
**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA : Hon. Joseph A. Dickson
 : :
 : Mag. No. 18-6696 (JAD)
 : :
 : :
HOWARD PRESCHHEL : **CRIMINAL COMPLAINT**
 : :
 : :

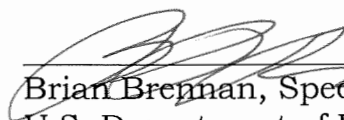
I, Brian Brennan, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with the U.S. Department of Labor, Office of Inspector General and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached pages and made a part hereof.




Brian Brennan, Special Agent
U.S. Department of Labor
Office of Inspector General

Sworn to before me and subscribed
in my presence,

September 28, 2018
Date

Honorable Joseph A. Dickson
United States Magistrate Judge
Name and Title of Judicial Officer

at Essex County, New Jersey
County and State



Signature of Judicial Officer

ATTACHMENT A

COUNT ONE

(Embezzlement from an Employee Benefit Plan)

From on or about September 2013 through on or about April 2018, in the District of New Jersey, and elsewhere, the defendant,

HOWARD PRESCHER,

did embezzle, steal, and unlawfully and willfully abstract and convert to his own use and the use of others, in the approximate amount of \$186,123.93, the moneys, funds, securities, premiums, credits, property and other assets of CMG Vending, Inc. Pension Trust, an employee pension benefit plan, subject to title I of the Employee Retirement Income Security Act of 1974 and of a fund connected with such plan.

In violation of Title 18, United States Code, Section 664.

COUNT TWO

(Failure to File the Annual Report for an Employee Benefit Plan)

From on or about January 1, 2016 and on or about July 29, 2016, in the District of New Jersey, and elsewhere, the defendant,

HOWARD PRESCHER,

did knowingly and willfully fail to file the annual report for the CMG Vending, Inc. Pension Trust for the calendar year 2015, which report was required to be filed by the Plan administrator with the Secretary of Labor, pursuant to title I of the Employee Retirement Income Security Act of 1974 and of a fund connected with such plan.

In violation of Title 29, United States Code, Section 1131.

ATTACHMENT B

I, Brian Brennan, am an agent with the U.S. Department of Labor, Office of Inspector General. I am fully familiar with the facts set forth herein based on my own investigation, my conversations with other law enforcement officers, and my review of reports, documents, and items of evidence. Where statements of others are related herein, they are related in substance and part. Because this complaint is being submitted for a limited purpose, I have not set forth each and every fact that I know concerning this investigation. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

Introduction

1. At all times relevant to this Complaint:
 - a. Defendant HOWARD PRESCHER was a resident of Bergen County, New Jersey.
 - b. CMG Vending, Incorporated ("CMG") was a business that operated, leased, and rented vending machines throughout New Jersey and New York.
 - c. On or about December 28, 1990, CMG established and thereafter maintained the CMG Vending Inc. Pension Trust ("the Pension Trust"), an employee pension benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Sections 1001-1145. The Pension Trust was intended to provide retirement benefits to employees and was revised on or about December 28, 2011 and again on or about April 25, 2012.
 - d. The Pension Trust was to be fully funded by CMG.
 - e. The Pension Trust was a defined benefit plan subject to Title I of ERISA, a type of plan whereby CMG agreed to make monetary contributions on an annual basis into the Pension Trust. Said monetary contributions were to be determined by an actuarial calculation based on the Employee's earnings history, tenure of service, and age, rather than depending on investment returns.
 - f. Employees of CMG were covered under the Pension Trust if they were employed by CMG in any capacity. Employees became partially vested after two years of service and fully vested after six years of service. An eligible participant was

permitted to collect retirement benefits under the trust at the age of 65.

