Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE REGISTRATION APPLICATION OF CHELSEA TRANSFER STATION & RECYCLE CORP. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Chelsea Transfer Station & Recycle Corp. ("Chelsea Transfer" or the "Applicant") has applied to the New York City Business Integrity Commission (the "Commission") for an exemption from licensing requirements and a registration ("Registration") to operate a trade waste business pursuant to New York City Administrative Code ("Admin. Code") §16-505(a). Specifically, Chelsea Transfer seeks 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. In addition, Chelsea Transfer has applied to the Department of Sanitation ("DSNY") for a permit to operate a Non-Putrescible Solid Waste Transfer Station ("Transfer Station"). DSNY requested that the Commission investigate the background of the applicant business and its principals pursuant to Admin Code §16-131.1.

Based upon the record, the Commission now refuses to issue the requested Registration and recommends that DSNY deny the Transfer Station application for the following independent reasons:

A. Neal DeVito, a Principal of Chelsea Transfer, was Engaged in a Large Scale Recyclable Cardboard Theft Scheme.

B. Neal DeVito, a Principal of Chelsea Transfer, has a Criminal Action Pending Against Him for Committing a Racketeering Activity.

C. Neal DeVito, a Principal of Chelsea Transfer, has Knowingly Associated with Vincenzo Grasso, a Convicted Racketeer and a Denied Principal.

D. Jerry DeRosa, a Principal of Chelsea Transfer, was a Principal of a Trade Waste Company that was Previously Denied by the Commission.

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, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. 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.

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. Id. 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. Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at §16-508(b). 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;
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;
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.

Id. at §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 §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 §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 §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 at 995; 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 § 16-116.

Statement of Facts

The reported principals of Chelsea Transfer are Neal DeVito ("DeVito") and Jerry DeRosa ("DeRosa"). On their application, DeVito and DeRosa state that they are co-presidents and equal shareholders. As set forth more fully below, a joint investigation by the Commission and the New Jersey State Police uncovered that DeVito and several co-conspirators (at least one of whom is a convicted racketeer) were responsible for the theft of large amounts of recyclable cardboard from New Jersey retailers. Indeed, on July 24, 2012, DeVito and his co-conspirators were charged in the New Jersey Superior Court with crimes related to this scheme. See infra at 6.

With respect to Chelsea Transfer's other principal, DeRosa, as discussed below the Commission has previously determined that DeRosa lacked the requisite good character, honesty and integrity. The Commission denied the registration application of DeRosa's other company, Coney Island Container Inc. ("Coney Island"). This conclusion was based on, not only the fact DeRosa's co-principal in that company was a convicted racketeer, but that Coney Island repeatedly failed to comply with its disclosure requirements.

Neal DeVito

On July 24, 2012, in the culmination of a nearly 3 month investigation by the Commission and the New Jersey State Police, DeVito, one of Chelsea Transfer's principals, was arrested and charged with second degree Theft, Conspiracy, and Fencing in New Jersey for his role in a large scale recyclable cardboard theft operation from large box retailers including Wal-Mart and Sam's Club. Rooting out cardboard theft is of great importance to the Commission. Theft of recyclable materials is a crime that has been occurring with increased frequency in New York City and across the country.[1] While recyclable materials are generally perceived as "garbage" by the public, recyclable materials are often valuable commodities. For example, recyclable cardboard can sell for over $100 per ton. New York City Trade Waste Industry

[1] The theft of recyclables is receiving increasing national attention, as it becomes more prevalent and more costly to the commercial carting industry, and ultimately to businesses that produce recyclable waste. See Shane Dixon Kavanaugh, Stealing Paper Profits, http://www.crainsnewyork.com/article/20120617/PROFESSIONAL_SERVICES/306179981; John Metcalfe, Inside the Surprisingly Lucrative World of Cardboard Theft, http://www.theatlanticcities.com/jobs-and-economy/2012/07/inside-surprisingly-lucrative-world-cardboard-theft/2761/; Allan Gurlat, New York City Breaks Cardboard Recycling Theft Operation, http://waste360.com/old-corrugated-cardboard-occ/new-york-city-breaks-cardboard-recycling-theft-operation, July 26, 2012.

members estimate that the theft of recyclable materials, including metals, cardboard, and waste oil, cost the New York City Trade Waste Industry millions of dollars per year.

Companies that produce recyclable cardboard as a byproduct arrange for it to be removed and recycled by a commercial carting company, often the same carting company that provides their businesses' waste removal services. The carting company then transports the cardboard to a transfer station. The transfer station generally pays the carting company for the value of the cardboard. Because the carting company is able to profit from the sale of the cardboard (or other recyclables) the carting company is able to provide the customer a discount to the costs of their carting services. Simply stated, the customer pays less for commercial carting services because the carter can profit from the sale of the recyclable materials. However, when the recyclable cardboard is stolen before the carter can pick it up, the carting company loses the earnings, the offset is lost, and the customer may suffer an increase in their carting fees.

