

FD-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	:	
UNITED STATES OF AMERICA,	:	
	:	88 CIV. 4486 (LAP)
Plaintiff,	:	
	:	APPLICATION 112 OF THE
v.	:	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 CHUCK
Defendants.	:	CRAWLEY, DENNIS BANKHEAD
_____	:	AND MARIE ESPINOSA

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 March 29, 30 and 31, 2004, and thereafter determined, on the charges filed against Local 988 President Chuck Crawley ("Crawley"), Secretary-Treasurer Dennis Bankhead ("Bankhead") and Member Marie Espinosa ("Espinosa").

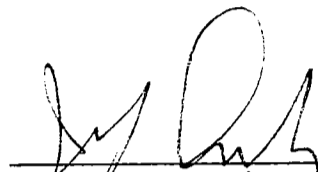
Crawley was charged with bringing reproach upon the IBT by allegedly engaging in a scheme for his own profit in which he caused the Local to pay \$20,000 more than was necessary for the telephone installation at the new union hall. He also allegedly caused the Local to issue checks to a vendor for the purchase of t-shirts and stickers when he knew the items were purchased from other vendors for less. Also, Crawley and Bankhead allegedly brought reproach upon the IBT, embezzled and converted union

property to their own use by taking Local mobile barbecue pits. They also allegedly embezzled and converted union funds to the use of another by paying approximately \$2,467 for Espinosa's legal fees in connection with her dealings with the Local. Lastly, Crawley and Bankhead allegedly assisted Espinosa in embezzling money from Local 988.

Having considered the evidence and post-hearing submissions, the IRB found that the evidence has established that Crawley brought reproach upon the IBT, violated the IBT Constitution and the Consent Decree by embezzlements involving the telephone installation at the union hall and purchases of t-shirts and stickers. On embezzlements by Crawley and Bankhead involving the barbecue pits, aiding and abetting Espinosa to embezzle money from the union, and by the payment of legal fees for Espinosa, the charges were not proved by a preponderance of the evidence. On the charges which have been proved, Crawley is permanently barred from holding membership in or any position with the IBT or any IBT-affiliated entity and may not hereafter obtain employment, consulting or other work, directly or indirectly, with the IBT or any IBT-affiliated entity.

Enclosed with our September 9, 2004, Opinion and Decision are the October 9, 2003, IRB Investigative Report with Exhibits 1-291 and the March 29, 30 and 31, 2004, IRB Hearing Transcript with Exhibits IRB-1 to IRB-19, the Chief Investigator's exhibits Ex. 292 to Ex. 295, and Respondents exhibits R-1 to R-29 introduced at the hearing.

It is respectfully requested that an Order be entered affirming the IRB's September 9, 2004, Opinion and Decision if Your Honor finds it appropriate.

By: 
John J. Cronin, Jr.
Administrator

Dated: September 9, 2004

-----X	:	
In re:	:	
	:	
Local 988 Officers Chuck Crawley,	:	OPINION AND DECISION
Dennis Bankhead and Member	:	OF THE INDEPENDENT
Marie Espinosa	:	REVIEW BOARD
	:	
-----X	:	

INTRODUCTION

The Independent Review Board (“IRB”) forwarded an investigative report to the International Brotherhood of Teamsters (“IBT”) General President James P. Hoffa (“Hoffa”) on October 9, 2003. The report recommended that Local 988 President and Business Manager Chuck Crawley (“Crawley”), Secretary-Treasurer Dennis Bankhead (“Bankhead”) and Local 988 member and employee Marie Espinosa (“Espinosa”) be charged with bringing reproach upon the IBT including embezzling and breaching their fiduciary duties to the Local and its members in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution.¹

¹ Article II, Section 2(a) of the IBT Constitution provides:

Each person upon becoming a member thereby pledges his honor: . . . to conduct himself or herself at all times in such a manner as not to bring reproach upon the Union. . . .

Article XIX, Section 7(b)(1) and (2) of the IBT Constitution provides:

The basis for charges against members, officers . . . for which he . . . shall stand trial shall consist of, but not be limited to, the following:

- (1) Violation of any specific provision of the Constitution, Local Union Bylaws or rules of order, or failure to perform any of the duties specified thereunder.
- (2) Violation of oath of office or of the oath of loyalty to the Local Union and the International Union.

