



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

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE APPLICATION OF CIRCLE INTERIOR DEMOLITION, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Circle Interior Demolition, Inc. ("Circle" or the "Applicant") has applied to the New York City Business Integrity Commission (the "Commission") for a registration to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Local Law 42, which created the Commission to regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Circle applied to the Commission for a registration enabling it to operate as a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "C & D." See Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission grants the applicant a registration, the applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin. Code § 16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§ 1-06 & 2-02 (specifying information required to be submitted by license applicant) with RCNY §§ 1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission's investigation and

determination of a registration application is whether the applicant has business integrity. See 17 RCNY § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); compare Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking “good character, honesty and integrity”).

Based upon the record as to the Applicant, the Commission denies its exemption/registration application on the ground that this Applicant lacks good character, honesty and integrity for the following independently sufficient reasons:

- A. The Applicant knowingly failed to provide information and/or documentation to the Commission in connection with the application.
- B. The Applicant failed to demonstrate eligibility for the registration it seeks.
 1. The Applicant has engaged in unregistered trade waste removal activity.
 2. The Applicant failed to abide by the terms of a Stipulation of Settlement to resolve a Notice of Hearing for unregistered trade waste removal activity.
 3. The Applicant failed to pay taxes and other obligations for which judgments have been entered.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as “a ‘black hole’ in New York City’s economic life.” Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) (“SRI”).

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND

Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42, § 1.

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the C & D sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the C & D sector of the carting industry has been a subject of significant federal prosecutions. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many C & D haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988; during that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs

instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately \$10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City's "cover" programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City's tipping fees. See 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.); see also United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the C & D sectors of the industry. Local Law 42 recognizes this fact in requiring C & D haulers to obtain registrations from the Commission in order to operate in the City. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004).

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. "Trade waste is broadly defined and specifically includes "construction and demolition debris." Id. § 16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of

New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 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).

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant “who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]” or “who has otherwise failed to demonstrate eligibility for such license.” Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to “review” exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases “where the applicant fails to provide the necessary information, or knowingly provides false information.” It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission’s authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant’s good character, honesty and integrity. Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

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.

Admin. Code § 16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. DISCUSSION

On or about November 21, 2005, the Applicant filed an application for exemption from licensing requirements for removal of demolition debris (the "Application") with the Commission.¹ The Commission's staff has conducted an investigation of the Applicant. On February 23, 2007, the staff issued a 13-page recommendation that Circle's registration application be denied, which was delivered by hand to the Applicant on February 26, 2007. Circle did not submit a response to the staff's recommendation. The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth below, the Commission finds that Circle lacks good character, honesty, and integrity, and denies its registration application.

Carlo Bordone V ("Carlo") is the Applicant's only disclosed principal. Carlo was also disclosed to the Commission in a separate application as the "vice president" of Metro Demolition Contracting Corp. ("Metro"), an affiliated company which also applied to the Commission for a registration. See Metro Registration Application at 10. Carlo and his father, Vincent Bordone ("Vincent"), were listed on Metro's application as the principals and owners of Metro. See id. On December 7, 2004, Carlo signed a Commission Registration Order as the vice president of Metro.²

III. Grounds for Denial

A. **The Applicant knowingly failed to provide information and/or documentation to the Commission in connection with the application.**

"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). By failing to respond to the Commission's requests for information and or documentation, the Applicant has "knowingly failed to provide the information" required by the Commission.

¹ By letter dated August 15, 2006, the Applicant's attorney advised the Commission that the Applicant "has decided not to proceed with its Business Integrity Commission application at this time." See August 15, 2006 letter from Carol A. Sigmond, Esq., to the Commission. This letter only came after the Commission expended considerable resources in investigating the background of this Applicant and its principal, and only after it became clear to the Applicant that its application might be denied. The Commission responded to the Applicant's request to withdraw its application by letter dated August 17, 2006. In this letter, the Commission advised the Applicant that its request to withdraw would not be considered, as the Applicant failed to abide by the terms of a written agreement with the Commission concerning the settlement of numerous administrative violations. See August 17, 2006 letter from David Mandell to Carol A. Sigmond, Esq.

