

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

CIVIL ACTION NO. 5:12-cv-186 (LEAD), 3:14-CV-504 (CONSOLIDATED)

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

ERIC APPELBAUM,)

Defendant.)

CLAUDIA APPELBAUM,)

Plaintiff,)

v.)

THE UNITED STATES OF AMERICA)

Defendant.)

ORDER

The parties dispute whether Eric Appelbaum was an officer of Warde Electric Contracting, Inc. In reviewing the parties’ submissions, the Court takes notice of the consent judgment in the action Chao v. Eric Appelbaum, et al. (Doc. 30-16). The Court notes that Defendant Eric Appelbaum, in his consent judgment, admitted the allegations set forth in the Secretary’s Complaint. See id. ¶ 6. The Complaint is already in the record at Plaintiff’s Exhibit 12 (Doc. 30-14). Pertinent to the Court’s analysis is Paragraph 9, which states that “at all times relevant to the allegations herein, defendant Eric Appelbaum was an owner and officer in the Plans’ sponsors, Warde Electric Contracting Inc. and L.A.B. Electric Sales Corp.” (Doc. 30-14, at ¶ 9). The allegations in the Secretary’s Complaint appear to encompass the time period at

issue in the instant case. (Id. at ¶ 25, referring to the period of January 1, 1992 to December 31, 2001).

The Court would like the parties to address whether or not the allegations that were admitted in the prior Department of Labor case are admissible in the instant case. For example, is Appelbaum's admission that he was an officer admissible in the instant case? The Court directs the parties to Rule 408 of the Federal Rules of Evidence and the Court's prior decision in *Smith v. Waverly Partners, et. al.*, No. 3:10-cv-28, 2012 WL 4086774 (W.D.N.C. Sept. 17, 2012).

IT IS, THEREFORE, ORDERED THAT the parties address the aforementioned issue in a filing with the Court by no later than Wednesday, September 30, 2015.

Signed: September 22, 2015



Richard L. Voorhees
United States District Judge

