



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
REGISTRATION APPLICATION OF HARMAN CONTRACTING INC. (#4574) TO
OPERATE AS A TRADE WASTE BUSINESS**

I. INTRODUCTION & BACKGROUND

A. Introduction

On April 18, 2013, Harman Contracting Inc. (#4574) (“Harman” or the “Applicant”) applied to the New York City Business Integrity Commission (the “Commission”)¹ 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” (the “2013 Application”).² 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).

After a review of the application, if the Commission grants the exemption from the Commission’s trade waste licensing requirements, the applicant will be issued a registration. See id. at § 16-505(a)-(b). The Commission’s review of an exemption application focuses on a determination of whether the applicant possesses business integrity. See Title 17, Rules of the City of New York § 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 § 16-504(a) (empowering the Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); Admin. Code § 16-509(a) (authorizing the Commission to refuse to issue licenses to applicants lacking “good character, honesty and integrity”).

¹ The Commission was formerly known as the New York City Trade Waste Commission.

² “Trade waste” or “waste” is defined at Admin. Code § 16-501(f)(1) and includes “construction and demolition debris.”

After a review of the 2013 Application, based on the record in this matter, the Commission staff recommended that the Commission deny the 2013 Application in a Notice to Harman Contracting Inc. of the Grounds to Deny the Registration Application of Harman Contracting Inc. to Operate as a Trade Waste Business, dated April 17, 2015 (the “Initial Notice”). The Commission served the Initial Notice on the Applicant on April 21, 2015. On May 4, 2015, the Commission staff issued and served a Revised Notice to Harman Contracting Inc. of the Grounds to Deny the Registration Application of Harman Contracting Inc. to Operate as a Trade Waste Business (the “Revised Notice”), which rescinded the Initial Notice. On June 4, 2015, the Commission received a written response from Harman, responding to the findings made by the Commission’s staff in the Revised Notice (the “Response”).³

The Commission has completed its review of the 2013 Application, having considered the Revised Notice and the Response. The Commission now denies the 2013 Application based on the following reason:

- 1. The Applicant knowingly failed to provide truthful and non-misleading information to and was intentionally deceptive during a sworn interview with the Commission in connection with the 2013 Application.**

The 2013 Application is Harman’s second exemption application. In 2009, the Commission denied Harman’s first application. The basis for that denial and the instant decision to deny Harman is explained below more fully.

B. 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, 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.).

³ The Response consists of two documents: the “Written Response to the Revised Notice to Harman Contracting Inc. of the Grounds to Deny the Registration Application of Harman Contracting Inc. to Operate as a Trade Waste Business,” dated June 3, 2015 (submitted by the Applicant’s attorney), and an affidavit of Tarek M. Ahmed, sworn to on June 4, 2015 (the “Ahmed Aff.”). Unless cited as “Ahmed Aff.,” cites to the Response refer to the attorney submission.

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. 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 its determination 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, __ N.Y.S.2d __, 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).

II. DISCUSSION

A. Statement of Facts

1. 2009 Denial Decision

In May 2008, Harman first applied to the Commission for a Trade Waste Removal Registration. See Harman Contracting Inc.’s Application for a Trade Waste Removal Registration filed May 14, 2008 (the “2008 Application”). By decision dated April 14, 2009, the Commission unanimously voted to deny the 2008 Application based on three independently sufficient grounds: (1) the Applicant’s president and only disclosed owner, Tarek Ahmed (“Ahmed”), was the subject of a pending indictment charging him with the crime of bribery under the New York Penal Law; (2) the Applicant failed to disclose a past principal of the Harman; and (3) the Applicant knowingly failed to provide information required by the Commission. See Decision of the Commission Denying the Exemption Application of Harman Contracting Inc. for a Registration to Operate as a Trade Waste Business, dated April 14, 2009 (the “2009 Denial Decision”).

With respect to the first ground for denial, the Commission found that the Applicant lacked good character, honesty and integrity based on a criminal case charging Ahmed with bribery.⁴ See 2009 Denial Decision at 7-8. Although Ahmed received an adjournment in contemplation of dismissal (“ACD”) in that matter, the case was still pending at the time of the denial, i.e., the case had not yet been dismissed and sealed. Id. at 7.

