Business Integrity Commission

DECISION OF THE BUSINES INTEGRITY COMMISSION DENYING THE LICENSE RENEWAL APPLICATION OF CITY BROTHERS, INC. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

City Brothers, Inc. ("City Brothers" or the "Applicant") (BIC #2857) has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for renewal of a license to operate as a trade waste business. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a).

On August 21, 2013, the staff issued and served the Applicant with a 10-page Notice of the Grounds to Deny the License Renewal Application of City Brothers (the "Recommendation"). As stated in the Recommendation, the Applicant had ten business days (September 5, 2013) from the date of the Recommendation to respond. See Title 17, Rules of the City of New York ("RCNY") §2-08(a); Recommendation at 10. On September 3, 2013, the Applicant's attorney contacted the Commission's staff and requested an extension of time to submit a response to the Recommendation. The Commission's staff agreed to extend the time to submit a response to September 11, 2013. On September 11, 2013, the Commission received the Applicant's 4-page response, a one page affidavit signed by Mayra Alvarez, and a one page affidavit signed by Tito Alvarez (collectively, 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 license renewal application of City Brothers because City Brothers lacks good character, honesty and integrity for the following sufficient reason:

- **The Applicant has provided false and misleading information to the Commission on its license application and on two license renewal applications.**

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 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.

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). Before issuing such license, 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 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 trade waste license or registration 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). Admin. Code § 16-116.

Statement of Facts

The Original Application

The Applicant applied to the Commission for a trade waste removal license. See License Application filed on February 11, 2008 ("Application"). Each of the disclosed principals certified that all of the information provided on the Application was true and accurate. See Application at 33; 38; 40. The Application asks in Question 13, "On Schedule A, identify all individuals who are principals of [the] applicant business and provide the information requested." Id. at 3. The Applicant disclosed three principals on Schedule A – Mayra Alvarez ("Alvarez") as the "President," Sonia Aguilar as the "Vice President," and Jessica Alvarez as the "Treasurer" of the company. Id. at 20-21. The Application also disclosed that Mayra Alvarez owns thirty-three percent of the company, Sonia Aguilar owns thirty-four percent of the company and Jessica Alvarez owns thirty-three percent of the company. Id. On July 1, 2008, the Commission issued the Applicant a license. See Licensing Order. As explained below, the evidence demonstrates that Mayra Alvarez's brother-in-law, Tito Alvarez, whose name does not appear anywhere on the Application, actually owns and controls the Applicant business.

Investigator Interview of Mayra Alvarez

On May 7, 2009, Commission investigators responded to a complaint and visited 176 Woodward Avenue, Queens, New York, which is the garage address that the Applicant disclosed to the Commission on its Application. See Application at 1. When the investigators arrived at 176 Woodward Avenue, they found that a cement company, and not the Applicant, used this address. Despite the fact that 176 Woodward Avenue had been disclosed by the Applicant as their garage, the Applicant's trucks were not parked there, and there was neither an indication that the Applicant conducted any business from that address, nor any indication that the Applicant was present at that address in any manner. Indeed, the Applicant changed its garage address, without informing the Commission as required by the Commission's rules.[1]

[1] The Applicant violated 17 Rules of the City of New York ("RCNY") §2-05(a) (2) by failing to amend its application within ten business days regarding this material change. In its response, although Alvarez previously told Commission investigators that the garage address had changed, the Applicant is now altering its position, claiming that a second garage location was added in addition to the disclosed garage address. Even if the Applicant's belated explanation is credited, the Applicant still had an ongoing obligation to provide the Commission with updated garage addresses, including any added garage address. Indeed, on or about September 15, 2009, the Applicant pleaded guilty to failing to notify the Commission

On May 11, 2009, the investigators visited the Applicant's main office address (62-31 62nd Road, Middle Village, New York) that was disclosed to the Commission on the Application. See Application at 1. As there was no one present at the main office address, an investigator contacted Alvarez by telephone. Alvarez told the investigator that both the Applicant's office and garage addresses had changed. When asked to provide the new garage address, Alvarez, who is disclosed as the "President" and thirty-three percent owner of the Applicant, initially told the investigator that she did not know the new garage address. The investigator then heard Alvarez ask an unknown person for the garage address. After Alvarez spoke to the unknown individual, she provided the investigator with the new garage address, 1901 Star Street, Queens, New York. Subsequent to this telephone conversation, Alvarez met the investigators at 1901 Star Street, Queens, New York. Once at this location, Alvarez told the investigators, among other things, that her brother-in-law, Tito Alvarez, "is the real owner" of the Applicant business. Despite this statement, Tito Alvarez's name did not appear anywhere in the Application.[2]

Statement Under Oath of Mayra Alvarez

On June 25, 2009, Alvarez provided the Commission with testimony under oath (hereinafter, "deposition"). See June 25, 2009 Deposition Transcript of Mayra Alvarez ("Alvarez Tr.").[3] As set forth more fully below, just as she had previously admitted to investigators, Alvarez admitted, under oath, that her brother-in-law, Tito Alvarez, is an undisclosed principal who both owns and participates directly or indirectly in the control of the Applicant business. See infra.

