

INVESTIGATIONS OFFICER,
Claimant,
v.
THEODORE R. COZZA,
Respondent.

SUPPLEMENTAL OPINION OF THE
INDEPENDENT ADMINISTRATOR ON
MOTION TO ALTER THE JUDGMENT

I. BACKGROUND

The Investigations Officer, Charles M. Carberry, initiated this action on September 12, 1990, when he charged Theodore R. Cozza ("Cozza"), former IBT Ninth Vice President, with violating Article II, Section 2(a) of the International Brotherhood of Teamsters ("IBT") Constitution by conducting himself in a manner to bring reproach upon the IBT by "knowingly associating" with six members of La Cosa Nostra ("LCN"). A hearing in this matter on the underlying charge was conducted on July 14 and August 2-3, 1990. In a 34-page Opinion issued on January 4, 1991, I found that the Investigations Officer had satisfied his just cause burden of proving that Cozza "knowingly associated" with five members of La Cosa Nostra. As a penalty, I permanently barred Cozza from the IBT. My January 4, 1991, Opinion was affirmed in all respects by United States District Judge David N. Edelstein in United States v. IBT, 764 F.Supp. 797 (S.D.N.Y. 1991).

This Supplemental Opinion rules on Cozza's Motion to Alter the Judgment ("Cozza's Motion") wherein Cozza, relying upon Fed. R. Civ. Pro. 59(e) and 60(b)(2), requests "that the hearing before me be reopened." Cozza's Motion at ¶ 14.

Argument on Cozza's Motion was conducted via telephone link on August 5, 1991. Heard were Joseph Pass, Esq., counsel for Cozza; and Robert Gaffey, Special Counsel to the Investigations Officer.

Cozza asserts that he has recently acquired documents from the Federal Bureau of Investigation ("FBI documents") that would discredit certain evidence propounded by the Investigations Officer at the hearing on the underlying charge; and, that this claimed "newly discovered evidence" would have prevented the Investigations Officer from satisfying his burden of proving the charge.

For the reasons set forth herein, Cozza's Motion is denied.

II. COZZA'S RELIANCE ON THE FEDERAL RULES OF CIVIL PROCEDURE

As noted, in making his motion Cozza relies on Fed. R. Civ. Pro. 59(e) and 60(b)(2). Fed. R. Civ. Pro. 60(b)(2) provides that a party may be relieved from a final judgment upon the discovery of new evidence "which by due diligence could not have been discovered in time to move for a new trial" Rule 59(e) sets forth the time limitation -- ten days from the date of the judgment -- for a "motion to alter or amend the judgment" ¹

¹ Apparently, Cozza initially filed his motion with Judge Edelstein within ten days of Judge Edelstein's May 9, 1991, affirmance of my January 4, 1991, Opinion. Judge Edelstein then
(continued...)

The Federal Rules of Civil Procedure, however, do not govern disciplinary hearings conducted pursuant to the March 14, 1989, Consent Order (the "Consent Order"). See Fed. R. Civ. Pro. 1 ("These rules govern the procedure in the United States District Courts . . ."). Thus, while the Federal Rules may provide me with some guidance in testing Cozza's motion, I am not bound by the letter of these Rules. The one question I must address here is whether the result reached in my January 4, 1991, Opinion should be disturbed given the discovery of the FBI documents. Accord, United States v. All Right, Title & Interest In Property, 753 F. Supp. 121, 126 (S.D.N.Y. 1990) (The question is whether the newly discovered evidence would "produce a different result."); Mumford v. Bowen, 814 F.2d 328, 329-330 (7th Cir. 1987) (The question is whether the "new evidence is likely to change the outcome").

I find that the FBI documents do nothing to change the result reached in my January 4, 1991, Opinion.

III. DISCUSSION

Cozza indicates that in 1988 during pretrial discovery and preparation for his defense in United States v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, et al., No. 88 Civ. 4486 (DNE), he became aware that the United States Department of Justice, through the FBI,

¹(...continued)
indicated that the motion should be filed before me. In any event, I will consider the motion timely.

maintained various investigatory files which named him as the subject of investigation. See Cozza's Motion at ¶¶ 1 and 2. Cozza states further that, pursuant to the Freedom of Information Act, he directed a request "at that time" to the Department of Justice seeking release of the contents of the various investigatory files which focused on him as the subject. Id. at ¶ 2. Moreover, Cozza indicates that "[b]y cover sheet dated April 4, 1991, the Department of Justice released related portions of certain investigatory files maintained by the FBI, including File No. 159-5307" -- the FBI documents. Id. at ¶ 3. Cozza relies upon these FBI documents in bringing the instant motion.

There are five FBI documents in question. First, is a partially redacted November 1985 memoranda to "Director, FBI," which states in pertinent part:

To date, Pittsburgh Division has been unable to substantiate allegations that THEODORE R. COZZA has violated any Federal laws, in particular Federal labor laws.

