The City of New York
BUSINESS INTEGRITY COMMISSION
100 Church Street · 20th Floor
New York · New York 10007
Tel. (212) 437-0555 · Fax (646) 500-7096

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION APPLICATION OF TOM MIERS LANDSCAPING LIMITED LIABILITY COMPANY (BIC #4647) TO OPERATE AS A TRADE WASTE BUSINESS

INTRODUCTION

Tom Miers Landscaping Limited Liability Company (the "Applicant" or "Tom Miers Landscaping") (BIC #4647) has applied to the New York City Business Integrity Commission (the "Commission")[1] 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."[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, New York City Administrative Code ("Administrative Code" or "Admin. Code") § 16-505(b).

On September 30, 2015, Commission staff issued and personally served the Applicant with the Notice of the Grounds to Deny the Registration Application of Tom Miers Landscaping Limited Liability Company to Operate as a Trade Waste Business ("Notice of Denial"). The Applicant had 10 business days to respond, which period expired on October 14, 2015. See Title 17 Rules of the City of New York ("RCNY") section 2-08(a). The Applicant did not submit a response to the Notice of Denial. The Commission has now completed its review of the Applicant's registration application, having carefully considered the Commission staff's Notice of Denial and the Applicant's failure to respond. Based upon the record as to the Applicant, the Commission denies the Applicant's registration application based on the following independently sufficient reasons:

A. The Applicant Knowingly Provided False and Misleading Information to the Commission in Connection with the Application; and

B. The Applicant's Principal Provided False and Misleading Information to the Commission.

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[1] The Commission was formerly known as the New York City Trade Waste Commission.
[2] "Trade Waste" or "waste" is defined at Admin. Code §16-501(f)(1).

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 (then known as the "Trade Waste 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 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;
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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;

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 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 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); NY Admin. Code § 16-116.

STATEMENT OF FACTS

Background

On or about August 29, 2013, the Applicant applied to the Commission for a registration to operate as a trade waste business. See Registration Application of Tom Miers Landscaping Limited Liability Company, filed August 29, 2013 (the "Application"). The Applicant disclosed Thomas Miers ("Miers") as its sole principal. See id. at p.11. Miers certified that all of the information contained in the Application was "full, complete and truthful." See id. at p.18. On October 8, 2014, Miers provided the Commission with sworn testimony in connection with the Application. See October 8, 2014 Transcript of Thomas Miers ("Miers Tr."). Prior to providing his sworn testimony, Miers completed a 13-page questionnaire, and certified that the answers he provided on the questionnaire were truthful. See questionnaire completed by Miers, dated October 8, 2014 (the "Questionnaire").

Miers and his wife, Nancy Miers, have a long history with the Commission, pre-dating the filing of the Application with the Commission. Years earlier, on April 15, 2009, officers from the New York City Department of Sanitation Police Department (the "DSNY Police") observed Miers engaging in unregistered trade waste removal activity and stopped his truck to investigate. See Sworn Affidavit from Officer Perrone of the DSNY Police. On June 4, 2009, the Commission issued Notice of Violation TW-3832 against Miers for engaging in unregistered trade waste removal activity in violation of Administrative Code § 16-509(b). See Notice of Violation for Unlicensed or Unregistered Activity TW-3832. On August 3, 2009, Miers agreed to resolve this administrative violation by entering into a Stipulation of Settlement with the Commission, in which Miers admitted guilt and paid a $500 fine. See Stipulation of Settlement TW-3832.

On or about May 6, 2009, shortly after the DSNY Police found Miers engaging in the above-described illegal activity, Nancy Miers d/b/a Miers Landscaping filed a registration application with the Commission. See Registration Application of Nancy Miers d/b/a Miers Landscaping (the "Nancy Miers Landscaping Application"). The Nancy Miers Landscaping Application indicated that the company has been in business since March 27, 2006.[3] See Nancy Miers Landscaping Application at p.8. The Nancy Miers Landscaping Application disclosed Nancy Miers as the company's sole principal and Miers merely as a vehicle operator for the company. See id. at pp.8, 12. On September 1, 2009, the Commission granted Nancy Miers Landscaping a registration. See Nancy Miers Landscaping Registration Order.

On August 31, 2011, Nancy Miers Landscaping filed a registration renewal application with the Commission. See Renewal Registration Application of Nancy Miers d/b/a Miers Landscaping (the "Nancy Miers Landscaping Renewal Application"). However, on September 13, 2011, Nancy Miers Landscaping submitted a letter to the Commission requesting to withdraw the Nancy Miers Landscaping Renewal Application. See letter from Nancy Miers Landscaping, dated September 13, 2011. On September 15, 2011, the Commission granted the request to withdraw.

