Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION APPLICATION OF GREENWOOD 2, INC., AND THE REGISTRATION RENEWAL APPLICATIONS OF RAINBOW TRANSPORTATION CORPORATION, NICHOLAS J. LLC AND MARKY OG, LLC. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Greenwood 2, Inc. has applied to the New York City Business Integrity Commission (the "Commission") for an exemption from licensing requirements and a registration to operate a trade waste business pursuant to New York City Administrative Code ("Admin. Code") § 16-505(a). Specifically, Greenwood 2 seeks an exemption from the licensing requirements and a registration enabling it to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "C & D." *Id.*

Rainbow Transportation Corp., Nicholas J. LLC, and Marky OG LLC are current registrants who have applied for renewals of their exemptions and registrations. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a).

The four trucking companies are nominally separate New Jersey-based businesses. Contrary to how they appear, all four companies form a single enterprise under the direction of John Farnsworth, as a federal grand jury sitting in the Eastern District of New York found and as he himself has now admitted. See *U.S. v. Farnsworth, et al.*, 11-cr-143 (E.D.N.Y.), Superceding Indictment, March 5, 2012, at ¶¶ 2, 3; John Farnsworth, Transcript of Plea, November 7, 2012 at 6-9 and 17.[1] In addition, the National Labor Relations Board ("NLRB") on August 31, 2010 filed a complaint in which they alleged that all of these companies were operating as single-integrated business enterprise with a common business purpose (commonly referred to as "alter egos and a single employer") and that John Farnsworth was in fact the owner and/or manager of these companies. See NLRB Complaint and Notice of Hearing at ¶ 5 and ¶ 9(a), respectively.[2] It is therefore appropriate that the Commission decide these pending applications together.

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[1] Farnsworth admits controlling Greenwood 2, Rainbow Transport, Nicholas J and other affiliated trucking companies, both directly and indirectly by appointing persons to act as nominees. *Plea* at 6-9, 17-18. Although Marky OG was not named in the indictment, there is ample evidence that it is one of the "affiliated trucking companies" to which the indictment and plea transcript refers. Marky OG is a New Jersey corporation owned by Mark O'Grady, a former employee of Rainbow and the younger brother of one of the other Farnsworth nominees, Toni Thomson, who is also Farnsworth's co-defendant. It operates as a non-union shop from the same premises and gets work by the same means as the other companies controlled by Farnsworth.

[2] Paragraph 5 - "At all material times Greenwood, Rainbow, Nicholas J and Marky have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other and have held themselves out to the public as single-integrated business enterprises with a common business purpose." and Paragraph 9(a) – "At all material

On December 21, 2012, the staff issued and served the Applicants with Notice of the Grounds to Recommend that the applications be denied. The Applicants were granted ten (10) business days to respond, until January 7, 2013. See Rules of the City of New York § 2-08(a). The Applicants did not submit any response. Based on the record as to the Applicants, the Commission now denies the Registration Application of Greenwood 2, Inc., the Renewal Registrations and Registrations of Rainbow Transportation Corp., Nicholas J., LLC and Marky O'G, LLC because the Applicants lack the requisite good character, honesty and integrity based on the following independently sufficient reasons:

A. The applicants have either pleaded guilty to conspiring to convert ERISA benefit fund monies to their own use or are unindicted co-conspirators and have a pending civil or administrative action against them

B. The applicants have failed to provide truthful information in connection with their applications.

Background and Statutory Framework

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. *See e.g., United States v. International Brotherhood of Teamsters (Adelstein)*, 998 F.2d 120 (2d Cir. 1993); *People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al.*, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); *United States v. Mario Gigante et al.*, No. 96 Cr. 466 (S.D.N.Y.); *People v. GNYTW*, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry has also been the subject of significant successful racketeering prosecutions. *See United States v. Paccione*, 949 F.2d 1183, 1186-88 (2d Cir. 1991), *cert. denied*, 505 U.S. 1220 (1992); *United States v. Cafra, et al.*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri, et al.*, No. 94 Cr. 518 (S.D.N.Y.); *United States v. Caccio, et al.*, Nos. 94 Cr. 357,358, 359, 367.

The Commission is charged with, *inter alia*, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42 of 1996, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City.

