

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	88 Civ. 4486
	:	APPLICATION XII OF THE
Plaintiff,	:	INDEPENDENT REVIEW BOARD
	:	-- OPINION OF THE
v.	:	INDEPENDENT REVIEW BOARD
	:	IN THE MATTER OF THE HEARING
INTERNATIONAL BROTHERHOOD	:	OF ANTHONY MICHAEL SENTER
OF TEAMSTERS, et al.,	:	
	:	
Defendant.	:	

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 David N. Edelstein, United States District Judge for the Southern District of New York, on the issues heard by the IRB on July 6, 1994, on the charges filed against Anthony Michael Senter ("Senter").

Senter was charged with bringing reproach upon the IBT by being a member of organized crime and engaging in racketeering activity including drug trafficking and conspiracy to murder while being a member of Local 813.

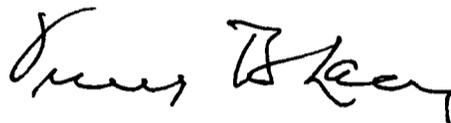
Following the hearing, having reviewed the evidence, the IRB found that Senter at all pertinent times has been a member of La Cosa Nostra. As a penalty, Senter was permanently barred from membership in the IBT.

The IRB elected not 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 Senter immediately be barred from IBT membership.

Enclosed with the August 2, 1994, Opinion of the IRB are the following exhibits:

- A) May 27, 1994, IRB Investigative Report with exhibits; and,
- B) July 6, 1994, hearing transcript with exhibits.

It is respectfully requested that an order be entered affirming the IRB's August 2, 1994, Opinion, if Your Honor finds it appropriate.

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

Dated: August 23, 1994

IN RE: ANTHONY MICHAEL SENTER

OPINION OF THE  
INDEPENDENT REVIEW BOARD

On May 27, 1994, the Independent Review Board ("IRB") issued an Investigative Report (attached hereto as Exhibit A) and forwarded it to General President Ron Carey of the International Brotherhood of Teamsters ("IBT"), recommending charges against Anthony Michael Senter ("Senter") as follows:

While an IBT member, you brought reproach upon the IBT and violated your membership oath in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2), (9) and (11) to wit: while a member of IBT Local 813 you were a member of organized crime. In addition, while a member of Local 813 you were a distributor of multiple kilos of cocaine and multiple tons of marijuana and conspired to commit murder. On June 28, 1989, you were convicted in United States District Court of racketeering activity as defined by applicable law, including conspiracy to commit murder and drug trafficking, which offenses were committed while you were a member of Local 813.

On June 1, 1994, Ms. Mary Joyce Carlson, counsel to the IBT Ethical Practices Committee, wrote to the IRB in response and referred this matter back to the IRB for a hearing and decision. This referral was made because of the unavailability of Federal Bureau of Investigation ("FBI") agents to testify in internal IBT procedures.

Thereafter, on June 15, 1994, the IRB sent a Notice of Hearing, to be held on July 6, 1994, to Senter at the Federal Penitentiary in Lompac, California where he is incarcerated. Enclosed with the Notice, Senter was provided with a copy of the IRB Investigative Report (with exhibits) and the IRB Operating and Hearing Rules. There has been no response from Senter.

On July 6, 1994, the noticed hearing went forward before the IRB. A copy of the hearing transcript, with the hearing exhibits, is attached hereto as Exhibit B. Among those present at the hearing were the IRB Chief Investigator Charles M. Carberry and Coordinating Supervisor/Special Agent Brian F. Taylor of the FBI who testified at the hearing via tele-conference with Assistant United States Attorney Christine Chung as his counsel.

At the hearing the following exhibits were placed into record:

Exhibit 1: IRB Investigative Report with exhibits dated May 27, 1994;

Exhibit 2: Ms. Mary Joyce Carlson's letter to the IRB dated June 1, 1994;

Exhibit 3: Notice of Hearing sent to Senter dated June 15, 1994;

Exhibit 4: Declaration of FBI Special Agent Brian F. Taylor dated May 23, 1994.

The IRB then addressed the Declaration of Special Agent Taylor executed on May 23, 1994, and his testimony was taken. The IRB is familiar with Mr. Taylor's experience with the FBI, and his background in organized crime investigations in and about New York City area have been well established.

