



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 31
11500 W Olympic Blvd Ste 600
Los Angeles, CA 90064-1753

Agency Website: www.nlr.gov
Telephone: (310)235-7351
Fax: (310)235-7420

November 29, 2016

[REDACTED]
Gilbert & Sackman
3699 Wilshire Boulevard, Suite 1200
Los Angeles, CA 90010-2732

Re: Black Hand Cinema LLC aka BHC and its
agents [REDACTED]
[REDACTED]
Case 31-CA-171862 and 31-CA-172556

Dear [REDACTED]

We have carefully investigated and considered your charges that Black Hand Cinema LLC aka BHC has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, and for the reasons set forth below, I have decided to dismiss charge 31-CA-172556 and to dismiss the portions of charge 31-CA-171862 alleging that the Employer violated Section 8(a)(3) of the Act by discharging and/or failing to recall union members, and violated Section 8(a)(1) by denying the Union access to its members on March 11, 2016. This does not affect the remaining portions of charge 31-CA-171862 alleging that the Employer violated Section 8(a)(1) of the Act by, on March 6, 2016, denying the Union access to its members and causing the Union's representative to be handcuffed and detained by the police. Those allegations remain subject to further processing.

With respect to the Employer's alleged denial of access to its members on March 11, 2016, the investigation revealed that the Union sought to enter the rear parking lot of a nail salon where filming was to take place. While the Employer attempted to have police officers bar Union representatives from the lot, no arrests were made and the police did not interfere with the Union's right to picket and chant. Accordingly, there is insufficient evidence to establish that the Employer denied the Union access to its members in violation of Section 8(a)(1) of the Act.

With respect to the allegations in both charges that the Employer violated Section 8(a)(3) of the Act by discharging, refusing to recall and/or refusing to hire [REDACTED] because they were Union members, there is insufficient evidence to establish a violation of the Act as alleged. The investigation revealed that the Employer contacted several companies to provide services and/or equipment to be used on a commercial shoot that lasted four days (March 5, 6, 11 and 12, 2016). The contracted companies included George Studio Catering and Cinelease, who contacted [REDACTED], respectively, for the jobs. The investigation revealed no evidence that the Employer sought to have George Studio Catering or Cinelease discharge [REDACTED], respectively. At most, the investigation revealed that the Employer modified its agreement with George Studio Catering and used another company

(SirReel) instead of Cinelease for the March 12 shoot. While these actions arguably affected the work opportunities for [REDACTED], they do not give rise to a violation of the Act as alleged. *Computer Associates, Intl.*, 342 NLRB 285 (1997) (company does not violate Section 8(a)(3) when subcontractor's employees lose their jobs because a contract is canceled, even if canceled for anti-union considerations).

Even if the Employer were found to be an employer of the two employees, there is still insufficient evidence that it discharged or failed to recall the employees. With respect to [REDACTED], he was hired on a day-to-day basis and had not been offered work past March 6, 2016. While the Employer elected a food drop for March 11 and 12, there is no evidence that the Employer suggested that George Studio Catering not use [REDACTED] for that work. Accordingly, there is insufficient evidence to establish that the Employer discharged or refused to recall [REDACTED]. With respect to [REDACTED], after engaging in a work stoppage on March 11, he did not make an unconditional offer to return to work. Even if the Employer had hired a temporary replacement for Jimenez, it would have been privileged to do so.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **December 14, 2016**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than **December 13, 2016**. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an

extension of time is **received on or before December 14, 2016**. The request may be filed electronically through the *E-File Documents* link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **December 14, 2016, even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



Mori Rubin
Regional Director

Enclosure

cc:

[REDACTED]
Black Hand Cinema LLC aka BHC
2228 Glencoe Ave
Venice, CA 90291-4039

[REDACTED]
Black Hand Cinema LLC aka BHC
2633 Lincoln Blvd STE 133
Santa Monica, CA 90405-4619

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Case 31-CA-171862 and 31-CA-172556

[REDACTED]
Richard Rosenblatt & Associates L.L.C.
8085. E. Prentice Ave.
Greenwood Village, CO 80111-2705

[REDACTED]
Ballard, Rosenberg, Golper & Savitt LLP
500 North Brand Boulevard
20th Fl
Glendale, CA 91203

Studio Transportation Drivers, Local 399
4747 Vineland Ave
North Hollywood, CA 91602-1262

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)