

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**CHINATOWN CARTING CORP. and  
WAYNE TRAGNI, NICOLAS TRAGNI  
and DAMON TRAGNI, as INDIVIDUALS**

and

**LOCAL 813, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS**

**Case Nos. 2-CA-34613  
2-CA-35306  
2-CA-35495  
2-CA-35621**

and

**DOMINGO HYNES, An Individual**

***Rita C. Lisko, Esq.* for the General Counsel  
*Steven B. Horowitz, Esq., (Roth Horowitz, LLC),*  
of Springfield, New Jersey, for the  
Respondents Chinatown Carting  
and Wayne Tragni and Nicolas Tragni  
as individuals  
*Mr. Damon Tragni, of New York, New York***

**SUPPLEMENTAL DECISION**

**ELEANOR MACDONALD, Administrative Law Judge:** On November 18, 2003 the National Labor Relations Board issued its Order in the above-captioned case directing Respondent Chinatown Carting Corporation to reinstate and make whole its employees Don Blyden, Jon Sarach, George Siao, Lavern Ford and Domingo Hynes for any loss of earnings and other benefits suffered as a result of the Respondent's unfair labor practices.<sup>1</sup> On January 30, 2004, the United States Court of Appeals for the Second Circuit issued its Judgment enforcing the Board's Order in full.<sup>2</sup>

On October 27, 2005 a Compliance Specification and Notice of Hearing was issued by the Regional Director for Region 2. An Order Amending the Compliance Specification and Notice of Hearing was issued on February 10, 2006. The Compliance Specification was further amended during the instant hearing on March 8, 2006. The Specification names Wayne Tragni, Nicolas Tragni and Damon Tragni as individuals.

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<sup>1</sup> Lavern Ford is also known as Vernon Ford.

<sup>2</sup> The Court Order was not entered into evidence during the hearing. Counsel for the General Counsel has requested that the document be accepted as an exhibit to the Motion for Summary Judgment. That request is hereby granted. The Motion for Summary Judgment with the Order of the Second Circuit attached is hereby admitted into evidence as ALJ Exhibit #3.

Respondents Chinatown Carting and Wayne Tragni and Nicolas Tragni filed an Answer and an Amended Answer to the Compliance Specification. Respondent Damon Tragni has not filed an Answer herein.

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The hearing to determine the amounts due to the discriminatees and the individual liability of Wayne Tragni, Nicolas Tragni and Damon Tragni was held in New York, New York, on March 8 and 9, 2006, and after an adjournment in contemplation of settlement efforts, the hearing continued on July 10, 2006. On that date Chinatown Carting Corp., and Wayne Tragni and Nicolas Tragni entered into a settlement and the hearing was adjourned without date. On July 24, 2006 Damon Tragni entered into a settlement. The settlements will be described in detail below. Counsel for the General Counsel served and filed a Motion for Summary Judgment on February 8, 2007.

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At the hearing on July 10, 2006 Counsel for the General Counsel and Counsel for Respondents Chinatown Carting and Wayne Tragni and Nicolas Tragni explained the terms of their settlement with General Counsel on the record. Respondents Chinatown Carting and Wayne Tragni and Nicolas Tragni agreed to pay a certain sum in satisfaction of the backpay liability, that is, \$305,000. Respondents agreed to pay \$15,000 immediately and \$20,000 on August 10, 2006. Respondents agreed to pay the balance of \$270,000 on November 15, 2006. If the balance were not paid by that date the Region would issue a notice of default and right to cure and if by December 15, 2006 the remaining sum had not been paid an application for summary judgment would be made for the full amount of the Specification. These Respondents withdrew their Answers and agreed that the General Counsel would file a Motion for Summary Judgment based on the withdrawal in the event that the Respondents defaulted on the settlement as described above. These Respondents agreed that if Counsel for the General Counsel filed for summary judgment they would be found liable for the entire amount of backpay as set forth in the Compliance Specification as amended. These Respondents paid the first installment of the settlement, a sum of \$15,000, on July 10, 2006. The second installment was not timely made and, after a notice of default was issued by the Region, a sum of \$20,000 was paid on September 8, 2006. Respondents did not pay the balance due on November 15, 2006 and a written Notice of Default was issued on November 16, 2006. Respondents Chinatown Carting and Wayne Tragni and Nicolas Tragni did not cure the default and to date have not submitted their final payment of \$270,000. These Respondents have not responded to the instant Motion for Summary Judgment.

