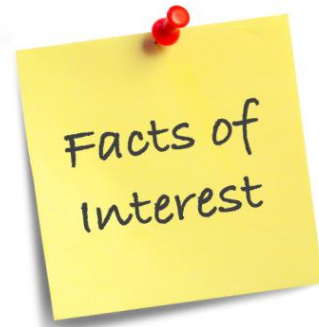




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## Ex-Wife Entitled to 401(k) Account Balance

### *Be Careful Out There*

February 14, 2014

No: 2014-04

**Even though an ex-wife waived her right to her now-deceased ex-husband's 401(k) plan savings, she is still entitled to the money, a federal judge in New Jersey has ruled.**

U.S. District Judge Robert B. Kugler for the District of New Jersey, in following a 2009 U.S. Supreme Court decision, ruled that the husband's old employer had to disburse the money according to the plan documents under which the ex-wife was the beneficiary.

In finding that Adele Kensinger was entitled to the money, Kugler pointed out that the Supreme court ruled that the Employee Retirement Income Security Act (ERISA) does not bar common law waivers but plan administrators are nevertheless bound by the plan documents if such waivers conflict.

Even if the property settlement agreement (PSA) constituted a valid waiver of Adele Kensinger's right to the 401(k) proceeds, the justices still had required the employer to transfer the proceeds according to the plan documents, Kugler said.

According to the decision, William and Adele Kensinger were married at the time that William Kensinger enrolled in his 401(k) plan and named Adele Kensinger as his beneficiary. The two subsequently divorced and executed a PSA in which they gave up their rights to any interest in the others' retirement accounts, but William Kensinger did not remove his ex-wife as the named beneficiary. He died in 2009, with an account balance of approximately \$57,000.

His estate argued that it was entitled to the funds.

The case is *In the Matter of the Estate of Kensinger*, D.N.J., No. 09-6510 (RBK/AMD).

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