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Anxiety spreads among benefits firm's clients Floodgates open for suits against Dickson company

By JANELL ROSS
Staff Writer

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September should have been a good month for Barry Stokes, president and CEO of 1Point Solutions.

The 1Point offices in Dickson are dark and locked since the benefits manager's 70 employees were laid off last week. LAVONDIA MAJORS / FOR THE TENNESSEAN

His Dickson-based benefits management company had a client base of public agencies and private-sector companies that spanned the country. Through them, 1Point provided retirement savings, flexible spending

and other accounts for thousands of employees. And, 1Point was scheduled to receive a Nashville Area Chamber of Commerce award reserved for fast-growing Middle Tennessee companies.

But a string of lawsuits filed in Nashville's federal court in the past 11 days and corporate records filed at the Tennessee secretary of state's office have made public a portrait of a company that, clients fear, is headed toward implosion.

"Is the company still operational? It appears to be," said Elliot Warner Jones, one of two Nashville attorneys hired last week to represent 1Point. Jones and attorney Kevin Sharp stressed in an interview late last week that they represent 1Point, not Stokes.

"We are really trying to get up to speed, trying to understand what has happened here. This situation, it's volatile, in the sense that it is changing almost by the hour."

Stokes could not be reached in repeated attempts by The Tennessean. An e-mail to The Tennessean from the marketing department of 1Point Solutions included a statement that it attributed to Stokes. The statement said, "We are in the process of formulating a legal response at this time."

Stokes did not attend last week's chamber banquet at which his company won an award. A Texas-based attorney, Paul Buchanan, who filed a motion to delay until Monday a deposition of Stokes, could not be reached for comment.

How 1Point's woes began

The situation began to unfold in early September.

On Sept. 6, an attorney for Beck/Arnley Worldparts, a thermostatic device manufacturer with operations in Smyrna, sent a letter to Stokes and 1Point. The letter demanded immediate transfer of the \$7 million in that company's employee 401(k) account, according to court documents filed by Beck/Arnley.

About 120 current and former Beck/Arnley employees participate in the plan. The company had decided to find a replacement for 1Point after employees began to complain that spouses invested in the same retirement funds received different reports about their returns. Others said payouts from the company 401(k) fund had been slow, according to court documents filed by Beck/Arnley.

Two days later, Beck/Arnley's attorney, Andy Jacobs, got a call from Thomas Dundon. Dundon told Jacobs that he represented both Stokes and 1Point and then shared some startling news, according to court documents. "Mr. Dundon advised that all the assets in the Beck/Arnley 401(k) plan were gone. He reported that his clients had invested the money in failed business ventures. He also represented that the money was not likely to be recoverable."

Dundon confirmed his comments in an e-mail sent to Jacobs on Sept. 12, but objected to one thing. "... The only part of your email that I would modify is the evaluation of the chances of restitution," Dundon wrote in the e-mail, which was included in court documents. "It is the company's intention and expectation to make restitution if it can remain financially viable. Tom."

Dundon told The Tennessean late last week that he no longer represents Stokes or the company.

On Sept. 13, Beck/Arnley filed suit against "1Point Solutions, LLC and Barry Stokes," alleging that 1Point and Stokes "engaged in a deliberate course of conduct to misappropriate Plan assets to their own use and purpose."

"Through no fault of their own, 120 hard-working people that built 401(k) nest eggs now face the Enron-like and sobering possibility of having nothing for their retirement," according to the suit.

One employee had as much as \$400,000 in retirement savings in the account, an official with the company later said.

Only one 1Point left

The Tennessee secretary of state's office shows that five corporations with variations on the 1Point name have been registered in Tennessee between 2000 and 2005. All but one have been dissolved or had their status revoked by either the secretary of state's office or the Tennessee Department of Revenue for failure to pay franchise tax, file franchise/excise tax returns or file required annual reports.

As of Friday, only "1Point Solutions LLC" remained an active corporation.

Early last week, it was media reports of Beck/Arnley's lawsuit that sparked more action.

On Monday, officials with two other 1Point customers, Nashville's Metro government and Mastrapasqua Asset Management, a local investment firm, visited 1Point's South Main Street offices in Dickson.

"From what I have been told, Mr. Stokes possibly had not been there for several days," said Dorothy Berry, director of human resources for Metro government.

About the same time, officials at Rhode Island-based Reliance Worldwide and its subsidiary, Cash Acme, began to check the status of retirement funds that Cash Acme had placed in 1Point's care — a 401(k) plan that covered 72 employees.

