

**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,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant/Plaintiff*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*

Defendants.

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 AND CONCLUSIONS OF LAW
RE CLAIM H-146: THE CREDIT CARD IMBALANCE**

Hamed files this proposed Findings of Fact and Conclusions of Law for his H-146 Claim based on the evidence submitted at the March 1, 2023, hearing. Exhibit references are the same as used at the hearing, with the Transcript referenced as “Tr.p. _.”

I. Preliminary Statement

Claim H-146 is a claim seeking reimbursement by Hamed of the credit card points earned by Fathi Yusuf and his family members (hereinafter “Yusuf”) on purchases made/expenses paid on behalf of the Partnership on their personal credit cards in excess of the credit card points earned by Mohammad Hamed and his family members (hereinafter “Hamed”) on purchases made/expenses paid on behalf of the Partnership on their personal credit cards. This claim covers the time period between January 1, 2013 and March 9, 2015 for the partnership stores, Plaza East, Plaza West and Plaza Tutu.

On November 22, 2022, the Special Master noted that the determination of what constitutes a partnership asset is a question of law for the Master to decide, holding on p. 17 of the Order:

Accordingly, the Master finds that the credit card points earned by the Yusufs and the Hameds on purchases made/expenses paid on behalf of the Partnership on their personal credit cards during the period of January 1, 2013 through March 9, 2015 **are Partnership assets and subject to equal distribution between the partners.** (Emphasis added)

However, the Order found that the amount of any such imbalance required a hearing, which was then held on March 1, 2023.

Thus, the only two issues left to address is the amount, if any, of the alleged imbalance for such points and the value per point.¹

¹ Testimony as to whose credit cards had higher limits, why it was beneficial for the business for family members to use their credit cards to buy items or pay for expenses

I. Proposed Findings of Fact

Based on the evidence introduced at the Hearing relevant to the amount of the credit-card imbalance between Yusuf and Hamed, the following Findings of Fact are hereby made:

1. Hamed called Bracey Alexander, its accounting expert, as its first witness. He discussed his credentials as a Certified Public Accountant who performs accounting functions for clients. Tr. p. 7.
2. Alexander identified the Expert Report he generated in 2016 for Hamed regarding the credit card imbalance issue, marked as H-Ex 1, which identified the task assigned to him, the work that he did and his expert conclusions.² Tr. pp. 7-9.
3. Alexander's report was limited to the Plaza East store, as those were the only records he received from John Gaffney. Tr. pp. 9-10.
4. Alexander reported that his review showed an imbalance of 16,849,384.60 in credit card points based upon reimbursements to Yusuf in excess of what Hamed received, which represented the amount of credit card points Yusuf received in excess of Hamed from the various credit card companies. Tr. pp. 9-10.
5. Alexander subsequently reviewed a 2022 discovery response from Yusuf with John Gaffney's analysis for the Plaza East store, marked as H-Ex 2, which clarified

for the business, etc. is not relevant to this inquiry since the November 22, 2022, Order already established that points earned on personal credit cards where the partnership reimbursed the payment to the individual are partnership property that must be split 50/50. Thus, no findings will be made regarding those issues, which are not relevant to whether an imbalance exists.

² All exhibits marked at the March 1st hearing were subsequently admitted into evidence.

how Gaffney had entered certain transactions into the store's accounting system.

Tr. pp. 11-12.

6. Based on that clarification, Alexander testified that his 2016 calculations should be reduced in half, leaving an imbalance for the Plaza East store of 8,424,962.30 in points for credit card reimbursements to Yusuf in excess of what Hamed received.
Tr. p. 12.
7. As Gaffney's 2023 analysis for the Plaza East store showed an amount that was still lower than the revised figure calculated by Alexander, he analyzed the support for Gaffney's calculations and identified a list of the items Gaffney either excluded or added that he had not excluded or added, marked as H-Ex 3. Tr. p. 13.
8. Alexander testified that the items on this list did not change his revised calculation of 8,424,962.30 points, as there was no acceptable explanation for why these items on H-Ex 3 should have been excluded or added. Tr. pp. 12-13.
9. Alexander then testified that his research in 2016 showed the value of these credit card points for this imbalance to be 2.5 cents per point in 2016, which was part of his Expert Report. Tr. p. 10.
10. Alexander also testified about repeating this research on that valuation just before the hearing, which showed a lower value for these points, which he testified was now 1.4 cents, as shown in H-Ex 4. Tr. pp. 13-14
11. Alexander testified that this difference was due to companies lowering the purchasing power of those points from 2016 to the present. Tr. pp. 14-15.

