

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSEPH HENRY and MICHAEL MALINKY,

Plaintiffs,

- v s -

01-CV-1681

CHAMPLAIN ENTERPRISES, INC., d/b/a
CommutAir; ANTONY VON ELBE; JOHN
ARTHUR SULLIVAN, JR.; ERNEST JAMES
DROLLETTE; ANDREW PRICE; WILLIAM L.
OWENS; CHAMPLAIN AIR, INC.; and U.S.
TRUST COMPANY OF CALIFORNIA, N.A.,

Defendants.

APPEARANCES:

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Champlain Air, Inc.; and all individual
Defendants.
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GROOM LAW GROUP CHARTERED
Attorneys for Defendant U.S. Trust
Company of California, N.A.
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Washington, D.C. 20006

DAVID N. HURD
United States District Judge

OF COUNSEL:

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EDWARD A. SCALLET, ESQ.
ROBERT P. GALLAGHER, ESQ.
LARS C. GOLUMBIC, ESQ.

ORDER

The mandate of the Second Circuit was received on June 8, 2006. In accordance with the decision dated April 26, 2006, it is

ORDERED that

1. The Clerk is directed to VACATE the damages awarded in Part 1 of the judgment entered on October 29, 2004;

2. The plaintiffs shall file proposed amended comprehensive findings of fact and conclusions of law which specifically address the following issues:

- a. Specific errors in HLHZ's valuation of CommutAir;
- b. Specific reasons why U.S. Trust, as a prudent fiduciary, should have detected the errors under the circumstances prevailing at the time of the ESOP transaction;
- c. Specific findings as to the total equity value of CommutAir as of March 15, 1994, and the value of the convertible preferred stock purchased by ESOP;
- d. Specific basis to award prejudgment interest including rate, amount, and time period; and
- e. Specific basis for a finding that a damages award does not result in a windfall to the ESOP;

3. U.S. Trust shall file proposed amended comprehensive findings of fact and conclusions of law which specifically address the following issues:

- a. Specific reasons that there were no errors in HLHZ's valuation of CommutAir;
- b. If there were errors, as claimed by plaintiff, specific reasons why U.S. Trust, as a prudent fiduciary, should not have detected those errors under the circumstances prevailing at the time of the ESOP transaction;

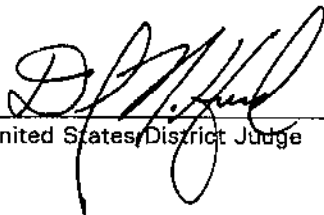
- c. Specific findings that the ESOP received "adequate consideration" for its purchase of company stock;
- d. Specific findings as to the total equity value of CommutAir as of March 15, 1994, and the value of the convertible preferred stock purchased by ESOP;
- e. Specific basis to deny prejudgment interest; and
- f. Specific basis to find that an award of damage would result in a windfall to the ESOP together with the amount of same.

4. The proposed amended findings of fact and conclusions of law shall reference specific pages or exhibits in the record;

5. The proposed amended findings of fact and conclusions of law shall be filed and served on or before August 14, 2006; and

6. The parties shall be permitted to file and serve reply memoranda of law (no longer than 20 pages), on or before September 11, 2006 - again, with specific reference to pages and exhibits in the record.

IT IS SO ORDERED.


United States District Judge

Dated: June 12, 2006
Utica, New York.