

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION RENEWAL APPLICATION OF MIKE'S EXTERIOR
CONTRACTING CORP. TO OPERATE AS A TRADE WASTE BUSINESS**

Introduction

Mike's Exterior Contracting Corp. ("Mike's Exterior" or the "Applicant") has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for renewal of an exemption from licensing requirements and a registration 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." See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a).

On December 14, 2012, the staff issued and served the Applicant with Notice of the Grounds to Recommend that the application be denied. The Applicant was granted ten business days to respond, until January 2, 2013. See 17 Rules of the City of New York §2-08(a). The Applicant did not submit any response. Based on the record as to the Applicant, the Commission now denies Mike's Exterior Contracting Corp.'s exemption renewal application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

- A. The Applicant Has Failed to Pay Taxes, Fines, Penalties, or Fees That are Related to the Applicant's Business That are Owed to the New York City Environmental Control Board, the Internal Revenue Service, and the Commissioner of Labor of the State of New York.
- B. The Applicant Knowingly Failed to Provide Information and Documentation Required by the Commission.

Background and Statutory Framework

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

City's carting industry has also been the subject of significant successful racketeering prosecutions. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992); United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367.

The Commission is charged with, *inter alia*, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. 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;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

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

Id. at §509(a)(i)-(x). Additionally, the Commission may refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by

the Commission...or who has otherwise failed to demonstrate eligibility for a license. Id. at §509(b). The Commission may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” Id. at §509(c). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at §509(d).

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

Statement of Facts

Mike’s Exterior applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. See Registration Application (“Application”). The Application disclosed Michael Reilly as the sole principal. See Registration Application at 9. On or about February 4, 2004, the Commission granted the Applicant a trade waste registration. See Registration Order. The Applicant’s registration was effective for two years, and expired on February 28, 2006. See id. The Applicant subsequently filed renewal applications on January 19, 2006, January 16, 2008, and March 11, 2010. After investigating the Applicant, the Commission granted each of the subsequent renewal applications. On or about February 15, 2012, the Applicant filed its fourth Renewal Application (the “Instant Renewal Application”) with the Commission. See Instant Renewal Application.

The Commission’s background investigation of the Applicant in connection with the Instant Renewal Application established that:

- the Internal Revenue Service (“IRS”) filed six federal tax liens against the Applicant that total \$554,740;
- the New York City Environmental Control Board (“ECB”) ordered nineteen different fines against the Applicant that total \$33,194.64; and
- the Commissioner of Labor of the State of New York filed two judgments against the Applicant that total \$8,049.29.

By letter dated July 16, 2012, the Commission’s staff notified the Applicant about the IRS federal tax liens, the ECB fines, and the judgments filed by the Commissioner of Labor of the State of New York. See July 16, 2012 letter from David Mandell to the Applicant. The Commission’s staff extended a deadline of August 10, 2012 for the Applicant to provide “proof

that the ECB violations and the judgments and liens filed by the IRS and the Commissioner of Labor of the State of New York have been resolved, or are the subjects of documented payment plans.” See Id. As the Applicant did not respond to this letter, on August 22, 2012, the Commission’s staff sent the Applicant another letter that was clearly marked “FINAL REQUEST FOR INFORMATION AND DOCUMENTATION.” See August 22, 2012 letter from David Mandell to the Applicant. Again, the Applicant failed to respond to the August 22, 2012 letter. Both the July 16, 2012 and August 22, 2012 letters from the Commission’s staff advised the Applicant that the failure to provide the requested information and/or documentation to the Commission may result in the withdrawal or denial of the renewal application.¹ See July 16, 2012 and August 22, 2012 letters from David Mandell to the Applicant.

According to a judgment and lien search conducted on January 3, 2013, the following judgments and liens have been docketed against the Applicant (totaling \$562,789.29):

Creditor	Filing Number	Amount
Internal Revenue Service	201206120332526	\$384,379.00
Internal Revenue Service	201202220107003	\$135,012.00
Internal Revenue Service	201206120332540	\$2,895.00
Internal Revenue Service	201209100513281	\$6,816.00
Internal Revenue Service	201209210538197	\$2,136.00
Internal Revenue Service	201211060630398	\$23,502.00 ²
Commissioner of Labor of the State of NY	1632004	\$7,561.72
Commissioner of Labor of the State of NY	1710044	\$487.57

See Judgment and Lien Printout dated January 3, 2013. As of January 3, 2013, the abovementioned judgments and liens remain open and unpaid. In addition, according to a search of the ECB database dated January 3, 2013, the following fines have been docketed against the Applicant (totaling \$33,194.64):

Creditor	Violation Number	Amount
NYC Environmental Control Board	0162130917	\$1,501.81
NYC Environmental Control Board	0162310336	\$1,637.03
NYC Environmental Control Board	0162310345	\$1,023.14
NYC Environmental Control Board	000253773P	\$87.50
NYC Environmental Control Board	0170498296	\$3,185.48
NYC Environmental Control Board	0170195329	\$910.89
NYC Environmental Control Board	0177171730	\$4,236.46
NYC Environmental Control Board	0177171749	\$871.13
NYC Environmental Control Board	0177013899	\$1,385.52
NYC Environmental Control Board	0179335970	\$1,834.18

¹ Two of the judgments filed by the IRS (that total \$8,952.00) were filed subsequent to the letters from the Commission’s staff to the Applicant. See Judgment and Lien Printout dated January 3, 2013.

