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Judge finds Disney short of 'ideal' in superagent case

THE ASSOCIATED PRESS

WILMINGTON, Del. — While The Walt Disney Co. CEO's "lapses were many," and its embattled president left the entertainment conglomerate with a \$140 million severance package, a court ruled that Disney board members did not violate their duties or waste company resources in the hiring and firing of former Hollywood superagent Michael Ovitz.

The Disney board did not breach its fiscal responsibilities by agreeing to hire Ovitz as president in 1995, then granting him the hefty severance just 14 months later.

The ruling closes the trial phase of a shareholder lawsuit that revealed the tempestuous inner workings of one of the world's largest entertainment companies.

Trial testimony included details of the enmity Ovitz engendered among fellow Disney executives, including CEO Michael Eisner, who described Ovitz in company memos as a "psychopath" with a "character problem."

Ovitz contended that he loved Eisner "like a brother" but was micromanaged, undermined by other key executives and "cut out like cancer" before he had time to prove his worth. Disney executives said Ovitz wasted money, alienated executives with his arrogance and could not be trusted during his tenure at the Burbank, Calif.-based company.

Chancellor William Chandler III said that while the directors' conduct "fell significantly short of the best practices of ideal corporate governance," board members did

not violate their duties or waste Disney resources.

"It is easy, of course, to fault a decision that ends in failure, once hindsight makes the result of that decision plain to see. But the essence of business is risk — the application of informed belief to contingencies whose outcomes can sometimes be predicted, but never known," Chandler wrote in a 175-page decision.

Attorneys for the plaintiffs said they will appeal Chandler's decision to the Delaware Supreme Court.

"It would be unfortunate for shareholders and employees of public companies if this decision is read by corporate managers as a license to act in disregard of their duties to engage in the deliberate processes required by fiduciaries," said Melvyn Weiss, a partner with Milberg Weiss Bershad & Schulman.

Ovitz's attorney, Mark Epstein, said his client was "extremely pleased," and that he is confident the decision will be upheld on appeal.

"According to the court, there were no improprieties regarding honesty, expenses, gift giving; he just dismissed without merit all of those allegations," Epstein said. "... I think the chancellor's decision with regard to Mr. Ovitz is rock solid."

The lawsuit claimed that current and former members of Disney's board did not properly scrutinize Ovitz's employment contract after Eisner tapped him as president, then wrongly granted Ovitz a non-fault termination entitling him to a \$140 million severance package just more than one year later.

Lawyers for the shareholders alleged that Ovitz's performance was so poor that he should have been fired for cause and not paid the remainder of his contract. The defendants, including Eisner and Ovitz, said Ovitz's contract was given careful consideration, and that while Ovitz's tenure was stormy from the start, there was no gross negligence or malfeasance that would justify denying him his severance package.

While ruling for plaintiffs, Chandler chided Eisner — who leaves as CEO next month — for not adequately involving the board in business matters and having "enthroned himself as the omnipotent and infallible monarch of his personal Magic Kingdom."

"His lapses were many. He failed to keep the board as informed as he should have. He stretched the outer boundaries of his authority as CEO by acting without specific board direction or involvement," the judge wrote. "Eisner's failure to better involve the board in the process of Ovitz's hiring, usurping that role for himself, although not in violation of the law, does not comport with how fiduciaries of Delaware corporations are expected to act."

Eisner's attorney, Gary Naftalis, said the CEO was "very pleased that the court, after hearing all the testimony and seeing the witnesses, has found that he and the other directors properly carried out their fiduciary duties to the shareholders."

"This was a case where the evidence didn't support any claims, and the judge after hearing it agreed," Naftalis said. "We're pretty happy."

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