THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
100 CHURCH STREET, 20TH FLOOR
NEW YORK, NEW YORK 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF CAB II ENTERPRISES, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

CAB II Enterprises, Inc. (the "Applicant" or "CAB") has applied to the New York City Business Integrity Commission ("Commission"), formerly named the New York City Trade Waste Commission, pursuant to Local Law 42 of 1996, for an exemption from licensing requirements for the removal of construction and demolition debris. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Local Law 42 was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

CAB applied to the Commission for 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." Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission grants the Applicant a registration, the Applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin. Code §16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto); Breeze Carting Corp. v. The City of New York, 52

A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). Central to the Commission's investigation and determination of a registration application is whether the applicant has business integrity. See 17 RCNY §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, deceptive trade practices, and failing to timely pay taxes); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"). Local Law 42 makes it clear that the Commission is not limited to consideration of the enumerated factors; the list is meant to be illustrative and not exhaustive.

Based upon the record as to the Applicant, the Commission denies its exemption/registration application on the ground that this Applicant lacks good character, honesty and integrity for the following independent reasons:

A. The Applicant knowingly failed to provide information and documentation required by the Commission and provided false and misleading information to the Commission.

1. The Applicant knowingly failed to provide information and documentation required by the Commission regarding the outstanding debts of the Applicant and its predecessors.

2. The Applicant knowingly provided false and misleading information to the Commission in the Registration Application in that it failed to disclose Carmine Bottiglieri Sr. as a principal of the Applicant.

B. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration.

1. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

2. The Applicant has repeatedly engaged in unregistered trade waste removal activity.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies.

For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life." Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI").

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42 §1.

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the C & D sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the C & D sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an

associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many C & D haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988. During that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills Landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately $10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City's "cover" programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City's tipping fees. See 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.); see also United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the C & D sectors of the industry. Local Law 42 recognizes this fact in requiring C & D

haulers to obtain registrations from the Commission in order to operate in the City. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004).

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. §16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 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); Attonito, 3 A.D.3d 415.

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases "where the applicant fails to provide the necessary information, or knowingly provides false information." It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Id.;

accord Breeze Carting Corp. v. The City of New York, No. 107859/07 (Sup. Ct. N.Y. Cty. April 1, 2008) (Commission denial not arbitrary and capricious where based on a criminal conviction, identification as an organized crime associate, and false and misleading statements). Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

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.

Admin. Code § 16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. THE APPLICANT

On June 7, 2006, the Applicant was formed. The disclosed principals of the Applicant are Mary Ann Bottiglieri and her son, Carmine Bottiglieri, Jr. ("Bottiglieri Jr."). See Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris ("Registration Application") at 9. Carmine Bottiglieri, Sr. ("Bottiglieri Sr."), Bottiglieri Jr.'s father and Mary Ann Bottiglieri's husband, was disclosed as a driver for the company. Id. at 14.

Bottiglieri, Sr. ("Bottiglieri Sr") has owned and/or operated various trucking companies over the past approximately twenty years.[1] All the companies were operated out of his home, and serviced the same customers, all solicited by Bottiglieri Sr.[2] Among the companies owned and/or operated by Bottiglieri Sr. were C.M.B. Enterprises, Inc., M.A.B. Contracting, Inc., MAR Contracting, Inc.,[3] M. Bottiglieri Trucking Inc., and Triboro Truck & Material Brokers Inc. There was no difference among the companies other than the name. See Bottiglieri Sr. Tr. at 38, 41, 45, 48-53, 55, 65, 68, 74-75, 78, 82,

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[1] The Commission deposed Bottiglieri Sr. on February 10, 2009. See Bottiglieri Sr. deposition transcript ("Bottiglieri Sr. Tr.").

