

The City of New York BUSINESS INTEGRITY COMMISSION

100 Church Street · 20th Floor New York · New York 10007 Tel. (212) 437-0500

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION APPLICATION OF MIKE'S HEAVY DUTY TOWING, INC. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Mike's Heavy Duty Towing, Inc. (the "Applicant" or "MHDT") (BIC #487590) applied to the New York City Business Integrity Commission ("Commission") for an exemption from licensing requirements and a registration to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation." See Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris, dated May 21, 2015 (the "Registration Application"). Local Law 42 of 1996 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 November 20, 2023, the Commission's staff issued and served the Applicant with the Commission staff's Notice to the Applicant of the Grounds to Deny the Class 2 Registration Application of MHDT to Operate as a Trade Waste Business (the "Notice"). See December 12, 2023 Affidavit of Service. MHDT had 10 business days to respond to the Notice, until December 4, 2023. See Title 17, Rules of the City of New York ("RCNY") § 2-08(a). The Commission did not receive a response from MHDT.

The Commission's review of an initial exemption application focuses on determining whether the applicant possesses business integrity, *i.e.*, good character, honesty and integrity. *See* Title 17, Rules of the City of New York ("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 § 16-504(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 or registrations to applicants lacking "good character, honesty and integrity").

The Commission has completed its review of MHDT's Registration Application, having considered both the Notice and the Applicant's lack of response. Based on the record in this

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

matter, the Commission denies MHDT's Registration Application because the Applicant lacks good character, honesty, and integrity based on the following two independently sufficient grounds:

- 1. The Applicant and/or principal Michael Mazzio have been indicted for bribery, conspiracy to form a monopoly, and offering a false instrument for filing; and
- 2. The Applicant failed to notify the Commission of principal Michael Mazzio's arrest, the Applicant's criminal charges and their convictions.

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.).

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. 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 the private carting industry 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 or "C&D," must apply to the Commission for an exemption from the licensing requirement. *Id.* If, after it reviews an application, the Commission grants the exemption, it issues the applicant a class 2 registration. *Id.* at § 16-505(a)-(b). In reviewing the application, 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). The "applicant" includes the business entity and each principal of the business. *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; and
- 11. failure to comply with any city, state or federal law, rule or regulation relating to traffic safety or the collection, removal, transportation or disposal of trade waste in a safe manner.

Id. at § 16-509(a)(i)-(xi). *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* § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial); *Elite Demolition Contracting Corp. v. The City of New York*, 4 N.Y.S.3d 196, 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). 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).

An applicant for a private trade waste hauling 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., 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).

Statement of Facts

The Applications

On or about May 21, 2015, the Applicant applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. *See* Registration Application. The Application disclosed three principals: Michael Mazzio ("Mazzio"), Margaret McCaffrey Mazzio, and Anthony Mazzio. *Id.*

at 13-14. All principals certified that all of the information contained in the Application was "full, complete and truthful." *Id.* at 25-27.

On December 7, 2016, the Applicant filed an updated application and disclosed essentially the same information it disclosed on its 2015 Registration Application. See Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris, dated December 2, 2016 (the "2016 Updated Registration Application"). The Applicant disclosed the same three principals in the 2016 Updated Registration Application as in the Registration Application. Id. at 13-14.

2023 Indictment - Bribery of a Public Official

On September 22, 2023, Michael Mazzio was arraigned on an indictment (the "2023 Indictment") in the Supreme Court of New York County for bribery in the second degree in violation of PL § 200.03 (a class C felony); bribery in the third degree in violation of PL § 200.00 (a class D felony); and conspiracy in the fourth degree in violation of PL § 105.10(1) (a class E felony). See People v Mazzio, et al., Indictment 73765-23.

According to the 2023 Indictment, Eric Ulrich, a former New York City Councilman, a former Senior Advisor to the Mayor, and the former NYC Department of Buildings ("DOB") Commissioner, used his authority and influence in those positions to benefit among others, Michael Mazzio. *See* New York County District Attorney's Office ("DANY") Statement of Facts at 1.

