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October 19, 2006

VIA UPS NEXT DAY AIR

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

Re: APPLICATION 124 OF THE INDEPENDENT REVIEW BOARD

Dear Judge Preska:

I transmit herewith one original and one copy of Application 124 of the Independent Review Board, submitting the Opinion and Decision regarding Robert D'Angelo, 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:

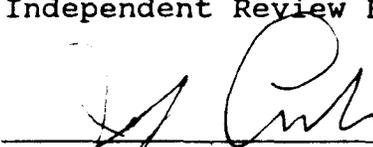
- (a) the October 19, 2006, Opinion and Decision of the IRB;
- (b) an Acknowledgment of Receipt; and
- (c) an Affidavit of Service.

If you find it appropriate, I respectfully request that a member of Your Honor's staff file the original of the "backed" Application, Opinion, 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

cc: Andrew W. Schilling, AUSA
Charles M. Carberry, Esq.
Bradley T. Raymond, Esq., IBT General Counsel
Stephen D. Hans, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	88 CIV. 4486 (LAP)
	:	
v.	:	APPLICATION 124 OF THE
	:	INDEPENDENT REVIEW BOARD
	:	-- OPINION AND DECISION OF
INTERNATIONAL BROTHERHOOD OF	:	THE INDEPENDENT REVIEW
TEAMSTERS, <u>et al.</u>	:	BOARD IN THE MATTER OF
	:	THE HEARING OF
Defendants.	:	ROBERT D'ANGELO
	:	

Pursuant to Paragraph O. of the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters ("IRB Rules"), Application is made by the Independent Review Board ("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 April 19, 2006, and thereafter determined, on the charges filed against Robert D'Angelo ("D'Angelo"), a member of IBT Local 813.

D'Angelo was charged with bringing reproach upon the IBT and violating his membership oath by knowingly associating with Louis Restivo and Federico Giovanelli, known members of organized crime. The evidence established just cause for the IRB to find that the charges against D'Angelo were proved. As a penalty,

D'Angelo has been permanently barred from holding membership in or any position with the IBT or any IBT-affiliated entity. D'Angelo and any business owned by or in which D'Angelo has a financial interest are permanently barred from seeking or obtaining employment, office, contracts, consulting or other work or similar relationship, whether paid or unpaid, with the IBT or any IBT-affiliated entity. D'Angelo 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 October 19, 2006, Opinion and Decision are the September 7, 2005, IRB Investigative Report with exhibits 1 to 24 and the April 19, 2006, IRB Hearing Transcript with IRB exhibits IRB-1 to IRB-19 and the Chief Investigator's added Exhibit 25.

It is respectfully requested that an Order be entered affirming the IRB's October 19, 2006, Opinion and Decision if Your Honor finds it appropriate.

Dated: October 19, 2006

By:



John J. Cronin, Jr.
Administrator

-----X
In re charge against: :
Robert D' Angelo :
-----X

OPINION AND DECISION
OF THE INDEPENDENT
REVIEW BOARD

I. INTRODUCTION

On September 7, 2005, the Independent Review Board (“IRB”) forwarded to the International Brotherhood of Teamsters (“IBT”) General President an investigation report concerning Local 813 member Robert D’Angelo (“D’Angelo”). The IRB report claims D’Angelo brought reproach upon the IBT and violated the membership oath in violation of Article II, Section 2(a), and Article XIX, Section 7(b)(1), (2) and (9) of the IBT Constitution and Paragraph E(10) of the March 14, 1989 Consent Decree in United States v. IBT, 88 Civ. 4486 (S.D.N.Y. 1989).¹ The IRB report recommended that charges be filed against D’Angelo for knowing association with two members of organized crime: Louis Restivo (“Restivo”) and Frederico Giovanelli (“Giovanelli”).

On October 12, 2005, the IBT General President adopted the IRB’s recommendation and filed charges against D’Angelo, referring the matter back to the IRB for adjudication. The IRB held a hearing on the charges on April 19, 2006, in New York, New York. At the hearing,

¹ Article II, Section 2(a) requires each member to pledge his honor to the IBT. Article XIX, Section 7 provides examples of possible charges against members and officers for which they may stand trial: Section 7(b)(1) includes a violation of any specific provision of the Constitution or Local Union Bylaws; Section 7(b)(2) includes a violation of the Oath of Office or Oath of Loyalty to the Local Union and the IBT; and Section 7(b)(9) includes a violation for knowingly associating with any member or associate of an organized crime family or other criminal group. In addition, Paragraph E(10) of the March 1989 Consent Decree provides that “members and employees of the IBT . . . are hereby permanently enjoined from . . . knowingly associating with any member or associate of” any organized crime family.

