Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF WELL BUILT DEVELOPMENT CORP. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Well Built Development Corp. ("Well Built" or "Applicant") (BIC #3906) has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for renewal of an 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 13, 2013, the staff issued and served the Applicant with Notice of the Grounds to Recommend that the application be denied. The Applicant was granted ten business days to respond, until November 29, 2013. See 17 Rules of the City of New York §2-08(a). On November 14, 2013, the Applicant's principal sent an email message to the staff that stated, "please except [*sic*] this email as written notification to withdraw my application for renewal of my trade waste license. This license is not needed in my current line of work." See November 14, 2013 Email message from Anthony Malfi. In a November 18, 2013, telephone conversation, the Commission's staff informed the Applicant's principal that the Applicant could provide the Commission with a written response to the Notice of the Grounds to Recommend that the application be denied. The Commission's staff memorialized that telephone conversation in an Email message that was sent to the Applicant on November 18, 2013. See November 18, 2013 Email message from the Commission's staff to the Applicant. Besides the Applicant's November 14, 2013 request to withdraw its application, the Applicant did not submit any substantive response to the Notice of the Grounds to Recommend that the application be denied. Based on the record as to the Applicant, the Commission denies Well Built Development Corp.'s exemption renewal application because the Applicant lacks good character, honesty and integrity based on the following sufficient reason:

> **Well Built pleaded guilty in 2012 to Criminally Negligent Homicide, a Class E felony, and Well Built's principal, Anthony Malfi, pleaded guilty to Reckless Endangerment, a Class A Misdemeanor.**

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. NY 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;

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., 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). NY Admin. Code § 16-116.

Statement of Facts

On June 24, 2010, Well Built 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. See Registration Application ("Application"). The Application disclosed Anthony Malfi ("Malfi") and Sally Ann Malfi as the only principals. See Registration Application at 13. On or about October 1, 2010, the Commission granted the Applicant a registration to operate as a trade waste business. See Registration Order.

On March 25, 2011, the Applicant was charged with criminally negligent homicide, a class E felony, and reckless endangerment in the second degree, a class A misdemeanor. See Indictment No. 99/2011 (Sup. Ct. Richmond Cty.); April 7, 2011 Department of Investigation Press Release. In addition, Principal Anthony Malfi was charged with reckless endangerment in the second degree, a class A misdemeanor. See id. The Applicant and Malfi were charged with failing to follow City-approved plans to build a wall at a construction site and failing to adequately brace and shore the wall. As a result of the Applicant's and Malfi's criminal conduct, the wall collapsed and killed someone. See id.

On March 2, 2012, the Applicant pleaded guilty to one count of criminally negligent homicide, a class E felony. The Applicant was sentenced to pay a $10,000 fine and a $375 surcharge. Malfi pleaded guilty to reckless endangerment, a class A misdemeanor. He was sentenced to a conditional discharge and was required to perform 100 hours of community service.

On or about April 5, 2012, Malfi surrendered both his New York City Department of Buildings ("DOB") General Contractor's license and his DOB Superintendent of Construction

license. See DOB Contractor Details printout. Then, on April 18, 2012, the New York City Department of Consumer Affairs ("DCA") denied Well Built's Home Improvement Contractor's license renewal application. DCA denied the Applicant's license renewal application based on two grounds: (1) because DCA had requested documentation regarding the criminal case, but the Applicant failed to provide DCA with the requested documentation; and (2) because Malfi failed to renew his Home Improvement Salesperson's license. See March 28, 2012 DCA License Denial Letter.

On September 25, 2012, the Applicant filed a renewal application (the "Renewal Application") with the Commission. See Renewal Application. The history set forth above raises substantial concerns that the continued operation of Well Built poses a significant danger to the public interest.

Basis for Denial

As described above, there is significant derogatory information that warrants denial of the Renewal Application. Specifically, both the Applicant business and its principal were convicted of crimes related to the construction industry that resulted in a person's death. These crimes establish that the Applicant lacks the requisite good character, honesty and integrity.

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Admin. Code § 16-509(a)(iii) expressly permits the Commission to consider the conviction of an applicant for a crime which, considering the factors set forth in Correction Law § 753, would provide a basis under such law for the refusal of such license or registration. Upon consideration of the factors in such law, the balance falls in favor of the denial of the Renewal Application of Well Built. The factors to be considered are as follows:

> (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
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> (b) The specific duties and responsibilities necessarily related to the license or employment sought.
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> (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
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> (d) The time which has elapsed since the occurrence of the criminal offense or offenses.

> (e) The age of the person at the time of occurrence of the criminal offense or offenses.
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> (f) The seriousness of the offense or offenses.
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> (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
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> (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

See Correction Law § 753.

As set forth below, after applying the Correction Law analysis, the Commission should conclude that the criminal convictions of both the Applicant business and its principal establish a basis for denial of the Renewal Application.

First, the Applicant was indicted and convicted in 2012 of criminally negligent homicide, a class E felony. In addition, principal, Anthony Malfi was indicted and convicted in 2012 of reckless endangerment in the second degree, a class A misdemeanor. These convictions relate to the death of a man who was killed at one of the Applicant's construction sites. This death was caused as a direct result of the Applicant and its principal's failure to follow plans that were approved by the City. Instead, the company and its principal disregarded those plans and failed to adequately brace and shore a wall. Well Built and Malfi's failure to follow City-approved plans, and their failure to properly brace and shore this wall caused the wall to collapse and kill someone.

If granted, the Renewal Application would authorize Well Built and Malfi to engage in construction and demolition debris removal. The convictions relate to the construction industry, and relate to the Applicant's obligation to conduct construction-related activities in a manner which does not jeopardize the safety of the public. The fact that Malfi chose to disregard the public safety establishes that Malfi is not worthy of a Commission issued registration.[1]

These crimes occurred only four years ago and the convictions occurred last year. Malfi was 42-years old at the time of the crimes. Accordingly, it cannot be maintained that these charges were not recent or that these charges were attributable to youthful indiscretion. See Correction Law § 753(1)(d) and (e). The Commission has a legitimate interest in preventing an

[1] Penal Law § 15.05(3) defines the term "recklessly" as follows: "[a] person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto."

unreasonable risk to property or to the safety or welfare of the general public and the denial of the Renewal Application herein directly furthers that interest. See Correction Law § 753(1)(h). Furthermore, there is no evidence of rehabilitation and good conduct as Malfi surrendered his DOB issued licenses and DCA denied his Home Improvement Contractor's license renewal application. Upon balancing the factors set forth in Correction Law § 753, the Commission finds that both criminal convictions (both separately, and taken together) warrant denial of this registration renewal application. The Applicant did not dispute this point. The Commission denies Well Built Development Corp.'s renewal application based on this sufficient ground.

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Conclusion

The Commission is vested with broad discretion to refuse to issue 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 sufficient reason, the Commission denies Well Built Development Corp.'s registration renewal application.

This registration denial is effective immediately. Well Built Development Corp. may not operate as a trade waste business in the City of New York.

Dated: December 18, 2013

THE BUSINESS INTEGRITY COMMISSION

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