



The City of New York
BUSINESS INTEGRITY COMMISSION
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
LICENSE RENEWAL APPLICATION OF SALIKEGNE EXPRESS INC.
(BIC #4446) TO OPERATE AS A TRADE WASTE BUSINESS**

I. INTRODUCTION

Salikegne Express Inc. (“Salikegne” or the “Applicant”) (BIC #4446) has applied to the New York City Business Integrity Commission (the “Commission”) for renewal of a license to operate as a trade waste business.¹ See Title 16-A of the New York City Administrative Code (“Admin. Code”), § 16-505(a).

On May 9, 2016, the Commission’s staff issued and served the Applicant with Notice of Grounds to Recommend the Denial of the License Renewal Application of Salikegne (the “Notice”). The Applicant was given 10 business days to respond, until May 23, 2016. See 17 Rules of the City of New York (“RCNY”) § 2-08(a). On May 18, 2016, the Applicant’s attorney requested an extension of time to submit a response. The Commission granted the request and extended the time to submit a response to June 8, 2016. See May 19, 2016 letter from David Mandell, Deputy General Counsel for Regulatory Enforcement to Peter Sullivan. On June 8, 2016, the Applicant submitted a response (dated June 4, 2016), which consisted of a two-page letter from the Applicant’s attorney (the “Response”). See Response. The Commission has completed its review of the Salikegne Application, having carefully considered both the Notice and the Response. Based on the record as to the Applicant, the Commission denies Salikegne’s application because the Applicant lacks good character, honesty and integrity based on the following two independently sufficient reasons:

- 1. The Applicant has engaged in significant amounts of recyclable cardboard theft; and**
- 2. The Applicant has been found in persistent violation of city, state, or federal laws, rules or regulations regarding the handling of trade waste, and has admitted liability for persistently violating Commission rules.**

¹ “Trade waste” or “waste” is defined at Admin. Code § 16-501(f)(1).

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, *inter alia*, combating the pervasive 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 (then known as the "Trade Waste 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). It is this licensing scheme that 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 operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code § 16-505(a). Before issuing such license, the Commission must evaluate the "good character, honesty and integrity of the applicant." *Id.* at § 16-508(b). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing decision:

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). Additionally, the Commission may refuse to issue a license or registration to any applicant who has “knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for a license. Id. at § 16-509(b). The Commission may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant “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 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 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); Admin. Code § 16-116.

III. FACTS

On or about July 18, 2012, the Applicant’s principal, Mouhamadou Diallo (“Diallo”) was issued an administrative violation for removing recyclables from a commercial premises, in violation of Title 16 of the New York City Administrative Code, § 16-118(7)(c). See Notice of Violation and Hearing for Violation Number E 040363149J; see also Environmental Control Board (“ECB”) Decision and Order for Violation Number E 040363149J. On July 19, 2012, a hearing was held before ECB Administrative Law Judge (“ALJ”) Stephen Haken. See ECB Decision and Order for Violation Number 040363149J. At the hearing, “Mr. Diallo indicated that he had no defense to the violation.” See id. On July 25, 2012, ALJ Haken sustained the violation and ordered the Applicant to a pay civil penalty of \$2,000, which the Applicant paid. See id.

The Applicant then applied to the Commission for a trade waste removal license. See License Application filed on August 21, 2012 (the “Application”). The Applicant disclosed Diallo as the only principal of the business. See Application at 20. Effective December 1, 2012, the Commission granted the Applicant a trade waste license. See Licensing Order. Among other things, the Licensing Order, as agreed to by the Applicant, provided, “The Applicant shall not remove recyclable materials from commercial premises without proper authorization to remove such materials.”² See id. at

² In addition to the prohibition from removing recyclable materials without the proper authorization as described in the Licensing Order, Title 17 of the Rules of the City of New York (“RCNY”) § 1-09 also prohibits a licensee from “remov[ing], collect[ing], or dispos[ing] of trade waste from a commercial establishment with which the . . . licensee does not have a contract or agreement or other permission from the Commission to remove, collect or dispose of such commercial establishment’s trade waste.”

5. On or about December 18, 2012, Diallo signed the Licensing Order on behalf of the Applicant, thereby agreeing to its terms. See id. at 6.

