



The City of New York
BUSINESS INTEGRITY COMMISSION
100 Church Street · 20th Floor
New York · New York 10007
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY
THE APPLICATION OF RUSSELL J. CONFUSIONE (BIC# PID-486860)
FOR A PHOTO IDENTIFICATION CARD**

I. INTRODUCTION

On or about March 19, 2015, Russell Confusione (“Confusione” or the “Applicant”) (BIC# PID-486860) filed an application with the New York City Business Integrity Commission (the “Commission”) for a Class B Photo Identification Card to work as a manager in the Brooklyn Wholesale Meat Market (the “Application”). See Application at 1. The Commission is authorized to make determinations on such applications and issue photo identification cards pursuant to New York City Administrative Code (the “Administrative Code” or “Admin. Code”) § 22-259(b).

On May 17, 2016, the Commission’s staff issued and served the Applicant with Notice of the Grounds to Deny the Application of Russell J. Confusione for a Photo Identification Card (the “Notice”). The Applicant was given 10 business days to respond, until June 1, 2016. See 17 Rules of the City of New York (“RCNY”) § 11-17(a). On or about May 26, 2016, the Applicant submitted a response, which consisted of a one page letter signed by the Applicant (the “Response”). See Response. The Commission has completed its review of the Application, having carefully considered both the Notice and the Response. Based on the record as to the Applicant, the Commission denies Russell J. Confusione’s application for a Photo Identification Card because the Applicant lacks good character, honesty and integrity based on the following reason:

- **The Applicant was convicted of a crime that bears a relationship to the fitness of such person to work in a public wholesale market.**

II. BACKGROUND AND STATUTORY FRAMEWORK

Local Law 28 of 1997 (“Local Law 28”) and the rules promulgated thereunder require that wholesale businesses in a public wholesale market register with the Commissioner of the Department of Small Business Services. See Title 22, Chapter 1-B of the Administrative Code § 22-253; Title 17 of the Rules of the City of New York (“RCNY”) § 11-04. Pursuant to a charter revision provision approved by the voters in November 2001, the duties of the Commissioner of the Department of Business Services were transferred to the Chairperson of the Organized Crime Control Commission. The Organized Crime Control Commission was subsequently renamed the Business Integrity Commission. See Local Law 21 of 2002.

All principals and employees working for a wholesale business or market business in a public wholesale market must register with the Commission for a photo identification card. Admin. Code § 22-252(a). The Brooklyn Wholesale Meat Market is a public wholesale market, located in Brooklyn, New York. As such, all wholesale businesses in the Brooklyn Wholesale Meat Market must register with the Commission and all principals and employees of those businesses must obtain a photo identification card. The Commissioner may refuse to issue photo identification cards to any person who lacks good character, honesty and integrity. Admin. Code §§ 22-252(d); 22-259(b); 17 RCNY § 11-17(a).

Administrative Code § 22-259(b) lists a number of factors that the Commission may consider in determining whether an applicant lacks good character, honesty and integrity. Among the factors that the Commission may consider are: (i) failure to provide truthful information in connection with the application; (ii) a pending indictment or criminal action against the applicant for a crime which under this subdivision would provide a basis for the refusal of such registration, or a pending civil or administrative action to which such person is a party and which directly relates to the fitness to perform the work for which the photo identification card is sought; and (iii) conviction of the applicant for a crime which, under article 23-A of the correction law, bears a relationship to the fitness of the applicant to work in a market. See Admin. Code § 22-259(b)(i)-(iii). The factors listed in this section are illustrative, not exhaustive. See Admin. Code § 22-259.

III. FACTS

On or about October 13, 2014, Confusione began working as a “Manager” at King Solomon Foods Inc. (“King Solomon”), located in the Brooklyn Wholesale Meat Market at 5600 First Street, Brooklyn, New York. See Application at 1. Confusione was previously employed by Bogopa Service Corp. (“Bogopa”) as a “Meat Manager” and as a butcher. See Kings County District Attorney’s Office, Complaint Room Screening Sheet, dated September 17, 2014 (“Complaint Room Screening Sheet”). Bogopa is registered to operate as a Wholesale Business in the Hunts Point Produce Market. Bogopa also operates a warehouse that is located at 650 Fountain Avenue in Brooklyn, New York.

Over the course of 19 different dates in August and September 2014, Confusione entered Bogopa’s business location in Brooklyn after business hours and removed a total of approximately \$23,000 worth of meat. See Complaint Room Screening Sheet. On approximately 15 of those dates, Confusione was accompanied by his son Matthew, who also was employed by Bogopa in 2011. See id. As a result of these criminal activities, on September 17, 2014, Confusione and his son were arrested. See id. Confusione was charged with grand larceny in the third degree, in violation of New York Penal Law § 155.35 (a class D felony), and petit larceny, in violation of New York Penal Law § 155.25 (a class A misdemeanor). See Superior Court Information, Kings County, No. 07703-2014. After his arrest, Confusione admitted to investigators that he sold the stolen meat to restaurants at a 25% discount. See id. On March 11, 2015, Confusione pled guilty to both charges and was sentenced to a one year conditional discharge. See Criminal History Record Search printout.