With respect to the second ground for denial, the Commission found that Harman failed to provide truthful and non-misleading information to the Commission in the 2008 Application. Harman listed Ahmed as the only principal and represented that there had been no other

⁴ Bribery is a racketeering activity enumerated in the enterprise corruption statute in the New York State Penal Law and is a basis for denial of an application for a license or registration from the Commission. See Admin. Code § 16-509(v).

principals in the 10-year period prior to the filing of the 2008 Application. Id. at 8. Ahmed (for Harman) signed a certification under penalty of perjury attesting to the truth of the contents of the 2008 Application. Id. However, a VENDEX⁵ application filed by Harman (and certified by Ahmed) in February 2003 disclosed that an individual named Faiz Ahmed was the Vice President of Harman and owned 40% of the company at the time of the filing of that application. Id.⁶ Thus, the Commission found that the Applicant failed to provide truthful and non-misleading information to the Commission by failing to disclose a past principal of the Applicant as required by the 2008 Application. Id.

Finally, the Commission denied the 2008 Application because, having been noticed for a sworn interview by the Commission, Ahmed appeared for the interview but refused to answer questions posed to him. Id. at 9. Therefore, the Applicant, through its principal Ahmed, again failed to provide information required by the Commission.

2. 2013 Application

On or about April 18, 2013, the Applicant filed the 2013 Application. See 2013 Application at p.1. Like the 2008 Application, the 2013 Application again disclosed Ahmed as Harman's sole principal and owner. See id. at p.13. Ahmed again certified that the answers in the Application were true. See id. at p.20. As set forth below, again, certain answers on the 2013 Application were, in fact, false.

On August 28, 2013, Ahmed appeared for a sworn interview conducted by a member of the Commission staff. See Transcript of Sworn Interview of Tarek Ahmed ("Ahmed Tr."). During that interview, Ahmed admitted that certain information in the 2013 Application is false and misleading. First, Question 15 asks:

Has the applicant business, any of its parents, subsidiaries, affiliates or any of the applicant's current or past principals ever had a license, permit, registration or authority to operate from any government agency denied, suspended or revoked?

2013 Application at p.3. The Applicant responded "No" to this question. Id. As set forth above, the Commission denied Harman's registration application on April 14, 2009. See 2009 Denial Decision. Thus, Harman's answer to Question 15 is false.

In his interview, Ahmed provided the following explanation for this false answer:

Q: Why was this [Question 15] answered incorrectly?

⁵ VENDEX is New York City's Vendor Information Exchange System, which is used by the Mayor's Office of Contract Services to determine whether to approve entities to have contracts with the City. See VENDEX Overview & Requirements, NYC Small Business Services, http://www.nyc.gov/html/sbs/html/neighborhood/neighborhood_running_bid_step3.shtml.

⁶ Interestingly, Faiz Ahmed had also been charged with bribery during the same investigation as Ahmed and pled guilty to Giving Unlawful Gratuities in violation of Penal Law § 200.30, a class A misdemeanor. Id. at 8-9.

A: (THE WITNESS, In English)⁷ Actually when my case is before, I have the case, this case dismissed, I come over here. I show him the old letter, I saved my old letter, like that one, old letter. And I show him. He say you lost three years gone and you have applied and get new one. What I think, maybe everything is brand new, the last one is finished.

A: That's why I want to reapply brand new. The case is dismissed, everything go dismissed. That's [what] the problem is now.

Q: But the question asked: Have you personally ever been denied a registration or license and you said no and now you've changed it to yes?

A: I just came over here they say you try to brand new, you forget this old application. When I came here last time I was advised that you apply for a new one, because three years have already passed and everything is gone, cancelled. So you apply for a new one. So that's why I put it on my application no. And then after that I received a call from the attorney that why did you say no to [Question] 15. Then I said yes, it is my mistake.

Ahmed Tr. at 12:8-13:12. The Applicant answered that it had not had a registration denied when it clearly had. Ahmed's claim that it was a mistake and that he thought the first denial did not apply because it had happened three years earlier (and that someone at the Commission had advised him accordingly) is not credible.

In the Response, the Applicant fails to confront this false answer directly, stating that:

when I answered question 15 on the 2013 application I mistakenly answered "no" regarding previously being denied registration with the Business Integrity [C]ommission due to my belief that since the basis for the denial – the criminal case – had been dismissed that denial was no longer valid.

See Ahmed Aff. at ¶ 5. First, this is an incorrect statement. The 2009 Denial Decision was based on three independently sufficient grounds, in which the criminal case against Ahmed was only one of them. The Applicant's contention that the dismissal of the criminal case against Ahmed would have abrogated the fact that Applicant was also denied for failing to disclose a past principal and for failing to provide the Commission

⁷ At Ahmed's sworn interview, an Urdu translator was provided for him. Ahmed nevertheless attempted to answer many questions in English. As a result, the transcript contains both answers provided by Ahmed in English, denoted with "In English," and answers given by Ahmed in Urdu and translated by the Urdu translator.

