



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 APPLICATION OF B & A COMMERCIAL, INC. FOR A
REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

I. Introduction

On August 23, 2016, B & A Commercial, Inc. (the “Applicant” or “B&A Commercial”) (BIC #491119) applied to the New York City Business Integrity Commission for an exemption from the Commission’s trade waste licensing requirements “to operate a trade waste business solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation.” Local Law 42 of 1996 (“Local Law 42”) authorizes the Commission to review and make determinations on such applications. *See* Title 16-A, New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 16-505(a).

On January 16, 2018, the Commission’s staff personally served the principal of B&A with the Commission’s Notice to the Applicant of the Grounds to Deny the Application of B&A Commercial Inc. for a Registration to Operate as a Trade Waste Business (the “Notice”). B&A Commercial had 10 business days to respond, until January 31, 2018. *See* Title 17, Rules of the City of New York (“RCNY”) § 2-08(a). The Commission received no response from B&A Commercial.

The Commission has completed its review of B&A Commercial’s application, having considered the Notice and B&A Commercial’s lack of response. Based on the record as to the applicant, the Commission denies B&A Commercial’s application because the company lacks good character, honesty, and integrity based on the following two independently-sufficient reasons:

- 1. The Applicant knowingly provided false and misleading information on its application; and**
- 2. The Applicant’s principal provided false and misleading information during sworn testimony before the Commission.**

II. Statutory Background and 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, known as trade waste. 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. Int'l Brotherhood of Teamsters (Adelstein)*, 998 F.2d 120 (2d Cir. 1993); *People v. Ass'n of Trade Waste Removers of Greater New York Inc.*, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); *United States v. Mario Gigante*, No. 96 Cr. 466 (S.D.N.Y.); *People v. Ass'n of Trade Waste Removers of Greater New York*, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically 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*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri*, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the 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. *See* Admin. Code § 16-505(a). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by 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," also known as construction and demolition debris, must apply to the Commission for an exemption from the licensing requirement. *Id.* If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a class 2 registration. *Id.* at § 16-505(a)-(b). Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." *Id.* at § 16-508(b); *see also id.* at § 16-504(a). An "applicant" for a license or registration means both the business entity and each principal thereof. *Id.* at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a decision on an application for a license or registration:

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 § 16-509(a)(i)-(x). *See also id.* at § 16-504(a).

The Commission also 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 § 16-509(b). *See also Elite Demolition Contracting Corp. v. The City of New York*, 125 A.D.3d 576 (1st Dep’t 2015); *Breeze Carting Corp. v. The City of New York*, 52 A.D.3d 424 (1st Dep’t 2008); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”); leave denied 2 N.Y.3d 705 (N.Y. 2004). *See also* Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial). In addition, the Commission may refuse to issue a license or registration to an applicant that “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 § 16-509(c). *See also id.* at § 16-504(a). 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 § 16-509(d); *see also id.* at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) 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 Indus., Inc.*, 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 (N.Y. 1997).

III. Statement of Facts

A. The Applicant is connected to several other companies.

On August 23, 2016, B&A Commercial applied for a registration to operate a trade waste business that solely removes construction and demolition debris. *See* B&A Commercial Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris (the “Application”). The Application disclosed Linda Levine (“Linda”) as the Applicant’s sole principal and owner. *Id.* at 13. Linda certified under oath that all of the information contained in the Application was “full, complete and truthful.” *Id.* at 20.

The Applicant disclosed its business telephone number as (516) 678-7793 and its facsimile number as (516) 678-1056. *Id.* at 1. These numbers are shared with trade waste companies owned by Linda’s husband, Charles Levine (“Charles”). The telephone number is shared with a similarly-named company, B&A Demolition & Removal, Inc. (“B&A Demolition”). *See* New York State Department of Environmental Conservation Waste Transporter Permit No. 1A-878, issued to B&A Demolition & Removal Inc., effective March 22, 2010; State of New York Worker’s Compensation Board, Certificate of Insurance Coverage Under the NYS Disability Benefits Law issued to B&A Demolition & Removal Inc., signed January 15, 2009. The facsimile number is shared with King Metal Corp. of New York (“King Metal”). *See* King Metal Corp. of New York’s Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris (“King Metal Original Application”) at 1.

