

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

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

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**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

**UNITED CORPORATION,** *Defendant.*

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**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

**FATHI YUSUF,** *Defendant/Plaintiff*

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vs.

**MOHAMMAD A. HAMED TRUST,** *et al,*

*Defendants.*

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**KAC357 Inc.,** *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP,**

*Defendant.*

**Case No.: SX-2012-CV-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

Consolidated with

**Case No.: SX-2014-CV-287**

Consolidated with

**Case No.: SX-2014-CV-278**

Consolidated with

**Case No.: ST-17-CV-384**

Consolidated with

**Case No.: ST-18-CV-219**

**HAMED'S PROPOSED FINDINGS OF FACT ANC CONCLUSIONS OF LAW  
RE HAMED'S CLAIM H-37:**

**\$186,819.33 CREDITED AS "DUE TO" YUSUF FROM PARTNERSHIP**

Hamed hereby files these proposed Findings of Fact and Conclusions of Law for Claim H-37 based on the evidence submitted at the Hearing held on December 6, 2022. All references to the exhibits are H-Ex \_\_ or Y-Ex-\_\_\_\_. All references to the Zoom Transcript of the December 6, 2022, hearing are "Tr. p. \_\_"

## **I. Proposed Findings of Fact**

Based on the evidence introduced at the Hearing, the following Findings of Fact are hereby made:

### **A. Introduction**

1. Claim H-37 seeks a credit of \$186,819.33 based upon a previous credit of said amount to Fathi Yusuf in the final partnership accounting, deemed to be a loan due to Fathi Yusuf by United Corporation. See H-Ex 1.
2. When an accounting for the Partnership was done on August 30, 2015, showing a balance owed Mohammed Hamed of \$183,381.91, the Parties expressly agreed that Hamed's objection to this credit of \$186,819.33 to Yusuf was preserved by Hamed so it could be challenged later. See Joint Motion for Final Judgment as to Claim H-37 (¶15 on p. 6) filed on August 17, 2022, signed by both Parties.<sup>1</sup>

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<sup>1</sup> That paragraph was in the section entitled "Facts submitted by Yusuf" and stated:

Attorney Holt marked three items in the Gaffney summary with the notation "1," "2," and "3" and the parties agreed that, with these three exceptions, the \$183,381.91 check represented a settlement of the debits and credits shown in that summary. By excepting those three items, Mohammed Hamed was reserving the right to challenge them in this litigation.

3. Consistent with this agreement, the language on the check for \$183,381.91 stating "Payment/IR Settlement 8/39/15" was stricken by Hamed's counsel before it was negotiated (initials "JHH"). H-Ex 1 (p. 2), Tr. p. 82.
4. As John Gaffney explained at the hearing, if the Special Master finds for Hamed on Claim H-37, then an amount equal to this payment of \$186,819.33 will need to be credited to Hamed. Tr. p. 82.

**B. The 2010-2012 Tax Returns**

5. The only known tax returns for United Corporation prior to this accounting in 2015 were the tax returns for 2002 to 2012, all signed by an officer of United Corporation. PEx-3 through PEx-13.
6. The credit of \$186,819.33 that is in dispute in Claim H-37 is found in Schedule L of the 2012 tax return for United Corporation on line 19 entitled "Loans from shareholders." See H-Ex 13 (Schedule L, line 19).
7. The tax returns for 2002 through 2010 were all filed on the same date, February 11, 2013. H-Ex 3 through H-Ex 11.
8. The tax returns for 2011 and 2012 were filed on May 13, 2013 and July 1, 2013, respectively. H-Ex 13, H-Ex 14.
9. Each tax return for 2002 through 2012 had a line 19 on Schedule L that showed "Loans from Shareholders" that were part of a summary exhibit that varied from a starting number of \$12,241 (H-Ex 3) to figures that ranged between \$600,00 and \$1,200,000 (H-Ex-14) to an ending figure of \$186,819 (H-Ex 13).

10. No "tax preparer" or accountant signed the line on the first page of these 2002 through 2010 tax returns for such persons who helped prepare the returns. H-Ex 3 through H-Ex 11, Tr. p. 55-56.
11. Each of these tax returns for 2002 through 2010 filed on February 11, 2013, contained this statement on the second page of each tax return (See H-Ex 3 through H-Ex 11):

Pursuant to the Plea Agreement entered in the Case of *U.S., et al. v. Fathi Yusuf, et al.* (1:05-cr-00015) in the District Court of the Virgin Islands, as incorporated in the closing agreement received by the Virgin Islands Bureau of Internal Revenue, the Taxpayer submits the attached information on Form 1120S.

The enclosed Form 1120S was prepared to the best of the Taxpayer's ability based on the available information. The United States Department of Justice, in the context of the referenced litigation, is in possession of substantial original documentation relating to certain taxable years that may be applicable to this Return as it relates to prior year carryovers, depreciation, amortization, and other issues.

The Department of Justice has assured the Taxpayer that it intends to release the information in the future, but that it is unable to release the information in time for this submission. The Taxpayer believes that to the best of its knowledge the information provided in this submission is complete under the circumstances.

