
INVESTIGATIONS OFFICER,

Claimant,

-v-

JOHN TRIVIGNO,

Respondent.

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter concerns a charge filed by the Investigations Officer against John Trivigno ("Trivigno"), the President and Business Representative of IBT Local Union 398 ("Local 398") in Rochester, New York.

The Investigations Officer charged Trivigno with:

Violating Article II, section 2(a) and Article XIX, section 6(b) of the International Brotherhood of Teamsters Constitution ("IBT"), by conducting [himself] in a manner to bring reproach upon the IBT and violating [his] oath.

TO WIT, from 1977 to the present while [he was] an officer, shop steward and member of Local 398 in Rochester, New York [he] knowingly associated with members of the Rochester family of La Cosa Nostra; including John Fiorino, Richard Marino, Joseph Rossi, Joseph Trieste, Joseph LaDolce, Anthony Oliveri, among others.¹

A hearing on this charge was held before me and post-hearing submissions were received. Trivigno was represented by counsel at

¹ At the hearing, the Investigations Officer added Joseph Geniola to his list of La Cosa Nostra members with whom Trivigno allegedly associated.

the hearing. Having reviewed the evidence submitted and the post-hearing submissions, I find that the Investigations Officer has satisfied his just cause burden of proving the charge against Trivigno by a preponderance of the evidence. See United States v. IBT, 745 F. Supp. 333, 338 (S.D.N.Y. 1990).

I. The IBT Constitutional Provisions

The charge against Trivigno implicates two provisions of the IBT Constitution. First, Article XIX, Section 6(b), which sets forth a non-exhaustive list of grounds for bringing disciplinary charges. That list includes:

- (1) Violation of any specific provision of the Constitution, Local Union By-laws 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 International Union.

Second, Article II, Section 2(a), is also implicated. This section, which contains the oath of office mentioned in Article XIX, Section 6(b)(2), mandates that all members shall conduct themselves "at all times in such a manner as not to bring reproach upon the Union . . ."

II. The Ulmer Declaration

At the hearing, the Investigations officer introduced the sworn declaration of Special Agent Robert D. Ulmer (the "Ulmer Declaration"). Investigations Officer Ex. AG. Agent Ulmer has

been employed as a Special Agent of the Federal Bureau of Investigation ("FBI") for over eighteen years. Ulmer Declaration at ¶ 1. He is currently a Supervisory Special Agent in charge of an organized crime squad in the Buffalo, New York area. Id. Agent Ulmer is also the coordinator of the Organized Crime Program for the Buffalo Office of the FBI. Id.

As a Supervisory Special Agent, Agent Ulmer is responsible for supervising the activities of several other Special Agents who conduct investigations of organized criminal activities. These investigations concentrate primarily on the members and associates of the Buffalo Family of La Cosa Nostra. Id. at ¶ 2. As the Coordinator of the Organized Crime Program, Agent Ulmer is also responsible for the monitoring, coordinating and managing of all organized crime investigations in the geographic territory of the Buffalo Office, which includes the city of Rochester, New York, and its surrounding area. Id. The primary focus of Agent Ulmer's work as the Coordinator of the Organized Crime Program has been to monitor, coordinate and manage investigations regarding criminal activities of members and associates of the Buffalo Family and the Rochester Family of La Cosa Nostra. Id.

Agent Ulmer has been involved in numerous organized crime investigations in the geographic territory of the Buffalo Office, including those in the vicinity of Rochester. Id. at ¶ 3. He has also reviewed the work of other Special Agents of the FBI who have been investigating La Cosa Nostra activities in and around

Rochester and criminal activities involving Local 398. Id. Agent Ulmer has also reviewed documentary and electronically recorded information maintained by the FBI regarding Local 398 and La Cosa Nostra activities in the vicinity of Rochester. Id.

Just prior to his current assignment, Agent Ulmer was assigned from June of 1989 to March of 1990 as a Supervisory Special Agent at FBI Headquarters in the Organized Crime Section of the Criminal Investigative Division. Id. at ¶ 4. In that capacity, he was responsible for monitoring, coordinating and authorizing organized crime investigations regarding La Cosa Nostra activity in several field offices of the FBI, including the Buffalo Office. Id. From 1976 to 1987, Agent Ulmer was assigned to various regional offices of the FBI, in which he conducted investigations regarding organized crime, white collar crime and labor racketeering. Id. at ¶¶ 5-6.

As a result of this vast experience, Agent Ulmer is quite familiar with FBI investigations involving La Cosa Nostra members and associates, as well as intelligence information gathered by the FBI regarding La Cosa Nostra activity. Id. at ¶ 7. In connection with his employment as a Special Agent, Agent Ulmer has also met, interviewed, observed and arrested members and associates of La Cosa Nostra. Id.

