

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

IN THE MATTER OF:

File No. IH19-008-BCR

**SOUTH CENTRAL RECYCLING
CN610272**

ALEXANDER SALAMI

RESPONDENT.

DECISION AND ORDER

I. INTRODUCTION

The Division of Recycling (Division) of the Department of Resources Recycling and Recovery (Department or CalRecycle) issued a notice to Alexander Salami and South Central Recycling (Respondent) dated May 10, 2019, denying Respondent's application for certification to operate a recycling center at 10211 South Avalon Boulevard in Los Angeles (Subject Location).

Respondent filed a timely request for hearing on the application denial pursuant to Title 14, section 2130 of the California Code of Regulations.

A hearing was conducted on July 18, 2019, in Sacramento, California. On that date, all evidence and testimony in this matter was received into the record.

Linda Nueva (Nueva), Senior Staff Counsel, CalRecycle, appeared on behalf of the Division. Nueva was assisted by CalRecycle Law Clerks, Carly Moran and Tatum Kennedy. Matthew Abbasi, esq., appeared on behalf of Respondent.

Douglas C. Jensen, Attorney IV, CalRecycle, presided over the hearing under a delegation of authority from CalRecycle Director, Scott Smithline.

II. ISSUE

Whether the Division's decision to deny Respondent's application for certification to operate a recycling center shall be sustained, modified, or reversed.

III. EVIDENTIARY MATTERS

The Division presented testimony from Carrie Holler (Holler), Recycling Specialist III. Holler reviewed Respondent's application for certification to run a recycling center at the Subject Location. She recommended that Respondent's application be denied based

1 on Respondent's involvement in Penny Recycling, Inc. (Penny Recycling), a recycling
2 center company that was disciplined by the Division for serious violations of California
3 Beverage Container Recycling and Litter Reduction Act.

4
5 The Division presented testimony from Benjamin Shelton (Shelton), Senior
6 Management Auditor. Shelton provided a description of work experience, but ultimately
7 did not offer substantive testimony at the discretion of the Division.

8
9 The Division presented testimony from Rebecca Chavez (Chavez), Associate
10 Governmental Program Analyst. Chavez conducted an investigation of a Penny
11 Recycling center located at 7801 Otis Avenue in Cudahy, California (Cudahy Center) on
12 May 22, 23, and 24, 2018, with coworker Rod Estrada (Estrada). The investigation
13 revealed that customer transactions had been fabricated at the Cudahy Center.

14
15 Respondent presented testimony from Alexander Salami (Salami). Salami denied that
16 he had significant involvement with Penny Recycling. Rather, he merely entered into a
17 "financing agreement" with the owner of Penny Recycling, Hamlet Betsarghez
18 (Betsarghez).

19
20 Division exhibits 1—8 were admitted into evidence without objection.

21
22 Respondent objected to the admission of Division Exhibit 9, the Declaration of Jonas
23 Bautista (Declaration). In it, Bautista declares that "all the information listed in my
24 August 30, 2017, Report of Conversation (Conversation Report) is true and correct."
25 The Conversation Report, Division Exhibit 8, was admitted as an official record pursuant
26 to Evidence Code section 1280.

27
28 Respondent objects to the admission of the Declaration on the basis that Bautista was
29 unavailable at hearing to be cross-examined on its contents. No foundation was
30 provided to admit the Declaration as an official record, and while it was provided under
31 of penalty of perjury, its lack of detail limits its probative value. The Declaration will not
32 be admitted into evidence.

33
34 Respondent Exhibits 1, 2, 4, 13, 14, and 15 were admitted into evidence without
35 objection. Respondent Exhibit 10, pages 26 and 27, was admitted into evidence without
36 objection.

37 38 **IV. FINDINGS OF FACT**

39
40 Salami, along with members of his family, has been involved in the recycling business
41 for the past twenty years. He currently operates three certified recycling centers in the
42 Los Angeles area.

43
44 Betsarghez is the owner of Penny Recycling, which operated certified recycling centers
45 at the following locations: 1521 East Cesar Chavez Boulevard in Los Angeles (Chavez
46 Center), 4157 Figueroa Street in Los Angeles, 8620 Orchard Avenue in Los Angeles,
47 and the Cudahy Center (collectively the Penny Centers).

1 Betsarghez and Salami are professional acquaintances, and in approximately
2 November of 2016, they entered into a verbal agreement (Verbal Agreement). Salami
3 lent Betsarghez approximately \$28,000 to finance his recycling business and agreed to
4 collect and distribute monies generated by the Penny Centers while Betsarghez was out
5 of the country receiving medical treatment. Initially, Salami agreed to deposit \$5,000
6 per month from the collected monies into an account provided by Betsarghez. Amounts
7 generated in excess of the \$5,000 were kept by Salami.

