

INDEPENDENT REVIEW BOARD  
444 North Capitol Street, NW, Suite 528  
Washington, DC 20001  
(202) 434-8080  
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Corruption Hotline (800) CALL IRB

Chief Investigator:

Charles M. Carberry, Esq.  
17 Battery Place, Suite 331  
New York, NY 10004

Administrator:  
John J. Cronin, Jr.

Hon. Loretta A. Preska  
United States District Court  
United States Courthouse  
500 Pearl Street, Room 1320  
New York, NY 10007

February 15, 2011

**VIA UPS NEXT DAY**

Board Members:  
Benjamin R. Civiletti, Esq.  
Venable LLP  
575 7th Street, NW  
Washington, DC 20004

Joseph E. diGenova, Esq.  
diGenova & Toensing, LLP  
1776 K Street, NW, Suite 737  
Washington, DC 20006

William H. Webster, Esq.  
Milbank, Tweed, Hadley & McCloy LLP  
1850 K Street, NW, Suite 1100  
Washington, DC 20006

Re: APPLICATION 146 OF THE INDEPENDENT REVIEW BOARD

Dear Judge Preska:

I transmit herewith one original and one copy of Application 146 of the Independent Review Board, submitting the Opinion and Decision regarding Michael E. Doe, approved by the IRB, to Your Honor for review, and if appropriate, to be "so ordered."

In addition to the Application, enclosed please find the original and one copy of:

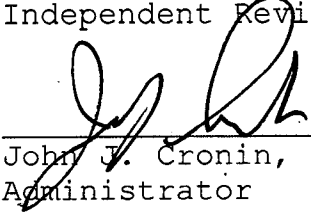
- (a) the February 10, 2011, Opinion and Decision of the IRB;
- (b) an Acknowledgment of Receipt; and
- (c) an Affidavit of Service.

If you find it appropriate, I respectfully request that a member of Your Honor's staff file the original of the "backed" Application, Opinion and Decision, Acknowledgment of Receipt and Affidavit of Service with the Clerk's office.

Respectfully submitted,

Members of the  
Independent Review Board

By:

  
John J. Cronin, Jr.  
Administrator

JJC:cft  
Enclosures

Pursuant to the Consent Order of the United States District Court, S.D.N.Y.  
United States -v- International Brotherhood of Teamsters 88 CIV. 4486 (LAP)

cc: Brian Feldman, AUSA  
Charles M. Carberry, Esq., w/o Appendix to Exh. A  
Bradley T. Raymond, Esq., w/o Appendix to Exh. A  
Michael E. Doe

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,  
  
  Plaintiff,  
  
  v.  
  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, et al.  
  
  Defendants.

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: 88 CIV. 4486 (LAP)  
:  
: APPLICATION 146 OF THE  
: INDEPENDENT REVIEW BOARD  
: -- OPINION AND DECISION OF  
: THE INDEPENDENT REVIEW  
: BOARD IN THE MATTER OF  
: MICHAEL E. DOE  
:  
:

Pursuant to Paragraph O. of the Rules and Procedures for Operation of the Independent Review Board ("IRB") for the International Brotherhood of Teamsters ("IRB Rules"), Application is made by the IRB for ruling by the Honorable Loretta A. Preska, United States District Judge for the Southern District of New York, on the issues heard by the IRB during a hearing on November 10, 2010, and thereafter determined, on the charges filed against Michael E. Doe ("Doe"), a member of Local 82.

("Doe") was charged with failing to cooperate with the IRB by willfully and without justification failing to appear for his in-person sworn examination pursuant to Paragraph H(3)(c) of the Rules and Procedures for Operation of the Independent Review Board for the Independent Review Board for the International Brotherhood of Teamsters.

The preponderance of the evidence established Doe brought reproach upon the IBT by twice failing to appear for a sworn examination and thus violated the IBT Constitution. Accordingly, Doe is hereafter permanently barred from holding membership in or any position with the IBT or any IBT-affiliated entity. Doe is permanently barred from seeking or accepting from the IBT or any IBT-affiliated entity any salary, severance payment, allowance, fee, payment for unused vacation, or compensation of any kind except fully vested pension compensation and fully vested welfare benefits; and permanently barred from the date of expulsion from having any contributions made on his behalf by any IBT entity to any pension, health and welfare, severance, or other benefit fund.