[2] According to Bottiglieri Sr., some of the companies he operated were put in his wife's name solely for union purposes. Bottiglieri Sr. testified that if he was listed as an owner of the company as opposed to an employee he would have to pay significantly more money to be a member of Teamsters Local 282. See Bottiglieri Sr. Tr. at 67-69, 51. Bottiglieri Sr.'s wife, Mary Ann Bottiglieri, did not have any role in operating the businesses. See Bottiglieri Sr. Tr. at 50-52.

[3] MAR Contracting, Inc. had applied to the Commission for a trade waste registration. Before the Commission made a final determination on the application, the application was withdrawn. See BIC licensing database printout, MAR Contracting Inc.

88-91, 97-98. None of these companies is currently active, but as demonstrated below, all have accumulated government debts that are currently outstanding.

As part of the investigation into the Applicant, on February 10, 2009, the Commission deposed Bottiglieri Sr. See Bottiglieri Tr.[4] Bottiglieri Sr.'s testimony establishes that he operates the company and is an undisclosed principal of the Applicant.

On December 21, 2011, the staff issued a 14-page recommendation that the application be denied. The Applicant was granted ten business days to respond. See 17 RCNY §2-08(a). The Applicant failed to submit a response to the staff's recommendation. The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth below, the Commission finds that CAB II Enterprises, Inc. lacks good character, honesty and integrity, and denies its exemption/registration application.

III. GROUNDS FOR DENIAL

A. The Applicant knowingly failed to provide information and documentation required by the Commission, and provided false and misleading information to the Commission.

1. The Applicant Knowingly Failed to Provide Information and Documentation Required by the Commission Regarding the Outstanding Debts of the Applicant and its predecessors.

"The 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 Admin. Code §16-509(b).

On or about February 13, 2009, a Commission staff member informed Mary Ann Bottiglieri and Bottiglieri, Jr., the disclosed principals of the Applicant, about the below-referenced unsatisfied judgments owed to state and federal tax authorities and the New York State Commissioner of Labor. See Letter to Mary Ann Bottiglieri dated February 13, 2009 ("Letter dated February 13, 2009"); *infra* at 10-12. In that letter, the Commission staff listed the below-referenced judgments, provided the Applicant with supporting documentation, and advised the Applicant that before the Registration Application could be processed further, the judgments must be satisfied or otherwise resolved. Id. Additionally, during his deposition before the Commission, Bottiglieri Sr. was advised about the outstanding judgments. See Bottiglieri Sr. Tr. at 121-22. Again, by letter dated May 8, 2009, after Bottiglieri Sr.'s deposition, a Commission staff member advised Bottiglieri Sr. and Mary Ann Bottiglieri about the judgments, all of which were still outstanding. Finally, on January 12, 2010, a Commission staff member met with Bottiglieri Sr., Mary Ann Bottiglieri, and their attorney, Suzanne Ascher, Esq.

[4] Bottiglieri Sr. testified that he and his son run the company, and, again, his wife is listed as a principal solely for union purposes. See Bottiglieri Sr. Tr. at 67-69, 51.

At that time, the Commission staff member again informed the parties about the outstanding debts. The Applicant's attorney stated that the Applicant would provide proof of the steps taken to resolve the debts. No such correspondence has been received by the Commission. See Memo dated January 12, 2010.

Notwithstanding all the notifications – in writing and in person – as of the date of this recommendation, the Commission has not received any documentation that any of the below-referenced judgments have been satisfied, otherwise resolved, or even addressed. Therefore, the Applicant has "knowingly failed to provide the information" required by the Commission. See Admin. Code §16-509(b). The Applicant did not dispute this point, leaving this ground uncontested. Accordingly, the Commission denies the Applicant's exemption/registration application on this independently sufficient ground.

2. The Applicant knowingly provided false and misleading information to the Commission in the Registration Application in that it failed to disclose Bottiglieri Sr. as a principal of the Applicant.

