The City of New York
BUSINESS INTEGRITY COMMISSION
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DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE LICENSE RENEWAL APPLICATION OF PARKSIDE RECYCLING INC. (BIC #3736) TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

On April 9, 2014, Parkside Recycling Inc. (BIC #3736) ("Parkside" or the "Applicant") applied to the New York City Business Integrity Commission (the "Commission")[1] for its second renewal of a license to operate as a trade waste business (the "Second Renewal Application").[2] Local Law 42 of 1996 ("Local Law 42") authorizes the Commission to review and make determinations on such license renewal applications. See Title 16-A, New York City Administrative Code ("Administrative Code" or "Admin. Code") § 16-505(a). The Commission's review of a license or renewal application focuses on a determination of whether the applicant possesses business integrity, i.e., good character, honesty and integrity. See Title 17, Rules of the City of New York § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code § 16-504(a) (empowering the Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); Admin. Code § 16-509(a) (authorizing the Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"). If the Commission grants the license renewal application, the applicant will be issued a license renewal order. See id.

On September 21, 2015, the Commission's staff issued and served the Applicant with Notice of the Grounds to Recommend that the License Renewal Application of Parkside be denied (the "Recommendation"). The Applicant had 10 business days to respond, which period expired on October 6, 2015. See Title 17 Rules of the City of New York § 2-08(a). The Applicant has not responded to the Recommendation. The Commission has now completed its review of Parkside's Application, having carefully considered the Commission staff's Recommendation and the Applicant's failure to respond. Based on the record as to the Applicant, the Commission denies the Second Renewal Application for the following independently sufficient reasons:

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[1] The Commission was formerly known as the New York City Trade Waste Commission.
[2] "Trade waste" or "waste" is defined at Admin. Code § 16-501(f)(1).

A. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered; and

B. The Applicant Violated the Terms of its License Renewal Order by Failing to Provide the Commission with Proof that an Outstanding Tax Warrant Had Been Satisfied or Otherwise Resolved.

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, known as trade waste. 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. Int'l Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante, No. 96 Cr. 466 (S.D.N.Y.); People v. Ass'n of Trade Waste Removers of Greater New York, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically 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, No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the 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). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by 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.

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a decision on an application for a license or registration:

> 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;

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 § 16-509(a)(i)-(x). See also id. at § 16-504(a).

The Commission also may refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for a license." Id. at § 16-509(b). See also Elite Demolition Contracting Corp. v. The City of New York, __ N.Y.S.2d __, 125 A.D.3d 576 (1st Dep't 2015); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424 (1st Dep't 2008); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dep't) (Commission may deny an application for an exemption "where the applicant fails to provide the necessary information, or knowingly provides false information"); *leave denied* 2 N.Y.3d 705 (N.Y. 2004). See also Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial). In addition, the Commission may refuse to issue a license or registration to an applicant that "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license." Id. at § 16-509(c). See also id. at § 16-504(a). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at § 16-509(d); see also id. at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) 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 Indus., Inc., 107 F.3d 985, 995 (2d Cir. 1997); see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100 (N.Y. 1997).

Statement of Facts

On or about February 23, 2010, Parkside applied to the Commission for a trade waste removal license. See Application. The Application disclosed Benjamin Vertuccio, Jr. ("Vertuccio") as the sole principal of the Applicant. See Application at 7. On or about April 8, 2010, the Commission granted the Application and issued the Applicant a Licensing Order. See Licensing Order. The Applicant's license was effective for two years, and expired on March 31, 2012. See id. at 2.

On or about March 30, 2012, the Applicant filed its first Renewal Application with the Commission. See First Renewal Application. The Commission's background investigation of the Applicant in connection with the First Renewal Application revealed one New York State tax warrant in the amount of $701.00 that was issued against the Applicant. See New York State Department of State, State Tax Warrant Notice System Printout.