In the instant case, Wal-Mart stores and Sam's Club stores in New Jersey (together "Wal-Mart") which produce a large amount of recyclable cardboard as a byproduct of their operations, contracted with Georgia Pacific LLC and Georgia Pacific Harmon Recycling LLC (together "GP") to collect and recycle the cardboard. To facilitate the pick-up process, Wal-Mart consolidates its cardboard into bales and places it behind their stores for pick-up by GP. GP transports Wal-Mart's cardboard to transfer stations, where it is sold. After deducting its fees and expenses, GP remits the proceeds from selling the cardboard to Wal-Mart.

Acting on a complaint received on March 15, 2012, the Commission uncovered that DeVito and several co-conspirators, were operating a large-scale scheme to steal cardboard from Wal-Mart. As detailed below, DeVito, together with his co-conspirators Vincenzo Grasso ("Grasso") and John Nichols ("Nichols"), operated two purportedly legitimate trucking companies that actually functioned to steal cardboard[2], and a third company that functioned to be the repository for the proceeds. The Commission uncovered that the proceeds of the stolen cardboard actually went to DeVito, Grasso and Nichols. This was no small scheme – by using at least two tractor trailers, three flatbed trucks, and a van, and often operating six days a week, DeVito, Grass and Nichols's operation stole approximately 900 tons of material valued in excess of $100,000, over the course of the Commission's three month investigation.

Specifically, Commission investigators learned that trucks registered to Straightline Trucking, LLC ("Straightline") and Safe and Secure Industries, LLC ("Safe and Secure") were used to steal cardboard from several Wal-Mart locations in New Jersey before that cardboard could be picked up by GP. Ownership of Straightline and Safe and Secure is evident – the trucks were registered to either, (a) the mailing address of DeVito's home residence; or (b) a UPS Store mailbox. That mailbox was rented first by a company which, upon information and belief, was owned by Grasso, and then was rented by DeVito. Further, the New Jersey Department of the Treasury lists the "Registered Agent" for Straightline as DeVito. Finally, Safe and Secure maintains a lot at 335 Chelsea Road, Staten Island, NY, the same address as the instant applicant,

[2] The Commission uncovered that Grasso himself took steps to obtain trucks for one of the trucking companies, to be used to steal and transport stolen cardboard.

Chelsea Transfer. Accordingly, through the investigation, the Commission was able to determine that the trucks owned by Straightline and Safe and Secure, used as instruments in the scheme to steal Wal-Mart's cardboard, were owned, in whole or in part, by DeVito.

The stolen cardboard was taken by Straightline and Safe and Secure to transfer stations located in New Jersey where it was sold. The transfer stations then remitted payment for the cardboard to a company named Metro Paper, Inc. ("Metro Paper"). Although Metro Paper is purportedly owned by a Robert Donofrio ("Donofrio"), Metro Paper's reported address with the New Jersey Department of Treasury is the same UPS Store mailbox rented by Grasso then DeVito, and used as the address of record by Straightline. The checks issued by the transfer stations for the stolen cardboard were issued to Metro Paper, but Commission investigators observed those checks being physically picked up, not by Donofrio, but by DeVito, Grasso or Nichols. Indeed, through the Commission's investigation, it was determined that Donofrio's true job was as a security guard for Safe and Secure's lot at 335 Chelsea Road, Staten Island, NY in exchange for living in a trailer on the premises. Based on the Commission investigation, there is sufficient evidence to conclude that the owner of Metro Paper is not Donofrio, but Grasso, DeVito and Nichols.

Following the July 24, 2012, arrest, DeVito, Grasso and Nichols were charged by the New Jersey State Attorney General's Office in the New Jersey Superior Court with second degree Theft, Conspiracy and Fencing, which carry a possible term of imprisonment of 5-10 years.[3]

Grasso is a convicted Racketeer and Denied Principal

In the course of operating the above described scheme, DeVito impermissibly "associated with" Grasso, a convicted racketeer and former principal of a trade waste company which the Commission previously determined lacked good character, honesty and integrity. Grasso was the owner and principal of Downtown Environmental Recycling, Inc. ("Downtown"). On December 3, 2008, Grasso was indicted for committing various felony offenses including stealing other carters' waste containers, conspiring with one of his employees to commit arson on one of Downtown's trucks to collect the insurance proceeds, and attempting to conceal the number of Downtown's customers, employees, and trucks.[4] On December 15, 2008, the Commission found that there had "likely been false or fraudulent information submitted on a license renewal application submitted to the Commission by Downtown," and that Grasso's

[3] DeVito and Nichols were arraigned for the charges related to the cardboard theft scheme. Grasso was arrested in New York State by the New York State Division of Parole for violating the terms and conditions of his release from prison after his previous conviction for Offering a False Instrument for filing in the first degree, a class "E" felony. See infra at 6-7. On August 21, 2012, Grasso was released by the New York State Division of Parole and surrendered to the New Jersey authorities for processing on the cardboard theft charges on August 28, 2012. Grasso was released after posting bail in the amount of $175,000.00.