Federal Bureau of Investigation (“FBI”) Special Agent Michael A. Campi presented a sworn declaration asserting Restivo and Giovanelli were members of organized crime and D’Angelo’s contacts and relationship with them. We conclude by the overwhelming preponderance of the evidence presented at the hearing that D’Angelo committed the charged offenses. Our opinion and decision are set forth below.

II. STATEMENT OF FACTS

A. D’Angelo’s IBT Membership

D’Angelo originally joined IBT Local 1034 in November 1971, (Ex. 4; Ex. 5) but let his membership lapse shortly thereafter (Ex. 6 at 5). During this time, D’Angelo worked for his father at the D’Angelo Funeral Home. (Ex. 6 at 7) D’Angelo’s father also owned Seneca Chapels Funeral Home (“Seneca Chapels”). (Ex. 6 at 7) When his father retired in 1976, D’Angelo and his brother, Louis, purchased both funeral homes from their father, each taking a fifty percent stake in each home. (Ex. 6 at 7, 9) D’Angelo became President of and a funeral director at D’Angelo Funeral Home and Vice President of Seneca Chapels. (Ex. 6 at 8-9)²

Again in March 1993, D’Angelo rejoined Local 1034. (Ex. 5; Ex. 6 at 4-5, 12) D’Angelo’s 1993 membership application stated he was employed as a “chauffeur” with D’Angelo Funeral Home. (Ex. 5) After a May 1998 merger between Locals 813 and 1034, D’Angelo continued as an IBT member with Local 813. (Ex. 3) Local 813 records reflected that D’Angelo’s dues were paid through August 2005. (Ex. 4)

² Louis D’Angelo, brother of the accused, has been an IBT member since February 1993. (Ex. 10) Louis D’Angelo was Vice President of D’Angelo Funeral Home and President of Seneca Chapels. (Ex. 6 at 8) Louis D’Angelo is listed in Local 813 records as employed at Seneca Chapels (Ex. 11) as a funeral director (Ex. 6 at 10).

B. History of La Cosa Nostra Influence on Locals 813 and 1034

Locals 813 and 1034 have a long history of association with organized crime. Bernard Adelstein, formerly a principal officer of Locals 813 and 1034, was permanently barred from the IBT for knowing association with La Cosa Nostra ("LCN") members.³ See United States v. IBT (Adelstein), 808 F. Supp. 279 (S.D.N.Y. 1992) (affirming the IRB's decision to bar Adelstein).⁴

Pursuant to a Consent Judgment entered in United States v. Private Sanitation Industry Association of Nassau/Suffolk et al., CV-89-1848, on January 4, 1994, Local 813 was placed into a federal civil RICO trusteeship and an Investigations Officer was appointed.

C. The Bonanno LCN family and Louis Restivo

The Bonanno family is a LCN organized crime group headquartered in New York City. (Ex. 25 at § C1-2) Its members and associates have a history of involvement in organized crime activities, including labor racketeering, illegal gambling, loan sharking, extortion, money laundering, narcotics trafficking, and murder. (Ex. 25 at § C2).

Joseph Massino was the head of the Bonanno family until his recent conviction. (Ex. 25 at § C2) Subsequent arrest, indictment, and conviction of several other prominent Bonanno

³ La Cosa Nostra, also known as the "Mafia" or the mob, refers to a secret organized crime group, organized into regional groups known as "families," that function throughout the United States and are headquartered in various cities, including New York, New York. (Ex. 25 at § B1, Declaration of FBI Supervising Special Agent Michael A. Campi)

⁴ Adelstein's sons, Martin and Alan, were also officers of both Locals 813 and 1034. (Ex. 2 at 5-6) In 1993, based upon IRB-recommended charges, they were both suspended for five years for failing to investigate and act on repeated allegations that Bernard Adelstein had ties to organized crime. (Ex. 2 at 25-26)

family members and associates allowed the FBI to develop a detailed understanding of the Bonanno family through extensive cooperation of former family members.⁵

