



THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
100 CHURCH STREET, 20TH FLOOR
NEW YORK, NEW YORK 10007

**DECISION OF THE BUSINESS INTEGRITY COMMISSION
DENYING THE APPLICATION OF ACE CONCRETE PAVING
CORP. FOR AN EXEMPTION FROM LICENSING
REQUIREMENTS AND A REGISTRATION TO OPERATE AS A
TRADE WASTE BUSINESS**

Ace Concrete Paving Corp. ("Ace" or the "Applicant") has applied to the New York City Business Integrity Commission, formerly known as the New York City Trade Waste Commission, ("Commission") for an exemption from licensing requirements and a registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-505(a). Local Law 42, which created the Commission to regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Ace has applied to the Commission as a trade waste business exempt from the requirement that it obtain a license, on the ground that it is "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." Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission finds that the applicant is entitled to be "exempt" from the licensing requirement applicable to businesses that remove other types of waste, it grants the applicant a registration. See id.¹

¹ A recent decision by the New York State Supreme Court appears to call into question this Commission's authority to refuse to register any hauler of construction and demolition debris that has provided all of the

In determining whether to grant an exemption and a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code § 16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§ 1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§ 1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission's investigation and determination of a registration application is whether the applicant has business integrity. See 17 RCNY § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity").

Based upon the record as to the Applicant, the Commission denies its exemption/registration application on the ground that this Applicant lacks good character, honesty and integrity for the following independently sufficient reasons:

- (i) The Applicant owes over \$5,000 in fees to the Commission.
- (ii) The Applicant failed to follow several Commission directives.
- (iii) The Applicant failed to pay taxes and other government obligations for which judgments have been entered.

information required by the Commission's application form. See Whitney Trucking, Inc., et al v. New York City Business Integrity Commission, Index No. 100300/2003 (appeal filed). However, the Whitney decision is not controlling authority for any case other than Whitney itself and is currently under appeal. In any event, that case is readily distinguishable. For example, the staff recommends denial based on the fact that Ace provided false information in its registration application (and thereby failed to provide truthful information). Section 16-509(b) of the Administrative Code authorizes the Commission to "refuse to issue a license or registration to an applicant ... who has knowingly failed to provide the information and/or documentation required" by the Commission (emphasis added).

- (iv) The Applicant failed to provide truthful information in its registration application.
- (v) The Applicant failed to notify the Commission of material changes in its registration application information.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as “a ‘black hole’ in New York City’s economic life.” Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) (“SRI”).

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime’s longstanding and corrupting influence over the City’s carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found “that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct.” Local Law 42, § 1.

The City Council’s findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many

of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the c & d sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the c & d sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many c & d haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988; during that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including c & d) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately \$10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City's "cover" programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City's tipping fees. See 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.); see also United States v. Caccio, et al., Nos. 94 Cr. 357, 358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the c & d sectors of the industry. Local Law 42 recognizes this fact in requiring c & d haulers to obtain registrations from the Commission in order to operate in the City.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." *Id.* § 16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled, that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 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).

II. DISCUSSION

Ace filed with the Commission an application for an exemption from licensing requirements and for a registration to operate a trade waste business on August 30, 1996. The principals of Ace are Matthew Maurice and Rosalia Maurice. The staff has conducted an investigation of the Applicant and its principals. On March 4, 2003, the staff issued a 12-page recommendation that Ace's application be denied. The Applicant failed to submit a response to the recommendation. The Commission has carefully considered both the staff's recommendation and the Applicant's failure to respond. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its exemption/registration application.

A. The Applicant Owes Over \$5,000 in Fees to the Commission.

As is further set forth below, Ace has failed to pay the Commission over \$5,000 in registration and truck fees since August 30, 1996.²

From 1996 to date, over 10 invoices have been delivered to Ace, yet Ace has only paid one invoice presented to it by the Commission. The only invoice Ace has paid in the past six years was the very first invoice delivered to Ace on December 31, 1997 for \$107.84. The second invoice delivered to Ace on April 30, 1998 was disputed. Although a corrected invoice was delivered to Ace in July 1998, Ace failed to pay both the corrected invoice and every invoice presented to it thereafter.

On July 27, 2000, the Commission issued a directive to Ace to pay all outstanding fees by August 11, 2000, or risk the termination of its ability to continue to operate as a trade waste removal business and the potential adverse effects on the pending registration application. Regardless of that warning, no payment was made. On April 13, 2001, the Commission delivered another demand for payment to Ace. Again, no payment was made.

In its correspondence with the Commission, the Applicant has fully acknowledged the existence of fees owed. By letter dated August 12, 2002, Matthew Maurice, the President of Ace, wrote the Commission asking for confirmation that the amount owed was correct (and attached as exhibits all of the prior unpaid invoices) and asking permission to pay that amount in installments. By letter dated October 10, 2002, the Commission confirmed that the amount owed was correct, but denied Ace's request to pay 6 years worth of overdue registration fees in installments. One last Commission directive was issued to Ace to pay the outstanding fees by November 1, 2002, or risk the consequences to its ability to operate. Again, no payment was made. As of the date of the staff's recommendation, Ace owed the Commission \$5,076.63.

