



## DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF O'CONNELL CONTRACTING TO OPERATE AS A TRADE WASTE BUSINESS

### Introduction

O'Connell Contracting ("O'Connell" or the "Applicant") has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for renewal of an exemption from licensing requirements and a registration to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "c & d." See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a).

On December 14, 2012, the staff issued and served the Applicant with Notice of the Grounds to Recommend that the application be denied. The Applicant was granted ten business days to respond, until January 2, 2013. See 17 Rules of the City of New York §2-08(a). The Applicant did not submit any response. Based on the record as to the Applicant, the Commission now denies O'Connell Contracting's exemption renewal application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

- A. The Applicant Has Failed to Pay Fines That are Directly Related to the Applicant's Business That Were Ordered to be Paid by the New York City Environmental Control Board.
- B. The Applicant Violated the Terms of its Registration Order by Failing to Provide the Commission With Proof that Fines Ordered by the New York City Environmental Control Board are Satisfied or Otherwise Resolved.
- C. The Applicant Knowingly Failed to Provide Information and Documentation Required by the Commission.

### Background and Statutory Framework

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See e.g., United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.);

United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.); People v. GNYTW, 701 N.Y.S.2d 12 (1<sup>st</sup> Dep't 1999). The construction and demolition debris removal sector of the City's carting industry has also been the subject of significant successful racketeering prosecutions. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992); United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367.

The Commission is charged with, *inter alia*, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. NY Admin. Code §16-505(a). It is this licensing scheme that continues to be the primary means of ensuring that an industry historically plagued with corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," commonly known as construction and demolition debris, or "C & D" removal, must apply to the Commission for an exemption from the licensing requirement. *Id.* If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption from the licensing requirement, it issues the applicant a Class 2 registration. *Id.* Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." *Id.* at §16-508(b). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing or registration decision:

1. failure by such applicant to provide truthful information in connection with the application;
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;
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;

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;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a

court or administrative tribunal of competent jurisdiction.

Id. at §509(a)(i)-(x). Additionally, the Commission may refuse to issue a license or registration to any applicant who has “knowingly failed to provide information or documentation required by the Commission...or who has otherwise failed to demonstrate eligibility for a license. Id. at §509(b). The Commission may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” Id. at §509(c). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at §509(d).

An applicant for a private carting license (including construction and demolition) has no entitlement to and no property interest in a license or registration and the Commission is vested with broad discretion to grant or deny a license or registration application. Sanitation & Recycling Industry, Inc., 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). NY Admin. Code § 16-116.

### **Statement of Facts**

O’Connell applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. See Registration Application (“Application”). The Application disclosed John O’Connell as the sole principal. See Registration Application at 9. On or about November 22, 2005, the Commission granted the Applicant a trade waste registration. See Registration Order. The Applicant’s registration was effective for two years, and expired on November 30, 2007. See id. On or about December 5, 2007, the Applicant filed its first Renewal Application with the Commission. See First Renewal Application. After an investigation of the Applicant, the Commission granted the First Renewal Application and authorized the Applicant to operate for another two years, until November 30, 2009.

On November 4, 2009, the Applicant filed its second Renewal Application with the Commission. See Second Renewal Application. The Commission’s background investigation of the Applicant in connection with the Second Renewal Application established that the New York City Environmental Control Board (“ECB”) ordered eleven different fines against the Applicant. On January 21, 2010, the Commission issued a Registration Renewal Order to the Applicant that was conditioned upon the Applicant resolving all eleven of the abovementioned ECB violations before November 30, 2011. See Registration Renewal Order. This Registration Renewal Order, as agreed to by the Applicant, provides that:

... the Registrant acknowledges the existence of Environmental Control Board violations docketed against it as listed in Appendix A to this Registration Renewal Order (the “Appendix A Violations”) and agrees that the Appendix A Violations must be fully satisfied or otherwise resolved, and that adequate proof of



satisfaction or other resolution must be submitted to the Commission, before the end of the registration period covered by this Registration Renewal Order. Registrant also understands and agrees that its failure to adhere to the conditions in this paragraph concerning the Appendix A Violations by no later than November 30, 2011, shall constitute adequate grounds upon which the Commission may deny the Registrant's application for renewal of the Registration without a hearing.

On November 21, 2011, the Applicant filed its third Renewal Application with the Commission. See Third Renewal Application. The Commission's background investigation of the Applicant in connection with the Third Renewal Application establishes that six of the eleven ECB violations listed in the Appendix to the Registration Renewal Order remain unresolved and that the Applicant owes the ECB twenty two thousand nine hundred sixty four (\$22,964.72) dollars.

Beginning on December 15, 2011, the Commission's staff notified the Applicant and the Applicant's attorney that there were numerous open ECB fines that were docketed against the Applicant. See December 15, 2011 letter from Tyler Sulli to the Applicant; January 26, 2012 letter from David Mandell to the Applicant, March 3, 2012 letter from David Mandell to Dennis Sullivan, Esq.; April 11, 2012 letter from David Mandell to Dennis O'Sullivan, Esq. and the Applicant. Initially, the Applicant's attorney responded by acknowledging the existence of the ECB fines and by stating "we are very close in resolving all fines..." See February 10, 2012 letter from Dennis O'Sullivan, Esq. Following the February 2012 correspondence, neither the Applicant nor its attorney provided the Commission with proof that the ECB fines were resolved. In fact, after initially stating that all of the fines were "very close" to being resolved, the Applicant and its attorney stopped responding to the Commission's staff's requests for information and documentation about the ECB fines. The final letter sent by the Commission's staff on April 11, 2012 to the Applicant's attorney (the Applicant was also mailed with a copy) was sent via certified mail, return receipt requested. See April 11, 2012 letter from David Mandell to Dennis O'Sullivan, Esq. The Applicant's attorney signed a United States Postal Service return receipt. Neither the Applicant nor its attorney responded to the April 11, 2012 letter.

