THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
100 CHURCH STREET, 20TH FLOOR
NEW YORK, NEW YORK 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF EXPRESS WASTE SERVICES, L.L.C. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Express Waste Services, L.L.C. ("Express Waste" or "Applicant") (BIC-4023) has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for renewal of an exemption from licensing requirements and a registration 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." See Title 16-A of the New York City Administrative Code ("Admin Code") §16-505(a).

On January 30, 2015, the staff issued and personally served the Applicant with Notice of Grounds to Recommend that the Registration Renewal Application of Express Waste Services, L.L.C. be denied ("Notice of Denial"). The Commission also served the Notice of Denial on the Applicant's attorney by mail. The Applicant was granted ten business days to respond, until February 13, 2015. See Title 17 Rules of the City of New York ("RCNY") section 2-08(a). On or about February 5, 2015, the Applicant's attorney contacted the Commission's staff and requested an extension of time to submit a response to the Notice of Denial. The Commission's staff granted that request and extended the time to submit a response, to February 20, 2015. See letter from Leigh Neren to John A. Gonnella, Esq., dated February 5, 2015. On February 20, 2015, the Commission received the Applicant's response, which consisted of a seven-page affidavit by the Applicant's principal, Ronald Delucia, along with a marked copy of the Notice of Denial as an exhibit ("Response"). See Response.

Based upon the record as to the Applicant, the Commission denies Express Waste's exemption renewal application because the Applicant lacks good character, honesty, and integrity based on the independently sufficient reasons:

A. The Applicant knowingly provided false and misleading information to the Commission.

B. The Applicant knowingly associated with Joseph C. Gallo, a member of the Gambino crime family.

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. NY 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;
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> 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. v. City of New York, 107 F.3d 985, 995 (2d Cir. 1997) ("SRI"); 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). NY Admin. Code § 16-116.

Statement of Facts

On December 3, 2010, the Applicant applied to the Commission for an exemption from the licensing requirement for the removal of construction and demolition debris. See Application for Exemption from Licensing Requirement for Removal of Demolition Debris ("Registration Application"). In its application, the Applicant disclosed that it had one principal, the President and 100% owner, Ronald DeLucia ("DeLucia"). See Registration Application at 13. The Applicant disclosed two employees. See id. at 18.

On or about February 16, 2011, the Commission approved the Registration Application and issued the Applicant a Registration, effective March 1, 2011, for a period of two years. See Registration Order. On February 18, 2013, the Applicant filed a Renewal Application for a License or Registration as a Trade Waste Business ("Renewal Application"). Again, the Renewal Application disclosed DeLucia as the sole owner and principal. See Renewal Application at 7. The Applicant disclosed three employees in the Renewal Application. See Renewal Application at 10-11.

The Applicant did not disclose Vito Pesce ("Pesce") in any manner – as either an employee or principal -- in either the Registration Application or Renewal Application. The

Applicant also did not disclose that it shares employees, telephone, or other resources with any other business, as required on the Registration Application and by its ongoing duty to disclose such information.[1] See Registration Application at 1, 2; 17 RCNY §2-05.

The Commission's investigation revealed that Pesce is in fact a principal of the Applicant business and that the Applicant concealed his involvement in the business because of Pesce's organized crime ties.

DeLucia and Pesce have been co-workers and close friends, dating back to the early 1990s when they both worked for companies owned and operated by Frank and Joseph Savino ("the Savino companies"), individuals who agreed to be permanently debarred from involvement in the trade waste industry.[2] Prior to their debarment, the Savino companies had applied to the Commission for licenses to operate as trade waste businesses.