In the Response, the Applicant asserts Alvarez's testimony should be disregarded because she has "little knowledge of the English language," because she was "not advised of her right to have an attorney present," and because she "was subjected to a cleverly designed and intimidating questioning technique." See Response at 3- 4. However, the Applicant cites to no particular portion of the transcript as evidence of such alleged "intimidation," rather the Applicant's response complains about the questions at the deposition in a wholly conclusory and self-serving manner. At her deposition, Alvarez testified that she understands and speaks English, and she was informed that she could call an attorney at any time during the deposition, or that the Commission's staff would adjourn the proceedings if she changed her mind at any time about legal representation.[4]

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about a change of garage address and paid a Two Thousand Five Hundred ($2,500) Dollar fine. See Stipulation of Settlement for TW-4172.

[2] Tito Alvarez was first disclosed as a "vehicle operator" for the Applicant in a renewal application that was filed with the Commission on June 28, 2010. See infra. He was not disclosed anywhere on the original application. See Application.

[3] Mayra Alvarez appeared for her deposition without counsel. At the outset of her deposition, she was informed that she could call an attorney at any time during the deposition, or that the Commission's staff would adjourn the proceedings if she changed her mind at any time about legal representation. Alvarez proceeded without counsel. See Alvarez Tr. at 3-4.

[4] In its Response, the Applicant claims that Alvarez testified that she "was not fluent in English." See Response at 4. However, the record reflects that Alvarez testified that she "understands and speak[s] English." Her testimony was that she was not "fluent" in reading and writing English. See Alvarez Tr. at 4-5.

See Alvarez Tr. at 3-5. She was also advised that if she did not understand any question, she should say so. See Alvarez Tr. at 4-5. At no time did Mayra Alavrez indicate that she did not understand the questions, nor did she ask to adjourn the interview for any reason. Furthermore, as described above, Mayra Alvarez previously made substantially similar statements about ownership and control of the Applicant business to Commission investigators (one of whom speaks Spanish). See supra.

According to Alvarez's testimony, Tito Alvarez's role in the Applicant business began in the formation stages of the business. For instance, when asked whose idea it was to start the Applicant business, Alvarez testified that it was the idea of her husband, Juan Alvarez, along with his brothers, Danilo Alvarez and Tito Alvarez.[5] Mayra Alvarez then stressed that "mainly, it was Tito Alvarez's" idea. See Alvarez Tr. at 15-16. She also testified that each of the four principals, including Tito Alvarez and the three disclosed principals, "put in" or invested Thirty-Thousand ($30,000) Dollars to start the Applicant business and buy trucks. See Alvarez Tr. at 25-27; 38-39. In addition to conceptualizing and helping to capitalize the business, Tito Alvarez located and negotiated for the purchase of the Applicant's trucks. See Alvarez Tr. at 24-25. Mayra Alvarez provided testimony about Tito Alvarez's role in the acquisition of the Applicant's trucks:

Q.: How did you find the sellers of these trucks?

A.: I think [Tito Alvarez] found them…

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Q.: Is Tito [Alvarez] the one that assisted you in negotiating for the trucks?

A.: Yeah.

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Q.: Did you negotiate the prices of these trucks?

A.: Yes.

Q.: You personally did?

A.: By phone. By phone, me and then [Tito Alvarez], both of us. Whatever he did. *He* went to look for trucks, *he* found them, *he* talked about prices, and I'm the one that called and made the arrangements to pick it up once *they* decided to buy it.

[5] Alvarez's husband, Juan Alvarez, and brother-in-law, Danilo Alvarez, are employed as drivers by another trade waste licensee. See Alvarez Tr. at 13-15. Although the three disclosed principals are women, the Applicant was likely named after the three brothers who conceived of the idea to start the business.

See Alvarez Tr. at 24-25, emphasis added. In addition, Tito Alvarez negotiates prices with customers, conducts waste stream surveys and participates in all major decisions on behalf of the Applicant business. See Alvarez Tr. at 28; 33-34; 36-37. Tito Alvarez is also the Applicant's landlord, as he owns the house in which the Applicant maintains its office.[6] See Alvarez Tr. at 18. Finally, and perhaps most tellingly, Tito Alvarez is the only person who collects income from the Applicant business. See Alvarez Tr. at 31-32.

