



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. ECE 02465-21

AGENCY DKT. NO. PEA 190001-
U2972

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, BUREAU
OF HAZARDOUS WASTE COMPLIANCE
AND ENFORCEMENT,**

Petitioner,

v.

**ALTISOURCE SOLUTIONS, INC. AND
WILLIAM B. SHEPRO, JOINTLY AND
SEVERALLY,**

Respondents.

Paige A. Hensor, Deputy Attorney General, for petitioner (Matthew J. Platkin,
Attorney General of New Jersey, attorney)

Brian W. Keatts, Esq., for respondents (Rutter & Roy, LLP, attorneys)

Record Closed: September 22, 2023

Decided: November 6, 2023

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Respondents Altisource Solutions, Inc. and William B. Shepro (Shepro) (together, Altisource), appeal the determination of petitioner New Jersey Department of Environmental Protection, Bureau of Hazardous Waste Compliance and Enforcement (NJDEP), that Altisource has violated the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (SW Management Act), and/or the New Jersey Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq. (SW Control Act), and the regulations promulgated pursuant to both laws (Regulations), respectively N.J.A.C. 7:26-3.2(a)(1) and -16.3(a), and N.J.A.C. 7:26H-1.6(a). Altisource also appeals the assessment by the NJDEP of a civil administrative penalty of \$20,000.

Respondent Shepro is named by the NJDEP in this matter as a director of Altisource Solutions, Inc. Altisource contends that Shepro is not and has never been a director of Altisource and therefore, seeks to have the Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) vacated as against Shepro.

PROCEDURAL HISTORY

On July 24, 2019, the NJDEP issued an AONOCAPA to Altisource. On September 26, 2019, respondents requested an adjudicatory hearing. On September 27, 2019, the NJDEP issued an amended AONOCAPA, adding charges under the above-cited Acts and regulations, and reducing the penalty assessed against Altisource from \$28,000, to \$20,000.¹

On November 13, 2020, the NJDEP notified Altisource that this matter would be transmitted to the Office of Administrative Law (OAL). The matter was filed for determination as a contested case on February 26, 2021, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, and assigned to the Honorable Elia A. Pelios, ALJ.

¹ I/M/O Altisource Services Inc., et al, EA ID # PEA190001-U2972 (September 27, 2019) (Amended AONOCAPA). All further references to AONOCAPA will be to the amended version.

On June 8, 2021, respondents asked Judge Pelios to place this matter on the inactive list as respondents are part of a joint defense group, composed of companies similarly situated in New Jersey, which was involved in negotiations with the NJDEP and the New Jersey Attorney General's Office to resolve this matter.² NJDEP did not object to this request and on July 6, 2021, Judge Pelios issued a six-month order of inactivity.

Judge Pelios held telephone prehearing conferences with the parties on January 6, and February 7, 2022, following which Altisource moved to consolidate this matter with a similar matter, OAL Dkt. No. ECE 02467-21. Judge Pelios denied the motion for consolidation by order, dated July 7, 2022.

On March 1, 2023, this matter was reassigned to me. On June 12, 2023, the parties proposed, and I approved a briefing schedule for cross-motions for summary decision.

On August 7, 2023, Altisource filed a motion for summary decision in their favor, seeking a finding that they are not liable for the violations of the Acts and Regulations alleged in the AONOCAPA and dismissing the NJDEP's assessment of a civil administrative penalty of \$20,000. On August 30, 2023, the NJDEP submitted a brief in opposition to the motion for summary decision and moved for summary decision in its favor.³ Altisource filed a reply brief on September 13, 2023. Following an inquiry from my chambers after the September 22, 2023, reply date, NJDEP stated that it would not reply, and the motion is now ripe for determination.

FACTUAL DISCUSSION AND FINDINGS

The parties stipulated to the following statements and therefore, I **FIND as FACTS:**

1. Respondent Altisource Solutions, Inc. is a corporation located at 2300 Lakeview Parkway, Suite 700, Office 756, Alpharetta, Georgia 30009.

² The Commerce and Industry Association of New Jersey submitted a letter in opposition to the NJDEP's position in this matter. No self-identified member of the joint defense group otherwise participated.

³ Altisource claims that the NJDEP fails to properly request such relief. Br. in Opposition to the NJDEP Cross-Motion (September 13, 2023), at 2-3. Given the order below, it is not necessary to rule on this claim.

