

**HEARING OFFICER'S REPORT AND  
RECOMMENDATION TO THE COMMISSION**

**WATERFRONT COMMISSION OF NEW YORK HARBOR**

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Proceeding on the Initiative of the Commission to Determine Whether to Revoke, Cancel, or Suspend the License of PASQUALE PONTORIERO as a Hiring Agent For Ports America, Inc. (Previously Known As P&O Ports North America, Inc.)

CASE: RHA-158

HEARING

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39 Broadway  
New York, NY 10006

ADMINISTRATIVE LAW JUDGE

Patrick W. McGinley, Esq.

APPEARANCES:

FOR THE COMMISSION

Walter M. Arsenault, Esq.  
*Executive Director*

RESPONDENT

Pasquale Pontoriero

ATTORNEYS FOR RESPONDENT

David C. Stanziale, Esq.  
Jon S. Deutsch, Esq.

A hearing was held at the office of the Waterfront Commission of New York Harbor on January 19, 2011, May 19, 2011, August 10, 2011, September 20, 2011, October 27, 2011, December 15, 2011, February 8, 2012 and March 7, 2012. Respondent appeared with his attorneys at each session.

The following Counts were presented in the Amended Notice of Hearing:

**COUNT I**

Whether Respondent associated with Tino Fiumara, a person who has been identified by Federal Bureau of Investigation, and other local and state law enforcement agencies as a "capo" in the Genovese Crime Family, under circumstances where such

association creates a reasonable belief that his participation in any activity required to be licensed or registered under the Waterfront Commission Act would be inimical to the policies of the Waterfront Commission Act within the meaning of the Waterfront Commission Act, Part II, Section 5-i(6).

**COUNT II**

Whether Respondent associated with Steven DePiro, a person who has been identified by Federal Bureau of Investigation, and other local and state law enforcement agencies as an “associate” in the Genovese Crime Family, under circumstances where such association creates a reasonable belief that his participation in any activity required to be licensed or registered under the Waterfront Commission Act would be inimical to the policies of the Waterfront Commission Act within the meaning of the Waterfront Commission Act, Part II, Section 5-i(6).

**COUNT III**

Whether Respondent knowingly associated with Tino Fiumara, a person who has been convicted of racketeering activity, under circumstances where such association creates a reasonable belief that his participation in any activity required to be licensed or registered under the Waterfront Commission Act would be inimical to the policies of the Waterfront Commission Act within the meaning of the Waterfront Commission Act, Part II, Section 5-i(7).

**COUNT IV**

Whether Respondent knowingly associated with Steven DePiro, a person who has been convicted of racketeering activity, under circumstances where such association creates a reasonable belief that his participation in any activity required to be licensed or registered under the Waterfront Commission Act would be inimical to the policies of the Waterfront Commission Act within the meaning of the Waterfront Commission Act, Part II, Section 5-i(7).

**COUNT V**

Whether Respondent associated with Tino Fiumara, a person who is a career offender, under circumstances where such association creates a reasonable belief that his participation in any activity required to be licensed or registered under the Waterfront Commission Act would be inimical to the policies of the Waterfront Commission Act within the meaning of the Waterfront Commission Act, Part II, Section 5-i(6).

**COUNT VI**

Whether Respondent associated with Steven DePiro, a person who is a career offender, under circumstances where such association creates a reasonable belief that

his participation in any activity required to be licensed or registered under the Waterfront Commission Act would be inimical to the policies of the Waterfront Commission Act within the meaning of the Waterfront Commission Act, Part II, Section 5-i(6).

