NYC
Business Integrity
Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF ELITE DEMOLITION CONTRACTING CORP. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Elite Demolition Contracting Corp. ("Elite" or "Applicant") 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 April 19, 2013, the staff issued and served the Applicant with a 12-page Notice of the Grounds to Recommend Denial of Elite'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 12. On May 6, 2013, the Commission received the Applicant's response which consisted of a two page letter written by the Applicant's attorney and seven exhibits that total 80-pages (the "Response"). 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 Elite because Elite lacks good character, honesty and integrity for the following independent reasons:

A. Vincenzo Bordone, Who the Commission Previously Found to Lack Good Character, Honesty, and Integrity, is an Undisclosed Principal of the Applicant.

B. The Commission Previously Found that Four Companies Related to the Applicant- Metro Demolition Contracting Corp., Circle Interior Demolition Corp., Phantom Demolition Corp., and World Class Demolition, Inc.- Lacked Good Character, Honesty, and Integrity, and Denied their Applications.

C. The Applicant Provided False and Misleading Information to the Commission.

D. 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 Environmental Control Board and the Internal Revenue Service.

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

Since its inception, Elite appears to have gone through numerous changes in management and ownership. However, Elite has failed to timely, consistently or truthfully disclose its management and ownership structure to the Commission. Rather, Elite has repeatedly provided the Commission with false and misleading information, likely in a vain attempt to hide the fact that it is a successor company or alter ego of Metro Demolition Contracting Corp. ("Metro"), Circle Interior Demolition Corp. ("Circle"), Phantom Demolition Corp. ("Phantom") and World Class Demolition, Inc. ("World Class"), all of which have previously been denied registrations by the Commission.

On August 27, 2007, (little more than three months after the Commission denied the Registration applications of Metro and Circle) Elite applied to the Commission for an exemption from the licensing requirement for the removal of construction and demolition debris. See Application for Exemption from Licensing Requirement for Removal of Demolition Debris ("Registration Application"). In its application, Elite stated that it had one principal, Marco Semilia ("Semilia"). The Registration Application reported that Semilia was the president and sole owner of Elite. See id. at 9.

Despite the Applicant's representation in the Registration Application that Semilia was the president and sole owner of the company, an August 31, 2009 Transfer Agreement later provided to the Commission by the Applicant establishes that Semilia was not an owner at all. See August 31, 2009 Transfer Agreement. According to the August 31, 2009 Transfer Agreement, Semilia's uncle, Donato Nicolo ("Nicolo") was the sole shareholder of the company when it was formed.[1] Indeed, Elite has repeatedly made inconsistent representations about the timing and nature of Semilia's and Nicolo's involvement: At the time of the Registration Application, Elite claimed Nicolo had no ownership interest and was not even affiliated with the company. Six months after their Registration was granted, Elite falsely represented that Nicolo had become a principal and *fifty-percent* owner of Elite on April 14, 2008. See May 30, 2008 Elite Submission.[2] In its renewal application submitted on November 4, 2009, Elite reported that Nicolo had been a fifty-percent owner, not since April 14, 2008, but from "inception." See November 4, 2009 Renewal Application for a License or Registration as a Trade Waste Business ("2009 Renewal Application"). The November 2009 renewal application listed Semilia as Vice-President and 50% owner; however, at a sworn interview conducted by the Commission on June 23, 2010, Semilia testified that he had resigned from the company in September 2009, two months before the submission of the renewal application.[3] See Sworn Testimony Transcript of Marco Semilia, taken June 23, 2010, ("Semilia Tr.") at 11. Also, during his testimony, Semilia conceded that Nicolo was an owner of the company "from the beginning," in 2007. See id. at 10. Throughout the Commission's investigation, Elite has provided numerous and conflicting accounts of Semilia and Nicolo's role in Elite. In the clear absence of any truthful, cogent disclosures, the Commission is left to conclude that Elite has made numerous materially false and misleading statements.[4]

Elite's material misstatements are also not limited to the ownership status of Semilia and Nicolo. Elite was also unable to provide truthful, accurate or even consistent information to the Commission, about a third purported owner – Fabio Bordone. On July 14, 2009, Elite informed the Commission that Fabio Bordone had been serving as its "VP of Operations" since June of 2008.[5] See July 14, 2009 Elite Submission. In this long after-the-fact disclosure, Elite claimed

[1] Semilia signed the Registration Application, certifying that the information contained therein was "full, complete and truthful." See Registration Application at 16.

[2] Even if the disclosed timing of Semilia's involvement in the company was truthful (which it was not), such notice was still in contravention to 17 RCNY §2-05(b)(i), which requires a registrant to notify the Commission within ten business days of "the addition of a principal to the business of a registrant subsequent to the submission of the application for registration or exemption from the licensing requirement pursuant to this chapter." The Applicant's Response does not address this violation of the Commission's rules.

[3] Semilia first testified that he resigned from Elite in September 2009, but when confronted with the first Renewal Application, claimed that, as of November 4, 2009, he was a fifty percent owner of the company. See Semilia Tr. at 20. He further testified that as of the date of his testimony, Nicolo was still an owner of the company. See id. at 16. Semilia's constantly evolving version belies an obvious effort to mislead the Commission.

[4] In its Response, the Applicant feebly disputes some of these facts. The Commission addresses even more false assertions made by the Applicant in its Response below. See infra at 13-14.

[5] Here again, Elite's notification to the Commission that it had a new principal at least 13 months after that new principal was appointed was in violation of 17 RCNY §2-05(b)(i). The Applicant's Response does not address this violation of the Commission's rules.

that Fabio Bordone did not have any ownership interest. See id. Documents provided to the Commission by the Applicant indicate that only six weeks after informing the Commission of Fabio Bordone's role in the company, on August 31, 2009, Fabio Bordone entered into an agreement with Donato Nicolo whereby Nicolo surrendered all of his shares of Elite to Fabio Bordone, leaving Fabio Bordone as Elite's sole owner. See August 31, 2009 Transfer Agreement. Notably, it appears that Semilia and Donato transferred ownership of the company to Fabio Bordone without any monetary consideration.[6] See Sworn Testimony Transcript of Fabio Bordone, taken September 14, 2010, ("Bordone Tr.") at 24. Then, despite the apparent previous transfer in ownership to Fabio Bordone, in its renewal application submitted on November 4, 2009, Elite represented to the Commission that Semilia and Nicolo were both 50% owners of Elite, and that Fabio Bordone was a principal with a 0% ownership interest.[7] See 2009 Renewal Application at 7-8. When confronted about this inconsistency at his September 14, 2010 deposition, Fabio Bordone gave incoherent testimony, apparently in an attempt to claim that the August 31, 2009, document he signed did not actually transfer full ownership to him, despite its clear language:

> Q: When did you become an owner of Elite?
>
> A: 2009, I guess. Well, it's not a hundred percent final yet because, you know, my attorney is insisting that I shouldn't expose myself to everything as of yet only because of the financial condition the company is in, so.
>
> Q: So it's not a hundred percent final. What stage is it?
>
> A: Well, I mean, it's final as far as I've assumed all responsibilities.

See Bordone Tr. at 22. Less than two months after this sworn testimony was provided, and following a request for production of documents to the Commission, Nicolo, Semilia and Fabio Bordone provided the Commission with another document entitled "Stock Redemption Agreement," purportedly signed on October 22, 2010, which represents yet another version of ownership and the transfer of ownership in the company. See October 22, 2010 Stock Redemption Agreement. This new document was undoubtedly created in an effort to deceive the Commission and to support their latest version of ownership. See id. Although the agreement signed on August 31, 2009 purported to transfer ownership in the company from Nicolo to Fabio Bordone, the October 22, 2010 Stock Redemption Agreement listed both Nicolo and Semilia as sellers, and largely restated that all of the shares of the company were being transferred to Bordone. See id. The creation of this self-serving, after-the-fact document does nothing to rehabilitate Elite after it has made numerous false statements to the Commission.

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[6] Although the Applicant states in its Response that there may be "many reasons for the transfer of an asset with significant liabilities and meager revenue for no monetary consideration," it fails to provide any examples. Indeed at his deposition, Fabio Bordone could not provide any legitimate reasons either. See Bordone Tr. at 28-29, 55-56.

