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232 F.3d 460 (5th Cir. 2000)

JAMES P. HOLLIS, Plaintiff-Appellee,
v.
DAN H. HILL, Defendant-Appellant.

*No. 99-20725***UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT***November 17, 2000*

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Appeal from the United States District Court for the Southern District of Texas

Before POLITZ, JOLLY, and BARKSDALE, Circuit Judges.

POLITZ, Circuit Judge:

1 James P. Hollis seeks a court-ordered buy-out of his 50% interest in a Nevada corporation. The district court found that Dan Hill, holder of the other 50% interest, breached the fiduciary duty he owed to Hollis and ordered a buy-out of Hollis' shares based on the corporation's value more than one year prior to the date of judgment. Hill timely appeals. For the reasons assigned, we affirm in part and vacate and remand in part.

BACKGROUND

2 In early 1995, Hill and Hollis jointly founded First Financial USA, Inc. (FFUSA), a Nevada corporation which marketed first lien mortgage notes and other non-security financial products. All of the whole mortgage notes placed by FFUSA were obtained from and serviced by South Central Mortgage.¹ Hill and Hollis also owned equal shares of First Financial United Investments, Ltd., L.L.P. (FFUI), a Texas limited liability partnership organized in June 1996 to sell securities products as a broker/dealer. This action focuses on the parties' rights and obligations respecting FFUSA.

3 Hill was a 50% owner of FFUSA, was a director and served as its president, and operated its Houston office. He testified his duties were "to set up the company, set up all the administration, hire the personnel, set up the tracking systems, support reps, recruit reps, and generally help in the strategizing of the company direction." Hollis owned the other 50% interest in FFUSA, was a director and served as its vice president. Hollis operated its Melbourne, Florida office, with duties including recruiting, training and supporting representatives in their marketing efforts, seeking out new revenue sources, and participating in management. Their wives completed the board of directors and were employed by the firm.

From its inception through 1997, FFUSA did very well financially and paid substantial salaries to Hill and Hollis. In early December 1997, however, Hill began to complain that Hollis was not carrying an equal share of the firm's work load and made known his belief that Hollis was getting more money than he deserved. He