



DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE REGISTRATION APPLICATION OF PANICO LANDSCAPING TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Jerry Panico d/b/a Panico Landscaping (“Panico Landscaping” or “Applicant”) has applied to the New York City Business Integrity Commission (“Commission”), for renewal of its Class 1 registration for the removal of waste generated in the course of operating its business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code (“Admin. Code”), § 16-505 (a).

On May 2, 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 May 16, 2012. See 17 RCNY §2-08(a). The Applicant did not submit any response. Based upon the record as to the Applicant, the Commission now denies Munoz Transport’s exemption application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

- A. Panico Landscaping’s sole proprietor Jerry Panico was convicted in January 2010 by the Superior Court of New Jersey, Monmouth County, for theft by deception, providing a basis for refusal to issue a registration after considering the factors in New York Correction Law § 753.
- B. Panico Landscaping failed to provide truthful information to the Commission by not disclosing the criminal conviction of its sole proprietor Jerry Panico on its renewal registration application submitted on July 15, 2010.

Background and Statutory Framework

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, 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 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, all companies that “remove, collect or dispose of trade waste that is generated in the course of operation of such person's business,” including landscaping companies, must apply to the Commission for registration. Id. at § 505(b). 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 trade waste license or 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.

Statement of Facts

Panico Landscaping Application History

Panico Landscaping is a sole proprietorship based in Staten Island, New York. Panico Landscaping's original application for a Class 1 Registration was submitted to the Commission on May 4, 2004. See Application for Class 1 Registration of Panico Landscaping ("Original Application"). In the Original Application, it was disclosed that Jerry Panico was the sole proprietor. Id. at 13.

The Commission issued Panico Landscaping a Class 1 registration effective September 1, 2004, which was valid for two years. See Admin. Code § 16-506 (a). Panico Landscaping submitted two subsequent applications to the Commission for renewal of its Class 1 registration. See Renewal Application August 11, 2006 ("First Renewal Application") and Renewal Application July 18, 2008 ("Second Renewal Application"). Panico Landscaping disclosed in the Renewal Applications that Jerry Panico continued to be the only principal of the company and one hundred percent owner. First Renewal Application at 3; Second Renewal Application at 5. The Renewal Applications also stated that Jerry Panico is the only employee of Panico Landscaping. First Renewal Application at 7; Second Renewal Application at 8. The Commission approved the First Renewal Application on August 30, 2006, and approved the Second Renewal Application on August 31, 2009, extending Panico Landscaping's authority to operate as a Class 1 registrant until midnight August 31, 2010.

On July 15, 2010, Panico Landscaping submitted to the Commission the instant application to renew its Class 1 registration. See Third Renewal Application July 15, 2010 ("Third Renewal Application"). In the Third Renewal Application, Jerry Panico was again identified as sole principal, and one hundred percent owner of Panico Landscaping. Id. at 7. Again it was disclosed that Jerry Panico is the company's sole employee. Id. at 10. Question 7 of the Application asks, "Has the applicant or any of the applicant's principals, employees, or affiliates been arrested, convicted of, or been the subject of any criminal charges in any jurisdiction?" Id. Panico Landscaping answered "No." to Question 7 of the Application. Id.

The Commission's Investigation Revealed The Arrest, Conviction, and Imprisonment of Jerry Panico.

In connection with the instant application, the Commission conducted a background investigation into Panico Landscaping and Jerry Panico. Although not disclosed by Panico, the Commission discovered that on June 1, 2009, Jerry Panico was arrested by detectives with the Monmouth County, New Jersey Prosecutor's Office. See Press Release, Monmouth County Prosecutor's Office, Private Investigator Charged with Embezzling Over \$120,000 from Employer (June 1, 2009) ("Press Release"). A Grand Jury issued an indictment in the New Jersey Superior Court for Monmouth County charging Jerry Panico with the crime of theft by



deception, in violation of New Jersey's criminal law. N.J. Stat. Ann. § 2C:20-4 (West 2003). See New Jersey v. Panico, No. 09-2397, Indictment at 1 (N.J. Super. Ct. Law Div. July 27, 2009) ("Indictment").

The indictment charged that between October 2005 and February 2007, while working for Allstate Investigations ("Allstate"), Jerry Panico diverted more than \$120,000 of client payments intended for Allstate Investigations to a personal account. See Indictment: Investigator Embezzled \$79K from Freehold Employer, Asbury Park Press, July 30, 2009, 2009 WL 15629705. The state alleged that Panico defrauded Allstate and its customers using two different scams. In the first scam, Panico, while an agent and employee of Allstate, performed investigations for Allstate customers without informing Allstate. He instructed Allstate customers to make checks payable to him rather than to Allstate, and deposited the checks in his personal accounts. See Press Release. In the second scam, Panico collected checks from customers made payable to Allstate and signed the checks over to himself, depositing them in his personal accounts. Id. The New Jersey Superior Court convicted Jerry Panico of one count of theft by deception. See Panico, No. 09-2397, Judgment and Order at 1 (N.J. Super. Ct. Law Div. 2010). On January 8, 2010, Panico was ordered to pay \$81,432.34 in restitution to Allstate and was sentenced to four years of imprisonment. Id.

