The City of New York
BUSINESS INTEGRITY COMMISSION
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DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE LICENSE APPLICATION OF HARRY'S DESIGN INC. D/B/A DELTA DEMO OF NEW YORK INC. (BIC #483559) TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

On June 11, 2014, Harry's Design Inc. d/b/a Delta Demo of New York Inc. (BIC #483559) (the "Applicant") applied to the New York City Business Integrity Commission (the "Commission")[1] for a license to operate as a trade waste business (the "Application").[2] Local Law 42 of 1996 ("Local Law 42") authorizes the Commission to review and make determinations on such license applications. See Title 16-A, New York City Administrative Code ("Administrative Code" or "Admin. Code") § 16-505(a). The Commission's review of a license application focuses on a determination of whether the applicant possesses business integrity. See Title 17, Rules of the City of New York § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code § 16-504(a) (empowering the Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); Admin. Code § 16-509(a) (authorizing the Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"). If the Commission grants the application, the applicant will be issued a license. See id.

On September 18, 2015, the Commission's staff served the Applicant with the Notice to Harry's Design Inc. d/b/a Delta Demo of New York Inc. of the Grounds to Deny the License Application of Harry's Design Inc. d/b/a Delta Demo of New York Inc. (BIC #483559) to Operate as a Trade Waste Business (the "Recommendation"). The Applicant had 10 business days to respond to the Recommendation, until October 6, 2015. See Title 17, Rules of the City of New York § 2-08(a). The Applicant did not submit a response. The Commission has now completed its review of the Application, having carefully considered the Commission staff's Recommendation and the Applicant's failure to respond. Based on the record as to the Applicant, the Commission denies the Application based on the following independently sufficient reasons:

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[1] The Commission was formerly known as the New York City Trade Waste Commission.
[2] "Trade waste" or "waste" is defined at Admin. Code § 16-501(f)(1).

A. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered; and

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, known as trade waste. 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. Int'l Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante, No. 96 Cr. 466 (S.D.N.Y.); People v. Ass'n of Trade Waste Removers of Greater New York, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically 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, No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the 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). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by 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," also known as construction and demolition debris, must apply to the Commission for an exemption from the licensing requirement. Id. If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a Class 2 registration. Id. at § 16-505(a)-(b). Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at § 16-508(b); see also id. at § 16-504(a). An "applicant" for a license or registration means both the business entity and each principal thereof. Id. at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a decision on an application for a license or registration:

> 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;
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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 § 16-509(a)(i)-(x). See also id. at § 16-504(a).

The Commission also 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 § 16-509(b). See also Elite Demolition Contracting Corp. v. The City of New York, __ N.Y.S.2d __, 125 A.D.3d 576 (1st Dep't 2015); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424 (1st Dep't 2008); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dep't) (Commission may deny an application for an exemption "where the applicant fails to provide the necessary information, or knowingly provides false information"); leave denied 2 N.Y.3d 705 (N.Y. 2004). See also Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial). In addition, the Commission may refuse to issue a license or registration to an applicant that "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 § 16-509(c). See also id. at § 16-504(a). 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 § 16-509(d); see also id. at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) 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 Indus., Inc., 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 (N.Y. 1997).

Statement of Facts

On or about June 11, 2014, the Applicant applied to the Commission for a trade waste removal license. See Application. The Application disclosed Balram Harry ("Balram") as the sole principal of the Applicant. See id. at p.20. According to the Application, the Applicant had been operating using the name BRH Harry Construction Inc. from 2005 to 2009, and B & S Harry Design Inc. from 2010 to 2013. See id. at p.3. Additionally, according to an asset purchase agreement provided to the Commission by the Applicant, the Applicant had purchased the assets of a formerly registered trade waste company, Delta Demo of New York, Inc. ("Delta Demo") (BIC# 1750) on April 11, 2014. See Asset Purchase Agreement. Delta Demo's registration had expired on January 31, 2014, after it failed to submit a renewal application to the Commission. At the time of its expiration, Delta Demo did not owe money to the Commission, but it failed to surrender a pair of Commission-issued trade waste plates, R-9651.

On or about February 13, 2015, a Commission investigator spoke with Balram regarding his company's pending application. During that conversation Balram admitted that his wife, Bibi Harry ("Bibi") assists him with his business. The Commission's review of the Application revealed that the Applicant failed to disclose Bibi as an employee. See Application, Schedule H, p.29. The Commission's review also found that the Applicant had failed to register the two vehicles it disclosed on its Application under the Applicant's business name, but instead were still registered to Delta Demo. See id. at p.30. As noted above, the Applicant failed to surrender the outstanding trade waste license plates that had been previously issued to Delta Demo.

