

Second Circuit Holds that Money Purchase Plan Must Pay Benefits Even if Plan Erroneously Overpaid Account to Ex-Spouse under QDRO

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An orthopedic surgeon participated in two plans, a profit sharing plan ("PSP") and a money purchase plan ("MPP"). When he divorced, the terms of the qualified domestic relations order (QDRO) provided that his ex-wife was entitled to half of his account in the PSP, and a fixed amount of \$47,358 from the MPP. Due to a clerical error, the third party service provider transferred half of his account in both plans to his ex-wife, resulting in an overpayment of approximately \$764,000. When he discovered the error, the participant sued the MPP seeking to recover the funds erroneously removed from his account with interest. The U.S. federal district court entered a \$1,571,723.73 judgment against the MPP which included lost earnings. It also entered judgment against the ex-wife to repay the MPP for the same amount. The U.S. Court of Appeals for the Second Circuit held that ERISA's prohibition on alienation does not impair a plan's ability to pay its own debts, and that participants in a defined contribution plan bear the risk of gains and losses, including the risk of loss in litigation. The MPP was ordered to pay the participant the rest of the value of his account as if the QDRO had been administered correctly with earnings. *Milgram v. The Orthopedic Associates Defined Contribution Pension Plan*, No. 10-1862-cv (2d Cir. Nov. 29, 2011).