Enclosed with our February 10, 2011, Opinion and Decision is the May 24, 2010, IRB Investigative Report (Exhibit A) and the Appendix to Exhibit A (Exhibits 1 - 11), the November 10, 2010, IRB Hearing Transcript (Exhibit B), and IRB exhibits IRB-1 to IRB-12 introduced at the hearing (Exhibit C).

It is respectfully requested that an Order be entered affirming the IRB's February 10, 2011, Opinion and Decision if Your Honor finds it appropriate.

By:

  
John J. Cronin, Jr.  
Administrator

Dated: February 10, 2011

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 IN RE: : OPINION AND DECISION  
           : OF THE INDEPENDENT  
           Michael Doe : REVIEW BOARD  
           : :  
           : :  
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**INTRODUCTION**

On May 24, 2010, the Independent Review Board ("IRB") forwarded to the Local 82 Executive Board a report with accompanying evidentiary exhibits recommending that Michael Doe ("Doe"), a member of Local 82, be charged with failing to reasonably cooperate with the IRB by failing to appear for his sworn testimony scheduled for April 9, 2010. (IRB Ex. 1)<sup>1</sup> The Local 82 Executive Board filed a charge on June 15, 2010. Doe, who received a copy of the report, charge and evidentiary exhibits, failed to appear at his scheduled hearing before the Executive Board held on July 7, 2010. (IRB Exs. 3-4) The Local 82 Executive Board found the charge proven in an unsigned opinion that barred Doe from Local 82 but not the IBT. (IRB Ex. 4) The IRB found the Board's action inadequate and returned it to the Executive Board for reconsideration. (IRB Ex. 5) In an opinion sent on September 23, 2010 to the IRB, signed by Local 82 Secretary-Treasurer John Perry, the Local 82 Executive Board

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<sup>1</sup> In this ruling, "IRB Ex." refers to exhibits the IRB introduced at the hearing on the charge against Doe and "Ex." refers to the exhibits to the investigative report which were introduced at the hearing.

banned Doe permanently from the IBT, indicating it was compelled to do so by the IRB. (IRB Ex. 6) As there was no such compulsion, the IRB found the action inadequate on October 13, 2010. (IRB Ex. 8) The IRB, therefore, held a de novo hearing on the charge on November 10, 2010, in its offices in Washington, D.C. Doe, who was notified of the hearing and provided the exhibits on October 20, 2010, failed to appear for the hearing before the IRB.

At that hearing, the Chief Investigator introduced Exhibits 1-11 to the May 24, 2010 report. Doe was sent a copy of the IRB hearing transcript on November 30, 2010. He has submitted no response.

#### **STATEMENT OF FACTS**

##### **A. Michael Doe**

Doe, who was employed by ABC Moving Services, Inc., had been a member of Local 82 since March 28, 2008. (Ex. 1) According to IBT records, Doe was placed on suspension from Local 82 and IBT membership on December 29, 2009 for non-payment of dues. (Ex. 1)

##### **B. Michael Doe's Failure to Appear**

On January 14, 2010, by U.S. Express Mail, return receipt requested, a notice of sworn examination was sent to Doe's address reflected in Local 82 records. (Exs. 1 & 3) On that same date, notices addressed to Doe's brother, Marc Doe ("M.

