Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF MIRNA LANDSCAPING TO OPERATE AS A TRADE WASTE BUSINESS

I. PRELIMINARY STATEMENT

Mirna Landscaping[1] (the "Applicant") (BIC-3798) has applied to the New York City Business Integrity Commission ("Commission") for a registration to operate a trade waste business pursuant to New York City Administrative Code ("Admin. Code") §16-505(a). Specifically, Mirna Landscaping seeks to renew its registration enabling it to operate a trade waste business "to remove, collect or dispose of trade waste that is generated in the course of operation of such person's business." Id.

On July 18, 2014, the staff issued and served the Applicant with Notice to the Applicant of the Grounds to Deny the Renewal Application of Mirna Landscaping to Operate as a Trade Waste Business ("Notice of Denial"). The Applicant was given ten business days to respond, until August 1, 2014. 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 Mirna Landscaping's renewal application for the following independently sufficient reasons:

A. The Applicant Failed to Pay Administrative Fines for Which a Decision and Order has been Entered.

B. The Applicant is Liable for a Civil or Administrative Action that Bears a Direct Relationship to the Fitness of the Applicant to Conduct the Business for Which the Registration is Sought.

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

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

[1] In its original application, the Applicant's business name was disclosed as Glorilando B. Aparicio d/b/a Aparicio Landscaping. On or about June 20, 2012, the Applicant changed its business name to Mirna Landscaping, and along with its first Renewal Application for a License or Registration as a Trade Waste Business, provided a copy of an Amended Business Certificate reflecting the new name.

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;

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 Indus., Inc. v. City of New York, 107 F.3d 985, 995 (2d Cir. 1997); 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

On or about April 5, 2010, Glorilando B. Aparico d/b/a Aparicio Landscaping applied to the Commission for a Class 1 Self Hauler Registration. See Glorilando B. Aparicio d/b/a Aparicio Landscaping's Application for Class 1 Registration, dated April 5, 2010 ("Application"). The Application disclosed Glorilando Aparicio as the sole principal of the Applicant. See Application at 11.

On or about June 16, 2010, the Commission issued the Applicant a registration to operate as a trade waste business removing waste generated solely in the course of operation of its business. See Registration Order. The Applicant's registration was effective for two years and expired on May 31, 2012. See id.

On or about June 21, 2012, the Applicant filed its first Renewal Application for a License or Registration as a Trade Waste Business ("Renewal Application"). See First Renewal Application. In its First Renewal Application, the Applicant disclosed a change in business name from Glorilando B. Aparicio d/b/a Aparicio Landscaping to Mirna Landscaping. It also disclosed changes in garage, office, and mailing addresses, as well as the addition of a principal, Mirna Ulloa ("Ulloa") that reportedly occurred on or about January 1, 2011. See id. at 1, 2 and 7.[2] The Applicant provided the Commission with supporting documentation for the name change, including an Amended Business Certificate. See id. at 20, 21.

As part of its evaluation and investigation of the Renewal Application, the Commission determined that the Applicant failed to pay an outstanding fine of $5,000.00 issued against it by the Commission and adjudicated by the New York City Department of Consumer Affairs ("DCA"). See Default Decision and Order dated September 9, 2010.[3] By letter dated April 18, 2013, the Commission notified the Applicant that it was required to pay the outstanding fine. The Commission provided a courtesy copy of the previously served Default Decision and Order, and gave the applicant a deadline of May 3, 2013. The Applicant was informed that its failure to pay might result in additional administrative violations, additional penalties and/or the denial of its Renewal Application. See letter from Commission Staff dated April 18, 2013. The Applicant

[2] Mirna Ulloa reportedly gained a 50% ownership interest on or about January 1, 2011. The addition of Mirna Ulloa as a new principal was not disclosed to the Commission in a timely manner, in violation of Title 17 of the Rules of the City of New York ("RCNY") §2-05(b)(i).

[3] The Commission issued such violation on or about May 14, 2010 after the respondent was observed collecting trade waste (lawn/yard waste) without a Commission registration, in violation of §16-505(a). See Notice of Violation, TW-6002. A hearing was held before the Department of Consumer Affairs on September 2, 2010. The Applicant failed to appear.

failed to pay the outstanding fine by the May 3, 2013 deadline, or ever provide documentation in response to the Commission's directive whatsoever.

By letter dated May 9, 2013, the Commission again notified the Applicant that it was required to pay the outstanding fine by May 22, 2013. The Applicant was again notified that its failure to do so might result in administrative violations, additional penalties, and/or the denial of its Renewal Application. See letter from Commission Staff dated May 9, 2013. Again, the Applicant failed to pay the outstanding fine or otherwise provide documentation in response to the Commission's directive whatsoever.

By letter dated May 29, 2013, the Commission again directed the Applicant to pay the outstanding fine by June 10, 2013. The Applicant was notified that its failure to do so *would* result in the denial of the Renewal Application. See letter from Commission Staff dated May 29, 2013. The Applicant failed to pay the outstanding fine by the June 10, 2013 deadline, or otherwise provide documentation in response to the Commission's directive whatsoever.

After previously sending three separate notices, and providing ample time for the Applicant to comply with the Commission's directive, by letter dated May 21, 2014, the Commission mailed another letter titled "Final Notice."[4] In that letter, the Commission again required payment of the outstanding violation and again informed the Applicant that failure to provide the proof by May 28, 2014, *would* result in the denial of the Renewal Application. See letter from Commission Staff dated May 21, 2014. As of the date of this Notice, the above mentioned Commission-issued Violation remains open and unpaid.

