

**Albert Schwartzberg and Samuel Lefkowitz d/b/a Kings Harbor Health Care (Formerly Waring Pavilion) and Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL-CIO and Local 106, affiliated with International Production Service and Sales Employees Union. Case 2-CA-13922**

December 8, 1978

#### SUPPLEMENTAL DECISION AND ORDER

On December 30, 1976, the Board issued an unpublished Decision and Order in the above-entitled case, approving the settlement stipulation entered into between Respondent, Albert Schwartzberg and Samuel Lefkowitz, d/b/a Kings Harbor Health Care (formerly Waring Pavilion), Local 106, affiliated with International Production Service and Sales Employees Union, the Party to the Contract, and Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, Service Employees International Union, AFL-CIO.<sup>1</sup> In its Decision, the Board expressly noted that its approval of the settlement stipulation did not preclude further proceedings concerning the General Counsel's allegations of misconduct by Respondent and its agents. On January 3, 1977, the Board issued an Order<sup>2</sup> in which it directed that Administrative Law Judge Paul Bisgyer, after providing for submission of statements of position by the parties, make findings of fact with respect to the General Counsel's allegations of misconduct and recommend to the Board whether such findings would warrant further proceedings pursuant to Section 102.44 of the Board's Rules and Regulations. On January 19, 1977, Administrative Law Judge Bisgyer issued an Order To Submit Statements of Position. Each of the parties subsequently responded; none requested a further hearing.<sup>3</sup> Thereafter, on June 10, 1977, Administrative Law Judge Bisgyer issued a Supplemental Decision, Findings of Fact and Recommendation in

<sup>1</sup> On various dates between February 4 and May 19, 1976, a hearing was held in the above-entitled proceeding before Administrative Law Judge Paul Bisgyer. At the hearing on May 19, 1976, Administrative Law Judge Bisgyer approved the settlement stipulation on the record and adjourned the hearing indefinitely. On June 14, 1976, the General Counsel filed an appeal from the Administrative Law Judge's approval of the settlement stipulation.

<sup>2</sup> Not published in bound volumes of Board Decisions. Then Chairman Murphy noted her disagreement.

<sup>3</sup> The joint statement of position of Respondent and Attorney Horowitz stated (p. 36):

Any further investigation or proceeding is unjustified and unwarranted because all the relevant evidence and testimony on the issues has already been presented, dissected and exhaustively analyzed through direct and cross examination at the hearing. Judge Bisgyer presently has before him all the evidence existent and needed in order to make complete and substantive findings of fact. . . . Accordingly, his findings of fact should be dispositive of the issues.

which he found that Respondent's attorney, Burton Horowitz, had knowingly introduced a fabricated document into evidence and had attempted to induce a witness to give false testimony in the underlying unfair labor practice hearing. He recommended that the Board proceed in accordance with the requirements of Section 102.44 to determine what disciplinary action, if any, was necessary to remedy the abuse of its processes and the subversion of its proceedings.

On July 7, 1977, Horowitz, by counsel, submitted a motion for leave to reopen the record for the purpose of placing into the record evidence which allegedly would undermine the findings of fact made by Administrative Law Judge Bisgyer. On January 5, 1978, the National Labor Relations Board issued an order directing that Administrative Law Judge Bisgyer, within 60 days, reopen the record in this proceeding to admit into evidence further testimony bearing on the allegations of misconduct under Section 102.44 against Attorney Horowitz.

By letter of January 13, 1978, counsel for the General Counsel in Region 2 requested that the Board postpone indefinitely any further hearing in this case on the grounds that certain of the matters involved in this proceeding were under investigation by the U.S. Attorney's office for the Southern District of New York and that a reopening of the hearing here within 60 days might have an adverse impact on the U.S. Attorney's investigation. By order dated February 17, 1978, the Board granted the request of the counsel for the General Counsel.

By letter dated July 18, 1978, Horowitz, through his attorneys, informed us that the above-mentioned investigation had led to his indictment and that on June 12, 1978, he had entered a plea of guilty to one count of subornation of perjury. As a consequence, the letter stated, he was transmitting to us a formal relinquishment of his right to appear and practice before the Board. Horowitz also requested that the record be closed because any further proceedings were moot in view of his resignation.

Taking official notice of the above-mentioned criminal proceedings,<sup>4</sup> we find that the felony to which Horowitz pleaded guilty constitutes misconduct of an aggravated character within the meaning of Section 102.44 of the Board's Rules and Regulations. We therefore rescind our Order of January 5, 1978, directing Administrative Law Judge Bisgyer to

<sup>4</sup> United States v. Horowitz, DKT. No. 78 Crim. 00166(1) KTD (S.D.N.Y., filed August 11, 1978) (Judgment and Probation Commitment Order). A certified copy of this order and a copy of Horowitz' indictment have been received into the record.

reopen the record. As we further believe Horowitz' serious misconduct warrants the loss of his privilege to appear and practice before the Board, and as his relinquishment effectively accepts these conditions, we shall order his disbarment from practicing before this Board.

**ORDER**

We hereby rescind the Board's Order of January 5, 1978, to reopen the record herein.

WE HEREBY disbar Burton R. Horowitz from appearing and practicing before the National Labor Relations Board.