



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 RENEWAL APPLICATION OF WEST NEW YORK RESTORATION OF CT, INC. A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

West New York Restoration of CT, Inc. (“WNYRCT” or the “Applicant”) has applied to the New York City Business Integrity Commission, formerly known as the New York City Trade Waste Commission, (“Commission”), for a renewal of its registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code (“Admin. Code”), §16-505(b). Local Law 42, which created the Commission to regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

WNYRCT applied to the Commission for renewal of a registration enabling it to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” – a type of waste commonly known as construction and demolition debris, or “C & D.” See Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission grants the applicant a registration, the applicant becomes “exempt” from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission’s determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code §16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York (“RCNY”) §§ 1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§ 1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); See also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any

rule promulgated pursuant thereto); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). Central to the Commission's investigation and determination of a registration application is whether the applicant has business integrity. See 17 RCNY § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); compare Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"). Local Law 42 makes clear that the Commission is not limited to consideration of the enumerated factors; the list is meant to be illustrative and not exhaustive.

Based upon the record as to the Applicant, the Commission denies WNYRCT, for the following independently sufficient reasons:

- A. The Applicant violated the terms of its Renewal Order because it failed to pay government debts as required in the order.
- B. The Applicant failed to pay taxes and other government obligations for which judgments have been entered.

II. DISCUSSION

On May 25, 2000, West New York Restoration, Inc. ("WNYR") applied to the Commission for a registration enabling it to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "C & D." See WNYR Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris. On or about February 28, 2003, WNYR's principal, Alfred Gallichio ("Gallichio"), informed the Commission by letter that WNYR was dissolved, and that he was conducting business through a new company, WNYRCT. See letter from WNYRCT dated February 27, 2003. As WNYRCT was a new entity the Commission required Gallichio to file a new application.

On or about March 12, 2003, WNYRCT submitted their application to the Commission. See WNYRCT Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris. Following the Commission's investigation, the Commission granted the Applicant a trade waste registration on or about April 10, 2003. See WNYRCT's Registration Order. WNYRCT's registration was effective for two years and expired on April 30, 2005. See id.

On March 22, 2005, the Applicant filed an application to renew its registration. See WNYRCT's First Renewal Application for License or Registration as a Trade Waste Business. On or about April 29, 2005, the Commission renewed WNYRCT registration for a period of two years.

On March 13, 2007, WNYRCT applied to the Commission for a renewal of its registration. See WNYRCT's Second Renewal Application for License or Registration

as a Trade Waste Business. The Commission's investigation revealed that WNYRCT and Gallichio's former company WNYR had incurred a substantial number of violations, judgments and liens; including the following three judgments:

- New York State Commissioner of Labor, filed 6/8/05, \$3,707
- New York State Commissioner of Labor, filed 6/8/05, \$32,793
- Commissioner of State Insurance Fund, filed 8/26/06, \$354,127

By correspondence dated March 28, 2007, counsel to the Commission informed WNYRCT of the outstanding violations, judgments and liens and requested that WNYRCT provide proof of resolution by April 20, 2007. See Letter to WNYRCT dated March 28, 2007. After WNYRCT failed to respond, counsel to the Commission sent another copy of the letter by facsimile on April 26, 2007. See Fax sent to WNYRCT dated April 26, 2007.

On May 4, 2007 WNYRCT responded to the Commission's letter and provided proof that some of the violations were resolved and requested more information about the other pending violations. See Letter from WNYRCT dated May 1, 2007. With regard to violations from the New York State Commissioner of Labor and the Commissioner of State Insurance Fund listed above, WNYRCT responded by stating:

In regards to West New York Restoration Inc., we believe that company stopped doing business in early 2002. We were not aware of any issues with labor and the State Insurance Fund, however, now we are trying to resolve these issues with our counsel Barry Karson. We hope to have all issues presently open with West New York Restoration Inc. resolved as soon as possible. We hope this matter can be resolved within (90) days. See Letter from WNYRCT dated July May 1, 2007.

In response, counsel to the Commission granted WNYRCT an extension to resolve all their violations, judgments and liens by June 8, 2007. See Letter to WNYRCT dated May 14, 2007.

On June 5, 2007 WNYRCT provided proof that many of the violations against WNYRCT and WNYR had been resolved, however, it did not include proof that the judgments from the New York State Commissioner of Labor or the Commissioner of State Insurance Fund had been satisfied. See Letter from WNYRCT dated June 2, 2007. In response, counsel to the Commission granted WNYRCT another extension until July 27, 2007 for WNYRCT to resolve all of the remaining violations, judgments and liens. See Letter to WNYRCT dated July 11, 2007.