The FBI considered Louis Restivo to be “a longstanding Member of the Bonanno LCN Family” as both a soldier and a capo. (Ex. 25 at § D1; accord Ex. 19 at ¶ 15) Restivo was indicted for racketeering conspiracy in January 2004, which included predicate acts of murder, loan sharking, illegal gambling, and substantive counts of gambling. (Ex. 14 at 1; Ex. 18 at 5, 9-10, 15)^{6,7} Restivo pled guilty to the racketeering counts and was sentenced to ten years imprisonment on May 26, 2005. (Ex. 25 at § D2)

Salvatore Vitale (“Vitale”), the self-admitted former underboss of the Bonanno family, identified Restivo as a former capo in that family and was prepared to testify about Restivo’s role in the family as well as his role in the charged crimes. (Ex. 25 at § D2) In addition, at least six former Bonanno family members cooperating with the Government were scheduled to testify at Restivo’s trial. (Ex. 25 at § D2) Finally, Peter Rosa, a former Bonanno soldier and cooperating

⁵ Cooperating Bonanno family members include: Joseph Massino, former “boss” or family leader; Salvatore Vitale, former underboss; James Tartaglione, former “capo” or mid-level member with supervisory responsibilities; Frank Lino, former capo; Richard Cantarella, former “soldier” or member; Joseph Damico, former soldier, and Peter Rosa, former soldier. (Ex. 25 at §§ B4-5, C3)

⁶ The United States Attorney’s office for the Eastern District of New York issued a press release in which they “announced the unsealing of a 20-count indictment charging twenty-seven members and associates of the Bonanno/Massino organized crime family of La Cosa Nostra (‘the Bonanno family’), including the acting boss, the acting underboss, 8 present or former captains or acting captains, 13 soldiers, including one who operates in Montreal, Canada, and 4 associates.” (Ex. 18 at 1-2) (footnote omitted)

⁷ Restivo’s codefendants included Joseph Cammarano, Sr. (“Cammarano, Sr.”) and Anthony Furino (“Furino”), both former IBT members. (Exs. 14-17)

In 1995, after Local 282 member Cammarano, Sr. learned the IRB intended to recommend charges alleging his membership in organized crime and knowing association with LCN members, he agreed to permanently resign from the IBT. (Ex. 15)

In 2004, the IRB recommended to the IBT that Local 807 member Furino be charged with failing to cooperate with the IRB by refusing to answer twenty-five questions during his IRB sworn examination, including whether he was a member of the Bonanno LCN family. (Ex. 16) Furino was permanently barred from the IBT. (Ex. 17)

witness for the FBI, has also provided information about Restivo. (Ex. 19 at ¶ 21; Ex. 25 at § D5)

Information provided by the former Bonanno family members has been corroborated by consensual recordings and surveillance by law enforcement who observed Restivo at various organized crime events and locations. (Ex. 25 at § D3) For example, from 1991 to 2000, Restivo was observed at four wakes in honor of deceased Bonanno family members and the wake of John Gotti's father – the former boss of the Gambino LCN family. (Ex. 25 at § D3) In connection with the IRB-recommended charges against former Local 282 member Joseph Cammarano, Jr. in 1992, the FBI executed search warrants at a Bonanno family social club in Maspeth, New York. (Ex. 19 at 10-11)⁸ During the search, FBI officials photographed several individuals considered to be Bonanno family members, including Vitale and Restivo in the same photograph. (Ex. 19 at ¶ 23)

D. D'Angelo's Associations with Restivo

D'Angelo described Restivo as a close friend whom he had known "his whole life." (Ex. 6 at 24-27; Ex. 7 at 25) D'Angelo and his wife regularly socialize with Restivo and his wife, including visiting Restivo's home "more than" once per month during the last five years and regular dinners at restaurants, including the Casablanca restaurant. (Ex. 6. at 41-42, 44)⁹ D'Angelo and his wife attended the weddings of all of Restivo's children and he visited Restivo's home for the christenings of Restivo's grandchildren and Restivo's sixtieth birthday

⁸ Between March 1991 and March 1992, the Grand Avenue Club was surveilled by the FBI. "During that time period, virtually the entire active membership of the Bonanno LCN family, including Acting Boss, Underboss, Consigliere [sic] and several capos, were observed entering the club on various occasions." (Ex. 19 at ¶ 21)

⁹ In a separate, criminal matter, discussed *infra*, the Government represented the Casablanca restaurant is a known Bonanno family locale, is owned by Restivo though controlled by the family, and the family regularly conducted LCN business on the premises. (Ex. 7 at 9-10, 14-15)

party. (Ex. 6 at 41-43) In addition, D'Angelo stated Restivo had visited him at his house approximately ten times during the last five years. (Ex. 6 at 43)