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times, John Farnsworth has been the owner and/or a manager of Greenwood, Rainbow, Nicholas J and Marky and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act as an agent of Respondent within the meaning of Section 2(13) of the Act". On July 27, 2012 an Order for a stay of the NLRB proceedings was granted by ALJ Steven Fish "until the related criminal proceedings are completed."

Admin. Code § 16-505(a). It is this licensing scheme that continues to be the primary means of ensuring that an industry historically plagued with corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market. However, the licensing scheme is not limited to a mere decision as to whether an applicant has ties to organized crime, since Local Law 42 of 1996 grants the Commission broader discretion to make a determination as to the "good character, honesty and integrity" of applicants. *See Canal Carting, Inc. v. City of New York Business Integrity Commission*, 66 A.D.3d 609, 888 N.Y.S.2d 30 (1st Dep't 2009). Thus, the licensing scheme enables the Commission to fulfill its mission by authorizing it to refuse licensure or registration to an applicant that, *inter alia*, lacks such good character, honesty and integrity. Admin. Code § 16-509(a).

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," commonly known as construction and demolition debris, or "C & D" removal, must apply to the Commission for an exemption from the licensing requirement. Admin. Code § 16-505(a). If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption from the licensing requirement, it issues the applicant a Class 2 registration. *Id*; *see also* Title 17 RCNY § 2-03(d). Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Admin. Code § 16-508(b); *see also Matter of Attonito v. Maldonado*, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dep't 2004) (establishing the Commission's authority to review, investigate and determine applications seeking a Class 2 registration to engage in the removal of "C & D"). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing or registration decision:

> 1. failure by such applicant to provide truthful information in connection with the application;
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> 2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
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> 3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 *et seq.*) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x).

Additionally, the Commission may refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for a license . . . ." *Id.* at § 16- 509(b). The Commission may refuse to issue a license or registration to an applicant when

such applicant was previously issued a license which was revoked or not renewed, or where the applicant "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license." *Id.* at § 16-509(c). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. *Id.* at § 16-509(d).

An applicant for a private carting license (including construction and demolition) has no entitlement to and no property interest in a license or registration and the Commission is vested with broad discretion to grant or deny a license or registration application. *Sanitation & Recycling Industry, Inc.*, 107 F.3d 985, 995 (2d Cir. 1997); *see also Daxor Corp. v. New York Dep't of Health*, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997); Admin. Code § 16-504(a); New York City Charter § 2101(b)(1).

The Applicants

John Farnsworth controlled all of these applicants, in part through the use of nominees who, among other things, presented themselves to the Commission as the sole and actual principals and attempted to conceal Farnsworth's role in their respective companies. John Farnsworth's son, Nicholas Farnsworth is the purported president and sole disclosed principal of Rainbow and Nicholas J. Toni Thompson is the purported president and sole disclosed principal of Greenwood 2.[3] Thompson's younger brother, Mark O'Grady, is the purported president and sole disclosed principal of Marky OG.

Rainbow was initially approved by the Commission to operate in New York City in June 2006. Notably, Rainbow was granted a "conditional" Solid Waste Transporter License by the N.J. Department of Environmental Protection on September 11, 2008, on the condition that John Farnsworth not associate with the business without approval by the Department. See NJ DEC Solid Waste Transporter License.

Nicholas J first applied to the Commission for a registration to operate in New York City in September 2006 and its application was approved in December that same year. Nicholas Farnsworth is purportedly the president and sole principal.

Greenwood 2 was incorporated in New Jersey in 2006 by Farnsworth who transferred ownership to Thomson sometime thereafter – the record is unclear exactly when - for little or no consideration.[4] See Certificate of Incorporation; John Farnsworth Dep. at 23. In June 2007,

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[3] Thompson is also the vice president of Markas Financial, a company owned by Eugene Kasakove which finances Rainbow's operations through a factoring agreement. See Nicholas Farnsworth. Dep. 54:7-13. Jan. 6, 2010. Through her position with Markas, Thompson does bookkeeping for all of the Applicants. See Nicholas Farnsworth Dep. at 32; Mark O'Grady Dep. at 29-30; Toni Thompson Dep. at 21.

[4] Thomson claimed, for example, that Farnsworth transferred his entire ownership interest in the company to her in 2006 for no consideration. See Thomson Dep. at 40-41. However, Farnsworth appears as Greenwood 2's 49 percent owner in 2007 federal and state tax returns provided to the Commission. See Greenwood 2 Application. Moreover, Farnsworth testified that he was President of Greenwood 2 until 2008 when he gave it to Thompson for "nothing." See John Farnsworth Dep. at 24.

