The City of New York
BUSINESS INTEGRITY COMMISSION
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DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION APPLICATION OF FOUR SEASONS LANDSCAPING & GUTTER CLEANING MAINTENANCE CORP. D/B/A FOUR SEASONS LANDSCAPING II CORP. (BIC #482034) TO OPERATE AS A TRADE WASTE BUSINESS

I. INTRODUCTION & BACKGROUND

A. Introduction

On or about March 10, 2014, Four Seasons Landscaping & Gutter Cleaning Maintenance Corp. d/b/a Four Seasons Landscaping II Corp. ("Four Seasons Landscaping II Corp."[1] or the "Applicant") (BIC #482034) applied to the New York City Business Integrity Commission (the "Commission")[2] for an exemption from the Commission's trade waste licensing requirements "to remove, collect or dispose of trade waste that is generated in the course of operation of such person's business" (the "Instant Application").[3] Local Law 42 of 1996 ("Local Law 42") authorizes the Commission to review and make determinations on such exemption applications. See Title 16-A, New York City Administrative Code ("Administrative Code" or "Admin. Code") § 16-505(b).

After a review of the application, if the Commission grants the exemption from the Commission's trade waste licensing requirements, the applicant will be issued a registration. See id. at § 16-505(a)-(b). The Commission's review of an exemption application focuses on a determination of whether the applicant possesses business integrity, i.e., good character, honesty and integrity. See Title 17, Rules of the City of New York § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code § 16-504(a) (empowering the Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); Admin. Code § 16-509(a) (authorizing the Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity").

On September 21, 2015, the Commission's staff personally served the Applicant's principal the Notice to the Applicant of the Grounds to Recommend the Denial of the Class 1 Registration Application of Four Seasons Landscaping & Gutter Cleaning d/b/a Four Seasons

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[1] The Applicant's principal stated during sworn testimony on June 17, 2014 that the corporation's name was changed to "Four Seasons Landscaping II Corp." shortly after its incorporation. See transcript of Sworn Interview of Mary Aloisio ("Aloisio Tr.") at 54:8-15.
[2] The Commission was formerly known as the New York City Trade Waste Commission.
[3] "Trade waste" or "waste" is defined at Admin. Code § 16-501(f)(1).

Landscaping II Corp. to Operate as a Trade Waste Business (the "Notice of Denial"). The Applicant was given 10 business days to respond, until October 8, 2015. See 17 Rules of the City of New York ("RCNY") § 2-08(a). The Commission did not receive a response from the Applicant. The Commission has now completed its review of the Instant Application, having carefully considered the Notice of Denial and the Applicant's lack of response. Based on the record as to the Applicant, the Commission denies the Applicant's Class 1 registration application based on the following independently sufficient grounds:

1. **The Commission Previously Denied the Application of a Company Related to the Applicant as Lacking Good Character, Honesty, and Integrity;**

2. **Stephen Cestro, Who the Commission Previously Found to Lack Good Character, Honesty, and Integrity, is an Undisclosed Principal of the Applicant; and**

3. **The Applicant Knowingly Failed to Provide Truthful and Non-Misleading Information to the Commission.**

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. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See e.g., United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.); People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999).

The Commission is charged with, inter alia, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry. 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. NY Admin. Code § 16-505(a). It is this licensing scheme that continues to be the primary means of ensuring that an industry historically plagued 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, all companies that "remove, collect or dispose of trade waste that is generated in the course of operation of such person's business" must apply to the Commission for a registration. Id. at § 16-505(b). Before issuing such a 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 this determination in connection with 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;

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). 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 also 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 registration has no entitlement to and no property interest in a license or registration, and the Commission is vested with broad discretion to grant or deny a license or registration application. Sanitation & Recycling Industry, Inc., 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). NY Admin. Code § 16-116.

II. DISCUSSION

A. Statement of Facts

On or about September 4, 2009, Four Seasons Landscaping & Designs Corp. ("Four Seasons," BIC #3558) applied to the Commission for a Class 2 Registration. See Four Seasons 2009 Application. This application was withdrawn in 2011 because its disclosed principal, Stephen Cestro ("Cestro") and his former company, Stephen's Landscaping, owed over $1,000,000 in judgments and liens to various entities. On or about March 22, 2012, Four Seasons again applied to the Commission, this time for a Class 1 Registration. See Four Seasons 2012 Application, BIC #4356. On June 22, 2015, the Commission denied Four Seasons' Class 1 Registration application because Stephen's Landscaping (Cestro's prior company) failed to pay its debts to the New York State Department of Labor and the Internal Revenue Service, and because Cestro failed to provide the Commission with proof of resolution of those debts.[4] See Decision of the Business Integrity Commission Denying the Registration Application of Four Seasons Landscaping & Designs Corp.