After the racketeering indictment was filed against Restivo, a bail hearing was held for Restivo on January 27, 2004. (Ex. 6) D'Angelo attended the hearing to "offer moral support" for Restivo. (Ex. 6 at 34) During the hearing, *in D'Angelo's presence* (Ex. 6 at 36), the Government represented to the court that Restivo was a "significant member in an organized crime family" and was implicated in "multiple murders." (Ex. 7 at 7-9, 14) The Government also represented that, although Restivo was the registered owner of the Casablanca restaurant, the actual owner was Bonanno family boss Massino and that the family regularly conducted management meetings on the premises. (Ex. 7 at 9-10, 14-15) Further, the Government stated Restivo held a meeting of the heads of the five New York LCN families in his home in 2000. (Ex. 7 at 11)

At the hearing and subsequent to the Government's representations, the court found Restivo's property ineligible as collateral, so Restivo's attorney offered D'Angelo's home as collateral instead. (Ex. 7 at 20-25) D'Angelo's property was ultimately used as collateral for Restivo's bail. (Ex. 22)¹⁰ D'Angelo testified that he offered his house because "if he [Restivo] needed my help, I would be there for him." (Ex. 6 at 31)

In addition to the hearing, Restivo's membership in the Bonanno family was widely covered in the popular press prior to Restivo's indictment. (See, e.g., Ex. 23) One such article referred to Restivo as a "subpoenaed wiseguy" and as the "official" owner of the Casablanca restaurant, which was part of Massino's "racketeering enterprise." (Ex. 23 at ¶ 3, Jerry Capeci, Heat on Massino Mobsters, NEW YORK SUN, Dec. 18, 2003, at 2)

¹⁰ Other Restivo family members' property was also used as collateral. (Ex. 7 at 21-22)

E. The Genovese LCN family and Federico Giovanelli

The Genovese LCN family is considered by the FBI to be the “largest and most powerful” LCN family in New York and “most secretive and criminally diverse” LCN family in the United States. (Ex. 25 at § E2)

The most recent boss of the family was Vincent Gigante (“Gigante”) until his 1997 racketeering conviction. (Ex. 25 at § D3) Michael Durso (“Durso”), a former high-ranking associate of the Genovese family, became a cooperating witness for the FBI and that cooperation was instrumental in securing the convictions of many Genovese family members, including Gigante. (Ex. 25 at § F5)¹¹

Federico Giovanelli (“Giovanelli”) is a capo in the Genovese family and a trusted member of Gigante’s crew. (Ex. 25 at § F1) In 1989, Giovanelli was convicted of the murder of New York Police Department Detective Anthony Venditti and the attempted murder of New York Police Department Detective Kathleen Burke, as well as racketeering including illegal gambling and conspiring to loan shark. United States v. Giovanelli, 945 F.2d 479, 481-82 (2d Cir. 1991). Detectives Venditti and Burke were active members of an FBI Joint Task Force (Ex. 25 at § F2) investigating the Genovese family, and the shooting occurred while the detectives were conducting surveillance on Giovanelli. Id. at 482-83. Though the murder conviction was

¹¹ Durso’s information supported the successful prosecution of “dozens” of organize crime figures including the following Genovese family members: Vincent Gigante, official boss; Dominick Cirillo, acting boss; Frank Serpico, acting boss; Lawrence Dentico, acting boss; Liborio Bellomo, acting boss; Alan Longo, capo; Ernest Muscarella, acting boss; Charles Tuzzo, capo. (Ex. 25 at § F5)

— overturned on appeal, Giovanelli's conviction of racketeering under 18 U.S.C. § 1962, including illegal gambling and conspiracy to loan shark, was upheld. *Id.* at 489.