The Commission's investigation indicated numerous outstanding judgments and liens docketed against Balram and other businesses owned by or associated with Balram. These judgments and liens included debts accumulated by Delta Demo a few days prior to and after its assets were sold to the Applicant. According to a judgment and lien search conducted on or about February 17, 2015, Balram and his associated businesses owed the following:

Balram Harry:

Creditor	Filing Number	Amount
New York State Insurance Fund	624895	$25,490.86

Ragnauth & Balram Harry d/b/a Harry's Construction & Restoration:

Creditor	Filing Number	Amount
New York State Workers' Compensation Board	997261	$43,250.00

BRH Construction and Restoration Corp.:

Creditor	Filing Number	Amount
New York State Department of Taxation	E-028984135-W001-6	$1,459.35
New York State Department of Taxation	E-02898435-W002-1	$50.00
Environmental Control Board	0162142173	$750.00
Environmental Control Board	034815855Y	$4,000.00
Environmental Control Board	034815856X	$8,000.00

BRH Construction and Restoration Corp. Total Debt: $14,259.35

Delta Demo of New York, Inc.:

Creditor	Filing Number	Amount
Environmental Control Board	000197422J	$3,380.00
Environmental Control Board	000265593X	$3,640.00
Environmental Control Board	000270306K	$4,550.00
Environmental Control Board	035099073L	$12,000.00
Environmental Control Board	035110568H	$400.00

Delta Demo of New York, Inc. Total Debt: $23,970.00

Cumulatively, these debts amounted to $106,970.21.

By letter dated March 16, 2015, the Commission requested proof that Applicant was taking steps to resolve the aforementioned debts, either by satisfying the judgments and liens completely, or by entering into verifiable payment plans with the appropriate governmental authorities. See Letter from Commission's Staff to the Applicant dated March 16, 2015. The Commission further requested proof that a civil judgment entered against Balram in the amount of $55,216.32 had been resolved. The Commission also requested the disclosure of Bibi as an employee of the Applicant, documentation indicating that the Applicant's disclosed vehicles were now registered to the Applicant, and the return of the pair of outstanding Commission trade waste license plates that had been issued to Delta Demo. The Commission set a deadline of April 13, 2015 for the Applicant to provide the requested documentation. See id. The Applicant failed to provide the requested documentation by the deadline.

By letter dated April 16, 2015, titled "Second and Final Notice," the Commission directed the Applicant to provide the same documentation previously requested in the March 16, 2015 letter, and set a new deadline of May 1, 2015. See Letter from Commission's Staff to the Applicant dated April 16, 2015. The Applicant was notified that its failure to provide the requested documentation could result in the denial of the Application. See id.

During the following weeks the Applicant made some progress in resolving its debts, but a large balance still remained.[3] No progress was made on the other requests made to the Applicant. On or about April 29, 2015, a member of the Commission's staff spoke with the Applicant's attorney by phone regarding these outstanding issues. As a follow-up to the conversation, the Applicant was sent a third letter dated May 1, 2015, titled "Final Notice." In this letter, the Commission directed the Applicant to provide proof that the remaining judgments and liens had been resolved. See Letter from Commission's Staff to the Applicant dated May 1, 2015. Moreover, the Commission continued to request Bibi's disclosure as an employee, as well as proof that the Applicant's vehicles had been registered under the Applicant's name, and finally that the Applicant return the pair of outstanding Commission-issued license plates that had been previously issued to Delta Demo. See id. The deadline to provide the requested documentation was May 15, 2015. Again, the Applicant was notified that its failure to provide the requested documentation could result in the denial of the Application. See id.

On or about May 18, 2015, three days after the final deadline had passed, the Commission's staff spoke with the Applicant's attorney by phone. The Applicant's attorney represented that the Applicant owed more money to the New York State Workers' Compensation Board than had been previously believed. The Applicant's attorney stated that, based on the amount of money owed, it

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[3] By email dated April 17, 2015, the Applicant's attorney provided proof to the Commission that the civil judgment entered against Balram had been resolved. See April 17, 2015 email from Applicant's attorney to the Commission. Subsequently, in emails dated April 22, 2015, the Applicant's attorney provided proof to the Commission that the judgment owed by Balram to the New York State Insurance fund had been resolved. Furthermore, the Applicant's attorney also argued that the Environmental Control Board violations against Delta Demo should be set aside, as the Applicant's asset purchase of Delta Demo did not include assuming Delta Demo's liabilities. See April 22, 2015 emails from Applicant's attorney to the Commission. Requests to satisfy these violations were not included in subsequent letters.

might take some time for the Applicant to resolve all its outstanding debts. Based on this conversation, as well as the time that had already elapsed since being informed of its outstanding debts, the Commission's staff informed the Applicant's attorney that the Applicant risked being served with a recommendation of denial if it failed to provide the previously requested documentation. The Applicant's attorney stated that the Commission should receive further documentation from the Applicant within a week.