[7] Notably, Elite left blank its response when asked to disclose when Bordone's role as principal began. See 2009 Renewal Application at 7.

Simply stated, the Applicant has failed in testimony and numerous written submissions to provide clear information about who is and who is not a principal of Elite. As set forth below, this unwillingness to provide truthful information to the Commission was no doubt an effort to prevent the Commission from discovering that Elite Demolition is simply the successor company, or alter ego, of several denied companies owned and/or controlled by Vincenzo Bordone, Fabio Bordone's father. Vincenzo Bordone has a long history of placing companies he owns or controls in the names of others, attempting to avoid the payment of taxes, union obligations and scrutiny by the Commission. The history of these denied companies (which the Applicant's Response does not address and therefore does not dispute) is as follows:

Metro filed an application with the Commission in 1996. See Decision of the Business Integrity Commission to Deny the Renewal Application of Metro Demolition Contracting Corp. for a Registration to Operate as a Trade Waste Business, dated May 8, 2007, at 6. Metro initially disclosed both Vincenzo Bordone and his son, Carlo Bordone V as principals. See id. By 2004, Metro started to provide the Commission with conflicting information about who was and who was not a principal of Metro. See id. at 7. Ultimately, the Commission denied Metro's application because the Internal Revenue Service filed $1,109,898 in judgments against Metro. See id. at 8. In addition to its failure to address debts owed to the federal government, Metro failed to address other debts directly related to the operation of its business. For instance, Metro breached the terms of a consent judgment it entered into regarding violations of the Employee Retirement Income Security Act and the Labor-Management Relations Act by failing to pay an agreed upon sum of $732,631. See id. The Commission also denied Metro's application because Metro would not comply with the Commission's rules, and once found guilty of violating the Commission's rules, refused to pay a $140,500 fine imposed by an Administrative Law Judge ("ALJ") via Decision and Order. See id. Finally, the Commission denied Metro's application because Metro failed to respond to the Commission's inquiries about its true ownership composition and provided the Commission with false and misleading information about civil and administrative violations issued against it and about its failure to pay taxes.[8] See id. at 9.

Several years after Vincenzo Bordone filed the Metro application with the Commission, the cycle of creating new companies with different disclosed principals began. In 2005, Circle filed an application with the Commission. See Decision of the Business Integrity Commission to Deny the Application of Circle Interior Demolition, Inc. for a Registration to Operate as a Trade Waste Business, dated May 8, 2007, at 7. The only disclosed principal of Circle was one of Vincenzo Bordone's sons, Carlo Bordone V, who was also a disclosed principal of Metro. See id. Carlo Bordone V unsuccessfully tried to distance himself and Circle from Vincenzo Bordone and Metro. In due course, the Commission denied the Circle application based on several independently sufficient grounds, including Circle's connections to Metro and Vincenzo Bordone, and numerous instances of providing false and misleading information to the Commission in a failed effort to conceal these connections. See id. at 7-10. When the Commission asked too many questions about the connections between Circle and Metro and

[8] In evaluating the instant application, we note that the Commission previously denied Metro's application based in part on Metro's failure to respond to the Commission's inquiries about its true ownership composition.

Vincenzo Bordone, Circle refused to cooperate with the Commission's investigation. See id. at 11. Furthermore, just as Metro demonstrated that it had no regard for the Commission's rules, Circle too demonstrated that it had no regard for the Commission's rules when it admitted guilt to several administrative violations, reached an agreement with the Commission to pay $36,000 to settle the violations, but then failed to pay the $36,000. See id. at 12-13. Additionally, the Commission also denied Circle's application based on its failure to pay taxes and union obligations. See id. at 13.