Mr. Taylor testified that based upon review of certain documents Senter is a member of the Luchese Family of La Cosa

Nostra. These documents included Judge Broderick's statement regarding Senter and other people, the United States Court of Appeals for the Second Circuit decision (U.S. v. DiNome, 954 F.2d 839 (1992)), which affirmed the conviction of Senter, the indictment that led to the trial of Senter, certain internal documents within the FBI and discussions Mr. Taylor has had with members of the Luchese La Cosa Nostra squad in New York.

At the conclusion of Mr. Taylor's testimony and after further review of the various exhibits, the IRB determined it would keep the record open for ten days to permit Senter to review a copy of the transcript of the proceeding and communicate with the IRB in the event he wished to submit any materials for consideration. The IRB thereafter transmitted a letter dated July 12, 1994, to Senter, advising him. As of this date, no response has been received.

On the basis of the foregoing, we find Mr. Taylor's testimony and the averments in his Declaration to be credible and hold that there is just cause for determining that it has been established by a preponderance of the evidence that the organized crime charges against Senter have been proved.

#### **PENALTY TO BE IMPOSED**

Senter's membership in organized crime is repugnant to the idea of a corruption-free Union. The IBT has committed itself to cleansing its ranks of organized crime's influence. Consistent with that commitment, the only just punishment for Senter is permanent debarment from the IBT. Having determined that Senter is to be barred from the IBT by virtue of his membership in organized

crime there is no need to address the merits of his drug trafficking, conspiracy to murder or racketeering charges.

Members of the  
Independent Review Board

Dated: August 2, 1994

By:

  
John J. Cronin, Jr.  
Administrator



on August 2, 1994.<sup>1</sup> Senter was charged as follows:

While an IBT member, you brought reproach upon the IBT and violated your membership oath in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2), (9) and (11) to wit:

While a member of IBT Local 813, you were a member of organized crime. In addition, while a member of Local 813 you were a distributor of multiple kilos of cocaine and multiple tons of marijuana and conspired to commit murder. On June 28, 1989 you were convicted in United States District Court of racketeering activity as defined by applicable law, including conspiracy to commit murder and drug trafficking, which offenses were committed while you were a member of Local 813.

(Opinion of the Independent Review Board In re: Anthony Michael Senter (August 2, 1994), Ex. A. at 4-5.)

A hearing on the above-quoted charges was scheduled for July 6, 1994 ("the hearing"). The IRB sent a Notice of Hearing, a copy of the IRB Investigative Report, and the IRB Operating and Hearing Rules to Senter at the Federal Penitentiary in Lompac, California, where Senter was incarcerated. Senter did not respond to the IRB and, on July 6, 1994, the noticed hearing went forward.

At the hearing, the IRB heard testimony from Special Agent Brian Taylor of the Federal Bureau of Investigation ("FBI"). The IRB also reviewed Mr. Taylor's sworn declaration, which was

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<sup>1</sup> The IRB is vested with broad investigatory and disciplinary powers. The IRB's investigatory authority is coextensive with that of the General President and the General Secretary-Treasurer under the IBT Constitution and applicable law. See February 2, 1994 Memorandum & Order, 842 F. Supp. 1550, 1551-52 (S.D.N.Y. 1994); see also August 19, 1991 Opinion & Order, 803 F. Supp. 761, 768 (S.D.N.Y. 1992), aff'd in relevant part, 998 F.2d 1101 (2d Cir. 1993). Under the Consent Decree, the IRB must use this authority, among other things, to investigate allegations of corruption within the IBT, allegations of influence by La Cosa Nostra or other organized crime groups upon IBT members or activities, and any failure of IBT members or leadership to cooperate fully with the IRB. Id.; see Consent Decree § G(a).

submitted as an exhibit. Mr. Taylor testified that Senter was a member of the Luchese family of La Cosa Nostra. Mr. Taylor testified that his conclusion was based on the his review of Senter's indictment, certain statements by Judge Broderick during Senter's trial, the opinion of the United States Court of Appeals for the Second Circuit affirming Senter's conviction, and certain internal FBI documents, as well as discussions with members of the FBI Luchese La Cosa Nostra squad in New York. The IRB found Mr. Taylor's testimony and sworn declaration to be credible. At the conclusion of the hearing, the IRB determined that it would keep the record open for ten days to permit Senter to review a copy of the transcript of the hearing and to respond or submit materials to the IRB for consideration. Again, Senter failed to respond to the IRB.