8
9 On November 21, 2016, Betsarghez and Salami entered into a written agreement
10 concerning the Penny Centers (Written Agreement). The Written Agreement identifies
11 Betsarghez as owner of the Penny Centers and Salami as operator. It states that "the
12 Operator shall be responsible for the financing of the [Penny Centers]" and "all material
13 and monies involved in any transaction as of [November 21, 2016] shall solely belong to
14 the Operator." It further states that the Owner shall keep the state license active and
15 that "the Operator shall manage the day to day operations." Finally, it provides that it is
16 the responsibility of the operator to pay the rent for [the Penny Centers] as of December
17 1, 2016.

18
19 In approximately January of 2017, an unlawful detainer action was initiated against
20 Betsarghez for failure to pay rent at the Chavez Center. The unlawful detainer led to a
21 judgment (Judgment), and redistribution of \$5,000 Salami had been depositing monthly
22 into the account provided by Betsarghez. Thereafter, Salami paid \$3,000 per month
23 towards the Judgment, \$3,000 into the account provided by Betsarghez, and continued
24 to keep the remainder for himself.

25
26 On January 26, 2017, Salami entered into a lease (Lease) for the Chavez Center—one
27 of the four certified Penny Centers. It identifies Betsarghez as the prior tenant and
28 indicates he was evicted due to \$60,000 back rent. It further establishes that the
29 premises "shall be used and occupied only for a recycling center" and indicates that
30 Salami "has been occupying the Premises for several months." The Lease required
31 Salami to obtain and keep an insurance policy insuring Salami and the landlord "against
32 liability arising out of the ownership, use, occupancy or maintenance of the Premises."
33 Finally, it required Salami to pay all utilities, including "water, gas, heat, light, power,
34 [and] telephone..."

35
36 On August 30, 2017, Division employee Jonas Bautista spoke by telephone to a man
37 that identified himself as Salami and stated that he is temporarily in charge of Penny
38 Recycling.

39
40 On May 22, 23, and 24, 2018, Division employees Chavez and Estrada conducted an
41 inspection of the Cudahy Center, one of four Penny Recycling centers. They asked the
42 Cudahy Center attendant who the manager was and he responded that it was Salami.
43 The inspection ultimately revealed serious violations, including the falsification of
44 records. As a result, the Penny Centers had their certifications revoked.

45
46 On February 11, 2019, Salami applied for certification to operate a recycling center at
47 the Subject Location. By way of a May 10, 2019 letter, his application was denied
48

1 (Denial). The Denial indicated that Salami had failed to demonstrate to the Division's
2 satisfaction that he will operate in accordance with applicable recycling laws.
3 Specifically, the Denial indicated that Salami was a 'responsible party' for the Penny
4 Center violations. Respondent timely requested a hearing challenging the Denial, and a
5 hearing was held on July 18, 2019.
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8 V. CONCLUSIONS OF LAW 9

10 The Division is charged with enforcing the California Beverage Container Recycling and
11 Litter Reduction Act (Public Resources Code section 14500 et. seq.) (Act) and related
12 regulations found at Title 14, California Code of Regulations, section 2000 et seq.
13 (Regulations). The Division is further charged with the duty of protecting the integrity of
14 the California Beverage Container Recycling Fund (Fund). (Pub. Res. Code § 14552.)
15 Section 14538(b)(1) of the Act requires an operator to demonstrate to the Division's
16 satisfaction that it will operate in accordance with the Act. This burden of demonstrating
17 compliance with the Act applies to applicants for certification.¹
18

19 Here, the Division denied Respondent's application on the basis that Respondent failed
20 to demonstrate to the Division's satisfaction that he will operate in accordance with the
21 Act and Regulations. Specifically, the Division alleges that Respondent is a
22 'responsible party' for the Penny Center violations pursuant section 14591.2(a) of the
23 Act. Section 14591.2(a) of the Act authorizes the Division to take disciplinary action
24 against "any party responsible for directing, contributing to, participating in, or otherwise
25 influencing the operations of a certified ... facility."²
26

27 Respondent denies that he was a responsible party for the Penny Center violations,
28 contending that he merely entered into a financing agreement with the Penny Centers'
29 owner, Hamlet Betsarghez.
30

31 Evidence produced at hearing suggests that Salami's role at the Penny Centers was
32 more substantial than a mere financier. Salami acknowledges that he entered into a
33 lease for one of the Penny Centers (1521 East Cesar Chavez Avenue), but he indicates
34 that he did it only to "allow [Hamlet] to operate one of recycling centers." However, the
35 terms of the lease obligated Salami to take on significant responsibilities for the
36 property. He was to pay monthly rent, take responsibility for maintenance and repair of
37 the real property, and obtain and keep an insurance policy insuring both Salami and the
38 landlord against liability arising out of the use of the property. Additionally, the lease
39 indicates that Salami has "been occupying the [property] for several months",
40 suggesting Salami's direct involvement with the recycling business located there.
41

