The City of New York
BUSINESS INTEGRITY COMMISSION
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DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF CLEAN SOIL SOLUTIONS INCORPORATED (BIC #4511) TO OPERATE AS A TRADE WASTE BUSINESS

I. INTRODUCTION AND BACKGROUND

A. Introduction

On April 9, 2015, Clean Soil Solutions Incorporated (BIC #4511) ("Clean Soil" or "Applicant") applied to the New York City Business Integrity Commission (the "Commission")[1] for an exemption from licensing requirements and a renewal of its registration to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation (the "Renewal Application").[2] Local Law 42 of 1996 ("Local Law 42") authorizes the Commission to review and make determinations on such exemption applications. See Title 16-A of the New York City Administrative Code ("Administrative Code" or "Admin. Code") § 16-505(a).

On October 6, 2015, the Commission's staff issued and personally served the Applicant with Notice to Clean Soil Solutions, Incorporated of the Grounds to Deny the Registration Renewal Application of Clean Soil Solutions, Incorporated to Operate as a Trade Waste Business (the "Notice of Denial"). See Affidavit of Service dated October 6, 2015. The Applicant had 10 business days to respond to the Recommendation, which period expired on October 21, 2015. See Title 17, Rules of the City of New York § 2-08(a). On October 21, 2015, the Commission received a one page letter from Applicant's principal (the "Applicant's Response") stating with respect to the criminal charges pending against him, "I am only asking for the courtesy of being presumed innocent by law, and that judgment of denial be postponed until after the court has decided." See Response. The Response does not dispute any of the facts or findings made by the Commission's staff in the Recommendation. See id. The Commission has now completed its review of the Renewal Application, having carefully considered the Commission staff's Recommendation and the Applicant's Response. Based on the record as to the Applicant, the Commission denies the Renewal Application based on the following two independently sufficient reasons:

1. **The sole principal of the Applicant has a criminal case pending in federal court for participating in a criminal conspiracy involving the sale of narcotics and weapons possession; and**

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[1] The Commission was formally known as the New York City Trade Waste Commission.
[2] "Trade waste" or "waste" is defined at Administrative Code §16-501(f)(1) and includes "construction and demolition debris."

2. **The Applicant provided false and misleading information to the Commission by failing to disclose both of the criminal cases pending against the Applicant's sole principal.**

B. Background and Statutory Framework

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates, known as trade waste. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See e.g., United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante, No. 96 Cr. 466 (S.D.N.Y.); People v. Ass'n of Trade Waste Removers of Greater New York, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically has 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.).

The Commission is charged with, among other things, combating the influence of organized crime and preventing its return to the City's private carting industry, 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). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by 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," also known as construction and demolition debris (commonly known as "C&D"), must apply to the Commission for an exemption from the licensing requirement. Id. If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a Class 2 registration. Id. at § 16-505(a)-(b). Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at § 16-508(b); see also id. at § 16-504(a). An "applicant" for a license or registration means both the business entity and each principal thereof. Id. at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a decision on an application for a license or registration:

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

2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

> 9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
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> 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). See also id. at § 16-504(a).

The Commission may also refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by the Commission ... or who has otherwise failed to demonstrate eligibility for a license." Id. at § 509(b). See also Elite Demolition Contracting Corp. v. The City of New York, __N.Y.S. 2d___, 125 A.D.3d 576 (1st Dep't 2015); Breeze Contracting Corp. v. The City of New York, 52 A.D.3d 424 (1st Dep't 2008); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dep't) (Commission may deny an application for an exemption "where the applicant fails to provide the necessary information, or knowingly provides false information."); leave denied 2 N.Y.3d 705 (N.Y. 2004). See also Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial). In addition, the Commission may refuse to issue a license or registration to an applicant that "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license." Id. at §509(c). See also id. at § 16-504(a). 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). See also id. at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) 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 (N.Y. 1997).