The Applicant is the successor company to Nancy Miers Landscaping, a fact that Miers acknowledged in his October 2014 sworn interview. See Miers Tr. at 185-87. Other evidence corroborates that assertion: both Nancy Miers Landscaping and the Applicant disclosed the same business address and the same garage address. See Nancy Miers Landscaping Application at p.8; Application at p.12. Both companies also operated the same vehicle. See Nancy Miers Landscaping Application at p.13; Application at p.16. Furthermore, Miers admitted that he held an ownership interest in Nancy Miers Landscaping, exercised direct control over the company, and made business decisions on behalf of the company. See Miers Tr. at 187-89. Thus, Miers was a principal of Nancy Miers Landscaping.

Despite Miers' testimony regarding his role at Nancy Miers Landscaping, the Application stated that Miers was not and had not been a principal of any other trade waste business in the previous 10 years. See Application at p.3. When confronted with the inconsistency between the Application and Miers' testimony regarding his role at Nancy Miers Landscaping, Miers initially claimed that he did not disclose his ownership interest in Nancy Miers Landscaping to the Commission because the truck and the loan for the truck were in his wife's name. See Miers Tr. at 188. Miers also claimed that he did not disclose that he was a principal of the company because he believed that he and his wife were a "single entity." See id. at 188-89. Miers went on to testify as follows:

> Q. Because the van was in her name you didn't disclose yourself as principal?
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> A. I put it in her name thinking that we were the same principal. I thought we were one entity. That is what I thought, I thought we

[3] Given the history of unregistered activity by Miers and the timing of the Nancy Miers Landscaping Application, it is likely that Nancy Miers Landscaping engaged in unregistered trade waste removal activity as well prior to being approved for a registration by the Commission.

were one entity. I thought the husband and wife were one entity. We are one entity in everything else in this life. When I found out it wasn't, I went to correct it, and this is what I got for doing it.

Q. When you say you went to go correct it, you're talking about in August, August 2013, when you filed the application under your name?

A. Yes. They came from Worker's Comp. When I was sick it came from Worker's Comp.[4]

Id. at 198.

In addition to providing the Commission with false and misleading information about Miers' status as a principal of Nancy Miers Landscaping, the Applicant also provided the Commission with false and misleading information about Miers' criminal history. Question 23 of the Application asked, "Has the applicant business, any current principal of the applicant business, or any past principal of the applicant business ever been charged or arrested or convicted of any criminal offense in any jurisdiction?" See Application at p.4. In addition, Question 28(g) of the Application asked, "During the past ten (10) years, has the applicant business or any current or past principal of the applicant business entered into a plea of nolo contendere or been granted an adjournment in contemplation of dismissal, or the equivalent to any felony or misdemeanor charge?" See id. at p.7. The Applicant answered, "No" to both of those questions. See id. at pp.4, 7.

Those answers are false because Miers was arrested and convicted of a criminal offense in the State of New Jersey within 10 years of the filing of the Application. On September 16, 2003, Miers was arrested in Hoboken, New Jersey and was charged with the crimes of 2nd degree robbery, 3rd degree criminal usury and conspiracy to commit the same.[5] See Superior Court of New Jersey, Hudson County, Criminal Indictment No. 019602/2004 ("Indictment"). The arrest was based on an allegation that, on September 9, 2003, Miers and co-defendant, Joseph Guido ("Guido"), allegedly entered a pet store to collect on an usurious loan made to the owner of the pet shop.[6] Miers and Guido then allegedly beat and robbed the victim of $2,500. See Investigation Report and Supplemental Investigation Report from the Hoboken Police Department. On June 2, 2004, Miers pled guilty to simple assault, a disorderly person offense. See Amended Judgment of Conviction from New Jersey Superior Court, Hudson County. On July 30, 2004, he was sentenced

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[4] Miers had testified that he did not have any matter pending before the Board of Worker's Compensation. See Miers Tr. at 191-92. According to Miers, when he fell ill, Worker's Compensation staff noted that Miers needed Worker's Compensation coverage because his wife was the owner and he was the worker. See id. at 191.

