

INDEPENDENT REVIEW BOARD  
444 North Capitol Street, NW, Suite 528  
Washington, DC 20001  
(202) 434-8080  
Facsimile (202) 434-8084  
Corruption Hotline (800) CALL IRB

Chief Investigator:

Charles M. Carberry, Esq.  
Investigations Office  
17 Battery Place, Suite 331  
New York, NY 10004

Administrator:  
John J. Cronin, Jr.

August 17, 2012

**VIA UPS GROUND**

Board Members:  
Benjamin R. Civiletti, Esq.  
Venable LLP  
575 7th Street, NW  
Washington, DC 20004

Joseph E. diGenova, Esq.  
diGenova & Toensing, LLP  
1776 K Street, NW, Suite 737  
Washington, DC 20006

The Honorable William H. Webster  
1850 K Street, NW, Suite 1100  
Washington, DC 20006

Hon. Loretta A. Preska  
United States District Court  
United States Courthouse  
500 Pearl Street, Room 1320  
New York, NY 10007

Re: APPLICATION 161 OF THE INDEPENDENT REVIEW BOARD

Dear Judge Preska:

I transmit herewith one original and one copy of Application 161 of the Independent Review Board, submitting the Agreement regarding Nicholas Bernhard, approved by the IRB, to Your Honor for review, and if appropriate, to be "so ordered."

In addition to the Application, enclosed please find the original and one copy of:

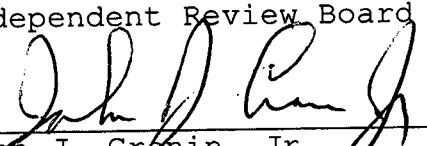
- (a) the August 17, 2012, Agreement and Exhibits A and B approved by the IRB;
- (b) an Acknowledgment of Receipt; and
- (c) an Affidavit of Service.

If you find it appropriate, I respectfully request that a member of Your Honor's staff file the original of the Application, Agreement, Acknowledgment of Receipt and Affidavit of Service with the Clerk's office.

Respectfully Submitted,

Members of the  
Independent Review Board

By:

  
John J. Cronin, Jr.  
Administrator

JJC:cft

Pursuant to the Consent Order of the United States District Court, S.D.N.Y.  
United States -v- International Brotherhood of Teamsters 88 CIV. 4486 (LAP)

Enclosures

cc: Tara M. La Morte, AUSA  
Charles M. Carberry, Esq.  
Bradley T. Raymond, Esq.  
Elizabeth Macedonio, Esq.  
Vincent F. Pitta, Esq.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	88 Civ. 4486 (LAP)
	:	AFFIDAVIT OF SERVICE
	:	
INTERNATIONAL BROTHERHOOD OF	:	
TEAMSTERS, <u>et al.</u>	:	
	:	
Defendants.	:	

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Carolyn F. Tibbs hereby deposes and says:

1. I am the Assistant to the Administrator in the office of the Administrator of the Independent Review Board. On August 17, 2012, I caused to be delivered via UPS Ground to the Honorable Loretta A. Preska one executed original and one copy of Application 161, the executed original and one copy of the Agreement, with attached Exhibits A and B, between the IRB and Nicholas Bernhard, and the original and one copy of the Affidavit of Service and Acknowledgment of Receipt.

2. I also caused a copy of Application 161 along with the enclosures to be delivered to:

Tara La Morte, AUSA, via UPS Ground  
Charles M. Carberry, Esq., via UPS Ground  
Bradley T. Raymond, Esq., via Hand Delivery  
Elizabeth Macedonio, Esq., via, UPS Ground  
Vincent F. Pitta, Esq., via UPS Ground

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Carolyn F. Tibbs

Sworn to and subscribed  
before me this \_\_\_\_\_ day

of \_\_\_\_\_ 2012

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	88 Civ. 4486 (LAP)
	:	ACKNOWLEDGMENT OF RECEIPT
INTERNATIONAL BROTHERHOOD OF	:	OF THE AGREEMENT
TEAMSTERS, <u>et al.</u>	:	BETWEEN THE INDEPENDENT
	:	REVIEW BOARD AND
Defendants.	:	NICHOLAS BERNHARD