[4] In making a determination as to whether to grant or deny a registration, the Commission is entitled to consider unpaid debts of an Applicant's principal and his prior company. See In re: C.I. Contracting Corp. v. New York Bus. Integrity Comm'n, Index 100701/13 (App. Div. 1st Dep't, May 7, 2015) (Commission may consider prior bad acts of applicant and "the unpaid taxes...attributed to [applicant's] principal and his former company").

(BIC #4356) to Operate as a Trade Waste Business, dated June 22, 2015 ("Four Seasons Denial Decision").

The Applicant is the third company with a relationship to Cestro applying for a BIC registration. On or about March 10, 2014, the Applicant applied to the Commission for a Class 1 Registration. See Instant Application. The Applicant disclosed Mary Aloisio ("Aloisio") as the sole principal and 100% owner. See id. at p.11. Aloisio is the fiancée of Cestro. Aloisio Tr. at 30:17-18. For the reasons set forth below, the Applicant appears to be an alter ego of Four Seasons.

The Applicant and Four Seasons are inextricably linked. They share a business address and facsimile telephone number.[5] Aloisio Tr. at 84:24-85:3. See also Instant Application at p.1; Four Seasons 2012 Application at p.1. Cestro used the Applicant's address on income tax returns for Four Seasons, though Aloisio claimed to be unaware that Four Seasons was operating out of that address. Aloisio Tr. at 38:4-5; see also Four Seasons U.S. Income Tax Return for an S Corporation 2011 at 1. The Applicant's principal testified to her use of Cestro's credit card, and to making payments under his name. Aloisio Tr. at 33:20-21. Aloisio stated that the Applicant and Four Seasons and Cestro shared an attorney and accountants. Id. at 29:23, 47:19-25, and 52:2-3. Aloisio advised the Commission that Four Seasons employed the services of her uncle, accountant Manuel Vidal ("Vidal"). Aloisio Tr. at 71:4-10. Vidal frequently communicated with the Commission on behalf of Four Seasons to discuss Four Seasons' outstanding debts. See Denial of Four Seasons, June 22, 2015 at p.5. Aloisio stated that Vidal is also "helping [the Applicant] set everything up." Aloisio Tr. at 97:7-8. Aloisio also used the services of Allen Guskin ("Guskin") as her accountant. Id. at 52:3-5. Four Seasons retained Guskin for its accounting services. Id. at 73:10-13. Additionally, Aloisio testified that the Applicant is using the legal services of Irwin Klein ("Klein"), a friend of Aloisio's. Id. at 29:17-23. Klein also assisted Cestro with Stephen's Landscaping. Id. at 47:11-22.

Though incorporated as "Four Seasons Landscaping & Gutter Cleaning," Aloisio stated that she changed the Applicant's name to "Four Seasons Landscaping II Corp." shortly after its incorporation.[6] Id. at 52:12-14. She stated that she chose the Applicant's name to capitalize on the reputation of the Four Seasons Hotel chain, and removed "Gutter Cleaning" for advertising purposes and because she was no longer interested in providing such services. Id. at 53:10-54:7 and 103:22-104:9. Of course, the Applicant's name also makes it appear as the direct successor to Four Seasons. When pressed, Aloisio stated, "I don't want any affiliation with [Cestro's] company, because that's why I put the 'II', and because we are together, I put the 'II' just to separate us." Id. at 104:3-6. This answer does not clarify how the two companies are separate. Rather than separating the two companies, calling the second company "II" serves to link them. Despite her protestations to the contrary, Aloisio was not able to demonstrate any meaningful way in which the Applicant and Four Seasons are separate.

Aloisio originally stated that the Applicant had no vehicles. Id. at 89:9-19; see also Instant Application at p.16. However, during her sworn testimony, she amended this statement, advising

[5] The business address, 7-24 166th Street, 6A, Whitestone, NY 11357, is owned solely by the Applicant's principal, though Cestro resides there. Aloisio Tr. at 59:19-20 and 31:13-21.

[6] Aloisio informed the Commission of the name change informally just prior to her 2014 sworn testimony, and not within 10 days of the Applicant's change of name. Though not an instant grounds for denial, pursuant to 17 RCNY 2-05(b)(iii), the Applicant was obligated to notify the Commission within ten calendar days of any material change in the information submitted in an application, such as a change of name, and failed to do so.

that the Applicant had obtained a vehicle from Cestro, "as a gift." Aloisio Tr. at 90:4-9 and 91:14. When asked why Cestro would simply gift the Applicant a vehicle, Aloisio replied that she could not afford to purchase one, and Cestro was willing to give her his truck because he was not using it anymore. Id. at 90:13-91:7. Importantly, this is the very same (and only) vehicle that is disclosed on Four Seasons' 2012 Application. See Four Seasons 2012 Application at p.16; see also Aloisio Tr. at 89:20-90:4.