II. DISCUSSION

A. STATEMENT OF FACTS

1. Initial Application

On January 22, 2013, Clean Soil submitted to the Commission its initial application for a Class 2 registration. See initial registration application of Clean Soil, dated January 22, 2013 (the "Initial Application"). The Initial Application disclosed Merlin Alston ("Alston") as sole principal of the Applicant. See id. at p. 13. In discussions with members of the Commission's staff during the review of the Initial Application, Alston disclosed that he was a Police Officer with the New York City Police Department ("NYPD"). He also indicated that he had family members in the trade waste industry and that his goal was to expand Clean Soil into a business that he could

continue to operate after his retirement from the NYPD. See Investigative Report of Commission Background Investigation Unit, dated February 20, 2013.

Question 27 of the Initial Application asks, "Are there any criminal charges pending against the applicant business or any principal of the applicant business in any jurisdiction?" Alston answered, "No." See Initial Application at p. 6. Question 27 is marked with an asterisk, which denotes that the information requested by that question is "material" and that any change in that information must be reported to the Commission, in writing, within 10 days of the change. See id. at p. 1; see also Title 17, Chapter 1 RCNY §§ 1-01, 2-05(a)(1). Alston signed the Initial Application before a notary public, certifying that the information contained therein was "full, complete and truthful." After a full review, the Commission approved the Initial Application and issued a Registration Order, effective May 1, 2013. The registration was valid for two years, with an expiration date of April 30, 2015.

2. Indictment

On December 4, 2014, while the Applicant was registered with the Commission, Alston was arrested and charged in New York State Supreme Court, New York County, with Conspiracy in the 2nd Degree, a class B felony, and two counts of Official Misconduct, a class A misdemeanor. As alleged in a December 5, 2014 Press Release from the Office of the Special Narcotics Prosecutor for the City of New York, dated December 5, 2014:

> A police officer since 2006, Alston was assigned to the NYPD's 46th Precinct and formerly served as a Field Intelligence Officer. . . The indictment charges that between June 2010 and October 2014, Alston conspired to commit Criminal Sale of a Controlled Substance in the First Degree and Second Degree. Alston also faces two counts of Official Misconduct. Alston allegedly participated in drug transactions, served as a driver for a drug trafficker and provided protection. He also assisted drug dealers in avoiding police detection.

See Press Release from the Office of the Special Narcotics Prosecutor for the City of New York (December 5, 2014).

Ultimately, the United States Attorney's Office for the Southern District of New York elected to prosecute the criminal case against Alston. In connection with that decision, on July 7, 2015, that office filed an indictment in the United States District Court for the Southern District of New York charging Alston with Conspiracy to Distribute Narcotics and to Knowingly Use and Carry a Firearm in furtherance of Conspiracy to Distribute Narcotics. See Indictment #15 Crim. 435 (S.D.N.Y.).[3] Since the federal indictment, Alston has been relegated to home confinement: he must wear a GPS monitoring device, is on paid suspension from the NYPD and may only leave his home for his required daily sign-ins at One Police Plaza during the pendency of his NYPD suspension. See USDOJ letter to Hon. Colleen McMahon, dated August 12, 2015,

[3] The New York State charges were dismissed on August 28, 2015.

and letter from USDOJ to Hon. McMahon, dated August 13, 2015 (endorsed August 14, 2015 by Hon. McMahon).

3. Renewal Application

On April 9, 2015, Clean Soil timely submitted the Renewal Application. Question 7 of the Renewal Application asks, "Has the applicant or any of the applicant's principals, employees, or affiliates been arrested, convicted of, or been the subject of any criminal charges in any jurisdiction?" Alston answered, "No." Renewal Application at p. 3. This question is marked with an asterisk, denoting that it requests material information and that the Applicant must update the Commission regarding any change to that information within 10 business days. Alston signed the Renewal Application, certifying that the information contained therein was "full, complete and truthful." See Renewal Application at p. 12.

As noted above, the Applicant was required to report any arrests of or criminal charges against Alston while the Applicant is registered with the Commission or has an application under review. However, neither the Applicant nor Alston reported the existence of either the state or federal criminal cases against Alston to the Commission.

B. BASIS FOR DENIAL

1. The sole principal of the Applicant has a criminal case pending in federal court for participating in a criminal conspiracy involving the sale of narcotics and weapons possession.

