Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE REGISTRATION APPLICATION OF R & B SERVICES, INC. (#4110) TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

R & B Services, Inc. ("R & B" 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 "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 Taxes, Fines, Penalties, or Fees That are Related to the Applicant's Business That are Owed to the Criminal Court of the City of New York, New York City Business Integrity Commission and New York State Department of Taxation and Finance.

B. The Applicant Knowingly Failed to Provide Information and Documentation Required by the 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;
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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 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

On or about May 31, 2005, R & B applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. The Application disclosed Nicole Bridgewater and Reginald Bridgewater as principals. On or about September 15, 2005, the Commission granted the Applicant a trade waste registration. The Applicant's registration was effective for two years, and expired on August 31, 2007. The Applicant declined to submit a renewal application at the time of its registration expiration, and R & B's registration expired on August 31, 2007.

On September 20, 2010, the Applicant was issued a notice of violation by the Commission for engaging in unlawful trade waste removal on September 10, 2010 without a registration or license issued by the Commission in violation of Admin. Code § 16-505(a). On or about March 4, 2011, the Applicant entered into a Stipulation of Settlement in Lieu of Notice of Violation and Hearing, acknowledged guilt and paid a total fine of $2,500.00 to resolve this Commission violation.

On or about March 18, 2011, the Applicant again applied for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. The Application disclosed Reginald Bridgewater as the sole principal. See Application at 13. That application is currently pending, and to date, the Applicant is not permitted to transport Trade Waste in New York City.

Applicant's Criminal Court Judgment Debt

The Commission's background investigation of the Applicant in connection with the instant Application revealed that the Applicant is the subject of a judgment debt issued by the Criminal Court of the City of New York City in the amount of $10,390.00. This judgment debt is based upon the Applicant's default in regards to sixteen separate criminal court summonses. By letter dated September 21, 2011, the Commission's staff notified the Applicant about the Criminal Court judgment debt, and instructed the Applicant to provide proof that this debt was paid or otherwise resolved no later than October 2, 2011. See September 21, 2011 letter from

Martin G.Gleeson to the Applicant.[1] After numerous requests for an extension of this October 2011 deadline, by letter dated March 29, 2012, the Applicant by its attorney informed the Commission that it had filed a motion in the Criminal Court of the City of New York, Richmond County, seeking to vacate the judgment, and that such motion was scheduled to be heard by the Court on April 19, 2012. See Letters from Valerie Wieczorek, Esq. to the Applicant, dated March 19, 2012 and March 29, 2012. By letter dated March 30, 2012, the Commission's staff notified the Applicant that information and/or documentation concerning the disposition of the criminal court summonses should be provided as soon as the Court rendered a decision on the motion. See March 30, 2012 letter from Martin G. Gleeson to the Applicant. By letter dated April 27, 2012, the Applicant by its attorney, notified the Commission that the motion had been adjourned by the Criminal Court of the City of New York, Richmond County to June 20, 2012. See Letter from Valerie Wieczorek, Esq. to the Applicant, dated April 25, 2012. On or about June 25, 2012, the Applicant's attorney telephoned the Commission and advised that the motion had been adjourned by the Court once again until July 25, 2012.

Having received no further information from the Applicant, on or about September 7, 2012, the Commission's staff sent an e-mail message to the Applicant, asking that the Applicant provide a written update concerning the status of its outstanding criminal court summons fines. The message also advised the Applicant that its application has "been pending for a considerable period of time based upon the outstanding status of these criminal court fines" and further advised that "R & B Services, Inc. has been given every opportunity to pay or otherwise resolve these fines for more than one year. Accordingly, it is imperative that R & B Services, Inc. take the steps necessary to bring this matter to a conclusion in short order." See September 7, 2012 e-mail message from Martin G. Gleeson to Applicant. On September 7, the Commission's staff was advised by the Applicant's attorney that the motion to vacate the criminal court summons fines had been denied by the Court. The Applicant's attorney requested that the Commission's staff put her in touch with counsel from the New York City Law Department with whom she might negotiate an installment agreement between the Applicant and the City of New York for payment of the outstanding criminal court summons fines. The Commission's staff thereafter placed the Applicant's attorney in touch with Alan H. Kleinman, Senior Counsel, Affirmative Litigation Division, New York City Law Department. On or about December 5, 2012, Mr. Kleinman advised the Commission's staff that while a draft "Criminal Court Fines Payment Agreement" had been discussed with the Applicant's attorney in October 2012, no further communication concerning the subject had been received from the Applicant's attorney. On December 3, 2012, the Commission's staff telephoned the Applicant's sole principal and left a voicemail message instructing him to contact the Commission regarding the outstanding criminal court summons fines. The Applicant failed to respond. Accordingly, on January 3, 2013, the Commission's staff sent the Applicant a letter marked "FINAL REQUEST FOR INFORMATION." The letter required a response by not later than January 15, 2013. See

[1] The Commission's background investigation also revealed that the Applicant owed $23,000.00 to the New York State Workers' Compensation Board. After many months of requesting that the Applicant provide proof that this debt was paid or otherwise resolved, on or about March 29, 2012, the Applicant provided the Commission with a copy of a Satisfaction of Judgment with respect to the New York State Workers' Compensation Board judgment debt.

