



The City of New York
BUSINESS INTEGRITY COMMISSION
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION APPLICATION OF FOUR SEASONS LANDSCAPING & DESIGNS
CORP. (#4356) TO OPERATE AS A TRADE WASTE BUSINESS**

Introduction

On March 22, 2012, Four Seasons Landscaping & Designs Corp. (#4356) (“Four Seasons” or the “Applicant”) applied to the New York City Business Integrity Commission (the “Commission”)¹ for an exemption from the Commission’s trade waste licensing requirements “to remove, collect or dispose of trade waste that is generated in the course of operation of such person’s business” (the “2012 Application”).² Local Law 42 of 1996 (“Local Law 42”) authorizes the Commission to review and make determinations on such exemption applications. See Title 16-A, New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 16-505(b).

After a review of the application, if the Commission grants the exemption from the Commission’s trade waste licensing requirements, the applicant will be issued a registration. See id. at § 16-505(a)-(b). The Commission’s review of an exemption application focuses on a determination of whether the applicant possesses business integrity. See Title 17, Rules of the City of New York § 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); Admin. Code § 16-504(a) (empowering the Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); Admin. Code § 16-509(a) (authorizing the Commission to refuse to issue licenses to applicants lacking “good character, honesty and integrity”).

The Commission has completed its review of the 2012 Application. On May 13, 2015, the Commission’s staff issued and served the Applicant with Notice of the Grounds to Deny the Application of Four Seasons to Operate as a Trade Waste Business (the “Notice of Denial”). The Applicant was given 10 business days to respond, until May 28, 2015. See 17 Rules of the City of New York (“RCNY”) §2-08(a). On May 21, 2015, the Commission received an email from the Applicant’s accountant with a purported response. After being informed by the Commission’s staff that the response must be submitted under oath from either the Applicant or its attorney, on May 28, 2015, the Commission received a scanned copy of a one-page affidavit

¹ The Commission was formerly known as the New York City Trade Waste Commission.

² “Trade waste” or “waste” is defined at Admin. Code § 16-501(f)(1).

from principal Stephen Cestro (collectively, the two responses will be referred to as the “Applicant’s Response”). The Commission has carefully considered both the Notice of Denial and the Applicant’s Response. Based upon the record as to the Applicant, the Commission now denies Four Seasons’s exemption application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

A. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered; and

B. The Applicant Knowingly Failed to Provide Information and Documentation Required by the Commission.

Background and Statutory Framework

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See e.g., United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass’n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.); People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep’t 1999).

The Commission is charged with, inter alia, combating the pervasive influence of organized crime and preventing its return to the City’s private carting industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. NY Admin. Code § 16-505(a). It is this licensing scheme that continues to be the primary means of ensuring that an industry historically plagued by corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, all companies that “remove, collect or dispose of trade waste that is generated in the course of operation of such person’s business” must apply to the Commission for a registration. Id. at § 16-505(b). Before issuing such a registration, the Commission must evaluate the “good character, honesty and integrity of the applicant.” Id. at § 16-508(b). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making this determination in connection with an application for a license or registration:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or

administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to

a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Id. at §509(a)(i)-(x). See also id. at § 16-504(a). Additionally, the Commission may refuse to issue a license or registration to any applicant who has “knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for a license.” Id. at §509(b). The Commission also may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” Id. at §509(c). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at §509(d).

An applicant for a private carting registration has no entitlement to and no property interest in a license or registration, and the Commission is vested with broad discretion to grant or deny a license or registration application. Sanitation & Recycling Industry, Inc., 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). NY Admin. Code § 16-116.