² In an apparent effort to distance himself from Vincent and Metro and advance the application of Circle, by letter dated May 26, 2006, Carlo submitted false and misleading information to the Commission when he advised the Commission that he "resigned from Metro Demolition Contracting Corp. in mid-2002 and no longer [has] any affiliation with [Metro]." This submission is demonstrably false. Carlo, as vice president of Metro, signed the Registration Order issued by the Commission to Metro on December 7, 2004.

1. The Applicant knowingly failed to provide information to the Commission by submitting an incomplete application.

When the Applicant filed its application with the Commission, it also filed a certification (that appears to be signed by Carlo before a notary public) that states, among other things,

A MATERIAL FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF REGISTRATION APPLICATION. IN ADDITION, SUCH FALSE SUBMISSION MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES AND WILL BE CONSIDERED, IF APPLICABLE# IN THE REVIEW OF YOUR APPLICATION FOR A REGISTRATION.

See Application at 20-21. Although the application appeared to be certified as true by Carlo, Carlo testified that he did not actually sign the certification page of the application. See May 23, 2006 Deposition Transcript of Carlo Bordone (“Bordone Tr.”) at 6. Instead, Carlo testified that the Applicant’s office manager, Michelle Coppolo, filled out the application and that the Applicant’s controller, Carmen Zapata, signed Carlo’s name on the certification page. See id. Carmen Zapata also signed her name on the certification page as the notary public before whom Carlo’s name was signed. See id. Although Carlo testified that he did not review the completed application before it was filed with the Commission, he stated that he authorized Carmen Zapata to sign his name on it.³ See id. It is likely that Carlo did not want to admit that he signed the certification page because he did not want to be held accountable for any false or misleading information contained in the application. Nevertheless, the signature on the certification page of the Application appears to match Carlo’s signature that was provided to the Commission at his deposition. See Questionnaire at 13.

Carlo is either testifying truthfully and admitting he previously submitted false information, or he is simply testifying falsely. If Carlo’s testimony that he did not review the application and sign the certification page is true, then the Applicant admitted that it knowingly failed to provide accurate and truthful information and documentation required by the Commission. If Carlo’s testimony that he did not review the application and sign the certification page is false, then Carlo provided the Commission with false and misleading testimony. Either way, the Applicant has provided false and misleading information to the Commission and the Commission cannot rely on any of the Applicant’s submissions. The Applicant did not dispute this point. The failure of the Applicant to provide truthful and complete information to the Commission constitutes an independent basis for the conclusion that the Applicant lacks good character, honesty and integrity. See Admin. Code §16-509(b). Accordingly, this registration application is denied based on this independent ground.

³ The Applicant failed to cooperate with the Commission’s directive to produce Zapata for a deposition. See *infra* at 10.

2. The Applicant knowingly failed to provide information to the Commission by submitting an application that contained false and misleading information.

Question 14 of the application asks:

Is, or at any time during the past ten years has, the applicant business or any principal or past principal of the applicant business been a principal in a trade waste business?

The Applicant falsely answered, "No." See Application at 5. The Applicant's answer to Question 14 fails to provide required information and is false and misleading because on or about August 30, 1996, Carlo Bordone V was "vice president" of Metro Demolition Contracting Corp., a trade waste business. See Metro Registration Application at 10. It is possible that Carlo attempted to conceal his affiliation with Metro Demolition Contracting Corp. because he believed that such an affiliation would result in the denial of the instant application.⁴

The failure of the Applicant to provide truthful information to the Commission and the willful submission of false and misleading information to the Commission constitute an additional independent basis for the conclusion that the Applicant lacks good character, honesty and integrity. The Applicant has not disputed this point. For this independent reason, this application is denied.⁵ See Admin. Code §16-509(b).

⁴ Carlo testified that although he was listed as a principal ("vice president of estimating and marketing and sales") in Metro's registration application, he did not consider himself to be a principal of Metro because he did not own Metro. See Bordone Tr. at 31-32. However, the registration application submitted by Metro and certified as true by both Vincent Bordone and Carlo Bordone V on August 30, 1996 states that Carlo Bordone V is the "vice president" and *fifty percent owner* of Metro. See Metro Demolition Application at 10, 31-32. Subsequent to his deposition, by letter dated May 26, 2006, Carlo stated,

"Please be advised that I resigned from Metro Demolition Contracting Corp. in mid 2002 and no longer have any affiliation with this firm."

