

Legal Brief

The Employee as Fiduciary



In our last article, we wrote about examples of fiduciary duties arising in not-so-obvious scenarios. The article included reference to at least one case in which an employee was found to have violated his fiduciary obligation to his employer by taking a kickback. Several readers expressed surprise at the proposition that the law perceives that an employee may owe a duty of loyalty to the employer. Perhaps this reaction arises from the fact that there are so many governmental regulations concerning employees that the relationship between worker and employer sometimes seems adversarial. Regardless of this point, the law generally views corporate employees as agents and, as such, they owe a fiduciary duty to the corporation.

A frequently cited case demonstrating the rule of employee loyalty is *Beatty v. Guggenheim Exploration Company*, 223 N.Y. 294, 119 N.E. 575 (1918). In 1905, Guggenheim employed a mining engineer by the name of Beatty. Guggenheim sent Beatty to Alaska to investigate mining properties on which Guggenheim held an option to purchase. While on the assignment, Beatty entered into a complicated transaction in which he acquired, for his own benefit, an interest in other mining properties adjacent to the ones on which Guggenheim had an option. In fact, owning the properties in which Beatty acquired an interest would have enhanced Guggenheim's mining of the properties it had under option.

On Beatty's recommendation, Guggenheim ultimately acquired the properties it had under option. Guggenheim then learned that Beatty had acquired the adjacent properties for his own account. Ultimately, Beatty was forced to surrender his interests in the surrounding properties to his

employer at cost. This is the same type of remedy that would be imposed on any other type of fiduciary (trustee, partner or corporate officer). The New York Court of Appeals, in deciding the case, stated succinctly:

An agent is held to the utmost good faith in this dealings with his principal; if he acts adversely to his employer in any part of the transaction or omits to disclose any interest which would naturally influence his employer's conduct in dealing with the subject of employment, it is such a fraud upon his employer as forfeits any right to compensation for his services.

Beatty, 223 N.Y. at 304.

Likewise, in *General Automotive Mfg. Co. v. Singer*, 19 Wis.2d 528, 120 N.W. 2d 659 (1963) the plaintiff was engaged in machine shop operations and had about five employees. The defendant, Mr. Singer, was hired as an employee by General Automotive because of his well-known skills in machining difficult parts. However, during the course of his employment, Mr. Singer diverted certain customer orders to competitors of General Automotive and took a fee from these competitors.

Once Singer's scheme was discovered, the courts took little time to impose a remedy in favor of General Automotive. The Wisconsin Supreme Court noted:

In this capacity he [Singer] was Automotive's agent and owed a fiduciary duty to it. ... Under his fiduciary duty to Automotive, Singer was bound to the exercise of the utmost good faith and loyalty so that he did not act adversely to the interests of Automotive by serving or acquiring any private interests of his own. ... If Singer violated his duty to Automotive by engaging in certain

business activities in which he received a secret profit, he must account to Automotive for the amounts he illegally received.

General Automotive,
19 Wis.2d at 533.

Thus, it is clear that employees have a duty of loyalty and if they act adversely to the employer, they breach their fiduciary duty. It should be noted, however, that employment relationships can be structured in a variety of ways. An employer may agree to engage a worker, but still allow the worker to conduct business on his or her own behalf. This expansion of the employee's rights necessarily restricts the fiduciary duties that the employee would owe to the employer. However, the fundamental point is that, unless otherwise altered, the relationship of employer and employee involves an agency and the fundamental fiduciary responsibility of loyalty to the employer.

For more information on fiduciary responsibility, contact W. Patrick Delaney at MacDonald, Illig, Jones and Britton LLP at 814/870-7658 or pdelaney@mijb.com.

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