In conjunction with the approval of the First Renewal Application, by letter dated November 13, 2012, the Commission's staff notified the Applicant about the outstanding New York State tax warrant. See Letter from Commission's staff to the Applicant dated November 13, 2012. The staff also informed the Applicant that "this tax warrant must be resolved before . . . March 31, 2014. Failure to do so will result in the denial of [the Applicant's] future license renewal application." See id. On November 26, 2012, the Commission issued a Licensing Renewal Order to the Applicant that was conditioned upon, among other things, the Applicant resolving the above-

mentioned New York State tax warrant before March 31, 2014. See Licensing Renewal Order at 2. The Licensing Renewal Order, as agreed to by the Applicant, provides as follows:

> the Licensee acknowledges the existence of a judgment debt docketed against it as listed in Appendix A to this Order ("Appendix A Debt") and agrees that the Appendix A Debt must be fully paid or otherwise satisfied before the end of the license period covered by this order. Licensee also understands and agrees that its failure to satisfy the Appendix A Debt by no later than March 31, 2014, shall constitute adequate grounds upon which the Commission may day the Licensee's application for renewal of its license.

See id. at 2. On or about March 5, 2013, Vertuccio signed the Licensing Renewal Order on behalf of the Applicant, thereby agreeing to its terms. See id. at 4.

On or about April 9, 2014, the Applicant filed its second Renewal Application with the Commission.[3] See Second Renewal Application. The Commission's background investigation of the Applicant in connection with the Second Renewal Application established that the above-mentioned New York State tax warrant in the amount of $701.00 remained unresolved. In addition, the Commission's background investigation revealed that the Applicant had accrued significant amounts of additional debt since the License Renewal Order was issued.

According to a judgment and lien search conducted on or about October 20, 2015, in addition to the above-mentioned New York State tax warrant, the Applicant owes the following money to the New York State Department of Taxation and Finance, the New York City Department of Finance, the New York County Criminal Court, and the Kings County Criminal Court:

Creditor	Filing Number	Amount
NYS Department of Taxation	E-014182683-W006-7	$1,942.88
NYC Department of Finance	3192750	$1,766.62
NYC Department of Finance	2781025	$13,618.07
NYC Department of Finance	2603022	$8,159.19
NYC Department of Finance	1814403	$527.99
NY County Criminal Court	2703519	$8,940.00
NY County Criminal Court	2395258	$500.00
NY County Criminal Court	2395259	$250.00
NY County Criminal Court	2395260	$500.00
NY County Criminal Court	2395253	$500.00
NY County Criminal Court	2395262	$2,140.00
Kings County Criminal Court	2086859	$1,000.00
Kings County Criminal Court	2086857	$250.00
Kings County Criminal Court	2746891	$3,250.00
TOTAL		$43,344.75

[3] The Applicant filed its Second Renewal Application 9 days late.

See Westlaw Judgment and Lien Printouts. Thus, as of the date of this Notice, the Applicant has failed to pay taxes, fines, penalties, and/or fees that total $44,045.75.

By letter dated May 12, 2015, the Commission's staff reminded the Applicant of the terms of its License Renewal Order, which required the Applicant to provide the Commission with proof of satisfaction of the New York State tax warrant by March 31, 2014. See letter from Commission's staff to the Applicant dated May 12, 2015. In addition, the Commission's staff requested proof that the remaining debts listed above had been satisfied or otherwise resolved.[4] The Applicant was given until May 27, 2015, to provide all requested documentation. See letter from Commission's staff to the Applicant dated May 12, 2015. The Applicant failed to provide proof that the remaining debts listed above had been satisfied or otherwise resolved by the deadline.

On or about June 3, 2015, the Commission's staff sent another letter to the Applicant entitled, "Second and Final Notice." See Letter from Commission's staff to the Applicant dated June 3, 2015. The June 3, 2015 letter from the Commission's staff directed the Applicant to provide the documentation requested in the May 12, 2015 letter, and established a compliance deadline of June 17, 2015. See id. The Applicant was reminded that its failure to provide the requested documentation could result in the denial of the Second Renewal Application. See id.