After Circle's application was denied, additional attempts by the Bordones to create different companies with different disclosed principals continued. Accordingly, the Commission next denied the applications of Phantom and World Class. See Decision of the Business Integrity Commission Denying the Application of World Class Demolition, Inc. for a Registration to Operate as a Trade Waste Business and Denying the Renewal Application of Phantom Demolition Corp. for a Registration to Operate as a Trade Waste Business, dated November 10, 2008. Although the only disclosed principals of Phantom were Vincenzo Bordone's sons, Maurizio Bordone and John Bordone, the Commission compiled evidence that Maurizio Bordone's and John Bordone's wives, Marisa Bordone and Desiree Bordone were the initial principals of the company. See id. at 17. The Commission also found evidence that Vincenzo Bordone, Carlo Bordone V, and John Bordone were also principals of the company. See id. at 18. The only initial disclosed principal of World Class was Joanne DiBiase ("DiBiase"), a clerical employee of Metro and Phantom. See id. at 15. After it became clear that the Commission had concerns about the true ownership and control of World Class, DiBiase informed the Commission that she resigned from the company and transferred her interest in World Class to Maurizio Bordone. See id. at 15-17.

The Commission denied both Phantom's and World Class' applications because Phantom and World Class were alter egos of each other and of Metro and Circle. See id. at 12-13. In denying the Phantom and World Class applications, the Commission concurred with National Labor Relations Board Administrative Law Judge Stephen Fish, who found that "the evidence here reveals that the Bordone family had little use or respect for corporate formalities, and believed that it could simply form and utilize a new company, any time it had problems with unions." See July 16, 2007 NLRB Decision by Administrative Law Judge Stephen Fish. Similarly, in denying the Phantom and World Class applications, the Commission found that the Bordone family followed the same practice when it had problems with the Commission's rules and regulations. See id. at 18. The Commission also denied these applications because of repeated instances of unregistered trade waste removal activity and because of the continued practice of providing false and misleading information to the Commission regarding who was and who was not a principal of the companies. See id. at 13, 18-19.

Elite is simply the next in a long series of attempts by denied principal Vincenzo Bordone to transport trade waste in New York City. This conclusion is supported, not only by Vincenzo Bordone's son, Fabio Bordone's admitted involvement, and by the myriad of false statements made to the Commission to avoid scrutiny, but also by several additional facts (none of which were addressed or contested in the Response):

- Elite's offices are located on property linked to Vincenzo Bordone and used by the other Bordone family businesses. See Bordone Tr. at 20 and 26.

- The Applicant's garage location is 56-20 Grand Avenue, the same garage address as Phantom. See Elite's 2011 Renewal Application for a License or Registration as a Trade Waste Business ("Instant Application") at 9.

- The garage Elite uses was originally owned by Vincenzo Bordone. See Bordone Tr. at 32-33.

- Elite's mailing address is 55-14 Grand Avenue, the same mailing address as World Class and Metro. See Instant Application at 9.

- Elite pays rent for both its office space and garage to Metro, income that Vincenzo Bordone ultimately receives. See Bordone Tr. at 33-35; see also June 2008 Lease Agreement between Metro Interior Demolition Inc. and Elite Demolition Contracting Corp.

- Elite employed one of Vincenzo Bordone's sons, Carlo Bordone, a former principal of denied companies Metro and Circle, to work for Elite for over a year. See Bordone Tr. at 13.

In addition to all of the above compelling evidence, on January 5, 2012, a Commission investigator observed one of Elite's trucks removing trade waste from a customer at 3 Columbus Circle. While the investigator inspected the Elite truck, Fabio Bordone arrived on the scene, spoke briefly to the investigator, and then returned to his vehicle. While in his vehicle, Fabio Bordone was observed placing a phone call before departing the scene. Shortly after Fabio Bordone was seen placing a phone call, Vincenzo Bordone arrived at the scene. Vincenzo Bordone asked the investigator if there was something wrong with "his truck." Vincenzo Bordone affirmatively told the Commission investigator that he owned both the truck and Elite. Vincenzo Bordone also stated this is "our job site." When the investigator asked the driver of the Elite vehicle who Vincenzo Bordone is, the driver confirmed, "that is the owner and boss of the company." Thus, it is clear that despite all of the different versions submitted to the Commission regarding who is and is not a principal of Elite, Vincenzo Bordone is an undisclosed principal who controls the Applicant. In fact, it is likely that the Applicant submitted so many different versions in response to the seemingly simple question of who is and who is not a principal of the Applicant to disguise the fact that Vincenzo Bordone is the true principal of the Applicant.

