Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION APPLICATION OF LUNA LIGHTING INC. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Luna Lighting Inc. ("Luna Lighting" or the "Applicant") (#4366) has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for an exemption from licensing requirements and a registration to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "c & d." See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a).

On March 25, 2013, the staff issued and served the Applicant with Notice of the Grounds to Recommend that the application be denied. The Applicant was granted ten business days to respond, until April 11, 2013. See 17 Rules of the City of New York §2-08(a). The Applicant failed to submit any response to the Commission. Based on the record as to the Applicant, the Commission now denies Luna Lighting's application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

A. The Applicant Failed to Pay Taxes, Fines, Penalties, or Fees that are Related to the Applicant's Business that are Owed to the Internal Revenue Service.

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

C. The Applicant Repeatedly Engaged in Unregistered Trade Waste Removal Activity.

D. The Applicant Provided False and Misleading Information to the Commission in its Application.

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

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

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

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

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

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

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Id. at §509(a)(i)-(x). Additionally, the Commission may refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by the Commission…or who has otherwise failed to demonstrate eligibility for a license. Id. at §509(b). The Commission may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license." Id. at §509(c). Finally, the Commission may refuse to issue a license or

registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at §509(d).

An applicant for a private carting license (including construction and demolition) has no entitlement to and no property interest in a license or registration and the Commission is vested with broad discretion to grant or deny a license or registration application. Sanitation & Recycling Industry, Inc., 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). NY Admin. Code § 16-116.

Statement of Facts

On April 10, 2012, Luna Lighting applied to the Commission for an exemption from the licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. See Registration Application ("Application"). The company is located at 203 Meserole Avenue, Brooklyn, New York, and has three principals, Anthony Argento, Angela Argento, and Gina Argento. See Registration Application at 13; Correspondence dated September 6, 2012.[1] All three principals certified that all information contained in the Application was "complete and truthful." See Application at 20, Certification of Angela Argento; Certification of Gina Argento.

Prior to submission of the Application, on April 9, 2009, a Commission investigator observed a 1990 white Mack dump truck while collecting and transporting trade waste in Brooklyn, New York. The truck was registered to Luna Lighting, Inc., and was marked "Luna Construction" on the vehicle with an address of 203 Meserole Avenue, Brooklyn, NY. The debris was collected from 301 Ainsle Avenue, Brooklyn, New York. See Notice of Violation, TW-4186. A Notice of Violation was issued against the Applicant, and a hearing was scheduled for October 8, 2009. The Applicant failed to appear for the hearing, and on October 16, 2009, a Default Decision and Order was entered. The Applicant was ordered to pay a fine of $5,000. See Default Decision and Order, TW-4186.

Again, on August 25, 2009, December 20, 2011, and January 4, 2012, Commission investigators observed the same white Mack dump truck marked "Luna Construction" while being used to transport trade waste in New York City. See Notices of Violation, TW-4688, TW-7935, and TW-8006. As a result of this unregistered activity, three Notices of Violation were issued against the Applicant.

On or about April 11, 2012, the Applicant, through its attorney, contacted the Commission in order to address the outstanding violations. On May 11, 2012, the Applicant and the Commission executed a Stipulation of Settlement whereby the Applicant admitted the above violations and agreed to pay a fine of $18,000 to resolve all four violations. Anthony Argento signed the

[1] The Application initially listed Anthony Argento as the sole principal, but tax records established that Angela Argento and Gina Argento were also principals due to their ownership interests in the Applicant. After repeated requests for information about this discrepancy, by correspondence dated September 6, 2012, the Applicant amended the Application to include Angela Argento and Gina Argento as principals.

Stipulation of Settlement agreeing to the terms therein and signing as "owner" of the Applicant. See Stipulation of Settlement, TW-4186 et al. The Applicant has paid the total fine.