12. However, Alexander testified that he stood by his valuation of 2.5 cents that he did in 2016, as that is when this credit card imbalance was first determined based on the records provided to him by Gaffney for his review. Tr. p. 14.
13. Thus, Alexander testified that the credit card imbalance for the Plaza East Store was \$210,617.30 ($.025 \times 8,424,962.30 = \$210,617.30$). Tr. p. 15.
14. Alexander testified that he did not have any records from the Plaza West or Plaza Tutu stores, so he had to accept Gaffney's 2023 analysis in Ex H-2 for those stores, which shows an imbalance of 8,275,557.35 points for the Plaza West store. Tr. pp. 15-16.
15. Thus, the value of the imbalance at the West store, using the same calculation for East would be \$206,888.93 ($.025 \times 8,275,557.35 = \$206,888.93$)
16. Alexander noted that with no records were available to Gaffney to make this same determination for the Plaza Tutu store, as reflected on Ex H-2. Tr. p.16.
17. Mafi Hamed was then called as a witness for Hamed, testifying that Alexander was hired to look at the financial records to see if there was any imbalance between the credit cards points earned between the Yusuf and Hamed families, which he testified were equally split until Yusuf locked the Hameds out of the operation of the stores after litigation began. Tr. p. 26-27, 34.
18. Mafi Hamed identified the credit cards that Alexander had used but that Gaffney had excluded from his calculations on H-Ex 3, testifying that the BP, Citi and Discover cards all earned points, supporting Alexander's statement that no reason had been given by Gaffney for excluding these cards from the points imbalance calculation. Tr. p. 27.

19. Mafi Hamed then testified that the BJ Wholesale and Sam's Discover cards Gaffney had included as Hamed credit cards on Ex-H 3 were cards which gave the store points, not any Hamed, so they should not have been used by Gaffney in calculating any points attributable to Hamed, also supporting Alexander's statement that no explanation was given by Gaffney for including these cards in the Hamed column for the points imbalance calculation. Tr. p. 28.

20. John Gaffney, the Partnership Accountant, then testified on behalf of one of the Partners, Yusuf, explaining his role between 2013 and 2015 as the accountant familiar with the credit card issues, which involved certain Yusuf or Hamed family members using their credit cards to buy or pay items for the business, for which they were reimbursed. Tr. pp. 43-45.

21. Gaffney explained how he created voluminous spreadsheets for each credit card reimbursement, marked as Ex B-1, B-2 and B-3, to determine his calculation of the imbalance between the points earned for the Plaza East and Plaza West stores. Tr. pp. 48-56.

22. Gaffney noted that his calculations for the 2013-2015 time period showed a disparity between the points allocated to the Yusuf/Hamed families at these stores as follows (Tr. pp. 56-57):³

Plaza East:

- a. Total Credit Card Payments for Yusuf family members was \$8,081,771.12.
- b. Total Credit Card Payments for Hamed family members was \$6,375,102.62.

³ These are the same figures contained in H-Ex 2.

- c. Total Credit Card Payments for which it is unknown which family member's card was related was \$118,320.79.

Plaza West:

- a. Total Credit Card Payments for Yusuf family members was \$12,695,951.83.
- b. Total Credit Card Payments for Hamed family members was \$3,820,393.48.
- c. Total Credit Card Payments for which it is unknown which family member's card was related was \$1,754,350.08.

23. Gaffney testified that the total charges for the Plaza Tutu Store were \$10,142,701.73 but that no calculations for any credit card imbalance could be done for Plaza Tutu, as those accounting records did not capture the necessary information to distinguish between the reimbursed expenditures for the individual Hamed/Yusuf family members. Tr. pp. 58-59.

24. Gaffney also testified that he while he never did any formal calculations of the value of these points, he did do a calculation of the points used on American Airlines based on what he paid for tickets versus how many miles he needed to obtain the same ticket, which he said had a value of 1 cent. Tr. pp. 66-67.

25. On cross, Gaffney acknowledged that his calculation of 1 cent per point for American Airlines was only informal, which he did over the past two or three years (2020-2023) because he was curious, but he acknowledged that Alexander's research as to the current figure for the value of a point on American Airlines is 2.04 cents (H-Ex 4). Tr. pp. 74-75.

26. Gaffney also agreed that he made no such calculation for the point value in 2016, nor did he do any similar calculations for the value of points for any other credit card besides American Airlines. Tr. p. 75.

