

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,      :
:                               :
:                               : 88 Civ. 4486 (DNE)
:                               :
:                               : APPLICATION LXXVI OF THE
:                               : INDEPENDENT REVIEW BOARD
:                               : --OPINION OF THE
:                               : INDEPENDENT REVIEW BOARD
INTERNATIONAL BROTHERHOOD      :
OF TEAMSTERS, et al.,         :
:                               : IN THE MATTER OF THE HEARING
:                               : OF MODESTINO C. ("AUGIE")
:                               : FESTA
:                               :
:                               :
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Pursuant to Paragraph O. of the Rules of 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 David N. Edelstein, United States District Judge for the Southern District of New York, on the issues heard by the IRB during a hearing on August 3, 1999, and thereafter determined, on the charges filed against Modestino C. Festa ("Festa").

Festa was charged with knowingly associating with Michael Sciarra, a member and associate of organized crime, after he was permanently barred from the IBT by the IRB and Your Honor's November 20, 1995 Order. Additionally, Festa was charged with violating his duty of fidelity to the Local by agreeing to obtain a Teamsters book reflecting membership in the IBT for an individual who was not employed by a company which had a collective bargaining agreement with a Teamster Local Union and who was not otherwise eligible for membership in the IBT. Having considered the evidence and post-hearing submission by the Chief Investigator, the IRB

found that the charge against Festa was proved. As a penalty, Festa has been permanently barred from membership in the IBT and may not hereafter obtain employment, consulting or other work with the IBT or any IBT-affiliated entity.

Given the IRB's determination, we do not find it appropriate to stay the Opinion or the penalty imposed pending review by Your Honor as we found it in the best interest of the IBT that Festa immediately be barred from IBT membership.

Enclosed with the November 15, 1999, Opinion are the following exhibits:

- 1) May 24, 1999, IRB Investigative Report with exhibits 1-21;
- 2) August 3, 1999, Festa Hearing Transcript with IRB's exhibits IRB 1 - IRB 5.

It is respectfully requested that an Order be entered affirming the IRB's November 15, 1999, Opinion if Your Honor finds it appropriate.

By: Frederick B. Lacey
Frederick B. Lacey
Member of the
Independent Review Board

Dated: November 24, 1999

who was not employed by a company which had a collective bargaining agreement with a Teamster local union and who was not otherwise eligible for membership in the IBT.

Festa was an IBT member and a member of Local 560 for more than twenty-three years, from 1971 until his retirement in April of 1995. He remains eligible to return to active membership in Local 560 and members are currently free to associate with him.

On six occasions in 1994 and 1995, Festa met with Sciarra or Nick Agathos ("Agathos"), a government informant, at a private social club in Hoboken, N.J. controlled by Sciarra. Law enforcement officials recorded the conversations which occurred at these meetings. Three of those meetings, held in 1995 on February 15, March 15 and March 16, involved direct contact between Festa and Sciarra and concerned obtaining a Teamster book for an individual who was not employed under an IBT collective bargaining agreement or otherwise eligible for IBT membership. During those meetings Sciarra directed that the book be obtained from a particular local, Local 641, and notified Festa and Agathos how to divide the \$2,500 fee which had been charged for that service. At a fourth direct contact with Sciarra on September 29, 1995, Festa discussed his gambling activities and business with Sciarra.

A reading of the transcripts of these discussions reveals that they were purposeful and did not occur due to coincidence. The contacts occurred in part in social clubs or restaurants of which Sciarra was shown to have been in control. The tone and content of the conversations recorded excludes any inference that they were coincidental.

Sciarra had longterm involvement with Local 560 both as a member and officer. As a result of a civil RICCO action, United States v. Local 560, International Brotherhood of

Teamsters, brought in the U.S. District Court for the District of New Jersey in March of 1982 against the Local, its officers, executive board members and members of the so-called "Provenzano Group" which was alleged to have ties with the Genovese La Cosa Nostra family, United States District Judge Ackerman found on March 16, 1984 after a five-month trial that Local 560 was dominated and exploited by persons having ties with the Genovese organized family including the Provenzano Group and then Local 560 President Sciarra. United States v. Local 560, 581 F.Supp. 279, 321 (D.NJ 1984), aff'd 780 F.2d 267 (3rd Cir. 1985), cert. denied 476 U.S. 1141 (1986). Remedial measures implemented on June 23, 1986 included the removal of Sciarra from office. 581 F.Supp. at 326.

Part of that lawsuit concerning Sciarra proceeded before a different judge, the Honorable Dickinson Debevoise, U.S. District Judge for the District of New Jersey. Between 1988 and 1991, Judge Debevoise issued several rulings affecting Sciarra's Local 560 status. First, in September 1988, Sciarra was permanently enjoined from seeking the presidency of the local because of the likelihood that, as an officer, Sciarra would "lead Local 560 back into control of Genovese Crime family". U.S. v. Local 560, 694 F.Supp. 1158, 1191-92 (D.NJ 1988). On May 4, 1990, the Court required removal of Sciarra from his appointed position as Business Agent and his debarment from holding any other positions of trust within the local as well as from attempting to influence Local 560's affairs. 736 F.Supp. 601, 612-13 (D.NJ 1990). In March of 1991, Sciarra was permanently enjoined from holding any position of trust in Local 560 or otherwise attempting to influence the affairs of the local or its funds. 754 F.Supp. 395, 399, 407-08 (D.NJ 1991).

As a member of Local 560 throughout this period, it is highly unlikely that Festa or

any other member of the local could have been unaware of the connection of Sciarra with organized crime. Further, the findings of the Court concerning Sciarra's close ties with the Genovese family were reported extensively in the press.

The FBI considers Sciarra to be a "made member" of the Genovese LCN family. Further, on August 31, 1995, the Chief Investigator sent letters to the Executive Board Members of all New Jersey locals, including Local 560, advising them of the findings of Judge Devevoise and putting all members on notice that any purposeful association with Sciarra may be grounds for union disciplinary charges. The September 25, 1995 meeting discussed above occurred after this notification was issued.

Despite allegations to this effect in our Report, Festa did not appear and deny the foregoing. Based on the foregoing, and in the absence of any evidence to the contrary, we find that Sciarra was identified as a member of organized crime and that as a member of Local 560 Festa would be aware of that identification.

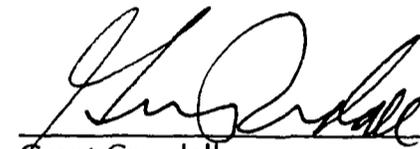
Accordingly, charges 1 and 2 pertaining to knowing association have been proven. Charge 3 relating to the obtaining of a membership book has also been proven.

CONCLUSION

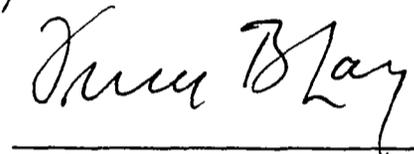
Based upon the foregoing, the evidence has established that Festa brought reproach upon the IBT and violated the IBT Constitution by knowingly associating with members of Organized Crime, and that Festa violated his duty of fidelity to the local by agreeing to obtain a Teamsters book reflecting membership in the IBT, for an individual who was not employed by a company which had a collective bargaining agreement with a Teamster local union and who was not otherwise eligible for membership in the IBT. Accordingly,

Festa is permanently barred from holding membership in or any position with the IBT, or any IBT-affiliated entity, in the future. Festa also may not hereafter obtain employment, consulting or other work with the IBT or any IBT-affiliated entity.

