Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF A & A CONSTRUCTION AND MANAGEMENT CORP. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

A & A Construction and Management Corp. (the "Applicant" or "A & A") (BIC #3708) has applied to the New York City Business Integrity Commission (the "Commission") for renewal of a registration to operate a trade waste business pursuant to New York City Administrative Code ("Admin. Code") §16-505(a). Specifically A & A seeks a renewal of an exemption from licensing requirements and 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." Id.

On August 21, 2013, the staff issued and served the Applicant with a 9-page Notice of the Grounds to Recommend Denial of A & A's Application (the "Recommendation"). As stated in the Recommendation, the Applicant had ten business days from the date of the Recommendation to respond. See Title 17, Rules of the City of New York ("RCNY") §2-08(a); Recommendation at 9. On September 5, 2013, the Commission received the Applicant's response which consisted of a one page unsigned letter written by the Applicant's currently disclosed principal, Stephanie Garcia (the "Response").[1] The Commission has carefully considered both the staff's recommendation and the Applicant's Response. Based on the record as to the Applicant, the Commission now denies the registration renewal application of A & A because A & A lacks good character, honesty and integrity for the following independent reasons:

A. The Applicant violated Local Law 42 and the Commission's rules by failing to timely notify the Commission about the addition of Stephanie Garcia as a principal of the company and the removal of Alberto Garcia as a principal of the company.

B. The Applicant failed to provide information and provided false and misleading information to the Commission.

C. The Applicant has failed to pay taxes that are related to the Applicant's business and are owed to the New York State Department of Taxation and Finance and the Applicant is not authorized to do business in the State of New York.

[1] Although the Recommendation states that any assertions of fact submitted in the Applicant's response must be made under oath, the Applicant's response failed to attach a *signed and sworn* affidavit from its principal. See Recommendation at 9 (allowing the Applicant 10 business days to submit any assertions of fact "under oath" and any information that it wishes the Commission to consider).

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;
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> 2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which

directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

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

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

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

> 9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
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> 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 January 27, 2010 A & A applied to the Commission for an exemption from the licensing requirement for the removal of construction and demolition debris. See A & A's Application for Exemption from Licensing Requirement for Removal of Demolition Debris ("Registration Application"). On its Registration Application, the Applicant disclosed Alberto Garcia as its only principal since October 7, 2008. See id. at 13. On April 13, 2010, the Commission granted the Applicant a trade waste registration. See A & A Registration Order. On May 5, 2010, Alberto Garcia signed the Registration Order, thereby consenting to the terms and conditions therein. See Registration Order at 5. A & A's registration was effective for two years, and expired on April 30, 2012. See Id.

On April 10, 2012, the Applicant filed an application to renew its registration with the Commission. See A & A's Renewal Application for License or Registration as a Trade Waste Business dated April 10, 2012 ("Renewal Application"). Alberto Garcia was not disclosed as a principal of the Applicant business on the renewal application. Rather, the Renewal Application disclosed to the Commission for the first time that Alberto Garcia's wife, Stephanie Garcia is the Applicant's sole principal. See Renewal Application at 7.

On January 17, 2013, Stephanie Garcia provided the Commission with testimony under oath.[2] Ms. Garcia testified that, unbeknownst to the Commission, Alberto Garcia was deported from the United States sometime in 2011. See January 17, 2013 Deposition Transcript of Stephanie Garcia ("Garcia Tr.") at 16. Although the timing is not clear due to conflicting information provided to the Commission by the Applicant, sometime before Alberto Garcia was deported, the Applicant company was placed in Stephanie Garcia's name. The timing is not clear because the Applicant submitted to the Commission at least four different versions of ownership history. The first version of ownership history was provided to the Commission in the Registration Application. The Registration Application states that Alberto Garcia was the only principal and "100%" owner of the Applicant company since October 7, 2008. See Registration Application at 13. The second version of ownership history was provided to the Commission in the Renewal Application. The Renewal Application states that Stephanie Garcia is the only principal and "100%" owner of the company since October 7, 2008. See Renewal Application at 7. The third version of ownership history was provided to the Commission in a Resolution of the Applicant's Board of Directors that was attached to the Renewal Application. This Resolution states that on November 15, 2008, Stephanie Garcia paid $2,000.00 to purchase 200 shares or 100% of the Applicant business. See Resolution of the Board of Directors. The fourth version of ownership history was provided to the Commission by Stephanie Garcia at her deposition. Although the Renewal Application states that she became the Applicant business' only principal on October 7, 2008, and the Resolution states that she became the sole owner of the company on November 15, 2008, Stephanie Garcia testified on January 17, 2013 that all of this information was incorrect. See Garcia Tr. at 20; Renewal Application at 7. Instead, Stephanie Garcia testified under oath that she owned one hundred percent of the company beginning sometime in 2011. Id. The Applicant's Response did not address any of these inconsistencies and did not even attempt to set the record straight about the ownership history of the Applicant business. See Response.

