



The City of New York
BUSINESS INTEGRITY COMMISSION
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION APPLICATION OF GRAND STREET LLC TO
OPERATE AS A TRADE WASTE BUSINESS**

I. Introduction

On April 12, 2017, Grand Street LLC (the “Applicant” or “Grand Street”) (BIC #492563) applied to the New York City Business Integrity Commission for an exemption from the Commission’s trade waste licensing requirements “to operate a trade waste business solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation.” Local Law 42 of 1996 (“Local Law 42”) authorizes the Commission to review and make determinations on such exemption applications. *See* Title 16-A, New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 16-505(a).

On September 28, 2018, the Commission staff issued and personally served the Applicant with the Notice to the Applicant of the Grounds to Deny the Registration Application of Grand Street LLC to Operate as a Trade Waste Business (the “Notice”). The Applicant had 10 business days to respond, which period expired on October 15, 2018. *See* Title 17 Rules of the City of New York (“RCNY”) § 2-08(a). The Applicant did not submit a response to the Notice. Now, the Commission has completed its review of the registration application, having carefully considered the Notice and the Applicant’s lack of response. Based on the record in this matter, the Commission denies the Applicant’s registration application on the following five independently sufficient grounds:

- 1. The Applicant knowingly provided false information to the Commission in connection with its application;**
- 2. The Applicant has knowingly failed to provide information and documentation required by the Commission;**
- 3. The Applicant’s principal testified falsely during her sworn interview;**
- 4. The Applicant’s undisclosed principal was a principal of a predecessor trade waste business for which the Commission would be authorized to deny a license; and**
- 5. The Applicant’s predecessor entity and its undisclosed principal have failed to pay taxes and other obligations for which judgments have been entered.**

II. 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, known as trade waste. 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. Int'l Brotherhood of Teamsters (Adelstein)*, 998 F.2d 120 (2d Cir. 1993); *People v. Ass'n of Trade Waste Removers of Greater New York Inc.*, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); *United States v. Mario Gigante*, No. 96 Cr. 466 (S.D.N.Y.); *People v. Ass'n of Trade Waste Removers of Greater New York*, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically has also been the subject of significant successful racketeering prosecutions. *See United States v. Paccione*, 949 F.2d 1183, 1186-88 (2d Cir. 1991), *cert. denied*, 505 U.S. 1220 (1992); *United States v. Cafra*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri*, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the 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. *See* Admin. Code § 16-505(a). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," also known as construction and demolition debris, must apply to the Commission for an exemption from the licensing requirement. *Id.* If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a class 2 registration. *Id.* at § 16-505(a)-(b). Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." *Id.* at § 16-508(b); *see also id.* at § 16-504(a). An "applicant" for a license or registration means both the business entity and each principal thereof. *Id.* at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a decision on an application for a license or registration:

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 § 16-509(a)(i)-(x). *See also id.* at § 16-504(a).

The Commission also 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 § 16-509(b). *See also Elite Demolition Contracting Corp. v. The City of New York*, 125 A.D.3d 576 (1st Dep’t 2015); *Breeze Carting Corp. v. The City of New York*, 52 A.D.3d 424 (1st Dep’t 2008); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”); leave denied 2 N.Y.3d 705 (N.Y. 2004). *See also* Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial). In addition, the Commission may refuse to issue a license or registration to an applicant that “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 § 16-509(c). *See also id.* at § 16-504(a). 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 § 16-509(d); *see also id.* at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) 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.*, 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 (N.Y. 1997).

III. Statement of Facts

1. Background

On April 12, 2017, Grand Street applied for a registration to operate a trade waste business that solely removes construction and demolition debris. *See* registration application for Grand Street LLC (the “Application”). The Application disclosed Lisa M. Glenn as the Applicant’s sole principal. *See* Application at p.13. The Applicant also disclosed two vehicle operators, including Glenn’s husband, Patrick Kenny (“Kenny”). *Id.* at p.18 (Schedule D). Glenn certified under oath that all of the information contained in the Application was “full, complete and truthful.” *Id.* at p.20.

2. Glenn provided false sworn testimony

On July 27, 2017, the Commission’s staff conducted a sworn interview of Glenn in connection with its review of the Application. *See* transcript of sworn interview of Lisa Glenn (“Glenn Tr.”), dated July 27, 2017. Before the interview began, Glenn completed a background questionnaire and certified under oath that her answers were truthful. *See* questionnaire completed by Glenn, dated July 27, 2017 (the “Questionnaire”).

During the interview, Glenn testified that no one besides herself – including her husband – had access to the Applicant’s bank accounts. *See* Glenn Tr. at 28-30, 41. However, when confronted with a copy of the Applicant’s bank account signature cards listing Kenny as a

signatory for the Applicant, Glenn acknowledged that he is authorized to sign checks on behalf of the company. *Id.* at 50; Exhibit 3 (National Valley Bank signature cards, dated January 27 2016). Despite this admission, Glenn continued to insist that she is “the one who writes the checks” because she has the checkbook. *See* Glenn Tr. at 50. However, when the Commission’s staff showed Glenn a copy of bank checks signed by Kenny, she admitted that Kenny also has access to the checkbook and issues checks on behalf of the Applicant. *Id.* at 52; Exhibit 4.

3. *Patrick Kenny was not disclosed as a principal of the Applicant.*

Kenny was not disclosed as a principal on the Application. However, a number of factors demonstrate that he plays a major role in the company. During her sworn testimony, Glenn admitted Kenny exerts control over the Applicant’s business affairs. *See* Glenn Tr. at 53. In describing Kenny’s involvement, Glenn stated that, “he’s driving and he’s actually doing everything. He’s helping supervising, yeah.” *Id.* at 13. She further testified that Kenny manages the work allocated to the employees and supervises their work onsite, as well as, makes decisions on what jobs to take. *Id.* at 30-31, 38. Lastly, Kenny owns the Applicant’s current garage location. *Id.* at 23, 47.

4. *K N D Construction Corporation*

Kenny has been in the trade waste industry for over 25 years and owned several trade waste businesses. *See, e.g., id.* at 19. In fact, Kenny is identified as the principal of at least four separate trade waste businesses: K N D Construction Corporation; Patrick C Kenny LLC.; Krill Contracting Inc.; and New Grange Contracting Corp. On October 29, 1997, K N D Construction Corporation (“K N D Construction”) filed a registration application with the Commission. *See* registration application of K N D Construction Corporation (the “K N D Construction Registration Application”). The K N D Construction Registration Application disclosed Kenny and John Dislane as principals of the entity. *Id.*¹ In February 1999, the Commission granted a registration to K N D Construction. *See* K N D Construction Registration Order. The Commission subsequently approved a total of seven registration renewal applications for K N D Construction.

K N D Construction is related to the Applicant in several respects. First, the Applicant and K N D Construction share a common owner and common management, *i.e.*, Kenny. Moreover, the Applicant utilizes the same garage location previously used by K N D Construction and owned by Kenny. *See* Glenn Tr. at 23, 47. Both entities have vehicle operators and employees in common, including Glenn. *See, e.g., id.* at 21, 29, 30, 46-47. Finally, the Applicant services some of the customers previously serviced by K N D Construction. *Id.* at 36.

K N D Construction has amassed a large amount of debt. Specifically, K N D Construction has failed to make the required employer contributions, payment of fringe benefits or the required overtime wages to their employees. Accordingly, several judgments were entered against K N D Construction, which total \$1,671,970.17. In addition, K N D Construction has an outstanding New York State tax warrant in the amount of \$1,516.39.²

¹ John Dislane was disclosed as a principal on K N D Construction’s first three applications to the Commission.

² Patrick C Kenny LLC also has an outstanding state tax lien in the amount of \$517.

5. *The Applicant failed to provide requested information.*

During the course of the Commission's review of the Application, the Applicant failed to provide certain requested information. Specifically, on three separate occasions, the Commission requested that the Applicant amend Schedule A to disclose Kenny as a principal. *See* letters from the Commission's staff to Grand Street, dated August 7, August 15, and August 24, 2017. Despite these requests, and despite Glenn's acknowledgment on the record that she would submit an amended Schedule A, the Applicant has not disclosed Kenny as a principal. *See* Glenn Tr. at 53.

IV. Basis for Denial

1. The Applicant knowingly provided false information to the Commission in connection with its application.

All applicants must provide truthful information to the Commission. A knowing failure to do so is a ground for a denial of the application. *See* Admin. Code §§ 16-509(a)(i); 16-509(b); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dept. 2004), *leave denied* 2 N.Y.3d 705 (2004); *Breeze Carting Corp. v. The City of New York*, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). By failing to disclose Kenny as a principal on the Application, the Applicant provided false information to the Commission.

Applicants must disclose all principals of the company on their applications. Section 16-501(d) of the Administrative Code defines a principal as, among other things, "all . . . persons participating directly or indirectly in the control of such business entity." Admin. Code § 16-501(d). Despite clear evidence that Kenny is a principal of the Applicant – and despite the Commission's staff directing that Kenny be disclosed on several occasions – the Applicant failed to disclose him as a principal on the Application. *See* Application at p.13 (Schedule A).

Kenny has extensive experience in the industry, including owning and managing other trade waste removal businesses. He owns the garage location where the Applicant parks its truck. *See* Glenn Tr. at 23, 47. Furthermore, during her testimony, Glenn admitted that her husband "actually does everything." *Id.* at 13. According to Glenn, Kenny manages the work allocated to the employees and supervises their work onsite. *Id.* at 31. Kenny also makes decisions on what jobs to take. *Id.* at 38. Finally, when asked directly, Glenn admitted that Kenny is a principal. *Id.* at 53. Yet, the Applicant never amended Schedule A of the Application to formally disclose Kenny as a principal.

By failing to disclose Kenny as a principal of the Applicant, the Applicant provided false information on the Application. The Applicant has not disputed the Commission's staff's assertions on this point. Accordingly, the Commission denies the Application based on this independently-sufficient ground. *See* Admin. Code §§ 16-509(a)(i); 16-509(b).

2. The Applicant has knowingly failed to provide information and documentation required by the Commission.

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 § 16-509(b). During Glenn’s sworn interview in July 2017, the Commission’s staff requested that the Applicant disclose Kenny as a principal. *See* Glenn Tr. at 53. By letter dated August 7, 2017, the Commission’s staff again requested that the Applicant properly disclose Kenny as a principal. *See* letter from Commission’s staff to Grand Street, dated August 7, 2017. The staff sent a follow-up notice to the Applicant on August 15, 2017, and a member of the Commission’s staff spoke with Glenn and left several messages as a reminder. *See* letter from Commission’s staff to Grand Street, dated August 15, 2017. On August 24, 2017, the Commission sent the Applicant a “final notice” requiring the Applicant to disclose Kenny as a principal. *See* letter from Commission’s staff to Grand Street, dated August 24, 2017. That letter advised the Applicant that “failure to respond may adversely affect the Applicant’s pending registration application.” *Id.* To date, the Applicant has not produced the required disclosure.

Thus, the Applicant has “knowingly failed to provide the information and/or documentation required by the Commission.” *See* Admin. Code § 16-509(b). The Applicant has not disputed the Commission’s staff’s assertions on this point. Accordingly, the Commission denies the Application based on this independently-sufficient ground.

3. The Applicant’s principal testified falsely during her sworn interview.

The Commission may refuse to issue a registration to an applicant who has provided false information to the Commission, including through a sworn interview. *See* Admin. Code § 16-509(a)(i); Admin. Code § 16-504(c) (Commission 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 . . .”). Here, Glenn provided false – and at times conflicting – testimony during her sworn interview with the Commission’s staff regarding her husband’s involvement in and control over the Applicant’s affairs. Despite initially admitting that Kenny was “actually doing everything” with regard to the Applicant’s business, Glenn later testified that her husband does not have access to the Applicant’s business account and is not an authorized signatory on the account. *See* Glenn Tr. at 28. Only after Glenn was confronted with copies of checks that Kenny signed did she admit that her husband issued checks on behalf of the Applicant and had access to the checkbook. *See* Glenn Tr. at 52.