The Commission's staff discovered another connection between the Applicant and Four Seasons on an internet advertisement. Advertising website Homeadvisor.com ("Homeadvisor") listed the name and address of the Applicant, yet provided a description not of the Applicant's business, but of services that Four Seasons performs, along with Four Seasons' telephone number and the year of Four Seasons' incorporation. Id. at 56:10-61:25; see also Four Seasons Landscaping II Corp. Homeadvisor Profile.[7] When asked whether Homeadvisor was advertising more accurately for Four Seasons, Aloisio stated, "Yes, that's something that [Cestro] would have advertised, yes." Aloisio Tr. at 61:24-25. Aloisio offered no credible explanation as to how Homeadvisor would have "mixed up companies," as she characterized it. Id. at 57:4. Given the combination of information regarding both the Applicant and Four Seasons, the Homeadvisor profile page for the Applicant strongly suggests that the Applicant is merely a successor corporation to Four Seasons, and that Cestro is participating in its control.

As further evidence of the connection between the two companies, the Applicant's principal was closely involved in Four Seasons' operations before the Commission denied the company's application. Aloisio corresponded with the Commission on behalf of Cestro and Four Seasons to discuss Four Seasons' outstanding debts. See emails from Mary Aloisio, dated October 1, 2012; January 4, 2013; and January 9, 2013. In the course of these communications, Aloisio frequently referenced Four Seasons being a company in which she had a vested and potential ownership interest. In a 2012 letter to the Commission on Four Seasons' behalf, Aloisio wrote:

> "We have applied 2x with the Business Commission for our plates for dumping purposes. Since our first application a lot more progress has been made, All tax issues are done and being paid and we are coming to closure with the dept of Labor. We ask to please grant us the dumping License plate so we can continue doing business and earn a living...We will continue to keep you posted even after the plates are issued."[8]

See letter dated October 1, 2012, from Aloisio to the Commission (emphasis added). Aloisio stated that, with regard to Four Seasons' application and Cestro, she "just guided him a little bit, and represented him to help him with his situation because he was in a situation with Business Integrity." Aloisio Tr. at 42:12-15. Aloisio also admitted that she performed design work for Four

[7] Available online. Retrieved June 16, 2014: http://www.homeadvisor.com/rated.StevesLandscapingand.4633708.html.

[8] This quotation has been reproduced using the original's punctuation and syntax.

Seasons and spoke to customers on the company's behalf. Id. at 42:17-25. All of this demonstrates that Aloisio was acting as, at a minimum, a key employee of Four Seasons.[9]

Aloisio appears to be a mere nominee of the Applicant, with Cestro its true principal, due especially to Aloisio's lack of familiarity with and work experience in the landscaping industry. Aloisio stated that she had worked as a hair dresser and then entered the transportation industry, specifically limousine and black car transportation service. Aloisio Tr. at 12:13-24:10. Aloisio has worked within the transportation industry for approximately 35 years. Id. Aloisio presently is under a four-year contract with a company called Charge & Ride, performing sales and marketing. Aloisio Tr. 22:8-12; see also facsimile from Tariq Abbasi on behalf of Charge & Ride, Inc., dated June 11, 2014 (stating Aloisio is under contract with Charge & Ride through 2018). When the Commission's staff asked Aloisio whether, "[e]very job since [Aloisio's hair salon job]...has basically been in the industry described as ground transportation," she responded, "Yes." Aloisio Tr. at 7-10. When asked if Aloisio had performed landscaping work, she responded, "Personally work it, no." Id. at 40:17. Given Aloisio's work history (which has almost exclusively been in the hair design and ground transportation fields), it is unlikely that Aloisio could run a landscaping company on her own.

Despite Aloisio's claims that the Applicant is a separate entity from Four Seasons, the evidence in this matter demonstrates that the two companies are closely tied. Both the Applicant and Four Seasons have the same name, the only difference being that the Applicant has a "II" after the name and Four Seasons has the word "Designs" in the name. The Applicant and Four Seasons share the same vehicle, the same business address and facsimile number, and the same attorney and accountants. The Applicant's principal has no prior job experience in the landscaping industry, other than the minimal design work and customer contact she has performed for Four Seasons. The essential difference between Four Seasons and the Applicant is who is listed as principal on their respective applications.

B. Basis for Denial

1. The Commission Previously Denied the Application of a Company Related to the Applicant as Lacking Good Character, Honesty, and Integrity.

