



**The City of New York
BUSINESS INTEGRITY COMMISSION**

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**DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE
REGISTRATION RENEWAL APPLICATION OF MOISES LANDSCAPING
(BIC #3487) TO OPERATE AS A TRADE WASTE BUSINESS**

I. PRELIMINARY STATEMENT

Moises Landscaping (the “Applicant”) (BIC #3487) has applied to the New York City Business Integrity Commission (the “Commission”) for renewal of a registration to operate a trade waste business pursuant to New York City Administrative Code (“Admin. Code”) § 16-505(b). Specifically, the Applicant 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 April 1, 2016, the Commission’s staff issued and served the Applicant with a Notice of Grounds to Recommend the Denial of the Registration Renewal Application of Moises Landscaping (the “Recommendation”). The Applicant was given 10 business days to respond in writing, until April 18, 2016. See 17 Rules of the City of New York (“RCNY”) § 2-08(a). The Applicant did not respond to the Recommendation. The Commission has completed its review of Moises Landscaping’s registration renewal application, having carefully considered both the staff’s Recommendation and the Applicant’s failure to respond. Based on the record as to the Applicant, the Commission denies Moises Landscaping’s registration renewal application because the Applicant lacks good character, honesty and integrity based on the following two independently sufficient grounds:

- A. The Applicant Lacks Good Character, Honesty and Integrity Because It Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered; and**
- B. The Applicant Knowingly Failed to Provide Information and Documentation Required by the Commission.**

II. 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, among other things, combating the pervasive 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. Admin. Code § 16-505(a). This regulatory framework 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 remove, collect or dispose of trade waste that is generated in the course of operation of such person's business . . . without having first registered with the [C]ommission.” Admin. Code § 16-505(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), 16-509(b). 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), 16-509(b).

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, 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). 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 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).

III. FACTS

On or about July 22, 2009, Moises Landscaping applied to the Commission for a trade waste registration. See Moises Landscaping Application for a Class 1 Registration filed on July 22, 2009 (the “Initial Application”). The Initial Application disclosed two principals, Moises A. Portillo (50% Owner and General Partner; DOB: 08/12/1958) and Blanca A. Portillo (50% Owner and Partner; DOB: 01/01/1958). See id. at 9 and 11. On or about September 11, 2009, the Commission approved the Initial Application and 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 September 30, 2011. See id.

On or about August 25, 2011, the Applicant filed its first Renewal Application for a License or Registration as Trade Waste Business (the “First Renewal Application”). See First Renewal Application filed August 25, 2011. On or about October 12, 2011, the Commission approved the First Renewal Application and issued the Applicant a Registration. See Registration Certificate issued October 12, 2011. The registration was effective for two years and expired on September 30, 2013. See id.

On or about September 6, 2013, the Applicant filed its second Renewal Application for a License or Registration as Trade Waste Business (the “Second Renewal Application”). See Second Renewal Application filed September 6, 2013. On or about November 21, 2013, the Commission approved the Second Renewal Application and issued the Applicant a Registration. See Registration Certificate issued November 21, 2013. The registration was effective for two years and expired on September 30, 2015. See id.

On or about August 24, 2015, the Applicant filed its third Renewal Application for a License or Registration as a Trade Waste Business (the “Instant Renewal Application”). See Renewal Application dated August 24, 2015. The Commission conducted a background investigation in connection with the Instant Renewal Application. The Commission’s investigation revealed that there were two judgments filed against the Applicant by the Workers’ Compensation Board of New York, totaling \$49,361.79.

The Commission staff took repeated steps to obtain proof of satisfaction of the outstanding judgments. On November 25, 2015, Commission staff sent the Applicant an email

to request such proof.¹ See November 25, 2015 email from Intelligence Analyst Christina Rusu to the Applicant. The Applicant did not respond to this email. On December 14, 2015, Commission staff contacted the Applicant by telephone. The Applicant referred Commission staff to the Applicant's attorney, Wayne Miller. See January 4, 2016 letter from Policy Analyst Santiago Mueckay ("Mueckay") to the Applicant. Subsequently, on numerous occasions, Commission staff attempted to contact both the Applicant and the Applicant's attorney by telephone, but did not receive a response from either. See id.