Statement of Facts

On or about March 22, 2012, Four Seasons applied to the Commission for a Class 1 Registration, permitting it to remove, collect or dispose of trade waste that is generated in the course of operation of its business.³ See 2012 Application. The Application disclosed Stephen Cestro (“Cestro”) as the sole principal of the Applicant. See 2012 Application at p.11. According to the 2012 Application, in the 1990s, Cestro owned 100% of a company known as Stephen's Landscaping Inc. (“Stephen's Landscaping”). See 2012 Application at Schedule C. Both Cestro and Stephen's Landscaping have a history of owing large amounts of debt. In fact, the Applicant applied to the Commission for a Class 2 Registration in September 2009 (BIC #3558) (the “2009 Application”), which was withdrawn in 2011 because Cestro and Stephen's Landscaping owed over \$1,000,000 in judgments and liens to various entities. Those debts included a lien in the amount of \$1,046,606.00 filed by the Internal Revenue Service (“IRS”) against Cestro in September 2009. In making a determination as to whether to grant or deny a registration, the Commission is entitled to consider unpaid debts of an applicant's principal and his prior company. See In re: C.I. Contracting Corp. v. New York Bus. Integrity Comm'n, Index

³ Although not relied on as a ground for denial, the Applicant (or its sole principal, Stephen Cestro) likely has been operating without a registration for some time. In 2010 and 2011, the Commission issued Stephen A. Cestro d/b/a Four Seasons Landscaping administrative violations for unregistered activity, in violation of § 16-505(b). See Notices of Violation Nos. TWC-5619 (April 4, 2010), TWC-5738 (May 4, 2010), and TWC-7434 (August 23, 2011). On April 19, 2012, the Applicant admitted violating § 16-505(b) and agreed to settle the violations. See Stipulation of Settlement of TWC-5619, TWC-5738, and TWC-7434.

100701/13 (App. Div. 1st Dep't, May 7, 2015) (Commission may consider prior bad acts of applicant and “the unpaid taxes and labor law violations attributed to [applicant’s] principal and his former company”).

On or about February 27, 2012, the Commission received a letter from the Applicant’s accountant attempting to explain the circumstances surrounding the debts owed by Stephen’s Landscaping. See letter from Robert Driscoll, dated February 27, 2012. According to Mr. Driscoll, the liens entered against Stephen’s Landscaping were the result of Cestro not notifying various agencies that the company had ceased operating in October 2005. *Id.* Mr. Driscoll’s letter demonstrates that Cestro and the Applicant were well aware of the outstanding debts of Stephen’s Landscaping in advance of the filing of the 2012 Application, but submitted it to the Commission notwithstanding those concerns.

According to a judgment and lien search conducted on May 1, 2012 (approximately six weeks after the 2012 Application was filed with the Commission), Stephen’s Landscaping owed substantial amounts of money to several government agencies:

Creditor	Filing Number	Amount
Internal Revenue Service	2008030701502001	\$2,349.00
Internal Revenue Service	2007120500210017	\$31,418.00
NYS Insurance Fund	07042606	\$16,631.00
NYS Workman’s Compensation Board	001118336	\$11,500.00
NYS Department of Labor	1110487	\$1,043.00
NYS Department of Labor	1137514	\$1,043.00
NYS Department of Taxation	E-01012370-W001-7	\$8,672.97
NYS Department of Taxation	E-0102370-W002-2	\$2,041.91
NYS Department of Taxation	E-01012370-W003-6	\$42,691.50

Total Amount of Debt: \$117,390.38

The Commission’s staff notified the Applicant of these debts in connection with the 2009 Application in several letters.⁴ The Commission’s staff also corresponded via email with Cestro’s fiancée, Mary Aloisio, on numerous occasions regarding the above-listed debts.⁵ Ms. Aloisio claimed in those emails that Cestro had entered into a payment plan with the IRS, and that the Applicant was making progress toward resolving the liens with the Department of Labor. *Id.* Despite these representations, the Applicant provided no proof to the Commission of payment of those liens or that Stephen’s Landscaping or Cestro had entered into a payment plan to reduce the amounts of the liens. Moreover, based on searches of public records databases, most of the Applicant’s debts continued to languish and remain unpaid.

⁴ See letters from the Commission’s staff to Applicant and/or its accountant, dated February 25, 2010, March 10, 2010, March 30, 2010, April 26, 2010, May 26, 2010, July 13, 2010, and January 21, 2011.

