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New Contract Dispute Resolution Board Panelists Sought

All City construction and service contracts contain a three-step dispute resolution process. Since 1999, OATH has administered the Contract Dispute Resolution Board (CDRB or Board), which hears the final appeal in the process. The three person Board consists of an OATH Administrative Law Judge (ALJ), who sits as chair, a representative of the Mayor's Office of Contracts, and a third panelist, i.e., a person with appropriate expertise, who is not affiliated with the City. OATH is inviting qualified persons to join its roster of third panelists. Applicants should have a background and experience in government contracting, construction, engineering or the law. Interested persons should send a completed [application form](#) and resume to Cherron Howard-Williams, the CDRB administrator.

When the engineer makes a determination relating to the scope of work, contract interpretation, or the amount to be paid for extra or disputed work that the supplier disagrees with, the supplier may file a claim with the agency head. If the supplier disagrees with the agency head's determination, it may file a claim with the Comptroller. If the supplier is dissatisfied with the Comptroller's decision, it may file a petition with the CDRB.

CDRB panelists review the parties' written submissions, hear oral argument, deliberate to decide the relevant issues and ultimately issue a written decision. Preparation for, attendance at and participation in deliberations immediately following the oral argument will be reimbursed in the amount of \$300. Post oral argument time spent on the case is compensated at \$75 per hour.

Lobbying Law

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In August 2007, OATH heard its first Lobbying Law enforcement proceeding. The Lobbying Law was amended in 2006, giving broader enforcement powers to the City Clerk. The amended law was intended to “strengthen the accessibility, transparency and integrity of City government for its citizens”. Mayor Bloomberg, Press Release, June 13, 2006. All registered lobbyists and their clients are required to file four quarterly written reports. A lobbyist or client who files late is liable for late fees of \$25 per day. In addition, a late filing may be penalized by imposition of a civil penalty up to \$20,000. Detailed information on the new law and the implementing rules is available on the City Clerk’s website, [Lobbying Bureau page](#).

Last Month's OATH Decisions

Lobbying Law

Lobbyist fined for failing to file periodic reports on time

In a case of first impression before OATH, ALJ Alessandra Zoragniotti recommended that a registered lobbyist be fined a total of \$14,750 for violating the reporting requirements of the Lobbying Law. The lobbyist, who failed to timely file periodic reports for five clients, was assessed late fees of \$4,750 and a civil penalty of \$10,000. The ALJ rejected the petitioner's request for the maximum civil penalty of \$20,000, noting that the respondent had filed the reports before a delinquency notice was sent to him. *Office of the City Clerk v. Lipsky*, OATH Index No. 155/08 (Aug.1, 2007).

Practice and Procedure

Discovery limited for Sanitation employees who requested records of all crews working in Queens

In an employee discipline case, ALJ Zoragniotti granted the Department of Sanitation's motion to limit the employees' discovery request for all performance records and dump tickets for all sanitation crews working in Queens for a five-month period. The sanitation workers were charged with working at a slow pace and failing to complete their routes. The ALJ found the respondent's discovery request to be unduly burdensome and overly broad. However, Judge Zoragniotti also denied the Department's motion as to all records for routes that were not completed, because those may be relevant at trial.. *Dep't of Sanitation v. Amato*, OATH Index Nos. 2092-2096/07, mem. dec. (Aug. 2, 2007).

Personnel

GPS data used to establish charges that employee left work early

ALJ Tynia Richard recommended termination for a Supervisor of Carpenters for the Department of Education who was charged with multiple separate instances of leaving work before the end of the workday. The charges were established using data from the global positioning system (GPS) in the employee's Department-issued cell phone. The ALJ found that the GPS data was accurate and reliable and that its use did not violate the employee's privacy rights under the United States Constitution. *Dep't of Education v. Halpin*, OATH Index No. 818/07 (Aug. 9, 2007).

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Licensing

License revocation recommended for taxi driver who locked passengers in his cab

ALJ Julio Rodriguez recommended revocation of the license of a taxi driver who was found to have assaulted and verbally harassed a passenger, operated his taxi recklessly, and locked the doors of the taxi so that his passengers could not exit. The ALJ found the driver's testimony less credible than the passenger's, whose description of the events was corroborated by documentary evidence of an injury to her head. *Taxi & Limousine Comm'n v. Wali*, OATH Index No. 1849/07 (Aug. 3, 2007).

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Vehicle Retention

Car ordered retained after loaded pistol was found

The Conflicts of Interest Board adopted a recommendation by ALJ Kevin Casey that the former Director of Engineering at the Department of Transportation be fined \$1,500 for violating the City Conflicts of Interest Law. In particular, the former employee negotiated and accepted a job with a vendor during a period when he was reviewing invoices submitted by the vendor as part of his City job. *Conflicts of Interest Bd. v. Pentangelo*, OATH Index No. 422/07 (Mar. 7, 2007), adopted, Bd. Decision (July 13, 2007).

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Human Rights Law

Age discrimination by employment agency: fine, damages recommended

ALJ Casey recommended an award of compensatory damages of \$1,000 to a complainant for discrimination on the basis of her age. The evidence showed that the complainant had been told by the respondent, an employment agency, that it was against company policy to hire anyone over the age of fifty. The ALJ also recommended a civil penalty of \$5,000 as appropriate where there was no evidence presented that the respondent had a history of discrimination or of significant impact to the public. *Comm'n on Human Rights ex rel. Campbell v. Personal Employment Services*, OATH Index No. 1579/07 (Aug. 20, 2007).
