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DATE/TIME 3/15/06 3:45



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 DEMO SERVICES, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Demo Services, Inc. ("Demo Services" 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.

Demo Services applied to the Commission for a registration enabling it to operate as 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 Id. §§ 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, for the following independently sufficient reasons, denies Demo Services’ registration application:

1. Michael Sarnelli and the Applicant’s predecessors have repeatedly engaged in unlicensed and/or unregistered trade waste removal activity.
2. A predecessor of the Applicant company has failed to pay a fine or penalty directly related to the trade waste industry for which judgment has been entered.
3. The Applicant’s predecessors and its principal, Michael Sarnelli, have failed to pay taxes for which judgment has been entered.
4. One of the Applicant’s predecessor companies, MCS Equipment & Services, Inc. failed to pay over \$5,200 in fees to the Commission.
5. The Applicant provided false and misleading information on its registration application.

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).

II. DISCUSSION

The staff has conducted an investigation of the Applicant and its principals. On January 31, 2006, the staff issued a 15-page recommendation that the application be denied. The Applicant's president was personally served with the recommendation on February 1, 2006, and was granted ten business days to respond (February 14, 2006). See 17 RCNY §2-08(a). On February 1, 2006, the Applicant's attorney requested a copy of the record relied upon by the Commission and requested "additional time of two weeks upon receipt" of the record to respond to the recommendation. See February 1, 2006 letter from Jade L. Fuller to David Mandell, Special Counsel. On February 1, 2006, the staff advised the Applicant's attorney that the record was available to be picked up. The staff also granted the Applicant's request for an extension of time to respond to February 17, 2006. See February 1, 2006 letter from David Mandell, Special Counsel, to Jade Fuller, Esq. Although the Applicant picked up the record on February 2, 2006, to date, the Applicant has not submitted a response. Instead, the Applicant's attorney submitted a 2-page letter that was dated February 21, 2006, and was received by the Commission on March 1, 2006. See February 21, 2006 letter from Joseph O. Giaimo, Esq., to Thomas McCormack, Chair of the Commission. The February 21, 2006 letter does not dispute any of the facts in the recommendation and states that "in light of the Commission's recommendation... Demo Services withdraws its' [sic] application for exemption from licensing." See Id. If the Applicant's declaration that it withdraws its application in light of the Commission's recommendation is a request to withdraw, that request is denied. It is far too late in the process for the Applicant to request that its application be withdrawn. As such, the Commission denies the Applicant's request to withdraw its application.

It is disturbing that the Applicant, through its attorney, states that Local Law 42 "does not require construction and demolition hauling businesses, such as Demo Services, to apply for an exemption to register with the Commission in order to operate." See Id. To the contrary, it is well settled law that construction and demolition haulers must obtain a registration from the Commission to operate in New York City. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004). The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth below, the Commission finds that Demo Services lacks good character, honesty, and integrity, and denies its registration application.

The staff's background investigation has revealed that this Applicant's only disclosed principal, Michael Sarnelli ("Sarnelli"), has also been a principal of a string of other companies that engage or engaged in the removal, collection or disposal of trade waste, including MCS Equipment & Services, Inc. ("MCS Equipment"), MCS Recycling, Inc. ("MCS Recycling"), Demo Plus, Inc. ("Demo Plus"), FBT, Inc. ("FBT"), Strong Equipment Corp. ("Strong

Equipment”), and On Call Equipment & Services Corp. (“On Call Equipment”). As described below, Sarnelli was a principal of Demo Plus within the five-year period preceding the instant application. As such, Demo Plus and its affiliates could be considered to be predecessor companies to this Applicant. See Admin. Code §16-508(b). All of these companies, including this Applicant, share Michael Sarnelli as a principal. Additionally, all of these companies are connected by virtue of having the same or similar mailing addresses, office addresses and or garage/yard addresses of “333 Chelsea Road,” “331 Chelsea Road,” and/or “337 Chelsea Road” in Staten Island.¹ See Demo Services Registration Application (“Registration Application”) at 1; MCS Equipment License Application (“MCS License Application”) at 1; January 15, 1997 Deposition Transcript of Michael Sarnelli (“1/15/97 Dep. Tr.”) at 23; MCS Recycling New York State Department of State Printout; Demo Plus New York State Department of State Printout; Demo Plus Judgment and Lien Filings Printout; FBT Judgment and Lien Filings Printout; FBT New York State Department of State Printout; Strong Equipment Judgment and Lien Filings Printout; Strong Equipment New York State Department of State Printout; On Call Equipment New York State Department of State Printout.

