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 EXEMPTION APPLICATION OF INDUS GC, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Indus GC, Inc. ("Indus GC" 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 an exemption from licensing requirements and a registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-505(a). Local Law 42, which created the Commission to regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

On October 15, 2010, Indus GC applied to the Commission for an exemption from licensing requirements and for 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." Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for exemptions. See id. If, upon review and investigation of the exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

In determining whether to grant an exemption from licensing requirements and a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code § 16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§ 1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§ 1-06 & 2-03(b)

(specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission's investigation and determination of an exemption application is whether the applicant has business integrity. See 17 RCNY § 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 § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008).

Based upon the record as to the Applicant, the Commission, for the following independently sufficient reasons, denies Indus GC's exemption application and refuses to issue Indus GC a registration:

A. The Applicant Has Provided False and Misleading Information to the Commission.

B. Undisclosed Principal Shaikh Yousuf was convicted of Offering a False Instrument for Filing in the Second Degree, and his company, which is affiliated with the Applicant, Indus General Construction, Inc., was convicted of Offering a False Instrument for Filing in the First Degree.

I. REGULATORY BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life." Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI").

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual

findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42, § 1.

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded guilty or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the c & d sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the c & d sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many c & d haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988; during that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs

instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including c & d) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately $10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City's "cover" programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City's tipping fees. See 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.); see also United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the c & d sectors of the industry. Local Law 42 recognizes this fact in requiring c & d haulers to obtain registrations from the Commission in order to operate in the City.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. § 16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated constitutional challenges (both facial and as applied) by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services,

Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 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).

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases "where the applicant fails to provide the necessary information, or knowingly provides false information." It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Id.; Accord Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008) (Commission denial based on a criminal conviction, identification as an organized crime associate and false and misleading statements not considered arbitrary and capricious). Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

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.

Admin. Code § 16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of

law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. DISCUSSION

On October 15, 2010, the Applicant applied to the Commission for an exemption from licensing and registration as a trade waste business that removes construction and demolition debris. See Registration Application filed on October 15, 2010 ("Application"). Bushra Yousuf certified that all of the information provided on the Application was true and accurate. See id. at 20. The Application disclosed Bushra Yousuf as the sole principal. See id. at 13. Although not disclosed as a principal of the Applicant, Bushra Yousuf's husband, Shaikh Yousuf, was disclosed in response to Question 33 of the Application, which inquires about "the person who prepared or assisted in the preparation of this application.[1] See Application at 12. The Application also disclosed Shaikh Yousuf as the sole vehicle operator for the Applicant business. See id. at 18. However, it is clear that the majority, if not all of the Applicant's business operations are performed by and are controlled by Shaikh Yousuf. See February 23, 2011 Deposition Transcript of Bushra Yousuf ("Yousuf Tr.").

The staff has conducted an investigation of the Applicant and its principals, and in connection with that investigation the staff deposed Bushra Yousuf on February 23, 2011. On June 27, 2011, the staff issued a 13-page recommendation that Indus GC's application be denied. The Applicant was served with the recommendation on or about June 29, 2011. The Applicant was granted ten business days to respond (July 18, 2011). See 17 RCNY §2-08(a). On July 18, 2011, the Applicant submitted its response, which consists of a one page affidavit signed by Bushra Yousuf ("Response").

The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application.

III. GROUNDS FOR DENIAL

A. The Applicant Has 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). The Applicant's principals submitted an application to the Commission that contained false and misleading information.

[1] Question 33 of the Application asks for the "name of the person who prepared or assisted in the preparation of this application. If not a current principal,, disclose the person's address." By providing Shaikh Yousuf's name *and* address, the Applicant stated to the Commission that Shaikh Yousuf is not a principal of the Applicant. See Application at 12.

Accordingly, the Commission cannot place any confidence in the Applicant's application, finds it unreliable and denies Indus GC's application.[2]

1. The Application Failed to Disclose a Principal of the Company in Its Exemption Application.

The Application filed by the Applicant asks in Question 12, "On Schedule A, identify all individuals who are principals of [the] applicant business and provide the information requested." See Registration Application at 3. Schedule A disclosed only one principal – Bushra Yousuf, President of Indus GC. Further, Bushra Yousuf certified under oath that she owned 100% of the company's stock beginning on April 20, 2010.[3] Id. at 13.