As another week passed without any communication from the Applicant or its attorney, on or about May 26, 2015, the Commission's staff again called the Applicant's attorney and left a message reminding him of the Applicant's ongoing failure to produce requested documentation and the potential ramifications for failing to cure these issues. As of the date of this denial decision, the Commission has received no further communication from the Applicant or its attorney, nor has the Commission received any further documentation.

An updated search conducted on October 29, 2015, showed that the Applicant continued to owe the following outstanding judgments, some of which had increased due to unpaid interest:

Ragnauth & Balram Harry d/b/a Harry's Construction & Restoration:

Creditor	Filing Number	Amount
New York State Workers' Compensation Board	997261	$43,250.00

BRH Construction and Restoration Corp.:

Creditor	Filing Number	Amount
New York State Department of Taxation	E-028984135-W001-6	$1,459.35
New York State Department of Taxation	E-02898435-W002-1	$50.00
Environmental Control Board	0162142173	$1,205.30
Environmental Control Board	034815855Y	$5,708.27
Environmental Control Board	034815856X	$11,416.55

BRH Construction and Restoration Corp. Total Debt: $19,839.47

Cumulatively, these debts amounted to $63,089.47.

The Commission's staff has repeatedly advised the Applicant of the existence of debts owed by its principal, Balram, and the businesses owned by or associated with Balram. Furthermore, as of the date of this denial decision, the Applicant has failed to disclose Bibi as an employee, failed to transfer the registrations of the vehicles it disclosed into the name of the Applicant, and failed to return the trade waste license plates issued to Delta Demo (or even provided the Commission with a notarized statement and/or police report reporting the plates as stolen, missing, or not in the possession of Balram and/or the Applicant). In sum, the Applicant's failure to satisfy its outstanding governmental obligations, as well as provide the information and documentation requested by the Commission, serve as the basis for this denial decision.

Basis for Denial

A. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

The Commission may refuse to issue a license to an applicant as lacking good character, honesty and integrity 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 court or administrative tribunal of competent jurisdiction." See Admin. Code § 16-509(a)(x). See also id. at § 16-504(a). As demonstrated above, the Commission has sent three letters to the Applicant, and had several conversations with the Applicant's attorney, notifying the Applicant of the need to resolve outstanding debts owed to the Environmental Control Board, the New York State Department of Taxation and the New York State Workers' Compensation Board. These letters requested documentation evidencing that these debts had been resolved or were otherwise subject to a payment plan with which the Applicant is in compliance. Notwithstanding those communications, as of the date of this denial decision, Balram and companies owned by or associated with Balram have failed to pay $63,089.47 owed to the Environmental Control Board, the New York State Department of Taxation, and the New York State Worker's Compensation Board. The Applicant's failure to satisfy the outstanding debts demonstrates that the Applicant lacks the good character, honesty and integrity necessary to be licensed with the Commission. Accordingly, the Commission denies the Application based on this independently sufficient ground. See Admin. Code § 16-509(a)(x).

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

The Commission may refuse to issue a license to an applicant lacking good character, honesty and integrity upon the failure of the applicant "to provide truthful information in connection with the application." See Admin. Code § 16-509(a)(i). See also id. at § 16-504(a). Furthermore, "[t]he 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 was given ample time to produce the required documentation to the Commission. In addition to requiring the satisfaction of the above-mentioned governmental obligations, the Commission requested documentation demonstrating the disclosure of an undisclosed employee, proper registration of the Applicant's vehicles, and the return of the Commission-issued license plates. The Commission has received none of this documentation. Therefore, the Applicant has "knowingly failed to provide the information and/or documentation required by the commission" by failing to sufficiently respond to the Commission's repeated requests. Accordingly, the Commission denies the Application based on this independently sufficient ground. See Admin. Code § 16-509(b).

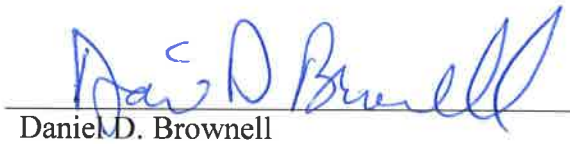
Conclusion

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines is lacking in good character, honesty and integrity. The record as detailed above demonstrates that the Applicant lacks those qualities. Accordingly, based on the two independently sufficient grounds set forth herein, the Commission denies the Applicant's license application.

This denial decision is effective immediately. Harry's Design Inc. d/b/a Delta Demo of New York Inc. may not operate as a trade waste business in the City of New York.

Dated: November 9, 2015

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



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