



The City of New York
BUSINESS INTEGRITY COMMISSION
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Daniel D. Brownell
Commissioner and Chair

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION APPLICATION OF BAM PRODUCE INC. (HPP#183) TO OPERATE
AS A MARKET BUSINESS IN A PUBLIC WHOLESALE MARKET**

I. INTRODUCTION & BACKGROUND

A. Introduction

On April 5, 2013, BAM Produce, Inc. (HPP#183) (the “Applicant” or “BAM”) applied to the New York City Business Integrity Commission (the “Commission”)¹ for a registration to operate a business located or operating within a public wholesale market pursuant to New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 22-253 (the “Registration”).

The Commission has completed its review of BAM’s application. On May 26, 2015, the Commission staff issued and served the Applicant with the Notice to BAM Produce Inc. of the Grounds to Deny the Registration Application of BAM Produce Inc. to Operate as a Market Business in a Public Wholesale Market (the “Notice”). The Applicant was given 10 business days to respond to the Notice. See Title 17, Rules of the City of New York § 11-17. The Applicant did not submit a response. Based on the record as to the Applicant, the Commission now denies BAM’s application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

- A. BAM Produce, Inc. operated as an unregistered market business for an extended period of time in the Hunts Point Produce Market; and
- B. The Applicant failed to provide truthful information to the Commission in connection with the Application.

B. Background and Statutory Framework

Local Law 28 of 1997 (“Local Law 28”) and the rules promulgated thereunder require that wholesale businesses located or operating within a public wholesale market register with the Commissioner of the Department of Business Services. See Admin. Code § 22-253; 66 RCNY

¹ The Commission was formerly known as the Organized Crime Control Commission.

§§ 1-12 and 1-13; 17 RCNY §§ 11-02 and 11-04. The duties of the Commissioner of the Department of Business Services were later transferred to the Commissioner of the Organized Crime Control Commission, pursuant to a charter revision provision approved by the voters in November 2001. The Organized Crime Control Commission was subsequently renamed the Business Integrity Commission, pursuant to Local Law 21 of 2001.

A “market business” is defined in 17 RCNY § 11-02 as

any business located or operating within a market that is engaged in providing goods or services to wholesalers or retail purchasers in such market that are related to the conduct of a wholesale business of the purchase of food or related agricultural products or horticultural products by retailers or others, or that receives such goods within a market for delivery, forwarding, transfer or further distribution outside of such market. ‘Market business’ shall include, but not be limited to, the provision of security services within a market, the provision of services related to the collection of fees for entrance into a market and parking, the supply of ice, and the loading, unloading, transfer or distribution of food or related agricultural products or horticultural products.

After a review of an application, the Commission may refuse to register a wholesale or market business when the Applicant or any of its principals lacks good character, honesty and integrity. See Admin. Code §§ 22-253(b), 22-259(b) and New York City Charter § 2101(a) and (b). Local Law 28 provides a number of factors which the Commission may consider in determining the fitness of a wholesale or market business for a market registration. See Admin. Code § 22-259(b).

The factors the Commission may consider in making a fitness determination include, but are not limited to:

- i. failure by an applicant to provide truthful information in connection with the application;
- ii. a pending indictment or criminal action against such applicant for a crime which would provide a basis for the refusal of such registration, 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 registration or photo identification card is sought;
- iii. conviction of such applicant for a crime which, under article 23-A of the Correction Law, bears a relationship to the fitness of such applicant or person to conduct a business or work in a market;
- iv. commission of a racketeering activity when the applicant knew or should have known of such activity, including but not limited to, an offense 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 for 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;

- v. 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 for registration knew or should have known of the organized crime associations of such person;
- vi. a principal of the applicant was a principal in a predecessor wholesale business or market business where the commissioner would be authorized to deny registration to such predecessor business; or
- vii. in the case of an applicant business, 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 and such judgment has not been stayed.

See Admin. Code § 22-259(b)(i) – (vii). The Commission is not limited to consideration of these enumerated factors; the list is meant to be illustrative and non-exhaustive. Admin Code § 22-259(b).

II. DISCUSSION

A. Statement of Facts

1. 2008 Notice of Violation for Unregistered Wholesaling

On or about July 7, 2008, the Commission issued to BAM a notice of violation (“NOV”) returnable to the Environmental Control Board (the “ECB”) for operating a market business in the Hunts Point Terminal Produce Market (the “Market”) without a registration (Violation No. E156218316). At that time, the Applicant was observed conducting business in Unit 247A in the Market. That unit was and still is owned and operated by Fierman Produce Exchange, Inc. (#HPP-28) (“Fierman Produce”). At the time the NOV was issued, the Applicant was informed it needed a Commission-issued registration in order to conduct business in the Market.