Basis for Denial

The Sole Principal of Panico Landscaping Was Convicted of the Crime of Theft by Deception.

In making licensing and registration determinations, the Commission is expressly authorized to consider prior convictions of the applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the New York Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also id. §16-501(a). Those factors are:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.



- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

See NY Correction Law, § 753. Panico is the sole proprietor, owner/president, and sole employee of Panico Landscaping. See Application at 7, 10. Thus it stands that Jerry Panico will perform all duties at Panico Landscaping, including contacting and collecting fees from the company's customers. The criminal charges against Panico directly relate to these duties; the crime for which Panico was convicted related to the theft of customer fees. The duties required of Jerry Panico at Panico Landscaping are exactly the types of duties he utilized to defraud Allstate and its customers. Moreover, the criminal charges (and subsequent plea) arose relatively recently, in 2009.

Panico was 49 years old when he entered his plea. He committed the thefts resulting in his conviction between October 2005 and February 2007, when he was between the ages of 45 and 47, mature enough to appreciate the seriousness of his crimes. Panico pleaded guilty to theft by deception – a crime which bears a direct relationship to the registration he now seeks. As there are no other disclosed employees, Panico's duties will necessarily include solicitation of business, and collecting fees from the company's customers. As such, it is recommended that the Commission refuse to renew Panico's registration based on this conviction.

Panico Failed to Provide Truthful Information in His Application Regarding His Conviction.

All Applicants must provide truthful and non-misleading information to the Commission. Failure to do so is a ground for the Commission to determine that the applicant lacks good character, honesty and integrity and refuse to issue a license to an applicant. See Admin. Code § 16-509 (a) (1); 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). In his Third Renewal Application, Panico failed to disclose the 2009 arrest and 2010 conviction. This alone is a sufficient basis to deny his application.¹

¹ The Certification purportedly signed by Panico is dubious. That certification, which requires *the applicant* to attest to the truthfulness of all answers provided in the application, reflects a signature with three letters following, "POA." Upon information and belief, because Panico was in jail at the time, the certification was signed by his Power of Attorney. Notably, on the date the Application was signed, Panico was incarcerated at Monmouth County Central Reception and Assignment Facility in New Jersey. The notary who attested to the signature was issued in Richmond County, New York. Third Renewal Application at 12.



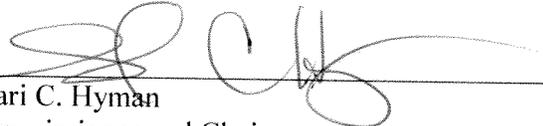
Conclusion

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 the exemption application and registration of Jerry Panico d/b/a Panico Landscaping.

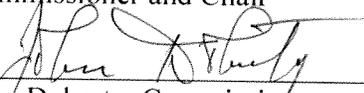
This registration denial is effective immediately. Jerry Panico d/b/a Panico Landscaping may not operate as a trade waste business in the City of New York.

Dated: June 5, 2012

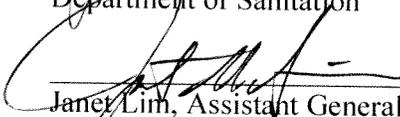
THE BUSINESS INTEGRITY COMMISSION



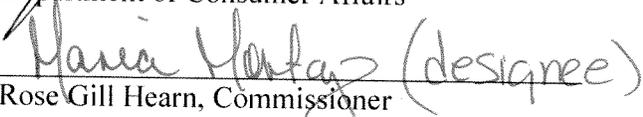
Shari C. Hyman
Commissioner and Chair



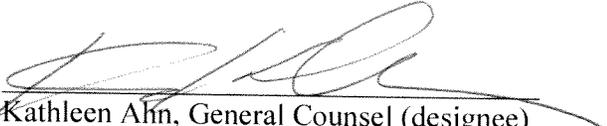
John Doherty, Commissioner
Department of Sanitation



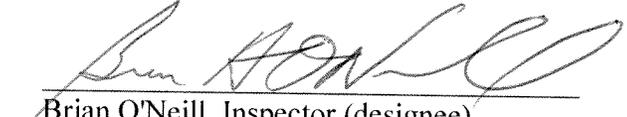
Janet Lim, Assistant General Counsel (designee)
Department of Consumer Affairs



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