NYC
Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE LICENSE RENEWAL APPLICATION OF DIAG EXPRESS TRUCKING, LLC TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Diag Express Trucking, LLC d/b/a Diag Carting ("Diag" or the "Applicant") (BIC # 2908) 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 23, 2013, the staff issued and served the Applicant with a 14-page Notice of the Grounds to Recommend Denial of Diag'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 14. On September 9, 2013, the Commission received the Applicant's response that consists of a one-page letter by the Applicant's principal (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 Diag because Diag lacks good character, honesty and integrity for the following independent reasons:

A. The Applicant has engaged in significant amounts of recyclable cardboard theft.

B. The Applicant provided false and misleading information to the Commission.

C. The Applicant and the Applicant's Principal have failed to pay taxes that are related to the Applicant's business that are owed to the Commission, the New York City Environmental Control Board and the State of New York.

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

A. Background.

In 2008, the Applicant applied to the Commission for a trade waste removal license. See License Application filed on April 10, 2008 ("Application"). The Application disclosed Mr. Dzaguily Sy (hereinafter "Sy" or "Mr. Sy") as the sole principal. See Application at 20. On or about October 10, 2008, the Commission granted the Applicant a trade waste license. See Registration Order. The Applicant's license was effective for two (2) years, and expired on September 30, 2010. See id. The Applicant subsequently filed a license renewal application on or about August 24, 2010. After investigating the Applicant, the Commission granted the Applicant's first license renewal application. On or about October 9, 2012, the Applicant filed its second license renewal application (the "Instant License Renewal Application") with the Commission. See Instant License Renewal Application.

B. Cardboard Theft.

The recent rise in the price of recyclable materials such as cardboard has fueled the theft of cardboard in the New York City area.[1] For example, in calendar year 2012, cardboard commanded as much as $100 a ton at recycling facilities. Id. Illegal haulers cruise city streets at night gathering as much cardboard as their rented moving vans can carry. Id. Licensed commercial waste haulers, who have scheduled pick-up times with businesses, are left empty-handed with no product to re-sell. Id. These licensed haulers report that they have lost between $8 million to $10 million each year due to the illegal theft of cardboard. Id.

Between March 2013 and June 2013, the Commission received three complaints alleging that the Applicant had stolen cardboard from various locations in Manhattan. Accordingly, in June 2013, the Commission commenced an investigation into the suspected cardboard theft by the Applicant.

On June 25, 2013 and June 26, 2013, Commission investigators conducted surveillance and observed the Applicant engage in significant cardboard theft. Commission investigators observed a rear loader collection truck displaying Commission license plate number L-9255[2] take the following route on both evenings: the Applicant's vehicle started from where it was parked in the Greenpoint section of Brooklyn, NY (a few blocks from a recycling facility), and travelled Northbound through Queens, Manhattan and the Bronx. The driver of the rear loader and other men on the truck were observed loading cardboard from virtually every single commercial establishment along this route that had left out cardboard for collection.

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[1] See "Stealing Paper Profits," Crain's New York Business, June 17, 2012, available at http://www.crainsnewyork.com/article/20120617/professional_services/306179981; "Inside the Surprisingly Lucrative World of Cardboard Theft," The Atlantic Cities, available at http://m.theatlanticcities.com/jobs-and-economy/2012/07/inside-surprisingly-lucrative-world-cardboard-theft/2761/.

[2] According to Commission records, this plate was issued by the Commission to the Applicant for the purpose of properly identifying trucks belonging to the Applicant in 2012.

The cardboard that Commission investigators observed the Applicant remove on these dates did not come from any of the Applicant's customers.[3] For example, the Applicant unlawfully collected cardboard from multiple major retail stores and pharmacies along the route, including Walgreens, Duane Reade, Edible Arrangements and Payless Shoe Source, to name a few, even though none of them are customers of Applicant, and Commission investigators spoke to managers at a number of the commercial establishments from which the Applicant collected cardboard and confirmed that the stores had not authorized the Applicant to collect their cardboard.