John Farnsworth signed a Collective Bargaining Agreement ("CBA") with Local 282 of the International Brotherhood of Teamsters on behalf of Greenwood 2. Greenwood 2 first applied to the Commission for permission to operate on March 26, 2009. Thompson is the sole disclosed principal in the application.

Marky OG was founded in 2004. Mark O'Grady, formerly a part-time mechanic with Rainbow and Toni Thomson's younger brother, is the purported president and sole owner. *See* O'Grady Dep. 23. Marky OG works solely for Rainbow. *See id.* at 26 and 28.

Basis for Denial

For the reasons discussed below, the Commission should deny the application of Greenwood 2 for an exemption from licensing requirements, and deny the renewal applications of Rainbow, Nicholas J, and Marky OG.

A. The applicants have pleaded guilty to conspiring to convert ERISA benefit fund monies to their own use, or are unindicted coconspirators and have a pending civil or administrative action against them;

Farnsworth, his son Nicholas Farnsworth, Toni Thompson, and other employees of the applicant companies, were indicted on March 5, 2012, for conspiring to embezzle from employee benefit plans and individual embezzlement from employee benefit plans. *See U.S. v. John Farnsworth*, Cr. No. 11-143 (EDNY) (ARR), *Superceding Indictment*, March 5, 2012. The indictment charged that between 2007 and 2011 Farnsworth directly or indirectly controlled the Applicants - Greenwood 2, Rainbow, Nicholas J. and other affiliated New Jersey companies. These companies operated out of the same yards, used the same drivers and otherwise had overlapping operations. Greenwood 2 alone was a signatory to a Collective Bargaining Agreement ("CBA") with Local 282 Teamsters which gave it access to lucrative union jobs in New York City and Long Island, and required Greenwood to pay union scale, pay into various ERISA benefit funds, comply with various reporting requirements, and refrain from operating a non-union trucking company. Beginning almost immediately upon becoming a signatory in June 2007 and continuing until April 2011, the Applicants began violating these terms of the CBA by conducting a "double-breasted" operation.[5] Farnsworth, Thomson, Nicholas Farnsworth and others did a substantial part of the business subject to the CBA with the non-union companies Rainbow, Nicholas J, and other affiliated companies such as Marky OG - and underreported the hours their drivers worked in order to avoid making the hourly wage and benefit payments required. Farnsworth paid his drivers partly by check and partly in cash. The part paid by check was reported to the union and was seemingly compliant with the wage and benefit provisions of the CBA. The cash part was not reported, was less than union scale and the associated benefit payments were not made. Farnsworth and his co-conspirators pocketed the difference.

[5]Collective bargaining agreements generally prohibit signatories from simultaneously operating non-union companies. "Double-breasting" simply refers to the practice of doing so in violation of such an agreement.

On November 7, 2012, Farnsworth and Toni Thomson pleaded guilty to illegally converting ERISA benefit fund payments to their own use. *John Farnsworth Plea*, Nov. 7, 2012, Tr. at 6-9 and 17-18. *Toni Thomson Plea*, Nov. 7, 2012, Tr. at 7-9 and 19. On December 10, 2012, Nicholas Farnsworth also pleaded guilty to the same count. *Nicholas Farnsworth Plea*, December 10, 2012, Tr. at 5-7 and 15-18. Although Marky OG was not a named defendant, it was an "affiliated trucking companies" to which the indictment and plea transcript refers. *See supra* fn.1.[6]

Admin. Code § 16-509(a)(iii) expressly permits the Commission to consider the conviction of an applicant for a crime which, considering the factors set forth in Correction Law § 753, would provide a basis under such law for the refusal of such license or registration. Upon consideration of the factors in such law, the balance falls in favor of the denial of the Registration Application of C.I. Contracting. The factors to be considered are as follows:

> (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
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> (b) The specific duties and responsibilities necessarily related to the license or employment sought.
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> (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
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> (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
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> (e) The age of the person at the time of occurrence of the criminal offense or offenses.
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> (f) The seriousness of the offense or offenses.
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> (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
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> (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

[6]Marky OG is also the subject of several civil and administrative proceedings based on the same conduct. *See* NLRB Complaint and Notice of Hearing, Case 22-CA-29249. Under Admin. Code §16-509, a pending administrative action against an Applicant is an independently sufficient ground for denial. Marky OG is also a defendant in a civil action brought by trustees and fiduciaries of various Local 282 trust funds for employee benefit plans and multiemployer plans. See Complaint, Cv. No. 09-3869 (E.D.N.Y. Sept. 8, 2009).

