



FINAL

THE CITY OF NEW YORK  
BUSINESS INTEGRITY COMMISSION  
100 CHURCH STREET, 20<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10007

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF FRANKIE BOY PRODUCE CORP. FOR REGISTRATION AS A WHOLESALE BUSINESS AT THE NEW YORK CITY TERMINAL MARKET AND REVOKING THE TEMPORARY PHOTO IDENTIFICATION CARDS OF FRANK PORCARO, JR. AND FRANK PORCARO, SR.<sup>1</sup>**

**Introduction**

On May 27, 2003, the Chairman of the Business Integrity Commission ("Commission") issued a ten (10) page preliminary decision ("Decision") denying the application of Frankie Boy Produce Corp. ("Frankie Boy") for registration as a wholesale business at the New York City Terminal Market and revoking the temporary photo identification cards of Frank Porcaro, Jr. ("Junior") and Frank Porcaro, Sr. ("Senior"). A copy of the Decision is annexed hereto. The Chairman issued the Decision based on his finding that Frankie Boy, Junior and Senior lacked good character, honesty and integrity. See Code §§22-253(b), 22-259(b), 66 RCNY §1-20. Although the Chairman is empowered to issue a final decision on his own, he has decided to submit the matter to the full Commission. As explained below in detail, the Commission affirms the Decision made by the Chairman to deny the application of Frankie Boy for a registration as a wholesale business at the New York City Terminal Market and to revoke the temporary photo identification cards of Junior and Senior.

**Procedural History**

The Decision was personally served upon Senior on May 29, 2003, individually and as a representative for Frankie Boy and his son, Junior.<sup>2</sup> The Decision advised Frankie Boy, Junior and Senior of their statutory right to be heard. See Code §§22-216(b). It directed them "individually or severally, to bring any information that they believe[d] [wa]s relevant to this Decision to the attention of the Commission, in writing, within ten days." See Decision at 10. Their attorney, Paul Gentile, submitted a three (3) page letter dated June 5, 2003, requesting an additional 30 days to respond to the

<sup>1</sup> The Commission has not received applications from Frank Porcaro, Jr. or Frank Porcaro, Sr. to replace their temporary photo identification cards with permanent ones. In their response, the applicants do not contest this assertion and do not claim that permanent identification card applications were submitted. In any event, had such applications been submitted, the considerations set forth here obviously mandate that they be denied as well.

<sup>2</sup> A joint response was submitted for Frankie Boy, Junior and Senior. No claim was made by Frankie Boy or Junior that they were not properly served with the Decision as a result of service on Senior. As a result, they have conceded that issue.

Decision, as well as requesting several documents. By letter dated June 9, 2003, the Commission granted these requests by extending the deadline to July 7, 2003 and providing copies of the documents relied upon in the decision (consisting of nineteen sets of documents and one videotape).

Frankie Boy, Junior and Senior availed themselves of the opportunity to respond to the Decision by submitting several arguments in their June 5, 2003 letter<sup>3</sup> ("Response One") as well as a four (4) page letter dated July 7, 2003 ("Response Two").

## Discussion

### Revocation of Junior's Temporary Photo Identification Card

Not surprisingly, Junior does not contest the Commissioner's decision to revoke Junior's temporary photo identification card. See Response Two at 1. Based on the overwhelming evidence of multiple bribery convictions, the Commission finds that Junior clearly lacks good character, honesty and integrity. Therefore, Junior's photo identification card is hereby revoked.

### Denial of Frankie Boy's Application for a Wholesaler Registration

Despite the Applicant's concession that Junior's identification card was correctly revoked (thereby conceding that Junior lacks good character, honesty and integrity), the Applicant still asks the Commission to grant Frankie Boy a registration. However, Frankie Boy and Junior are indistinguishable; for all intents and purposes, Junior is Frankie Boy and *vice versa*. Junior has been the sole principal of Frankie Boy (a company with less than 10 employees) for over eight years. Any evidence that Junior lacks good character, honesty and integrity (including his failure to notify the Commission about his arrests and convictions)<sup>4</sup> is directly attributable to the company and makes Frankie Boy unworthy of registration.

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<sup>3</sup> The letter also requested a hearing date in order to examine any witnesses against the applicants and to present testimony and other evidence. This request for a hearing was denied. It is well established that Commission licensing and registration decisions need not be based on full-fledged, adversarial hearings with witnesses subjected to cross-examination and documents introduced into evidence. See Sanitation and Recycling Industry, Inc. v. City of New York, 107 F.3d 985 (2<sup>nd</sup> Cir. 1997). Instead, the staff of the Commission prepares a written report summarizing the evidence against the applicant (known as the "non-final decision" or "recommendation"). The Applicant is then given the opportunity to respond to the written report and may submit written opposition papers, in which the Applicant can submit documents or other evidence and can raise whatever factual questions or policy issues the Applicant deems appropriate. The final decision of the Chairman (or the Commission) is based on the Chairman's preliminary decision (occasionally referred to as the Commission staff's recommendation) and the Applicant's response.