2. Altisource Solutions, Inc. is authorized to engage in business in the State of New Jersey as a foreign profit corporation.
3. Affiliates of Altisource Solutions, Inc. provide property preservation and inspection services in the State of New Jersey, among other locations. In so doing, these affiliates, from time to time, contract directly with certain independent contractors to perform a variety of property preservation and inspection services.
4. Property preservation is the process of performing services inside and outside of pre-foreclosure and post-foreclosure properties at the request of loan servicing clients. The requested services include property repairs, inspections, and maintenance.
5. Altisource Solutions, Inc. maintains a network of independent vendors to carry out property preservation services at particular locations. Those vendors may retain subcontractors to perform the necessary services.
6. In 2019, an affiliate of Altisource Solutions, Inc. retained REO Elite 1 LLC (REO) to perform property preservation services at 701 East State Street, Trenton, NJ 08609 (701 E. State St.). REO retained a subcontractor, whose identity was unknown to Altisource Solutions, Inc., to perform the services. An individual named Ebase Egbe (Egbe) allegedly performed the services using a U-Haul truck bearing (Arizona) license plate AE92248.
7. On or about March 21, 2019, Egbe was interviewed by representatives of the NJDEP and stated that he held a solid waste transporter self-generator registration, with an associated registration decal bearing number 105318, which did not expire until June 30, 2019. Mr. Egbe reportedly advised the NJDEP representatives that he was not utilizing the truck associated with that decal because it was not large enough for the work.
8. In 2019, an affiliate of Altisource Solutions, Inc. retained ProCraft Design

& Construction Inc. (ProCraft) to perform property preservation services at 65 Carroll Street, Trenton, NJ 08609 (65 Carroll St.). ProCraft retained a subcontractor, whose identity was unknown to Altisource Solutions, Inc., to perform the services. An entity known as A&S Preservation, LLC allegedly performed the services at 65 Carroll St. on or about August 8, 2019.

Based on the documents filed by the parties in support of their motions, I **FIND** the following additional background **FACTS**:

1. On September 27, 2019, NJDEP issued the AONOCAPA charging respondents with violating the SW Management Act and its regulations, specifically N.J.A.C. 7:26-3.2(a)(1), and N.J.A.C. 7:26-16.3(a), for engaging “in the collection, transportation, treatment, storage, transfer, or disposal of solid waste as. . . a prime contractor without first obtaining an [A-901 license]” and without filing a disclosure statement by hiring Egbe as a subcontractor to collect, transport and dispose of solid waste on March 21, 2019, from 701 E. State St., in a truck which was not duly registered.
2. In the AONOCAPA, NJDEP also charged respondents with violating N.J.A.C. 7:26-16.3(a), for “brokering the collection, transportation, or disposal of solid waste” in New Jersey without an A-901 license, “on August 8, 2019, when it hired A&S Preservation LLC to remove debris at 65 Carroll St.[.]”
3. In the AONOCAPA, NJDEP also charged respondents with violating the SW Control Act and its regulations, specifically N.J.A.C. 7:26H-1.6(a), for engaging “in the business of solid waste collection or solid waste disposal as defined by N.J.S.A. 48:13A-3” without a certificate of public convenience and necessity when they subcontracted the collection, transport, and disposal of solid waste from 701 E. State St., on March 21, 2019, and when they hired A&S Preservation LLC to “remove debris from 65 Carroll St.,” on August 8, 2019.
4. In 2019, the term “broker” was defined in the SW Management Act regulations as follows:

"Broker" means any person, not registered with the Department, who for compensation (e.g., a commission or fee) arranges for the transportation or disposal of solid waste or hazardous waste, other than waste generated by that person.

[N.J.A.C. 7:26-16.2.]

5. In 2019, that portion of the SW Management Act referred to as the "A-901 Law,"⁴ was amended to include the following definition of "broker," effective January 21, 2020:

"Broker" means a person who for direct or indirect compensation arranges agreement between a business concern and its customers for the collection, transportation, treatment, storage, processing, transfer or disposal of solid waste or hazardous waste, or the provision of soil and fill recycling services.

[L. 2019, c. 397, § 3, found at N.J.S.A. 13:1E-127(n).]

6. The following explanation was included in the report of the New Jersey Assembly Appropriations Committee on the proposed 2019 amendments to the A-901 Law (Senate Bill No. 1683/Assembly Bill No. 4267):

This bill amends existing law to expand the requirement for background checks to a broader range of persons involved in the solid waste industry, such as sales persons, consultants, and brokers.

