



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 J. C. LANDSCAPE CONTRACTING CORP. FOR RENEWAL OF ITS REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

J. C. Landscape Contracting Corp. ("J. C. Landscape" 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 a renewal of its 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(b). 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 December 28, 2004, J. C. Landscape submitted its application to the Commission for a renewal of its registration ("Registration Renewal Application" or "Renewal Application") enabling it to continue to operate a trade waste business engaged in the removal of "trade waste that is generated in the course of operation" of its business. Admin. Code §16-505(b).

Local Law 42 authorizes the Commission to refuse to issue a license or registration to any applicant, who it determines, in the exercise of its discretion, lacks good character honesty and integrity. See Admin. Code §16-509. The statute identifies a number of factors that the Commission may consider in making its determination. See id. §16-509(a) – (d). These illustrative factors include the failure of an applicant to provide truthful information to the Commission in connection with the application and/or the knowing failure to provide information required by the Commission. See id.

Based upon the record of J.C. Landscape, the Commission denies its Registration Renewal Application on the grounds that this applicant lacks good character, honesty, and integrity for the following independently sufficient reasons:

1. The Applicant, by its sole principal, failed to provide truthful information to the Commission in connection with its Renewal Application;

2. The Applicant's sole principal was convicted of Offering a False Instrument for Filing, in violation of New York State Penal Law §175.30

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 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); Attonito, 3 A.D.3d 415.

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the

information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases "where the applicant fails to provide the necessary information, or knowingly provides false information." It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Id.; accord Breeze Carting Corp. v. The City of New York, No. 107859/07 (Sup. Ct. N.Y. Cty. April 1, 2008) (Commission denial not arbitrary and capricious where based on a criminal conviction, identification as an organized crime associate, and false and misleading statements.) Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;
9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

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

II. DISCUSSION

On December 28, 2004, J.C. Landscape, by Gerardo J. Carbonaro ("Carbonaro"), its President and sole principal, submitted an application for renewal of its registration as a trade waste business. Carbonaro signed a notarized certification swearing to the truth of the contents of the application. See Renewal Application at 9. The staff conducted a background investigation of the Applicant and its principal, which revealed that Carbonaro had made a false statement on the application. On February 29, 2008 the staff issued an eight-page recommendation that J.C. Landscape's Renewal Application be denied. The Applicant was served by mail with the Commission's recommendation on March 17, 2008. On March 26, 2008, the Commission received the Applicant's response to the staff's recommendation, which consisted of a one-page Affidavit by Gerardo Carbonaro and a two-page Affirmation by the Applicant's attorney. The Commission has carefully considered the staff's recommendation and the Applicant's response. For the

reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity and has failed to demonstrate eligibility for a registration. Therefore, the Commission denies J. C. Landscape's Renewal Application.

A. The Applicant Knowingly Failed to Provide Truthful Information to the Commission in Connection with its Renewal Application

The Commission may refuse to issue a registration to an Applicant who has failed "to provide truthful information in connection with the application." See Admin. Code §16-509(a)(b); Attonito, 3 A.D.3rd 415 (1st Dept. 2004) *leave denied*, 2 N.Y. 3rd 705 (2004). See also Breeze Carting Corp. v. The City of New York, No. 10759/07 (Sup. Ct. N.Y. Cty. April 1, 2008).

Question 6 of the Renewal Application filed by J.C. Landscape on December 28, 2004 asks, "Have you or any of your principals, employees, or affiliates been convicted of any criminal offense in any jurisdiction, or been the subject of any criminal charges in any jurisdiction?" See Application at 2. Applicant, by its principal, Carbonaro, falsely responded "no" to this question. Id.

The Applicant's answer to Question 6 was false, and Carbonaro knowingly failed to provide truthful information to the Commission in response to this question, in that on November 11, 2004, he was arrested and charged with: Criminal Possession of a Weapon – 3rd (loaded gun); Menacing – 2nd; and Assault With Intent to Cause Physical Injury; under §265.02, §120.14, and §120.00, respectively, of the New York State Penal Law. He was again arrested on December 6, 2004 and charged with Criminal Contempt – 1st, under §215.51 of the New York State Penal Law.¹ See Criminal History of Gerardo Carbonaro.

In his response to the denial recommendation, Carbonaro states that he was having marital trouble; that his wife had him arrested [twice]; that one case was dismissed and that he pled guilty to a violation in the other case; that his criminal lawyer told him he had no criminal record; and that, consequently, he thought he had no criminal record at the time he submitted the Renewal Application. However, the question to which Carbonaro responded asks not only whether there has been a conviction of a principal, employee or affiliate of any criminal offense in any jurisdiction, but also whether any principal, employee or affiliate has been the subject of any criminal charges in any jurisdiction. As of the filing of the Applicant's Renewal Application on December 28, 2004, Carbonaro had recently been arrested twice. In fact, both sets of criminal charges were still pending against Carbonaro. Therefore, Carbonaro knew he had twice been the subject of criminal charges during the seven weeks preceding the filing, and falsely responded "no" to the question.