- g. The Pension Trust maintained a bank account in New Jersey, and defendant HOWARD PRESCHEL was a signatory on this account (the "Pension Trust Bank Account"). The money in the Pension Trust Bank Account was property of the Pension Trust, and any contributions made into the Pension Trust Bank Account by CMG constituted property of the Pension Trust.
- h. The Pension Trust also maintained two brokerage accounts in New Jersey, and defendant HOWARD PRESCHEL was a signatory on these accounts (the "Pension Trust Brokerage Account-1" and the "Pension Trust Brokerage Account-2"). The money in the Pension Trust Brokerage Accounts was property of the Pension Trust, and any contributions made into the Pension Trust Brokerage Account by CMG constituted property of the Pension Trust.
- i. From at least in or around 2011, HOWARD PRESCHEL served as the sole Trustee of the Pension Trust. HOWARD PRESCHEL was also an employee-beneficiary of the Pension Trust.
- j. Defendant HOWARD PRESCHEL, on behalf of the Pension Trust, was a person required to publish and file annual reports with the Secretary of Labor on behalf of the Pension Trust within 210 days after the close of the Plan year pursuant to the provisions of title I of the Employee Retirement Income Security Act, 29, United States Code, Sections 1023 and 1024.
- k. Because the Plan was organized under ERISA, it was subject to statutory and regulatory restrictions. As the Trustee and administrator to the Pension Trust, defendant HOWARD PRESCHEL, under Title 29, United States Code, Section 1104 of ERISA, was a fiduciary and required to act solely in the interest of the Pension Trust's participants and beneficiaries for the exclusive purpose of providing benefits to such individuals with the care, skill, prudence and diligence of a prudent person under the circumstances, and in accordance with the Pension Trust governing documents, including its trust agreement. Furthermore, under Title 29, United States Code, Section 1106(b) of ERISA, defendant HOWARD PRESCHEL was prohibited from dealing with the assets of the Pension Trust in his own interest or for his own account.

- l. The Trust Agreement for the Pension Trust mirrored the language of the ERISA statute and also required that the Trustee “adhere at all times to the fiduciary standards established by ERISA.” In particular, the Pension Trust required that the Trustee discharge his duties solely in the interests of Participants and Beneficiaries and, in accordance with the requirements of ERISA Section 404(a)(1)(B), “with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent man acting in a like capacity and familiar with such matters would use in conducting an enterprise with like character and like aims.”
- m. Among other limitations, money, once contributed to the Plan, could not be taken out except for specifically enumerated purposes.
- n. As of the date of this Criminal Complaint, the Pension Trust had approximately 18 participants or beneficiaries; however, only approximately 3 individuals were eligible to collect benefits under the trust. Defendant HOWARD PRESCHEL, who was born in 1956, is a participant of the Pension Trust; however, he is not currently eligible to collect any benefits under the trust because he is not age 65.
- o. “Employee-1” was employed by CMG and had access to the bookkeeping records of CMG from at least in or around September 2013 through in or around May 2015.
- p. “Bank-1” was a commercial bank with branch offices in New Jersey. Bank-1 held money of the Pension Trust in the Pension Trust Bank Account.
- q. “Attorney-1” was an attorney employed by Bank-1 and received various deposits into his trust account on behalf of Bank-1.
- r. “Brokerage Firm-1” was a financial services firm with branch offices in New Jersey. Brokerage Firm-1 held money of the Pension Trust in Pension Trust Brokerage Account-1

The Embezzlement Scheme

2. From at least in or around October 2013, contrary to his fiduciary duties and in violation of the restrictions of the use of funds in the Plan, defendant HOWARD PRESCHER embezzled approximately \$186,123.93, from the Pension Trust and converted the money for his personal use or benefit and for the use or benefit of others, as described in Paragraphs 3 through 12 below.

3. On or about the dates set forth in the chart below, defendant HOWARD PRESCHER issued Pension Trust checks, drawn on the Pension Trust Bank Account, made payable to himself or to cash, which checks he then endorsed.

