

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

**Complainant,**

**- against -**

**FINEST TOWING & AUTOBODY INC.,**

**Respondent.**  
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**SUPERSEDING DECISION  
AND ORDER**

**Violation No.: LL005292258**

**DCA License No.: 921249**

**Respondent's Address:  
597 Baltic St.  
Brooklyn, NY 11217**

A hearing on the above-captioned matter was held on July 11, 2012 and January 10, 2013.<sup>1</sup>

Appearances: For the Department: P.O. Holmes, Shield #10993 (July 11, 2012); Jordan Cohen, Esq. Legal Division (January 10, 2013). For the Respondent: Anthony DeStefano, corporate officer; Lloyd Berns, authorized representative.

1. The respondent was charged with violating Title 20 of the New York City Administrative Code (Administrative Code) Section 20-518(b)(2) by responding to the scene of an accident without being requested to by a person in charge of the vehicle or directed to do so by the police department. (1 count)

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

**Findings of Fact**

The Respondent is a licensed tow truck company. On October 30, 2011, Anthony DeStefano responded to the scene of an accident without being requested to do so either by the person in charge of a vehicle involved in the accident or the police department.

**Opinion**

The Department established by a preponderance of the evidence that Anthony DeStefano responded to the scene of an accident without being requested to do so either by the person in charge of the vehicle or the police department. Officer Holmes established, through detailed testimony and evidence, that Mr. DeStefano told him that he had gone to the scene at the

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<sup>1</sup> Pursuant to an appeal determination, dated December 7, 2012, the matter was remanded for "an additional hearing on the sole issue of whether a violation of Administrative Code Section 20-518(b)(2) can be enforced against a tow truck company, taking into consideration the provisions of Title 6 of the Rules of the City of New York [6 RCNY] Section 2-363(h)".

request of his friend, Mr. Yepes, because his vehicle had been involved in an accident. Officer Holmes further testified that Mr. DeStefano told her he was taking Yepes' 2008 Toyota to his auto body shop.

Mr. DeStefano's bare claim, that Mr. Yepes is both a friend and a customer who asked him to come to the accident scene, is not substantiated by the evidence. Mr. Yepes neither testified at the hearing nor submitted a notarized statement. Yepes' name is spelled two different ways in the statement that respondent submitted. In it, Yepes said that he walked to DeStefano's house, around the corner from the accident. In contrast, Officer Holmes testified that DeStefano told her that Yepes phoned him and further testified that the scene was five blocks away from DeStefano's claimed residence. Additionally, when Officer Holmes was shown Yepes' photograph at the hearing, she testified that she never saw him at the accident scene. Further, DeStefano submitted no corroborating evidence of his exact residence which he testified was only two blocks away.

It is determined that Administrative Code Section 20-518(b)(2) is enforceable against a tow truck company (and not just the driver) under the authority of 6 RCNY Section 2-363(h) which states: Licensees may be held responsible for any act or omission of any of their employees which results in the licensee's failure to comply with such regulations as are applicable. Respondent's claim, that 6 RCNY Section 2-363(h) should have been cited in the Notice of Hearing and that issuing the violation against the tow truck company rather than the tow truck operator is arbitrary and capricious, is without merit. Many provisions of the Administrative Code and 6 RCNY, including 6 RCNY Section 2-363(h), give notice of the Commissioner's authority and need not be included in every Notice of Hearing.

Respondent's additional claim that the cited violation supersedes 6 RCNY Section 2-363(h) because it is more specific is likewise without merit. The two sections compliment rather than supersede each other. Moreover, read together the two sections promote the legislative intent to protect the public from "over-reaching by certain members of the towing industry and from reckless conduct of certain such members which can threaten life and property".<sup>2</sup> Accordingly, it is not arbitrary or capricious to charge the tow truck company under the cited section. It is also noted that the tow truck operator herein is respondent's corporate officer.

Based on the foregoing, the respondent did not rebut the Department's case and the charge is, accordingly, sustained.

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<sup>2</sup> See Administrative Code Section 20, Subchapter 31 "Towing of Vehicles" Subchapter added NYC LL 28(1987) Section 1. Declaration of legislative intent.

**ORDER**

The respondent is found **guilty** of violating the charge and is, hereby, **ORDERED to pay to the Department a TOTAL FINE of \$2,000.**

**This constitutes the recommendation of the Administrative Law Judge.**

**N. Tumelty  
Administrative Law Judge**

**DECISION AND ORDER**

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

**This constitutes the Decision and Order of the Department. Failure to comply with this order within (30) days shall result in the suspension of the license at issue, and may result in the suspension of any other Department of Consumer Affairs license(s) held by the respondent.**

**Date: 28 January 2013**

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**James M. Plotkin  
Deputy Director of Adjudication**

cc: Lloyd Berns  
32 Court Street Suite 303  
Brooklyn, NY 11201  
Via email: [sportymb@aol.com](mailto:sportymb@aol.com)

Jordan Cohen, Esq.  
Legal Division

**Mail payment in the enclosed**

**envelope addressed to:**

NYC Department of Consumer  
Affairs

Collections Division  
42 Broadway, 9<sup>th</sup> 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](mailto:myappeal@dca.nyc.gov) and, at the same time, mail the \$25 appeal fee to: DCA Administrative Tribunal, 66 John Street, 11<sup>th</sup> 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](http://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 \$25 appeal fee to: Director of Adjudication, Department of Consumer Affairs, 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038. You must also mail a copy of your appeal to: DCA, Legal Division, 42 Broadway, 9<sup>th</sup> 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](http://www.nyc.gov/consumers), or mail a check or money order to: DCA, Collections Division, 42 Broadway, NY, NY 10004.