This case involves allegations of a number of corrupt practices by the President of Local 988 headquartered in Houston, Texas aided and abetted by other officers and at least one other employee. Prior corrupt activities by former leaders of Local 988 had resulted in disciplinary action and placing the Local in trusteeship from November 1995 to April 1997.

Following an investigation by IRB and information received from the IBT's RISE program, the IBT General President filed charges against Local 988 President and Business Manager Chuck Crawley, Secretary-Treasurer Dennis Bankhead and Local 988 member and employee Marie Espinosa alleging various acts of embezzlement and breaches of fiduciary duties during the period 1998 through 2002. The General President then, without explanation, referred these charges, which were denied, to the IRB for hearing and determination.

The charges ranged from (1) a scheme to inflate the bills for a new telecommunications system at the new union hall in Houston, Texas and accepting substantial kickbacks from the installer to (2) filing altered invoices to conceal the appropriation and division of two barbeque pits purchased for the Union to (3) overcharging the Local for t-shirts and stickers and pocketing the difference to (4) overcharging the Local for various food and drinks made available to visitors at the grand opening of the Local's new facility in Houston from June through December 2002 to (5) embezzlement of Union funds to pay a Union employee's legal expenses.

After a review of the testimony, the exhibits on file and the arguments of counsel, we find as follows:

Charge A: Embezzlement Involving the Telephone Installation

Perhaps the most serious allegation was that of a blatant kickback scheme imposed by Crawley on the contractor, David Fagan and his wife, Shannon Fagan, who worked as Crawley's secretary from July 1998 to September 26, 2002. Shannon had learned that Local 988 would be installing a new phone system in its new union hall and asked Crawley if her husband, with fifteen years experience as an installer, could bid on the job. Following a meeting at Local 988 during which Crawley described the specifications for the job, Fagan submitted a bid in the approximate amount of \$32,000. According to Fagan, Crawley told Fagan to increase the bid by twenty thousand dollars. Crawley explained that the additional \$20,000 would be "for me". Fagan testified that when he warned that this amount might not be competitive, Crawley said that he ran the Union and he could take care of it. Fagan had used equipment cost figures and had increased each by a percentage, generally 20-25%, to include labor and profit. After talking with Crawley, Fagan "went home, looked at all the prices, pretty much doubled them" and entered the changes in his computer program, arriving at \$52,364. Crawley put the bid through for approval by his Executive Board.²

Bankhead testified that he told Crawley that the husband of an employee should not be submitting a bid because of the appearance of nepotism but Bankhead did not disclose this to the Executive Board.

The bid went to Fagan. Payments were to be 1/3 down, 1/3 at halfway and 1/3 on completion.

² Although he told his Executive Board that there were three bids, it does not appear that they asked to see them and they were not in the Union files. Only Crawley, Bankhead and Flores, a Local Trustee, claimed to have seen them but their descriptions varied.

According to Fagan, Crawley wanted to be paid \$10,000 from the first check and \$10,000 from the second check. Crawley gave Fagan the first check for \$17,454, dated February 28, 2002 (the date of Fagan's first invoice) which was drawn on the Local's bank account. Crawley gave him directions to the bank. Fagan cashed the check, put \$10,000 in an envelope and the balance in another, and then took the first envelope to Crawley and gave it to him on the afternoon of March 1, 2002, counting "the money out to him at his desk". Because the amount cashed required IRS notification, the bank had required Fagan's driver's license and social security number. In order to avoid problems with the next payment, Fagan asked Crawley if he could pay him by check. Crawley refused.

The second check from the Union was dated May 30. Shannon Fagan brought it home and later deposited it, May 31, 2002, in their bank. She then withdrew \$5,500 in cash on the same day. On June 3, 2002, Shannon testified that also on May 31, 2002 she gave Crawley \$5,000 of the money she had cashed. Fagan withdrew \$5,000 in cash, using a check dated May 31, written by Shannon Fagan "to cash". Fagan testified he took the \$5,000 he had cashed June 3 and gave it to Crawley the same day in his office.³

The documents in evidence support this version. Crawley contends he was not in his office on the days and times of the alleged payoffs by Fagan the afternoon of March 1, 2002 and the morning of June 3, 2002.

