



The City of New York
BUSINESS INTEGRITY COMMISSION
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Daniel D. Brownell
Commissioner and Chair

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION RENEWAL APPLICATION OF F & M LANDSCAPING OF NY
CORP. TO OPERATE AS A TRADE WASTE BUSINESS**

Introduction

F & M Landscaping of NY Corp. (“F & M” or the “Applicant”) (BIC-3611) has applied to the New York City Business Integrity Commission (“Commission”), formerly known as the New York City Trade Waste Commission, for a registration to operate a trade waste business pursuant to New York City Administrative Code (“Admin. Code”) §16-505(b). Specifically, F & M seeks to renew its registration enabling it to operate a trade waste business “to remove, collect or dispose of trade waste that is generated in the course of operation of such person’s business.” Id.

On January 7, 2015, the staff issued and served the Applicant with Notice to the Applicant of the Grounds to Recommend the Denial of the Registration Renewal Application of F & M Landscaping of NY Corp. to Operate as a Trade Waste Business (“Notice”). The Applicant was given ten business days to respond, until January 27, 2015. See 17 Rules of the City of New York §2-08(a). The Applicant did not submit any response. Based upon the record as to the Applicant, the Commission now denies F & M’s renewal application for the following sufficient reason:

- 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 (1st Dep’t 1999).

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. 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.

Local Law 42 provides that “[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission.” Admin. Code §16-505(a). Before issuing such license, 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 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 trade waste license or registration 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 Indus., Inc. v. City of New York, 107 F.3d 985, 995 (2d Cir. 1997); 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). Admin. Code § 16-116.

Statement of Facts

On or about October 13, 2009, F & M applied to the Commission for a Class 1 Self Hauler Registration. See F & M's Application for Class 1 Self Hauler Registration (“Registration Application”). On or about April 14, 2010, the Commission issued the Applicant

a registration to operate as a trade waste business removing waste generated solely in the course of operation of its business. See Registration Order. The Applicant's registration was effective for two years and expired on April 30, 2012. See id.

On May 17, 2012, the Applicant filed its first application to renew its registration. See F & M's 2012 Renewal Application for a License or Registration as a Trade Waste Business ("2012 Renewal Application"). After investigating the Applicant, the Commission granted the renewal application. On or about April 28, 2014, the Applicant filed its second Renewal Application ("2014 Renewal Application") with the Commission. See 2014 Renewal Application.

As part of its investigation of the 2014 Renewal Application, the Commission's staff found that the Applicant had been classified as "Inactive – Dissolution by Proclamation / Annulment of Authority" by the New York State Department of State, Division of Corporations, and that New York State filed a tax warrant in the amount of \$823.00 against the Applicant.

By letter dated July 3, 2014, the Commission's staff notified the Applicant about its inactive status and about the State tax warrant. See July 3, 2014 letter from Commission staff to the Applicant. The Commission's staff extended a deadline of July 16, 2014 for the Applicant to provide proof that the Applicant had been classified by the New York State Department of State as "active," and to provide proof that the tax warrant filed by the State of New York had been satisfied or otherwise resolved. The letter also advised the Applicant that its failure to respond may result in administrative penalties, including monetary fines and/or denial of its renewal application. See id.

The Applicant failed to respond to the July 3, 2014 letter, and on July 21, 2014, the Commission's staff sent the Applicant another letter requesting the exact same information. See July 21, 2014 letter from Commission staff to the Applicant. The Commission's staff extended yet another deadline of August 4, 2014 for the Applicant to provide the requested information. The letter again informed the Applicant that its failure to respond may result in administrative penalties, including monetary fines and/or denial of its renewal application. See id.

The Applicant again failed to respond to the July 21, 2014 letter. By letter dated August 6, 2014, the Commission's staff sent another letter entitled "**FINAL NOTICE**" to the Applicant. See August 6, 2014, letter from Commission staff to the Applicant. In that letter, the Commission's staff requested for the third time, the exact same information. The Commission's staff extended a final deadline of August 20, 2014, and again informed the Applicant that the failure to respond may result in administrative penalties, including monetary fines and/or denial of its renewal application. See id.

By facsimile dated August 16, 2014, the Applicant responded to the Commission's staff by providing proof of satisfaction of the New York State tax warrant. See August 16, 2014 facsimile from the Applicant to Commission staff. However, the Applicant did not provide any proof that it had been classified by the New York State Department of State as an "active" corporation.

On or about August 18, 2014, Commission's staff was contacted via telephone by the principal's wife, Sofia Funes Mendoza ("Sofia"). During this conversation the Commission's staff identified the outstanding information and/or documentation required by the Commission. In response, by facsimile dated August 19, 2014, the Applicant stated that the reason for the "inactive" status was that "taxes were not filed for the year 2009, 2010, & 2011." See August 19, 2014 facsimile from the Applicant to Commission staff. Then, by facsimile dated August 21, 2014, the Applicant informed the Commission's staff that it had "met with [its] current accountant and....faxed a request for the Transcripts of Tax Returns for the years 2009, 2010, and 2011 to the IRS." See August 21, 2014 facsimile from the Applicant to Commission staff. Additionally, the Applicant requested an extension of time to provide the requested documentation to the Commission. See id. By letter dated September 3, 2014, the Commission's staff acknowledged receipt of the Applicant's August 21, 2014 facsimile and extended the deadline for which the Applicant was required to provide the previously requested information. See September 3, 2014 letter from Commission staff to the Applicant. The Commission's staff then granted the Applicant's request and extended another deadline to September 26, 2014 to provide the previously requested documentation, and again informed the Applicant that the failure to provide the requested documentation may result in administrative penalties, including monetary fines, and/or the denial of its renewal application. See id.

By email to the Commission's staff dated October 2, 2014, the Applicant stated that it has "been trying to obtain copies of Tax Return Transcript records." See October 2, 2014 email from the Applicant to Commission staff. The Applicant additionally stated that it would be "go[ing] to the IRS office personally [to] try and obtain these records." See id. The Applicant provided the Commission with proof of its Request for Transcript of Tax Return, which was signed and dated August 20, 2014. Again, the Applicant requested another extension of time to provide the information previously requested by the Commission. See id. By letter dated October 3, 2014, the Commission responded to the Applicant's October 2, 2014 email and extended the deadline by which the Applicant was required to provide the previously requested documentation to October 10, 2014. See October 3, 2014 letter from Commission staff to the Applicant.

Although the deadline was October 10, 2014, by facsimile dated October 14, 2014, the Applicant responded to the Commission's October 3, 2014 letter and stated that it had visited the IRS office in Bethpage, New York, and that it was "able to verify that there were not tax records on file for form 1120 for the years 2010 and 2011." See October 14, 2014 facsimile from the Applicant to Commission staff. Again, the Applicant requested an extension of time to provide the Commission with the previously requested documentation. See id.

Finally, after previously sending five separate notices, and providing ample time for the Applicant to comply with the Commission's requests for documentation, by letter dated December 4, 2014, Commission staff sent another letter titled "**FINAL NOTICE**" to the Applicant. See December 4, 2014 letter from Commission staff to the Applicant. In that letter, the Commission again requested that the Applicant to produce the outstanding information requested in its letters dated July 3, 2014, July 21, 2014, August 6, 2014, September 3, 2014, and October 3, 2014. The Commission's staff furthermore directed the Applicant to provide "documentation and/or correspondences with the Department of State showing that [it] is working towards resolution" if the Applicant was unable to become an "active" company. See id. Again, the Applicant failed to respond to the Commission's staff.

As noted above, the July 3, 2014, July 21, 2014, August 6, 2014, September 3, 2014, October 3, 2014, and December 4, 2014 letters from the Commission's staff all advised the Applicant that the failure to provide the requested information and/or documentation to the Commission may result in the withdrawal or denial of the renewal application. See July 3, 2014, July 21, 2014, August 6, 2014, September 3, 2014, October 3, 2014, and December 4, 2014 letters from Commission staff to the Applicant. As of the date of this notice, the Applicant has not only failed to provide the required information, but has failed to even provide proof to the Commission that it is working with State authorities towards re-activation.

Basis for Denial

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 its “active” status with the New York State Department of State Division of Corporations. Moreover, the Applicant also failed to provide adequate proof that it was addressing its “inactive” status.

The Applicant has “knowingly failed to provide the information” required by the Commission by failing to respond to the Commission's repeated requests for information and/or documentation. The Applicant does not dispute this point. For this sufficient reason, the 2014 Renewal Application should be denied.

Conclusion

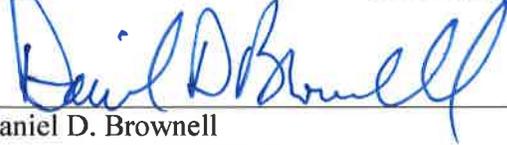
The Commission is vested with broad discretion to issue a license or refuse to grant an exemption from the licensing requirement and issue a registration in lieu of a license, to any applicant who it determines to be lacking in good character, honesty and integrity. The record as detailed above demonstrates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

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This registration denial is effective immediately. F & M may not operate as a trade waste business in the City of New York.

Dated: March 6, 2015

THE BUSINESS INTEGRITY COMMISSION



Daniel D. Brownell
Commissioner and Chair



Commissioner Kathryn Garcia
Department of Sanitation



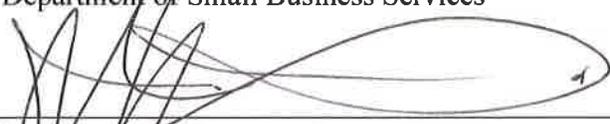
Commissioner Mark Peters
Department of Investigation



Senior Director of Policy Shira Gans
(Designee)
Department of Consumer Affairs



Deputy Commissioner Andrew Schwartz
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Department of Small Business Services



Inspector John Denesopolis
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