Upon submission of the Application on April 10, 2012, the Commission conducted a background investigation of the Applicant. The background investigation revealed that the Application contained false information regarding Anthony Argento's criminal history. Question 26 of the Application asks if the "the applicant business, any current principal of the applicant business... [has] ever been convicted of a crime in any jurisdiction?" The Applicant responded, "No." In fact, on April 25, 1997, Anthony Argento was arrested for driving while intoxicated and aggravated unlicensed operation of a motor vehicle in the first degree, a felony. Anthony Argento pled guilty to aggravated unlicensed operation in the third degree, an unclassified misdemeanor. See Criminal History Record Search (CHRS) printout for Anthony Argento.[2]

The Commission's background investigation also revealed various outstanding federal tax liens against the Applicant business and its principal, Anthony Argento:

- Filed 11/28/00 against Luna Lighting Inc. for $67,505
- Filed 10/19/06 against Anthony Argento for $253,763.34
- Filed 2/17/03 against Anthony Argento for $367,627.52
- Filed 11/6/06 against Anthony Argento for $367,627.52

Therefore, the Applicant and its principal owed $1,056,523.38 to the Internal Revenue Service ("IRS").[3] See Westlaw judgment results for Luna Lighting and Anthony Argento.

By letter dated June 18, 2012, the Commission's staff notified the Applicant about, among other things, the IRS tax liens.[4] The Commission requested that the Applicant provide proof by July 2, 2012, that the liens were satisfied or otherwise resolved. The correspondence enclosed copies of the outstanding judgments for the Applicant. See letter from Leigh Neren dated June 18, 2012.

The Applicant failed to respond in any manner to the June 18, 2012 letter. Therefore, by letter dated July 16, 2012, the Commission's staff sent another letter to the Applicant notifying it that it had until July 27, 2012 to provide the previously requested documentation and information. Further, the Applicant was advised that the failure to provide the previously requested information and documentation may result in the denial of the Application. See letter from Leigh Neren dated

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[2] By letter dated September 18, 2012, Anthony Argento admitted that he had been arrested, but denied that he had been convicted of a crime.

[3] A judgment and lien search conducted on April 29, 2013 revealed that the judgment against Anthony Argento that was filed on November 6, 2006, is no longer outstanding. Therefore, as of April 29, 2013, the Applicant owes $688,895.86 to the Internal Revenue Service.

[4] In addition to requesting information about the outstanding tax liens, the Commission requested: 1) clarification and documentation regarding the principals of the Applicant; 2) documentation regarding the outstanding Commission-issued violations; 3) proof that various criminal court judgments had been resolved; 4) proof that various outstanding Environmental Control Board summonses had been resolved; and 5) information about Anthony Argento's criminal history. See letter from Leigh Neren dated June 18, 2012. This information and/or documentation was eventually provided to the Commission.

July 16, 2012. On July 27, 2012, the Commission received a letter from the Applicant's accountant that stated in part, "Anthony Argento is aware of his tax liabilities." See letter from Edward Lampert dated July 26, 2012.

By letter dated August 15, 2012, titled "FINAL NOTICE," the Commission's staff gave the Applicant another opportunity to provide the previously requested documentation. The Applicant was informed that the letter from its accountant was insufficient proof of satisfaction of the tax debts, and that it had until August 30, 2012 to provide the proof. The prior two letters requesting the same information were also enclosed. See letter from Leigh Neren dated August 15, 2012.

On August 27, 2012, "Sal Alaimo from Luna Lighting" sent an email to the Commission and requested copies of the outstanding judgments. The Commission staff again sent the letter dated June 18, 2012 along with its attachments. See email correspondence dated August 27, 2012. The Applicant was reminded that it had until August 30, 2012 to provide the previously requested documentation. See id.

On September 7, 2012, after the given deadline, the Applicant submitted a partial incomplete response to the Commission's request which failed to include any proof with respect to the outstanding federal tax liens. As a result, once again, the Commission gave the Applicant another opportunity to provide the documentation, until September 21, 2012. See email correspondence dated September 7, 2012: email correspondence dated September 11, 2012; letter from Leigh Neren dated September 11, 2012.

Starting in September 2012, and through December 2012, the Applicant's attorney contacted the Commission's staff and made representations regarding attempts to obtain the required documentation. On September 26, 2012, and on or about October 12, 2012, the Applicant's attorney provided documentation to the Commission, none of which included proof regarding the outstanding federal tax liens. See correspondence from Linda March date stamped September 26, 2012; correspondence from Linda March dated October 12, 2012. Additionally, by correspondence dated December 5, 2012 and December 11, 2012, the Applicant's attorney provided documentation regarding tax liens other than the federal tax liens referenced above. Consequently, orally, and in writing on December 26, 2012, the Commission's staff notified the Applicant's attorney that the federal tax lien against the Applicant business and the three federal tax liens against Anthony Argento remained outstanding.

