BEFORE THE
DEPARTMENT OF RESOURCES, RECYCLING & RECOVERY
OF THE STATE OF CALIFORNIA

IN THE MATTER OF:

South Central Recycling – Alexander Salami

Address: 10211 South Avalon Blvd, Losa Angeles, California

Type of Entity: Application Denial

File No.: IH19-008-BCR
Certificate No.: CN610272
PRECEDENTIAL DECISION No.: 23-09

Designation of decision as precedential under Government Code Section 11425.60

Pursuant to Government Code Section 11425.60, the Department of Resources, Recycling and Recovery hereby designates as precedential its decision, dated August 2, 2019, in the above-referenced action.

This decision is designated precedential effective September 10, 2023,

Sacramento, California.

Dated: September 10, 2023.

As approved by Rachel Machi Wagoner on September 10, 2023,

Department of Resources, Recycling & Recovery.

STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

IN THE MATTER OF:	**File No. IH19-008-BCR**
SOUTH CENTRAL RECYCLING CN610272	
	DECISION AND ORDER
ALEXANDER SALAMI	
RESPONDENT.	

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 dale, 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 Ill. 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

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

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

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

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

Division exhibits 1-8 were admitted into evidence without objection.

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

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

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

IV. FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

V. CONCLUSIONS OF LAW

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

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

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

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

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

[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."

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

Moreover, Salami entered into the Written Agreement with Bestsarghez by which he expressly accepted responsibility for managing the day-to-day operations of the Penny Centers. By way of explanation, Salami stated that he included that term because it "protected me from not being reimbursed for my monies". He stated that it was "poorly worded" and "not what was intended." However, when pressed as to what was actually intended by the term, Salami offered no credible explanation[1]. The plain meaning of the term is unambiguous-Salami accepted management responsibilities for the Penny Centers.

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

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

There is no question that a manager, either by his presence or lack thereof, influences the operations of a certified facility. The Cudahy Center was engaged in fraud-an activity that could have been prevented by a manager that was present and involved[2]. Either Salami fulfilled his promise and was actively managing the Cudahy Center while it was engaged in fraud, or he left it unfulfilled, thereby exposing it to abuse by unsupervised employees. Either way, Salami influenced the operations of a certified center and is a responsible party pursuant to section 14591.2(a).

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

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

VI. DECISION AND ORDER

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

IT **IS SO ORDERED.**

HEARING OFFICER

DATED: 12/21/16

Douglas C. Jensen
Attorney IV
Department of Resources Recycling and Recovery (CalRecycle)

California Environmental Protection Agency

Gavin Newsom
California Governor

CalRecycle

Department of
Resources Recycling and Recovery

Jared Blumenfeld
Secretary for
Environmental Protection

Scott Smithline
Ca/Recycle 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
Law Offices of Abbasi & Associates
Abbasi Law Corporation
8889 West Olympic Blvd, Suite 240
Beverly Hills, CA 90211
matthew@malawgroup.com

Linda Nueva, Senior Staff Counsel
CalRecycle - Legal Office
801 K Street, MS 19-03
Sacramento, CA 95814
Linda.Nueva@calrecycle.ca.gov

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.

(Signature)