

One Fall To A TPA's Finish

Hidden Fees, Fake Plan Audits, and The Greatest 401(k) TPA Scandal You Have Never Heard About It Until Now.

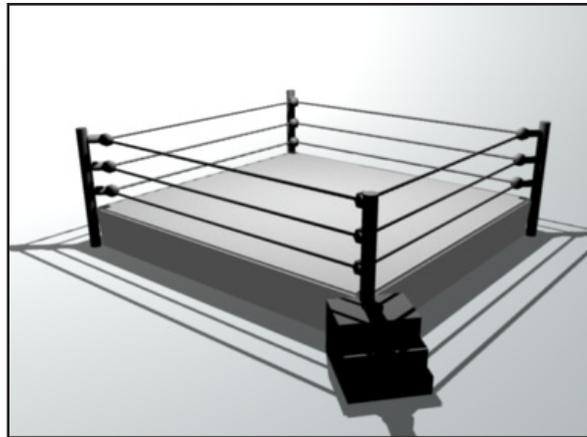
By Ary Rosenbaum, Esq.

To understand a person's viewpoint, one often has to look at that person's background and experience. My views on fee disclosure, the need for independence between a third party administrator (TPA) and an investment advisor, and the need for annual reviews for retirement plans stems from my experience as the former Director of ERISA Legal Services at a company formerly known as Geller Group. As many of you know, Geller Group was merged into another related TPA because of an ongoing civil and criminal investigation by the Department of Labor. The Geller name had to be retired because in the 401(k) industry, the name stands for hidden fees, fake retirement plan audits, and poor administration.

If you Google the name Geller Group, you will see the articles detailing the tragic events of how two men destroyed a 25 year reputation in the industry by putting their greedy needs ahead of the needs of their clients and employees. For purposes of this article, we will call these men Tilden and Maury. The names have been changed to protect their guilt and because since I left Geller Group in 2007, they have tried to destroy my career on a number of occasions because of my outspoken criticism of their business practices. They need no further recognition

It wasn't always like that. When I joined Geller in November 2002, I was very impressed by Tilden. As an attorney and certified public accountant, Tilden built a TPA from three employees to 70 employees in a short time. Tilden built an aura around him of professionalism and prestige. Unlike my previous employment, there was a dress code, plan documents were presented to clients in well bounded books, and these bosses were always on site in the morning. Their registered advisory practice also added another layer of interest because the idea of a one stop shop was of interest to me at that time.

When I first started there, I was hired as a staff attorney. There was also a paralegal named Walter and a senior attorney named Michael. Walter was very outspoken and made it clear to me that Tilden and Maury could not be trusted. I chalked up Walter's views to his gregarious behavior. Michael looked like he was 50 going on 70. His files and office looked like a hurricane hit them, he always looked overwhelmed.



Michael wasn't an employee of Geller, he was an independent contractor who was paid a third of what the legal department grossed. Sensing my competence and the fact that they only hired me for \$75,000, Maury and Tilden decided to end their relationship with Michael six weeks after I arrived. Since I was recently engaged, I thought this was going to be a tremendous financial opportunity as I was going to be promoted to Director of ERISA Legal Services and be responsible for supervising 750 plans. When Tilden told me of my promotion, he told me that he was bumping me up to \$80,000. I was shocked by the insignificant raise. I was later shocked when Walter told me that at the same time, his salary was cut from \$85,000 to \$75,000. Walter's salary was cut because they couldn't pay a paralegal more than the ERISA attorney! So Tilden and Maury not only saved hundreds of thousands of dollars by firing Mike, they pocketed an extra \$5,000 by promoting me. Needless

to say, my relationship with Tilden and Maury was never the same and I wanted to leave from that point forward.

The further I was there, the more it appeared that the professionalism and prestige that Tilden tried to heap on our company was just a façade. The organization suffered from a lack of leadership because Tilden was always selling and Maury was always checking his online stock portfolio. Maury started with Tilden from the beginning and his lack of competence was apparent. Tilden had a strange loyalty to Maury that I never understood and I still don't understand to this day. Maury was in charge of the day to day operations which included the administration of over 750 retirement plans. While the staff had a number of top notch administrators and a conversion specialist that I would recommend to any other TPA that would listen, there was no oversight and no training. Administrators who lacked experience had no one to turn to.

From what I understood, they used to have someone to turn to, a man by the name of Mike who had overseen Geller's transition to daily recordkeeping and was forced to leave because Maury thought that Mike was threatening Maury's spot as Tilden's partner. If Maury thought you were a threat to his spot, he'd make sure that Tilden know that you had to go. They always did end up going.

The lack of oversight was fully evident when an administrator was quickly dismissed. The reason for his dismissal was that he was caught by a plan custodian trying to transfer from a participant's account to his own individual retirement account (IRA). The only reason he was caught because he happened to get his own IRA account number wrong. This administrator was escorted offsite and never prosecuted because the last thing that Maury wanted was for everyone to know that there was no oversight or checks and balances to ensure that this type of fraud could not take place.

