

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

**MOHAMMAD HAMED, BY HIS
AUTHORIZED AGENT WALEED HAMED,**

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

**FATHI YUSUF AND UNITED
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

v.

**WALEED HAMED, WAHEED HAMED,
MUFEEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

**ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, PARTNERSHIP
DISSOLUTION, WIND UP, and
ACCOUNTING**

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter “Master”) on Hamed’s motion as to Hamed Claim No. H-9: John Gaffney’s salary, benefits and bonuses. United/Yusuf filed an opposition and Hamed filed a reply thereafter.

In his motion, Hamed argued that the Partnership’s share of accountant John Gaffney’s (hereinafter “Gaffney”) salary, benefits and bonuses (hereinafter “Benefits”) should be reduced:¹ (1) from 100% to 10% during the period from “October 7, 2012 to April 24, 2013”; (Motion, p. 1) and (2) from 100% to 50% during the period from “April 25, 2013² to the present.”³ (Id., at p. 6) Hamed pointed out that “[i]t is uncontested that in [Gaffney’s] 2013 testimony at the Preliminary Hearing” that: (i) Gaffney is not a certified public accountant in the U.S. Virgin Islands or elsewhere; (ii) Gaffney worked for United; (iii) Gaffney began his employment with United on October 7, 2012; and (iv) Gaffney did not receive a formal engagement letter with job duties. (Id., at p. 2) Hamed further pointed out that Gaffney testified at his April 3, 2014 deposition that “when he was hired and during his employment, United had unrelated, ‘non-grocery store’ operations and financial transactions—and that prior to April 2013, in addition to working on Partnership matters, he did the accounting for those totally separate United operations.” (Id., at p. 2-3) Moreover, Hamed also pointed out that “once the Partnership was split up, [Gaffney] then became the **full-time** comptroller for *United Corporation and New East*—totally separate entities that also had several other operations unrelated to the Partnership.” (Id., at p. 3) (Emphasis in original) Lastly, Hamed noted that

¹ The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (January 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed Claim H-9 falls within the scope of the Master’s report and recommendation given that Hamed Claim H-9 are alleged debts owed by United/Yusuf to the Partnership (or in other words, potential Partnership Assets).

² “April 25, 2013” presumably because April 25, 2013 was the date of the issuance of the Preliminary Injunction in *Hamed v. Yusuf, et al.*, Civil No. SX-12-CV-370.

³ “The present” presumably means July 31, 2016 because the Partnership’s share of Gaffney’s Benefits was reduced from 100% to 50% beginning August 1, 2016.

“there are no contemporaneous time sheets showing the division of his labor between these entities.” (Id.) As such, Hamed concluded that the Partnership’s share of Gaffney’s Benefits during the two aforementioned periods should be reduced to reflect the time Gaffney actually spent working for the Partnership. (Id., at p. 6)

In its opposition, United/Yusuf responded that: (1) Hamed omitted Gaffney’s testimony reflecting his extensive accounting background; (Opp., p. 3) and (2) Hamed mischaracterized Gaffney’s testimony that he did substantial work for United that is not related to the Partnership by omitting the fact that Gaffney treated United and the Partnership as one and the same at that time. (Id., at p. 4) United/Yusuf pointed out that “the Partnership operated under the umbrella of United for decades and even after the Partnership was declared by the Court, it continued to operate under that umbrella” and provided the example that “the two accounts that were opened by the Liq[uidating] Partner and the Master pursuant to the express term of the [Wind Up] Plan (the Claims Reserve Account and Liquidating Expenses Account) were set up under the name of ‘United Corporation Partnership.’” (Id.) United/Yusuf further pointed out that, as reflected in the declaration of Gaffney, dated December 27, 2017, “[f]rom April 25, 2013 through the end of 2015, substantially all of my working time was devoted to Partnership matters, which again included a small portion of my time devoted to matters involving the three jointly owned companies” and “[f]rom January through July of 2016, roughly 80% of my working time was devoted to Partnership matters or matters involving the jointly owned companies.” (Id., Exhibit C) Moreover, United/Yusuf also pointed out that “Gaffney was hired as an employee not as an outside consultant” and “[n]o employee of the Partnership was ever required to maintain contemporaneous time sheets, even though it was well know that members of both Partners’ families worked on non-partnership matters.” (Id., at p. 6) Lastly, United/Yusuf noted that after the disposition of the three Plaza Extra Stores on March 8, 2015 and April 30, 2015,

United provided Gaffney with a vehicle, copy machines, and other overhead items “all of which were used for the benefit of the Partnership without cost to the Partnership.”⁴ (Id., at p. 5) As such, United/Yusuf argued that the Master should deny Hamed’s motion to reduce the Partnership’s share of Gaffney’s Benefits from October 7, 2012 through July 31, 2016.

In his reply, Hamed pointed out that United failed to explain why Yusuf, United, and Seaside received free accounting services from Gaffney when the Partnership paid 100% of Gaffney’s Benefits from October 7, 2012 through July 31, 2016. (Reply, p. 2)

DISCUSSION⁵

The Master finds Hamed’s allegations to be unsupported by evidence. For example, Hamed alleged Yusuf, United, and Seaside received free accounting services from Gaffney from October 7, 2012 through July 31, 2016, but Hamed did not offer any support for these statements. Here, Yusuf, as the Liquidating Partner, with the approval of the Master, approved the Partnership’s payment of 100% of Gaffney’s Benefits from October 7, 2012 through July 31, 2016.⁶ Thus, without more, the Master must deny Hamed’s motion to reduce the Partnership’s share of Gaffney’s Benefits from October 7, 2012 through July 31, 2016.

⁴ United/Yusuf seems to imply that there should be an offset of the benefit provided to the Partnership at the expense of United—namely, the vehicle, copy machines, and other overhead items provided by United to Gaffney—against the benefit, if any, provided to United by Gaffney at the expense of the Partnership. Nevertheless, United/Yusuf did not develop or support their argument regarding this issue any further. As such, the Master will not address this issue.

⁵ While it appears that Hamed briefly questioned Gaffney’s qualification as an accountant in his motion, Gaffney’s qualification was not in dispute in this instance. Furthermore, the amount of salary, benefits and bonuses paid to Gaffney was also not in dispute. Hamed’s main argument is simply that the Partnership should not have paid for 100% of Gaffney’s Benefits from October 7, 2012 through July 31, 2017, and not that Gaffney was paid too much in salary, benefits and bonuses. Accordingly, the Master need not address Gaffney’s qualification nor the amount of Benefits paid to Gaffney.

⁶ Under Section 3 of the January 7, 2015 order, Yusuf’s rights and obligations, as the Liquidating Partner, relative to the winding up, is subject to the review of the Master, and that “[a]ll acts of the Liquidating Partner, except those customarily undertaken in the ordinary course of the ongoing business operations of the Partnership, are subject to the prior notification to and approval of the Master.” (January 7, 2015 order: Final Wind Up Plan)

CONCLUSION

Based on the foregoing, the Master will deny Hamed's motion to reduce the Partnership's share of Gaffney's Benefits from October 7, 2012 through July 31, 2016.

Accordingly, it is hereby:

ORDERED that Hamed's motion to reduce the Partnership's share of Gaffney's Benefits from October 7, 2012 through July 31, 2016 is **DENIED WITH PREJUDICE**.

DONE and so **ORDERED** this 13TH day of March, 2018.


EDGAR D. ROSS
Special Master