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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 EXEMPTION APPLICATION OF FRANK LIQUORI PLUMBING & HEATING INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Frank Liquori Plumbing & Heating Inc. (“FLP&H” or the “Applicant”) has applied to the New York City Business Integrity Commission (“Commission”), formerly known as the New York City Trade Waste Commission, for an exemption from licensing requirements and a registration to operate 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.

On September 2, 2005, FLP&H applied to the Commission for an exemption from licensing requirements and for a registration enabling it to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” – a type of waste commonly known as construction and demolition debris, or “c & d.” Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for exemptions. See id. If, upon review and investigation of the exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

In determining whether to grant an exemption from licensing requirements and 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 an exemption 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); 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 FLP&H's exemption application and refuses to issue FLP&H a registration:

- The Applicant's President was Convicted of the Federal Crime of Conspiracy to Bribe a Public Official.
- The Applicant Engaged in Long-Term Unregistered Activity and Paid a \$5,000 Fine to Settle Administrative Charges Relating to Such Activity.

I. REGULATORY 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 guilty 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 over the past decade. 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.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("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 constitutional challenges (both facial and as applied) 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

FLP&H is a plumbing company owned and operated by Frank Liquori, Sr. ("Liquori"), President. See Exemption Application of FLP&H ("Application") at 17. The only other principal of the Applicant is Liquori's wife, Lorraine K. Schaffer Liquori, Secretary. Id.

On September 2, 2005, FLP&H filed an application for an exemption from licensing and a trade waste registration. The staff has conducted an investigation of the Applicant and its principals. On January 27, 2006, the staff issued a 7-page recommendation that the application be denied. The Applicant's Secretary 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 14, 2006, the Applicant's attorney requested additional time and was granted an extension until February 21, 2006. On February 21, 2006, the Applicant submitted a 4-page response. See Affidavit of Frank Liquori, Sr. ("Response").

A. The Applicant's President was Convicted of the Federal Crime of Conspiracy to Bribe a Public Official.

In 2004, Frank Liquori, the President and sole owner of FLP&H, was convicted of Conspiracy to Bribe a Public Official, in violation of 18 U.S.C. §371. See Application at 7, 11, 13; See also Certification for Temporary Permission to Operate. Under that statute, "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both." See 18 U.S.C. §371.

The investigation began in October 1999 after an inspector employed by the New York City Department of Buildings ("DOB"), acting as an agent of the New York City Department of Environmental Protection ("DEP"), reported receiving a bribe from a plumber. Thereafter, the inspector agreed to actively cooperate with law enforcement and began wearing a recording device. The inspector recorded numerous conversations with Liquori and other plumbers, who collectively paid the inspector on over 100 occasions in amounts ranging from \$20 to \$1,400 to obtain expedited approvals for work or approvals without the necessary DOB/DEP inspections or permits.¹ Liquori and the other plumbers paid a total of approximately \$34,000 in bribes to the inspector. A total of fourteen (14) plumbers and two developers were arrested and charged after the investigation was completed. See United States Attorney's Office for the Eastern District of New York Press Release dated October 30, 2003 ("EDNY Press Release") at 2.

¹ The plumbers were responsible for installing new sewer connections, making repairs to existing sewer systems and connecting water pipes to the New York City water system in all five boroughs of New York City. Sewer installations required filing plans with DEP and obtaining work permits from DEP, DOB and the NYC Department of Transportation. The permits and a copy of a DEP-approved sewer application needed to be presented to the DOB/DEP inspector on the date of the inspection. Had the work been found to be in compliance with DOB and DEP regulations, the inspector would have approved the work and would have issued a Certificate of Inspection. See United States Attorney's Office for the Eastern District of New York Press Release dated October 30, 2003 ("EDNY Press Release") at 3.

The investigation revealed that Liquori and four of his co-defendants formed a “club” and offered to pay the inspector \$400 monthly to obtain approvals for all the work performed by their respective companies. The club defendants even offered to pay the inspector an additional monthly sum of \$600 to encourage the inspector to deny approval of the work performed by their principal competitor. Id. at 2.

