



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
REGISTRATION RENEWAL APPLICATION OF GRACE CARTING CORP.
TO OPERATE AS A TRADE WASTE BUSINESS**

Introduction

On March 9, 2018, Grace Carting Corp. (the “Applicant”) (BIC #487713) applied to the New York City Business Integrity Commission to renew an exemption from licensing requirements and a registration to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” (the “Renewal Application”).¹ Local Law 42 of 1996 authorizes the Commission to review and make determinations on such exemption applications. *See* Title 16-A, New York City Administrative Code (“Admin. Code”) § 16-505(a).

After a review of a trade waste registration renewal application, if the Commission grants the renewal of the exemption from the Commission’s trade waste licensing requirements, the applicant will be issued a registration renewal. *See id.* at § 16-505(a)-(b). The Commission’s review of an initial exemption application or an application to renew such an exemption focuses on determining whether the applicant possesses business integrity, *i.e.*, good character, honesty and integrity. *See* Title 17, Rules of the City of New York (“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 § 16-504(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 or registrations to applicants lacking “good character, honesty and integrity”).

The Commission’s staff has reviewed the Renewal Application and conducted a background investigation of the Applicant. As part of this investigation, the Commission attempted to take the testimony of principal Mark Loughlin. Instead of cooperating with the Commission’s investigation, Loughlin refused to testify and instead attempted to withdraw the Renewal Application in an effort to frustrate and obstruct the Commission’s investigation.

¹ “Trade waste” or “waste” is defined at Admin. Code § 16-501(f)(1) and includes “construction and demolition debris.”

On February 24, 2020, Commission staff served on the Applicant and their attorneys an eight page Notice of the Grounds to Deny the Registration Renewal Application of Grace Carting Corp. (the “Notice”). The Applicant was given 10 business days until March 9, 2020, to file a response with the Commission. *See* 17 RCNY § 2-08(a). On March 3, 2020, attorneys for the Applicant requested an extension of time to respond, to March 16, 2020. *See* E-mails from Rither Albare to Commission staff dated March 3, 2020. The Commission granted this request. *See* E-mails from Commission staff to Rither Albare dated March 4, 2020. On March 12, 2020, attorneys for the Applicant requested another extension of time, to March 23, 2020, to file a response with the Commission. *See* E-mails from Rither Albare to Commission staff dated March 12, 2020. Again the Commission granted this request. *See* E-mails from Commission staff to Rither Albare dated March 12, 2020. On March 19, 2020, the Applicant filed a four page response with the Commission, which also consisted of an introductory letter, as well as three exhibits and a notarized affidavit signed by Mark Loughlin (collectively, the “Applicant’s Response”).

The Commission has completed its review of the Renewal Application, having considered the Notice as well as the Applicant’s Response. Based on the record herein, the Commission denies the Applicant’s registration renewal application because the Applicant lacks good character, honesty, and integrity based on the following two independently sufficient grounds:

- 1. The Applicant knowingly failed to provide information to the Commission; and**
- 2. The Applicant has previously been found to lack the “requisite reliability, competence, expertise and integrity” to participate in the State of New Jersey’s solid waste industry.**

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, known as trade waste. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. *See, e.g., United States v. Int’l Brotherhood of Teamsters (Adelstein)*, 998 F.2d 120 (2d Cir. 1993); *People v. Ass’n of Trade Waste Removers of Greater New York Inc.*, Indictment No. 5614/95 (Sup. Ct. N.Y. Co.); *United States v. Mario Gigante*, No. 96 Cr. 466 (S.D.N.Y.); *People v. Ass’n of Trade Waste Removers of Greater New York*, 701 N.Y.S.2d 12 (1st Dep’t 1999). The construction and demolition debris removal sector of the City’s carting industry specifically has also been the subject of significant successful racketeering prosecutions. *See United States v. Paccione*, 949 F.2d 1183, 1186-88 (2d Cir. 1991), *cert. denied*, 505 U.S. 1220 (1992); *United States v. Cafra*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri*, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the influence of organized crime and preventing its return to the City’s private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. Admin. Code § 16-505(a). This regulatory framework continues to be the primary means of ensuring that

an industry once overrun by corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation,” also known as construction and demolition (or “C & D”) debris, must apply to the Commission for an exemption from the licensing requirement. Admin. Code § 16-505(a). If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a Class 2 registration. *Id.* at § 16-505(a)-(b). Before issuing a registration, the Commission must evaluate the “good character, honesty and integrity of the applicant.” *Id.* at § 16-508(b); *see also id.* at § 16-504(a). An “applicant” for a license or registration means both the business entity and each principal of the business. *Id.* at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in determining whether to grant 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; and
11. failure to comply with any city, state or federal law, rule or regulation relating to traffic safety or the collection, removal, transportation or disposal of trade waste in a safe manner.

