



**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION RENEWAL APPLICATION OF SJG SERVICES, INC. TO OPERATE
AS A TRADE WASTE BUSINESS**

Introduction

SJG Services, Inc. (“SJG” or the “Applicant”) (BIC Reg. #1935) has applied to the New York City Business Integrity Commission (“Commission”), formerly known as the New York City Trade Waste Commission, for renewal of 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).

On March 12, 2013, the staff issued and served the Applicant with Notice of the Grounds to Recommend that the application be denied. The Applicant was granted ten business days to respond, until March 29, 2013. See 17 Rules of the City of New York §2-08(a). The Applicant submitted a response, which consisted of an unsworn one-page letter signed by principals of the Applicant, John Picone and Stephen Guido, claiming that the Applicant is making an effort to resolve its tax liabilities and contesting the amount owed (“Response”). Based on the record as to the Applicant, the Commission now denies SJG’s exemption renewal application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

- A. The Applicant has Failed to Pay Taxes for which Judgments have been entered.
- B. The Applicant Violated the Terms of its Registration Renewal Order by Failing to Provide the Commission with Proof that its Outstanding Taxes had been paid.
- C. 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. NY 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., 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). NY Admin. Code § 16-116.

Statement of Facts

On February 3, 2005, SJG Services, Inc. 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. See Application for Exemption from Licensing Requirement for Removal of Demolition Debris (“Application”). The Application disclosed Stephen Guido (“Guido”) and John Picone (“Picone”) as the principals of the Applicant. See Application at 9.¹ On or about April 1, 2005, the Commission granted the Applicant a trade waste registration. See Registration Order. The Applicant’s registration was effective for two years, and expired on March 31, 2007. See id. On or about February 15, 2007, the Applicant filed its first renewal application with the Commission (“First Renewal Application”). See First Renewal Application. After an investigation of the Applicant, the Commission granted the First Renewal Application and authorized the Applicant to operate for another two years, until March 31, 2009.

The Applicant filed its second renewal application with the Commission on or about April 3, 2009 (“Second Renewal Application”). See Second Renewal Application. The Commission’s background investigation of the Applicant in connection with the Second Renewal Application revealed three New York State tax warrants against the Applicant for \$273,542.00, \$237,846.00, and \$237,846, totaling \$749,234. As a result, by letters dated August 21, 2009, September 22, 2009, January 14, 2010, February 17, 2010, March 9, 2010, and April 27, 2010, the Commission requested proof of satisfaction of the outstanding tax debts.

¹ By letter notarized on February 23, 2010, Picone stated that as of August 2009 Guido was no longer a principal and has had no role in the Applicant business. As demonstrated throughout this Notice, Guido has in fact maintained the role of principal in the Applicant business and will be treated as such throughout this Notice. See Admin. Code section 16-501(d) (definition of principal).



Alternatively, the Commission requested that the Applicant provide proof of payments towards the outstanding tax debts, proof of an installment plan, and/or proof of acceptance into the New York State Amnesty Program. Intermittently, since the first letter sent by the Commission's staff, the Applicant made representations that it would be accepted into the New York State Amnesty Program, thereby decreasing the debt, and that it was in the process of obtaining a loan to pay off the debt. Therefore, by letter dated September 21, 2010, the Commission memorialized the Applicant's representations and requested documentary proof supporting its previous oral and written representations.² The Applicant was notified that its failure to provide such proof would result in administrative violations and maximum penalties. See letter from Leigh Neren dated September 21, 2010.

On October 8, 2010, the Commission received an Offer in Compromise dated October 4, 2010 purportedly filed with the New York State Department of Taxation and Finance offering to pay the tax authority \$140,000 in satisfaction of the outstanding debt. See Offer in Compromise dated October 4, 2010.

On October 26, 2010, the Commission issued a Registration Renewal Order to the Applicant that was conditioned upon the Applicant providing proof of a final determination on the Offer in Compromise by the New York State Department of Taxation and Finance by March 31, 2011. Further, failure to enter into such an agreement with the tax authorities would be adequate grounds for the denial of future renewal applications. See Registration Renewal Order. On October 26, 2010, John Picone signed the Registration Renewal Order acknowledging and accepting to the terms therein. See Registration Renewal Order at 4.