The Commission's investigation into the Savino companies revealed that Pesce, who was the Director of Operations for the Savino companies, knowingly associated with organized crime figure Joseph C. Gallo ("Gallo"). Law enforcement sources consider Gallo to be a "made" member of the Gambino organized crime family. See State of New Jersey Commission of Investigation, "The New Jersey Garment Industry," April 1991 at 39-40; see also William K. Rashbaum, "New Clothing Capo, Say Feds Gallo's 'Taking Over' From Jailed Gambino," New York Daily News, January 29, 1996; Leonard Buder, "Trial of Gambino Figures Starts with Depictions of Leaders," The New York Times, September 30, 1987. As far back as 1991, Gallo was named as a member of the Gambino crime family. His father, Joseph N. Gallo, was the family's consigliere during the leadership of former Gambino boss Paul Castellano. See e.g. United States v. Joseph N. Gallo, *et al.*, 863 F.2d 185 (2d Cir. 1988); Buder, *supra*; Rashbaum, *supra*. Gallo has been arrested for crimes including weapon possession, possession of stolen property, and narcotics. According to media reports, Gallo took over the Gambino family's interests in the City's garment center following the imprisonment of Tommy Gambino in January 1996. See id. More recently, in 2007, Gambino associate Joseph Zuccarello, who was indicted with numerous members and associates of the Gambino and Luchese crime families on charges including extortion, racketeering, and money laundering, was ordered as a condition of bail to not associate with Gallo and other members of the Gambino crime family, including Frank Cali and Peter Inzerillo.[3] See United States v. Joseph Zuccarello, 07-CR-56 (EDNY),

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[1] Applicants and registrants must notify the Commission within ten business days of any material change in the information submitted to the Commission. Material information is identified by an asterisk (*) on an application. There is an asterisk next to Question 11 of the Registration Application, which asks "Does the applicant business share any office space, staff or equipment (including, but not limited to, telephone lines) with any other business or organization?" See 17 RCNY §§1-01, 2-05; Registration Application at 1, 2.

[2] Allegro Carting & Recycling Inc. (formerly known as Allegro Carting Inc.) ("Allegro"), Pandora Sanitation Co. Inc. ("Pandora"), Joseph Savino & Sons Inc. ("Savino & Sons"), Regional Recycling Corp. ("Regional") and Interboro Disposal and Recycling, Inc. ("Interboro") (collectively "the Savino companies") were trade waste companies owned and operated by members of the Savino family, including Frank and Joseph Savino.

[3] Frank Cali and Peter Inzerillo have been identified by law enforcement as acting capo of the Gambino crime family and soldier in the Gambino crime family, respectively. See United States v. Agate, *et al.*, Cr. 08-76 (EDNY) Indictment ("Indictment") at 9; United States v. Agate, *et al.*, Cr. 08-76, Memorandum of Law in Support of the Government's Motion for Permanent Orders of Detention ("Detention Memo") at 16.

Transcript of Criminal Cause for Bail Hearing. Consequently, Gallo's history with organized crime figures has been well documented and publicized.[4]

At Pesce's sworn testimony ("Pesce deposition") before the Commission in 1997, he testified that he had a close friendship with Gallo and he used that friendship to obtain waste removal accounts for the Savino companies. Pesce testified that he read about Gallo's organized crime ties and conceded that he associated with Gallo despite his knowledge that Gallo had been identified as an organized crime figure in media reports. See Pesce Deposition at 81-82, 87-89 ("Pesce Tr."). For instance, Pesce said that Gallo is like his "brother," that they got together every one or two weeks, that they discuss everything from "A to Z," including all matters that one would "discuss with a close friend." See Pesce Tr. at 63-66, 88. Pesce admitted that he "might" have told Gallo about things that were happening in the waste removal industry and about Pesce's work life. See id. at 67.

Pesce was also knowledgeable about Gallo's criminal activities. Pesce explained that, in the 1970s, Gallo was "locked up on a narcotics violation" after he was caught with Pesce's brother, Frank Pesce, in a car rented by Pesce. See id. at 81-83. Pesce then visited Gallo in prison. See id. at 83-84.[5]

Pesce obtained several carting accounts for the Savino companies through Gallo. For instance, he stated that Cutting Edge, in which Gallo had an interest, became a customer of the Savino companies "through [Pesce's] friendship with Joseph Gallo." See id. at 72. He also admitted that Railroad Enterprises and Toni-Linda, both owned by Gallo, also became customers of the Savino companies due to Pesce's connection to Gallo. See id. at 72, 80.[6] Thus, Pesce's association with Gallo – both personal and business – continued notwithstanding his familiarity with Gallo's criminal history and affiliation with the Gambino organized crime family.[7]

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[4] DeLucia states in the Response that he does not know Gallo or the other organized crime figures referenced above.

[5] In the Response, DeLucia claims that Pesce denied that he or his brother were involved. See Response at 4.

[6] In its Response, DeLucia claims that Pesce was a salaried employee of the Savino companies and had no involvement in decision making. See Response at 3, 4. Even if true, this in no way negates any of Pesce's own admissions to the Commission.

[7] In addition to Pesce's association with Gallo, Pesce has intimate knowledge of and participation in the property rights system that existed under the organized crime cartel that dominated the trade waste industry prior to the Commission's existence. The Savino companies received payments from Chambers Paper Fibres ("Chambers"), a carting company that was participating in the Manhattan District Attorney's undercover investigation into the carting industry, as compensation for stops "taken" from the Savino companies by Chambers. The payments, which were arranged by trade association representatives, were made to compensate the Savino companies for stops taken by Chambers. In the affidavit of Vito Pesce, submitted to the Commission by the Savino companies in support of its application for a waiver of the 30-day termination provision of section 11 of Local Law 42, Pesce stated that he "heard 'on the street' that Chambers was going to make good on the existing contracts held by other carting firms." He also stated that "[a]t a regular Tuesday meeting of the New York Association of Trade Waste Removers" he was informed "by Pat Pecararo [sic] that Chambers was making good on the D'Agostino account." On or about August 30, 1994, Pesce received a $12,000 check, drawn by the cooperating carter, from Peccoraro who allegedly stated "this is regarding the D'Agostino contract matter." Pesce gave the check to Allegro's Chief Financial Officer. In December 1994, Pesce received a second $12,000 check. When the check bounced, Pesce informed Peccoraro who stated "OK, I'll take care of it." Peccoraro gave Pesce a new check from the cooperating carter at a subsequent association meeting. See Trade Waste Commission's Decision Regarding the Waiver Application of Allegro Carting & Recycling Inc. ("Allegro Waiver Decision").

In connection with the Commission's investigation into the Applicant, on August 1, 2012, the Applicant's principal, DeLucia, provided sworn testimony to the Commission ("DeLucia deposition"). His testimony and the Commission's investigation of the Applicant revealed that DeLucia knows very little about his own company and its operations, that Pesce has been operating the company since its inception, and that the Applicant concealed Pesce's involvement in the business.[8]

DeLucia has known Pesce for over twenty years, since they both worked for the Savino companies – companies that exited the trade waste industry due to integrity issues – and maintained a close friendship for years thereafter.[9] See Delucia deposition transcript at 84-86, 95, 131-132 ("DeLucia Tr."). Before that, DeLucia worked for his father's company, which was sold to the Savinos. See id. at 84-85. DeLucia testified that he and Pesce speak daily and socialize together. Id. at 147-149. Further, DeLucia gave Pesce $75,000 to start up his business, Triple Crown Disposal LLC ("Triple Crown"), without any formal agreement because he was "comfortable with [Pesce]." DeLucia Tr. at 131-132.

Triple Crown is a trucking company owned and operated by Pesce. DeLucia was an initial investor, but according to DeLucia, his initial investment has been paid back and his interest in the company has been divested. Id. at 130-131, Response at 5. According to DeLucia, Triple Crown is an asbestos removal business. In practice, Triple Crown and Express Waste comingle their assets and operations, and are essentially operating as one company. They share a telephone line (one that the Applicant failed to disclose to the Commission), trucks, and employees. According to DeLucia, if a call comes in to the dispatch line that the companies share for a demolition job, the truck with the Commission-issued license plates is dispatched;[10] if a call comes in for asbestos removal, one of the other three trucks is dispatched. Pesce is the individual who receives those calls. The telephone line is reportedly located at the office of Triple Crown, which is also where the Express Waste vehicles are parked. All four trucks used by both companies are owned by Triple Crown and leased to Express Waste. They are all parked at the same garage, which was rented by Pesce. See id. at 55-56, 58-59, 139-140. While one driver is paid by Express Waste, any of the drivers purportedly paid by Triple Crown may be operating the vehicle with the Commission-issued license plates. See id. at 143-144.[11]

Notwithstanding the Applicant's attempts to characterize the above arrangement as two totally separate entities, Express Waste – in whatever form – is operated by Pesce, not DeLucia. This was clear from both DeLucia's lack of knowledge about the Applicant's operations as well as his admissions regarding Pesce's role.

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[8] In the Response, the Applicant claims these statements are "incorrect and misleading" but points to no specifics that contradict any of the factual assertions below. See Response at 5.

[9] DeLucia testified that he knew the Savinos had "issues in New York." DeLucia Tr. at 108, 110-113.

[10] Each vehicle used to transport trade waste must be disclosed to the Commission and have Commission-issued trade waste conveyance plates affixed to it.

[11] DeLucia claims in the Response that Pesce handles the asbestos jobs (see Response at 3, 5), is not an owner, (id. at 5), and is not on the Applicant's payroll. Id. at 5. He does not, however, refute any of the facts above. The Applicant also points to the fact that another person, Mark Tabor, dispatches the trucks and handles customer calls for the Applicant. Even if true, that does not negate Pesce's role with the company -- as testified to by DeLucia. Moreover, Mark Tabor has been disclosed to the Commission as an employee of the Applicant while Pesce has not been disclosed in any capacity.

As to DeLucia's involvement in the business, DeLucia testified that he did not know: who the Applicant's customers are; what jobs the Applicant takes; how many containers it has; the garage address; how the garage location was found; how much the Applicant pays to parks its vehicles at the garage; and who drives the Applicant's vehicles on any given day. See id. at 53-54, 56-57, 72-73, 140, 143-44. DeLucia also did not know the terms of the lease of the trucks and containers from Triple Crown. DeLucia Tr. 137-138. Further, at the time of his testimony, DeLucia had never even been to the location where the vehicles are parked. Id. at 58, 65. DeLucia testified that he does "the minimum," solely paying bills and "receiving some checks." Id. at 68-70.[12]

In fact, Pesce runs the company. He dispatches the trucks, has the relationship with the customers, decides what jobs to take, handles collections, found the garage location, purchased the vehicles used by Express Waste, hires the employees, and decides what transfer stations to use. See id. at 53-55, 56-58, 67-68, 74-76, 78, 140, 165-66. In short, the company and its operations – as indicated above and admitted by DeLucia – are under Pesce's control, not DeLucia's. See id. at 82-83.[13]

When asked why Pesce was not disclosed as a principal, DeLucia said because "he is doing the asbestos." Id. at 142. In addition to being nonresponsive, this response is illogical; simply because Pesce controls Triple Crown does not mean he does not also control the Applicant.

Both DeLucia and Pesce knew that Pesce's involvement in the business might be of concern to the Commission. In fact, DeLucia admitted such when he testified. He knew Pesce had a history with the Commission, that Pesce didn't want to apply to the Commission due to that history, and that Pesce's association with his "childhood friend" was an issue for the Commission. See DeLucia Tr. at 128, 147, 149-151, 153-154.[14]

Although DeLucia admitted Pesce had some issues, DeLucia attempted to minimize his understanding of what those issues were and claimed to be ignorant of Gallo and his organized crime status. Further, DeLucia was evasive and repeatedly failed to answer the questions asked when confronted with the issue of Pesce's relationship with Gallo. See id. at 152-154. In fact,

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[12] DeLucia states in the Response that this is how "successful businessmen" operate, by delegating authority. See Response at 6-7. He seems to ignore the fact that the trade waste industry is highly regulated, and its statutory scheme mandates transparency because of the history of corruption and organized crime influences within it. DeLucia also does not explain why he permitted Pesce, a person who has known organized crime ties, to run the company. Further, he failed to explain why he concealed Pesce's identity from the Commission despite his obligation to disclose him.

[13] Again, DeLucia simply claims in the Response that "these allegations are just wrong" and points out that Mark Tabor is a dispatcher. First, even if Mark Tabor also performs functions that Pesce performs, that in no way negates the fact that Pesce also performs them (in addition to other functions). Secondly, the Response does not address the fact DeLucia testified under oath about the facts described above at his own deposition where he appeared with his own attorney. Third, Pesce, not Mark Tabor, has organized crime ties and was conspicuously left off the Applicant's initial application and renewal application that were filed with the Commission.

[14] In fact, DeLucia surmised that the Applicant's New Jersey carting permit application was denied due to Pesce's associations with his "childhood friend," Joseph Gallo. See DeLucia Tr. at 49-151. The Applicant is currently appealing that denial.

contrary to DeLucia's claims of ignorance, Pesce stated to DeLucia that the Applicant's license application in New Jersey may have been denied because of Pesce's relationship with his "childhood friend." Notwithstanding the obvious ramifications of this relationship, DeLucia incredulously claimed he didn't ask Pesce any questions because he "didn't want to know." See id. at 150. First, Pesce and DeLucia's close friendship, their common histories in the industry – including with a company that left the industry due to integrity issues – and DeLucia's own admissions about what Pesce had said, indicate this claim is unbelievable. Secondly, the fact that Pesce was never disclosed to the Commission, even as an employee, supports the conclusion that the Applicant knew there could be consequences to such disclosure. Moreover, it defies logic to believe that DeLucia attributed Pesce's relationship with Gallo to be the cause of the loss of his New Jersey license, yet, he had no further discussions with Pesce about the particulars of that relationship when it might also cause issues with his New York City operations. More logically, DeLucia knew about the particulars and then sought to conceal Pesce's involvement in the Applicant.

In its Response, DeLucia argued that Pesce is not a principal of the Applicant because: 1) he is not an owner of the company; and 2) he is merely the "operations manager." See Response at 3, 5. DeLucia further provided his own definition of principal, as one who "has a financial interest in the company and makes business decisions for the company." See Response at 3. Needless to say, the definition of "principal" as per Local Law 42, not as per DeLucia, governs in the instant matter. See *infra* at 10. Secondly, what is relevant to making that determination is dependent upon what Pesce does for the company. The facts – evidenced by DeLucia's own testimony and not refuted by the applicant in the Response – demonstrate that Pesce is in fact a principal of the Applicant because he has control and/or indirect control over the company.[15] See Admin. Code §16-501(d); *supra* at 7-8; *infra* at 9. Moreover, what is conspicuously absent from the Response is any purported explanation for why the so-called "operations manager" is omitted from any disclosure to the Commission. The reason is clear; it is because the Applicant knew that his disclosure might result in issues with the Commission and its approval of the Applicant's registration application.

Basis for Denial

1. The Applicant Provided False and Misleading Information to the Commission.

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a ground for denial of the application. See Admin. Code §16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); leave denied 2 N.Y.3d 705 (2004); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). As discussed above, the Applicant provided the Commission with applications and other submissions that contained false and misleading information about, among other things, who is a principal of the company.

[15] The Applicant also requests a hearing. See Response at 7. As the Applicant has no property interest in a future registration and therefore no due process to protect, it is not entitled to a hearing. SRI, 107 F.3d at 995. Nevertheless, in accordance with it rules, the Commission has afforded the applicant the opportunity to respond in writing to the staff's recommendation before the Commission makes a final determination. See 17 RCNY §2-08(a).

Failure to Disclose Pesce as a Principal

Both the Registration Application and the Renewal Application directed the Applicant to identify all principals of the applicant business and provide specific information about each. See Registration Application at 3, 13; Renewal Application at 7. The definition of Principal includes all "persons participating directly or indirectly in the control of such business entity." Admin. Code §16-501(d). Both documents, certified by DeLucia as true, failed to disclose Pesce as a principal (or even an employee) of the Applicant business. Yet, as demonstrated above, Pesce runs the company and has control over its operations.

While the Commission is not required to attribute a motive to an applicant's false filings (and false and misleading testimony as demonstrated below), it is more than reasonable to conclude that DeLucia and Pesce did not want to disclose Pesce's true role in the Applicant company – or any role – due to Pesce's association with Gallo, a made member of the Gambino crime family. If DeLucia had really believed that there was nothing wrong with this "friendship" then the Applicant would have disclosed Pesce and its relationship with Triple Crown.

DeLucia admitted this when he acknowledged that Pesce said he did not want to apply to the Commission "because of somebody that he knew...." See DeLucia Tr. at 128. Further, both Pesce and DeLucia surmised that the Applicant's New Jersey license was revoked due to DeLucia's relationship with Gallo. This belief – whether accurate or not – demonstrates what the motivation was behind failing to disclose Pesce to the Commission in the Registration Application, the Renewal Application, or in any submission to the Commission.

In its Response, in addition to summarily stating (without any support) that Pesce is not a principal, the Applicant states that it "did not conceal [Pesce's] work" with the Applicant. First, these claims do not refute any of the factual support – as per DeLucia's own testimony – as to the tasks performed by Pesce that lead to the conclusion he is a principal. Second, the Applicant's claim that it did not conceal Pesce's role is simply false; Pesce is not disclosed anywhere in any application submitted to the Commission – either as an employee or a principal. Furthermore, the Applicant does not even address this omission, thus providing additional support establishing that this omission was intentional and further tainting DeLucia's other claims.

Failure to Disclose Sharing Resources with Triple Crown

Question 11 of the Registration Application asks, "Does the Applicant business share any office space, staff, or equipment (including, but not limited to, telephone lines) with any other business or organization." Registration Application at 2. The Applicant responded, "No." Id. The question has an asterisk next to it, which "denotes material information on the application. Any change in material information must be reported to the Business Integrity Commission... within ten (10) days of the change." See id. at 1, 2. As discussed above, the Applicant shares a telephone line and other resources with Triple Crown. Thus, this was a false statement in the Registration Application filed with the Commission. The Applicant does not refute this point; it simply attempts to argue that the Applicant only shares some, not all, resources with Triple Crown. See Response at 5.

Failure to Disclose the Association with Gallo

Question 32 of the Registration Application asks if the applicant business or any of its principals ever "associated with any person that you knew, or should have known, was a member or associate of an organized crime group." The Applicant responded, "No." Registration Application at 10. The Renewal Application asks a similar question and has an asterisk next to it, indicating that a change in the response must be updated within ten days of such change. Renewal Application at 5. The Applicant responded, "No" to question 32. As demonstrated above, notwithstanding DeLucia's incredible claims about his knowledge of Pesce's organized crime ties, Pesce himself admitted that he read that Gallo was an organized crime figure and that he obtained business accounts from Gallo when he worked for the Savinos.[16] In the Response, DeLucia claims he does not know and has never met Gallo.[17] He does not and cannot however, refute the fact that Pesce, an undisclosed principal, has admitted such a relationship to the Commission during sworn testimony. Therefore, as essentially conceded, the Applicant failed to answer such questions truthfully in the Registration Application and the Renewal Application.

False Statements at the Deposition

DeLucia also provided false testimony before the Commission during his sworn testimony. DeLucia was repeatedly evasive, attempted to deflect the questions and made statements that are incredible on their face.

Specifically, DeLucia claimed he had no idea about Pesce's association with Gallo, an organized crime figure. First, had these assertions been true, then the Applicant would have disclosed Pesce, at minimum, as an employee of the Applicant business. Also, the fact that the Applicant failed to disclose that it shared resources with Triple Crown as required further indicates that DeLucia knew more about Pesce's organized crime association than he revealed. Further, DeLucia and Pesce have been close friends for decades, even going into business together. Finally, DeLucia's own testimony regarding Pesce's association with Gallo was evasive and non-responsive, further indicating that he knew more than he would admit. Therefore, either DeLucia was telling the truth and buried his head in the sand, or more likely, he has an admittedly close relationship with Pesce and helped him by obtaining a Commission registration and intentionally concealing Pesce's involvement in the business. In the Response, DeLucia merely states that he provided truthful testimony at his deposition. He does not, however, address any of the facts outlined above or why the Applicant failed to make the required notifications. All the above factors and common sense lead the Commission to conclude that DeLucia knew the specifics about Gallo's organized crime status.[18] Moreover, in