[Assembly Appropriations Committee Statement to Senate, No. 1683 (December 12, 2019).]

7. On or before June 24, 2019, Altisource Solutions, Inc. filed a registration statement with the New Jersey Department of State, Division of Commercial Recording, on which Shepro is listed as a director and his address is given as Luxembourg City.

⁴ N.J.S.A. 13:1E-126 to -135.

POSITIONS OF THE PARTIES

The issues for resolution here are whether the undisputed facts prove that on two separate occasions at two locations in Trenton, New Jersey, Altisource⁵ was engaged “in the collection, transportation, treatment, storage, transfer, or disposal of solid waste” as (1) a prime contractor or subcontractor, and/or (2) directly or as a broker, as those terms are defined in the statutes and regulations quoted below.

"[P]rime contractor" means any person who enters into an oral or written agreement with a generator to store, collect, process, transfer, treat, or dispose of solid waste in this State through the use, control or possession of any solid waste transport unit.

"[S]ubcontractor" means any person who engages in the storage, collection, processing, transfer, treatment, or disposal of solid waste in this State through the use, control or possession of any solid waste vehicle, pursuant to an oral or written agreement entered into with a prime contractor for the performance of all or part of the prime contract.

[N.J.A.C. 7:26-3.2(a)(1)(i), (ii).]

“Engaged in the business of solid waste” means obligating oneself, through a contract or some other means, to provide collection, transportation, treatment, storage or disposal of solid waste in the State of New Jersey, including employment of a licensed hauler, including a subsidiary, to do the actual collections, transportation, treatment, storage or disposal.

[N.J.A.C. 7:26H-1.4.]

⁵ While the parties agree that affiliates of Altisource provide the actual services and contract with independent vendors for some of these services, very little information is offered by Altisource about these affiliates, including their names. Further, Altisource stipulated that Altisource Solutions, Inc. is the entity authorized to do business in New Jersey and is the entity that maintains the “network of independent vendors” from which the affiliates choose vendors to conduct preservation services. Altisource offers no information regarding the agreements (whether written contracts or verbal agreements) between Altisource Solutions, Inc. (or any affiliate) and the owners of the subject properties. For the purposes of this initial decision, there is no reason to distinguish between Altisource and its affiliates.

“Broker” means a person who for direct or indirect compensation arranges agreement between a business concern and its customers for the collection, transportation, treatment, storage, processing, transfer or disposal of solid waste or hazardous waste, or the provision of soil and fill recycling services.

[N.J.S.A. 13:1E-127(n).]

"Broker" means any person, not registered with the Department, who for compensation (e.g., a commission or fee) arranges for the transportation or disposal of solid waste or hazardous waste, other than waste generated by that person.

[N.J.A.C. 7:26-16.2 (emphasis added).]

Altisource contends that they are a “corporate support entity that employs personnel in the United States who assist with the provision of property preservation and inspection services, but Altisource does not perform [the] property preservation services.” Br. in Support of Respondents’ Motion for Summary Decision (Respondents’ Br.) (August 7, 2023), at 3. Further, Altisource does not directly contract with the vendors who perform the services; “affiliates of Altisource contract with vendors [and] these vendors often retain third-party subcontractors to perform the actual services.” Id. at 4. Altisource cannot be described as a prime contractor, subcontractor, or broker as those terms are defined in the applicable regulations. Further, Altisource did not engage in the business of solid waste and were therefore not subject to the licensing requirements of the SW Management Act and/or the SW Control Act.

In its motion for summary decision, the NJDEP responds that Altisource was “engaged in the business of solid waste” by “acting as a prime contractor”⁶ in connection with the work done at 701 E. State St. Br. of Petitioner in Response to Motion for Summary Decision by Respondents and Cross Motion for Summary Decision by Petitioner (Petitioner’s Br.) (August 9, 2023), at 6. NJDEP discounts Altisource’s argument that their affiliate contracted with REO

⁶ Altisource notes that while the AONOCAPA charges them with acting as a subcontractor in connection with hiring Egbe at 701 E. State Street, the NJDEP does not respond to Altisource’s argument that it could not have acted as subcontractor. Br. in Opposition to the NJDEP Cross-Motion and in Further Support of Respondents’ Motion for Summary Decision (September 13, 2023) (Reply Br.), at 11-12. The NJDEP cites to no evidence that Altisource “used, possessed or controlled” a solid waste vehicle, necessary to prove that Altisource acted as a subcontractor.

because of the failure of Altisource to name this affiliate or to provide documentary proof of the affiliate contract. Ibid. Further, the NJDEP cites documents that establish Altisource's connection to the work.