³ Shannon Fagan testified she gave Crawley an additional \$400 which was part of a separate monthly kickback to fund money for a different purpose, from a raise he had given her. No charge was made on such payments in this proceeding.

On March 1, 2002, Crawley testified he was at a meeting all day at Roadway, a Local 988 employer and left for home at 6:30 PM. Witnesses substantiated Crawley's statement in part, but did not exclude the possibility that he could have left the meeting for thirty minutes or enough time to permit a meeting with Fagan at Crawley's office. The alibi testimony was shadowed by the interests of the witnesses who worked for Crawley. The testimony of the Fagans, however, was straightforward, consistent and unshadowed by interest in the outcome.⁴

Even if there were an error in the precise payment dates, we doubt this would overcome the straightforward testimony of two disinterested witnesses.

We note too that there is no similar alibi evidence in the record with respect to Shannon Fagan's May 31, 2002 payment to Crawley.

We conclude that charge A was established by a preponderance of the evidence.

Acceptance of such payments amounting to \$20,000 was a clear violation of Crawley's fiduciary duties and brought reproach upon the IBT.

Article XIX, Section 7(b)(3) of the IBT Constitution make it a chargeable offense to breach "a fiduciary obligation owed to any labor organization by any act of embezzlement or conversion of Union's funds or property." Union officers have a duty "to hold its money and property solely for the benefit of the organization and its members." 29 U.S.C. 501(a).

⁴ Allegations that Shannon resented no smoking rules and surveillance cameras would not explain her damaging testimony nor the consistent testimony of her husband. We credit their testimony and the evidence supporting it.

Crawley's scheme involved overcharging the Union for work to be performed by a contractor and receiving a kickback from such overcharged amounts which were paid to the contractor by his authority. This was embezzlement and conversion.

Charge B: Embezzlement Involving the Barbeque Pits

One charge alleges that Chuck Crawley, while a member and President of Local 988, and Dennis Bankhead, while a member and Secretary-Treasurer of Local 988, from November 2001 through April 2002 violated their fiduciary duties, embezzled and converted Local funds and property to their own use and brought reproach upon the IBT by taking two mobile pits that had been purchased by the Local.

This charge was extensively briefed and argued. In simplest terms, the two mobile pits were part of a purchase order on August 17, 2001 of five pits in all, three to be imbedded at the new hall and two to be movable to other locations as needed. The two mobile pits each cost approximately \$1,600 and the embedded pits cost \$2,400.

When the purchases came up for approval by the Executive Board the full price of \$4,000 plus taxes of \$330 was disclosed but the document reflected only three embedded pits. On November 1, 2001 one of the mobile pits was picked up by Bankhead at the factory and taken to his home. The reason given was that mobile pits had been stolen while the new hall was being constructed and Crawley wanted to keep them in a safe place for the time being. Bankhead testified he had used the pit five or six times. Also in November Local employees picked up the other mobile pit and the three embedded pits. The embedded pits were stored with one of the employees and the mobile pit was dropped off at Crawley's financee's home. In April 2002 the mobile pit

was moved at Crawley's direction to the home of International Vice President Tyson Johnson, who lived outside Dallas.

The new union hall was occupied in June 2002. The embedded pits were brought there and installed. Johnson returned the mobile pit in November 2002. Bankhead returned the pit in his possession in March 2003.

The document reflecting five pits was altered. Explanations for what happened and why the pits were returned so late are not particularly convincing. On the other hand, there is no evidence that either Crawley or Bankhead ever claimed ownership of the pits, which argues against conversion. There was confusion connected with building the new hall and the Union ultimately obtained possession. While the matter is not free from doubt, we believe the evidence is insufficient to sustain the charge in this count.

Charge C: Embezzlement Involving T-Shirts and Stickers

The IBT filed a separate charge against Chuck Crawley alleging that he manipulated the purchase of 2,000 stickers and some 800 t-shirts to be used for promotional purposes so that the Local Union paid more than the actual cost, with the difference going to Crawley.