Half of my job was working on plan documentation and the other half was putting out fires caused by our administrators. While we had a couple of stars, it was fully evident that there was no interest in improving our administrative practices. Tilden never knew of the terrible work done in his name because he relied on Maury and Maury had no interest in letting Tilden know of his incompetence running the administration side of the business. Of course when Walter was laid off, my work doubled and my salary stayed the same.

When top salesman Richard Laurita (who I talked about in a previous article) joined the firm, there was a renewed push towards revenue sharing funds and how revenue sharing could help our competitive pricing. Rich was a godsend for the company because he opened up relationships with brokers and financial advisors nationwide. Previously, most of the business was when we were both TPA and RIA because we apparently had a reputation of stealing business from brokers and advisors who gave us business. Rich, an expert in revenue sharing let Tilden know of Fidelity's 251 program which offered more revenue sharing to TPA firms. So Tilden and Maury appointed one of our conversion specialists to move plans on the Fidelity 279 platform to 251. What I learned right before I left was that our clients were informed that we would be cutting our fees my making the conversion. What Tilden and Maury never told the clients was that through revenue sharing, they would be making more money in fees. There was no disclosure of revenue sharing fees to most clients and many clients were offered retail class shares when cheaper institutional shares were offered. What was thought as a one stop shop of retirement services appeared to be a giant skimming operation. When Geller was bought by a consolidator of investment advisor firms, Tilden was told after I left that he had to reveal revenue sharing. What Tilden did was ingenious, he let the clients know that he was now revealing a new fee called a custodial platform maintenance fee that revenue sharing was used to offset. So Tilden invented a fake fee to legitimize the pocketing of revenue sharing. The only caveat was that clients and their competitors now knew how expensive they really were. Tilden and Maury even switched our 401(k) plan from Fidelity to Nationwide to save on the premier pricing on Nationwide plans for their clients. Prohibited transaction, anyone?

In 2007, I was asked to read an agreement between the New York Attorney General's office and NYSUT regarding their ING 403(b) plan. I realized then that fee disclosure was the future and with the way Maury would run the business, we

would die. Coupled with Rich's illness and their apparent decision to fire him, as well as Maury intercepting my mail to dig up complaints about my work so Tilden would know, I quit because I knew we were going to be history in a matter of time.

What I never thought about then was that there was an accounting practice onsite that was doing retirement plan audits. When one of the partners of this accounting practice wanted out and the other partner was no longer going to be Tilden's father in law and partner in the



TPA business, one of Maury's CPA friends started a new firm to take over the auditing business. For plans that required audits, Tilden advertised this auditing practice because they could do independent audits for a fraction of what a large accounting firm would practice. What I learned later is that Tilden and Maury were the trustees of the accounting firm's 401(k) plan, they advertised the audit firm's practice on their website, and the accountants who did this audit work were on Geller's payroll. Also, I learned later that much of the audit work was done after the audit reports were sent to the client and one of the administrative staff might have forged the accountant's signature on audit reports that Maury reviewed and approved before being sent to the clients. When the Department of Labor closed down this accounting practice, they discovered that 85 plan audits were completed by three accountants which they believed is impossible. The problem with this situation is that audit reports required for plans with 100 or more participants need to be independent. What Tilden, Maury, and Maury's CPA pal was doing was fraud. The facts about this auditing practice and the fact that Tilden's father in law owned the predecessor accounting firm remain uncontroverted and unexplained.

Why would a legitimate TPA set up a non-legitimate auditing practice? The answer is clear, never. A proper plan audit could uncover hidden fees, poor administration, and faked discrimination tests. After I left in 2007, I was advised by one of our former administrators for one of the

biggest clients that they were pressured to fake testing results by Tilden and Maury. This administrator resigned shortly after.

When the story broke in February 2010, I was the only former employee willing to talk to reporters on the record. I wanted people to know that I was uncomfortable with their business practices and I left three years before they were being investigated. I felt that my job there did not mean that I was part of a criminal conspiracy that provided me no pecuniary benefit.

I have never seen a worse public relations handling of a scandal since Watergate. Rather than admitting to the overwhelming evidence, Tilden claimed there was no Department of Labor investigation and this was the work of a disgruntled former employee. Then Tilden admitted there was an investigation, but it was an old one and they would be cleared. Four months later, Tilden and Maury "retired." Their successor claimed that this retirement was in the works for four years even though Tilden and Maury gave employees four days notice of their "retirement". Now the word in October was that Geller Group was being absorbed into a sister TPA and the DOL investigation still continues. Again, the facts presented about the auditing practice remain uncontroverted and unexplained.

Year ago, Tilden claimed that at our holiday party that the party wasn't about Geller, it was about the Group. Having known of his business practices and how he treated his employees, it was never about the Group and was always about Tilden and Maury. Now you know why I have been a strong supporter of fee disclosure, annual retirement plan reviews, and the need for independence between an ERISA attorney, financial advisor, and TPA.

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