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January 6, 2012

Via Electronic Filing

Mr. Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th St. N.W.
Washington, D.C. 20570-0001

Re: *Rochdale Village, Inc. v. LIUNA, Residential Construction & General Service
Workers Local Union No. 10, Case No. 29-CA-30406*

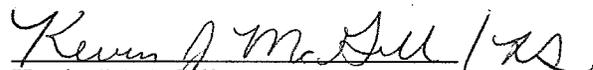
Dear Mr. Heltzer:

Please accept for e-filing in the above-referenced case the attached Statement of Exceptions by Respondent Rochdale Village, Inc. to the Decision and Order of the Administrative Law Judge and Respondent's Brief in Support of Exceptions.

Very truly yours,

CLIFTON BUDD & DeMARIA, LLP

By:



Kevin J. McGill

Scott M. Wich

Attorneys for Charging Party
Rochdale Village, Inc.

STATEMENT OF EXCEPTIONS BY RESPONDENT
ROCHDALE VILLAGE, INC. TO THE DECISION AND
ORDER OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Respondent Rochdale Village, Inc. hereby excepts to the Decision and Recommended Order of Administrative Law Judge Eleanor MacDonald, Judge's Decision JD(NY)-47-11, dated December 1, 2011 ("J.D."), as follows:

1. To the ruling of the ALJ precluding production of the charter and the various collective bargaining agreements assertedly possessed by the charging party. (J.D., 2:15-23).

2. To the conclusion that "Silva's testimony on direct was more than sufficient to establish that Local 10 is a labor organization under the Act." (J.D., 2:18-20).

3. To the ruling of the ALJ that "the demand for production of the charter and collective-bargaining agreements was unnecessary and would only have served to lengthen the hearing without changing the result." (J.D., 2:22-23).

4. To the finding that the charging party "is an organization in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wage rates of pay, hours of employment, or conditions of work" and that consequently the charging party "is a labor organization within the meaning of Section 2 (5) of the Act." (J.D., 2:25-29).

5. To the failure to find that the cul-de-sac gardens have been maintained continuously by Rochdale Village, Inc. even though deeded to the City of New York since 1963. (J.D., 3:35-36).

6. To the finding that exterior restoration “work falls within the jurisdiction of Local 10.” (J.D., 4:47-48).

7. To the failure to find that Local 10 agents were trespassing on private property when they distributed flyers in the commercial mall areas of Rochdale. (J.D., 5:30-36).

8. To the finding that Rochdale’s constant maintenance of the cul-de-sac street sidewalks “merely shows that it performed a duty common to all abutting owners in New York City.” (J.D., 8:45-49).

9. To the failure to find that the entire residential lease, including the provision in paragraph 1 which specifies that the cul-de-sac sidewalks are not to be used “for any purpose other than for entering and leaving the Apartment and for deliveries in a fast and proper manner . . .” has been approved by the State of New York. (J.D., 9:1-16).

10. To the failure to find that the record is devoid of any evidence contradicting Mason’s testimony that Rochdale Village has continuously and exclusively controlled pedestrian access to the cul-de-sac sidewalks since they were created in 1963. (J.D., 9-10).

11. To the finding that chief Mason’s testimony “makes it clear that handbilling frequently takes place in Rochdale Village.” (J.D., 10:45-49).

12. To the finding that Mason's testimony "shows that handbilling is not strictly prohibited in Rochdale and is not routinely subject to issuance of a violation or a cease summons or a threat of arrest." (J.D., 11: 3-5).

13. To the finding that the "wording of the signs posted in Rochdale Village shows that Respondent has not asserted the right to prohibit soliciting on the sidewalks of the apartment complex." (J.D., 11:9-11).

14. To the finding that "Respondent produced no proof that any tenant or other person has actually been prohibited from soliciting or leafleting on the sidewalks of the cul-de-sac streets." (J.D., 11:11-13).

15. To the finding that "the rules and regulations attached to the tenant leases which prohibit 'door-to-door sales and/or solicitations' are not meant to apply to sidewalk handbilling." (J.D., 11:15-16).

16. To the finding that "[i]t is well-established that the statutory protections extended to employees include job applicants and potential applicants." (J.D., 11:37-39).

17. To the finding that "[m]any labor organizations run programs that prepare trainees so that they can apply for employment in a field within the jurisdiction of the union." (J.D., 11:49-51).

18. To the conclusion that "[m]anifestly, offering a potential job applicant union training so that he can obtain a job with good wages and possible union membership is an activity that implicates concerted activity for mutual aid or protection." (J.D., 11:51 to 12:1).

19. To the finding that *Loch Sheldrake Associates, Inc. v. Evans*, 306 NY 297, 305 (N.Y. 1954) disposes of Respondent's argument about an implied easement. (J.D., 12:15-21).

20. To the finding "that the claimed easement was not 'long continued and obvious or manifest prior to separation' in 1963." (J.D., 12:33-35).

21. To the finding that Respondent's argument that the leaflets were directed toward recruiting union business agents "rests on a willful misreading of the fliers." (J.D., 12, n.9).

22. To the finding that "[t]here is no evidence that Rochdale residents seeking to use the sidewalks as a public forum have actually been prohibited from exercising that right." (J.D., 13:8-11).