See May 26, 2006 letter from Carlo Bordone to the Commission. This letter, signed by Carlo before a notary public and obviously containing false and misleading information, is a weak attempt to buttress Carlo's false and misleading deposition testimony regarding his affiliation with Metro. This submission is obviously false and misleading since the Registration Order issued to Metro by the Commission was signed by Carlo, as "vice president" of Metro, on or about December 7, 2004. See Metro Registration Order.

⁵ Carlo also attempted to provide the Commission with misleading information when he answered Question 24 on the Questionnaire he filled out prior to his deposition. Question 24 of the Questionnaire asks, "Do you hold a driver's license?" Carlo answered, "yes." See Questionnaire at 7. At his deposition, Carlo amended his answer and stated that he did not have a driver's license, but had a learner's permit. See Bordone Tr. at 69. Carlo's casual disregard for abiding by the law was demonstrated by his own admissions regarding his driver's license. Carlo first stated that his driver's license was "suspended." See *id.* Then, he admitted that he has been driving without a driver's license for the last six years when he testified, "I obviously got pulled over and arrested for it..." See *id.* at 70.

3. The Applicant knowingly failed to provide documentation to the Commission in connection to the application.

After taking Carlo's testimony, on or about August 1, 2006, the Commission sent both the Applicant and the Applicant's attorney a letter seeking information relating to the Application. See August 1, 2006 letter from David Mandell to Carol A. Sigmond, Esq. The Commission's request for information and documentation included: (1) a copy of the lease for the property located at 55-14 Grand Avenue, Maspeth NY; (2) all checks (and receipts) used to pay rent and property taxes for the property located at 55-14 Grand Avenue, Maspeth NY;⁶ (3) all proposals / contracts / letters of intent / invoices that Circle and its affiliates entered into with truckers to remove debris;⁷ (4) all proposals / contracts / letters of intent / invoices that Circle and its affiliates entered into with customers to remove debris; (5) copies of bills of sale for all vehicles used by Circle and its affiliates; and (6) all checks used to make payments on all vehicles used by Circle and its affiliates. This letter directed both the Applicant and the Applicant's attorney to,

produce these records to the Commission's offices before the close of business on August 11, 2006. Your failure to provide this documentation to the Commission is an adequate ground upon which to deny Circle's registration application. See Title 16-A of the New York City Administrative Code, § 16-509(b).

See August 1, 2006 letter from the Commission to Carlo. The Applicant failed to respond to the Commission's request for information and documentation, despite the Commission's warning that the application could be denied for knowingly failing to provide information and documentation.⁸ The Applicant knowingly failed to provide information and documentation that is required by the Commission. The Applicant did not dispute this point. For this independent reason, this application is denied.

⁶ At his deposition on May 23, 2006, Carlo unsuccessfully attempted to demonstrate that Metro and the Applicant are not affiliated. In doing so, he testified that there is a written lease for use of the property at 55-14 Grand Avenue. See Bordone Tr. at 15. Carlo also stated that he writes the check for rent to "Metro Interior Demolition" in the amount of five thousand dollars every month. See Bordone Tr. at 16. Carlo later changed his testimony and stated that he pays the property taxes in lieu of paying the rent for the use of this property. See id.

⁷ Carlo testified that since being issued a Notice of Hearing for unregistered trade waste removal activity, the Applicant outsourced its trade waste removal to several other companies, including Metro Demolition, Freedom Demolition, Prestige, and Nacirema. See Bordone Tr. at 20-21. In relation to the outsourced jobs, Carlo testified that he may maintains "invoices and proposals" in the Applicant's office at 55-14 Grand Avenue and 56-00 Grand Avenue. See id.

⁸ Instead, the Applicant attempted to withdraw its application in an attempt to prevent the disclosure of information to the Commission. See Footnote 1.

- 4. The Applicant knowingly failed to provide information to the Commission by failing to produce office manager, Carmen Zapata, for a deposition under oath in connection to this application.**

On or about August 1, 2006, the Commission sent the Applicant and the Applicant's attorney a letter that directed Circle's office manager, Carmen Zapata to appear at the Commission's offices on August 16, 2006 for a deposition under oath in relation to the application. See August 1, 2006 letter from David Mandell to Circle. Carmen Zapata failed to appear for her deposition under oath on August 16, 2006. The Applicant and the Applicant's attorney failed to contact the Commission to advise the Commission that Carmen Zapata would not appear on August 16, 2006.

