



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  
THE REGISTRATION APPLICATION OF ABARROTES AND MEXICAN  
FLAVORS CORP. TO OPERATE AS A WHOLESALE BUSINESS  
IN A PUBLIC WHOLESALE MARKET**

*Introduction*

On April 12, 2016, Abarrotes and Mexican Flavors Corp. (the “Applicant”) (BIC #HPA-489995) applied to the New York City Business Integrity Commission (the “Commission”) for a registration to operate as a wholesale food business in the Hunts Point Market Adjacent Area (the “Instant Application”). Local Law 28 of 1997 authorizes the Commission to review and make determinations on such wholesale business registration applications. *See* Title 22, New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 22-253. The Commission’s review of a wholesale business registration application focuses on a determination of whether the applicant possesses business integrity, *i.e.*, good character, honesty and integrity. *See* Title 17, Rules of the City of New York (“RCNY”) §§ 12-18, 12-19 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, and false or misleading statements to the Commission); Admin. Code § 22-253(a)-(b) (empowering the Commission to issue and establish standards for the issuance and revocation of registrations); Admin. Code § 22-216(b)-(c) (authorizing the Commission to refuse to issue registrations to applicants lacking “good character, honesty and integrity”).

The Commission’s staff has reviewed the Instant Application and conducted a background investigation of the Applicant. On December 8, 2020, the Commission’s staff served on the Applicant an eight-page Notice of the Grounds to Deny the Registration Application of Abarrotes Mexican Flavors Corp. (the “Notice”). The Applicant was given 10 business days, until December 21, 2020, to file a response with the Commission. *See* 17 RCNY § 2-08(a). On December 22, 2020, the Applicant’s attorney contacted the Commission and requested an extension of time to submit a written response. The Commission granted the Applicant’s request for an extension of time to January 4, 2021. *See* e-mails from Commission staff to Ferris Turner, Esq, dated December 22, 2020. Ultimately, despite the extension of time, the Applicant did not submit a response to the Commission.

The Commission has completed its review of the Application, having carefully considered the Notice. Based on the record in this matter, as detailed below, the Commission denies the Instant Application based on the following three independently sufficient grounds:

- 1. The Applicant failed to provide truthful information in connection with the Instant Application;**
- 2. The Applicant and the Applicant's predecessor company have repeatedly engaged in unregistered activity; and**
- 3. The Applicant and the Applicant's predecessor company have failed to pay fines directly related to the Applicant's business, for which judgment has been entered.**

### ***Background and Statutory Framework***

Local Law 28 of 1997 ("Local Law 28") and the rules promulgated thereunder require that wholesale businesses located or operating within a public wholesale market register with the Commissioner of the Department of Small Business Services. *See* Admin. Code § 22-253; 66 RCNY §§ 1-12, -13; 17 RCNY §§ 11-02, -04. The duties of the Commissioner of the Department of Small Business Services were later transferred to the Commissioner of the Organized Crime Control Commission ("Commissioner"), pursuant to a charter revision provision approved by 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 it or any of its principals lacks good character, honesty and integrity. *See* Admin. Code §§ 22-253(b), 22-259(b); New York City Charter §2101(a), (b). Administrative Code § 22-259(b) lists a number of factors that the Commission may consider in determining the fitness of an individual or a wholesale business. Among the factors that the Commission may consider in making a fitness determination are:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or photo identification card, or a pending civil or administrative proceeding to which such applicant is a party and which relates to the fitness to conduct the business or perform the work for which the license or photo identification is sought, in which cases the commissioner may defer consideration of a proposal or application until a decision has been reached by the court or administrative tribunal before which such action or proceeding is pending, unless such applicant demonstrated to the commissioner that such pending action or proceeding should not be the basis for deferral of the license or photo identification card or consideration of the proposal;
3. conviction of such applicant for a crime which, under article twenty-three-A of the correction law, would provide a basis for the denial of a license to conduct business in the market area;

4. commission of a racketeering activity or association with a person who has been convicted of a racketeering activity when the applicant knew or should have known of such conviction, 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;
5. 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;
6. a principal of the applicant was a principal in a predecessor wholesale business or market business where the commissioner would be authorized to deny registration to such predecessor business;
7. 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 and enforcement of such judgment has not been stayed.

