Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE REGISTRATION RENEWAL APPLICATION OF N. ZAPATA TRUCKING (#2130) TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

N. Zapata Trucking ("Zapata" 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 a renewal of its 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).

Based upon the record as to the Applicant, the Commission now refuses to issue the requested exemption and registration for the following independent reasons:

A. The Applicant Has Failed to Pay Fines or Penalties That Are Related to the Applicant's Business That Are Owed to the New York City Business Integrity Commission.

Background and Statutory Framework

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See e.g., United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.); People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry has also been the subject of significant successful racketeering prosecutions. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992); United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367.

The Commission is charged with, inter alia, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. Admin. Code § 16-505(a). It is this licensing scheme that continues to be the primary means of

ensuring that an industry historically plagued with corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," commonly known as construction and demolition debris, or "C & D" removal, must apply to the Commission for an exemption from the licensing requirement. Id. If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption from the licensing requirement, it issues the applicant a Class 2 registration. Id. Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at § 16-508(b). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing or registration decision:

> 1. failure by such applicant to provide truthful information in connection with the application;
>
> 2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
>
> 3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
>
> 4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
>
> 5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from

time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Id. at § 509(a)(i)-(x). Additionally, the Commission may refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by the Commission…or who has otherwise failed to demonstrate eligibility for a license." Id. at § 509(b). The Commission may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license." Id. at § 509(c). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at § 509(d).

An applicant for a private carting license (including construction and demolition) has no entitlement to and no property interest in a license or registration and the Commission is vested with broad discretion to grant or deny a license or registration application. Sanitation &

Recycling Industry, Inc. v. City of New York, 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, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). Admin. Code § 16-116.

Statement of Facts

A. Applicant's Registration History

On or about October 13, 2005, Zapata applied to the Commission for a Class 2 registration for 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". The Application disclosed Nestor E. Zapata as its sole principal. On or about January 17, 2006, the Commission granted the Applicant a class 2 trade waste registration. The Applicant's registration was effective for two years, and expired on December 31, 2007. The Applicant thereafter submitted renewal applications in 2008 and 2009. See Commission License View Database, Commission File No. 2130. On or about January 31, 2012, one month after its registration had expired on December 31, 2011, the Applicant submitted another registration renewal application to the Commission. The Application again disclosed Nestor E. Zapata as the Applicant's sole principal. See Application at 7. However, on or about February 27, 2012, the Commission was notified by the Applicant's banking institution that the check tendered to the Commission by the Applicant in payment of its registration renewal fees was being returned due to insufficient funds. See JP Morgan Chase Bank, N.A. Return Reason Notice, dated February 22, 2012. By letter dated February 27, 2012 the Commission's staff requested that the Applicant pay its required registration renewal fees and warned that failure to make payment by March 9, 2012 would result in the expiration of its registration. See February 27, 2012 letter from Hector Serrano to the Applicant. Payment of such registration renewal fees was received by the Commission from the Applicant on or about May 14, 2012, some 134 days following the expiration of the Applicant's registration on December 31, 2011.

B. Applicant's Outstanding Commission Fine, Stipulation of Settlement and Failure to Pay Despite Request for Payment

On June 21, 2012, the Applicant was issued a notice of violation by the Commission for operating an unregistered trade waste removal business from December 31, 2011 to May 14, 2012. See Commission Notice of Violation No. TW-8583, dated June 19, 2012. On or about June 27, 2012, the Applicant verbally agreed to enter into a stipulation of settlement with the Commission in which it agreed to pay a total fine of $2,500.00 to resolve this Commission violation. This stipulation called upon the Applicant to make five payments of $500.00 each to the Commission on July 30, 2012, August 30, 2012, September 30, 2012, October 30, 2012 and November 30, 2012. Paragraph No. 1 of this stipulation provides that the "Respondent [Applicant herein] admits the charged violation(s) . . . ." Paragraph No. 4 of this stipulation provides that "[f]ailure of the Respondent to timely remit the agreed upon fine to the Business Integrity Commission will constitute a material breach of this Stipulation of Settlement, and may

result in additional administrative penalties as well as the reinstatement of the settled violation(s)." Paragraph 7 of such stipulation provides, in pertinent part, that "[n]othing contained herein limits in any way, or shall be construed in any way to limit the authority of the Business Integrity Commission to exercise any and all its powers under Title 16-A, Chapter 1 of the New York City Administrative Code or the rules promulgated thereunder." See Stipulation of Settlement, Commission Violation No. TW-8632, and cover letter, dated July 5, 2012, to Applicant from Jonathan Jacobs. On or about August 6, 2012, the Commission received a $500.00 payment from the Applicant's principal. See U.S. Postal Service Money Order Serial Number 20264149620 from Applicant. While the Applicant made the first installment payment for this fine in accordance with the stipulation, the Applicant did not execute the written stipulation.

The Applicant did not make any further payments to the Commission in accordance with the stipulation. Accordingly, by letter dated February 22, 2013, the Commission's staff notified the Applicant about its failure to make any payments in accordance with the stipulation and demanded that the Applicant make full payment by not later than March 8, 2013. A copy of the stipulation was attached to this letter. See February 22, 2013 letter from Martin G. Gleeson to the Applicant. The February 22, 2013 letter advised the Applicant that "failure to comply with this letter may result in the withdrawal or denial of the Class 2 Registration Renewal Application of" the Applicant.

Basis for Denial

The Applicant Has Failed to Pay Taxes, Fines, Penalties, or Fees That Are Related to the Applicant's Business That Are Owed to the New York City Business Integrity Commission.

The commission may refuse to issue a license to an applicant when such applicant has failed "to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefor, . . ." See Admin. Code § 16-509(a)(x).

As of the date of this Decision, the Applicant has failed to pay a $2,000.00 fine owed to the Commission pursuant to a verbal stipulation of settlement in which it admitted liability for such fine. The Applicant also admitted liability by making an initial partial installment payment for such fine in accordance with the stipulation of settlement. Furthermore, the Commission's staff informed the Applicant that it owed such unsatisfied debt and requested payment therefore. Despite this warning, the debt owed to the Commission remains unsatisfied. For this independently sufficient reason, this Registration Renewal Application should be denied.

Conclusion

The Commission is vested with broad discretion to 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

Business Integrity Commission

independently sufficient reasons, the Commission denies the Applicant's exemption renewal application.

This exemption denial is effective immediately. Zapata may not operate a trade waste business in the City of New York.

Dated: May 13, 2013

THE BUSINESS INTEGRITY COMMISSION

Shari C. Hyman
Commissioner and Chair

John Doherty, Commissioner
Department of Sanitation

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

John Kantor, Chief Inspector (designee)
Department of Investigation

Kathleen Ahn, General Counsel (designee)
Department of Small Business Services

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