Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE REGISTRATION RENEWAL APPLICATION OF PJF TRUCKING LLC (# 3477) TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

PJF Trucking LLC ("PJF" or the "Applicant") has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for a renewal of its 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 May 28, 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 January 2, 2013. See 17 Rules of the City of New York §2-08(a). The Applicant did not submit any response. Based upon the record as to the Applicant, the Commission now refuses to issue the requested exemption and registration for the following independently sufficient reasons:

A. The Applicant Has Failed to Pay Taxes, Fines, Penalties, or Fees That Are Related to the Applicant's Business that Are Owed to the State of New Jersey.

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. 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. 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;
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> 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;
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> 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. v. City of New York, 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, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). Admin. Code § 16-116.

Statement of Facts

On or about July 17, 2009, PJF applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. The Application disclosed Paula Scott as the Applicant's sole principal. On or about August 9, 2010, the Commission granted the Applicant a trade waste registration. The Applicant's registration was effective for two years, and expired on June 30, 2012. On or about July 16, 2012, the Applicant filed an untimely application to renew its registration with the Commission ("Renewal Application"). The Renewal Application again listed Paula Scott ("Scott") as PJF's sole principal.

Applicant's State of New Jersey Tax Lien

The Commission's background investigation of the Applicant in connection with the instant Renewal Application revealed that the Applicant is the named debtor in a tax lien filed by the State of New Jersey in the amount of $23,100.00. On information and belief, this lien was filed on July 26, 2012 in New Jersey State Superior Court, Filing Number DJ15498512. The Commission's background investigator called Scott to request information regarding this tax lien on or about October 17, 2012. At that time, the investigator called both the business and cellular phone numbers provided by the Applicant in the Renewal Application. Voicemails were left for Scott on both phone lines. However, Scott did not return the investigator's calls. By letter dated November 21, 2012, the Commission's legal staff requested that Scott provide proof that this outstanding New Jersey State tax lien had been paid or otherwise resolved on or before December 5, 2012. See November 21, 2012 letter from Martin G. Gleeson to the Applicant. Having received no response to this letter, the Commission's legal staff sent another letter to Scott, dated February 28, 2013 and clearly marked in upper case, underscored, bold letters "Second Request for Information", again asking that the principal provide the information and documentation previously requested. This second letter requested that the information be provided to the Commission by no later than March 15, 2013. See February 28, 2013 letter from Martin G. Gleeson to the Applicant. Having received no response to this letter, the Commission's legal staff sent a third letter to Scott, dated April 4, 2013 and clearly marked in upper case, underscored, bold letters "Final Request for Information", again asking that the principal provide the information and documentation previously requested. This third letter requested that the information be provided to the Commission by no later than April 19, 2013.

See April 4, 2013 letter from Martin G. Gleeson to the Applicant. No response has been received from the Applicant as of the date of this Notice. The letters to the Applicant, dated November 21, 2012, February 28, 2013 and April 4, 2013, were all sent by first class mail to the mailing address provided by the Applicant in its Renewal Application in accordance with 17 RCNY § 1-02. None of these letters was returned to the Commission by the U.S. Postal Service.[1] Furthermore, all three letters from the Commission to the Applicant advised the Applicant that failure to provide the requested information and/or documentation to the Commission may result in the withdrawal or denial of its registration renewal application.

Basis for Denial

The Applicant Has Failed to Pay Taxes, Fines, Penalties, or Fees That Are Related to the Applicant's Business That Are Owed to the State of New Jersey.

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 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." See Admin. Code § 16-509(a)(x); see also § 16-509(c)(ii); see also § 16-513(a)(iv).

As of the date of this Decision, the Applicant has failed to pay a tax lien in the amount of $23,100.00 filed by the State of New Jersey in New Jersey State Superior Court on or about July 26, 2012 against the Applicant. Despite the warnings provided by the Commission, the New Jersey State tax lien remains unsatisfied. For this independently sufficient reason, this Registration Renewal Application should be 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).

Despite repeated inquiries by the Commission's staff, the Applicant has failed to provide proof of satisfaction or other resolution of the outstanding taxes owed to a governmental entity.

The Applicant has "knowingly failed to provide the information" required by the Commission by failing to respond to the Commission's repeated requests for information and/or

[1] The letter dated April 4, 2013 was also sent by certified mail, return receipt requested. This letter was returned to the Commission by the U.S. Postal Service on as "unclaimed – unable to forward" on or about May 1, 2013. See U.S. Postal Service Receipt No. 9171082133393287751288.

documentation. For this independently sufficient reason, this Registration Renewal Application should be denied.

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 upon the above independently sufficient reasons, the Commission denies the Applicant's exemption renewal application.

The exemption denial is effective immediately. PJF may not operate a trade waste business in the City of New York.

Dated: June 24, 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

Rose Gill Hearn, Commissioner
Department of Investigation

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