



Carolyn Pokorny
MTA Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
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July 6, 2020

Via Electronic Mail

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

**Re: MaBSTOA Superintendent
Theft of NYC Transit Property
& Unauthorized Dual
Employment
MTA/OIG #2020-19**

Dear Ms. Feinberg,

The Office of the MTA Inspector General (OIG) substantiated the allegation that an MTA Manhattan and Bronx Surface Transit Operating Authority (MaBSTOA) Superintendent (Superintendent) removed 2 five-gallon containers of an epoxy floor patching material, worth approximately \$800, from a New York City Transit (NYC Transit) facility for personal use. The Superintendent made false and misleading statements to the OIG that he was transporting the epoxy floor patching material to another NYC Transit facility at the request of a NYC Transit Maintainer. The OIG also found that the Superintendent failed to obtain dual employment authorization for 1 of his 2 businesses. Furthermore, he failed to disclose his outside businesses in his 2018 and 2019 annual Financial Disclosure Statements (FDS) filed with the New York State Joint Commission on Public Ethics (JCOPE).

During the OIG's investigation, the Superintendent was taken out of service. We recommend that NYC Transit discipline the Superintendent as it deems appropriate, up to and including termination. The Superintendent's conduct also appears to violate the New York State Public Officers Law. Accordingly, we are forwarding this matter to JCOPE for any action as it may deem appropriate.

I. BACKGROUND

On July 2, 2018, NYC Transit hired the Superintendent. He is currently the Facility Manager for the Eastchester and Yonkers Bus Depots. His shift is 7:00 a.m. to 3:00 p.m., with regular days off of Saturday and Sunday. Given the supervisory nature of his position and the salary associated with it, NYC Transit required the Superintendent to submit an annual FDS to JCOPE.

II. INVESTIGATION

A. Interview of the Superintendent

On June 19, 2020, the OIG interviewed the Superintendent at his residence. Upon approaching his residence, the OIG observed 2 five-gallon containers of an epoxy floor patching material that were clearly marked “NYCTA stock #70-13-3593” (NYCTA Containers) in front of the Superintendent’s garage. See photograph attached as Exhibit A.

The Superintendent stated to the OIG that he obtained the NYCTA Containers from the Eastchester Bus Depot where it was stored in a supply container. The Superintendent stated that he transported the NYCTA Containers to his residence in his private vehicle. He claimed that he had no room in his vehicle to store the NYCTA Containers so he removed them earlier that week and placed them in front of his garage. Although he had no knowledge of a work order requesting the containers, the Superintendent claimed he was going to bring them to the Yonkers Bus Depot because a Yonkers Bus Depot Maintainer requested the NYCTA Containers. However, based on NYC Transit time records the Superintendent was on vacation from June 16, 2020 until June 19, 2020, which belies his claim that he was planning to deliver the NYCTA Containers to the Yonkers Bus Depot.

The Superintendent admitted to the OIG that he has a contracting business and that he works mostly on floors. The OIG removed the NYCTA Containers from the Superintendent’s residence and notified NYC Transit. According to NYC Transit records, the unit price of the NYCTA Containers was \$227 each; however, the market value for a similar product is approximately \$400 each.

B. Interview of the Yonkers Bus Depot Maintainer

On June 19, 2020, the OIG interviewed the Maintainer identified by the Superintendent from the Yonkers Bus Depot. The Maintainer stated that he was familiar with the product, but currently had no need for it nor did he expect any shipment of the NYCTA Containers. The Maintainer further stated that he has only used the epoxy in the NYCTA Containers twice in the 27 years he has worked for NYC Transit. The Maintainer stated that he has the same epoxy floor patching material unopened in storage and therefore he did not order any additional product. The Maintainer then showed the OIG his supply of the same epoxy, which confirmed he did not need the additional product.

C. Unauthorized Dual Employment

During his interview, the Superintendent admitted to the OIG that he is the owner of a business that does flooring. A review of the Superintendent's pre-employment forms he completed as part of the NYC Transit's on-boarding process, dated June 11, 2018, indicated that he was the owner of a business and would be seeking dual employment authorization. Public records indicate the Superintendent is linked to a home improvement business with the same name as indicated on his pre-employment questionnaire.

The Superintendent is also linked to a business that provides modern enclosed and open air photo booths for events in New York, Northern New Jersey, and Connecticut. According to the website, the photo booth company also provides DJ Services, event planning and decorations, and catering services. The phone number for the photo booth business is the same as 1 of the 2 phone numbers associated with the Superintendent's home improvement business and is also the Superintendent's personal phone number as listed in his NYC Transit personnel file. Additionally, the Superintendent's personal Facebook page lists several events that used his photo booths. Finally, while leaving the office after he was taken out of service by NYC Transit, the Superintendent requested permission to take his photo booth, claiming it belonged to him, which he had in his office.

Although the Superintendent acquired dual employment authorization for his construction company, he did not request authorization for his photo booth business. The Superintendent completed regularly scheduled MTA training on topics including ethics and the Agency rules regarding outside employment. He certified that he had read and understood the MTA All-Agency Code of Ethics.

Furthermore, the Superintendent filed FDS with JCOPE in 2018 and 2019. In his 2018 FDS, the Superintendent did not list his photo booth business although his Facebook page indicates the business engaged in services in 2018. Additionally, his 2018 FDS disclosed a construction company with a different name than that on his dual employment authorization form that he filed with NYC Transit. His 2019 FDS did not disclose any construction company.

III. POLICIES AND ANALYSIS

A. MTA All-Agency Code of Ethics

1. *§ 1.07: Cooperation with Audits and Investigations*

The MTA All-Agency Code of Ethics Section 1.07 states, in pertinent part that "employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General, ... or other governmental agencies". The failure to so cooperate will subject an Employee to appropriate disciplinary penalty, up to and including dismissal.