The 2023 Indictment alleged that "[i]t was also part of this conspiracy for Michael Mazzio and Joseph Livreri to use their access to said high-ranking officials to attempt to obtain exclusive contracts for arterial towing for Mike's Heavy Duty Towing, a business operated and controlled by Michael Mazzio, and to attempt to convince said officials to disqualify a competitor's existing arterial towing contract. It was also part of this conspiracy for Eric Ulrich to agree to assist Michael Mazzio to resolve existing issues relating to Mike's Heavy Duty Towing's tow truck company license issued by the New York City Department of Consumer and Workers Protection ("DCWP")." See 2023 Indictment at 3.

On or about August 5, 2021, to on or about November 1, 2021, Mazzio committed the crime of bribery in the second degree when he offered a benefit in excess of five thousand dollars upon Eric Ulrich in exchange for his "vote, opinion, judgment, action, decision, and exercise of discretion as a public servant would thereby by influenced." *Id.* at 12. These charges relate to Ulrich's agreement to help MHDT resolve certain DCWP tow truck company licensing issues. *See* DANY Statement of Facts at 3. In exchange, Mazzio, in part, purchased Ulrich a premium season ticket package with the New York Mets valued at nearly \$10,000. *Id.*

The 2023 Indictment further alleges that on or about February 1, 2022, to on or about May 2, 2022, Mazzio committed the crime of bribery in the third degree. See 2023 Indictment at 13. These charges relate to "Ulrich's intervention with the DOC Commissioner, acting with the purported authority of the Mayor's Office, to obtain a higher-paying job for Mazzio's daughter in exchange for money, as documented by several Venmo transfers to Ulrich before and after the position was secured in February 2022." See DANY Statement of Facts at 4.

2018 Indictment - Conspiracy to Form a Monopoly in the Towing Industry

On February 21, 2018, the Applicant and Michael Mazzio were indicted in the Supreme Court of New York County, and charged with contract or agreement for monopoly or in restraint of trade in violation of New York General Business Law ("GBL") § 340 (a class E felony); offering a false instrument for filing in the first degree in violation of New York Penal Law ("PL") § 175.35 (a class E felony); and conspiracy in the fifth degree in violation of PL § 105.05(1) (a class A misdemeanor). See People v Mazzio, et al., Indictment 81-18 ("2018 Indictment").

The criminal matter brought against the Applicant and Mazzio by the New York County District Attorney's Office related to an illegal monopoly targeting the towing industry. *Id.* Among other illegal acts, Mazzio and his codefendants manipulated the application and bidding process to establish a monopoly on arterial towing jobs involving city highways. *See* February 21, 2018 New York County District Attorney's Office Press Release at 4 ("2018 DANY Press Release"). Mazzio, who controlled permits for multiple highway segments, subcontracted collision work to companies by codefendants in exchange for a quarterly fee of \$20,000 and a portion of the proceeds from resulting insurance claims. *See* 2018 DANY Press Release at 4. In 2017, Mazzio falsified applications submitted to the NYPD related to the New York City arterial highway towing program. *See* 2018 Indictment at 64-66.

Non-Disclosure of Criminal Charges – 2023 Indictment

On September 22, 2023, Michael Mazzio was arrested by the NYPD in connection with his 2023 Indictment. *See* New York State Unified Court System ("NYSUCS") Case Details - Indictment Number 73767-2023/004. The Commission has not received any notification from the Applicant pertaining to Mazzio's recent arrest.

Untimely Disclosure of Criminal Charges – 2018 Indictment

On February 21, 2018, Michael Mazzio was arrested by the New York Police Department ("NYPD") in connection with his 2018 Indictment. See NYSUCS Case Details - Indictment Number 81-2018. The Applicant was also charged for its role in a criminal monopoly targeting the towing industry. See February 21, 2018 MHDT Arraignment Minutes.

On or about May 4, 2018, the Commission received a one-page letter from the Applicant disclosing Michael Mazzio's transfer of ownership interest in MHDT to his mother. *See* Letter from Raymond Casey, Esq. The Applicant further disclosed that Mazzio and MHDT were indicted by the New York County Grand Jury. *Id.* In a second correspondence, the Applicant requested to withdraw its Registration Application. *See* Letter from Raymond Casey, Esq.