[5] New Jersey Code of Criminal Justice § 2C:1-4 makes a distinction between petty disorderly persons offense, disorderly persons offense (comparable to misdemeanors) and crimes (indictable offenses), which are comparable to a felony charge. Crimes are, therefore, defined as offenses for which a sentence in excess of a 6 month imprisonment is imposed and are classified at varying degrees of first, second, third and fourth degree crimes. See New Jersey Revised Code of Criminal Justice § 2C:1-4.

[6] According to the victim's statements, the victim borrowed $7,000 from Guido, who in turn was going to get the money from Miers. See Hudson County Prosecutor's Office Supplemental Report; see also Police Department Information Statement.

to one year of probation and was ordered to pay a $50 assessment and $2,701 in restitution. See id.

Throughout the review process, Miers was advised on several occasions that his failure to disclose his criminal history on the Application was of issue with the Commission. Despite the warnings, Miers did not immediately offer an amended Application. Instead, when later questioned regarding his failure to amend the application, Miers testified that he believed the Commission's staff would update the application on his behalf. See Miers Tr. at 176-77.

On June 13, 2015, a member of the Commission's staff spoke with Miers regarding the Application and requested Miers submit an amended application to update any changes or inaccuracies not reflected on the Application. On July 29, 2015, Miers provided the Commission with an update. See Tom Miers Landscaping July 29, 2015 Application (the "Update"). Although the Update disclosed Miers' 2003 arrest and 2004 conviction, it did not disclose the fact that Miers was a principal of Nancy Miers Landscaping. See id. at p.3 (failing to disclose required information in response to Question 14).

In addition to the two false filings made to the Commission (the Application and the Update), Miers also gave false and misleading testimony regarding his criminal history during his sworn interview and in the Questionnaire. In the Questionnaire, Miers disclosed that he had been charged with a crime on one occasion. See Questionnaire at p.8. (Question 32). However, in addition to the assault case described above, in February 2014, Miers was also charged with Driving While Intoxicated ("DWI") and pled guilty to a traffic violation. See Monmouth County Order and Certification. As a result, Miers was ordered to complete a 12-hour class and pay a $600 fine. See id. Additionally, Miers' New Jersey driver's license was suspended for 90 days, a fact he also failed to disclose on the Questionnaire (Question 25).[7] See id. at p.7.

In his sworn interview, Miers initially claimed that the arrest he disclosed in the Questionnaire was from the 2014 DWI case. See id. at 54. He then claimed that he was referring to the arrest which took place in 2003, and not the DWI. See id. at 54-57. When pressed, Miers continued to be evasive:

> Q. Have you been charged with a crime any other times?
>
> A. No.[8] I have to be a clean machine for my job.
>
> * * *
>
> Q. But you have been arrested twice; correct?
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> A. Well once. I don't know. Twice, whatever. I don't know. I don't know. Maybe it is twice. I don't know if it is twice.

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[7] Although traffic violations are not deemed material information on the Application, the Questionnaire specifically asked about prior license suspensions and prior arrests including DWIs. See Questionnaire at pp.7, 8.

[8] Notwithstanding his testimony, in addition to the two arrests, Miers was charged with assault in 1994, albeit the charges were later dropped. See id. at 205.

Q. You have been arrested at least once for fighting ten years ago; is that correct?

A. Yes.

Id. at 57-58.

Despite initially acknowledging his 2003 arrest,[9] Miers later testified that he was never in fact arrested. See id. at 118-19. He also denied being charged with any criminal offense other than misdemeanor assault. See, e.g., id. at 120. In fact, as discussed above, Miers was charged with robbery, criminal usury, and conspiracy to commit the same.[10] See Indictment. When offered an opportunity to retract his earlier testimony, Miers declined to do so:

Q. So now, looking at this document, do you want to change the answer to your response previously when I said: Were you charged with any other crimes other than assault?

A. Not really, because I wasn't. I wasn't. I wasn't charged with this. I wasn't.

Q. Is it your testimony that you were not charged with any other crimes other than assault for this incident?

A. This says that, though; right? Is that what you're saying to me? I don't remember it being like that. The lawyer took care of everything, you know what I mean? I never saw this. I never saw this document.[11]

Id. at 123-24. Miers later continued his assertion that he was only charged with misdemeanor assault, stating, "I was only charged with assault. That is what I am telling you. It was only assault. It was only a misdemeanor." See id. at 145.

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[9] See, e.g., id. at 39, 56-58.