Agent Ulmer has also provided instruction to newly hired Special Agents at the FBI Training Academy in Virginia, regarding various subjects, including the nature of organized crime and ways

to conduct investigations concerning organized crime. Id. at ¶ 9. He has also lectured to officials from other federal, state, local and foreign law enforcement agencies concerning the nature and investigation of organized crime at a conference held by the Pennsylvania Crime Commission in September of 1989 at Norfolk, Virginia. Id.

Given Agent Ulmer's extensive background and experience, I accept him as an expert knowledgeable in the investigation and structure of organized crime especially in the Buffalo and Rochester areas of New York. This is consistent with my acceptance of Agent Ulmer as an expert in the matter of Investigations Officer v. Angelo Misuraca, Opinion of the Independent Administrator, (March 6, 1991) at p. 6, aff'd, United States v. IBT, 88 Civ. 4486 (DNE) slip op. (S.D.N.Y. July 16, 1991).

III. The Organized Crime Connections of Trivigno's Alleged Associates

In his Declaration, Agent Ulmer provides details of the existence and historic activity of the Rochester Family of La Cosa Nostra. Through the Ulmer Declaration, its attached exhibits and other proof, the Investigations Officer established that John Fiorino ("Fiorino"), Richard Marino ("Marino"), Joseph Rossi ("Rossi"), Joseph Trieste ("Trieste"), Joseph LaDolce ("LaDolce"),

Anthony Oliveri ("Oliveri") and Joseph Geniola ("Geniola") are, or were², members of the Rochester Family of La Cosa Nostra.

A. John Fiorino

In his Declaration, Agent Ulmer indicates that "at the time of his death, the [FBI] considered Fiorino to be a member of the Rochester Family." Ulmer Declaration at ¶ 40. Fiorino is also identified as a former member of the faction of the Rochester Family of La Cosa Nostra known as the "A Team." His murder is allegedly related to the conflict between the "A Team" and a rival faction of the Rochester Family known by the law enforcement community as the "C Team." Id.

This identification of Fiorino as a member of the Rochester Family is corroborated by the testimony of Anthony Oliveri, a self-admitted member of the Rochester Family of La Cosa Nostra, in United States v. Samuel J. Russotti, et al., 82 Cr. 156 (W.D.N.Y. 1984).³ Investigations Officer Ex. V. Oliveri is a participant in the Federal Witness Security Program. During the Russotti trial, Oliveri told of his in-depth knowledge of the activities, identities and hierarchical relationships of many of the members and associates of the Rochester Family. Id. at p. 23. Oliveri testified that Fiorino was a Captain in the Rochester Family of La

² Fiorino was shot to death in December of 1981. Ulmer Declaration at ¶ 40.

³ Russotti is based on a criminal racketeering indictment brought by the Government.

Cosa Nostra. Investigations Officer Ex. V at pp. 2770 and 2812. Oliveri also testified that Fiorino was present at Oliveri's induction into the Rochester Family. Id. at p. 2896.

Angelo F. Monachino, a self-admitted member of the Rochester Family of La Cosa Nostra and a participant in the Federal Witness Security Program, also testified for the Government in the Russotti trial. Investigations Officer Ex. W. At trial, Monachino stated that Fiorino was a made member of the Rochester Family of La Cosa Nostra. Investigations Officer Ex. W at pp. 934-935.

In addition, John Grande, a Special Agent with the Office of Labor Racketeering in the United States Department of Labor at its Newburgh Field Office in Rochester, New York,⁴ testified that Fiorino was a "documented member of organized crime." T360-6 to 9.⁵

Given the corroborating testimony of Oliveri and Monachino, buttressed by the FBI's identification and Agent Grande's input, I accept the finding that up until the time of his death Fiorino was a member of the Rochester Family of La Cosa Nostra.

⁴ Agent Grande's credentials and testimony are discussed in detail at pp. 16-19, infra.

⁵ All transcript references are to the transcript of the hearing before me. The cite refers to the transcript page number followed by the line number. In this case, "T360-6 to 9" refers to transcript page 360, line 6 through line 9.

B. Richard Marino

The finding that Marino is a member of the Rochester Family is also well supported in the record. Marino was identified as the Underboss of the Rochester Family hierarchy during hearings entitled "Organized Crime: 25 Years After Valachi" before the Permanent Subcommittee on Investigations of the United States Senate. Investigations Officer Ex. A. In his Declaration, Agent Ulmer indicates that "Marino is considered by the Federal Bureau of Investigation to be a high-ranking member of the Rochester Family." Ulmer Declaration at ¶ 28.

Furthermore, Marino was charged in the Russotti matter with being the Underboss of the criminal enterprise described in that prosecution. As explained by Agent Ulmer, the "enterprise" in the Russotti matter is identical to the Rochester Family. Ulmer Declaration at ¶ 25. Marino was convicted. Investigations Officer Exs. B and H.