On July 2, 2013, Commission investigators stopped and interviewed the individual who had been driving the Applicant's truck ("the Driver") on June 25 and June 26, 2013. After being confronted with the fact that he had participated in unlawful cardboard theft for the Applicant, the Driver voluntarily agreed to cooperate with the Commission. On July 10, 2013, Commission staff interviewed the Driver and took his statement under oath. The Driver identified a photograph of the Applicant's principal, Mr. Sy, and testified that he knew Mr. Sy as "Jack." See Transcript of Deposition of the Driver[4], taken on July 10, 2013 (hereinafter "Driver Deposition Transcript"), at 12. The Driver testified that when he began his employment with the Applicant in mid June 2013, he was directed by "Jack," or Mr. Sy, to collect nine tons of cardboard every night, for six nights a week. Id. at 23-24, 30, 34. The Driver further testified that "Jack" told him to pick up any cardboard he saw on the street, to "basically get [the cardboard] every way we could find [it.]" Id. at 23-24, 30, 31.

The Driver explained that Sy and one of his employees provided the Driver with a list of approximately seven locations, which Sy claimed were Diag's actual customers, and instructed the Driver to pick up both the cardboard and putrescible waste from those locations. Id. at 13-14, 24, 28-29, 32. The Driver testified that Sy instructed him that, aside from collecting from those few customers, the Driver should "pick up as many [cardboard] boxes that you could" and to "fill up my truck with nine tons [of cardboard], I don't care how you do it, how you get it, just pick up nine tons." Id. at 36-37, 30. The Driver provided the Commission with dump tickets issued to the Applicant from two recycling facilities where the Applicant had unloaded cardboard during an approximately three-week period in June 2013. According to the dump tickets, although the Applicant only had 14 reported customers at the time, the Applicant had unloaded approximately 30[5] tons of cardboard per week at the facilities. These dump tickets corroborate the Driver's statement that he was instructed to unlawfully take cardboard from generators that were not the Applicant's customers.

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[3] As discussed more fully below, the Applicant has reported to the Commission that it currently only has 14 customers, none of which are in Brooklyn or Queens, NY, where the Applicant was observed taking substantial amounts of cardboard. See Transcript of Dzaguily Sy's Sworn Interview ("deposition"), taken on August 8, 2013, (hereinafter "Sy Deposition Transcript") at 50-51; Applicant's June 2013 Customer Register.

[4] The identity of the cooperating driver is maintained as confidential.

[5] As will be discussed more fully below, the 14 reported customers of the Applicant cannot have generated this amount of tonnage in cardboard. By way of context, a rear end loader garbage truck holds approximately 7-8 tons of cardboard. The Applicant claims that his 14 customers generate more than seven and a half garbage trucks full of cardboard a week. As discussed more fully below, particularly given the nature of Applicant's customers, this claim is preposterous.

On August 8, 2013, Mr. Sy appeared for a sworn interview before the Commission as the Applicant's Principal. When confronted with a portion of the video surveillance that Commission investigators had taken in June 2013, Mr. Sy admitted that his Driver had used Diag's vehicle to take cardboard from a store that was not on the Applicant's customer registry. See Transcript of Dzaguily Sy's Sworn Interview ("deposition"), taken on August 8, 2013, (hereinafter "Sy Deposition Transcript") at 208-210. However, Mr. Sy disclaimed responsibility, stating that "I'm working in the daytime, you never know what these guys [the Applicant's drivers] are doing in the nighttime." Id. at 214. Likewise, in his Response, the Applicant simply claims, in a wholly self-serving manner, that he was unaware of the fact that his employees were stealing extensive amounts of cardboard. The Applicant's bald assertion that the drivers were stealing without the Applicant's knowledge or acquiescence falls flat, particularly given that the proceeds of the theft were going to the Applicant, and not the drivers.

The Applicant's claim that he was unaware that his truck was being used to steal large amounts of cardboard is not credible. First, such claim is belied by the Driver's sworn statement that he was specifically told by Sy to collect cardboard from generators who were not the Applicant's customers. Moreover, the dump tickets obtained by the Commission for a three week period in June reflect that Diag dumped (and was being paid for) approximately 30 tons of cardboard a week. It is nonsensical that Diag's 14 customers generated 30 tons of cardboard on a weekly basis, and Sy was clearly aware that he was being remunerated by transfer stations for far more cardboard than could have been generated by his customers. Even if the Commission were to believe that Sy's drivers were not acting at Sy's direction (which it does not), Sy still should have questioned the inordinate amount of cardboard being collected by his truck, rather than just blindly cashing the check, as he admits he did. Id. at 20-23, 46-53, 159-168, 216-18; Diag's Financial Statements for 2010-2012 and for January through June, 2013.

