

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DMITRY A. NOVIK,

Plaintiff,

v.

PRINCIPAL LIFE INSURANCE
COMPANY,

Defendant.

Civil Action No. 10-32 (CKK)

MEMORANDUM OPINION
(May 24, 2010)

Plaintiff, Dmitry A. Novik, proceeding *pro se*, filed the above-captioned suit against Defendant, Principal Life Insurance Company, seeking damages, interests, and court costs stemming from the alleged mismanagement of his 401(k) account. Plaintiff originally filed the action on October 29, 2009, in the Superior Court for the District of Columbia. Defendant subsequently removed the case to this Court on January 8, 2010, on the basis that Plaintiff's claims properly arise under the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.* See Def.'s Not. of Removal, Docket No. [1]. No objection to removal was made.

Accordingly, the Court held an Initial Scheduling Conference in this case on February 3, 2010, at which time Defendant advised the Court that it intended to file a motion to transfer this action to the Southern District of Iowa. Pursuant to the schedule agreed upon by the parties and adopted by the Court, as amended, Defendant filed its [15] Motion to Transfer on February 19, 2010. As set forth therein, Defendant represents that all of the events pertinent to Plaintiff's claim occurred in the Southern District of Iowa and virtually all of the potential witnesses with material information about Plaintiff's claim reside in or near Des Moines, Iowa. In addition,

Defendant represents that Plaintiff is a putative class member in *In re Principal U.S. Property Account Litigation*, Master File No. 09cv9889 (S.D.N.Y.), in which four plaintiffs represented by national class counsel allege breach of fiduciary duty claims relating to the very same conduct that is at issue in this case. The Court has recently been advised by Defendant that the Honorable Colleen McMahon, United States District Judge for the Southern District of New York, has ordered that the putative class action be transferred to the United States District Court for the Southern District of Iowa. *See* Notice, Docket No. [16]. Defendant indicates that Plaintiff's lawsuit, if transferred, will likely be consolidated with the putative class action claim.

Accordingly, Defendant asserts that transfer would permit Plaintiff, who is currently proceeding *pro se*, to benefit from counsel and would ensure that Defendant is not forced to defend the same claims concurrently in two forums, risking inconsistent adjudications. Defendant therefore seeks to transfer this case to the Southern District of Iowa pursuant to 28 U.S.C. § 1404(a), which provides that a court may transfer a case to any other district where it might have been brought “[f]or the convenience of parties and witnesses, in the interests of justice.”

Plaintiff's Opposition to Defendant's Motion to Transfer was due on or before May 17, 2010. *See* Feb. 3, 2010 Order, Docket No. [12]; Feb. 12, 2010 Order, Docket No. [14]. The Court specifically advised Plaintiff, at both the Initial Scheduling Conference and in its February 3, 2010 Scheduling Order, that “the failure to timely respond to the Motion to Transfer by May 17, 2010, may result in the Court treating the Motion to Transfer as ***conceded*** and granting the request to transfer this case to the Southern District of Iowa.” Feb. 3, 2010 Order at 2. Plaintiff failed to timely file a response to Defendant's Motion to Transfer by May 17, 2010, or at any time thereafter. Indeed, as of the date this Memorandum Opinion, the Court had not received any response from Plaintiff to Defendant's Motion. Accordingly, consistent with the Court's

February 3, 2010 Scheduling Order, the Court shall GRANT Defendant's [15] Motion to Transfer as conceded. This case is therefore transferred to the United States District Court for the Southern District of Iowa. An appropriate Order accompanies this Memorandum Opinion.

Date: May 24, 2010

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge