



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 EAGLE RUBBISH REMOVAL, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Eagle Rubbish Removal, Inc. (“Eagle Rubbish” or the “Applicant”) has applied to the New York City Business Integrity Commission (the “Commission”), formerly known as the New York City Trade Waste 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.

Eagle Rubbish applied to the Commission for an exemption from licensing requirements and for a registration enabling it 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.” Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for exemptions. See id. If, upon review and investigation of the exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

In determining whether to grant an exemption from licensing requirements 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 an exemption 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 on the record, the Commission denies the Applicant's exemption application on the following grounds:

1. The Applicant knowingly failed to provide required information to the Commission in connection with the application.
2. The Applicant failed to demonstrate eligibility for registration for the following reasons:
 - a. The Applicant's principal engaged in a racketeering activity.
 - b. The Applicant's principal has been indicted for the crime of offering a false instrument for filing in the first degree.

I. REGULATORY 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 guilty 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 constitutional challenges (both facial and as applied) 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).

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant “who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]” or “who has otherwise failed to demonstrate eligibility for such license.” Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to “review” exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases “where the applicant fails to provide the necessary information, or knowingly provides false information.” It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission’s authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant’s good character, honesty and integrity. Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

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.

Admin. Code § 16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. DISCUSSION

Eagle Rubbish filed an application for registration as a trade waste business (the “application”) on October 1, 2004. The only principal disclosed in the application is Mazin Saleh (“Saleh”).¹ See application, Schedule A. The Commission’s staff conducted an investigation of the Applicant and its principal and, on January 26, 2007, the staff issued a nine-page recommendation that the application be denied. On March 7, 2007, the Applicant submitted a response in opposition to the recommendation consisting of an affidavit by the Applicant’s principal, Mazin Saleh, with attached exhibits marked A through D, and a two-page attorney’s letter. The Commission has considered the staff’s recommendation and the Applicant’s response. For the reasons set forth below, the Commission denies the application.

A. The Applicant knowingly failed to provide required information to the Commission in connection with the application.

The Commission may refuse to issue a registration to an applicant who has knowingly failed to provide information required by the Commission.² The Applicant knowingly failed to provide required information in its application.

The background investigation of the Applicant and its principal revealed that Saleh has a criminal record. On January 17, 1997, Saleh pled guilty in federal court to possession with intent to distribute cocaine base, a felony, for which he was sentenced to five years’ probation. Previously, on March 3, 1995, he pled guilty in North Carolina to a worthless check charge, a misdemeanor, and was sentenced to serve six months in jail and three years’ probation and ordered to pay restitution.³

Part II, question 1, of the application asks,

Has the applicant business, or any past or current principal of the applicant business, been convicted of any misdemeanor or felony in any jurisdiction during the past ten (10) years? Do not include traffic violations.

The Applicant falsely answered “No” to this question. Since both of Saleh’s convictions fell within the ten-year period prior to the application’s October 1, 2004

¹ The application was originally filed on October 1, 2004, by Mazin Saleh as a sole proprietor doing business under the assumed name of Rapid Removers. On January 15, 2005, the application was amended to substitute Eagle Rubbish, Saleh’s corporation, d/b/a Rapid Removers, in place of Saleh, as the applicant.

² See Admin. Code § 16-509(b); Attonito v. Maldonado, 3 AD3d 415 (1st Dept. 2004), lv. denied 2 NY3d 705 (2004).

³ Saleh’s criminal record also includes a number of other arrests on a variety of charges, many of which are serious. From 1993 through 1998, he was arrested on several occasions in North Carolina. The charges included solicitation to commit murder, conspiracy to commit murder, assault with a deadly weapon, robbery, obtaining property by false pretense, injury to real property and worthless check. While these arrests did not result in convictions, they show that Saleh’s two convictions were not his only contacts with the criminal justice system.

filing date, the response should have been “Yes.”⁴ Furthermore, the Applicant had ample opportunity to disclose, albeit belatedly, Saleh’s convictions after filing the application, but did not do so.⁵

In his affidavit, Saleh argues that he misunderstood the application questions. He states,

Page 6 [of the application] shows that I originally answered “yes” to questions numbered 3 and 4 and page 5 shows that I answered “no” to question 2.⁶ I did not understand the questions correctly as I read pages 5 and 6 of the application. After reading page 6 I thought the period I had to respond to was 5 years because the questions on page 5 and 6 were similar to me.⁷

Nowhere in this explanation does Saleh mention the question at issue, question number 1, or address how his possible misreading of other questions in the application caused confusion about question number 1. Question 1 is separate and distinct from the other application questions mentioned by Saleh, and the wording of all questions is clear. Question 1 seeks disclosure of any misdemeanor or felony conviction “during the past ten (10) years.” The question is self-explanatory and leaves no doubt as to the nature of the information to be reported or the applicable disclosure period. There is no need to look to any other question in the application to interpret question 1.

Saleh’s suggestion that his reading of questions three and four of the application somehow explains, and excuses, his failure to disclose the information required under question 1 is also without merit. Questions 3 and 4 call for disclosure of proven and pending administrative violations, respectively. These questions mirror the disclosure requirements applicable to criminal convictions and pending criminal charges under questions 1 and 2. Question 3 requires that proven administrative violations be reported and uses the same disclosure period, “the past ten (10) years,” found in question 1. Far from being a possible source of misinterpretation, question 3 reinforces the only

⁴ See application, Part II, question 1.

⁵ The Applicant had an opportunity, as well as the obligation, to correct its response to Part I, question 1, and disclose the convictions, when the application was amended on January 15, 2005. By once again failing to provide this information, the Applicant repeated and renewed the reporting violation. In reliance on the information provided in the application, as amended, the Commission granted the Applicant a Temporary Permission to Operate Without Registration (the “Temporary Permission”) on January 19, 2005, with an effective date of January 1, 2005, pending the Commission’s final determination on the application. Upon discovering that the application had been falsified, the Commission exercised its discretion and terminated the Temporary Permission on April 13, 2006.

⁶ Question 2 on page 5 also concerns criminal matters, but its focus differs from question 1 on page 4 as it calls for disclosure of any “pending” misdemeanor or felony charges, not convictions. Questions 3 and 4 on page 5 have nothing to do with criminal convictions, or even pending criminal charges. Question 3 seeks disclosure of proven administrative violations, while question 4 requires disclosure of pending administrative charges. The applicant’s answers to Questions 3 and 4 on page 6 were changed: each question was originally answered “yes” but then that answer was crossed out and changed to “no.” See application, Part II, pages 5-6.

⁷ See Saleh Affidavit at 4. The only question with a five (5) year time period is question 5 on page 6. See footnote 8.

reasonable interpretation of question 1 by seeking disclosure of completed administrative actions and employing the same ten-year disclosure period used in question 1. Question 4, the counterpart of question 2, seeks disclosure of pending administrative charges and neither question limits the response to any time period. It is hard to understand how Saleh's alleged misreading of question 1 could have resulted from a reading of either question 3 or question 4. In addition, while Saleh crossed out and changed his answers to questions 3 and 4, the answer to question 1, the only application question presently at issue, was not changed, providing no evidence that Saleh was confused when he answered that question.⁸

Rather than supporting Saleh's claim that he was confused by the application questions, the corrected responses to questions 3 and 4 suggest that he answered the questions in the application with thought and deliberation. There is no indication that Saleh had any trouble understanding and completing the rest of the application. The application appears to have been properly prepared in all other respects, including all required supporting documentation. Also, while Saleh originally filed the application as a sole proprietor, he knew enough about business organizations and the Commission's application process to incorporate the Applicant and amend the application accordingly. As with the original application, the amendment paperwork appeared to be properly completed and included all necessary supporting documentation. The application is consistent with the level of higher education and extensive business experience that, according to his affidavit, Saleh attained within the United States,⁹ and which belies the notion that he was confused by any of the questions in the application.

As Saleh is the Applicant's sole principal and the only signatory on the application, there can be no doubt that the failure to report his own convictions was a knowing and deliberate act of concealment. The Applicant's failure to disclose this information to the Commission provides ample evidence that the Applicant lacks good character, honesty and integrity. The Applicant's knowing failure to provide required information to the Commission constitutes a sufficient independent ground to deny the application.