Admin. Code § 22-259(b).

Local Law 28 makes clear that the Commission is not limited to consideration of the enumerated factors. The list is illustrative, not exhaustive.

### ***Statement of Facts***

#### *The Instant Application*

As noted above, on April 12, 2016, the Applicant filed the Instant Application to operate in the Commission-regulated area adjacent to the New York City Terminal Produce Cooperative Market (the "Hunts Point Market" or "Market").<sup>1</sup> See Instant Application. The Instant Application disclosed Jonathan Franke ("Franke") as the sole principal of the Applicant and its address as "1170 Randal [sic] Avenue, Bronx, NY 10474." *Id.* at 1. Franke signed the Instant Application as president of the Applicant. *Id.* at 27. In doing so, Franke certified under penalty of perjury that he "read and understood the questions contained in the attached application and its attachments"

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<sup>1</sup> This area adjacent to the Hunts Point Market (the "Adjacent Area") is included in the definition of a public wholesale market and subject to the Commission's jurisdiction. See 17 RCNY § 11-02.

and “that to the best of [his] knowledge the information provided in response to each question and in the attachments is full, complete and truthful.” *Id.*

*Abarrotes Mexicano Wholesale Inc. and the Bankruptcy Court Proceeding*

In 2011, prior to the Applicant being incorporated, the Commission issued a wholesaler registration to a similarly named company, Abarrotes Mexicano Wholesale Inc. (“Wholesale”). *See* Wholesale Registration Order, dated February 16, 2011 (“Wholesale Registration Order”). The Applicant’s present address is the same as the address that Wholesale disclosed: 1170 Randall Avenue, Bronx, NY 10474. *Id.* at 1. Similarly, the Applicant’s telephone number and agent for service of process are the same as those that Wholesale disclosed. *See* Instant Application at 1; *see also* Wholesale Business Registration Application, dated December 18, 2009 (“Wholesale Registration Application”) at 1. Franke is married to Adriana Giadans, the sister of Wholesale’s sole disclosed principal, Elizabeth Giadans. *See* Instant Application at 24; *see also* Wholesale Registration Application at 22. Adriana Giadans is also one of the Applicant’s employees. *See* Instant Application at 24.

Wholesale’s Commission-issued wholesaler registration expired on February 28, 2014. *See* Wholesale Registration Order. Less than four months later, Wholesale filed for bankruptcy. *See* Bankruptcy Petition, dated June 24, 2014. During the bankruptcy proceeding, the bankruptcy trustee sought an injunction preventing the Applicant from disposing of any of Wholesale’s assets, charging that the Applicant was a “continuation and alter ego” of Wholesale. *See* Bankruptcy Complaint at 1, 4. The bankruptcy complaint alleged that the Applicant and Wholesale have the same phone number and address and were incorporated by the same person: Edmundo Garcia (“Garcia”). *Id.* at 3.

During the bankruptcy proceeding, Franke signed an affidavit, in which he explained how he acquired ownership of the Applicant. *See* Franke Affidavit, dated July 15, 2014. Although the Applicant was incorporated in September 2013, Franke worked and continued to work as a carpenter. Franke stated that he had “been in a business similar to [the Applicant] for a number of years,” but provided no further details. *Id.*; *see also* transcript of testimony of Jonathan Franke, dated March 6, 2017 (“Franke Transcript”) at 11, 28. Franke claimed that the Applicant “is a new corporation with no affiliation with [Wholesale].” *Id.* Ultimately, despite Franke’s efforts to separate the two companies, the Applicant agreed to pay the bankruptcy trustee \$25,000 to settle some of Wholesale’s debts. *See* Bankruptcy Settlement Stipulation, dated February 5, 2015.

*The Connections between the Applicant and Wholesale*

On March 6, 2017, Franke provided sworn testimony to the Commission. *See* Franke Transcript. He testified that in 2013, Garcia (his accountant) approached him with an opportunity to be involved in the produce industry. *Id.* at 28. Contrary to the claim in his bankruptcy court affidavit, Franke testified that he had no prior experience in the industry. *Id.* Franke stated that

Garcia introduced Franke to Milton Giadans (“Milton”), who Franke believed owned Wholesale.<sup>2</sup> Franke agreed to “take over the lease” for Wholesale because Milton was unable to make payments for the property. *Id.* at 40.

