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**DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE
APPLICATION OF AGRIPROCESSORS, INC. FOR REGISTRATION AS A
WHOLESALE BUSINESS AT THE BROOKLYN WHOLESALE MEAT MARKET.**

Local Law 28 of 1997 (“Local Law 28”) and the rules promulgated thereunder require that wholesale businesses located or operating within the Brooklyn Wholesale Meat Market (“BWMM”) register with the Commissioner of the Department of Business Services.¹ The duties of the Commissioner of the Department of Business Services were later transferred to the Chairman of the Organized Crime Control Commission, pursuant to a charter revision provision approved by the voters in November 2001. The Organized Crime Control Commission was subsequently renamed the Business Integrity Commission, pursuant to Local Law 21 of 2002.

The Commission may refuse to register a wholesale business when the business or any of its principals lacks good character, honesty, and integrity.² Administrative Code §22-259(b) lists a number of factors that the Commission may consider in determining the fitness of a wholesale business. Among those factors that the Commission may consider in making a fitness determination are: failure to provide truthful information in connection with its registration application and a pending indictment or criminal action against such Applicant or person for a crime which would provide the basis for a denial under §22-259.³ Local Law 28 clearly indicates that the Commission is not limited to consideration of the enumerated factors; the list is intended to be illustrative and not exhaustive.

Based upon the investigation of Agriprocessors, Inc. (“Applicant”), the Commission has determined that it is necessary to deny the application of Agriprocessors for registration as a market wholesale business for the following independently sufficient reasons:

- (A) The Applicant and a principal of the Applicant are currently under federal indictment charging them with the crimes of (1) Conspiracy to Harbor Undocumented Aliens for Profit, (2) Harboring and Aiding and Abetting the

¹ See New York City Administrative Code (“Admin. Code”) §22-253; 66 RCNY §1-13.

² See Admin. Code §§22-253(b), §22-259(b).

³ See *id.* At §22-259(b)(ii).

Harboring of Undocumented Aliens for Profit, (3) Conspiracy to Commit Document Fraud, (4) Aiding and Abetting Document Fraud, (5) Aiding and Abetting Aggravated Identity Theft, (6) Bank Fraud, (7) False Statements and Reports to a Bank, (8) Money Laundering and Aiding and Abetting Money Laundering, and (9) Willful Violation of an Order of the Secretary of Agriculture and Aiding and Abetting of the same.

1. The Applicant and a principal of the Applicant have been indicted for crimes of which would provide the basis for a refusal of such application under article 23-A of the New York Correction Law.

2. The Applicant and a principal of the Applicant have been indicted for knowingly participating in criminal activity that constitutes "Racketeering Activities" under Title 18, Section 1961 of the United States Code.

(B) The Applicant and a principal of the Applicant have been charged in the state of Iowa for the crimes of (1) Child Labor at an Occupation in or about a Slaughtering or Meat Packing Establishment, (2) Child Labor Involving Exposure to Dangerous or Poisonous Chemicals, (3) Child Labor During Prohibited Times and/or for a Prohibited Number of Hours in One Day, (4) Child Labor for a Prohibited Amount of Hours in One Week, and (5) Child Labor Involved in the Operation of or Tending of Power-Driven Machinery

(C) The Applicant refused to comply with a condition required by the Commission for registration, in that the Applicant rejected the Commission's requirement that the Applicant retain an independent auditor.

(D) The Applicant failed to notify the Commission that the Applicant and a principal of the Applicant had been arrested and charged as a party to a criminal action.

DISCUSSION

The Applicant is an Iowa corporation, incorporated on August 21, 1987.⁴ On December 29, 1999, the Applicant filed for a certificate as a Foreign Business Corporation in the state of New York as "Agriprocessors of New York, Inc." This filing has since been rendered inactive, and the Applicant re-filed and obtained a certificate of incorporation in New York as Agriprocessors, Inc. on October 1, 2007.⁵

The sole shareholder and President of the Applicant is Abraham Aaron Rubashkin ("Aaron"). Until September 18, 2008, Aaron's son Sholom Rubashkin ("Sholom") was the company's Chief Executive Officer. Bernard S. Feldman, a lawyer from Long Island

⁴ Records obtained from Westlaw Corporation, 2009.

⁵ Records obtained from the New York State Department of State, 2009.