Despite agreeing to the conditions in the Licensing Order, on or about March 19, 2013, Commission investigators observed Diallo and two of the Applicant's employees removing recyclable materials (cardboard) from a commercial establishment that did not authorize the Applicant to remove such recyclable materials. See March 19, 2013 Report by Investigator Thomas Frammosa. This activity was in direct violation of the Licensing Order.

On or about April 30, 2013, a Department of Sanitation Police Officer observed Diallo unlawfully remove recycled paper that was placed out for collection from a commercial premises located at 1205 Avenue M, Brooklyn, New York. See Notice of Violation and Hearing E 40583424J. As a result, Diallo was issued an administrative violation for removing recyclables from a commercial premises, in violation of Admin. Code, § 16-118(7)(c). See Notice of Violation and Hearing Number E 40583424J. On June 5, 2013, a hearing was held before ECB ALJ Joseph Dabbah. See ECB Decision and Order for Violation Number E 40583424J. At the hearing, Diallo testified "that he is unemployed and was looking to earn some money; that he met someone who rented a truck whose name he does not know (Mr. Doe); that he and Mr. Doe delivered a mattress and box spring on the violation day; and that after the delivery, Mr. Doe drove to the place of occurrence where they were loading the cited recyclables into the truck. . . . [Diallo] testified that he did not know it was illegal to remove the recyclables." See id. In the Decision and Order dated June 12, 2013, ALJ Dabbah sustained the violation and ordered Diallo to pay a \$2,000 civil penalty. See id. The \$2,000 civil penalty was paid.

On or about September 9, 2013, the Applicant was observed while it unlawfully removed recyclable paper that was placed out for collection from 189 Schermerhorn Street, in Brooklyn, New York. See Department of Sanitation Impounded Motor Vehicle & Heavy Equipment Notice.³ As a result, the Applicant, Diallo, and Diallo's brother were each served with civil violations for violating Admin. Code § 16-118(7)(b)(1) for unlawfully removing recyclable paper placed out for collection from a residential premises. See Notices of Violation and Hearing Numbers E 40555557P; E 40555558R; and E 40555559Z; see also ECB Decisions and Orders for Violation Numbers E 040555558R, E 040555557P, and E 040555559Z. On September 11, 2013, a hearing was held before ECB ALJ Judge Didi Skaff. See ECB Decisions and Orders for Violation Numbers E 040555558R, E 040555557P, and E 040555559Z. At the hearing the Applicant, the Applicant's principal, and the Applicant's employee each admitted to the violations issued against them. See id. In the September 12, 2013 Decision and Order, ALJ Skaff sustained the violations and ordered the Applicant, the Applicant's principal, and the Applicant's employee to each pay a civil penalty of \$2,000. See id. The \$6,000 in civil penalties were paid.

³ 189 Schermerhorn Street is a residential apartment building. Thus, the cardboard set out for collection from 189 Schermerhorn Street was the property of the Department of Sanitation. See Admin. Code § 16-118(7)(b)(1).

On October 2, 2014, New York City Police Department Detectives observed Diallo and two of the Applicant's employees removing recyclable materials (cardboard) from a commercial establishment without the authority of the commercial establishment to remove such recyclable materials. See Affidavit of New York City Police Department Detective Biagio Santangelo. This was the fourth time Diallo and his associates had been found engaged in activity in violation of the Licensing Order.

On November 25, 2014, the Applicant filed a Renewal Application for a License or Registration as a Trade Waste Business (the "License Renewal Application") with the Commission. See License Renewal Application.

On or about September 1, 2015, the Commission issued administrative violation number TWC-212341 against the Applicant. This violation was issued for failing to respond to a Commission Directive, which directed the Applicant to respond to a survey regarding drivers' route trip sheets and collection routes and schedules, in violation of 17 RCNY § 1-09. See Notice of Violation Number TWC-212341. On or about October 21, 2015, the Applicant settled this matter by entering into a Stipulation of Settlement with the Commission. See Stipulation of Settlement Number TWC-212341. Among other things, the Applicant admitted to the charged violation and agreed to pay a total fine of \$1,000. See Stipulation of Settlement TWC-212341.