Diag currently has 14 customers. See Sy Deposition Transcript at 51; June 2013 Customer Register. The Applicant claims that those 14 customers generate *no* putrescible waste. Id. at 44. Rather, in its most recent customer register submission, the Applicant makes the incredible claim that it collects approximately 53 tons of cardboard per week from 14 businesses.[6] Perhaps in a failed attempt to make his story slightly more credible, Sy testified at his deposition that Diag actually collects between 15 to 20 tons of cardboard per week from its 14 customers. Id. at 46-51. This testimony is contradicted by Diag's financial statements, which

[6] With respect to the disproportionate amount of cardboard being generated by the Applicant's 14 disclosed customers, the Applicant simply states: "As for the 53 tons of cardboard per week for the last six months, that was from all my customers and not only from the 14 current customers." See Response. While the meaning of this statement is not readily apparent, to the extent the Applicant now claims that the 14 customers reported to the Commission in the Applicant's Customer Register is not complete and accurate, such explanation constitutes a further failure by the Applicant to meet its requirement to provide truthful and accurate information to the Commission. Remarkably, aside from claiming that the cardboard was generated "from all of my customers and not only from the 14 current customers," the Response does not identify any additional customers that might justify the cardboard collected by the Applicant.

indicate that during the last six months, he received $86,647.21 from "Cardboard Income."[7] At an average of $100 per ton, that reported income would come from 866.5 tons of cardboard over six months, or approximately 33 tons of cardboard per week.

The Applicant's statements regarding the nature and volume of waste generated by 14 commercial establishments are not only inconsistent, but, regardless of which version is credited, are nonsensical and controverted by common sense as well as by information obtained by the Commission.

The Applicant's 14 reported customers, who he claims generate more than 52 tons of cardboard a week, consist of: three Metro PCS cell phone retailers, two shoe stores, one fruit and vegetable stand, and eight "99 cent stores." With respect to the three cell phone retailers, the Applicant claims that they each generate 10.42 tons of cardboard a month, and no putrescible waste at all. This claim is false. One of the cell phone retailers purportedly serviced by the Applicant, Metro PCS on Chambers Street, was previously serviced by a different licensed carter, who reports that during the more than two years that it serviced the stop, the customer actually generated a total of 1.46 cubic yards of *total* waste a month, including putrescibles. In other words, while the Applicant claims that each Metro PCS generated the equivalent of one and a half garbage trucks full of cardboard a month, the previous carter reports that the Metro PCS in question actually only generated slightly more than 1/25th of a garbage truck a month. The Applicant's claim about the amount of cardboard generated by these three cell phone retailers grossly inflates the amount of cardboard collected, is incredible and is an affirmative misrepresentation to the Commission.

Likewise, the Applicant reports that two of his customers, both shoe stores, each generate 9.9 tons of cardboard a month. The Commission has discovered, however, that these two customers, St. Nicholas Glory Shoes Corp. and Top Shoes at Concourse have been serviced by another licensed carter since July 2013. Remarkably, the new carter reports that the stores each generate eight large bags of putrescible waste and only two "bundles" of cardboard per week. In general, a bundle of cardboard is approximately 0.005 tons - a far cry from the Applicant's reported 9.9 tons.

Another of the Applicant's purported customers, Roberto Cortes, is a fruit and vegetable stand. See Applicant's June 2013 Customer Register. Remarkably, the Applicant's customer register data states that this fruit and vegetable stand generates *no* putrescible waste, and 9.17 tons of cardboard per month. That a fruit and vegetable stand – or, for that matter, any of Diag's 14 stops that presumably have customers and employees who produce solid waste – would generate no putrescible waste is preposterous and defies logic.

[7] Diag's financial statements report $151,762.52 of cardboard income in 2012 and a stunning $900,514.32 in 2011 and $889,904.02 in 2010. Although Diag reported additional customers during those years, this remains a staggering and disproportionate amount of cardboard collected.

Finally, with respect to the Applicant's eight "99 cent stores," the Applicant claims that they each generate between 15 and 30 tons of cardboard a month (and, remarkably, no putrescible waste). By way of comparison, it is reported to the Commission that a major large retail pharmacy in Manhattan, such as a CVS, generates approximately 6 tons of recyclable cardboard per month. Here, the Applicant claims that the 99 cent stores he services (three of which appear to be small corner stores) each generate from two to five times more than a major drug store. Diag's representations to the Commission in this regard are utterly incredible.