[4] The felony charges included Arson in the third degree, a class "C" felony, Grand Larceny in the second degree, a class "C" felony, Insurance Fraud in the third degree a class "D" felony, Offering a False Instrument for Filing in the first degree, a class "E" felony, Falsifying Business Records in the first degree, a class "E" felony – all racketeering activities as defined in Admin. Code § 16-509(a)(v).

continued operation of Downtown created imminent danger to life or property. Accordingly, Downtown's license was suspended on an emergency basis. See Final Determination of the Business Integrity Commission to Suspend Downtown Environmental Recycling, Inc.'s License to Operate as a Trade Waste Business, December 15, 2008. Thereafter, Grasso pleaded guilty to Offering a False Instrument in the first degree, a class "E" felony and was sentenced to 1 1/3 to 4 years incarceration. Offering a False Instrument for filing in the first degree is a racketeering activity pursuant to Admin. Code §16-509(a)(v). Following Grasso's conviction, the Commission denied Downtown's trade waste license renewal application, finding that Grasso and Downtown lacked good character, honesty and integrity.[5] See Decision of the Business Integrity Commission Denying the Renewal Application of Downtown Environmental Recycling, Inc. for a License to Operate as a Trade Waste Business and Denying the Application of Downtown Carting Corp. for a License to Operate as a Trade Waste Business, March 10, 2010.

Jerry DeRosa

Jerry DeRosa, Chelsea Transfer's other named principal, was also a principal of Coney Island Container Inc. ("Coney Island"). Coney Island's Registration renewal application was recently denied by the Commission on June 5, 2012. DeRosa's chosen partner and business associate in Coney Island was Anthony Castelle ("Castelle"), a convicted racketeer. Castelle's brothers are Eugene "Boobsie" Castelle and John "Big John" Castellucci, reputed organized crime figures. Castelle's brothers were co-defendants in a federal racketeering case against the Bensonhurst Crew of the Lucchese organized crime family, and they were convicted for committing various crimes under the Racketeer Influenced and Corrupt Organizations Act ("RICO") in violation of 18 USC §§1962(c) and 1963.

On June 5, 2012, the Commission determined that Coney Island and its principals, including DeRosa, lacked good character, honesty and integrity, and therefore denied Coney Island's application to renew its Registration. See Decision of the Business Integrity Commission to Deny the Registration Application of Coney Island Container Inc. to Operate as a Trade Waste Business, June 5, 2012. Such determination was based on a number of grounds, including the fact that DeRosa's business partner, Castelle, was indicted for felony level weapons charges and subsequently pleaded guilty to a felony charge. Castelle's crimes constituted a racketeering activity. Admin. Code §16-509(v). Additionally, the Commission's decision was based on Coney Island's repeated failure to disclose Castelle's full criminal history, and lifelong association with organized crime figures.

Remarkably, Coney Island's address was listed as 335 Chelsea Road, Staten Island, NY - the address listed for Chelsea Transfer, Safe and Secure, and the same address where Donofrio, purported owner of Metro Paper, provides security and is given a place to live.

[5] The Commission's denial of Downtown's registration application was not appealed.

Basis for Denial

For the reasons set forth below, the Commission denies Chelsea Transfer's Registration application, as its principals lack good character, honesty and integrity:

A. Neal DeVito, a Principal of Chelsea Transfer, was Engaged in a Large Scale Recyclable Cardboard Theft Scheme.

As described above, the Commission's investigation uncovered that DeVito was engaged in a scheme to steal significant amounts of recyclable cardboard, a valuable commodity, from Wal-Mart stores. Specifically, the stolen cardboard was transported to transfer stations by trucks from two companies tied to DeVito - Straightline and Safe and Secure. The stolen cardboard was sold by Metro Paper, another company tied to DeVito, and the checks that represented the proceeds of the theft were then picked up by DeVito or his co-conspirators. Despite DeVito's apparent attempt to conceal his involvement in the scheme by creating separate corporate entities, Straightline, Safe and Secure and Metro Paper, all the companies clearly link back to DeVito as the owner. As DeVito was a primary player in this large scale theft ring – the facts of which make out a racketeering activity, DeVito lacks good character, honesty and integrity, and the Commission denies Chelsea Transfer's Registration application based upon this independently sufficient ground. Admin. Code §16-509(a)(v).