with information required by the Commission is wrong. Second, Ahmed's beliefs were not mistaken; he has been dishonest. At any time during the more than four months that elapsed between the submission of the 2013 Application and Ahmed's August 2013 sworn interview, the Applicant could have provided the Commission with a sworn statement amending its answer to Question 15. No such amendment was received by the Commission. Moreover, in the sworn interview, it was not as if Ahmed was confronted with the Commission staff's questions regarding Question 15 of the 2013 Application only to be shocked to find that contrary to his mistaken belief his answer was false. In fact, the opposite occurred. After being sworn in, prior to any confrontation regarding Question 15, Ahmed admitted that he had answered that question falsely. Ahmed Tr. at 10:19-12:4. It therefore appears that Ahmed made a calculated decision to answer this question falsely on the 2013 Application, which changed only after he realized that the 2013 Application would not be quickly granted and that he would have to appear at the Commission for a sworn interview.

Second, the Applicant provided false and misleading information with respect to Question 31(d) on the 2013 Application. That question asks:

During the past ten (10) years, has the applicant business or any current or past principal of the applicant business:

...

d. Received a subpoena or been asked to testify before any court, grand jury, or legislative, civil, criminal or administrative body involving any criminal matter or any other matter related to the trade waste industry?

2013 Application at p.8. The Applicant answered "No" to this question. However, in August 2008, the Commission asked Ahmed to testify at a sworn interview with the Commission in connection with the 2008 Application. The determination of Harman's eligibility for a registration to operate a trade waste business was a matter related to the trade waste industry. Thus, the Applicant's answer to Question 31(d) is false.

In the Response, the Applicant stated that given Ahmed's education and language difficulties, it is not surprising he did not realize that the Commission was an administrative body. See Response at p.4; Ahmed Aff. at ¶ 4. Despite, the Applicant's arguments that Ahmed is too unsophisticated to know the accurate answer to this question, the facts say otherwise. Although Ahmed requested an Urdu translator at his sworn interview, Ahmed attempted to answer many, if not most, of the questions he was asked in English without the translator. In fact, at one point Ahmed was instructed to answer a question in Urdu through his translator, but after a few sentences continued to answer in English. Ahmed Tr. at 35:8-36:1. Moreover, Ahmed is well-versed in dealing with administrative bodies. As stated above, not only has he applied twice for a trade waste registration with the Commission, but has submitted a VENDEX application through the Mayor's Office of Contract Services. Ahmed also testified he has applied for and performed work for the School Construction Authority ("SCA"). *Id.* at 25:19-25:23; 44:10-45:7. Ahmed proudly stated that the SCA checked his paperwork on a job he

performed all the time and had no problems. Id. at 44:10-45:7. Ahmed also stated the Applicant submitted an application for an agency he termed the small business association. Id. at 55:3-55:8. According to Ahmed, it was his responsibility as owner of the Applicant to know all the regulations when doing work for New York City. Id. at 44:10-44:16. Similarly, Ahmed acknowledged that it was his responsibility to understand the Commission's trade waste application, and that if he did not understand the application he could have sought the advice of someone who did. Id. at 51:11-51:23.

Third, the Applicant provided false and misleading information with respect to Question 17 on the 2013 Application. That question asks:

How many individuals (not including the principals of the applicant business) does the applicant current employ?

2013 Application at p.4. In response, the Applicant wrote the number zero. However, Ahmed stated during his August 2013 sworn interview that the Applicant employed a work force that could be as large as 18 people, depending on the jobs the company had at a particular time. Ahmed Tr. at 32:9-32:20. Ahmed also admitted that he has an office employee named Asha Rajanu. Id. at 32:21-33:15. Furthermore, the Commission investigator who served the Initial Notice at Harman's office handed the document to a person named Prabbawattie Rajnarayan, who was also not counted as an employee on the 2013 Application.

In the Response, the Applicant claims that this false answer to Question 17 of the 2013 Application is easily explainable because of the Applicant's fluctuating workforce. See Response at p.4; Ahmed Aff. at ¶ 3. However, the Response does not expressly state that the Applicant ever had zero employees. Instead, Ahmed coyly claims that "my company only has employees when we have jobs and the number of employees fluctuate with the job." See Ahmed Aff. at ¶ 3. If his company truly had zero employees, Ahmed could have simply stated that, at the time of the Application, the company had no jobs and, therefore, no employees. His failure to do so is a failure to adequately refute the Commission staff's determination that Ahmed's response to Question 17 is false.

During his August 2013 sworn interview, Ahmed was confronted with the numerous misstatements on the 2013 Application, which he attempted to minimize:

Q: Do you understand that it's a serious problem when you swear to answers that are not true?

A: The small mistakes are slip of pen, could happen to anybody. And that's what happened with me. And honestly after I taking oath I wanted to be truthful and do everything rightly, but it happened. It could happen to anyone just like slip of pen.