During the Russotti trial, Oliveri testified that Marino was a member of the Rochester Family. Investigations Officer Ex. V at pp. 2770 and 2823. In fact, Oliveri said that his own induction into the Rochester Family of La Cosa Nostra took place at Marino's house and that Marino was present during the ceremony. Investigations Officer Ex. V at pp. 2894-2896.

During the Russotti trial, Monachino similarly testified that Marino was present when Monachino was inducted into the Rochester Family of La Cosa Nostra and that Marino was at one time a Captain

in the Rochester Family to whom Monachino was assigned. Investigations Officer Ex. W at pp. 916-917, 927, 931-932 and 984.

Agent Grande also described Marino as a "documented member of organized crime," who has "had a close association with other documented members of organized crime." T361-15 to 17.

Against this background, I find that Marino is a member of the Rochester Family of La Cosa Nostra.

C. Joseph Rossi

Rossi has been listed by the Permanent Subcommittee on Investigations of the United States Senate as a Captain in the Rochester Family. Investigations Officer Ex. A. In his Declaration, Agent Ulmer states that "Rossi is considered by the Federal Bureau of Investigation to be a member of the Rochester Family." Ulmer Declaration at ¶ 26.

Rossi was also named as a defendant in Russotti and charged with being a Capo in the criminal racketeering enterprise in that prosecution. Rossi was convicted. Investigations Officer Exs. B and I.

During the Russotti trial, Oliveri testified that Rossi was a Capo in the Rochester Family and that at one time Oliveri himself had been placed under Rossi's supervision. Investigations Officer Ex. V at p. 2770. Oliveri also testified that Rossi had sponsored him for membership in the Rochester Family of La Cosa Nostra. Investigations Officer Ex. V at p. 2895.

During the Russotti trial, Monachino confirmed that Rossi was a member of the Rochester Family. Investigations Officer Ex. W at pp. 936-937.

Agent Grande also corroborated that Rossi was a "documented member of organized crime." T362-6 to 7.

That Rossi is a member of the Rochester Family of La Cosa Nostra is well-supported in the record and I accept it.

D. Joseph Trieste

At the hearing before me, Agent Ulmer testified that the FBI considers Trieste to be a made member of the Rochester Family of La Cosa Nostra. T301-10 to T303-5. This identification is corroborated by the testimony of Oliveri in Russotti. Oliveri testified that Thomas Marotta was a Captain in the Rochester Family and that Trieste worked under him. Investigations Officer Ex. V at pp. 2770 and 2812.

The Investigations Officer also introduced an FBI form 302 report memorializing a May 1990 interview with Dominic Taddeo, a self-admitted member of La Cosa Nostra. Investigations Officer Ex. AH. The 302 report shows that in January of 1987, Taddeo arranged for a meeting with other made members of the Rochester Family of La Cosa Nostra to "straighten things out." Taddeo states that he, Trieste, and three other made members of the Rochester Family, including Angelo Amico, the Boss of the Rochester Family, attended the meeting.

Given the FBI's identification, as corroborated by Oliveri and the Taddeo affidavit, I find that Trieste is a member of the Rochester Family of La Cosa Nostra.

E. Joseph LaDolce

In his Declaration, Agent Ulmer states that LaDolce is "considered by the Federal Bureau of Investigation to be a member of the Rochester Family." Ulmer Declaration at ¶ 36. Oliveri testified in Russotti that LaDolce worked under Thomas Marotta, a Captain in the Rochester Family of La Cosa Nostra. Investigations Officer Ex. V at pp. 2770 and 2812. Oliveri also testified that LaDolce was present during Oliveri's induction into the Rochester Family. Investigations Officer Ex. V at p. 2896.

LaDolce was also named as a defendant in United States v. Angelo Amico, et al., CR-87-00177L (W.D.N.Y.) and as a member of the criminal racketeering enterprise that was the subject of that prosecution. Investigations Officer Exs. D, E and F. Agent Ulmer describes the "enterprise" in that case as identical to the Rochester Family of La Cosa Nostra. Ulmer Declaration at ¶ 27. LaDolce was convicted. Investigations Officer Ex. Q.

Against this background, I find LaDolce to be a member of the Rochester Family of La Cosa Nostra.

F. Anthony Oliveri

As already noted, Oliveri is a self-admitted member of the Rochester Family of La Cosa Nostra who is currently a participant in the Federal Witness Security Program. Ulmer Declaration at ¶ 23. In Russotti, Oliveri admitted that he was a member of the Rochester Family and gave details of his induction into that organization. Investigations Officer Ex. V at pp. 2892-2899.

Given Oliveri's admission, there can be no doubt that he is a member of the Rochester Family of La Cosa Nostra, and I so find.