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This Court hereby acknowledges that the Agreement enclosed with Application 161 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 161 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, NW, Suite 528  
Washington, DC 20001  
Administrator of the Independent Review Board

Tara La Morte, AUSA  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, NY 10007

Bradley T. Raymond, Esq.  
International Brotherhood of Teamsters  
25 Louisiana Avenue  
Washington, DC 20001

Elizabeth Macedonio, Esq.  
42-40 Bell Blvd.  
Suite 302  
Bayside, NY 11361

Charles M. Carberry, Esq.  
Investigations Office  
17 Battery Place, Suite 331  
New York, New York 10004

Vincent F. Pitta, Esq.  
Pitta & Giblin LLP  
120 Broadway, 28<sup>th</sup> Floor  
New York, New York 10271

Dated: \_\_\_\_\_, 2012  
New York, New York

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U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	88 CIV. 4486 (LAP)
	:	
v.	:	APPLICATION 161 OF THE
	:	INDEPENDENT REVIEW BOARD
INTERNATIONAL BROTHERHOOD OF	:	-- AGREEMENT BETWEEN THE
TEAMSTERS, <u>et al.</u>	:	INDEPENDENT REVIEW BOARD
	:	AND NICHOLAS BERNHARD
	:	
Defendants.	:	

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Pursuant to Paragraph O. of the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters ("IRB Rules"), the Independent Review Board ("IRB") files this Application submitting the Agreement with Nicholas Bernhard, a former President and Principal Officer of Local 917 in Floral Park, New York. The Agreement, and accompanying IRB request for clarification of benefits to which Mr. Bernhard is entitled as set forth as Exhibit A, and the IBT provided clarified list of benefits as set forth as Exhibit B, has been approved by the IRB and is submitted to Your Honor for review and, if appropriate, to be entered as an order.

On April 25, 2012, the IRB issued Investigative Reports to the Executive Board of Local 917 recommending that a charge be filed against Nicholas Bernhard for failing to cooperate with the IRB by refusing to answer questions during his April 5, 2012 IRB

sworn examination. On May 2, 2012, the Local 917 Executive Board filed the charge and referred the charge to IBT General President James P. Hoffa for adjudication. On May 22, 2012 Mr. Hoffa informed the IRB that; the charge was filed, that a hearing panel was appointed and that a hearing was scheduled for June 14, 2012.

Before the scheduled IBT hearing was held, Nicholas Bernhard forwarded to the IBT a signed Agreement seeking to resolve the matter. The IBT approved and signed the Agreement and forwarded it the IRB. The Agreement, approved and signed by the IRB, is enclosed.

This Application complies with former United States District Court Judge David N. Edelstein's February 2, 1994, Order stating that all IRB Agreements shall "contain a paragraph informing signatories that the Agreement will be reviewed and may be rejected." The Agreement reached between the IRB and Nicholas Bernhard satisfies this procedure. One original and one copy of an Acknowledgment of Receipt are enclosed with this Application for execution by Your Honor.

Effective August 17, 2012, Nicholas Bernhard has agreed to permanently resign from the IBT, Local 917. From August 17, 2012 forward, he has further agreed not to:

(1) hold membership in the IBT or hold any position with Local 917 or any employment, office, position or consulting or similar relationship, whether paid or unpaid, with Local 917, and

any IBT Entities;

(2) accept any pay, salary, allowance, fee or compensation of any kind, except that he may receive any fully vested pension benefits and the clarified benefits specifically listed in Exhibit B;

(3) accept any contributions on his behalf to any pension, health and welfare, severance or other benefit fund;

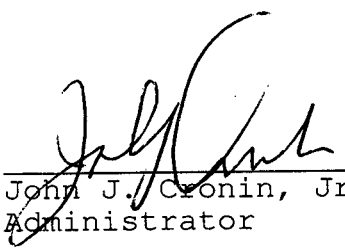
(4) receive any gratuities, severance payments or gifts of any kind whatsoever from Local 917, or IBT Entities; or

(5) participate in any manner in any of the activities or affairs of Local 917, or any other IBT entities.