On or about November 16, 2015, the Commission issued administrative violation number TWC-212648 against the Applicant for failing to file a customer register for the period from January 1, 2015 through June 30, 2015, in violation of 17 RCNY § 1-09 and § 5-03(g). See Notice of Violation Number TWC-212648. Then, on or about November 20, 2015, the Commission issued administrative violation number TWC-212678 against the Applicant for failing to timely file a report that includes an annual financial statement, in violation of Title 17 RCNY § 5-03(f). See Notice of Violation TWC-212678. On or about January 11, 2016, the Applicant settled both TWC-212648 and TWC-212678 by entering into a Stipulation of Settlement with the Commission. See Stipulation of Settlement Number TWC-212800.⁴ Among other things, the Applicant admitted to the charged violations and agreed to pay a total fine of \$2,000. See id.

IV. ANALYSIS

1. The Applicant Has Engaged in Significant Amounts of Recyclable Cardboard Theft.

The Commission may refuse to issue a license to an applicant who lacks "good character, honesty and integrity." Admin. Code § 16-505(a). Here, as discussed above, both New York City Police Department Detectives and Department of Sanitation Police Officers have independently observed the Applicant repeatedly engage in the illegal activity of cardboard theft. The victims of the Applicant's illegal activities included the

⁴ Stipulation of Settlement Number TWC-212800 resolved Notice of Violation Number TWC-212648 and Notice of Violation Number TWC-212678. See Affidavit of Jonathan Jacobs, Executive Agency Counsel.

Applicant's legitimate competitors, the City of New York, and the customers of the Applicant's legitimate competitors.

It should be noted that at a June 5, 2013 hearing before the ECB, Diallo testified that "he did not know it was illegal to remove the recyclables."⁵ See ECB Decision and Order for Violation Number E 40583424J. Despite his June 5, 2013 testimony, the evidence suggests that Diallo testified falsely at the June 5, 2013 hearing as this testimony came after he was cited on July 18, 2012 for committing the same violation at a different location, after he did not offer a defense for the committing this violation at a hearing that took place on July 19, 2012, and after he paid a \$2,000 civil penalty for committing the violation. Furthermore, Diallo's claim of ignorance at the June 5, 2013 ECB Hearing took place after he signed a Licensing Order on behalf of the Applicant that was issued by the Commission, thereby agreeing, among other things, that "the Applicant shall not remove recyclable materials from commercial premises without proper authorization to remove such materials." See supra at 5.

In the Response, the Applicant does not dispute the fact that ALJ Dabbah sustained the violation against Diallo for unlawfully removing recyclable paper. See Response at 1-2. Instead, in the Response, the Applicant takes issue with the suggestion that Diallo offered false testimony at the June 5, 2013 ECB hearing.⁶ A review of the entire record demonstrates that at the time of his June 5, 2013 testimony, Diallo either knew or should have known that it was illegal for him to remove recyclable paper from a commercial establishment using a vehicle that was not "licensed or registered with the Business Integrity Commission." See Notice of Violation and Hearing E 40583424J.

The Response also attempts to minimize and trivialize Diallo's persistent illegal behavior, but again, the Response does not dispute that any of Diallo's illegal behavior occurred. See Response at 2. In attempting to minimize and trivialize Diallo's persistent illegal behavior, the Response compares cardboard theft to "just a step beyond jaywalking." See id. The Response also attempts to minimize the Environmental Control Board, by describing it as simply "a ministerial revenue-generating agency, rather than a fact finder." See id. In doing so, the Response seeks to set aside the numerous observations of several Department of Sanitation Police Officers and New York City Police Department Detectives and the findings of several Environmental Control Board Administrative Law Judges. Again, the Applicant has never denied any of the facts concerning Diallo's persistent illegal behavior.

The Response also attempts to argue that the Commission should essentially overlook the Applicant's persistent illegal activity and renew the Applicant's license because it claims (without citing any evidence) that cardboard theft "has been a political thorn of significant proportions" for the Commission. See id. Simply stated, the

⁵ ALJ Dabbah's June 12, 2013 Decision and Order stated that "it is not an excuse that [Diallo] did not know it is illegal to steal recyclables using a vehicle." See Environmental Control Board Decision and Order for Violation Number E 40583424J.

⁶ We note that the suggestion that Diallo offered false testimony at the June 5, 2013 ECB hearing is not a ground for denial of this license renewal application.

