

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

Complainant,

- against -

**CUSTOM TOWING INC. and HECTOR
RUIZ,**

Respondents.
-----X

**SUPERSEDING¹ CONSOLIDATED
DECISION AND ORDER**

**Record Nos.:
10978-2014-ADJC
10977-2014-ADJC**

**NOH No.:
05312922**

**DCA Licensing Nos.:
1037310 (Custom- Brooklyn)
2003209 (Custom- Staten Island)
1471267 (Ruiz)**

**Respondents' Addresses:
223 26th Street
Brooklyn, NY 11232**

**49 Elizabeth Street
Staten Island, NY 10310**

**22 Pleasant Valley Avenue
Staten Island, NY 10304**

A hearing on the above-captioned matter was held on November 19, 2014.

Appearances: For the Department: Jordan Cohen, Esq; Ellen Liang (observing). For the Respondents: John Russo, Esq.; Hector Ruiz, principal of Custom Towing Inc. and tow truck driver.

¹ The Consolidated Appeal Determination issued in this matter on March 25, 2015 (1140-2014-ADJC.1141-2014-ADJC) was remanded for the issuance of a superseding Decision which shall “incorporate all of the findings and determinations of this Appeal Determination.”

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The respondent Custom Towing Inc. was charged with violating the following:

1. Title 6 of the Rules of the City of New York (“6 RCNY”) § 2-378 *et seq.* for failure to maintain records in electronic format. (2 counts)
2. 6 RCNY § 1-16 for failure to make records available for inspection to the Department. (2 counts)
3. Title 20 of the New York City Administrative Code (“Administrative Code”) § 20-516 for failure to maintain and produce records, ledgers, receipts, bills, and other records prescribed by regulation. (2 counts)
4. Administrative Code § 20-101 for failure to maintain the standards of honesty, integrity, and fair dealing required of licensees by failing to maintain electronic records.
5. Administrative Code § 20-101 for failure to maintain the standards of honesty, integrity, and fair dealing required of licensees by failing to maintain and produce required records.

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The respondent Mr. Ruiz was charged with violating the following:

1. Administrative Code § 20-101 for failure to maintain the standards of honesty, integrity, and fair dealing required of licensees by failing to maintain electronic records.
2. Administrative Code § 20-101 for failure to maintain the standards of honesty, integrity, and fair dealing required of licensees by failing to maintain and produce required records.

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

Findings of Fact

The respondent, Custom Towing Inc. (“Custom”), did not respond to two subpoenas issued by the Department in a timely manner. The information that was submitted after the submission deadline was incomplete. One subpoena was served on Custom’s Brooklyn location (Lic. No. 1471267) and one on the Staten Island location (Lic. No. 2003209). Hector Ruiz is licensed as a tow truck driver (Lic. No. 1037310).

Custom did not maintain records in electronic format, did not make records available for inspection to the Department, and did not maintain and produce records, ledgers, receipts, bills, and other records prescribed by regulation.

Opinion

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The Department established by a preponderance of the credible evidence that the respondent Custom violated 6 RCNY § 1-16, and Administrative Code § 20-516. There is no dispute that the subpoenas on both locations initially required responses by August 15, 2014 and that Custom was given an extension by the Department through an email correspondence (See Dept.'s Ex. D). The respondent was then required to respond by August 22, 2014, but failed to do so. After retaining an attorney, the Department agreed to give the respondent until November 7, 2014 to respond to the subpoenas and then on November 17, 2014 the Department received a partial response to the subpoenas (See invoices, Dept.'s Ex. F).

Mr. Ruiz admits that Custom did not respond to both subpoenas in a timely manner and did not submit a complete response on November 17, 2014. However, he established through detailed and credible testimony and evidence that Custom was unable to produce the required records because: two relatives passed away at the time the subpoenas were due, the records were on a laptop stolen from his car, the person who was handling Custom's paperwork left the business, and the company had no knowledge it was required to maintain the particular types of records requested by the subpoenas. See Respondent's Exhibits 1, 2 and 3. These claims do not constitute meritorious defenses to the violations. As a licensee, Custom is required to comply with the Department's rules and regulations.