In that company's lawsuit filed Tuesday, it said the bank where 1Point claimed to have deposited Cash Acme's 401(k) money informed company officials that it had no such account established.

Cash Acme, with a plant in Alabama, manufactures pressure, thermostatic and temperature valves for the plumbing and heating industry.

By Tuesday, both Beck/Arnley and Cash Acme had won temporary restraining orders freezing 1Point's and Stokes' personal bank accounts.

Also Tuesday, Kurtis J. Winstead, the registered agent on all of the Tennessee companies that include the words 1Point, filed a letter with the Tennessee secretary of state's office, resigning from "1Point Solutions, LLC."

That night, Tonya Coleman went to a pharmacy in the Louisiana suburb where she lives. She needed to pick up a medication refill that helps to keep her thyroid condition in check. When the pharmacist swiped the 1Point debit card associated with a flexible spending account her husband established as an IT worker for the state of Louisiana, the card was declined.

"I was kind of surprised but I said, 'Just try it again. I know there is money on there because it comes straight out of my husband's check every two weeks.' "

Flexible spending accounts such as the one Coleman uses to pay her prescription are made up of pretax dollars deducted from an employee's pay. They are typically used to cover costs such as deductibles and co-pays that are not covered by health insurance. Another type of flexible spending account can be used by working parents for child-care expenses.

"She swiped that card a few times," Coleman said about the pharmacist. "Finally, we had to give up, so I paid for my (prescription) out of my pocket."

Employees with two other 1Point customers, Memphis Light Gas & Water and Knox County Schools, reported similar problems with their accounts beginning Tuesday.

Knox schools spokesman Russ Oaks said the district was following the situation closely and would do whatever necessary to protect its employees' money. By Wednesday, the state of Louisiana, which has a flexible spending account contract with 1Point covering about 3,000 employees, began to look into its accounts.

Metro drops 1Point, too

By Thursday, Metro government and school officials had decided to drop 1Point as their flexible spending account administrator. Metro government officials said late last week that they had not determined whether money was missing.

Also on Thursday, Nashville-based Mastrapasqua As-set Management filed a lawsuit against 1Point alleging that \$796,988 in 401(k) and employee profit-sharing funds was missing. Mastrapasqua officials learned that their company's 401(k) account was completely depleted after one employee leaving the firm was paid only about half of his expected \$230,000 payoff from his retirement fund, according to the suit.

The company's lawsuit also alleged that 12 deposits that 1Point reported it had made into a Mastrapasqua 401(k) fund were never made.

Thursday also brought new troubles for 1Point employees.

Dickson Chamber of Commerce President and CEO David Hamilton said he met Thursday morning with Stokes, who told him that he had laid off his employees but promised to pay them through the remainder of the month.

Hamilton estimated that 1Point had about 70 employees. By midmorning Thursday, the company's offices were dark and locked.

Friday brought yet another lawsuit against 1Point.

Nashville law firm Colbert & Winstead filed a federal suit alleging that an unspecified amount of money from its employee 401(k) fund was missing and that employees had experienced difficulty being reimbursed by 1Point for child-care costs through their flexible spending accounts.

Colbert & Winstead decided to hire a company to replace 1Point in May. The new benefits manager said that when it attempted to collect the law firm's collective 401(k) balance in June, Stokes said that he would need until the end of September to comply. Stokes also told Colbert & Winstead officials that it would be wise to transfer the funds around that same time, according to the law firm's suit.

When law firm staff read media reports about other federal suits filed against 1Point, Colbert & Winstead officials began, unsuccessfully, to try to contact Stokes, the firm said.

By Friday, the state Department of Commerce and Insurance issued a statement saying it was looking into the matter to determine the extent of its jurisdiction. The U.S. Department of Labor may have primary jurisdiction if the activities involve self-funded benefits, the state agency said.

The situation described in the lawsuits filed in Nashville is relatively rare, said Mark Johnson, a Texas attorney who has been an expert witness in lawsuits involving retirement savings. Most employees and employers find themselves at odds with benefits administrators for bad management or investment choices, not theft, he said.

Most companies maintain a variety of insurance policies to protect them from theft and other problems, said David Wray, president of Profit Sharing/401k Council of America, an organization of corporate plan sponsors based in Chicago.

Before distributions can be made of any missing monies, however, the judicial and insurance processes must play out, Wray said. That can be a particular burden for employees at retirement age, he said.

"In terms of recovery of assets, it's important that there is a criminal prosecution," Wray said. "If the allegations in the (cases) turn out to be true, other people who have perpetuated similar frauds have gone to jail." •

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