



The City of New York
BUSINESS INTEGRITY COMMISSION
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION APPLICATION OF NYC TOPLINE CONSTRUCTION &
MANAGEMENT INC (BIC #491145) TO OPERATE AS A TRADE WASTE BUSINESS**

I. *Preliminary Statement*

NYC Topline Construction & Management Inc (“Topline” or the “Applicant”) (BIC #491145) has applied to the New York City Business Integrity Commission for an exemption from the 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 Title 16-A of the New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 16-505(a).

On April 20, 2017, the Commission staff issued and personally served the Applicant with a Notice to the Applicant of the Grounds to Recommend the Denial of the Registration Application of NYC Topline Construction & Management Inc to Operate as a Trade Waste Business (the “Notice of Denial”). The Applicant had 10 business days to respond. On May 2, 2017, the Applicant requested the criminal court documents relied on by the Commission staff in the Notice of Denial, and an extension of time to respond to the Notice of Denial. On May 3, 2017, the Commission staff provided the requested documents and granted a two-week extension to respond. On May 18, 2017, the Applicant requested a second extension of time to respond. The Commission granted the extension, for one week. On May 25, 2017, the Applicant filed a two-page response, which consisted of a one-page notarized – but unsworn – statement by the Applicant’s principal and a copy of the certificate of disposition that the Commission provided to the Applicant (the “Response”).

The Commission has completed its review of the registration application, having carefully considered the Notice of Denial and the Response. Based on the record as to the Applicant, the Commission denies Topline’s application because the Applicant lacks good character, honesty, and integrity based on the following two independently sufficient reasons:

- 1. The Applicant’s sole principal was convicted of falsifying business records in the second degree; and**

2. The Applicant provided false information to the Commission in the registration application.

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, 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. 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 construction and demolition debris removal sector of the City's carting industry specifically has 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, et al.*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri, et al.*, 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," commonly known as construction and demolition debris or "C&D," must apply to the Commission for an exemption from the licensing requirement. *Id.* If, after review of an application, the Commission grants the exemption, it issues the applicant a class 2 registration. *Id.* In reviewing the application, the Commission must evaluate the "good character, honesty and integrity of the applicant." *Id.* at § 16-509(a).

The Administrative Code provides the following illustrative list of relevant factors for the Commission to consider in determining whether to grant 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).

The Commission may also 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). 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 such license or registration, and the Commission is vested with broad discretion to grant or deny a license or registration application. *Sanitation & Recycling Industry, Inc.*, 107 F.3d at 995; *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*

A. *The Registration Application.*

On August 30, 2016, the Applicant applied to the Commission for a registration to operate as a trade waste business that removes construction and demolition debris. *See* Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris (the “Registration Application”). In the Registration Application, the Applicant disclosed that it had one principal, Satwant Singh, who is the President and 100% owner of the company. *See* Registration Application at p.13. Singh certified that all the information contained in the Registration Application was “full, complete and truthful.” *Id.* at p.20.

Question 26 of the Registration Application asks, “Has the applicant business, any current principal of the applicant business, or any past principal of the applicant business ever been convicted of any criminal offense in any jurisdiction?” The Applicant responded, “No.” As more fully set forth below, this response was false. Singh was convicted of a crime in 2012.

B. Singh's conviction.

On or about August 9, 2011, Singh was arrested in Queens County, New York, and charged with offering a false instrument for filing in the first degree, in violation of Penal Law § 175.35 (a class E felony); falsifying business records in the second degree, in violation of Penal Law § 175.05 (a class A misdemeanor); and offering a false instrument for filing in the second degree, in violation of Penal Law § 175.30 (a class A misdemeanor). *See* Criminal Complaint, Docket No. 2011QN043617 (the “Criminal Complaint”). Singh’s arrest came as part of a larger criminal case involving commercial vehicle operators fraudulently obtaining multiple driver’s licenses using aliases. State and federal law enforcement agencies, including U.S. Immigration and Customs Enforcement’s Homeland Security Investigations, conducted the investigation. *See* Press Release from Office of U.S. Immigration and Customs Enforcement, “*HIS participates in the arrest of commercial drivers for fraudulently obtaining licenses in New York*,” August 18, 2011; *see also*, John Valenti, “*Guv: 10 LI drivers had multiple licenses*,” *Newsday*, August 19, 2011, Garth Johnston, “*DMV catches 51 People with Amazing Fake Names*,” *Gothamist*, August 18, 2011.