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

The Commission also may refuse to issue a license or registration to any applicant who has “knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for a license.” *Id.* at § 16-509(b). *See also id.* at § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial); *Elite Demolition Contracting Corp. v. The City of New York*, 4 N.Y.S.3d 196, 125 A.D.3d 576 (1st Dep’t 2015); *Breeze Carting Corp. v. The City of New York*, 52 A.D.3d 424 (1st Dep’t 2008); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”); *leave denied* 2 N.Y.3d 705 (N.Y. 2004). In addition, the Commission may refuse to issue a license or registration to an applicant that “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” *Id.* at § 16-509(c); *see also id.* at § 16-504(a). Finally, the Commission may refuse to issue a license or registration to any applicant when the applicant or its principals have previously had a license or registration revoked. *Id.* at § 16-509(d); *see also id.* at § 16-504(a).

An applicant for a private carting license (including a registration for hauling C & D debris) has no entitlement to, and no property interest in a license or registration; the Commission is vested with broad discretion to grant or deny a license or registration application. *Sanitation & Recycling Indus., Inc.*, 107 F.3d 985, 995 (2d Cir. 1997); *see also Daxor Corp. v. New York Dep’t of Health*, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997).

Statement of Facts

Licensing History in New Jersey

From December 2007 to June 2018, the Applicant operated as a trade waste company in New Jersey. In 2018, the Applicant filed an application with the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste (“NJDEP”) to retain its solid

waste license under N.J.S.A. 13E-126 *et seq.*, also known as the A-901 Act (“A-901”). Following this initial application, the Applicant was required to file with the NJDEP an annual report of their ongoing activities. The Applicant failed to file any annual report in the years 2013, 2014, 2015, and 2018. On or about June 14, 2018, the NJDEP denied the Applicant’s A-901 license application. *See* Order of Denial of A-901 Application of Grace Carting Corp. and Debarment of Mark Loughlin and Rodger Loughlin (“A-901 Denial”). In denying the Applicant’s A-901 license and debarment of the Applicant’s principals, the NJDEP found, among other things, that:

1. On November 9, 2010, the NJDEP discovered that the Applicant was illegally transporting New York solid waste into New Jersey by using the decals of Grasso Carting, a company formerly licensed by the NJDEP;
2. The Applicant was issued an Administrative Order and Notice of Civil Administrative Penalty Assessment in the amount of \$107,964.96, which the Applicant paid on April 10, 2015;
3. Based on the Applicant’s cooperation and the payment of the abovementioned penalties, the NJDEP intended to approve the Applicant for a solid waste license, contingent on the Applicant attending a mandatory compliance assistance workshop;
4. On numerous occasions since August 2016, the NJDEP has contacted the Applicant and its representatives to schedule a compliance assistance workshop, which the Applicant and its representatives failed to attend;
5. The NJDEP recently attempted to contact the Applicant by telephone, using the telephone number provided to the NJDEP in the Applicant’s most recent A-901 update. The NJDEP found that telephone number now belongs to another company;
6. The Applicant failed to file annual updates for the years 2013, 2014, 2015, and 2018;
7. For the year 2017, the NJDEP sent a Notice of Suspension of the Applicant’s A-901 license application, because it failed to submit the A-901 annual update in a timely manner; and
8. On February 15, 2018, the NJDEP sent a Formal Request for Information and Notice of Suspension of the company’s A-901 license application because the Applicant failed to submit the annual update by the due date of November 1, 2017.

See A-901 Denial.

Ultimately, the NJDEP denied the Applicant’s A-901 license because, “based on the unwillingness to attend a compliance workshop, the failure to file annual updates on time and on a regular basis, and failure to provide the New Jersey Attorney General with accurate information, [the Applicant] clearly shows a lack of reliability, competency and expertise to follow the most basic of regulations.” *See id.* The A-901 Denial also prohibited Mark Loughlin and Rodger

Loughlin “from acting as [a] key employee, equity holder or debt holder of any A-901 licensed company for five years.” *Id.*

The Applicant requested and was granted a hearing concerning the A-901 Denial on July 9, 2018. In this request, the Applicant admitted some of the bases for the A-901 Denial—including that “[o]n numerous occasions since August 2016, DEP has contacted the company and its representatives to schedule a compliance assistance workshop[;] [t]he company and its representatives have consistently failed to attend”—while denying others. *See Applicant’s Response, Exhibit B.*

Subsequently, the Applicant and NJDEP entered into an Administrative Consent Order (“ACO”) which allowed the Applicant to withdraw its pending A-901 application in exchange for Grace Carting, Mark Loughlin and Rodger Loughlin agreeing not to reapply for an A-901 license and to refrain from any involvement in the commercial waste industry in New Jersey for a period of five years. *See Applicant’s Response, Exhibit C.* The ACO reiterated certain key findings of the A-901 Denial, including the following:

1. Beginning in August 2016, the Department repeatedly attempted to contact the Respondents to schedule their attendance at a mandatory compliance assistance workshop. The Respondents did not attend the workshop.
2. Grace Carting did not file A-901 annual updates for 2013, 2014, 2015, and 2018.