On March 15, 2011, the Applicant filed its third renewal application with the Commission ("Renewal Application"). See Renewal Application. The Commission's background investigation of the Applicant in connection with the Third Renewal Application established that the three New York State tax warrants totaling approximately \$750,000 remained outstanding. Further, the Commission had not received proof that the Offer in Compromise had been accepted or rejected.

By letter dated September 7, 2011, a Commission staff member reminded the Applicant of the terms of its Registration Renewal Order, which required that it provide proof regarding the tax debt to the Commission by March 31, 2011, and gave it another opportunity to submit the previously required documentation. The Applicant was given until September 16, 2011 to provide the documentation. It was further advised that the failure to do so would result in denial of the Renewal Application or administrative penalties. See letter from Tyler Sulli dated September 7, 2011.

The Applicant failed to provide the requested documentation. Therefore, on or about October 21, 2011, the Commission issued a Notice of Violation against the Applicant charging it

² Additionally, on August 18, 2010, a Commission employee spoke with the bank from where the Applicant was seeking to obtain a loan and was notified that the loan application filed by the Applicant had been denied.



with failing to provide information or documentation to the Commission in violation of Admin. Code section 16-509(b) and 17 RCNY section 1-09, and for violating the terms of its Registration Renewal Order. See Notice of Violation, TW-7381. The violation was scheduled for a hearing on January 19, 2012. At the Applicant's request, the hearing was adjourned to February 2, 2012, for the Applicant to provide the previously requested documentation.

On January 31, 2012, two days before the scheduled hearing, Stephen Guido contacted the Commission, claimed that the Offer in Compromise was accepted by New York State and that the Applicant's accountant would provide proof of such. On January 31, 2012, the Applicant's accountant provided a letter representing not that the Offer in Compromise was accepted, but merely that he spoke with the revenue officer in charge of the Applicant's case who reportedly informed the accountant that a decision on the Offer in Compromise may not be finalized for approximately four months. Notwithstanding the misleading comments by the Applicant, based on the accountant's representations, the Commission adjourned the administrative hearing until April 5, 2012.

On April 5, 2012, the Applicant again requested an adjournment of the hearing to produce the previously requested tax documentation. The hearing was rescheduled, again, until May 2, 2012.

By letter dated April 30, 2012, three days before the scheduled hearing date, the Applicant's accountant stated that the company was still attempting to pay its outstanding tax liabilities and that it was now seeking to pay the remaining balance from the funds of an expected unrelated lawsuit settlement.³ See letter from Jack M. Portney dated April 30, 2012. Consequently, On May 2, 2012, the Applicant requested another adjournment to provide proof that the tax warrant had been paid. The case was rescheduled to June 14, 2012, and the Applicant was informed that no further adjournments would be given.

On June 14, 2012, the Applicant appeared at the hearing without the required tax proof and settled the case for \$5,000 to be paid in two monthly installments of \$2500. The Applicant has paid the fine.

By letter dated August 31, 2012, titled "Final Notice," the Commission directed the Applicant to provide the documentation proving that the New York State tax warrants were resolved. The Applicant was informed that the failure to provide the proof by September 14, 2012, would result in the denial of the Renewal Application. The Commission has not received the requested documentation.

As of March 25, 2013, the abovementioned New York State tax warrants remain open and unpaid. In its Response, the Applicant claimed that it owes \$306,356.02, not \$749,234.00 to

³ Again, contrary to the Applicant's previous claims that Guido was no longer a principal, the letter referenced that the shareholders of the business are Stephen Guido and John Picone. See letter from Jack M. Portney dated April 30, 2012, copying Guido and Picone.



New York State. Further, the Applicant claimed that an “agreement for a payment plan has been offered and accepted, [and] the first payment is due April 15, 2013.” The Applicant failed to provide any documentation to support its unsworn assertions.

Basis for Denial

The Applicant Failed to Pay Taxes 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....” See Admin. Code §16-509(a)(x); see also §16-509(c)(ii); see also §16-513(a)(iv).