Here, the Superintendent failed to fully and honestly answer the OIG questions about why he removed the NYCTA Containers from the Eastchester Bus Depot and brought them to his residence by claiming that he was transporting the NYCTA Containers to the Yonkers Bus

Depot at the request of a NYC Transit Maintainer, which was flatly denied by the Yonkers Bus Maintainer. His lack of candor violates section § 1.07 of the Code of Ethics.

2. *§ 8.04: Prohibition Against the Use of MTA Property*

The MTA All-Agency Code of Ethics, Section 8.04 Prohibition Against the Use of MTA Property states, in pertinent part: “MTA’s . . . supplies, equipment, and other resources may not be utilized for non-governmental purposes, including for personal purposes or for outside activities of any kind except as may be specifically authorized herein.”

Here, the Superintendent removed MTA property, to wit: the NYCTA Containers, for personal purposes.

3. *§ 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, the Superintendent failed to obtain the required agency authorization to engage in his photo booth business.

4. *§ 4.02: Public Trust*

The MTA All-Agency Code of Ethics, Section 4.02, states, in pertinent part, that employees shall not engage in a course of conduct that will raise suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust. Further, employees shall avoid even the appearance that they can be improperly influenced in the performance of their official duties, or induced to violate the public trust or impair their independence of judgment in the exercise of their official duties.

Here, the Superintendent removed the NYCTA Containers from the Eastchester Bus Depot into his personal vehicle and instead of transporting them to another NYC Transit Bus Depot, was storing them at his residence. Furthermore, the Superintendent misled the OIG in claiming that a NYC Transit Maintainer requested the NYCTA Containers. Additionally, the Superintendent’s admittance that his construction company does flooring work combined with the fact he took the NYCTA Containers, valued at a market rate of \$ 400 each, raises suspicion among the public that he is likely engaged in acts that are in violation of the public trust. Finally, the Superintendent kept his photo booth, a business for which he did not receive authorization, on NYC Transit property.

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 new hire who wishes to continue other employment must file a dual employment request prior to his/her appointment date. If the department subsequently denies the request, the employee will be required to terminate the outside employment within two (2) days of receiving notice of the determination, and Section VI, further provides, in pertinent part, that all newly appointed employees who wish to continue other employment must file a dual employment request prior to commencing 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, the Superintendent violated these policies when he failed to obtain dual employment authorization for his photo booth business.

C. New York State Public Officers Law

1. § 73-a

New York State Public Officer's Law § 73-a provides in pertinent part, that specifically designated state employees must file an annual statement of financial disclosure. Question 5a of the FDS specifically requires the filer to list the name, address and description of any occupation, employment, trade, business or profession in which they engaged during the reporting period. Question 13 requires the employee to declare any income, other than his/her state salary, in excess of \$ 1,000 that either he/she or his/her spouse earned.

Here, in his 2018 FDS, the Superintendent did not list his photo booth business although his Facebook page indicates it engaged in services in 2018. Additionally, his 2018 FDS discloses a construction company with a different name than that on his dual employment authorization form the he filed with NYC Transit. His 2019 FDS did not disclose his construction company.

2. § 74(3)(d)

New York State Public Officers Law § 74(3)(d) states, in pertinent part, that "no officer or employee of a state agency... should use or attempt to use his or her official position to secure

unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated nongovernmental purposes.”

Here, the Superintendent used his official position to secure unwarranted privileges for himself when he misappropriated the NYCTA Containers and brought them to his residence.

3. *§ 74(3)(h)*

New York State Public Officers Law § 74(3)(h) states, in pertinent part, that “an officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.”

Here, for the same reasons as stated above in MTA All-Agency Code of Ethics Section 4.02, the Superintendent engaged in acts that violated his trust.

IV. FINDINGS

1. The Superintendent violated § 1.07 of the MTA All-Agency Code of Ethics when he failed to fully and honestly answer the OIG questions about why he removed the NYCTA Containers.
2. The Superintendent engaged in misconduct when he removed NYC Transit property and transported it to his residence in his personal vehicle in violation of the MTA All-Agency Code of Ethics Section 8.04, MTA All-Agency Code of Ethics Section 4.02, and New York State Public Officers Law §§ 74(3)(d) and (h).
3. The Superintendent engaged in unauthorized dual employment in violation of the MTA All-Agency Code of Ethics Section 4.07, NYC Transit Rule 4(g) and NYC Transit Policy/Instruction Number 4.23.2, Section IV(A)(4) and Section VI(B)(2).
4. The Superintendent did not report his outside employment to JCOPE as required by New York State Public Officers Law § 73-a.

V. RECOMMENDATION

We recommend that NYC Transit impose discipline on the Superintendent as it deems appropriate, up to and including termination. A copy of this report will be provided to JCOPE for its review and any action it deems appropriate.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within forty five (45) days¹ of any actions you take pursuant to this letter. 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, NYC Transit
Kim Moore-Ward, Vice President, Office of Labor Relations, NYC Transit
Monica Stamm, General Counsel, JCOPE

¹ Typically we seek a response within 30 days, and recognize that additional time likely will be needed due to the ongoing COVID-19 pandemic.



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Agency Response
to
MTA/OIG #2020-19

MABSTOA Superintendent Theft of NYC Transit Property & Unauthorized Dual Employment

On July 28, 2020, NYC Transit responded to the Office of the MTA Inspector General's (OIG) investigation and report, and advised the OIG that the agency has issued disciplinary charges to the Superintendent and sought his dismissal. The Superintendent has been suspended pending the outcome of the disciplinary proceeding.