### **COUNT VII**

Whether Respondent possesses good character and integrity within the meaning of the Waterfront Commission Act, Part I, Article V, Section 7(a) and 3(a) in that :

- A) He associated with a member of the Genovese Crime Family as set forth in Count I above; and
- B) He associated with a member of the Genovese Crime Family as set forth in Count II above; and
- C) He knowingly associated with a person who has been convicted of racketeering activity as set forth in Count III above; and
- D) He knowingly associated with a person who has been convicted of racketeering activity as set forth in Count IV above; and
- E) He associated with a person who is a career offender as set forth in Count V above; and
- F) He associated with a person who is a career offender as set forth in Count VI above; and

a cause which would permit his disqualification from receiving a license upon original application; and

### **COUNT VIII**

Whether to revoke, cancel, or suspend Respondent's license as a Hiring Agent;

### **INTRODUCTION**

I find that jurisdiction in this matter has been established, specifically by the receipt in evidence of Commission Exhibit 1, Respondent's application for longshoreman's registration dated June 30, 1998 and by Commission Exhibit 2, Respondent's application for the position of hiring agent dated January 5, 2005.

This hearing was tried over a period of a year and two months with written briefs submitted thereafter. There were preliminary motions, including those to compel

production of documents, to suppress the Article IV statements, and to stay these administrative proceedings, all of which were resolved and made part of this record. The Commission introduced 39 documents into evidence; the defense 6 documents and the Court 6 others. Several witnesses were called by each side. Respondent introduced into evidence a character reference letter from the Most Reverend Nicholas DiMarzio, Bishop of Brooklyn.

The facts as elicited are remarkably uncomplicated. Their interpretation and application to the charges herein, however, resulted in a lengthy and contested hearing. References herein are to pages of the hearing transcript.

### **APPLICABLE LAW**

It is appropriate at the outset, as well as relevant to an understanding of the charges against the Respondent, to acknowledge the role of organized crime on the waterfront over a long period of time. This is set forth in Part I, Article I of the Waterfront Commission Act:

#### Part I

#### Article I: Findings and Declarations

The States of New Jersey and New York hereby find and declare that the conditions under which waterfront labor is employed within the Port of New York district are depressing and degrading to such labor, resulting from the lack of any systematic method of hiring, the lack of adequate information as to the availability of employment, corrupt hiring practices and the fact that persons conducting such hiring are frequently criminals and persons notoriously lacking in moral character and integrity and neither responsive or responsible to the employers nor to the uncoerced will of the majority of the members of the labor organizations of the employees; that as a result waterfront laborers suffer from irregularity of employment, fear and insecurity, inadequate earnings, an unduly high accident rate, subjection to borrowing at usurious rates of interest, exploitation and extortion as the price of securing employment and a loss of respect for the law; that not only does there result a destruction of the dignity of an important segment of American labor, but a direct encouragement of crime which imposes a levy of greatly increased costs on food, fuel and other necessities handled in and through the Port of New York district.

(McK. Unconsol. Laws 9802)

(N.J.S.A. 32:23-2)

Courts have not hesitated in stating, even decades ago, that the Commission's oversight of the harbor is designed to eradicate "an unwholesome concentration of criminals on the waterfront." In re Kaiser, 94 N.J. Supra, 95, 99 (App. Div. 1967); N.J.S.A. 32:23-2.

In this case, the sections of the Waterfront Commission Act charged against the Respondent are the following:

Article XVI, Part II, Section 5-I(6) of the Waterfront Commission Act provides for revocation of registration where:

Association with a person who has been identified by a federal, state or local law enforcement agency as a member or associate of an organized crime group,... or who is a career offender, under circumstances where such association creates a reasonable belief that the participation of the ... registrant under this act would be inimical to the policies of this act.

Article XVI, Part II, Section 5-I (7) provides for revocation of registration where there is:

... knowing association with a person who has been convicted of racketeering activity by a court of the United States or any state... under circumstances where such an association creates a reasonable belief that the participation of ... the registrant in any activity required to be... registered under this act would be inimical to the policies of this act.

(McKinley's Unconsolidated Laws 9913; N.J.S.A. 32:23-93)

Apparently, these two sections of the Waterfront Commission Act have not been judicially reviewed. However, I have received and reviewed certain decisions relating to the Casino Control Act in New Jersey which both sides agree is an agency similar to the Waterfront Commission and with similar statutes.