<sup>4</sup> The Applicant asserts that since "Junior's arrest was published in Trade publications and the newspapers, and, we assume, that the Commission was notified by the office of the USDA Inspector General and the FBI. His bribery conviction was also public knowledge," the Commission had "actual and constructive knowledge of Junior's arrest and conviction." Response One at 2. The Applicant cites no authority for this proposition which is contrary to the statute and regulations which place the burden on the Applicant to disclose, not the Commission to discover, the Applicant's arrests and/or convictions. Applicants have the affirmative duty to notify the Commission, within 30 calendar days, of the arrest or criminal conviction of any principal of the business. See Admin. Code §22-253(a). The Commission notes that this is an

Furthermore, Junior's criminal acts were not committed solely by him. Junior used his employees as accomplices to his crimes. Both John Troyano and Maxine Abraham<sup>5</sup> repeatedly assisted Junior in paying Cashin for inspections.

Notwithstanding the overwhelming evidence that Frankie Boy lacks good character, honesty and integrity, the Applicant has requested that the company be registered, albeit with "special conditions," including the transfer of ownership to Junior's wife, Jennifer, and the proposed satisfaction of the outstanding worker's compensation judgment. See Response Two at 3.

The Applicant's proposal is further evidence of Frankie Boy's indifference to the standards it must meet. Despite Junior's conviction over two years ago and the knowledge that a registration application was still pending before the Commission, the company continues to be owned by convicted felon; the subject of a transfer of ownership was not even proposed until the company was on the verge of denial. In addition, the proposed transfer to a family member is not an arms-length transaction and comes with no assurances that Junior will be segregated from the operations of the company.<sup>6</sup>

Furthermore, the Commission does not credit the Applicant's promise to resolve the outstanding judgment. No effort has been made to satisfy the judgment during the past two years, nor have any steps been taken during the eight-month period since the Decision was issued to attempt to vacate or otherwise satisfy the judgment. Frankie Boy's offer to pay the judgment is an empty and hypocritical gesture: the company attempts to appear cooperative while it uses the offer of payment it owes anyway contingent upon a registration approval.

As a result, the Commission rejects Frankie Boy's last-minute proposal to be allowed to sell the company, in lieu of denial.

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affirmative duty on the part of the *Applicant*, not on the part of the Commission's staff. See Response One at 2. Even if the Commission were aware of an arrest, this does not relieve the Applicant of its independent affirmative legal obligations. The Commission rejects the Applicant's assertion that this violation was "a mere technicality for the Applicant to provide redundant notice."

<sup>5</sup> On August 28, 2002, Maxine Abraham was convicted of the crime of Supplementing a Government Salary. See 18 USC §§209(a), 216(a)(1).

<sup>6</sup> This concern is reinforced by a phone call from Jennifer Porcaro to a Commission staff member on September 22, 2003, asking if it would be okay for Junior to continue working for the company from home once she took over ownership. Clearly, Ms. Porcaro does not understand that the Commission's responsibility is to rid the market of the influence of individuals who fail to meet the fitness standard of good character, honesty and integrity, not merely to eliminate their physical presence on market property.

### Revocation of Senior's Identification Card

By the denial of the registration application of Frankie Boy, the temporary identification card of Senior automatically ceases to be valid.<sup>7</sup> See Admin. Code §22-252(a) (“a temporary identification card shall cease to be valid, and shall be returned to the department, upon the refusal to issue a permanent photo identification card ... or denial of the registration to the business in which the person applying for such identification card is a principal or is employed”). Because the statutory revocation of the temporary identification card is automatic, there is no need to discuss the merits of Senior's argument that he should be granted a card.

Counsels repeated accusations that the Commission is depriving Senior his Constitutional “right to make a living” (see Response One at 2, Response Two at 2) are misplaced. The Commission is not denying Senior the right to work, just denying him the privilege of working in one highly regulated specialized marketplace with a long-standing history of corruption.

- Bribes by Senior

In his response, Senior denies paying bribes to Cashin and notes that he was never arrested or convicted of such conduct. He further claims that Cashin is not a credible witness (citing an acquittal of another wholesaler, American Banana, after a trial in which Cashin testified) and accuses the inspector of victimizing the wholesalers. See Response Two at 2.