The inconsistent, incredible statements made by the Applicant about the waste generated by his customers not only support a finding that the voluminous amount of cardboard Diag is collecting is a result of theft, but also raise concerns about whether the Applicant might be disposing of the putrescible waste of his 14 customers in an unlawful manner.

June 2013 is not the first time that the Applicant has been observed stealing cardboard. See Sy Deposition Transcript at 159-168, 218. In October 2009, Commission investigators observed the Applicant's box truck which displayed the Commission license plate number issued to the Applicant, and was already filled with cardboard, being used to pick up cardboard from in front of 836 West 29th Street, New York, NY. The Applicant's driver at the time admitted to Commission investigators that he was stealing cardboard from the location. Mr. Sy testified at his recent deposition that Commission investigators contacted him and that he confirmed to them that the location was not the Applicant's customer. Sy Deposition Transcript at 161-62. During this 2009 telephone conversation, Commission investigators requested that Mr. Sy appear at Commission offices the following day for further questioning regarding the incident. Mr. Sy appeared at Commission offices but refused to cooperate with the Commission investigators' questioning. At his recent deposition, Mr. Sy admitted that the Applicant's driver had engaged in cardboard theft by stealing cardboard from a location that was not the Applicant's customer. Id. When asked for an explanation of such action, Sy again self-servingly testified that he had been unaware that his driver (notably, his cousin) had been using his truck to steal cardboard. Id. at 160-61. Sy also testified that he has continued to employ his cousin, despite the knowledge that his cousin engaged in cardboard theft.

Likewise, in or about August through early September 2011, Commission investigators observed the Applicant involved in cardboard theft. Specifically, Commission investigators observed a driver and two helpers in a white rental box truck without a Commission plate remove bundles of cardboard from multiple locations in Queens, NY. The locations included several C-Town grocery stores, a Rite-Aid pharmacy, a Duane Reade pharmacy and a CVS pharmacy. None of these locations were customers of the Applicant as this was confirmed by Commission investigators, who contacted managers at the various locations to verify that the stores had not authorized Diag to remove the cardboard. Later during their surveillance, the Commission investigators observed the box truck approach the Applicant's collection truck that was parked on the street in the Greenpoint section of Brooklyn, NY. One of the individuals who had been driving the box truck entered the Applicant's truck and started the vehicle. The individuals then backed up the two trucks so that the rear of the Applicant's vehicle was positioned adjacent to the rear of the white rental box truck. Commission investigators then

observed the three individuals transfer the bundles of stolen cardboard from the rental box truck to Diag's collection truck. Thereafter, the Applicant's truck entered a nearby paper and cardboard recycling transfer station, Rapid Recycling Paper Corp. ("Rapid Recycling"), located at 860 Humboldt Street, Brooklyn, NY. The Commission investigators observed the Applicant's truck unload the stolen cardboard inside the transfer facility.

The Commission Investigators stopped the three individuals involved. One of the drivers admitted to intentionally stealing cardboard at the direction of the Applicant's Principal, Mr. Sy. The driver told Commission investigators during the interview that he disposed of the stolen cardboard at Rapid Recycling using the Applicant's vehicle and using the Applicant's account. The driver further stated that he and the Applicant's Principal decided on this scheme to use rented box trucks to collect stolen cardboard. The driver stated that he and Mr. Sy began this scheme because it was difficult for the driver to sell cardboard at transfer stations in the City of New York without a Commission license. When confronted at his deposition with this unlawful activity, Sy again testified in a self-serving manner that he was unaware of the cardboard theft by employees using the Applicant's vehicle. See Sy Deposition Transcript at 172-73.

The Applicant admits that Diag's trucks have been repeatedly used to steal significant amounts of cardboard. In a vain attempt to avoid responsibility, the Applicant simply claims that this cardboard theft was happening without his knowledge, despite the fact that he was cashing the checks. At best, this demonstrates that Mr. Sy was not in control of his own trucks, drivers or business. However, particularly given Sy's remarkable claims about the amount of cardboard generated by his "customers," and the repeated statements from various employees that they were directed by Sy to commit the thefts, the Commission instead concludes that Sy was well aware of and responsible for millions of dollars of cardboard theft.

