Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF DOWNTOWN COMPLETE CONSTRUCTION CORP. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Downtown Complete Construction Corp. (the "Applicant") has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for 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 July 14, 2014, the Commission staff issued and served the Applicant with Notice of the Grounds to Recommend that the application be denied (the "Notice"). The Applicant was given ten business days to respond, until July 28, 2014. See 17 Rules of the City of New York §2-08(a). The Applicant did not submit any response before the statutory deadline. However, more than three days after that deadline, counsel for the Applicant telephoned the Commission's staff to request further time to respond. The Commission extended an additional 24 hours as a courtesy, or until 5:00 p.m. on Friday August 1, 2014. Counsel for the Applicant submitted an unsworn letter at 5:36 p.m. on Friday, August 1, 2014 (the "Response"). Despite not being a statement sworn under oath[1], and despite being submitted late, the Commission has reviewed the Applicant's response. Based on the record as to the Applicant, the Commission now denies Downtown Complete Construction Corp.'s exemption 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, Fines, Penalties, or Fees That are Related to the Applicant's Business That are Owed to the New York City Department of Housing Preservation and Development, the New York City Environmental Control Board, and the Internal Revenue Service.

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

[1] Although both 17 RCNY Section 2-08(a) and the Notice state that any assertions of fact submitted in the Applicant's response must be made under oath, the Applicant's response failed to include a *sworn* affidavit from its principal, or by counsel. See 17 RCNY Section 2-08(a); see also Notice at 7 (allowing the Applicant 10 business days to submit any assertions of fact "under oath" and any documentation 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 August 17, 2012, Downtown Complete Construction Corp. 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 Registration Application ("Application"). The Application disclosed William Mauro as the sole principal. See Application at p. 13.

The Commission's initial background investigation of the Applicant in connection with the Application established that:

- the New York City Department of Housing Preservation and Development ("HPD") filed 12 judgments against the Applicant for unpaid fines, totaling $108,600 owed to HPD;
- the Internal Revenue Service holds three Federal Liens against the Applicant totaling $58,739.67;

- the City of New York held a Tax Warrant against the Applicant in the amount of $8,636.12; and

- the Applicant had three unpaid New York City Environmental Control Board ("ECB") fines totaling $675.

By letter dated February 6, 2013, the Applicant was notified that it needed to resolve the IRS federal tax liens, the ECB fines, and the judgments filed by HPD. See February 6, 2013 letter from Martin Gleeson to the Applicant. The Applicant was given a deadline of February 20, 2013 to provide "proof that these outstanding judgment debts have been paid or otherwise resolved." See Id. The Applicant responded in a cover letter dated February 27, 2013, but the documents enclosed therein did not provide specific documentary proof that the debts were satisfied and were not responsive to the requests made by the Commission, and thus, the Applicant was sent a "second request for information." See April 2, 2013 letter from Martin Gleeson to the Applicant. Thereafter, the Applicant, by its attorney, made at least three separate requests for extensions of time to provide the required information and documentation, which requests were granted by the Commission. However, even with the numerous extensions of time, the Applicant failed to provide proof that the outstanding governmental judgment debts had been paid or otherwise resolved, as required. Therefore, on October 3, 2013, the applicant was sent a "final request for information." See October 3, 2013 letter from Martin Gleeson to Applicant. All three 2013 letters from the Commission's staff advised the Applicant that the failure to provide the requested information and/or documentation to the Commission may result in the withdrawal or denial of the renewal application. See February 6, 2013, April 2, 2013 and October 3, 2013 letters from Martin Gleeson to the Applicant.

According to a judgment and lien search conducted as recently as August 4, 2014, the Applicant still owes at least $167,739.67 to HPD, the New York City Department of Finance, and the IRS, and owes the NYC ECB a total of $4,525.00[2]. Specifically, the following judgments and liens are still currently docketed against the Applicant:

Creditor	Filing Number	Amount
Internal Revenue Service	ft3750004895975	$44,965.49
Internal Revenue Service	ft3830004895983	$11,974.05
Internal Revenue Service	ft3500005433950	$1,800.13
HPD	433796	$1,750.00
HPD	516809	$5,000.00
HPD	1380497	$400.00
HPD	1385163	$14,250.00
HPD	1385166	$2,400.00

[2] Notably, since the issuance of the Notice, the Applicant has incurred an additional fine from ECB in the amount of $3,850.00, which, added to the previously-owed amount of $675 for the three violations included on the Notice, total to $4,525 owed by the Applicant to ECB.