Recently, Giovanelli was again charged with racketeering under 18 U.S.C. § 1962(c), (d). The predicate acts of racketeering included illegal trafficking of motor vehicle parts, extortion, operation of an illegal gambling business, and obstruction of justice. The obstruction of justice charge stemmed from interference into a grand jury investigation into another LCN family, the DeCalvalcante family. Giovanelli warned DeCalvalcante family members of their impending arrests, which aided the DeCalvalcante family in their efforts to kill any cooperating witnesses prior to their arrests. (Ex. 25 at § F2) Three former members of the DeCalvalcante family cooperated with the FBI and testified against Giovanelli, resulting in his conviction for obstruction of justice and sentencing to more than seven years imprisonment in May 2004. (Ex. 25 at § F2)

F. D'Angelo's Associations with Giovanelli

D'Angelo testified that he has known Giovanelli since approximately 1986, before Giovanelli was indicted for the murder of Detective Venditti. (Ex. 6 at 85-86; Ex. 20) During this same timeframe in the late 1980s, widespread news articles identified Giovanelli as a member of the Genovese LCN family. (See, e.g., Ex. 20) D'Angelo admitted to knowledge of Giovanelli's murder charge "when it happened," as well as the subsequent conviction from the newspaper accounts. (Ex. 6 at 85-88) D'Angelo dined with Giovanelli and attended the weddings of his three children (most recently in 2001). (Ex. 6 at 84-85)

III. OPINION

A. Elements of the Charge

Article XIX, Section 7(b)(9) of the IBT Constitution prohibits “knowingly associating . . . with any member or associate of any organized crime family or any other criminal group.” Paragraph E(10) of the Consent Decree in United States v. IBT, 88 Civ. 4486 (S.D.N.Y. 1989) provides that “members and employees of the IBT . . . are hereby permanently enjoined from . . . knowingly associating with any member or associate of” any organized crime family.

In order to establish that an IBT member knowingly associated with a member of organized crime, it must be proven that the contact was knowing and “purposeful and not incidental or fleeting.” United States v. IBT (DiGirlando), 824 F. Supp. 410, 414 (S.D.N.Y. 1993), aff’d United States v. IBT, 19 F.3d 816, 821 (2d Cir. 1994). An inference of knowledge of an IBT member can be drawn from the length and quality of the relationship with a member of organized crime. E.g., DiGirlando, 19 F.3d at 821; United States v. IBT (Senese), 745 F. Supp. 908, 919 (S.D.N.Y. 1990) (knowing association may be inferred from the duration and quality of the association). Purposeful contacts are prohibited even if no illegal purposes were demonstrated. DiGirlando, 19 F.3d at 821-22. Purposeful contacts may occur in either a business or a social setting. Id.

B. Standard of Proof

The standard of proof for establishing knowing association is a preponderance of the evidence. Rules and Procedures for Operation of the Independent Review Board, Para J(6) (“[I]n

order to be sustained, the proposed . . . charges . . . contained in the Investigate Report, must be supported by a preponderance of reliable evidence.”); United States v. IBT (Simpson), 931 F. Supp. 1074, 1089 (S.D.N.Y. 1996), aff’d United States v. IBT, 120 F.3d 341 (2d Cir. 1997).¹²

The evidence supporting a charge may be direct or circumstantial. In re Brennan, et al., IRB Supp. Dec. at 2 (Aug. 3, 2001) (“[T]he Chief Investigator may rely, whether in whole or in part, on circumstantial evidence, and such evidence is of no less value than direct evidence.”), aff’d United States v. IBT, 2001 U.S. Dist. LEXIS 11322 (S.D.N.Y. August 7, 2001).

Reliable hearsay is admissible in Consent Decree disciplinary hearings. E.g., United States v. IBT (Adelstein), 998 F.2d 120, 124 (2d Cir. 1993) (“[H]earsay may be admitted in IBT disciplinary proceedings, provided it is reliable”); United States v. IBT (Wilson, Dickens, and Weber), 978, F.2d 68, 72 (2d Cir. 1992). Indicia of reliability may include other hearsay statements that corroborate a hearsay statement through independent assertion of similar evidence. United States v. IBT (Cimino), 964 F.2d 1309, 1312 (2d Cir. 1992).

C. D’Angelo’s Relationship with Restivo Was One of Knowing Association

Restivo’s membership in the Bonanno LCN family has been established above by a preponderance of the evidence. Most significant in this determination is the FBI’s expert opinion and the Government’s successful prosecution of Restivo for his LCN-related activities culminating in a guilty plea for racketeering in 2005. (Ex. 25 at § D2)

D’Angelo’s claim that he has known Restivo his “whole life” as merely “social” friends (Hearing Tr. at 40) without knowing of Restivo’s Bonanno family membership blinks reality and is not credible. An inference of knowledge can be drawn from the length and quality of the

¹² In addition, Article XIX, Section 1(c) of the IBT Constitution provides that internal union disciplinary charges must be proven by a preponderance of the evidence.

relationship with a member of organized crime. E.g., DiGirlando, 19 F.3d at 821. In DiGirlando, the Second Circuit concluded that “regular contact” and life-long friendship with four LCN members, in addition to substantial medial coverage detailing Government prosecutions for their various criminal activities, was sufficient to justify the inference that DiGirlando knew of the their ties to organized crime. In D’Angelo’s case, his regular and close association with Restivo as set forth above is undisputed. Given the length and quality of their relationship alone, such an inference of knowing association can logically be drawn.