In addition to the fact that the business was, at some point, transferred to Stephanie Garcia without timely notifying the Commission, the Applicant also failed to disclose that Genaro Garcia, Alberto Garcia's brother, actually assumed control of the applicant and is an undisclosed principal. 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.* See Admin. Code § 16-501(d) (italics added). Again, the Applicant's Response did not address these facts.

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[2] Although Stephanie Garcia originally agreed to appear for a deposition on December 10, 2012, she failed to appear on December 10, 2012. See December 10, 2012 Stephanie Garcia Deposition Transcript. Approximately one hour after her deposition was supposed to begin, a member of the Commission's staff contacted Stephanie Garcia by telephone. Garcia told the Commission's staff for the first time, that she would not be able to attend the deposition that day because she could not find a babysitter. During this telephone conversation, Garcia agreed to reschedule her deposition to January 17, 2013, but cautioned the Commission staff member, "you better not ask any questions about my husband because he is not here." On January 17, 2013, Garcia appeared for her deposition without counsel. She was informed that she could call an attorney at any time during the deposition, or that the Commission's staff would adjourn the proceedings if she changed her mind at any time about legal representation. Garcia proceeded without counsel.

Throughout Stephanie Garcia's deposition, it became clear that she knows little about the Applicant business and the trade waste industry, and that her brother-in-law, Genaro Garcia, whose name appears nowhere in the application, is an undisclosed principal who controls the company. Stephanie Garcia testified that the only things she does for the Applicant business is pay the bills, "write out the contracts," answer telephones and occasionally serve as a translator for Genaro Garcia.[3] See Garcia Tr. at 32, 35, 37. Although she is disclosed to the Commission as the only principal of the Applicant business, she had difficulty describing what the Applicant does, with whom the Applicant does business or how the Applicant obtains business. Id. at 23-56, 62-69. Garcia did not know where the Applicant dumps its waste or even how much it pays to dump waste - a basic and essential component of operating a trade waste business. Id. at 62. Despite her claim that she pays bills on behalf of the company, Stephanie Garcia could not provide the details about most of the company's expenses, including employee salaries. Id. at 23-56, 62-69. The Applicant's scant Response did not dispute any of these facts.

Stephanie Garcia admitted that after her husband's deportation, her brother-in-law, Genaro Garcia became her "partner" in the applicant business. Id. at 10, 31. By Stephanie Garcia's own admission, in his capacity as a "partner," Genaro Garcia took control of virtually every aspect of the Applicant business. Genaro Garcia handles such tasks as renting the container to remove debris, paying for the rental of parking spots for the trucks and the Applicant's office, as well as paying the salaries to the employees, communicating with the Applicant's bookkeeper, providing estimates to customers, choosing where to dump waste, purchasing the necessary materials for each job, in addition to performing the actual construction work on each job. Id. at 23, 27-32, 34, 41, 62. Genaro Garcia also helped Stephanie Garcia complete the Renewal Application. Id. at 10. Thus, although he has no official ownership interest in the company, the role Genaro Garcia plays in A & A can clearly be defined as that of a principal.

Schedule "A" of the Renewal Application directs the Applicant to "identify all persons who are current principals of the licensee or registrant ..." See Renewal Application at 7. Schedule "A" disclosed only one principal- Stephanie Garcia, "President" and "100%" owner of the Applicant business. Id. Stephanie Garcia's brother-in-law, Genaro Garcia, is an undisclosed principal of the applicant business. Yet, Genaro Garcia's name does not appear anywhere in the application submitted by A & A. See 2012 Renewal Application.[4] Once again, the Applicant's Response did not dispute any of these facts.