New York, has since replaced him as the company's CEO.⁶ Other listed principals of the Applicant include two of Aaron's other sons, Joseph Rubashkin and Tzvi Rubashkin, and counsel for the corporation, Howard Karasik.⁷

The Applicant is one of the largest producers of kosher and non-kosher meat products in the United States. The Applicant's slaughtering operations take place largely at its headquarters in Postville, Iowa where the Applicant has been located since its founding. The Applicant sells its products through a variety of outlets, including national supermarkets and wholesale clubs under a variety of names: Iowa's Best Beef, Rubashkin's, Aaron's Best, and Shor Habor. The Applicant claims assets of between one hundred and five hundred million dollars, with yearly sales amounting to approximately two hundred and fifty million dollars.⁸

The Commission began regulating the BWMM in February 2006. The Applicant applied for registration as a wholesale business in the BWMM on January 17, 2007. The Commission granted the Applicant permission to operate pending a full evaluation of and ultimate determination on their application. The Commission's staff served a denial recommendation upon the Applicant on May 21, 2009, and to which the Applicant had ten (10) business days to reply. The Applicant failed to reply to the denial recommendation before the ten day period expired on June 7, 2009, and the Commission has subsequently issued this decision denying the Applicant's application.

A. The Applicant and a principal of the Applicant are currently under federal indictment charging them with the crimes of (1) Conspiracy to Harbor Undocumented Aliens for Profit, (2) Harboring and Aiding and Abetting the Harboring of Undocumented Aliens for Profit, (3) Conspiracy to Commit Document Fraud, (4) Aiding and Abetting Document Fraud, (5) Aiding and Abetting Aggravated Identity Theft, (6) Bank Fraud, (7) False Statements and Reports to a Bank, (8) Money Laundering and Aiding and Abetting Money Laundering, and (9) Willful Violation of an Order of the Secretary of Agriculture and Aiding and Abetting of the same.

The Commission may deny a registration application based upon 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 registration."⁹ Such crimes include those defined by Title 18 of the United States Code, Section 1961 (also known as the Racketeering Influenced and Corrupt Organization law ("RICO")), and those that bear negatively on an applicant's fitness to conduct business under Title 23-A of the New York Correction Law. The Applicant is currently under federal indictment for crimes that are racketeering offenses under the RICO statute and crimes that bear on its fitness under Title 23-A of the Correction Law, and which directly impact upon its good character,

⁶ Though Mr. Feldman was announced as the new CEO of the Applicant, the Fourth Superseding Indictment from the Northern District of Iowa alleges that Sholom actually retained daily control of the Applicant and its operations behind the scenes. See Fourth Superseding Indictment at 3

⁷ Information obtained from the licensing department records of the New York City Business Integrity Commission.

⁸ Information obtained from Agriprocessors, Inc. Voluntary Bankruptcy Petition that was filed in the United States Bankruptcy Court for the Eastern District of New York on November 4, 2008.

⁹ See Administrative Code §22-259(b)(ii) and (iv).

honesty, and integrity. Furthermore, Sholom, a principal of the Applicant, has also been indicted for crimes directly impacting upon his good character, honesty, and integrity.

On September 17, 2008, a grand jury in the United States District Court for the Northern District of Iowa handed down an indictment against Karina Pilar-Freund, an employee of the Applicant. On November 13, 2008, a Superseding Indictment was handed down which, in addition to Karina Pilar-Freund, charged Sholom and with three felonies.¹⁰ On November 20, 2008, a Second Superseding Indictment was handed down against Sholom and Karina Pilar-Freund that added additional criminal charges and defendants, including the Applicant itself.¹¹ A Third Superseding Indictment, which was not issued against Karina Pilar-Freund, was handed down against the Applicant, Sholom, and others on December 11, 2008. On January 15, 2009, a Fourth Superseding Indictment containing allegations of ninety-nine separate felony counts was issued against the Applicant and Sholom as well as other members of the Applicant's staff. The Fourth Superseding Indictment was again amended, and on March 31, 2009 a Fifth Superseding Indictment (the "Indictment") was handed down. This Indictment charged the Applicant and Sholom, along with three employees of the Applicant, Hosam Amara ("Amara"), Brent Beebe ("Beebe"), and Zeev Levi ("Levi"). Karina Pilar-Freund is not named in the Indictment. The total number of charges against the defendants has also been reduced from ninety-nine to seventy-nine. The Indictment alleges the following:

In April and May of 2007, Amara and Levi (managers in the poultry division of the Applicant), approached Martin De La Rosa ("De La Rosa"), a supervisor in the division, and informed him that six employees in his department were working under false papers and that he would be required to terminate them unless they could obtain new documentation.