We have found the Agreement and the entitled benefits clarified in Exhibit B serves to resolve the matter in a fair and equitable manner.

**Therefore,** we respectfully request that Your Honor execute the Agreement on the line provided. This will, in effect, serve to have the Agreement "so ordered" by the Court. Thereafter, it is respectfully requested that a member of Your Honor's staff file the fully executed original Agreement with the Clerk and transmit to me a confirmed copy of the Agreement as "so ordered."

By:

  
John J. Cronin, Jr.  
Administrator

Dated: August 17, 2012

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In The Matter of  
Nicholas Bernhard

**AFFIDAVIT AND AGREEMENT**

Before the  
**INDEPENDENT REVIEW BOARD**

-----X

STATE OF NEW YORK ) ss.:

COUNTY OF NASSAU ) ss.:

Nicholas Bernhard, being duly sworn, deposes, says, and agrees as follows:

1. On April 25, 2012, 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 bringing reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), and (2) section 14(i) of the IBT Constitution by failing to cooperate with the IRB by refusing to answer 31 questions during his sworn examination on April 5, 2012. The Executive Board of Local 917 subsequently adopted and filed these charges, and referred them to James P. Hoffa, General President of the International Brotherhood of Teamsters for a decision on the merits.

2. I make this Affidavit and Agreement (this "Agreement") to resolve the IRB recommended charges described in paragraph 1. This Agreement does not constitute an admission or denial of the wrongdoing alleged in the IRB charges.



3. I represent and agree to the following:
- (a) I have been a member of Local 917 of the International Brotherhood of Teamsters ("Local 917") and the International Brotherhood of Teamsters ("IBT") since 1984. From 1984 to 2007, I worked for Charmer Industries. Charmer merged with Peerless Importers in 2007 becoming Empire Merchants. I worked for Empire Merchants from 2007 until December 2011. In December 2011, I was elected President of Local 917. I have served as a trustee of the Local 917 Health Fund, the Local 917 Pension Fund, the IBT Local 868 Pension Fund and the Local 816 Labor & Management Pension Trust Fund since becoming President of Local 917.
  - (b) Other than the foregoing, I have held no other elected or appointed positions or offices of any kind with Local 917, the IBT or any of their affiliated entities, including any other locals, superior bodies, inferior bodies, conferences, joint councils, committees, divisions, pension, health, welfare or severance funds/plans or other such entities ("IBT Entities").
5. I hereby agree that I will permanently resign from all IBT-affiliated positions, including all positions described in paragraph 3, above, including my membership in Local 917 and the IBT effective upon the date ("the effective date") this Agreement is approved by the IRB. I agree never to seek or to hold any elected or appointed office or position with Local 917 or any other IBT Entities, whether paid or unpaid, including any consulting or similar type arrangements.
6. From the effective date of this Agreement forward, neither Local 917, the IBT, nor any other IBT Entities shall pay me, nor shall I accept, any salary, gratuities, gifts, severance payments, allowances, fees or any

other compensation of any kind, except that I may receive any compensation or benefits which have accrued or vested prior to the effective date of this Agreement, including but not limited to any pension, health and welfare, or severance benefits, or any wages, unused vacation or other paid leave time to which I am entitled, including any reasonable business related expense reimbursements which are owed to me by Local 917, in accordance with Local 917's existing expense reimbursement policies and practices.