The failure to pay legally required licensing fees constitutes per se lack of fitness on the part of the Applicant. The Applicant has not contested

² Ace was permitted to operate while its registration application was pending because permits previously issued by the New York City Department of Consumer Affairs ("DCA") remained valid pending decision by the Commission on timely filed registration applications. See Local Law 42, §14(iii)(a).

this finding. Based on this independent ground, the Commission denies the Applicant's exemption/registration application.

B. The Applicant Failed to Follow Several Commission Directives.

An applicant shall not "violate or fail to comply with any order or directive of the Commission." 17 RCNY §1-09. The Commission may refuse to grant a registration to an Applicant that "has knowingly failed to provide the information and/or documentation required by the commission." Admin. Code. §16-509(b).

As stated above, the Applicant failed to follow three separate Commission directives to pay fees – issued on July 27, 2000, April 13, 2001 and October 10, 2002. The Applicant has not contested this finding. Based on this independent ground, the Commission denies the Applicant's exemption/registration application.

C. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

"[T]he failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's integrity. NYC Admin. Code §16-509(a)(x).

Numerous judgments have been docketed against Ace by New York City, New York State and the United States of America. According to a judgment and lien search conducted by the Commission, Ace³ owes the following unsatisfied judgments:

NYS Commissioner of Labor: \$75,275.18

- 4/10/87, \$2,022
- 1/28/88, \$2427
- 7/19/89, \$1488.20
- 9/7/89, \$1,102.91
- 3/21/91, \$2,113.46
- 12/5/91, \$578.98
- 3/27/92, \$341.24

³ Prior to March 30, 1994, Ace operated under the name Ace Concrete & Asphalt.

- 5/26/94, \$13,406.28
- 7/17/95, \$770
- 8/14/95, \$1,388.52
- 9/16/96, \$1,405
- 1/3/97, \$642
- 9/22/97, \$269
- 6/8/98, \$1,603
- 2/26/99, \$1,406
- 10/20/99, \$508
- 4/3/00, \$1,576
- 2/7/01, \$2,033
- 3/13/02, \$2,557

NYS Department of Taxation and Finance: \$50,355.15

- 4/3/89, \$6,102
- 4/5/89, \$3,704
- 4/5/89, \$5,321
- 8/10/89, \$4,353
- 8/10/89, \$539
- 3/20/91, \$695.34
- 3/21/91, \$1,983.63
- 3/27/91, \$436
- 3/27/91, \$138.74
- 2/25/92, \$474.27
- 2/25/92, \$7,659.76
- 12/30/92, \$955.43
- 12/30/92, \$770.05
- 3/4/93, \$1,112.43
- 5/18/93, \$462.17
- 10/13/93, \$976.92
- 8/9/94, \$594.41
- 10/23/97, \$584
- 10/23/97, \$246
- 5/5/99, \$2,108
- 5/5/99, \$215
- 1/19/01, \$4,887
- 8/29/01, \$2,185
- 8/31/01, \$2,185
- 2/25/02, \$1,667

NYC Criminal Court: \$15,500

- 4/18/91, \$500
- 4/18/91, \$500
- 4/18/91, \$500
- 4/18/91, \$500
- 4/18/91, \$500
- 9/4/91, \$2,000
- 9/4/91, \$2,000
- 8/13/92, \$2,000
- 9/10/92, \$2,000
- 9/10/92, \$500
- 10/27/92, \$2,000
- 10/27/92, \$2,000
- 10/27/92, \$500

NYC Department of Finance: \$3,905

- 2/13/95, \$3,905

Federal Tax Lien/Internal Revenue Service: \$25,928

- 2/21/90, \$9,345
- 3/24/92, \$5,901
- 7/27/92, \$4,030
- 6/13/95, \$6,652

The Commission's staff informed Ace on April 13, 2001 that Ace owed "numerous unsatisfied judgments and liens to state and federal tax authorities, the New York State Commissioner of Labor, and the Criminal Court of the City of New York." Despite that warning, the judgments remain unsatisfied.

The Applicant has refused to satisfy numerous debts that have been reduced to judgment and has not contested this finding. Based on this independent ground, the Commission denies the Applicant's exemption/registration application.

D. The Applicant Failed to Provide Truthful Information in its Registration Application.

Ace failed to provide truthful information in connection with its registration application. Despite the existence of numerous docketed

judgments against Ace, none of this information was disclosed in its registration application. Question 19 in Ace's "Application for Exemption from Licensing Requirements for Removal of Demolition Debris" (refiled on April 16, 1998) asked if "judgment [had] been entered against the applicant business ... in any civil case related to the conduct of a business that removes or recycles trade waste ... in any jurisdiction?" The details were supposed to be listed on Schedule E. See Registration Application at 7. Ace answered this question "No" and left Schedule E blank. Id. at 14.