The outstanding fine was not the only issue required to be resolved by the Applicant. As part of its investigation, the Commission determined that Glorilando Aparicio, the company's then principal and then sole disclosed driver, had his driver's license revoked as of December 4, 2011, due to an "uninsured accident." See New York State Department of Motor Vehicles records. When the Commission called to inquire about such matter, the Commission was informed that the Applicant had a different driver, Edgar Aparicio. Not only did the Applicant fail to disclose Edgar Aparicio to the Commission in violation of 17 RCNY § 2-05(b)(iii), but the Commission also determined that Edgar Aparicio's driver's license was suspended.

In an effort to address the issue of Gloriando Aparicio's revoked license, and the undisclosed driver with a suspended driver's license, in each of the above-referenced letters the Commission required that the Applicant provide: 1) a valid driver's license for each vehicle operator, including Glorilando Aparicio and Edgar Aparicio; and 2) the dates of employment, title, and job responsibilities of Edgar Aparicio. See Letters dated April 18, 2013, May 9, 2013, May 29, 2013, and May 21, 2014. Despite multiple notices, the Applicant failed to provide the requested materials in response to the Commission's directives.

[4]The April 18, 2013, May 9, 2013, and May 29, 2013, letters were all mailed to the Applicant's mailing address provided by it to the Commission on the Renewal Application. On April 9, 2014, the Applicant disclosed a new mailing address to the Commission in its Second Renewal Application. The May 20, 2014 letter was mailed to that address.

On or about May 9, 2014, (while the Renewal Applicant was still pending because of the Applicant's failure to respond), the Applicant filed its second Renewal Application ("Second Renewal Application") (Renewal Application and Second Renewal Application, referred to collectively hereinafter as "Renewal Applications"). See Second Renewal Application. In what is perhaps an attempt to avoid the Commission's scrutiny of Edgar Aparicio or Glorilando Aparicio (both of whom appear to have been driving without valid licenses), the Second Renewal Application indicated for the first time that in 2012, Glorilando Aparicio had sold his ownership interest in the company to his daughter, Ulloa. See id. at 7 and 14.[5] The Applicant further claimed on the Second Renewal Application that his daughter, and not him or Edgar Aparicio, was the sole vehicle operator. See id. at 11.

IV. BASIS OF DENIAL

A. The Applicant Failed to Pay Administrative Fines for Which a Decision and Order has been Entered.

The Commission may refuse to issue a registration 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...." See Admin. Code §16-509(a)(x); see also §16-509(c)(ii); see also §16-513(a)(iv).

As of July 18, 2014, the Applicant has failed to pay Violation Number TW-6002 in the amount of $5,000.00 as ordered by the New York City Department of Consumer Affairs. As demonstrated above, the Applicant was given more than ample opportunity to pay the outstanding fine. Despite repeated opportunities and time, the fine remains unpaid. The Applicant does not dispute this point. The Commission denies Mirna Landscaping's Renewal Applications on this independently sufficient ground.

B. The Applicant is Liable for a Civil or Administrative Action that Bears a Direct Relationship to the Fitness of the Applicant to Conduct the Business for Which the Registration is Sought.

The Commission may refuse to issue a registration to an applicant if "the Applicant is liable for a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct...business..." See Admin. Code §16-509(a)(iv).

As discussed above, the New York City Department of Consumer Affairs issued a Default Decision and Order resulting from the Applicant's failure to appear at an administrative

[5] Again, the change in ownership interest of Mirna Ulloa to 100% owner was not disclosed to the Commission in a timely manner, in violation of RCNY §2-05(b)(i).

hearing where a Commission-issued violation for unregistered trade waste removal activity was to be adjudicated. As discussed above, the Applicant is liable for the $5,000.00 fine. However, it has refused to pay it. The failure to pay this fine bears a direct relationship on the Applicant's fitness to conduct business as a trade waste business and Registrant of the Commission. The Applicant does not dispute this point. The Commission denies Mirna Landscaping's Renewal Applications 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." Admin. Code §16-509(b).

As demonstrated above, by letters dated April 18, 2013, May 9, 2013, May 29, 2013, and May 21, 2014, the Commission required the Applicant to provide: 1) valid drivers' licenses for all vehicle operators, including Glorilando Aparicio and Edgar Aparicio; and 2) the dates of employment, title, and job responsibilities of Edgar Aparicio. See Letters dated April 18, 2013, May 9, 2013, May 29, 2013, and May 21, 2014. The Applicant was repeatedly advised that its failure to provide such material would result in the denial of the Renewal Application and subsequently the Second Renewal Application. Instead of providing the documentation, however, the Applicant has been unresponsive.

In short, despite being given numerous opportunities to provide proof of payment of the Default Decision and Order, as well as employment information, and proof of valid drivers' licenses for its employees, the Applicant has failed to provide the requested documentation and/or information. Therefore, the Applicant has "knowingly failed to provide the information" required by the Commission by failing to provide any of the requested information and/or documentation to the Commission despite its repeated requests for such. The Applicant does not dispute this point. The Commission denies Mirna Landscaping's Renewal Applications on this independently sufficient ground.

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V. CONCLUSION

The Commission is vested with broad discretion to issue a registration or refuse to grant a registration 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 Mirna Landscaping's registration Renewal Applications.

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

Dated: November 20, 2014

THE BUSINESS INTEGRITY COMMISSION

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