Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE REGISTRATION APPLICATION OF C.I. CONTRACTING CORP. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

C.I. Contracting Corp. ("C.I. Contracting" or the "Applicant") has applied to the New York City Business Integrity Commission (the "Commission") for an exemption from licensing requirements and a registration to operate a trade waste business pursuant to New York City Administrative Code ("Admin. Code") § 16-505(a). Specifically, C.I. Contracting seeks an exemption from the 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." *Id.*

On December 17, 2012, the Commission served C.I. Contracting Corp. with "Notice to the Applicant of Grounds to Recommend the Denial of the Registration Application of C.I. Contracting Corp. to Operate as a Trade Waste Business" ("Notice"). The Notice stated the grounds for denial of the application and notified C.I. Contracting Corp. of its opportunity to submit a written response to the Notice and/or to provide other information it would have the Commission consider in connection with its exemption application. The Notice further stated that any factual assertions in C.I. Contracting Corp.'s response were to be made under oath. Response was due within ten (10) business days from the date of the notice. The Applicant was later granted an extension of time until January 7, 2013, to respond. On January 7, 2013, the Commission received C.I. Contracting Corp.'s response which consisted of a Memorandum in Support of its Application for exemption signed by Paul Casowitz, counsel for C.I. Contracting Corp., and nine exhibits (collectively, "Response"). Notwithstanding the fact that the Response was not made under oath, as required, a copy of the Response was provided to members of the Commission for their review.

Based upon the record, the Commission now refuses to issue the requested exemption and registration for the following independent reasons:

A. **The sole principal of C.I. Contracting: 1) was a Principal of a company that was convicted of Manslaughter in the Second Degree; and 2) was convicted of violating labor law after failing to pay prevailing wages.**

B. **C.I. Contracting's sole principal entered into an Order on Consent Agreement to resolve charges brought against him by the New York State Department of Environmental Conservation.**

C. **C.I. Contracting has been unlawfully transporting trade waste without a license or registration for over a decade.**

D. C.I. Contracting failed to provide truthful information in connection with its application.

E. C.I. Contracting's sole principal's former company owes Federal and State taxes in excess of $350,000.00

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 construction and demolition debris removal sector of the City's carting industry has also been the subject of significant successful racketeering prosecutions. *See United States v. Paccione*, 949 F.2d 1183, 1186-88 (2d Cir. 1991), *cert. denied*, 505 U.S. 1220 (1992); *United States v. Cafra, et al.*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri, et al.*, No. 94 Cr. 518 (S.D.N.Y.); *United States v. Caccio, et al.*, Nos. 94 Cr. 357,358, 359, 367.

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 of 1996, 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). 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. However, the licensing scheme is not limited to a mere decision as to whether an applicant has ties to organized crime, since Local Law 42 of 1996 grants the Commission broader discretion to make a determination as to the "good character, honesty and integrity" of applicants. *See Canal Carting, Inc. v. City of New York Business Integrity Commission*, 66 A.D.3d 609, 888 N.Y.S.2d 30 (1st Dep't 2009). Thus, the licensing scheme enables the Commission to fulfill its mission by authorizing it to refuse licensure or registration to an applicant that, *inter alia*, lacks such good character, honesty and integrity. Admin. Code § 16-509(a).

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" removal, must apply to the Commission for an exemption from the licensing requirement. Admin. Code § 16-505(a). If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption

from the licensing requirement, it issues the applicant a Class 2 registration. *Id*; *see also* Title 17 RCNY § 2-03(d). Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Admin. Code § 16-508(b); *see also Matter of Attonito v. Maldonado*, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dep't 2004) (establishing the Commission's authority to review, investigate and determine applications seeking a Class 2 registration to engage in the removal of "C & D"). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing or registration decision:

> 1. failure by such applicant to provide truthful information in connection with the application;
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> 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;
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> 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;
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> 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;
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> 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;
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> 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;
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> 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.

Admin. Code § 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 private carting license (including construction and demolition) 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 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); Admin. Code § 16-504(a); New York City Charter § 2101(b)(1).

Statement of Facts

C.I. Contracting applied to the Commission for a registration on or about October 26, 2011. *See* "Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris (Class 2 Registration Application)" ("Registration Application"). C.I. Contracting states that, since it was incorporated on September 2, 1998, its

President and sole principal has been Bernardino Esposito ("Esposito"). *See* Registration Application at 13. C.I. Contracting describes its business as: "[i]nstallation of footings, foundations, sidewalks, driveways, masonry (bricks/blocks etc.) and excavation." *Id.* at 4.

As set forth below, in addition to the information disclosed on the Registration Application, the Commission has uncovered additional derogatory information which warrants denial, particularly when taken in the aggregate.

Conviction of Espo Construction, Inc. for Manslaughter in the Second Degree

The Commission's investigation of the Registration Application revealed that Esposito was formerly a principal in a construction company named Espo Construction, Inc. ("Espo"). In 1998, Espo was involved in roof and masonry repairs at Public School 131 in Borough Park, Brooklyn.[1] On January 9, 1998, a 16-year-old girl was hit outside the school by one of the bricks that prosecutors alleged was being used by Espo to secure a tarpaulin on the roof. The young girl suffered a fractured skull and tragically died several days later without regaining consciousness. A supervisor for Espo, Kevin Cunningham, pleaded guilty to a New York City Building Code misdemeanor which related to his failure to provide overhead protection at the school even after the New York City School Construction Authority notified Espo that protection from falling debris was required for the project. *See* Transcript dated September 28, 1998, *People v. Espo Construction, Inc. et al.*, Indictment No. 606/98 ("Plea Transcript").

Espo was also charged in the death of the young girl and pleaded guilty to the most serious charge that it faced - Manslaughter in the second degree - and paid a $10;000.00 fine. Esposito personally appeared before the Court on September 28, 1998 and identified himself as the Vice-President of Espo.[2] *See* Plea Transcript at 7. Espo entered a plea of guilty to the charge of Manslaughter in the second degree in the case. *Id.* at 8. Specifically, Espo Construction pleaded guilty to Count 1 of the Indictment. Accordingly, Espo pleaded guilty to the allegation that, *acting in concert with the other defendants*, it:

> ...recklessly engage[d] in conduct which caused the death of Yan Zhen Zhao, by failing to provide sidewalk shedding or to close the sidewalk in the area of construction, and by securing tarpaulins with bricks, thereby causing Yan Zhen Zhao to be hit with one of those bricks, thereby inflicting various wounds and injuries upon

[1] *See* "Builder Pleads Guilty in Death of Girl, 16", *New York Times*, September 29, 1998. The published news account identified Bernardino Esposito as a vice president of the company. The NYS Department of State Division of Corporations Entity Information on-line database identifies Bernardino Esposito as the "Chairman or Chief Executive Officer" of Espo Construction, Inc. At his deposition before the Commission, Esposito could not identify his exact title with the company, but acknowledged that he was a principal. *See* transcript of October 26, 2012, deposition of Bernardino Esposito ("Esposito Dep.") at 6-7.

