

29) Accordingly, the Local paid a total of \$23,038 for the 2009 Cadillac. (Exs. 74-75, 88, 89, 29)¹⁴

3. The Local Did Not Need a Spare Car

During their November 2010 IRB sworn examinations, Wojciechowski and Rosano both claimed that the Local assumed the lease of the 2009 Cadillac because the Local needed a spare car. (Ex. 2 at 36-37; Ex. 22 at 45-46, 50) In contrast to this testimony, six of the nine full-time officers and non-clerical employees testified that they did not drive the 2009 Cadillac. (Ex. 18 at 11; Ex. 15 at 11; Ex. 20 at 11-12; Ex. 16 at 9; Ex. 23 at 23-24; Ex. 24 at 9-10)¹⁵ Wojciechowski also testified that he did not drive the 2009 Cadillac after the Local assumed the lease. (Ex. 2 at 38-39) Cotoggio, Wojciechowski's Executive Assistant, testified that he used the car three or four times: once or twice when his car was in the shop, once to go to Albany with Wojciechowski and once he used it for a day to keep

¹⁴ This figure, which the Local's comptroller calculated, also included \$80.81 for the registration of the car and \$85.80 in repairs to the car. (Ex. 88)

¹⁵ During the relevant time period, the Local had eleven full time employees: officers Wojciechowski, Rosano, Cotoggio, Warren Marsh, Edward Weber and Joseph Vitta; business agent John Ulrich, Political Director John O'Neill, comptroller James Scarpati, office manager Lorraine Rotante and clerical employees Rashida Bolden. (Ex. 76) In addition to six of the nine full-time non-clerical employees testifying that they did not drive the 2009 Cadillac, office manager Rotante also testified that she did not drive that car. (Ex. 25 at 21)

the battery from dying. (Ex. 26 at 7-8, 10-11)¹⁶ Rosano testified that he drove the 2009 Cadillac for one week while his car was being repaired. (Ex. 22 at 46) No records were kept regarding who used the 2009 Cadillac. (Ex. 22 at 47, 66)

There was no need for a spare car as Wojciechowski claimed. Indeed, two employees, business agent Ulrich and Trustee Edward Weber ("Weber"), testified that Rosano told them they could not use the 2009 Cadillac. (Ex. 15 at 11; Ex. 20 at 11-12) In addition, Recording Secretary Vitta testified that if his car, which had 205,000 miles on it, was being repaired, he used his wife's car. (Ex. 16 at 9-10) Trustee Weber also testified that if his car broke down, he used his wife's car. (Ex. 20 at 11) Indeed, Wojciechowski acknowledged that ". . . [i]t [the 2009 Cadillac] wasn't being used enough. I saw it gathering dust." (Ex. 2 at 39) The 2008 Executive Board minutes did not reflect any discussion of the need to acquire a spare car. (Ex. 73) When the car was disposed of, no other car was obtained to be a spare. (Ex. 23 at 25-26)

4. Wojciechowski Caused the Local to Sell the 2009 Cadillac Without the Requisite Executive Board Approval

¹⁶ Ulrich testified that Cotoggio drove the 2009 Cadillac to Smithtown, Long Island to visit an employer and Ulrich went with him. (Ex. 15 at 8-9)

By letter dated April 12, 2010, US Bank, to which lease payments were made for the 2009 Cadillac, advised the Local that the car could be purchased for \$33,491.30. (Ex. 77) On April 15, 2010, Wojciechowski caused the Local to sell the 2009 Cadillac to Great Neck Car Buyers and Sellers. (Ex. 2 at 51-52; Ex. 27) Great Neck Car Buyers and Sellers paid \$26,000 to purchase the 2009 Cadillac from the leasing company. (Ex. 27) As part of the sale, the Local paid \$7,491 difference to the leasing company. (Ex. 29) There was no Executive Board approval for the sale of the 2009 Cadillac as the Local's Bylaws mandated. (Exs. 12 and 78)

Between December 1, 2008, when the Local assumed the lease of the 2009 Cadillac, and April 15, 2010, when the 2009 Cadillac was sold, 5,669 miles had been put on the car. (Exs. 6 and 27) The average monthly mileage usage of the car during the prior three months when Wojciechowski had the car was roughly the same as the average monthly mileage usage after the Local assumed the lease. (Ex. 87)¹⁷

¹⁷ For the three months between September 2008 and December 2008, when Wojciechowski had the car, the average monthly mileage usage was 378 miles. (Exs. 5, 6, 27 and 87) For the seventeen months between December 2008 and April 2010, when the Local had the car, the average monthly mileage usage was 333 miles. (Exs. 6, 27, 87) During the relevant period, Wojciechowski lived in Flushing, approximately six miles from the Local's office in Great Neck. (Exs. 33, 76 and 80)

Shortly before the Local sold the 2009 Cadillac, Wojciechowski leased a 2010 Cadillac CTS. (Ex. 2 at 53, 60; Ex. 68)¹⁸