The Commission may refuse to issue a license or registration to an applicant who lacks good character, honesty and integrity. "In making such determination, the [C]ommission may consider . . . 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 . . . ." See Admin. Code § 16-509(a)(ii). As set forth above, Alston, the principal of Clean Soil, was indicted in December 2014 in New York State Supreme Court for Conspiracy in the 2nd Degree and two counts of Official Misconduct. Then, on July 7, 2015, a separate indictment was filed in the United States District Court for the Southern District of New York charging Alston with Conspiracy to Distribute Narcotics and Carrying a Firearm in Furtherance of the Conspiracy.

A police officer takes an oath and swears to uphold the laws of his or her jurisdiction. Alston not only failed to report criminal activity that he observed, as required in his capacity as a sworn law enforcement officer, but also allegedly participated in the criminal conspiracy. The fact that the conspiracy involved the distribution of drugs and weapons makes his case particularly egregious. Those are serious crimes that potentially lead to violence and put all citizens of New York City in danger. The indictments and their allegations reflect that the Applicant's principal lacks the requisite good character, honesty and integrity required to participate in the trade waste removal industry in New York City. The Applicant's Response has not refuted this finding or the factual findings on which it is based. Accordingly, the Commission denies the Renewal Application based on this independently sufficient ground.

2. The Applicant provided false and misleading information to the Commission by failing to disclose both of the criminal cases pending against the Applicant's sole principal.

"The Commission may . . . refuse to issue a license to an applicant who lacks good character, honesty and integrity. . . . In making such a determination, the Commission may consider, but is not limited to failure by such applicant to provide truthful information in connection with the application." See Admin. Code § 16-509(a)(i). In addition, "the Commission may . . . refuse to issue a license or registration to an applicant . . . who has knowingly failed to provide the information and/or documentation required by the Commission . . . ." See Admin. Code § 16-509(b).

When the Applicant submitted the Renewal Application on April 9, 2015, Alston certified on behalf of the Applicant that the information contained therein was "full, complete and truthful." The evidence in this matter demonstrates that was not the case. The Renewal Application denied that either the Applicant or its principal had been "arrested, convicted of or been the subject of any criminal charges in any jurisdiction." Renewal Application at p. 3. In fact, Alston was arrested and charged with participation in a criminal conspiracy a mere five months prior to submitting the Renewal Application. While the Renewal Application was pending, Alston was arrested again and charged with crimes relating to the same conspiracy in the United States Court for the Southern District of New York.

Not only did the Applicant fail to disclose on the Renewal Application the pending criminal case against Alston, but it also failed to inform the Commission of the changes in the material information regarding arrests and criminal charges on both the Initial Application and the Renewal Application. Because the Applicant held a Commission-issued registration at the time Alston was arrested and indicted in December 2014, the Applicant was required to notify the Commission of the criminal charges against Alston within 10 days. See RCNY Title 17 Chapter 1, § 2-05(a)(1). And, because the Renewal Application was under review at the time of Alston's arrest and indictment in July 2015, the Applicant was required to notify the Commission of those events within 10 days. See id. The Applicant did neither. Thus, the Applicant failed to provide truthful information in connection with the application. See Admin. Code § 16-509(a)(i). It also "knowingly failed" to provide the information required by the Commission pursuant to Title 16-A of the Administrative Code. See id. at § 16-509(b).

It is likely that the Applicant failed to disclose the arrests and indictments because it and Alston did not want the Commission to know of the charges against Alston. However, the omission of information so crucial to the review of the Renewal Application demonstrates that the Applicant and its principal lack the requisite good character, honesty and integrity required to participate in the trade waste removal industry in New York City. Therefore, the Commission finds that the Applicant knowingly failed to provide the Commission with truthful and non-misleading information as required by the Commission. The Applicant's Response has not refuted this finding or the factual findings on which it is based. Accordingly, the Commission denies the Renewal Application based on this independently sufficient ground.

Conclusion

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

This denial decision is effective immediately. Clean Soil Solutions Incorporated may not operate as a trade waste business in the City of New York.

Dated: November 9, 2015

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION

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