HPD	1419764	$2,000.00
HPD	1441124	$10,000.00
HPD	1486554	$2,500.00
HPD	1537912	$22,650.00
HPD	1537881	$21,400.00
HPD	1559533	$15,000.00
HPD	1954185	$11,650.00

See Judgment and Lien Printout dated August 4, 2014.[3] In addition, according to a search of the ECB database dated August 4, 2014, the following fines have been docketed against the Applicant (totaling $4,525):

Creditor	Violation Number	Amount
NYC Environmental Control Board	106295054	$75.00
NYC Environmental Control Board	106909844	$300.00
NYC Environmental Control Board	106909835	$300.00
NYC Environmental Control Board	000270113Y	$3850.00

See Judgment and Lien Printout dated August 4, 2014., 2014. As of August 4, 2014, all of the abovementioned fines and violations, totaling 172,264.67, remain open and unpaid.

[3]An earlier Judgment and Lien Printout (which had been referenced in the Notice) also included a tax warrant issued by the New York City Department of Finance, number 1809704, in the amount of $8,636.12. That warrant still appears on Westlaw, although it does not appear when the New York State Tax Warrant Notice System is searched. In any event, what remains is that, since February 6, 2013, the Applicant has been instructed to provide proof of satisfaction of this and other debts, and has failed to do so.

Basis for Denial

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 New York City Department of Housing Preservation and Development, the New York City Environmental Control Board and the Internal Revenue Service.

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 Denial, the Applicant has failed to pay $108,600 in fines to the New York City Department of Housing Preservation and Development. In addition, the Applicant has failed to pay $4,525 in fines ordered by the ECB, and has failed to resolve $58,739.67 in judgments and liens filed by the IRS. On multiple occasions, the Commission's staff informed the Applicant that it owed numerous unsatisfied debts to governmental entities. Despite these warnings, the debts remain unsatisfied.

In its Response, the Applicant states: "To address this first part of the piece enclosed please find letters indicating that no taxes are due by [the Applicant], the IRS or the State of New York." See Response at 1. However, no such documentation was actually enclosed with or attached to the Response, nor has it been provided at any time since. Moreover, such assertion is belied by the Commission's review of relevant databases, all of which still reflect the outstanding debt. In its Response, the Applicant also states that, with respect to the HPD judgments that were issued on default, he "contests any claim that he bears responsibility for the claimed amount." See Response at 1. To the extent that the Applicant wished to contest the issuance of these default judgments, his remedy was to seek redress from the issuing tribunal, and then provide the Commission with proof that such judgments had been released. He did not do so. Rather, he ignored the Commission's request for proof of satisfaction or release of judgments for nearly 18 months, time in which the Applicant could have, but apparently did not, seek to have such judgments vacated.

What remains is that the Applicant, even after nearly a year and a half of requests made by the Commission, and even after the issuance of the Notice, has failed to pay fines and penalties for which judgment has been entered by an administrative tribunal of competent jurisdiction. Accordingly, the Commission denies Downtown Complete Construction Corp.'s application on this independently sufficient ground.

B. 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, and the granting of numerous extensions of time requested by the Applicant, the Applicant has failed to provide proof of satisfaction or other resolution of the outstanding fines, judgments and liens owed to governmental entities.

In its Response, the Applicant asserts that it is not "subject to the jurisdiction of [the Commission]." See Response at 2. This argument fails for two reasons: (1) the Applicant chose to submit an application to the Commission, thereby requesting consideration for a registration and submitting to the Commission's jurisdiction, and (2) it is well-established that even when a business hauls waste consisting of only construction and demolition material that it itself generated in its primary business of home construction, that business is required to apply for an exemption under Administrative Code Section 16-505(a). *See* NYC Business Integrity Commission v. Zych Constr. Services Corp., NYC Department of Consumer Affairs Appeal Determination (Violation Number TW000006825, Dec. 13, 2011).

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. The Applicant did not dispute this point. The Commission denies Downtown Complete Construction Corp.'s application on this independently sufficient ground.

Business Integrity Commission

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 Downtown Complete Construction Corp.'s exemption application and registration.

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

Dated: November 20, 2014

THE BUSINESS INTEGRITY COMMISSION

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Commissioner and Chair

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Department of Sanitation

Mark Peters, Commissioner
Department of Investigation

Julie Menin, Commissioner
Department of Consumer Affairs

Andrew Schwartz, Deputy Commissioner
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