⁵ See Emails from Mary Aloisio, dated October 1, 2012, January 4, 2013, and January 9, 2013. Ms. Aloisio is not disclosed as a principal or employee on the 2012 Application, but may be one or both. She is the disclosed principal and owner of Four Seasons Design and Landscape II, a company that has also filed a Class 1 Registration application with the Commission. See Application #482034, filed on or about March 10, 2014, by Four Seasons Landscaping & Gutter Cleaning Maintenance Corp. This application is pending. Ms. Aloisio’s company shares a common address and facsimile telephone number with the Applicant.

An updated search on August 20, 2014, revealed that, although the debts had been reduced, Stephen’s Landscaping continued to carry a substantial amount of debt:

<u>Creditor</u>	<u>Filing Number</u>	<u>Amount</u>
NYS Department of Taxation	E-010124370-W002-2	\$2,047.91
NYS Department of Labor	1443853	\$1,034.78
NYS Department of Labor	1420441	\$1,033.19
NYS Department of Labor	1420155	\$2,469.46
NYS Department of Labor	1345983	\$1,035.06
NYS Department of Labor	1330424	\$4,494.09
NYS Department of Labor	1311716	\$1,037.13
NYS Department of Labor	1282259	\$1,030.59
NYS Department of Labor	1215562	\$5,779.83
NYS Department of Labor	1227862	\$1,039.15
NYS Department of Labor	1197091	\$1,041.66
NYS Department of Labor	1110487	\$1,043.37
NYS Department of Labor	1137514	\$1041.66
NYS Department of Labor	1171984	\$1042.52
Internal Revenue Service	2007120500210017	\$31,418.24
Internal Revenue Service	2008030701502001	\$2,349.00

Total Amount of Debt: \$58,937.64

The Commission’s staff repeatedly advised the Applicant that it must provide proof to the Commission of resolution of those outstanding debts. See letters to the Applicant, dated August 21, 2014 and September 15, 2014. On October 27, 2014, Cestro sent via facsimile an 11-page document entitled “Satisfaction of Liens” to the Commission’s staff, which did not address all of the outstanding judgments against the Applicant. See facsimile from Applicant, dated October 27, 2014. On November 18, 2014, the Commission’s staff sent the Applicant a letter advising it of this fact, and again providing a list of all outstanding liens and judgments. See letter to the Applicant, dated November 18, 2014.

On December 16, 2014, the Commission’s staff sent the Applicant another letter, requesting that it provide proof of resolution of all outstanding judgments by no later than December 30, 2014. See letter to Applicant, dated December 16, 2014. Manny Vidal, an accountant retained by the Applicant, sent the Commission a letter representing that, among other things, Cestro retained his firm eight days prior and that “the holidays are upon us and far less IRS agents are available to assist taxpayers.” See letter from Manny Vidal, dated December 23, 2014. Mr. Vidal’s assertion that he had only recently been retained to assist the Applicant is curious given that Mr. Vidal’s firm had been assisting the Applicant and was aware of its debts since at least 2010, as evidenced by numerous letters from Mr. Vidal to the Commission in 2010. See letters from Manny Vidal to the Business Integrity Commission, dated March 1, 2010, May 25, 2010, May 26, 2010, and July 22, 2010. Mr. Vidal requested extensions of time to comply,

and attempted to explain efforts the Applicant was making to resolve its debts.⁶ The Commission’s staff repeatedly requested information regarding the Applicant’s accountant’s progress.⁷ To date, the Applicant still has not provided proof that it has resolved these debts.

An updated search conducted on April 1, 2015 showed that the Applicant continued to owe the following outstanding judgments:

Creditor	Filing Number	Amount
NYS Department of Labor	1443853	\$1,034.78
NYS Department of Labor	1420441	\$1,033.19
NYS Department of Labor	1420155	\$2,469.46
NYS Department of Labor	1330424	\$4,494.09
NYS Department of Labor	1311716	\$1,037.13
NYS Department of Labor	1282259	\$1,030.59
NYS Department of Labor	1215562	\$5,779.83
NYS Department of Labor	1227862	\$1,039.15
NYS Department of Labor	1197091	\$1,041.66
NYS Department of Labor	1110487	\$1,043.37
NYS Department of Labor	1137514	\$1041.66
NYS Department of Labor	1171984	\$1042.52
Internal Revenue Service	2007120500210017	\$31,418.24
Internal Revenue Service	2008030701502001	\$2,349.00

Total Amount of Debt: \$55,863.67

In sum, the Commission’s staff repeatedly advised the Applicant of the existence of debts owed by Cestro (its principal) and Stephen’s Landscaping (Cestro’s former company), since the submission of the 2009 Application. Further, the Applicant withdrew the 2009 Application due to the existence of debts owed to government agencies, and was advised not to re-apply until its debt issues had been resolved. The Applicant’s failure to satisfy its outstanding debts and to provide proof of resolution of the judgments serve as the bases for this denial recommendation.