C. Failure to Pay Taxes and Penalties.

Between July 2012 and February 2013, the Applicant was charged with 12 separate trade waste violations.[8] Rather than proceeding to hearing, the Applicant resolved the 12 violations by entering into Stipulations of Settlement with the Commission dated August 10, 2012, October 4, 2012, January 17, 2013, February 11, 2013 and April 12, 2013. ("Stipulations of Settlement"). In the Stipulations of Settlement, the Applicant admitted to the 12 trade waste violations and agreed to pay the Commission a total of $8,450.00 to resolve these violations. See Stipulations of Settlement. Specifically, pursuant to the Stipulations of Settlement, the applicant was required to pay as follows:

[8] The Commission issued one of these violations when the Applicant failed to disclose two separate arrests of its principal Mr. Sy, in violation of Title 17, Chapter 1 of the Rules of the City of New York Section 2-05(a)(1). On or about May 2, 2012, Mr. Sy was arrested and charged by the in Kings County District Attorney's Office ("DA's Office") with Assault in the third degree, Attempted Assault in the third degree, Menacing in the third degree and Harassment in the second degree, under docket number 2012KN041751. Thereafter, on or about July 10, 2012, Mr. Sy was arrested and charged by the Kings County DA's Office with Criminal Contempt in the first degree, Criminal Contempt in the second degree, Attempted Assault in the third degree, Menacing in the third degree and Harassment in the second degree, under docket number 2012KN056634.

Violation Numbers	Amount	Deadline for Full Payment
TWs 8761, 8765, 8781 and 8786	$4,500.00	December 30, 2012
TWs 8888 and 8984	$550.00	November 15, 2012
TWs 9179, 9180 and 9193	$2,000.00	April 1, 2013
TWs 9517, 9527 and 9541	$1,400.00	April 12, 2013

Despite the fact that the Applicant's principal signed stipulations requiring payment, as of May 30, 2013, the Applicant had failed to make a single payment to the Commission for any of the nine deadlines to which it agreed in the four separate Stipulations of Settlement. Id. Accordingly, the Commission served the Applicant with a Notice to Deny the Applicant's License Renewal Application, dated May 30, 2013 ("First Notice of Denial"), for, *inter alia*, the Applicant's failure to pay any of the outstanding debt the Applicant owed to the Commission and to which the Applicant had stipulated.

Thereafter, on or about June 10, 2013, in response to this First Notice of Denial, the Commission received $4,500.00 in payment from the Applicant to resolve Violations TWs 8761, 8765, 8781 and 8786. Additionally, on this date, the Commission received payment in the amount of $500.00 to partially resolve Violations, 8888 and 8984. Moreover, on or about June 28, 2013, in response to the Commission's First Notice of Denial, the Applicant provided a check to the Commission for $3,450.00 to resolve the remainder of the debt the Applicant owed pursuant to three Stipulations of Settlement as follows: (1) $1,400.00 for TWs 9517, 9527 and 9541; (2) $2,000.00 for TWs 9179, 9180 and 9193 and (3) $50.00 for TW 8888. Significantly, however, on or about August 13, 2013, the Applicant's check for $3,450.00 was returned for insufficient funds. To date, the Applicant has failed to provide the Commission with a new check or to make payment on the outstanding debt of $3,450.00.[9]

In addition to the money owed to the Commission, the Applicant owes an additional $1,025.00 to the New York City Environmental Control Board ("ECB"). According to a search of the ECB database, dated August 20, 2013, the following fines have been docketed against the Applicant's principal (totaling $1,025.00):

[9] Additionally, the Applicant recently resolved Violations TWs 9629 and 9683 for $2,530.00 and stipulated to pay the full amount by September 24, 2013 in two monthly installments.

Creditor	Violation Number	Amount
NYC ECB	0140240953	$1,000.00
NYC ECB	0146346999	$25.00

See ECB Database Search Results, dated August 20, 2013. To date, the abovementioned ECB violations remain open and unpaid.

