

1743



THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
100 CHURCH STREET, 20TH FLOOR
NEW YORK, NEW YORK 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE EXEMPTION APPLICATION OF WILLIAMSBURG HAULING INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Williamsburg Hauling Inc. (“WHI” or the “Applicant”) has applied to the New York City Business Integrity Commission, formerly the Trade Waste Commission (the “Commission”), for an exemption from licensing requirements and a registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code (“Admin. Code”), § 16-505(a). Local Law 42, which created the Commission to regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

WHI applied to the Commission for an exemption from licensing requirements and a registration enabling it to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” – a type of waste commonly known as construction and demolition debris, or “c & d.” Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such exemption applications. See id. If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

In determining whether to grant an exemption from licensing requirements and a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission’s determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code § 16-504(a) (empowering Commission to issue and establish standards for issuance, suspension and revocation of licenses and registrations); compare Title 17, Rules of the City of New York (“RCNY”) §§ 1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§ 1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code § 16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission’s investigation

and determination of an exemption application is whether the applicant has business integrity. See 17 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 § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking “good character, honesty and integrity”).

Based on the record, the Commission denies WHI’s exemption application for the following independently sufficient reasons:

1. The Applicant’s principal, Anthony Caponigro, has been convicted of three felonies involving attempted assault and weapon possession.
2. The Applicant failed to notify the Commission of the May 14, 2005 arrest of the Applicant’s principal, Anthony Caponigro, as well as his subsequent indictment and resulting conviction.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. Beginning in the late 1950’s, and until only a few years ago, the commercial carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as “a ‘black hole’ in New York City’s economic life.” Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) (“SRI”).

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anticompetitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime’s longstanding and corrupting influence over the City’s carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates and rampant customer overcharging. More generally, the Council found “that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct.” Local Law 42, § 1.

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry. The industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. All of those defendants were convicted of felonies; many were sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures were imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the c & d sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking and other sectors of the City's construction industry).

Moreover, the c & d sector of the carting industry has been a subject of significant federal prosecutions. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many c & d haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988; during that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including c & d) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: refuse was placed beneath, and hidden

by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately \$10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City's "cover" programs. The various hauling companies, from Brooklyn, Queens and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City's tipping fees. See 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.); see also United States v. Caccio, et al., Nos. 94 Cr. 357, 358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the c & d sectors of the industry. Local Law 42 recognizes this fact in requiring c & d haulers to obtain registrations from the Commission in order to operate in the City.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing of businesses that remove, collect or dispose of trade waste. See Admin. Code §16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. § 16-501(f)(1). The carting industry immediately challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, 940 F. Supp. 656 (S.D.N.Y. 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. 97 CV 0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97 CV 364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 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).

II. DISCUSSION

WHI filed an application for exemption from licensing requirements for removal of demolition debris (the "application") on July 25, 2003. The only principal disclosed by the Applicant is Anthony Caponigro ("Caponigro"). See Schedule A of the application. The Commission's staff conducted an investigation of the Applicant and its principal and, on February 21, 2006, issued an eight-page recommendation that the application be denied. The Applicant's attorney accepted service of the recommendation on behalf of the Applicant on February 21, 2006. On March 2, 2006, the attorney informed the Commission's staff that the Applicant would not be submitting a response to the recommendation. The Commission has carefully considered the staff's recommendation. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty and integrity and denies its application.

A. The Applicant's principal, Anthony Caponigro, has been convicted of the crimes of attempted assault in the first degree, criminal possession of a weapon in the second degree, and criminal possession of a weapon in the third degree.

Early in the morning on May 14, 2005, New York City police officers arrested the Applicant's principal, Anthony Caponigro, charging him with attempted murder in the second degree, assault in the second degree (intentionally causing serious injury with a weapon) and criminal possession of a weapon in the second degree (possession of a loaded firearm), all of which are armed felonies, in connection with a shooting that had just occurred outside the VIP Club, a nightclub, in the Chelsea area of Manhattan. According to press reports,¹ Caponigro was apprehended near the nightclub and a .32 caliber Smith & Wesson handgun was recovered from the floor of the silver Porsche SUV that he was driving. Caponigro reportedly had been tossed out of the VIP Club earlier in the evening and returned to take revenge for his ejection. Although the individual who was shot, Ajdar Xuhdo, was an employee of the VIP Club, apparently he was just a bystander and not the intended target of the shooting. Mr. Xuhdo was hit once in the abdomen. He was treated at a local hospital and survived.

A Manhattan grand jury subsequently indicted Caponigro on State felony charges in connection with the May 14, 2005 shooting. The five-count indictment charged Caponigro with the crimes of attempted murder in the second degree, attempted assault in the first degree, criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree and assault in the second degree.²

¹See "Bounced Gunman Shoots Strip-Club Worker," New York Post, Online Edition, May 16, 2005; and "Chelsea Shooting," Police Blotter, The Villager, Vol. 74, No. 54, May 18-24, 2005.

²See New York County Indictment No. 02855-2005.

On December 20, 2005, a trial jury found Caponigro guilty on three counts: first degree attempted assault and second and third degree weapon possession.³ He remains incarcerated pending sentencing.⁴ His sentence will include mandatory jail time since he was convicted of class C felonies.

