



Barry L. Kluger
Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
Two Penn Plaza, 5th Floor
New York, New York 10121
212-878-0000

June 5, 2017

Darryl Irick
Acting President
MTA New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

**Re: Unauthorized Dual Employment
NYCT Superintendent
MTA/OIG #2017-04**

Dear Mr. Irick:

The Office of the MTA Inspector General (OIG) has completed an investigation into allegations of unauthorized dual employment by MTA New York City Transit (NYC Transit) Superintendent Gudeshwar Persaud, Maintenance of Way Operations, Elevators and Escalators (MOW/EE). We substantiated the allegations and found that Persaud also failed to disclose income derived from his dual employment to the New York State Joint Commission on Public Ethics (JCOPE). We also found Persaud failed to cooperate fully and honestly with OIG's investigation. We recommend that NYC Transit discipline Persaud, up to and including termination.

Based on our finding that Persaud's conduct appears to violate New York State Public Officers Law (Public Officers Law), we are referring this matter to JCOPE, in accordance with its jurisdiction, for such action as it may deem appropriate.

INVESTIGATION

Persaud was hired by NYC Transit on October 6, 2014, and is currently a MOW/EE Superintendent who supervises more than 50 employees responsible for maintaining elevators and escalators in NYC Transit's system. As a Superintendent, Persaud is considered a "policy maker" and required to adhere to heightened ethical standards and provide financial disclosure pursuant to the Public Officers Law.

The MTA All-Agency Code of Ethics and NYC Transit policies required Persaud to obtain authorization prior to engaging in dual employment and further, as a policy maker, Persaud was required to obtain authorization from his direct supervisors, the head of his department, and NYC Transit's Ethics Officer. Thereafter, if approved, NYC Transit's Ethics Officer was to forward his request to JCOPE for final approval before Persaud could engage in outside employment.

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Persaud was also required under Public Officers Law § 73 to file financial disclosure forms annually with JCOPE listing, among other matters, income in excess of \$5,000 derived from any activity other than his NYC Transit employment.

In or about January 2015 Persaud obtained authorization from his department managers for dual employment with BOCA Group (BOCA) to work as an inspector for their clients. BOCA's business includes elevator and escalator installation, service, and inspection. Due to staffing changes at NYC Transit, Persaud's application for dual employment was not immediately forwarded to NYC Transit's Ethics Officer and it was never forwarded to JCOPE for its review and approval. Nevertheless, OIG staff's review of BOCA's records established that during his employment with NYC Transit, Persaud worked for BOCA in 2015 and 2016.

During our investigation OIG staff learned that Paige Graves, NYC Transit's Ethics Officer, had received Persaud's application on May 31, 2016. Graves informed OIG staff that she intended to deny Persaud's application based on a potential conflict of interest, and to direct Persaud to resign from his employment with BOCA. Graves denied Persaud's application in writing on June 13, 2016, via an email that stated, in pertinent part:

Your request for approval for dual employment with BOCA Group International has been **denied** (emphasis in original) ... The services you want to provide are too closely related to your current NYCT duties and responsibilities, such that it would raise an appearance of a conflict of interest violating the public trust section of the All Agency Code of Ethics. Additionally, one of the clients you listed that you will be working for on behalf of BOCA Group does business with the MTA. You must terminate your employment with BOCA Group and provide proof of termination.

On November 1, 2016, Graves reiterated the denial and again directed Persaud to terminate his dual employment and provide proof of termination.

On November 2, 2016, Persaud emailed Graves to request an appeal of the denial of dual employment authorization. In response Graves provided Persaud with an even more detailed explanation of the reason for the denial and informed Persaud there was no appeal and that the decision was final.

On November 15, 2016, OIG staff interviewed Persaud regarding working a second job and he stated he was not then working another job and had not done so for months.

On December 1, 2016, by email, Graves asked Persaud for the third time to provide confirmation that he had terminated his employment with BOCA, to which Persaud simply replied, "Yes, it's confirmed . . ." without providing any documentation from BOCA.

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In April 2017, OIG staff reviewed BOCA payroll records and learned that Persaud had in fact continued to work for BOCA, contrary to his statements to OIG staff and Graves, and despite Graves's multiple denials of approval and direction that he resign from BOCA. The records established that 2016 alone Persaud earned \$108,000 from BOCA.

Further, our review of Persaud's JCOPE financial disclosure filings established that he violated Public Officers Law section 73 by failing to disclose in his 2016 filing his employment with BOCA and his \$108,000 in earnings.

MTA All-Agency Code of Ethics and NYC Transit Rules, Regulations and Policy Instructions

MTA All-Agency Code of Ethics section 1.07 states that:

Employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General, Joint Commission on Public Ethics, Auditor General, Chief Compliance Officer, Agency Ethics Officer, or other governmental agencies. Failure to so cooperate will subject an Employee to appropriate disciplinary penalty, up to and including dismissal.