On October 30, 2003, Liquori and his co-defendants² were arrested and charged with Bribery³ and Mail Fraud.⁴ On April 20, 2004, Liquori pleaded guilty to Conspiracy to Bribe a Public Official, in violation of 18 U.S.C. 371. Id. at 3. On December 3, 2004, Liquori was sentenced to three years probation, a \$10,000 fine, a \$100 special assessment and 1040 hours of community service. Liquori is still serving the probationary portion of his sentence. See Application at 7, 11, 13; See also Certification for Temporary Permission to Operate.

In its response, the Applicant did not dispute the conviction or the underlying facts. See Response at 2. Instead, Liquori argued that he had no other criminal record besides this incident and that he was remorseful. Id. However, Liquori’s purported remorse was not for his own actions, but for the “scandal involving [his co-defendant] Mr. Gregorio and the bribery charges.” Id. Rather than fully accepting responsibility for his own actions, he attempted to shift blame to his co-defendant, Louis Gregorio.⁵ His

² One of Liquori’s co-defendants was his son, Frank Liquori, Jr (“Junior”). See EDNY Press Release at 6. Liquori notified the Commission in a notarized letter dated September 2, 2005 that he was giving Junior power of attorney “to make any decisions on [his] behalf” with regard to the Applicant business. See Letter from Liquori to the Commission, dated September 2, 2005. Such authority renders Junior a principal of the Applicant business. See Admin. Code §16-501(d)(definition of “principal” includes all “persons participating directly or indirectly in the control” of the Applicant business). Liquori’s delegation of control of the Applicant business to his son and co-defendant in the bribery scheme does not reflect well on his business judgment or integrity.

³ According to 18 U.S.C. §666(a)(2), “whoever ... corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$5,000 or more shall be fined under this title, imprisoned not more than 10 years, or both.” This applies to agencies that receive in excess of \$10,000 in any one-year period under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance. See 18 U.S.C. §666(b).

⁴ According to 18 U.S.C. §1341, “Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both.”

⁵ In response, Liquori appears to claim that Gregorio’s application (without identifying Gregorio’s purported company) before the Commission has been treated more favorably despite similar criminal conduct by Gregorio. See Response at 3-4. Liquori is incorrect. While every application before the Commission presents unique facts and is evaluated independently on its own merits, the Commission believes that the company referenced by Liquori is Richmond County Carting Services, Inc. (“RCCS”).

remorse focused on the impact of his arrest and conviction rather than sincere regret for committing the crimes.

Furthermore, the Applicant's argument that Liquori's criminal record was limited to the bribery conviction is not persuasive. The Commission does not find the absence of additional aggravating factors to be a mitigating factor in the Applicant's favor. This crime was not an isolated incident committed by a naïve youth; rather, this crime consisted of multiple criminal acts committed over a lengthy period of time by an experienced businessman in furtherance of the Applicant business.

The President of the Applicant committed crimes that go directly to the heart of Liquori's "good character, honesty and integrity."⁶ His crimes constitute "racketeering activities" under 18 U.S.C. §1961(1) and NYS Penal Law §460.10(1). As the sole owner and President of the Applicant, there is no distinction between Liquori and the Applicant business; as a result, a conviction that demonstrates a lack of good character of the sole principal necessarily demonstrates a lack of good character of the Applicant business as well. The conviction of Liquori is an independently sufficient basis to deny FLP&H's exemption application. See Admin. Code §16-509(a)(v).

However, as of the date of this decision, the application of RCCS is currently pending and no decision (favorable or otherwise) has been reached.

