

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

**DEPARTMENT OF CONSUMER AFFAIRS,**

**Complainant,**

**-against-**

**FASTWAY TOWING & RECOVERY INC.**

**and**

**ZBIGNIEW FILIPOWICZ,**

**Respondents.**

**SUPERSEDING  
CONSOLIDATED DECISION  
AND ORDER #2<sup>1</sup>**

**Violation Nos.:**

**SV005287210  
LL005287211  
LL005204621  
LL005204649  
LL005130916  
LL005130917  
LL005287407<sup>2</sup>**

**License Nos.: 1244731**

**1271232  
1158042**

**Respondents' Addresses:**

**31 Grand Avenue  
Brooklyn, New York 11205**

**350 Front Street  
Staten Island, New York 10304**

**3932 Flatlands Avenue  
2<sup>nd</sup> floor  
Brooklyn, New York 11234**

**Date: October 11, 2012**

A consolidated hearing on the above-captioned matters was held on December 1, 2011, February 16, 2012, March 15, 2012 and May 10, 2012<sup>3</sup>.

Appearances: December 1, 2011: For the Department: Jordan Cohen, Esq.; Police Officer Heurtelou, 62 pct., witness; Benjamin Lapin, witness. For

<sup>1</sup> The second Superseding Decision and Order adds additional consumer restitution. The rest of the decision remains the same.

<sup>2</sup> The original Decision and Order dated August 30, 2012 incorrectly cited LL005130407 as the violation number. This matter was corrected in the Superseding Consolidated Decision and Order dated September 14, 2012.

<sup>3</sup> The record was held open until August 6, 2012 for post-hearing submissions from the parties. The tribunal received a post-hearing submission from the Department. The respondents failed to submit any post-hearing submission.

the Respondents: Zbigniew Filipowicz, president. February 16, 2012: For the Department: Jordan Cohen, Esq.; Inspector Ramos; David Sloan, witness. For the Respondents: Zbigniew Filipowicz, president; John Russo, Esq.; Aixa Martinez, witness. March 15, 2012: For the Department: Jordan Cohen, Esq.; Inspector Hossain. For the Respondents: Zbigniew Filipowicz, president; John Russo, Esq. May 10, 2012: For the Department: Jordan Cohen, Esq.; Police Officer Michael Wolf, 62 pct.; Lt. Wadler and Sgt Simons, observing. For the Respondents: Zbigniew Filipowicz, president; John Russo, Esq.

The respondents are charged with violating the following:

**SV005287210**

- 1) Administrative Code of the City of New York ("Administrative Code") Section 20-496(b) by engaging in unlicensed tow truck driver activity (1 count).

**LL005287211**

- 2) Administrative Code Section 20-700 by engaging in a deceptive trade practice by holding itself out to be a licensed tow truck company (1 count);
- 3) Administrative Code Section 20-104(4) by failing to surrender its license (1 count); and
- 4) Administrative Code Section 20-101 by failing to maintain the standards of integrity, honesty and fair dealing required among licensees (1 count).

**LL005130916, LL005130917 and LL005287407**

- 5) Title 6 of the Rules of the City of New York ("6 RCNY") Sections 2-377(d) and 1-12, and Administrative Code Sections 19-169.1(b) and 20-700 by improperly towing vehicles from private property located at 3090 Ocean Avenue in Brooklyn; 6 RCNY Sections 2-377(d) and (g)(3), and Administrative Code Section 19-169.1(b), by failing to maintain signage at a pedestrian exit, and by failing to post signs at two pedestrian exits that met the designated height requirements; and 6 RCNY Section 2-377(d)(6) and Administrative Code Section 19-169.1(b) by failing to disclose that the hours during which towed vehicles can be redeemed must include all times during which vehicles may be towed from the lot (and at

least 60 minutes after the latest time a vehicle may be towed) (1019 counts<sup>4</sup>);