42 ¹ Absent a statute or other authority fixing a different standard, the burden of proof requires proof by a
43 preponderance of the evidence. (Evidence Code § 115.) Except as otherwise provided by law, a party
44 has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for
45 relief or defense that he is asserting. (Evid. Code § 500.) Therefore, applicants for certification must
46 meet the burden of proof by a preponderance of the evidence.
47

48 ² Section 14591.2(a) further states that "[a] responsible party includes, but is not limited to, the certificate
holder, registrant, officer, director, or managing employee."

1 Regardless, the Lease makes clear that Salami's participation in Penny Recycling's
2 business was significant.

3
4 Moreover, Salami entered into the Written Agreement with Bestsarghez by which he
5 expressly accepted responsibility for managing the day-to-day operations of the Penny
6 Centers. By way of explanation, Salami stated that he included that term because it
7 "protected me from not being reimbursed for my monies". He stated that it was "poorly
8 worded" and "not what was intended." However, when pressed as to what was actually
9 intended by the term, Salami offered no credible explanation¹. The plain meaning of the
10 term is unambiguous—Salami accepted management responsibilities for the Penny
11 Centers.

12
13 Salami's promise to manage the day-to-day operations of the Penny Centers is
14 consistent with information gleaned by Division employees. Both Chavez and Bautista
15 were told by persons associated with Penny Recycling that Salami was the manager.

16
17 It is Respondent's burden to prove by a preponderance of the evidence that he is not a
18 'responsible party' for the Penny Recycling violations pursuant to section 14591.2.
19 While Respondent contends that he was a mere financier for the Penny Centers, the
20 preponderance of the evidence leads to the conclusion that Salami's role was more
21 significant. Salami accepted significant legal responsibilities for the Cesar Center by
22 entering into the Lease. Moreover, Salami expressly agreed in writing to manage the
23 day-to-day operations of the Penny Centers. That promise alone, even if it went
24 unfulfilled, renders Salami a responsible party pursuant to section 14591.2.

25
26 There is no question that a manager, either by his presence or lack thereof, influences
27 the operations of a certified facility. The Cudahy Center was engaged in fraud—an
28 activity that could have been prevented by a manager that was present and involved².
29 Either Salami fulfilled his promise and was actively managing the Cudahy Center while
30 it was engaged in fraud, or he left it unfulfilled, thereby exposing it to abuse by
31 unsupervised employees. Either way, Salami influenced the operations of a certified
32 center and is a responsible party pursuant to section 14591.2(a).

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39 ¹ It is also noted that the terms of the Verbal Agreement, as represented by Salami, conflict with the terms
40 of the Written Agreement. For example, Salami stated that he deposited first \$5,000 per month, and then
41 \$3,000 per month in an account provided by Betsarghez. However, the written agreement indicates "all
42 materials and monies involved in any transaction ... shall solely belong to [Salami]." Salami did not
43 provide any credible explanation of these contradictions, suggesting that he was less than fully
44 forthcoming regarding his relationship with Bestsarghez.

45 ² No evidence was presented either here or at the Penny Center hearing that indicated Salami was
46 directly involved in the fraud perpetuated at the Cudahy Center. Absent such evidence, Salami's
47 designation as a responsible party for the Penny Centers is not a basis for any revocation action against
48 Respondent.

1 **VI. DECISION AND ORDER**

2
3 The Division's decision to deny Respondent's application for certification to run a
4 recycling center is sustained.
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7

8 **IT IS SO ORDERED.**

9
10
11 DATED: 8/2/19

HEARING OFFICER



Douglas C. Jensen

Attorney IV

Department of Resources Recycling
and Recovery (CalRecycle)



Department of
Resources Recycling and Recovery

Jared Blumenfeld
Secretary for
Environmental Protection

Scott Smithline
CalRecycle Director

PROOF OF SERVICE

I, Donnet J. McFarlane, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to this action. My place of employment and business is as in the letterhead.

On August 2nd, 2019, I served the attached for entitled action:

Decision and Order in The Matter of South Central Recycling, CalRecycle Case No. IH19-008-BCR to:

Alexander Salami
c/o Matthew Abbasi, Esq
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By:

First Class Mail - In a sealed envelope, with postage thereon fully prepaid, in the United States.

Certified Mail - In a sealed envelope, return receipt requested with Postage thereon fully prepaid, in the United States mail.

Electronic Service - Sent to the email addresses listed above.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on the 2nd day of August 2019.

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal line and a trailing flourish.

(Signature)