On August 30, 1996, MCS Equipment² submitted a license application to the Commission. Sarnelli’s wife, Michelle Crudele Sarnelli, was listed as the 100% owner, “Chairman of the Board of Trustees,” and “Vice President.” See MCS License Application at 22. Sarnelli was listed as “President” of the company. See Id. Both Sarnellis were initially deposed on January 15, 1997. Sarnelli was subsequently deposed on June 2, 1999 and December 21, 1999. On March 12, 1997, the Commission granted MCS Equipment temporary permission to operate as a trade waste business in New York City. That temporary permission expired on or about June 1, 1997, and the Commission later withdrew MCS Equipment’s application after MCS refused to pay license and truck fees. See infra Section D. Thus, MCS Equipment did not have permission to operate after June 1, 1997. See Id. In fact, none of the other Sarnelli companies ever had permission to operate as trade waste businesses in New York City. See Id.

The Commission’s staff’s investigations and depositions of Sarnelli initially revealed that in addition to operating MCS Equipment, Sarnelli operated or attempted to operate at least two other affiliate companies, MCS Recycling, Inc. (“MCS Recycling”)³ and FBT, Inc. (“FBT”)⁴, as

¹ Although “337 Chelsea Road” is listed in three different places on the application, the Commission’s staff could not verify it as an existing address. See infra at footnote 7.

² MCS Equipment is currently listed by the New York State Department of State as “inactive.” The address for service of process filed with the New York State Department of State was “333 Chelsea Road, Staten Island, New York, 10314.” See New York State Department of State Printout.

³ MCS Recycling is currently listed by the New York State Department of State as “inactive.” The address for service of process filed with the New York State Department of State was “333 Chelsea Road, Staten Island, New York, 10314.” See New York State Department of State Printout.

⁴ Sarnelli initially testified that “FBT” stood for “Flat Broke Trucking.” See June 2, 1999 Deposition Transcript of Michael Sarnelli Deposition Transcript (“6/2/99 Dep. Tr.”) at 12-13. He chose this name because it was “a funny name” and because “we’re always broke.” See Id. In a subsequent deposition, he testified that “FBT” stood for “Five Borough Trucking.” See December 21, 1999 Michael Sarnelli Deposition Transcript (“12/21/99 Depo. Tr.”) at 7-8. Although Sarnelli claimed that FBT only owned trucks that were leased to MCS Equipment, it is clear that FBT itself also applied to dump waste at a New York City transfer station. See infra. FBT is currently listed by the New York State Department of State as “inactive.” The address for service of process filed with the New York State

unlicensed and unregistered carting companies. These two affiliates were used after MCS Equipment filed for Chapter 11 bankruptcy protection in November 1998 as a means to generate cash flow and to artificially support the life of the Sarnelli's carting operations. In the process, Sarnelli diverted receivables that rightfully belonged to the bankruptcy estate and/or other entities.⁵ Finally, when MCS Equipment's bankruptcy was involuntarily converted into a Chapter 7 liquidation proceeding by the bankruptcy court, Sarnelli engaged in a scheme to defraud the MCS Equipment bankruptcy estate of monies due to the estate by diverting those monies to an entirely different company he formed, called Strong Equipment Corp.⁶

Michael Sarnelli also created, owned and operated another trade waste company, Demo Plus, Inc. ("Demo Plus"), that never applied for and was never granted a trade waste license or registration. See *infra*. Demo Plus also used the 333 Chelsea Road, Staten Island address and the 337 Chelsea Road, Staten Island address. See New York State Department of State Printout.

Most recently Sarnelli filed the instant application for exemption from licensing requirements for removal of demolition debris (the "Application") with the Commission. As he was for the Applicant's predecessors, Michael Sarnelli is a principal of the Applicant. See Application at 8. The Application states that the Applicant's principal office, mailing address,

Department of State was "333 Chelsea Road, Staten Island, New York, 10314." See New York State Department of State Printout.