As of March 25, 2013, the Applicant has failed to pay taxes in the amount of \$749,234.00 as ordered by New York State. As demonstrated above, the Applicant was given over three years – since the Commission’s initial notification on August 21, 2009 – to pay the outstanding taxes. Despite repeated opportunities and time to pay the debt, the tax warrants remain outstanding. The Applicant claims in its unsworn Response that it owes \$306,356.02 in outstanding taxes and that a payment plan has been accepted. Notwithstanding these claims, as of March 25, 2013, New York State Department of State, State Tax Warrant Notice System reveals that \$749,234.00 is owed by the Applicant business and its principals to New York State. Moreover, the Applicant concedes that it does in fact owe hundreds of thousands of dollars to the tax authorities. For this independently sufficient reason, this Renewal Application is denied.

The Applicant Violated the Terms of its Registration Renewal Order by Failing to Provide the Commission With Proof that its Outstanding Taxes had been Paid.

On or about October 26, 2010, the Commission issued a Registration Renewal Order to the Applicant.⁴ See Registration Renewal Order. Among other things, as a condition of the Registration Renewal Order, the Applicant acknowledged the existence of the New York State tax warrants and that it had submitted an Offer in Compromise to the tax authorities to resolve such debt. Further, the Applicant agreed that its failure to enter into a formal agreement with the tax authorities to resolve such debt by March 31, 2011 shall “constitute[] adequate grounds upon which the Commission may deny” the Applicant’s renewal application. See Registration Renewal Order.

⁴ On or about October 26, 2010, principal John Picone signed the Registration Renewal Order on behalf of the Applicant. See Registration Renewal Order.



As described above, the Applicant violated the terms of the Registration Renewal Order by failing to provide the Commission with proof of an agreement with the New York State tax authorities. Further, to date, the Applicant has failed to provide any satisfaction or other resolution of the New York State tax warrants. Thus, the Applicant violated the terms of the Registration Renewal Order, terms to which the Applicant previously agreed. The Applicant does not contest this point. This violation demonstrates the Applicant's lack of honesty, integrity and character. As such, this Renewal Application is denied on this independently sufficient ground.

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).

As demonstrated above, the Applicant has been given opportunity after opportunity to provide proof that the outstanding tax warrants have been satisfied, that they have been resolved in any manner, and/or that the Applicant has entered into an agreement with the tax authorities to pay such debt. Moreover, the Applicant was repeatedly advised that its failure to provide such proof would result in the denial of the Renewal Application. Notwithstanding these notices, the Commission gave the Applicant further extensions of time to submit the documentation. Instead of providing the documentation, however, the Applicant has merely delayed the process with unsubstantiated (and perhaps misleading) representations in an attempt to thwart efforts to resolve the debt.

In short, despite being given numerous opportunities – for over two years – to provide proof of resolution of the tax debt, the Applicant has failed to provide proof of satisfaction or other resolution of the outstanding tax warrants owed to a governmental entity. In its Response, the Applicant, once again, makes unsupported claims that it is addressing its tax liabilities, providing no proof of such claims, thereby attempting to delay the process by requesting yet again that “this matter be postponed for 30 to 45 days.” See Response. The Applicant should not be given any more opportunities based on unsubstantiated self-serving claims. Consequently, it is clear that the Applicant has “knowingly failed to provide the information” required by the Commission by failing to fully respond to the Commission’s repeated requests for information and/or documentation. For this independently sufficient reason, this Renewal Application is denied.

Conclusion

The Commission is vested with broad discretion to issue a license or 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 renewal application.

This exemption/registration denial is effective immediately. SJG 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



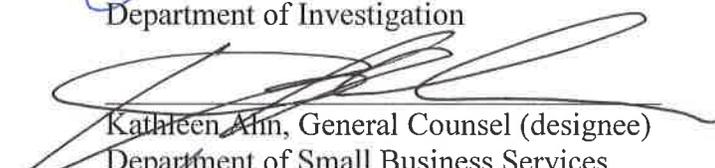
John Doherty, Commissioner
Department of Sanitation



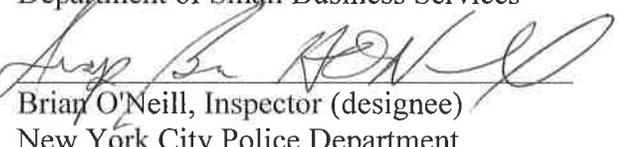
Janet Lim, Assistant General Counsel (designee)
Department of Consumer Affairs



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