When the Chief Investigator's office initially requested a copy of the bill of sale for the 2009 Cadillac, none was produced. (Ex. 23 at 28-32) According to Rosano and comptroller Scarpati, the bill of sale was not at the Local. (Ex. 22 at 27; Ex. 23 at 28-32) Scarpati obtained the bill of sale from the dealership. (Ex. 23 at 32)

5. Wojciechowski's Misleading Testimony Regarding Executive Board Approval for the Lease Assumption

During his November 2010 IRB sworn examination, Wojciechowski claimed that the Executive Board had approved the Local's assumption of the lease for the 2009 Cadillac at an informal "communication meeting" which were held on Fridays at the Local. (Ex. 2-46, 52-53) In contrast to this, four other Executive Board members denied approving the Local's assumption of the lease. (Ex. 16 at 10-11; Ex. 18 at 13-14; Ex. 20 at 9-10; Ex. 19 at 7; Ex. 17 at 22-23) There was no approval reflected in the minutes of Executive Board meetings. (Ex. 73)

G. Action Taken after the IRB's Investigation Began

¹⁸ The 2010 Cadillac was registered to Wojciechowski on March 17, 2010. (Ex. 68)

1. Secretary-Treasurer Rosano Falsified Executive Board Meeting Minutes to Reflect the Executive Board Approved the Sale of the 2009 Cadillac

The IRB conducted a books and records examination at Local 812 on June 29, 2010. (Ex. 81) The Local was asked to produce all Executive Board meeting minutes for the period from July 1, 2005 to the present. (Ex. 82) In response, the Local produced Executive Board meeting minutes from July 22, 2005 to April 9, 2010. (Ex. 83)

In late October 2010, shortly before the sworn examinations of Rosano and Wojciechowski were conducted (Exs. 2 and 22), the Chief Investigator's office requested Executive Board minutes from May 2010 to the present. (Ex. 55) On or about October 29, 2010, the Local produced Executive Board minutes, including minutes of the May 6, 2010 Executive Board meeting. (Ex. 55)

The May 6, 2010 Executive Board meeting minutes contained the following statement, "[a] motion was made by Tom Rosano to dispose of the 2009 Cadillac because we would be purchasing a car for the new business agent seconded by John Cotoggio." (Ex. 30) During a sworn examination on March 1, 2011, Local 812 office manager Lorraine Rotante ("Rotante") testified that sometime at the end of October 2010 or the beginning of November 2010, Rosano instructed her to insert the above referenced sentence regarding the

2009 Cadillac into the minutes of the May 6, 2010 Executive Board meeting. (Ex. 25 at 8, 12-13)

Local 812 Recording Secretary Joseph Vitta testified Rotante told him that Rosano had instructed her to change the May 6, 2010 minutes and that she had done so. (Ex. 17 at 10-15) Vitta testified that when he compared his original minutes to the minutes that were produced to the Chief Investigator, the reference to disposing of the 2009 Cadillac was not in the original minutes. (Ex. 17 at 14-16; Exs. 30-31)

After Rosano's counsel was advised that the Chief Investigator planned to recommend a charge against him for falsifying Executive Board meeting minutes that were provided to the Chief Investigator, on April 8, 2011 Rosano entered into an agreement to permanently resign from the IBT. (Ex. 32)

2. Meeting after the November 2010 IRB Sworn Examinations of Wojciechowski and Rosano

Shortly after the November 2010 sworn examinations of Wojciechowski and Rosano, during which they were questioned about the 2009 Cadillac, Wojciechowski and Rosano called a meeting with the other Executive Board members. (Ex. 15 at 29-31; Ex. 20 at 25-29; Ex. 16 at 11-13) At this meeting,

there was a discussion about the 2009 Cadillac. (Ex. 15 at 29-30; Ex. 20 at 25-31; Ex. 16 at 11-13) Trustee Weber described the meeting as follows:

. . . Joe [Wojciechowksi] says I just want to tell you guys I had to go testify before the IRB hearing, and basically, it's all about my cars, the cars. And in doing so, he was saying well, you all know that -- you know, we put - got rid of the car because we were going to put Angel on, and this is why we got rid of the car, because we couldn't have him drive the car to the facilities.

At that point - and Tommy Rosano, he would butt in once in while and say a couple of things. I raised my hand and said Joe, I don't know anything about your cars - your car, I should say. The car, the Cadillac. And he sat back for a few minutes. He said what do you mean you don't know anything about my cars? I said I don't know anything about your cars. And that was that, that meeting. And he just went on. It was like telling us what, maybe, we should say. I don't know. But I'm just telling you I don't know anything about his car.

(Ex. 20 at 26) When asked what he thought the purpose of the meeting was, Vitta responded, "I think it was to cover the fact that they bought and sold the CTS." (Ex. 16 at 12)

V. ANALYSIS

A. Wojciechowski Embezzled Local 812 Funds

The standard of proof for establishing the charge against Wojciechowski is a preponderance of evidence. Rules and Procedures for Operation of the Independent Review Board, Para. J(6) ("[i]n order to be sustained, the

