



Republic Services Pounds Small San Angelo Entrepreneurs with its Legal Hammer

J-Bar Solutions roll-off trash bins were legislated out of the city limits by the US 5th Circuit Court of Appeals. (J-bar Solutions)

By Joe Hyde | Feb. 2, 2017 9:59 am

SAN ANGELO, TX — The first casualty of the City of San Angelo's exclusive contract with Republic Services wasn't Texas Disposal Systems, a large, statewide waste management company with 600 employees.



J-Bar Solutions roll-off trash bins were legislated out of the city limits by the US 5th Circuit Court of Appeals. (J-bar Solutions)

Headed by Oprah Winfrey's lawyer, Chip Babcock of Jackson Walker in Dallas, Republic's legal hammer instead is pounding two San Angelo entrepreneurs out of business.

The entrepreneurs who attracted the attention of Republic's attorneys worked extremely hard to outsell Republic and TDS combined. The upstarts took control of the small but lucrative temporary trash business in San Angelo that uses "roll-off" containers at construction sites.

Justin Jenkins and John Duke Hudson formed a company known as J-Bar Solutions when they discovered that building construction contractors



Above: A row of J-Bar's popular 18-cu. yd. roll-off trash bins. (J-Bar Solutions)

preferred the smaller 18-yard 7x12' roll-off containers. It had a smaller footprint than Republic Services or TDS's large and long bins. Jenkins and Hudson ingrained themselves with the San Angelo Home Builders' Association and soon found about 40 locations citywide to service with their temporary trash hauling service.

The business started as a side gig for the two men, and they concentrated outside the city for customers originally. Starting with just six bins, a trailer and a pickup, the partners found the business lucrative for a part-time endeavor.

Then, Federal Judge Sam Cummings ruled in Sept. 2015 in favor of Texas Disposal Systems. Cummings ruled that the City of San Angelo could not give Republic Services exclusivity for temporary trash pickup, and TDS or anyone else is free to compete for the business of area building construction firms.

The law in question was Texas Health and Safety Code § 364.034(h), as modified in 2007 to read, "This section [on allowing public entities to award exclusive trash hauling contracts] does not apply to a private entity that contracts to provide temporary solid waste disposal services to a construction project."

Judge Cummings confirmed that temporary solid waste disposal was an open market, unencumbered by the City's exclusive trash contract with Republic Services.

With this, the J-Bar partners saw opportunity.

"We didn't work inside the city until Judge Cummings ruled we could," Jenkins said.

Once operating inside the city, business boomed, and Jenkins said he quit his six-figure sales job to tend to J-Bar full time.

"Our entire business plan assumes the 2007 law that allows an open market is correct and that a Judge Cummings ruled it so," Jenkins said.

Until yesterday, J-Bar served the "A-List" of new construction projects in the city, like the new Cane's Chicken being built on Knickerbocker.

Entrepreneurial success did not last long, however.

On Dec. 15 of last year in New Orleans, Republic Services' lawyers won a decision by the US 5th Circuit of Appeals that reversed Judge Cummings ruling. The appeals court said the language of the Texas Statute is vague, and lawmakers who wrote the law did not intend to deny municipalities the ability to hand exclusivity deals to trash haulers like Republic.

On Jan. 17, Judge Cummings, after receiving the reversal from the appeals court, issued a summary judgment granting declaratory relief to Republic Services in San Angelo. J-Bar and Texas Disposal had to shut down their construction trash business.

J-Bar has 54 dumpsters in its San Angelo "fleet." Jenkins said in addition to the 40 sites inside the city, the other 14 are spread all over west Texas in a 200-mile radius, including in Midland, Big Spring, and as far south as Sonora and Fort Stockton.

The company also has an additional 24 dumpsters in the San Antonio market. Jenkins said the Alamo City is effectively an open market for temporary roll-off trash.

Jenkins said Republic Services area manager Ray Grothaus called him on Jan. 9 to nicely ask him to shut his business inside the city down. Jenkins said the two tried to work out an arrangement. Jenkins said he was hopeful at first, but soon it became apparent that the only option being offered was a longer timeframe to shut down before Republic sued him like they did TDS. But to get more time, Republic wanted Jenkins to introduce Republic to his clients.