January 3, 2013 letter from Martin G. Gleeson to the Applicant. The Applicant failed to respond to the January 3, 2013 letter. The letters dated September 21, 2011, October 7, 2011, January 23, 2012, and January 3, 2013 from the Commission to the Applicant all advised the Applicant that failure to provide the requested information and/or documentation to the Commission may result in the withdrawal or denial of its registration application. The Commission has been advised by Mr. Kleinman that Applicant's criminal court summons fines remain unpaid and that as of October 2012, the balance owed by the Applicant to the City of New York in connection with these criminal court summons fines, including accrued interest of nine percent (9%) since the judgment was docketed on October 23, 2003, was $18,722.60.

Applicant's Outstanding Commission Fine

On or about May 23, 2012, a Commission investigator observed a vehicle owned by the Applicant and operated by an employee of the Applicant transporting C & D trade waste within the confines of New York City without a registration issued by the Commission in violation of Admin. Code § 16-505(a). The Applicant was issued a notice of violation by the Commission for this offense. See Business Integrity Commission Notice of Violation No. TW-8623. On or about August 30, 2012, the Applicant entered into a Stipulation of Settlement to resolve the notice of violation. The Applicant admitted guilt and agreed to pay a $4,000.00 fine to the Commission in five equal monthly installments payments of $800.00 each. Such payments were to have been made on or before: September 15, 2012; October 15, 2012; November 15, 2012; December 15, 2012; and January 15, 2013. 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-8623, dated August 30, 2012.

The Applicant failed to make any payment on the first four payment dates. Accordingly, by letter dated January 3, 2013, the Commission's staff instructed Applicant to remit all outstanding payments under the stipulation by January 15, 2013. See January 3, 2013 letter from Martin G. Gleeson to the Applicant. To date, despite this letter and the Applicant's agreement, no payments have been made to the Commission as required by the stipulation.

Applicant's Outstanding New York State Tax Warrants

In addition to the Criminal Court judgment debt, and the outstanding Commission fine, the Applicant owes nearly $30,000.00 in outstanding New York State tax warrants payable to the New York State Department of Taxation and Finance. Fully eighty-six percent (86%) of this debt has remained outstanding for more than one year. According to the New York State

Department of State Tax Warrant Database, the warrants pertaining to the Applicant are as follows:

No.	New York State Tax Warrant ID#	Docket Date	Docket Amount
1	E-029276862-W003-2	February 27, 2012	$25,202.27
2	E-029276862-W005-1	March 4, 2013	$ 3,718.12
3	E-029276862-W006-5	March 4, 2013	$ 232.12

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 Criminal Court of the City of New York, the New York City Business Integrity Commission, and the New York State Department of Taxation and Finance.

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 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." See Admin. Code § 16-509(a)(x); see also § 16-509(c)(ii); see also § 16-513(a)(iv).

As of the date of this Decision, the Applicant has failed to pay fines and fees ordered by the Criminal Court of the City of New York. In addition, the Applicant has failed to pay a $4,000.00 fine that is due and payable to the Commission. Finally, the Applicant has failed to pay nearly $30,000.00 in outstanding tax warrants that are due and payable to the New York State Department of Taxation and Finance. On multiple occasions, the Commission's staff informed the Applicant that it owed numerous unsatisfied debts to governmental entities. Despite these warnings, the debt ordered by the Criminal Court of the City of New York and the Commission remain unsatisfied. For this independently sufficient reason, this Registration Application should be denied.

The Applicant Knowingly Failed to Provide Information and 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 pursuant to this chapter or any rules promulgated pursuant hereto." See Admin. Code § 16-509(b).

Despite repeated attempts by the Commission's staff, the Applicant has failed to provide proof of satisfaction or other resolution of all of the outstanding fines, judgments and liens owed to governmental entities.

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The Applicant has "knowingly failed to provide the information" required by the Commission by failing to respond to the Commission's repeated requests for information and/or documentation. For this independently sufficient reason, this Registration 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 independently sufficient reasons, the Commission denies the Applicant's exemption application.

This exemption denial is effective immediately. R & B 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