[2] Bernadino Esposito's brother, Anthony, also appeared before the Court on September 28, 1998. Anthony identified himself as Espo's treasurer. When asked by the Court who the president of Espo was, Bernadino Esposito stated that his father was the president, but that he and his brother "had taken over," and were "the two highest ranking officials running [Espo]." *See* Plea Transcript at 8.

> Yan Zhen Zhao, and thereafter on or about January 14, 1998, Yan Zhen Zhao died of the wounds and injuries.

See Indictment, *People v. Espo Construction, Inc. et al.*, Indictment No. 606/98 at 2.

When questioned about the incident by Commission background investigators, Esposito responded in writing in a letter dated January 18, 2012. In the letter, he acknowledged that he was a shareholder in Espo Construction, Inc. at the time of the victim's death, and that the events leading to the victim's death occurred at the site of a school construction job being performed by Espo Construction, Inc. as a General Contractor.[3] In his letter, Esposito claimed that "severe winds caused a brick to fall from the roof" which hit the victim. Esposito further stated that "[t]he Contractors were held responsible for the unfortunate accident. The subcontractor, my brother and I were arrested on March 17, 1998, and charged with manslaughter and other charges related to this incident. *None of the manslaughter or related Penal Law charges were (sic) proven.*" *See* Letter dated January 12, 2012 (emphasis added). Because this statement was clearly at odds with newspaper accounts of the incident which reported that Espo was convicted upon a guilty plea to manslaughter charges, Esposito was asked for additional information. In response, Esposito first claimed that he was not certain of the disposition of the homicide charges that were brought against Espo, then later conceded that Espo had pleaded guilty to Manslaughter in the Second Degree (a class C felony). Esposito belatedly provided a "Certificate of Disposition Indictment" from Kings County Supreme Court dated September 28, 1998.

Because the applicant's initial representation in his January 18, 2012 letter to the Commission was clearly false, C.I. Construction entered into a stipulation of settlement in lieu of notice of hearing and violation, in which it pleaded guilty to failing to list the conviction and paid a fine of $2,500.00.

Criminal Conviction of Esposito for Failing to Pay Prevailing Wages

On March 17, 1998, Esposito was arrested and charged in New York State Supreme Court, Kings County with: Grand larceny in the second degree, Penal Law § 155.40, a class C felony; Failure to pay prevailing wages, Labor Law § 220(3), an unclassified misdemeanor; 29 counts of Offering a false instrument for filing in the second degree, Penal Law § 175.30, class A misdemeanors; 27 counts of Falsifying business records in the first degree, Penal Law § 175.10, class E felonies; 27 counts of Making an apparently sworn false statement in the first degree, Penal Law § 210.40, class E felonies; and a New York City Building Code unclassified misdemeanor. *See* New York State Criminal History report for Bernardino Esposito; *see also* Indictment, *People v. Espo Construction, Inc. et al.* at 2. These charges arose from Esposito's failure to pay employees the prevailing wages required by the New York State Labor Law for a public works project. Notably, the public works project at issue was the project at the school where the injuries that lead to the 16 year-old girl's death occurred. Esposito Dep. at 20. Counts

[3] Esposito's written statement incorrectly identified the location of the incident, stating that it occurred in Queens County. The statement also incorrectly identified the date of the incident.

6, and 8 through 88 alleged that Esposito and others submitted certified payroll records to the School Construction Authority that contained false statements. *See* Indictment, *People v. Espo Construction, Inc. et al.*, Indictment No. 606/98 at 3-25. Simply stated, Esposito was alleged to have billed the School Construction Authority at prevailing wage, paid employees less than prevailing wage, and kept the difference.

On January 19, 1999, Esposito pleaded guilty to a violation of Labor Law § 220(3), an unclassified misdemeanor. Esposito was sentenced to pay a fine of $500.00, perform 70 hours of community service, and pay $65,182.00 in restitution to employees. *See* New York State Criminal History report for Bernardino Esposito. Unlike the manslaughter conviction described above, Esposito did disclose this conviction in his Registration Application. *See* Registration Application at 5.

Failure to Pay Prevailing Wages/U.S. Department of Labor Investigation

On or about March 30, 2011, the Wage and Hour Division of the U.S. Department of Labor ("USDOL") commenced an investigation that related to C.I. Contracting's work on a federally funded project from October 10, 2010 to September 23, 2011. USDOL found that C.I. Contracting committed the following Federal Davis-Bacon and Related Acts ("DBRA") violations: Failure to pay prevailing wage rates to employees (5 violations); Misrepresenting or falsifying certified payroll vs. actual pay practices (1 violation); and Failure to properly pay Health and Welfare (Fringe Benefits) to employees (7 violations). *See* USDOL Wage and Hour Investigative Support and Reporting Database (WHISARD) Compliance Action Report, dated October 20, 2012. On or about September 28, 2011, Esposito entered into a "Back Wage Compliance and Payment Agreement" with USDOL in which C.I. Contracting agreed to pay its employees unpaid DBRA wages in the amount of $6,681.68 in accordance with the USDOL investigation findings.

Bernardino Esposito's 2011 Order on Consent with the New York State Department of Environmental Conservation

In addition to being a principal of C.I. Contracting, Esposito also serves as a principal of D & D Bowne St. Realty Corp. In September 2006, the New York State Department of Environmental Conservation ("DEC") commenced an action against a number of respondents, including D & D Bowne St. Realty Corp., and Esposito, personally and as corporate officer of D & D Bowne St. Realty Corp. *See* DEC Complaint dated September 13, 2006 ("DEC Complaint"). D & D Bowne St. Realty Corp. has owned a waterfront parcel of land located at 435 Hunter Avenue, Bronx, NY 10464, since November 30, 2004. The property abuts, and a portion of the site extends into, the Long Island Sound, and it is mapped as a tidal wetland in the official tidal wetlands maps of the DEC. *Id.* at 2.

