The City of New York
BUSINESS INTEGRITY COMMISSION
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DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE LICENSE RENEWAL APPLICATION OF SWF TRUCKING, INC. TO OPERATE AS A TRADE WASTE BUSINESS

I. PRELIMINARY STATEMENT

SWF Trucking, Inc. ("SWF" or the "Applicant") (BIC-3375) has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for renewal of a license to operate as a trade waste business. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a).

On October 14, 2014, the staff issued and served the Applicant with Notice of the Grounds to Recommend that the License Renewal Application of SWF be denied ("Notice"). The Applicant was granted ten business days to respond, until October 30, 2014. See Title 17 Rules of the City of New York §2-08(a). On October 28, 2014, the Applicant's attorney requested an extension of time to submit a written response. See October 30, 2014 letter from David Mandell to Gerald J. McMahon, Esq. The Commission's staff and the Applicant's attorney agreed to extend the time to submit a written response to November 10, 2014. See id. On November 10, 2014, the Applicant submitted a three-page response from its attorney and a one-page affidavit signed by the Applicant's principal, Salvatore Ferraioli (collectively, "Response"). See November 10, 2014 Response. Based upon the record as to the Applicant, the Commission now denies SWF's license renewal application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

1. **The Applicant's sole owner and principal is the subject of a pending indictment that charged him with the crime of operating an illegal gambling business.**

2. **The Applicant's sole owner and principal has committed a racketeering activity.**

II. 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 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. 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.

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). Before issuing such license, 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 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 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). Admin. Code § 16-116.

III. FACTS

The Applicant applied to the Commission for a trade waste removal license. See License Application filed on June 5, 2009 ("Application"). Salvatore Ferraioli ("Ferraioli") was disclosed as the sole principal and 100% owner of the Applicant. See Application at 21. On August 28, 2009, the Commission granted the Applicant a trade waste license. See SWF Licensing Order. On August 9, 2011, the Applicant filed its first renewal application with the Commission ("First Renewal Application"). See First Renewal Application.

On May 8, 2012, Salvatore Ferraioli and several associates of the Gambino organized crime family were indicted by a federal grand jury in the District of Connecticut.[1] See United States v. DePreta, et al, 12CR93(VLB) ("Indictment"); United States Attorney, District of Connecticut, June 13, 2012 Press Release ("Press Release"). The defendants were charged in a ten-count indictment with crimes including conspiring to violate the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), operation of an illegal gambling business, interstate travel in aid of racketeering, and money laundering. See id.

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[1] Although the Notice did not state that Salvatore Ferraioli has been identified by a federal, state, or city law enforcement or investigative agency as an associate of the Gambino organized crime family, the Applicant's Response alleges that the Notice "suggests" the same. See Response at 1. To be clear, according to the press release issued by the United States Attorney, District of Connecticut on June 13, 2012, "twenty individuals, including alleged associates of the Gambino Crime Family of La Cosa Nostra, have been charged with various federal offenses related to their alleged involvement in a large-scale illegal Internet sports bookmaking operation and illegal card gambling clubs in Stamford and Hamden, ..." See Press Release. See also infra at 5.

The indictment charged that from in or about January 2008 to May 2012, Ferraioli, Dean DePreta, Richard Uva, Thomas Uva IV, Douglas Corbin, Joseph Borea, and others unlawfully, willfully, and knowingly conducted, financed, managed, supervised, directed, and owned all or part of an illegal gambling business, in violation of Title 18, United States Code, Sections 1955 and 2.[2] See Indictment at 8-9. Specifically, the United States Attorney for the District of Connecticut ("US Attorney") alleged that Ferraioli and his codefendants were involved in a "large-scale sports bookmaking operation in which gamblers placed bets with offshore Internet sports-gambling websites..."[3] See Press Release.

Ferraioli's codefendants, Dean DePreta, Richard Uva, Thomas Uva IV, Douglas Corbin, and Joseph Borea are identified in the Indictment as associates of the Gambino crime family. See Indictment at 4; Press Release. Furthermore, the US Attorney identified DePreta, as the "primary supervisory force behind the Gambino crime family's illegal activities in southern Connecticut during the past several years."[4] See Government's Memorandum in Support of Pretrial Detention of Dean DePreta ("DePreta Detention Memo") at 4. The US Attorney identified Richard Uva as DePreta's "long-time right-hand man," who ran "four illegal-gambling-business entities on a day-to-day basis." See id. Ferraioli, along with two other defendants, had "substantial contact with Richard Uva, the operational leader of the sports bookmaking operation who reported directly to Dean DePreta." See Government's Omnibus Response to Discovery Motions at 22. Specifically, "Ferraioli served as an active agent in the bookmaking operation and

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[2] The Federal Bureau of Investigation Cryptoanalysis Unit reviewed the criminal organization's sports-gambling records for the 2010-2011 wagering season alone and determined that total profits amounted to $1.69 million for that year. See DePreta Detention Memo at 4.