See id.

The Applications Filed With the Commission

On or about June 10, 2015, the Applicant applied to the Commission for an exemption from the licensing requirement for the removal of C & D. *See June 10, 2015 Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris of Grace Carting Corp. (the “Application”).* On or about March 4, 2016, the Commission granted the Applicant an exemption and issued it a class 2 registration. *See Registration Order issued to Grace Carting Corp.* The Applicant’s registration was effective for two years and expired on March 31, 2018. *See id.*

On or about March 9, 2018, the Applicant filed a Renewal Application for a License or Registration as a Trade Waste Business. *See Renewal Application.* Both the Application and the Renewal Application listed brothers Mark Loughlin (President) and Rodger Loughlin (Vice President) as the only principals of the Applicant. *See Application at 13; Renewal Application at 8.* The Renewal Application asked the following question:

Has the applicant or any of the applicant’s principals been charged with any civil or administrative violations by any governmental agency?

See Renewal Application at 4. The Applicant answered “yes” in response to this question and stated that the “New Jersey Department of Environmental Protection (NJDEP) issued a violation dated May 11, 2011.” See *id.*

In connection with the Renewal Application, the Commission’s staff advised the Applicant that it wished to take Mark Loughlin’s testimony on September 24, 2019. See August 14, 2019 letter from the Commission’s staff to Mark Loughlin. In response, on or about August 19, 2019, the Applicant’s attorney sent the Commission a letter in which the Applicant stated that it wished to withdraw the Renewal Application. See August 19, 2019 letter from Rocco Iacoviello to the Commission. The Commission declined the Applicant’s request to withdraw the Renewal Application in advance of Mark Loughlin’s testimony. See August 23, 2019 letter from the Commission’s staff to Rocco Iacoviello. After several communications between Commission staff members and attorneys for Mark Loughlin, Mark Loughlin agreed to appear and provide testimony on October 30, 2019. See E-mails from Commission Staff to Rocco Iacoviello (September 30, 2019 & October 2, 2019).

On October 28, 2019, two days before Mark Loughlin was scheduled to provide testimony, the Applicant filed a petition in New York State Supreme Court, New York County, alleging that the Commission had acted in an arbitrary and capricious manner in rejecting the Applicant’s request to withdraw the Renewal Application. See October 28, 2019 Order to Show Cause. On October 29, 2019, the Commission’s staff clarified to the Applicant’s attorney that a final determination regarding the Applicant’s request to withdraw the application could not occur prior to the sworn interview of Mark Loughlin, which was scheduled for the following day. See October 29, 2019 letter from Commission Staff to the Applicant’s attorney. In response, the Applicant informed the Commission’s staff that Mark Loughlin would not cooperate with the Commission and provide sworn testimony while the Applicant’s Article 78 petition was pending.

On December 23, 2019, Judge Lyle Frank dismissed the Applicant’s petition and found that the Commission’s decision to deny the Applicant’s request to withdraw the Renewal Application was not arbitrary or capricious. See *Grace Carting Corp. v. The City of New York, The City of New York Business Integrity Commission*, 2019 N.Y. Slip Op. 33707(U), 2019 WL 7067074 (N.Y. Sup. Ct. N.Y. Co. Dec. 23, 2019). Following the Court’s decision, the Commission’s staff again communicated with the Applicant’s attorney to schedule the sworn interview of Mark Loughlin. On January 17, 2020, the Applicant informed the Commission that Mark Loughlin still would not appear for his sworn interview. See January 17, 2020 letter from Rocco Iacoviello to the Commission.

Had Loughlin testified as required, the Commission’s staff would have asked him questions about several subjects, including but not limited to the relationship between the Applicant and Grasso Carting, the Applicant’s use of Grasso Carting’s decals, and the Applicant’s reasons for choosing not to fulfill any of the reporting requirements required by the NJDEP. Additionally, the Commission’s staff would have inquired about the Applicant’s failure to notify the Commission regarding the A-901 license denial, as is required by the Commission’s rules. See 17 RCNY § 2-05(a)(2).