The definition of "principal" (which is included in the instructions for the application) includes corporate officers and directors, all stockholders holding ten percent or more of the outstanding shares of the corporation and all other persons participating directly or indirectly in the control of such business entity. An individual is considered to hold stock in a corporation where such stock is owned directly or indirectly by or for the spouse of such individual (other than a spouse who is legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled).[4] See Admin. Code §16-501(d).

Apart from the statutory definition, Shaikh Yousuf should have been disclosed as a principal based on his significant involvement in the operations of this company. In contrast, the disclosed principal does not provide any substantial contributions to the operations of the Applicant – Bushra Yousuf does nothing besides merely helping with the books and learning from Shaikh Yousuf about how to operate a company.[5] Bushra Yousuf has no experience in the industry. In fact, Bushra Yousuf has never even held a job. See Yousuf Tr. at 16. Unlike Bushra Yousuf, Shaikh Yousuf has experience in the industry- Bushra Yousuf admitted that her husband will use his experience in the industry in connection to the Applicant and that "he is going to help me a lot in this thing." See id. at 30.

Based on Bushra Yousuf's testimony, Shaikh Yousuf already has "helped her a lot" in his role as a principal of the Applicant business. Although he was not disclosed as a principal on Indus GC's application, Shaikh Yousuf was responsible for the creation

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[2] Even if the Applicant initially submitted a complete and truthful application, the Commission would have denied that application based on Shaikh Yousuf's criminal record.

[3] Indus GC was incorporated on April 20, 2010, approximately ten months after Shaikh Yousuf and his company, Indus General Contracting, Inc., were each convicted for Offering a False Instrument for Filing.

[4] Without providing any evidence, in the Response Bushra Yousuf states that she and Shaikh Yousuf "have decided to separate," and "are filing for divorce." See Response. Nevertheless, the Commission finds that Shaikh Yousef is a principal of the Applicant.

[5] When specifically asked what she does for the applicant business, Bushra Yousuf admitted that she does nothing, "I'm doing like, you know, I'm just trying to finish with my stud[ies], and then I am – I will be, you know, involved in like, you know, completely involved." See Yousuf Tr. at 18-19.

of the Applicant company and the development of its business.[6] Shaikh Yousuf negotiated for and financed the Applicant company's truck. See Yousuf Tr. at 20. He filled out the application. See Yousuf Tr. at 28. He finds and communicates with customers. See Yousuf Tr. at 18. Finally, besides having similar names, Indus GC and Indus General Contracting, Inc. share the same telephone number, which is actually Shaikh Yousuf's cellular telephone number.[7] See Yousuf Tr. at 23-24. In all likelihood, without Shaikh Yousuf, there would be no Indus GC.

Although Bushra Yousuf is disclosed to be the only principal of the Applicant company, she had difficulty describing what the Applicant does, with whom the Applicant does business, and how the Applicant obtains business. See Yousuf Tr. at 16-19. She was able to name "Tower Group" as one company the Applicant does business with, however, she could not name the owner of "Tower Group" and she could not even name the person with whom the Applicant business has contact with at "Tower Group." See Yousuf Tr. at 17-18. Furthermore, Bushra Yousuf was not sure how the applicant business and the "Tower Group" found each other. See Yousuf Tr. at 18. Eventually, Bushra Yousuf admitted that she does not personally do business with anyone at "Tower Group" because Shaikh Yousuf does. See Yousuf Tr. at 18. At her deposition, Bushra Yousuf admitted that "he helps me. I'm new, and he helps me to do this. Like he is going to guide me how to do all of this." See Yousuf Tr. at 18.

The Applicant's response to the staff's recommendation barely merits a reply on this point. Nowhere does it address the factual basis for the staff's conclusion that the Applicant provided false, incomplete and misleading information to the Commission concerning Shaikh Yousuf's status as a principal of Indus GC, and Indus GC's and Indus General Contracting, Inc.'s close affiliation. The Applicant's response all but concedes this point. See Response. (admitting that Shaikh Yousuf helped "set up this business" and provided "advice and guidance" concerning the Applicant business.)