B. Neal DeVito, a Principal of Chelsea Transfer, has a Criminal Action Pending Against Him for Committing a Racketeering Activity.

A pending criminal action against an applicant for a crime which would provide basis for the refusal of such a registration may be an independently sufficient ground for denial of a Registration. Admin. Code §16-509(a)(ii). As set forth above, DeVito has a criminal action against him for conduct which constitutes a racketeering activity. According to Admin. Code § 16-509(a)(v), second degree Theft is a racketeering activity because its equivalent offense in the New York State Penal Law, Grand Larceny in the second degree, is listed in the New York State's Enterprise Corruption Statute, Penal Law §460.10(1). DeVito's commission of a racketeering activity is an independently sufficient ground to deny Chelsea Transfer's Registration application. Id.

In any event, analysis of the crimes charged in light of the factors set forth in §753(1) of the New York State Corrections Law ("Corr. L."), pursuant to Admin. Code §16-509(a)(ii) and (iii), provides additional support for denial of Chelsea Transfer's registration. Those factors are:

> (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.
>
> (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
>
> (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.
>
> (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
>
> (e) The age of the person at the time of occurrence of the criminal offense or offenses.
>
> (f) The seriousness of the offense or offenses.
>
> (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
>
> (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.

See Corr. L. § 753(1). Here, the public policy of the State to encourage licensure is not outweighed by the Commission's legitimate interest in pursuing its mission under Local Law 42 and protecting "the safety and welfare" of the general public. See id. at (a) and (h). The Commission's investigation has shown that DeVito committed crimes that are directly related to the conduct of a trade waste business. The crimes are so recent, so serious and so closely related to both the purpose for which trade waste licenses and Registrations are sought and the duties and responsibilities associated with possessing a trade waste license or registration, that it should preclude the grant of a trade waste Registration to Chelsea Transfer. At the time of his participation in this scheme, DeVito was 35 years old and clearly old enough to know what the law required, how to obey it, and to recognize that the scheme in which he was involved was illegal. Clearly, DeVito chose to break the law which goes directly against the public's interest in eliminating the entrenched corruption that has plagued the New York City carting industry for decades. Public confidence in the integrity of the carting industry would be undermined if those that have ignored the law received registrations from the Commission. Based on this analysis, the Commission denies Chelsea Transfer's Registration application based upon this independently sufficient ground. Admin. Code §16-509(a)(ii) and (iii).

C. Neal DeVito, a Principal of Chelsea Transfer, has Knowingly Associated with Vincenzo Grasso, a Convicted Racketeer and a Denied Principal.

The knowing association with a person who has been convicted of a "racketeering activity" may be an independently sufficient ground for denial of a Registration. Admin. Code §16-509(a)(v). Here, DeVito's co-conspirators in his scheme to steal cardboard included Grasso, a convicted racketeer. See supra. Aside from the theft scheme itself, the mere fact that DeVito knowingly entered into a relationship with an individual who had been accused of, *inter alia*, stealing trade waste containers, insurance fraud related to the arson of a trade waste vehicle, submitting false statements to the Commission, and who was ultimately convicted a class "E" felony, is by itself a basis for the Commission to determine that DeVito's registration application should be denied. Accordingly, the Commission denies Chelsea Transfer's Registration application based upon this independently sufficient ground.

D. Jerry DeRosa, a Principal of Chelsea Transfer, was a Principal of a Trade Waste Company that was Previously Denied by the Commission.

The Commission has already determined that DeRosa is unfit for registration. DeRosa was formerly a principal of Coney Island; a company that the Commission has found lacks good character, honesty and integrity. Therefore, the Commission denies Chelsea Transfer's application based upon this independently sufficient ground. See Admin. Code §16-509(a)(vii) and (b).[6]

[6] In addition to the grounds (A)- (D), Chelsea Transfer's registration application could also be denied on the basis that, following the June 24, 2012, arrest of one of its principals, no disclosure of such arrest was made to the Commission, as required by Title 17 Rules of the City of New York ("RCNY") § 2-05(a)(1).

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Conclusion

The Commission is vested with broad discretion to refuse to issue a license or Registration to any applicant that it determines lacks good character, honesty, and integrity. The record as detailed above demonstrates that the Applicant falls short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies Chelsea Transfer's exemption application and registration.

This exemption/registration denial is effective immediately. Chelsea Transfer may not operate as a trade waste business in the City of New York.

Dated: September 24, 2012

THE BUSINESS INTEGRITY COMMISSION

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Department of Sanitation

Jonathan Mintz, Commissioner
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