G. Joseph Geniola

In his Declaration, Agent Ulmer states that Geniola is "considered by the Federal Bureau of Investigation to be a member of the Rochester Family." Ulmer Declaration at ¶ 34. Geniola was also present and helped set up the meeting described earlier of Taddeo, Trieste and other made members of the Rochester Family in January of 1987. Investigations Officer Ex. AH. Geniola was named as a defendant and as a member of the criminal racketeering enterprise in Amico. Investigations Officer Exs. D, E and F. Geniola was convicted after trial in that case. Investigations Officer Ex. M.

Agent Grande testified that Geniola "has been identified as an LCN member." T363-13 to 15.

In view of the evidence presented by the Investigations Officer, I find that Geniola is a member of the Rochester Family of La Cosa Nostra.

IV. Trivigno's Associations with Members of the Rochester Family of La Cosa Nostra

In Trivigno's sworn examination taken by the Investigations Officer prior to the hearing before me, Trivigno testified that he knows Trieste socially. Trivigno testified that he has also worked with Trieste on many jobs and that sometimes he bow hunts with him. Investigations Officer Ex. Y at p. 24. Trivigno also stated that he was "in court," presumably at the 1984 Russotti trial, when Oliveri identified Trieste as a member of La Cosa Nostra. Id. at pp. 24-25. Trivigno also admitted to meeting with Trieste after 1984. Id. at p. 25. At one point, Trivigno described Trieste as being "like my son's godfather." Id. at p. 45.

Investigations Officer Exhibit AH, the FBI form 302 report memorializing an FBI interview with Dominic Taddeo, discussed at p. __, supra, sheds additional light on Trivigno's close ties with Trieste, and his other mob associates. The 302 report shows that in January of 1987, Taddeo arranged for a meeting with other made members of the Rochester Family of La Cosa Nostra to "straighten things out." Investigations Officer Ex. AH. Taddeo states that Trieste, Geniola, himself and three other made members of the Rochester Family, including Angelo Amico, the reigning Boss of the Rochester Family, attended the meeting. Id. Taddeo also states

that he asked "the others at one point if Trivigno and Joe LoDolce were informed of this meeting." Id. The 302 report also reflects that "Joe Trieste [told] Taddeo that Trivigno is with 'us,' but did not want to come to this meeting."⁶ Id.

Trivigno was also named as a defendant in the Russotti matter where he was identified as an individual who worked for the criminal enterprise described in that prosecution, i.e., the Rochester Family. Investigations Officer Ex. B. Trivigno was acquitted of the charges in that case. Investigations Officer Ex. R. However, regardless of whether Trivigno was acquitted or convicted of the criminal racketeering charges in Russotti, the evidence presented at that trial is quite probative of the Investigations Officer's charge that Trivigno knowingly associated with certain named members of La Cosa Nostra.⁷

For example, in Russotti Oliveri testified that he went to a restaurant with a Mr. Tom Taylor to meet Fiorino concerning a

⁶ The Investigations Officer also cites to this statement to support his argument that Trivigno is a made member of the Rochester Family of La Cosa Nostra. Since the Investigations Officer has not charged Trivigno with being a member of La Cosa Nostra, I find it unnecessary to address this contention.

⁷ It is worth noting that the Investigations Officer's charge may be proven by evidence of Trivigno simply associating with members of La Cosa Nostra without any indication that such association is part of a larger criminal conspiracy or that it is pursuant to the perpetration of an underlying predicate criminal act, as would be necessary to prove any criminal racketeering charges against Trivigno. I also note that the standard of proof in Russotti was "beyond a reasonable doubt," whereas here there is a just cause standard which is proven by a "preponderance of the evidence." See United States v. IBT, 745 F. Supp. 333, 338 (S.D.N.Y. 1990).

rumored attempt on Taylor's life. Oliveri stated: "When I walked in John Fiorino, and Joe Rossi, . . . Joe Trieste, John Trivigno, and some other guys were all there [including] Joe LaDolce." Investigations Officer Ex. V at pp. 2719-2735.

Later on, Oliveri testified that he had once been ordered by Rossi to go to the Centurion restaurant for a meeting with members and associates of La Cosa Nostra. Id. at p. 2752. Oliveri testified that Rossi, Fiorino, Trieste, Marino, LaDolce and Trivigno, among others, had all attended the meeting. Id. at pp. 2752-2753.

Oliveri also testified that Trivigno had met with him at his apartment one time as part of a planned murder attempt. Trivigno was supposed to drive a motorcycle during the proposed hit. Id. at pp. 2796-2801.

Oliveri further testified that he had gone to Marino's house, on a separate occasion, and met with Trieste, Marino, Fiorino, Rossi and Trivigno, among others, to discuss La Cosa Nostra business. Id. at pp. 2815-2819.

