



Carolyn Pokorny
MTA Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
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May 13, 2020

Sarah E. Feinberg
Interim President
MTA New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

**Re Unauthorized Dual Employment by
2 NYC Transit Car Inspectors
MTA/OIG #2020-14**

Dear Ms. Feinberg:

The Office of the MTA Inspector General (OIG) substantiated allegations that two New York City Transit (NYC Transit) Car Inspectors (Car Inspector A and Car Inspector B) jointly started and continue to operate two construction/home renovation businesses and failed to obtain dual employment authorization from NYC Transit.

We recommend that the Car Inspectors be disciplined as NYC Transit deems appropriate.

I. BACKGROUND

NYC Transit hired Car Inspector A in December of 2006 and Car Inspector B in September of 2007. Their work location is the 207th Street Overhaul Shop. Their hours are 6 a.m. to 2 p.m. Monday to Friday with Saturday and Sunday as their regular days off.

II. INVESTIGATION

A. Record Review

In the fall of 2015, both Car Inspectors certified that they had read and understood the MTA All-Agency Code of Ethics. In addition, MTA Chief Compliance Officer Lamond W. Kearse issued a Policy Clarification on dual employment to all MTA Employees on July 31, 2019, which noted that the MTA Code of Ethics defines employment as “the performance of services...to obtain economic or other material benefit. This means any employment (including self-employment...)” Neither Car Inspector A nor Car Inspector B has ever filed a request for Dual Employment with NYC Transit.

The OIG analyzed both Car Inspectors' financial records for the 2017 through 2019 calendar years. The Car Inspectors incorporated Limited Liability Company A (Company A) in 2016 and Limited Liability Company B (Company B) in 2017. They opened bank accounts in the respective companies' names, and used these accounts to operate their businesses. Between June 2017 and December 2017, Company A received over \$230,000 in funding from corporate lenders, and \$11,000 in cash deposits. During the same time period, Company A made payments to roofing, lumber, plumbing, framing, and heating contractors as well as supply companies such as Home Depot and Lowe's. Between July 2018 and June 2019, Company B received over \$260,000 from a corporate lender, and approximately \$50,000 in cash deposits. Company B, like Company A, also made payments to various home contracting subcontractors and supply stores.

B. OIG Interviews

1. Car Inspector A

Car Inspector A admitted to the OIG that he and Car Inspector B owned and operated Company A and Company B. Car Inspector A stated that Car Inspector B acted as a project manager, handling logistics and marketing while he performed the "hands on" work. The Car Inspectors funded the projects via corporate business loans and financing from family members and friends. Company A performed home renovations for property owners, while Company B purchased, renovated, and sold 2 houses. The first property Company B purchased has been completely renovated and sold. As of the date of Car Inspector A's interview, Company B had completed the renovations on the second property and listed the house for sale. In March of 2020, the second property sold for \$925,000.

Car Inspector A acknowledged that he had not filed for dual employment authorization because he had "misinterpreted" the MTA and NYC Transit rules.

2. Car Inspector B

Car Inspector B acknowledged he owned and operated Company A and Company B. Company A focused on home renovations for customers, while Company B bought, renovated, and resold homes. Car Inspector B stated that he did not do any of the actual renovation work but rather managed everything from his cell phone. He claimed that he made all business calls or emails outside of his MTA work hours. Like Car Inspector A, Car Inspector B solicited willing friends and family members to invest in Company A and Company B when the business needed working capital to complete projects. Car Inspector B maintained that the companies were legitimate.

Car Inspector B acknowledged he did not seek nor did he receive NYC Transit approval for his dual employment. He told OIG that he "was not aware that owning a business was employment... It is my fault, I should have known. I am pleading ignorance." However, having certified that he both read and understood the MTA Code of Ethics, Car Inspector B, contrary to his assertion, was not ignorant of his reporting obligations. Moreover, in his OIG interview, Car Inspector B admitted that in June of 2019, his union representative had warned him that he was required to disclose his outside business.

III. POLICIES AND ANALYSIS

A. MTA All-Agency Code of Ethics

1. *§ 4.07: Other Employment and Outside Activities*

The MTA All-Agency Code of Ethics, Section 4.07, states, in pertinent part, that employees may engage in outside employment/activity provided that (1) such employment/activity does not violate the specific guidelines for other employment set by their MTA Agency; and (2) they obtain the required approvals as set forth in the specific procedures for approval of other employment set by their MTA Agency.

Here, Car Inspector A and Car Inspector B failed to obtain the required approval for their active employment as home improvement contractors in violation of NYC Transit policies.

B. NYC Transit Rules and Regulations and Policy/Instruction

1. *Rule 4(g): General Duties and Obligation of Employees*

The NYC Transit Rules and Regulations, Rule 4(g), states, in pertinent part, that all employees must obtain NYC Transit approval before engaging in any occupation, business or professions, including self-employment, outside the Authority.

2. *Policy/Instruction Number 4.23.2: Dual Employment*

The NYC Transit Policy/Instruction Number 4.23.2 for Dual Employment, Section IV, states, in pertinent part, that a current employee may not begin a secondary job until he or she receives approval for dual employment and Section VI, further provides, in pertinent part, that all current employees must file a dual employment request prior to commencing employment, including self-employment, with the Authority. Violation of these procedures may subject an employee to discipline, up to and including termination of employment, and/or may expose an employee to civil or criminal penalties.

Here, Car Inspector A and Car Inspector B violated these policies when they each failed to file a dual employment request for approval with the NYC Transit prior to starting their self-employment. Although the Car Inspectors both acknowledged in their interviews that they were self-employed and should have asked for dual employment authorization, neither one ever submitted a request for approval.

IV. FINDINGS

Car Inspector A and Car Inspector B failed to submit a request for approval for their outside employment as a home improvement contractors and engaged in unauthorized dual employment in violation of the MTA All-Agency Code of Ethics Section 4.07, and NYC Transit Policy/Instruction Number 4.23.2, Section IV(A)(3) and Section VI(B)(1).

V. RECOMMENDATION

We recommend that NYC Transit impose discipline on Car Inspectors A and B as it deems appropriate.

As always, we appreciate your continued courtesy and cooperation. Please advise us within thirty (30) days of any action you intend to take and the result of any action taken. Should you have any questions, or need additional information, please contact Executive Deputy Inspector General for Legal Pei Pei Cheng-de Castro at (212) 878-0072.

Very truly yours,

/S/

Carolyn Pokorny

cc: David Farber, General Counsel and Ethics Officer, NYC Transit
Kim Moore-Ward, Vice President, Office of Labor Relations, NYC Transit



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Agency Response
to
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In June 2020, in response to the OIG's investigation and report, NYC Transit brought disciplinary charges against the 2 NYC Transit Car Inspectors. On June 10, 2020, NYC Transit conducted Step 1 disciplinary hearings and sustained the charges against both employees. The Car Inspectors have appealed the decision. The parties are awaiting a date for the Step 2 disciplinary proceedings.