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Generally a stockholder, who is not a director, is not charged with notice of the affairs of the corporation.¹² A stockholder who does not participate in an illegal or tortious act is not to be held accountable.¹³ In the principal case the appellant was charged with knowledge of, and participation in the fraud, in that she was a principal stockholder, and permitted the use of her funds for corporate affairs. The court, in effect, charged that the appellant's status in the corporation, together with the fact that her money was being used by the corporate entity was tantamount to her participation in the fraud. It may be that such a charge lies within the discretion of the courts, but did the evidence in fact show that such a charge was warranted? It is submitted that it did not. In the case of *Corvell v. Phipps*,¹⁴ the court stated that the plaintiff must show by a preponderance of evidence that the corporation's activities were in reality those of the individual stockholder.

The appellant was not a director of the corporation either in name or in reality; it was not shown that she actually participated in the fraud, and the evidence and testimony did not show that she had knowledge of the fraud. The court relied upon her status as principal stockholder, and the fact that her funds were used in the corporation as a basis to disregard the legal entity.¹⁵ It would seem that the Florida courts are no longer *reluctant* to brush aside the corporate veil, but rather they are aggressive in doing so. It is conceded that the corporate fiction should not hinder the courts in the achievement of justice. However, a careful scrutinization of the individual acts of corporate members will more accurately determine the *real actors*.

RALPH P. EZZO

LABOR LAW — UNIONS — LOYALTY OATH

A union officer filed a false non-Communist affidavit with the National Labor Relations Board with full knowledge by the union membership that the affidavit was false. The Board ruled that the union was not in

12. *Nettles v. Childs*, 100 F.2d 952 (4th Cir. 1939); *Mandeville v. Courtright*, 142 Fed. 97 (3rd Cir. 1905); *Commercial Savings Bank v. Kietges*, 206 Iowa 90, 219 N.W. 44 (1928); *Rudd v. Robinson*, 126 N.Y. 113, 26 N.E. 1046 (1891); *Hughes v. Wachter*, 61 N.D. 513, 238 N.W. 776 (1931); *Barson v. Pioneer Savings & Loan Co.*, 163 Ohio St. 424, 121 N.E.2d 76 (1954); *Greenville Gas Co. v. Ries*, 54 Ohio St. 549, 44 N.E. 271 (1896); *Medill v. Collier*, 16 Ohio St. 599 (1866); *Chourmis v. Laing*, 125 W.Va. 275, 23 S.E. 2d 628 (1942).

13. *Linninger v. Botsford*, 32 Cal. App. 386, 163 Pac. 63 (1916); *Atchison, T. & S. F. Ry. v. Cochran*, 43 Kan. 225, 23 Pac. 151 (1890); *Grapico Bottling Co. v. Ennis*, 140 Miss. 502, 106 So. 97 (1925); *Belo v. Fuller*, 84 Tex. 450, 19 S.W. 616 (1892). See note 12 *supra*. In *Advertex, Inc. v. Sawyer Industries*, *supra* note 7 the court held that the veil would not be lifted unless the assets were diverted by the stockholders or appropriated for their personal use.

14. 128 F.2d 702 (5th cir. 1942).

15. The court in the instant case noted the fact that the books of the corporation were poorly kept, however *Riley v. Fatt*, *supra* note 11 held that this was not enough to disregard the legal entity.

compliance with the National Labor Relations Act¹ and refused to allow the union to avail itself of any further rights or benefits provided under the act.² The court of appeals³ granted an injunction against the Board's action. *Held*, affirmed, the sole sanction imposed by the statute⁴ is criminal action against the officer filing the false affidavit. The National Labor Relations Board had no power to order decompliance of the union, nor to alter in any way the union's right to benefits under the act,⁵ even where the union membership was aware of the officer's fraud. *Leedom v. International Union of Mine, Mill and Smelter Workers*, 352 U.S. 145 (1956).

Section 9(h) of the National Labor Relations Act of 1947 requires union officers to file non-Communist affidavits with the National Labor Relations Board. When all the officers required by the act have so filed, the union is considered to be in compliance with the act and is accorded certain rights and benefits.⁶ In the original House and Senate drafts of the act, the test of compliance under section 9(h) was the *fact* of non-membership in the Communist party.⁷ An investigation by the Board was required where the veracity of the affiant was challenged. The House-Senate Conference Committee recognized the possibility of an indefinite delay in according benefits to unions, if the Board were required to investigate each affidavit filed. They revised the wording of section 9(h) to require the mere *filing* of an affidavit to constitute compliance.⁸ The Penal Code⁹ was made applicable in cases involving the filing of false affidavits. The section, as

1. Labor Management Relations Act, 1947 (Taft-Hartley Act), 61 STAT. 143, as amended, 29 U.S.C. § 159 (h) (1952). "No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits."

2. Maurice E. Travis, 111 N.L.R.B. 422 (1955).

3. 226 F.2d 780 (D.C.Cir. 1955).

4. See note 1 *supra*.

5. Labor Management Relations Act, 1947 (Taft-Hartley Act), 61 STAT. 143 as amended, 29 U.S.C. § 160 (1952).

6. *Ibid*.

7. H.R. Rep. No. 353, § 6 80th Cong., 1st Sess. (1947). "Under the House Bill, in section 9(f)(6) no labor organization could be certified if one or more of its national or international officers or one or more of the officers designated on the ballot was or ever had been a member of the Communist party. . . . The Senate Amendment, in section 9(h), contained a similar provision, differing from the House Bill only in not imposing the requirement that an officer 'has never been' one of the described individuals."