⁶ In making licensing determinations, the Commission is expressly authorized to consider prior convictions of the Applicant (or any of its principals) for crimes that, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also id. §16-501(a). Those factors are: (a) the public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses; (b) the specific duties and responsibilities necessarily related to the license . . . sought; (c) the bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities; (d) the time which has elapsed since the occurrence of the criminal offense or offenses; (e) the age of the person at the time of occurrence of the criminal offense or offenses; (f) the seriousness of the offense or offenses; (g) any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct; (h) the legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public. N.Y. Correct. Law §753 (1). Applying these factors, the Commission finds that, notwithstanding the public policy of the State of New York to encourage licensure of persons convicted of crimes, the crimes committed by Liquori are antithetical to the very purpose of Local Law 42, which is to root out corruption from the trade waste industry. Liquori was 68 years old in 2003, and his criminal conduct cannot be described as a "youthful indiscretion." Moreover, the conviction is recent and is for activity directly related to the Applicant's business.

B. The Applicant Engaged in Long-Term Unregistered Activity and Paid a \$5,000 Fine to Settle Administrative Charges Relating to Such Activity.

FLP&H is a plumbing company that hauls debris resulting from new construction (dirt, sand, broken asphalt, stone, broken concrete).⁷ See Exemption Application at 4. FLP&H has been operating and hauling debris in the five boroughs of New York City since it was incorporated in September 19, 1984. See Certificate of Incorporation of FLP&H. FLP&H has been hauling trade waste without a license or registration from the Commission (or, before 1996, from the Department of Consumer Affairs).

On September 2, 2005, FLP&H was charged administratively with operating an unlicensed waste removal business, in violation of §16-505(a) of the New York City Administrative Code. See DCA Notice of Hearing, #TWC-1203. On September 2, 2005, FLP&H agreed to pay a fine in the amount of \$5,000 to settle the administrative charges.⁸

In its response, the Applicant admits that it removed “its own dirt, concrete and asphalt from its work sites,” but “never believed or understood” the need to be registered to do so and only settled the charges “in the effort to fully cooperate with the City of New York.” See Response at 3. The Commission does not find the Applicant’s purported ignorance of the law or his claim that such ignorance exists throughout his industry to be an acceptable excuse.

Long-term unregistered activity is further evidence of FLP&H’s lack of business integrity and disregard for the law, and is another independent, sufficient basis upon which to deny its exemption application. See Admin. Code 16-509(a)(iv).

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 FLP&H falls far short of that standard.⁹

⁷ In its response, the Applicant emphasizes that it removes soil, asphalt and concrete as by-products generated from job sites it works on and that it does not remove waste generated by other companies. See Response at 2. The Commission does not dispute the Applicant’s representation of the type of debris it hauls. Even under the facts as presented by the Applicant, it is still required to apply for a trade waste license or an exemption from licensing and is still required to meet the fitness standard of good character, honesty and integrity.

⁸ Liquori was also charged criminally. On September 1, 2005, Frank Liquori was arrested by Commission detectives and charged with operating an unlicensed waste removal business, a misdemeanor, in violation of §16-505(a) of the New York City Administrative Code. The criminal case has since been sealed. However, the Commission may consider the underlying facts and make independent findings regarding whether or not the Applicant meets the fitness standard for a trade waste registration.

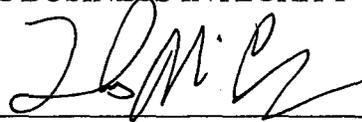
⁹ In its response, the Applicant appears to argue that the Commission previously investigated Liquori in connection with another company (name omitted) and that the Commission previously found Liquori to possess good character, honesty and integrity. See Response at 3. This argument is factually incorrect. Other than the instant application, the Commission has never received an application from a company owned by Liquori. Even assuming that Liquori was a principal in Liquori Carting, Inc. (“LCI”)(whose application stated that the sole principal was Liquori’s son, Frank Liquori, Jr.), LCI was never approved by

It is of grave concern to the Commission that the sole principal of the Applicant engaged in a large-scale bribery operation on behalf of the Applicant. Based upon the above independently sufficient reasons, the Commission denies FLP&H's exemption application and registration.

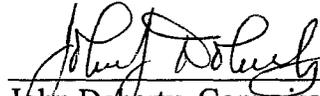
This exemption/registration denial is effective immediately. FLP&H may not operate as a trade waste business in the City of New York.

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

the Commission. Rather, LCI's application was withdrawn on July 19, 2004 for failure to respond to several requests for information by the Commission.