In denying the World Class and Phantom applications, the Commission found that the four Bordone companies were mere alter egos of each other, ones that shared common offices, ownership, management and supervision. See Phantom and World Class Denial Decision at 9. As Elite also shares common offices, ownership and management with Metro, Circle, World Class and Phantom, it too is inextricably linked to the other Bordone companies and we find that Elite is an alter ego of the other Bordone companies.

Judgments and Liens

According to a judgment and lien search conducted on May 7, 2013, the following judgments and liens have been docketed against the Applicant (totaling $203,783.00):

Creditor	Filing Number	Amount
Internal Revenue Service	201110110537183	$179,697.00
Internal Revenue Service	201112190678042	$705.00
Internal Revenue Service	201202010067659	$23,381.00

See Judgment and Lien Printout dated May 7, 2013. By letter dated October 13, 2010, the Commission's staff requested proof of a payment plan with the IRS to resolve Elite's tax debts. The Applicant did not respond to this request until submitting its Response to the Commission on May 6, 2013. The Applicant's Response states that the "IRS lien is the subject of a payment agreement and substantially paid down as evidenced in the annexed Exhibit "D." See Response Footnote 1 at 1-2. Exhibit "D," which was attached to the Response consists of a one page letter from the Internal Revenue Service dated January 23, 2012. This letter states that the Internal Revenue Service has "approved your request to pay your taxes in installments. Your first payment of $5,000.00 is due on 02/25/2012. You agreed to make future payments of $5,000.00 on the 25th of each month until you have paid the full amount you owe. See Response Exhibit "D." Contrary to the assertion in the Response, the Applicant has not provided the Commission with any proof that a single payment has been made.[9] We also note that the lien in the amount of $23,381.00 was filed against the Applicant on February 1, 2012, after the date of the letter from the Internal Revenue Service. Thus, it appears that this tax lien is not covered by any such agreement.

In addition, according to a search of the Environmental Control Board ("ECB") database dated May 7, 2013, the following fine has been docketed against the Applicant:

Creditor	Violation Number	Amount
NYC Environmental Control Board	0180812821	$2,250.00

See ECB printout dated May 7, 2013. Although a hearing of this matter was scheduled to take place on February 4, 2013, the Applicant did not appear. The Applicant's Response does not specifically address this ECB violation.[10] Therefore, the maximum penalty was imposed. See id.

[9] Furthermore, this letter from the Internal Revenue Service states, a "Notice of Federal Tax Lien has been filed and the lien will be released" when the Applicant finishes paying what the Applicant owes. See Response Exhibit "D." Thus, the lien exists.

[10] The Applicant's Response did provide proof that several judgments and liens filed against the Applicant by the Commissioner of Labor of the State of New York have been resolved. The Applicant's Response also provided proof that it resolved one other ECB violation and has scheduled future hearing dates regarding five additional ECB violations. See Response Exhibits "B" and "C."

Basis for Denial

Vincenzo Bordone, Who the Commission Previously Found to Lack Good Character, Honesty, and Integrity, is an Undisclosed Principal of the Applicant.

"The commission may refuse to issue a license or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter." Admin. Code §16-509(b). The term "applicant" includes both the applicant business and any "principal" of the business. See Admin. Code §§16-501(a); 16-501(d). 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).

As discussed above, Vincenzo Bordone was disclosed to the Commission to be a principal of Metro. The Commission later found him to be an undisclosed principal of Circle, Phantom, and World Class. The evidence here too establishes that Vincenzo Bordone is an undisclosed principal of the Applicant. As the Commission previously concluded in the Decision denying the applications of Phantom and World Class, Vincenzo Bordone formed a new company anytime he wished to avoid the payment of taxes, the payment of union obligations, and government regulation. It is likely that Vincenzo Bordone knew he could not include his name in an application filed with the Commission if he wished to continue to avoid these obligations. Furthermore, it is likely that he knew that any application with his name filed with the Commission would be subject to denial on its face. Thus, Vincenzo Bordone attempted to deceive the Commission by omitting his name from the instant application. Eventually, on January 5, 2012, after years of deception, misinformation and falsehoods, Vincenzo Bordone admitted to Commission investigators that he is the true principal of the Applicant.