Milton is not disclosed on the Instant Application in any capacity. *See* Instant Application. During his testimony, Franke was evasive when asked about Milton’s ongoing role in the Applicant’s business. Franke first stated that, although he understood that Milton had owned Wholesale, Milton no longer worked at the Applicant’s business. *See* Franke Transcript at 35. Franke further claimed that Milton never did work with him, and that Milton did not come to the Applicant’s place of business. *Id.* at 66-67. However, when the Commission’s staff confronted Franke with evidence that Milton had taken calls from Commission staff members at the Applicant’s place of business and taken messages, Franke altered his testimony and acknowledged that Milton had assisted in operating the business. *Id.* at 67-69. Finally, Franke admitted that Milton visited the Applicant business several times a week to assist in its operations. *Id.* at 69-70.

Franke also testified that his wife Adriana is Milton and Elizabeth Giadans’s sister. *Id.* at 30, 36. The Wholesale registration application states that Elizabeth’s home address is “1142 Rosedale Avenue, Bronx, NY.” Wholesale Registration Application at 22. And the Instant Application states that Adriana lives at the same address. Instant Application at 24. Yet, Franke implausibly claimed that he has never met or even seen Elizabeth. *See* Franke Transcript at 43, 57.

The facts in this matter demonstrate a web of connections between the Applicant and Wholesale. When Wholesale declared bankruptcy, the Applicant assumed certain of Wholesale’s debts and agreed to take over Wholesale’s lease. *See* Bankruptcy Settlement Stipulation; *see also* Franke Transcript at 29. Milton assists with the Applicant’s operations (a fact Franke sought to hide), and he was previously a manager at Wholesale. And while Franke has no experience in the produce industry, *see* Franke Transcript at 28, his family does: Franke’s wife is Milton and Elizabeth Giadans’s sister; Elizabeth was Wholesale’s only principal. *See* Wholesale Registration Application at 22.<sup>3</sup>

#### *Repeated Unregistered Activity*

Because Wholesale’s registration expired on February 28, 2014, *see* Wholesale Registration Order, Wholesale was not authorized to operate thereafter as a wholesale business in a Commission-regulated wholesale market. Yet, on September 16, 2014, Commission investigators found Wholesale operating, and issued it an administrative violation for unregistered activity in violation of Admin. Code § 22-253(a). *See* Notice of Violation and Hearing #0177101403. Wholesale failed to appear at the hearing for the violation, and a default decision was issued. *See* Environmental Control Board (“ECB”) Decision and Order, dated December 1,

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<sup>2</sup> Elizabeth Giadans (Wholesale’s sole disclosed principal) testified that Milton was a manager of Wholesale. *See* Transcript of testimony of Elizabeth Giadans, dated September 8, 2010 (“Elizabeth Giadans Transcript”) at 22. Despite this fact, Wholesale never disclosed Milton in any capacity on its registration application to the Commission. *See* Wholesale Registration Application.

<sup>3</sup> The Commission’s staff made repeated requests of the Applicant to contact the Commission in order to address the Applicant’s operations and connections to Wholesale. The Applicant has failed to respond to each of these requests. *See* Communications between Commission Staff and the Applicant.

2014. In the decision, Wholesale was advised that it could ask for another hearing date or a penalty would be imposed. Wholesale never requested a new hearing date, and the Court imposed a penalty in the amount of \$7,522.47, which remains outstanding. *See* OATH Summons Information.

On December 8, 2014, Commission investigators again found Wholesale operating illegally and issued a second administrative violation. *See* Notice of Violation and Hearing #0177099176. Wholesale failed to appear at the hearing, and a default decision was issued. *See* ECB Decision and Order, dated May 18, 2015. In the default decision, Wholesale was advised that it could ask for another hearing date or a penalty would be imposed. Wholesale never requested a new hearing date, and the Court imposed a penalty in the amount of \$7,333.84, which remains outstanding. *See* OATH Summons Information.