12. John Gaffney testified that Joe DiRuzzo must have added this statement before filing these returns, as he had never used this language before. Tr. pp. 56-57.
13. Joe DiRuzzo was the criminal lawyer for United Corporation at the time he apparently added this clause, as he was trying to clear up all tax filings for United Corporation before the sentencing in the criminal tax fraud case, *United States of America v Fathi Yusuf, United Corporation et al*, STT District Court Crim, No. 05-0015. See, e.g., H-Ex 15.

14. Attorney DiRuzzo made it clear to the IRB that all payments were being made only for "members of the Yusuf family for taxes owed through 2002 through 2010" and were not being paid on behalf of the Hamed family, who were not to receive "any benefit or credit from that payment." HEx-15.
15. John Gaffney testified that the funds paid to resolve the tax issues (\$6.5 million) were paid on behalf of the Yusuf interests only. Tr. pp. 88-89.
16. The disclaimer regarding the verification of the figures included in the 2002-2010 tax returns was consistent with the prior statements of several accountants who have testified as experts in this case that United Corporation's financial records for this time period (and even before this date) were not properly maintained or capable of any proper accounting analysis. See, e.g., H-Ex 18 (BDO Report at pp. 20, 22), H-19 (David Jackson at p. 1, p. 4)
17. John Gaffney acknowledged under oath that "no audit trail exists to validate the transactions giving rise to this liability." H-Ex 16 at ¶15, Tr. p. 61.
18. However, John Gaffney did testify that it was proper for him to include this figure in the 2012 tax return since "accountants generally accept the validity of such items since they are reported on tax returns." H-Ex 16 at ¶15, Tr. p. 61.
19. Notwithstanding this practice, John Gaffney agreed that the figures listed for "Loans from shareholders" on line 19 of Schedule L of the 2002 tax return was based on loan transactions that took place in the "2002, 2003, 2004, 2005 time period" (Tr. p. 61), which he agreed was a carryover from old accounting records that could not be located. Tr. p. 63.

20. In short, John Gaffney, who made this entry in the 2012 tax return, agreed that it was accurate to state that there is “no record or knowledge” of how these loans from shareholders came into existence at that time. Tr. p. 77.

21. Indeed, he could not say whether Fathi Yusuf improperly included these entries into the shareholder accounts going back to 2002 (Tr. p. 78), nor has he ever seen a promissory note signed by United Corporation for any shareholder loan made by Fathi Yusuf.<sup>2</sup> Tr. p. 43.

22. In fact, when Fathi Yusuf was asked whether he recalled making any such loans in 2002, Yusuf could not recall ever making any such loans (Tr. p. 10), despite the fact that the 2002 tax return showed “Loan from shareholders” increasing from \$12,241 to \$705,633 in 2002. HEx-3 (Schedule L at line 19).

## **II. Proposed Conclusions of Law**

Based on the foregoing Findings of Fact, the following Conclusions of Law are hereby entered:

1. The figure of \$186,819.33 allocated as a loan due Fathi Yusuf has no audit trail that would validate the initial figures in the 2002 tax return that ultimately led to this calculation.
2. Even if such an audit trail could be reliably reconstructed, the amount would still be based on accounting matters that pre-date Judge Brady's “bar” date of

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<sup>2</sup> Yusuf objected to Hamed's submission of the grand jury testimony of United Corporation's former accountant, Pablo O'Neill, as well as the statements its former comptroller (as contained in his FBI interview), both of whom suggested Fathi Yusuf treated deposits as “loans from shareholder” on the corporation's books. Based on the findings made, there is no need to address those objections, as that proffered testimony is not being relied upon in making these findings.

September 17, 2006, for such claims. *Hamed v. Yusuf*, Order dated November 15, 2017 (Denial of Yusuf's Motion for Reconsideration, at p.2)

3. As for Yusuf's affirmative defenses of estoppel or waiver, alleging that Hamed is barred from contesting this amount since it was included in line 19 of Schedule L to United's 2012 tax return, Yusuf failed to meet its burden of proof on these affirmative defenses based on this evidence adduced at the hearing:

- The tax returns were all signed by an officer of United Corporation;
- No accountant or tax preparer for any Party, including the Hamed's, signed the tax returns;
- The tax returns were filed by Attorney DiRuzzo, the lawyer for United, after adding his own draft of a disclaimer of the figures in the returns;
- Attorney DiRuzzo made it clear to the IRB that all payments were only being made for the Yusuf interests and were specifically not being paid on behalf of the Hamed family, who were not to receive "any benefit or credit from that payment"; and
- John Gaffney testified that the funds paid to resolve the tax issues (\$6.5 million) were paid on behalf of the Yusuf interests only.

4. As such, Hamed's H-37 Claim is recognized as valid so that \$186,819.33 must be credited to Hamed's partnership account to offset this amount previously credited to Yusuf.

### **III. Conclusion**

For the reasons set forth herein, Claim H-37 is resolved by hereby crediting \$186,819.33 to Hamed's partnership account. Fees and pre-award interest, if any, will be decided when all accounting claims are final.

**Dated:** February 6, 2023

/s/ Joel H. Holt

**Joel H. Holt, Esq.**

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of February, 2023, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**

Special Master  
edgarrossjudge@hotmail.com

**Charlotte Perrell**

**Stefan Herpel**

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/s/ Joel H. Holt