Section 4.07, Other Employment and Outside Activities, states, in pertinent part, the following:

Employees are prohibited from outside employment . . . that interferes or is in conflict with the proper and effective discharge of the individual's official duties and responsibilities . . . Employees may engage in outside employment/activity provided that . . . such employment/activity does not interfere with their ability to devote appropriate time and attention to their employment with their MTA Agency . . . such employment/activity does not violate the specific guidelines for other employment set by their MTA Agency . . . and . . . they obtain the required approvals as set forth in the specific procedures for approval of other employment set by their MTA Agency.

Sections 4.07(2) and 4.07(2)(c) state, in pertinent part, that "Employees in Policy-Making positions shall not engage in any private employment, profession or Business or other outside activity, without the following approvals . . ." and for employees in Policy-Making positions who earn Annual compensation in excess of \$5,000 – Written approval by the applicable MTA Agency and the Joint Commission on Publics Ethics.

In addition, Section 4.07 contains a reminder section that states, in relevant part:

(c) Employees holding Policy-Making Positions who request approval from the Joint Commission on Public Ethics to engage in outside activities must file a written request with the Commission which contains the approval of the activity

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by the applicable MTA Agency. Each Agency Ethics Officer or Ethics Committee acts as the agent of the applicable MTA Agency in approving or disapproving such requests. The Agency Ethics Officer's or Ethics Committee's disapproval is final.

Similarly, NYC Transit Rule 4(g) provides, in pertinent part, that:

All employees must obtain Authority approval before engaging in any occupation, business or professions, including self-employment, outside the Authority . . . In addition, New York State Joint Commission on Public Ethics (JCOPE) issues opinions and regulations governing employee conduct . . . JCOPE regulations place strict restrictions on employees who hold policy-making positions in addition to those stated in this Rule.

NYC Transit's Policy/Instruction No. 4.23.2 (P/I) embodies dual employment policies for employees in policy-making positions that are virtually indistinguishable from the above-described MTA All-Agency Code of Ethics' provisions and NYC Transit Rule. P/I 4.23.2, section I. (iii) provides that employees seeking to engage in dual employment must "follow the procedures and obtain the required approvals as set forth in [the Dual Employment Policy Instruction]" and 4.23.2, section IV.A.3. states that an "employee may not commence a secondary job until his/her dual employment request has been approved in writing."

NYC Transit Ethics Policy/Instruction No. 5.6.4, section (c)(iii) provides, in part, that a policy making employee may not engage in any private employment, profession or Business or other outside activity, for compensation without obtaining both NYC Transit and JCOPE approval.

New York State Public Officers Law Section 73-a

Public Officers Law section 73-a 2. (a) states that "[e]very . . . state officer or employee . . . shall file an annual statement of financial disclosure . . ." while section 73-a 4. states that, "[a] reporting individual who . . . knowingly and willfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to this section shall be subject to a civil penalty in an amount not to exceed forty thousand dollars."

Persaud, a policy maker, not only engaged in dual employment for more than a year without having obtained the required advance approvals, he continued to engage in that employment after having been explicitly denied approval on three occasions in defiance of direction from the NYC Transit Ethics Officer to terminate the dual employment and provide written confirmation. Moreover, Persaud lied when questioned by OIG staff about his dual employment.

FINDINGS

1. Persaud engaged in dual employment without first obtaining written approval, in violation of MTA All-Agency Code of Ethics, section 4.07 and NYC Transit Rule 4(g) and Policy/Instruction Number 4.23.2.
2. Persaud engaged in dual employment for which he received in excess of \$5,000 in compensation without first obtaining permission from both NYC Transit and JCOPE, in violation of MTA All-Agency Code of Ethics section 4.07 and NYC Transit Ethics Rule 4(g) and Policy/Instruction Number 5.6.4.
3. Persaud failed to disclose on his 2016 financial disclosure statement income in excess of \$5,000 earned from his dual employment, in violation of New York State Public Officers Law section 73.
4. Persaud failed to cooperate fully and honestly with OIG's investigation in that he lied to OIG staff and NYC Transit Ethics Officer Graves about not working for BOCA, in violation of MTA All-Agency code of Ethics section 1.07.

RECOMMENDATION

We recommend that NYC Transit impose discipline on Persaud, up to and including termination.

Finally, based on our determination that Persaud's conduct appears to violate New York State Public Officers Law, we are referring this matter to JCOPE, in accordance with its jurisdiction, for such action as it may deem appropriate.

As always, we appreciate your continued courtesy and cooperation. Should you have any questions, please contact me at (212) 878-0007 or Deputy Inspector General Demetri M. Jones at (212) 878-0279.

Very truly yours,

Barry Kluger

By:


Demetri M. Jones

Deputy Inspector General