The Applicant disclosed its email address as linda@nydemo.com. *Id.* at 1. Notably, this email address contains the name “NY Demo,” which is also the name of a company owned by Charles. *See* “Roosevelt: Residents Cheer Denial of Metal Yard,” *Newsday*, March 31, 2015 (noting that Charles owns the company). Additionally, B&A Demolition previously disclosed its website to the Commission as “NYDemo.com.” *See* B&A Demolition’s Seventh Renewal Application for a License or Registration as a Trade Waste Business dated March 11, 2013 (“B&A Demolition’s Seventh Renewal Application”) at 1. Thus, Linda’s email is not only the Applicant’s email address, but it is also clearly affiliated with NY Demo, and likely B&A Demolition.

The Applicant disclosed its office and mailing address as 70 New Street, Oceanside, New York. *Id.* Again, this address is shared with Charles’ companies, B&A Demolition and King Metal. *See* B&A Demolition’s Seventh Renewal Application at 7; King Metal Original Application at 1. Even the Applicant’s only disclosed truck was previously registered to both B&A Demolition and King Metal. *See* Application at 19; DMV Vehicle System printout for VIN Number 1NPAXU0XX1N553479, dated October 31, 2016.

B. Charles Levine has a history in the trade waste industry.

Charles has a long history of involvement in the trade waste industry. As mentioned above, he owns B&A Demolition and King Metal, both of which applied for a trade waste registration in the past. On December 17, 1997, B&A Demolition applied to the Commission for a class 2 registration. *See* B&A Demolition & Removal’s Original Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris dated December 17, 1997 (“B&A Demolition Original Application”). Charles was disclosed as the sole principal and owner of the company, and the business address was listed as 70 New Street, Oceanside, New York. *Id.* at 1, 8. On February 26, 1999, the Commission granted the B&A Demolition Original Application. *See* B&A Demolition Original Registration Order.

B&A Demolition subsequently filed six renewal applications. *See* B&A Demolition & Removal’s First Renewal Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris dated February 28, 2001 (the “First Renewal Application”); B&A Demolition & Removal’s Second Renewal Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris dated March 3, 2003 (the “Second Renewal Application”); B&A Demolition & Removal’s Third Renewal Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris dated February 3, 2005 (the “Third Renewal Application”); B&A Demolition & Removal’s Fourth Renewal Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris dated January 16, 2007 (the “Fourth Renewal Application”); B&A Demolition & Removal’s Fifth Renewal Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris dated February 26, 2009 (the “Fifth Renewal Application”); B&A Demolition & Removal’s Sixth Renewal Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris dated February 2, 2011 (the “Sixth Renewal Application”). The Commission approved each of them.

On or about March 11, 2013, B&A Demolition filed its seventh Renewal Application for a License or Registration as a Trade Waste Business. *See* B&A Demolition’s Seventh Renewal Application. During the background investigation, the Commission informed B&A Demolition

that it owed approximately \$600,000 in judgments and liens to New York State, New York City, and the Internal Revenue Service. *See* letter to B&A Demolition from a member of the Commission's staff dated June 10, 2014. On or about September 29, 2014, B&A Demolition requested to withdraw the renewal application. *See* B&A Demolition Withdrawal Request letter dated September 23, 2014. On December 10, 2014, the Commission granted the withdrawal request. *See* Commission letter to B&A Demolition, dated December 10, 2014.