On May 13, 2015, the Commission’s staff served the Applicant with the Notice of Denial. See Notice of Denial. At the time of the issuance of the Notice of Denial, the Applicant had failed to satisfy any of the debts listed above. On May 21, 2015, the Applicant’s accountant

⁶ Mr. Vidal requested an extension of 15 business days from December 23, 2014 to submit evidence indicating that the tax matters were resolved. See letter from Manny Vidal, dated December 23, 2014. Mr. Vidal sent a second letter, also dated December 23, 2014, notarized and signed by both he and Cestro, amending his extension request to February 27, 2015. See second letter from Manny Vidal, dated December 23, 2014. The Commission granted the amended extension request.

⁷ On February 20, 2015, a member of the Commission’s staff spoke with Mr. Vidal and requested an update on all outstanding liens owed by the Applicant. Mr. Vidal stated that he was in contact with the Department of Labor and requested a “special meeting” with the agency to discuss the Applicant’s debt. See letter from Manny Vidal, dated February 20, 2015. The Commission’s staff again asked the Applicant’s accountant for an update regarding resolution of all judgments owed. See emails to Mr. Vidal, dated February 24, 2015, February 26, 2015, and February 27, 2015. The Commission’s staff again spoke to Mr. Vidal on March 2, 2015, and March 10, 2015, during which conversations Mr. Vidal made vague representations that Stephen’s Landscaping was nearing a resolution of all debts it owed to the IRS and Department of Labor.

sent an email to the Commission’s staff. See email from Manuel Vidal, dated May 21, 2015. In this email, the Applicant’s accountant attached IRS transcripts, and stated that “all of the transcripts [regarding Stephen’s Landscaping] show a zero balance.”⁸ Id. However, the IRS transcripts attached to the email demonstrate that the Applicant still owes at least \$24,430.20 to the IRS. Id. Additionally, an updated search conducted by the Commission’s staff on June 1, 2015, demonstrates that the following outstanding liens and judgments remain against the Applicant:

<u>Creditor</u>	<u>Filing Number</u>	<u>Amount</u>
NYS Department of Labor	1443853	\$1,034.78
NYS Department of Labor	1420441	\$1,033.19
NYS Department of Labor	1420155	\$2,469.46
NYS Department of Labor	1330424	\$4,494.09
NYS Department of Labor	1311716	\$1,037.13
NYS Department of Labor	1282259	\$1,030.59
NYS Department of Labor	1215562	\$5,779.83
NYS Department of Labor	1227862	\$1,039.15
NYS Department of Labor	1197091	\$1,041.66
NYS Department of Labor	1110487	\$1,043.37
NYS Department of Labor	1137514	\$1041.66
NYS Department of Labor	1171984	\$1042.52
Internal Revenue Service	2007120500210017	\$31,418.24
Internal Revenue Service	2008030701502001	\$2,349.00 ⁹

Total Amount of Debt: \$55,863.67

On May 22, 2015, the Commission’s staff called the Applicant’s accountant and advised him that, pursuant to 17 RCNY §2-08(a) and the Notice of Denial, the Commission would only consider a response under oath prepared by either the Applicant or its attorney. See Notice of Denial.

