

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
 Plaintiff, :

-v- :

MEMORANDUM & ORDER

INTERNATIONAL BROTHERHOOD OF :
 TEAMSTERS, CHAUFFEURS, :
 WAREHOUSEMEN AND HELPERS OF :
 AMERICA, AFL-CIO, et al., :

88 CIV. 4486 (DNE)

Defendants. :
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IN RE: APPLICATION XXX OF THE
INDEPENDENT ADMINISTRATOR
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APPEARANCES: CHARLES M. CARBERRY, Investigations Officers of the
International Brotherhood of Teamsters;

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

MICHAEL B. POLLACK, New York, New York; PODVEY,
SACHS, MEANOR, CATENACCI, HILDNER & COCOZIELLO,
Newark, New Jersey, for Anthony Calagna, Sr.

EDELSTEIN, District Judge:

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

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

Application XXX presents for this Court's review three opinions of the Independent Administrator finding that the Investigations Officer proved three charges filed against IBT member Anthony Calagna, Sr. Calagna is the former President of IBT Local 295 in Jamaica, New York. The first opinion decides Charges II and II. The second opinion decides the severed Charge III. The third opinion imposes penalties on Calagna's health and welfare benefits.

In Charge I, the Investigations Officer charged Calagna with bringing reproach upon the IBT by being a member of La Cosa Nostra, in violation of Article II, §2(a) of the IBT constitution. In Charge II, Calagna was charged with violating Article, II, §2(a) and Article XIX, §6(b) by refusing to answer over one hundred questions put to him by the Investigations Officer during his sworn statement pursuant to ¶F.12.(C) of the Consent Decree. In Charge III, Calagna was charged with embezzling at least \$50,000 of Local 295 money to pay his legal fees in connection with criminal racketeering charges then pending in the United States District Court for the Eastern District of New York. Because Charge III involved a retainer agreement for Calagna's counsel Michael

Pollock, the Independent Administrator severed the hearing on Charge III, and ordered that Calagna retain separate counsel in regard to that charge.

Calagna was convicted by a jury of one count of extortion, and one count of conspiracy to commit extortion on January 4, 1991, in the United States District Court for the Eastern District of New York. Calagna was sentenced to eighty-seven months imprisonment on April 12, 1991.

The Independent Administrator found that Investigations Officer had sustained his burden and demonstrated just cause that all three charges had been proved. On Charge I, Calagna was permanently suspended from the IBT. As a result of the penalty on Charge I, the only penalty imposed on Charge II was the Investigations Officer's costs for the taking of Calagna's deposition. On Charge III, Calagna was directed to repay Local 295 \$50,000.00. Further, Local 295 was directed to (i) make no severance payments to Calagna, (ii) make no further contributions to its pension fund, welfare fund or life insurance plan on Calagna's behalf, (iii) that no Local 295 funds be paid for Calagna's legal fees.

Calagna appeals to this Court the findings of the Independent Administrator. This Court determines that those findings are fully supported by the evidence, and Calagna's arguments are without merit. Accordingly, the three opinions of the Independent Administrator are affirmed in all respects.