Applicant's license cannot be renewed because the Applicant has demonstrated that it cannot or will not abide by the law.

Finally, the Response makes an allegation, without providing any evidence or even any specific information, that "enforcement/police officers of the Commission" compelled Diallo "to be involved in cardboard theft throughout the relevant period of time." See id. There is no evidence that anyone compelled Diallo to break the law. In fact, Diallo had several opportunities to testify under oath at ECB and offer such a defense, which he never did.

Based on the Applicant's repeated theft of recyclable materials, the Commission finds that the Applicant lacks the good character, honesty and integrity required of a licensed trade waste hauler. For this independently sufficient reason, the Commission denies Salikegne's License Renewal Application.

2. The Applicant Has Been Found in Persistent Violation of Any City, State, or Federal Law, Rule or Regulation Regarding the Handling of Trade Waste, and Has Admitted Liability for Persistently Violating Commission Rules.

The Commission may refuse to issue a license to an applicant when such applicant "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license pursuant to this chapter or any rules promulgated hereto." See Admin. Code § 16-505(c)(ii). The Commission may "revoke or suspend a license . . . when the licensee and/or its principals, employees and/or agents . . . has been found in persistent or substantial violation of any city, state, or federal law, rule or regulation regarding the handling of trade waste" See Admin. Code § 16-513(a)(vi). As discussed above, on three separate occasions, ECB ALJ's found the Applicant guilty of violating the New York City Administrative Code regarding the handling of trade waste. On two additional occasions, New York City Police Department Detectives observed the Applicant engaging in similar illegal activities. Furthermore, the Applicant has exhibited a pattern of violating the rules of the Commission. The Applicant admitted liability for several different administrative violations, all of which bear directly on the Applicant's ability to conduct business in compliance with Local Law 42 in the New York City trade waste industry.

In the Response, the Applicant actually acknowledges that "filing violations can technically be used by the Commission to deny a renewal application."⁷ See Response at 1. Yet, the Applicant argues that many Commission licensees and registrants have similar "filing violations" and "are routinely renewed by the Commission." The Applicant also argues that "the allegations are so minor that the reference to the allegations is limited to two 'template' sentences." Contrary to the claim in the Response, this second ground for denial of the Application is not based solely on two

⁷ Although the Response does not specifically state what the "filing violations" are, it appears that the Response is referring to the administrative violations issued by the Commission against the Applicant for violating the Commission's rules.

“filing violations.” Rather, it is based on the Applicant having been found to be in persistent violation of laws, rules and regulations regarding the handling of trade waste. Importantly, the Applicant’s own principal has admitted to such violations.

Thus, based on the Applicant’s persistent violations of applicable laws, rules and regulations regarding the handling of trade waste, the Commission finds that the Applicant lacks the good character, honesty and integrity required of a licensed trade waste hauler. For this independently sufficient reason, the Commission denies this License Renewal Application.

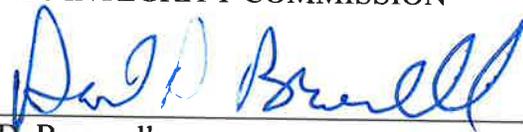
V. CONCLUSION

The Commission is vested with broad discretion to issue a license 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 Salikegne Express, Inc.’s license renewal application.

The denial is effective 14 days from the date of this denial decision. So that the Applicant’s customers can make arrangements to have their trade waste collected without an interruption in service, the Applicant is directed to continue servicing its customers for the next 14 days in accordance with existing contractual arrangements, unless advised not to do so by particular customers. The Applicant may not accept new customers during this period. After the expiration of the 14-day period, the Applicant shall no longer service any customer 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



Kathryn Garcia, Commissioner
Department of Sanitation



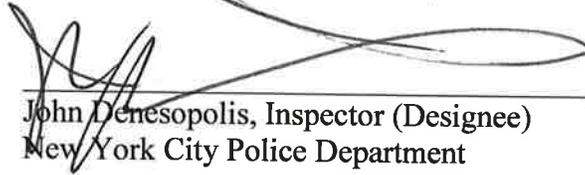
Chantal Senatus, Deputy General Counsel
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Department of Investigation



Sandra Abeles, Assistant Commissioner (Designee)
Department of Consumer Affairs



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



John Denesopolis, Inspector (Designee)
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