De La Rosa subsequently told one of his employees, a poultry "lead-person," that he would have to obtain new falsified documentation for those employees. As directed, each of the employees obtained forged social security cards and forged resident alien cards. The documents were given to De La Rosa. At the same time, a similar operation was taking place in the beef department with Beebe and his employees. In that department, the lead-person told the employees who needed new documentation that the cost would be approximately \$300 per person. After being informed of this, Beebe, at a meeting in a barn on the premises, told Sholom that \$4,500 would have to be loaned to the employees to pay for the documents. Sholom agreed and loaned the money.

Once the documents had been obtained using the money loaned by Sholom, Sholom personally inspected the documents. After spotting errors, he ordered them corrected and resubmitted. Once the documents had been fixed and re-submitted, Sholom ordered them to be processed by the Applicant's human resources department.

¹⁰ The original indictment issued against Karina Pilar-Freund did not indict the Applicant or Sholom. The First Superseding Indictment brought charges against Sholom, and the Second Superseding Indictment initiated charges against the Applicant.

¹¹ In addition to Sholom, Ms. Pilar-Freund, and the Applicant, named defendants included Brent Beebe ("Beebe") (Agriprocessors' operations manager), and Hosam Amara ("Amara") and Zeev Levi ("Levi") who were employed as poultry managers with the Applicant. *See Second Superseding Indictment CR-08-1324 LRR (11/20/08)*.

Count One of the Indictment charges the Applicant and Sholom with Conspiracy to Harbor Undocumented Aliens.¹² The Indictment alleges that Sholom and his co-defendants were aware that there were undocumented workers employed at the Applicant's facility, and that the defendants worked in concert to ensure that fraudulent or falsified documents were obtained and offered as proof of citizenship for these undocumented workers. Furthermore, the Indictment alleges that these undocumented aliens were paid off the books and in cash, and were in some cases put on payroll with other companies affiliated with the Applicant to make it appear that they did not work for the Applicant.¹³

Count Two of the Indictment charges Sholom with Harboring and Aiding and Abetting the Harboring of Undocumented Aliens for Profit. The charge stems from the same facts as Count One, while also charging that Sholom aided and abetted undocumented aliens in the procurement of false documentation, all for the purpose of his and the Applicant's gain.¹⁴

Count Three of the Indictment charges Sholom and the Applicant¹⁵ with Conspiracy to Commit Document Fraud.¹⁶ Count Three arises out of Sholom's involvement in the process of ordering, procuring, examining, and uttering falsified documentation obtained by undocumented aliens employed by the Applicant.¹⁷

Count Four of the Indictment charges the Applicant and Sholom with Aiding and Abetting Document Fraud.¹⁸ The charge alleges that Sholom and the Applicant knew of the document fraud being perpetrated by members of the Applicant's staff, and permitted and encouraged such activity to continue.¹⁹

Count Five through Eleven of the Indictment, charged against the Applicant, Beebe, and Sholom allege that the Applicant and Sholom engaged in Aiding and Abetting Aggravated Identity Theft.²⁰ This charge stems from the Applicant and Sholom knowingly aiding and abetting the transfer of fraudulent documentation providing a resident alien number to six employees: Ronald Sombra, Yesmi Loera, Lester Lopez, Reynaldo Lopez-Nunez, Monica Hernandez, and Lena Chernova, and Juan Arias Hernandez.²¹

Counts Twelve through Twenty-Five of the Indictment charge Sholom and the Applicant with fourteen counts of Bank Fraud, in violation of Title 18 of the United

¹² See Title 8, United States Code §1324(a)(1)(A)(v)(I), §1324(a)(1)(B)(i).

¹³ See Indictment at 10 and 11.

¹⁴ See Title 8, United States Code §1324(a)(1)(A)(iii), §1324(a)(1)(A)(iv), §1324(a)(1)(v)(II), and §1324(a)(1)(B)(i).

¹⁵ Count Three was also charged to Beebe, Amara, and Levi as co-conspirators with Sholom and the Applicant.

¹⁶ See Title 18, United States Code §371.

¹⁷ See Indictment at 12-17.

¹⁸ Count Four also charges Beebe, Amara, and Levi as co-conspirators with Sholom and the Applicant. See Title 18, United States Code, §1546(a) and 2.

¹⁹ See Indictment at 18.

²⁰ See Title 18, United States Code §1028(a)(1) and §2. It should also be noted that Count Eleven of the indictment is not charged to Sholom.

²¹ See Indictment at 19.