D & D Bowne St. Realty Corp. apparently purchased the site with the intention to build a seafood restaurant. *See* DEC Ruling, dated November 10, 2009 at 2; *see also* Esposito Dep. at 80. D & D Bowne St. Realty Corp. initially applied for DEC permits through its consultant to

build the restaurant at the site in January 2005. *See* DEC Complaint at 2; *see* also Esposito Dep. at 108. However, prior to the issuance of any permits by the DEC, the respondents were alleged to have engaged in a number of different activities at the site which required a DEC permit pursuant to Article 25 of the Environmental Conservation Law ("ECL") and DEC rules. The DEC Complaint alleges that the respondents engaged in the following unlawful activities in violation of ECL § 25-0401 and 6 NYCRR § 661.8:

- On or before March 28, 2006, on multiple occasions, the respondents (a) placed fill, including construction and demolition debris on the site, and (b) excavated and regraded at the site;
- Between March 28, 2006 and May 4, 2006, on multiple occasions, the respondents (a) placed ***additional*** fill, including construction and demolition debris on the site, and (b) engaged in ***continued*** excavation and regrading at the site; and
- On or before September 1, 2006, on multiple occasions, the respondents serviced and/or stored commercial equipment and machinery, including but not limited to a crane, a steel truss, a combustion engine and beams.

See DEC Complaint at 3. When asked about these serious charges at his deposition, Esposito first claimed that the prior owners of the site, and not him, had left construction and demolition debris on the property when he bought it in 2004. Esposito Dep. at 107. Notably, Esposito could not recall the name of the previous owner, or whether he had raised the issue of debris on the property with previous owner. *Id.* at 106-107. Esposito then claimed that a marine company that had been subleasing the property from him was responsible for the presence of a crane and pilings. Here again, although he testified that the company had occupied the property for more than two years, Esposito could not remember the name of the marine company that leased the property, nor could he remember the time period when it was leased. Esposito Dep. at 98-100.

Neither of Esposito's proffered explanations is credible. First, with respect to his claim that the debris was left by the previous owner in 2004, such claim is undermined by the photographs of the site provided to the Commission by DEC. Those photographs, taken in 2006, two years after Esposito acquired the property, show fairly substantial piles containing concrete rubble, metal, brick, wood, dirt, rocks, and plastic tubing. However, the piles in the photographs appear to have been placed on the site recently because they are devoid of any observable residual plant matter in and around the construction and demolition debris.[4] One of the

[4] Common sense dictates that had debris been placed on property sometime in or before 2004 (as asserted by Esposito), the photographs taken two years later would have shown plant growth on the debris. They do not. Rather, the photographs taken on March 28, 2006 and May 4, 2006, show plant matter elsewhere on the property, but not on the unlawfully placed construction and demolition debris. The reasonable conclusion is that such debris was not placed there by the previous owner in 2004 as Esposito claims, but was placed there near the time the photographs were taken. Indeed, in photographs taken in September 2006, extensive plant growth on the same debris is now evident. It stands to reason, therefore, that if this debris developed plant growth when left on site for four months, the clean faced debris in the earlier photographs could not be two years old. In its Response, the applicant argues that growth of foliage between March and September is expected, and does not support the conclusion that the debris was placed on the property in March. *See* Response at 14. While some growth over

photographs also reveals the presence of a dump truck belonging to a construction and demolition debris removal company.[5] The photograph also reveals the presence of construction equipment, such as a back hoe and crane, suggesting that, despite Esposito's strained excuses, construction activity was taking place on the site without the required permits.[6] This utterly undermines Esposito's claim that the debris was placed on the site by the previous owner. Even if the Commission were to credit Esposito's account (which it does not), or if it were to credit Esposito's claim that one of his tenants placed the materials on the property, it still remains that Esposito *knowingly allowed* construction and demolition debris to remain on his property, a tidal wetland, for several years in violation of the Environmental Conservation Law.

Notwithstanding his protestations of innocence, on or about October 28, 2011, Bernardino Esposito entered into an Order on Consent with the DEC to resolve charges alleging violations of the NYS Environmental Conservation Law and DEC rules by Esposito and others. *See* DEC Order on Consent. The terms of the DEC Order on Consent required the respondents to pay a civil penalty of $50,000.00. The order also required the respondents to remove all equipment from the regulated tidal wetland adjacent area on the site by December 4, 2011, and to remove and lawfully dispose of all unauthorized materials (including, but not limited to, concrete rubble, asphalt, and brick) from the regulated tidal wetland and tidal wetland adjacent area on the site by December 19, 2011. Finally, the order required the respondents to enter a notice covenant in the property records maintained by the Bronx City Register acknowledging DEC jurisdiction over the tidal wetlands area on the property, and informing persons that conducting a regulated activity on such area requires a DEC permit. *See* DEC Order on Consent at 6; 10-11.

C.I. Contracting Corp.'s Persistent Unauthorized Hauling of Construction and Demolition Debris

Although C.I Contracting was incorporated in 1998, C.I. Contracting did not apply to the Commission until 2011 for a registration to haul trade waste. In fact, even after it was issued a violation for the hauling of trade waste without a license or registration in violation of Admin. Code § 16-505(a) on June 27, 2007, C.I. Contracting still did not apply to the Commission until 2011.[7]

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summer months could be expected, if the Applicant's explanation that the debris was placed there in 2004 was truthful, the photographs in March 2006 would certainly show *some* accumulation of some debris over 2 years. It does not. Rather, the photographs taken by DEC (who, after conducting such surveillance commenced the action against Esposito) show, *inter alia*, concrete that has no plant growth, no significant dirt or foliage residue, and no visible indication that it has been there for the 2 years claimed.

[5] The dump truck bears the logo, "DMP Contracting Corp." The President of DMP Contracting Corp. is Daniel Pirraglia. Both DMP Contracting and Daniel Pirraglia are also named as respondents in the DEC action. Pirraglia is also a corporate officer (president) of D & D Bowne St. Realty Corp, Esposito's company. Despite the fact that his business partner's dump truck was on the site, that the site was littered with debris, and that Esposito and Pirraglia entered into a consent agreement to resolve the action, Esposito still disclaims any responsibility whatsoever.

[6] In its Response, the Applicant does nothing to explain the presence of construction equipment at a location where construction and demolition activities had not yet been approved.

[7] On July 28, 2007, C.I. Contracting pleaded guilty to this violation and paid a $2,500.00 fine.

Evidence obtained by the Commission indicates that C.I. Contracting has been flouting the law for years by operating without the required registration. As part of its investigation, the Commission obtained a listing of work permits issued by the NYC Department of Buildings and NYC Department of Transportation to C.I. Contracting for various construction projects within New York City within the last two years. The Commission then served the applicant a *subpoena duces tecum* with these permits attached as a "rider", compelling the production of:

> any and all documents, records, books, accounts and/or papers relating to the collection, removal and/or disposal of trade waste in connection with work performed pursuant to each permit set forth in the attached "RIDER", including, but not limited to: contracts, invoices, payment records, accounting records, financial records, "dump" tickets, etc.

See subpoena duces tecum.