⁵ On numerous occasions throughout his June 1999 deposition, Sarnelli provided different explanations for operating both MCS Equipment and MCS Recycling concurrently. For example, Sarnelli claimed that he created MCS Recycling so that it could be a separate, albeit unregistered, company for his construction and demolition business. See 6/2/99 Dep. Tr. at 16-19. Sarnelli also claimed that he needed to keep MCS Recycling separate from MCS Equipment so that he could comply with the Commission's regulation requiring the submission of a customer list for putrescible waste customers. See *Id.* at 58-59. However, Sarnelli's deposition testimony that MCS Recycling removed construction and demolition waste *and* putrescible waste from customers contradicted his earlier explanation. See *Id.* at 27, 30, 63-64. He also removed waste from MCS Equipment customers and deposited money earned as a result thereof into MCS Recycling accounts. When Sarnelli used his garbage trucks to pick up trade waste from MCS Equipment customers, and then deposited the earnings from those customers into the bank account of an unlicensed and unregistered entity (MCS Recycling), he engaged in a fraudulent transfer. A transfer of property from a bankruptcy estate is considered fraudulent when it is made "with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred." See 11 U.S.C. § 548(a)(1)(A). Thus, the operation of MCS Recycling not only violated Local Law 42, but also likely violated federal bankruptcy law.

⁶ In late 1999, MCS Equipment's bankruptcy was converted into a Chapter 7 liquidation proceeding. At that time, the Commission's staff received several reports that MCS Equipment's carting customer route had been sold to another carter without seeking or receiving the Commission's approval as required by Local Law 42. See 17 Rules of the City of New York § 5-05(b). In his December 21, 1999 deposition, Sarnelli denied the allegation that he sold MCS Equipment's customer route. See 12/21/99 Depo. Tr. at 27-29. Rather, he claimed that certain physical assets were sold to another carting company for a total of \$15,500. See 12/21/99 Depo. Tr. at 15, 40-41. Sarnelli testified that he deposited the proceeds of the physical asset sale into the account of a new corporation Sarnelli formed named Strong Equipment ("Strong"). See 12/21/99 Depo. Tr. at 16. Sarnelli could not or would not explain whether the physical assets he purportedly sold belonged to MCS Equipment, MCS Recycling, or FBT. Therefore, and because Sarnelli was evasive about which of his companies owned the physical assets, it is clear that some of the physical assets that Sarnelli claimed were sold actually belonged to MCS Equipment but none belonged to Strong. Strong Equipment Corp. is currently listed by the New York State Department of State as "inactive." The address for service of process filed with the New York State Department of State was "333 Chelsea Road, Staten Island, New York, 10314." See New York State Department of State Printout.

and business address is "337 Chelsea Road, Staten Island, New York."⁷ See Application at 1 and 8. This address is remarkably similar to the Applicant's predecessors' addresses, and it shares the same telephone number, (718) 966-0700, as predecessor Demo Plus. See Application at 1; see also November 2000 – October 2001 Verizon Yellow Pages for Staten Island Consumer and Business Edition at 572;⁸ November 2001 – October 2002 Verizon Yellow Pages for Staten Island Consumer and Business Edition at 523.⁹

A. Michael Sarnelli and the Applicant's predecessors have repeatedly engaged in unlicensed and/or unregistered trade waste removal activity.

Over the course of several years, Sarnelli has used numerous different unlicensed and unregistered companies to engage in trade waste removal activity in New York City. For instance, Sarnelli admitted that MCS Recycling engaged in unlicensed and unregistered activity when he testified that MCS Recycling was incorporated in or about 1997, and that MCS Recycling had been carting solid waste since it was incorporated. See 6/2/99 Dep. Tr. at 14, 17. Sarnelli also admitted that MCS Recycling never had a trade waste license or registration.¹⁰ *Id.* at 16-17. Still, Sarnelli testified that MCS Recycling billed 125 to 150 solid waste customers. *Id.* at 18-20. Sarnelli also testified that he thought MCS Recycling picked up a roll-off container in May of 1999 and that at least one check payable to "MCS" or "MCS Recycling" was deposited in an MCS Recycling bank account. *Id.* at 27. Finally, Sarnelli testified that he had dumped waste at a Brooklyn Waste Management transfer station under the name "MCS Recycling," and was still doing so at the time of his deposition. *Id.* at 70-71. All of the above is evidence that MCS Recycling engaged in long term unlicensed and unregistered activity.