States Code, §1344. The Indictment alleges that the Applicant maintained a line of credit in the amount of \$35,000,000 dollars with First Bank Business Capital (“FBBC”), and, as per a contract with the bank, submitted directly to the bank all payments received from customers as accounts payable. Furthermore, as part of the certifications made by the Applicant pursuant to the line of credit application, the Applicant represented and warranted that it was not in violation of any law, statute, or regulation applicable to the Applicant, which violation would in any respect materially and adversely affect the collateral offered for the line of credit of the property, business, operations, or conditions of the Applicant. Sholom and the Applicant are charged with (1) falsely certifying to FBBC that the Applicant’s representations and warranties stated in the loan agreement were true, in light of the fact that Sholom then knew that the Applicant was employing hundreds of illegal workers in violation of law and regulations²²; and (2) causing accounts payable received from a customer of the Applicant to be diverted to an account other than the one earmarked for deposit with the FBBC and to then be used by the Applicant for its own benefit. Sholom, on behalf of the company then caused the books of the company to inaccurately reflect that such payments had not been received and made false certifications to be sent to FBBC, which inflated the amount of the Applicant’s accounts receivable.²³

Counts Twenty-Six through Forty-Nine of the Indictment charge the Applicant and Sholom with making False Statements and Reports to a Bank.²⁴ The Indictment alleges that the Applicant and Sholom made false statements and reports to FBBC for the purpose of influencing FBBC’s decisions in connection with advances on the Applicant’s revolving loan. These false statements include the allegations made in Counts Twelve through Twenty-Five of the Indictment. Furthermore, the alleged false statements include a certification made by Sholom to FBBC following the May 12, 2008 raid (discussed in more detail in section (B) below) that he was unaware that any undocumented aliens had been employed by the Applicant. Finally, the indictment charges that the Applicant and Sholom filed monthly statements and reports to FBBC which overstated the amounts that were owed to the Applicant by its customers.²⁵

Counts Fifty through Fifty-Nine of the Indictment charge the Applicant and Sholom with Money Laundering.²⁶ The Indictment alleges that the Applicant and Sholom deposited checks into the Decorah Bank and Trust Company from third parties named “Kosher Community” and “Torah Education” for the purpose of concealing the unlawful activities of the Applicant and Sholom with respect to their bank fraud, false statement and reports to a bank, and their harboring of undocumented aliens.

Counts Sixty through Seventy-Nine of the Indictment charge the Applicant and Sholom with Willful Violation of an Order of Secretary of Agriculture.²⁷ Beginning in February 2008 and continuing until April 1008, failed to obey an order of the United States Secretary of Agriculture demanding; (1) that the Applicant cease and desist from failing to pay the full purchase price of livestock when such payments became due, and

²² See Indictment, at 21

²³ See *Id.* at 21-26.

²⁴ See Title 18, United States Code §1014.

²⁵ See Indictment at 29-31.

²⁶ See Title 18, United States Code §1956(a)(1)(A)(i), §1956(a)(1)(B)(i), and §2.

²⁷ See Title 7, United States Code §195 and Title 18, United States Code §2.

(2) failing to deposit checks issued in payment for livestock in the mail before the close of the next business day after the purchase of the livestock. The Indictment alleges that Agriprocessors violated the order of the Secretary of Agriculture with respect to 20 shipments of livestock received by the Applicant from eight different suppliers.²⁸

1. The Applicant and a principal of the Applicant have been indicted for crimes of which would provide the basis for a refusal of such application under article 23-A of the New York Correction Law.

Under §22-259(b)(ii) the Commission may consider a “pending indictment or criminal action against such Applicant or person for a crime that under that subdivision would provide the basis for a refusal of that registration.” Section (b)(iii) of that subdivision further provides that the Commission may refuse registration to any Applicant or person who has been convicted of a crime that, under Article 23-A of New York State Correction Law (“article 23”), bears negatively on the fitness of such Applicant or person to conduct business or work in a public market.

Under Article 23-A §752 it is permissible to deny a registration when the Applicant’s conviction bears a direct relation to the specific license sought or the issuance of license would present an unreasonable risk to property. In assessing the probity of a prior conviction to an application for registration and advancing the State’s public policy in favor of licensure of persons convicted of criminal offenses, the Commission must consider the factors enumerated in §753 of the Correction Law.

First, in the instant case, the crimes for which the Applicant is indicted are directly connected to “the specific duties and responsibilities necessarily related to the license...sought by the [Applicant].” Further, these alleged crimes bear directly on the Applicant’s “fitness or ability to perform one or more such duties or responsibilities.”²⁹ The Applicant has submitted an application for permission to operate in a public market of New York City. In that capacity, the Applicant would be responsible for the hiring of employees and the maintenance of a workforce to conduct the daily operation of the business. However, as demonstrated in Iowa by the Applicant’s history of employment, immigration, and labor violations, it has consistently fallen short of the requirements of law. The Applicant generally employs a class of workers who are under-educated, unskilled, and unable to defend themselves against an entity the size of the Applicant, and are therefore left at an elevated risk of being exploited and mistreated by the Applicant. To permit the Applicant to operate within New York’s public markets would endanger the welfare of the entire class of workers employed by the Applicant.