As of the date of this Decision, the Applicant has not produced its office manager for testimony under oath relating to her activities on behalf of the Applicant. The Applicant does not dispute this point. For this independent reason, this application is denied.

- B. The Applicant failed to demonstrate eligibility for the registration it seeks.**

- 1. The Applicant has engaged in unregistered trade waste removal activity.**

The Applicant has been operating and hauling debris in the five boroughs of New York City without a license or registration from the Commission. This company never held a Department of Consumer Affairs, Trade Waste Commission or Business Integrity Commission carting license or registration, and has never been legally authorized to operate in the City of New York.

At his deposition on May 23, 2006, Carlo testified that he established the Applicant in January 2005. See Bordone Tr. at 19. He also testified that the Applicant started to remove construction and demolition waste in New York City for "several months" until the Commission issued a Notice of Hearing for unregistered activity on or about March 30, 2006. See Bordone Tr. at 19-20. In addition, the Commission obtained documentation that proves that the Applicant removed trade waste as early as December 2005. See Bordone Tr. at 53. At his deposition, Carlo admitted, "it may be possible" that the Applicant removed waste in New York City since at least December 2005 even though it did not have a trade waste registration.⁹ See Bordone Tr. at 53.

On March 30, 2006, Circle was charged administratively with operating an unlicensed or unregistered waste removal business on January 6, 2006, January 16, 2006, January 24, 2006, February 23, 2006, and March 3, 2006, in violation of §16-505(a) of the

⁹ Carlo could not initially bring himself to admit that the Applicant engaged in unregistered trade waste removal activity. Eventually, he admitted that the Applicant began removing waste in December 2005 two or three days a week, from two or three different construction sites. See Bordone Tr. at 53-54.

New York City Administrative Code.¹⁰ See Department of Consumer Affairs (“DCA”) Notice of Hearing, #TW-1391.

Under the circumstances, the Applicant’s unregistered carting merits the denial of its registration application. Unregistered trade waste removal activity is further evidence of the Applicant’s lack of honesty, integrity and good character, and is an independently, sufficient basis upon which to deny this exemption application. The Applicant did not dispute this point. Accordingly, the Commission denies the Applicant’s registration application on this independent ground.

2. The Applicant has failed to abide by the terms of a Stipulation of Settlement to resolve a Notice of Hearing for unregistered trade waste removal activity.

On or about June 12, 2006, after a written offer to settle¹¹ and oral negotiations, the Applicant and the Applicant’s attorney verbally agreed with the Commission’s staff to settle the administrative violation for: (1) unregistered trade waste removal activity in violation of § 16-605(a) of the Admin. Code; (2) failing to notify the Commission within ten calendar days of a material change to the information provided on its application, in violation of 17 RCNY, § 2-05(a)(2); (3) making false or misleading statements to the Commission, in violation of 17 RCNY § 1-09; and (4) failing to have proper vehicle markings, in violation of 17 RCNY § 7-03(b). See June 12, 2006 letter from Ellen Ryan, Directory of Regulatory Enforcement to Carol A. Sigmond, Esq.; Stipulation of Settlement, TW-1391. Terms of the settlement included the remittance of \$36,000 by certified check made payable to the Commission before June 30, 2006. See Stipulation of Settlement, TW- 1391.

Subsequent to June 30, 2006, the Commission’s staff repeatedly attempted to contact the Applicant’s attorney about this settlement by telephone. By letter dated July 7, 2006, the Applicant’s attorney advised the Commission that the Applicant and the Applicant’s affiliate “are experiencing cash flow difficulties.” Therefore, “Mr. Bordone is asking for 2 additional weeks to make payment.” See July 7, 2006 letter from Carol A. Sigmond, Esq. to Ellen Ryan. By letter dated July 10, 2006, the Commission agreed to extend the time for the Applicant to abide by the terms of the Stipulation of Settlement to July 21, 2006. See July 10, 2006 letter from Ellen Ryan to Carol A. Sigmond, Esq. Although the Applicant provided the Commission with a signed and dated Stipulation of Settlement on or about July 14, 2006, as of the date of this Decision, the Applicant failed