The NJDEP also claims Altisource was engaged in the business of solid waste by their action in brokering or "contracting with an outside business to perform a clean out" at 65 Carroll St. Petitioner's Br. at 10. By hiring ProCraft to perform the clean out service, Altisource brokered "the collection, transportation or disposal of solid waste without a license[.]" Ibid. "Altisource is not authorized to broker clean out services . . . without an A-901 license" and a certificate of public convenience and necessity. Id. at 11. Even though Altisource does not perform the cleanout services itself, it "obligates" itself to provide those services with each property preservation contract.

In response, Altisource contends that they did not hire the actual party that removed the debris from 65 Carroll St., the independent vendor hired the disposal company. And, even if the facts supported characterizing Altisource as a broker, in 2019, brokers were not required to be licensed under the A-901 Law or the SW Control Act. Reply Br. at 13-14.

Finally, Altisource contends that Shepro was not a director of Altisource and therefore, is not a proper party. See Certification of Abigail Schuettinger, Altisource Solutions, Inc. Director of Operational Excellence for Field Services (August 7, 2023), ¶ 3. Further, Shepro contends that he is a resident of Luxembourg and as such, must be served pursuant to the requirements of N.J.A.C. 1:1-7(d), R. 4:4-44, and the Hauge Convention. The NJDEP disagrees as Altisource named Shepro as a director when it registered with the New Jersey Secretary of State, Division of Commercial Recording, prior to the alleged incidents. Petitioner's Br. at 15-16; Certification of Robert Gomez (August 30, 2023) (Gomez Cert.), Ex. C.

LEGAL ANALYSIS AND CONCLUSIONS

Standard for Summary Decision

Summary decision is the well-recognized administrative counterpart to summary judgement, a procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute. By applying the applicable law and standard of proof to the undisputed facts, a decision may be reached in a case without the necessity of a hearing at which evidence is presented and testimony taken. N.J.A.C. 1:1-12.5.

The regulations provide that the decision sought by the movant “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b).

The standards for determining motions for summary judgment are found in Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 74–75 (1954), and later in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). A motion for summary decision may only be granted where the moving party sustains the burden of proving “the absence of a genuine issue of material fact,” and all inferences of doubt are drawn against the movant. Judson, 17 N.J. at 74-75. Nevertheless, if the opposing party offers only facts which are immaterial or insubstantial in nature, these circumstances should not defeat a motion for summary judgment. Id. at 75. Although the pleadings may raise a factual issue, the question before the judge is whether those facts are “material” to the legal issues to be tried.

While the judge should not weigh the truth of the evidence or resolve factual disputes at this early stage of the proceedings, the trial court should not hesitate to grant summary judgement when “the evidence . . . is so one-sided that one party must prevail as a matter of law.” Brill, 142 N.J. at 541 [quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)]. In reviewing the proffered evidence to determine the motion, the judge must be guided by the applicable evidentiary standard of proof that would apply at trial on the merits.

The Applicable Statute and Regulations

The collection, transportation and disposal of solid waste is regulated by the SW Management Act, which authorizes the NJDEP to regulate all solid waste facilities and register all persons engaged in the collection and/or disposal of solid waste. N.J.S.A. 13:1E-2(b)(6), -4(a). The SW Management Act is a strict liability statute; only the proscribed act must be proven to establish liability. State v. Lewis, 215 N.J. Super. 564, 573 (App. Div. 1987) (citing Dept. of Env't'l. Prot. v. Harris, 214 N.J. Super. 140 (App. Div. 1986)). The civil penalty provision of the SW Management Act “does not stipulate that either willfulness or intention to violate must be proven before a penalty is imposed.” Lewis, 215 N.J. Super. at 573 (quoting Harris, 214 N.J. Super. at 147).

The A-901 statute, N.J.S.A. 13:1E-126 to -135, and its regulations, N.J.A.C. 7:26H-16.1 et seq., impose a licensing requirement on the commercial waste industry in New Jersey. In order to receive an A-901 license, an individual or business must disclose extensive information to the NJDEP and submit to background investigations by the Attorney General to demonstrate their fitness, integrity and expertise. N.J.S.A. 13:1E-126, -133, and -134.

