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Commissioner and Chair

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION APPLICATION OF LANDSOURCE CONTAINER SERVICE, INC.
(#4439) TO OPERATE AS A TRADE WASTE BUSINESS**

I. Introduction

On August 8, 2012, Landsource Container Service, Inc. (BIC #4439) (“Landsource” 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 operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” (the “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(a).

The Commission has completed its review of the Application. On May 7, 2015, the Commission staff issued and served the Applicant with Notice of the Grounds to Recommend the Denial of the Application of Landsource Container Service, Inc. to Operate as a Trade Waste Business (the “Notice”). The Applicant was given 10 business days to respond to the Notice. See 17 Rules of the City of New York §2-08(a). On May 12, counsel for the Applicant contacted the Commission staff, who agreed to extend the statutory deadline for an additional week, to May 28, 2015. On June 1, 2015, the Commission received a response from the Applicant, along with five attached letters from various individuals in support of the Applicant’s principal (the “Response”). The Commission has reviewed the Response and its attachments. Based on the record as to the Applicant, the Commission now denies the Application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

- A. Principal Eleuterio Martinez-Amaya pled guilty to scheme to defraud the government, a crime directly connected to the trade waste industry;
- B. The Applicant has engaged in unregistered trade waste removal activity; and

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) and includes “construction and demolition debris.”

- C. The Applicant knowingly failed to provide truthful information required by the Commission in connection with the Application.

II. 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 construction and demolition debris removal sector of the City's carting industry 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, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367.

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, 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. 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 with 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," commonly known as construction and demolition debris, or "C & D" removal, must apply to the Commission for an exemption from the licensing requirement. *Id.* If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption from the licensing requirement, it issues the applicant a Class 2 registration. *Id.* Before issuing such 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 a licensing or registration decision:

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. § 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 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 license (including construction and demolition) 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.

III. Statement of Facts

The Commission originally approved Landsource for a Class 2 Registration under a different BIC number (#2705), effective December 1, 2007. At that time, Carmella Fratello was listed as the sole principal of the company, with her son, Clifford Fratello, as a driver. Landsource's registration was renewed in 2009, but lapsed and was deemed expired as of January 9, 2012. On August 8, 2012, the Commission received the Application.

A. Failure of the Applicant to Disclose Eleuterio Martinez-Amaya as a Principal, and to Disclose His Legal Name and Criminal History

The Application disclosed Santa Martinez as the sole principal. See Application at p. 13. The Application also disclosed Clifford Fratello as the sole vehicle operator. See id. at p. 18. The name of Santa Martinez's husband, Eleuterio Martinez (aka Eleuterio Martinez-Amaya) (“Eleuterio”), does not appear anywhere in the original Application. Santa Martinez certified that all of the information provided in the Application was true and accurate. See id. at p. 20.

During the course of the Commission's investigation, Commission staff spoke to disclosed principal Santa Martinez, who stated that she works full-time at a nursing home facility, and has no experience in the trade waste industry. She referred all questions concerning the Application to her husband. Commission staff took the sworn interviews of Santa Martinez, Eleuterio, and Clifford Fratello on August 8, 2013. The interviews largely focused on who was managing and running the day-to-day operations of Landsource, as well as the sale of Landsource from Carmella Fratello to the Martinezes. Commission staff questioned Eleuterio regarding Santa Martinez's duties related to Landsource; when asked if Santa Martinez managed the business, Eleuterio replied, "She doesn't really manage it." See Transcript of Sworn Interview of Eleuterio Martinez Dated August 8, 2013 ("8/8/13 Sworn Interview of Eleuterio Martinez Transcript") at p. 20. Commission staff further inquired about Santa's involvement in the business:

Commission: "Just the day-to-day operations of the company, if you need to purchase something for the company, who makes the purchase? Is it you or your wife?"

Eleuterio: "Myself, me."

Commission: "Just you. Does your wife get involved in making calls to customers at all?"

Eleuterio: "No."

Commission: "Does she keep the books at all?"

Eleuterio: "Not—the book—well, the book—she goes to the accounts..."

Commission: "What else does she do for the company, if anything?"

Eleuterio: "Not much."

8/8/13 Sworn Interview of Eleuterio Martinez Transcript at p. 48. When asked why he wasn't listed as a principal on the application, Eleuterio stated that "you have better opportunities to get more work as a woman's owner." See *id.* at p. 19.³

As a result of the depositions, Commission staff informed Eleuterio that he must amend the Application to disclose himself as a principal. Shortly thereafter, Landsource sent the Commission an amended Schedule A disclosing "Eleuterio Martinez" as a principal of the company. See Amended Schedule A.