In the Response, the Applicant claims that Tito Alvarez is not an undisclosed principal, but is nothing more than a "seed investor" who contributed $30,000 to help start the business. See Response at 1-2. The Applicant claims that Tito Alvarez gave the company $30,000 (the same amount that each of the three disclosed principals contributed), with no resulting ownership interest. First, even if the company was given such a gift, that too is required to be disclosed on the application, which it was not. See Application at 18, question 46. More importantly, however, the undisputed nature of Tito Alvarez's role in the company requires that he be disclosed as a principal. The Applicant attempts to minimize his role by vaguely stating that he is only "involved in some of the activities of the business and was employed as a driver for the business." See Response at 2. However, Tito Alvarez's "activities" concededly include "negotiating truck prices, and conceptualization, and etc." See Response at 3. In addition, the Applicant's Response ignores the fact that Tito Alvarez is the Applicant's landlord and is the only person who collects income from the Applicant business. Yet, despite the Applicant's admissions about Tito Alvarez's role in the company, the Response attempts to deceive the Commission by referring to some, but not all of Local Law 42's definition of "principal." According to the Applicant's Response, Local Law 42 "provides no definition for an owner but does provide the following definition of a "Principal":

> "Principal" shall mean [...] of a corporation, every officer and director and every stockholder holding ten percent or more of the outstanding shares of the corporation.

See Response at 2. The Response, in order to suit the Applicant's needs, omitted the full definition of "principal," as set forth in Local Law 42. The full 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.*[7] See Admin. Code §16-501(d) (italics added). Based on all of the evidence described above, including admissions made to Commission investigators,

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[6] When asked why the Applicant's office was located in a house owned by Tito Alvarez, Mayra Alvarez initially stumbled when she testified, "Because I didn't want to- - I usually go there and it was their decision to do it." When asked "whose decision," Mayra Alvarez corrected her earlier testimony by stating, "actually it was everyone's decision, me, too..." See Alvarez Tr. at 18-19. Thus, it appears that based on Mayra Alvarez's initial testimony, she had nothing to do with selecting the office address for the Applicant business.

[7] Even if we were to accept the Applicant's version, that Tito Alvarez is not an "owner" of the Applicant business, the evidence establishes that he participates directly or indirectly in the control of the Applicant business.

admissions made under oath, and admissions made in the Applicant's Response, we find that Tito Alvarez is a an undisclosed principal of the Applicant business.

In contrast to all of the duties and responsibilities for the Applicant that are carried out by Tito Alvarez, Mayra Alvarez testified that she is the Secretary for the Applicant with little or no responsibility:

> Q.: … What do you do for City Brothers Inc.?
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> A.: I'm the Secretary. I mean, I handle all the paperwork there.
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> Q.: Do you do anything else for the company?
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> A.: No, that's it.
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> Q.: What kind of paperwork do you handle?
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> A.: Like the - - bills, payments, customers, you know, because we're just starting; that's it.
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> Q.: Let's go through the paperwork you deal with in your secretary position. Do you write checks?
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> A.: Yes.
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> Q.: What else do you do?
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> A.: Like make sure that the payments for permits and insurance are on time, the payments, I prepare the invoices. There's nothing much to do.

See Alvarez Tr. at 6-7; 35. This testimony demonstrates that besides performing secretarial work, Alvarez has little responsibility for the Applicant's operations. Similarly, when asked what Sonia Aguilar, who is disclosed as the Applicant's "Vice President," does for the Applicant business, Alvarez testified:

> A.: She's a Vice President but right now she - - you know, she gives out cards; nothing much.
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> Q.: Has she ever done anything else?
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> A.: She helps me with the paper. Sometimes she drives me to a place I have to go, any place, but nothing else.

See Alvarez Tr. at 12. When asked what Jessica Alvarez, who is disclosed as the Applicant's "Treasurer," does for the Applicant business, Alvarez testified:

> A.: Same thing. Right now she's not doing anything. She helps me - - sometimes she helps me with the books.

See Alvarez Tr. at 12.

Thus, in addition to admitting under oath that Tito Alvarez has an undisclosed ownership interest in the Applicant business, Mayra Alvarez also described how Tito Alvarez directly controls virtually every aspect of the Applicant business. In contrast, Mayra Alvarez testified about how she and the other disclosed principals either perform secretarial work for the Applicant business or do nothing for the Applicant business. Taken together, it is clear that Tito Alvarez is an undisclosed principal of the Applicant business.

The First Renewal Application

On June 28, 2010, the Applicant filed its first renewal application with the Commission ("First Renewal Application"). Mayra Alvarez, Sonia Aguilar and Jessica Alvarez each certified that the information provided in response to each question in the First Renewal Application "is full, complete and truthful." See First Renewal Application at 12; 14; 17. Contrary to Mayra Alvarez's June 25, 2009 testimony about Tito Alvarez's significant role in the operations of the company, Tito Alvarez was only disclosed to the Commission in the First Renewal Application, as a "vehicle operator" for the Applicant business.[8] See First Renewal Application at 11.