According to a search of the ECB database dated January 3, 2013, the following fines, which total \$22,964.72 and were the subject of the Commission's prior Registration Renewal Order, have been docketed against the Applicant:

<u>Creditor</u>	<u>Violation Number</u>	<u>Amount</u>
NYC Environmental Control Board	161422131	\$1,663.66
NYC Environmental Control Board	156227024	\$6,818.49
NYC Environmental Control Board	34454466J	\$1,500.00
NYC Environmental Control Board	162461559	\$6,705.07
NYC Environmental Control Board	00252407K	\$4,777.50
NYC Environmental Control Board	34593296X	\$1,500.00

See ECB Database Search Results dated January 3, 2013. As of January 3, 2013, the abovementioned ECB violations remain open and unpaid.

**Basis for Denial**

**A. The Applicant Has Failed to Pay Fines That are Directly Related to the Applicant's Business That Were Ordered to be Paid by the New York City Environmental Control Board.**

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).

As January 3, 2013, the Applicant has failed to pay \$22,964.72 in fines ordered by the ECB. On multiple occasions, the Commission's staff informed both the Applicant and the Applicant's attorney that the Applicant owed numerous unsatisfied fines. Despite these warnings, the fines remain unsatisfied. The Applicant did not dispute this point. The Commission denies O'Connell's renewal application on this independently sufficient ground.

**B. The Applicant Violated the Terms of its Registration Order by Failing to Provide the Commission With Proof that Fines Ordered by the New York City Environmental Control Board are Satisfied or Otherwise Resolved.**

On or about January 21, 2010, the Commission issued a Registration Renewal Order to the Applicant.<sup>1</sup> See Registration Renewal Order. Among other things, as a condition of the registration, the Applicant acknowledged the existence of the fines docketed against it by the ECB and agreed that it would provide proof of satisfaction or other resolution to the Commission before November 30, 2011. Furthermore, the Applicant agreed that its failure to resolve the fines ordered by the ECB and to provide proof of the same to the Commission, "shall constitute adequate grounds upon which the Commission may deny" the Applicant's renewal application. See Registration Renewal Order.

As described above, the Applicant violated the terms of the Registration Renewal Order by failing to provide the Commission with proof of satisfaction or other resolution of the fines ordered by the ECB. Thus, the Applicant violated the terms of the Registration Renewal Order, terms to which the Applicant previously agreed to. This violation demonstrates the Applicant's lack of honesty, integrity and character. The Applicant did not dispute this point. The Commission denies O'Connell's renewal application on this independently sufficient ground.

---

<sup>1</sup> On or about March 25, 2010, principal, John O'Connell signed the Registration Renewal Order on behalf of the Applicant. See Registration Renewal Order.

**C. The Applicant Knowingly Failed to Provide Information and Documentation Required by the Commission.**

“The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto.” See Admin. Code §16-509(b).

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

The Applicant has “knowingly failed to provide the information” required by the Commission by failing to fully respond to the Commission’s repeated requests for information and/or documentation. The Applicant did not dispute this point. The Commission denies O’Connell’s renewal application on this independently sufficient ground.

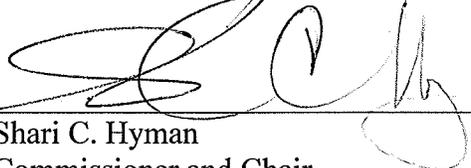
Conclusion

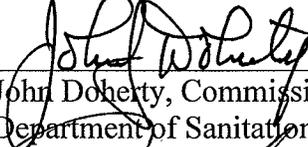
The Commission is vested with broad discretion to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license, to any applicant who it determines to be lacking in good character, honesty and integrity. The record as detailed above demonstrates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

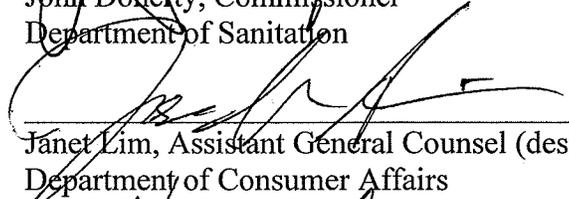
This exemption/registration denial is effective immediately. O'Connell Contracting may not operate as a trade waste business in the City of New York.

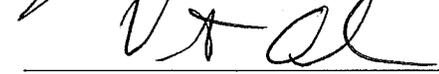
Dated: January 14, 2013

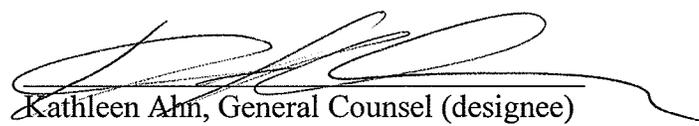
THE BUSINESS INTEGRITY COMMISSION

  
\_\_\_\_\_  
Shari C. Hyman  
Commissioner and Chair

  
\_\_\_\_\_  
John Doherty, Commissioner  
Department of Sanitation

  
\_\_\_\_\_  
Janet Lim, Assistant General Counsel (designee)  
Department of Consumer Affairs

  
\_\_\_\_\_  
Victor Olds, First Deputy Commissioner (designee)  
Department of Investigation

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

  
\_\_\_\_\_  
Brian O'Neill, Inspector (designee)  
New York City Police Department