The Salt Lake Tribune

Draper man indicted for $24M missing from retirement accounts

BY TOM HARVEY

THE SALT LAKE TRIBUNE

PUBLISHED: FEBRUARY 25, 2015 10:46PM

UPDATED: FEBRUARY 25, 2015 10:24PM

A former winner of a Utah “Best of State” award was charged with fraud Wednesday for allegedly concealing the theft of $24 million from account holders who put retirement funds into his Riverton company, American Pension Services.

Curtis L. DeYoung, of Draper, was indicted Wednesday by a federal grand jury on 15 charges of mail fraud, each carrying a possible 20-year prison term. A summons will be issued for DeYoung, 58, to appear in court, according to a spokeswoman for the U.S. attorney for Utah.

DeYoung came under criminal investigation by the FBI after he and his company were sued by the Securities and Exchange Commission in April 2014. The SEC complaint cited millions of dollars missing from accounts of people who had used APS to hold their Individual Retirement Accounts and 401(k)s while they direct their own investments. Such an arrangement gives account holders much broader investing options for their funds than if they were held in regular accounts.

DeYoung used the monies for investments with friends — most of which failed — personal expenses, loans and high salaries, according to court documents.

SEC attorney Dan Wadley has said that the agency started looking into the company after noticing APS’ involvement in funneling funds into other alleged investment frauds.

In a proposed settlement with the SEC, DeYoung admitted to taking $19 million, an amount below a $20 million threshold that, under federal guidelines, could cause several years to be added to any prison sentence. The indictment, however, says DeYoung illegally appropriated more than $24 million from accounts where money was only to be disbursed with written instructions from the owners.

American Pension Services won a “Best of State” award in 2013 in the Business Services category, according to a news release in which DeYoung was quoted as saying it was a “tremendous honor to be considered among Utah’s best.”

DeYoung became a partner in the business in January 1983 with Jerry Burnett, who had begun operating APS the previous year. DeYoung took sole control of the business in April 1983 and discovered that Burnett had misappropriated monies from an account to pay for his own lifestyle.

Burnett was convicted of eight counts of theft from APS for writing checks that totaled $13,543 from a trust account, according to a 1985 Utah Supreme Court decision. The conviction was reversed when the court found that the prosecution had provided evidence that Burnett had stolen from third-party investors, not APS itself.

Beginning in January 2000, DeYoung himself began to take funds out of client accounts, according to court records. To conceal his efforts, he allegedly created false account statements, with inflated balances, for all APS customers — actions that led to the mail-fraud charges.

In October 2009, DeYoung added a bookkeeping entry in APS records for $24.78 million to conceal the missing funds, according to the indictment. But he also needed to keep bringing in new customers in order to have sufficient funds to make APS appear solvent.

DeYoung touted his company in appearances on CNBC's "Power Lunch" and in stories in the Wall Street Journal, Personal Real Estate Investor Magazine and other publications, according to company news releases.

In Personal Real Estate Investor Magazine, DeYoung wrote, according to a news release, "Because self-direction is a specialized area of the retirement industry, it is important you select an administrator with a long track record, and a penchant for efficiency and excellent customer service. I would caution that while cost is an important consideration, it is more important that your administrator be capable of providing the expertise and service you will ultimately require for successful self-direction."

APS' court-appointed receiver, Los Angeles attorney Diane Thompson, also has sued DeYoung and his wife, Michelle, saying they benefited from high salaries, funds put into retirement accounts and loans from the company even as it was insolvent.

Thompson has proposed selling APS accounts to another administrator of self-directed accounts. She also is proposing that 10 percent of monies be held back from all accounts until the case is resolved, but she estimates APS clients will ultimately end up losing around 6 percent of their funds.

The proposed settlement with Curtis DeYoung awaits final approval by the SEC, and then must also get the OK from U.S. District Judge Robert Shelby.

Shelby also has been assigned to preside over the DeYoung criminal case.

Michelle DeYoung filed for divorce from her husband in late 2014, and she and three daughters then sought to intervene in the SEC case to argue that she was entitled to some of the company assets. Shelby, however, recently denied that request, though he said she could file a similar motion in the separate lawsuit against her and her husband.

tharvey@sltrib.com