Furthermore, the Applicant is charged with 20 counts of willfully violating an order of the Secretary of Agriculture. These crimes specifically demonstrate that the Applicant and Sholom continually express disregard for those entities charged with regulating the industries within which it operates. There is no reason to assume that the Applicant would not continue to circumvent such regulation with respect to its operations in New York City.

²⁸ See Indictment at 34-36.

²⁹ See New York Correction Law, Article 23-A §753(c).

The offenses charged by the Indictment are extremely serious. The Applicant and Sholom currently face seventy-nine felony charges under the federal indictment. The charge of Conspiracy to Harbor Undocumented Aliens for Profit carries a prison sentence of up to ten years for each alien whom the offender is charged with harboring. Similarly, Harboring and Aiding and Abetting the Harboring of Undocumented Aliens for Profit carries a prison sentence of up to ten years. A conviction for Conspiracy to Commit Document Fraud carries a sentence of five years to be imposed, as does a conviction for Aiding and Abetting Document Fraud. The Applicant and Sholom also face five counts of violating 18 USC §§1028A(a)(1) and 2, each of which calls for a prison sentence of up to two years if convicted. Additionally, each charge of Bank Fraud and False Statements and Reports to a Bank carries a sentence of up to 30 years in prison and a fine of up to one million dollars. Each charge of Money Laundering and Aiding and Abetting carries a prison sentence of up to five hundred thousand dollars (or twice the value of the laundered property) and up to 20 years in prison. Finally, each charge of Willful Violation of Order of the United States Secretary of Agriculture carries a fine of five hundred to ten thousand dollars or six months to five years in prison or both.

Finally, the crimes alleged against the Applicant directly impact the Commission's "legitimate interest...in protecting property, and the safety and welfare of specific individuals or the general public." The Commission's mission is to ensure that businesses operating in the public markets of New York City are free from the influence of organized crime and other forms of corruption. In order to perform these functions, the Commission must be free to exercise oversight over those companies who apply for registrations in those markets. Thus, the Commission is the primary entity charged with protecting the public interest in the integrity of the City's public markets, and in making sure that only those companies that possess the requisite good character, honesty, and integrity, are allowed to operate there.

The alleged actions of the Applicant are antithetical to the purposes and mandate of the Commission. The Applicant has demonstrated through its activity that it possesses no regard for the laws of the United States or those made by state and local authorities that govern its activities. Permitting a wholesale business that has demonstrated such a willingness to operate outside the bounds of the law to operate within the BWMM would endanger the property and safety of those who operate within and use the market. Furthermore, the Applicants past actions indicate that there is no reason to believe that the Applicant would not engage in similar illegal activity within the BWMM, a circumstance that presents a high probability of damage to or infringement upon the property and safety of the other tenant businesses in the market, employees of those businesses, or members of the general public.

As the Applicant and Sholom have been indicted for crimes which would clearly be the basis for a refusal of such registration under §22-259(b)(iii) and Correction Law §23-A, the Commission possesses an independently sufficient basis upon which to deny the Applicant permission to operate within the Brooklyn Wholesale Meat Market.

2. The Applicant and a principal of the Applicant have been indicted for knowingly participating in criminal activity that constitutes "Racketeering Activities" under Title 18, Section 1961 of the United States Code.

Under Local Law 28 §22-259(b)(ii) and (iv), the Commission may deny a registration to a company which is indicted for the “commission of a racketeering activity...when the Applicant knew or should have known of such activity, including, but not limited to, an offense listed in subdivision one of section nineteen-hundred sixty-one of the Racketeer Influenced and Corrupt Organization (“RICO”) statute...” 18 USC §1961(1) defines those offenses which are included as RICO crimes. Among those crimes that are listed are those groups of crimes defined by Title 8 USC §1546 (Aiding and Abetting Document Fraud), Title 18 USC §1028 (Aiding and Abetting Aggravated Identity Theft), Title 18 USC §1344 (Bank Fraud), and Title 18 USC §1956 (Money Laundering and Aiding and Abetting Money Laundering), the crimes charged against the Applicant and Sholom.