Noticeably, two important words found in the above cited sections of the Act are not defined therein, i.e., "association" and "inimical." I have received argument from both counsel, orally and in their post hearing briefs. With regard to "association," I am not persuaded that any meaning, other than its commonly understood dictionary meaning should be adopted.

Accordingly, I adopt the dictionary definition proposed by the Commission, that is "to keep company, as a friend, companion or ally." It is a definition that connotes

neither good nor ill and is dependent on the facts for interpretation. But it is straightforward and easily understood.

Regarding the word "inimical" I shall adopt the meaning described in the Casino Control cases: "adverse to the public confidence, trust, credibility, integrity and stability of the industry." See Application of Re Steel and Bayshore Rebar, Docket Nos. 95-0660-SI, 95-0661-SI, 8 (NJ CCC 1996)

There are two other legal aspects relevant to the charges against Respondent. The first is that there is no requirement under the Waterfront Commission Act that the Commission must prove that any association was for a criminal purpose. (248). Since both sides agree that the Commission's standard for revocation for criminal association is similar to the New Jersey Casino Control Act, I shall adopt the reasoning of the New Jersey Superior Court in holding that association with a career criminal by a casino license applicant "creates an unacceptable risk of corruption," and that it is "unnecessary to wait for the detrimental effects" to occur before taking action. (See HREBI, Local 54, 496 A.2d 1111 (App. Div. 1985). Accordingly, I find that the Commission in this case has no obligation, as part of its burden of proof, to show that Respondent met with either Tino Fiumara or Stephen DePiro for a criminal purpose.

I also find that under the Waterfront Commission Act, there is no requirement that Respondent knew or should have known that Messrs. Fiumara and DePiro were career offenders or organized crime members. The Commission has shown, in Exhibit I attached to the Commission's post trial submission, that New Jersey Senate Bill, No. 2606, which became Waterfront Commission Act, Article XVI, Part II, Section 5-1 (6), initially proposed language relating to association with a person "whom the licensee or registrant knows or should know" is a member of organized crime. The quoted language, however, was not enacted.

In my view, the Sections of the Waterfront Commission Act cited above provide for strict liability. The statute is aimed at the appearance of impropriety; there are no statutory exceptions. My view, I believe, is supported by the conditions existing on the piers before its passage (supra) and by the history indicating legislative refusal to add language concerning criminal purpose or knowledge of criminality (supra). I view the specific sections as a tough, no exception, antidote to criminal influence on the piers.

There is, however, a practical exception, one I think supported by the testimony of both expert witnesses in this case. Both Mr. Stewart and Mr. Levine would accept a happenstance, inadvertent or unplanned association, "a completely fortuitous encounter." (Stewart 397). To be actionable, the meeting must be intentional, more than a happenstance (Levine 814); intentional, knowingly, not by accident (Stewart 248). This practical exception appeals to common sense, and is one not so different in application than Justice Potter Stewart's famous declaration about pornography.

Because I view the statutory scheme here to be one of strict liability, I shall not adopt the Staluppi factors (State of New Jersey v. Staluppi, 94 N.J.A.R.2d 31, (CCC), 1993 WL 601850 (NJ Admin). Frankly, I do not find Staluppi to be controlling in this case. I have adopted the meaning of “inimical” from Application of Re Steel and Bayshore Rebar, Ibid.

### **FACTS**

During my discussion of the facts herein, I shall draw adverse inferences to Respondent's contentions because, on almost every crucial issue of fact relating to organized crime, he invoked his Fifth Amendment privilege and refused to answer.

Although the transcript of Respondent's Article IV interview at the Commission was entered into evidence (Respondent exhibit 16) and defense counsel argued that its receipt should estop any adverse inference from Respondent's Fifth Amendment responses during the hearing, it occurred in March 2010 and provides a poor substitute for live testimony in determining credibility. Moreover, Respondent also repeatedly invoked the Fifth Amendment during the course of the Article IV hearing to all questions relating to organized crime. However, I acknowledge that any adverse inferences I may draw are insufficient in and of themselves to support my findings. I draw these inferences in conjunction with the other evidence adduced at the hearing.

