

August 23, 2010

Mr. Thomas F. Prendergast  
President  
MTA New York City Transit  
2 Broadway, 30<sup>th</sup> Floor  
New York, NY 10004

Re: **Roselli Moving- Transit Employee  
Receiving Gratuities  
MTA/OIG #2010-02**

Dear Mr. Prendergast:

During the course of the investigation conducted by this Office and the Manhattan District Attorney of Roselli Moving and Storage (Roselli), we learned that two NYC Transit Space Management employees received cash and other gifts from Roselli in exchange for accepting inflated and in some instances fabricated invoices. One of those employees, Robert Vinci, resigned, pleaded guilty to grand larceny for thefts that occurred within the statute of limitations, and fled before sentencing. The other employee, Antonio Spotorno, was a subordinate of Vinci's from approximately 1997 to 2000, and allegedly participated in the scheme for approximately three years before he transferred out of Space Management to Capital Program Management (CPM). According to Robert Vallano, a principal of Roselli, over the course of approximately three years, Spotorno accepted as much as \$10,000 and other gratuities from Roselli, including personal moving services.<sup>1</sup> Spotorno was not included in the criminal prosecution because his misconduct was outside the statute of limitations. OIG learned that another NYC Transit vendor, Quality Carpet, also provided gratuities to Vinci and Spotorno. The sales representative responsible for providing the gifts and submitting invoices to New York City Transit received immunity from prosecution for the information that he provided the New York County District Attorney's Office in exchange for a cooperation agreement.<sup>2</sup>

### INVESTIGATION

During an interview with investigators from this Office, Spotorno was silent when confronted with the evidence that he had received cash and moving services from Roselli while working in Space Management. During the interview, Spotorno asked that he be allowed to leave and

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<sup>1</sup> As reported separately in a December 23, 2009 letter, Vallano pleaded guilty to one count of Attempted Grand Larceny in the 2<sup>nd</sup> Degree and was sentenced to 6 months in jail and five years probation. Roselli accepted a corporate plea to Grand Larceny in the 2<sup>nd</sup> Degree, and as part of its sentence will pay NYC Transit \$260,950 in restitution. The president of Roselli, Roxanne Nelson pleaded guilty to False Filing in the 2<sup>nd</sup> Degree and was sentenced to a conditional discharge.

<sup>2</sup> A report detailing Quality Carpets activities will follow this report.

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confer with counsel, and that request was granted. Through correspondence with his counsel, Spotorno subsequently refused to be further interviewed about the allegations against him and denied having any additional information about any criminal activity involving MTA employees. In a letter from his counsel, Spotorno admitted that Roselli provided him with moving services, but denied that he had received money from Roselli.

### *Gratuities from Vendors*

#### Roselli

From 1997 through 2000, Spotorno was Vinci's subordinate in Space Management, Maintenance of Way, which arranged office moves and office build-outs for NYC Transit. Spotorno was involved in the management of vendor contracts such as Roselli's for moving services. Sometime in 1997, Roselli began submitting false invoices that were either padded or billed for work never done, in exchange for cash payments made to Vinci and Spotorno. Although Vinci and Vallano and the Roselli representative who remitted the cash, disagree about who initiated the kickback scheme, both told representatives of the Manhattan District Attorney's Office and the OIG that Spotorno participated in it. Vallano told us that Vinci initially approached him about the scheme to pad invoices. Vallano said that he would deliver the cash to Spotorno's home, and that he gave Spotorno \$1,000 or \$2,000 on four or five different occasions.

Vallano also told investigators that Roselli provided moving services to Spotorno on two occasions. On one occasion Vallano said that Spotorno was not charged for the move, but that the cost may have been added to a NYC Transit moving invoice. Vallano said that Roselli charged Spotorno for a second move, from Syosset to Suffolk County.