The Stickers

David McCormick was a Union organizer in the Spring of 1999. Acting on Crawley's instructions, McCormick placed an order with SMD Graphics for 1,000 custom-made IBT logo stickers for less than \$.50 per sticker. Crawley later instructed him to place an order for another 1,000 stickers at the same price.

Crawley asked McCormick if he knew any one in the Asian community. McCormick told Crawley of his sister, Kim Nguyen, who owned the Sezchuan Express, a Chinese restaurant. Crawley arranged for Sam Betros, a local employee who was also his stepson, to create an invoice from Kim Nguyen for \$1.00 per sticker or \$1,000. Crawley arranged to have a Union check made out to Kim Nguyen in the same amount as the invoice. He also arranged to have Sam Betros create an invoice purporting to be from Sezchuan Express dated May 18, 1999. McCormick took the Union check to his sister, who cashed it. McCormick and Earl China took the cash to SMD Graphics and purchased the stickers at the lower price. He then returned to the Local and gave Crawley the difference in cash.

This procedure was followed a second time. The false invoice created by Betros was dated June 4, 1999. On the same day, Crawley and Bankhead signed a Local check to Kim Nguyen dated June 2, 1999 for \$1,082.00, which she cashed. The cash was then used to purchase 1,000 additional stickers from SMD Graphics and the stickers and excess cash were delivered to Crawley by McCormick.

The T-Shirts

Crawley had used a handwritten note listing the shirts to be purchased and the prices thereof to authorize a check to Kim Nguyen. On June 10, 1999 a Local check for \$6,616.78 payable to "Nguyen, Kim" on Crawley's authorization was signed by Crawley and Bankhead. Betros created another fictitious invoice from Sezchuan Express at Crawley's direction. Nguyen cashed the check and the shirts were purchased from C&L Specialties at \$1,829.90 less than the amount of the Sezchuan Express invoice. Of this amount \$200.00 was paid, at Crawley's direction, to Nguyen who had to go to the

bank to cash the check. McCormick gave the net excess cash to Crawley after giving Nguyen \$200, for her trouble, as Crawley instructed.

This false billing procedure in many ways mirrors the phone installation kickback scheme developed by Crawley under Charge A. While Betros claimed he acted only on McCormick's instruction, we believe the preponderance of the credible evidence supports the conclusion that McCormick did receive and pass along the instructions from Crawley to Betros. The credible evidence also supports our finding that Crawley received the kickbacks in the amount of \$1,084 for the stickers and \$1,629.90 for the t-shirts. The embezzlement alleged in Charge C was established by a preponderance of the credible evidence.

Charge D: Embezzlement Involving AIS

Charge D alleges that Chuck Crawley, while a member and President of Local 988, and Dennis Bankhead, while a member and Secretary-Treasurer of Local 988, and Marie Espinosa, while a member and employee of Local 988, violated their fiduciary duties to the Local and its members, embezzled and converted Local funds and properties to their own use and the use of others, and brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution. The charge further alleges that this activity occurred from June through December 2002.

The evidence to support this charge begins in June 2000 when Crawley hired Espinosa, a 19 year old college student, as a fill-in for absent employees at the Local. He had met Espinosa by chance while purchasing a vacuum cleaner. Espinosa

was a full-time student but she was allowed a flexible schedule in order to work 31-34 hours a week at the Local.

At the old Local building, Crawley had used a Local member, Kim Noel, to perform cleaning services. For whatever reason, Crawley refused to pay her personally and insisted on paying a company name. She therefore used "Noel Enterprises". When the Local moved to its new building, Crawley decided not to use Noel and in late June 2002 made arrangements for Espinosa to perform these services. Espinosa filed a form in Harris County, Texas to allow her to do business under an assumed name, Affordable Industrial Services (AIS). They agreed on a \$1,900 a month fee for the services which involved cleaning the offices each week any time between Thursday and Sunday. She followed the fictitious name pattern, using AIS, because she knew that Noel had had her own company.

