

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 CARA SEAFOOD EXPRESS, INC. FOR REGISTRATION AS A SEAFOOD DELIVERER AT THE NEW YORK CITY NEW FULTON FISH MARKET AT HUNTS POINT AND DENYING THE APPLICATION OF JOHN CHIRICHELLA FOR A PHOTO IDENTIFICATION CARD

Introduction

Local Law 50 of 1995 (“Local Law 50”) and the rules promulgated thereunder require that seafood delivery businesses within the Fulton Fish Market Distribution Area register with the Commissioner of the Department of Business Services. NYC Admin. Code §22-211; 66 RCNY §§1-31(a), 1-32; 17 RCNY §13-06. The duties of the Commissioner of the Department of Business Services were later transferred to the Commissioner of the Organized Crime Control Commission (“Commissioner”), pursuant to a charter revision provision approved by the electorate in November 2001. The Organized Crime Control Commission was subsequently renamed the Business Integrity Commission, (“Commission”) pursuant to Local Law 21 of 2002. The Fulton Fish Market Distribution Area was geographically relocated on November 13, 2005, and upon moving was renamed “The New Fulton Fish Market at Hunts Point.” The City’s full regulatory authority over the Fulton Fish Market Distribution Area was conferred upon The New Fulton Fish Market at Hunts Point, (“Fulton Fish Market” or “Market”), effective November 9, 2005. *See* 66 RCNY §1-58. On September 26, 2010, Title 66 of the Rules of the City of New York was replaced with Chapter 2 of Title 17 of the Rules of the City of New York.

The Commissioner may refuse to register a seafood wholesaler or a seafood deliverer in the Fulton Fish Market when any of its principals lacks good character, honesty and integrity. Admin. Code §§22-211(b), 22-216(b). Administrative Code §22-216(b) lists a number of factors that the Commissioner may consider in making a fitness determination. Among the factors that the Commissioner may consider in determining the fitness of an individual or a market business are: association with a person who is a convicted racketeer (*id.* at §22-216(b)(iv)), failure to provide truthful information in connection with the application (*id.* at §22-216(b)(i)), or failure to pay any tax, fine, penalty, fee related to the applicants business for which judgment has been entered (*id.* at §22-2-16(b)(vi)). Local Law 50 makes clear that the Commissioner is not limited to consideration of the enumerated factors; the list is meant to be illustrative and not exhaustive.

For the independently sufficient reasons set forth in detail below, the Commission denies the seafood deliverer application of Cara Seafood Express, Inc. (“Cara Seafood Express” or “Applicant”) and denies the photo identification card application of John Chirichella (“Chirichella”).

Background

Chirichella has owned and operated various seafood delivery businesses over the past thirty years. On September 8, 1999, he formed the Applicant. See NYS Department of State, Division of Corporations record for Cara Seafood Express, Inc.; Chirichella Deposition Transcript (“Chirichella Tr.”)¹ at 47. Prior to that, he owned and operated Cara Seafood Inc. and Cara’s Express, Inc. (“Cara’s Express”). All three companies were owned and operated by Chirichella, located in his home, and serviced the same customers. See NYS Department of State, Division of Corporations record for Cara Seafood Express, Inc.; NYS Department of State, Division of Corporations record for Cara’s Express, Inc.; NYS Department of State, Division of Corporations record for Cara Seafood Inc.; Chirichella Tr. at 34-37, 42-50.