Those crimes for which the Applicant has been charged are crimes of deceit, fraud, and identity theft, all of which bear negatively on the Applicant’s character. Furthermore, these crimes, as charged, directly impact the ability of the Applicant to perform the work for which the registration is sought.³⁰ The Applicant has been charged with acts that demonstrate a pattern of exploitation of its workers and a federally insured financial institution, and which also demonstrate its willingness to violate the laws of the federal government and the state of Iowa. Therefore, the Applicant does not possess the good character, honesty, and integrity required by the city of New York for those seeking to operate within its public markets.

Under §22-259, this indictment provides the Commission with an independently sufficient basis upon which to deny this Applicant permission to operate within the Brooklyn Wholesale Meat Market.

B. The Applicant and a principal of the Applicant have been charged in the State of Iowa for the crimes of (1) Child Labor at an Occupation in or About a Slaughtering or Meat Packing Establishment, (2) Child Labor Involving Exposure to Dangerous or Poisonous Chemicals, (3) Child Labor During Prohibited Times and/or for a Prohibited Number of Hours in One Day, (4) Child Labor for a Prohibited Amount of Hours in One Week, and (5) Child Labor Involved in the Operation of or Tending or Power-Driven Machinery

On May 12, 2008, the Applicant’s plant and center of operations in Postville, Iowa was the subject of a raid organized by federal agents with the Department of Homeland Security, Immigrations and Customs Enforcement. During the raid, the agents detained three hundred and eighty nine (389) undocumented workers who were employed in the facility.³¹

³⁰ See Administrative Code §22-259(b)(ii).

³¹ According to an article published on May 18, 2008, by WashingtonPost.com entitled “*Immigration Raid Jars a Small Town*,” of the 389 immigrants seized at the plant, two hundred and ninety (290) were Guatemalan immigrants, ninety three (93) were Mexican, two had entered from Israel, and the remaining four were Ukrainian.

Subsequent to the Postville raid, on September 9, 2008, the Attorney General of the State of Iowa charged the Applicant, and a number of the Applicant's employees with child labor law violations.³² The criminal complaint alleges: that the Applicant permitted children, all under the age of eighteen and some as young as sixteen to work on the floor of the slaughterhouse, (a) with chemicals such as dry ice and chlorine, and (b) while operating power-driven machinery such as conveyor belts, meat grinders, circular saws, power washers, and power shears. Iowa law prohibits minors from being employed in any of these circumstances. The complaint also alleges that the Applicant required undocumented minors to work more hours per week than the law permits and at times of the day prohibited by Iowa law (before seven a.m. and after seven p.m. and, while school was in session, more than four hours per day or twenty-eight hours per week)³³. The Applicant also failed to compensate the minors for all of the overtime hours that they worked.³⁴ As of the date of this denial decision, all of the charges are pending before the Iowa District Court for Allamakee County.

As detailed earlier, Administrative Code §22-259(b)(ii) permits the Commission to refuse to issue a registration where an Applicant or principal has been charged with a crime, the conviction for which directly impacts the ability of the Applicant to perform the work for which the registration is sought.³⁵ By employing undocumented minors in its facility, the Applicant has participated in activities that directly negatively impact on its ability to perform the specific duties and responsibilities necessary to the registration it seeks from the Commission. In violating child labor laws, the Applicant has placed in danger a class of people who are extremely vulnerable and susceptible to exploitation. In permitting children to work with harmful chemicals and large, dangerous machinery, the Applicant willfully placed children in harms way. Furthermore, the Applicant permitted these unlawful activities to continue with its knowledge for an extended period of time. Finally, the Applicant, and Sholom as the principal of the Applicant are responsible for corporate activities, especially those that have occurred within the last year, during which time Sholom was directly responsible for the company as its CEO.

The Commission, in its role as the regulatory agency overseeing the BWMM, has a direct responsibility to ensure that the companies it registers possess the requisite good character, honesty, and integrity. The Applicant, through its systematic disregard for the immigration laws of the United States Government and the child labor laws of the state of Iowa, has repeatedly failed to comply with the standards required for registered companies. Thus the Commission has determined that it is necessary and appropriate to deny the Applicant registration as market wholesaler on this independently sufficient basis.

C. The Applicant refused to comply with a condition required by the Commission for registration, in that the Applicant rejected the

³² The Attorney General's complaint charged the Applicant, Aaron, Sholom, and three managerial members of the Human Resources Department for the Applicant, with 9,311 counts of child labor law violations. The charges arose from the Applicant's employment of thirty-two (32) undocumented minors employed at the plant. One count was issued against each defendant for each day that each undocumented minor worked in the plant.