Oliveri also told of the time that he, Fiorino, LaDolce and Trivigno, among others, were involved at one time in tailing a car as part of La Cosa Nostra business. Id. at pp. 2832-2834.

Finally, in describing the hierarchy and structure of the Rochester Family of La Cosa Nostra, Oliveri testified that Thomas Marotta was a Captain in the Rochester Family for whom Trivigno, Trieste and LaDolce worked. Id. at pp. 2770, 2812.

At the hearing before me, further corroborating evidence of Trivigno's links to his mob associates was provided by Agent Grande. Agent Grande testified that since 1986, he has worked as a Special Agent with the Office of Labor Racketeering in the United States Department of Labor at its Newburgh Field Office situated in Rochester, New York. T329-24 to T330-9. As part of his duties at the Department of Labor, he is involved in the investigation of criminal activity within the labor community. T334-2 to 8.

Prior to joining the Department of Labor, Agent Grande served as a member of the Rochester Police Department for 20 years. T330-10 to 18. From 1974 until the time of his retirement, Agent Grande served as the supervisor in charge of the Intelligence Unit of the Rochester Police Department. T330-19 to T331-9. As part of his work in the Intelligence Unit, Agent Grande was in charge of overseeing investigations into organized crime in the Rochester, New York area. T331-15 to T332-22. His duties at the Intelligence Unit often involved working closely with other law enforcement agencies, including the FBI, the New York State Police, the State Police Special Investigations Unit and the local police departments in Monroe County. T332-17 to T333-12. Agent Grande was specifically involved in the investigations leading up to the prosecutions in Russotti and Amico. T333-13 to 25. Agent Grande has lived in the Rochester area his whole life. T334-17 to 18. He grew up in the same neighborhood as Trivigno and has known him as far back as he can remember. T334-19 to T335-8.

Given Agent Grande's extensive background and experience, I accept him as an expert qualified to offer opinion testimony regarding the investigation, activities and structure of organized crime in the Rochester area. As with Agent Ulmer, this is consistent with my acceptance of Agent Grande as an expert in Investigations Officer v. Angelo Misuraca, Opinion of the Independent Administrator, (March 6, 1991), aff'd, United States v. IBT, 88 Civ. 4486 (DNE) slip op. (S.D.N.Y. July 16, 1991).

Agent Grande testified that he has personally observed Trivigno in the company of Fiorino, Marino, LaDolce, Trieste and Geniola on numerous occasions. T401-5 to T406-11. For example, at the hearing Agent Grande was questioned as follows:

Q. Now, do you have any direct personal knowledge, personal observations of the respondent's association with John Fiorino? Did you ever observe them together?

A. Yes.

Q. And can you tell us approximately when and where and how many?

A. During the time frame of 19 -- I will put it at 1975 to the time of his death, [December of 1981] on many, many occasions I personally seen Mr. Trivigno and Fiorino together.

* * * *

Q. And do you have any recollection of the locations where you made these observation [sic]?

A. Yes, sir, to begin with Woodbury -- I believe it's Woodbury place, the location of Sam John Trucking. The Centurion Lounge, any number of ABC [alcoholic beverage control] establishments, sir. I don't specifically recall many of the names, but at the time they were frequented by both Mr. Trivigno and Mr. Fiorino, along with others . . .

* * * *

Q. Did you have any personal observations of Richard Marino associating with the respondent?

A. Yes, sir, it would fall in the same kind of category, ABC establishments, restaurants, street corners, coffee shops, the like.

* * * *

Q. Did you have any personal observations of respondent and Mr. Joseph LaDolce?

A. Yes, sir.

Q. And where did you observe them together?

A. The same type of locations, including Mr. Trivigno's own bar, sir.

* * * *

Q. Did you have any occasion to observe the respondent in the company of Mr. Joseph Trieste?

A. Yes, sir.

Q. And is this one time or many times?

A. Throughout the time of my employment in law enforcement, many times.

Q. And where did you make those observations, where were they -- these?

A. In his bar located at Clifford and Goodman.

Q. When you say his bar, who is him?

A. Mr. Trivigno operated a bar at the corner of Clifford and Goodman Street. In his bar, in each other's vehicles, seldom at ABC establishments, but at coffee shops, driving down the street together, standing on the street corner together, that type thing, sir.

* * * *

Q. And with respect to Mr. Geniola, would you have an occasion to observe him in the company of the respondent?

A. Yes, sir, in addition to Local 398 the same type situations, a street corner, coffee shops, ABC establishments on occasion and that type of atmosphere, sir.

[T401-5 to T406-11.]

