

UNITED STATES OF AMERICA BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

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REGENCY HOUSE OF WALLINGFORD, INC.,

and

LOCAL 560C, INTERNATIONAL CHEMICAL  
WORKERS UNION COUNCIL.

Case Nos.: 34-CA-9895  
34-CA-9915  
34-CA-10075  
34-CA-10101

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**RESPONDENT'S BRIEF IN OPPOSITION TO CHARGING PARTY  
UNION'S MOTION TO STRIKE CERTAIN OF RESPONDENT'S  
EXCEPTIONS TO JUDGE MCCARRICK'S SUPPLEMENTAL DECISION  
AND ORDER AND CERTAIN PORTIONS OF RESPONDENT'S  
SUPPORTING MEMORANDUM OF LAW**

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On the Brief:

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**PRELIMINARY STATEMENT**

As witnessed by the instant unnecessary motion to strike, counsel for the Charging Party, Local 560C, International Chemical Workers Union Council (the "Union"), has sought to obfuscate the critical issues in this matter by engaging in a pattern of diversion and blame-casting upon counsel for Respondent, Regency House of Wallingford, Inc. ("Respondent" or "Regency"). Throughout this motion, the Union's 78-page "supplemental" brief submitted to Administrative Law Judge John McCarrick ("ALJ McCarrick"), and its repetitive cross-exceptions to a decision that has been vacated by the Board (*to wit*, the Decision of Administrative Law Judge Howard Edelman ("ALJ Edelman") vacated by Board Order on May 31, 2006), the Union has sought to conceal the issue at the heart of this matter - the employees' right to select their exclusive bargaining agent. This campaign of obfuscation, however, backfires and instead illuminates the Union's suspect intentions. The Union's position rises to a level of patent absurdity. It challenges any reference to ALJ Edelman's bias because it

incorrectly alleges no such reference had been made in Respondent's Exceptions to ALJ Edelman's Decision. It has somehow escaped the Union's attention that ALJ Edelman's Decision has already been vacated by the Board due to his obvious bias and we are now dealing with Exceptions to ALJ McCarrick's Decision. By challenging the mere reference to ALJ Edelman's biased and patently improper conduct of the underlying trial, the Union provides much needed attention to the core issue here - ALJ Edelman's refusal to allow material witnesses to testify on Respondent's behalf. Contrary to the Union's claims, Respondent took proper exception with said misconduct as well as other portions of ALJ Edelman's Decision in compliance with Board Rules and Regulations §102.46(b) (Respondent's Exceptions to the Decision of ALJ Edelman, Nos. 4, 19, 37, 41). Respondent has continued to except to any affect ALJ Edelman has had on this litigation, whether it be through his improper credibility findings which ALJ McCarrick adopted, or the incomplete, and thus biased, record which ALJ Edelman created. This is Respondent's right under the National Labor Relations Act (the "Act").

As to the Union's contention that portions of Respondent's Exceptions and/or Brief in Support of its Exceptions should be stricken as unsubstantiated with regard to statements made by Lori Carver ("Carver"), the Union is clearly grasping at straws. The Union draws a distinction between the words "respond" and "supply," as well as their meaning in the context of certain information requests made of Respondent by the Union. Simply, this issue is not one to be

raised in a motion to strike but rather one to be asserted before the administrative law judge who heard the case and/or the Board in an answering brief to a party's exceptions. Suffice it to say that it continues to be Respondent's position that it provided the Union with certain information and responses it sought, and therefore Carver's testimony to the contrary was false. Any further discussion of this concocted issue is a waste of the Board's resources.

## ARGUMENT

### RESPONDENT LAWFULLY TOOK EXCEPTION TO JUDGE MCCARRICK'S DECISION AS IS ITS RIGHT UNDER THE ACT AND IN COMPLIANCE WITH BOARD RULE AND REGULATION SECTION 102.46(B)

Respondent legitimately and justifiably designated its points of disagreement with Judge McCarrick's Decision in its Exceptions pursuant to Board Rules and Regulations §102.46(b). However, the Union continues to believe that ALJ Edelman's now-vacated Decision is the touchstone for Respondent's current Exceptions and that some perceived failure to comply with §102.46(b) more than three (3) years ago somehow affects Respondent's legitimate Exceptions to ALJ McCarrick's Decision. This position is patently absurd. In its Exceptions to ALJ McCarrick's Decision, Respondent has neither excepted to ALJ Edelman's Decision nor his board-sanctioned copying. The Board definitively disposed of those issues in its May 31, 2006 Order. Respondent has excepted to ALJ McCarrick's baseless reliance on ALJ Edelman's Decision as ALJ Edelman's conduct irretrievably corrupted the record on which ALJ McCarrick decided. ALJ Edelman's adversarial relationship with Respondent's counsel, Arthur Kaufman, and his Board-censured copying merely led credibility to the distorted condition of the record herein. Moreover, as part of his Decision, ALJ McCarrick found these defenses to be legitimate (that is, not frivolous) (ALJ McCarrick Decision, p. 18, lines 29-30). Consequently, the Union's complete misconstruing, if not ignorance, of Respondent's exceptions to

ALJ McCarrick's Decision (not that of ALJ Edelman) render this motion frivolous and further grandstanding by the Union unnecessary.

CONCLUSION

WHEREFORE, Respondent respectfully requests that the Union's Motion to Strike be dismissed in its entirety and that Respondent be awarded such other relief as the Board deems just and proper, including, but not limited to, costs and fees incurred in responding to this frivolous motion.

Dated: Woodbury, New York  
February 12, 2007

Respectfully submitted,

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

REGENCY HOUSE OF WALLINGFORD,	X	
	:	
AND	:	Case Nos: 34-CA-9895
	:	34-CA-9915
	:	34-CA-10075
INTERNATIONAL CHEMICAL WORKERS	:	34-CA-10101
UNION COUNCIL/UFCW, LOCAL 560C,	:	
	X	

STATE OF NEW YORK     }  
                                  }SS:  
COUNTY OF NASSAU     }

Barbara Tsotsos, being duly sworn, deposes and says:

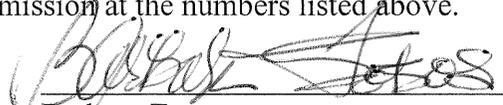
That Deponent is not a party to this action, is over 18 years of age and resides in Merrick, New York.

That on the 12<sup>th</sup> day of February 2007, Deponent served one (1) copy of the Respondent's Brief in Opposition to Charging Party Union's Motion to Strike Certain of Respondent's Exceptions to Judge McCarrick's Supplemental Decision and Order and Certain Portions of Respondent's Supporting Memorandum of Law upon:

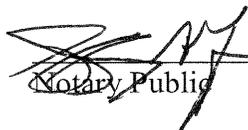
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at the addresses designated for that purpose by depositing a true copy thereof, in a sealed, properly addressed wrapper, and placing the same under the exclusive care and custody of Federal Express Delivery Service, prior to the latest time designated by that service for overnight delivery and via facsimile transmission at the numbers listed above.

  
\_\_\_\_\_  
Barbara Tsotsos

Sworn to before me this  
12<sup>th</sup> day of February, 2007.

  
\_\_\_\_\_  
Notary Public

