

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DISABILITY MANAGEMENT : 3:03cv1717 (WWE)
ALTERNATIVES, LLC, :
Plaintiff, :
v. :
MARY KAFKAS, :
Defendant :

RULING ON MOTION TO DISMISS,
OR IN THE ALTERNATIVE, TO TRANSFER

This is an action for a fiduciary's recovery of an overpayment of benefits under an employee welfare plan formed and administered pursuant to the Employment Retirement Income Security Act of 1974 ("ERISA"), codified at 29 U.S.C. §§ 1001-1461. The plaintiff asserts that the Court has jurisdiction under the provisions of 29 U.S.C. § 1132(d), and claims that Connecticut is the proper venue pursuant to 28 U.S.C. § 1391 and 29 U.S.C. § 1132(e)(2). At all times relevant to this action, the defendant worked in Brookfield, Wisconsin, for a firm that is incorporated in the state of New Jersey, until she became disabled and was no longer able to work.

Pending before the Court is the defendant's motion to dismiss the complaint on the basis of lack of subject matter jurisdiction and improper venue (Fed.R.Civ.P. 12(b)(2) and 12(b)(3)), or in the alternative, to transfer the action

pursuant to 28 U.S.C. §§ 1404 and 1406. The defendant's lengthy and concise analysis of the law applying to jurisdiction and venue is familiar and persuasive to the Court, and the Court concurs that, especially given that the defendant has never "set foot in Connecticut" or availed herself of the privileges of the state of Connecticut in any way, it has no personal jurisdiction over the defendant. The Court is not persuaded by the plaintiff's argument that the Court has jurisdiction simply because the ERISA plan was administered in the state of Connecticut, and that the breach occurred here. Furthermore, Connecticut is not the proper venue for this action, given the burden it would place on the defendant who is very ill, unemployed, and a resident of the state of Wisconsin. More importantly, the plaintiff has not responded in a timely fashion to the defendant's motion to dismiss, or to transfer, which the Court construes as lack of prosecution of this matter.

For the reasons set forth above, and in the interest of justice, the defendant's motion to dismiss (Doc. # 11) is hereby GRANTED. The motion to transfer is DENIED as moot. The Clerk is instructed to close this case.

SO ORDERED this 5th day of April, 2004, at Bridgeport, Connecticut.

WARREN W. EGINTON, Senior U.S. District Judge