Second, is a partially redacted June 1986 memorandum to "Director, FBI," which reads in pertinent part:

Please have information listing subject COZZA as an LCN member purged due to the fact that he does not meet the necessary criteria, as set forth in Bureau airtel dated 11/1/85, to qualify him as a member of the LCN.

Third, is a partially redacted May 1986 memorandum to "Director, FBI," which states in pertinent part:

Pittsburgh is requested to provide FBIHQ of the current status of captioned investigation.

Fourth, is another partially redacted May 1986 memorandum, again to "Director, FBI," which reads in pertinent part:

This Division is continuing its efforts to ascertain the status of captioned subject in connection with the LCN in Pittsburgh.

The fifth, and last, document is dated July 17, 1986, and appears on FBI stationery. It is not directed to any particular individual. The document reads in pertinent part:

The Pittsburgh Division instituted an investigation concerning Theodore Robert Cozza into allegations that Cozza might possibly be receiving pay-offs from individuals in exchange for employment, receiving kickbacks in purchasing or leasing motor vehicles, and possibly was involved in illegal activities regarding annual physical examinations of Local 211 members. The investigation conducted by the Pittsburgh Division has failed to substantiate the allegations. The investigation also failed to develop any evidence of wrongdoing on the part of Cozza which could be utilized in a criminal prosecution.

Cozza relies on these five documents to attack the credibility of the Investigations Officer's only witness, FBI Special Agent Charles J. Duffy ("Duffy"). Cozza contends that these documents destroy Duffy's credibility as a witness. Cozza further argues that once you remove the Duffy support, the Investigations Officer's entire case topples.

At the underlying hearing the Investigations Officer submitted an Affidavit of Duffy ("Duffy Affidavit") in lieu of direct testimony. Duffy did testify, however, on cross-examination. Given Duffy's extensive background and experience, I accepted him as an expert knowledgeable in the investigation into organized

crime and the structure of organized crime in the Pittsburgh and Western Pennsylvania areas.

It was through the Duffy Affidavit that the Investigations Officer demonstrated the organized crime connections of Cozza's associates. The Duffy Affidavit also served as the chief source of information regarding the nature of Cozza's associations with his associates. Thus, to the extent Cozza suggests that the Duffy Affidavit is the foundation of the Investigations Officer's case, I agree. Cozza, however, grossly overstates the impact the FBI documents have on Duffy's credibility. In fact, I find that the FBI documents leave Duffy's credibility as a witness untarnished.

Cozza's attack on the Duffy Affidavit focuses primarily on Duffy's reference to a statement of Jackie Presser ("Presser"), the late IBT General President and FBI informant. In paragraph 50 of his Affidavit, Duffy states:

I have further reviewed a report of the Federal Bureau of Investigation dated December 1, 1984, which concerned information provided by Presser about Cozza, in which Presser described Cozza as "a made guy from Pittsburgh."²

Cozza argues that Duffy intentionally withheld the information that the FBI later determined that Cozza "does not meet the necessary criteria . . . to qualify him as a member of the LCN." This, Cozza contends, causes the entire Duffy Affidavit to unravel because Duffy was relying on reports which were discredited by the FBI.

² The term "made guy" refers to an individual who has sworn allegiance to and has become a member of an organized crime family of LCN.

Perhaps if Cozza had been charged with being a member of organized crime and the Presser statement was relied upon by Duffy to support that charge (when he knew, or should have known, that the FBI had concluded otherwise), Cozza's argument would have merit. The Duffy Affidavit was not intended to be a compilation of all FBI material that touched upon Cozza. Thus, I do not fault Duffy for not having mentioned that the FBI had concluded that Cozza was not an LCN member.³

Whether Cozza was an organized crime member was never an issue. Why then even include a reference to Presser's statement in the Duffy Affidavit? The answer is simple -- Presser, a Union peer of Cozza, believed that Cozza was a member of the Pittsburgh LCN Family. Given the charge at issue ("knowing association"), the fact that Presser was mistaken is of no moment. What is significant, and highly probative on the issue that was before me, is that Cozza's associations with mobsters was so extensive that it gave the impression to others in the Union that Cozza himself was an LCN member. It is this type of impression that adds to Cozza's organized crime ties bringing "reproach upon the Union." Viewed in this light, the FBI documents do not weaken the Duffy Affidavit, as Cozza suggests, but rather fortify it.

³ The impact of the other FBI documents regarding Cozza's lack of criminal activity also do nothing to affect Duffy's credibility. Cozza was not charged with any criminal wrongdoing and Duffy does not allege that Cozza committed any criminal wrongdoing. In fact, in my January 4, 1991, Opinion, at p. 25, I concluded that "[t]he Investigations Officer need not establish that Cozza either knew the details of [his organized crime associates] criminal activities or participated in any of those activities."