On July 24, 2007 WNYRCT provided proof that the remaining violations pending against it had been resolved; however with regard to the judgments from the New York State Commissioner of Labor and the Commissioner of State Insurance Fund, WNYRCT stated:

In regards to the NYS Labor Commission and the Commissioner of the State Insurance Fund judgments, as of Monday, July 23, 2007, these issues

have been resolved, however, it will take approximately (3) weeks to obtain copies of any correspondences. See Letter from WNYRCT dated July 24, 2007.

After receiving proof that the judgment in favor of the Commissioner of the New York State Insurance Fund in the amount of \$354,127.00 had been resolved, on or about November 21, 2007, the Commission exercised its discretion and granted WNYRCT's Second Renewal Application, and renewed the Applicant's registration for a period of two years. See WNYRCT's Registration Renewal Order ("Renewal Order").

The Renewal Order contained a number of additional conditions, including a requirement that the Applicant satisfy all outstanding government related debts, including the two remaining judgments specified in Appendix A in favor of the New York State Commissioner of Labor by April 30, 2009. See Renewal Order. The Renewal Order was signed by the Applicant on November 21, 2007, thereby voluntarily consenting to all the conditions therein.

On March 13, 2009, WNYRCT again applied to the Commission for a renewal of its registration. See WNYRCT Third Renewal Application for License or Registration as a Trade Waste Business. The Commission has reviewed the Third Renewal Application and conducted a background investigation of the Applicant.

During the Commission's investigation of WNYRCT's Third Renewal Application, it became apparent that WNYRCT did not satisfy the debts in Appendix A as required by the Renewal Order. Therefore on or about July 13, 2009, counsel to the Commission informed Gallichio that WNYRCT had outstanding judgments, including those in favor of the New York State Commissioner of Labor in the amounts of \$32,793.00 and \$3,707.00.¹ See Letter to WNYRCT dated July 13, 2009. The letter sent to Gallichio contained transcripts of the outstanding judgments and directed Gallichio to provide proof of resolution by July 24, 2009, almost three months after the compliance date specified in the Registration Order.

On July 30, 2009 Applicant's attorney, Barry Karson, Esq. responded to the Commission's correspondence, but did not submit proof that the aforementioned judgments were resolved. See Letter from Mr. Karson dated July 28, 2009. After several telephone conferences with Mr. Karson, numerous extensions were granted so that the Applicant could resolve the outstanding judgments. However, in a telephone conversation on January 5, 2010, more than seven months after the compliance date in the Registration Order, Mr. Karson informed counsel to the Commission that Gallichio would not satisfy any of the outstanding judgments; including those required by the terms of the Renewal Order.²

¹ The total amount that WNYR and WNYRCT owe in violations, judgments and liens may be substantially higher as the figures used in this decision do not include interest which has accrued since the date the violations, judgments and liens were entered. For example, according to the New York State Commissioner of Labor, the judgment in the amount of \$32,793.00 exceeds \$57,000.00 as of November 11, 2009.

² As of the date of this decision, the judgments in favor of the New York State Commissioner of Labor, which the Registration Renewal Order specifically required the applicant to resolve, were still outstanding.

On April 15, 2010, the Commission's Staff served a denial recommendation via certified U.S. mail on the Applicant and Mr. Karson. On April 20, 2010, Mr. Karson responded to the staff's denial recommendation in an unsworn letter in which he made various counter arguments. After careful consideration the Commission finds that the Applicant has failed to demonstrate eligibility for a registration and lacks good character, honesty, and integrity, and therefore denies their renewal application.

A. The Applicant Violated the Terms of its Renewal Order because it Failed to Pay Government Debts as Required in the Order.

As discussed above, on or about November 21, 2007, the Commission granted the Applicant's Second Renewal Application and issued the Renewal Order effective May 1, 2007. By signing the Renewal Order, Gallichio agreed its terms, including the condition that required the Applicant to satisfy the judgments in favor of the New York State Commission of Labor:

WHEREAS, The Registrant acknowledges the existence of judgment debts docketed against it as listed in Appendix A to this Order ("Appendix A Debts") and agrees that the Appendix A Debts must be fully paid or otherwise satisfied before the end of the registration period covered by this order. Registrant also understands and agrees that its failure to satisfy the Appendix A Debts by no later than April 30, 2009, shall constitute adequate grounds upon which the Commission may deny the Registrant's application for renewal of its registration; See Renewal Order.

As stated above, the debts contained in Appendix A were the two judgments in favor of the New York State Commissioner of Labor in the amounts of \$32,793.00 and \$3,707.00.

During the Commission's investigation of WNYRCT's Third Renewal Application, it was apparent that WNYRCT did not satisfy these debts as required by the Renewal Order. Additionally, WNYRCT failed to satisfy the debts, even after being granted numerous time extensions.

