

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: February 18, 2010

Decided: April 12, 2010

Peter J. Walsh, Jr.
Ryan T. Costa
Potter Anderson & Corroon LLP
Hercules Plaza, 6th Floor
1313 North Market Street
P.O. Box 951
Wilmington, DE 19899

Jeffrey M. Weiner
Law Offices of Jeffrey M. Weiner PA
1332 King Street
Wilmington, DE 19801

Re: *Saliba, et al. v. William Penn P'ship, et al.*
Civil Action No. 111-CC

Dear Counsel:

I have considered your arguments on the question of shifting attorneys' fees and expenses in this lawsuit. This letter constitutes my decision on the matter.

Although defendants are correct that the defendants' litigation conduct does not warrant a fee shift, plaintiffs do not ask the Court to shift fees based on the defendants' litigation conduct. Instead, plaintiffs ground their fee and expense application on defendants' pre-litigation conduct. In this case, the Court clearly found that the individual defendants breached their duties as fiduciaries by failing to make full and timely disclosures to plaintiffs and by manipulating the sales process related to the Beacon Hotel for the individual defendant's self-interested purposes. The Court plainly found based on the evidence of record that the defendants structured the sale process for Del Bay's sole asset to benefit themselves personally, rather than to insure that Del Bay's sole asset was sold pursuant to a fair process that would protect the interests of all of Del Bay's members. The defendants were fiduciaries who stood on both sides of the transaction and, thus, were required to demonstrate their utmost good faith and the most scrupulous and inherent fairness of the bargain. As conflicted fiduciaries, the defendants

bore the burden of demonstrating that the disputed transaction was entirely fair, involving both fair process and fair price. Defendants failed to meet that burden. Because defendants conducted the sale in a clearly conflicted manner that resulted in a breach of fiduciary duty, I find and conclude that it would be unfair and inequitable to require plaintiffs to shoulder the costs incurred in demonstrating the unfairness of this sales process. For that reason, I award plaintiffs all of their attorneys' fees and the portion of costs that they have paid in connection with the court-appointed expert witnesses. Those who violated their fiduciary obligations and were the cause of this litigation are the parties who properly should bear the fees and costs made necessary solely by reason of their faithless conduct.

For these reasons, I direct plaintiffs' counsel to prepare an appropriate final order and judgment that includes plaintiffs' attorneys' fees and court costs, including the portion of the expert witness fees paid by plaintiffs. Counsel for defendants should advise the Court in writing regarding the fees and costs portion of the final judgment order.

IT IS SO ORDERED.

Very truly yours,



William B. Chandler III

WBCIII:meg