The Applicant subsequently defaulted on this NOV, but early in 2013, the Applicant successfully moved ex parte to have the default vacated and the NOV restored to ECB's calendar. In early 2013, Market Agent Ahmad Weish, who issued the NOV in 2008, returned to Unit 247A to refresh his recollection in advance of the new calendar date for the 2008 NOV. He found that BAM was continuing to operate a market business without a registration.

2. 2013 Notices of Violation for Unregistered Wholesaling

Between January 22, 2013 and April 8, 2013, various Market Agents issued to BAM a total of five ECB NOV's for operating an unregistered market business under Admin. Code § 22-

253(a). After receiving the fifth NOV, the Applicant shut down its business at the Market. Evidence supporting these five NOVs included a BAM Produce, Inc. business card that identified the Applicant's business location as "247A Hunts Point Market," with a phone number with a "718" area code and labeled as a "market" phone number, as well as photographs taken by Market Agents of other business records with pre-printed "718" "market" telephone and fax numbers. See BAM Produce, Inc. business card; Violations E-177096884, E-177096875, E-17796893, E-17796783.

A BIC Investigator called this "market" telephone number as part of an undercover operation and spoke to an individual who represented himself as the Applicant's principal, William Iarrobino.² The investigator represented to Iarrobino that he owned a smoothie shop in Queens and was shopping for produce at wholesale prices. Iarrobino told the Investigator that he could provide such wholesale price points and assist him in obtaining the produce he was looking for. This call provided additional evidence that the Applicant was in fact conducting business at the Market without a registration.

Ultimately, the Commission's staff negotiated a settlement with the Applicant's counsel in which the Applicant admitted liability and paid three of the five ECB NOVs for a total fine of \$8,500.00. The Commission dismissed the remaining two NOVs. The Applicant paid the fines in a timely manner.

3. The Application

On April 5, 2013, and having received five NOVs, the Applicant submitted its Market Business Registration Application to the Commission (the "Application"). The Application lists the Applicant's main office address as "14 Kanen Lane, Huntington Bay, NY 11743," makes no mention anywhere of Unit 247A at the Market, and does not disclose the "718" or "market" phone number.³ See Application. The sole principal disclosed on the Application is William Iarrobino, President of the Applicant. The Application disclosed five additional employees and four vehicles — one of which is listed as a "storage trailer." See Application at pp. 24-30. Principal Iarrobino certified and swore under oath that all statements in the Application were true and accurate. See Application at p. 27.

During the Commission's review of the Application, the Commission learned that BAM has had a PACA License to operate as a Broker at the Market since about September of 2007. See License No. 20071362. However, in the Application, the Applicant responded that it had not been issued a license, permit, registration or authorization to operate from any government agency. See Application at 8.

² The BIC Investigator recorded this telephone conversation, as well as a subsequent conversation with an employee of the Applicant.

³ The Applicant's telephone number disclosed on the Application is (516) 901-9393, which is principal Iarrobino's cell phone number.

4. Sworn Interview of Joel Fierman

On April 24, 2013, Commission staff conducted a sworn interview of Joel Fierman, President of Fierman Produce. See Transcript of Fierman Sworn Interview dated April 24, 2013 (“Fierman Int. Tr.”). During his sworn testimony, Fierman stated that BAM is a produce broker who conducts business in the market out of one of Fierman’s offices. See id. at 16-17. Fierman further informed the Commission that when BAM purchases produce at the Market, he stores it in trailers there but not on Fierman’s property. Id. at 20. According to Fierman, “he stages product outside . . . but he doesn’t actively display product.” Id. at 54-55.

Fierman testified that he and Iarrobino have a signed lease for the office space (the “Lease”), whereby BAM pays Fierman Produce \$1 per year for use of the office space. See id. at 24-25. According to Fierman, the Lease expired in 2013 and has not been renewed.⁴ Id. at 43. However, Fierman did state that he would consider renewing the lease and/or re-leasing the space to Iarrobino if requested, if Iarrobino showed proof that he had a BIC registration. Id. The Lease, dated September 30, 2009, was marked as Exhibit 1 during the interview, and Fierman authenticated it. Id. at 51.

Fierman stated that after receiving his first ECB ticket for operating without a registration, Iarrobino informed Fierman that he was going to be applying for a registration with the Commission. According to Fierman, Iarrobino told him he was submitting an application in or about 2009 or 2010. See id. at 26-28. Fierman admitted that BAM has a phone line in the office that it uses, but that is paid for by BAM. Id. at 34-35. He further stated that Iarrobino is at the Market almost every single day. Id. at 37.