The Second Renewal Application

On June 29, 2012, the Applicant filed its second renewal application with the Commission ("Second Renewal Application"). Similar to the First Renewal Application, Mayra Alvarez, Sonia Aguilar and Jessica Alvarez each certified that the information provided in response to each question in the Second Renewal Application "is full, complete and truthful." See Second Renewal Application at 12; 13; 14. Contrary to Mayra Alvarez's testimony about Tito Alvarez's role as a principal of the company, Tito Alvarez was only disclosed to the Commission in the Second Renewal Application, as a "vehicle operator" for the Applicant business.[9] See Second Renewal Application at 11.

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[8] As part of First Renewal Application, each of the disclosed principals also certified that she "read and understood the instructions accompanying the attached renewal application, including the definitions of 'principal' and 'affiliate' contained therein." See First Renewal Application at 12; 14; 17.

[9] As part of the First Renewal Application, each of the disclosed principals also certified that she "read and understood the instructions accompanying the attached renewal application, including the definitions of 'principal' and 'affiliate' contained therein." See Second Renewal Application at 12; 13; 14.

Basis for Denial

The Applicant provided false and misleading information to the Commission on its license application and on two license renewal applications.

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). Local Law 42 sets forth a broad definition of a principal. In its response the Applicant relies on a portion of the relevant provision defining "principal," but self-servingly omits the remainder of the language stating that a "principal" is defined as, not only individuals with an ownership interest, but also "all other persons participating directly or indirectly in the control of such business entity." See Admin. Code § 16-501(d).

The Applicant submitted multiple applications to the Commission that contained false and misleading information by failing to disclose that Tito Alvarez is a principal of the Applicant business. In addition to Mayra Alvarez's statements to investigators and testimony, in which she admits that Tito Alvarez has an ownership interest in the Applicant business, her description of Tito Alvarez's role in the company clearly establishes that he is a person who participates directly in the control of the business:

- The formation of the Applicant business was "mainly" Tito Alvarez's idea. See Alvarez Tr. at 15-16.
- Tito Alvarez invested Thirty-Thousand ($30,000) Dollars to start the Applicant business and purchase trucks. See Alvarez Tr. at 25-27; 38-39.
- Tito Alvarez located and negotiated for the purchase of the Applicant's trucks. See Alvarez Tr. at 24-25.
- Tito Alvarez negotiates prices with customers and conducts waste stream surveys. See Alvarez Tr. at 36-37.
- Tito Alvarez participates in all major decisions made on behalf of the Applicant business. See Alvarez Tr. at 33-34.
- Tito Alvarez is the Applicant's landlord. See Alvarez Tr. at 18.
- Tito Alvarez is the only person who collects income from the Applicant business. See Alvarez Tr. at 31-32.

Furthermore, as described above, the Response admits that Tito Alvarez invested $30,000 to start the applicant business and either admits or does not address each of the roles he performs for the Applicant company. These roles establish that he participates directly or indirectly in the control of the Applicant business. Although the evidence establishes that

Tito Alvarez is an owner who has also directly controlled the Applicant business since it was formed, the original license application did not mention his name at all and the two license renewal applications vastly understated his position in the company. Again, the Applicant's Response failed to address why Tito Alvarez's name was not included anywhere on the original application filed by the Applicant.

The statements on the Applicant's license application and on each of the two renewal applications that Mayra Alvarez, Sonia Aguilar and Jessica Alvarez are the only principals were false and misleading. The Commission need not prove a motive for the nondisclosure of Tito Alvarez as a principal of the Applicant business. Information regarding who is in control of an applicant business, who has contact with customers and who is responsible for oversight of the Applicant's activities is crucial to the Commission's mission to ensure proper oversight of the carting industry. Undisclosed principals and employees makes proper oversight impossible and provides inroads for the reemergence of the type of criminal activity that historically has had a stronghold on the industry. The failure of the Applicant to provide truthful and non-misleading information to the Commission about who is and who is not a principal of the company is evidence that the Applicant lacks good character, honesty and integrity. Therefore, the Commission denies this license renewal application based 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 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 City Brothers' license renewal application.

This license denial is effective immediately. City Brothers Inc. may not operate as a trade waste business in the City of New York.

Dated: September 19, 2013

THE BUSINESS INTEGRITY COMMISSION

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Commissioner and Chair

John Doherty, Commissioner
Department of Sanitation

David Friedman, Senior Advisor to the Commissioner on Financial Empowerment Policy (designee)
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation

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