Based on the evidence presented at the hearing, the IRB held that it had been established by a preponderance of the evidence, see IRB Rules, ¶ J.6, that the organized crime charges against Senter had been proved. Having held that the charge against Senter concerning his membership in organized crime had been proved, and having considered the seriousness of this charge, the IRB permanently debarred Senter from the IBT. In light of its decision to bar Senter from the IBT for life on the basis of his membership in organized crime, the IRB found no need to address Senter's racketeering, drug trafficking, and conspiracy to commit murder charges.

The IRB's findings and rulings are contained in a four-page

opinion and are based on evidence presented at a hearing at which Senter was given the opportunity to present evidence and testimony on his behalf. As discussed above, Senter failed to respond to the IRB's communications either before or after his noticed hearing. Senter has, however, objected to IRB Application XII by letter addressed to this Court. In his letter, Senter denies that he has ever been a member of La Cosa Nostra and claims that the testimony presented at the hearing is unreliable. The Court has received responses to Senter's letter from the Government and the IRB Chief Investigator.

As a threshold matter, Senter has defaulted on his claims by failing to respond to the IRB either before or after his noticed hearing, and thus he has waived his right to challenge the evidence presented at the hearing. This Court has previously held, during an earlier phase of the Consent Decree, that failure to appear at a noticed hearing before the Independent Administrator constitutes a waiver of the right to challenge the evidence presented at that hearing. See September 18, 1990 Opinion & Order, 745 F. Supp. 189, 193 (S.D.N.Y. 1990) (failure to appear at hearing before the Independent Administrator constitutes waiver of right to challenge evidence presented at hearing); August 27, 1990 Opinion & Order, 745 F. Supp. 908, 919 (S.D.N.Y. 1990) (subject of disciplinary proceeding "defaulted by not appearing at his hearing before the Independent Administrator"), aff'd, 941 F.2d 1292 (2d Cir. 1991), cert. denied, 112 S. Ct. 1161 (1992). Similarly, failure to appear at a noticed hearing before the IRB or to respond to the IRB in

writing constitutes a default and waiver of the right to challenge the evidence presented at that hearing. This rule is supported by Second Circuit decisions concerning the standard of review set forth in the Administrative Procedure Act. See, e.g., Franklin County Employment and Training Admin. v. Donovan, 707 F.2d 41, 44-45 (2d Cir. 1983) ("all issues which a party contests on appeal must be raised at the appropriate time under agency practice"). Because the IRB rules incorporate the same standard of review, see IRB Rules, ¶ 0, Senter is barred from raising any issues that he failed to raise at the hearing.

Moreover, even if Senter had not defaulted on his claims, these claims are clearly without merit. The IRB's finding that Senter is a member of organized crime is amply supported by the evidence, including the extensive testimony of an FBI organized-crime expert. Having carefully reviewed the IRB's opinion, as well as the exhibits attached thereto, I find that the IRB's decision is not arbitrary or capricious. See IRB Rules, ¶ 0; see also October 19, 1994 Memorandum & Order, 1994 U.S. Dist. LEXIS 14900, at \*4-\*5 (S.D.N.Y. 1994); September 22, 1994 Memorandum & Order, 1994 U.S. Dist. LEXIS 13407, at \*4-\*5 (S.D.N.Y. 1994); June 2, 1994 Memorandum & Order, 853 F. Supp. 757, 1994 U.S. Dist. LEXIS 7425, at \*6 (S.D.N.Y. 1994); May 6, 1994 Memorandum & Order, 1994 U.S. Dist. LEXIS 6513, at \*5 (S.D.N.Y. 1994). Accordingly, the decision of the IRB is affirmed in its entirety.

SO ORDERED.

DATED: New York, New York  
December 7, 1994

  
U.S.D.J.