From 1961 until 1979, Chirichella worked for his father-in-law’s company, MC Fish, delivering fish to restaurants and fish stores. Chirichella Tr. at 25-27. When Chirichella’s father-in-law, Michael Caracappa, retired in 1979, he gave Chirichella one of his seafood delivery routes. Id. at 29-31, 33. As a result, in 1979, Chirichella formed Cara Seafood Inc. and purchased a truck to service those customers. See NYS Department of State, Division of Corporations record for Cara Seafood Inc.; Chirichella Tr. at 29-31, 33. Cara Seafood Inc. operated from 1979 until 1995, at which time Chirichella formed Cara’s Express. See Chirichella Tr. at 41-43. Chirichella testified that he formed Cara’s Express because his accountant advised him to do so. Id. at 42. He stated that there was no difference, other than the name, between Cara Seafood Inc. and Cara’s Express. See id. at 42-44, 48. Then, in 1999, Chirichella formed the Applicant. See NYS Department of State, Division of Corporations record for Cara Seafood Express, Inc.; Chirichella Tr. at 47-48. Again, Chirichella testified that he dissolved Cara’s Express and formed the Applicant upon the advice of his accountant. See Chirichella Tr. at 49-50.² He testified that there was no difference between the two companies. Id. at 48, 50.³

On February 14, 2007, the Applicant submitted an application to operate as a seafood deliverer in the Market.⁴ See Cara Seafood Express, Inc. Public Wholesale Markets Seafood Delivery Business Registration Application (“Registration Application.”). As part of its investigation, on December 9, 2008, the Commission deposed Chirichella. See Chirichella Deposition Tr.

¹ As discussed below, Chirichella was deposed by the Commission in connection with the Applicant’s seafood deliverer registration application.

² In the Applicant’s response to the Commission’s recommendation that the Registration Application and Chirichella’s photo identification card application be denied, Chirichella reiterated how the Applicant’s formation came about and that the Applicant’s predecessor companies were dissolved upon the advice of his accountant. As discussed below, Chirichella did not address why he failed to pay the outstanding debts of these companies.

³ As discussed below, all three companies have been “dissolved by proclamation,” are “inactive” with the New York State Department of State, Division of Corporations, and have outstanding tax and other government liabilities.

⁴ Cara’s Express was initially granted a registration to operate as a seafood deliverer in 1998 by the Department of Business Services. See DBS letter dated December 9, 1998. In 2004, Chirichella submitted an application on behalf of Cara Seafood Express, Inc. to the Commission to *renew* its registration to operate as a seafood deliverer. As Cara Seafood Express, Inc. had never been registered to operate as a seafood deliverer, the Commission advised Chirichella that if he wished to renew the registration for Cara’s Express, he must submit a properly completed application to renew that registration. Alternatively, if Chirichella was seeking to obtain a registration on behalf of the Applicant, he was required to submit a new registration application on behalf of the Applicant. See Commission letter dated June 16, 2004. Chirichella subsequently submitted the instant application.

On December 1, 2010, the Commission's staff issued an eight-page recommendation that the Registration Application and Chirichella's photo identification card application be denied ("Recommendation"). The Applicant was served with the Commission's recommendation by mail on December 1, 2010.⁵ On December 10, 2010, the Applicant submitted a response to the staff's recommendation ("Response"). The Response consisted of a three-page unsworn letter signed by John Chirichella before a notary public. The Commission has carefully considered both the staff's recommendation and the Applicant's Response, and for the independently sufficient reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application as well as the photo identification card application of John Chirichella.

Basis for Decision

1. The sole principal of Cara Seafood Express, John Chirichella, has associated with a convicted racketeer.

The Commission may deny a registration application based on the applicant's "association with a person who has been convicted for a racketeering activity when the applicant knew or should have known of such conviction..." Admin. Code §22-216(b)(iv). As set forth below, the principal of the Applicant associated with Phillip Caracappa ("Caracappa"), someone Chirichella knew or should have known was a convicted racketeer.

In 1984, Caracappa was charged with and convicted of theft of interstate shipment of goods, interstate transportation of stolen goods, and possession of stolen goods, racketeering activities. See Criminal History of Philip Caracappa ("Caracappa's Criminal History"); 18 USC §1961. Caracappa was sentenced to three years of imprisonment and five years of probation. See id.

