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Judge Joseph F. Bianco  
U.S. District Judge  
100 Federal Plaza  
Central Islip, NY 11722

Dear Judge Bianco,

Today, you had ordered a conference for 3 PM, but you were in court. Saul Zabell – while he presumably would have had to take time for the conference – said he couldn't wait. The conference was rescheduled, at his consent for 5 PM. He said he tried calling in, but I have no record of that.

This, I am close to certain, is intentional conduct on the part of Mr. Zabell. An NLRB Administrative Law Judge just published this last summer:

[D]uring the course of the hearing, Zabell, engaged in a persistent pattern of aggravated misconduct that interfered with the judge's attempts to conduct the hearing. Zabell's apparent misconduct included the following unjustified and repeated behavior: bullying and intimidating the Respondent's witnesses, including making threats to report them to immigration authorities; falsely accusing the Union's president of threatening Zabell's safety and referring to him as a "felon"; summoning federal marshals to the courtroom and insisting on a police presence throughout the hearing, accusing the General Counsel of misconduct; and questioning the trial judge's competence and authority after rulings had been made. The judge . . . stated: "Mr. Zabell, I have never seen such misconduct engaged in by an attorney in these proceedings in my 43 years with the Board and 35 years as a judge. . . . Your conduct before me. . . was improper, contemptuous, unprofessional, and constituted misconduct of an aggravated character. It will not be tolerated."

After reviewing the record, the NLRB concluded that it was appropriate . . . to bring the allegations concerning Zabell to the attention of the Investigating Officer for . . . disciplinary action[.]

*Deep Distributors of Greater NY d/b/a The Imperial Sales, Inc.*, 365 NLRB No. 95 (2017) (summarized in “Lawyers Behaving Badly, available at <https://howardandhoward.com/article/2157/Lawyers-Behaving-Badly.aspx>).

This Court tolerates Mr. Zabell’s conduct and should not. He is now playing the same games with the Court and with me that he did in the earlier part of the litigation. I know you won’t sanction him, so I won’t ask; but the failure of the bench (in general) to control Mr. Zabell is in part why he acts like he does. Punish him and he’ll learn. The conduct in which he engaged in *Deep Distributors* is tantamount to homophobic manner in which he treated the memory of the deceased Mr. Zarda in the first trial. It was shameful.

This conference is very important because it deals with the question of successor liability, which may be determined by the contract of sale of Altitude Express – a corporation which does not exist – though successor liability rules are relaxed in civil rights cases. The 11<sup>th</sup> Circuit recently summed up the matter in applying successor liability in a Title VII case, “the Supreme Court ha[s] consistently applied [successor liability] under other federal labor laws.” *Hatfield v. A+ Nursetemps, Inc.*, 651 F. App’x 901, 906 (11th Cir. 2016). There is a federal common law in this area such that the “‘doctrine of successorship’ is not as narrowly construed as the rule of corporate liability (which restricts successor liability to: explicit assumption by the acquirer, an acquirer who is “merely a continuation” of the predecessor, and transactions “entered into to escape liability”)....[T]his court recognized successor liability under Title VII of the Civil Rights Act of 1964, ruling successor liability in labor cases was “equally compelling in Title VII litigation”. *In re Nat’l Airlines, Inc.*, 700 F.2d 695, 698 (11th Cir. 1983). *Id.*

Altitude Express, Inc. no longer exists. Ray Maynard is not liable under Title VII. But Sky Dive Long Island, Inc., which supported the Second Circuit’s ruling, exists at precisely the same spot as Altitude Express did when it reincorporated in 2016 and Sky Dive Long Island, Inc. took over. So, there is either going to be a document wherein the new corporation accepts liability for the old, or the Court will have to apply the federal common law. We will also have to amend the caption and plan for trial if there is to be one. I also suggested a settlement conference with the magistrate.

Mr. Zabell is avoiding the substance of the matter, as is his wont. I will speak to you about this and other matters on Monday at 11:30.

Sincerely,

*Greg S. Antollino*

Gregory Antollino

Cc: Saul Zabell