5. Sworn Interview of William Iarrobino

After meeting with Fierman and obtaining a copy of the Lease, which indicated that the Applicant had been running a market business without a registration for at least four years, the Commission noticed Iarrobino for a sworn interview. On June 5, 2013, Iarrobino and his counsel met with Commission staff to give sworn testimony under oath (the “Interview”). During the Interview, Iarrobino denied that BAM is a “wholesaler” because it does not receive direct delivery of the product at Hunts Point Terminal Market. See Transcript of Iarrobino Interview dated June 5, 2013 (“Iarrobino Int. Tr.”) at pp. 80-81. However, he admitted conducting activity at the Market to undeniably qualify BAM as a “market business.”⁵ Iarrobino was deliberately evasive when describing his pricing model, and the fact that he sells produce to customers whose other providers are indeed wholesalers. See id.

⁴ The Lease contained a provision stating that it was for a one year term only, but Fierman explained that he and Iarrobino continued as though the terms had been renewed from 2010 through 2013. See Fierman Int. Tr. at 55-56.

⁵ See, e.g., Iarrobino Int. Tr. at p. 57 (Iarrobino produced an invoice that advertises a market phone number and confirmed he receives calls in Unit 247A), p. 69 (Iarrobino stated that he has a produce market ID that reflects the fact that he is a buyer at the market), p. 70, (Iarrobino admitted that he prepares invoices in the office space in Unit 247A in the Market), p. 80 (Iarrobino stating that he makes and receives customer calls from the office space in Unit 247A), and p. 27 (Iarrobino admitting that BAM has a PACA license that authorizes it to do business at the market as a broker).

Iarrobino stated that he was not familiar with BIC's definition of the terms "market business" and "wholesaler," and that he only filed the Application two months prior so he "can maintain office space up at Hunts Point Market without getting summonses, because they told [him] that [he] couldn't stay there without having the application." See Iarrobino Int. Tr. at 93-94. Iarrobino also stated that his wife helps him with the business side of BAM, takes care of some paperwork and spends 12 to 15 hours a week helping him run the Applicant. Id. at 27-28, 58-60. His wife was not disclosed in the Application as either an employee or as a principal, though Iarrobino stated that it was she who actually prepared the Application. See Application at pp. 22-24.

Iarrobino stated that he had been operating BAM since about 1998. He initially stated that he had only been operating in the Market since 2011 or 2012: When asked when he began operating in the Market, Iarrobino responded, "Just about—I think it was a year ago we had a lease with Fierman Produce?" See Iarrobino Int. Tr. at 42. The Commission requested Iarrobino to clarify when exactly the Lease was entered into:

Iarrobino: "It could be two years, three years, I don't remember, exactly."

Commission: "That's a pretty wide range. Can you narrow it down?"

Iarrobino: "I would say narrow it down to two years."

Commission: "This is 2013. This is the current year. You are saying that on or about 2011 you entered into a lease with Fierman?"

Iarrobino: "Correct. I'm not sure of the exact date."

Commission: "Could it have been longer than that?"

Iarrobino: "It's possible"

Commission: "Could it have been much longer than that?"

Iarrobino: "No."

Iarrobino Int. Tr. at 43-44.

Commission staff then presented Iarrobino with the signed Lease, dated September 30, 2009, which Fierman had provided to Commission during his interview. Iarrobino confirmed that the Lease was indeed the agreement he had executed with Fierman for use of the office space at 247A. See id. at 45. Once Iarrobino's recollection was refreshed by the Lease, he readily admitted that he had been using the space in 247A since at least 2009 — almost four years. Id. at 46-47. Iarrobino denied the possibility that he had used the space any earlier than September 2009, however:

Commission: "Is it possible that you subleased space from Fierman prior to that date?"

Iarrobino: "No, I did not"

Commission: "You are certain of that?"

Iarrobino. "I am positive."

Id. at 48-49.

During the Interview, Iarrobino produced a BAM invoice which he indicated was up-to-date and current which he utilized in refreshing his recollection as to specific information.⁶ The invoice was entered into evidence as Exhibit 2, and contained the “718” Market telephone number as well as a Market phone line for “Fax Orders,” both of which are phone lines he stated he uses in Unit 247A (and which were not disclosed on the Application).⁷

When the Commission asked whether Iarrobino was still operating out of Unit 247A, he stated that he only recently stopped leasing the space, and “that was because [he] was getting tickets for \$5,000 a night . . . from BIC. It kind of stopped [him] from working every night.” See Iarrobino Int. Tr. at 78. Iarrobino confirmed that from the date on the Lease (September 30, 2009) until he recently stopped working in 247A (in 2013), he continuously sublet the space from Fierman. Id. at 79.

The Commission inquired about the NOVs that Iarrobino had received, and asked him whether he had ever received any summonses or violations other than the five he had received earlier in 2013; Iarrobino stated that he had not. See id. at 95. A few moments later, Iarrobino changed his response to indicate that he and Fierman had in fact responded to a summons in a written letter at least five or six years ago. Id. at 97. At this point, Iarrobino once again changed more of his previous testimony, and admitted that he had been operating out of Fierman’s space even before the Lease was executed:

Commission: “Is it your testimony that you were occupying the space in 2007 or 2008, because the letter was written, you are saying, around that time?”