Non-Disclosure of Criminal Conviction – 2018 Indictment

On October 2, 2023, Michael Mazzio pled guilty to Attempted Conspiracy to Form a Monopoly in violation of GBL § 340 (a class A misdemeanor). See Michael Mazzio Certificate of Disposition. Mazzio was sentenced to a conditional discharge and \$1,000 fine. Id. On October,

2, 2023, the Applicant similarly pled guilty to Attempted Conspiracy to Form a Monopoly in violation of GBL § 340 (a class A misdemeanor). See MHDT Certificate of Disposition. MHDT was sentenced to a \$5,000 fine. *Id*.

Basis for Denial

1. The Applicant and/or principal Michael Mazzio have been indicted for bribery, conspiracy to form a monopoly, and offering a false instrument for filing.

The Commission may deny a registration application based on the "pending indictment or criminal action against such applicant or person for a crime which under this subdivision would provide a basis for the refusal of such [registration]." See Admin. Code § 16-509(a)(ii). While the Commission may defer consideration of an application until the pending criminal case has been resolved, it is not required to do so.² See Admin. Code § 16-509(b)(ii). Given the serious nature of the new criminal charges in this case, the Commission should not defer consideration of the Application any further.

In determining whether to deny a registration application due to a pending indictment or criminal action that would provide a basis for the refusal of such registration, the Commission must evaluate the crimes charged in light of the factors set forth in Section 753 of the Correction Law, which would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii). Those factors are as follows:

- (a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license . . . sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.

² The Commission has the discretion to defer consideration of an application until a decision has been reached on a pending indictment. See Admin. Code §16-509(a)(ii). A plea of not guilty without more is an insufficient reason to defer consideration of an indictment: doing so would mandate deferral in every case involving a pending indictment and is inconsistent with the statutory provision specifically authorizing the Commission to deny a registration application based upon a pending indictment. Id. Given the long history of corruption in this industry, the Commission is not required to wait extended periods of time, often years, for a resolution of an indictment. Given the serious nature of the criminal charges in this case and the direct connection to the trade waste industry, the Commission declines to exercise such discretion in this case.

- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law § 753(1).

Applying these factors, both the 2023 indictment against Mazzio and the 2018 Indictment filed against the Applicant and Mazzio are serious. In October 2023, Mazzio and the Applicant both pled guilty to Attempted Conspiracy to Form a Monopoly in violation of GBL § 340, a class A misdemeanor. See Michael Mazzio Certificate of Disposition, MHDT Certificate of Disposition. The charges are antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption from the trade waste industry. Moreover, the crimes charged, which relate directly to corruption, go to the crux of the Applicant's honesty, integrity, and character.

Despite New York State's public policy to encourage the licensure of persons previously convicted of a criminal offense, see *id.* at § 753(1)(a), as demonstrated below, the Correction Law factors weigh in favor of denying the Registration Application based upon all of the serious charges against the Applicant and Michael Mazzio. The charge of bribery in the second degree is a class C felony, punishable by up to fifteen years in prison. See PL §§ 70.00(2)(c), 200.03.

In committing the offenses, the Applicant and Mazzio falsified paperwork submitted to the NYPD about MHDT and utilized the Applicant's business to monopolize the towing industry in furtherance of their illegal scheme. Thus, these crimes directly relate to the duties and responsibilities of the Applicant with respect to the registration sought. See Correction Law at § 753(1)(b). The convictions demonstrate that MHDT and Mazzio cannot be trusted to abide by the laws that regulate the hauling of trade waste in New York City – and that they are, therefore, unfit to perform the duties and responsibilities of a registrant in the trade waste industry. See id. at § 753(1)(c).

During the bribery conspiracy, Mazzio was over 50 years old, and escalated his disregard for obeying laws by bribing a public official. See 2023 Indictment. Thus, these crimes occurred recently. See id. at § 753(1)(d). During the approximately nineteen months covered by the 2018 Indictment which commenced in 2016, Mazzio was also over 50 years old – plainly old enough to know what the law required, how to obey it, and to recognize that the schemes in which he was involved were illegal. See id. at § 753(1)(e). See 2018 Indictment. Mazzio's crimes were the result of a series of conscious decisions to violate the law and are a disturbing reminder of the cynical disregard for the law that corrupted the City's waste removal industry in the past.