"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). Ace failed to provide complete and truthful information in its application regarding the numerous judgments docketed against it. Ace has not contested this finding.

Ace's failure to provide complete and accurate information in its application is an additional ground upon which to deny its application. Based on this independent ground, the Commission denies the Applicant's exemption/registration application.

E. The Applicant Failed to Notify the Commission of Material Changes in its Registration Application.

"An applicant for a registration ... shall notify the Commission within ten business days of: (i) the addition of a principal to the business of a registrant subsequent to the submission of the application for registration or exemption from the licensing requirement []; ... (iii) any other material change in the information submitted ..." 17 RCNY §2-05(b). The "principal" of a corporation is defined as "every officer and director and every stockholder holding ten percent or more of the outstanding shares of the corporation ... [and] all other persons participating directly or indirectly in the control of such business entity." Admin. Code §16-501(d).

In its registration application, Ace only disclosed two principals: Matthew Maurice as President and sole owner and Rosalia Maurice as Secretary.

However, other employees of Ace participated directly in the control of Ace in its activities before the Commission. Both Sal Maurice and Irene

Maurice, neither of whom are disclosed in Ace's application, spoke to the Commission on behalf of the company on August 7, 2002 and August 12, 2002. On August 7, 2002, Sal Maurice answered the phone and spoke as a representative of the company when a Commission staff member asked about Ace's unpaid invoices and judgments. On August 12, 2002, Irene Maurice answered the phone and also spoke as a representative of the company. Irene stated that she was the "Secretary" and that Sal was the "Site Foreman." Irene further stated that Ace was a family business and that they were principals of the company, along with Matthew and Rosalia: "We are *all* principals." Furthermore, Ace filed a document on January 25, 1999, in response to a Commission request, which listed its contact person as "Irene Maurice." Two other pieces of correspondence, dated January 20, 1999, were received from Irene Maurice on Ace letterhead referring to the company as "my company."

Ace never disclosed the additional principals, nor did it update "Schedule A – Principals" in its application. The application only lists Sal Maurice as an employee-driver, and makes no mention of Irene Maurice at all.

Ace failed to notify the Commission of material changes in its application and has not contested this finding. Based on this independent ground, the Commission denies the Applicant's exemption/registration application.

IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue an exemption/registration to any applicant that it determines lacks good character, honesty and integrity. The evidence recounted above demonstrates convincingly that Ace falls far short of that standard.

It is of grave concern to the Commission that the Applicant has failed to pay outstanding unpaid fees and taxes, has failed to provide truthful information to the Commission, and has failed to follow Commission directives. For the independently sufficient reasons discussed above, the Commission hereby denies Ace's exemption/registration application.

This exemption/registration denial decision is effective fourteen days from the date hereof. In order that the Ace Concrete's customers may make other trade waste collection arrangements without an interruption in service

and in order that Ace Concrete has sufficient time to retrieve all of its trade waste containers from New York City customers, Ace Concrete is directed (i) to continue servicing its customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to immediately notify each of their customers by first-class mail that they must find an alternative trade waste collection arrangement within the next fourteen days. Ace Concrete shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: July 29, 2003

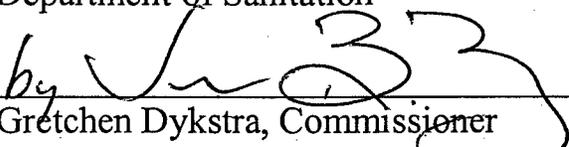
THE BUSINESS INTEGRITY COMMISSION



José Maldonado
Chairman

 for Doherty

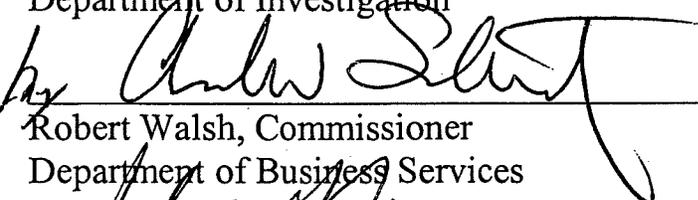
John Doherty, Commissioner
Department of Sanitation

by  for Dykstra

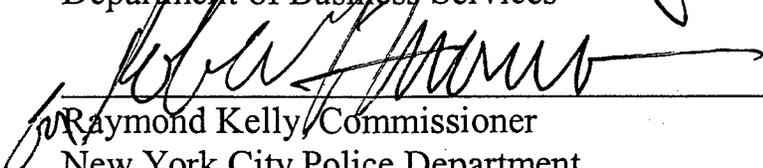
Gretchen Dykstra, Commissioner
Department of Consumer Affairs

by  A.C.

Rose Gill Hearn, Commissioner
Department of Investigation

by 

Robert Walsh, Commissioner
Department of Business Services



Raymond Kelly, Commissioner
New York City Police Department