27. Gaffney was then questioned about certain figures in the spreadsheets marked as Ex B-1 for the Plaza East store, conceding that he had no reason to disagree with Mafi Hamed's testimony that certain points allocated to Hamed by him in his calculations for the Plaza East store (the BJ Wholesale and Sam's Discover cards) would be incorrect since they were points given straight to the partnership. Tr. pp. 76-80.
28. Fathi Yusuf, the former managing partner of the Partnership and as the current liquidating partner under the Final Wind Up Plan,⁴ then testified.
29. Yusuf was shown Yusuf Exhibit C, which indicated that the records for Plaza East and Plaza West showed a credit card disparity of \$20,777.722.95 for Yusuf and \$12,015,371.37 for Hamed based upon Gaffney's calculations.
30. Yusuf was then asked on cross whether he agreed that that the records for Plaza East and Plaza West based on Exhibit C showed that approximately 66% of the credit card usage was on Yusuf credit cards, while 33% was on Hamed credit cards (a 2-1 ratio). Yusuf's counsel then conceded this allocation is correct for the Plaza East and Plaza West stores Tr. pp. 98.
31. As Gaffney noted in his testimony, the total Credit Card Payments for which it is unknown which family member's card was related for the Plaza East store (\$118,320.79) and the Plaza West store (\$1,754,350.08) is \$1,872,670.87, which is also shown in Ex-H 2.

⁴ See, e.g., Ross Order dated May 10, 2022, at p. 22.

32. Since the imbalance between the two stores is 2-1 in favor of Yusuf, it can be reasonably assumed that the value this credit imbalance needed to compensate Hamed is \$15,605.59 ($.025 \times \$1,872,670.87 = \$46,816.77$, which is then divided by 3 to get \$15,605.59 to be paid to Hamed to equalize the 2 to 1 ratio).

33. While there are no records breaking down the 10,142,701.73 points for Plaza Tutu, using the same percentage breakdown for the use of credit cards at that store over the same time period as occurred in the other two stores (66% Yusuf to 33% Hamed, or 2 to 1), the credit card imbalance at that store is \$84,522.51 ($.025 \times 10,142,701.73 = \$253,567.54$, divided by 3 to get \$84,522.51 to be paid to Hamed to equalize the 2 to 1 ratio).

II. Proposed Conclusions of Law

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

1. As stated in the November 22, 2022, Order, credit card points earned by the Yusuf and Hamed on purchases made/expenses paid on behalf of the Partnership on their personal credit cards during the period of January 1, 2013 through March 9, 2015, are Partnership assets and subject to equal distribution between the partners.
2. While the evidence for the Plaza East store regarding this disparity was disputed at the hearing, the credible evidence supports the figure of 8,424,962.30 provided by Hamed's accounting expert, Bracey Alexander.
3. The evidence for the Plaza West store regarding this disparity of 8,275,557.35 was not disputed at the hearing.

4. While the evidence regarding the value of these points was disputed at the hearing, the 2.5 cents figure provided by Hamed's accounting expert, Bracey Alexander, is the only evidence of this value in 2016.
5. Thus, the credit card imbalance for the Plaza East Store is \$210,617.30 ($.025 \times 8,424,962.30 = \$210,617.30$) and for Plaza West stores is \$206,888.93 ($.025 \times 8,275,557.35 = \$206,888.93$), for a total of \$417,506.23.
6. While there are no records breaking down the unallocated credit card payments for the Plaza East store or the Plaza West store or the entire Plaza Tutu store, using the percentage breakdown for the use of credit cards contained in Yusuf Ex-C, (66% Yusuf to 33% Hamed, or 2 to 1), the unallocated credit card imbalance for these stores requires the following payments to be made to Hamed to equalize that credit card imbalance as follows:
 - a) The value of the Plaza East and Plaza West unallocated points is \$15,605.59 ($.025 \times \$1,872,670.87 = \$46,816.77$), which is then divided by 3 to get \$15,605.59 needed to pay Hamed to equalize the 2 to 1 ratio).
 - b) The value of the Plaza Tutu's unallocated points is \$84,522.51 ($.025 \times 10,142,701.73 = \$253,567.54$, divided by 3 to get \$84,522.51 needed to pay Hamed to equalize the 2 to 1 ratio).
7. For the reasons set forth herein, Claim H-146 is resolved by awarding \$517,634.33 to Hamed. Fees and pre-award interest, if any, will be decided when all accounting claims are final.

Respectfully submitted for the Hameds,

Dated: March 21, 2023

/s/ Joel H. Holt

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2023, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

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