¹ The two cases were later consolidated. On February 16, 2005, Carbonaro pled guilty to Harassment-2nd (no sentence specified), and the remainder of the charges were discharged on condition of unspecified alcohol treatment. An Order of Protection was issued. See Criminal History of Gerardo Carbonaro.

Carbonaro's statement that he thought he had no criminal record at the time he submitted the renewal application on December 28, 2004, is clearly contradicted by the factual chronology. The Certificates of Disposition in the foregoing criminal cases against Carbonaro, show that it wasn't until February 16, 2005, nearly two months after submission of the Applicant's Renewal Application, that one case against Carbonaro was adjourned in contemplation of dismissal, and that a guilty plea to Penal Law §240.26, Harassment in the Second Degree, was entered in the other case. The cases were not sealed until a year later, on February 16, 2006. See Certificates of Disposition Number 115018 and Number 9406. These documents clearly refute Carbonaro's statement in his Affidavit, to wit: "When I filled out the application I honestly believed I could check "No" to the question."

The knowing failure of the Applicant to provide truthful information by the willful submission of false information to the Commission in connection with its Renewal Application, establishes that the Applicant lacks good character, honesty and integrity and constitutes an independent basis to deny this Application. See Admin. Code §§16-509(a)(i); 16-509(b).

B. The Applicant's Sole Principal was convicted of Offering a False Instrument for Filing, in violation of New York State Penal Law §175.30

In determining whether to grant an applicant a registration to remove waste generated in the course of such applicant's business, the Commission may consider the same 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.); §16-509(a)(i-x) (reasons the Commission may consider for refusal to issue a license); §16-509(b) (empowering the Commission to refuse to issue a registration to an applicant who has otherwise failed to demonstrate eligibility).

On July 18, 2007, Carbonaro pled guilty to §175.30 of the New York State Penal Law, Offering a False Instrument for Filing, in connection with his failure to disclose the his arrests of November 11 and December 6, 2004 by responding "no" to Question 6 in the December 28, 2004 Renewal Application submitted to the Commission by J. C. Landscape. See Criminal History of Gerardo Carbonaro. This crime was committed by Carbonaro in furtherance of the interests of J.C. Landscape, as it directly relates to the registration sought from the Commission by J.C. Landscape, and negatively reflects upon Carbonaro's "good character, honesty, and integrity." See Admin. Code §16-509(a)(iii); NYS Correction Law §752(1). In its response, the Applicant does not refute this point, leaving this ground uncontested.

As the sole owner and President of J. C. Landscape, Carbonaro's lack of good character, honesty and integrity is directly attributable to J. C. Landscape. Consequently, its Renewal Application is denied on this independently sufficient ground.

III. CONCLUSION

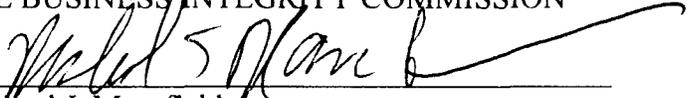
J. C. Landscape Contracting Corp. has not satisfied its burden of demonstrating its eligibility for a trade waste registration. J. C. Landscape, by its sole principal, "has knowingly provided false and misleading information to the Commission and has failed to provide the information and/or documentation required by the Commission." See Admin. Code §16-509(b). In addition, its principal, Gerardo Carbonaro, was convicted of a crime that directly relates to the registration sought from the Commission by J.C. Landscape. See Admin. Code §16-509(a)(iii); NYS Correction Law §752(1). "The commission may refuse to issue a license or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter." See Admin. Code §16-509(b).

For the above independently sufficient reasons, the Commission denies J. C. Landscape's Renewal Application and refuses to issue J. C. Landscape a registration.

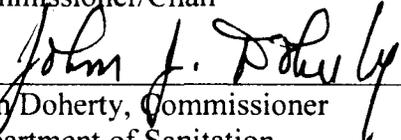
This registration denial is effective immediately. J.C. Landscape Contracting Corp. may not operate as a trade waste business in the City of New York.

Dated: JUNE 24, 2008

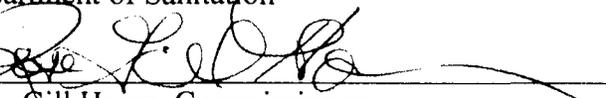
THE BUSINESS INTEGRITY COMMISSION



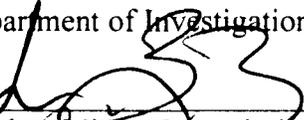
Michael J. Mansfield
Commissioner/Chair



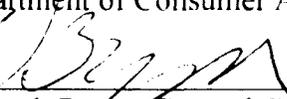
John Doherty, Commissioner
Department of Sanitation



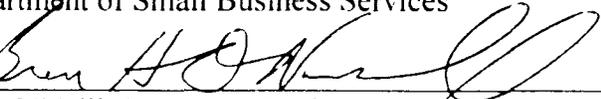
Rose Gill Hearn, Commissioner
Department of Investigation



Jonathan Mintz, Commissioner
Department of Consumer Affairs



Deborah Buyer, General Counsel (Designee)
Department of Small Business Services



Brian O'Neill, Inspector (Designee)
Police Department