- 6) 6 RCNY Sections 2-377(h) and 1-12 and Administrative Code Sections 19-169.1(c) and 20-700, by improperly towing vehicles from private property at 3090 Ocean Avenue, Brooklyn, in that respondents removed allegedly improperly parked vehicles without first obtaining written authorization from the owner of the lot or the owner's agent who has been designated in writing to authorize such towing (960 counts);
- 7) Administrative Code Section 19-169.1(e) by failing to take vehicles towed from private parking lots directly to respondents' licensed storage facility (4 counts<sup>5</sup>);
- 8) Administrative Code Section 20-527 by refusing to accept payment by credit card for towing services (5 counts<sup>6</sup>);
- 9) Administrative Code Section 19-169.1(a) by charging amounts in excess of what the law allows (5 counts<sup>7</sup>);
- 10) Administrative Code Section 19-169.1(f) by failing to notify the local precinct of vehicle tows from Caesar's Bay within thirty minutes of towing the vehicles (139 counts<sup>8</sup>);
- 11) 6 RCNY Section 1-14 by failing to comply with a Department subpoena and Administrative Code Section 20-516 by failing to provide documents requested by the Department that the respondents are required to maintain and provide to the Department upon request (1 count); and
- 12) Administrative Code Section 20-101 by failing to maintain the standards of honesty, integrity, and fair dealing required of licensees.

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<sup>4</sup> The Notice of Hearing charged 1,216 counts. The Department reduced the counts from 1,200 to 1,019.

<sup>5</sup> The Department withdrew 1 count.

<sup>6</sup> The Department withdrew 1 count.

<sup>7</sup> The Department withdrew 1 count.

<sup>8</sup> The Notice of Hearing charged 163 counts. The Department withdrew 24 counts.

**LL005204621**

- 13) Administrative Code Section 20-496(c) by authorizing an unlicensed tow truck operator to operate a tow truck;
- 14) 6 RCNY Section 2-363(n) by failing to list a tow truck operator with the Department; and
- 15) 6 RCNY Section 2-367 by failing to have a complete Authorization to Tow form.

**LL005204649**

- 16) 6 RCNY Section 2-377(g)(3) by failing to post signs that meet the requirements of the rules (4 counts); and
- 17) 6 RCNY Section 2-377(d)(6) by failing to provide a 60 minute time period to redeem vehicles after the latest time that vehicles are subject to towing from such property each day.

**Findings of Fact**

**SV005287210 and LL005287211**

On December 20, 2011, an employee of the respondent Fastway Towing & Recovery Inc. ("Fastway") towed a parked vehicle from the McDonald's parking lot located at 1531 Fulton Street in Brooklyn. Fastway's license (#1244731) had been revoked on November 30, 2011. The respondent never surrendered its license following the suspension. The vehicle was seized.

**LL005130916, LL005130917 and LL005287407**

On or about December 5, 2008, the respondents, Fastway and Zbigniew Filipowicz ("Filipowicz") entered into an agreement with Citi Corps Management Inc. to tow illegally parked vehicles from a parking lot located at 3090 Ocean Avenue in Brooklyn. Between the period from February 28, 2009 until March 24, 2010, the respondents towed 1,019 vehicles<sup>9</sup> from this lot. During this same time period, there was no signage at one pedestrian exit concerning the towing of vehicles from the lot. Additionally, the tops of at least two signs located at other pedestrian exits measured less than 6 feet in height above the ground. All of the signs, at both the entrances and at the pedestrian exits,

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<sup>9</sup> The amount of counts was amended from 1,218 in the Department's post-hearing submission.

stated that towed vehicles could be redeemed only between the hours of 10 a.m. and 5 p.m. on Monday through Friday, with a one-hour redemption period after 5 p.m. if towed at that time. All of the signs indicated that towing could take place 24 hours a day, 7 days a week. The respondents did not obtain a written authorization from either the owner of the lot or the owner's agent to tow 960 vehicles from the lot.

The respondents failed to tow 4 cars to its storage facility. The respondents charged the full price for towing to 5 consumers who returned to their vehicles before their vehicles were removed. The respondents refused to accept credit card payment from 5 consumers who appeared in person.

The respondents failed to notify the police department within 30 minutes of the vehicles' arrival to a storage facility, of 139 tows between June and July of 2011.

On September 8, 2011, the Department issued a subpoena to Fastway for all towing invoices and authorizations from June 2011 through the subpoena return date. The respondents failed to provide records, or any explanation as to why records were not presented, for August and September 2011.

#### **LL005204621**

On November 10, 2009, Fastway towed Department of Consumer Affairs Inspector Hossain's vehicle from a parking lot at 82-66 Broadway in Queens. Jason Fernandez, the tow truck driver, did not have a current tow truck driver license at that time. Additionally, Fastway did not list Mr. Fernandez with the Department as its employee. The Authorization to Tow form shown to the inspector was incomplete.