The Commission may refuse to issue a registration to an applicant who has failed "to provide truthful information in connection with the application." See Admin. Code §16-509(a), (b); Attonito, 3 A.D.3d 415. See also Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). Mary Ann Bottiglieri and Bottiglieri Jr. certified that the information contained in the Registration Application was true and accurate. See Registration Application at 16. In fact, the application was false in that it failed to disclose Bottiglieri Sr. as a principal of the Applicant.

Under Local Law 42, the definition of "principal" (which is included in the instructions section 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*" (emphasis added). See Admin. Code §16-501(d).[5]

Question 12 of the Application states, "On Schedule A, identify all individuals who are principals of [the] applicant business...." See Registration Application at 2. The application disclosed that Mary Ann Bottiglieri and Bottiglieri Jr. are the only principals of the company. Id. at 9. Yet, Bottiglieri Sr.'s testimony before the Commission clearly demonstrates that Bottiglieri Sr. has direct and indirect control over the company.

[5] In addition, an individual is considered to hold stock in a corporation where such stock is owned directly or indirectly by or for the spouse of such individual. See Admin. Code §16-501(d). This broad definition of "principal" was adopted by the City Council to be read in conjunction with the legislation's §16-507 (requiring Applicants for registration to provide the Commission with information sufficient to enable the Commission to identify a business) and §16-508 (setting forth a detailed list of information Applicants for license would have to provide to the Commission). See Report of the Legal and Governmental Affairs Division of the City Council; Hearing on Int. No. 676-A Before the Committee on Consumer Affairs, May 10, 1996 at 11-12.

The Applicant business is essentially the same company as its predecessors, all of which have been operated by Bottiglieri Sr. See Bottiglieri Sr. Tr. at 65, 90-91. Bottiglieri Sr. testified that he took a loan out on his home in order to purchase the trucks for the Applicant, the Applicant's customers are Bottiglieri Sr's customers from the Applicant's predecessor companies, and Bottiglieri Sr. found the garage location for the vehicles. See id. at 72-79, 83-84. Moreover, Bottiglieri Sr. testified that he has control over the company, what jobs it takes, and has the authority to negotiate contracts. Id. at 78-79.

Bottiglieri Sr.'s testimony demonstrates that he exerts direct control over the applicant business and its operations. Although the Commission need not attribute a motive to this false filing, it is likely that the Applicant failed to include Bottiglieri Sr. as a principal because of his history of incorporating different businesses and dissolving them with outstanding debts, a practice that would reflect negatively upon the Applicant's good character, honesty and integrity.

Thus, the evidence demonstrates that in addition to being a principal statutorily based on his familial relationship, Bottiglieri Sr. is a principal of the Applicant because he exerts direct control over the company. Therefore, the failure to include Bottiglieri Sr. as a principal in the Registration Application was false and misleading. The Applicant did not dispute this point, leaving this ground uncontested. Based on this independently sufficient ground, this application is denied.

B. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration.

1. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

"[T]he failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's integrity. See NYC Admin. Code §16-509(a)(x). Further, as demonstrated above and below, Bottiglieri Sr.'s pattern of incorporating new businesses to avoid the payment of debts incurred by predecessor businesses is additional evidence of the lack of the Applicant's business integrity.

Numerous judgments and liens have been docketed against the Applicant and its predecessor businesses by New York City, New York State, the United States of America, and the Commission. A judgment and lien search conducted by the Commission on August 17, 2011, reveals the following outstanding judgments and liens have been docketed against the Applicant:

NYS Workers' Compensation Board: $9,000

- Filing date 9/24/09 - $9,000

The following outstanding judgments have been docketed against MAB Contracting Inc.