Subject to the factors set forth in Section 753 of New York's Correction Law, criminal convictions of an applicant (or any of its principals) may be considered by the Commission in refusing to grant a license, or an exemption from the license requirement. See Admin. Code §16-509(a)(iii); see also id. §16-501(a). Those factors are:

- (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.
- (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.

Correction Law § 753 (1).

³See Certificate of Disposition. The attempted assault and second degree weapon possession crimes are class C felonies, and third degree weapon possession is a class D felony. See Penal Law §§ 110/120.10(1), 265.03(2) and 265.02(4).

⁴ Each of the C felonies carries a maximum prison sentence of 15 years, and the maximum sentence on the D felony is 7 years. See Penal Law § 70.00(2)(c) and (d).

Applying these factors, the Commission finds that, notwithstanding the public policy of the State of New York to encourage licensure of persons convicted of crimes, Anthony Caponigro should not be allowed to participate in the trade waste industry in New York City because, as a convicted violent felon, he poses a serious threat to the safety of the general public. Caponigro was 33 years old in May 2005, so his criminal behavior cannot be explained as the product of “youthful indiscretion.” The conviction is very recent and shows a blatant disregard for the law. Even though Caponigro’s criminal conduct may not be directly related to the carting industry, the history of mob control of the New York City carting industry through violence and threats of violence impels the Commission to treat violent criminal acts very seriously. Public confidence in the integrity of the carting industry would be undermined if violent criminals who are serving time in prison receive licenses or license exemptions from the Commission. Indeed, the spectacle of Caponigro managing his business from jail, or directing a nominee who would manage it on his behalf, should be avoided. Permitting him to do so would defeat the purposes of Local Law 42. The serious crimes of which Caponigro has been recently convicted reflect adversely on the Applicant’s fitness to participate in the trade waste industry and compel the conclusion that the Applicant lacks good character, honesty and integrity. Accordingly, the Commission denies the application based on this independently sufficient ground.

B. The Applicant failed to notify the Commission of the May 14, 2005 arrest of the Applicant’s principal, Anthony Caponigro, as well as his subsequent indictment, and the Applicant also failed to notify the Commission of Caponigro’s resulting conviction.

Subsequent to the submission of an application for exemption from the license requirement, an applicant has an affirmative duty to notify the Commission within ten (10) calendar days of the arrest or criminal conviction of any principal of which the applicant has or should have knowledge. See 17 RCNY § 2-05(a)(1). The Applicant failed to notify the Commission of Anthony Caponigro’s May 14, 2005 arrest. Caponigro’s subsequent indictment in the same case was the second event that the Applicant neglected to report to the Commission. A criminal indictment of an applicant’s principal is a material change in the information required to be submitted in an application and, as such, has to be reported.⁵ Not only was the indictment itself a reportable occurrence, it presented the Applicant with an occasion to mitigate its ongoing reporting delinquency by notifying the Commission about the original arrest and pending criminal charges, as well as the indictment. The Applicant failed to take advantage of the opportunity to meet any of its reporting obligations. Caponigro’s conviction was the third event in his criminal case that triggered a notification requirement. Once again, though, the Applicant failed to provide any notice to the Commission.

Failure to comply with the Commission’s notice requirements is further proof that the

⁵See 17 RCNY § 1-01 (definition of “material change”), and the instructions for exemption applications. The application instructions clearly state that the “applicant is under a continuing obligation to update answers to application questions marked with an asterisk (*).” One such question is application question 16, which asks whether there are any felony or misdemeanor charges pending against the applicant business or any principal of the applicant business in any jurisdiction.

Applicant and its principal lack good character, honesty and integrity and provides another independent basis for denying the exemption application.

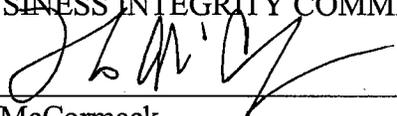
III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license, or to refuse to grant an exemption from the license requirement and issue a registration in lieu of a license, to any applicant who it determines lacks good character, honesty and integrity. The record as detailed above demonstrates conclusively that the Applicant falls far short of that standard. Accordingly, the Commission finds that WHI lacks good character, honesty and integrity and denies the Applicant's exemption application.

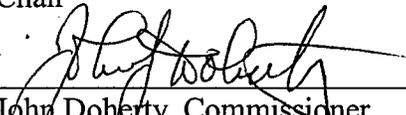
This decision is effective immediately.

Dated: March 14, 2006

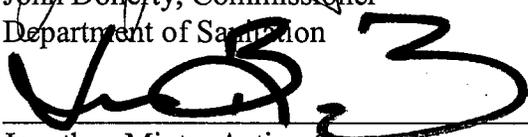
THE BUSINESS INTEGRITY COMMISSION



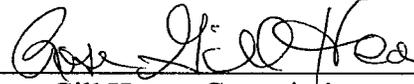
Thomas McCormack
Chair



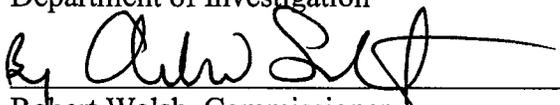
John Doherty, Commissioner
Department of Sanitation



Jonathan Mintz, Acting Commissioner
Department of Consumer Affairs



Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Small Business Services



Raymond Kelly, Commissioner
New York City Police Department