Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE REGISTRATION RENEWAL APPLICATION OF PRECISION INDUSTRIES, INC. (#3315) TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Precision Industries, Inc. ("Precision" or the "Applicant") has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for a renewal of its exemption from licensing requirements and a registration 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 Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-505(a).

On November 15, 2013, the Commission served Precision with a "Notice to the Applicant of the Grounds to Recommend the Denial of the Registration Renewal Application of Precision Industries, Inc. (#3315) to Operate as a Trade Waste Business" ("Notice"). The Notice stated the grounds for denial of the renewal application and notified Precision of its opportunity to submit a written response to the Notice and/or to provide other information it would have the Commission consider in connection with its exemption renewal application. The Notice further stated that any factual assertions in Precision's response were to be made under oath. Response was due within ten (10) business days from the date of the Notice. *See* 17 Rules of the City of New York ("RCNY") § 2-08(a); *see also* Notice at 7. No response was received from Precision.

Based upon the record, the Commission now refuses to issue the requested exemption and registration renewal for the following independently sufficient reasons:

A. The Applicant Has Failed to Pay Fines That Are Related to the Applicant's Business That Are Owed to the Commission.

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

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 construction and demolition debris removal sector of the City's carting industry has also been the subject of significant successful racketeering prosecutions. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992); United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367.

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.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," commonly known as construction and demolition debris, or "C & D" removal, must apply to the Commission for an exemption from the licensing requirement. Id. If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption from the licensing requirement, it issues the applicant a Class 2 registration. Id. Before issuing such registration, 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 or registration 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 private carting license (including construction and demolition) 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. 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.

Statement of Facts

On or about April 28, 2009, Precision applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. The Application disclosed Antonino Faraci as the Applicant's sole principal. On or about June 30, 2009, the Commission granted the Applicant a trade waste registration. The Applicant's registration was effective for two years, and expired on June 30, 2011. On or about June 30, 2011, the Applicant filed an application to renew its registration with the Commission ("Renewal Application"). The Renewal Application again listed Antonino Faraci ("Faraci") as Precision's sole principal.

A. Cancellation of the Applicant's Workers' Compensation Insurance and Issuance of Commission Directive

On or about December 2, 2011, the Commission received a notice of cancellation of the Applicant's workers' compensation insurance from the New York State Insurance Fund indicating that the insurance policy was cancelled, effective December 13, 2011. See November 23, 2011 New York State Insurance Fund "Cancellation of Certificate of Workers' Compensation Insurance" notice. The Applicant is required to maintain current and valid workers' compensation insurance coverage pursuant to New York State Workers' Compensation Law § 3. Accordingly, on or about December 2, 2011, the Commission sent a Commission Directive to the Applicant notifying it of the notice of cancellation of insurance and directing the Applicant to provide proof to the Commission that it had secured valid insurance coverage by December 9, 2011. This Directive clearly stated that failure to comply could result in penalties and/or immediate suspension of the Applicant's registration. See December 2, 2011 letter from Hector Serrano, Assistant Commissioner for Licensing to the Applicant.

B. Applicant's Failure to Comply with the Commission Directive and Imposition of Fine

The Applicant did not comply with the Commission Directive, and failed to provide proof to the Commission that it had secured valid workers' compensation insurance coverage. Title 17 RCNY § 1-09 provides that a registrant shall not "violate or fail to comply with any order or directive of the Commission". On or about May 15, 2013, the Commission served a Notice of Violation upon the Applicant for this violation of 17 RCNY § 1-09. This notice directed the Applicant to appear for a hearing on the violation at the Office of Administrative Trials and Hearings ("OATH") on June 6, 2013. See May 14, 2013 Notice of Violation and May 15, 2013 Affidavit of Service, Violation No. TW-9301.[1] The Applicant failed to appear at OATH on June 6, 2013. On that date, OATH Administrative Law Judge ("ALJ") Alessandra F. Zorgniotti held a hearing at which the Commission presented evidence of the violation. On June 7, 2013, ALJ Zorgniotti issued a Report and Recommendation finding the evidence sufficient to establish the charge and recommending a civil penalty of $10,000.00. See Report and Recommendation, Business Integrity Commission v. Precision Industries, Inc., OATH Index No. 2265/13 (June 7, 2013), Violation No. TW-9301. In a letter dated July 29, 2013, the Commission's General Counsel advised the Applicant that ALJ Zorgniotti's recommendation was accepted, and imposed the fine of $10,000.00. The letter demanded payment of the fine within 30 days. See July 29, 2013 letter from Abigail Goldenberg to the Applicant. As of the date of this Decision, the Applicant has failed to pay this duly imposed fine.