As I stated at the outset, the facts as elicited are remarkably uncomplicated. Simply stated, Respondent Pontoriero visited the home of Stephen DePiro on two (2) occasions. Respondent had dinner with Tino Fiumara, together with several others including Respondent's father, at Rothman's Steak House in Long Island. Messrs. Fiumara and DePiro are notorious organized crime figures.

### **TINO FIUMARA**

I shall spend scant time discussing the criminal career of Tino Fiumara. He has been identified by federal and state law enforcement as a “capo” in an organized crime group and as a career offender. He has been convicted of racketeering activity (Commission Exhibits 19, 20, 25). He has been described at various times as one of the most notorious criminals in New Jersey history. Respondent's attorneys as well as Robert Levine, Respondent's expert witness, all agree on Fiumara's criminal reputation. Association with Fiumara, without more, comes close to a per se violation of the Waterfront Commission Act, Article XVI, Part II, Sections 5-I (6) and 5-I (7). As Mr. Stewart testified, there is no evidence that anything positive can come out of a relationship between a working longshoreman and an organized crime figure (328). But more is required. The Commission must prove that the association with Fiumara was under circumstances where such association created a reasonable belief that Respondent's participation as a registrant under the Act, i.e., as a Hiring Agent, would be inimical to the policies of the Act.

Respondent has acknowledged that he had dinner with Tino Fiumara and several others at Rothman's Steak House, but claims that he did so only as an accommodation to his father, Antonio, who is not in good health and unable to drive himself at night. When questioned at the hearing about this trip, Respondent refused to answer (104); however, at his Article IV Waterfront Commission interview (Commission Exhibit 14), Respondent said his father insisted he go. Antonio Pontoriero, Respondent's father, was described by his doctor as too ill to testify at the hearing (Court Exhibit 3 in evidence).

Dan Seratelli, called as a witness by Respondent, testified that he owns a printing graphics business. He was a friend of Tino Fiumara, posted bail for him, and regularly met him for dinner and other social occasions. He also heard that Antonio Pontoriero, Respondent's father, did not drive at night. He recalled the night that Respondent, together with several others met at Sal Alfano's law office in Bloomfield, New Jersey to go to dinner with Tino Fiumara who would meet them at Rothman's Steak House in Long Island. They all entered a limousine outside Alfano's office and drove to the Steak House, an hour and 20 minutes ride. The only conversation Seratelli remembers revolved around his grandson and baseball and the Kansas City Royals. After dinner, he said, the limousine took the New Jersey group (without Fiumara) back to the Alfano law office. The dinner lasted about two hours.

Salvatore Alfano, Esq., a member of the New Jersey Bar, and Fiumara's attorney from 1990 to his death in 2010, testified that everyone left by limousine from his law office and that the only interaction he observed between Fiumara and Respondent at the restaurant was Fiumara's comment that he hadn't seen Respondent in a long time and that he "got fat" (146).

There is no evidence that the dinner at Rothman's was anything more than a social occasion. In fact, Alfano testified that it was a birthday celebration for Fiumara, whose birthday was in August, and that it occurred in summer 2007/2008 (137).

In Respondent's April 9, 2012 Letter Memorandum, counsel argues that Respondent was pressured to attend the dinner by his father and that there was no way a son of a proud Italian father could refuse. At his Article IV testimony, Respondent said he only learned in the limousine that Fiumara would be at dinner and that his father insisted he go. Otherwise, counsel argues that Respondent would have suffered his father's fury by yelling or silent treatment. Of course, Respondent himself did not make this argument at trial, and even if he did, it would have fallen of its own weight. I find this argument to be without merit.

There is no father, Italian or otherwise, who would have insisted his son have dinner with a notorious organized crime figure. This is especially so since Respondent's father, who once posted bail for Fiumara, had a long career on the docks and would have known that any association with a notorious mobster could be a threat to his son's waterfront license.

