

**CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS**

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

BROADWAY COLLISION & TOWING INC.

-and-

RICHARD TUREK,

Respondents.

DECISION AND ORDER

Violation No.: LL005206450

License No.: 1069700

Respondent Broadway Collision

Address:

2455 First Avenue

New York, NY 10035

Respondent Richard Turek

Address:

304 E. 62nd Street

New York, NY 10021

A hearing on the above-captioned matter was held on May 10 and May 17, 2011.

Appearances: For the Department: Jordan Cohen, Esq.; Sanford Cohen, Esq. For the Respondent: Erach Screwvala, Esq.; Richard Joseph Turek, vice president (May 10 only); Richard Steven Turek, manager.

The respondent is charged with violating the following:

1. Title 6 of the Rules of the City of New York (6 RCNY) Section 1-14 by failing to comply with a subpoena duces tecum.
2. New York City Administrative Code (Administrative Code) Section 20-104(e)(3) by failing to comply with a lawful order of the Department.
3. 6 RCNY Section 2-371(y) "upon suspension of its license, Broadway is disqualified from participating in the DARP program pursuant to 6 RCNY Section 2-371(y) for failing to be in possession of a valid, current license to engage in towing as required by Administrative Code Section 20-518(a)(3)".
4. Administrative Code Section 20-101 by failing to maintain the standards of integrity, honesty and fair dealing required of licensees while engaged in licensed activities by failing to appear in person to answer a subpoena and for failing to comply with a lawful order of the Department.

The respondent Richard Joseph Turek is charged with violating the following:

5. 6 RCNY Section 1-14 by failing to comply with a subpoena duces tecum.
6. Administrative Code Section 20-101 by failing to maintain the standards of integrity, honesty and fair dealing required of licensees while engaged in licensed activities by failing to appear in person to answer a subpoena and for failing to comply with a lawful order of the Department.

Based on the evidence in this case, I **RECOMMEND** the following:

Findings of Fact

At all relevant times, Broadway Collision & Towing Inc. ("Broadway Collision") was and is a corporation licensed to engage in towing activity.

Richard Joseph Turek is the vice president of Broadway Collision. He does not hold any Departmental licenses.

On August 18, 2010 the Department issued a non-judicial subpoena duces tecum upon Broadway Collision, directing it to "appear and attend" at the office of the Department of Consumer Affairs on September 2, 2010. The subpoena also required the production of documents set forth in Schedule "A" that was attached to the subpoena. The Department adjourned the return date to September 16, 2010. Broadway Collision did not appear on either date.

In February 2011, Richard Steven Turek, Broadway Collision's manager, appeared at the Department on behalf of the respondent and produced documents pursuant to the August 18 subpoena. All requested documents -- except for an individual tax return for Richard Joseph Turek -- were provided. Richard Joseph Turek did not file an individual tax return.

On November 23, 2010 the Department issued a non-judicial subpoena duces tecum upon Richard Joseph Turek, directing him to "appear and attend" at the office of the Department of Consumer Affairs on December 7, 2010. The subpoena also required the production of documents set forth in Schedule "A" that was attached to the subpoena.

The respondent Richard Joseph Turek did not appear on December 7, 2010 or at any time subsequently to be examined, nor has he produced any documents pursuant to the November 23 subpoena.

Opinion

Broadway Collision

6 RCNY Section 1-14 states:

A licensee must appear in person at the Department to answer a notice of hearing or a subpoena duces tecum served upon that licensee. If the licensee is an individual, he or she must appear; if a partnership, one of its general partners must appear; and if a corporation, one of its officers must appear (emphasis added).

The subpoena upon Broadway Collision requested its appearance on the adjourned date of September 16, 2010. Because Broadway Collision did not appear or answer the Department subpoena by that date, charge 1 should be sustained.

With respect to charge 2, Administrative Code Section 20-104(e)(3) states:

The commissioner or the commissioner's designee shall be authorized to suspend the license of any person ... pending compliance with any other lawful order of the department.

For the purposes of this decision, I am considering a subpoena to be a lawful order of the Department. It is undisputed that Broadway Collision appeared in February 2011 and produced all documents in response to the subpoena except for a tax return for Richard Joseph Turek. On the record, counsel for the Department conceded that the respondent's accountant represented in writing that: 1) Richard Joseph Turek did not file a tax return because he did not receive any compensation or salary from Broadway Collision, and 2) that the compensation on Broadway Collision's tax return for Richard Turek was for Richard Steven Turek. The Department presented no evidence to prove that the representations of the respondent's accountant were incorrect. I determine that Broadway Collision has fully answered, or complied with, the subpoena, as of the date of the hearing. Administrative Code Section 20-103(e)(3) gives authority to suspend only pending compliance. Since as of now Broadway Collision has complied, charge 2 should be dismissed.

With respect to charge 3, the Department acknowledged that only the respondent's participation in the DARP program – and not its tow license – has been suspended. Accordingly, charge 3 should be dismissed.