[3] In the Response, the Applicant takes issue with several "facts" that were not discussed in the Notice. First, the Response notes that "Ferraioli reported the gambling arrest to BIC the day after it occurred." See Response at 2. The Applicant's Response fails to state that while this may have been the case, the Applicant was actually required to make such disclosure to the Commission. See 17 RCNY §2-05(a)(1). Additionally, the Commission is not alleging any violation of its rules for not reporting the arrest. Second, the Response notes that "Ferraioli quit the gambling business months before he was arrested." See Response at 2. Notwithstanding that this is a self serving statement, the date when Ferraioli claims that he stopped participating in this large scale organized crime controlled gambling ring is irrelevant and has no bearing on his arrest and the underlying reasons for his arrest. Third, the Response notes that "Ferraioli has an agreement with the Connecticut Federal prosecutors to resolve the Indictment with a misdemeanor tax plea; he was the only one of 20 defendants allowed to plead to a misdemeanor." See Response at 2. Yet, as of the date of this Decision, there has been no plea, and even if and when Ferraioli does plead guilty to a crime, such a plea would not mitigate his culpability in this criminal case, as described above. In fact, such a plea supports such culpability.

[4] In a prior case, in 2002, Senior District Judge Alan H. Nevas sentenced DePreta to a term of incarceration of 39 months for Collecting an Extension of Credit by Extortionate Means, Operating an Illegal Gambling Business, and Failing to File a Tax Return. See DePreta Detention Memo at 3. In the instant case, the US Attorney alleged that DePreta "is a well known organized crime figure who has previously been incarcerated in federal prison; this stature and criminal history helped facilitate collections on behalf of DePreta's illegal organization." See id. at 5. Yet, in the Response, the Applicant attempts to minimize DePreta's and Uva's stature in organized crime by pointing out that the "indictment charges that DePreta and Uva were not members of the Gambino Family, but merely associates." See Response at 1-2. We do not find the Applicant's attempt to minimize DePreta's and Uva's roles within organized crime to be persuasive. Local Law 42 permits the Commission to consider the "association with any member *or* associate of an organized crime group..." to be a valid reason to deny an application (*emphasis added*).

regularly spoke to Uva to arrange for the collection or disbursement of gambling funds with him." See id. at 23.

On August 30, 2013, the Applicant filed its second renewal application with the Commission ("Second Renewal Application"). See Second Renewal Application. On July 24, 2014, Ferraioli provided the Commission with sworn testimony. See Ferraioli Transcript ("Ferraioli Tr."). Notably, during his sworn testimony, Ferraioli admitted that he participated in the illegal gambling operation by taking bets, collecting money, and regularly delivering money to associate of the Gambino organized crime family, Richard Uva. See Ferraioli Tr. at 30-43. He admitted that he engaged in this criminal behavior for over four years. See id.

IV. ANALYSIS

1. The Applicant's sole owner and principal is the subject of a pending indictment that charged him with the crime of operating an illegal gambling business.

The Commission may deny a license application based on a "pending indictment or criminal action against such applicant or person for a crime which under this subdivision would provide a basis for the refusal of such license." See Admin. Code §16-509(a)(ii).[5] As the Commission may deny a license application due to a pending indictment or criminal action that would provide a basis for the refusal of such license, see Admin Code §16-509(a)(ii); the Commission must evaluate the crimes charged in light of the factors set forth in §753 of the Correction Law, which 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 [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.
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> (b) The specific duties and responsibilities necessarily related to the license . . . sought.

[5] The Commission has the discretion to defer consideration of an application until a decision has been reached on a pending indictment. See Admin. Code §16-509(b)(ii). A plea of not guilty without more is an insufficient reason to defer consideration of an indictment; doing so would mandate the deferral in every single case involving a pending indictment and is inconsistent with the statutory provision specifically authorizing the Commission to deny a license application based upon a pending indictment. See Admin. Code §16-509(b)(ii). In the Response, the Applicant unpersuasively states that in the Notice, the Commission staff's consideration of the nature of the criminal charges, the evidence of organized crime corruption, and Ferraioli's casual disregard for committing a crime with organized crime figures "do not justify" the denial of this license renewal application. See Response at 2. The Commission disagrees. After carefully reviewing the nature of the criminal charges, the evidence of organized crime corruption, and Ferraioli's casual disregard for committing a crime with organized crime figures, the Commission declines to exercise its discretion to defer consideration of the application in this case.