Furthermore, the Applicant's principal has been issued eleven (11) traffic violations which remain open, including five (5) unpaid judgments, that total $2,825.00. According to a search of the New York State DMV database, dated May 8, 2013, the following five (5) judgments have been docketed against the Applicant's principal Mr. Sy (totaling $2,825.00):

Creditor	Order Numbers	Amount
NYS DMV	K972283	$295.00
NYS DMV	K972294	$520.00
NYS DMV	K902131	$670.00
NYS DMV	K902141	$520.00
NYS DMV	K102036	$820.00

See New York State DMV database, dated May 8, 2013. As of the date of this Notice, the abovementioned judgments remain open and unpaid. Id.[10]

Finally, according to a search of the New York State Department of State Tax Warrant Notice System, the Applicant has State Tax Warrant ID # E-039015127-W001-5 in the amount of $8,784.63 docketed against it on or about June 18, 2013. See New York State Department of State Tax Warrant Database Search Results, dated August 20, 2013.

Despite repeated notices and opportunities afforded to the Applicant by the Commission to resolve the outstanding balances it owes various governmental agencies, to date, the Applicant has failed to resolve these violations, fines or judgments. By letter dated January 8, 2013, the Commission's staff notified the Applicant about the outstanding balance the Applicant owed to the Commission at the time ($6,850.00) and the ECB fines. See January 8, 2013 letter from Michael Mirabella to the Applicant. The Commission's staff advised the applicant that failure to "pay, remediate or resolve the above discussed matter by **January 30, 2013,**" could result in a denial of the Applicant's license renewal application. Id. (bold in the original). The Applicant failed to make any payment by January 30, 2013. In a belated attempt to make payment, on or about April 17, 2013, the Applicant attempted to provide the Commission with a payment of $1,400.00 (which was due on April 12, 2013). However, the Applicant sought to pay the

[10] Additionally, Mr. Sy's New York State driver's license has been suspended since July 24, 2012. Id. This is also not the first time that Mr. Sy's driver's license has been suspended. Since November 2008, Mr. Sy's New York State driver's license has been suspended a total of twenty-five (25) times. Id. On September 7, 2011, and again on November 6, 2012, Mr. Sy was arrested for Aggravated Unlicensed Operation of a Vehicle. See New York City Police Department Online Arrest Report Printouts, dated November 23, 2012.

Commission with a "starter check" which contained no information about the name and address of the account holder. On or about April 23, 2013, the Applicant provided the Commission with a subsequent check (which included the account holder's name and address) for $1,400.00. Remarkably, on or about May 16, 2013, that check bounced, and no further payment was made.[11]

By letter, dated May 8, 2013, the Commission's staff sent the Applicant another letter, by email and by first class mail that was clearly marked "FINAL NOTICE." See May 8, 2013 letter from Philip S. Frank to the Applicant. Again, the Commission's staff notified the Applicant about the outstanding balance the Applicant owed to the Commission, the ECB fines and the DMV judgments. Id. The Commission's staff, *inter alia*, set a final deadline of May 21, 2013 for the Applicant to: (1) "remit a certified check or money order" to the Commission for the outstanding balance; (2) provide the Commission with proof that these ECB violations are resolved"; and (3) provide the Commission with proof that these [DMV] violations are resolved." Id. Again, the Applicant failed to respond to the May 8, 2013 letter. Both the May 8, 2013 and January 3, 2013 letters from the Commission's staff advised the Applicant that failure to provide the requested information and/or documentation to the Commission may result in the withdrawal or denial of the registration application. See January 8, 2013 and May 8, 2013 letters from Michael Mirabella and Philip S. Frank, respectively, to the Applicant.

Basis for Denial

A. The Applicant Has Engaged in Significant Amounts of Recyclable Cardboard Theft.

The Commission may refuse to issue a license to an applicant who lacks "good character, honesty and integrity." Admin. Code §16-505(a). Here, as discussed above, Commission investigators have observed the Applicant repeatedly engage in the illegal activity of cardboard theft. Mr. Sy admitted at his deposition that Diag's employees repeatedly engaged in cardboard theft, using the Applicant's vehicles. As discussed above, the Commission does not find credible Mr. Sy's self-serving testimony that he was not aware of the repeated theft of cardboard by his employees. Multiple employees of the Applicant have told Commission investigators that they engaged in cardboard theft at the behest of Mr. Sy. Significantly, one of the Applicant's own drivers testified under oath that the Applicant's Principal Mr. Sy directed the Driver to unlawfully collect nine tons of cardboard an evening, six days a week. Moreover, Mr. Sy's testimony and the Applicant's submissions to the Commission concerning the volume of cardboard the Applicant collects from its limited amount of customers completely lack any credibility and defy logic.

