

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5495-12T2

IN RE PROCEEDINGS BEFORE THE
WATERFRONT COMMISSION OF NEW
YORK HARBOR

Argued November 6, 2014 – Decided July 21, 2015

Before Judges Fuentes, Ashrafi and O'Connor.

On appeal from the Waterfront Commission of
New York Harbor, Docket No. RC-685.

Vincent J. Sanzone, Jr., argued the cause
for appellant Leonard Moravek.

Phoebe S. Sorial, General Counsel, argued
the cause for respondent Waterfront
Commission of New York Harbor.

PER CURIAM

Leonard Moravek, a longshoreman, appeals from the June 4,
2013 order issued by the Waterfront Commission of New York
Harbor that revoked his registration as a checker. We affirm.

I

In 1953, the States of New York and New Jersey created the
Waterfront Commission of New York Harbor (Commission) "'to deal
with sundry evils of the waterfront of the New York Harbor.'"

Knoble v. Waterfront Comm'n of N.Y. Harbor, 67 N.J. 427, 430

(1975) (quoting State v. Murphy, 36 N.J. 172, 185 (1961)). As we observed in Application of Kaiser, 94 N.J. Super. 95 (App. Div. 1967):

It was common knowledge prior to the time New York and New Jersey entered into a compact setting up the Waterfront Commission that there was an unwholesome concentration of criminals on the waterfront. One of the principal purposes of the Waterfront Commission was to get rid of this element, and to that end the act empowered the Commission to bar persons whom it determined to be unsuitable for waterfront employment by reason of their criminal records.

[Id. at 99.]

In furtherance of its purpose, the Commission was entrusted with enforcing the Waterfront Commission Act, N.J.S.A. 32:23-1 to -225 (Act), "to combat corruption and organized crime on the New Jersey and New York waterfronts." In re Pontoriero, 439 N.J. Super. 24, 29 (App. Div. 2015) (citing N.J.S.A. 32:23-2; Knoble, supra, 67 N.J. at 430).

Among other things, the Commission licenses and regulates longshoremen. N.J.S.A. 32:23-86. All longshoremen are required to be registered with the Commission. N.J.S.A. 32:23-27. A checker is a longshoreman who inspects or performs a custodial accounting of waterborne freight, or records or tabulates the number of hours stevedores or freight carriers' employees work on the piers or other waterfront terminals. N.J.S.A. 32:23-

85(5). All checkers must be included in the longshoremen's register as a checker, see N.J.S.A. 32:23-105(1), and no one may be included in that register as a checker unless the Commission has found that he or she possesses good character and integrity, N.J.S.A. 32:23-105(3)(a).

Following an investigation that commenced in 2010, the Commission issued a notice to Moravek dated November 4, 2011 advising it scheduled a hearing to determine if his registration as a checker should be revoked because he: (1) associated with Joseph Queli, a person identified by law enforcement agencies to be an associate or member of organized crime, and associated with Queli under circumstances that created a reasonable belief that Moravek's participation in any activity as a checker would be inimical to the policies of the Act; (2) knowingly associated with Queli, who was convicted of racketeering on January 15, 1999, and did so under circumstances where such association created a reasonable belief that Moravek's participation in any activity as a checker would be inimical to the policies of the Act; and (3) lacked the good character and integrity within the meaning of the Act because he committed the two aforementioned offenses.

An Administrative Law Judge (ALJ) presided over the hearing. The pertinent evidence was as follows. Moravek began

working at the Port of New York and New Jersey in approximately 1990 and became a registered checker in 1995. Although raised in Hazlet, he spent significant periods of time in the Ironbound section of Newark as a child, where various relatives lived and worked; in fact, at one point during his testimony he stated he grew up in the Ironbound.

Moravek acknowledged that the Ironbound was an area where "everybody knows everybody." He was familiar with the Queli family, which was a part of the Ironbound community, although he never actually met Queli until he attended Queli's son's wedding sometime between 2002 and 2005. Moravek and Queli's son worked together daily as checkers at the same terminal.

