

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

-v- :

MEMORANDUM & ORDER

INTERNATIONAL BROTHERHOOD OF :

TEAMSTERS, CHAUFFEURS, :

WAREHOUSEMEN AND HELPERS OF :

AMERICA, AFL-CIO, et al., :

Defendants. :

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IN RE: APPLICATION XXXVI OF THE  
INDEPENDENT ADMINISTRATOR

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APPEARANCES: CHARLES M. CARBERRY, Investigations Officers of the  
International Brotherhood of Teamsters;

OTTO G. OBERMAIER, United States Attorney for the  
Southern District of New York, (Edward T. Ferguson,  
III, Assistant United States Attorney, of counsel)  
for the United States;

CHARLES F. CARNESI, Brooklyn, New York, for Anthony  
Zappi.

EDELSTEIN, District Judge:

This opinion emanates from the voluntary settlement in the  
action commenced by the plaintiffs United States of America (the  
"Government") against the defendants International Brotherhood of  
Teamsters (the "IBT") and the IBT's General Executive Board (the  
"GEB") embodied in the voluntary consent order entered March 14,  
1989 (the "Consent Decree"). The Consent Decree provided for three  
Court-appointed officials, the Independent Administrator to oversee  
the remedial provisions, the Investigations Officer to bring

charges against corrupt IBT members, and the Election Officer to oversee the electoral process leading up to and including the 1991 election for International Officers (collectively, the "Court Officers"). The goal of the Consent Decree is to rid the IBT of the hideous influence of organized crime through the election and prosecution provisions.

Application XXXVI presents for this Court's review the opinion of the Independent Administrator finding that the Investigations Officer proved the charge filed against IBT member Anthony Zappi. Zappi is the Secretary-Treasurer of IBT Local 854 in Valley Stream, New York. The Investigations Officer charged Zappi with bringing reproach upon the IBT by knowingly associating with John Gotti, Frank Dapolito, and Frank Morano, all alleged members of La Cosa Nostra, in violation of Article II, §2(a) of the IBT constitution.

The Independent Administrator found that Zappi was a member of La Cosa Nostra and permanently suspended Zappi from the IBT. Further, Local 854 was directed to (i) make no severance payments to Zappi, (ii) make no further contributions to its pension fund, welfare fund or life insurance plan on Zappi's behalf, (iii) that no Local 854 funds be paid for Zappi's legal fees.

Zappi appeals to this Court the finding of the Independent Administrator that he was a member of La Cosa Nostra. This Court determines that the findings of the Independent Administrator are fully supported by the evidence, and Zappi's arguments are without merit. Accordingly, the opinion of the Independent Administrator is affirmed in all respects.

It is well settled that the findings of the Independent Administrator "are entitled to great deference." United States v. Int'l Brotherhood of Teamsters, 905 F.2d 610, 616 (2d Cir. 1990), aff'g March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y. 1990). This Court will overturn findings when it determines that they are, on the basis of all the evidence, "arbitrary or capricious." United States v. Int'l Brotherhood of Teamsters, supra, 905 F.2d at 622; July 16, 1991 Opinion & Order, slip opinion, at 3-4 (S.D.N.Y. 1991); June 6, 1991 Opinion & Order, slip opinion, at 4-5 (S.D.N.Y. 1991); May 9, 1991 Memorandum & Order, slip opinion, at 4 (S.D.N.Y. 1991); May 6, 1991 Opinion & Order, slip opinion, at 5 (S.D.N.Y. 1991); December 27, 1990 Opinion & Order, 754 F. Supp. 333, 337 (S.D.N.Y. 1990); September 18, 1990 Opinion & Order, 745 F. Supp. 189, 191-92 (S.D.N.Y. 1990); August 27, 1990 Opinion & Order, 745 F. Supp. 908, 911 (S.D.N.Y. 1990); March 13, 1990 Opinion & Order, supra, 743 F. Supp. at 159-60, aff'd, 905 F.2d at 622; January 17, 1990 Opinion & Order, 728 F. Supp. 1032, 1045-57, aff'd, 907 F.2d 277 (2d Cir. 1990); November 2, 1989 Memorandum & Order, 725 F.2d 162, 169 (S.D.N.Y. 1989);

The Investigations Officer's evidence against Zappi included the sworn declaration of FBI special agent Andris Kurins. (the "Kurins declaration"). Kurins was accepted as an expert knowledgeable about organized crime, specifically the Gambino organized crime family. Kurins was present at the disciplinary hearing, did not testify on direct examination, but was cross-examined on his declaration by Zappi's counsel. The Kurins

declaration stated that the FBI identified Zappi as a member of the Gambino family of La Cosa Nostra. The Kurins declaration also stated that the Permanent Subcommittee on Investigations of the United States Senate (the "Senate Investigations subcommittee") identified Zappi as a member of the Gambino family. The Independent Administrator found that these corroborating identifications of Zappi as a member of the Gambino family were credible. These identifications, considered together with other evidence introduced at the hearing, were sufficient for him to find that Zappi was a member of the Gambino family of La Cosa Nostra.