In response to this *subpoena duces tecum*, C.I. Contracting provided the Commission with 18 separate dump tickets[8] issued to C.I. Contracting from three authorized transfer stations. These dump tickets establish that C.I. Contracting removed, transported and dumped 18 loads of construction and demolition debris from the job sites within New York City on various dates between July 12, 2010 and August 10, 2011. Indeed, at his deposition, Esposito confirmed that for each of the jobs in question, C.I. Contracting had removed and disposed of such loads of construction and demolition debris. Esposito Dep. at 126-132. There is no dispute that in these instances, C.I. Construction transported trade waste without a registration issued by the Commission in violation of Admin. Code § 16-505(a).

Esposito's deposition testimony further makes clear that the unlawful transport of trade waste materials was not an isolated occurrence. Rather, Esposito testified that C.I. Contracting regularly hauls construction and demolition debris from New York City jobsites without the required Commission registration:

> Q. All right. And with respect to this construction and demolition debris, do you generally haul it yourself?
> A. Yes.
> Q. Generally. So, you do haul construction and demolition debris from the jobs that you do in New York City, Westchester and Rockland?
> A. Yes.

Esposito Dep. at 43.

[8] Dump tickets are records issued by authorized transfer stations and recycling centers to document the amount of waste dumped by haulers of trade waste.

> Q. If you can give me in terms of a year, when did you start hauling construction and demolition debris yourself as a company rather than use other haulers?
> A. We did both from the beginning.

Esposito Dep. at 45.

> Q. When that construction and demolition debris is generated is it fair to say that C.I. Contracting corporation hauls that C and D with regularity?
> A. Yes.
> Q. And it's fair to say that C and D is hauled with regularity whether the jobs take place in New York City or outside of New York City; is that correct?
> A. Yes.

Esposito Dep. at 134-135.

C.I. Contracting has a history of unlicensed activity that extends beyond its failure to obtain a registration from the Commission. The NYC Department of Consumer Affairs ("DCA") seized two vehicles owned and operated by C.I. Contracting Corp., on two separate occasions, in May 2004 and June 2006, because C.I. Contracting was engaged in home improvement contracting without a license issued by DCA in violation of Admin. Code § 20-387. C.I. Contracting pleaded guilty to both violations.

C.I. Contracting's Material Misstatements or Omissions to the Commission

C.I. Contracting's most glaring misstatement to the Commission was made when Esposito told the Commission, in writing, that the criminal charges against his former company relating to the death of a young girl had not been "proven." Despite Esposito's apparent efforts to conceal it, the Commission discovered that Esposito's company had, in fact, pleaded guilty to Manslaughter in the Second Degree.

This was not C.I. Contracting's only misstatement to the Commission. As set forth above, Esposito, the sole principal for C.I. Contracting, was the subject of administrative charges brought by the DEC. However, C.I. Contracting failed to disclose this matter to the Commission in its application. Nor did C.I. Contracting disclose in its application that it had been the subject of an investigation by the U.S. Department of Labor. Nor did C.I. Contracting disclose that it shares office space with numerous other corporate entities, all of which is required in the Registration Application.

First, with respect to the DEC charges, Question 29 of the Registration Application reads, as follows:

> [a]re there any administrative charges brought by a municipal, state or federal agency, relating to the conduct of a business that removes or recycles trade waste, a trade waste broker business or the operation of a dump, landfill or transfer station, presently pending against the applicant business or any current or past principal of the applicant business where the applicant business or any current or past principal of the applicant business faces the possible sanction of suspension or revocation of any license, permit or registration or where a fine of $5,000 or more, or an injunction of six (6) months or more could be imposed?

See C.I. Contracting Registration Application at 7.

Despite the fact that Esposito *was* the subject of such pending administrative charges, C.I. Contracting answered this question by checking the box labeled "no." Such response was a false statement. The DEC charges were pending at the time C.I. contracting filed its application with the Commission on October 26, 2011.[9] *See* DEC Order on Consent at 4. The DEC charges "relat[e] to the conduct of a business that removes or recycles trade waste" since Esposito's co-respondent, DMP Contracting Corp., was registered with the Commission as a company that may engage in the removal of trade waste materials resulting from building demolition, construction, alteration or excavation. Finally, New York State Environmental Conservation Law § 71-2503 authorizes the imposition of a civil penalty of up to ten thousand dollars ($10,000.00) per day for each violation brought as well as injunctive relief. *See* DEC Order on Consent at 5. This charge should have been disclosed in response to Question 29. At his deposition, even Esposito did not dispute that his response to question 29 was false. Rather, Esposito simply claimed that his failure to disclose the pending DEC administrative charges in response to this question was a mistake. Esposito Dep. at 114.

Second, with respect to the U.S. Department of Labor investigation, Question 31(c) of the Registration Application reads as follows: "[d]uring the past ten (10) years, has the applicant business or any current or past principal of the applicant business: been the subject or target of any investigation regarding an alleged violation of any other federal, state or local statute?" Despite the fact that C.I. Contracting was the subject of an investigation regarding an alleged violation of various wage provisions of Federal law, C.I. Contracting answered this question by checking the box labeled "no." Although Esposito belatedly informed the Commission of such investigation, the information provided to the Commission on C.I. Contracting's application was a false statement, as admitted by Esposito:

[9]As per the discussion above, the DEC charges were filed in September 2006, and resolved by Order dated November 4, 2011, *after* the submission of C.I.'s application.

> Q. Why did you not disclose the U.S. Department of Labor investigation of C.I. Contracting Corp. in response to this question?
> A. No reason. I just -- slipped my mind. I don't know.
> Q. So your answer is it slipped your mind?
> A. (Nodding affirmatively.)
> Q. But you agree that that question is not accurately answered?
> A. Looking at it now, no.

Esposito Dep. at 120-121.

Finally, with respect to C.I.'s failure to disclose shared office space, Question 11 of the Registration Application reads as follows: "[d]oes the applicant business share any office space, staff or equipment (including, but not limited to, telephone lines) with any other business or organization?" While C.I. Contracting did disclose one company with whom it shares office space, C.I. Contracting failed to disclose four additional companies in response to this question.