Espinosa also sought to provide coffee service for the Local at its new building. She replaced Brand, an outside service, which had provided this service including all the supplies. Brand had given the Local a commercial coffee maker. Crawley and Espinosa did not have a formal agreement other than that she would be "reasonable". Espinosa paid \$814.98 for four coffee makers which she then rented to the Local for \$100.00 per month. During July and August, 2002, Espinosa undertook to do her agreed-upon work for the Union as well as her coffee services and the cleaning service.

Crawley also had early discussions with Espinosa about helping out with the upcoming grand opening of the new Local building. The Chief Investigator offered extensive evidence intended to call into question not only whether Espinosa charged the

Union for more than it received in the way of soda, beer and snacks for the grand opening, which she provided, but also whether this work could or should have been performed by her in her capacity as an employee for a flat fee. On July 11, 2002 Espinosa submitted an invoice to the Local for \$8,733.53 for beer, soda and koozies. The refreshments, which were to be given to visitors to the union hall and other meetings there, were billed at a substantial mark-up over cost, which Espinosa justified was for her services. Espinosa was absent for the weekend of August 2-4 during which time her mother undertook to fulfill her responsibilities by the purchase of these refreshments at various grocery stores using some of her own cash for which she claimed reimbursement. The Chief Investigator attempted to show, and perhaps did show, that there was a shortfall in supplies for which the Local was billed.

This charge is one of embezzlement and of aiding and abetting Espinosa to embezzle money from the Union. Although substantial efforts were made to track the purchase of the refreshments and to identify the supporting receipts and other documents related to these activities, we failed to find a conscious purpose to embezzle from the Union. What we did find was inexcusable sloppiness and supervision in the management of refreshments for the grand opening. This is not, however, an offense within the jurisdiction of the Independent Review Board. Unlike the proven charges of kickbacks for the telephone installation and kickbacks from the purchase of stickers and t-shirts, there is no evidence that Crawley or Bankhead personally received anything for their own benefit. Nor is it clear that the activities of Espinosa resulted in her enrichment by purposefully fraudulent means. The "reasonableness" of her charges are not for us to decide. The Local is free to demand an accounting if it wishes.

Charge E: Alleged Embezzlement of the Legal Fees for Espinosa

Finally, the IBT, based upon the IRB Chief Investigator's Report, charged that Chuck Crawley and Dennis Bankhead, in violation of their fiduciary duties, had embezzled and converted Local 988 funds to the use of another by paying approximately \$2,467.50 in December 2002 for Marie Espinosa's legal fees in connection with her invoking her Fifth Amendment privilege before the Grand Jury and her motion to quash a subpoena requesting her business records dealing with the Local.

At the time of an FBI investigation of Local 988's activities, the Local officials sought the advice of attorney James Hicks as to whether legal representation could be provided to Local employees. Hicks responded in a letter dated November 7, 2002 saying that it was his

“understanding that certain employees of the Local had been contacted by the FBI and had been asked to cooperate in an investigation that they had been told is of Local 988.”

Hicks stated the general rule that the law requires labor organizations to expend its monies in the interest of the Union and its members and then stated

“I have no doubt that providing legal representation to employees in the course of an investigation of the local union meets this obligation.”

Thereafter the Local hired attorney Michael Pena to represent a series of employees who were being interrogated by the FBI, including Marie Espinosa. Only amounts paid to Pena on behalf of Espinosa are challenged in this charge.

Authority to make these disbursements is found in Article 16, Section 1(I) of Local 988's By-Laws which vests the President with authority to disburse whatever in his judgment furthered the best interests of the Local Union, subject to approval by the Executive Board. It appeared that individual members of the Executive Board, through

their actions in signing checks, reviewing invoices and payments made, particularly at the Executive Board meetings in January and March approved these payments. Subsequently on November 8, 2002, the Executive Board approved a motion authorizing the payment of all legal expenditures authorizing payment of legal expenses under stated conditions. This resolution was submitted to the General Membership on November 17, 2002 and was unanimously carried.

In the course of the FBI's investigation, Attorney Pena advised Espinosa to assert her Fifth Amendment privileges against self incrimination, which she did. Neither Crawley nor Bankhead were aware of this action at the time it occurred and for several months thereafter, although the Chief Investigator contends that with greater diligence they would have learned of it sooner.