Subsequent to the above racketeering convictions, on December 2, 1999, Caracappa was indicted along with 38 other defendants in a 42-count racketeering indictment by the United States Attorney for the Southern District of New York. See United States Attorney, Southern District of New York, Press Release dated December 2, 1999 ("Press Release"). The charges in the indictment included, among other things, murder, gambling, extortion, and transportation of stolen property. See United States v. Vincent Palermo et al., Indictment No. 99 Cr. 1199 (United States District Court, Southern District of New York) ("Indictment"). Caracappa was charged with conspiring to sell and attempting to sell stolen United States savings bonds in furtherance of the racketeering enterprise. See id. at 31, 35, 63-64. On September 19, 2002, Caracappa was convicted upon a plea of guilty to Conspiracy to Defraud the United States. See Judgment in a Criminal Case, United States v. Philip Caracappa, at 1. He was sentenced to time served and ordered to pay a fine. Id.

Caracappa was the sole principal of Caravente Corp. ("Caravente"), a seafood delivery business in the Market. The Commission denied Caravente's renewal application on June 9, 2005 as a result of Caracappa's racketeering convictions, as well as his association with organized crime figures. See Commission Decision Denying the Renewal Application of Caravente Corp., dated June 9, 2005.

⁵ The Commission also attempted to serve by facsimile the attorney who appeared with Chirichella when he was deposed by the Commission, Peter Discenza, Jr. Those attempts, however, were unsuccessful, and the Commission was unable to obtain further information.

Chirichella clearly knew or should have known that Caracappa was a convicted racketeer. Caracappa is Chirichella's brother-in-law. Chirichella and Caracappa speak daily and see each other regularly. See Chirichella Tr. at 71. Chirichella testified that he had known "for years" that Caracappa had been arrested and convicted of "hijacking." See id. at 65-68. Chirichella was also aware of Caracappa's association with organized crime figures and Caracappa's more recent arrest in 1999. See id. Finally, Chirichella testified that he knew that the Commission denied Caracappa's registration application. Id. at 63-64.

Even though Chirichella had full knowledge that Caracappa was a convicted racketeer, Chirichella continued to associate with Caracappa, maintaining a business relationship with him. On March 24, 2004, the Commission's Security and Enforcement Section ("SES") cited driver Phillip Caracappa at the Fulton Fish Market for his failure to produce market identification. See SES Certificate of Inspection, March 24, 2004. Caracappa told SES that he was doing business as Cara's Express. See id. Additionally, on or about November 4, 2005, a Fulton Fish Market buyer's vehicle access card application was submitted to the Market on behalf of Cara's Express and its principal, John Chirichella. See Fulton Fish Market Buyer's Vehicle Access Card Application, dated November 4, 2005. The fee for this application was paid for by Caracappa. See id. Both Caracappa's credit card information and authorized signature appear on the form. See id.

Finally, correspondence to the Commission from the Applicant demonstrates a continued business relationship with Caracappa through December 2008, even after Chirichella's deposition before the Commission when he claimed he had never done business with Caracappa. On December 16, 2008, the Applicant forwarded to the Commission a document that was originally transmitted via facsimile from "Caravente Corp.," the company owned and operated by Caracappa that was denied a registration by the Commission. See correspondence to the Commission, dated December 16, 2008. Thus, even as late as December 16, 2008, after Chirichella had been deposed, the Applicant continued to associate with Caracappa.

In addition, as discussed below, Chirichella gave false testimony before the Commission when he claimed that he and Caracappa have never had any business relationship. See Chirichella Tr. at 49, 61-62, 64-65. This attempt to distance himself from Caracappa is further evidence that Chirichella knew about his brother-in-law's criminal history and was aware that any business association with him was problematic.