[11] In or about May 2013, the Applicant's principal contacted the Commission, purportedly to make payment (likely because, at the time, he was scheduled to appear at OATH regarding an additional violation). The Applicant spoke on the telephone to Commission staff, and claimed that he wanted to make a payment using a debit card. However, when the Commission staff asked the Applicant to hold while that transaction was processed, the Applicant conceded that there were insufficient funds in the account, and that such transaction could not be completed.

As detailed above, the Applicant, in its one-page letter Response, once again makes the self-serving claim that Mr. Sy was unaware of the cardboard theft. For the reasons set forth above, the Commission does not find this claim to be credible. The Commission does not credit the Applicant's claim that he was not aware that his trucks and his employees were stealing cardboard, the proceeds of which were being collected by the Applicant. Indeed, the Applicant provides no explanation as to how he could be unaware of such unlawful activity, given that he profited immensely from the sale of the cardboard which could in no way logically correspond to the amount of cardboard produced by the limited number of Applicant's customers.

Diag's illegal cardboard theft not only constitutes a crime, but is also in violation of § 1-09 of the Commission's Rules.[12] Theft of recyclables adversely impacts not only the other licensed carters who are actually authorized to pick up this valuable commodity, but it is also at great cost to the businesses in the City of New York who receive discounts or rebates on their overall bill in exchange for recycling cardboard. Based on Diag's repeated cardboard theft, the Commission should find that Diag lacks the good character, honesty and integrity required of a licensed hauler. For this independently sufficient reason, this License Renewal Application should be denied.

B. 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 discussed above, the Applicant provided the Commission with testimony under oath and submissions that contained false, misleading and conflicting information about the volume of cardboard and putrescible waste that the Applicant removes from its limited number of customers. Significantly, the Applicant's testimony and submissions falsely report that its current 14 customers produce *no* putrescible waste, whatsoever. These statements defy common sense. Moreover, as discussed above, the Commission has received information from other licensed haulers that have processed or are currently processing some of these 14 locations. This information undermines the Applicant's claim that his "customers" do not produce any putrescible waste. These statements were clearly designed to camouflage the amount of illicit cardboard being collected and sold by his employees through the Applicant and from which the Applicant was clearly reaping a significant financial benefit.

[12] §1-09 provides that licensees may not "remove, collect or dispose of trade waste from a commercial establishment with which the applicant, licensee or registrant does not have a contract or agreement or other permission from the Commission to remove, collect or dispose of such commercial establishment's trade waste."

C. The Applicant and the Applicant's Principal Have Failed to Pay Taxes That are Related to the Applicant's Business That are Owed to the Commission, the New York City Environmental Control Board and to the State of New York.

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).

The Applicant has exhibited a pattern of failing to pay its taxes, fines and penalties. To date, the Applicant has failed to pay $3,450.00 in fines to the Commission, pursuant to three separate Stipulations of Settlement, for seven violations.[13] In addition, the Applicant's principal has failed to pay $1,025.00 in fines to the New York City ECB. Moreover, the Applicant's principal has failed to resolve $2,825.00 in judgments filed by the State of New York for traffic violations. Finally, the Applicant owes New York State $8,784.63 in a tax warrant that the Department of State has docketed.

In its Response, the Applicant does not dispute that it has failed to pay the above-mentioned taxes, fines and penalties. Instead, the Applicant's Response claims that the Applicant is "willing" to resolve its fines. This is too little, too late. With respect to the outstanding fines owed to Commission, the Applicant knowingly entered into multiple Stipulations of Settlement to resolve its Commission violations, all of which provided agreed-upon deadlines for payment. The Applicant failed to make these mutually agreed upon deadlines. Likewise, the Applicant has been on notice since January 2013 that it must resolve its outstanding ECB fines or risk denial of its renewal application. Despite Sy's pronouncement that he is now "willing" to pay Diag's debt, he has not, to date, done so. For this independently sufficient reason, this License Renewal Application should be denied.

[13] By the end of this month, the Applicant will owe an additional $2,530.00 to the Commission related to additional recently-settled violations.

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Conclusion

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

This denial is effective immediately. Diag Express Trucking, LLC may not operate as a trade waste business in the City of New York.

Dated: September 19, 2013

THE BUSINESS INTEGRITY COMMISSION

Shari C. Hyman
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

Kathleen Ahn, General Counsel (designee)
Department of Small Business Services

Inspector John Denesopolis (designee)
New York City Police Department