Ten months later, on or about October 21, 2015, King Metal applied to the Commission for a class 2 registration. *See* King Metal Original Application. Charles was disclosed as the sole principal and owner of King Metal. *Id.* at 13. Also, the company disclosed the same office address shared by the Applicant and B&A Demolition. *Id.* at 1. At the time of King Metal's application, Charles continued to owe large amounts of debt. One of the liens against Charles stemmed from a federal criminal conviction in 2012 failing to collect, account for an pay over FICA taxes. *See U.S. v. Levine*, CR 12-00052-01 (E.D.N.Y. 2012), Judgment in a Criminal Case. In that case, Charles was sentenced to five years' probation and was assessed a criminal monetary penalty of \$255,688. *See id.*

In January 2016, a member of the Commission's staff informed Charles of several outstanding tax warrants and liens docketed against him and his companies. *See* email from a member of the Commission's staff to Charles Levine, dated January 11, 2016. On or about March 15, 2016, King Metal requested to withdraw its application. *See* letter from King Metal to the Commission, dated March 15, 2016. The Commission granted King Metal's withdrawal request. *See* letter from the Commission to King Metal, dated March 16, 2016.

As of the date of this notice, Charles and his companies owe a total of \$1,435,423.37 to various governmental entities. *See* Judgment and Lien printouts, dated January 10, 2018; New York Judgment Docket and Lien Records of B & A Demolition and Removal, Inc., dated January 10, 2018 (Westlaw); New York Judgment Docket and Lien Records of B & A Wrecking Corp, dated January 10, 2018 (Westlaw); New York Judgment Docket and Lien Records of Charles Levine, dated January 10, 2018 (Westlaw); Bankruptcies, Liens & Judgments Search Results of King Metal Corp of New York, dated January 10, 2018 (Lexis); Bankruptcies, Liens & Judgments Search Results of B & A Demolition and Removal, dated January 10, 2018 (Lexis).

Although both companies that disclose Charles as the owner and principal have withdrawn their Commission applications, and despite the large amount of outstanding debt attributable to Charles and his companies, on September 8, 2017, Charles called a member of the Commission's staff to ask about the progress of the Commission's review of the Application. *See* affidavit of Jonathan Jacobs re: Application of B&A Commercial, Inc., dated October 20, 2017. During the telephone conversation, Charles asked several times what next steps *he* should take to expedite the application review process. *Id.*

C. Linda Levine's sworn testimony.

As part of the review of the Application, a member of the Commission's staff attempted to speak to Linda. After numerous unsuccessful attempts to reach her at the Applicant's disclosed business telephone number, the Commission directed Linda to provide sworn testimony to the

Commission.¹ On February 7, 2017, Linda appeared at the Commission's offices and provided sworn testimony. *See* transcript of sworn interview of Linda Levine, dated February 7, 2017 ("Linda Levine Tr.").

Although she is disclosed as the sole principal and owner of B&A Commercial, Linda testified that she and Charles decided that she would incorporate and manage the business because Charles would not be able to obtain a registration due to the taxes he owes. *See id.* at 44. Linda stated that she only works at the company when her children's schedule allows, and that she is "primarily a housewife." *Id.* at 37. She estimated that she goes into the office "a few times a month, not very often at all." *Id.* Linda also admitted that she has no experience in the trade waste industry and described her employees as mentors who can teach her about the business. *Id.* at 19, 36 ("I can slowly get involved and learn about it through them as my kids get older and I can start to get more involved."). Linda stated that she is "still not involved" in the company's business. *Id.* at 37.

Linda's knowledge of the company's operations is limited. She is not familiar with B&A Commercial's employees: she does not speak with the Applicant's drivers; nor could she name the only driver disclosed on the Application. *See id.* at 48-49; Application at 18. She also confused the names of the other employees that she mentioned during her testimony. *See* Linda Levine Tr. at 48-49. Linda also knows little about the projects in which her company is involved. She could only name two. *Id.* at 55-56. Nor was she involved in the bidding process for the projects and did not sign any contracts on behalf of the company. *Id.* at 57-58. Linda was uninformed about the details of B&A Commercial's finances: she could not recall the start-up costs for the business, the salary she paid the employees, or the amount of any of the company's contracts. *Id.* at 45, 52, 58.

