



**DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE
REGISTRAION RENEWAL APPLICATION OF SANO CONSTRUCTION CORP. TO
OPERATE AS A TRADE WASTE BUSINESS**

Introduction

Sano Construction Corp. (“Sano” or the “Applicant”) has applied to the New York City Business Integrity Commission (the “Commission”) for renewal of its exemption from licensing requirements and a registration to operate a trade waste business pursuant to New York City Administrative Code (“Admin. Code”) §16-505(a). Specifically, the Applicant seeks an exemption from the licensing requirements and 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.” Id.

On December 17, 2012, the Commission served the Applicant with Notice of Grounds to Recommend Denial of the Registration Application (“Notice”). The Notice stated the grounds for denial of the application and notified the Applicant 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 application. The Notice further stated that any factual assertions in the Applicant’s response were to be made under oath. The Applicant’s response was due within ten (10) business days from the date of the notice. The Commission received no substantive response from the Applicant. Rather, on December 31, 2012,¹ the Commission received correspondence from the Applicant stating only that it disputes the conclusions set forth in the Notice, without providing any specific objections or basis of dispute. Additionally, the Applicant requested a meeting with Commission staff. By letter dated January 4, 2013, the Commission reminded the Applicant that any response was required to be “a written response,” with any assertions of fact made under oath. Accordingly, the Commission denied the Applicant’s request for a meeting, and as a courtesy, extended the Applicant’s time to submit any such written response until January 7, 2013. On January 7, 2013, the Applicant faxed a letter to the Commission in which the Applicant included conclusory and non-sequitor statements, and nothing more. A copy of the Applicant’s December 31st and January 7th letters, to the extent that such unsworn documents were intended to respond to the Notice, (collectively, “Response”) have been provided to the Commission.

Based upon the record as to the Applicant, the Commission denies the Applicant’s registration renewal application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

¹ The Applicant’s letter is dated December 27, 2012. However, the letter was not faxed to the Commission until December 31, 2012, at 4:58 P.M. Further, although the letter indicates that it was also transmitted by “USPS Certified Mail/Return Receipt Requested,” such correspondence was not mailed until January 4, 2013 and it was not received by the Commission until January 8, 2013.

- A. The Applicant Has Failed to Pay Fines That are Directly Related to the Applicant's Business That Were Ordered to be Paid by the New York City Environmental Control Board and the New York City Criminal Court.
- B. The Applicant Violated the Terms of its Registration Order by Failing to Provide the Commission With Proof that Fines Ordered by the New York City Environmental Control Board and New York City Criminal Court are Satisfied or Otherwise Resolved.
- C. 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. 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;
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

The Applicant 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 Vincenzo Oppedisano (“Oppedisano”) as the sole principal. See Registration Application at 8. On or about February 10, 2005, the Commission granted the Applicant a trade waste registration. See Registration Order. The Applicant’s registration was effective for two years, and expired on February 28, 2007. See id. On or about January 19, 2007, the Applicant filed its first Renewal Application with the Commission. See First Renewal Application. After an investigation of the Applicant, the Commission granted the First Renewal Application and authorized the Applicant to operate for another two years, until February 28, 2009.

On February 26, 2009, the Applicant filed its second Renewal Application with the Commission. See Second Renewal Application. The Commission’s background investigation of the Applicant in connection with the second Renewal Application established that the Applicant had numerous judgments and liens, including 51 different judgment orders from the New York City Environmental Control Board (“ECB”) totaling \$308,104.00 and 18 different judgment orders from the New York City Criminal Court (“Criminal Court”) totaling \$6,800.00. By letter dated August 11, 2009, the Applicant was notified of the outstanding judgments and liens, and transcripts for each outstanding matter were enclosed.