Moravek testified that, in 2006 or 2007, he was in a café in the Ironbound when he "happened" to sit down with Queli. Queli sensed something was troubling him and asked what was wrong. Moravek explained he was having financial problems and needed \$1200. Queli lent him the money, without interest or a deadline by when the money had to be repaid. According to Moravek, Queli stated he was willing to loan him the money because "I know your whole family" and "I don't think you're going to stick me."

Over the ensuing two and a half years, Moravek sporadically paid Queli with the money he happened to have in his possession

whenever the two encountered each other in the café or on the street. Eventually, however, Queli became angry with him for taking so long to repay the loan and demanded he immediately pay the balance, which was \$600. Moravek borrowed the money from an uncle and paid off the loan.

Joseph Longo, a former New York City police officer assigned to the New York City Police Department and Federal Bureau of Investigation Joint Organized Crime Task Force, testified he was familiar with Queli, who was known by the FBI, the New York City Police Department and other law enforcement agencies to be a soldier in the Genovese crime family.

It was undisputed Queli was convicted in 1999 for racketeering, for which he was sentenced to a term of thirty months. In evidence were newspaper articles about Queli's arrest and his position as a soldier in the Genovese crime family. During the hearing Moravek claimed he had not been aware of Queli's conviction until after he repaid the loan, and denied any knowledge Queli was a soldier in the Genovese crime family or was associated with organized crime.

On May 13, 2013, the ALJ issued a written decision in which he found that Moravek had committed the acts alleged by the Commission and recommended that his registration as a checker be revoked. On June 4, 2013, the Commission considered the record

of the proceedings, including the findings and recommendations of the ALJ, and entered an order revoking Moravek's registration as a checker.

Because the ALJ's legal conclusions are the primary focus of Moravek's appeal, we briefly summarize his legal analyses.

The ALJ noted N.J.S.A. 32:23-93(5-i) provides that the Commission may revoke a registration for:

(6) 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 . . . under circumstances where such 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.

. . . .

(7) [K]nowing association with a person who has been convicted of a racketeering activity . . . under circumstances where such 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.

[(emphasis added).]

Observing there was no law interpreting the words "association" and "inimical" as used in this statute, the ALJ adopted the dictionary definition of "association," which is "to

keep company, as a friend, companion or ally."¹ The judge used substantially the same definition of "inimical" as developed by the New Jersey Casino Control Commission under the New Jersey Casino Control Act, N.J.S.A. 5:12-1 to -233, and determined the definition of "inimical" as used in N.J.S.A. 32:23-93(5-i)(6) and (7) meant "adverse to the public confidence and trust in the credibility, integrity and stability of the industry."

The ALJ further held that subsections (6) and (7) of N.J.S.A. 32:23-93(5-i) "provide for strict liability," although he found as a fact that Moravek knew or should have known Queli had been convicted of racketeering and was a member of organized crime, noting his ignorance of Queli's notorious background was implausible.

The judge further found Moravek's association with Queli created the appearance that he could exercise influence or control over Moravek as a checker at the waterfront and, thus, such association was inimical to the policies of the Act. Finally, the judge concluded Moravek lacked the requisite good character and integrity required under the Act to retain his registration as a checker.

On appeal, Moravek contends that the Commission's findings and decision were arbitrary, capricious, and unreasonable

¹ The ALJ did not provide the citation to the dictionary from which he obtained this definition.

because: (1) the ALJ and the Commission failed to utilize the proper definitions of "association" and "inimical," and erroneously applied a strict liability standard to N.J.S.A. 32:23-93(5-i)(6) and (7); (2) there was no evidence he knew he was prohibited from associating with a person who was a member of organized crime or had been convicted of racketeering; (3) there was no evidence he had a "knowing association" with Queli; (4) the acceptance of the loan was not inimical to the policies of the Act; and (5) the revocation of his registration was disproportionate to the alleged offense.