Agent Grande testified that these observations of Trivigno associating with Marino, LaDolce, Trieste and Geniola occurred during the time period that he worked for the Rochester Police Department, from the middle to late 1970's until he retired from the Department in 1989, or until one of the mob associates was incarcerated. Id.⁸

With respect to his many observations of Trivigno with mob ties, Agent Grande provided the following opinion:

[B]ased on my observations of Mr. Trivigno with the named individuals in the charge, and the collective body of people associating with him at that time in those places, and the named people, all of which who -- many of which have been identified on numerous occasions in open court as members of LCN, and the nature of LCN itself, it would be my opinion that in addition to any other matters that may be ongoing that are not of a criminal nature, criminal activity or ongoing activity of the LCN, are discussed and are acted upon, even in a casual way.
[T601-2 to 12.]

Surveillances conducted by the Rochester Police Department from 1978 to 1988 corroborate Agent Grande's testimony and the other evidence presented by the Investigations Officer of

⁸ It would have been impossible for Trivigno to have associated with any of the members listed in the Investigations Officer's charge other than Trieste, LaDolce and Geniola after 1984, except by visiting the other men in prison, since each of them had been sentenced to lengthy prison terms by then.

Trivigno's numerous associations with the named members of the Rochester Family of La Cosa Nostra. See, e.g., Investigations Officer Ex. AI (Various Intelligence Reports prepared by the Rochester Police Department, designated by date) at 8/10/87 (Trivigno observed at bar with Trieste); 3/14/88 (Confidential source stated that "the new gambling location . . . is being operated by" Trivigno with Trieste); 3/17/88 (Trivigno and Trieste observed leaving building together); 3/18/88 (Trivigno and Trieste observed moving building supplies together); 4/6/88 (Trivigno and Trieste observed taking turns getting into car to speak with another individual and then entering a nearby building); 2/16/89 (Trivigno observed in a restaurant with Geniola). See also Investigations Officer Ex. AJ (Various Intelligence Reports from the Rochester Police Department designated by stamp number) at C28958 (On 7/22/83, Trivigno observed at a party with LaDolce); C28966-968 (On 6/19/78, Trivigno and Trieste observed inside car); C28974-75 (On 11/14-15/79, Trivigno observed with Fiorino, Geniola and Trieste at a party for Fiorino); C28940-41 (On 3/7/88, Trivigno observed driving with Trieste); C28987-88 (On 3/30/79, Trivigno and LaDolce observed sitting together in a restaurant); C28971 and C28989 (On 3/10/80, Officer identified car as belonging to Trivigno parked in front of a known gambling establishment next to cars identified as belonging to Rossi, Fiorino, Geniola and LaDolce); C28997-98 (On 2/23/79, Trivigno observed in restaurant at same time as Marino, Oliveri, Fiorino, Geniola, Trieste and LaDolce); C29004

(On 8/29/78, Trivigno observed in archery class with Oliveri and Trieste); C29005-06 (On 9/27/78, Trivigno and Trieste observed outside courtroom together); C29010 (On 8/9/78, Trivigno observed whistling to Rossi and Trieste when Officer approached, then Rossi and Trieste, who was carrying a paper bag, came out of nearby building and all three of them got into truck and drove away); C29041-2 (On 3/27/78, Trivigno observed in restaurant with Rossi and Fiorino).

V. Trivigno's Knowledge Of His Associate's Organized Crime Ties

Trivigno is a long time resident of Rochester, T334-17 to T335-8, and has been a "Teamster in the Rochester area" for some 21 years. Investigations Officer Ex. Y at pp. 8-9. As a Teamster, Trivigno has always been associated with Local 398. Id. Moreover, his associations with Rochester mobsters span nearly two decades.

The Rochester Family of La Cosa Nostra, including its influence within Local 298, has been the subject of extensive media coverage in the Rochester area. Investigations Officer Exs. S and T. Given Trivigno's longtime ties to Rochester and Local 398, it appears certain that allegations concerning his associates organized crime ties would have been brought to his attention. In fact, given his longstanding relationships with his mob associates, "it is inconceivable that he was unaware that they were infamous members of [Rochester's] underworld." Investigations Officer v. Cozza, Decision of the Independent Administrator at pp. 24-25

(January 4, 1991), aff'd, 764 F. Supp. 797 (S.D.N.Y. 1991). See Investigations Officer v. Senese, Decision of the Independent Administrator at p. 37 (July 12, 1990), aff'd, 745 F. Supp. 908 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292 (2d Cir. 1991) ("In the absence of direct evidence of knowledge of organized crime ties of an associate, I conclude that such knowledge may be inferred from the duration and quality of the association.") See also Investigations Officer v. O'Brien, Decision of the Independent Administrator at p. 25 (May 15, 1991), aff'd, United States v. IBT, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. September 11, 1991). ("It strains credulity that [Respondent] could be friends with all the members of the highest ranking positions of the Detroit Family of La Cosa Nostra and not be aware of their organized crime connections. This is especially true in light of the extensive media coverage in the Detroit area offered by the Investigations Officer concerning the organized crime connections of [Respondent's] associates.")⁹

VI. Trivigno's "Knowing Association"

In my July 12, 1990, Decision in Senese at pp. 35-36, I held that:

[I]n order for the Investigations Officer to sustain his burden of proving a prohibited association with

⁹ In fact, as to Trieste, Trivigno testified that he was present in Court when Oliveri identified Trivigno as a member of La Cosa Nostra, and that he continued to associate with him after that identification was made. See p. 13, supra.

organized crime members, he must show that the contacts in question are purposeful and not incidental or fleeting. Such contacts may be shown in either a business or social context In determining whether the Investigations Officer has sustained his burden of proving a prohibited association, the focus will be placed on the nature and not the number of contacts in question.

Given the nearly two decades of Trivigno's close associations with organized crime members as chronicled by the Investigations Officer, I can reach no conclusion other than that "the contacts in question were purposeful and not incidental or fleeting."

Trivigno attacks the sufficiency of the Investigations Officer's evidence. First, Trivigno places great emphasis on his contention that during Oliveri's testimony in Russotti, Oliveri was never asked, and he never did positively identify John Trivigno, the Respondent here, as the defendant named in Russotti. Similarly, Trivigno argues that the Investigations Officer also failed to present any evidence showing that Respondent Trivigno is the same "Trivigno" Oliveri testified about during Russotti. Trivigno Post-Hearing Brief at pp. 10-16.

This argument carries no weight. There is absolutely no suggestion in the record that there are two John Trivignos. Respondent does not even argue that there are two individuals named John Trivigno and that Oliveri was speaking of someone else. Rather, he simply argues that Oliveri never positively identified Trivigno during the Russotti trial.

Second, Trivigno argues that neither Agent Grande's testimony nor the numerous surveillance reports by the Rochester Police

Department provide any evidence that Trivigno actually "associated" with the named members of organized crime, rather, at most, they simply show Trivigno may have been observed near the individuals in question. For example, Trivigno argues:

On another occasion Grande testified that an observation was made of the Respondent sitting with LaDolce and other people in a restaurant, however, when asked whether they were together Grande responded that based on a report it appeared that way but he had no way of knowing from the report what was being talked about or what they were doing in a restaurant. (T562-T563).
[Trivigno Post-Hearing Brief at pp. 18-19.]

And the following:

Report dated 8/10/87 was offered to show a meeting between the Respondent and Trieste. (T390). On cross-examination Grande acknowledged that the report does not show any connection between Respondent and Trieste other than the fact that they were in the same building. (T541). The report itself indicates that Respondent and Trivigno [sic] attended a stag party but does not indicate any association between the two men.
[Trivigno Post-Hearing Brief at p. 21.]

Trivigno's argument misses the point. While one or two observations of an IBT officer in the same building or room with a member of La Cosa Nostra may not be enough to prove an association charge, that is not what we have here. The Investigations Officer has come forward with evidence showing that Trivigno was seen in the company of members of organized crime on countless occasions throughout the course of nearly twenty years. The evidence here establishes at a minimum, that:

1. Trivigno hunted with Trieste;
2. Trivigno frequented restaurants, bars and coffee shops with Fiorino, Rossi, Trieste, Marino, LaDolce, Oliveri, and Geniolo;

3. Trivigno met with Oliveri as part of a planned murder attempt;

4. Trivigno was at parties with LaDolce, Fiorino, Geniola and Trieste;

5. Trivigno was in a car with Trieste and Rossi;

6. Trivigno was in archery class with Trieste; and

7. Trivigno described Trieste as being "like my son's grandfather."

Such evidence is more than sufficient to prove association even absent details concerning what exactly transpired during any particular meeting. As I stated in Cozza, supra, at p. 25:

[A]ll that must be established by the Investigations Officer to sustain the charge is that [Respondent] knew them to be members of organized crime. The Investigations Officer need not establish either that [Respondent] knew of the details of their criminal activities or participated in any of those activities.

Considering the totality of the evidence presented by the Investigations Officer, I find that he has satisfied his burden of proving by a preponderance of the evidence that Trivigno knowingly associated with those members of the Rochester Family of La Cosa Nostra named in the charge.

VI. Trivigno's Fifth Amendment Defense

Trivigno argues that his right to due process under the Fifth Amendment to the United States Constitution was violated because the Government's assertion of privilege often denied him access to documents and sources of information which formed the basis of

Agent Ulmer and Agent Grande's opinion testimony.¹⁰ Trivigno Post-Hearing Brief at pp. 2-7.