Fastway was found guilty of violating Administrative Code Section 20-496(c) on April 14, 2011 (see LL005242933)

#### **LL005204649**

On November 12, 2009, two Department inspectors conducted an inspection at 82-66 Broadway in Queens. The sign posted at the entrance, facing outwards stood 22 inches from the ground; the sign posted at the entrance, facing inward stood 24 inches from the ground; the sign posted at the exit, facing inward stood 49 inches from the ground; and the sign posted at the exit, facing outward stood 40 inches from the ground. The redemption sign reads: towing 24 hours a day 7 days a week. Redeemable hours are Mon to Fri from 10:00 am to 5:00 pm. There is no provision for a 60 minute period to redeem vehicles after the latest time vehicles are subject to towing from such property each day.

**Opinion****SV005287210**

With respect to charge 1, the Department has failed to establish the violation by a preponderance of the credible evidence. Administrative Code Section 20-496(b) states in pertinent part: "...no person shall drive or otherwise operate a tow truck or assist in any activity for which a license is required...unless such person shall have first obtained a tow truck operator's license..." As this section pertains to a tow truck operator and not a towing business (see Administrative Code Section 20-496(a)), and the operator was not named, the charge shall be dismissed.

**LL005287211**

With respect to charges 2, 3, and 4, the Department has established the violations by a preponderance of the credible evidence. There is no dispute that the respondent's license (#1244731) was revoked on November 30, 2011, that it failed to surrender its license, and that it engaged in towing activity on December 20, 2011. Fastway's actions in this instance constitute a failure to maintain the standards of integrity, honesty and fair dealing required of licensees. John Russo, Esq. offered no evidence with which to rebut the Department's case. Accordingly, the charges shall be sustained.

**LL005130916, LL005130917 and LL005287407**

With respect to charge 5, the Department has established the violations by a preponderance of the credible evidence.

Administrative Code Section 19-169.1(b) states: "No owner or operator of parking facilities on private property shall tow or cause to be towed from such private property any motor vehicle unless such owner or operator shall conspicuously post and maintain upon such private property a sign stating the name, address and telephone number of the tow operator, the hours of operation for vehicle redemption, towing and storage fees of the tow operator and the hours vehicles are prohibited from parking and subject to tow."

6 RCNY Section 2-377(d) states: "A towing company shall not remove a vehicle from private property without the consent of such vehicle's owner or operator unless signs are posted on such property which are plainly visible and which contain the following information: (6) The hours during which the

owners or operators of vehicles towed from such property may redeem towed vehicles, provided that such hours shall include all times during which vehicles may be towed from such property and at least 60 minutes after the latest time that vehicles are subject to towing from such property each day.”

6 RCNY Section 2-377(g) states: “The signs containing the information specified in subdivisions (d) and (e) of this section shall be placed in the following locations at or adjacent to the private property from which vehicles are towed: (3) At each pedestrian exit from such private property to the adjacent street or sidewalk and at each point of pedestrian access from such private property to each store or business establishment that is contiguous to or near such private property, except that if the distance between entrances to adjacent stores or business establishments is 50 feet or less, such sign may be posted midway between the two adjacent entrances. The top of each sign posted pursuant to this paragraph shall be not more than 8 feet nor less than 6 feet above the ground. Each such sign shall be faced so the required information is clearly and conspicuously visible to anyone entering the store or business establishment from such private property.”

Inspector Ramos testified that he conducted two inspections of the lot at 3090 Ocean Avenue in Brooklyn- the first one on April 28, 2009, and the second one on March 24, 2010. He established by detailed and consistent testimony that the signs posted did not comply with the required rules and regulations. Although Mr. Russo speculated, that it was possible that the proper signs were posted on other days within that time frame, the respondents failed to support this claim with any corroborating evidence. As each invoice notes an individual vehicle, and each individual vehicle may not be removed from private property without proper signage, the respondents are found to have violated 1,019 counts of the charges set forth in this regard.

With respect to charge 6, the Department has established the violations by a preponderance of the credible evidence.

Administrative Code Section 19-169.1(c) states: “No vehicle shall be removed by a tow operator from private property without express written authorization by the owner of the private property or his or her agent as designated in the contract between the owner of the

private property and the tow operator. Such authorization shall be required for each vehicle removed, and shall include the location, make, model, color and license plate number of the vehicle to be removed.”

Jordan Cohen, Esq., on behalf of the Department, submitted numerous Authorizations to Tow without an authorized signature. Ms. Martinez testified that she is the president of City Corps Management, that she has 3 or 4 employees, and that she manages between 20 and 30 parking lots. Her uncorroborated testimony, that either she or one of her employees always provides authorizations to the respondents before they perform tows, is not credible in light of the number of her employees compared to the number of tows performed. As the respondents failed to provide testimony or evidence to rebut the allegation as to the number of counts alleged, 960 counts shall be sustained.