The Commission disagrees with Senior's assessment of Cashin's credibility. Senior ignores that a unanimous jury found Cashin credible with regard to bribes paid by Junior and other employees of Frankie Boy and that Junior's conviction has been affirmed on appeal. The overwhelming evidence against Junior has not been challenged in the Applicant's response. The Applicant's response is internally inconsistent: it concedes Cashin's evidence against Junior, yet challenges it against Senior.

The Commission finds that Cashin's information about Senior is credible and reliable. The history of bribes by Senior gives proper context and explanation to Junior's continuation of payments after the change of ownership of the company. Cashin's information is also corroborated by the videotape of Senior's presence during a bribe payment by Junior.<sup>8</sup>

The Commission need not ignore evidence of Senior's behavior simply because the criminal proceedings were never initiated. The Commission may still consider the underlying facts in its determination of whether the Applicant meets the fitness standard.

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<sup>7</sup> As a result, Senior's request to be granted a one-year temporary identification card to facilitate the transfer of Frankie Boy to new managers is moot. See Response Two at 3.

<sup>8</sup> In his response, Senior does not dispute the evidence that he was present for at least one of his son's bribe payments to Cashin.

- Possession of gambling devices

In his response, Senior asserts a variety of arguments to rebut the claim that evidence of possession of gambling devices reflects poorly on Senior's integrity. He first claims that the arrest did not result in a conviction. The burden of proof before the Commission is not "beyond a reasonable doubt," and the Commission need not close its eyes to Senior's wrongdoing merely because the criminal proceedings did not result in a conviction. The Commission may still consider the underlying facts in its determination of whether the Applicant meets the fitness standard.

Even so, Senior next argues the offense was – at worst – only a misdemeanor. He also ignores the fact that it is also a violation of market rules. In any event, this dismissive attitude towards violations of the law is further evidence of a lack of good character, honesty and integrity.

The Applicant also claims that this information is too old to be probative of lack of good character and that the Commission waived its right to rely on this evidence of bad character due to the passage of time. The Commission does not consider evidence from eleven years ago to be too "remote," especially given the ongoing misconduct by the Applicant. Furthermore, the Commission is not required to immediately act to deny an application every time it acquires derogatory information, but may consider the cumulative effect of repeated acts of misconduct.

Senior also attempts to shift the blame to Junior for the gambling machines by claiming that "Junior had admitted that he alone was responsible for those machines." Response Two at 2. There is no evidence in the record that Junior claimed *sole* responsibility, merely that he was the individual who *purchased* the machines. Senior was still the sole owner of Frankie Boy at the time Junior purchased the machines and he allowed the illegal machines to remain on the premises for over six months.

- False information in application

In his response, Senior concedes that identifying himself as the "owner" was technically false, but he offers different theories in defense. First, he claims that he believed himself to be the owner since he came out of retirement to run the business when Junior went to jail. Response One at 3. Later, he claimed that he only believed it to be true since he held a mortgage on the business. Response Two at 2. The first defense fails because the false statement was made in 1998 – years BEFORE Junior was even arrested. The second fails because Senior's emotional feelings about his position with the company are irrelevant – the statement remains false. Nor does the fact that the Commission was not actually deceived inure to Senior's benefit; the Commission finds that his statement was still false and misleading.

**Final Decision**

Based on the foregoing, and for the reasons set forth in the Decision, the application of Frankie Boy Produce Corp. for a registration as a wholesale business at the New York City Terminal Market is denied and the temporary photo identification cards of Frank Porcaro, Sr. and Frank Porcaro, Jr. are revoked. Senior and Junior are no longer eligible to be employed in the Market. Furthermore, Frankie Boy must terminate operations in the Market and vacate the premises within five (5) days of receipt of this final decision.

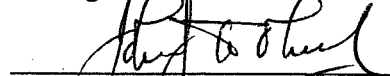
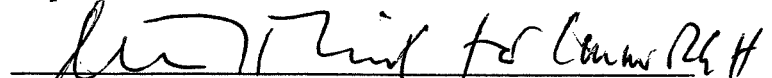

Furthermore, the temporary identification cards of all employees of Frankie Boy automatically cease to be valid upon the issuance of this denial and must be returned immediately to the Commission. See Admin. Code §22-252(a) ("a temporary identification card shall cease to be valid, and shall be returned to the department, upon the refusal to issue a permanent photo identification card ... or denial of the registration to the business in which the person applying for such identification card is a principal or is employed").

Dated: New York, New York  
March 23, 2004

THE BUSINESS INTEGRITY COMMISSION



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