By letter dated January 4, 2016, the Commission again requested proof that the above-mentioned judgments filed by the Worker's Compensation Board of New York were resolved. The Commission established a deadline of January 15, 2016 to provide the necessary documentation. See id. On January 5, 2016, Jennifer Portillo ("Portillo"), who identified herself as "Moises' daughter," sent an email to the Commission in which she stated that she "will speak to [her] dad about [the open judgments]." See January 5, 2016, 11:07 a.m. email from Portillo to Mueckay. Portillo later sent another email to the Commission, in which she stated, "please keep trying to reach my father's lawyer. . . ." See January 5, 2016 3:42 p.m. email from Portillo to Mueckay. In response, Commission staff informed Portillo that he had tried on numerous times to contact the Applicant's attorney and that he had not received a response from the attorney. See January 5, 2016 email from Mueckay to Portillo.

On January 21, 2016, Commission staff sent another email to the Applicant to inform the Applicant that the Commission extended the deadline for the Applicant to provide the required information to January 26, 2016. See January 21, 2016 email from Mueckay to the Applicant. In response, that same day, Portillo sent an email to the Commission in which, among other things, she asked, "is there anything else we can do?" See January 21, 2016 email from Portillo to Mueckay. Commission staff responded the same day, and extended the deadline to January 29, 2016. See January 21, 2016 email from Mueckay to Portillo. In addition, Commission staff warned the Applicant that its "failure to provide the Commission with the requested information and or documentation [before January 29, 2016] . . . could result in the denial of [the] registration [renewal] application." See id. As of the date of this Decision, the Commission has not received any of the required documentation.

IV. ANALYSIS

A. The Applicant Lacks Good Character, Honesty and Integrity Because It Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

The Commission may refuse to issue a license or registration to an applicant who lacks good character, honesty and integrity. 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

¹ By letter dated October 6, 2015, the Applicant notified the Commission that its email address is jportillo505@gmail.com. See October 6, 2015 letter from Moises A. Portillo.

court or administrative tribunal of competent jurisdiction” See Admin. Code § 16-509(a)(x). See also *id.* at §§ 16-513(a)(iv), 16-504, 16-509(b).

As demonstrated above, on multiple occasions, the Commission notified the Applicant of its outstanding debts (two judgments filed by the Worker’s Compensation Board of New York) and requested documentation evidencing that the judgments have been resolved or are subject to a payment plan with which the Applicant is in compliance.² Notwithstanding those notices, as of the date of this Decision, the Applicant’s debts to the Worker’s Compensation Board remain outstanding. The Applicant owes over \$49,000 in judgments dating back to July 2014. The Applicant has not disputed this point. For this independently sufficient reason, the Commission denies the Instant Renewal Application.

B. 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).

As demonstrated above, the Applicant was given ample time to produce the required documentation to the Commission regarding the Applicant’s outstanding debts to the Worker’s Compensation Board of New York. In addition to making several telephone calls to both the Applicant and the Applicant’s attorney, the Commission sent the Applicant several emails and letters requesting documentation. Notwithstanding these notices, the Applicant has failed to provide any documentation to the Commission. The Applicant has not disputed this point. For this independently sufficient reason, the Commission denies the Instant Renewal Application.

V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant who it determines to be lacking in good character, honesty and integrity. The record, as detailed above, demonstrates that the Applicant lacks those qualities. Accordingly, based on the reasons set forth above, the Commission denies Moises Landscaping’s registration renewal application.

² Additionally, as discussed above, Commission staff spoke with the Applicant about the debts.

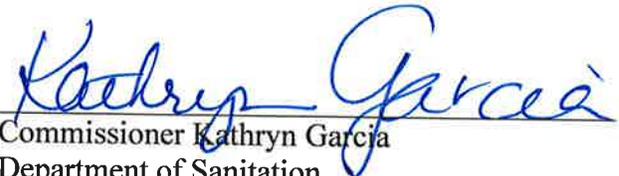
This registration denial decision is effective immediately. The Applicant shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York.

Dated: June 22, 2016

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



Daniel D. Brownell
Commissioner and Chair



Commissioner Kathryn Garcia
Department of Sanitation



Chantal Senatus, Deputy General Counsel
(Designee)
Department of Investigation



Assistant Commissioner Sandra Abeles
(Designee)
Department of Consumer Affairs



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



Inspector John Denesopolis
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New York City Police Department