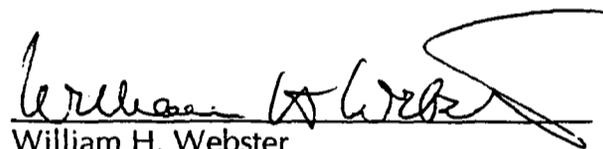
Members of the
Independent Review Board



Grant Crandall



Frederick B. Lacey



William H. Webster

Dated: November 15, 1999

UNITED STATES of America Plaintiffs,
v.
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al., Defendants.

No. 88 CI. 4486(DNE).

United States District Court, S.D. New York.

Feb. 8, 2000.

MEMORANDUM & ORDER

EDELSTEIN, District J.

*1 WHEREAS on May 24, 1999, the Independent Review Board ("IRB") issued an Investigative Report (the "IRB Report") and forwarded it to the General Executive Board of the International Brotherhood of Teamsters ("IBT") recommending charges against Local 560 member Modestino C. Festa, also known as "Augie" Festa ("Festa"), for bringing reproach upon the IBT by knowingly associating with a member of organized crime, in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (9) of the IBT Constitution, and by knowingly violating his duty of fidelity to the Local by agreeing to obtain a Teamsters book, reflecting membership in the IBT, for an individual who was not employed by a company which had a collective bargaining agreement with a Teamster local union and who was not otherwise eligible for membership with the IBT, in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution; and

WHEREAS by letter dated May 26, 1999, James P. Hoffa, General President of the IBT, advised the IRB he had adopted and filed the recommended charges against Festa and that the charges were referred back to the IRB for adjudication; and

WHEREAS on June 8, 1999, at the direction of the IRB, John J. Cronin, Jr. ("Cronin"), the IRB administrator, notified Festa, by UPS overnight letter, that a hearing was scheduled for July 8, 1999, at 10:00 a.m., at the offices of the IRB, located at 444 North Capitol Street, N.W., Suite 528, Washington, D.C., and also gave Festa the opportunity, in the alternative, to have the hearing in New York City, if he were to reply within five days stating his preference; and

WHEREAS on June 14, 1999, by UPS overnight letter to Festa, Cronin confirmed Festa's telephone

call of June 11, 1999 advising that he would not appear at the hearing, and postponed the hearing until August 3, 1999; and

WHEREAS on June 17, 1999, by UPS overnight letter, Cronin informed Festa that the hearing was rescheduled for August 3, 1999, at 10:00 a.m., at the law offices of LeBoeuf, Lamb, Greene, & MacRae, 125 West 55th Street, 19th Floor, New York, NY; and

WHEREAS on August 3, 1999, the noticed hearing went forward before the IRB and Festa did not attend, did not submit any papers in his behalf, and was not represented at the hearing; and

WHEREAS at the hearing, the IRB reviewed evidence, including the testimony of Federal Bureau of Investigation ("FBI") Special Agent Michael A. Campi, stating that the FBI considers Michael Sciarra ("Sciarra") to be a member of the Genovese La Cosa Nostra ("LCN"), enumerating several instances where Festa had extensive contact with Sciarra, and showing that Festa agreed to obtain a Teamster book for an individual who was not eligible for membership in the IBT; and

WHEREAS by letter dated December 1, 1999, this Court offered Festa the opportunity to submit written objections to Application LXXVI by December 15, 1999 at 5:00 p.m.; and

*2 WHEREAS Festa never submitted any objections to Application LXXVI to this Court; and

WHEREAS having reviewed the IRB's November 15, 1999 Opinion and Decision and all accompanying exhibits, this Court finds that the charge against Festa has been proven by a preponderance of the evidence; and

WHEREAS having reviewed the sanctions imposed by the IRB, this Court finds that the sanctions are proportionate to the severity of the misconduct of which Festa is guilty; and

WHEREAS accordingly, this Court finds that Application LXXVI of the IRB should be granted;

IT IS HEREBY ORDERED THAT Application LXXVI of the Independent Review Board regarding the charges and sanctions imposed against Modestino C. Festa is GRANTED.

Slip Copy
(Cite as: 2000 WL 145744, *2 (S.D.N.Y.))

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SO ORDERED

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