Iarrobino: “Correct.”

Commission: “Okay. That letter concerned BAM Produce’s use of the unit?”

Iarrobino: “I believe so, yes.”

Commission: “So that would have been 2007 or 2008; correct?”

Iarrobino: “Yes.”

Commission: “So is it fair to say that BAM Produce has been using this unit earlier than the date of the written [lease] agreement, which is Exhibit No. 1?”

Iarrobino: “Yes.”

Id. at p. 98.

By the conclusion of the Interview, Iarrobino had changed his testimony twice as to how long he had been operating his business out of Unit 247A in the Market. He ultimately admitted that he had been operating a market business since at least 2008, and possibly 2007.

⁶ See Iarrobino Int. Tr. at p. 57.

⁷ Iarrobino confirmed that these phone numbers also appear on his Order Sheets. Id. at 100-101.

B. Basis for Denial

1. BAM Produce, Inc. operated as an unregistered market business for an extended period of time in the Hunts Point Produce Market.

Since at least July of 2008, the Applicant operated as a market business in the Market without registering with the Commission, as required by Local Law 28. See Admin. Code §§ 22-251(e) (definition of market business); 22-253 (registration requirement). In fact, the Applicant admitted that it may have been operating since as early as 2007. See Iarrobino Int. Tr. at 98. Furthermore, the Applicant was on notice that his behavior was in violation of Local Law 28 since at least July 7, 2008, when he was issued his first NOV. Despite the fact that he was knowingly operating unlawfully, the Applicant continued to do business in the Market, in violation of Section 22-253 of the Administrative Code.

The Commission has issued the Applicant numerous NOVs for this unregistered activity for which it admitted liability and was fined, yet it continued to operate continuously from 2007 or 2008 through 2013 until it finally submitted the Application. See Iarrobino Int. Tr. at 46-47, 93-94, 98. The Applicant's open and obvious operation of an unregistered market business for more than five years is precisely the conduct Local Law 28 was enacted to protect against. Local Law 28 unambiguously requires market businesses to register with the Commission. Public confidence in the integrity of the public wholesale markets would be undermined if those proven to have ignored the law receive registrations from the Commission. By continuing to operate in violation of market rules and regulations, the Applicant has demonstrated a lack of the good character, honesty and integrity necessary to operate such a business. The Applicant has not responded to the Notice, containing the Commission staff's recommendation that the Commission deny the Application based on this ground. Therefore, the Commission staff's recommendation with respect to this basis for denial is uncontested. Based on the record in this matter, the Commission now denies the Application based on this independently sufficient ground.

2. The Applicant failed to provide truthful information to the Commission in connection with the Application.

As set forth above, the Applicant provided false and misleading information in response to several questions on the Application. Specifically, the Applicant failed to disclose its "718" market telephone number and fax number, and its business address in the Market. In addition, the applicant failed to disclose Iarrobino's wife as an employee. Moreover, the Applicant's false testimony under oath during the Interview as to how long he had been operating in the Market without a registration is consistent with its dishonest approach in filling out the Application.

The Applicant has not responded to the Notice, containing the Commission staff's recommendation that the Commission deny the Application based on this ground. Therefore, the Commission staff's recommendation with respect to this basis for denial is uncontested. Based on the record in this matter, the Commission finds that the Applicant provided false and misleading information under oath in connection with the Application. Therefore, the

Commission now denies the Application based on this independently sufficient ground. Admin. Code § 22-259(b)(i) (failure to provide truthful information in connection with the application).

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a registration to any applicant based on certain criteria set forth in the Administrative Code, including operating an unregistered market business and knowingly failing to provide the information and/or documentation required by the Commission pursuant to the Commission's rules and regulations. Based on the record set forth above, the Applicant knowingly operated without a registration for an extended period of time and has provided false and misleading information to the Commission. Accordingly, based on the above independently sufficient reasons, the Commission denies the Application.

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This denial is effective immediately. BAM Produce Inc. may not operate as a market business in the City of New York.

Dated: June 22, 2015

THE BUSINESS INTEGRITY COMMISSION



Daniel D. Brownell
Commissioner and Chair



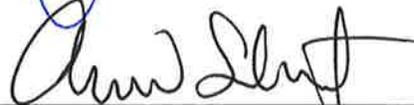
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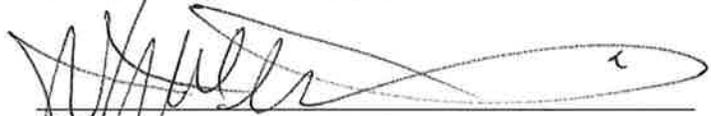
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