On February 11, 2015, Commission investigators again found Wholesale operating illegally and issued a third administrative violation. *See* Notice of Violation and Hearing #0177095582. Wholesale failed to appear at the hearing, and a default decision was issued. *See* ECB Decision and Order, dated March 30, 2015. In the default decision, Wholesale was advised that it could ask for another hearing date or a penalty would be imposed. Wholesale never requested a new hearing date, and the Court imposed a penalty in the amount of \$7,371.29, which remains outstanding. *See* OATH Summons Information.

On January 20, 2016, Commission investigators again found Wholesale operating illegally and issued a fourth administrative violation. *See* Notice of Violation and Hearing #0177102274. The Applicant failed to appear at the hearing, and a default decision was issued. *See* ECB Decision and Order, dated May 2, 2016. In the default decision, the Applicant was advised that it could ask for another hearing date or a penalty would be imposed. Wholesale never requested a new hearing date, and the Court imposed a penalty in the amount of \$6,845.62, which remains outstanding. *See* OATH Summons Information. To date, as a result of repeatedly operating illegally, Wholesale owes the City of New York \$29,073.22 in penalties.

Finally, as recently as September 15, 2020, Commission investigators observed the Applicant operating without a registration and issued yet another administrative violation. *See* Notice of Violation and Hearing #0205897726. The hearing to adjudicate this violation was scheduled to take place remotely on November 10, 2020. The Applicant did not appear. As a result, the Commission expects the Court will issue another default decision. *See* OATH Summons Information; Notice of Violation and Hearing #0205897726.

#### *Unpaid Taxes to New York State*

In addition to the penalties described above, the Applicant owes \$8,568.47 in unpaid taxes to New York State. *See* New York State Tax Warrant ID #E-044023337-W002-9. As a result of this debt, New York State declared the Applicant to be an “inactive” corporation, and the company was dissolved by proclamation. *See* Abarrotes and Mexican Flavors Corp. corporate registration. Thus, the Applicant does not presently have authority to do business in New York State. *See* Tax Law, § 203-a. Similarly, Wholesale had three state tax warrants filed against it and currently owes \$11,610.57 to New York State. *See* New York State Tax Warrant IDs #E-030740135-W010-8;

#E-030740135-W011-3; and #E-030740135-W013-2. This totals an additional \$20,179.04 that the Applicant and Wholesale owe in taxes and penalties. In sum, the Applicant and Wholesale owe a combined \$49,252.26<sup>4</sup> in taxes and penalties to New York City and New York State.

As noted above, despite requesting an extension of time to file a response to the Notice, the Applicant did not file a response. Thus, the Applicant has not disputed any of the facts described above.

### ***Basis for Denial***

#### **1. The Applicant failed to provide truthful information in connection with the Instant Application.**

The Commission may refuse to issue a registration to an applicant who has failed “to provide truthful information in connection with the application.” *See* Admin. Code § 22-259(b)(i). On April 12, 2016, the Applicant filed the Instant Application. Although it is clear that Milton assists in the operations of the Applicant, he was not disclosed in any capacity on the Instant Application. *See* Franke Transcript at 67-69; Instant Application. This omission is plainly material. Milton has experience in the produce industry; Milton’s sister Elizabeth (Wholesale’s principal) described Milton as a “manager” of Wholesale. And Franke testified that Milton was his initial point of contact regarding the Applicant “taking over” the space at 1170 Randall Avenue. Milton continued to play a role in the Applicant’s operations, visiting the Applicant regularly. *See* Franke Transcript at 68, 70; *see also* Elizabeth Giadans Transcript at 22. Importantly, as in the Instant Application, Wholesale never disclosed Milton in any capacity either, despite his sister Elizabeth testifying that Milton was a manager at Wholesale. *See* Wholesale Registration Application; *see also* Elizabeth Giadans Transcript at 22 (describing Milton as a “manager” at Wholesale).

Additionally, Franke’s testimony regarding his own experience in the produce industry and the Applicant’s affiliation with Wholesale was false and misleading. Franke unconvincingly attempted to distance himself and the Applicant from Wholesale. Despite clear evidence to the contrary, Franke initially claimed that the Applicant does not employ Milton. *See* Franke Transcript at 67. Franke also claimed that he had never met or even seen his own sister-in-law – who was Wholesale’s principal. This claim is particularly incredible given the fact that Franke’s wife Adriana and her sister Elizabeth disclosed the same home address to the Commission.