Linda further testified that the employees run and manage the applicant business. There are a few core employees, including Maureen MacDonald, Brian Levine, and Ralph Leykind, all of whom had previously worked for B&A Demolition. *Id.* at 23, 36. She described them as the "heartbeat" of the business. *Id.* at 48. They interview potential employees, make hiring and firing decisions, and bid on projects. *Id.* at 51-53, 57. MacDonald even determined Linda's salary, along with the company's accountant. *Id.* at 54. Linda characterized these employees as running the business. *Id.* at 37-38. However, she also testified that Charles works in the same office space as B&A Commercial. *Id.* at 29-30, 37. The Applicant's office is in a two-story building shared with Charles' scrap metal business. *Id.* at 37-38. Charles owns both that office building and the garage where the Applicant's equipment is stored. *Id.* at 62-63.

Moreover, Linda unconvincingly claimed that there is no relationship or affiliation between B&A Commercial and B&A Demolition. *Id.* at 28. In fact, she later testified that almost all her employees were once employed by B&A Demolition. *Id.* at 50. Linda also admitted that the Applicant's telephone numbers were previously used by B&A Demolition. *Id.* at 70. When asked why the Applicant's employee application form is on B&A Demolition letterhead, she stated that it must just be old letterhead in the office. *Id.* at 66. Linda also could not account for where her employees worked in the time between B&A Demolition's alleged dissolution and B&A

¹ The Applicant's employee, Maureen Macdonald, answered the business telephone on two occasions and informed Commission staff that Levine is rarely in the office.

Commercial's formation, stating that she did not know but that "they worked, they were working for us."² See Linda Levine Tr. at 36-37.

IV. Basis for Denial

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a basis to deny an application. See Admin. Code § 16-509(b); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dept. 2004); leave denied 2 N.Y.3d 705 (2004); *Breeze Carting Corp. v. The City of New York*, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). As discussed above, the Applicant provided false and misleading information to the Commission in the Application and in sworn testimony about who is involved in the operations and management of the company.

1. The Applicant's disclosed principal knowingly provided false and misleading information on its application.

Question 12 of the Application requires disclosure of all of the principals of the Applicant. "Principal" is defined as "every officer and director and every stockholder holding ten percent or more of the outstanding shares of a corporation . . . and all persons participating directly or indirectly in the control of such business entity." See Admin. Code § 16-501(d). The Application, which Linda certified under oath, disclosed Linda as the only principal of the Applicant business. See Application at 13. There is no mention of Charles in the Application, even as a mere employee. Yet, the evidence establishes that Linda does not (and cannot) control the operations of B&A Commercial. In fact, Charles and various employees of the Applicant control the company, none of whom are disclosed as principals.

Linda is not involved in the daily operations of the business. She admitted that other employees run the company, even determining her salary. And, given Charles' extensive experience in the trade waste industry, the telephone call he made to the Commission on behalf of the Applicant, and his shared office space with the Applicant, it is likely that Charles is closely involved in B&A Commercial's operations – and may be running the company. He does not appear on any of B&A Commercial's paperwork, likely because he and Linda know that Charles' debt (currently totaling \$1,435,423.37) is an impediment to receiving a Commission-issued registration. Two of his companies have already withdrawn applications to the Commission for that reason.