However, the true breadth of the association between D’Angelo and Restivo goes far beyond those undisputed facts. D’Angelo’s relationship with Restivo was notorious among members of organized crime. Vitale, the Bonanno family underboss, knew of the relationship and considered D’Angelo and his brother Louis to be civilian associates of the family through Restivo. (Ex. 25 at § D6)¹³ The relationship was so pervasive that when Restivo provided body bags for murders committed by the Bonanno family, Vitale assumed D’Angelo as the source of the bags because of the “close association” between Restivo and D’Angelo and the nature of D’Angelo’s business as a funeral home owner. (Hearing Tr. at 27-30; Ex. 25 at § D6)¹⁴ The Government also considers D’Angelo to be the source of the body bags. (Ex. 7 at 27) In the course of Restivo’s bail hearing, the Government “raised[d] a concern” that “Mr. Restivo in the

¹³ D’Angelo claimed to know Vitale only fleetingly (Ex. 6 at 73), however the salient issue is Vitale’s knowledge of an extensive relationship between Restivo and D’Angelo and the perception of a business relationship between them.

¹⁴ D’Angelo denies providing body bags to Restivo. (Hearing Tr. at 47-49; Ex. 6 at 47-49) During his IRB sworn examination, D’Angelo testified that Seneca Chapels does not use body bags. (Ex. 6 at 45-49) However, though the funeral home does not have a supply of bags, he stated bodies “sometimes” arrive in body bags and the vendors the homes deal with for preparation of the remains provide body bags, as required. (Hearing Tr. at 47-48) Whether D’Angelo was the source of the bags in fact, even though D’Angelo has better access than most and the Government considers that to be the case (Ex. 7 at 27), that senior Bonanno family members like Vitale believed D’Angelo was the source of Restivo’s body bags evinces D’Angelo’s close and supportive relationship with Restivo and the perception of impermissible dealings. Moreover, such a perception certainly brings reproach upon the IBT and is inexcusable.

murder of Anthony Tomasulo obtained a body bag to dispose of the body and it was from that funeral home [D'Angelo-owned Seneca Chapels]." (Ex. 7 at 27; Ex. 6 at 45, 47)

Separately, Peter Rosa, a Bonanno family soldier, also knew of the D'Angelo-Restivo relationship. Rosa observed the D'Angelo brothers with Restivo at the Bonanno family-owned Casablanca restaurant on "numerous occasions." (Ex. 25 at § D5) According to the FBI, Rosa, a mere soldier in the family, could not dine "on the same level as D'Angelo did with these high-ranking members [including Vitale] of the Bonanno family." (Hearing Tr. at 25) Rosa received a body bag from Restivo in connection with the Tomasulo murder, and he understood that the D'Angelo brothers were the source of the body bag. (Ex. 25 at § D5)

Robert Durso, a former "high-ranking" associate of the Genovese family provided the FBI with a different, independent perspective on the D'Angelo-Restivo relationship. The FBI considers Durso an "extremely credible witness when it comes to providing the FBI with information." (Hearing Tr. at 33) In fact, Durso's testimony has resulted in the "incapacitation of the most powerful mafia Members of the LCN, including virtually the entire hierarchy of the Genovese LCN family." (Ex. 25 at § F2) Durso learned that Robert D'Angelo was close to Restivo and that D'Angelo participated in Restivo's illegal loan sharking schemes. (Ex. 25 at § F6) Durso learned this information approximately eighteen years ago originally through John D'Angelo, a relative of Robert's. (Hearing Tr. at 33; Ex. 25 at § F6)¹⁵ John D'Angelo's knowledge of Restivo's criminal enterprises was corroborated by Durso's knowledge that John was also "with" Restivo and had to report his criminal activities to Restivo. (Ex. 25 at § F6, 7)