⁸ Saleh's argument may also be that his alleged confusion was caused by question 5, the last question on page 6. See application at 6; page 8 *supra*. This question, the only question in the application with a five-year disclosure period, requires disclosure of a variety of information, including criminal investigations and misdemeanor or felony charges, as well as consent decrees or orders, default decrees, injunctions and civil judgments that are related to the trade waste industry. See *id.* However, this possible argument is without merit. Not only does question 5 not mirror question 1, as question 3 does, it does not provide a credible explanation for Saleh's alleged confusion. If this question caused uncertainty on Saleh's part as to the time period for the other questions, he would not have crossed out the "yes" responses and replaced them with "nos" but, rather, might have crossed out "nos" and replaced them with the answer "yes:" any event within five (5) years would be within ten (10) years but the reverse would not be true.

⁹ The Applicant's attorney argues that it would behoove the Commission to grant the application as a public service to New York City so that its citizens could see and interact with ethnic groups in non-traditional roles. While the Commission does not argue with the value of this proposition, it does not provide a basis for granting the application. In addition, Saleh claims that the application should be granted because the Applicant provides good service to its customers, and attaches to his affidavit statements from various customers that are laudatory or supportive. Such mitigation, even if true, is clearly overshadowed by the seriousness of the Applicant's misconduct.

B. The Applicant failed to demonstrate eligibility for registration for the following reasons:

1. The Applicant's principal engaged in a racketeering activity.

In determining whether an applicant possesses the good character, honesty and integrity required to operate a trade waste business, the Commission may consider the "commission of a racketeering activity," as defined by state or federal law, by the applicant or its principal.¹⁰

As already discussed, Saleh pled guilty to the federal crime of possession with intent to distribute cocaine base. Dealing in a controlled substance, such as cocaine, is a racketeering activity as that term is defined under federal law.¹¹ In his affidavit, Saleh denies that he ever actually distributed or sold cocaine in his life, but was implicated in an overheard conversation.¹² However, he pled guilty to a felony, conceding that the evidence was sufficient to support the charge. Any subsequent claim of innocence is simply inconsistent with his guilty plea.¹³

Accordingly, Saleh's conviction of a racketeering activity provides a sufficient independent ground to deny the application.¹⁴

¹⁰ See Admin. Code §16-509(a)(v).

¹¹ See 18 USCA §1961(1)(A).

¹² See Saleh Affidavit at 4.

¹³ As he has attempted to excuse both his narcotics conviction and his failure to properly complete the application, Saleh also has an excuse for every incident in his criminal history. See footnote 3, *supra*. He argues that his conviction for passing a worthless check resulted from his being unaware that there were insufficient funds for the check that he wrote, and states, "Being young and lacking skills, I was unaware of how to properly run a family business at the time." See Saleh Affidavit at 4. However, Saleh's own account of his life experiences up to that point in time refute that explanation: he had worked with his father at the family grocery store in Brooklyn while attending high school, and his father grew "very dependent" on him; after graduating from high school, he worked with his uncle for about a year in Wilson, North Carolina; he worked part-time at a fish market while attending community college; he graduated with an associates degree in "Business Administration and Applied Sciences" and then worked as a branch rental manager at a rental car company while attending college as a full-time student. See Saleh Affidavit at 2. Saleh certainly had sufficient business experience at the time he bounced the check not to plead ignorance. Saleh's account of the circumstances surrounding the robbery charge was that after a fight with his girlfriend, he "took back" a necklace that he had previously given to her. See Saleh Affidavit at 4-5. Saleh claims that the solicitation to commit murder charge resulted from a friend accidentally grazing the finger of a second friend during hunting practice and Saleh being "unable to come up with the money" the victim demanded from them. See Saleh Affidavit at 5 (Although Saleh claims that the shooter informed the police that Saleh owned the gun and pressured him to fire, Saleh provides no explanation as to why he would be responsible for payment to the victim). Saleh's explanation for his assault with a deadly weapons charge is that he was defending his brother, who was struck in the face with a pistol during a burglary of their store. However, Saleh concedes that he only retrieved his gun and chased the culprits "[a]fter the robbers took the money and exited the store" and that he fired the six shots "[w]hile the robbers were fleeing with their backs towards [him]." See *id.* Saleh admits having paid the victims in both cases to extricate himself from prosecution. See *id.* (the charge concerning the shooting of the friend "was dropped after I paid \$6,000.00 to" the victim and all charges in the case concerning the burglars were dropped shortly after Saleh "paid restitution, in addition to the robber's hospital bill").