On May 28, 2015, the Commission received via email a scanned copy of an affidavit signed by Cestro. See email from Manuel Vidal, dated May 28, 2015. The affidavit states that Stephen’s Landscaping “did not owe any taxes and/or other government obligations because Stephen’s terminated any and all business activity” and that “the liens in question were arbitrarily placed against Stephen’s . . . and, therefore, legally without merit.” Id. Further, the affidavit states that the Applicant “has provided more than ample documentation, which establishes conclusively that Stephen’s did, in fact, terminate any and all business activity, as at [sic] December 31, 2005.” Id. Those arguments are unpersuasive. The question of whether the liens were issued arbitrarily, as the Applicant claims, is not before the Commission. There is no

⁸ The Applicant’s accountant states that, “[T]he NYS Labor Department is going to give Mr. Cestro a hearing, so that he could provide testimony and evidence that Stephen’s Landscaping Inc. was not active, after the final quarter of the calendar year 2005. We have conclusive evidence of that fact. I am waiting for a letter, which should be in my hands shortly.” Id. To date, Applicant’s accountant has not provided said letter. Further, this correspondence makes plain that the Department of Labor liens remain outstanding against the Applicant’s predecessor company.

⁹ These amounts remain entirely unchanged from the Commission staff’s search on April 1, 2015.

question that the liens exist and significant portions of them remain unpaid and unresolved. The Commission's staff has repeatedly advised the Applicant of the existence of its principal's and his predecessor company's debts, and that the liens against it have remained unresolved for years, a matter which the Applicant does not dispute. Further, the Commission has consistently and continually requested documentation regarding the satisfaction of the liens docketed against Stephen's Landscaping, which the Applicant has failed to provide.

Basis for Denial

A. The Applicant Lacks Good Character, Honesty and Integrity Because It Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

The Commission may refuse to issue a license to an applicant as lacking good character, honesty and integrity upon the failure of the applicant "to pay any tax, fine, penalty, fee related to the applicant's business . . . for which judgment has been entered by a court or administrative tribunal of competent jurisdiction." See Admin. Code § 16-509(a)(x). See also id. at § 16-504(a).

As of the date of this Decision, Cestro's former company has failed to pay \$55,863.67 owed to the New York State Department of Labor and the Internal Revenue Service. There can be no credible argument that the Applicant and Cestro were unaware of the debts, which have been outstanding for years. The Commission has repeatedly brought the debts to the Applicant's attention and directed the Applicant and its principal to resolve them. In fact, the Applicant withdrew the 2009 Application because of those debts. The Applicant's failure to satisfy the outstanding debts demonstrates that the Applicant lacks the good character, honesty and integrity necessary to be registered with the Commission. See Admin. Code § 16-509(a)(x). For this independently sufficient reason, the Commission denies the 2012 Application.

B. The Applicant Lacks Good Character, Honesty and Integrity Because It Knowingly Failed to Provide Information and Documentation Required by the Commission.

The Commission may refuse to issue a license to an applicant as lacking good character, honesty and integrity upon the failure of the applicant "to provide truthful information in connection with the application." See Admin. Code § 16-509(a)(i). See also id. at § 16-504(a). Furthermore, "[t]he Commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." See Admin. Code § 16-509(b).

Despite repeated requests by the Commission's staff, and extensions of time to comply with those requests, the Applicant has failed to provide proof of resolution of certain outstanding fines, judgments and liens that Stephen's Landscaping owes to governmental entities. See letters to the Applicant, dated August 21, 2014, September 15, 2014, November 18, 2014, December 16, 2014, January 30, 2015, and March 11, 2015. Therefore, the Applicant has "knowingly

failed to provide the information required” by the Commission by failing to respond to the Commission’s repeated requests for information and documentation. See Admin. Code §§ 16-509(a)(i); 16-509(b). For this independently sufficient ground, the 2012 Application is denied.

Conclusion

The Commission is vested with broad discretion to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license, to any applicant who it determines to be lacking in good character, honesty and integrity. The record as detailed above demonstrates that the Applicant falls short of that standard. Accordingly, based on the independently sufficient reasons set forth above, the Commission denies Four Seasons’s registration application.

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This registration denial is effective immediately. Four Seasons may not operate as a trade waste business in the City of New York.

Dated: June 22, 2015

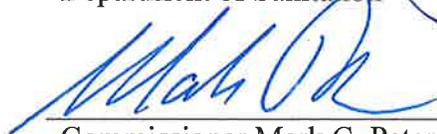
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