At his June 2, 1999 deposition before the Commission, Sarnelli testified that FBT owned six trucks that were then leased to MCS Equipment. See 6/2/99 Dep. Tr. at 7, 40-41. However, at least one of the six trucks had the name "MCS Recycling" stenciled on it. *Id.* at 7-8 (emphasis added).¹¹ FBT also owned containers, which both MCS Equipment and MCS Recycling

⁷ Although Sarnelli provided the address "337 Chelsea Road, Staten Island, NY 10314" three different times on the application, the Commission's staff could not find any evidence through property record searches that this address exists. In addition, a site visit by a Detective assigned to the Commission revealed that the address "337 Chelsea Road, Staten Island, NY 10314" could not be located.

⁸ This advertisement falsely states that Demo Plus was "licensed."

⁹ This advertisement falsely states that Demo Plus was "licensed."

¹⁰ In fact, MCS Recycling has never even applied for a trade waste license or registration.

¹¹ Sarnelli was evasive and vague in many of his deposition responses, including his responses about the name(s) painted on FBT's trucks:

- Q. What does it say on the side of the roll-offs?
A. MCS Recycling and Equipment.
Q. MCS Recycling and Equipment?
A. Yes. One might say MCS Recycling; another might say Equipment.
Q. Can you tell me again how many trucks you have?
A. Four roll-offs.
Q. Okay?
A. Two packers.
Q. What do the two packers say on the side of them?
A. MCS.
Q. MCS what?

removed while they were filled with trade waste. See Id. at 47-50. Evidence also establishes that both MCS Recycling and FBT applied for an account to dump waste at a Waste Management of New York (“Waste Management”) transfer station in a vain attempt to get credit where MCS Equipment’s credit had run out.¹² See New Account Applications & Agreements. After MCS Equipment’s temporary permission to operate expired, on or about September 17, 1997, “MCS Recycling” submitted a credit application to Waste Management. See Id. Instead of listing Sarnelli as the contact person for MCS Recycling, “Santo” was listed. See Id. That application was rejected. Shortly thereafter, “FBT” submitted a similar application to Waste Management, again seeking to dump with 15 days to pay the dumping bill. This time “Santo Pellicano” was listed as the contact person. See Id. That application, too, was rejected. Sarnelli’s repeated attempts to gain access to a transfer station serves as additional evidence that MCS Recycling and FBT engaged in unlicensed or unregistered activity.

The Commission’s staff deposed Santo Pellicano (“Pellicano”) on January 7, 2000. Pellicano, who was a driver and yard worker for Sarnelli, was questioned about the Waste Management transfer station credit applications. The deposition of Pellicano revealed Sarnelli’s poorly planned and executed attempt to gain credit via a thinly veiled alter ego corporation and “new” principal.¹³ Pellicano testified that Sarnelli asked him to fill out the credit application “to get credit from Waste Management.” See January 7, 2000 Deposition Transcript of Santo Pellicano (“1/7/00 Dep. Tr.”) at 39-40. “He asked me to do this to see if . . . we can get him back in [to the Waste Management transfer station]. Id. “He needed a place to dump. . . . He wanted me to use my name to see if we [could] get credit. . . . because his credit is no good.” Id. at 41-42. MCS Equipment, MCS Recycling, and FBT engaged in such activity despite not having trade waste licenses or registrations.

Based upon these facts, the Commission should conclude that Sarnelli, through a myriad of alter ego companies, engaged in unlicensed or unregistered carting. In doing so, Sarnelli made a variety of misrepresentations in his attempts to gain credit from transfer stations. Finally, Sarnelli testified that after MCS Equipment went out of business, yet another of his companies, Strong Equipment, engaged in additional unlicensed and unregistered trade waste removal activity within the City of New York. See 12/21/99 Depo. Tr. at 24-26.

More recently, another of the Applicant’s predecessors, Demo Plus, has been operating and hauling debris in the five boroughs of New York City without a license or registration from

A. I believe one says Recycling and I believe the other one says MCS Staten Island on it.

Q. Just to clarify, one says MCS Recycling?

A. Yes.

Q. And one says MCS Staten Island?

A. New York.

Q. Does the MCS Recycling say Staten Island, New York, on it?

A. I believe it may.

See 6/2/99 Dep. Tr. at 8-9.