In regard to the charge 6 RCNY § 2-378 *et seq.* set forth in the Notice of Hearing, the Department established that the respondent did not maintain records in electronic format. The Appeal Determination found the charge 6 RCNY § 2-378 *et seq.* gives sufficient notice to the respondent of which specific subsection or subsections of § 2-378 are being charged.

In light of the foregoing, the charges shall be sustained. In regard to 6 RCNY § 1-16 and Administrative Code § 20-516, based upon the respondent's credible testimony and evidence², and as these are first time violations, the fines

² The credible documentary evidence includes a Police Department Incident Information Slip and memorial cards for the death of Henry Charles Perez and Felix

will be assessed accordingly.³

In regard to Administrative Code § 20-101, the facts of this case do not rise to a level that would warrant revocation and a finding that Custom is permanently unfit to hold future Department licenses because these are first time violations and the violations do not involve matters of health and safety (but rather recordkeeping). Furthermore, the Department bases one of the grounds for violation of Administrative Code § 20-101 on the respondent's failure to produce records pursuant to a Subpoena Duces Tecum. However, the Department did not charge the respondents with a violation of 6 RCNY § 1-14 (the requirement that a licensee respond to a Subpoena Duces Tecum). Therefore, charges 4 & 5 shall be dismissed.

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Mr. Ruiz is a licensed tow truck driver (Lic. No. 1471267). His responsibilities as a licensed tow truck driver do not include maintaining and producing Custom's records. The Department argues that Mr. Ruiz's position as principal of Custom would warrant revocation of his tow truck driver license and a finding that he is unfit to hold a license. The respondent's attorney argues that such a penalty under the circumstances of this case would be draconian and unfair. I find that the facts of this case do not rise to a level that would warrant revocation of Mr. Ruiz's tow truck driver license and a finding that Mr. Ruiz, as sole principal, is permanently unfit to hold future Department licenses because he is not personally required to produce Custom's records and because these are first time violations.

Therefore, the charges against respondent, Hector Ruiz, shall be dismissed.

ORDER

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The respondent Custom Towing Inc. is found **guilty** of charges 2 and 3 and is hereby **ORDERED to pay to the Department a TOTAL FINE of \$6,500, which is immediately due and owing**, as follows:

Manuel Perez, Jr. (See Respondent's Exhibits 1, 2 and 3).

³ In regard to 6 RCNY § 2-378 *et seq.*, I do not make any determination whether or not the fine should be mitigated. The Appeal Determination found "no reason in the record to impose a mitigated fine for the violation of 6 RCNY § 2-378. The respondent's principle [*sic*] conceded he was unaware of the requirement to keep electronic records and offered no defense to the charge."

Charge 1: \$5000⁴ (\$2500 for each licensed location)

Charge 2: \$500 (\$250 for each licensed location)

Charge 3: \$1000 (\$500 for each licensed location)

Charges 4 and 5: **dismissed**.

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The charges against respondent Hector Ruiz are hereby **dismissed**.

This constitutes the recommendation of the Administrative Law Judge.

**David S. Paul
Administrative Law Judge**

DECISION AND ORDER

The recommendation of the Administrative Law Judge is **approved**.

This constitutes the decision of the Department of Consumer Affairs. The Department may suspend any DCA license(s) held by the respondent if the respondent fails to comply with this Decision and Order within thirty (30) days, including payment of the fine. Payment with a check that is dishonored or a credit card transaction that is denied or reversed will not be considered compliance with this Decision and Order. Such license(s) will not be reinstated until the respondent has served any suspension period ordered in this Decision and has paid ALL fines owed to the Department.

Date: April 8, 2015

**Eryn DeFontes
Associate Director of Adjudication**

cc: Jordan P. Cohen, Esq. via e-mail: jcohen@dca.nyc.gov

John L. Russo, Esq. via e-mail: jlrussopc@gmail.com

⁴ This fine was assessed by the Appeal Determination which ordered that this Superseding Decision shall “incorporate all of the findings and determinations” of the Appeal Determination.

Mail payment of fine 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 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 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.