In addition to the FBI and Senate Investigations subcommittee identifications, the Independent Administrator considered as further support for his findings a statement from Michael John Franzese, an admitted member of the Colombo family. In his statement, dated and witnessed on September 21, 1990, Franzese stated that he had met Zappi, and that Zappi had been introduced to Franzese as being a member of La Cosa Nostra.

The Independent Administrator also considered evidence relating to Zappi's associations with John Gotti, Frank Dapolito, and Frank Morano. In the Kurins declaration, Gotti, Dapolito, and Morano were identified in the Kurins declaration as members of the Gambino family by the Senate Investigations subcommittee. Further, all three were identified as members of the Gambino family by the FBI. Zappi did not dispute the identifications of Gotti, Dapolito or Morano as members of La Cosa Nostra.

The Independent Administrator found that Zappi had (i) met

Gotti; (ii) been at the Ravenite Social Club at the same time as Gotti; (iii) attended Gotti's 1987 Christmas party at the Ravenite Social Club; (iv) visited Gotti's Bergen Hunt and Fish Club in Queens, New York; (v) met Gotti on the street outside of the Bergen Club; (vi) visited the Bergen Club with Dapolito in an automobile owned by Local 854; (vii) that Dapolito had come to Local 854's union hall three weeks prior to Zappi's deposition. These findings were based on Zappi's own deposition testimony before the Investigations Officer.

Zappi challenges the reliability of the Senate Investigations subcommittee and FBI identifications of him as a member of La Cosa Nostra. Zappi also argues that the Independent Administrator's admission of, and weight accorded to the Franzese statement was arbitrary and capricious. These objections are unpersuasive.

Zappi disputes the admission and reliability of the Senate Intelligence committee and FBI identifications of him and the other listed persons as members of the Gambino family. Zappi did not contest that John Gotti, Frank Dapolito, or Frank Morano were members of the Gambino family. While the reports contained hearsay, it is conceded by Zappi that reliable hearsay is admissible at hearings before the Independent Administrator. Zappi's counsel cross-examined special agent Kurins at the hearing, and thus had ample opportunity to expose any alleged unreliability of the identifications. The FBI's identification of Zappi was supported by an extensive record.

The FBI evidence was supplemented by the Senate Intelligence

subcommittee report. Neither at the hearing, nor before this Court does Zappi offer anything more than conjecture to support his contention that the FBI or Senate Investigations subcommittee identifications were unreliable. After considering the reports and Zappi's cross-examination intended to impeach the reliability of reports, the Independent Administrator specifically found that the reports were reliable. Because of the multiplicity of the sources, and the lack of any specific challenges to the sources veracity, the Independent Administrator's findings that the reports which identified Zappi and the other named persons as members of the Gambino family were admissible and reliable are amply supported by the record, and neither arbitrary nor capricious.

Zappi challenges the Franzese statement's admissibility because the statement was not produced to him in advance of the hearing, but was instead produced by Kurins at the hearing during Zappi's cross-examination. The Independent Administrator found that Zappi did not object to the introduction of the statement. The Independent Administrator further found that any prejudice to Zappi was cured by Zappi's cross-examination of Kurins regarding the statement, and the fact that Zappi was granted an adjournment to give Zappi an opportunity to testify and rebut the substance of the Franzese statement. After the adjournment, Zappi testified that he never met Franzese. The Independent Administrator found Zappi's testimony not credible, and accorded it no weight.

Zappi has no basis for challenging the Franzese statement. A review of the record indicates that at the hearing, Zappi agreed

to have the statement marked for identification, and noted for the record that the statement was not produced in advance of the hearing. (October 29, 1990 hearing transcript at 9). Zappi did not object to the statement's introduction. Zappi was given ample opportunity to cross-examine Kurins regarding the statement, and an adjournment to allow Zappi to testify and rebut the statement. Accordingly, the Independent Administrator's finding that the statement was admissible is not arbitrary or capricious.

Further, the Independent Administrator considered the Franzese statement as cumulative to what the other evidence had already established. The Independent Administrator considered Zappi's challenges to the weight to be accorded the statement, and found that it should be considered only as corroboration for the other evidence that established Zappi as a member of La Cosa Nostra. The Independent Administrator's finding that Zappi was a member of La Cosa Nostra did not rest on the Franzese statement. As the trier of fact, the Independent Administrator was in the best position to consider the weight to be accorded the statement. Considering the deference to be given his factual findings, this finding is not arbitrary or capricious.

Accordingly, the findings of the Independent Administrator was not arbitrary or capricious.

IT IS HEREBY ORDERED that the findings of the Independent Administrator are affirmed in all respects.

IT IS FURTHER ORDERED that the stay on the imposition of the penalties on Zappi is hereby dissolved.

So Ordered.

Dated: July 31, 1991  
New York, New York

S/DWE

U.S.D.J.