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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 EXEMPTION APPLICATION OF BERTHA M ABADDESAGUAY TRUCKING FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Bertha M Abaddesaguay Trucking (“Abaddesaguay Trucking” or the “Applicant”) has applied to the New York City Business Integrity Commission (the “Commission”) for a registration to operate as 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.

Abaddesaguay Trucking applied to the Commission for a registration enabling it to operate as 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 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 grants the applicant a registration, the applicant becomes “exempt” from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant 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); compare 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, for the following independently sufficient reasons, denies Abaddesaguay Trucking’s exemption application and refuses to issue Abaddesaguay Trucking a registration:

1. The Applicant has repeatedly and knowingly failed to respond to inquiries from the Commission.
2. The Applicant failed to provide and update information required on its application.

I. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the “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

Abaddesaguay Trucking applied to the Commission for a registration to operate as a trade waste business pursuant to Local Law 42 of 1996. The Commission’s staff has performed a background investigation of the Applicant based, in part, on the information provided by the Applicant. On January 31, 2006, the staff issued a 5-page recommendation that the application be denied. The Applicant’s president was

personally served with the recommendation on February 1, 1006, and was granted ten business days to respond (February 14, 2006). See 17 RCNY §2-08(a). The Applicant did not submit a response to the staff's recommendation. The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth below, the Commission finds that Abaddesaguay Trucking lacks good character, honesty, and integrity, and denies its registration application.

A. The Applicant Has Repeatedly and Knowingly Failed to Respond to Inquiries From the Commission.

The Commission has the power “[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation.” See Admin. Code §16-504(c). The Commission may refuse to grant a license or registration to an Applicant that “has knowingly failed to provide the information and/or documentation required by the commission...” See Admin. Code. §16-509(b). Throughout the registration process, the Applicant has knowingly failed to provide information to the Commission.

Upon reviewing the Application, the Commission's staff made several inquiries to the Applicant. The Commission's staff first attempted to contact the Applicant by telephone via the “home” telephone number provided on the Application.¹ See Application at 1. That telephone number was disconnected.² The Commission's staff then attempted to contact the Applicant by telephone call to the cellular telephone number provided on the Application. See id. Although the Commission's staff left two messages, including one with the Applicant's principal's husband, the Applicant never responded to the Commission's staff.

On September 1, 2005, the Commission's staff sent a letter to the Applicant at the address provided by the Applicant that directed the Applicant to contact the Commission's staff before September 12, 2005 to discuss the Application. See September 1, 2005 letter from Commission to Applicant. As the Applicant never responded to the September 1, 2005 letter, on or about September 12, 2005, the Commission's staff sent the Applicant a second letter that directed the Applicant to designate a “*business* address in New York City where notices may be delivered and legal process served” in accordance with Admin. Code §16-508(d) before September 20, 2005. See September 12, 2005 letter from Commission to Applicant. As the Applicant never responded to the September 12, 2005 letter, the Commission's staff sent the Applicant a third and final letter on September 29, 2005. See September 29, 2005 letter from Commission to Applicant. The September 29, 2005 letter was titled

¹ The Applicant failed to provide a business telephone number to the Commission. See Application.

² “An applicant for a registration... shall notify the Commission within ten business days of... any material change in the information submitted” in the registration application. See 17 RCNY §2-05(4)(b). The Applicant's telephone number is such material information. See 17 RCNY § 1-01.

“THIRD AND FINAL REQUEST FOR INFORMATION”

Again, this letter directed the Applicant to “designate a *business* address in New York City where notices may be delivered and legal process served.” Admin. Code §16-508(d). See id. This information was due to the Commission before October 10, 2005. See id. The Applicant was warned that the “failure to provide information requested by the Commission may have a negative impact on the application for a trade waste removal registration.” See id. Despite repeated attempts by the Commission’s staff to contact the Applicant by mail and by telephone, the Applicant failed to respond to the Commission’s staff’s requests for information.

The Applicant has failed to respond to the Commission’s inquiries. Based on this sufficient independent ground, the Commission denies this application.

