Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE REGISTRATION APPLICATION OF INFINITY PLUS TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Infinity Plus (the "Applicant") has applied to the New York City Business Integrity Commission (the "Commission") for a registration to operate a trade waste business pursuant to New York City Administrative Code ("Admin. Code") §16-505(a). Specifically, Infinity Plus 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 18, 2012, the Commission served the Applicant with Notice of Grounds to Recommend Denial of the Registration Application ("Notice"). The Notice stated the grounds for denial of the application and notified the Applicant 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 the Applicant's response were to be made under oath. Response was due within ten (10) business days from the date of the notice. On January 2, 2013, the Commission received the Applicant's response which consisted of a four page letter signed by Kim Gibbs, the principal ("Response"). A copy of the Response was provided to members of the Commission for their review.

Based upon the record as to the Applicant, the Commission denies the Applicant's registration renewal application be denied because Infinity Plus lacks good character, honesty and integrity for the following independent reason:

A. Kim Gibbs, the sole principal of Infinity Plus, was convicted of 31 felony charges for his leadership in a large scale conspiracy to manufacture, sell and distribute counterfeit subway tokens throughout New York City

B. Kim Gibbs, the sole principal of Infinity Plus, made material false and misleading statements to the Commission in connection with his application

C. Kim Gibbs, the sole principal of Infinity Plus, failed to provide the information and/or documentation required by the Commission

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, 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.

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. Id. 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. Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at §16-508(b). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing or registration decision:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the

license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;
6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;
9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Id. at §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 §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 §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 §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 at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). Admin. Code § 16-116.

Statement of Facts

On January 14, 2010, Infinity Plus applied to the Commission for a Class 2 Registration for the removal of construction and demolition debris ("Registration"). See Infinity Plus' Application for Exemption from licensing Requirement for Removal of Construction and Demolition Debris ("Registration Application"). In the Registration Application, Kim Gibbs ("Gibbs") was Infinity Plus's sole reported principal. The Commission's review of Gibbs's application has revealed that Gibbs has an extensive criminal history which he failed to fully disclose.

On March 10, 1989, Gibbs and four co-defendants were arrested and indicted by the Grand Jury of New York County for Unlawfully Using Slugs in the first degree in violation of Penal Law ("PL") §170.60, a class "E" felony. The arrest stemmed from Gibbs's involvement in a conspiracy to manufacture, sell and distribute counterfeit New York City Metropolitan Transit Authority ("MTA") subway tokens, commonly known as "slugs". On April 3, 1990, Gibbs pleaded guilty to the felony charge and was sentenced to a five-year period of supervision by the New York State Department of Probation.

It is apparent that Gibbs was not deterred by this interaction with the criminal justice system, as Gibbs (and nine co-conspirators) was again arrested and indicted by the Grand Jury of New York County on 63 separate felony charges in June 1991. In this subsequent case, it was alleged that between January 1990 and June 1991, Gibbs and his co-conspirators were manufacturing, selling and distributing up to 10,000 slugs per week, for $0.20-0.55 each.[1] See Indictment at 1; and Ronald Sullivan, New York Times, Raid Cuts Off Slugs for Subway Cheats, June 25, 1991. As one of the leaders of the conspiracy, Gibbs was responsible for not only selling, but coordinating the logistics of slug distribution into New York City's underground economy. This was accomplished by methods similar to a narcotics distribution ring; Gibbs

[1] In 1991, the full MTA subway fare was $1.15 for a one way trip.

would obtain the slugs in bulk from a cohort scheme leader who manufactured the slugs, and would sell smaller quantities to others who would peddle them through the distribution chain until the slugs were sold at the street level. The logistics of delivering the slugs was accomplished through a bicycle messenger business, "KG Delivery Services," which Gibbs established to facilitate the execution of this scheme. See Ronald Sullivan, New York Times, Raid Cuts Off Slugs for Subway Cheats, June 25, 1991. News reports state that Gibbs operated "KG Delivery Services" like a "gang" which he named the "Ministry", and as the gang's leader, Gibbs called himself the "Prime Minister". See id.; see also Jim Dwyer, New York Times, 1904-2004; Fare-Beater Inc.