(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 and 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 . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law §753 (1).

Applying these factors, the crime charged against Salvatore Ferraioli is recent, is serious, and is directly related to organized crime. The charge against Ferraioli is antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption from the carting industry. Moreover, the crime charged, which relates directly to organized crime, goes to the crux of the Applicant's honesty, integrity and character. As charged, over the course of his more than four years of participation in the criminal scheme commencing in 2008, Ferraioli was in his late 20's and early 30's – plainly old enough to know what the law required, how to obey it, and to recognize that the schemes in which he was involved were illegal. Ferraioli's crime as charged was the result of a series of conscious decisions to violate the law and serve as a disturbing reminder of both organized crime's links to people involved in the City's waste removal industry and the cynical disregard for the law that corrupted the City's waste removal industry in the past. Ferraioli has shown himself to be unworthy of licensure in that same industry. Thus, the crime charged should preclude the grant of a trade waste removal license to this Applicant.

In the Response, the Applicant's attorney first attempts to minimize Ferraioli's criminal behavior by arguing that Ferraioli was charged with simply "being a bookie." See Response at 2. Regarding this characterization, the Applicant's attorney opines "that there are few if any crimes more benign than being a bookie." See id. Next, the Applicant's attorney attempts to minimize both Ferraioli's connection to associates of the Gambino crime family and the stature of those associates within the Gambino crime family. See id. Finally, the Applicant's attorney disputes the assertion that Ferraioli has a "casual disregard for running a sports gambling business with organized crime associates." The Applicant's attorney argues that if Ferraioli had such a "casual disregard," he would not have quit the criminal activity months before he was arrested.

See id. at 2-3. These arguments lack merit and demonstrate a feeble attempt to argue almost anything in light of the overwhelming weight of the above delineated factors.

As an Internal Revenue Service Special Agent in Charge stated regarding this criminal case, "with these indictments, the Organized Crime Task Force has disrupted an alleged criminal organization that commits crimes against our society." See Press Release. Ferraioli was a part of this criminal organization. He admitted that for over four years he engaged in the conduct that resulted in his indictment. He admitted that he regularly met with associates of the Gambino crime family in furtherance of the crimes they committed together. Simply stated, the charge against Ferraioli, which was admitted to during his sworn testimony, provides substantial evidence that both Ferraioli and the Applicant lack good character, honesty, and integrity. Upon balancing the factors set forth in Correction Law §753, the Commission finds that the pending indictment against the sole principal of the Applicant warrants the denial of the Applicant's renewal application. The Commission denies SWF's renewal application on this independently sufficient ground.

2. The Applicant's sole owner and principal has committed a racketeering activity.

Admin. Code §16-509(a)(v) allows the Commission to consider "the Commission of a racketeering activity..." in refusing to issue a license to an applicant. See Admin. Code §16-509(a)(v). A conviction for a racketeering activity is not required. As discussed above, as charged in the Indictment, and admitted by Ferraioli in sworn testimony under oath, the Commission has a rational basis to find that Ferraioli committed a racketeering activity.[6]

The violation of the United States Code that Ferraioli is charged with violating, Title 18, United States Code, Sections 1955 and 2, is a racketeering activity as defined by 18 USC §1961(1). Section 16-509(a)(v) of the Administrative Code provides that the Commission may deny an application based on the commission of a racketeering activity, including those delineated in 18 USC §1961(1).

In the Response on this point, the Applicant's attorney states that "it would be unjust to shut down [Ferraioli's] trucking company because he was a part-time bookie and because gambling is defined as a 'racketeering activity.'" See Response at 3. Again, the Applicant's attorney attempts to minimize the crime and by characterizing Ferraioli as a "part time bookie," completely fails to even mention that Ferraioli engaged in the criminal scheme with associates of organized crime. The Applicant's attorney also fails to dispute the fact that the Applicant violated the terms of the Commission issued Licensing Order when Ferraioli admittedly violated the law.

[6] By engaging in this criminal activity, the Applicant also violated the terms of its Licensing Order, which states that the "Applicant shall not violate any law of the United States of America or the State of New York...." See Licensing Order at 3.

Ferraioli's commission of a racketeering activity with codefendants who are associates of organized crime is a sufficient ground upon which to deny the Applicant's application. See Admin. Code §16-509(a)(v). Accordingly, the Commission denies SWF's renewal application on this independently sufficient ground.

V. CONCLUSION

The Commission is vested with broad discretion to issue 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 sufficient reason, the Commission denies SWF's License Renewal Application.

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This license denial is effective immediately. SWF may not operate as a trade waste business in the City of New York.

Dated: March 6, 2015

THE BUSINESS INTEGRITY COMMISSION

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