On August 20, 2009, the Commission issued a Registration Renewal Order to the Applicant that was conditioned upon the Applicant resolving all outstanding ECB violations and judgment orders from the Criminal Court before February 28, 2011. See Registration Renewal Order, dated August 20, 2009 (“Registration Renewal Order”). The language in the Registration Renewal Order, as agreed to by the Applicant, contained the following condition:

ORDERED that the Registrant satisfy any and all outstanding fines, judgments and/or liens either currently owed, or received subsequent to this date, prior to the submission of the next renewal application that shall be required in two (2) years. The aforementioned fines, judgments and liens include, but are not limited to those issued by the New York City Business Integrity Commission, the Environmental Control Board and any other federal, state or local governmental agency. The burden to provide such proof of satisfaction will remain solely with the applicant and the failure to adhere to this requirement shall constitute adequate grounds upon which the Commission may deny the Registrant’s application for renewal of the Registration without a hearing.”

Subsequently, on May 10, 2011, the Applicant filed its third Renewal Application with the Commission. See Third Renewal Application.² The Commission's background investigation revealed that, despite the fact that it had been ordered by the Commission to satisfy such debts, the Applicant made little effort to resolve the outstanding violations. As set forth below, 32 of the 51 judgments order by the ECB totaling \$205,612.00, and 16 of the 18 judgment orders from the Criminal Court totaling \$7,474.00 remain pending and unresolved:

Creditor	Filing Number	Amount
NY Environmental Control Board	050039710Y	\$ 31,200.00
NY Environmental Control Board	000183978H	\$ 1,352.00
NY Environmental Control Board	050040030Z	\$ 65,000.00
NY Environmental Control Board	034706416J	\$ 4,000.00
NY Environmental Control Board	034750276P	\$ 400.00
NY Environmental Control Board	034768426R ³	\$ 2,400.00
NY Environmental Control Board	034790243P	\$ 800.00
NY Environmental Control Board	034790244R	\$ 2,400.00
NY Environmental Control Board	0168788869	\$ 2,250.00
NY Environmental Control Board	0170213661	\$ 5,000.00
NY Environmental Control Board	0178872962	\$ 1,800.00
NY Environmental Control Board	050036245Y	\$ 24,960.00
NY Environmental Control Board	050036265L	\$ 7,800.00
NY Environmental Control Board	034439250P	\$ 2,500.00
NY Environmental Control Board	034438974X	\$ 2,500.00
NY Environmental Control Board	034439412Z	\$ 5,000.00
NY Environmental Control Board	0135106117	\$ 5,000.00
NY Environmental Control Board	034453849M	\$ 2,000.00
NY Environmental Control Board	034475400J	\$ 1,000.00
NY Environmental Control Board	034463878K	\$ 500.00
NY Environmental Control Board	0146173592	\$ 750.00
NY Environmental Control Board	034500183Y ⁴	\$ 2,500.00
NY Environmental Control Board	0146481400	\$ 250.00
NY Environmental Control Board	034486623K	\$ 5,000.00
NY Environmental Control Board	034509434K	\$ 2,000.00
NY Environmental Control Board	034509433Z	\$ 1,500.00
NY Environmental Control Board	0146529653	\$ 750.00
NY Environmental Control Board	034514633J	\$ 5,000.00
NY Environmental Control Board	034514636P	\$ 5,000.00

² Oppedisano certified that the answers that he provided in the third Renewal Application were "full complete and truthful." Notwithstanding this certification, Oppedisano answered "no" to question 8, which asks "Has the applicant or any of the applicant's principals been charged with any civil or administrative violations by any governmental agency?"