While the total amount of money generated from this scheme (and stolen from the MTA and New York City) is unknown, the judge who presided over Gibbs's criminal trial and sentencing stated, "the amount of money that was stolen from the people of the City of New York is mind-boggling. There were ten thousand counterfeit slugs per week over a period of years." See transcript April 22, 1992, Sentencing of Kim Gibbs at 20.

After trial on these 1991 charges, Gibbs was convicted of committing 31 separate felony crimes in connection with the scheme:

- One (1) count of Conspiracy in the fifth degree in violation of PL §105.05, a class "D" felony
- Five (5) counts of Grand Larceny in the third degree in violation of PL §155.35, a class "D" felony
- Five (5) counts of Criminal Possession of a Forged Instrument in the second degree in violation of PL §170.25, a class "D" felony
- Fourteen (14) counts of Unlawfully Using Slugs in the first degree in violation of PL §170.60, a class "E" felony
- Six (6) counts of Scheme to Defraud in the first degree in violation of PL §190.65, a class "E" felony

At Gibbs's sentencing hearing on April 22, 1992, Gibbs made a statement in open court about his conduct. In his statement, Gibbs showed little remorse for his actions, and blamed society for forcing him to engage in a life of crime. See transcript April 22, 1992, Sentencing of Kim Gibbs at 13-17. The sentencing judge cited Gibbs's total lack of remorse as one of the factors for sentencing Gibbs – now a predicate felony offender - to an indeterminate term of imprisonment between 6-12 years.[2] See id. at 21-22.

[2] The sentencing judge also cited the fact that Gibbs reconstituted his criminal enterprise while his previous criminal case with identical allegations was pending and that he failed take advantage of his probationary sentence to rehabilitate himself. See id. at 21.

Significantly, Gibbs failed to fully disclose his criminal history to the Commission. Specifically, in question 26 of the Renewal Application, Gibbs was asked whether "the applicant business, any current principal of the applicant business, or any past principal of the applicant business has ever been convicted of a crime in any jurisdiction?" Gibbs answered "yes" and provided that he had been arrested in June 1991, convicted in February 1992 of "Grand Larceny" and "Unlawful Use of Slugs", and was sentenced to 6-12 years of imprisonment. However, Gibbs failed to disclose that he was in fact convicted of 31 separate felony charges, as detailed above. In addition, Gibbs completely failed to disclose that in 1989 he was also arrested and then convicted in 1990 for committing the very same crime. See supra at 4.

On April 12, 2010, the Commission received a correspondence from Gibbs which supplemented his Registration Application. In this letter Gibbs continued to blame the "system" and society for forcing him into an "illegal life." In addition, Gibbs admitted to selling "slugs consistently for over 12 years before going to jail," and he claimed that "it [took]... a whole lot of integrity to do that." Notably, Gibbs failed to express any remorse for his actions or the staggering financial losses suffered by the MTA and New York City over the 12-year span of his criminal activity.

Basis for Denial

For the reasons set forth below, the Commission should deny Infinity Plus's Registration Application:

A. Kim Gibbs, the sole principal of Infinity Plus, was convicted of 31 felony charges for his leadership in a large scale conspiracy to manufacture, sell and distribute counterfeit subway tokens throughout New York City

In determining whether an applicant lacks good character, honesty and integrity, the Commission is explicitly authorized to consider the "commission of a racketeering offense." See Admin. Code §16-509(a)(v). As set forth above, Gibbs was convicted of 31 separate felony charges including five (5) counts of Grand Larceny in the third degree in violation of PL §155.35, and five (5) counts of Criminal Possession of a Forged Instrument in the second degree in violation of PL §170.25. These felony crimes are "racketeering offense[s]" according to Admin. Code § 16-509(a)(v), as both are offenses listed in the New York State's Enterprise Corruption Statute, PL §460.10(1). "Commission of a racketeering activity" (which Gibbs has been convicted of) is, as a matter of law, an independent basis for denial. See Admin. Code § 16-509(a)(v).