The Criminal Complaint alleged that, on February 25, 2009, Singh applied for a New York State driver’s license, filing an application with the New York State Department of Motor Vehicles. *See* Criminal Complaint. That application contained a different name (“Nick Singh”), date of birth, and social security number than Singh previously used to obtain another New York State driver’s license. *See id.*

On January 3, 2012, Singh pleaded guilty in New York City Criminal Court, Queens County, to falsifying business records in the second degree, a class A misdemeanor. *See* Certificate of Disposition, Docket No. 2011QN043617 (“Certificate of Disposition”). In pleading guilty, Singh admitted that, on or about February 25, 2009, he applied for a driver’s license at the New York State Department of Motor Vehicles and indicated in the application that he had not previously obtained a driver’s license; nor had he ever had his driver’s license suspended. *See* transcript of plea, Docket No. 2011QN043617 (“Plea Transcript”), at 3. Those representations were false. Singh had a previous driver’s license – obtained under a different name – and that license had been suspended. *See id.* Singh was sentenced to a conditional discharge and ordered to pay a fine of \$500. *See* Certificate of Disposition at 4-5.

IV. Basis of Denial

1. The Applicant’s sole principal was convicted of falsifying business records in the second degree.

In refusing to issue a license or registration, the Commission may consider the applicant’s conviction for a crime which, considering the eight factors set forth in Correction Law § 753(1), would provide a basis under such law for the refusal of the license or registration. *See* Admin. Code § 16-509(a)(iii). *See also* *Arrocha v. Board of Educ. Of City of New York*, 93 N.Y.2d 361, 365 (1999) (Board “considered all eight of the factors . . . in reaching its conclusion”); *Gorelik v. New York City Dept. of Bldgs., et al.*, 128 A.D.3d 624, 625 (1st Dept. 2015) (citing *Arrocha*). Before considering those factors, however, the Commission must find that

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought . . .; or (2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

Correction Law § 752.

The Commission must also consider a certificate of relief from disabilities, if one exists, “which shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.” *Id.* at § 753(2).

The factors set forth in Correction Law § 753(1) are as follows:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment 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 or 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.
- (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 or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

As noted above, in January 2012, Singh pleaded guilty to the crime of falsifying business records in the second degree, a class A misdemeanor. Singh admitted that, on or about February 25, 2009, he applied for a driver’s license at the New York State Department of Motor Vehicles and indicated falsely in the application that he had not previously obtained a driver’s license; nor had he ever had his driver’s license suspended. *See* Plea Transcript at 3.

As Singh is the sole principal of the Applicant, his conviction is considered the Applicant's conviction. *See* Admin. Code § 16-501(a). Singh's conviction implicates the first exception to the rule that an applicant may not be denied a license or registration based on a prior conviction. *See* Correction Law § 752. There is a direct relationship between the criminal offense of which Singh was convicted and the Applicant's trade waste registration. *See id.* at § 752(1). Singh filed a false document with a government agency. As a proprietor of a trade waste business, Singh, as well as the Applicant business, is required routinely to file documents with the Commission, the agency tasked with the Applicant's regulation. The Commission's mandate is to uncover corruption within the regulated industries with the ultimate goal of the protection of customers. Providing truthful information is at the core of that mission. The Commission is also responsible for ensuring that all business records are accurate on an ongoing basis. The crime of falsifying business records relates directly to (and reflects poorly on) the Applicant's character, honesty, and integrity, the Commission's standard in determining who may be permitted to operate in the trade waste industry.

Given that Singh's conviction implicates an exception to the rule against denying a license or registration based on a prior conviction, the Commission must analyze the eight factors in Correction Law § 753 to determine whether denial of the Application is appropriate. With respect to the first factor, the Commission recognizes the importance of New York State's public policy to encourage the licensure and employment of persons previously convicted of one or more criminal offenses. *See* Correction Law § 753(a). Wherever possible, the Commission approves license or registration applications where a principal has been convicted of a crime. But, the analysis of such applications is highly fact specific. In this case, all of the other Correction Law factors weigh heavily in favor of denial of the Application.

As noted above, the specific duties and responsibilities necessarily related to the registration include proper truthful record keeping, billing, and routine business-record filings. *See* Correction Law § 753(1)(b) (the specific duties and responsibilities necessarily related to the license or employment sought). Singh has demonstrated that he cannot be trusted to perform those duties honestly. He is clearly willing to file false documents with a government agency. In light of this willingness, it is even less likely that the Applicant will feel compelled to be honest with its customers, whose business acumen may be low. *Id.* at § 753(1)(c) (bearing offense of conviction will have on fitness to perform duties). Additionally, the criminal activity occurred in 2009, less than ten years ago. *See id.* at § 753(1)(d) (time that has elapsed since occurrence of crime). *See also Levine v. N.Y.C. Taxi and Limousine Comm'n*, 136 A.D.3d 1037, 1038-39 (2d Dept. 2016) (finding that petitioner's crimes were "recent" when they occurred at least 10 years prior to the license application). There has been no separation in time between when he committed the crime and the filing of the Application. In fact, Singh perpetuated the crime by filing another false document – with the Commission, the agency with which the Applicant sought to be registered.