NYS Commissioner of Labor: $7,010.66

- Filing date 1/25/96 - $1,321.20
- Filing date 12/3/96 - $5,298.56
- Filing date 12/18/97 - $390.90

NYS Department of Taxation and Finance: $2,159.21

- Filing date 10/27/97 - $1,405.56
- Filing date 5/24/95 - $753.65

The following outstanding judgments have been docketed against MAR Contracting:

Criminal Court of the City of New York: $7,275

- Filing date 6/12/01 - $1,200
- Filing date 2/16/99 - $2,025
- Filing date 8/26/02 - $2,025
- Filing date 12/23/02 - $2,025

NYS Department of Taxation and Finance: $13,975.40

- Filing date 11/29/99 - $50.36
- Filing date 11/29/99 - $125.94
- Filing date 11/29/99 - $12,400
- Filing date 11/16/00 - $1,399.10

The following outstanding judgments have been docketed against CMB Enterprises Inc.

Criminal Court of the City of New York: $400

- Filing date 3/17/09 - $400

NYS Department of Taxation and Finance: $23,800

- Filing date 2/15/07 - $11,850
- Filing date 9/29/07 - $11,950

The following outstanding judgments have been docketed against Triboro Truck & Material Brokers Inc.

NYS Department of Taxation and Finance: $758.80

- Filing date 1/21/05 - $758.80

The following outstanding judgments have been docketed against M Bottiglieri Trucking Inc.

NYS Commissioner of Labor: $303.48
- Filing date 2/18/92 - $303.48

Internal Revenue Service: $5,341
- Filing date 4/29/92 - $5,341

New York City Department of Finance: $1,159.45
- Filing date 3/28/02 - $527.99
- Filing date 3/5/91 - $631.46

New York State Department of Taxation & Finance: $7,150.60
- Filing date 1/31/91 - $1,908.31
- Filing date 9/9/91 - $1,108.66
- Filing date 7/20/94 - $1,440.63
- Filing date 6/3/93 - $713

The judgments filed against the Applicant total $9,000. The total amount owed by the Applicant's predecessor companies is $69,333.60. Consequently, the Applicant and its predecessor companies owe a total of $78,333.60 in outstanding judgments and liens filed on behalf of tax authorities and other government authorities, including the agency charged with regulation of the Applicant.

As discussed above, by letters dated February 13, 2009 and May 8, 2009, the Commission notified the Applicant in writing of the various outstanding liens and judgments that had been filed against the Applicant and its predecessors by governmental agencies. See Letter dated February 13, 2009; Letter dated May 8, 2009. Additionally, Bottiglieri Sr. was personally notified at his deposition and thereafter that the debts remained unsatisfied. Mary Ann Bottiglieri and Bottiglieri Sr. were also notified in the presence of their attorney that the Commission required proof that the debts were resolved. See Memo dated January 12, 2010.

Despite the above notifications, as of the date of this recommendation, the judgments remain unsatisfied. Accordingly, the Commission should deny this Applicant's Registration Application on this independent and sufficient ground. Additionally, Bottiglieri Sr.'s practice of creating and dissolving businesses with outstanding government debts is clearly an attempt to avoid payment of legitimate debts incurred in the operation of his trucking businesses. This deceptive practice is further proof that Bottiglieri Sr. and the Applicant lack good character, honesty, and integrity and is an additional ground for denying his application. The Applicant did not dispute this point, leaving this ground uncontested. For this independently sufficient reason, CAB's application is denied.

2. The Applicant has repeatedly engaged in unregistered trade waste removal activity.

The Commission is authorized to deny the registration application of a company that has engaged in unlicensed carting activity in the City of New York. See Admin. Code §§16-505(a), 16-509(c)(ii), 16-513(a)(i).

The Applicant has never held a carting license or registration issued by Department of Consumer Affairs, Trade Waste Commission, or Business Integrity Commission, and has never been legally authorized to operate a trade waste business in New York City. Nevertheless, since its inception, the Applicant has continuously operated a trade waste removal business in the City of New York without the requisite legal authority.