For his deposition before the Commission, Esposito completed a questionnaire. This questionnaire asked for a listing of Esposito's non-trade waste business interests currently or within the past 10 years. In contrast to the Registration Application, in the questionnaire, Esposito identified three additional active companies that all shared the mailing address of C.I. Contracting – 459 City Island Avenue, Bronx, New York. The companies are: 459 Realty Corp.; 503 City Island Corp.; and D & D Bowne Street Realty Corp. Esposito further indicated in the questionnaire that such companies were in existence at the time that C.I. Contracting filed its Registration Application.[10] *See* Deposition Questionnaire of Bernardino Esposito, dated October 28, 2012, at 11 and subsequent attachment. When questioned at his deposition before the Commission as to why he did not disclose these companies in response to Question 11 of the Registration Application, Esposito conceded that they should have been listed in the Registration Application. Esposito Dep. at 72-73. During his deposition before the Commission, Esposito also admitted that C.I. Contracting shares office space at 459 City Island Avenue, Bronx, New York with DMP Contracting Corp. (i.e., one of Esposito's co-respondents in the administrative proceeding brought by DEC described more fully *supra.*). Esposito Dep. at 71.[11]

Espo Construction, Inc.'s Outstanding Federal Tax Liens and New York State Tax Warrants

Espo Construction, Inc. (Mr. Esposito's former company) currently owes a total of $368,022.50 in taxes. Specifically, Espo Construction has three outstanding federal tax liens for tax debts currently owed to the U.S. Internal Revenue Service totaling $314,612.16 according to

[10] All of these companies are listed as "active" on the NYS Department of State ("DOS") Corporation & Business Entity Database. Further, all of these companies list 459 City Island Avenue, Bronx, New York as their address for DOS Process and/or its Chairman or Executive Officer and/or its Principal Executive Office.
[11] DMP Contracting Corp. is also listed as "active" on the NYS DOS Corporation & Business Entity Database and lists 459 City Island Avenue, Bronx, New York as its address for DOS Process and its Chairman or Executive Officer.

Accurint® and Westlaw® public record searches.[12] Additionally, six New York State Tax Warrants totaling $53,410.34 were docketed against Espo Construction, Inc. Such warrants, as set forth below, remain outstanding and unsatisfied:

No.	New York State Tax Warrant ID#	Docket Date	Docket Amount
1	E-009898685-W002-6	August 11, 1998	$23,238.89
2	E-009898685-W008-3	August 26, 1999	$ 7,596.31
3	E-016077161-W001-6	October 4, 1999	$17,930.17
4	E-009898685-W016-9	August 21, 2000	$ 2,716.83
5	E009898685-W018-8	January 18, 2001	$ 100.00
6	E-016077161-W006-8	February 6, 2002	$ 1,828.14

Notably, the current entity status of Espo Construction, Inc. with the NYS Department of State Division of Corporations is "INACTIVE - Dissolution by Proclamation/Annulment of Authority (Dec 27, 2000)". New York State corporations that have been delinquent in filing returns or paying taxes or fees for two consecutive years are subject to dissolution by proclamation by the New York Secretary of State. *See* New York State Tax Law § 203-a.

Basis for Denial

As described above, there is significant derogatory information (some of which the applicant failed to disclose) that warrants denial. Specifically, the applicant's prior company was convicted of manslaughter, the applicant was convicted for a criminal labor law violation, the applicant was found to have violated the DBRA by failing to pay prevailing wages, the applicant was the subject of DEC charges, and the applicant's prior company owes Federal and State taxes in excess of $350,000.00. Any one of these indiscretions might independently serve as the basis of a denial. Taken together, the fact that the applicant has apparently been unlawfully transporting trade waste for years and has made misstatements or omissions to the Commission, draws a glaring picture of an applicant who lacks the requisite good character, honesty and integrity.

A. C.I. Contracting's sole principal was: 1) the Principal of a Company that was convicted of Manslaughter in the Second Degree; and 2) convicted of violating labor law after failing to pay prevailing wages.

Admin. Code § 16-509(a)(iii) expressly permits the Commission to consider the conviction of an applicant for a crime which, considering the factors set forth in Correction Law § 753, would provide a basis under such law for the refusal of such license or registration. Upon consideration of the factors in such law, the balance falls in favor of the denial of the Registration Application of C.I. Contracting. The factors to be considered are as follows:

[12] The lien amounts and filing dates are as follows: (1) $15,028.01 filed on February 20, 1998; (2) $83,823.15 filed on April 2, 1998; and (3) $215,761.00 filed on May 31, 1999.

> (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.

See Correction Law § 753.

As set forth below, after applying the Correction Law analysis, the Commission has concluded that the criminal conviction of the company which Esposito had formerly been a principal of, as well as Esposito's own criminal conviction, provide a basis for denial.

First, in 1998, Espo Construction, Inc. (Esposito's prior company) was indicted and convicted of Manslaughter in the second degree under Penal Law § 125.15(1), a class C Felony. The manslaughter conviction related to the death of a 16 year-old girl who was killed by a brick which fell from a construction site where Espo Construction was working. Because Espo Construction apparently failed to secure the site in a safe manner, leading to the girl's tragic death, Espo Construction pleaded guilty to "recklessly caus[ing] the death of another person."

If granted, the Registration Application would authorize C.I. Contracting (led by the same person who was a principal of Espo Construction) to engage in construction and demolition debris removal. The previous manslaughter conviction relates directly to this duty, and the related obligation to conduct construction-related activities in a manner which does not

jeopardize the safety of the public. The fact that Esposito was a principal in a closely held company that has a conviction for failing to adhere to such a standard is compelling.[13]

Although Espo Contracting, Inc. was convicted of this serious crime 14 years ago, the passage of time alone does not warrant the approval of the application. Indeed, the inference can be drawn that the applicant's 13-year delay in seeking the required registration from the Commission was based on a desire to "wait out" this serious criminal conviction. Such behavior should not be rewarded by the Commission. Moreover, it is of great concern that while biding time until the conviction had aged, Esposito engaged in the unlicensed transportation of trade waste in flagrant violation of the law. In sum, the record is devoid of any indication that the Applicant is going to behave differently going forward or, for that matter, is in any way rehabilitated.[14] Esposito was 34-years old at the time of his prior company's indictment on homicide charges. Accordingly, it cannot be maintained that such charges were attributable to youthful indiscretion. *See* Correction Law § 753(1)(e). The Commission has a legitimate interest in preventing an unreasonable risk to property or to the safety or welfare of the general public and the denial of the Registration Application herein directly furthers that interest. *See* Correction Law § 753(1)(h).

In its response, the Applicant first argues that because the manslaughter conviction was against Espo (Esposito's former company), and not C.I. Contracting or Esposito himself, it is not attributable to Esposito and should not be considered by the Commission. The Commission finds that this argument is form over substance. While Esposito was not convicted of manslaughter in his individual capacity, it is entirely appropriate that the Commission should consider this serious conviction of a corporation previously owned and operated by the Applicant and his brother. Esposito had significant control over Espo as one of its two principals, and had responsibility to ensure that Espo performed its work safely and within the bounds of law. C.I. Contracting's suggestion that Espo's conviction essentially should have no bearing on its Registration Application is specious.

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[13] Penal Law § 15.05(3) defines the term "recklessly" as follows: "[a] person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto."