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[3] Although she claimed that she pays the bills, she admitted that Genaro Garcia pays the employees, including cash paid to day-laborers, and pays the bookkeeper who helped fill out the Renewal Application. See Garcia Tr. at 41-42.

[4] Schedule C of the application also requires applicants to disclose "all current employees... [and] all new employees who solicit customers, who perform bill collection...who have regular contact with customers, who have the authority to agree to service or refuse service to customers, and/or who have authority to resolve customer complaints." See 2012 A & A Renewal Application. Genaro Garcia's name was not disclosed. See Id. at 10-11.

Taxes and the Failure to Maintain Authorization To Do Business In New York State

The New York Secretary of State dissolved the Applicant corporation by proclamation on October 26, 2011.[5] See New York State Department of State Division of Corporations printout. The Applicant has done nothing to restore its authorization to do business in New York State. Consequently, as of the date of this Notice, the Applicant is not authorized to do business in the State of New York. Prior to the Applicant corporation's dissolution by proclamation, on June 14, 2011, the New York State Department of Taxation and Finance filed a tax warrant in the amount of One Thousand Three Hundred Seventy Eight ($1,378.05) Dollars and Five Cents against the Applicant. See New York Judgment Docket and Lien Records Printout. On August 10, 2012, a member of the Commission's staff informed Stephanie Garcia about this outstanding tax warrant. The Commission's staff member later provided Stephanie Garcia with additional information about the tax warrant. On August 12, 2012, the Applicant's accountant contacted the Commission and informed a member of the Commission's staff that he is working on resolving the tax warrant. On August 30, 2012, the member of the Commission's staff contacted the Applicant's accountant to ask about the status of the tax warrant. The Applicant's accountant told the Commission staff member that he is working on resolving the tax warrant. The Commission's staff member then placed telephone calls to the Applicant's accountant on September 14, 2012, September 28, 2012, and on October 15, 2012. Although the Commission's staff left messages, none of these telephone calls were returned. As of the date of this Notice, the Applicant still owes the New York State Department of Taxation and Finance One Thousand Three Hundred Seventy Eight ($1,378.05) Dollars and Five Cents and still does not have authority to do business in New York State.

Basis for Denial

A. The Applicant violated Local Law 42 and the Commission's rules by failing to timely notify the Commission about the addition of Stephanie Garcia as a principal of the company and the removal of Alberto Garcia as a principal of the company.

Registrants must inform the Commission of any changes in the ownership composition of the registrant, the addition or deletion of any principal at any time subsequent to the issuance of the registration, or any other material change in information submitted on the application for registration within ten business days. See Admin. Code §16-507(b); Title 17 Rules of the City of New York §2-05(b). Although the Applicant provided conflicting accounts of when Alberto Garcia relinquished his ownership interest in the Applicant company and when Stephanie Garcia acquired her interest in the Applicant company, it is clear that the first time the Applicant notified the Commission of any change in ownership was when it filed its renewal application on April 10, 2012. Whether Stephanie Garcia became a principal on October 7, 2008, as the

[5] If a New York corporation does not file franchise tax returns or pay franchise taxes for two or more years, the New York Secretary of State may dissolve the corporation by proclamation. When a corporation is dissolved by proclamation, the legal entity of the corporation ceases to exist. See New York State Department of Taxation and Finance website, http://www.tax.ny.gov/bus/doingbus/tr125.htm.

Renewal Application states, on November 15, 2008, as the Resolution of the Applicant's Board of Directors states, or sometime in 2011, according to Stephanie Garcia's testimony, the Applicant violated Local Law 42 and the Commission's rules by failing to timely disclose its change in ownership.

The Applicant's Response concedes the fact that the Applicant violated Local Law 42 and the Commission's rules by failing to timely notify the Commission about the addition of Stephanie Garcia as a principal of the company and the deletion of Alberto Garcia as a principal of the company. In the Response, Stephanie Alvarez claims ignorance by stating "that that change [in principals] was done by my accountant and I was not aware that I had to notify [the Commission] because the company name remains the same." See Response. Stephanie Garcia's argument, that she was ignorant about the Applicant's responsibilities under Local Law 42 and the Commission's rules does not absolve the Applicant's responsibility to timely report to the Commission who is in control of the Applicant business and reflects adversely on her fitness for registration. Furthermore, if Stephanie Garcia had any control over the Applicant business, she would have known about such basic reporting responsibilities and would not left such a task to her accountant. Based on this independently sufficient ground, the Commission denies this registration renewal application.