Glenn’s false statements demonstrate that the Applicant and its sole-disclosed principal lack good character, honesty, and integrity. The Applicant has not disputed the Commission’s staff’s assertions on this point. Accordingly, the Commission denies the Application based on this independently-sufficient ground.

4. The Applicant's undisclosed principal was a principal of a predecessor trade waste business for which the Commission would be authorized to deny a license.

Among the facts the Commission may consider in determining whether an applicant lacks good character, honesty, and integrity is whether a principal of the applicant was a “principal in a predecessor trade waste business . . . where the commission would be authorized to deny a license to such predecessor business” *Id.* at § 16-509(a)(vii). The term “predecessor trade waste business” is defined as “any business engaged in the removal, collection or disposal of trade waste in which one or more principals of the applicant were principals in the five-year period preceding the application.” *Id.* at § 16-508(b).

As demonstrated above, Kenny is an undisclosed principal of the Applicant. *See, e.g.*, Glenn Tr. at 53 (describing Kenny as a principal for the first time). Additionally, Kenny was a principal of K N D Construction, a business engaged in the removal, collection or disposal of trade waste. K N D Construction remained active until June 4, 2014; the Applicant incorporated in New Jersey two days before K N D Construction ceased doing business – June 2, 2014. The Applicant registered to do business in New York in March 2016 and filed the instant application on April 12, 2017. Thus, Patrick Kenny was a principal of K N D Construction within the five-year period preceding the Application.

Several factors demonstrate that the Applicant is a successor of K N D Construction. The Applicant and K N D Construction share a common owner and common management, *i.e.*, Kenny. The Applicant also uses the same garage location and office space that K N D Construction previously used. *See* Glenn Tr. at 47; Application at p.1; letter from K N D Construction dated November 28, 2014. Both entities have employees and vehicle operators in common. *See, e.g.*, Glenn Tr. at 29, 30, 46-47. And, the Applicant services some of the customers previously serviced by K N D Construction. *Id.* at 36. Thus, the Applicant is a successor of K N D Construction.

K N D Construction has outstanding judgments against it in the amount of \$1,671,970.17. Such a large amount of debt would warrant denial of an application for a trade waste license. *Id.* at § 16-509(a)(x) (“failure to pay any tax, fine, penalty, 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” as a ground for denial).

Thus, Kenny – a principal of the Applicant – was a principal of the Applicant’s predecessor trade waste business; and the Commission would be authorized to deny a license to that predecessor trade waste business due to the large amount of debt that it owes. The Applicant has not disputed the Commission’s staff’s assertions on this point. Accordingly, the Commission denies the Application based on this independently-sufficient ground. *See* Admin. Code § 16-509(a)(vii).

5. The Applicant's predecessor entity and its undisclosed principal have failed to pay taxes and other obligations for which judgments have been entered.

As noted above, in determining whether an applicant lacks good character, honesty and integrity, the Commission may consider an applicant’s “failure to pay any tax, fine, penalty, fee

related to the applicant's business . . . for which judgment has been entered by a court or administrative tribunal of competent jurisdiction” Admin. Code § 16-509(a)(x). *See also id.* at §§ 16-513(a)(iv), 16-509(b). As noted, the Applicant's predecessor business – K N D Construction – owes \$1,671,970.17 in judgments. As a predecessor business, the Commission may attribute K N D Construction's debt to the Applicant. The Applicant has not disputed the Commission's staff's assertions on this point. Accordingly, the Commission denies the Application based on this independently-sufficient ground.

IV. Conclusion

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant who it determines lacks good character, honesty and integrity. The record herein demonstrates that the Applicant and its principals lack good character, honesty and integrity. Accordingly, based on the aforementioned independently sufficient grounds, the Commission denies the registration application of Grand Street LLC.

This denial decision is effective immediately. Grand Street LLC may not operate as a trade waste business in the City of New York.

Dated: March 20, 2019

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



Daniel D. Brownell,
Commissioner and Chair



Steven Costas, Acting Commissioner
Department of Sanitation



Margaret Garnett, Commissioner
Department of Investigation



Lorelei Salas, Commissioner
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