

Business ethics assignment

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This paper discusses in detail the issue of fiduciary responsibility. A fiduciary relationship describes an association in which an individual is vested with the obligation of caring for another person's rights or property. The fiduciary relationship is supposed to be a very special and confidential association where the fiduciary must be honor-bound to legally accomplish their duties and remain loyal to the grantor's trust in them (Breadboards & Independent Sector, 2003, p.). A great majority of the most important business discussions in the twenty first century business arena regard business ethics (Thereon, Belonged & Thereon, 201 1, p. 1). In recent days, however, there has occurred increased concern and criticism regarding the failure of accounting officials to act in an ethical and responsible manner. Lack of fiduciary responsibility in the field of accounting is commonly blamed on the failure of the accountancy field to consider public interest as well as the tendency by accounting professionals to act unethically.

This paper will scribe in detail the phenomenon of fiduciary responsibility in accounting. An explanation will be offered on how the issue has developed over time, and specific examples involving this ethical issue. After a brief explanation on what should be done regarding the issue, this paper will back up the recommended solutions with ethical concepts learned in the course. An explanation of at least one additional perspective on the issue will be offered. At the end of the paper will be a conclusive summary followed by a list of the references cited herein. Development of Fiduciary Responsibility

Over time the concept of fiduciary responsibility has developed. The concept of fiduciary responsibility in accounting has developed over the years to include the relationships that exist between professionals and their clients.

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Although the fiduciary responsibility or duty has conventionally been analyzed in trustee contexts which are characterized by trust deeds clearly outlining a trustee and the trustee's powers as well as their beneficiaries, the concept of fiduciary responsibility is currently applied in other contexts. The first extensions of fiduciary responsibility to other contexts were first defined in the British company law.

This law purports that the board of directors in any company have a fiduciary responsibility to act in good faith, and in the best interest of a company and its members. Although at times it is not possible to define the parameters that characterize fiduciary relationship the relationship (Maharani, Icemaker ; Sufferance's, 2010). Thereon, Belonged & Thereon (2011) assert that the importance and sanctity of fiduciary principles was first recognized in the year 1928 by Judge Benjamin Cardiac in his ruling in the *Marinara v. Salmon* case. Thereon, Belonged & Thereon (2011, p.) further state that " the modern definition of agent as a fiduciary was first rationalized and clarified as a legal doctrine in 1933". In the year 1993 the Delaware Supreme Court identified the harmony in the fiduciary relationship by describing the duties of a fiduciary (Thereon, Belonged & Thereon, 2011). Some of the identified duties include: good faith, practice of due care, engaging in full and fair disclosure as well as the duty of loyalty. This triad was reaffirmed by the same court in the years 2006 and 2010 (Thereon, Belonged & Thereon, 2011).

Fiduciary Responsibility The terminology " fiduciary' is derived from a Latin word which may be loosely translated to mean " faith" or " trust" in English. A fiduciary relationship describes an association in which an individual is

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vested with the obligation of caring for another person's rights or property (Thereon, Belonged & Thereon, 2011). It is noteworthy that fiduciary accounting is generally concerned with issues of personal representatives or/and trustees; this is regardless of the fact that at other times other fiduciaries may be involved (Passels-Med, 2004).

The person who is tasked with such a responsibility is commonly referred to as the fiduciary (Gaston-Lewis, 2011). The person who entrusts their assets to a fiduciary is known as a grantor. The fiduciary and remain loyal to the grantor's trust in them (Maharani, Icemaker ; Suffer-Landers, 2010). A fiduciary relationship is typified by the existence of special confidence between the fiduciary and grantor as well as the tendency by both parties to offer advice for each other's benefit.

Trusted accountants and legal representatives are amongst the most prevalent types of fiduciaries in the present day (Thereon, Belonged & Thereon, 2011). Responsible fiduciaries are expected to act in the best interests of their clients and offer the insight that is required for the legal transaction of business deals. The decisions made by fiduciaries must be aimed at safeguarding the client's assets and steering away from conflict of interest (Passels-Med, 2004). There are several features that make fiduciary accounting unique in regard to other forms of accounting (Gaston-Lewis, 2011).

The most significant feature is that fiduciary accounting is comprised of numerous laws, concepts and principles which may differ from one region to another (Thereon, Belonged ; Thereon, 2011). Another feature that sets

apart fiduciary accounting from other forms of accounting is the fact that a majority of fiduciary actions, particularly those which impact accounting, are regulated neither by the State nor federal legal decrees (Maharani, Icemaker ; Suffer-Landers, 2010). On the contrary the conduct of fiduciaries is controlled by the wishes of the grantor.