In his correspondence dated April 20, 2010, Mr. Karson argued that WNYRCT, was not responsible for and should not be required to satisfy the aforementioned debts as they are docketed against WNYR and not WNYRCT. However, the Applicant's response fails to address the fact that the Applicant violated the terms of the Renewal Order. Separate and apart from the fact that WNYRCT is a successor entity of WNYR and the fact that the Commission is authorized by Admin. Code §16-509(x) to consider such debts against the Applicant, on November 21, 2007, the Applicant's principal signed the Renewal Order, thereby agreeing to the binding terms that required the satisfaction of the

aforementioned debts by no later than April 30, 2009.³ Therefore, Mr. Karson's argument is not persuasive.

As the Applicant's failure to pay the judgments in favor of the New York State Commission of Labor is in direct violation of the terms of Renewal Order, the Commission denies its renewal application on this independently sufficient ground.

B. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

"[T]he failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's integrity. See NYC Admin. Code §16-509(a)(x). According to a judgment and lien search conducted by the Commission, as of February 24, 2010, the Applicant has failed to pay \$ 37,700.59 for which various judgments have been entered.

The below judgments have been docketed against WNYR by the New York State Commissioner of Labor:

Commissioner of Labor State of New York

- Filing date 08/26/03- Filing Number 000606190, \$32,793.00
- Filing date 06/08/05- Filing Number 753606, \$3,707.59

The below judgments have been docketed against WNYRCT by the New York City Environmental Control Board:

New York City Environmental Control Board

- Violation number 176540275 – Violation Date 12/07/2009, \$1,200.00

In his April 20, 2010 correspondence, Mr. Karson argued by stating "As counsel for applicant I made numerous requests to the Commission for back up documentation of the claims. I was refused. The Commission failed to research Court or county judgment files to determine whether claims were satisfied." Notably, the Applicant doesn't deny that the judgments have not been satisfied. In addition, following Mr. Karson's correspondence dated July 28, 2009, Senior Special Counsel Michael Mirabella provided Mr. Karson with the following information regarding the Department of Labor judgments: 1) WNYR's employer registration number; 2) WNYR's federal employer identification number; 3) New York State Department of Labor's contact information including a contact person; and 4) the amounts due. Furthermore, Mr. Mirabella provided the Applicant and Mr. Karson with database transcripts for all of the aforementioned judgments. The Registration Renewal Order places the burden on the Applicant to

³ Further, the file reflects numerous correspondences between the counsel to the Commission and Mr. Karson showing that these terms and conditions were discussed at length prior to the Applicant executing the conditional renewal order. The proper time to argue this point would have been prior to the Applicant accepting the terms, not after they had failed to meet them.

provide evidence that debts were satisfied and the Commission had no duty to provide information.⁴ The Commission did in fact provide sufficient information for the Applicant to determine if the judgments were satisfied. Therefore the Applicant's argument is not persuasive.

The Applicant's failure to satisfy numerous debts for which judgments have been entered is a sufficient independent ground for denial of its registration application. See Admin. Code §16-509(a)(x); see supra at 5-6. Therefore, the Commission denies the Applicant's renewal application.

IV. CONCLUSION

Based upon the outstanding judgments against the Applicant and its failure to comply with conditions in the Registration Order and the second Renewal Order, it is recommended that the Commission deny WNYRCT registration renewal application. The above failures display that the Applicant lacks good character, honesty, and integrity.

⁴ Although, it is not the duty of the Commission to ascertain whether these debts are indeed outstanding, on May 4, 2010, Mr. Mirabella reconfirmed that the above mentioned debts were outstanding. In addition to the debts listed above, it was ascertained that the New York State Insurance Fund also has an outstanding judgment against WNYR in the amount of \$6,500.00 (filing number 1041887 filing date 05/23/2008).

This exemption/registration denial is effective immediately. West New York Restoration of CT, Inc. may not operate as a trade waste business in the City of New York.

Dated: June 28, 2010

THE BUSINESS INTEGRITY COMMISSION



Michael J. Mansfield
Commissioner/Chair



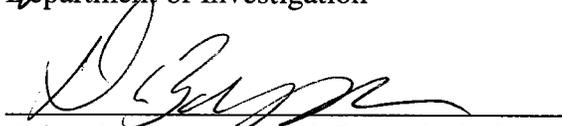
John Doherty, Commissioner
Department of Sanitation



Andrew Eiler, Director of Legislative Affairs (designee)
Department of Consumer Affairs



Jayme Naberezny, Inspector General (designee)
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Deborah Buyer, General Counsel (designee)
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