In addition to failing to properly disclose the Applicant's principals, the Application also failed to disclose the other connections between B&A Commercial and Charles' companies. Question 11 of the Application asks if the Applicant business shares "any office space, staff or equipment (including, but not limited to, telephone lines) with any other business or organization." The Applicant answered "no" to this question. See Application at 2. However, connections between B&A Commercial and B&A Demolition abound. They have nearly the same name; they share telephone numbers, office space, paperwork, and employees. Also, Charles owns the

² Although not registered with the Commission, B&A Demolition appears to still be an active corporate entity. See Printout from New York State, Department of State, Division of Corporations, "Entity Information" for B and A Demolition and Removal, Inc., dated February 6, 2017.

building at which the companies share office space, as well as the garage where the Applicant stores its equipment. Charles is not only present at these locations on a regular basis, but he is also the Applicant's landlord, a position which would allow him to exert additional control over the business.

Thus, the Applicant provided false answers to Questions 11 and 12 on the Application. This failure demonstrates that B&A Commercial lacks good character, honesty and integrity. The Applicant has not disputed the Commission's staff's assertions on this point. Accordingly, the Commission denies B&A Commercial's application on this basis.

2. The Applicant's disclosed principal knowingly provided false and misleading information during sworn testimony before the Commission.

Not only did the Applicant provide false information on the Application, but Linda also provided false and misleading testimony under oath in a sworn interview with the Commission's staff. Linda falsely testified that she formed B&A Commercial on her own and that she is the sole principal of the business. *See* Linda Levine Tr. at 41. Additionally, she testified that Charles did not assist her in running the business. *Id.* at 37. The evidence in this matter, including Linda's own contradictory testimony, demonstrates that those statements are false.

Although she claimed to be the sole company's principal, Linda also admitted she is "primarily a housewife" and does not go to the office often. *Id.* at 37. In fact, she relies on B&A Commercial's other employees to run the business, calling them "the heartbeat" for B&A. *Id.* at 48. Linda testified that she did not sign contracts on behalf of the company and was mostly unfamiliar with the company's current projects. *Id.* at 56, 58. Again, this establishes that she does not control the operations of B&A Commercial and that someone else is doing so.

Tellingly, Linda actually admitted that she and Charles established B&A Commercial in her name because Charles was concerned about the effect of his tax debts on the Application. *Id.* at 42-44. That statement completely contradicts Linda's claim that she is the sole principal of the business (as well as the answer to Question 12 on the Application). Moreover, Charles owns the building that houses the Applicant and is present at the address regularly. *Id.* at 37. Given his extensive experience in the trade waste industry (B&A Demolition had a valid trade waste registration for 15 years), Charles clearly is deeply involved in running the Applicant business.

The evidence demonstrates that Linda provided false testimony to the Commission. As she is the sole-disclosed principal of the Applicant, Linda's false sworn statements demonstrate that the Applicant lacks the good character, honesty, and integrity required to participate in the trade waste industry. The Applicant has not disputed the Commission's staff's assertions on this point. Accordingly, the Commission denies B&A Commercial's application on this independently sufficient ground.

V. Conclusion

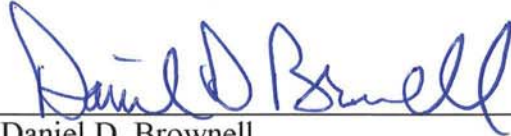
The Commission is vested with broad discretion to refuse to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license to any applicant that it determines lacks good character, honesty, and integrity. The evidence set

forth above demonstrates convincingly that B&A Commercial lacks those qualities. Accordingly, based on the three independently-sufficient grounds set forth herein, the Commission denies B&A Commercial's application.

This denial decision is effective immediately. B&A Commercial may not operate as a trade waste business in the City of New York.

Dated: February 20, 2018

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



Daniel D. Brownell
Commissioner and Chair



Commissioner Kathryn Garcia
Department of Sanitation



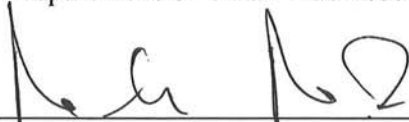
Assistant General Counsel Christopher Tellet
(Designee)
Department of Investigation



Commissioner Lorelei Salas
Department of Consumer Affairs



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



Deputy Inspector Dominick C. D'Orazio
(Designee)
New York City Police Department