In this case, the NJDEP alleges that Altisource has violated the SW Management Act, the SW Control Act, and the following two provisions of the Regulations, in pertinent part:

No person shall engage in the business of solid waste collection or solid waste disposal as defined by N.J.S.A. 48:13A-3 unless such person is the holder of a certificate of public convenience and necessity issued by the Department.

[N.J.A.C. 7:26H-1.6(a).]

No person shall engage or continue to engage in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste in this State without a license, or without complying with all the provisions of N.J.S.A. 13:1E-126 et seq., and with the provisions of this subchapter and of N.J.A.C. 7:26-16A [A-901 licensing requirements].

[N.J.A.C. 7:26-16.3(a).]

It is undisputed that Altisource indirectly hired two companies to “perform cleanout and removal services,” which is another way of saying to collect, transport and dispose of solid waste, at 701 E. State Street and at 65 Carroll Street. It is undisputed that neither Altisource nor their affiliates held an A-901 license or a certificate of public convenience and necessity. The parties stipulated that Altisource is responsible for a variety of property restoration activities but does not perform the actual field services; all services are performed by third parties which are hired by Altisource or its affiliates.

Altisource argues for the dispositive application of my recent decision finding that a property preservation company which hired a third party to collect, transport and dispose of solid waste did not engage in the business of solid waste, did not act as a broker of solid waste services, and was not required – at the time of the alleged violation – to hold an A-901 license or a certificate of public convenience and necessity. Reply Br. at 3-4 (citing New Jersey Dept. of Env’tl. Prot. v. Cyprexx Services, LLC, et al., OAL Dkt. No. ECE 02467-21 (September 7, 2023) (Final Decision pending).) There are significant similarities in the undisputed, stipulated facts of the Cyprexx case and this one, including:

1. Cyprexx and Altisource are both property preservation companies.
2. The description of the “property preservation services” offered by both companies is almost identical.
3. Both companies maintain a network of independent vendors to carry out property preservation services. Neither Altisource nor Cyprexx directly handle on-site activities, including the collection, transport, or disposal of solid waste.
4. There is no evidence that either company owns or operates a solid waste collection and/or disposal facility and/or solid waste transportation equipment.
5. The NJDEP charged both companies with violations of the SW Management Act and the SW Control Act by engaging in the business of solid waste as a broker

without first obtaining an A-901 license and a certificate of public convenience and necessity.

The main difference in the two cases is that the NJDEP charged Altisource with acting as a prime contractor and/or subcontractor with respect to the work performed at 701 E. State Street. Therefore, the first inquiry is whether Altisource or an affiliate of Altisource violated the applicable laws and regulations by virtue of acting as a prime contractor and/or subcontractor.

Altisource Did Not Act as a Prime Contractor

It is undisputed that the owner of 701 E. State St. hired Altisource or an affiliate of Altisource to conduct property preservation services. The affiliate hired REO to conduct on-site property preservation services and REO hired Egbe, who – at the least – collected and transported solid waste from the building on March 21, 2019. By this series of transactions, the NJDEP claims Altisource engaged in the business of solid waste as a prime contractor.

Neither party cites cases in support of their position on this issue, but a review of the regulatory definition is sufficient. To be a prime contractor, Altisource or its affiliate must have entered into a contract with the generator of the solid waste to handle the waste using the prime contractor's equipment. See N.J.A.C. 7:26-3.2(a)(1)(i) (emphasis added). Even if the generator of the solid waste is determined to be the owner of the building at 701 E. State Street⁷, which did hire Altisource (or the unnamed affiliate) to perform property preservation services, those services did not include handling waste using Altisource's equipment. As is explained in greater detail below, there is no evidence that Altisource or an affiliate of Altisource is a solid waste treatment or disposal service or owns the equipment or facilities necessary to conduct solid waste treatment or disposal services. NJDEP finds evidence of Altisource acting as a prime contractor in (1) a work order issued to REO, the vendor who contracted with Egbe for "clean out services"; and (2) a sign in the window stating that the "property is under the supervision of Altisource." Petitioner's

⁷ NJDEP does not allege that the owner of the building, Wells Fargo Bank, N.A., generated the waste. While we can surmise that waste is generated as a building is "repaired and maintained," the generator is not identified by the NJDEP in the AONOCAPA or its brief. See Br. of Respondent, at 8-9.