¹⁴ Saleh argues that he never served any jail time for any of his convictions. However, the absence of a prison term in a sentence for a racketeering conviction is irrelevant to the Commission's consideration of this factor. Engaging in a racketeering activity even without a conviction or jail sentence, is a sufficient

2. The Applicant's principal has been indicted for the crime of offering a false instrument for filing in the first degree.

In determining whether an applicant possesses the good character, honesty and integrity required to operate a trade waste business, the Commission may consider "a pending indictment or criminal action against such applicant for a crime" which would provide a basis for denial.¹⁵

Saleh was arrested on May 24, 2006, and charged with offering a false instrument for filing in the first degree, an E felony, for falsifying Eagle Rubbish's application.¹⁶ He was later indicted on the same charge by a Manhattan grand jury.¹⁷

When an indictment is pending against an applicant, the Commission may "defer consideration of an application until a decision has been reached by the court ... before which such action is pending."¹⁸ However, deferral is not warranted in this matter. Saleh has previously been convicted of a crime constituting a racketeering activity, which he intentionally attempted to hide from the Commission. At the time he completed the application, he was a 32 year-old man, and as the sole principal of the Applicant, cannot absolve himself of responsibility. Even if the pending criminal case is resolved in his favor, the underlying conduct of falsifying the application is an act that alone provides sufficient basis to deny the Applicant a registration.¹⁹ Under the circumstances, there is no need to await the outcome of the criminal case against Saleh to reach a final determination on the application. The Commission denies the application on this independently sufficient ground.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license, or to 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, and has not satisfied its burden of demonstrating its eligibility for a trade waste registration. Additionally, the Commission may deny an application for exemption and registration if the applicant has knowingly failed to provide information required by the Commission. Eagle Rubbish failed to provide required information and also provided

basis for the Commission to determine that an applicant lacks good character, honesty and integrity. See Admin. Code §16-509(a)(v). Saleh's efforts to downplay his conviction have no merit.

¹⁵ See Admin. Code §16-509(a)(ii).

¹⁶ Penal Law §175.35.

¹⁷ See Indictment in People v. Saleh, 2006NY035040. The criminal case against Saleh is pending as of the date of this decision.

¹⁸ See Admin. Code §16-509(a)(ii).

¹⁹ See Admin. Code §§16-509(b).

false information to the Commission. Accordingly, the Commission denies Eagle Rubbish's exemption application and refuses to issue a registration to the Applicant.

This decision is effective immediately.

Dated: May 8, 2007

THE BUSINESS INTEGRITY COMMISSION

Thomas McCormack
Chair

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation

Jonathan Mintz, Commissioner
Department of Consumer Affairs

Andrew Schwartz, First Deputy Commissioner
Department of Small Business Services

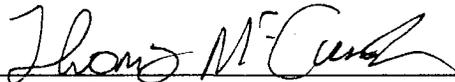
Brian O'Neill, Deputy Inspector
New York City Police Department

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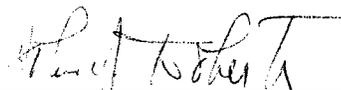
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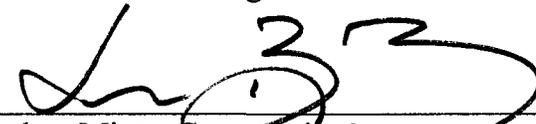
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Jonathan Mintz, Commissioner
Department of Consumer Affairs



Anthony Dell'Olivo, General Counsel (designee)
Department of Small Business Services



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