See Correction Law § 753. The Commission should conclude that the applicant's criminal convictions provide a basis for denial. Notwithstanding the public policy of the state to encourage licensure where possible of those convicted of crimes, the offenses committed by these applicants directly involved the conduct of the businesses they seek to register and made those businesses the instrumentalities of their crime. The crimes for which these applicants were convicted were intrinsic to the operation of their businesses. The applicants have allocuted on the record that a significant part of their trade waste business model was to undermine the integrity of a collective bargaining agreement and enrich oneself at the expense of employees and their rights. Moreover, the criminal conduct and the applicants' pleas are quite recent. Not enough time has passed for reform and rehabilitation. Nor is youth a factor here. The offenses to which the applicants have pleaded are serious and should not be condoned or minimized, particularly in an industry such as this with an unfortunate and rich history of corruption. Accordingly, the Commission should deny the applications on this independent ground.

B. The applicants failed to provide truthful information in connection with their applications.

An Applicant's failure to provide truthful information in connection with its application is an enumerated ground for denial under Local Law 42. Admin. Code 16-509(a)(i). The plea allocutions of John and Nicholas Farnsworth and Toni Thomson all admit – as the grand jury had previously found - that John Farnsworth controlled and was an undisclosed principal in Nicholas J., Rainbow, Greenwood 2 and "affiliated companies" such as Marky OG. John Farnsworth Plea Tr. at 6-9, 17-18; Nicholas Farnsworth Plea Tr. at 5-7 and 15-19; Thomson Plea Tr. at 7-9 and 19. As Nicholas Farnsworth admitted in his plea allocution, John Farnsworth "wasn't allowed to be in the industry. So I was basically hiding him." Nicholas Farnsworth Plea Tr. at 15. *See also*, *supra* at 5 (Rainbow given transporter's permit in NJ on condition that John Farnsworth not associate with the business).

Moreover, John Farnsworth, Nicholas Farnsworth and Toni Thomson all admitted in their allocutions that their testimony before this Commission was false and part of the conspiracy. *Id.* Each made numerous false statements in order to minimize Farnsworth's role and exaggerate their own in the conduct of the enterprise in an effort to persuade the Commission to grant their applications. Mark O'Grady for example, said Farnsworth was "[j]ust the landlord. That is all he is to me." O'Grady Dep. at 76. Thomson testified that Farnsworth "no longer wanted to be in the trucking business, so he transferred his shares to me." Thomson Dep. at 7. Nicholas Farnsworth claimed to have no idea why his drivers would identify his father, John Farnsworth, as their boss. Nicholas Farnsworth Dep. at 63-64

Concealing the identity of a person controlling a company in order to evade a regulatory prohibition is a fundamental flaw and a prime example of the sort of dishonest and deceptive business practice that this commission was created to combat. The Commission should find that these applicants failed to provide truthful information in connection with their applications and should deny them on this independent ground.

Business Integrity Commission

Conclusion

The Commission is vested with broad discretion to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license, to any applicant who it determines to be lacking in good character, honesty and integrity. The record as detailed above demonstrates that the Applicants fall short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies the Registration Application of Greenwood 2, Inc. and the Exemption Renewal Applications and Registrations of Rainbow Transportation Corp., Nicholas J., LLC and Marky O'G, LLC.

This exemption/registration denial is effective immediately. The Applicants; Greenwood 2, Inc., Rainbow Transportation Corp., Nicholas J., LLC and Marky O'G, LLC., may not operate as a trade waste business in the City of New York.

Dated: January 14, 2013

THE BUSINESS INTEGRITY COMMISSION

Shari C. Hyman
Commissioner and Chair

John Doherty, Commissioner
Department of Sanitation

Janet Lim, Assistant General Counsel (designee)
Department of Consumer Affairs

Victor Olds, First Deputy Commissioner (designee)
Department of Investigation

Kathleen Ahn, General Counsel (designee)
Department of Small Business Services

Brian O'Neill, Inspector (designee)
New York City Police Department