C. Applicant's Continuing Failure to Provide Proof of Workers' Compensation Insurance Coverage

The Commission made repeated demands to the Applicant to provide proof that it had secured valid workers' compensation insurance coverage in accordance with the Commission Directive. In a letter dated July 31, 2013, the Commission's legal staff demanded that the Applicant provide such proof by not later than August 7, 2013. The letter clearly indicated that the Applicant's failure to provide the requested information and documentation in a timely fashion could result in the withdrawal or denial of its registration renewal application. See July 31, 2013 letter from Martin G. Gleeson to the Applicant. Having received no response to the July 31, 2013 letter, the Commission's legal staff wrote to the Applicant once again. In a letter dated August 14, 2013, a further demand was made that the Applicant provide proof that it had secured valid workers' compensation insurance coverage in accordance with the Commission Directive by not later than August 21, 2013. This letter similarly indicated that the Applicant's failure to provide the requested information and documentation in a timely fashion could result in the withdrawal or denial of its registration renewal application. Moreover, this letter was clearly marked "Final Request for Information" in upper case, underscored, boldfaced, 14 point

[1] The Commission served a prior Notice of Violation upon the Applicant for this charge that was returnable before the Department of Consumer Affairs (See May 24, 2012 Notice of Violation, Violation No. 8376). That Notice of Violation was withdrawn by the Commission when OATH acquired jurisdiction to hear the violation pursuant to Mayor's Executive Order No. 148, dated June 8, 2011. Thereafter, Faraci verbally agreed to a settlement, but reneged on this agreement by failing to sign a stipulation of settlement in lieu of notice of violation and hearing. Consequently, the Commission brought a new proceeding against the Applicant before OATH.

size letters. The letter was forwarded by certified mail, return receipt requested, and first-class mail. The U.S. Postal Service return receipt indicated that the letter was received by Maria Faraci on August 17, 2013 at the address provided by the Applicant for mailing purposes. As of the date of this Decision, no response has been received from the Applicant.

Basis for Denial

The Applicant Has Failed to Pay Fines That Are Related to the Applicant's Business That Are Owed to the Commission.

The Commission may refuse to issue a license to an applicant "upon the failure of the applicant to pay any tax, fine, penalty, 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." See Admin. Code § 16-509(a)(x); see also § 16-509(c)(ii); see also § 16-513(a)(iv).

As of the date of this Decision, the Applicant has failed to pay the fine of $10,000.00 duly imposed by the Commission following proceedings held before the Office of Administrative Trials and Hearings. For this independently sufficient reason, this Registration Renewal Application is denied.

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 [] chapter [1 of Title 16-A of the Admin. Code] or any rules promulgated pursuant hereto." See Admin. Code § 16-509(b).

Despite repeated inquiries by the Commission's legal staff, the Applicant has failed to provide proof of valid workers' compensation insurance coverage.

The Applicant has "knowingly failed to provide the information" required by the Commission by failing to respond to the Commission's repeated requests for information and/or documentation. For this independently sufficient reason, this Registration Renewal Application is denied.

Conclusion

The Commission is vested with broad discretion to refuse to grant an exemption from the license requirement and issue a registration in lieu of 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

independently sufficient reasons, the Commission denies the Applicant's exemption renewal application.

This exemption denial is effective immediately. Precision Industries, Inc. may not operate a trade waste business in the City of New York.

Dated: December 18, 2013

THE BUSINESS INTEGRITY COMMISSION

Shari C. Hyman
Commissioner and Chair

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Department of Consumer Affairs

John Kantor, Chief of Investigations (Designee)
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New York City Police Department