¹⁵ D'Angelo claimed not to have seen or spoken with John D'Angelo for approximately twenty years. (Hearing Tr. at 52) However, this length of time is consistent with the timeframe when Durso became aware of the D'Angelo-Restivo relationship from John D'Angelo. (Hearing Tr. at 32-33; Ex. 25 at § F6)

The inference of D'Angelo's knowledge of Restivo's connections with the Bonanno Family and organized crime, even before his indictment and the bail hearing, is robustly supported by the independent knowledge and perception of the D'Angelo-Restivo relationship by the three LCN members: Vitale, Rosa, and Durso. Such LCN members would have no reason to know of the relationship, and certainly no reason to believe that D'Angelo provided body bags and supported loan sharking operations, without some factual basis to support the perception of a business relationship between Restivo and D'Angelo. The permissible inference is that Restivo was so open with D'Angelo through their more than forty-year friendship that the three LCN members assumed D'Angelo was more of a business associate than a social friend. Given the observed and discussed relationship between the two, D'Angelo must have known of Restivo's role in the Bonanno family.

No such inference of knowledge is required, however, when considering D'Angelo's willingness to post his house as collateral at Restivo's bail hearing. Such action alone proves that D'Angelo's actions were with the full knowledge that Restivo was a member of organized crime. D'Angelo admits to learning of Restivo's LCN connection on "the day of his arrest . . . [when] I [D'Angelo] saw it on the [television] news, New York 1, as well as the newspapers the following day." (Hearing Tr. at 41) Despite this knowledge, D'Angelo's wife initiated the topic of offering their house for Restivo's bail, and "I said I was willing to help." (Hearing Tr. at 43)

At the bail hearing, but before D'Angelo posted his property as collateral, the Government represented that Restivo was implicated in at least two murders, other illegal operations, and that the Casablanca restaurant that Restivo purportedly owned (and where D'Angelo frequently dined with him) was in fact a notorious Bonanno family business and base of operations. (Ex. 7 at 7-10, 14-15) The Government also stated that Restivo hosted a meeting

of the heads of the five New York LCN families in his home in 2000. (Ex. 7 at 11) Despite the representations by the Government at the bail hearing, D'Angelo knowingly and voluntarily chose to use his home as collateral for Restivo's bail. (Ex. 6 at 56) Moreover, after the bail hearing, D'Angelo never considered withdrawing his support for Restivo, even though "[he] knew [he] could." (Ex. 6 at 56-57) D'Angelo continued to support Restivo *even after* the Government claimed it had evidence that Restivo obtained the body bags used in the Tomasulo murder from D'Angelo's funeral home. (Ex. 7 at 27) Despite this reference linking D'Angelo's company to an ongoing murder case, he still never reconsidered his support for Restivo.

By continuing such a course of action, D'Angelo knowing provided material support to a known LCN member, and such a calculated choice to continue to associate with such persons of prohibited status brought reproach upon the IBT and is sufficient alone to satisfy the charges levied against D'Angelo.

D. D'Angelo's Knowing Association with Giovanelli

Giovanelli's membership in the Genovese LCN family has been established by a preponderance of the evidence based on the FBI's expert opinion and successful Government prosecution of him for his organized crime activities in 1989 and 2004.

The significance of D'Angelo's claiming to turn a blind eye to allegations of Restivo's organized crime membership is heightened by D'Angelo's similar actions in the face of extensive and public allegations of Giovanelli's connections with organized crime. Throughout D'Angelo's more than twenty-year friendship with Giovanelli (Ex. 6 at 86), even after learning of allegations that Giovanelli killed a police detective who was surveilling Giovanelli because he was considered a member of the Genovese LCN family and his conviction for the LCN-related

crimes of illegal gambling and loan sharking, D'Angelo continued to associate with him without ever asking him about the charges. (Hearing Tr. at 54; Ex. 6 at 85-88) Such a pattern of, at best, willful disregard of his lifelong friends' involvement in organized crime (and murder of a police detective), without even a fleeting inquiry, is inexcusable and supports the inference that D'Angelo knew of Giovanelli's membership in organized crime.

Under the Consent Order of March 14, 1989, purposeful contacts in a social setting are sufficient, especially based on the length and quality of the relationship in question. DiGirlando, 19 F.3d at 821-22. An inference of D'Angelo's knowledge of Giovanelli's involvement in organized crime can be drawn from his more than twenty-year friendship—a friendship that continued after Giovanelli's implication in the murder of a police detective who was involved in investigating Giovanelli for his connection with organized crime. Regardless of whether the conviction was upheld, since 1989, D'Angelo's associations with Giovanelli have been under the cloud of his certain connection to organized crime.