³ In the Notice this filing number was listed incorrectly as 03476842R

⁴ In the Notice this filing number was listed incorrectly as 0344500183Y

NY Environmental Control Board	034514638Z	\$ 5,000.00
NY Environmental Control Board	034514630Y	\$ 5,000.00
NY Environmental Control Board	034486623K	\$ 5,000.00
Criminal Court of the City of New York	2007SQ013576	\$ 150.00
Criminal Court of the City of New York	2007SQ013574	\$ 175.00
Criminal Court of the City of New York	2005SN008446	\$ 500.00
Criminal Court of the City of New York	2005SN008437	\$ 575.00
Criminal Court of the City of New York	2004SN119594	\$ 575.00
Criminal Court of the City of New York	2007SQ023259	\$ 500.00
Criminal Court of the City of New York	2007SQ023258	\$ 500.00
Criminal Court of the City of New York	2007SQ023257	\$ 500.00
Criminal Court of the City of New York	2007SQ023256	\$ 500.00
Criminal Court of the City of New York	2007SQ023255	\$ 500.00
Criminal Court of the City of New York	2007SQ023260	\$ 500.00
Criminal Court of the City of New York	2007SQ023261	\$ 500.00
Criminal Court of the City of New York	2007SQ023262	\$ 500.00
Criminal Court of the City of New York	2007SQ023263	\$ 500.00
Criminal Court of the City of New York	2006SQ087125	\$ 500.00
Criminal Court of the City of New York	2005SQ092740	\$ 500.00

On March 21, 2012, the Commission's staff sent the Applicant a letter that again notified the Applicant of these outstanding matters and requested that the applicant provide documentation that all matters were satisfied by April 10, 2012. The Applicant failed to respond to this letter. The Commission sent another letter on April 10, 2012, again notifying the Applicant of the outstanding matters and, as a courtesy, granting an extension of time, until April 24, 2012, to provide documentation that the outstanding matters had been satisfied.

On April 25, 2012, a day after Applicant's response was due, the Commission received correspondence from the Applicant, which was signed by JoAnn Pesavento "for Vincenzo Oppedisano". See Letter from Sano, dated April 18, 2012. In sum and substance, the correspondence indicated that the Applicant still had not resolved any of the outstanding matters. *Id.* Instead of proposing a plan to come into compliance with the requirements of its Registration Renewal Order and the Commission's two letters requesting additional documentation, the Applicant disclaimed responsibility for the violations, instead blaming others, including its customers, for the outstanding violations. The Applicant's self-serving explanation, that according to his work contracts the "customers bear the responsibility" for the violations, ignores the fact that the Applicant was found guilty of committing these violations after a hearing or after the Applicant failed to appear to exercise its due process rights.⁵ The correspondence concluded by describing the ECB a "parasite", stating "Even a tape worm recognizes it must leave something for the host or they both perish."

⁵ Additionally, the Applicant did not proffer evidence that it brought legal action against its customer to indemnify itself from the outstanding violations which total more than \$200,000 and that were allegedly the responsibility of its customers.

Despite numerous opportunities to do so (and an order from the Commission requiring the Applicant to do so), as of the date of this decision, the Applicant has failed to resolve the ECB and Criminal Court judgments.⁶

In its Response, the Applicant failed to articulate any challenge to the grounds cited in the notice, nor does it dispute with any specificity that the relevant debt remains unsatisfied. Instead, the Applicant repeatedly requests “a full hearing with the right to confrontation and cross-examination,” and claims that the Commission’s refusal to grant such hearing violates due process. The Applicant is incorrect. The Applicant is entitled to “notice and an opportunity to be heard”. See Admin. Code §16-509(a). Title 17, Rules of the City of New York §2-08(a) defines the “opportunity to be heard” as the opportunity to “respond in writing” to the Commission’s notice. Such opportunity has been afforded.

Basis for Denial

The Applicant Has Failed to Pay Fines That are Directly Related to the Applicant’s Business That Were Ordered to be Paid by the New York City Environmental Control Board and the New York City Criminal Court.

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 judgment has been entered by a[n] ... 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 notice, the Applicant has failed to pay fines ordered by the ECB and judgment orders from the Criminal Court, relating to his business. On multiple occasions, the Commission’s staff informed the Applicant that it owed numerous unsatisfied fines. Despite these notifications and warnings, the fines remain unsatisfied. For this independently sufficient reason, the Commission denies the Applicant’s Renewal Application.