7. From the effective date of this Agreement forward, Local 917 and any other IBT Entities shall not make, nor shall I accept, any contributions on my behalf to any pension, health and welfare, severance or other employee benefit fund/plan, except as required to maintain any accrued or vested health and welfare benefits to which I am entitled as of the effective date of this Agreement.
8. Should I become employed by an employer which is part to a collective bargaining agreement with Local 917 or another IBT affiliate after the effective date of this Agreement I understand that I may not, and cannot be compelled to, become a member of Local 917, or the other IBT affiliate, as applicable.
9. I understand and agree that this Agreement will be submitted to the IRB for its review and approval and if approved by the IRB, it will be submitted to the United States District Court for the Southern District of New York ("USDC SDNY") for its review and approval. I also understand that if this Agreement is approved by the USDCSDNY it will be entered as a Court order. I acknowledge that no representations have been made to me as to whether this Agreement will be approved by the IRB or the USDCSDNY. If this Agreement is not approved by the IRB or by the USDCSDNY, there shall be no Agreement.
10. I make this Agreement freely, under no duress or coercion of any kind.

11. This Agreement is permanent.

Nicholas Bernhard  
Nicholas Bernhard

Sworn to before me this  
6th day of July 2012  
[Signature]  
Notary Public

Anthony Parisi  
Notary Public, State of New York  
Lic. NO. 01PA6152170  
Qualified in Rockland County  
Commission Expires Aug. 28, 2014

AGREED:

Bh  
For the IBT

Date: 7/10/12

Approved: [Signature]  
For the IRB

Date: 8/17/12

So Ordered:  
Hon. Loretta A. Preska

\_\_\_\_\_  
Date: \_\_\_\_\_  
United States District Judge

# EXHIBIT A

INDEPENDENT REVIEW BOARD  
444 North Capitol Street, NW, Suite 528  
Washington, DC 20001  
(202) 434-8080  
Facsimile (202) 434-8084  
Corruption Hotline (800) CALL IRB

Chief Investigator:

Charles M. Carberry, Esq.  
Investigations Office  
17 Battery Place, Suite 331  
New York, NY 10004

July 17, 2012

Administrator:  
John J. Cronin, Jr.

Bradley T. Raymond, Esq.  
International Brotherhood of Teamsters  
25 Louisiana Avenue NW  
Washington DC 20001

Vincent Pitta, Esq.  
Pitta & Gibling LLP  
120 Broadway, 28<sup>th</sup> Floor  
New York, NY 10271

Dear Messers. Raymond and Pitta:

As part of its review of the agreement between Mr. Bernhard and the IBT, please provide the IRB with a schedule of "the compensation or benefits which have accrued or vested prior to the effective date" of the agreement, as is provided for in paragraph 7, that Mr. Bernhard is asserting a right to or that he is owed. If the IRB approves the agreement, a list of what that paragraph covers will be submitted to the Court along with the agreement to identify what Mr. Bernhard is allowed to receive under the agreement.

Very truly yours,

Members of the  
Independent Review Board

By:

  
John J. Cronin, Jr.  
Administrator

cc: Charles M. Carberry, Esq.

# EXHIBIT B

**Schedule of compensation and benefits that have accrued or vested as of July 17, 2012 as described in Paragraph 7 of the Affidavit and Agreement signed by Nicholas Bernhard on July 6, 2012**

1. unused vacation pay – 5 weeks
2. unused personal days -- 6-7
3. severance pay – the local does not have a severance pay program
4. proration of monthly \$900 car allowance
5. proration of monthly \$125 cell phone allowance
6. Local 816-917 pension. The Fund Administrator has advised that Bernhard has earned 27 1/4 credits. If he retired today, he would receive \$465 per month. If he waits until he is 55 years old, he would receive \$713.50 per month. If he waits until age 65, he would receive \$1,783 per month. In addition, if he obtains 2 3/4 additional credits, he would be entitled to retire with an unreduced monthly pension benefit of \$2,077.50.
7. Joint Council 16 pension. Bernhard is not eligible for a benefit from this fund since he does not have the minimum of five years of participation for vesting purposes.
8. Local 868 pension. Bernhard has no vested benefits under this fund.
9. Health and Welfare. Bernhard is not eligible for health and welfare coverage under the plan to which Local 917 contributes beyond his eligibility to elect COBRA continuation coverage, for which he would be responsible for paying the premiums

Nicholas Bernhard Date: 7/30/12

B Date: 8/9/12

BRENDLEY T. RAYMOND,  
General Counsel