¹² Sarnelli admitted that MCS Equipment bounced checks he wrote to Waste Management for dumping waste and that MCS Equipment owed Waste Management approximately \$12,000 in dumping fees.. See 6/2/99 Depo. Tr. at 72-74.

¹³ The deposition testimony also revealed Sarnelli’s modus operandi to use alter ego corporations to accomplish his ends in the trade waste industry.

the Commission. Like its predecessors, 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.

On June 17, 2002, Demo Plus was charged administratively with operating an unlicensed or unregistered waste removal business during the periods from November 2000 to October 2002, and on April 17, 2002, in violation of §16-505(a) of the New York City Administrative Code. See Department of Consumer Affairs (“DCA”) Notice of Hearing, #TW-312. On August 21, 2002, a hearing was held at the DCA before Administrative Law Judge (“ALJ”) Bruce Dennis.¹⁴ Both Michael Sarnelli and his attorney appeared at the hearing. Subsequently, on May 27, 2003, by Decision and Order, ALJ Dennis found Demo Plus guilty of violating the New York City Administrative Code §16-505(a) and ordered Demo Plus to pay a total fine of \$52,500.¹⁵ Demo Plus was also ordered to “**cease its unlicensed activity immediately.**” See Decision and Order. As of the date of this recommendation, despite the Commission staff’s attempts to settle this matter with Sarnelli and several of his attorneys, Demo Plus has failed to pay this fine. See *infra*.

Despite not having a license or registration, and despite the ALJ’s order for Demo Plus to “cease its unlicensed activity immediately,” Demo Plus and Michael Sarnelli continued to operate a trade waste business or businesses illegally. On June 27, 2003, Michael Sarnelli was arrested by members of the New York City Police Department and was charged with engaging in unlicensed or unregistered trade waste removal activity in violation of New York City Administrative Code §16-505(a), a Class A misdemeanor. As a result, Sarnelli’s vehicles were seized by the New York City Police Department.

Not surprisingly, Demo Plus (who was substituted for Sarnelli as a corporate defendant) pleaded guilty in the face of the overwhelming evidence of unlicensed carting. On January 13, 2004, Sarnelli pleaded guilty on behalf of Demo Plus, to the misdemeanor criminal charge of Unlicensed Activity, Admin. Code §16-505(a).¹⁶

The record amply and incontestably proves that Sarnelli and his companies have engaged in a pattern of unlawful waste removal activity without the required trade waste removal license or registration. Furthermore, Sarnelli and his companies have demonstrated an utter lack of concern with regulatory compliance and have continued to engage in unlawful removal of waste. Public confidence in the integrity of the carting industry would be undermined if those proven to have repeatedly ignored the law received licenses or registrations from the Commission whose governing law and regulations they have been persistently found to violate. Sarnelli’s guilty plea to unlicensed or unregistered carting and separate administrative findings of the same compel the conclusion that the Applicant lacks good character, honesty, and integrity. Moreover, the

¹⁴ Sarnelli requested and received adjournments of the hearing before DCA on July 11, 2002, August 1, 2002, and August 7, 2002.

¹⁵ In doing so, ALJ Dennis found at least some of Michael Sarnelli’s testimony not to be credible. See Decision and Order at 2.

¹⁶ Sarnelli and Demo Plus failed to notify the Commission regarding this arrest and conviction as required by 16 RCNY § 2-05(a)(1) and Admin. Code §16-508(c). See *infra*.

Commission is authorized to deny the registration application of a company that has engaged in unregistered carting activity in the City of New York. See Admin. Code §§16-505(a), 16-509(c)(ii), 16-513(a)(i). This Applicant's predecessor, Demo Plus, plainly engaged in such activity. Under the circumstances, Demo Plus' unregistered carting would merit the denial of a registration application. As Demo Services is the successor business of Demo Plus, its registration application is denied. Large-scale unlicensed or unregistered activity is further evidence of Sarnelli's lack of honesty, integrity and good character, and is an independently, sufficient basis upon which to deny this exemption application.

Accordingly, the Commission denies the Applicant's registration application based on this sufficient independent ground.

B. A predecessor of the Applicant company has failed to pay a fine or penalty directly related to the trade waste industry for which judgment has been entered.