On or about June 16, 2015, one day before the final deadline, a member of the Commission's staff received a telephone call from the Applicant requesting another extension of time to produce the previously requested documentation. The Commission's staff member granted the Applicant's request and extended the time to provide documentation to July 1, 2015. See Letter from Commission's Staff to the Applicant dated June 17, 2015. In the June 17, 2015 letter, the Commission's staff memorialized the June 16, 2015 telephone conversation and reminded the Applicant that its failure to provide the requested documentation could result in the denial of the Second Renewal Application. As of the date of this Notice, the Applicant has not provided the Commission proof that the $44,045.75 in debts has been resolved.[5]

The Applicant had 10 business days to respond to the Recommendation. It did not respond in any manner. Thus, the Applicant has not contested any of the factual allegations herein.

Basis for Denial

A. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

The Commission may 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

[4] The Commission's staff also requested that the Applicant provide the Commission with an updated Schedule B – Renewal Roster of Vehicles, and Schedule D – Operators of Vehicles.

[5] The only documentation provided by the Applicant was the updated Schedule B – Renewal Roster of Vehicles, and Schedule D – Operators of Vehicles, which was provided to the Commission on or about June 17, 2015.

Admin. Code §16-509(a)(x). As of the date of this Decision, the Applicant has failed to pay $44,045.75 in government obligations owed to the New York State Department of Taxation and Finance, the New York City Department of Finance, the New York County Criminal Court and the Kings County Criminal Court. On multiple occasions over a period of approximately seven weeks, the Commission's staff informed the Applicant that it owed these debts. Despite these warnings, the government obligations remain unsatisfied. The Applicant has not disputed this point. Therefore, based on this independently sufficient reason, the Renewal Application is denied.

B. The Applicant Violated the Terms of its License Renewal Order by Failing to Provide the Commission with Proof that its Outstanding Tax Warrant Had Been Satisfied or Otherwise Resolved.

On or about November 26, 2012, the Commission issued a License Renewal Order to the Applicant.[6] See License Renewal Order. Among other things, as a condition of the license, the Applicant acknowledged the existence of the taxes docketed against it by the State of New York and agreed that it would satisfy this debt before March 31, 2014. Furthermore, the Applicant agreed that its failure to resolve the New York State Tax Warrant "shall constitute adequate grounds upon which the Commission may deny" the Applicant's renewal application. See License Renewal Order.

As described above, the Applicant violated the terms of the License Renewal Order by failing to provide the Commission with proof of satisfaction or other resolution of the taxes owed to the State of New York. The Applicant was well-aware of its obligations under the License Renewal Order because it expressly agreed to the terms of that order. Under the circumstances in this matter, the Applicant's failure to comply with the terms of the License Renewal Order demonstrates the Applicant's lack of honesty, integrity and character. The Applicant has not disputed this point. As such, the Renewal Application is denied based on this independently sufficient ground.

Conclusion

The Commission is vested with broad discretion to issue a license to any applicant it determines is 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 Parkside's License Renewal Application.

[6] As noted above, on or about March 5, 2013, principal Vertuccio signed the License Renewal Order on behalf of the Applicant. See License Renewal Order at 4.

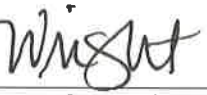
This denial decision is effective immediately. Parkside may not operate as a trade waste business in the City of New York.

Dated: November 9, 2015

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION

Daniel D. Brownell
Commissioner and Chair

Deputy Commissioner Robert Orlin
(Designee)
Department of Sanitation



Deputy General Counsel Tracy N. Wright
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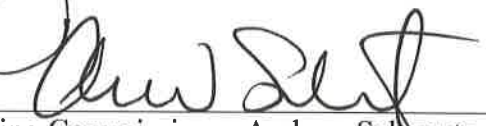
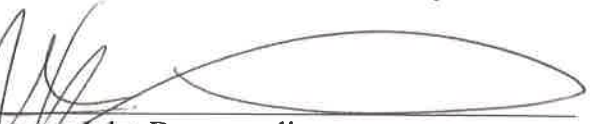


Acting Commissioner Andrew Schwartz
Department of Small Business Services



Inspector John Denesopolis
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