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On July 24, 2006 Respondent Damon Tragni entered into a Backpay Stipulation setting forth his personal liability for the backpay amounts due to each of the discriminatees for the period during which he was president of Chinatown Carting Corp. The Stipulation further provided that Damon Tragni would make two payments totaling \$15,000 as a settlement of the "net backpay" due to the discriminatees. Upon payment of this sum Damon Tragni's liability for his portion of the monies due to the discriminatees would be satisfied. Damon Tragni made a payment of \$10,000 on July 24, 2006. The Backpay Stipulation provided that a final payment of \$5,000 was due on August 28, 2006 and if the amount were not paid after ten days written notice to Damon Tragni then the Stipulation would be rendered null and void. In the event of such default, the Stipulation provided that Counsel for the General Counsel would make a Motion for Summary Judgment and a decision and order "shall issue holding Damon Tragni personally liable for the entire of amount of backpay owed to each of the discriminatees ... plus interest...."

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On August 29, 2006 the Supervisory Compliance Officer of Region 2 issued a Notification of Default to Damon Tragni and advised him that if the final payment of \$5,000 were

not received by September 8, Counsel for the General Counsel would move for summary judgment. A check for \$5,000 was received by Region 2 on September 8 but this check was returned unpaid due to insufficient funds. On October 5, 2006 Counsel for the General Counsel gave Damon Tragni written notice of default and informed him that unless he provided a certified check for \$5,000 by October 11 a motion for summary judgment would be made. Damon Tragni has not made restitution for the returned check. Damon Tragni has not responded to the instant Motion for Summary Judgment.

### Conclusions

The Respondents Chinatown Carting, Wayne Tragni, Nicolas Tragni and Damon Tragni have, respectively, withdrawn their Answer by defaulting on their settlement and have failed to file an Answer to the Amended Compliance Specification as required by Section 102.56 of the Board's Rules and Regulations. The Amended Specification shall therefore be found to be true and an appropriate order will be entered.

The backpay period is from August 1, 2002 until December 20, 2005.

The net backpay for the discriminatees is set forth in the Amended Compliance Specification.

At all material times Wayne Tragni has been an owner and officer of Respondent, and he has failed to adhere to corporate formalities by failing to follow rules of corporate governance, by failing to segregate accounts or employees, by diverting corporate funds or assets for non-corporate purposes and by commingling corporate and personal funds and money. Based on this conduct the corporate veil shielding Wayne Tragni from personal liability arising from the Board's Order, enforced by the Order of the United States Court of Appeals, should be pierced.

At all material times Nicolas Tragni has been an owner and officer of Respondent, and he has failed to adhere to corporate formalities by failing to follow rules of corporate governance, by failing to segregate accounts or employees, by diverting corporate funds or assets for non-corporate purposes and by commingling corporate and personal funds and money. Based on this conduct the corporate veil shielding Nicolas Tragni from personal liability arising from the Board's Order, enforced by the Order of the United States Court of Appeals, should be pierced.

During the period August 1, 2003 up to and including January 13, 2004, Damon Tragni has been an owner and officer of Respondent, and he has failed to adhere to corporate formalities by failing to follow rules of corporate governance by failing to segregate accounts or employees, by diverting corporate funds or assets for non-corporate purposes and by commingling corporate and personal funds and money. Based on this conduct the corporate veil shielding Damon Tragni from personal liability arising from the Board's Order, enforced by the Order of the United States Court of Appeals, should be pierced. Damon Tragni's liability is set forth in the Backpay Stipulation executed by him on July 24, 2006.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

**ORDER<sup>3</sup>**

The hearing in the above-captioned case is hereby closed.

5 The Motion for Summary Judgment is hereby granted.

Chinatown Carting, Corp., its officers, agents, successors and assigns, and Wayne Tragni and Nicolas Tragni individually, shall pay to the discriminatees listed below the following amounts, less statutory deductions, plus interest, and shall make pension contributions on their behalf in the following amounts:<sup>4</sup>

10	Domingo Hynes	\$107,632	Pension	\$1,570
	Don Blyden	\$146,113	Pension	\$1,570
15	Lavern Ford	\$ 32,376	--	
	Jan Sarach	\$161,202.32	Pension	\$1,570
20	George Siao	\$163,982	Pension	\$1,570

Damon Tragni shall pay to the discriminatees listed below the following amounts, less statutory deductions, plus interest:

25	Domingo Hynes	\$9,234.42
	Don Blyden	\$17,753.64
30	Lavern Ford	\$19,225.92
	Jan Sarach	\$16,865.15
35	George Siao	\$17,455.92

Dated: March 12, 2007

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Eleanor MacDonald  
Administrative Law Judge

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<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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<sup>4</sup> Interest shall be calculated as prescribed in *New Horizons or the Retarded*, 283 NLRB 1173 (1987), accrued to the date of payment.