Br. at 7. That is not enough to satisfy the clear requirements of the regulatory definition. I **CONCLUDE** that neither Altisource nor the affiliate who contracted with REO engaged in the business of solid waste as a prime contractor at 701 E. State St.⁸

Altisource Did Not Act as a Broker

It is undisputed that the owner or operator of 65 Carroll St. hired an affiliate of Altisource to conduct property preservation services. The affiliate hired ProCraft to conduct on-site property preservation services and ProCraft hired A&S Preservation LLC, who – at the least – collected and transported solid waste from the building on August 8, 2019. Because of this series of transactions, the NJDEP charged Altisource with violating the SW Management Act by engaging “in the collection, transportation, treatment, storage, transfer or disposal of solid waste” by “brokering the collection, transportation, and disposal of solid waste” without an A-901 license. The statutory definition of broker and the obligations of a broker with respect to licensing changed after the AONOCAPA was issued.

“Generally, the law favors prospective, rather than retroactive, application of new legislation unless a recognized exception applies.” Strategic Env'tl. Partners, LLC v. New Jersey Dep't of Env'tl. Prot., 438 N.J. Super. 125, 140 (App. Div. 2014) (citing James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 556, 563 (2014)). In James, the Supreme Court applied a “two-part test” to determine if a statute could be applied retroactively: “whether the Legislature intended to give the statute retroactive application [and] whether retroactive application will result in either an unconstitutional interference with vested rights or a manifest injustice.” 216 N.J. at 563 (citations omitted); see also Strategic Partners, 438 N.J. Super. at 140.

There are three circumstances in which a statute should be applied retroactively:

⁸ For this reason and those stated in footnote 4, above, it is unnecessary to parse the arguments made by the parties regarding whether Altisource may properly avoid responsibility as a prime contractor or a broker by placing an affiliate and then an independent vendor between the company and the vendor who ultimately performed the waste disposal services.

- (1) When the Legislature expresses its intent that the law apply retroactively, either expressly or implicitly;
- (2) when an amendment is curative; or
- (3) when the expectations of the parties so warrant.

[James, 216 N.J. at 563 (citations omitted).]

The NJDEP points to no instances in which the new definition of broker was applied retroactively and there is no language in the statute directing retroactive application. The new law is not simply curative, it expanded the categories of persons subject to background checks. The NJDEP contends that the amendments to the A-901 statute clarified that a “broker” is someone who is paid for arranging disposal services by a disposal company for the broker’s customers. Petitioner’s Br. at 13-14. A close reading of the two versions of the “broker” definition leads to the conclusion that the actual change is the omission of the phrase “who are not regulated by the Department” in the latter. Both versions define a broker as someone who is paid for arranging solid waste services for a third party. Further, the Legislative History, quoted above, states that the 2019 amendment did not clarify the definition of a broker but added brokers to the entities which are required to obtain A-901 licenses under the SW Management Act. Finally, there is no evidence that the parties anticipated retroactive application. Accordingly, I **CONCLUDE** that the applicable statute and regulations are those that were in effect in August 2019, and that were cited by the NJDEP when the AONOCAPA was issued in September 2019.

Liability of a Broker for Compliance with the Licensing Requirements of the SW Management Act and the SW Control Act in 2019

Respondents are charged with engaging in the business of solid waste without a license through their actions in brokering the services of A&S Preservation Services. In 2019, brokering is not specifically included in the list of covered activities and the definition of broker strongly implies that registration is not required:

“Broker” means any person, not registered with the Department, who for compensation (e.g., a commission or fee) arranges for the transportation or disposal of solid waste

or hazardous waste, other than waste generated by that person.

[N.J.A.C. 7:26-16.2 (emphasis added).]

However, another section of the regulations lists the persons exempt from the licensing and disclosure requirements and a “broker” is not included. N.J.A.C. 7:26-16.3(d) (last amended December 1984). In an unreported decision, the Appellate Division notes the ambiguity raised by the two sections and recommends that the Department resolve the ambiguity. Dept. of Env’tl. Prot. v. Amco Resource Recovery, Inc., et al., Dkt. No. A-5926-89T3, fn. 1 (App Div. June 4, 1991) (noting that trial judge observed that as written, N.J.A.C. 7-26-16.2, suggests brokers are exempt).

There are no published cases finding a broker, as defined prior to 2020,⁹ is engaged in the solid waste business as a result of arranging for transportation or disposal of solid waste. Nor are there reported cases in which a company offering property preservation services like those of Altisource has been deemed a broker or has been deemed to be engaged in the business of solid waste.