³³ See Iowa Criminal Code §92.7.

³⁴ See Affidavit of Jon Turbett, September 9, 2008.

³⁵ See Administrative Code §22-259(b)(ii).

Commission's requirement that the Applicant retain an independent auditor

The Commission may require that an Applicant consent to the appointment of an independent auditor to be approved or selected by the Commissioner and compensated by the Applicant whenever the Commission's investigation exposes information adverse to the Applicant's application.³⁶ The Commission determined that before it could reach a final determination on the Applicant's application the appointment of an auditor was necessary to audit the labor and employment practices of the Applicant in light of the federal and state criminal charges. The Applicant refused to consent to this condition.

On September 18, 2008, the Commission requested a meeting with the Applicant to discuss the criminal charges pending in Iowa, and the effect that they may have on the Applicant's New York operations.

The initial meeting between the Applicant and the staff of the Commission³⁷ took place on September 23, 2008. Attending this meeting for the Applicant was Bernard S. Feldman, Howard Karasik, an attorney for the Applicant,³⁸ and Sholom Minkowitz, manager at the BWMM facility maintained by the Applicant.³⁹ At this meeting, the Applicant was informed that the Commission had serious concerns about the criminal charges pending in Iowa and that the Commission would not consider granting the application until the criminal charges were resolved. In addition, the Commission informed the Applicant that the Commission would require the appointment of an independent auditor ("monitor") in order to continue evaluating the application. The monitor's primary function would be to ensure that the Applicant was complying with all federal, state, and local labor and employment laws. The Applicant was informed that if they did not agree to the monitor, the Commission would deny their application.⁴⁰

On September 25, 2008, the Commission served the Applicant with its proposed monitoring order by e-mail to Howard Karasik. Mr. Karasik was informed that any concerns or questions regarding the monitoring order must be communicated in writing to the Commission before the close of business on October 2, 2008. A meeting was also scheduled between the Commission and the Applicant to discuss the monitoring order. The meeting was scheduled for October 3, 2008. The Applicant informed the Commission that it would be reserving comments on the monitoring order until the meeting on October 3, 2008.

³⁶ See Administrative Code §22-253(b)(iii).

³⁷ Attending the September 23, 2008 meeting for the Commission were Eric Dorsch, Deputy Commissioner for Legal Affairs and General Counsel, Jack Laudon, former Senior Special Counsel assigned to the application of Agriprocessors, Inc. and John Fellin, a member of the Legal Unit assisting in the matter.

³⁸ Howard Karasik is also listed with the Commission as a principal and Assistant Secretary.

³⁹ Prior to the September 23, 2008 meeting, Sholom Minkowitz was not listed as a principal or officer with the Applicant. However, after discussion with Mr. Feldman and Mr. Karasik it was determined that Mr. Minkowitz was in fact a principal and officer as defined by §22-251(g) of the Administrative Code. Mr. Minkowitz subsequently submitted principal disclosure forms to the Commission.

⁴⁰ §22-253(b)(iii) grants the Commissioner the ability to require an Applicant to submit to an "independent auditor approved or selected by the Commissioner." That auditor shall, "investigate the activities of the...market business with respect to compliance with the provisions of this chapter, other applicable federal, state, and local laws, and such other matters as the Commissioner shall determine." See Admin. Code §22-253(b)(iii).

At the October 3rd meeting, the Applicant stated various concerns that it held regarding the installation of a monitor.⁴¹ The Applicant proposed instead, that it be permitted to install an “Outside Compliance Officer,” who would serve in place of a Commission assigned monitor. The Applicant stated that immediately following the raid on its Iowa location it had retained James G. Martin, an attorney practicing in Missouri, to serve as compliance officer for the Applicant, and suggested that he be permitted to serve also as Outside Compliance Officer.

The staff received the proposal from Mr. Martin on October 14, 2008. On October 16, 2008, Mr. Martin, along with Mr. Feldman and Mr. Karasik met with members of the Commission’s staff to discuss the proposal.⁴² The Commission raised various concerns regarding the proposed plan, principally arising out of his relationship as counsel to the Applicant and the attorney-client privilege.⁴³ At this time, the Applicant was notified that the Commissioner would take the proposal under advisement and would notify the Applicant of its decision.

On November 7, 2008 the Applicant was notified (via e-mail to Howard Karasik) that the Applicant’s proposal of an Outside Compliance Officer had been rejected. The letter dated November 7, 2008 further notified the Applicant that it would have until the close of business on November 17, 2008 to sign and date the original monitoring order and return it to the Commission. The Applicant was further informed that failure to do so could result in a denial of its application.