¹⁰ As discussed above, the Applicant engaged in unlicensed or unregistered trade waste removal activity on numerous other dates as well. The Applicant was only charged with unlicensed or unregistered trade waste activity on dates when the Commission’s staff observed the activity. The Applicant was also charged with: (1) failing to notify the Commission within ten calendar days of a material change to the information provided on its application, in violation of 17 RCNY, § 2-05(a)(2); (2) making false or misleading statements to the Commission, in violation of 17 RCNY § 1-09; and (3) failing to have proper vehicle markings, in violation of 17 RCNY § 7-03(b). See id.

¹¹ By letter dated May 30, 2006, the Applicant, through its attorney, offered to settle this Notice of Hearing for \$15,000. See May 30, 2006 letter from Carol A. Sigmond, Esq. to the Commission.

to abide by the terms of the Stipulation of Settlement. See Executed Stipulation of Settlement.

Although the Applicant entered into the Stipulation of Settlement on July 14, 2006, it has repeatedly reneged on agreements to settle the matter with the Commission's staff. The failure of the Applicant to abide by the terms of the Stipulation of Settlement and the Applicant's negotiations in bad faith are indicative of this Applicant's lack of good character, honesty and integrity. The Applicant did not dispute this point. For this independently sufficient ground, this application is denied.

3. The Applicant failed to pay taxes and other obligations for which judgments have been entered.

"[T]he failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's integrity. See Admin. Code §16-509(a)(x).

Judgments have been docketed against the Applicant by the New York State Department of Taxation and Finance and by the New Jersey Building Laborers Statewide Benefit Funds. According to a judgment and lien search conducted by the Commission, the Applicant owes the following unsatisfied judgments:

New York State Department of Taxation and Finance

\$3,154.71	Index Number: E026171014	Docket Date: 4/3/06
\$5,850.00	Index Number: E027495374	Docket Date: 11/21/06

New Jersey Building Laborers Statewide Benefit Funds

\$8,156.30	Index Number: 2006CV004028	Date: 9/26/06
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The Applicant's refusal to satisfy numerous debts that have been reduced to judgment is another sufficient independent ground for denial of its registration application. The Applicant did not dispute this ground. For this independent ground, this application is denied.

IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue an exemption/registration to any applicant that it determines lacks good character, honesty and integrity. The evidence recounted above demonstrates convincingly that Circle falls far short of that standard.

It is of grave concern to the Commission that the Applicant has failed to provide information and/or documentation to the Commission in connection to its application, has engaged in unregistered trade waste removal activity, has failed to abide by the terms of a Stipulation of Settlement with the Commission, and has failed to pay taxes and other

obligations for which judgments have been entered. For the independently sufficient reasons discussed above, the Commission hereby denies Circle's exemption/registration application.

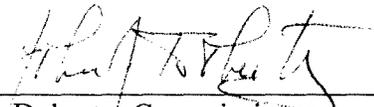
This exemption/registration denial decision is effective immediately. Circle shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York.

Dated: May 8, 2007

THE BUSINESS INTEGRITY COMMISSION



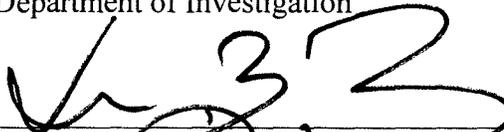
Thomas McCormack
Chair



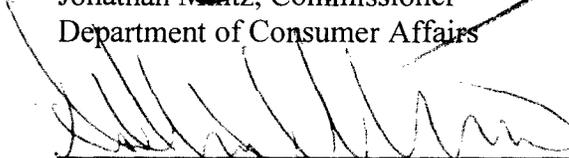
John Doherty, Commissioner
Department of Sanitation



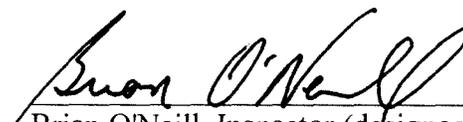
Rose Gill Hearn, Commissioner
Department of Investigation



Jonathan Mintz, Commissioner
Department of Consumer Affairs



Anthony Dell'Olfo, General Counsel (designee)
Department of Small Business Services



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