The Commission "may refuse to issue a license or registration to an applicant...who has otherwise failed to demonstrate eligibility for such license under this chapter." See Admin. Code §16-509(b). The term "applicant" includes both the applicant business and any "principal" of the business. Id. at §§ 16-501(a) and (d). The evidence set forth above establishes that the Applicant (Four Seasons Landscaping II Corp.) is a thinly-veiled alter ego and successor corporation of Four Seasons (full name: Four Seasons Landscaping & Designs Corp.). In addition to using nearly the same name, the same address, facsimile telephone number, accountants, vehicle and attorney as Four Seasons, the Applicant's principal had significant involvement in, and may have been an

[9] While Aloisio admittedly assisted Four Seasons, Cestro was unquestionably its principal. For instance, Cestro was the party responsible while Four Seasons was operating without a registration. In 2010 and 2011, the Commission issued Stephen A. Cestro d/b/a Four Seasons Landscaping administrative violations for unregistered activity, in violation of § 16-505(b). See Notices of Violation Nos. TWC-5619 (April 4, 2010), TWC-5738 (May 4, 2010), and TWC-7434 (August 23, 2011). On April 19, 2012, Cestro admitted violating § 16-505(b) and agreed to settle the violations. See Stipulation of Settlement of TWC-5619, TWC-5738, and TWC-7434, signed by Cestro.

undisclosed principal of, Four Seasons. Advertisements for the Applicant provide information and descriptions of services derived directly from Four Seasons. Even the name the Applicant uses makes clear that it is a direct successor to Cestro's denied company.

The Commission previously found that Four Seasons lacked good character, honesty, and integrity, and denied its application. See Four Seasons Denial Decision. Given the close ties between the Applicant and Four Seasons, the Commission's finding as to Four Seasons' lack of business integrity is equally applicable to the Applicant. Id. at § 16-501(a). The Applicant has not disputed these assertions. Thus, the Commission denies the Instant Application based on this independently sufficient ground.

2. Stephen Cestro, Who the Commission Previously Found to Lack Good Character, Honesty, and Integrity, is an Undisclosed Principal of the Applicant.

The Commission "may refuse to issue a license or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter." Admin. Code § 16-509(b). The term "applicant" includes both the applicant business and any "principal" of the business. See Admin. Code §§ 16-501(a) and (d). The definition of "principal" (which is included in the instructions for the application) includes corporate officers and directors, all stockholders holding ten percent or more of the outstanding shares of the corporation and all other persons participating directly or indirectly in the control of such business entity. See id. at § 16-501(d) (emphasis added).

The facts set forth above indicate that Cestro is participating directly or indirectly in the control of the Applicant. The Applicant's principal testified about her work experience, listing no landscaping work other than minimal customer contact and design work on behalf of Four Seasons. Additionally, the Applicant's principal is presently a full-time employee of Charge & Ride, a company having nothing to do with the landscaping industry. The Applicant uses the same address, facsimile number, accountants, attorney, and advertising service as Cestro's company. Further, the Applicant's only vehicle was a gift from Cestro. Unlike Cestro, Aloisio owned no prior companies, and had no personal outstanding tax debts when the Instant Application was submitted. Therefore, a background investigation into the Applicant and Aloisio would not reveal similar tax issues that served as the basis of the denial of Cestro's application. In this manner, Aloisio could serve as a nominee of a new company and attempt to evade Commission scrutiny that would result in a denial of a registration application.

The record clearly establishes that Cestro participates directly or indirectly in the control of the Applicant business and is, therefore, a principal. Cestro was not disclosed to the Commission in the Instant Application, or any other submissions, as required. The Applicant has not disputed these assertions. Thus, the Commission denies the Instant Application based on this independently sufficient ground.

3. The Applicant Knowingly Failed to Provide Truthful and Non-Misleading Information to the Commission.

The Commission may refuse to issue a license to an applicant as lacking good character, honesty and integrity upon the failure of the applicant "to provide truthful information in connection with the application." See Admin. Code § 16-509(a)(i). See also id. at § 16-504(a). Furthermore, "[t]he Commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." See id. at § 16-509(b).

As discussed above, the Applicant provided the Commission with an application and testimony that contained false, misleading, and conflicting information.[10] It is likely that Aloisio did not want to disclose Cestro's role in the Applicant due to the significant tax issues that Cestro and his companies accumulated, issues that ultimately led to the denial of Four Seasons' application. The attempt to conceal Cestro's participation in the business of the Applicant from the Commission by failing to disclose Cestro as a principal of the Applicant is evidence that the Applicant lacks good character, honesty, and integrity. The Applicant has not disputed these assertions. Thus, the Commission denies the Instant Application based on this independently sufficient ground.

III. 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 lacks those qualities. Accordingly, based on the three independently sufficient grounds set forth herein, the Commission denies the Instant Application.

[10] Additionally, though not grounds for denial, pursuant to 17 RCNY § 2-05(b)(iii), the Applicant was obligated to inform the Commission of the acquisition of a new vehicle and its change in business name within 10 business days, yet failed to do so for either.

This denial decision is effective immediately. The Applicant 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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