It is well settled that the findings of the Independent

Administrator "are entitled to great deference." United States v. Int'l Brotherhood of Teamsters, 905 F.2d 610, 616 (2d Cir. 1990), aff'g March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y. 1990). This Court will overturn findings when it determines that they are, on the basis of all the evidence, "arbitrary or capricious." United States v. Int'l Brotherhood of Teamsters, supra, 905 F.2d at 622; July 31, 1991 Memorandum & Order, slip opinion at 3-4 (S.D.N.Y. 1991); July 18, 1991 Memorandum & Order, slip opinion at 3-4 (S.D.N.Y. 1991); July 16, 1991 Opinion & Order, slip opinion, at 3-4 (S.D.N.Y. 1991); June 6, 1991 Opinion & Order, slip opinion, at 4-5 (S.D.N.Y. 1991); May 13, 1991 Memorandum & Order, 764 F. Supp. 817, 820-21 (S.D.N.Y. 1991); May 9, 1991 Memorandum & Order, 764 F. Supp. 797, 800 (S.D.N.Y. 1991); May 6, 1991 Opinion & Order, 764 F. Supp. 787, 789 (S.D.N.Y. 1991); December 27, 1990 Opinion & Order, 754 F. Supp. 333, 337 (S.D.N.Y. 1990); September 18, 1990 Opinion & Order, 745 F. Supp. 189, 191-92 (S.D.N.Y. 1990); August 27, 1990 Opinion & Order, 745 F. Supp. 908, 911 (S.D.N.Y. 1990); March 13, 1990 Opinion & Order, supra, 743 F. Supp. at 159-60, aff'd, 905 F.2d at 622; January 17, 1990 Opinion & Order, 728 F. Supp. 1032, 1045-57, aff'd, 907 F.2d 277 (2d Cir. 1990); November 2, 1989 Memorandum & Order, 725 F.2d 162, 169 (S.D.N.Y. 1989);

With respect to Charge I, Calagna appeals the Independent Administrator's finding that Calagna was a member of La Cosa Nostra. Calagna contends that the Independent Administrator's reliance on the sworn declaration of FBI special agent James J.

Malley (the "Malley declaration") was arbitrary and capricious, since the declaration was unreliable hearsay. At the hearing, Malley was accepted as an expert knowledgeable about organized crime, specifically the Gambino organized crime family. Malley was present at the disciplinary hearing, did not testify on direct examination, but was examined on his declaration by Calagna's counsel.

The Malley declaration stated that the FBI considered Calagna a member of La Cosa Nostra. Further, the Independent Administrator found that other evidence of Calagna's associations with members of La Cosa Nostra introduced by the Investigations Officer supported the conclusion in the Malley declaration. Those facts may be summarized as follows. At the hearing Calagna admitted having met Richard DeLuca "five hundred" times. (Ind. Ad. Opinion at 6). Calagna socialized with John Giordano. Calagna testified that he has known Salvatore Avellino for "twenty, twenty-five years." (In. Ad. Op. at 5-7). DeLuca, Giordano, and Avellino were identified in the Malley declaration as being listed as members of La Cosa Nostra by the FBI, and by the United States Senate Permanent Subcommittee on Investigations ("Senate investigations subcommittee").

As further Additional evidence, the Independent Administrator considered Calagna's own testimony regarding his association with organized crime members, his indifference to those allegations, and his lack of knowledge of fundamental IBT affairs. Calagna acknowledged that he "could have" discussed IBT business with

Avellino. Regarding Giordano, Calagna testified:

INVESTIGATIONS OFFICER: Would [Giordano's LCN membership] be a matter of concern to you, as a union official, that someone you know might be tied up with organized crime?

CALAGNA: Not really. I didn't give a shit.

(Tr. at 448). The Independent Administrator found that Calagna could not answer the most fundamental questions about Local 295, of which he was president. For example, Calagna could not name the members of the Local 295 GEB. (In. Ad. Op. at 5-7).

Reliable hearsay is admissible in disciplinary hearings before the Independent Administrator. United States v. International Brotherhood of Teamsters, slip opinion, (2d Cir., August 6, 1991). The Independent Administrator specifically found that the Malley declaration was reliable. That finding of reliability was buttressed by the numerous additional facts found that corroborated the identification of Calagna as a member of La Cosa Nostra. Calagna has not demonstrated that this finding was arbitrary nor capricious. Calagna's challenge to Charge I is without merit and denied.

As to Charge II, the Independent Administrator found that Calagna's refusal to answer 124 questions by the Investigations Officer brought reproach upon the IBT by obstructing the Investigations Officer's proper scrutiny into corrupt influences in the IBT. Calagna argues that it was unfair for the Independent Administrator to sanction him for invoking his fifth amendment right against self incrimination, since he believed his answers may have had some effect on his pending criminal charges.