Doe") and Doe's uncle, Ronald Doe ("R. Doe") were sent to the same address. (Exs. 4 & 5) U.S.P.S. records indicated that all three sworn examination notices were delivered and signed for on January 15, 2010, by an individual named "M. Bracctt". (Ex. 6) The sworn examinations of Doe, R. Doe, and M. Doe were all scheduled for January 29, 2010. (Exs. 3-5) During his IRB sworn examination on January 29, 2010, Doe's brother M. Doe, indicated that his step-grandfather had signed for the notices of sworn examination. (Ex. 7 at 16)<sup>2</sup> During his sworn IRB examination, M. Doe indicated that although his brother, Doe, was aware that he was scheduled to appear for a sworn examination, Doe would not appear for his scheduled sworn examination because he was taking an examination for barber's school. (Ex. 7 at 15-16) Doe failed to appear for his scheduled sworn examination on January 29, 2010. (Ex. 8) In addition, Doe failed to contact the Chief Investigator's Office to request a postponement of his scheduled sworn examination. At Doe's scheduled examination, the Chief Investigator's Office planned to question Doe about matters including, but not limited to, his Local 82 membership and the Local's enforcement of its collective bargaining agreements.

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<sup>2</sup> During his IRB sworn examination, Marc Doe stated that his grandmother had remarried and that his step-grandfather's name was Michael Buscini. (Ex. 7 at 16) Marc Doe admitted that he was not sure how to spell his step-grandfather's name. (Ex. 7 at 16) As discussed below, according to the return receipt for the second notice of sworn examination sent to Doe, it appears that Marc and Michael Doe's step-grandfather's name was actually Michael Braccini. (Ex. 10)

On March 26, 2010, a second notice of sworn examination was sent to the Doe to give him an opportunity to cure his failure to appear. (Ex. 9) This second sworn examination was scheduled for April 9, 2010. (Ex. 9) The notice informed Doe that if he failed to appear for his scheduled sworn examination, the Independent Review Board may recommend that he be charged with failing to cooperate with the IRB. (Ex. 9) The notice also explained that if Doe did not appear for his scheduled sworn examination that such non-appearance could result in his expulsion from the Local and the IBT. (Ex. 9) Doe's step-grandfather, Michael Braccini, signed the return receipt, which indicated that the notice was delivered to Doe's address on March 27, 2010. (Ex. 10)

Doe did not appear for his second scheduled sworn examination on April 9, 2010. (Ex. 11) Nor did he contact the Chief Investigator's Office to request a postponement.

#### **DISCUSSION**

Under Article II, Section 2(i) of the IBT Constitution, "[n]o member seeking to resign from membership in any Local Union may do so except by submitting such resignation in writing to the Secretary-Treasurer of the Local Union." (Ex. 2) There is no record of Doe submitting a resignation in writing to Local 82. Indeed, Local 82 records showed that on December 29, 2009, Doe was suspended from membership. (Ex. 1) Thus, at the time of



his scheduled sworn examination, Doe was a member of the Union. Pursuant to Article XIX, Section 1(g) of the IBT Constitution, internal union disciplinary charges can be filed against "a suspended member or an inactive member who has been issued a withdrawal card." (Ex. 2)

The court approved Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters empower the Chief Investigator,

to take and require sworn statements or sworn in-person examinations of any officer, member, employee, representative, or agent of the IBT, provided that the IRB has given the person to be examined at least ten days advance notice in writing and also provided that the person to be examined has the right to be represented by an IBT member or legal counsel . . . Failure to appear for a duly-noticed in-person examination shall be deemed a failure to cooperate with the IRB.

(IRB Rules, Paragraph H (3)(c)). Additionally, Article XIX, Section 14(i) of the IBT Constitution provides:

All officers, members, employees, and representatives of the International Union and its affiliated bodies shall cooperate fully with the Independent Review Board in the course of any investigation or proceeding undertaken by it. Unreasonable failure to cooperate with the Review Board shall be deemed to be conduct which brings reproach upon the Union, and which is thereby within the Review Board's investigatory and decisional authority.

(Ex. 2) It is well-settled that the failure to cooperate with the IRB is grounds for disciplining IBT members. See e.g.,

United States v. IBT [Calagna], 1991 U.S. Dist. LEXIS 11256 (S.D.N.Y. August 14, 1991); United States v. IBT [Hickey], 945 F. Supp. 96 (S.D.N.Y. 1996); In re: Donny Robles, September 11, 2006 Decision of the Local 714 Executive Board. On April 9, 2010, without explanation, Doe failed to appear for his properly noticed sworn examination. This was the second time he failed to do so.