The Commission did not receive a signed copy of the original monitoring order prior to the November 17th deadline. Furthermore, the Applicant notified the Commission that the Applicant would not submit a response to the Commission’s monitoring order. The Commission has never received a signed copy of the monitoring order. Due to the serious nature of the charges against the Applicant and its principals, the Commission reasonably required the Applicant to retain an outside monitor. Without the monitor the Commission could not ensure that the Applicant would act in a lawful manner during the pendency of the investigation. In addition, the auditor was necessary to the Commission to be able to make an ultimate determination about the Applicants good character, honesty, and integrity. The Applicant’s refusal to consent to the installation of an independent monitor as required by Administrative Code §22-253(b)(iii) is an independently sufficient ground to deny the Applicant’s registration application.

D. The Applicant failed to notify the Commission that the Applicant and a principal of the Applicant had been arrested and charged as a party to a criminal action.

⁴¹ Among those concerns highlighted by the Applicant were the financial burden that a auditor would place upon the company, the intrusiveness of the auditor’s activities, and duration for which the Monitoring Order would remain in effect.

⁴² Attending the October 16, 2008 meeting for the Commission were Jack Laudon, and John Fellin. Michael J. Mansfield, Commissioner/Chair of the Business Integrity Commission was also present at the meeting.

⁴³ The proposal put forth by Mr. Martin and the Applicant included: (1) publishing of the Agriprocessors, Inc. Code of Conduct, (2) the creation of an employee help “hotline” and (3) an Order for Outside Compliance Officer drafted by Mr. Martin.

All Applicants are required to inform the Commission of the arrest and/or criminal conviction of any principal of the business.⁴⁴ The Applicant is required to notify the Commission in writing within ten calendar days of such arrests or convictions.⁴⁵

On October 30, 2008, Immigration and Customs Enforcement officers arrested Sholom.⁴⁶ The Applicant failed to duly notify the Commission of the arrest of Sholom within the subsequent ten-day period culminating on October 9, 2008. Furthermore, the Applicant failed to notify the Commission of the addition of the federal Bank Fraud charges against it. Furthermore, as of February 25, 2009, no such notification has been submitted to the Commission. Therefore, the Applicant and Sholom are in violation of the requirement that all arrests of principals be timely reported to the Commission.

The requirement that principals of wholesale businesses in the City's markets notify the Commission of any arrests or criminal convictions is essential to the purpose of the Commission. In order for the Commission to protect the public's interest in its markets, the Commission must have a complete and accurate record of the activities and information pertaining to those companies who seek registration. Furthermore, the Commission is unable to monitor on its own each and every principal or key employee operating within the markets, and thereby relies on the complete disclosure of those persons in order to perform its duties. The Commission may only correctly function when Applicants adhere to the requirements of the laws governing the Public Markets. Therefore, based upon the Applicant's failure to adhere to Title 16 §1-14(b) of the Rules of the City of New York, the Commission must deny the Applicant's application on that independently sufficient basis.

CONCLUSION

Based upon each of the independently sufficient reasons stated above, the Commission has determined that the Applicant lacks good character, honesty, and integrity and has determined that it is necessary and appropriate to deny the Applicant's application for a registration as a wholesale business at the Brooklyn Cooperative Meat Market.

On May 19, 2009, the staff issued a 13-page recommendation that the Applicant's registration application be denied, which was delivered by hand to the Applicant on May 21, 2009. The applicant failed to submit a response to the staff's recommendation. The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth above, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its registration application.

⁴⁴ Title 66, Rules of the City of New York §1-14(b)

⁴⁵ Id.

⁴⁶ The Warrant for Arrest was issued based upon the criminal complaint filed by Michael D. Fischels, a Special Agent with the United States Department of Homeland Security, Immigration and Customs Enforcement. The complaint was filed with the District Court on October 30, 2008. Agent Fischels complaint would later form the basis for the grand jury indictment issued against Mr. Rubashkin on November 13, 2008.

Date: New York, New York
July 29, 2009

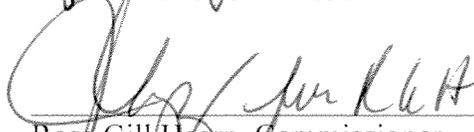
THE BUSINESS INTEGRITY COMMISSION



Michael J. Mansfield
Chair



John Doherty, Commissioner
Department of Sanitation



Rose Gill Hearn, Commissioner
Department of Investigation



Jonathan Mintz, Commissioner
Department of Consumer Affairs



Deborah Buyer, General Counsel
Department of Small Business Services (designee)



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