Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION APPLICATION OF BEST TRUCKING & DEMOLITION CO. INC. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Best Trucking & Demolition Co. Inc. ("Best Trucking" 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 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 March 7, 2013, 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 March 22, 2013. See 17 Rules of the City of New York §2-08(a). The Applicant did not submit any response. Based upon the record as to the Applicant, the Commission now denies Best Trucking's exemption application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

A. The Applicant and the Applicant's Principal Have Failed to Pay Taxes That are Related to the Applicant's Business That are Owed to the State of New York and the New York State Department of Taxation and Finance.

B. The Applicant is an Inactive Corporation That is Not Authorized to do Business in the State of New York.

C. 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;
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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;
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> 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

Best Trucking 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.[1] See Registration Application ("Application"). The Application disclosed Otis Oliver as the sole principal of the company. See Registration Application at 13.

The Commission's background investigation of the Applicant in connection with the Registration Application established that:

- the State of New York filed a State Tax Warrant against the Applicant in the amount of $1,329.00;

[1] On September 26, 2007, the Applicant's predecessor company, Solomon Oliver Mechanical Construction Corp. ("SOMCC") 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. SOMCC and the Applicant have the same main office address, mailing address, garage address, business telephone number, and facsimile number. See September 26, 2007 Registration Application submitted to the Commission by SOMCC. The Applicant's only disclosed employee, Albert Brooks, was also disclosed to be an employee of SOMCC. See Id. The disclosed principal of the Applicant, Otis Oliver, informed a member of the Commission's staff that he is the son of the principal of SOMCC, Solomon Oliver. The Commission's investigation of SOMCC revealed that $153,618 in judgments and liens were filed against SOMCC by the New York City Department of Finance, the State of New York, the New York State Tax Commission, the Workers' Compensation Board of the State of New York, and the Commissioner of Labor of the State of New York. On June 11, 2009, SOMCC requested that the Commission withdraw its application. See June 11, 2009 letter from Solomon Oliver. On June 18, 2009, the Commission withdrew SOMCC's application.

- the New York State Department of Taxation and Finance filed a State Tax Warrant against Otis Oliver in the amount of $2,289.09; and

- The New York Secretary of State dissolved the Applicant corporation by proclamation on January 25, 2012.

By letter dated December 6, 2012, the Commission's staff notified the Applicant about the tax warrants and the New York State Department of State's "inactive" classification for the Applicant business. See December 6, 2012 letter from David Mandell to the Applicant. The Commission's staff extended a deadline of December 29, 2012 for the Applicant to provide "proof that Best Trucking & Demolition Co., Inc. is classified by the Department of State as an active business." See Id. The Commission's staff also requested "proof that all of the judgments and/or liens have been resolved, or are the subjects of documented payment plans." See Id. As the Applicant did not respond to this letter, on January 3, 2013, the Commission's staff sent the Applicant another letter that was clearly marked "SECOND AND FINAL REQUEST FOR INFORMATION." See January 3, 2013 letter from David Mandell to the Applicant. Again, the Applicant failed to respond to the January 3, 2013 letter. Both the December 6, 2012 and January 3, 2013 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 registration application. See December 6, 2012 and January 3, 2013 letters from David Mandell to the Applicant.

According to a judgment and lien search conducted on December 6, 2012, the following judgments and liens have been docketed against the Applicant and the Applicant's principal (totaling $3,618):

Creditor	Filing Number	Amount
State of New York	E035231212W0016	$1,329.00
NYS Department of Taxation and Finance	3018705	$2,289.09

See Judgment and Lien Printout dated December 6, 2012. As of the date of this Decision, the abovementioned judgments and liens remain open and unpaid. Also, as of the date of this Decision, the Applicant is classified as "inactive" by the New York State Secretary of State.

Basis for Denial

A. The Applicant and the Applicant's Principal Have Failed to Pay Taxes That are Related to the Applicant's Business That are Owed to the State of New York and the New York State Department of Taxation and Finance.

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 the date of this Decision, the Applicant and the Applicant's Principal have failed to pay $3,618 in taxes to the State of New York and the New York State Department of Taxation and Finance. On multiple occasions, the Commission's staff informed the Applicant and the Applicant's principal that both owed numerous unsatisfied debts to governmental entities. Despite these warnings, the debts remain unsatisfied. The Applicant did not dispute this point. The Commission denies Best Trucking's application on this independently sufficient ground.

B. The Applicant is an Inactive Corporation That is Not Authorized to do Business in the State of New York.

The New York Secretary of State dissolved the Applicant corporation by proclamation on January 25, 2012.[2] See New York State Department of State Division of Corporations printout. The Applicant never advised the Commission of this change of information regarding its corporate status. As the Applicant is not authorized to do business in the State of New York, it should not be authorized to operate as a trade waste business in New York City. The Applicant did not dispute this point. The Commission denies Best Trucking's application on this independently sufficient ground.

C. 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 Best Trucking's application on this independently sufficient ground.

[2] If a New York corporation does not file franchise tax returns or pay franchise taxes for two or more years, the New York Secretary of State may dissolve the corporation by proclamation. When a corporation is dissolved by proclamation, the legal entity of the corporation ceases to exist. See New York State Department of Taxation and Finance website, http://www.tax.ny.gov/bus/doingbus/tr125.htm.

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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 Best Trucking's exemption application and registration.

This exemption/registration denial is effective immediately. Best Trucking & Demolition Co. Inc. may not operate as a trade waste business in the City of New York.

Dated: May 13, 2013

THE BUSINESS INTEGRITY COMMISSION

Shari C. Hyman
Commissioner and Chair

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

John Kantor, Chief Inspector (designee)
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