As of the date of this Notice, the Applicant has not provided proof that the outstanding federal tax liens are satisfied or otherwise resolved. Further, all but one of the liens remains open and unpaid.

Basis for Denial

The Applicant Failed to Pay Taxes, Fines, Penalties, or Fees that are Related to the Applicant's Business that are Owed to the IRS.

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 April 29, 2013, the Applicant has failed to pay over $620,000.00 in federal tax liens filed by the IRS. On multiple occasions, the Commission's staff informed the Applicant that it must resolve these liens. Yet, despite these warnings, the debts remain unsatisfied. Further, the Applicant does not contest any of these points. For this independently sufficient reason, this Application is denied.

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

"The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." See Admin. Code §16-509(b).

As indicated above, the Commission has given the Applicant more than ample opportunity to provide documentation that the outstanding federal tax liens have been satisfied or otherwise resolved. Indeed, the first request for this documentation was on June 18, 2012. Notwithstanding the fact that the Applicant has had almost one year to provide the requested documentation and that the Commission has made repeated requests for the documentation, the Applicant has failed to provide proof of satisfaction or other resolution of the outstanding liens owed to the IRS. The Applicant does not contest this point.

Therefore, the Applicant has "knowingly failed to provide the information and/or documentation" required by the Commission by failing to respond to the Commission's repeated requests for proof of resolution of these liens. For this independently sufficient reason, this Application is denied.

The Applicant Repeatedly Engaged in Unregistered Trade Waste Removal Activity.

The Commission is authorized to deny the registration application of a company that has engaged in unlicensed carting activity in the City of New York. See Admin. Code §§16-505(a), 16-509(c)(ii), 16-513(a)(i).

The Applicant has never held a carting license or registration issued by Department of Consumer Affairs, Trade Waste Commission, or Business Integrity Commission, and has never been legally authorized to operate a trade waste business in New York City. Nevertheless, since at least April 9, 2009, the Applicant has continuously operated a trade waste removal business in the City of New York without the requisite legal authority.

As demonstrated above, on four different dates, Commission investigators observed the Applicant illegally collecting and transporting trade waste in New York City without the required license or registration.

While the Commission need not attribute a motive to the Applicant for the failure to submit a registration application earlier, it is likely that the Applicant knew that its failure to pay over one million dollars in liens owed to the federal government would be an impediment to approval of a registration. Therefore, the Applicant likely determined that it would rather risk operating illegally. It simply chose to disregard the law and continue to operate without subjecting itself to the Commission's regulation. The circumstances suggest that only because the Applicant was cited for a fourth violation by the Commission for unregistered activity – potentially exposing it to a maximum penalty of $5,000 per violation and/or criminal charges – did it finally decide to file an application with the Commission.

The Applicant's repeated unregistered activity demonstrates a blatant disregard for the Commission's rules and regulations. Under the circumstances, the Applicant's unregistered carting is strong evidence of the Applicant's lack of good character, honesty and integrity and merits the denial of its registration application. The Applicant does not refute this point. Accordingly, the Commission denies the Application on these independently sufficient grounds.

The Applicant Provided False and Misleading Information to the Commission in its Application.

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). Here, the Applicant submitted an Application to the Commission that contained false and misleading information regarding Anthony Argento's criminal history.

As discussed above, the Applicant provided the Commission with false and misleading information by not disclosing on its Application that Anthony Argento was convicted of a crime. The Applicant does not refute this point.

It is crucial that applicants provide truthful and accurate information about its principals and employees. Such information is crucial to the Commission's mission of preventing the re-emergence of the criminal activity that historically had a stronghold in the commercial carting industry. The failure of the Applicant to provide truthful and non-misleading information on its

application to the Commission is evidence that the Applicant lacks good character, honesty, and integrity. Therefore, the Commission denies the Application on this independently sufficient ground. See Admin. Code §§16-509(b); 16-509(a)(i).

Conclusion

The Commission is vested with broad discretion to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license, to any applicant who it determines to be lacking in good character, honesty and integrity. The record as detailed above demonstrates that the Applicant falls short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies the Applicant's exemption/registration application.

This exemption/registration denial is effective immediately. Luna Lighting Inc. may not operate a trade waste business in the City of New York.

Dated: May 13, 2013

THE BUSINESS INTEGRITY COMMISSION

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