Respondents cite an unpublished, nonprecedential decision of the Appellate Division in which a remediation company hired to cleanup, restore, and maintain a hazardous waste disposal site and which subcontracted the transportation for disposal of the waste was deemed not to be a solid waste transporter and therefore, not subject to the licensing requirements for solid waste transporters. In re the Matter of the Bid for Removal and Disposal of PCB Contaminated Materials at the Burnt Fly Bog-Uplands Site, Contract X-25867, 1993 N.J. Super. Lexis 10, at *3 (App. Div., April 21, 1993). In concluding that the remediation company was not a solid waste transporter, the court found that “the non-transportation work” was “substantial,” and described numerous activities performed by the remediation company which were unrelated to moving the hazardous waste. Ibid.

⁹ As the Legislative History makes clear, brokers are now required to obtain A-901 licenses. Altisource will likely continue to argue that it is not a broker, but I make no findings with respect to the activities of Altisource or its affiliates after the AONOCAPA was issued.

In contrast, a company could not avoid liability simply by holding itself out as a broker and was found to have “placed itself directly in the middle of the removal process,” and was therefore liable under the SW Management Act and the SW Control Act for engaging in the business of solid waste without a license. Dept. of Env’tl. Prot. v. Adamo Container Servs., et al., OAL Dkt. No. ESW 08241-00S, Initial Decision, (October 4, 2001), adopted, Comm’r. (November 28, 2001). While “[a] broker is generally an intermediary,” Adamo exercised control over all aspects of the process, including seeking customers who generated waste, setting prices for disposal containers, negotiating with collectors and arranging for delivery and removal of containers at customer sites, billing customers and even suing for non-payment by customers. Id. at *4.

Similarly, in another unreported opinion, a company which argued it simply brokered transportation or disposal of solid waste was found to have “exercised significant control over solid waste collection” and was subject to the licensing requirements. NJDEP v. Amco Resource Recovery, Inc., et al., Dkt. No. 5926-89T3, *3 (June 4, 1991). Amco “contracted with several retail chains to remove waste from work sites,” chose the subcontractors who handled collection, “supervised all aspects of the collection, provided . . . containers, handled customer complaints and negotiated the contract prices directly with the customers.” Id. at *2-3.

NJDEP argues that Altisource “handles customer complaints and clearly supervises all aspects of the cleanout and anything that happens at the property per their posted signage[.]” Petitioner’s Br. at 14. The parties do not appear to dispute that an affiliate of Altisource was paid by the owners of 65 Carroll St. to supervise a multitude of services related to cleaning up and restoring the property. Not all services provided during a “property preservation” generate waste and most of those services are unrelated to the collection and disposal of solid waste. Based on the undisputed facts, I **CONCLUDE** that Altisource did not engage in the business of solid waste by virtue of its property preservation services.

Altisource, or its affiliate hired ProCraft, which hired A&S Preservation LLC to collect, transport and dispose of the waste generated at the Site. There is no evidence as to how or by whom A&S Preservation LLC was paid. There is no evidence that once Altisource retained ProCraft, it asserted any control over the way ProCraft performed its job. On the

other hand, there is no evidence that Altisource or its affiliate acted as a broker, was merely hired to find a vendor to handle solid waste transport and disposal, was paid a fee by the owner of 65 Carroll St., and then stepped aside. I **CONCLUDE** that in July 2019, Altisource did not engage in the business of solid waste by brokering the collection, transport and disposal of solid waste.¹⁰ For that reason, Altisource was not required to hold an A-901 license or a certificate of public convenience and necessity.

The Legislature, as urged by the courts and the Attorney General's Office, amended the A-901 Law to ensure that as of January 2020, companies which directly or indirectly arrange for collection, transportation and disposal of solid waste must be licensed. I agree with the NJDEP that because of that amendment, brokers must now be licensed, and the guidance of the Appellate Division in Burnt Fly Bog-Uplands may no longer apply. However, as of 2019, when the AONOCAPA was issued, I **CONCLUDE** that the preponderance of the credible, undisputed evidence does not prove that respondents violated the SW Management Act and the SW Control Act.