As described above, on May 27, 2003, by Decision and Order, ALJ Dennis found Demo Plus guilty of violating Administrative Code Section 16-505(a) and ordered Demo Plus to pay a total fine of \$52,500. As of the date of this decision, over two and a half years have passed since the DCA entered judgment against Demo Plus. Since at least September 2003, the Commission's staff has attempted to resolve the administrative fine against Demo Plus. After numerous conversations, on or about January 29, 2004, Demo Plus' and Sarnelli's attorney, Vincent Martinelli, Esq. ("Martinelli") orally agreed with the Commission's staff to settle the administrative violation in conjunction with settling the subsequent criminal action brought by the Staten Island District Attorney's Office. Terms of the settlement included the remittance of \$52,500 in installments and Michael Sarnelli's signature on a debarment affidavit before February 6, 2005. This agreement was memorialized in a January 29, 2004 letter from the Commission's staff. See January 29, 2004 letter from David Mandell, Special Counsel, to Vincent Martinelli, Esq.; see also Stipulation of Settlement; Debarment Affidavit.

On or about February 5, 2004, Martinelli left a voicemail message for the Commission's staff wherein he requested additional time for Sarnelli and Demo Plus to enter into the above-mentioned Stipulation of Settlement and pay the fine, and for Sarnelli to execute the debarment affidavit. By letter dated February 6, 2004, the Commission's staff advised Martinelli that his request for additional time was granted until February 13, 2004. See February 6, 2004 letter from David Mandell, Special Counsel, to Vincent Martinelli, Esq. Terms of the settlement agreement remained unchanged. See Stipulation of Settlement.

On or about February 13, 2004, Martinelli had another conversation with a member of the Commission's staff and again requested additional time for Sarnelli and Demo Plus to enter into the Stipulation of Settlement, pay the fine, and execute the debarment affidavit. By letter dated February 13, 2004, the Commission's staff memorialized this conversation and advised Martinelli that his request for additional time was again granted until April 1, 2004. See February 13, 2004 letter from David Mandell, Special Counsel, to Vincent Martinelli, Esq.

Terms of the settlement remained unchanged. See Stipulation of Settlement. Sarnelli and Demo Plus did not abide by the terms of the agreement. In fact, Sarnelli's and Demo Plus' attorney contacted the Commission's staff again about this matter, over one year later, on April 28, 2005.

On or about April 28, 2005, Joseph Giaimo, Esq. ("Giaimo"), Sarnelli's and Demo Plus' (and this Applicant's) new attorney, contacted the Commission's staff. At this time, the Commission's staff provided Giaimo with a copy of the Stipulation of Settlement and the debarment affidavit, as was agreed to by Sarnelli's and Demo Plus' prior counsel.¹⁷ See April 28, 2005 letter from David Mandell, Special Counsel, to Joseph Giaimo, Esq.; see also Stipulation of Settlement. In response, Giaimo advised the Commission's staff for the first time that Sarnelli would not sign a debarment affidavit.

The Commission is authorized to deny a registration application of a company that has failed to pay any fine or penalty related to the applicant's business for which liability has been admitted by the person liable therefore, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction. See Admin. Code §16-509(a)(x). The Department of Consumer Affairs entered judgment against Demo Plus on May 27, 2003, and Sarnelli and Demo Plus have repeatedly reneged on agreements to settle the matter with the Commission's staff. Most recently, the Applicant's attorney has sought to change the terms of the original agreement despite the DCA judgment. Both the Department of Consumer Affairs judgment and the negotiations in bad faith are indicative of this Applicant's lack of good character, honesty and integrity. For this independently sufficient ground, the Commission denies this application.

C. The Applicant's predecessors and its principal, Michael Sarnelli, have failed to pay taxes, for which judgment has 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). Numerous judgments have been docketed against MCS Equipment, FBT, Inc., Demo Plus, Strong Equipment Corp., and Michael Sarnelli by New York City, New York State, the State Insurance Fund and the United States of America. According to a judgment and lien search conducted by the Commission, the Applicant and its predecessors owe the following unsatisfied judgments:

Michael Sarnelli- Internal Revenue Service: \$65,823

- Filing Date: 11/21/03, Amount: \$20,673, Docket Number: 202323
- Filing Date: 6/18/04, Amount: \$45,150, Docket Number: 205774

¹⁷ At this time, Giaimo proposed, and the staff accepted, a settlement wherein there would be two payments to settle the Administrative violation. As evidenced by the Stipulation of Settlement that the staff sent to Giaimo, the first payment, in the amount of \$26,000 was to be paid by May 15, 2005 and the second in the amount of \$26,500 was to be paid by June 15, 2005. All other pertinent provisions of this Stipulation of Settlement remained identical to the Stipulation of Settlement agreed to with Sarnelli's and Demo Plus' prior attorney, Vincent Martinelli, Esq.