The Applicant Violated the Terms of its Registration Order by Failing to Provide the Commission With Proof that Fines Ordered by the New York City Environmental Control Board and the New York City Criminal Court are Satisfied or Otherwise Resolved.

⁶ On August 31, 2012, the New York City Department of Building (“DOB”) nullified Oppedisano’s General Contractor Registration. The grounds cited were that Oppedisano lacked “good moral character” because Oppedisano falsified information on his General Contractor’s Registration application. Specifically, Oppedisano failed to disclose a criminal conviction, the existence of the outstanding violations discussed supra, and his ownership of the applicant company. As stated in footnote 1, the Applicant also failed to report these outstanding debts in their third Registration Renewal Application.

On or about August 20, 2009, the Commission issued a Registration Renewal Order to the Applicant.⁷ See Registration Renewal Order. Among other things, as a condition of the registration, the Applicant acknowledged the responsibility to resolve all fines docketed against it by the ECB and judgment orders issued by Criminal Court and that it would provide proof of satisfaction or other resolution to the Commission before February 28, 2011. Furthermore, the Applicant agreed that its failure to resolve the fines ordered by “the Environmental Control Board and any other federal, state or local governmental agency”, and to provide proof of the same to the Commission, “shall constitute adequate grounds upon which the Commission may deny” the Applicant’s renewal application. See Registration Renewal Order.

As described above, the Applicant violated the terms of the Registration Renewal Order by failing to provide the Commission with proof of satisfaction or other resolution of the above mentioned judgments ordered by the ECB and judgments ordered by the Criminal Court. Thus, the Applicant violated the terms of the Registration Renewal Order, terms to which the Applicant previously agreed to. This violation demonstrates the Applicant’s lack of honesty, integrity and character. As such, the Commission denies the Applicant’s Renewal Application based on this independently sufficient reason.

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 this chapter or any rules promulgated pursuant hereto.” See Admin. Code §16-509(b).

Despite repeated attempts by Commission staff, the Applicant has failed to provide proof of satisfaction or other resolution of the outstanding fines owed to a governmental entity.

The Applicant has “knowingly failed to provide the information” required by the Commission by failing to fully respond to the Commission’s repeated requests for information and/or documentation. For this independently sufficient reason, the Commission denies the Applicant’s Renewal Application.

⁷ Oppedisano signed the Registration Renewal Order on behalf of the Applicant or about January 13, 2010. See Registration Renewal Order.

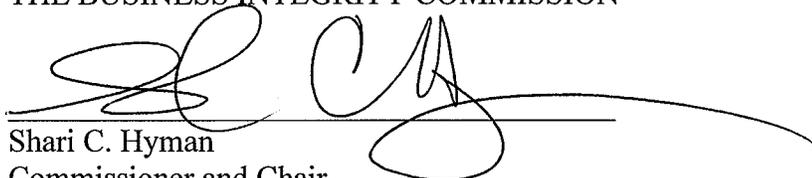
Conclusion

The Commission is vested with broad discretion to issue a license or 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 application and registration.

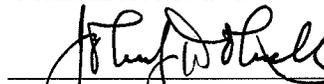
This exemption/registration denial is effective immediately. Sano Construction Corp. may not operate as a trade waste business in the City of New York.

Dated: January 14, 2013

THE BUSINESS INTEGRITY COMMISSION



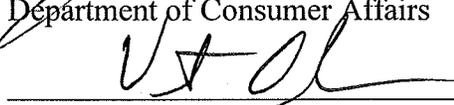
Shari C. Hyman
Commissioner and Chair



John Doherty, Commissioner
Department of Sanitation



Janet Lim, Assistant General Counsel (designee)
Department of Consumer Affairs



Victor Olds, First Deputy Commissioner (designee)
Department of Investigation



Kathleen Ahn, General Counsel (designee)
Department of Small Business Services



Brian O'Neill, Inspector (designee)
New York City Police Department