[14] It is also notable that no certificates of relief from disability or certificates of good conduct have been provided to the Commission. Rather, as evidenced by the applicant's letter to the Commission dated January 18, 2012, the record reveals that Esposito has not accepted responsibility for the homicide. In that letter, Esposito states that, despite Espo's plea: "[n]one of the manslaughter or related Penal Law charges were proven." This statement follows his assertion in the letter that the Contractors (i.e., Espo) "were held responsible for the unfortunate accident", and his further assertion in the letter that both he and his brother, the co-principals of Espo, were charged with manslaughter. Yet, despite Espo's conviction, Esposito maintains that no manslaughter charges were proven. Moreover, Esposito executed a stipulation of settlement with the Commission in which it was affirmatively stated that C.I. Contracting failed to properly list the corporate conviction in the case. The Commission deems that Esposito's letter lacks candor with respect to the fact that Espo was convicted of manslaughter.

The Applicant also argues that the liability of his former company is "entirely derivative" of the conduct of its employee, Kevin Cunningham. *See* Response at 4. Such argument is likewise unpersuasive and unsupported by the record. Esposito, himself, as vice-president of his former company, Espo, agreed to a plea wherein he admitted the charge that Espo *acted in concert* with Kevin Cunningham, when it "...recklessly engage[d] in conduct which caused the death of Yan Zhen Zhao, by failing to provide sidewalk shedding or to close the sidewalk in the area of construction, and by securing tarpaulins with bricks," causing the death of a young girl. *See*, supra at 5. The Applicant's argument that Cunningham (and not Espo) was the primary culpable party ignores not only Espo's plea, but ignores the fact that Cunningham was found guilty only of violating NYC Building Code § 27-1021(a)(5) in failing to erect a sidewalk shed. *See* Plea Transcript at 9-12. In fact, the only defendant to enter a plea of guilty to a manslaughter charge was Espo demonstrating conclusively that it was Espo that clearly bore the brunt of criminal liability for the death of the victim.

Finally, C.I. Contracting argues that the Commission should essentially ignore this serious conviction because it has not had any "*material* safety violations" from city agencies in the past 14 years. *See* C.I. Contracting's Response at 12 (emphasis added). The Applicant's counsel's careful drafting is not lost on the Commission. Counsel did not go so far as to say that the Applicant has *no* safety violations, because such statement would be untrue. Indeed, in an effort to adequately address the Applicant's Response, the Commission has now obtained information regarding violations issued by other City agencies to the Applicant. On or about January 9, 2004, C.I. Contracting was cited by the NYC Department of Buildings ("DOB") for violating NYC Building Code § 27-1009(a) for failure to provide mandated guardrails at a jobsite. According to DOB records, inspectors observed men working, including unloading steel, where there were no guardrails on stairwell openings and other open areas from the first to the fifth floor. DOB listed the violation severity/aggravation level of this violation as "hazardous". Violations that have been marked hazardous are not eligible for stipulated settlement and are also not eligible for imposition of a mitigated penalty. *See* 48 RCNY § 3-103.[15] Given Espo's criminal conviction resulting from the failure to erect a sidewalk shed, this almost identical violation by Esposito's subsequent company is remarkable although fortunately no one was injured or killed in the 2004 instance. Additionally, C.I. Contracting has been issued eight ECB Notices of Violation by the NYC Department of Transportation ("DOT"), all of which resulted in C.I. Contracting paying a fine. The violations include: Failure to comply with DOT standard specifications (two counts); Failure to comply with the terms and conditions of DOT permits; Street closing without permit (two counts); Construction materials/equipment store, on street without permit; use/opening of street without permit; and Crossing sidewalk with a motorized vehicle without permit. The Applicant's carefully worded argument that "it is reasonable to infer that the Applicant's violation history was reviewed and showed no [ ] violations" is disingenuous. C.I. Contracting does not have an unblemished record of safety,

[15] DOB issued three additional ECB Notices of Violations to C.I. Contracting for violations which DOB ultimately deemed "cured". The violation descriptions and dates of issuance are as follows: Work Does Not Conform to Approved Construction Documents/Amendments – May 13, 2010; Failure to Provide Approved Plans at Premises at Time of Inspection – October 20, 2003; and Work without a Permit – October 20, 2003.

despite its assertions to the contrary, and its violations have the potential to jeopardize the safety of the public.

The reckless death of a 16-year old caused by a company under the control of Esposito is not the only criminal conviction attributable to the applicant. In 1999, Esposito pleaded guilty to a violation of Labor Law § 220(3), an unclassified misdemeanor, relating to allegations that he (as a principal of his former company) failed to pay prevailing wages. *See supra* at 5-6. Remarkably, in 2011, Esposito was the subject of a further prevailing wage investigation, which resulted in a finding by the USDOL that C.I. Contracting committed the following Davis-Bacon and Related Acts ("DBRA") violations: Failure to pay prevailing wage rates to employees (5 violations); Misrepresenting or falsifying certified payroll vs. actual pay practices (1 violation); and Failure to properly pay Health and Welfare (Fringe Benefits) to employees (7 violations). *See* USDOL Wage and Hour Investigative Support and Reporting Database (WHISARD) Compliance Action Report at 2. If the instant Application was granted, Esposito would have the specific duty and responsibility of ensuring that wages are properly paid to employees and that necessary governmental forms are completed honestly and truthfully in accordance with applicable law. Esposito has shown his failings in this regard, not once, but twice.[16] Thus, the specific duties and responsibilities held by Esposito militate against approval of the Registration Application. *See* Correction Law § 753(1)(b). Similarly, Esposito's conviction bears heavily on his fitness and ability to properly perform payroll duties and responsibilities in accordance with the law. His conviction also lends itself to a determination that Esposito markedly lacks good character, honesty and integrity when it comes to his business dealings in general. *See* Correction Law § 753(1)(c). Further, while 13 years have elapsed since Esposito's conviction under Labor Law § 220(3), this time period cannot be viewed as remote, particularly because Esposito demonstrated recidivism during this time period by failing to properly pay prevailing wages under the DBRA. *See* Correction Law § 753(1)(d). Also, Esposito was 34-years old at the time of his arrest on the multiple charges relating to failure to pay prevailing wage. Accordingly, it cannot be maintained that such charges were attributable to youthful indiscretion. *See* Correction Law § 753(1)(e). Even the sentence itself indicates the seriousness of the offense as Esposito was required, *inter alia*, to pay $65,182.00 in restitution to his employees. The amount of money that Esposito failed to pay his employees is not inconsequential. While Esposito was permitted to plead guilty to a misdemeanor, it should be noted that Labor Law § 220(d)(i)(2) provides that any contractor or subcontractor that participates in a public works project and willfully fails to pay or provide the prevailing rate of wage or supplements in an aggregate amount greater than $25,000.00 to all workers employed shall be guilty of a class E felony, undisputedly, a serious offense. Here, not only is the record devoid of any information related to the applicant's rehabilitation, but the fact that he was a recidivist in 2011 demonstrates that no such rehabilitation occurred. Upon balancing the facts set forth in Correction Law § 753,

[16] At his deposition, Esposito was asked how his company could twice violate legal prevailing wage mandates. Esposito simply stated that, on this second occasion, the failure to pay prevailing wages was not "intentional", but was a mistake on his part. Esposito Dep. at 147. This further demonstrates an unwillingness to take responsibility for the seriousness of such acts, and further leads the Commission to determine that the applicant has in no way been rehabilitated.

the Commission finds that both criminal convictions (both separately, and taken together) warrant denial.