Demo Plus Inc.- New York State Department of Taxation and Finance: \$2,890

- Docket Date: 4/7/05, Amount: \$2,890, Transaction Number: 43000223138

Demo Plus Inc.- City of New York: \$3,485

- Docket Date: 8/8/01, Amount: \$3,485, Index Number: 00SR017495

Demo Plus Inc.- Criminal Court of the City of New York: \$160

- Docket Date: 4/16/03, Amount: \$160, Index Number: 2003SN0088

Demo Plus Inc.- New York State Tax Commission: \$3,921

- Filing Date: 2/3/05, Amount: \$1,031, Docket Number: 000220384
- Filing Date: 4/7/05, Amount \$2,890, Docket Number: 223138

FBT Inc.- New York State Tax Commission: \$1,621

- Filing Date: 10/27/00, Amount: \$577, Docket Number: 000152855
- Filing Date: 3/4/99, Amount: \$1,044, Docket Number: 000135236

FBT Inc.- New York State Department of Taxation and Finance: \$2,841

- Docket Date: 4/8/98, Amount: \$2,841, Transaction Number: 43000124164

FBT Inc.- City of New York: \$1,000

- Docket Date: 6/12/01, Amount: \$1,000, Transaction Number: 43000162922

MCS Equipment and Services Inc.- State Insurance Fund: \$12,562

- Filing Date: 7/27/99, Amount: \$12,562, Docket Number: 1027998

Strong Equipment Corp.- Internal Revenue Service: \$53,402

- Filing Date: 12/23/03, Amount: \$53,402, Docket Number: 43000204023

Strong Equipment Corp.- New York State Department of Taxation & Finance: \$46,229

- Docket Date: 7/8/04, Amount: \$16,738, Transaction Number: 43000212627
- Docket Date: 2/15/05, Amount: \$150, Transaction Number: 43000220792
- Docket Date: 12/8/03, Amount: \$18,115, Transaction Number: 43000203203
- Docket Date: 12/8/03, Amount: \$11,226, Transaction Number: 43000203204

Strong Equipment Corp.- Commissioner of Labor, State of New York: \$3,413

- Docket Date: 4/27/05, Amount: \$147, Transaction Number: 43000224018
- Filing Date: 8/5/02, Amount \$568, Docket Number: 000180522
- Filing Date: 2/4/03, Amount \$1,661, Docket Number: 000188879
- Filing Date: 2/25/03, Amount \$1,037, Docket Number: 000189933

Strong Equipment Corp.- New York State Tax Commission: \$18,208

- Filing Date: 1/21/03, Amount: \$16,464, Docket Number: 000188245
- Filing Date: 1/21/03, Amount: \$1,744, Docket Number: 000188246

Again, the failure of the Applicant and its predecessors to satisfy numerous debts that have been reduced to judgment demonstrates that the Applicant lacks good character, honesty and integrity. Based on this sufficient independent ground, the Commission denies this application.

D. One of the Applicant's predecessor companies, MCS Equipment has failed to pay over \$5,200 in fees owed to the Commission.

One of the predecessor businesses of this Applicant, MCS Equipment, has failed to pay the Commission \$5,296.97 in license and truck fees. From March 12, 1997 to March 12, 1998, the Commission delivered several invoices to MCS Equipment, yet MCS Equipment has never paid a single invoice presented to it.

The failure to pay licensing fees directly related to a predecessor of the Applicant's business demonstrates the Applicant's lack of fitness and is another adequate independent ground for the denial of this application. Based on this independently sufficient ground, this application is denied.

E. The Applicant provided false and misleading information on its Registration Application.

The Commission may refuse to issue a registration to an Applicant who has knowingly failed to provide information and/or documentation required by the Commission. See Admin. Code §16-509(b). Demo Services, Inc. filed the instant application for exemption from licensing requirements for removal of demolition debris on May 13, 2005. By signing the certification page, Michael Sarnelli certified that the answers in the Application were "full, complete and truthful." See Application at 18-19. However, the questions on the application that Sarnelli submitted to the Commission were altered so that Sarnelli would not have to disclose information that establishes his lack of good character, honesty and integrity, and so he would not have to certify false answers as true.