In the Response, Chirichella stated that Caracappa was never employed by Chirichella. He also alleged that Caracappa paid for the vehicle access card as a favor to Chirichella because he did not have a credit card at the time. No evidence was submitted to support these unsworn statements. Moreover, the Response failed to address the other evidence before the Commission that indicated a business association between Chirichella and Caracappa -- that is, that Caracappa represented to Commission personnel that he was an employee of one of Chirichella's companies, that Chirichella provided false statements about the relationship, and that a document transmitted to the Commission originated from Caracappa's company. In the Response, Chirichella also argued that he is being unfairly punished due to his family ties. As demonstrated above, this argument is without merit. The Commission is not relying on Chirichella's familial relationship with Caracappa. On the contrary, the evidence establishes that the Applicant has in fact maintained a *business* association with Caracappa, a convicted racketeer. The Applicant does not submit any evidence, other than the unsworn statements referenced above, to refute this point.

Consequently, the above information demonstrates that Chirichella knew or should have known that Caracappa was a convicted racketeer, and that Chirichella associated with Caracappa long after he was aware of Caracappa's racketeering convictions. Further, Chirichella's continued business association with Caracappa after he knew that the Commission denied Caracappa's registration application, thus finding that Caracappa lacked good character honesty and integrity, is further evidence that Chirichella lacks the good character, honesty and integrity to operate in the Market. Accordingly, the Commission denies this Applicant's registration application on this independently sufficient ground.

2. The sole principal of the Applicant, John Chirichella, failed to provide truthful information in connection with the application.

The Commissioner may deny a registration application based on "failure by the applicant to provide truthful information in connection with the application..." Admin. Code §22-216(b)(i).

a. Chirichella provided false and misleading information to the Commission during his sworn testimony.

As set forth below, Chirichella, the Applicant's sole principal, provided false and misleading information to the Commission during his sworn testimony on December 9, 2008.

When Chirichella appeared before the Commission, he was asked several questions about his business relationship with Caracappa. Chirichella testified that Caracappa had never worked for any of Chirichella's companies, and that Chirichella had never worked for any of Caracappa's companies. See Chirichella Tr. at 49, 61-62, 64-65. Further, Chirichella unequivocally stated that he never had any business dealings in any manner with Caracappa either before or after Caravente Corp's registration renewal application was denied in 2005. See id. at 61-62, 64-65. Chirichella, however, maintained a business relationship with Caracappa both before and after 2005.

In fact, first, in March 2004, the SES cited Caracappa, then reportedly employed as a driver with the Applicant's predecessor, Cara's Express, at the Market for his failure to produce market identification. See SES Certificate of Inspection, March 24, 2004. The following year, in November 2005, Caracappa paid for and used his credit card to secure a Fulton Fish Market buyer's vehicle access card for Cara's Express and John Chirichella. See Fulton Fish Market Buyer's Vehicle Access Card Application, November 4, 2005. Finally, in December 2008, after Chirichella's deposition, Chirichella forwarded correspondence to the Commission originating from Caravente Corp., Caracappa's company. See correspondence to the Commission, dated December 16, 2008. Consequently, there is sufficient evidence to show that Chirichella had in fact employed Caracappa in the past and maintained a business relationship with him. This contradicts Chirichella's sworn testimony before the Commission that he had never done so. Therefore, Chirichella's statements made under oath during his deposition were false. In the Response, the Applicant does not address or contest this point. Although the Commission is not required to attribute a motive for these false statements, it is likely that Chirichella knew that his business dealings with Caracappa were problematic, and he made a conscious effort to hide those dealings from the Commission.

Regardless of Chirichella's motive for testifying falsely about his relationship with Caracappa, Chirichella provided false and misleading information to the Commission during his

deposition. In the Response, Chirichella sets forth a purported reason for Caracappa paying for the Applicant's vehicle access card, but fails to address why he did not disclose that to the Commission during the deposition or contest that he testified falsely. Accordingly, the Commission denies the Applicant's registration application on this independent and sufficient ground.

b. Chirichella failed to provide the Commission with requested information and documentation.

As set forth below, the principal of the Applicant failed to provide the Commission with the information and documentation that it had requested.