[10] During his interview, Miers suggested that the only reason he provided false testimony regarding the criminal charges was because the officer told him the charges were for assault only. See id. at 126. Miers then incredibly testifies that until the date of his sworn interview, he was not aware that he was ever charged with robbery, criminal usury and conspiracy, but rather that, only his co-defendant and friend, Joseph, was charged with the aforementioned. See id. at 126-27. This is rather difficult to suppose when one considers that Miers and Joseph were represented by same counsel. See id. at 68. When asked about the disposition of his case, Miers alleged that he pled guilty merely because his attorney was later disbarred, though he concedes that the disbarment had no relation to, and occurred months after, his criminal matter concluded. See id. at 59-61. Miers then changes his testimony, alleging the reason he pled guilty was because the prosecutor indicated his friend, Joseph, will take a felony charge if Miers did not plea to a misdemeanor charge. See id. at 62. Miers then goes on to allege, he pled guilty because his attorney advised "it is better for your friend." See id. at 67-68. These assertions are rather difficult to sustain in light of the fact that Joseph may, in fact, have pled guilty to felony assault. See id. at 66.

[11] In his testimony, Miers is referring to the Indictment, which he read and reviewed prior to answering the questions posed.

Miers also alleged that he was never asked to post bail and, at times, alleged that bail was never set on the matter. See id. at 132-33, 136. In response, a member of the Commission's staff showed Miers a copy of the New Jersey Criminal Complaint for an Arrest Warrant (the "Criminal Complaint"). According to the Criminal Complaint, bail was set in Miers' case at $100,000 or 10% cash. Ultimately, Miers conceded that his brother-in-law posted his bail. See id. at 151-52.

BASIS FOR DENIAL

A. The Applicant Knowingly Provided False and Misleading Information to the Commission.

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a ground for denial of the application. See Admin. Code §16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004) leave denied 2 N.Y.3d 705 (2004); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). It is crucial that applicants provide truthful and accurate information about its principals and employees. Such information is fundamental to the Commission's mission of preventing the re-emergence of the criminal activity that historically had a stronghold in the commercial carting industry.

The Application failed to disclose Miers as a former principal of Nancy Miers Landscaping on Schedule C of the Application, as did the Update. See Application at p.15; Update at p.15. However, Miers himself acknowledged that he had an ownership interest and a leading role in Nancy Miers Landscaping. See Miers Tr. at 187. To date, the Applicant has failed to accurately disclose Miers' ownership interest in Nancy Miers Landscaping, despite having had ample opportunity to rectify the omission. As described above, the Application also failed to accurately disclose Miers' criminal history. See Application at pp. 4, 7. Miers' contention that he assumed the Commission would automatically update the Application to include his criminal history is both baseless and not credible. See id. at 176-77. The burden of disclosure clearly lies on the Applicant rather than on the Commission. See 17 RCNY § 2-05(b)(iii) ("An applicant for registration . . . shall notify the Commission within ten business days of any other material change in the information submitted pursuant to this sub-chapter").

The failure of the Applicant to provide truthful and non-misleading information on its application to the Commission is evidence that the Applicant lacks good character, honesty, and integrity. The Applicant has not refuted this point. Accordingly, the Commission denies the Application based on this independently sufficient basis. See Admin. Code §§ 16-509(b); 16-509(a)(i).

B. The Applicant's Principal Provided False and Misleading Information to the Commission.

The Commission has the power "[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such

investigation." See Admin. Code § 16-504(c). Moreover, the Commission may refuse to issue a registration to an applicant who has "knowingly failed to provide the information and/or documentation required by the Commission." See id. at §16-509(b). Here, in addition to having submitted documents containing false and misleading information regarding Miers' prior ownership interest and his criminal history, Miers (the Applicant's principal) provided the Commission with false and misleading testimony while under oath.

As fully described above, Miers lied numerous times during his sworn testimony. Miers' continued misstatements, denials, and repeated attempts to minimize his criminal history while under oath and despite having been presented with evidence to the contrary, further demonstrates that the Applicant (and its principal) lacks good character, honesty and integrity. The Applicant has not refuted this point. Accordingly, the Commission denies the Application based on this independently sufficient basis.

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 it determines is lacking in good character, honesty and integrity. The record as detailed above demonstrates that the conduct of the Applicant indicates that it and its principal lack good character, honesty and integrity. Accordingly, based on the above independently sufficient grounds, the Commission now denies the Registration Application of Tom Miers Landscaping Limited Liability Company.

This denial decision is effective immediately. Tom Miers Landscaping Limited Liability Company 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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(Designee)
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