn 401(k) discussion group. One person speculated that Hutcheson's contradictory behavior might be a sign of manic-depressive illness. Others were simply angry. Several participants noted that Hutcheson had been trustee of a MEP, or multi-employer plan, and some speculated that the presence of so many "eggs in one basket" might have facilitated the alleged fraud.

Readers of this publication may remember our profile of Hutcheson in 2010. While describing his very public campaign to improve fiduciary conduct, we observed that he seemed to be promoting himself and his own business interests as he promoted higher fiduciary standards. He was described by one interviewee as him as a "polarizing" figure in the retirement industry, and the story noted that he didn't appear to have graduated from college.

The indictment charges that Hutcheson used millions of dollars in retirement savings for opportunistic real estate investments and to buy personal items, including motorcycles and luxury automobiles:

> From January 2010 through December 2010, Hutcheson allegedly misappropriated approximately $2,031,688 of G Fid Plan assets for his personal use. On twelve occasions, Hutcheson directed the G Fid Plan record keeper to effect wire transfers of plan assets from the G Fid Plan account at Charles Schwab to bank accounts controlled by Hutcheson and to other bank accounts for his personal benefit.

> The indictment alleges that Hutcheson used these assets to extensively renovate his personal residence, to repay personal loans, to purchase luxury automobiles, motorcycles, all-terrain vehicles, and a tractor, and for other personal expenses. When G Fid Plan clients, plan record keepers, and others requested information about the location and status of the plan assets, Hutcheson allegedly misrepresented that they were safely invested.
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> Additionally, according to the indictment, from January 2010 through December 2010, Hutcheson is alleged to have misappropriated approximately $3,276,000 of RSPT Plan assets to pursue the purchase of the Tamarack Resort in Donnelly, Idaho, on behalf of a limited liability corporation he controlled, called Green Valley Holdings, LLC. In December 2010, Hutcheson directed the RSPT Plan record keeper to effect a wire transfer of approximately $3 million from the RSPT Plan to an escrow account for the benefit of Green Valley Holdings, LLC. Hutcheson directed the RSPT Plan record keeper to describe the transaction in plan records as an investment in a fixed income bank note. In reality, Hutcheson used the $3 million to purchase a bank note secured by a majority interest in the Osprey Meadows Golf Course and Lodge at the Tamarack Resort in the name of Green Valley Holdings (not the RSPT Plan).

The indictment contains a forfeiture allegation seeking approximately $5,307,688, or substitute assets, including property, valued at this amount. Each count of wire fraud is punishable by up to 20 years in prison, a maximum fine of $250,000 or twice the gain or loss from the offense, and up to three years of supervised release.

Each count of theft from an employee pension benefit plan is punishable by up to five years in prison, a maximum fine of $250,000 or twice the gain or loss from the offense, and up to three years of supervised release.

“Legal aspects aside, this story makes me very sad,” wrote one member of the LinkedIn 401(k) discussion group, where a long chain of comments about Hutcheson’s indictment appeared in recent days. “ Of course, for the plan participants and those in charge of the plan, who were so terribly wronged.

“But I’m also sad for Matt’s young family, and for our industry as a whole. This puts a black eye on it, in the estimation of many people, and that bothers me a lot. I am proud to be associated with the people and companies in the business of retirement plans, who for the most part, have high ideals–at least in my opinion.

“Matt showed so much promise and had such a high degree of respect among his peers. It is just very sad that at some point along the way, it appears that he abandoned his ‘protect the participants at all costs’ viewpoint in favor of his own goals and ego.”