SUMMARY: The Board and the New York City Department of Sanitation ("DSNY") concluded fifty-two three-way settlements with Sanitation Workers, and the Board concluded two separate settlements with former Sanitation Workers, who, while on City time and using their DSNY trucks, collected scrap metal for their private benefit. Scrap metal is a valuable recyclable that DSNY collects as part of the City-wide recycling program and for which DSNY has contracted with a private entity to accept, process, and/or sell. Instead of collecting this valuable recyclable for the City, the fifty-four Sanitation Workers sold the scrap metal for their personal benefit. Each Sanitation Worker acknowledged that his conduct violated the City's conflicts of interest law, which prohibits a public servant from using or attempting to use his or her position as a public servant to obtain any financial gain, contract, license, privilege, or other private or personal advantage, direct or indirect, for the public servant and from using City time or City letterhead, personnel, equipment, resources, or supplies for any non-City purpose. The Board and DSNY, in their three-way settlements, fined each of the fifty-two Sanitation Workers a suspension of five to thirty days, valued at $892 to $7,410, to be imposed by DSNY. The Board, in its separate settlements, fined the twenty former Sanitation Workers $1,500 each. DSNY has contracted with a private entity to accept, process, and/or sell. Instead of collecting this valuable recyclable for the City, the fifty-four Sanitation Workers sold the scrap metal for their personal benefit. Each Sanitation Worker acknowledged that his conduct violated the City's conflicts of interest law, which prohibits a public servant from using or attempting to use his or her position as a public servant to obtain any financial gain, contract, license, privilege, or other private or personal advantage, direct or indirect, for the public servant and from using City time or City letterhead, personnel, equipment, resources, or supplies for any non-City purpose. The Board and DSNY, in their three-way settlements, fined each of the fifty-two Sanitation Workers a suspension of five to thirty days, valued at $892 to $7,410, to be imposed by DSNY. The Board, in its separate settlements, fined the two former Sanitation Workers $1,500 each.
STIPULATION AND DISPOSITION:

WHEREAS, the New York City Department of Sanitation ("DSNY") served disciplinary charges against the Respondent Mario Barone ("Respondent"), pursuant to Section 16-106 of the New York City Administrative Code; and

WHEREAS, the New York City Conflicts of Interest Board (the “Board”), DSNY, and Respondent wish to resolve these matters on the following terms,

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

In full satisfaction of the above captioned matters, Respondent admits the following:

1. I have been employed by DSNY since May 3, 2004, as a Sanitation Worker.

2. At all relevant times hereafter mentioned, I was a public servant within the meaning of Chapter 68 of the New York City Charter ("Chapter 68").

3. On October 31, 2006, while on City time and using a DSNY truck, I collected scrap metal, a valuable recyclable that DSNY collects as part of the City-wide recycling program and for which DSNY has contracted with a private entity to accept, process, and/or sell. I then sold this scrap metal for cash for my personal benefit.

4. I acknowledge that by utilizing City time and my DSNY truck for my own personal profit, I violated Chapter 68 of the City Charter, specifically City Charter §§ 2604(b)(2) and 2604(b)(3), as well as Board Rules §§ 1-13(a) and 1-13(b). City Charter § 2604(b)(2) states: “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)(3) states: “No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.” Board Rules § 1-13(a) states: “it shall be a violation of City Charter § 2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.” Board Rules § 1-13(b) states: “it shall be a violation of City Charter Section
2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose.”

5. On or about July 12, 2007, DSNY served upon me disciplinary charges, pursuant to Section 16-106 of the New York City Administrative Code, relating to my above-described misconduct. I acknowledge that my misconduct also violated the DSNY Code of Conduct, as set forth in the DSNY disciplinary charges.

6. In recognition of the foregoing, I agree to a five (5) work-day fine to be imposed by DSNY, which has the value of approximately $862.50.

7. I agree that this Disposition is a public and final resolution of the charges against me. 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 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 DSNY, or any members or employees thereof relating to, or arising out of this Disposition or the matters recited therein.

8. I confirm that I have entered into this Disposition freely, knowingly, and intentionally, without coercion or duress, and after having been represented by an 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 DSNY; and that I fully understand all the terms of this Disposition.

9. Any material misstatement of the facts of this matter, including of the Disposition, by me, my attorney or my agent shall, at the discretion of the Board, be deemed a waiver of confidentiality of this matter.

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

11. Respondent and DSNY consent to making the Board a party to this Disposition.
12. The Board and 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 DSNY against Respondent based upon the facts and circumstances set forth herein, except that the Board and DSNY shall be entitled to take any and all actions necessary to enforce the terms of this Disposition.

Dated: April 23, 2008

/s/
Mario Barone
Respondent

Dated: April 23, 2008

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

Dated: April 23, 2008

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

Dated: April 23, 2008

/s/
Steven B. Rosenfeld
Chair
NYC Conflicts of Interest Board