Ahmed Tr. at 53:20-54:4.

The false answers provided on the 2013 Application were not mere "slip[s] of [the] pen." Id. They were demonstrably false statements, each of which is a sufficient ground to deny the 2013 Application.

3. 2014 Unregistered Violation

In addition to the issues set forth above, during the pendency of the 2013 Application, the Applicant has also violated the Commission's rules and regulations by operating a trade waste removal business without a registration. On July 9, 2014, the Commission charged the Applicant with operating an unlicensed or unregistered waste removal business, in violation of § 16-505(a) of the Administrative Code. See Notice of Violation #TWC-210035. On September 18, 2014, the Applicant entered into a Stipulation of Settlement with the Commission, admitted to the violation, and agreed to pay a \$2,500 fine. See Stipulation of Settlement, Violation #TWC-210035, dated September 18, 2014. The Applicant paid the fine in full.

As stated in his sworn interview, Ahmed knew that the Applicant could not legally collect trade waste without a registration:

Q: Do you ever use your dump truck to remove debris?

A: (THE WITNESS, In English) No, no. I know that day I get the \$5,000 ticket. I know that if anybody stop me, then I get the \$5,000 ticket. A lot of people told me, that's why I applied for this one without the plate you get the ticket and it is \$5,000. How can I afford \$5,000?

Ahmed Tr. at 31:23-32:8.

B. Basis for Denial

1. **The Applicant knowingly failed to provide truthful and non-misleading information to and was intentionally deceptive during a sworn interview with the Commission in connection with the 2013 Application.**

All applicants must provide truthful and non-misleading information required by the Commission pursuant to the Commission's rules and regulations. See Admin. Code § 16-509(b). A knowing failure to do so is a ground for denial of the application. See id. As set forth above, the Applicant provided false and misleading information in responding to several questions on the 2013 Application. Specifically, the Applicant answered that it never previously had been denied a registration, had not previously been asked to testify before an administrative body, and had no other employees besides Ahmed. Each of those answers is false. Ahmed exacerbated the problem in his August 2013 sworn interview by providing incredible excuses and attempting to minimize the seriousness of the misstatements. Moreover, the Applicant's lack of candor in connection with the 2013 Application is consistent with its conduct with respect to the 2008 Application. As stated above, the Commission denied the 2008 Application, in part, for failing to provide truthful information to the Commission. Furthermore, the Applicant's Response attempts to excuse those false statements by claiming that they were only misunderstandings, rather than credibly claiming that the false statements were actually true. The Commission finds those claims unpersuasive.

Therefore, the Commission finds that the Applicant knowingly failed to provide the Commission with truthful and non-misleading information required by the Commission in the

2013 Application and in his August 2013 sworn interview. Based on that conduct, the Commission now denies Harman's application on this ground. See Admin. Code § 16-509(b).

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or an exemption from the license requirement to any applicant based on certain criteria, including knowingly failing to provide the information and/or documentation required by the Commission pursuant to the Commission's rules and regulations. Based on the record set forth above, the Applicant has failed to provide truthful and non-misleading information required by the Commission. Accordingly, the Commission denies the 2013 Application.

THIS PORTION INTENTIONALLY LEFT BLANK

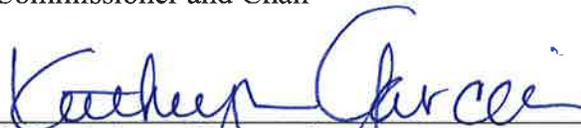
This denial is effective immediately. Harman Contracting Inc. may not operate as a trade waste business in the City of New York.

Dated: June 22, 2015

THE BUSINESS INTEGRITY COMMISSION



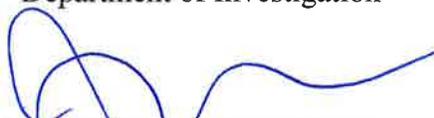
Daniel D. Brownell
Commissioner and Chair



Commissioner Kathryn Garcia
Department of Sanitation



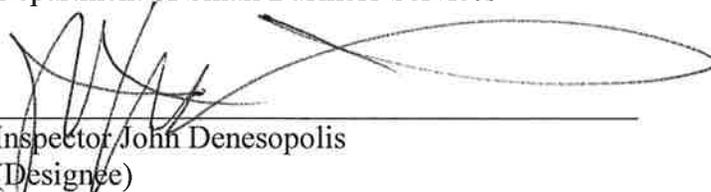
Commissioner Mark G. Peters
Department of Investigation



Commissioner Julie Menin
Department of Consumer Affairs



Deputy Commissioner Andrew Schwartz
(Designee)
Department of Small Business Services



Inspector John Denesopolis
(Designee)
New York City Police Department