Basis for Denial

1. The Applicant knowingly failed to provide information to the Commission.

The Commission has the power and duty “[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation.” Admin. Code § 16-504(c). On numerous occasions, the Applicant hindered the Commission’s investigation by first delaying and then refusing to appear to provide sworn testimony, culminating in the Applicant’s willful failure to provide requested information.

In its Response, the Applicant argued that Mark and Rodger Loughlin previously answered questions posed by the Commission’s staff during unsworn interviews conducted in 2018. *See* Applicant’s Response at 2. Furthermore, the Applicant argued that sworn interviews should not be necessary because the Applicant had not conducted any business for some time and because the Applicant wished to withdraw the Renewal Application. *See id.*

The Applicant’s arguments affirm that the Applicant refused to cooperate with the Commission’s investigation by first delaying, and then refusing to provide sworn testimony. Again, had Loughlin testified as required, the Commission’s staff would have asked him questions about several subjects, including but not limited to the relationship between the Applicant and Grasso Carting, the Applicant’s use of Grasso Carting’s decals, and the Applicant’s reasons for choosing not to fulfill any of the reporting requirements required by the NJDEP. Additionally, the Commission’s staff would have inquired about the Applicant’s failure to notify the Commission regarding the A-901 license denial. Many of the subjects that Commission staff’s questions would have explored concerned events that occurred after the unsworn interviews took place on May 17, 2018.

The Commission may refuse to grant a registration if an applicant “has knowingly failed to provide the information and/or documentation required by the commission . . .” Admin. Code § 16-509(b). The Applicant was advised on multiple occasions that the failure to answer the Commission’s questions under oath is an adequate ground on which to deny the Renewal Application. Yet, Loughlin – one of the Applicant’s two principals – refused to provide sworn testimony in connection with the Renewal Application. Accordingly, the Commission denies the Renewal Application based on this independently sufficient ground.

2. The Applicant has previously been found to lack the “requisite reliability, competence, expertise and integrity” to participate in the State of New Jersey’s solid waste industry.

The Commission may consider 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. Admin. Code § 16-509 (a)(iv). As noted above, the Applicant has established a history of violations so extensive that the State of New Jersey denied its A-901 license. The violations ranged from the use of another carting company’s decals to failing to attend required

NJDEP classes to failing to file required annual updates for four separate years over a six-year period. *See* A-901 Denial.

The Applicant's Response seeks to argue that the Commission may not consider the A-901 Denial because the NJDEP and the Applicant subsequently entered into the ACO, which "is not an admission of guilt or liability." *See* Applicant's Response at 3. The ACO, however, does not nullify the facts set forth in the A-901 Denial or the circumstances that preceded it. The language relied on by Applicant is standard boilerplate, and does not address the findings detailed in the A-901 Denial or render those findings immaterial to the Commission's determination of the Applicant's character, honesty, and integrity. Indeed, as noted above, the ACO reiterates certain key findings of the A-901 Denial and requires Grace Carting, Mark Loughlin and Rodger Loughlin not to reapply for an A-901 license and to refrain from any involvement in the commercial waste industry in New Jersey for a period of five years. *See* ACO.

The facts, circumstances and findings by the State of New Jersey, including the finding in the A-901 Denial that the Applicant lacks the "requisite competence, expertise and integrity" to participate in the State's waste industry, indicate that the Applicant lacks the good character, honesty and integrity required to do business in the City of New York. For this independently sufficient basis, the Commission denies the Renewal Application.

Conclusion

The Commission is vested with broad discretion to refuse to issue a license or an exemption from the license requirement to any applicant it determines lacks good character, honesty and integrity. The record as detailed herein demonstrates that the Applicant lacks those essential qualities. Accordingly, based on the two independently sufficient grounds detailed above, the Commission denies the instant Application of Grace Carting Corp.

The registration denial is effective immediately. Grace Carting Corp. may not operate in the trade waste industry in the City of New York

Dated: March 30, 2020

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION

**Approved at March 30, 2020
Telephonic Commission Meeting**

Noah D. Genel
Commissioner and Chair

**Approved at March 30, 2020
Telephonic Commission Meeting**

Robert Orlin, Deputy Commissioner of Legal
Affairs (Designee)
Department of Sanitation

**Approved at March 30, 2020
Telephonic Commission Meeting**

Margaret Garnett, Commissioner
Department of Investigation

**Approved at March 30, 2020
Telephonic Commission Meeting**

Lorelei Salas, Commissioner
Department of Consumer and Worker Protection

**Approved at March 30, 2020
Telephonic Commission Meeting**

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

**Approved at March 30, 2020
Telephonic Commission Meeting**

Matthew Hyland, Inspector
(Designee)
New York City Police Department