During the time of the criminal activity, Singh was approximately 31 years old. *See* Correction Law § 753(1)(e) (age of the offender at time of crime). Clearly, he was old enough to know what the law required, how to obey it, and to recognize that his actions were illegal. Singh cannot credibly claim that the crime occurred long ago or was attributable to youthful indiscretion.

And, falsifying business records with a government agency is a serious crime, particularly when such conduct is recurrent. *See id.* at § 753(1)(f) (seriousness of offense). Importantly, the crime of falsifying business records is a crime of dishonesty. By failing to disclose Singh's conviction on the Registration Application, the Applicant has demonstrated a pattern of providing false information to regulatory authorities: Singh has once again submitted an application bearing false information to a government entity. And, Singh certified the truthfulness of the Registration Application. Clearly, the criminal behavior that led to Singh's conviction was not an aberration.

The Applicant has not provided any information to demonstrate Singh's rehabilitation or good conduct. *See id.* at § 753(1)(g) (rehabilitation or good conduct). In the Response, the Applicant simply asserts that Singh inadvertently omitted the conviction on the Registration Application. The Applicant does not address the substance of Singh's conviction, the underlying criminal conduct, or any of the above-discussed factors. *See Response.* Further, as discussed below, the assertion that the Applicant's omission was inadvertent appears highly unlikely to be true.

Lastly, and perhaps most important to the consideration of the Application, Singh's crime directly implicates the legitimate interest of the Commission in uncovering fraud in furtherance of the protection of customers, and the trade waste industry as a whole. *See id.* at § 753(1)(h). The Commission was formed to rid the trade waste industry of corruption. By filing false documents with the Department of Motor Vehicles, Singh attempted to further his own interest, by attempting to obtain a license to which he was not legally entitled. The Applicant has provided no proof that he has been rehabilitated since he committed this crime: he does not even have a certificate of relief from disabilities. In fact, his conduct in this matter (falsifying the information on the Registration Application regarding the conviction) demonstrates that he continues to obscure the truth on official documents. Issuance of a registration to the Applicant would ignore this fact and provide an opportunity for the Applicant to deceive the Commission and the Applicant's customers in the future.

After balancing the factors set forth in Correction Law § 753, the Commission finds that Singh's recent conviction is a basis on which to deny the Registration Application. Accordingly, the Commission denies the application for this independently sufficient reason.

2. The Applicant provided false information to the Commission in the registration application.

The Commission may deny an application where the applicant has failed "to provide truthful information in connection with the application." *See Admin. Code § 16-509(a); 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). As discussed above, the Registration Application contained false information.

Although Singh himself certified the answers in the Registration Application as being true, the Applicant falsely answered that he had never been convicted of a crime. In fact, Singh was convicted of a crime in 2012. The Applicant likely sought to conceal Singh's criminal history out

of a concern that the conviction – which directly relates to the Applicant’s character, honesty, and integrity – might bar the Applicant from obtaining a registration from the Commission.

The Applicant’s blatant false statement demonstrates that neither the Applicant nor Singh possess the requisite good character, honesty, and integrity to operate in the trade waste industry. In the unsworn Response, the Applicant asserts that the false statement in the certified registration application was an inadvertent omission “with no intent to deceive.” As Singh is the sole owner and principal of the Applicant, it was his obligation to ensure that all responses were accurate. Further, his prior conviction for making false statements makes this statement in the Response difficult to credit. At best, Singh’s conduct here indicates that he does not take sworn submissions seriously. At worse, and more likely, the false statement in the Registration Application was an intentional concealment aimed at furthering his self-interest once again. Given the circumstances, the Applicant’s claims should not be given any weight. Therefore, the Commission denies the application for this independently sufficient reason.

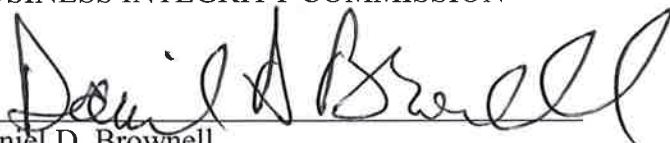
V. Conclusion

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant it determines lacks good character, honesty and integrity. The record as detailed above demonstrates that the Applicant lacks those qualities. Accordingly, the Commission denies the Registration Application for the two independently sufficient reasons set forth herein.

This decision is effective immediately. NYC Topline Construction & Management Inc may not operate as a business engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation in the City of New York.

Dated: June 27, 2017


THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



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Department of Sanitation




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