It is now settled that the proceedings before me, which are brought pursuant to the Consent Order and the IBT Constitution, do not involve Government action and therefore the Fifth Amendment is inapplicable. United States v. IBT, 941 F.2d 1292, 1295-97 (2d Cir. 1991). Nevertheless, under the Consent Order Trivigno is entitled to a fair hearing and he received one.

In raising his Fifth Amendment argument, Trivigno specifically argues that Agent Ulmer's and Agent Grande's opinion that Trivigno is "affiliated with the Rochester A Team Family of LCN," should be disregarded because the Government's assertion of privilege thwarted his attempt to identify the sources of this opinion. Trivigno Post-Hearing Brief at pp. 2-7. The point Trivigno misses is a basic one. In making my findings, I have not relied on any uncorroborated opinions of Agents Ulmer and Grande. All of my findings are well-supported in the record by several corroborating sources of proof. As I made clear at the hearing, to the extent the Government precludes the disclosure of corroborating material, the Investigations Officer is at much of a disadvantage as Trivigno, given that the Investigations Officer runs the risk of his uncorroborated evidence being rejected by me. T603-4 to 21.

¹⁰ Representatives of the federal government and not the Investigations Officer asserted the privilege in order to protect the identity of confidential informants and to safeguard the integrity of on-going investigations. See Investigations Officer's Reply Memorandum at pp. 2-3.

All of my findings in this decision are based upon well corroborated sources of proof. Thus, the Government's assertion of privilege did not deprive Trivigno of a fair hearing.¹¹

VII. The Penalty To Be Imposed

An individual, like Trivigno, who counts among his associates reputed underworld figures, has no place in the IBT. It is now settled that "[t]here is only one just reasonable penalty to be imposed when a Union official . . . sees fit to hobnob with mob bosses and underlings -- permanent debarment from the very Union he has tainted." Cozza, supra, at p. 32.

By virtue of this decision, Trivigno is permanently barred from the IBT. Thus, Trivigno is to remove himself from all of his IBT-affiliated Union positions (including membership in the IBT) and draw no money or compensation therefrom, or from any other IBT-affiliated source. In addition, I will impose sanctions impacting upon Trivigno's employee benefits (including pension, health and welfare benefits). See Investigations Officer v. Senese, Supplemental Decision of the Independent Administrator (November

¹¹ Trivigno also argues that Agent Ulmer's reliance on Oliveri's and Monachino's testimony and the FBI's debriefing of Taddeo cannot be accepted because their testimony is unreliable hearsay. It is well settled that hearsay, if reliable, is admissible in these proceedings. United States v. IBT, 745 F. Supp. 908, 914-915 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292 (2d Cir. 1991). I conclude that this evidence and the other evidence presented by the Investigations Officer corroborate each other, are reliable, and thus, admissible.

29, 1990), aff'd, United States v. IBT, 753 F. Supp. 1181 (S.D.N.Y. 1990).

As is my practice, I invited Trivigno to submit a schedule of his benefits as well as a memorandum on the issues raised in imposing sanctions touching upon those benefits. Trivigno, however, did not provide me with any submission regarding his benefits. Despite Trivigno's failure to provide me with a submission, sanctions impacting upon such benefits, to the extent they exist, are in order.

The first category of benefits to address are those that are administered by both IBT-affiliated persons or entities, on the one hand, and non-IBT-affiliated persons and entities on the other. In the past, I have characterized such benefits as "Third-Party Plans." If Trivigno is a participant in any Third-Party Plan, I direct that the IBT and any affiliate that may contemplate making payments, not make, or discontinue making, payment of Union funds to such Third-Party Plans on Trivigno's behalf. This ruling does not interfere with Trivigno's right to receive any benefits that may already be vested in such plans.


In addition, to the extent the IBT or any IBT-affiliated entity contemplates making the payment of any benefits to Trivigno which are under their exclusive control (such as bonuses and Local controlled severance plans), they are hereby directed not to make such payments.

Lastly, it is well-settled that Union officials charged with misconduct and found to have committed misconduct may not have their legal fees paid by their Union. See, e.g., United States v. Local 1804-1, 732 F. Supp. 434, 437 (S.D.N.Y. 1990). Thus, no IBT-affiliated entity may make any contributions to Trivigno's attorneys fees in connection with these charges.

VIII. Application To Judge Edelstein

Given the extensive nature of Trivigno's involvement with the Rochester Family of La Cosa Nostra, it is in the best interest of the IBT and Local 398 that Trivigno immediately be purged from the Union. Accordingly, I will not voluntarily stay this decision. The penalties imposed herein shall take effect immediately.

Notwithstanding the fact that I have not stayed this decision or the penalties imposed, I will submit this Decision to Honorable David N. Edelstein for his review and approval by way of Application in accordance with the procedure set forth in the Consent Order.



Frederick B. Lacey
Independent Administrator

Dated: March 12, 1991