With respect to the charge that Broadway Towing violated Administrative Code Section 20-101, it is undisputed that Broadway Collision appeared in February 2011 and all produced documents in response to the subpoena except for a tax return for Richard Joseph Turek. On the record, counsel for the Department conceded that the respondent's accountant represented in writing that: 1) Richard Joseph Turek did not file a tax return because he did not receive any compensation or salary from Broadway Collision, and 2) that the compensation on Broadway Collision's tax return for Richard Turek was for Richard Steven Turek. The Department presented no evidence to prove that the representations of the respondent's accountant were incorrect. I determine that Broadway Collision has fully complied with the subpoena, as of the date of the hearing. However, the respondent's answer, approximately five months after

the date it was commanded to appear, was not timely. I find that by not appearing on a timely basis, the respondent did not meet the standards of honesty, integrity and fair dealing required of licenses. Accordingly, charge 4 should be sustained, and a 15-day suspension imposed against Broadway Towing.

Richard Joseph Turek

By their terms, 6 RCNY Section 1-14 and Administrative Code Section 20-101 are limited to licensees. Given that there is no dispute that Mr. Turek was not, at any time relevant to the allegations against him, a licensee of the Department, both charges 5 and 6 should be dismissed.

Order

Broadway Collision

The respondent Broadway Collision is found **guilty** of charges 1 and 4, and is **ordered** to pay to the Department a **TOTAL FINE of \$350** as follows:

Charge 1: \$350

The respondent Broadway Collision is found **not guilty** of charges 2 and 3, and these charges are **DISMISSED**.

For its violation of charge 4, the license is suspended for fifteen (15) days. The suspension shall be effective **five business days** from the date of this Decision. The respondent is directed to surrender its license document to the Licensing Division. Once the suspension period expires, the respondent may, if all fines are paid and administrative requirements met, retrieve its license document from the Licensing Division.

Failure to surrender the license document shall constitute grounds for additional suspension or revocation of the license. If respondent continues to operate during the period of suspension, it is subject to CRIMINAL PROSECUTION and/or civil penalties of \$100 per day for each day of unlicensed activity, as well as the closing of its business and/or the removal of items sold, offered for sale, or utilized in the operation thereof, pursuant to the Administrative Code §§ 20-105 and 20-106 (the "Padlock Law").

Richard Joseph Turek

Charges 5 and 6 against the respondent Richard Joseph Turek are **DISMISSED**.

This constitutes the recommendation of the Administrative Law Judge.

**Judith Gould
Administrative Law Judge**

DECISION AND ORDER:

The recommendation of the Administrative Law Judge is **not approved with regard to charges #2 and #4.**

With respect to charge #2, Administrative Code § 20-104(e)(3) authorizes “the commissioner or the commissioner’s designee [to] suspend the license of any person . . . pending compliance with any other lawful order of the department”. Here, the Department issued a subpoena duces tecum requiring the respondent to “appear and attend” and produce documentation on September 2, 2010. The return date was adjourned to September 16, 2010, pursuant to the respondent’s request. By failing to appear or to produce the required documentation on that date, the respondent failed to comply with the Department’s lawful order, notwithstanding its subsequent appearance in February 2011. There is no evidence in the record to establish that the Department ever consented to adjourn the September 16, 2010 return date. Accordingly, charge #2 is sustained and the respondent is **Ordered to pay to the Department a total fine of \$500.**

Regarding charge #4, the respondent failed to respond to the subpoena until approximately 5 months after it was required to appear and, even then, did not produce all of the required documentation. Accordingly, the **respondent’s license shall be revoked** for its failure to maintain the standards of honesty and integrity, in violation of Administrative Code § 20-101.

In addition, the **respondent’s License is REVOKED EFFECTIVE IMMEDIATELY.** The respondent is directed to surrender the license document to the Licensing Division immediately. If the respondent continues to operate with a revoked license, it is subject to CRIMINAL PROSECUTION and/or civil penalties of \$100 per day for each day of unlicensed activity, as well as the closing of the business and/or the removal of items sold, offered for sale, or utilized in the operation of the business, pursuant to the Administrative Code of the city of New York §§ 20-105 and 20-106 (the “Padlock Law”).

The recommendation of the Administrative Law Judge regarding charges #1, #3, #5 and #6 is approved. This constitutes an Order of the Department.

Failure to comply with this order within thirty (30) days may result in the suspension of any other Department of Consumer Affairs license(s) held by the respondent.

DATE: June 10, 2011

James M. Plotkin
Principal Administrative Law Judge

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Mail payment in the enclosed envelope addressed to:

NYC Department of Consumer Affairs
Collections Division
42 Broadway, 9th Floor
New York, NY 10004

APPEAL INFORMATION

You have **30 days** to file an **APPEAL** of this decision. You must include with your appeal **all** of the following: (1) a check or money order payable to DCA for the sum of \$25; and (2) a check or money order payable to DCA for the amount of the fine imposed by the decision, or an application for a waiver of the requirement to pay the fine as a requisite for an appeal, based upon financial hardship. The application must be supported by evidence of financial hardship, including the most recent tax returns you have filed.

BY EMAIL: Send your appeal to myappeal@dca.nyc.gov and, at the same time, mail the \$25 appeal fee to: DCA Administrative Tribunal, 66 John Street, 11th Floor, New York, NY 10038. (Make sure to write the violation number(s) on your check or money order.) You may pay the fine online at www.nyc.gov/consumers, or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.

BY REGULAR MAIL: Mail your appeal and the appeal fee to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11th Floor, New York, NY 10038. You must also mail a copy of your appeal to: DCA, Legal Compliance and Fitness Division, 42 Broadway, 9th Floor, New York, NY 10004. Make sure to include in your appeal some indication or proof that you have sent a copy of the appeal to DCA's Legal Compliance and Fitness Division. You may pay the fine online at www.nyc.gov/consumers, or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.