8. See note 1 *supra*.

9. § 35 A, as amended, 18 U.S.C. § 1001 (1948), provides a penalty of \$10,000 or a prison term or both, for making fraudulent statements in matters under the jurisdiction of federal departments and agencies.

amended, allows no delay in according benefits to unions, unless an officer involved refuses to file.¹⁰ Paul M. Herzog, past Chairman of the Board, pointed out the wisdom of this revision four years later. In reviewing the history of section 9(h) he remarked how "intolerable and delaying" the administrative procedure would have been if the original drafts had been enacted.¹¹ Early rulings of the Board declared that it was not its purpose to litigate the veracity¹² of affidavits. The courts upheld these rulings, stating that the intent of Congress was to prevent litigation,¹³ and therefore the question of veracity was not litigable before the Board.¹⁴ In holding this section constitutional the Court concluded that filing was not mandatory,¹⁵ but was merely a condition precedent¹⁷ to obtaining the services of the Board.

In August, 1953, a union officer was indicted under the penal provisions of the code¹⁸ for filing a false affidavit. Shortly thereafter,¹⁹ the Board attempted to protect its process from such abuse by promulgating a statement of policy²⁰ which declared that the conviction of an officer of a union would decertify the union and it would be ruled "not in compliance" with the act. The statement further declared that the Board would withhold benefits from unions, pending the outcome of a criminal action, in cases where union officers were indicted for filing false affidavits.²¹ The courts immediately rejected this attempted policy change, holding that the Board had no power or authority to investigate the veracity of affidavits or to sanction unions because union officers had filed false affidavits,²² even in a case involving a returned indictment.²³ The Board could only determine that each person required by the act to file had in fact done so.²⁴

10. 93 Cong. Rec. 6860 (1947). See Senator Taft's explanation of the House-Senate Conference agreement on § 9(h).

11. *Leedom v. International Union of Mine Workers*, 352 U.S. 145 (1956).

12. *Alpert & Alpert*, 92 N.L.R.B. 806 (1950), Harry Bridges had been convicted of perjury. The Board refused to look behind the affidavit saying, "Persons desiring to establish falsification have recourse to the Department of Justice."

13. *N.L.R.B. v. Wiltse*, 188 F.2d 917 (6th Cir. 1951).

14. *N.L.R.B. v. Louisville Container Corp.*, 209 F.2d 654 (6th Cir. 1954); *N.L.R.B. v. Sharples Chemicals*, 209 F.2d 645 (6th Cir. 1954); *Farmer v. United Electrical Workers*, 211 F.2d 36 (D.C. Cir. 1953).

15. *Cross v. N.L.R.B.*, 351 U.S. 62 (1956); *Osman v. Douds*, 339 U.S. 846 (1950).

16. *National Maritime Union v. Herzog*, 334 U.S. 854 (1948); *N.L.R.B. v. Louisville Container Corp.*, 209 F.2d 654 (6th Cir. 1954); *Aaronson Bros. Paper Corp. v. Fishko*, 144 N.Y.S.2d 643 (Sup. Ct. 1955), *aff'd*, 286 App. Div. 1009, 146 N.Y.S.2d 661 (1st Dept. 1955).

17. *United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U.S. 62 (1956).

18. See *International Fur Workers v. Farmer*, 117 F.Supp. 35, 37 (D.D.C. 1953).

19. The Board's policy decision was made on October 23, 1953; see note 20 *infra*.

20. 18 Fed. Reg. 7185 (1953).

21. *N.L.R.B. v. Indiana & Michigan Electric Co.*, 318 U.S. 9 (1943). (In this case it was implied that the Board had the power to protect its process from abuse).

22. *Farmer v. International Fur Workers*, 221 F.2d 862 (D.C. Cir. 1955); *United Electric Workers v. Herzog*, 110 F.Supp. 220 (D.D.C. 1953), *aff'd*, *Farmer v. United Electrical Workers*; 211 F.2d 36 (D.C. Cir. 1953).

23. *International Fur Workers v. Farmer*, 117 F.Supp. 35 (D.D.C. 1953).

24. *N.L.R.B. v. Coca Cola Bottling Co.*, 350 U.S. 264 (1956).

In the instant case, the court extended the union's right to benefits under the act to include a situation where the membership of the union is aware that an affidavit is false at the time of filing. It concluded that "the rule written into section 9(h) is for the *protection* of unions as well as the *detection* of Communists."²⁵ In a companion case,²⁶ decided on similar reasoning, the court rejected the Board's attempt to sanction a union, whose officer had been convicted of filing a false affidavit, because the officer had filed another affidavit subsequent to his conviction, and the veracity of the later affidavit had not been challenged.

It is submitted that these are times of strong public sentiment in regard to the Communist problem. It is comforting to know that the Supreme Court remains a stable influence in the midst of this emotional storm. Once again the Court has affirmed its faith in a government of laws rather than men and has refused to permit an administrative board to arbitrarily assume the function of a court.

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25. *Leedom v. International Union of Mine Workers*, 352 U.S. 145 (1956).

26. *Amalgamated Meatcutters AFL-CIO v. N.L.R.B.*, 352 U.S. 153 (1956). Gold, the union president, was convicted of filing a false non-Communist affidavit, on August 30, 1950. More than one year later he filed another affidavit. Mr. Justice Frankfurter, quoting from the dissenting opinion in the lower court, said: "A jury has found that in 1950 Gold was both a Communist and a liar, to put it bluntly. Yet to indulge in the presumption that he was therefore guilty of committing a criminal offense a year later in filing the 1951 affidavit is further than I can go on the record before us."