<u>Date</u>	<u>Payor</u>	<u>Payee</u>	<u>Check Amount</u>	<u>Pension Trust Account</u>
10/15/13	CMG Vending Inc. Pension Trust	Howard Preschel	\$ 20,000.00	Bank-1
01/31/14	CMG Vending Inc. Pension Trust	Cash (endorsed by Howard Preschel)	\$ 900.00	Bank-1
08/22/14	CMG Vending Inc. Pension Trust	Cash (endorsed by Howard Preschel)	\$ 3,100.00	Bank-1

4. On or about the date set forth in the chart below, defendant HOWARD PRESCHER issued a Pension Trust check, drawn on the Pension Trust Bank Account, made payable to a third party for debts incurred by CMG, not debts incurred by the Pension Trust.

<u>Date</u>	<u>Payor</u>	<u>Payee</u>	<u>Check Amount</u>	<u>Pension Trust Account</u>
10/15/13	CMG Vending Inc. Pension Trust	Dept. of Treasury - US	\$ 11,037.00	Bank-1

5. On or about the dates set forth in the chart below, defendant HOWARD PRESCHER issued a Pension Trust check, drawn on the Pension Trust Bank Account, made payable to CMG.

<u>Date</u>	<u>Payor</u>	<u>Payee</u>	<u>Check Amount</u>	<u>Pension Trust Account</u>
03/05/14	CMG Vending Inc. Pension Trust	CMG Vending	\$ 2,000.00	Bank-1

6. On or about the dates set forth in the chart below, defendant HOWARD PRESCHER transferred money from the Pension Trust Bank Account to the CMG Vending Operating Account at Bank-1.

<u>Date</u>	<u>Payor</u>	<u>Recipient</u>	<u>Transfer Amount</u>	<u>Pension Trust Account</u>
11/01/13	CMG Vending Inc. Pension Trust	CMG Vending Operating Account	\$ 2,250.00	Bank-1
02/25/14	CMG Vending Inc. Pension Trust	CMG Vending Operating Account	\$ 3,250.00	Bank-1
08/22/14	CMG Vending Inc. Pension Trust	CMG Vending Operating Account	\$ 3,000.00	Bank-1

7. On or about the date set forth in the chart below, defendant HOWARD PRESCHER transferred money from the Pension Trust Bank Account to HOWARD PRESCHER's personal account at Bank-1.

<u>Date</u>	<u>Payor</u>	<u>Recipient</u>	<u>Transfer Amount</u>	<u>Pension Trust Account</u>
08/25/14	CMG Vending Inc. Pension Trust	Howard Preschel Personal Account	\$ 3,800.00	Bank-1

8. On or about the date set forth in the chart below, defendant HOWARD PRESCHER transferred money from the Pension Trust Bank Account to Attorney-1 for debts incurred by CMG, not debts incurred by the Pension Trust.

<u>Date</u>	<u>Payor</u>	<u>Recipient</u>	<u>Transfer Amount</u>	<u>Pension Trust Account</u>
05/15/15	CMG Vending Inc. Pension Trust	Attorney-1	\$ 136,786.93	Brokerage Firm-1

9. By in or about the end of 2015, as a result of the withdrawals and /or transfers listed above, the balance of the Pension Trust held at Bank-1 was \$0.02.
10. On or about October 15, 2013, HOWARD PRESCHER filed a Form 5500-SF for calendar year 2011. In this filing, HOWARD PRESCHER was listed as the plan administrator and/or employer and/or the plan sponsor for the Pension Trust. Said filing was the last 5500 form HOWARD PRESCHER filed on behalf of the Pension Trust.
11. In order to conceal the ongoing embezzlement, HOWARD PRESCHER failed to inform employees that insufficient funds were being forwarded to the Plan, failed to distribute the Annual Funding Notice to participants in the Plan, and failed to file required Forms 5500 annual reports for the Plan with the Department of Labor.
12. In or around October 2013, the Annual Funding Notice was sent to the Pension Trust and HOWARD PRESCHER. When Employee #1 asked HOWARD PRESCHER if Employee #1 could distribute the Annual Funding Notice and its related documents to the other employees of CMG, HOWARD PRESCHER instructed Employee #1 not to distribute said documents. HOWARD PRESCHER stated that he did not want any of the employees of CMG knowing anything about the pension plan. HOWARD PRESCHER advised Employee #1 that the Plan was his money and that anything the employees would receive was a gift.