It is clear that Union funds cannot be spent for legal representation designed to avoid cooperation by one of its members. When Espinosa's actions, which were taken upon the advice of her counsel, were brought to the attention of Crawley, Bankhead and Espinosa by the Chief Investigator, they promptly collectively repaid all sums charged by her lawyer for services to her, in the amount of \$3,097.

Subsequent to the assertion of her Fifth Amendment privilege to avoid testifying before a Grand Jury, upon advice of counsel, Espinosa responded to questions in her two sworn IRB examinations, at the Local's trusteeship hearing and at our hearing. She had turned over documents to the Chief Investigator without objection, including her personal bank records and the records related to her fictitious company, AIS.


There is no evidence offered that either Crawley or Bankhead encouraged Espinosa or her attorney to assert her Fifth Amendment privileges. The evidence is that

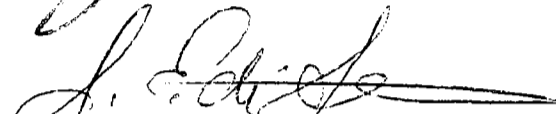
they did not know she had asserted her privileges until some time thereafter. The record does not support the conclusion that they had a fraudulent intent to deprive the Local of its funds at the time the services were rendered. When it was called to their attention that Espinosa had asserted her Fifth Amendment privileges, the Union was promptly reimbursed for the legal expenses. We therefore conclude that this charge was not proved by a preponderance of the evidence.

CONCLUSION

The evidence has established that Chuck Crawley brought reproach upon the IBT, violated the IBT Constitution and the Consent Decree as charged in Charges A and C relating to acts of embezzlement from Local 988. The charges contained in Charges B, D and E have not been proved by the preponderance of the evidence and they are dismissed. On the charges which have been proved, Chuck Crawley is permanently barred from holding membership in or any position with the IBT or any IBT-affiliated entity. Furthermore, Chuck Crawley may not hereafter obtain employment, consulting or other work, directly or indirectly, with the IBT or any IBT-affiliated entity.

Members of the
Independent Review Board


Benjamin R. Civiletti


Joseph E. diGenova


William H. Webster

Dated: September 9, 2004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: UNITED STATES OF AMERICA, :
: Plaintiff, : 88 Civ. 4486 (LAP)
: :
: ORDER
: -against- :
: :
: INTERNATIONAL BROTHERHOOD : APPLICATION NO. 112
: OF TEAMSTERS, et al., :
: :
: Defendants. :
: :
-----X

LORETTA A. PRESKA, United States District Judge:

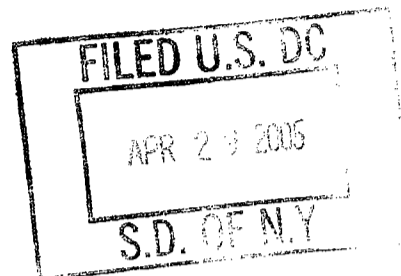
Because the parties did not receive the order dated January 13, 2005 [Docket No. 3855], it is hereby ORDERED that, in accordance with the reasons set forth on the transcript of the oral argument held on January 13, 2005 in Courtroom 12A, Application 112 of the Independent Review Board is granted.

SO ORDERED

March 2, 2005


Loretta A. Preska, 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.

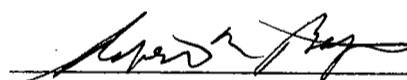
88 Civ. 4486 (LAP)

**NOTICE OF APPEAL OF DISTRICT
COURT'S ORDER GRANTING
APPLICATION NO. 112 OF THE
INDEPENDENT REVIEW BOARD**

Notice is given that Charles Crawley in the above-captioned case hereby appeals to the United States Court of Appeals for the Second Circuit from the Final Order granting Application No. 112 of the Independent Review Board entered in this action on March 2, 2005.

Dated: April 28, 2005

Respectfully submitted,


Robert M. Baptiste (Bar No. RMB-4105)
BAPTISTE & WILDER, P.C.
1150 Connecticut Avenue, N.W., Suite 500
Washington, D.C. 20036
(202) 223-0723
(202) 223-9677 FAX