B. The Applicant Failed to Provide and Update Information Required on its Application.

An application for an exemption shall contain “a business telephone number and a business address within the City of New York where notices may be delivered and legal process may be served, and where records... shall be maintained.” See 17 RCNY §2-03(b)(3). The Application that was submitted contained a business telephone number that is disconnected. See supra. The Application also contained an address, “575 West 177th Street N.Y. N.Y 10033,” as a business address within the City of New York where notices may be delivered and legal process may be served. See Application at 1. This is not a business address, but a residential apartment building.³ See affidavit of Detective Mattioli. On October 21, 2005, members of the Commission’s staff contacted the Applicant’s principal, Bertha Abad, by telephone.⁴ The Commission’s staff used a telephone number that was not provided by the Applicant as required, but as a result of its investigation into the background of the Applicant. At this time, Bertha Abad stated that she could not provide a business telephone number to the Commission and could not identify a business agent for service of process in New York City, as required by 17 RCNY §2-03(b)(3). Thus, the Applicant did not provide the Commission with a valid business telephone number and did not provide the Commission with a business address within the City of New York where notices may be delivered and legal process served, and where records are maintained.

An application for exemption shall contain “the names and addresses of the principals” See 17 RCNY §2-03(b)(2). The application states that the sole principal, Bertha Abad, resides at “424 Ridge Street, Newark N.J. 07104.” See Application at 9. During the October 21, 2005 telephone conversation between Abad and members of the

³ Furthermore, the Commission received at least thirteen other applications from businesses that disclosed the address “575 West 177th Street” as a principal office address, mailing office address, business agent for service of process address, and/or home address.

⁴ During this conversation, Abad acknowledged receiving at least some of the correspondence sent by the Commission on September 1, 2005, September 12, 2005 and September 29, 2005. She could not explain why she did not respond to the Commission’s communications.

Commission's staff, Abad stated for the first time that she no longer resided at the address "424 Ridge Street, Newark N.J. 07104." At this time, Abad stated that she resided at the address "575 West 177th Street, Apt. #24 10033." Thus, the application did not provide the Commission with a valid address of its only principal. The Applicant failed to notify the Commission of this material change as well.⁵

The Applicant failed to provide accurate information on its registration application and the Applicant failed to update its application with accurate information. Based on this independently sufficient ground, the Commission denies the Applicant's registration application.

⁵ "An applicant for a registration... shall notify the Commission within ten business days of... any material change in the information submitted" in the registration application. See 17 RCNY §2-05(4)(b). The Applicant's principal's home address is such material information. See 17 RCNY § 1-01.

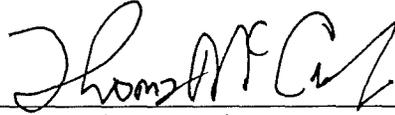
III. CONCLUSION

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

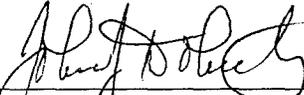
Despite being notified of the staff's recommendation, the Applicant chose not to submit a response, thereby leaving the evidence against it unrebutted. Based upon the above independently sufficient reasons, the Commission denies Abaddesaguay Trucking's exemption application and registration. This registration denial is effective immediately. Abaddesaguay Trucking may not operate as a trade waste business in the City of New York.

Dated: March 14, 2006

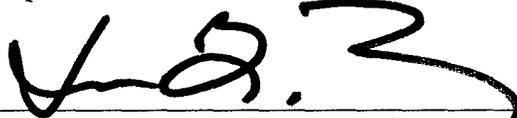
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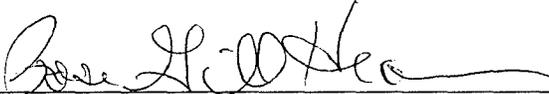
Thomas McCormack
Chair



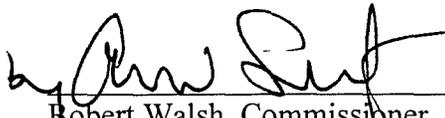
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