II

Our review of an agency's final decision is limited. In re Taylor, 158 N.J. 644, 656 (1999). An agency decision must stand as long as it is statutorily authorized and is not arbitrary, capricious, or unreasonable. Circus Liquors, Inc. v. Middletown Twp., 199 N.J. 1, 9 (2009). We only reverse agency fact-finding if "'clearly . . . mistaken . . . and so plainly unwarranted that the interests of justice demand intervention and correction'" Campbell v. N.J. Racing Comm'n, 169 N.J. 579, 587-88 (2001) (quoting Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 588 (1988)). Reasonable credibility determinations are afforded similar deference. Id. at 588. In addition, "[w]hen resolution of a legal question turns on factual issues within the special

province of an administrative agency, those mixed questions of law and fact are to be resolved based on the agency's fact finding." Ibid. (citation omitted). Finally, disciplinary charges need only be proven by a preponderance of the evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

Our recent decision In re Pontoriero, supra, 439 N.J. Super. 24, a case factually analogous to the present one, is dispositive of predominantly all of Moravek's arguments. In that case, we approved the definition of "association" and substantively the same definition of "inimical" the ALJ employed in this case.² Id. at 39-40.

We further held in Pontoriero that, in order to prove a violation of subsection (6) or (7) of N.J.S.A. 32:23-93(5-i), the Commission is not required to show a registrant had actual or constructive knowledge of an associate's criminal history or his membership in organized crime; the application of strict liability is appropriate. Id. at 40. In addition, we found the term "knowing association" in subsection (7) is not intended to impose a heightened burden of proof upon the Commission but, rather, is intended to exclude from liability any association

² The precise definition of "inimical" that we found applicable to N.J.S.A. 32:23-93(5-i)(6) and (7) is: "adverse to the public confidence and trust in the credibility, integrity and stability of the waterfront and in the strict regulatory process of the Waterfront Act." Id. at 43.

that is merely "happenstance" or an inadvertent or unplanned encounter. Ibid.

A finding of inimical association does require an analysis of "whether a reasonably objective observer could believe that the criminal associate could influence the [registrant] in his or her role as a worker regulated by the Act," id. at 41; we held the following factors relevant in making that determination:

(1) the nature and sensitivity of the [registrant's] position; (2) the time elapsed since the [registrant's] last interaction with the associate; (3) the duration and frequency of the association; (4) the purpose and nature of the association; (5) whether the association was attenuated through third-parties; (6) the associate's character and reputation; (7) the licensee's knowledge or reasonable efforts to determine the associate's character and reputation; (8) if there is more than one associate, the number of associates, and the relationship amongst them; (9) termination of the association, if any; (10) the reasons for any such termination; and (11) any other relevant facts or circumstances.

[Id. at 42.]

In this case there is clear evidence Moravek associated with a person who had been convicted of racketeering and was identified by law enforcement as a member or associate of organized crime. There is also sufficient evidence that a reasonably objective observer could believe Queli could have

influenced Moravek in his role as checker, making Moravek's association with Queli inimical to the Act.

Using the above factors in our analysis, there is no question Moravek's position as a checker was highly sensitive to corruption. He was charged with inspecting or accounting for freight, or keeping track of the number of hours certain employees worked on the piers or at the waterfront terminals. While working as a checker, Moravek owed money over a period of many months to a soldier in the Genovese crime family and a convicted racketeer. The ALJ found Moravek knew or should have known Queli was a member of organized crime and a convicted racketeer. In the final analysis, we cannot quarrel with the ALJ's conclusion that "borrowing money from a member of organized crime could create immediate problems for a checker on the waterfront[,] . . . a reckless act that could have led to dire consequences, especially after Queli grew tired of waiting for repayment."

After carefully considering the record and the briefs, we conclude Moravek's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION