Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE LICENSE RENEWAL APPLICATION OF ENVIRONMENTAL ENERGY RECYCLING CORP. TO OPERATE AS A TRADE WASTE BUSINESS

I. PRELIMINARY STATEMENT

Environmental Energy Recycling Corp. ("EERC" or the "Applicant") has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for renewal of a license to operate as a trade waste business. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a).

On October 24, 2014, the staff issued and served the Applicant with Notice of the Grounds to Recommend that the License Renewal Application of EERC be denied. The Applicant was granted ten business days to respond, until November 13, 2014. See 17 Rules of the City of New York §2-08(a). The Applicant did not submit any response. Based on the record as to the Applicant, the Commission now denies EERC's license renewal application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

1. **The Applicant knowingly failed to provide information and/or documentation required by the Commission.**

2. **The Applicant has been found liable in an administrative action that bears a direct relationship to the fitness of the Applicant to conduct a trade waste business, and has failed to pay fines that are directly related to the Applicant's business.**

II. 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 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.

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). Before issuing such license, 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 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;
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> 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;
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> 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 trade waste license or registration 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.

III. FACTS

The Applicant applied to the Commission for a trade waste removal license. See License Application filed on May 5, 2005 ("Application"). On September 7, 2005, the Commission granted the Applicant a trade waste license. See EERC Licensing Order. On August 22, 2007, the Applicant filed its first renewal application with the Commission ("First Renewal Application"). See First Renewal Application. The Commission granted the First Renewal Application effective September 1, 2007. On October 6, 2009, the Applicant filed its second renewal application with the Commission ("Second Renewal Application"). See Second Renewal Application. The Commission granted the Second Renewal Application effective September 1, 2009. On September 7, 2011, the Applicant filed its third renewal application with the Commission ("Third Renewal Application").[1] See Third Renewal Application. The Commission granted the Third Renewal Application effective September 1, 2011. On October 21, 2013, the Applicant filed its fourth renewal application with the Commission ("Fourth Renewal Application" of the "Instant Renewal Application"). See Fourth Renewal Application.

The Applicant disclosed Ralph Tommaso ("Tommaso") as its sole principal and 100% owner in the Application and in each of the four Renewal Applications. See Application at 15; First Renewal Application at 5; Second Renewal Application at 6; Third Renewal Application at 7; Fourth Renewal Application at 7. In its Third Renewal Application, EERC disclosed to the Commission for the first time, that Sherry Good ("Good") was a "Fleet Manager" for EERC.[2] See Third Renewal Application at 10.

As part of its investigation, the Commission discovered that Good commenced a civil action against EERC in the United States District Court for the Eastern District of Pennsylvania. See Good v. Environmental Energy Recycling Corp., et. al, 13-cv-04515, Complaint filed on August 5, 2013 ("Good Complaint"). In her complaint, Good alleged that in December 2011 and/or January 2012, she learned from a competitor's telephone call that EERC "had potentially produced false documentation in support of requests for Federal and State Funding, in that applications stated, inter alia, that [EERC was] providing certain services that they were not providing, and were rendering other services through sub-contractors, while representing that they were performing the services themselves and/or had engaged in other shady dealings." Id. at 7. The Complaint further alleges that sometime after February 3, 2012, "the FBI and EPA contacted [Good] regarding an investigation" into the Applicant's dealings. Id. at 8. Good claimed, *inter alia*, that after confronting Tomasso about the competitor's allegations, she was subject to retaliatory actions, including termination. Id. at 7-9.

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[1] In a letter dated May 21, 2012, the Applicant informed the Commission that the Applicant "is a business line of Greenworks Holdings, which also includes the business lines of Smarter Fuel, Inc., Smarter Fuel South, Greenworks Propane, and AROSE."

[2] Although EERC did not disclose to the Commission that it employed Good prior to the filing of the Third Renewal Application, the Third Renewal Application states that EERC hired Good on January 19, 2008. See Third Renewal Application at 10.

The Good Complaint also included allegations relating to high-level EERC employees who were never disclosed to the Commission. Specifically, the Good Complaint included a reference to Dave Dunham, "an owner, shareholder, manager and supervisory employee" of EERC.[3] Id. at 4. Similarly, the Good Complaint refers to Gregory Paglianite and Deborah Spinosa as "manager[s] and supervisory employee[s]" of EERC. See Id. at 4-5. Neither has been disclosed as employees or principals to the Commission.

Failure of the Applicant to Cooperate With the Commission's Investigation

While the civil action was dismissed by the Court, given the nature of the allegations, the Commission sought to take the sworn testimony of Tommaso as part of its evaluation of the instant application. By letter dated April 30, 2014, the Commission directed Tommaso to appear at the Commission's offices to provide sworn testimony on May 13, 2014. See April 30, 2014 letter from David Mandell to Tommaso. In a May 12, 2014 telephone conversation with a Commission staff member, Tommaso requested to postpone his appearance to early June 2014. The Commission staff member agreed to reschedule Tommaso's appearance to June 10, 2014. See May 12, 2014 Email message from David Mandell to Tommaso. On June 9, 2014, the Commission's staff left several voicemail messages for Tommaso and sent Tommaso an email message to confirm his appearance the next day. On June 9, 2014 at approximately 1:30 p.m., Tommaso emailed the Commission's staff: "Sorry about the late response, as I was waiting to hear back from my attorney. My attorney has a conflict for tomorrow's appointment. Can you please give me a couple of available dates so I can reschedule? In addition, my attorney feels uncomfortable having me go under oath without knowing the questions to be asked ahead of time. Can you please send me a list of the questions prior to the hearing?" See June 9, 2014 Email message from Tommaso to David Mandell. At the Commission staff member's request, Tommaso subsequently provided the staff member with the name of the Applicant's attorney. After leaving several telephone messages for the Applicant's attorney, on June 12, 2014, the Commission staff member informed both Tommaso and his attorney via email that Tommaso's appearance to provide sworn testimony was rescheduled to June 26, 2014. See June 12, 2014 Email message from David Mandell to Tommaso and Colm Connolly, Esq. On June 24, 2014, a Commission staff member had a telephone conversation with the Applicant's attorney, Colm Connolly. During this conversation, Connolly stated that "EERC is going to let its license expire." He said that the company is under investigation and is not operating. He also stated that Tommaso will not provide the Commission with sworn testimony. The Commission's staff member advised Connelly that he should send a letter to the Commission to request that the Instant Renewal Application be withdrawn. By email sent on June 25, 2014, Connolly

[3]Good's allegations regarding Dave Dunham were corroborated by Dave Dunham himself. Although never disclosed to the Commission, Dave Dunham admitted his affiliation with EERC in a January 31, 2014 email to the Commission regarding EERC's customer register. In the email, Dunham states, "I discovered that our former employee, Jennifer Templeton, had been submitting our customer register via email. In July we mailed it in but there was some problem receiving it. Candy has been working with someone at BIC to get that resolved. I'm guessing email is a better way to submit. Attached is our second half 2013 information. Let me know if you have any problems processing this." See January 31, 2014 Email message from Dave Dunham to the Commission.

stated: "Thank you for speaking with me yesterday. As I informed you then, EERC is no longer actively engaged in business. Accordingly, I respectfully withdraw on behalf of Mr. Tommaso, his application for a license renewal."[4] See June 25, 2014 Email from Connolly to David Mandell.

By letter dated October 8, 2014, the Commissioner and Chair of the Commission notified Connolly that the "the Commission declines to accept EERC's withdrawal request because withdrawal of this application may have a result that is inimical to the purposes of Local Law 42 of 1996... The sworn testimony of Ralph Tommaso... is now rescheduled for October 21, 2014 at 10:00 a.m. Failure to appear is an adequate ground upon which to deny EERC's license renewal application. See Title 16-A of the New York City Administrative Code § 16-509(b)." See October 8, 2014 letter from Daniel D. Brownell to Connolly.

On October 20, 2014, Connolly informed the Commission's staff via telephone conversation and email that "Ralph Tommaso will not appear on October 21, 2014." See October 20, 2014 Email message from Lori M. Gibson on behalf of Colm Connolly.

Administrative Violations Issued by the Commission

On January 3, 2014, the Commission issued Notice of Violation Number TW-208948 against the Applicant for failure to file a customer register for the period January 1, 2013 to June 30, 2013, in violation of Title 17 of the Rules of the City of New York ("RCNY")§5-03(g)(3). See Notice of Violation Number TW-208948. On February 18, 2014, the Commission issued Notice of Violation Number TW-209245 against the Applicant for failure to file a 2012 annual financial statement with the Commission in violation of 17 RCNY §5-03(e) and §5-03(f). See Notice of Violation Number TW-209245. EERC failed to appear on July 17, 2014 for hearings on both matters before the New York City Office of Administrative Trials and Hearings ("OATH"). See August 1, 2014 Report and Recommendation by Administrative Law Judge ("ALJ") Kevin F. Casey ("Report and Recommendation"). In his Report and Recommendation, ALJ Casey found that "the undisputed evidence showed [the Applicant] failed to maintain or file a 2012 financial statement and failed to maintain or file a customer register for the first six months of 2013, as required." See Report and Recommendation at 2. Accordingly, ALJ Casey recommended a total civil penalty of $20,000. See Id. at 3.

By letter dated August 13, 2014, the Commission's General Counsel, Abigail Goldenberg, informed the Applicant that "pursuant to delegation of authority of

[4] A subsequent investigation by the Commission confirmed that the Applicant continues to operate as a trade waste business in New York City. On September 9, 2014, an EERC customer informed a Commission investigator that an EERC truck had visited the customer and removed waste oil from the customer. See Affidavit by Special Investigator Jeffrey Makhmaltchi. The customer provided the Commission investigator with a photograph of the truck, which had EERC markings, and with a receipt, which indicated that on September 9, 2014, 70 gallons of waste oil was collected from the customer. See Photograph of truck and receipt from AROSE. This demonstrates, in part, why the Commissioner and Chair of the Commission could not entertain the Applicant's request to withdraw its application.

Commissioner Dan Brownell, I have carefully reviewed the record before me. I accept the ALJ's recommendation and hereby impose a fine of $20,000." See August 13, 2014 letter from Abigail Goldenberg to the Applicant. As of the date of this Notice, the Applicant has neither moved to vacate this default nor paid the $20,000 penalty.

IV. ANALYSIS

1. The Applicant knowingly failed to provide information and/or documentation required by the Commission.

"The Commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the Commission..." See Admin. Code §16-509(b). Over the course of several months, the Commission has attempted to take the sworn testimony of principal Ralph Tommaso in connection with the Instant Renewal Application. However, Tommaso refused to cooperate with the Commission's investigation and, after he delayed his appearance to provide testimony, he ultimately refused to provide testimony. See supra.

The Commission need not attribute a motive for this failure to appear. It is likely, however, that Ralph Tommaso failed to appear because he did not want to answer questions under oath about, among other things, (a) the investigation(s) referred to by former employee, Sherry Good and the Applicant's attorney, Colm Connolly; (b) the failure of the Applicant to abide by the Commission's rules; (c) the failure of the Applicant to pay fines directly related to the trade waste industry; (d) the Applicant's present operations; and (e) undisclosed principals and/or employees including, but not limited to Dave Dunham, Gregory Paglianite, and Deborah Spinosa.

Notwithstanding the reason for Ralph Tommaso's failure to appear to provide sworn testimony, the Commission may refuse to grant a license if an applicant fails to provide information in connection with the application. Ralph Tommaso refused to appear and provide testimony despite being warned that such a refusal could be considered as a ground upon which to deny the application. The Applicant did not dispute this point. Thus, the refusal of Ralph Tommaso to provide sworn testimony in connection with the license renewal application of EERC constitutes an independently sufficient ground upon which the Commission denies this application.

2. The Applicant has been found liable in an administrative action that bears a direct relationship to the fitness of the Applicant to conduct a trade waste business, and has failed to pay fines that are directly related to the Applicant's business.

The commission may refuse to issue a license to an applicant "after a finding of liability in an administrative action that bears a direct relationship to the fitness of the applicant to conduct the business." See Admin. Code §16-509(a)(iv); see also §16-509(c)(ii); see also §16-513(a)(i). The commission may also refuse to issue a license to

an applicant "upon the failure of the applicant to pay any tax, fine, penalty, fee related to the applicant's business...for which judgment has been entered by a[n] ... administrative tribunal of competent jurisdiction..." See Admin. Code §16-509(a)(x); see also §16-509(c)(ii); see also §16-513(a)(iv).

The Applicant violated the rules of the Business Integrity Commission and disregarded the consequences. An ALJ for OATH found the Applicant liable in administrative actions that bear direct relationship with the Applicant's ability to conduct business in compliance with Local Law 42 in the New York City trade waste industry. The Notices of Violation resulted in total fines and penalties of Twenty Thousand ($20,000) Dollars, which the Applicant has failed to pay and has failed to address. The Applicant did not dispute this point. The Commission denies EERC's license renewal application on this independently sufficient ground.

V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant who it determines to be lacking 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 EERC's license renewal application.

This license renewal application denial is effective immediately. EERC may not operate as a trade waste business in the City of New York.

Dated: November 20, 2014

THE BUSINESS INTEGRITY COMMISSION

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Commissioner and Chair

Andrew Schwartz, Deputy Commissioner (Designee)
Department of Small Business Services

Julie Menin, Commissioner
Department of Consumer Affairs

John Denesopolis, Inspector (Designee)
New York City Police Department

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Department of Sanitation