In its response, the Applicant does not even attempt to contest the majority of the evidence relied on by the Commission. Indeed, the Applicant's response conveniently disregards and fails to address the fact that: (a) the Applicant's offices are located on property linked to Vincenzo Bordone and used by the other Bordone family businesses; (b) the Applicant's garage location is 56-20 Grand Avenue, the same garage address as Phantom; (c) the garage used by the Applicant was originally owned by Vincenzo Bordone; (d) the Applicant's mailing address is 55-14 Grand Avenue, the same mailing address as World Class and Metro; (e) the Applicant pays rent for both its office space and garage to Metro, income that Vincenzo Bordone ultimately receives; and (f) the Applicant employed one of Vincenzo Bordone's sons, Carlo Bordone, a former principal of denied companies Metro and Circle, to work for the Applicant for over a year.

In a vain attempt to explain away Vincenzo Bordone's admission to Commission investigators that he is a principal of the Applicant company, the Applicant makes yet another misrepresentation to the Commission. In the Applicant's self-serving version of the event,

Vincenzo Bordone happened to be taking a walk near his home when he "encountered" a Commission investigator who stopped one of the Applicant's trucks. This account is patently false. Vincenzo Bordone did not arrive on the scene while "taking a walk" around the neighborhood, rather he arrived in his a white Range Rover. Moreover, his arrival was anything but inadvertent. The record reflects that after speaking with Commission investigators, Fabio Bordone returned to his vehicle, made a telephone call, presumably to his father, who then arrived approximately 10 minutes later. Upon his arrival, Vincenzo Bordone explicitly professed his ownership *and* direct control of the Applicant business. The Applicant's employee independently confirmed that Vincenzo Bordone "is the owner and boss of the company." In its response, the applicant states that the employee made such statement because Vincenzo Bordone is a "significant person in his own right in the business." See Response Exhibit "A" at 2. In this regard, the Applicant's own response appears to concede that Vincenzo Bordone was in control of Elite and its employees.

Against this clear and convincing evidence, there is before the Commission only the groundless denial by Fabio Bordone that his father has ever been a principal of the Applicant as well as copies of a few checks and bank statements that on their own the Applicant considers "relevant... to show that there were no secret deposits by Vincenzo Bordone, or anyone else into Nicolo's account." See Response Exhibit "A" at 1. Copies of a small sample of selectively chosen checks and bank statements lack any probative value.

The Commission cannot credit the assertion that Vincenzo Bordone is not a principal of the Applicant. Rather, the record abundantly establishes that Vincenzo Bordone participates directly or indirectly in the control of the Applicant business and is therefore a principal. See Admin Code §16-101(d) (definition of "principal").[11] Furthermore, Vincenzo Bordone is clearly a principal, and was not disclosed to the Commission in the Registration Application, Renewal Applications, or any other submissions as required. As the Commission previously determined that undisclosed principal, Vincenzo Bordone lacks good character, honesty, and integrity, this renewal application is denied based on this independently sufficient ground.

The Commission Previously Found that Four Related Companies- Metro Demolition Contracting Corp., Circle Interior Demolition Corp., Phantom Demolition Corp., and World Class Demolition, Inc.- Lacked Good Character, Honesty, and Integrity, and Denied their Applications.

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. See Admin. Code §16-509(c).

[11] As the parent of majority stockholder Fabio Bordone, Vincenzo Bordone would be deemed by Local Law 42 to be a principal of Elite even if he did not participate in the control of Elite. See Admin. Code §16-501(d).

The evidence discussed above establishes that Elite is a thinly veiled alter ego of Metro, Circle, World Class and Phantom, and that all of these companies are controlled by Vincenzo Bordone. The Commission previously found that each of these companies lacked good character, honesty, and integrity, and denied their respective applications. The Commission's findings that Metro, Circle, Phantom, and World Class each lack good character, honesty, and integrity are fully applicable to this Applicant. Accordingly, the Commission's denial of Metro's, Circle's, Phantom's, and World Class' applications for lack of good character, honesty, and integrity necessarily encompasses the finding that the Applicant and its disclosed and undisclosed principals are unfit to be registered. As discussed above, the Applicant's Response fails to address the evidence that establishes that Elite is an alter ego of Metro, Circle, World Class, and Phantom. This renewal application is denied based on this independently sufficient ground.