The grantor's wishes are usually expressed in their trust, will or any legally acceptable governmental instrument (Passels-Med, 2004). A fiduciary relationship may be describes as being either formal or informal (Gaston-Lewis, 201 1). Formal fiduciary relationships are those in which fiduciary responsibilities and duties are enforced by law (Thereon, Belonged & Thereon, 2011). Such fiduciary relationships include those between borrowers and lenders, attorneys and clients, financial advisers and client, trustees and beneficiary as well as principle and agent (for example and employer and employee).

Informal fiduciary relationships, on the other hand, occur in the absence of formal fiduciary relationships and emerge from the elites that characterize a relationship between the involved parties (Maharani, Icemaker & Suffer-Landers, 2010). Examples of informal fiduciary relationship include that arising from a long time personal friendship or an elongated business partnership. Case Examples Cases regarding the breach of fiduciary duty are not uncommon in the contemporary society.

However, in order for such a case to be successful the existence of a formal Or informal fiduciary relationship between involved parties must be established. In the year 2007 in Lee v. Hashes WALL 236899 case was heard.

Hashes had offered Lee “ friendly” advice regarding her divorce only to sue her in 2000 asking for of Lee’s marital estate worth \$ 140 million. The courts agreed that there was enough evidence of a fiduciary relationship (Maharani, Icemaker ; Suffer-Landers, 2010). Since the two had been friends and confidants for may years the court ruled that Hashes had contravened his fiduciary duty to Lee.

This is because the financial advisor in question had an elongated personal friendship with the plaintiff and had even spent a vacation together. There relationship was therefore a confident and trustful one. It is significant that in some cases for instance the Victoria Rae Ponderosa, Janis Claire Stark and Ray Todd Ponderosa v. Barbara Sharp Ponderosa 2014 case, courts refuse to acknowledge the claims of a fiduciary relationship based on the argument that a fiduciary relationship must obligate an individual to “ place someone else’s interest above their own” (Gaston-Lewis, 201 1).

Barrett (201 1) describes another case of fiduciary irresponsibility. In this case Wall-Mart Stores and a division of Bank of America (Merrill Lynch) were ordered by a Kansas federal court to remit \$13. Million in a 401 (k) fiduciary lawsuit. This case was filled by a Wall- Mart employee, Jeremy Braded, in the year 2008. Barrett (201 1) purports that the accusations stated in this lawsuit alleged that “ Wall-Mart-famous for using its size to squeeze suppliers to get the lowest possible price to pass onto customers-did nothing of the sort with mutual funds offered in its 401 (k) plan”.

The plaintiff claimed that the high retail fees meted out by the company’s mutual funds on its employees would greatly eat into the employees’ savings

for their retirement (Barrett, 2011). In addition to intervening in its fiduciary duties, Wall-Mart also infringed upon the federal legal decrees on pension. Personal Experience with Fiduciary Responsibility: I once had a personal experience regarding the issue of fiduciary responsibility. Although it is actually my friend's uncle who was actually involved in this case, it greatly affected her whole family.

A certain company approached a local bank for financing in order to obtain real property so that the company could build an international hotel. The company's attorney presented the bank authorities with all legal documents required, including a placement plan and appraisals. Despite the fact that these documents were perceived as being very confidential, the attorney did not ask for a confidentiality agreement as he trusted that nothing bad would happen (Maharani, Icemaker ; Suffer-Landers, 2010).

Later on, the firm failed to pay a purchase money mortgage and the property was foreclosed. The company then entered into a joint venture in order to come up with the funding required to restore the mortgage. This was however impossible since during the foreclosure exercise the property was purchased by a group. One of the members of this group, who is also my friend's uncle, was an outside director of the involved financial institution (Maharani, Kingmaker ; Suffer-Landers, 2010).

My friend's uncle and his colleagues resold the property and realized almost three million dollars in profit. When the involved company found out that my friend's uncle was one of the outside directors for the bank, it filed a lawsuit against the bank claiming that the bank had contravened its fiduciary

responsibility to it and that my friends uncle had acquired confidential information regarding the foreclosed property from the ann. (Thereon, Belonged ; Thereon, 2011).

A further claim was made that my friends uncle had obtained more information regarding the foreclosure from one of the parties in the company's joint venture. During this time my friend was devastated and actually thought that her uncle had broken the law and that he would end up in prison. The perception she had towards him was also adversely affected since she could not believe that her uncle was capable of being so unethical by taking advantage of his position and hurting others in such a cruel way.

Personal Opinion The rulings made by the trial court regarding the issue however rested my mind.

The trial court judged in favor of the bank where my uncle is an outside director. Upon appealing this decision, the Third District reiterated that there was no association between the bank and the company which could form the basis for a fiduciary relationship and thus fiduciary responsibility.