Against this clear and convincing evidence then, there is before the Commission only the groundless denial by Bushra Yousuf that her husband has never been a principal of Indus GC. See Response. Instead, the Response seeks to portray Shaikh Yousuf as a passive advisor or resource whom Bushra Yousuf only calls upon for advice. See Response. We do not think the record supports this assertion. In addition to creating the company, Shaikh Yousuf negotiated on behalf of the company, financed the company, and even located and communicated with customers. Amazingly, Bushra Yousuf admitted that she does nothing for the Applicant business besides helping with the books and learning from Shaikh Yousuf how to operate a company. The record thus abundantly establishes that Shaikh Yousuf participates directly in the control of Indus GC and is therefore a principal, that Indus GC and Indus General Contracting, Inc. are closely affiliated companies, and that the Applicant provided false, incomplete and misleading testimony about these subjects. See 16 NYC Code Section 1-01 (definition of principal).

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[6] Bushra Yousuf testified that it was Shaikh Yousuf's idea to form the applicant company and to put it in her name. See Yousuf Tr. at 30.

[7] Both companies also use the same facsimile number. See Yousuf Tr. at 24.

While the Commission is not required to attribute a motive for the Applicant's false filing, it appears that Shaikh Yousuf is unwilling to disclose his true role in the Applicant company due to his recent industry related criminal conviction.

The failure of the Applicant to provide truthful and non-misleading information to the Commission is evidence that the Applicant lacks good character, honesty, and integrity. Based on this independent ground, the Commission denies Indus GC's application

2. The Applicant Failed to Disclose Shaikh Yousuf's Criminal Record in Its Exemption Application.

Question 26 of the application asks the applicant to disclose all felony and misdemeanor convictions of any current principal or past principal of the company. See Registration Application at 5 ("Has the applicant business, any current principal, ...or any past principal... ever been convicted of a crime in any jurisdiction?"). Indus GC's failure to disclose Shaikh Yousuf as a principal of the company was an unsuccessful attempt to conceal his industry related felony conviction. Nondisclosure of Shaikh Yousuf's connection to the Applicant was intended to allow Bushra Yousuf to avoid answering this question in the application. The Applicant's answer to Question 26 on the registration application is false and misleading because Shaikh Yousuf, who is a principal of the company, was convicted on June 10, 2009, of the crime of Offering a False Instrument for Filing in the Second Degree, a Class A Misdemeanor. In addition, a company that Shaikh Yousuf controlled, Indus General Construction, Inc., was convicted of the crime of Offering a False Instrument for Filing in the First Degree, a Class E Felony. See Plea Agreement, People v. Shaikh Yousuf and Indus General Construction, Inc.

In addition to the failure to disclose Shaikh Yousuf's conviction in the Application, Bushra Yousuf also initially tried to avoid answering questions about Shaikh Yousuf's criminal conviction at her deposition:

Q.: Was your husband ever arrested?

A.: No.

Q.: You don't know if your husband was ever arrested?

A.: No. Since I have been here, he doesn't, and he never told me that he has been arrested.

Q.: What if I told you that on June 10th of 2009 he was arrested?

A.: 2009?

Q.: Right.

A.: No, I don't think so. I was here. I was here in June of 2009.

Q.: Are you aware of any time that your husband had to go to court for anything?

A.: I don't think- - sometimes like a seat belt ticket.

Q.: Okay.

A.: I don't think so anything else.

Q.: What about for offering a false instrument for filing?

A.: Oh, that one?

Q.: That one.

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Q.: If I told you that your husband submitted a certified payroll report that contained false information, would that refresh your memory?

A.: I don't think so because - - oh, yeah, yes.

Q.: That does refresh your memory?

A.: Yes.

Q.: Okay. So now that it refreshes your memory, can you tell me what you remember about this case.

A.: About that case?

Q.: Yes.

A.: It was like - - actually, I don't want to discuss about it. Simple as that.

See Yousuf Tr. at 31-34. Bushra Yousuf changed her mind and proceeded to discuss the criminal case only after the Commission's staff member warned her that her failure to answer questions on the topic could be considered as a ground to deny the instant application. See id. at 34.

The Response correctly states that Shaikh Yousuf's criminal record was disclosed to the Commission on January 7, 2011. However, this disclosure was only made in response to the staff's inquiry. The Applicant nevertheless initially failed to disclose Shaikh Yousuf's criminal conviction in response to Question 26 of the application.

Similarly, Bushra Yousuf initially attempted to avoid answering questions about Shaikh Yousuf's criminal conviction at her deposition.

The Applicant's attempts to provide false and non-misleading information to the Commission is evidence that the Applicant lacks good character, honesty and integrity. The Commission denies Indus GC's application on this independently sufficient ground. See Admin. Code §§16-509(b); 16-509(a)(i).