² The Commission learned about this federal tax lien, which was filed on November 6, 2012, after it served the Applicant with the Notice of the Grounds to Recommend that the renewal application be denied.

NYC Environmental Control Board	0179335961	\$254.75
NYC Environmental Control Board	0162266482	\$1,475.47
NYC Environmental Control Board	0162058555	\$1,475.47
NYC Environmental Control Board	0162239743	\$1,475.47
NYC Environmental Control Board	0176273828	\$2,732.67
NYC Environmental Control Board	0170195310	\$2,732.67
NYC Environmental Control Board	010847417J	\$2,600.00
NYC Environmental Control Board	010910675L	\$3,750.00
NYC Environmental Control Board	010910674J	\$25.00

See ECB Database Search Results dated January 3, 2013. As of January 3, 2013, the abovementioned ECB violations remain open and unpaid.

Basis for Denial

A. The Applicant Has Failed to Pay Taxes, Fines, Penalties, or Fees That are Related to the Applicant's Business That are Owed to the New York City Environmental Control Board, the Internal Revenue Service, and the Commissioner of Labor of the State of New York.

The commission may refuse to issue a license to an applicant "upon the failure of the applicant to pay any tax, fine, penalty, fee related to the applicant's business...for which judgment has been entered by a[n] ... administrative tribunal of competent jurisdiction..." See Admin. Code §16-509(a)(x); see also §16-509(c)(ii); see also §16-513(a)(iv).

As of January 3, 2013, the Applicant has failed to pay \$33,194.64 in fines ordered by the ECB. In addition, the Applicant failed to resolve \$562,789.29 in judgments and liens filed by the IRS and the Commissioner of Labor of the State of New York. On multiple occasions, the Commission's staff informed the Applicant that it owed numerous unsatisfied debts to governmental entities. Despite these warnings, the debts remain unsatisfied. The Applicant did not dispute this point. The Commission denies Mike's Exterior's renewal application on this independently sufficient ground.

B. The Applicant Knowingly Failed to Provide Information and Documentation Required by the Commission.

“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).

Despite repeated attempts by the Commission’s staff, the Applicant has failed to provide proof of satisfaction or other resolution of the outstanding fines, judgments and liens owed to governmental entities.

The Applicant has “knowingly failed to provide the information” required by the Commission by failing to respond to the Commission’s repeated requests for information and/or documentation. The Applicant did not dispute this point. The Commission denies Mike’s Exterior’s application on this independently sufficient ground.

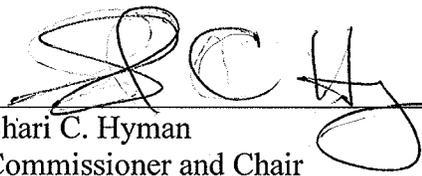
Conclusion

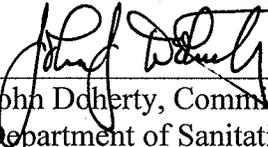
The Commission is vested with broad discretion to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license, to any applicant who it determines to be lacking in good character, honesty and integrity. The record as detailed above demonstrates that the Applicant falls short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies Mike's Exterior's exemption renewal application and registration.

This exemption/registration denial is effective immediately. Mike's Exterior Contracting Corp. may not operate as a trade waste business in the City of New York.

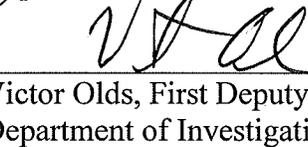
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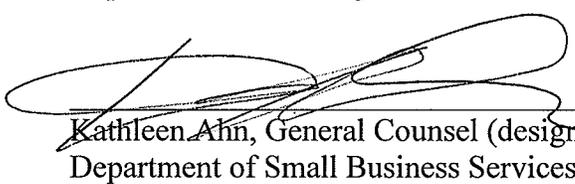
THE BUSINESS INTEGRITY COMMISSION

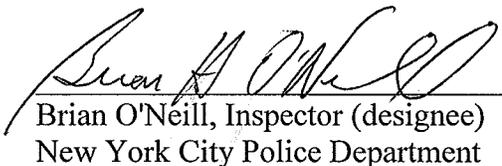

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