Sarnelli attempted to deceive the Commission by adding or subtracting key words contained in several of the application questions. For instance, Question 15 of the Commission's Application asks:

During the past ten years, has the applicant business or any principal of the applicant business been convicted of any misdemeanor or felony in any jurisdiction?

However, the Application that Sarnelli submitted to the Commission contained altered language:

During the past ten years, has the applicant business or any *past [emphasis added]* principal of the applicant business been convicted of any misdemeanor or felony in any jurisdiction?

The Applicant answered “no” to this question. See Application at 5. By adding the word “past” to the question, Sarnelli’s answer to his question was not false. However, as explained above, Michael Sarnelli, a current principal of this Applicant, was convicted upon a plea of guilty to violating Local Law 42, an Unclassified Misdemeanor. Therefore, Sarnelli failed to answer the Commission’s question truthfully.

Similarly, Question 17 of the Application asks:

During the past ten years, has the applicant business or any current or past principal of the applicant business been found in violation of the administrative rules or regulations of any municipal, state or federal agency where the violation relating to the conduct of a business that removes or recycles trade waste, a trade waste broker business or the operation of a dump, landfill or transfer station where the penalty imposed for the violation resulted in the suspension or revocation of any license, permit or registration, the imposition of a fine of \$5,000 or more or the imposition of an injunction of six months or more?

However, the Application that Sarnelli submitted to the Commission altered the language of the question by omitting the word “current” to ask:

During the past ten years, has the applicant business or any *past principal [emphasis added]* of the applicant business been found in violation of the administrative rules or regulations of any municipal, state or federal agency where the violation related to the conduct of a [sic] that removes or recycles trade waste, a trade waste broker business or the operation of a dump, landfill or transfer station where the penalty imposed for the violation resulted in the suspension or revocation of any license, permit or registration, the imposition of a fine of \$5,000 or more or the imposition of any injunction of six months or more?

The Applicant answered “No.” See Application at 6. By omitting the word “current” from the question, Sarnelli’s answer to his own invented question was not false. However, as explained above, Michael Sarnelli and his company, Demo Plus, were found to be in violation of the administrative rules or regulations of the Business Integrity Commission, which resulted in the imposition of a fine of \$5,000 or more. Therefore, Sarnelli failed to answer the Commission’s question truthfully.

Based upon the record, the Applicant clearly did not disclose information required by the Commission. Further, the Applicant attempted to hide truthful information from the Commission by distorting questions on the Commission's application so that he did not have to disclose truthful information to the Commission. The failure of the Applicant to provide truthful information to the Commission constitutes an additional independent basis for the conclusion that the Applicant lacks good character, honesty and integrity. Moreover, the fact that the Applicant went to such lengths to conceal the truth from the Commission by altering the questions on the application is additional evidence that establishes that the Applicant lacks good character, honesty and integrity and constitutes an additional independent basis to deny this application. See Admin. Code §16-509(a)(i); §16-509(b). Based on this independently sufficient ground, this application is denied.

III. CONCLUSION

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

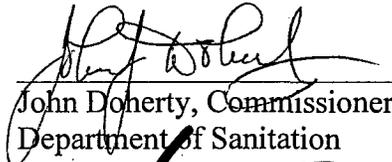
Despite being notified of the staff's recommendation, the Applicant chose not to submit a response, thereby leaving the evidence against it un rebutted. Based upon the above independently sufficient reasons, the Commission denies Demo Services' exemption application and registration. This registration denial is effective immediately. Demo Services may not operate as a trade waste business in the City of New York.

Dated: March 14, 2006

THE BUSINESS INTEGRITY COMMISSION



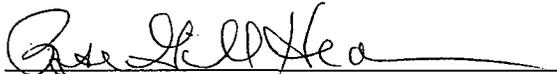
Thomas McCormack
Chair



John Doherty, Commissioner
Department of Sanitation



Jonathan Mintz, Acting Commissioner
Department of Consumer Affairs



Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Business Services



Raymond Kelly, Commissioner
New York City Police Department