Respondent's statement in his Article IV interview that he only learned that Fiumara was to be at Rothman's Steak House at the time he entered the limousine defies logic and common sense. He found himself in front of Salvatore Alfano's law office in Bloomfield, New Jersey with his father, who posted bail for Fiumara, with Dan Seratelli, who posted bail for Fiumara, and with Sal Alfano, Fiumara's long time attorney. The situation smacked of a Fiumara reunion. Beyond that, conceding that Antonio Pontoriero could not drive at night, Respondent could have dropped him at the Alfano law office and picked him up after the limousine returned from Long Island. After all, Antonio Pontoriero lives with Respondent in New Jersey.

Moreover, on the issue of Respondent's meetings with Fiumara, or for that matter, DePiro, it is clear that they required advance planning, indeed a restaurant reservation for Fiumara's dinner; certainly, the meetings were not inadvertent or accidental.

I do not credit Respondent's explanation for his appearance at the Fiumara dinner in Long Island. I find that he went to the dinner intentionally and knowingly – a voluntary act designed to make him a presence at Fiumara's table-and by doing so associated with Fiumara. I do not credit Mr. Levine's conclusion that the Fiumara dinner was nothing more than a happenstance meeting brought about by a family tie (814).

Respondent's position of a hiring agent is an important one and is affected with the public interest as set forth in Part I, Article I, Section 4.

The States of New Jersey and New York hereby find and declare that the occupations of longshoreman, stevedores, pier superintendents, hiring agents and port watchman are affected with a public interest requiring their regulation and that such regulation shall be deemed an exercise of the police power of the two States for the protection of the public safety, welfare, prosperity, health, peace and living conditions of the people of the two States.

(McK. Unconsol. Laws 9805)

(N.J.S.A. 32:23-5)

Stewart, in describing the role of the hiring agent, testified that "... it is the hiring agent who is really the keystone that holds the whole edifice of groups on the waterfront together and in place..." The hiring agent, said Stewart, can punish an individual by depriving him of work (388). The hiring agent must be like Caesar's wife (454-455). In this regard, I note with some astonishment that Respondent, at the hearing, invoked his Fifth Amendment rights when asked whether, as a hiring agent, he favored people as directed by the Genovese Family (106). How could I not draw a negative inference from that answer.

I find that Respondent's association with Fiumara created "an unacceptable risk of corruption" and was therefore inimical to the policies of the Waterfront Commission Act. I credit the expert testimony of Robert Stewart, an attorney and former supervisor with the United States Department of Justice Organized Crime Strike Force and currently the federally appointed Deputy Administrator of the formerly crime controlled ILA Local 1588. Stewart, who has devoted most of his career to prosecuting labor racketeering, testified that Respondent's position of Hiring Agent was one of great discretion and authority in the hiring system on the piers, and he stressed how control of the hiring system gives organized crime its power in the ports (80). Accordingly, Stewart testified that a hiring agent must exhibit good character and integrity in the discharge of his duties (106). There is an obligation outside the workplace to refrain from conduct that would reasonably cause an ordinary longshoreman to believe that a hiring agent had been compromised or otherwise vulnerable to influence from reported racketeers (106).

### **STEPHEN DEPIRO**

At the hearing, Respondent was asked if he was aware at the time he visited Stephen DePiro that the latter was a member of organized crime. He refused to answer (104). Similarly, at the hearing, Respondent refused to answer whether he was aware that DePiro pleaded guilty to racketeering in 1999 (108). I draw negative inferences from Respondent's refusal to answer those questions.