With respect to charges 7, 8 and 9, the Department has established the violations by a preponderance of the credible evidence. The Department offered affidavits from numerous consumers that were not allowed to pay by credit card and were charged excessive amounts for towing services. Additionally, the evidence establishes that several of these consumers’ vehicles were not taken directly to the respondents’ storage facility as required. Mr. Russo’s argument, that the respondents were unable to cross-examine an affidavit, even if true, does not set forth a meritorious defense, as hearsay is admissible in administrative proceedings. Accordingly, 4 counts of Administrative Code Section 19-169.1(e), 5 counts of Administrative Code Section 20-527, and 5 counts of Administrative Code Section 19-169.1(a) shall be sustained.

With respect to charge 10, the Department has established the violation by a preponderance of the credible evidence.

Administrative Code Section 19-169.1(f) states in pertinent part: “Any person who removes a vehicle pursuant to this section shall, within 30 minutes of the vehicle’s arrival at a facility for storage, notify the local police precinct having jurisdiction over the area from which the vehicle was removed...”

The Department established by detailed and consistent testimony, and supporting documentation, that- the respondents towed at least 163 vehicles from Caesar’s Bay between the period of June and September 2011; and that the police log book only indicates 25 tows performed by the respondents. Mr. Filipowicz’s argument, that the respondents bring all the paper work to the precinct and are unaware if the police actually record the tows in the log book, is complete conjecture and unsubstantiated by any corroborating evidence.

Accordingly, 139 counts of Administrative Code Section 19-169.1 shall be sustained.

With respect to charge 11, the Department has established the violation by a preponderance of the credible evidence. The Department substantiated by the evidence it submitted that the respondents were served with a subpoena on September 8, 2011. As the respondents failed to fully comply with the subpoena or, in the alternative, to provide an explanation as to why documents could not be produced, the charge shall be sustained.

With respect to charge 12, the Department has established the violation by a preponderance of the credible evidence. The respondents, by failing to completely comply with the subpoena as noted above, have failed to maintain the standards of honesty, integrity, and fair dealing required of licensees. Accordingly, the charge shall be sustained.

**LL005204621**

With respect to charges 13, 14 and 15, the Department has established the charges by a preponderance of the credible evidence.

Administrative Code Section 20-496(c) states in pertinent part: "No person who is required to obtain a license under subdivision a of this section shall permit or authorize the driving or other operation of a tow truck by a person who does not possess a current, valid tow truck operator's license or whose tow truck operator's license has been suspended or revoked where such license is required under this subchapter..."

Inspector Hossain established by detailed and consistent testimony that Jason Fernandez, Fastway's tow truck driver who towed his car, did not have a current tow truck operator's license. Inspector Hossain further established that there was no record at the Department of Mr. Fernandez' employment with the respondent. Furthermore, there was an incomplete Authorization to Tow presented. The respondent offered no rebuttal testimony, although given the opportunity to do so. Accordingly, the charges shall be sustained.

**LL005204649**

With respect to charges 16 and 17, the Department has established the charges by a preponderance of the credible evidence. Mr. Russo stipulated to the submission of evidence clearly indicating that- there were 4 signs that did not meet the requirements of 6 RCNY Section 2-377(g)(3); and that there was no indication on any sign that owners or operators of vehicles would have at least 60 minutes after the latest time that vehicles are subject to towing to redeem their vehicles. Mr. Russo offered no further comment on these charges,

although given the opportunity to do so, both on the record and in a post-submission brief. Accordingly, the charges shall be sustained.

**Order**

**SV005287210**

The respondent, Fastway, is found **not guilty** of violating charge 1 and the charge is **dismissed**.

If the respondent has posted a cash bond, said bond shall be **promptly refunded** to the respondent.

If the seized vehicle is still in the custody of the Department of Consumer Affairs, it shall be **promptly released to its owner**. The owner must appear at 66 John Street (11<sup>th</sup> floor), between the hours of 9:00 a.m. and 3:00 p.m., to sign a release form for the vehicle.

If the owner does not claim the vehicle within **five (5) days**, the owner shall be responsible for any additional storage fees.

If the vehicle has **not been claimed** by the owner with **ten (10) days** of the date of this decision, it shall be deemed by the Department to be **abandoned** pursuant to Administrative Code Section 20-522.1(f), and may be **disposed** of pursuant to Section 1224 of the New York State Vehicle and Traffic Law.