The Applicant 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). As disclosed above, the Applicant provided the Commission with applications and other submissions that contained false, misleading, and conflicting information about who is and who is not a principal of the company. In addition, the Applicant's disclosed principals provided the Commission with testimony under oath that contained false, misleading, and conflicting information about who is and who is not a principal of the Applicant, and about the relationship between the Applicant and the other Bordone companies. While the Commission is not required to attribute a motive to an applicant's false filings and false and misleading testimony, it is reasonable to conclude that Vincenzo Bordone did not want to disclose his true role in the Applicant company in part due to all of the debts that he and the Bordone companies accumulated.

The Applicant's Response to the staff's recommendation barely merits a reply on this point. The Applicant's Response all but concedes the fact that the Applicant provided false, misleading and conflicting information to the Commission. The Applicant's Response contends that all of the false, misleading and conflicting information was provided to the Commission by prior principals of the Applicant, and not the current disclosed principal, Fabio Bordone. The fact that Mr. Bordone is an untimely disclosed new principal ignores the fact that the false information provided to the Commission by the company, including the timing and nature of his own ownership, casts a pall on his integrity as well and does nothing to establish any viable grounds to approve the application.

Most remarkably, in its Response, the Applicant appears to attempt to deceive the Commission once again. The Applicant claims that the Commission's staff:

> "made a material error in its findings concerning Messrs Semilia and Nicolo,... The November 2009 renewal application did not list Semilia as a 50% owner of Elite. Thus, Semilia's statement may not evidence what [the Commission's] staff claims it evidences."

See Response Exhibit "A" at 3. In support of this assertion, the Applicant relies on a version of what the they claim is the November 2009 renewal application. See Response at Exhibit "G." However, the renewal application attached to the Response as Exhibit "G" is not marked as "received" by the Commission and indeed, is a different document then what was actually filed with the Commission.[12] In relying on a document which, at best, is an unfiled draft, and, at worst, a fraudulent document, the Applicant does nothing to revive its credibility with the Commission. Indeed, the Applicant's Response is nothing more than yet another version of the Applicant's ownership structure, this time solely asserted by its *current* disclosed principal, Fabio Bordone.

Accordingly, the Commission cannot have any confidence in the credibility of the application, testimony and other submissions, including the Response itself, finds them unreliable, and denies this renewal application based on this independently sufficient ground.

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 Environmental Control Board and the Internal Revenue Service.

According to a judgment and lien search conducted on May 7, 2013, the Applicant owes the IRS Two Hundred Three Thousand Seven Hundred Eighty Three ($203,783.00) Dollars. Similarly, according to a search of the ECB database conducted on May 7, 2013, the Applicant owes Two Thousand Two Hundred Fifty ($2,250.00) Dollars to the ECB. As discussed above, the Applicant's Response addresses some, but not all of the debts it owes to the IRS and the ECB. For instance, the Applicant has failed to provide proof that it has abided by the terms of an agreed upon payment plan with the IRS to resolve all of the federal tax liens. Also, the Applicant completely fails to address the federal tax lien that was filed against it subsequent to being approved to enter into a payment plan. In addition, the Applicant has failed to provide proof that it resolved an ECB violation for which a total fine of Two Thousand Two Hundred

[12] The renewal application attached to the Response as Exhibit "G" states that Nicolo was "President," that Fabio Bordone was "VP," and that each own fifty percent of the company. See Response Exhibit "G." As stated above, the renewal application that was actually filed with the Commission on November 4, 2009 reported that Nicolo was "President" and fifty-percent owner of the company, that Semilia was "Vice-President" and fifty-percent owner, and that Fabio Bordone was "Vice President of Operations" with no ownership interest in the company. See 2009 Renewal Application at 7-8.

Fifty Dollars was imposed ($2,250.00). Finally, as discussed above, the Applicant's alter ego companies have compiled significant debts that are owed to various government agencies, including the Commission. The Commission denies Elite's renewal application based on this independently sufficient ground. See Admin. Code §§16-509(b); 16-509(a)(i).

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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 Elite's exemption renewal application and registration.

This exemption/registration denial is effective immediately. Elite Demolition Contracting Corp. may not operate as 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