23. To the conclusion that "the asserted easement has not been proven to be necessary for the beneficial enjoyment of the land retained by Rochdale." (J.D., 13:15-17).

24. To the conclusion that "Respondent has presented no clear and convincing evidence in the instant case to show it has an implied easement to prohibit handbilling on the public sidewalks of the cul-de-sac streets." (J.D., 13:30-32).

25. To the finding that the Doctrine of Adverse Possession does not apply in this matter. (J.D., 13:34-37).

26. To the conclusion of law that Respondent violated Section 8 (a)(1) of the Act. (J.D., 13:47-50).

27. To the remedial order recommended by the ALJ. (J.D., 14-15).
28. To the proposed Notice to Employees recommended by the ALJ. (J.D., APPENDIX).
29. To the failure to find that continuously since May 28, 1963, Rochdale has had the responsibility to maintain the cul-de-sac sidewalks and to maintain a liability insurance policy covering them. (Resp. Exh. 5, Section 10).
30. To the failure to find that since Rochdale opened for occupancy in 1963, it has exerted exclusive control over the cul-de-sac sidewalks. (Tr., 230:13 to 231:3; 234:8-19; 268:14-18).
31. To the failure to find that no city agency unit, unit, or department apart from the New York City Police Department exerts any control over the sidewalks in the cul-de-sac. (Tr., 230:13-17).
32. To the failure to find that from the day that Rochdale Village opened for occupancy it has maintained exclusive control over the sidewalks including maintenance, replacement, and security. (Tr., 275:24 to 276:2).
33. To the failure to find that Rochdale security officers are responsible with regard to enforcing rules on loitering, (Tr., 217:10-14), disturbing the peace (Tr., 221:5-17), littering (Tr., 221:18-25), handbilling (Tr., 222:7-12), public intoxication (Tr., 222:13-22) and skateboarding (Tr., 222:23-25) on the cul-de-sac sidewalks.
34. To the failure to find that the State of New York has always approved Rochdale's ability to restrict the use of sidewalks by its residents. (Tr., 269:11 to 270:19; Resp. Exh. 10, p.13, para. 1).

35. To the failure to find that the City of New York assumes no responsibility for the maintenance of the cul-de-sac garden area even though said garden area has been deeded to the City since 1963. (Tr., 211:2-5).

36. To the failure to find that the residential release specifies that “[t]hose persons asked to move by Public Safety Personnel and who refuse to do so are subject to fine, administrative charge and/or eviction for repeated occurrences.” (Resp. Exh. 10, p.13, para. 1).

37. To the failure to find that no competent evidence was introduced that employees participate in Local 10. (J.D., 2).

38. To the failure to find that the cul-de-sac sidewalks are highly trafficked areas at any given time during the day. (Tr., 211:6-22).

39. To the failure to find that the New York City Police Department engages in no enforcement activity on the cul-de-sac sidewalks. (Tr., 213:24 to 214:15; 249:8 to 250:4).

The basis for the foregoing exceptions urged by the Respondent, citation to the record and legal argument, are contained in the Brief in Support of Exceptions filed herewith.

Dated: New York, New York
January 6, 2012

Respectfully submitted,
CLIFTON BUDD & DeMARIA, LLP

By: _____



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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

-----x	:	
In the Matter of:	:	
ROCHDALE VILLAGE, INC.,	:	
Respondent,	:	
- and -	:	Case No. 29-CA-30406
	:	
LIUNA, RESIDENTIAL CONSTRUCTION &	:	
GENERAL SERVICE WORKERS LOCAL UNION	:	
NO. 10,	:	
Charging Party.	:	
-----x		

AFFIDAVIT OF SERVICE BY FEDERAL EXPRESS

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

VIRGINIA CUATON, deposes and says:

I am not a party of the action, I am over 18 years of age, and I reside in Jersey City, New Jersey. On January 6, 2012, I served the within **Statement of Exceptions by Respondent Rochdale Village, Inc. to the Decision and Order of the Administrative Law Judge** upon:

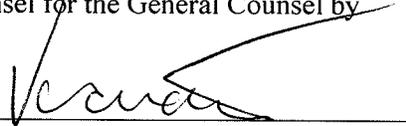
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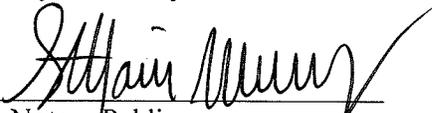
LIUNA Residential Construction &
General Service Workers Union
Local 10
Byron G. Silva, Business Manager
10-54 47th Avenue
Long Island City, New York 11101
membermail@liuna.org

at the addresses designated for that purpose, by depositing true copies of the same in a properly addressed wrapper into the custody of Federal Express for overnight delivery, prior to the latest time designated by FedEx for overnight delivery within New York State, and upon Counsel for the General Counsel by electronic mail at the e-mail address indicated above.



VIRGINIA CUATON

Sworn to before me this
6th day of January, 2012



Notary Public

STEFANIE MUNSKY
Notary Public, State of New York
No. 02MU6191987
Qualified in New York County
Commission Expires Aug. 25, 2012