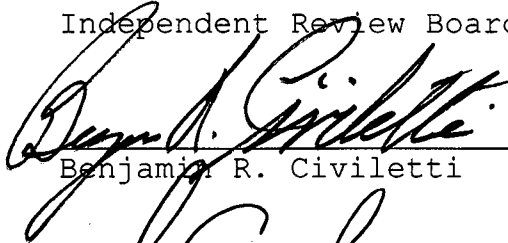
#### **CONCLUSION**

The preponderance of the evidence established Doe brought reproach upon the IBT by twice failing to appear for a sworn examination and thus violated the IBT Constitution. Accordingly, Doe is hereafter permanently barred from holding membership in or any position with the IBT or any IBT-affiliated entity. Doe is permanently barred from seeking or accepting from the IBT or any IBT-affiliated entity any salary, severance payment, allowance, fee, payment for unused vacation, or compensation of any kind except fully vested pension compensation and fully vested welfare benefits; and permanently barred from the date of expulsion from having any contributions made on his behalf by any IBT entity to any pension, health and welfare, severance, or other benefit fund.

Dated: February 10, 2011

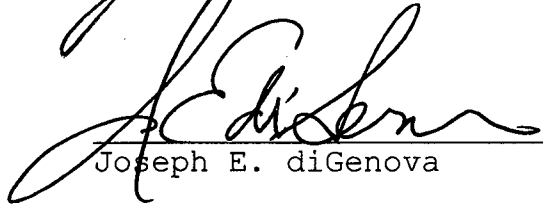
Respectfully submitted,

Members of the  
Independent Review Board



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Benjamin R. Civiletti



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Joseph E. diGenova



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William H. Webster

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, et al.

Defendants.

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: 88 Civ. 4486 (LAP)  
: ACKNOWLEDGMENT OF RECEIPT  
: OF THE OPINION AND  
: DECISION OF THE  
: INDEPENDENT REVIEW BOARD  
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This Court hereby acknowledges that the Opinion and Decision of the IRB of Application 146 of the Independent Review Board ("IRB") for the International Brotherhood of Teamsters ("IBT") has been received by this Court, and that this Court has caused to be filed the original documents concerning the Opinion and Decision of Application 146 of the IRB with the Clerk of the Court of the Southern District of New York.

This Court further certifies that the instant Acknowledgment of Receipt ("the Acknowledgment") has been filed with the Clerk of the Court of the Southern District of New York, and that a copy of the Acknowledgment has been forwarded to the following:

John J. Cronin, Jr.  
444 North Capitol Street, NW, Suite 528  
Washington, DC 20001  
Administrator of the Independent Review Board

Michael E. Doe  
54 Belmont Street  
Charlestown, MA 02129  
Respondent

Dated: New York, New York  
\_\_\_\_\_, 2001

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U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, et al.  
  
Defendants.

88 Civ. 4486 (LAP)  
AFFIDAVIT OF SERVICE

Joseph D. Comtois hereby deposes and says:

1. I am the Assistant to the Administrator in the office of the Administrator of the Independent Review Board. On February 16, 2011, I caused to be delivered via UPS NEXT DAY to the Honorable Loretta A. Preska one executed original and one copy of Application 146, the executed original and one copy of the Opinion and Decision of the IRB, and the original and one copy of the Acknowledgment of Receipt.

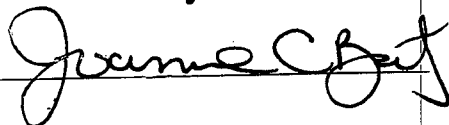
2. I also caused a copy of Application 146 along with the enclosures to be delivered to:

Brian Feldman, AUSA, via UPS Next Day  
Charles M. Carberry, Esq., via UPS Next Day  
Bradley T. Raymond, Esq., via Hand Delivery  
Michael E. Doe, Member Local 82, via UPS Next Day Air

  
\_\_\_\_\_  
Joseph D. Comtois

Sworn to and subscribed  
before me this 16th day

of February 2011

  
\_\_\_\_\_  
Joanne C. Batz

JOANNE C. BATZ  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires March 14, 2012