The Applicant's and Mazzio's conviction for Attempted Conspiracy to Form a Monopoly stemming from the 2018 Indictment related to their efforts to form a monopoly in the towing

industry and the submission of falsified paperwork to the NYPD. See Michael Mazzio Certificate of Disposition, MHDT Certificate of Disposition. These convictions bear directly on the Applicant's fitness to participate and operate in the trade waste industry, especially given the fact that the Applicant's principal, Michael Mazzio, was also part of this criminal scheme. Thus, they are serious crimes. See id. at § 753(1)(f).

With respect to rehabilitation or good conduct, *see id.* at § 753(1)(g), the Applicant did not respond to the Notice and did not produce to the Commission any information regarding the Applicant's or Mazzio's rehabilitation or good conduct.

The Commission's interest in protecting property, and the safety and welfare of the general public, is clear. See id. at § 753(1)(h). Public confidence in the integrity of the trade waste industry would be undermined if those proven to have ignored the law received a registration from the Commission, particularly given the difficult history the industry has had with respect to corruption.

The recent 2023 charges for conspiracy to commit bribery directly relate to an examination of whether the Applicant and its principals possess good character, honesty, and integrity. Bribing a public official establishes that MHDT and its principals lack the requisite good character, honesty and integrity to operate a trade waste business in New York City. The Applicant did not dispute this ground. Accordingly, the Commission denies the Registration Application on this independently sufficient ground.

2. The Applicant failed to notify the Commission of principal Michael Mazzio's arrest, the Applicant's criminal charges and their convictions.

An applicant for a registration has a duty to notify the Commission within 10 business days of an arrest or criminal conviction of a principal subsequent to the submission of the application. See 17 RCNY §§ 2-05(a)(1) and 2-05(b)(1)(ii). Michael Mazzio was arrested on September 22, 2023 in connection with the 2023 Indictment, and the charges were unsealed in court the same day. See NYSUCS Case Details - Indictment Number 73767-2023/004. The Applicant failed to notify the Commission of Mazzio's arrest and charges by October 6, 2023.

Michael Mazzio was also arrested on February 21, 2018 in connection with the 2018 Indictment, and the charges against him were unsealed in court that same day. See NYSUCS Case Details - Indictment Number 81-2018. MHDT was also criminally charged on the same day. See February 21, 2018 MHDT Arraignment Minutes. The Applicant failed to notify the Commission of the charges against MHDT and Mazzio's arrest by March 7, 2018.

On or about May 4, 2018, the Applicant did notify the Commission of Michael Mazzio's arrest and the Applicant's indictment. While the Applicant submitted a letter apprising the Commission of the 2018 indictment, the disclosure was untimely and did not meet the requirements

that it be sworn and notarized by all of the principals. See 17 RCNY § 2-05(d), Letter from Raymond Casey, Esq.³

Mazzio's charges stemming from his 2018 and 2023 indictments and his recent criminal conviction were never disclosed pursuant to 17 RCNY §§ 2-05(b)(1)(ii) and 2-05(d). The failure of the Applicant to perform its legal obligation is further evidence that the Applicant and its principals, lack good character, honesty, and integrity. The Applicant did not dispute this point. Accordingly, the Commission denies the Registration Application on this independently sufficient ground.

Conclusion

The Commission is vested with broad discretion to refuse to issue a license or an exemption from the license requirement to any applicant who it determines lacks good character, honesty and integrity. The record as detailed above demonstrates that the Applicant lacks those essential qualities. Accordingly, based on the two independently sufficient grounds detailed above, the Commission denies MHDT's Registration Application.

This registration denial is effective immediately. Mike's Heavy Duty Towing, Inc. may not operate as a trade waste business in the City of New York.

Dated: February 1, 2024

SIGNATURE PAGE FOLLOWS

³ As set forth in the Commission's rules, such notifications, *inter alia*, "must be sworn and notarized and must be signed by all persons participating directly or indirectly in the control of the applicant business ..." See 17 RCNY § 2-05(d).

THE NEW YORK CITY **BUSINESS INTEGRITY COMMISSION**

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Business Integrity Commission

Jessica Tisch, Commissioner Department of Sanitation

Yocelyn Strauber, Commissioner Department of Investigation

Vilda Vera Mayuga, Commissioner

Department of Consumer and Worker Protection

Anthony Dell'Olio, General Counsel (Designee)

Department of Small Business Services

Osvaldo Nunez, Inspector (Designee)

New York City Police Department

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