**LL005287211**

The respondent, Fastway, is found **guilty** of violating charges 2, 3 and 4 and is **ordered to pay the Department a total fine of \$350** as follows:

Charge 2: \$350

The respondent's license (#1244731) is **REVOKED effective immediately**. The respondent is directed to surrender the license document to the Licensing Division immediately. Please NOTE that if the respondent continues to operate with a revoked license, the respondent 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 respondent's business and/or the removal of items sold, offered for sale, or utilized in the operation of such business, pursuant to the Administrative Code of the City of New York Sections 20-105 and 20-106 (the "Padlock Law").

**It is further declared that all licenses held by the Respondent are hereby revoked, and that the Respondent and its principals are found**

**permanently unfit to maintain any Department of Consumer Affairs licenses.**

**LL005130916 and LL005130917**

Fastway is found **guilty** of violating charges 5, 6, 7, 8, 9, 10, 11 and 12 and is **ordered to pay the Department a total fine of \$536,250** as follows:

Charge 5: \$254,750 (\$250 per count, for 1,019 counts)

Charge 6: \$240,000 (\$250 per count, for 960 counts)

Charge 7: \$1,000(\$250 per count, for 4 counts)

Charge 8: \$3,750 (\$750 per count, for 5 counts)

Charge 9: \$1,250 (\$250 per count, for 5 counts)

Charge 10: \$34,750 (\$250 per count, for 139 counts)

Charge 11: \$750

**LL005287407**

Filipowicz is found **guilty** of violating charges 5, 6, 7, 8, 9, 10, 11 and 12 and is **ordered to pay the Department a total fine of \$536,250** as follows:

Charge 5: \$254,750 (\$250 per count, for 1,019 counts)

Charge 6: \$240,000 (\$250 per count, for 960 counts)

Charge 7: \$1,000(\$250 per count, for 4 counts)

Charge 8: \$3,750 (\$750 per count, for 5 counts)

Charge 9: \$1,250 (\$250 per count, for 5 counts)

Charge 10: \$34,750 (\$250 per count, for 139 counts)

Charge 11: \$750

With respect to charge 12, the respondents' licenses (#1244731, #1158042, #1271232) are **REVOKED effective immediately**. The respondents are directed to surrender the license documents to the Licensing Division immediately. Please NOTE that if the respondents continue to operate with revoked licenses, the respondents are 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 respondents' businesses and/or the removal of items sold, offered for sale, or utilized in the operation of such businesses, pursuant to the Administrative Code of the City of New York Sections 20-105 and 20-106 (the "Padlock Law").

**It is further declared that all licenses held by the Respondents are hereby revoked, and that the Respondents and their principals are permanently unfit to maintain any Department of Consumer Affairs licenses.**

**LL005204621**

The respondent, Fastway, is **guilty** of violating charges 13, 14 and 15 and are ordered to pay to the Department a **total fine of \$2,100** as follows:

Charge 13: \$1,500

Charge 14: \$250

Charge 15: \$350

**LL005204649**

The respondent, Fastway, is **guilty** of violating charges 16 and 17 and are **ordered to pay the Department a total fine of \$1,250** as follows:

Charge 16: \$1,000 (\$250 per count, for 4 counts)

Charge 17: \$250

**Restitution**

Pursuant to Administrative Code Section 19-169.1(i), the respondents are **directed to pay to the Department a total amount of \$129,004.16 as follows: \$128,089.28**, as cited in the Department's Post-Hearing Submission<sup>10</sup> and an additional **amount of \$914.88** for the following consumers:

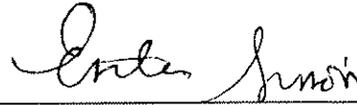
Mohammad Nadeem	\$189.00
Aleksey Buyinovskiy	\$190.00
Maria Pavlotskaya	\$100.00

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<sup>10</sup> A list of consumers that are to be awarded restitution is included in the Department's post-submission brief. That portion of the brief listing such amount is incorporated into this Decision and Order for purposes of awarding the said restitution.

Benjamin Lapin	\$217.00
Adam Epner	\$110.00
David Sloan	\$108.88

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



**Esther Simon**  
**Administrative Law Judge**

**DECISION AND ORDER**

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

**This constitutes an Order of the Department.**



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

cc: Jordan Cohen, Esq.

[johnlawny@msn.com](mailto:johnlawny@msn.com)

Fastway Towing & Recovery Inc.,  
1065 Pacific Street  
Brooklyn, New York 11238

**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 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 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.