

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/12/09

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al.

Defendants.

88 CIV. 4486 (LAP)

ACKNOWLEDGMENT OF RECEIPT
OF THE AGREEMENT
BETWEEN THE INDEPENDENT
REVIEW BOARD AND
THOMAS CLAIR

Handwritten: FILED TO COUNSEL

This Court hereby acknowledges that the Agreement enclosed with Application 139 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 Agreement enclosed with Application 139 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:

John J. Cronin, Jr.
444 North Capitol Street, N.W., Suite 528
Washington, DC 20001
Administrator of the Independent Review Board

Marvin Gittler, Esq.
Asher Gittler Greenfield & D'Alba, LTD
200 West Jackson Boulevard, Suite 1900
Chicago, IL 60606
Counsel for Thomas Clair

Dated: November 9, 2009
New York, New York

Signature of Jonathan Preska
U.S.D.J.

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>11/12/09</u>
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-----X
In The Matter of

Thomas Clair

Before the

INDEPENDENT REVIEW BOARD
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AFFIDAVIT AND AGREEMENT
88 CV 4486 (LAP)

Filed
FILED TO COUNSEL

STATE OF ILLINOIS)

COUNTY OF COOK)

) ss.:
)
)

Thomas Clair, being duly sworn, deposes, says, and agrees as follows:

- On July 21, 2009, the Independent Review Board ("IRB"), appointed pursuant to the Consent Order entered March 14, 1989 in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (DNE) (SDNY) (the "Consent Order"), recommended that charges be filed against me for (A) bringing reproach upon the IBT and for violating my fiduciary duties in violation of Article II, Section 2(b) (1), (2) and (6) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution by allegedly causing the Local 726 Pension Fund to enter

into two ERISA prohibited transactions and by otherwise failing to administer the Fund in accordance with the Fund's documents and for the benefit of participants and beneficiaries of the Fund, (B) bringing reproach upon the IBT and violating my fiduciary duties in violation of Article XIX, Section 7 (b) (1) of the IBT Constitution and Section 14 (A) (3) of Local 726's bylaws by allegedly taking actions on March 21 and 27, 2008 to cause Local 726 to enter into loan transactions in which I caused the Local to pledge assets to secure loans I made along with two other Local officers without obtaining approval by the Local's Executive Board, and (C) bringing reproach upon the IBT in violation of Article XIX, Section 7 (b) (1) and (2) of the IBT Constitution by allegedly misleading the IBT General Secretary that Local 726 was reporting on the Local's financial statements, as instructed, the liabilities of the Local's Severance Plan and by failing to correct an inaccurate representation by the Joint Council's President to the General Secretary Treasurer that Local 726's officers had taken salary reductions when in fact they had not done so. The General President subsequently adopted and filed these charges, and referred them to a Panel for a hearing which is currently scheduled to begin on September 25, 2009.

2. I make this Affidavit and Agreement (the "Agreement") to resolve the IRB charges described in paragraph 1. This Agreement does not constitute an admission or denial of the wrongdoing alleged in the IRB charges. I further understand and agree that this Agreement is based on the unique circumstances of my case. This Agreement shall not serve as precedent for other charges similar to the charges that were brought against me.

3. I represent and agree to the following:

(a) I have been a member of the IBT and Local 726 since 1971. I have been employed by Local 726 since 1995 when I was hired as a business agent. Since 2003, I have been the Local's Secretary Treasurer and principal officer. Also, since 2003, I have been a trustee of the Local 726 Pension Fund and the Plan Administrator.

(b) Other than the foregoing, I have held no other elected or appointed positions or offices of any kind with Local 726 or the IBT or any of their affiliated entities, including any locals, superior bodies, inferior bodies, conferences, councils, committees, divisions, pension, health, welfare or severance plans or other such entities ("IBT entities").

4. I hereby agree that effective beginning on July 31, 2009, I permanently retired from Local 726 and from my positions with the Local 726 Pension Fund. I acknowledge and agree that following my retirement, I am and will be ineligible to hold any appointed or elected office or employment with Local 726, the IBT or any affiliate of the the IBT, including but not limited to Joint Councils, Local Unions, and any benefit funds affiliated with the IBT or any of their affiliates. In addition, while I may retain my status as an inactive member on withdrawal, I shall not participate in any manner in any of the activities and affairs of Local 726 or the IBT, including but not limited to meetings, discussions, consultations, negotiations, votes or any other business activity of Local 726, the IBT or any of their affiliates, except that upon written request of an attorney for Local 726 I may provide necessary information and testimony regarding or in connection with grievances, arbitrations and other issues that involve matters arising prior to my retirement.
5. I hereby further agree that except as provided herein from and after July 31, 2009, neither Local 726, the IBT, nor any other entities affiliated with the IBT, shall pay me, nor shall I accept, any salary, gratuities, gifts, severance payments, allowances, fees, benefit

- payments or contributions or any other compensation of any kind from any IBT entities, except that I may receive any compensation or benefits which have accrued to me prior to the effective date of my retirement and any fully vested or accrued pension, vacation or other benefits under any existing benefit plans or programs maintained or sponsored by Local 726 or IBT affiliated entities. In addition, I may receive payment for any expenses I incurred in connection with my work on behalf of Local 726 prior to the effective date of my retirement in accordance with existing policies and procedures of Local 726. This also means that from and after July 31, 2009, no contributions may be made on my behalf to any Local 726 or IBT affiliated benefit funds by Local 726 or other IBT affiliated entities. I further understand and agree that funds I authorized to be paid to my 401 k account in July of 2009 will be held in escrow until monetary claims or potential monetary claims against me have been resolved. Such funds shall not be paid to Local 726, the Local 726 Pension Fund or me in the absence of a binding adjudication or mutual agreement between the IBT and me.
6. I hereby further agree that from and after July 31 2009, I will not seek or hold any office, employment or appointed position with Local 726,

the IBT or other IBT entities, including any Joint Council, any Local Union or any other affiliate of any of the foregoing, including any affiliated benefit funds. The foregoing prohibition includes consulting or similar relationships, whether paid or unpaid.

7. I understand and agree that this Agreement will be submitted to the Independent Review Board ("IRB") for its review and approval. If approved by the IRB, it will be submitted to the United States District Court for the Southern District of New York for review. I understand that if the Agreement is approved by the United States District Court for the Southern District of New York it will be entered as a Court order. I understand that no representations have been made as to whether this Agreement will be approved by the IRB or the United States District Court for the Southern District of New York. If this Agreement is not approved by the IRB or the Southern District of New York, this Agreement will be null and void.
8. I make this Agreement freely, under no duress or coercion of any kind.
9. I will transmit this Agreement, signed by me, to the IBT. When it is signed by the IBT and the IRB, it will be submitted to the Court for review.

Thomas P. Clair

Thomas Clair

Sworn to before me this
29th day of OCTOBER, 2009

Charles A. DeLo
Notary Public



Witnessed *Loren Ward*

AGREED:

Bh
For the International Brotherhood of Teamsters

Dated 11/2/09

APPROVED:

John J. ...
For the Independent Review Board

Dated 11/5/09

So Ordered:

Loretta A. Preska
United States District Court Judge
Hon. Loretta A. Preska

Dated November 9, 2009