Moreover, reviewing Gibbs's criminal felony convictions in light of the factors set forth in §753(1) of the New York State Corrections Law ("Corr. L."), further justifies denial of his application for a registration. Those factors are:

> (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 or held by the person.
>
> (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 Corr. L. § 753(1).

Here, Gibbs was one of the leaders of a large-scale, organized criminal enterprise that flooded New York's underground economy with at least 10,000 slugs per week thereby defrauding the MTA and costing it millions of dollars in unrecognized revenue. In order to ensure that the trade waste industry in New York City is free from fraudulent behavior, an applicant must be able to demonstrate the ability to operate a business free from corruptive business practices. Based on the Applicant's criminal history as well as his inability to accept responsibility for wrongdoing (even in the present application), it is clear that the Applicant could not meet this threshold standard. See supra at 4-5.

The Applicant's Response, which is largely nonsensical and unresponsive, does nothing to satisfy the Commission that Gibbs possesses the requisite good character and integrity, notwithstanding his felony conviction. Remarkably, in his response, Gibbs appears to acknowledge his involvement in the scheme to defraud the MTA and the resulting felony convictions, but goes on to suggest that his large scale fraud was not his fault, but was the fault of the MTA:

> In order for this to happen the system would have to be fundamentally insufficient. This is a big part of why the system had to change or UpGrade [sic] to a metro card system . You really can't blame the people for using slugs while it lasted. In an

> oppressive and sometime depressive situation it was an empowering and uplifting thing to do.

See Response at 1. Such statement, and Gibbs's statement that he views himself as a "modern day Robin Hood," only serves to confirm the that the Applicant lacks remorse and has shown no evidence of rehabilitation following his multiple felony convictions.

As the Commission has a legitimate interest in protecting property, safety and welfare of the general public, the Commission finds that Gibbs would be unable to meet the responsibilities and requirements of holding a Registration. Accordingly, the Commission denies the Applicant's registration application on this independent ground. Admin. Code §16-509(a)(v).

B. Kim Gibbs, the sole principal of Infinity Plus, made material false and misleading statements to the Commission in connection with his application

As described above, the Commission's investigation uncovered that Gibbs provided false and misleading statements in his Registration Application. Specifically, Gibbs provided false and misleading answers to direct questions about his criminal history. See supra at 5. It appears that Gibbs falsely answered these questions in an attempt to conceal the fact that he had been twice convicted of felony crimes for the same exact conduct. In his Response, Gibbs provides a nonsensical explanation as to why he failed to disclose to the Commission that he was convicted of 31 separate felony charges, and failed to disclose that he was re-arrested in 1989 after committing the very same crime. See supra at 4. At best, Gibbs appears to claim that he "tried to explain" his criminal history to Commission staff before he filed his application, and that Commission staff still told him to file his application. The fact that Commission staff appears to have correctly told the Applicant that they would not opine on the significance of Gibbs's criminal history without a pending application is of no moment. Such fact does not justify the Applicant's failure to fully disclose his criminal history when he did ultimately submit a sworn-to application to the Commission. Nor does the Applicant's statement that "the ammount [sic] of counts is really irrelavant [sic] considering everything" do anything to mitigate the fact that the Applicant made material false and misleading statements to the Commission. Accordingly, the Commission finds that Gibbs lacks good character, honesty and integrity, and denies Infinity Plus's Registration based upon this independently sufficient ground. Admin. Code §16-509(a)(1) and (b).

C. Kim Gibbs, the sole principal of Infinity Plus, failed to provide the information and/or documentation required by the Commission

As described above, the Commission's investigation uncovered that Gibbs failed to provide information regarding his criminal history in his Registration Application. As such,

Gibbs knowingly failed to provide the "information and/or documentation required" to obtain a registration. Admin. Code §16-509(b). Accordingly, the Commission denies Infinity Plus's Registration application based upon this independently sufficient ground. Id.

Conclusion

The Commission is vested with broad discretion to issue a license or 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 and registration.

This exemption/registration denial is effective immediately. Infinity Plus may not operate as a trade waste business in the City of New York.

Dated: January 14, 2013

THE BUSINESS INTEGRITY COMMISSION

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