

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,
MUFEED 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-10: Mary Gonzales’ post-split bonus. United/Yusuf filed an opposition and Hamed filed a reply thereafter.

In his motion, Hamed argued that the Partnership should not have paid for Mary Gonzales’ (hereinafter “Gonzales”) bonus in the total amount of \$28,899.28 (hereinafter “Bonus”) because it was paid after the Partnership stores were split by the Court’s order.¹ Hamed pointed out that Gonzales elected to remain to work for Yusuf at the Plaza Extra-East store after the Partnership stores were split by the Court’s order. (Motion, p. 2) Hamed further pointed out that “[t]he Plaza East store was transferred to Yusuf on March 9, 2015” and that Gonzales retired in April 2015 when she was solely the employee of Yusuf and no longer an employee of the Partnership. (Id.) Moreover, Hamed also pointed out that “[t]he Hameds were not consulted” and that in fact, “Hameds paid such retirement benefits to the employees who went to the West store and subsequently retired.” (Id.) (Emphasis omitted). Thus, Hamed concluded that the Yusuf should have paid for Gonzales’ Bonus rather than the Partnership. (Id.) Alternatively, Hamed stated that “[t]he only other way to decide this is to follow the regular and ordinary accounting rules (GAAP) – as set out in [Hamed’s] Expert CPA’s report” which found that Gonzales’ Bonus “should be reimbursed to the Partnership.” (Id., at p. 3) As such, Hamed’s motion requested the Master to find that Gonzales’ Bonus was improperly paid by the Partnership and sought to have Yusuf

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-10 falls within the scope of the Master’s report and recommendation given that Hamed Claim H-10 are alleged debts owed by United/Yusuf to the Partnership (or in other words, potential Partnership Assets).

reimburse the Partnership in the total amount of \$28,899.28 plus interest at the statutory rate. (Id.)

In its opposition, United/Yusuf responded by pointing out that: (1) Gonzales began her employment at the Plaza Extra-East around 1991; (2) Gonzales' retirement was discussed at about the time Plaza Extra-East store was transferred on March 9, 2015, and her retirement became effective approximately three weeks later, on April 1, 2015; and (3) at the time of her retirement, Gonzales had put in approximately 24 years of service for the Partnership, which made her one of the longest serving employees (other than members of the Hamed and Yusuf families) in the history of the Partnership. (Opp., p. 2) United/Yusuf further pointed out that since "Gonzales spent 99.76% of her 24 years working for the [P]artnership and .24% of her period of employment working for Plaza Extra-East after its transfer" even if the Bonus "were allocated on this basis, \$69.35 would be payable by Yusuf and the remaining \$28,829.93 would be payable by the [P]artnership." (Id.) Moreover, United/Yusuf also pointed out that "Yusuf had the discretion as Liquidating Partner to determine the amount of Ms. Gonzales' bonus" and "Yusuf also had the discretion as Liquidating Partner to pay that amount from [P]artnership monies." (Id.) Thus, United/Yusuf concluded that [w]hile an abstract argument could be made for return of \$69.35 to the [P]artnership account, this amount is too trivial to justify any action by the Master other than a denial of both [Hamed's] Motion and the Claim." (Id.)

In his Reply, Hamed reiterated the fact that when Gonzales retired, she was solely and completely the employee of Yusuf, and as a result, Yusuf should have taken full legal and financial responsibility of Gonzales. (Reply, p. 2) Hamed also raised a series of rhetorical questions, such as, "if this bonus is subject to 'allocation' between the Partnership and the new employers based on percentages of time worked, does this mean every

employee who has retired or will retired should be paid, in part, from Partnership funds even though the stores were separated almost three years ago?”

DISCUSSION²

The Master finds Hamed’s arguments to be unpersuasive. Here, Yusuf, as the Liquidating Partner, approved the Partnership’s payment of Gonzales’ Bonus in the total amount of \$28,899.28.³ This was a specific decision made as to Gonzales based on her specific set of circumstances at the time of her retirement. This decision was not a broad sweeping decision to apply to every employee who has retired or will retire since the Liquidating Partner was only reviewing the facts regarding Gonzales’ retirement and such a determination was within his discretionary authority. Thus, without more, the Master must deny Hamed’s motion to find that Gonzales’ Bonus was improperly paid by the Partnership and to have Yusuf reimburse the Partnership in the total amount of \$28,899.28 plus interest at the statutory rate.

CONCLUSION

Based on the foregoing, the Master will deny Hamed’s motion. Accordingly, it is hereby:

ORDERED that Hamed’s motion to find that Gonzales’ Bonus was improperly paid by the Partnership and to have Yusuf reimburse the Partnership in the total amount of \$28,899.28 plus interest at the statutory rate is **DENIED WITH PREJUDICE**.

² The Court finds that the amount of Gonzales’ Bonus—\$28,829.93—was not in dispute in this instance. In fact, Hamed pointed out in his reply that “[t]he only question is who should pay for [Gonzales’ post-split bonus]—her then current employer or a former employer.” (Reply, p. 3) Accordingly, the Master need not address the amount of Gonzales’ Bonus.

³ 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)

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ORDER

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



EDGAR D. ROSS
Special Master