Calagna may be sanctioned for invoking his fifth amendment right against self incrimination in disciplinary matters involving the Court Officers. The Second Circuit has directly held that the Court Officers in this Consent Decree are not state actors, and thus the fifth amendment protection against self-incrimination does not apply to Calagna in the context of disciplinary proceedings involving the Court Officers. United States v. International Brotherhood of Teamsters, supra (2d Cir. August 6, 1991) at 5-6. Accordingly, Calagna's objection must be rejected on this ground alone.

The Independent Administrator specifically found that the questions that Calagna refused to answer "did not concern the allegations of extortion related to [Calagna's] indictment." (In. Ad. Op. at 14). Instead, the Independent Administrator found that "the questions related to such issues as Calagna's knowledge of and membership in La Cosa Nostra; the intrusion of organized crime into the affairs of Locals 295 and 806; criminal prosecutions of local union officers other than Calagna; and the embezzlement of union monies from Local 295." Id. This finding of the Independent Administrator is supported in the record, and not arbitrary or capricious.

Finally, Calagna objects to the Independent Administrator's finding that the Investigations Officer proved Charge III. The Independent Administrator found Calagna had embezzled and converted to his own use \$50,000.00 of Local 295 monies in order to pay his attorney, Michael Pollack, who was to represent him in his criminal

charges then pending in the Eastern District of New York. Calagna argues that the evidence was insufficient to find that he himself acted with fraudulent intent to convert the monies to his own benefit. This argument is completely without merit.

Summarizing the facts as found by the Independent Administrator fully supports the finding that Calagna bamboozled Local 295 to pay his legal fees after his indictment. Calagna called a special meeting of the Local 295 GEB on May 16, 1989, ostensibly to discuss a labor dispute. At that meeting, without any prior notice, he asked Local 295 to pay his fees, which he asserted he could not afford. When asked about the charges by the GEB, Calagna assured them that he was innocent. The GEB accepted this representation without any further inquiry.

Breaking with past practice, the Local 295 GEB did not consult Ira Drogin, Local 295's counsel, or any other attorney regarding the propriety of paying Calagna's legal fees. The GEB had been advised in the past that such payments were improper. The GEB relied on Calagna's assurance that the "lawyer said it was alright." The lawyer whom Calagna referred was Michael Pollock, Calagna's personal criminal defense attorney.

After the GEB approved the payment, a general membership meeting of Local 295 was held on May 31, 1989 at which those in attendance, less than 10% of the total membership, approved payment of Calagna's legal fees. Calagna told the members present that the GEB had decided "to accept the advice of counsel" that "the charges pending, in counsel's opinion is a union matter and that Local 295

could pay any and all such fees pertaining to this charge." The advice of counsel Calagna referred to was a retainer agreement between Pollack and Local 295. (Ind. Ad. Op. at 4-8).

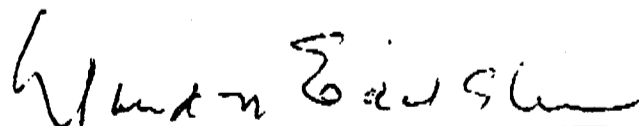
In sum, this evidence supports the Independent Administrator's finding that Calagna acted with fraudulent intent to deprive Local 295 of its Funds. Calagna asserted his innocence of criminal charges and asked the local to accept that at his say so without more. Calagna did not seek the advice of Local 295's own counsel, instead he offered his own counsel's advice as to whether the payment was lawful. His counsel's self-interest was apparant, and was a serious conflict. These facts warranted the inference that Calagna acted manipulatively and deceitfully, and thus with fraudulent intent. The Independent Administrator was in the best position to make such inferences. These inferences are fully supported, and are in no way arbitrary or capricious. The finding of the Independent Administrator is affirmed.

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

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

So Ordered.

Dated: August 14, 1991
New York, New York



U.S.D.J.