Through his attorney, Spotorno denied that he received any money from Roselli Moving. His counsel asserted that "although there apparently exists [sic] a 'one time' personal move for Mr. Spotorno by the Roselli Moving and Storage Company, there exists [sic] no other corroborated evidence of any misdeeds by my client." Despite his claims to the contrary, Vallano's statements to investigators are evidence that Spotorno received cash and free moving services from a vendor that he was overseeing and managing. While Vinci would have an obvious motive to implicate Spotorno in the kickback scheme, potentially mitigating his own liability, Vallano had no such motive. Vallano told investigators that payments were made to Spotorno at Spotorno's home. Vallano did tell investigators that the scheme was initiated by Vinci and that Vinci directed Vallano to bring the money to Spotorno's home. Notably, Vallano did not benefit from implicating Spotorno, particularly since the conduct was outside the statute of limitations and could not lead to a successful prosecution of Spotorno. Moreover, Spotorno admits that Roselli provided him with free residential moving services, not an inconsequential benefit received from a vendor he was supervising at the time.

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### Quality Carpet

During an interview with a sales representative from Quality Carpet, OIG learned that Antonio Spotorno received a “few thousand dollars of flooring” that Quality Carpet installed. The flooring was installed while Spotorno was working in Space Management and overseeing work done by Quality Carpet. Spotorno did not pay for the flooring and the cost of the flooring was added to an invoice paid by NYC Transit. Spotorno’s attorney was contacted and asked if Spotorno would like to respond to the allegation made by the Quality Carpet sales representative. Spotorno’s lawyer informed an OIG representative that Spotorno denied receiving free flooring and had nothing additional to provide this Office.

### *Improper Use of NYC Transit Resources & Dual Employment*

In addition to receiving illegal gratuities from a NYC Transit vendor, Spotorno used his NYC Transit telephone, and possibly other resources, to conduct an outside business. While collecting background information about Spotorno, OIG learned that Spotorno was listed by Dun & Bradstreet as the owner of a company called Tri County Consulting as early as 2005 and as recently as January 2008. According to the Dun & Bradstreet report, the company’s address is Spotorno’s former residence and the business telephone number is Spotorno’s NYC Transit telephone number. The Dun & Bradstreet report also reflects that Spotorno reported that the company had \$100,000 in annual sales.

When interviewed by OIG investigators, Spotorno admitted that he had done work for Tri County, but denied that he was the owner of the company and claimed that he had tried to clarify that with Dun & Bradstreet. He claimed that the owner is a former NYC Transit employee, Frank Zaso, who worked as an architect in CPM with him. We were unable to link Zaso to the firm, despite searching a number of computer databases. OIG efforts to contact Zaso and talk to him about this company were unsuccessful. Spotorno also claimed that the only work that was done by the company was residential work and that the company did not work with any companies conducting business with the MTA.

Regardless of the nature of the work performed by Spotorno’s company, he failed to obtain prior permission for his outside employment, as required by NYC Transit’s dual-employment policy. In addition, as a policy-maker, Spotorno is required by the New York State Public Officers Law and the New York Code of Rules and Regulations to obtain permission from the NYS Commission on Public Integrity for outside employment for which he receives more than \$4,000 in annual compensation; the Dun & Bradstreet report reports annual sales of \$100,000 by Tri County making it likely he received more than \$4,000 in income. OIG obtained Spotorno’s New York State Financial disclosure forms from 2004 through 2008 and he failed to report his outside employment with Tri County on any of those forms. Moreover, Spotorno violated the MTA All-Agency Code of Ethics (Section 4.07 *Other Employment and Outside Activities*) by using his NYC Transit telephone as the business telephone for Tri County Consulting. That code section

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prohibits MTA employees from using any MTA Agency resources in connection with outside employment, and specifically identifies telephones as such a resource.

### **FINDINGS**

- 1) Spotorno accepted cash and in-kind gratuities from two NYC Transit vendors for which he had oversight responsibilities.
- 2) Spotorno failed to obtain approval from NYC Transit or the NYS Commission on Public Integrity to engage in outside employment with Tri County Consulting.
- 3) Spotorno failed to report his outside activity on his New York State Financial Disclosure form.
- 4) Spotorno improperly used NYC Transit resources to conduct his outside activities.

### **RECOMMENDATION**

NYC Transit should take appropriate disciplinary action against Spotorno.

Should you or your staff have any questions, please contact me or Maura Daly at telephone number (212) 878-0013.

Very truly yours,

Michael L. Boxer  
Special Counsel