B. C.I. Contracting's sole principal entered into an Order on Consent Agreement to resolve charges brought against him by DEC.

As set forth more fully above, Esposito was charged by DEC to have excavated, regraded, and placed fill, including construction and demolition debris, in the adjacent area of a regulated tidal wetland on multiple occasions and also serviced and/or stored commercial equipment and machinery in such area in violation of the New York State Environmental Conservation Law and DEC rules. Esposito and his co-respondents agreed, *inter alia*, to pay a significant monetary civil penalty and remediate the regulated tidal wetland adjacent area by removing all unauthorized materials from the area, including, but not limited to, concrete, rubble, asphalt and brick, as well as enter a notice covenant in the property records maintained by the Bronx City Register acknowledging DEC jurisdiction over the tidal wetlands area on the property in question, and informing persons that conducting a regulated activity on such area requires a DEC permit.

The DEC charges bear a direct relationship to the registration sought; while the applicant seeks to be registered to transport (and dispose of) construction and demolition materials, he has already been alleged to have improperly disposed of such debris. Esposito's attempt to explain away these charges by shifting blame for the placement of the debris to the previous owner of the site (an owner whose name he could not recall) and attempt to shift blame, first to a previous owner, and then to his tenant are self-serving and unsubstantiated. It is clear from the record that Esposito intended to build a restaurant on the site, and in fact had applied to the DEC for permits for that purpose. The presence of fill, evidence of excavation and regrading, as well as construction equipment at the site, appears completely consistent with the performance of a construction project thereat. Moreover, the photographs of the site taken in March and May of 2006 by DEC agents strongly suggest the recent placement of the construction and demolition debris therein, due to the fact that no residual vegetation of any kind is observed in and around the debris, as certainly would have been the case had the debris been in place since 2004 or earlier.[17] Furthermore, the presence of a DMP Contracting Corp. dump truck at the site, as seen in a photograph provided by DEC, provides further evidence of recent placement of construction and demolition debris thereat. Additionally, it is significant that the DEC complaint alleged that the dumping of construction and demolition debris took place at the site on or before March 28, 2006, and that *additional* construction and demolition debris was placed there between March 28, 2006 and May 4, 2006. The DEC's allegations of *additional* dumping during this time frame

[17] As discussed more fully above, C.I. Contracting argues that the photographs taken in March 2006 were at the beginning of the growing season and would not reflect "summers (sic) growth". *See* C.I. Contracting's Response at 15. However, this argument ignores the fact that no *residual* growth is observed on the construction and demolition debris piles, evidencing more recent C & D placement, rather than the 2004 or earlier C & D placement asserted by the Applicant. The Commission has considered all of the Applicant's assertions and arguments and finds the DEC's allegations more credible.

clearly undercut Esposito's assertion that the debris was present when he purchased the property in 2004. Given Esposito's lack of credibility and candor in other matters, as described *supra*, the DEC allegations appear much more worthy of belief.

In any event, whether or not the Commission found Esposito's self-serving and unsubstantiated explanations plausible (which it does not), Esposito clearly had control over the property at the time that the DEC alleged that construction and demolition debris was placed there without its permission. Esposito conceded that construction and demolition debris was present at the site, and DEC had clearly not given its permission for it to be placed there. At a minimum, Esposito had a duty to ensure that construction and demolition debris was not illegally dumped on his property, and to remove such debris to prevent the property from becoming an illegal dumping ground in that event. However, he clearly failed to do so. The illegal disposal of construction and demolition debris on the property and/or the failure to remove such debris by an applicant seeking a Class 2 Registration from the Commission to remove and dispose of construction and demolition debris warrants denial, particularly in light of the laundry list of other derogatory information.

C. C.I. Contracting has been unlawfully transporting Trade Waste without a license or registration for over a decade.

It is clear from the record, including the documents provided to the Commission by the Applicant in response to the Commission's *subpoena duces tecum* and Esposito's statements made during his deposition before the Commission, that since its inception in 1998 and continuing to the present day, C.I. Contracting has regularly engaged in the hauling of construction and demolition debris from jobsites within New York City without a Class 2 Registration issued by the Commission in violation of Admin. Code § 16-505(a). Notably, Admin. Code § 16-515(b)(i) provides for significant criminal and civil penalties for violations of Admin. Code § 16-505(a), as follows: a criminal fine of up to $10,000.00 for *each day of such violation* and/or by imprisonment not exceeding six months, and also a civil penalty of up to $5,000.00 *for each day of such violation.* This unauthorized hauling by the Applicant continued unabated despite the payment of a fine to the Commission in 2007 for such unauthorized activity. This persistent flouting of the law by C.I. Contracting clearly demonstrates a lack of good character, honesty and integrity.

In its response, C.I. Contracting concedes that the Applicant "has removed uncontaminated rock, brick, concrete, and soil associated with its own construction activities", and further "concedes that self-hauling waste from its own business required a Registration from the Commission." *See* Response at 5-6. However, the Applicant provides a tortured and unpersuasive argument as to why such hauling without a registration should be acceptable to the Commission. The Applicant's argument appears to be as follows: 1) the trade waste materials it transported without a registration did not constitute hazardous materials pursuant to DEC rules and regulations; 2) the materials it transported are defined as clean fill by some unidentified

authority,[18] and 3) the materials were transported to facilities that "can only accept clean fill material." *See* Response at 6. Here again, the assertions made in the Applicant in its Response are purposefully vague, and aside from setting forth a series of non-sequitur, unsupported statements, the Applicant does not dispute that it transported trade waste without a registration. That is because it cannot dispute such unlawful activity. The documents submitted by the Applicant in response to the *subpoena duces tecum* clearly demonstrate that the Applicant transported construction and demolition debris, which is as a matter of law, trade waste. Admin. Code § 16-501(f). For example, dump tickets issued to C.I. Contracting on June 6, 2010, July 20, 2010 and August 1, 2010 by Edison Ave. Recycle & Materials Supply Corp. ("Edison"), establish that the Applicant dumped specified quantities of "concrete, asphalt and concrete & asphalt" at Edison's facility on those dates. Indeed, this evidence, and Esposito's admission at his deposition indicate that the Applicant regularly transported C & D without the required registration.