By letter dated January 19, 2007, the Commission notified Chirichella that the Applicant was "inactive" with the New York State Department of State, Division of Corporations.⁶ See Commission letter to Chirichella dated January 19, 2007. In that letter, Chirichella was informed that the Applicant must provide proof to the Commission that the situation was resolved and that the company was reinstated to do business in New York. Id. In fact, the Applicant was dissolved by proclamation on June 26, 2002 for its failure to provide required annual financial statements to New York State.⁷ See NYS Department of State, Division of Corporations record for Cara Seafood Express, Inc. During Chirichella's deposition he was again informed about his company's "inactive" status. See Chirichella Tr. at 68-70. Despite being notified of this issue and instructed to submit proof that it has been rectified, as of July 11, 2011, the Applicant is still "inactive" with the New York State Department of State, Division of Corporations. The Applicant does not refute this point.

The Applicant's failure to provide the information requested by the Commission in connection with the instant application is a sufficient ground for denying its application. Notably, the Applicant does not submit any evidence or explanation regarding its failure to provide the Commission with the requested information or why it has not addressed the applicant's "inactive" status. Accordingly, the Commission denies this Applicant's registration application on this independent ground.

3. The Applicant failed to pay taxes and other government obligations for which judgments have been entered.

The Commissioner may deny a registration application based on the applicant's "failure to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefore, or for which judgment has been entered by a court..." Admin. Code §22-216(b)(vi). Numerous judgments and liens have been docketed against the Applicant, Cara's Express, Cara Seafood Inc. and John Chirichella by New York City, New York

⁶ The Commission had first notified Chirichella of the inactive status of both Cara's Express and the Applicant by letter dated June 16, 2004 after Chirichella had incorrectly submitted a *renewal application* on behalf of the Applicant. That letter also notified Chirichella of various outstanding judgments owed by the Applicant, Cara's Express, and Chirichella to numerous government authorities. See Commission letter dated June 16, 2004.

⁷ "Every corporation...shall be subject to dissolution for failure to register or to file annual financial reports..." NY CLS N-PCL §1014. The Applicant, as well as Cara's Express and Cara Seafood Inc., were dissolved by proclamation and notified about how to seek reinstatement. See NYS Department of State, Division of Corporations record for Cara Seafood Express, Inc.; NYS Department of State, Division of Corporations record for Cara's Express; NYS Department of State, Division of Corporations record for Cara Seafood Inc.

State, and other government entities. Further, Chirichella'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.

A judgment and lien search conducted by the Commission on October 22, 2010 revealed the following outstanding judgments and liens have been docketed against the Applicant:

NYS Commissioner of Labor: \$13,993.45

- Filing Date 7/11/07 - \$1,041.66
- Filing Date 6/28/06 - \$1,039.21
- Filing Date 4/25/06 - \$1,064.71
- Filing Date 3/24/06 - \$1,038.44
- Filing Date 6/25/04 - \$1,026.62
- Filing Date 3/26/04 - \$1,026.99
- Filing Date 8/27/03 - \$1,038.00
- Filing Date 1/5/07 - \$1,043.66
- Filing Date 4/17/07 - \$4,508.16
- Filing Date 1/2/08 - \$1,166.00

State of New York: \$3,126

- Filing Date 1/5/07 - \$1,044
- Filing Date 6/15/06 - \$1,039
- Filing Date 12/21/06 - \$1,043

NYS Tax Commission: \$1,159

- Filing Date 6/28/05 - \$1,159

NYC Department of Finance: \$9,632.43

- Filing Date 1/22/08 - \$4,424.35
- Filing Date 11/26/08 - \$5,208.08

The following outstanding judgments and liens have been filed against Cara's Express:

NYS Commissioner of Labor: \$7,252.14

- Filing Date 3/15/02 - \$7,252.14

NYS Department of Finance: \$1,468.77

- Filing Date 12/11/01 - \$1,468.77

NYC Department of Finance: \$1,393.89

- Filing Date 3/22/99 - \$1,393.89

The following judgments and liens have been filed against Cara Seafood Inc.:

NYC Department of Finance: \$917.51

- **Filing Date 3/1/90 - \$50.92**
- **Filing Date 5/8/91 - \$424.59**
- **Filing Date 3/17/92 - \$442**

Finally, the following outstanding judgments and liens have been filed against Chirichella:

NYS Department of Taxation and Finance: \$9,572.52

- **Filing Date 8/7/06 - \$4,649.37**
- **Filing Date 9/25/07 - \$4,180.83**
- **Filing Date 11/10/08 - \$742.32**

The judgments filed against the Applicant business total \$27,910.88. The total amounts owed by Cara's Express and Cara Seafood Inc. are \$10,114.80 and \$917.51, respectively. Finally, Chirichella personally owes a total of \$9,572.52. Consequently, the Applicant and its principal owe a total of \$48,515.71 in outstanding judgments and liens filed on behalf of tax authorities and other government authorities.⁸

In the Response, Chirichella claimed that due to some financial difficulties in the past, he failed to pay some personal taxes, but is currently "under an agreement" and makes monthly payments to resolve those taxes. Chirichella provided no proof of such an agreement or of the payments that have allegedly been made to resolve his personal outstanding taxes. Moreover, Chirichella failed to address the other debts in any manner. Accordingly, the Commission denies this Applicant's registration application on this independent and sufficient ground. Additionally, Chirichella'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 seafood delivery business. Although Chirichella claimed in the Response that the dissolution and formation of these related companies was due to the advice of his accountant and an IRS agent, Chirichella did not address or contest the outstanding debts against the Applicant's predecessor companies. Therefore, the Commission concludes that in addition to failing to pay its taxes, the Applicant engaged in a deceptive practice, which is further proof that the Applicant lacks good character, honesty, and integrity and is an additional ground for denying his application.

Conclusion

Based on each of the independently sufficient reasons stated above, the Commission finds that Cara Seafood Express, Inc. and John Chirichella each lack good character, honesty and integrity. Accordingly, the Commission denies the application of Cara Seafood Express, Inc. for registration as a seafood deliverer in the Fulton Fish Market and the photo identification card of John Chirichella.

Furthermore, the identification card of "all employees" automatically cease to be valid upon the Commission denying this registration application and upon such a denial these identification cards must be returned immediately to the Commission. See Admin. Code §22-219(b) ("the discontinuance of business operations in the market area by a registrant shall require the immediate

⁸ Notably, by letter dated June 16, 2004, the Commission informed Chirichella about many of the above listed debts that remain outstanding against Cara Seafood and Cara's Express. See Commission letter dated June 16, 2004.

cessation of use of a registration number and the immediate surrender of all decals, stickers and photo identification cards issued to such registrant and the principals, employees and/or agents of the registrant”).

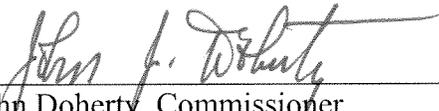
This decision is effective immediately.

Dated: August 2, 2011

THE BUSINESS INTEGRITY COMMISSION



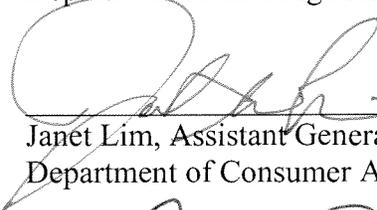
Michael J. Mansfield
Commissioner/Chair



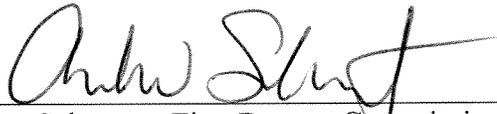
John Doherty, Commissioner
Department of Sanitation



Rose Gill Hearn, Commissioner
Department of Investigation



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



Andrew Schwartz, First Deputy Commissioner (designee)
Department of Small Business Services



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