William Shepro is a Proper Party

In the AONOCAPA, Shepro is named by the NJDEP as a director of Altisource and is alleged to be jointly and severally liable. Altisource contends that Shepro is not, and has never been, a director of Altisource and supports this argument with Schuettinger's certification. Altisource does not, however, address the inconsistency between Schuettinger's statements and the registration papers filed by Altisource with the New Jersey Secretary of State in which Shepro is included in the list of directors or, for that matter, the Altisource web page from May 2019, that describes Shepro as "Chairman of the Board of Directors and Chief Executive Officer." Gomez Cert., Ex. D. The failure to respond is strong evidence that regardless of Shepro's actual role within the company, Altisource gave information to the State of New Jersey sufficient for an agency of the State to conclude that Shepro was a director and therefore, could be held jointly and severally liable for any violations by the company of the SW Management Act and the

¹⁰ Even if Altisource's only connection to 65 Carroll St. was to serve as a broker for disposal services, it is questionable whether the law in effect in August 2019, required brokers to be licensed, as discussed above.

SW Control Act. I **CONCLUDE** that Shepro was properly named as a director of Altisource Solutions, Inc.

The remaining question is whether personal service of the AONOCAPA was required for Shepro, or if service to Altisource Solutions, Inc., at the address provided by the company in its registration documents, was sufficient.

Service of process in administrative proceedings is governed by the Administrative Procedure Act rules, specifically N.J.A.C. 1:1-7, while the New Jersey Rules of Court apply only “when personal service is required.” N.J.A.C. 1:1-7(d). “[T]he Legislature may provide for service by administrative agencies in any manner that meets fundamental procedural due process, namely ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action’.” Shannon v. Academy Lines, Inc., 346 N.J. Super. 191, 196 (App. Div. 2001) (quoting Mullane v. Cent. Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950)). Neither party cited case law in support of their position; the following cases found service of process to be sufficient if it was reasonably calculated to reach the defendant and notice was actually received.

In James v. City of Jersey City, the plaintiff mailed process to the defendant’s employer, who then forwarded the summons and complaint to defendant, who gave the summons to his attorney. James v. City of Jersey City, 1999 U.S. Dist. LEXIS 15702 (D.N.J. 1999) (applying Federal Rules of Civil Procedure). Even though the employer was not an agent of the defendant for service of process, the court found that because notice was received, the error was “purely technical” and due process was satisfied. Id. at *11. The purpose of the service rules – to ensure the defendant receives the complaint and has an opportunity to defend himself – was met. Id. at *10.

Similarly, where a corporate officer was named individually and served by certified mail to the corporate office on behalf of himself and the corporation, the court rejected his argument that he never received service as an individual. Peju Province Winery v. Eibert, 2007 N.J. Super. Unpub. LEXIS 2763 (App. Div. 2007). The service rules, including service by mail, should be “liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received.” Id. at *10 (citations omitted).

The defendant received actual notice of the complaint, signing for both his copy and that addressed to the corporation. He had notice of the pending proceeding, the request to enter a default against him, and the assessment of court costs. Service by mail was “reasonably calculated to inform the defendant of the litigation against him personally, and he did in fact receive the notice,” therefore, he was not denied due process. Id. at *11-12; see also Rosa v. Araujo, 260 N.J. Super. 458 (App. Div. 1992) (proof that due process was satisfied -- even though the complaint was served on the wrong person -- was that the defendant obtained a copy of the complaint, gave it to his attorney timely, and requested and was granted an extension to file an answer).

Here, any error by the NJDEP in serving Shepro was purely technical. Neither party described the manner of service, though it appears from the face of the AONOCAPA that both respondents were served by certified mail. In any event, though Shepro neither designated someone at Altisource Solutions, Inc., as a registered agent to receive process for him nor was personally served, Shepro did receive a copy of the AONOCAPA. He has been represented by the same counsel as his employer and -- as is detailed in the procedural history, above -- has had plenty of opportunity to mount an adequate defense. I **CONCLUDE** that Shepro is a proper party and received adequate notice of the complaint against him.

ORDER

It is **ORDERED** that the application for summary decision by respondents Altisource Solutions LLC and William Shepro that they are not liable for the violations alleged in the AONOCAPA is **GRANTED** and the cross-motion of petitioner NJDEP for summary decision in its favor is **DENIED**.

I **ORDER** that the application for summary decision by respondent William Shepro that he is not a proper party and/or was not properly served with the AONOCAPA is **DENIED**.

Finally, I **ORDER** that the Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the NJDEP against Altisource and Shepro be **DISMISSED WITH PREJUDICE**.

I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**, who by law is authorized to make the final decision in this matter. If the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** does not adopt, modify or reject this order within forty-five days and unless such time limit is otherwise extended, this initial decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this order was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 6, 2023

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/kl/lam