

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

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DEPARTMENT OF CONSUMER AFFAIRS

Complainant,

-against-

RESPONSE TOWING SERVICE INC
170-30 39 AVENUE
QUEENS, NY 11358

Respondent.

**SECOND AMENDED
NOTICE OF HEARING**

NOH# 05331921

License # 0853860

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In accordance with the powers of the Commissioner of the New York City Department of Consumer Affairs ("the Department") set forth in Section 2203(h) of Chapter 64 of the Charter of the City of New York and Section 20-104 of the Administrative Code of the City of New York ("the Code"), **YOU ARE HEREBY ORDERED TO APPEAR FOR A HEARING AT THE ADJUDICATION TRIBUNAL OF THE DEPARTMENT OF CONSUMER AFFAIRS, 11TH FLOOR, 66 JOHN STREET, NEW YORK, NEW YORK AT 9:00 AM ON January 13, 2014.**

AND SHOW CAUSE why monetary and other penalties should not be imposed on you on the grounds specified herein.

APPLICABLE LAW

1. Title 6 of the Rules of the City of New York (6 RCNY) Section 2-378 states: "Every person or entity licensed to engage in towing must maintain records in an electronic format concerning every tow performed under the authority of the following: the Directed Accident Response Program ("DARP"), the Rotation Tow Program ("ROTOW"), the Arterial Towing Program, and the authority to remove vehicles improperly parked on private property. . . ."
2. 6 RCNY Section 2-378(i) requires licensees to submit to the Department, within sixty (60) days of the effective date of Section 2-378, "an affirmation . . . that it is maintaining electronic records in compliance with [Section 2-378]. . . [N]o license will be issued until the towing company files with the Department an affirmation that it will comply with [Section 2-378] and no license will be renewed unless the licensee submits an affirmation that it is complying with this section." Section 2-378 became effective on August 2, 2012, thereby requiring submission of the affirmation by October 1, 2012.
3. 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"

4. 6 RCNY § 1-16(a) states: “Every licensee shall maintain the records which it is required to maintain under Chapters 1 and 2 of Title 20 of the New York City Administrative Code and the regulations promulgated thereunder, and, except as otherwise set forth in said chapters or regulations, shall retain such records for three years. Licensees shall make such records available for inspection at the offices of the Department of Consumer Affairs, or at licensee’s place of business, during business hours.”

FACTS

5. RESPONSE TOWING SERVICE INC (“Respondent”) is licensed by the Department to engage in towing under License Number 0853860. Respondent was licensed when 6 RCNY Section 2-378 became effective on August 2, 2012.
6. Respondent is a participant in the DARP program.
7. Respondent has failed to submit to the Department an Affirmation that it is maintaining electronic records in compliance with 6 RCNY Section 2-378(i).
8. On November 27, 2013, the Department served on Respondent a subpoena *duces tecum* ordering Respondent to appear at the Department on December 18, 2013, and produce certain required records (“the Subpoena”).
9. The Subpoena ordered Respondent to produce the following records:
 10. For the period of July 2013 through September 2013, a PDF copy of Respondent’s bound record book, if Respondent participates in the Directed Accident Response Program (DARP) or the Rotation Tow Program (ROTOW), pursuant to 6 RCNY Sections 2-371(u) and 2-372(o).
 11. For the period of July 2013 through September 2013, a PDF copy of Respondent’s trip records, if Respondent is authorized by the Department to tow improperly parked vehicles from private property, pursuant to 19-169.1(f) of the Administrative Code.
 12. For the period of July 2013 through September 2013, an original CD-ROM or write-once media device containing electronic records that Respondent is required to make copies of, at least once per week, pursuant to 6 RCNY Section 2-378(g)(5).
13. Respondent failed to appear and produce records in response to the Subpoena on December 18, 2013 or thereafter.

CHARGES

Failure to Submit Electronic Record Keeping Affirmation of Compliance

14. Respondent violated 6 RCNY Section 2-378(i) by failing to submit to the Department an affirmation that it is complying with electronic record keeping requirements.

Failure to Comply With Subpoena Duces Tecum

15. Respondent violated 6 RCNY § 1-14 by failing to appear in person at the Department to answer the Subpoena.

Failure to Make Records Available for Inspection

16. Respondent violated 6 RCNY § 1-16(a) by failing to make available for inspection by the Department the logbook and/or trip records Respondent is required to maintain under 6 RCNY Section 2-371(u) and/or §2-372(o), and Section 19-169.1(f) of the Code.

17. Respondent violated 6 RCNY § 1-16(a) by failing to make available for inspection by the Department the electronic records Respondent is required to maintain under 6 RCNY Section 2-378.

Failure to Maintain Records

18. Respondent violated 6 RCNY Section 2-371(u) of the Code by failing to maintain a logbook for the period of July 2013 through September 2013.

19. Respondent violated 6 RCNY 2-378 by failing to maintain electronic records for the period of July 2013 through September 2013.

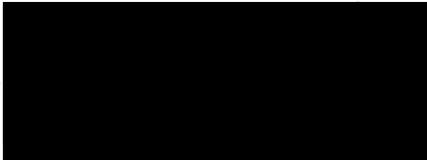
SPECIFIC RELIEF SOUGHT

WHEREFORE, the Department demands that the tribunal:

1. Order Respondent to pay the maximum fines for each of the charges set forth above;
2. Revoke Respondent's license to engage in towing; and
3. Grant such other and further relief as is deemed just and proper.

Dated: December 27, 2013
New York, New York

For: Jonathan Mintz, Commissioner

By: 

IMPORTANT INFORMATION FOR RESPONDENTS

You are charged with violating the Laws and Rules of the New York City Department of Consumer Affairs.

FAILURE TO APPEAR AT THE HEARING: If you do not appear at the DCA Adjudication Tribunal on the scheduled hearing date, you will be found guilty of the charges and ordered to pay the maximum fine for the charge(s), and you will be ordered to pay an additional fine for failing to appear at the hearing. .

ADJOURNMENTS: A request to adjourn the hearing must be received at least three (3) business days before the hearing date. Your request must include an affidavit or documentary evidence that proves why you need an adjournment. Use ONE of the following methods to submit your request:

- Online at [nyc.gov/Business Toolbox](http://nyc.gov/BusinessToolbox). Click “Request a DCA Adjournment” under Quick Links. You will be redirected to a web page where you must register an account with the City of New York. OR
- E-mail adjournmentrequests@dca.nyc.gov (make sure to also send a copy of your request to: regcmpltow@dca.nyc.gov)OR
- Fax (212) 361-7766 OR
- Mail to: DCA Adjudication Tribunal, 66 John Street, 11th Floor, New York, NY 10038

REPRESENTATION: Although it is not required, you may choose to bring a lawyer or authorized representative to the hearing.

TRANSLATION SERVICES: DCA will provide translation services at the hearing for you and your witnesses. **You may not use your own interpreter at the hearing.**

REASONABLE ACCOMMODATION: If you have a disability and require a reasonable accommodation on the day of the hearing, you must send a request, with proof, before the hearing date to the Adjudication Tribunal at mycase@dca.nyc.gov or call 311 (212-NEW-YORK outside NYC) and ask for “Consumer Affairs Hearing - Reasonable Accommodation.”

SETTLEMENT: If you wish to settle this matter before the hearing date, please see settlement instructions in the enclosed cover letter.

For additional information, visit DCA’s website at www.nyc.gov/consumers or call 311.