Franke’s testimony also conflicts with his own sworn statements in his affidavit filed in the bankruptcy court. *See* Franke Affidavit, dated July 15, 2014. In that affidavit, Franke stated that he had experience in the produce industry; yet he told the Commission under oath that he had none. *Id.*; *see also* Franke Transcript at 72. Franke claimed in his affidavit that the Applicant “has no affiliation with [Wholesale]”; yet his testimony to the Commission demonstrates the close connection between the Applicant and Wholesale through a combination of business transactions and personal relationships. *See* Franke Transcript at 58, 68. The facts demonstrate that the

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<sup>4</sup> This number will increase if the Court, as expected, issues a default decision in connection with Notice of Violation and Hearing #0205897726, as described above.

Applicant is the successor corporation to Wholesale – created to avoid Wholesale’s debts and liabilities.

The failure of the Applicant to provide truthful and non-misleading information to the Commission demonstrates that the Applicant lacks good character, honesty and integrity. The Applicant has not disputed this point. Therefore, the Commission denies the Instant Application based on this independently sufficient ground.

**2. The Applicant and the Applicant’s predecessor company have repeatedly engaged in unregistered activity.**

As detailed above, the Applicant and Wholesale have repeatedly engaged in unregistered activity. From September 2014 to January 2016, Wholesale was found liable for operating without a Commission-issued registration on four separate occasions. And the Commission issued a violation against the Applicant for unregistered activity in September 2020. Although the hearing on that violation was scheduled for November 2020, the Applicant failed to appear.

As described above, the Commission may refuse to register a wholesale business when it or any of its principals lacks good character, honesty and integrity, *see* pp. 2-3 *supra*, and Administrative Code § 22-259(b) lists a number of factors that the Commission may consider in determining the fitness of an individual or a wholesale business. The Administrative Code specifies that the listed factors are not exhaustive, and the Commission may rely on other factors. *See* Admin. Code § 22-259(b) (“the commissioner may consider, but not be limited to” the listed factors when determining good character, honesty and integrity). Here, the longstanding pattern of illegal operation demonstrates a lack of good character, honesty and integrity that warrants denial of an application to conduct business in the New York City public wholesale food markets. The Applicant has not disputed this point. Therefore, the Commission denies the Instant Application on this independently sufficient ground.

**3. The Applicant and the Applicant’s predecessor company have failed to pay fines directly related to the Applicant’s business, for which judgment has been entered.**

The Commission may consider the “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 and such judgment has not been stayed.” *See* Admin. Code § 22-259(b)(vii).

As noted above, Wholesale was found to have engaged in unregistered activity on four occasions, totaling \$29,073.22 in penalties. In addition, the Applicant and Wholesale also collectively owe \$20,178.57 in penalties and taxes to New York State. Thus, the two entities owe a combined \$49,251.79 in penalties and taxes to New York City and State. Failure to pay these fines and taxes establishes that the Applicant lacks good character, honesty and integrity. The Applicant has not disputed this point. Therefore, the Commission denies the Instant Application based on this independently sufficient ground.

**Conclusion**

The Commission is vested with broad discretion to refuse to issue a registration to any applicant it determines lacks good character, honesty and integrity. The record in this matter demonstrates that the Applicant lacks those essential qualities. Accordingly, based on the three independently sufficient grounds detailed above, the Commission denies the Instant Application.

The registration denial is effective immediately. Abarrotes and Mexican Flavors Corp. may not operate as a wholesale business in a public wholesale market, including the Adjacent Area next to the Hunts Point Market.

Dated: January 19, 2021

THE NEW YORK CITY  
BUSINESS INTEGRITY COMMISSION

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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Noah D. Genel Commissioner  
and Chair

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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Edward Grayson, Commissioner  
Department of Sanitation

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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Margaret Garnett, Commissioner Department  
of Investigation

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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Lorelei Salas, Commissioner  
Department of Consumer and Worker Protection

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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Andrew Schwartz, Deputy Commissioner  
(Designee)  
Department of Small Business Services

**Approved at January 19, 2021  
Telephonic Commission Meeting**

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John Dusanenko, Captain  
(Designee)  
New York City Police Department