

IN THE MATTER OF DESMOND DARMALINGUM
COIB CASE NO. 2016-956
APRIL 28, 2017

SUMMARY: Two New York City Department of Sanitation (“DSNY”) Sanitation Workers drove their sanitation truck to a vacant lot adjacent to one of their homes to meet contractors who were making a delivery there. They remained there for over one-half hour. In three-way settlements with the Board and DSNY that resolved both their conflicts of interest law violations and unrelated disciplinary charges, the Sanitation Worker to whose home they traveled accepted a ten-workday suspension, valued at approximately \$2,971. *COIB v. Darmalingum*, COIB Case No. 2016-956 (2017). The second Sanitation Worker accepted a seven-workday suspension, valued at approximately \$2,079, which penalty takes into account that he received no personal benefit from his unauthorized use of his DSNY vehicle. *COIB v. Hooks*, COIB Case No. 2016-956a (2017).

STIPULATION AND DISPOSITION:

WHEREAS, the New York City Department of Sanitation (“DSNY”) served disciplinary charges against Desmond Darmalingum (“Respondent”), pursuant to Section 16-106 of the New York City Administrative Code; and

WHEREAS, given that related disciplinary action was pending at DSNY that alleged violations of the City of New York’s conflicts of interest law, found in Chapter 68 of the New York City Charter (“Chapter 68”), the New York City Conflicts of Interest Board (the “Board”) referred this matter to DSNY pursuant to Section 2603(e)(2)(d) of Chapter 68; and

WHEREAS, the Board, DSNY, and Respondent wish to resolve this matter on the following terms;

IT IS HEREBY AGREED by and among the parties as follows:

1. In full satisfaction of the above-captioned matter, Respondent admits to the following:
 - a. Since May 10, 1993, I have been employed by DSNY as a Sanitation Worker. As such, I have been and continue to be a “public servant” within the meaning of Chapter 68.
 - b. On October 18, 2016, while on duty and without authorization, I left my required collection route and used my assigned DSNY sanitation truck to drive to a vacant lot adjacent to my home to meet contractors who were making a delivery there. I remained at the lot for approximately 34 minutes.

- c. I acknowledge that, by using a City resource, namely a City vehicle, for a personal, non-City purpose, I violated Chapter 68, specifically City Charter § 2604(b)(2), pursuant to Board Rules § 1-13(b), which state respectively:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. [City Charter § 2604(b)(2)]

Except as provided in subdivision (c) of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose. [Board Rules § 1-13(b)]

2. DSNY has determined that a ten (10) workday suspension without pay, which has the value of approximately \$2,970.50, is the appropriate penalty to resolve both this matter and unrelated disciplinary infractions.

3. The Board accepts the penalty imposed by DSNY as sufficient for the Chapter 68 violation cited above.

4. Respondent agrees to the following:

- a. I agree to serve a ten (10) workday suspension, valued at approximately \$2,970.50, on dates to be determined by DSNY.
- b. I agree that this Disposition is a public and final resolution of the above-captioned matter only.
- c. I knowingly waive on my behalf and on behalf of my successors and assigns any rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political subdivision, or office of the City or the State of New York or the United States, and to contest the lawfulness, authority, jurisdiction, or power of the Board or the DSNY in imposing the penalty which is embodied in this Disposition, and I waive any right to make any legal or equitable claims or to initiate legal proceedings of any kind against the Board or the DSNY, or any members or employees thereof relating to or arising out of this Disposition or the matters recited therein.
- d. I confirm that I have entered into this Disposition freely, knowingly, and intentionally, without coercion or duress, and after having been represented by the attorney of my choice; that I accept all terms and conditions contained herein without reliance on any other promises or offers previously made or

tendered by any past or present representative of the Board or the DSNY; and that I fully understand all the terms of this Disposition.

- e. I agree that any material misstatement of the facts of this matter, including of the Disposition, by me or by my attorney or agent shall, at the discretion of the Board, be deemed a waiver of confidentiality of this matter.

5. The Board and the DSNY accept this Disposition and the terms contained herein as a final disposition of the above-captioned matter only, and affirmatively state that other than as recited herein, no further action will be taken by the Board or the DSNY against Respondent based upon the facts and circumstances set forth herein, except that the Board and the DSNY shall be entitled to take any and all actions necessary to enforce the terms of this Disposition.

6. This Disposition shall not be effective until all parties have affixed their signatures below.

Dated: April 4, 2017

_____/s/
Desmond Darmalingum
Respondent

Dated: April 4, 2017

_____/s/
Allen Cohen
Kirschner & Cohen, P.C.
Counsel for Respondent

Dated: April 4, 2017

_____/s/
Rita Brackeen
Employment Counsel/Department Advocate
Office of Employment & Disciplinary Matters
NYC Department of Sanitation

Dated: April 28, 2017

_____/s/
Richard Briffault
Chair
NYC Conflicts of Interest Board