Significantly, C.I. Contracting has engaged in a general pattern of unlicensed activity that extends beyond its failure to obtain a registration from the Commission. DCA seized a vehicle owned and operated by C.I. Contracting and fined the company on not one, but two occasions, because on those occasions C.I. Contracting was engaged in unlicensed home improvement contracting. Accordingly, C.I. Contracting has clearly demonstrated a pattern of unwillingness to submit to lawful regulatory and licensing authorities, even after being fined by such authorities. This contempt for governmental authority reflects poorly on the character, honesty and integrity of the Applicant.

D. C.I. Contracting failed to provide truthful information in connection with its application.

C.I. Contracting failed to provide truthful information with respect to three critical questions contained in its Registration Application. Specifically, the Applicant did not disclose the pending administrative charges brought by the DEC[19], the investigation of C.I. Contracting undertaken by the USDOL, and its sharing of office space with four other business entities.[20] It is not incumbent upon the Commission to prove motivation for such non-disclosure, but the facts

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[18] C.I. Contracting insists that the term "clean fill" is defined in the Admin. Code, but did not provide a citation. The Commission reviewed the Administrative Code, and found only a definition for the term "fill material." Admin. Code § 16-130(a)(7) defines "fill material" as "only clean material consisting of earth, ashes, dirt, concrete, asphalt millings, rock, gravel, stone or sand, provided that such material shall not contain organic matter having the tendency to decompose with the formation of malodorous by-products." In any event, there is no authority for the proposition that such materials are not considered "trade waste."

[19] C.I. Contracting asserts that it did not have a duty to disclose the DEC administrative charges because such charges did not "relat[e] to the conduct of a business that removes or recycles trade waste". *See* C.I. Contracting's Response at 16. However, it is clear that DMP Contracting Corp. ("DMP"), a Commission registered class 2 C & D hauler, was a named co-respondent in the DEC administrative proceeding. It is equally clear that Esposito was aware of DMP's involvement in the proceedings and regular hauling of C & D. *See* Esposito Dep. at 56 and 77.

[20] C.I. Contracting concedes this point, but asserts that the other business entities "served as holding companies for various real interests" and were not "independent companies". This assertion is not supported by the record. However, even if it was, C.I. Contracting was required to list "*any* other business or organization" and all of these entities meet that criteria.

certainly suggest that the Applicant's non-disclosure was motivated by intent to avoid Commission scrutiny in these key areas. The DEC administrative charges, especially those involving the unauthorized dumping of construction and demolition debris, are directly relevant to a determination of the Applicant's fitness to remove and dispose of construction and demolition debris. Moreover, C.I. Contracting's failure to disclose its business ties to DMP Contracting Corp. and D & D Bowne Street Realty Corp. could have hindered the Commission's efforts to discover and investigate the relevant DEC administrative charges. Furthermore, the USDOL investigation was also directly relevant to a determination of the Applicant's fitness for a Class 2 Registration in light of the fact that such investigation centered on the Applicant's failure to pay prevailing wages for a second time.

In its Response, C.I. Contracting characterizes the USDOL investigation as an "audit" and asserts that it was never informed that it was the subject or target of an investigation. *See* Response at 8-9. This argument is undermined by documents signed by Esposito himself. Esposito executed a USDOL "Back Wage Compliance and Payment Agreement" on or about September 28, 2011 which clearly stated that USDOL "conducted an *investigation* of the employer's [C.I. Contracting's] business under DBRA. The *investigation* covered the employer's operations from 10/10/2010 to 09/23/2011." The Applicant was clearly on notice that it was the subject of an investigation by USDOL under DBRA and the Applicant failed to properly disclose this investigation to the Commission.

Here again, C.I. Contracting has engaged in a general pattern of failing to provide truthful information in connection with applications to engage in business. On February 26, 2010, Esposito, on behalf of C.I. Contracting, submitted a General Contractor Registration form to the New York City Department of Buildings ("DOB"). As part of that application, Esposito submitted a signed affidavit dated March 23, 2010. In that affidavit, Esposito stated, under oath:

> From about 1988 to 1998 I was Vice President of Espo Construction...In 1998 Espo Construction and its principals were doing projects for NYC and NYS. At that time there was an accident on one of the job sites. **Espo was cleared of any charges to do with the accident.**

See Affidavit of Bernadino Esposito, dated March 23, 2010 (emphasis added). Esposito's statement submitted to DOB is untrue and perjurious. Espo Construction was not cleared of the charges, but pleaded guilty to Manslaughter in the second degree. The Commission concludes that, since the Applicant has not only made false statements in connection with the instant application, but to at least one other City agency, the Applicant lacks the requisite character and integrity.

E. C.I. Contracting's sole principal was a principal of a company that owes Federal and State taxes in Excess of $350,000.00

Esposito was a principal in Espo Construction, Inc. Espo currently has three outstanding Federal tax liens for tax debts owed by that company to the U.S. Internal Revenue Service. The total amount of indebtedness from these Federal tax liens is over $314,000.00. Espo was dissolved by proclamation/annulment of authority by the State of New York on December 27, 2000, and currently owes over $53,000.00 in outstanding New York State tax warrants.

In his Response, Esposito argues that he is not legally responsible for the $314,000.00 owed by his former corporation. However, the Applicant ignores the fact that the Commission's consideration is not limited to debts legally owed by the applicant. Rather, the Commission is expressly permitted to consider failure to pay any tax, fine, penalty, or fee *related to* the applicant's business. *See* Admin. Code § 16-509(a)(x) (emphasis added). The Commission finds that debt incurred by the Applicant's former closely-held corporation is related to the Applicant's current business, and further evinces a lack of good character, honesty and integrity.

Business Integrity Commission

Conclusion

The Commission is vested with broad discretion 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 to be lacking in good character, honesty and integrity. The record as detailed above demonstrates that the Applicant falls short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies the Applicant's exemption application.

This exemption denial is effective immediately. C.I. Contracting may not operate a trade waste business in the City of New York.

Dated: January 14, 2013

THE BUSINESS INTEGRITY COMMISSION

Shari C. Hyman
Commissioner and Chair

John Doherty, Commissioner
Department of Sanitation

Janet Lim, Assistant General Counsel (designee)
Department of Consumer Affairs

Victor Olds, First Deputy Commissioner (designee)
Department of Investigation

Kathleen Ahn, General Counsel (designee)
Department of Small Business Services

Brian O'Neill, Inspector (designee)
New York City Police Department