On December 10, 2009, a Commission investigator observed a dump truck with the name "CAB II Enterprises" marked on the vehicle while attempting to unload collected waste at a transfer station in the Bronx, New York. The debris was collected from a location in front of 410 East 77th Street, New York, New York. See Commission Notice of Violation, TW-4854. A Notice of Violation was issued against the Applicant, and a hearing was scheduled for January 6, 2011. The Applicant failed to appear for the hearing, and on January 13, 2011, a Default Decision and Order was entered. The Applicant was ordered to pay a fine of $5,000. See Default Decision and Order, TW-4854. The Applicant has not paid the fine or any portion thereof.

Again, on January 6, 2010, a Commission investigator observed a dump truck with the name "CAB II Enterprises" marked on the vehicle while it was being used to collect and transport trade waste from a location in front of 1440 York Avenue, in Manhattan. See Commission Notice of Violation, TW-5183. A Notice of Violation was issued against the Applicant, and a hearing was scheduled for April 29, 2010. The Applicant failed to appear. On May 17, 2010, a Default Decision and Order was entered, which directed the Applicant to pay a fine of $5,000. See Default Decision and Order, TW-5183. The Applicant has not paid the fine or any portion thereof.

Consequently, the Applicant owes the Commission $10,000 as a result of the above violations for which Default Decisions have been entered.

Further, during his deposition Bottiglieri Sr. acknowledged that the company has been continuously operating illegally since its inception in 2006. See Bottiglieri Sr. Tr. at 79-80. Even worse, Bottiglieri Sr. also testified that he was aware that operating without a registration would subject him to fines of up to $5,000 per day. See Bottiglieri Sr. Tr. at 88.

Moreover, Bottiglieri Sr. had filed an application with the Commission on behalf of one of the Applicant's predecessor companies, MAR Contracting Inc., on September 3, 1996. See BIC licensing database printout, MAR Contracting, Inc.; Bottiglieri Sr. Tr. at 88-89. Therefore, at the time the Applicant's Registration Application was filed,

Bottiglieri Sr. was certainly well aware of the Commission's rules and regulations. Consequently, the Applicant can not now claim ignorance of the legal requirement for a Commission-issued license or registration to haul trade waste in New York City.

Notwithstanding the Commission's rules and regulations, on January 27, 2005, the Bottiglieris withdrew the MAR Contracting Inc. registration application. Then, the Bottiglieris formed a new company, the Applicant, and operated that company without first obtaining a license or registration. Although Bottiglieri was aware that the Applicant required a Commission-issued registration to operate, he operated illegally without such registration and engaged in a pattern of misconduct for approximately five years, since the Applicant's formation.

The Applicant's repeated unregistered and unlicensed activity demonstrates blatant disregard for the Commission's rules and regulations. Moreover, in addition to operating without the appropriate license or registration, principals of the Applicant affirmatively withdrew another trade waste registration application for MAR Contracting, Inc. and chose to operate under a different unregistered company name. Under the circumstances, the Applicant's unregistered carting is strong evidence of the Applicant's lack of good character, honesty and integrity and merits the denial of its registration application. Additionally, the fact that the Applicant owes the Commission $10,000 as a result of unlicensed and unregistered trade waste removal activity negatively reflects upon the Applicant's good character, honesty and integrity and is a separate ground for denial of the application. The Applicant did not dispute this point, leaving this ground uncontested. The Commission denies CAB's exemption/registration application based on this independently sufficient ground.

IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that CAB II Enterprises, Inc. falls far short of that standard. Based upon the above independently sufficient reasons, the Commission denies CAB II Enterprises, Inc.'s exemption/registration application.

This exemption/registration application denial is effective immediately. CAB II Enterprises, Inc. may not operate as a trade waste business in the City of New York.

Dated: February 7, 2012

THE BUSINESS INTEGRITY COMMISSION

Shari C. Hyman
Commissioner and Chair

John Doherty / RFH
John Doherty, Commissioner
Department of Sanitation by Proxy

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

Rose Gill Hearn, Commissioner
Department of Investigation

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

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