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[16] In its Response, DeLucia claims he doesn't know Gallo and/or his organized crime status. Regardless of DeLucia's knowledge of lack thereof, Pesce, an undisclosed principal of the company maintained a relationship with the organized crime figure. The Applicant also claimed in the Response that the Commission staff member questioning DeLucia during his sworn testimony "struck [his] question from the record" after DeLucia asked if Pesce was a "bad guy." See Response at 7. The Applicant's characterization of the testimony is inaccurate. See DeLucia Tr. at 153-154.

[17] The Commission does not allege that DeLucia does know Gallo.

[18] DeLucia also claimed to have no knowledge as to why the Savinos sold their companies until pressed, at which point DeLucia only acknowledged that he heard they "had some issues in New York." See DeLucia Tr. at 108-112. The Savinos – DeLucia's former employers – sold their companies in the late 1990s, at a time when multiple

either case, these actions reflect negatively on the Applicant's good character, honestly, and integrity.

Consequently, based on the above false and misleading information provided to the Commission, the Commission denies the Renewal Application based on this independently sufficient ground.

2. The Applicant knowingly associated with Joseph Gallo, a member of the Gambino crime family.

The Commission may deny a license application of a business whose principals have had business dealings with known organized crime figures. See Admin. Code §16-509(a)(vi); SRI, 107 F.3d at 998. Pesce, an undisclosed principal of the Applicant, has associated with Joseph C. Gallo, a made member in the Gambino organized crime family. Notwithstanding Gallo's status, Pesce admittedly maintained a business relationship with Gallo while employed by the Savino companies, including acquiring numerous trade waste business accounts as a result of that relationship.

Notwithstanding DeLucia's claims in the Response that he has not associated with Gallo, he certainly cannot refute Pesce's own testimony on this issue. [19] As Pesce admitted this business association with Gallo, and is an undisclosed principal of the Applicant, the Commission denies the Renewal Application on this independently sufficient ground.

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 Applicant falls short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies Express Waste Services L.L.C.'s registration renewal application.

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indictments were pending against carting companies and the trade associations that enforced the criminal cartel's rules. Press accounts were widespread. The Savinos personally participated in and benefitted from the property rights system that dominated the industry at the time. In connection with its activities, on June 18, 1998, Frank Savino, Joseph Savino and the Savino companies were charged by the District Attorney's Office of New York with Conspiracy to Form a Monopoly, a class E Felony, and Criminal Facilitation in the 4th Degree, a class A Misdemeanor. Then, on September 18, 1998, Frank Savino, Joseph Savino and the Savino companies pleaded guilty to Criminal Facilitation in the 4th Degree. Frank was sentenced to three years of probation. During this time, the Savino companies were sold. DeLucia was either employed by the Savinos at the time they were criminally charged and sold their companies, or he had recently left their employment. It defies logic that DeLucia knew nothing about the issues surrounding the Savinos departure from the New York City trade waste industry.

[19] In the Response, DeLucia claimed that he "know[s] as a fact that [Pesce] has no organized crime ties." Further, he stated that had he known that Pesce had such ties he "would have disassociated [himself] from [Pesce] in all of [his] business acitivities." See Response at 3. These claims are disingenuous and simply untrue. First, Pesce admitted ties to organized crime figure, Joseph Gallo. Secondly, DeLucia previously admitted during his sworn testimony that he knew there was an issue with Pesce's relationship with Gallo that might be an issue for the Commission. Yet, as discussed above, at best, he chose to take no further action or make any further inquiry. Therefore, his claims now that had he known about these ties with Gallo, he would have severed ties with Pesce are false.

This registration denial is effective immediately. Express Waste Services L.L.C. may not operate as a trade waste business in the City of New York.

Dated: March 6, 2015

THE BUSINESS INTEGRITY COMMISSION

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