

Legal Brief

The Scope of Fiduciary Duty



In prior articles, we have written about the fiduciary status and responsibilities of business owners. Partners owe fiduciary duties to one another. Corporate officers and directors owe fiduciary duties to their company. Controlling shareholders owe fiduciary duties to minority shareholders. Likewise, members/owners of limited liability companies (LLCs) and limited liability partnerships (LLPs) owe fiduciary responsibilities to one another.

However, fiduciary status reaches far beyond simple business ownership. As early as the 15th century, the Court of Chancery in England was issuing decisions that attempted to apply ethics and conscience to disputes between individuals. These decisions evolved into the concept of a fiduciary position. Thus, over the centuries, certain titled positions have been recognized as undoubtedly involving fiduciary responsibilities: trustees are fiduciaries, so are guardians, executors, and attorneys (including non-professionals who accept responsibilities under a simple "Power of Attorney"). However, these are not the only positions in which fiduciary responsibilities might arise. The essential character of a fiduciary is that of a person who undertakes to act on behalf of another in a particular matter in which there is a relationship of trust and confidence between the parties. There is no requirement that the parties declare or document that their relationship involves a fiduciary responsibility.

Thus, in *Spratlin, Harrington & Thomas, Inc. v. Hawn*, 156 S.E. 2d 402 (Ga. App. 1967), Hawn hired Spratlin to act as a mortgage broker for a development of a large shopping mall in Atlanta. Spratlin was to be paid a \$50,000 fee for securing a loan

of \$10 million. A loan commitment for financing the development was obtained with Spratlin assisting Hawn in negotiating terms of the loan. Shortly before construction was to commence, Hawn announced that he would not be using the construction financing obtained by Spratlin. Spratlin sued for the \$50,000 fee and asserted that it had fulfilled its contractual obligations by providing a loan commitment.

Hawn argued that Spratlin, as an agent acting on his behalf, was a fiduciary. The court agreed and, unfortunately for Spratlin, the evidence demonstrated that Spratlin also negotiated a fee from the mortgage lender and had not revealed this information to Hawn. The Georgia Court of Appeals noted that dual agency is not improper per se. However, an agent such as Spratlin owed a duty of loyal adherence to Hawn's interest. The secret fee arrangement with the mortgage lender amounted to a breach of Spratlin's fiduciary obligations to Hawn and barred Spratlin from recovering any commission.

The case of *Sears Roebuck & Co. v. American Plumbing & Supply Co.*, 19 F.R.D. 334 (E.D. Wis. 1956) demonstrates how an employee can be a fiduciary, and how third parties can suffer legal consequences from the breach of a fiduciary duty. Sears employed a Mr. Stockwell as a purchasing agent for plumbing supplies. Stockwell arranged to purchase supplies from American Plumbing, not because of the price or the quality of goods, but because American Plumbing agreed to pay Stockwell a kickback. The federal district court that was handling the matter noted that Mr. Stockwell, as purchasing agent for Sears, owed

a duty of loyalty to his employer, which was breached in his affairs with American Plumbing. Further, it noted that American Plumbing could be held liable for aiding and abetting Stockwell's breach of his fiduciary duty.

Again, no document or title is required to establish fiduciary status. It is doubtful that Mr. Stockwell or American Plumbing pondered whether Stockwell was a fiduciary as they negotiated their kickback arrangement. The point is that fiduciary status, and the accompanying legal responsibilities, can arise in some not-so-obvious scenarios. Ultimately, fiduciary responsibility simply involves the concept that a person is in a position of trust and confidence and is acting on behalf of another. From those simple circumstances, significant legal responsibilities and potential liabilities arise.

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