Lest we forget, all Duffy stated was that he reviewed Presser's statement that Cozza was "a made guy from Pittsburgh." This is true -- Duffy did review that statement. Duffy also reviewed many other sources of information in compiling his affidavit. He did not, however, draw conclusions as to each one. For example, in the Investigations Officer's original charge, it was alleged that Cozza associated with, among others, Antonio Ripepi. In the Duffy Affidavit, all that Duffy said about Ripepi was:

I am aware that the Pennsylvania Crime Commission has issued regular reports which have listed . . . Ripepi . . . as [a] member of the Pittsburgh Family of La Cosa Nostra.

Given the lack of evidence regarding Ripepi, I rejected the Investigations Officer's conclusion that Ripepi is a member of organized crime. As I stated at p. 14 of my January 4, 1991, Opinion:

The only items of evidence connecting Ripepi with organized crime are the Pennsylvania Crime Commission Reports which list him as a member of the Pittsburgh Family. However, Duffy does not describe him as an organized crime member.

My treatment of Ripepi clearly demonstrates that the proofs offered by way of the Duffy Affidavit were all independently evaluated, and in the case of Ripepi, those proofs were rejected. Thus, the fact that Duffy stated that he reviewed a particular document did not in my mind, as the trier of fact, cause me to infer that Duffy had reached a conclusion as to that document, nor did it transform the contents of that document into the gospel truth.

Spinning off in a slightly different direction, Cozza also argues that my reliance on Presser's information regarding another of Cozza's LCN associates -- Mannerino -- is now tainted, given that the FBI documents prove Presser to be an unreliable source. I reject this argument concerning Presser's reliability. The point that Cozza ignores in making this argument is that I did not rely upon Presser's Mannerino information in a vacuum. I determined Presser's information to be reliable only after weighing it alongside other corroborating proofs. The FBI documents do nothing to alter that analysis. Given the background developed in the record, the information supplied by Presser regarding Mannerino remains reliable and probative.⁴

Moreover, even if I did not credit the Presser information regarding Mannerino, I would still be left with the following:

1. Duffy's identification of Mannerino as a La Cosa Nostra Underboss;
2. The fact that in 1957 Mannerino accompanied the then Pittsburgh LCN Boss, John S. LaRocca, to a meeting attended by numerous high ranking LCN members in Appalachian, New York;
3. The Pennsylvania Crime Commission Report listing Mannerino as an LCN member;
4. The electronic intercepts during which Mannerino was discussed as an LCN member;
5. Cozza's own admissions regarding his association with Mannerino; and

⁴ It must be made clear that although Cozza suggests in his motion that I found all the Presser information to be "reliable and probative," I only made this specific finding as to the Mannerino information. In fact, the Mannerino information was the only information from Presser that I expressly relied on.

6. The statements of Cozza's own son regarding Cozza's association with Mannerino.

In short, without ever having reviewed the Presser information regarding Mannerino, my conclusions would be unchanged as it was based upon the other extensive evidence which supports the fact that Mannerino was an LCN member, and Cozza "knowingly associated" with Mannerino.

Still further, even if Mannerino were taken out of the equation, that fact remains that I still found that Cozza knowingly associated with four other organized crime members, including Cozza's most frequent companion LaRocca, the late Boss of the Pittsburgh LCN. This alone was just cause to permanently ban Cozza from the IBT.

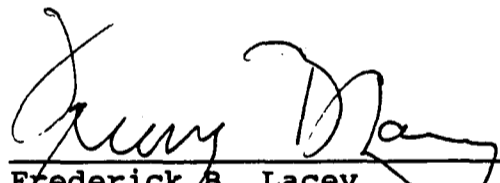
Cozza advances yet another argument. He contends that he was denied a full and fair hearing because the Investigations Officer had access to the FBI documents prior to the hearing and did not supply them to Cozza. This argument is rejected for essentially two reasons. First, during oral argument on Cozza's motion, the Investigations Officer's representative stated that he did not have the FBI documents at the time of the hearing. Second, Judge Edelstein, in his May 9, 1991, affirmance of the Cozza matter plainly stated that the "Consent Decree . . . does not give an IBT member against whom disciplinary charges have been filed any right of pre-hearing discovery."

In a related connection, Cozza argues that since his access to the FBI file "is much more limited than that of the Investigations

Officer . . . state action is involved in this case." Cozza's Motion at ¶ 11. First, this argument is based upon the mistaken assumption that the Investigations Officer had access to the FBI documents at the time of the hearing and did not produce them. More importantly, however, the "state action" issue has recently been closed by the decision of the United States Court of Appeals for the Second Circuit, wherein it was held that the disciplinary proceedings conducted under the Consent Order do not constitute "state action." United States v. IBT, 91-6052, slip op. (2d Cir. August 6, 1991).

IV. CONCLUSION

For the foregoing reasons, Cozza's Motion To Alter The Judgment is denied in its entirety.


Frederick B. Lacey
Independent Administrator

Dated: September 6, 1991