Stephen DePiro has been depicted at the hearing as the right hand man of Tino Fiumara on the docks (268-270) (See Commission Exhibits 7, 8, 29 and 30). On two occasions, when Respondent visited DePiro's home in Kenilworth, New Jersey, he was accompanied by Salvatore LaGrasso. LaGrasso is currently a co-defendant of DePiro in a 2010 federal indictment in the District of New Jersey, charging them and others with racketeering and extortion at the New Jersey waterfront. (Commission Exhibit 14)

Respondent claims that he did not know that DePiro was an organized crime figure and, for support, points to the Commission's expert witness, Robert Stewart, who testified that he did not know of DePiro until 2010. Interestingly, there was no question in Michael Levine's testimony that DePiro is a career offender and convicted racketeer (789, 804, 825). As Stewart testified the piers are rife with gossip about who is mobbed up and who you should stay away from (451).

At his Article IV Waterfront interview, Respondent said he went to DePiro's home at the urging of Salvatore LaGrasso who is related to DePiro. Counsel, in his argument for an innocent encounter with DePiro, points to dates of the indictment occurring some time after the two visits to DePiro's house, and also notes that Respondent volunteered the occasion of the second visit, the first having been captured by a Waterfront Commission pole camera set up in proximity to DePiro's residence (199), Commission Exhibits 21A-D. Although the pole camera video ran as long as six months, Respondent appeared only once (215).

Respondent's expert witness, Robert Levine, pointed out that Respondent parked his automobile on the street in broad daylight, in front of DePiro's home, and with the car's license plates clearly visible. These are not the actions, said Mr. Levine, of a man meeting with a member of organized crime for any illegal purpose. Defense counsel urges that Respondent's visits both to Fiumara and DePiro were not voluntary because he was pressured on both occasions, respectively by his father and by LaGrasso. Mr. Levine testified that the DePiro meeting was not significant because he saw no further attempt by law enforcement to investigate (809-810).

The sections of the Waterfront Act alleged against Respondent, I note again, do not require an illegal act, nor require that the Respondent know/should know that he is visiting a member of organized crime. Nevertheless, Mr. Stewart indicated that Respondent's association with Fiumara and DePiro was inimical to the policies of the Waterfront Commission, and found a "high probability that any meeting or encounter involves some sort of conspiratorial misconduct even though there is not independent evidence to establish that." (Commission Exhibit 28 at 7)

I find that Respondent's association with DePiro created "an unacceptable risk of corruption" and was therefore inimical to the policies of the Waterfront Commission Act. My findings are based on the same considerations expressed in the Fiumara discussion (supra) and on Mr. Stewart's expert opinion (337-343).

### **OBSERVATIONS**

As trier of fact, I was not presented with any credible defense, nothing to contrast with the Commission's straightforward presentation of what I have previously described as remarkably, uncomplicated facts.

Of course, the Respondent can simply put the Commission to its proof, which is essentially what occurred at the hearing. And the Commission proved its case by clear and convincing evidence.

The evidence proffered by Respondent bordered on the absurd. It was a speak no evil, hear no evil, see no evil approach. Respondent grew up in an area where organized crime was not unknown; he has worked on the piers for almost 14 years; his father before him worked on the piers for 17 years. His own expert testified that in an area with organized crime figures, everybody knows who they are because the criminals want people to know who they are. It's about power. He refused to answer questions regarding Fiumara and DePiro. Indeed, on every question directed to Respondent, at the Article IV interview or at the hearing, relating to organized crime activities or to the identities of organized crime personalities, or to his activities as Treasurer of the Spilingisi Club, an organized crime hangout, he refused to answer. What is the purpose in refusing to answer questions at the hearing when such action permits me to draw a

negative inference, and which prevents me from hearing Respondent's version of any of the events described at the hearing.

In addition, I am presented with what the Commission has described as the "proud Italian father" defense. I accord no credibility to the suggestion that Antonio Pontoriero would have vented his fury on Respondent if he didn't attend a dinner with a major organized crime figure (and of course, even if true, it would not constitute a defense in law). Most would agree with Homer that it is every father's wish that his son exceed him in every way and bring joy to his mother - not to put his waterfront pass in jeopardy. Besides, there was no reason for Respondent to go to the dinner since his father, who could not drive at night, was transported by limousine to and from Long Island.