B. Undisclosed Principal Shaikh Yousuf was convicted of Offering a False Instrument for Filing in the Second Degree, and his company, which is affiliated with the Applicant, Indus General Construction, Inc., was convicted of Offering a False Instrument for Filing in the First Degree.

The staff's investigation into Shaikh Yousef's background revealed that he was convicted on June 10, 2009, of the crime of Offering a False Instrument for Filing in the Second Degree, a Class A Misdemeanor. A company that Shaikh Yousuf controlled, which is an affiliate of the Applicant, Indus General Construction, Inc., was convicted of the crime of Offering a False Instrument for Filing in the First Degree, a Class E Felony. See Plea Agreement, People v. Shaikh Yousuf and Indus General Construction, Inc. In this criminal case, Shaikh Yousuf and his company, Indus General Construction, Inc. were awarded a contract by, and performed work for the Port Authority of New York and New Jersey.[8] Under the terms of the contract, Shaikh Yousuf and Indus General Construction, Inc. were required to pay employees who provided labor on said contract the "prevailing wage" for their work, which, at the time, would have required a pay rate equal to $490.00 for a ten hour day. Instead, Shaikh Yousuf and his company only paid workers $120.00 per day, regardless of if they worked more than ten hours per day. See Criminal Court Complaint, People v. Shaikh Yousuf and Indus General Construction, Inc. ("Criminal Court Complaint"). In furtherance of the scheme, Shaikh Yousuf signed and filed on behalf of his company a Certified Payroll Report to the Port Authority of New York and New Jersey. See Criminal Court Complaint. The Certified Payroll Report contained false information in that it claimed that Shaikh Yousuf and Indus General Construction, Inc. were paying the lawful "prevailing wage" rate to their workers when, in fact, they were not. See Criminal Court Complaint. As a result, over the course of this contract with the Port Authority of New York and New Jersey, Shaikh Yousuf and Indus General Construction, Inc. underpaid their employees by $38,000.00. See Criminal Court Complaint.

In accordance with the plea agreement, Shaikh Yousuf and Indus General Construction, Inc. were each sentenced to a Conditional Discharge. See Plea Agreement. In addition, Shaikh Yousuf and Indus General Construction, Inc. agreed to pay $38,000 (thirty-eight thousand dollars) restitution to the Port Authority of New York and New Jersey and $20,000 (twenty thousand dollars) to the New York County District Attorney's Office, in lieu of fines, forfeiture, and costs of prosecution. See Plea Agreement; See Certificate of Conviction. This guilty plea by an undisclosed principal of

[8] Contract Number LGA-722 involved the removal and replacement of Garage Door Number 2 in Hangar 7 at LaGuardia Airport.

this Applicant and a closely affiliated company constitutes an independent ground for denying the registration application of this Applicant.

In determining whether an applicant possesses good character, honesty, and integrity, the Commission may consider prior convictions of the Applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also Admin. Code §16-501(a). Those factors are:

(a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license . . . sought.

(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 and 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 . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law §753 (1).

Applying the above factors, the Commission finds that, notwithstanding the public policy of the State of New York to encourage licensure of persons convicted of crimes, the crimes committed by Shaikh Yousuf and his company were serious crimes that go to the heart of one's honesty, integrity and character, and are antithetical to the very purpose of Local Law 42. The conviction is recent, is for activity directly related to the construction and demolition industry, and happened when Shaikh Yousuf was approximately 56 years old. Finally, the public interest in eliminating the entrenched corruption that has plagued the New York City carting industry for decades is clear. Public confidence in the integrity of the carting industry would be undermined if those proven to have ignored the law received licenses or registrations from the Commission.

The Response does not dispute any of the underlying facts and again, barely merits a response. On this point, the Response, in the face of overwhelming evidence to the contrary, only contains a self serving statement that Shaikh Yousuf "is not an undisclosed principal." See Response. The Applicant's undisclosed principal's guilty plea to crimes involving the construction and demolition industry compels the conclusion that the Applicant lacks good character, honesty, and integrity. Accordingly, Commission denies the Applicant's registration application on this independent ground.

IV. 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 evidence recounted above demonstrates convincingly that Indus GC falls far short of that standard. Based upon the above sufficient reason, the Commission denies Indus GC, Inc.'s exemption application and registration.

This exemption/registration denial is effective immediately. Indus GC, Inc. may not operate as a trade waste business in the City of New York.

Dated: August 2, 2011

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Commissioner/Chair

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation

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

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

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