“I don’t have the money to fight Republic in court,” he said.

Builder Mike Biggerstaff is livid about the loss of a free market in roll-off construction trash in San Angelo. He owns half of Fireside Partners, the company renovating the old Roosevelt Hotel in downtown San Angelo.

He began the demolition of the inside of the structure in mid-November. He said he obtained quotes from TDS, Republic, and J-Bar. J-Bar didn’t have the large bins needed and basically passed on the deal.

Only TDS came forward and proposed a workable solution. Inside the old Roosevelt are tons and tons of metal like old cast iron pipes, copper wiring, lathing, re-bar, conduit, and panel boxes. In all, Biggerstaff estimated before the clean-out began he would fill 55 40-foot bins with recyclable metal.



Above: A TDS temporary trash roll-off bin seen at the old Roosevelt Hotel last month. (LIVE! Photo/Joe Hyde)

TDS offered to supply a recycling bin through its affiliated company Acme Iron and Metal, and a second bin from TDS for trash. Biggerstaff said Acme offered to pay him for the scrap metal and the proceeds are significantly subsidizing the cost of the frequent trash hauling from the old hotel.

“When I estimated the cost of the trash hauling, I was under the assumption I would be able to use the TDS and Acme service. Now, I don’t know how much it’s going to cost me,” he said. He estimates there are approximately 12 40-foot bins of recyclable metal left to haul off.

Now, instead of being recycled, the remainder of the scrap metal may have to be dumped into the landfill, Biggerstaff said.

The haul rates will be 50 percent higher for J-Bar’s former clients. Until yesterday, Jenkins said his smaller bins were priced at \$95 per haul and \$3 per day rental. He said J-Bar didn’t mark up the dump fees of about \$38 per ton.

Republic Services received the approval to provide the smaller bins like J-Bar was using at the last city council meeting. The city council will allow Republic to charge \$149.21 to haul them, plus a fuel charge and environmental recovery fee, Jenkins said. Delivery rates for J-Bar were \$75; City Council approved Republic’s higher delivery charge of \$81.72 Jan. 17. Republic charges more for daily rental, too, at \$3.27 per day versus J-Bar’s flat \$3 per day. Republic’s bins are smaller, too, at only 15 cubic yards.

Roll-Off Collections

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Industrial charge over 10 tons (per ton)	-	-	\$50.00	\$51.45	\$52.94	\$54.48	\$56.06	\$57.68	\$59.36	\$61.08	\$62.85
cubic yard container											
Haul rate	-	-	\$145.00	\$149.21	\$153.53	\$157.98	\$162.57	\$167.28	\$172.13	\$177.12	\$182.26
Delivery	-	-	\$79.41	\$81.72	\$84.09	\$86.52	\$89.03	\$91.62	\$94.27	\$97.01	\$99.82
Relocate	-	-	\$79.41	\$81.72	\$84.09	\$86.52	\$89.03	\$91.62	\$94.27	\$97.01	\$99.82
Rolloff dry run (Customer called but container not ready for haul)	-	-	\$79.41	\$81.72	\$84.09	\$86.52	\$89.03	\$91.62	\$94.27	\$97.01	\$99.82
Disposal	Current tipping fee										
Daily rental	-	-	\$3.18	\$3.27	\$3.36	\$3.46	\$3.56	\$3.66	\$3.77	\$3.88	\$3.99
Installation/Maintenance	-	-	-	-	-	-	-	-	-	-	-
cubic yard container											

Above: San Angelo City Council-approved roll-off rates for construction sites that will be charged by Republic Services for smaller 15-cu-yd bins. (Screenshot, Council Agenda for Jan. 17, 2017)

That Republic is shutting down J-Bar with a threat of legal action, and then borrowing J-Bar's concept for builders of using the smaller bins, and doing so with city council approval angers Jenkins.

"It's a very tight market to be in, and we had to get a lot of work (clients) to make it work," Jenkins said. "I believe it should be an open market."

J-Bar has informed its customers it is no longer providing roll-off trash hauling in the city and has begun picking up their trash bins. TDS informed their clients their intention to cease temporary trash service within the city limits Jan. 31.

Ironically, one of the TDS customers was the contractor who is remodeling the city auditorium behind city hall where TDS bins were seen frequently. No more, however.