B. The Applicant failed to provide information and 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). In connection with the renewal application, Stephanie Garcia signed a sworn certification under penalty of perjury that she "read and understood the questions contained in the attached application and its attachments" and "that to the best of [her] knowledge the information provided in response to each question and in the attachments is full, complete and truthful." Id. at 12. Despite signing this certification, Stephanie Garcia provided the Commission with information that she knew was false and misleading because she failed to disclose Genaro Garcia as a principal of the Applicant business.

It is abundantly clear from the deposition transcript and communications with Stephanie Garcia that Genaro Garcia is the true principal of the Applicant business and should have been disclosed as such based on his significant involvement in the operations of the Applicant company. In contrast, the disclosed principal contributes little, if anything to the operations of the business. In fact, all of the available evidence establishes that Stephanie Garcia has never been in control of the Applicant company and has no plans to assume control of the company in the future.

In its Response, the Applicant does not even attempt to contest any of the the evidence relied upon by the Commission. The unsigned Response submitted by Stephanie Garcia on

behalf of the Applicant only states, "I am not aware of any false or misleading information ever given to any licensing department." See Response. Therefore, the Response did not address the fact that Genaro Garcia is an undisclosed principal of the Applicant. Similarly, the Response did not address the fact that Stephanie Garcia does virtually nothing for the Applicant business.

Information regarding who is in control of an applicant business, who has contact with customers and who is responsible for oversight of the Applicant's activities is crucial to the Commission's mission to ensure proper oversight of the carting industry. Undisclosed principals and employees makes proper oversight impossible and provides inroads for the reemergence of the type of criminal activity that historically has had a stronghold on the industry. The failure of the Applicant to provide truthful and non-misleading information to the Commission about who is and who is not a principal of the company is evidence that the Applicant lacks good character, honesty and integrity. Therefore, the Commission denies this registration renewal application based on this independently sufficient ground. See Admin. Code §§16-509(b); 16-509(a)(i).

C. The Applicant has failed to pay taxes that are related to the Applicant's business and are owed to the New York State Department of Taxation and Finance and the Applicant is not authorized to do business in the State of New York.

The commission may refuse to issue a license to an applicant "upon the failure of the applicant to pay any tax, fine, penalty, fee related to the applicant's business...for which judgment has been entered by a[n] ... administrative tribunal of competent jurisdiction..." See 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 and the Applicant's Principals have failed to pay $1,378.05 in taxes to the New York State Department of Taxation and Finance. Furthermore, the New York Secretary of State dissolved the Applicant corporation by proclamation on October 26, 2011. See New York State Department of State Division of Corporations printout. The Applicant never advised the Commission of this change of information regarding its corporate status and never provided the Commission with proof that it paid all of the taxes it owes.

The unsigned Response submitted on behalf of the Applicant by Stephanie Garcia claims, without providing any evidence, that she has made "payment arrangements with the state and ha[s] been complying with those payments." See Response. Although the Applicant states in the Response that it is addressing its tax delinquencies, it provided no evidence of such efforts. Furthermore, a judgment and lien search conducted on September 11, 2013, confirms that the warrant filed by the New York State Department of Taxation and Finance in the amount of One Thousand Three Hundred Seventy Eight ($1,378.05) Dollars and Five Cents still stands. See September 11, 2013 Judgment and Lien printout. In addition, the Applicant provided no proof that it has done anything to restore its authorization to do business in New York State. Consequently, as of the date of this Decision, the Applicant is still not authorized to do business in the State of New York. See September 11, 2013 New York State Department of State Division of Corporations Printout.

As the Applicant owes taxes to the New York State Department of Taxation and Finance and is not authorized to do business in the State of New York, it should not be authorized to operate as a trade waste business in New York City. The Commission denies this registration renewal application based on this independently sufficient ground.

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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 A & A's exemption renewal application and registration.

This exemption/registration denial is effective immediately. A & A Construction and Management Corp. may not operate as a trade waste business in the City of New York.

Dated: September 19, 2013

THE BUSINESS INTEGRITY COMMISSION

Shari C. Hyman
Commissioner and Chair

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Department of Sanitation

David Friedman, Senior Advisor to the Commissioner on Financial Empowerment Policy (designee)
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation

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