IV. BASIS FOR DENIAL

The Application should be denied because the Applicant was convicted of a crime that bears a relationship to the fitness of such person to work in a public wholesale market.

Administrative Code § 22-259(b)(iii) sets forth a list of factors that the Commission may consider in making a determination as to whether to refuse to issue a photo identification card to an applicant who lacks good character, honesty and integrity. Among those factors is the conviction of the applicant of a crime which, in light of the factors set forth in Article 23-A of the Correction Law, bears a relationship to the fitness of such applicant to conduct a business or work in a market. See Administrative Code § 22-259(b)(iii). The factors in Article 23-A of the Correction Law that the Commission must consider specifically are set forth in Section 753 and are as follows:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses;
- (b) The specific duties and responsibilities necessarily related to the license or employment sought;
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities;
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses;
- (e) The age of the person at the time of occurrence of the criminal offense or offenses;
- (f) The seriousness of the offense or offenses;
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct; and
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

See Correction Law § 753.

Applying the above factors, the Commission finds that, notwithstanding the public policy of the State of New York to encourage licensure and employment of persons previously convicted of criminal offenses, the crimes committed by Confusione bear a direct relationship to the fitness of Confusione to work in the Brooklyn Wholesale Meat Market. Confusione is

applying to be permitted to work as a manager overseeing operations at a company in the Brooklyn Wholesale Meat Market. Yet, he was convicted of stealing meat from another public wholesale market business less than two years ago while employed as a manager. The offense is serious: the highest charge is a class D felony. Of course, Confusione's conduct calls into question his fitness to perform the duties of a manager again. Moreover, Confusione engaged in the criminal activity when he was approximately 58 years old. Thus, his crimes were not youthful indiscretions. Finally, the legitimate interest of the Commission in eliminating this type of illegal conduct is clear: a chief component of the Commission's mission is to prevent corruption in the public wholesale markets in New York City.

In the Response, the Applicant admits that he "made a mistake," is "very very sorry for what [he] has done," and has "paid full restitution for [his] mistake." See Response. The Applicant also explained that "this crime did not happen in the market." While the Applicant has expressed remorse for his actions, the facts demonstrate that the Application should be denied. The Applicant abused his position of trust to steal from a company registered to do business in the Hunts Point Produce Market. He used keys and the alarm system code to enter Bogopa's Brooklyn warehouse and disarm the alarm system. See Complaint Room Screening Sheet. Thus, while Bogopa entrusted the Applicant to secure its property, the Applicant instead used the keys and alarm code to do the opposite. With respect to the argument that the crime did not take place in a public wholesale market, that point is irrelevant. Given the substantial abuse of trust that occurred less than two years ago, the Commission cannot sanction the Applicant to work in another position of trust in a New York City public wholesale market. Therefore, based on the factors set forth in the Correction Law, the Commission finds that the Applicant lacks the good character, honesty, and integrity required to work in a public wholesale market in New York City. Accordingly, the Commission denies the photo identification card application on this ground.

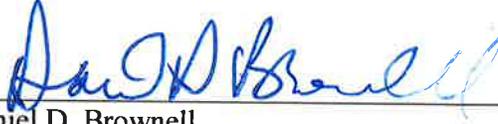
V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a photo identification card to any applicant who it determines to be lacking in good character, honesty and integrity. The record, as detailed above, demonstrates that the Applicant lacks those qualities. Accordingly, based on the reason set forth above, the Commission denies Russell J. Confusione's Photo Identification Card Application.

This denial decision is effective immediately.

Dated: June 22, 2016

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



Daniel D. Brownell
Commissioner and Chair



Kathryn Garcia, Commissioner
Department of Sanitation



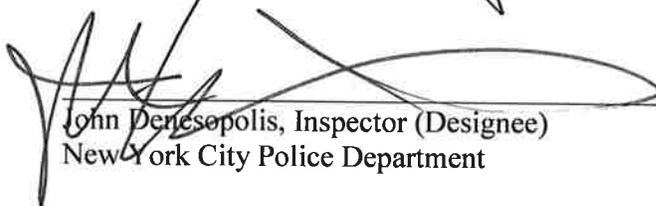
Chantal Senatus, Deputy General Counsel
(Designee)
Department of Investigation



Sandra Abeles, Assistant Commissioner
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Department of Consumer Affairs



Andrew Schwartz, Deputy Commissioner
(Designee)
Department of Small Business Services



John Deresopolis, Inspector (Designee)
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