The Respondent is apparently a family man with a wife and two children and who honorably served in the military. In addition, he has never been convicted of a crime or accused of any improprieties on the waterfront. Moreover, Michael Levine testified that Respondent's background, military service and work record are radically inconsistent with one hundred percent of organized crime associates he'd encountered in 45 years of experience (885). On cross-examination, Mr. Levine acknowledged that exceptions existed.

I have received a character reference for Respondent from the Most Reverend Nicholas DiMarzio, Bishop of Brooklyn. In his letter, the Bishop writes of his long standing relationship with the Pontoriero family, a "solidly religious" one, and adds that he has never heard anything negative about the Respondent. It is an impressive letter and I have taken it into consideration with everything else that is positive about the Respondent. However, it causes me to wonder again about Respondent's see no evil, hear no evil, speak no evil approach to this case. Even the Bishop, in talking about the "complicated social situation in the Ironbound" acknowledges that many people may have a "relationship with those who might be considered members of organized crime." I understand what the Bishop means about the "interplay between port and parish" in the City of Newark. Had Respondent understood it as well, there might have been fewer negative inferences in this case.

Like any judge, or trier of fact, I have tolerance for a little puffery or even some appealing hyperbole, but the defenses and explanations provided herein are simply not in accord with human experience. Much as I looked for something from the defense to engage the Commission on issues of credibility, I was provided with truly incredible explanations. In short, Respondent's evidence does nothing to provide any satisfactory explanation for his visits to Fiumara and DePiro, and his Fifth Amendment responses to all questions about organized crime, at the hearing, provided negative inferences.

Respondent's see no evil, speak no evil hear no evil posture is unavailing. He lived in the Down Neck section of Newark or close enough to it as to be aware of the personalities who lived there and worked on the piers. He is the Treasurer of a

Genovese crime family frequented social club, the Spilingise (278), for which he kept the checkbook as Treasurer. His father, Antonio, who lives with him is a long time longshoreman who knew Tino Fiumara well enough to post bail for him. Respondent's lack of knowledge of organized crime figures at the Article IV interview are simply incredible; his Fifth Amendment responses to similar questions at the hearing practically invited negative inferences.

### **CONCLUSION**

Based upon the evidence adduced at the hearing, I find that the charges set forth in the Notice of Hearing have been established by a clear preponderance of the evidence.

I find that Respondent associated with Tino Fiumara, identified as a "capo" in the Genovese Crime Family, and as a notorious organized crime figure in the State of New Jersey, under circumstances where the association created a reasonable belief that his licensed activities on the waterfront would be inimical to the policies of the Waterfront Commission Act, Part II, Section 5-I (6).

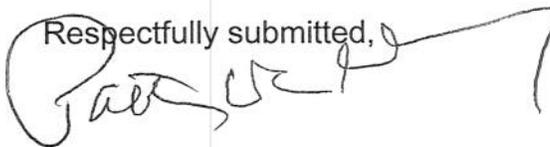
I find also that Respondent associated with Steven DePiro, identified as an "associate" in the Genovese Crime Family, under circumstances where the association created a reasonable belief that his licensed activities on the waterfront would be inimical to the policies of the Waterfront Commission Act, Part II, Section 5-I (6).

I find that Respondent's association with Messrs. Fiumara and DePiro violated the Waterfront Commission Act, Part II, Section 5-I (7) because the association created a reasonable belief that his licensed activities on the waterfront would be inimical to the policies of the Act.

Accordingly, I find that Respondent does not possess good character and integrity within the meaning of the Waterfront Commission Act, Part I, Article V, Section 7(a) and 3(a) because he knowingly associated with Messrs. Fiumara and DePiro, convicted of racketeering activity, and career offenders, a situation that would permit his disqualification from receiving a license upon original application.

**RECOMMENDATION**

I recommend that Respondent's license as a Hiring Agent be revoked.

Respectfully submitted,  


Patrick W. McGinley

Dated: New York, New York  
August 16, 2012