Further, as with D'Angelo's friendship with Restivo, Vitale also knew that D'Angelo had a "close relationship with Giovanelli." (Ex. 25 at § F4) Again, that a high ranking member of a separate LCN family would know of D'Angelo's "close relationship with Giovanelli" underscores the inference that such a relationship was likely more than merely social or at least perceived to be so. Even if it were merely social, that would be sufficient proof to support the charge of knowing association.

E. D'Angelo's Defenses

In his defense, D'Angelo cites United States v. District Council of New York City, 941 F. Supp. 349 (S.D.N.Y. 1996), in which the court found contact at a "neighborhood ballfield" to be

incidental and did not constitute knowing association; however, the charged party's visit to an organized crime member's home did constitute prohibited association. Id. at 370-371.¹⁶ Here, D'Angelo's contacts far exceed the threshold for incidental and fleeting contact, and were instead a "'calculated choice' to associate with persons" of prohibited status, DiGirlando, 19 F.3d at 822. As such, D'Angelo's social contacts with organized crime members Restivo and Giovanelli alone, to say nothing of his actions at Restivo's bail hearing, constitute prohibited knowing association.

D'Angelo also claims that because D'Angelo did not hold an office in the IBT, this somehow excuses his significant associations with organized crime members. (D'Angelo Br. at 7-8) Such a claim ignores precedent where Teamster members, who held no other IBT position, were permanently barred from the IBT for knowingly associating with organized crime members. United States v. IBT (Porta), 908 F. Supp. 139 (S.D.N.Y. 1995); United States v. IBT (Lauro), 910 F. Supp. 139 (S.D.N.Y. 1996); United States v. IBT (Froncillo), 946 F. Supp. 318 (S.D.N.Y. 1996).

IV. DECISION

Based on the foregoing, the evidence established beyond a preponderance of the evidence that Robert D'Angelo brought reproach upon the IBT and violated the IBT Constitution and the Consent Decree by knowingly associating with organized crime members. Accordingly,

¹⁶ The Consent Order at issue in District Council contained the same knowing association standard as the March 14, 1989 Consent Decree that controls in the present case. Id. at 366. D'Angelo also cites the non-Teamster case United States v. Local 1804 (Ciccione), 44 F.3d 1091 (2d Cir. 1995). Ciccione is inapposite because it involves the interpretation of a non-Teamster Consent Order, which contained a different standard for knowing association requiring proof of improper association. Id. at 1096-97. For the present case, the controlling March 14, 1989 Consent Decree does not require proof of improper association, only mere knowing association.

D'Angelo is hereafter permanently barred from holding membership in or any position with the IBT or any IBT-affiliated entity. D'Angelo and any business owned by or in which D'Angelo has a financial interest are permanently barred from seeking or obtaining employment, office, contracts, consulting or other work or similar relationship, whether paid or unpaid, with the IBT or any IBT-affiliated entity. D'Angelo 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.

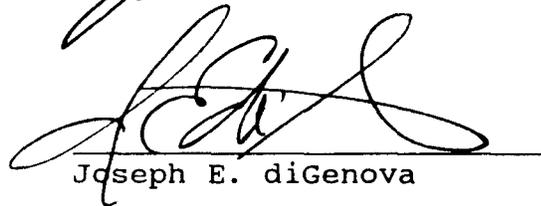
Dated: October 19, 2006

Respectfully submitted,

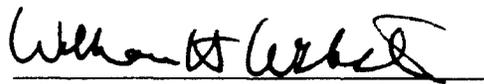
Members of the
Independent Review Board



Benjamin R. Civiletti



Joseph E. diGenova



William H. Webster

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	88 CIV. 4486 (LAP)
	:	
v.	:	ACKNOWLEDGMENT OF RECEIPT
	:	OF THE OPINION AND
	:	DECISION OF THE
INTERNATIONAL BROTHERHOOD OF	:	INDEPENDENT REVIEW BOARD
TEAMSTERS, <u>et al.</u>	:	
	:	
Defendants.	:	

This Court hereby acknowledges that the Opinion and Decision of the IRB of Application 124 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 124 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:

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Administrator of the Independent Review Board

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Counsel for Robert D'Angelo

Dated: _____, 2006
New York, New York

U.S.D.J.