The Applicant likely failed to disclose Eleuterio as a principal due to his history of working for a company that has been denied a registration by the Commission, V. Garofalo Carting, Inc. (BIC #1912, Denied, October 24, 2006) ("V. Garofalo"), and his involvement in a criminal scheme for which he pled guilty to Scheme to Defraud, a class A misdemeanor. See September 27, 2000 Garofalo Transcript of Allocution (County Court, Suffolk County). Eleuterio disclosed to the Commission that he had worked for V. Garofalo since the late 1980s—almost 30 years. The Commission denied V. Garofalo a Class 2 Registration on October 24,

³ In the Response, the Applicant echoes this notion, stating that it disclosed only Santa Martinez as a principal because Eleuterio "was told that women owned businesses were preferred to those owned by men." See Response at p. 5.

2006, based upon its role in a series of civil, administrative and criminal findings related to illegal dumping, unauthorized transfer station operation, a scheme to obtain free tipping at city dumps, and unlicensed trade waste activity in New York City.

Eleuterio did not disclose his role in any of the Garofalos' criminal activity in his sworn interview with the Commission on August 8, 2013,⁴ nor did he disclose his arrest and subsequent guilty plea. The Commission's staff investigation only uncovered the fact that Eleuterio had pled guilty to at least one of the Garofalos' crimes months after his first deposition. In fact, it was this discovery that led the Commission to uncover that Eleuterio's legal name is actually Eleuterio Martinez-Amaya, and it was under that name that Eleuterio was convicted of scheme to defraud along with his employer, V. Garofalo; Eleuterio failed to disclose both his alias as well as his criminal history to the Commission.

In the Response, the Applicant attempts to excuse both the failure to disclose Eleuterio as a principal (or in any other role with the Applicant) and the use of a shortened version of his full name. With respect to the failure to disclose Eleuterio on the Application, the Applicant does not dispute that it failed to disclose him on the Application, but blames it on Eleuterio's "own lack of sophistication, believing that if had his wife sign the application papers, the process would go faster for him." See Response at p. 6. This claimed lack of sophistication does not excuse the failure to disclose the person who actually runs the company as a principal on the Application. Nor is it a convincing argument to claim, in essence, that he was simply falsely attempting to make the Applicant appear to be owned solely by a woman.

With respect to the use of a shortened version of Eleuterio's full name on the amended Schedule A, the Applicant contends that because of a cultural difference between Latin America and the United States, "[m]any Hispanic immigrants drop the hyphenation in their name" after moving to the United States, and "Mr. Martinez did just that, dropping the 'Amaya'." Response at p. 3. However, Eleuterio clearly did not cease using his second surname at the time he moved to the United States, since he was still legally known by both surnames when he was charged with Scheme to Defraud in the First Degree, and then subsequently pled guilty to Scheme to Defraud in the Second Degree. It was not until he submitted the Application's amended Schedule A at the Commission's direction in order to properly disclose himself as a principal that he appears to have dropped his second surname. As a result of these discoveries, Commission staff noticed Eleuterio for a second deposition in order to discuss his relationship with his employers and his role in the crime to which he pled guilty.

B. Eleuterio's History With the Garofalos

On July 29, 2014, Eleuterio appeared for a second sworn interview (the "July 2014 Interview") with Commission staff. Eleuterio gave a detailed history of his employment at V. Garofalo during the Interview. According to Eleuterio, he began working for V. Garofalo in 1987, after he walked into the yard to see if they would hire him despite not speaking English. See Transcript of Sworn Interview of Eleuterio Martinez, dated July 29, 2014 ("Int. Tr.") p. 14.

⁴ Because the Applicant had not disclosed Eleuterio as a principal, his criminal history was likewise undisclosed to the Commission at the time of his first sworn interview in August of 2013.

Vincent Garofalo hired him, and he began working as a garbage separator, initially, for about three years, before he began riding on the backs of the trucks on routes. After a couple of years doing that job, Eleuterio stated that he began working in the yard, maintaining the equipment and trucks, doing mechanic work, and generally working his way up in the yard. *Id.* at pp. 16-17. Around the same time, Vincent Garofalo took ill, and his sons Mario and Ralph took over running V. Garofalo. After five years working in the yard doing maintenance, Eleuterio said he began “getting more involved in the business, like running the machines. . . . Like the big payloaders, excavators” in the yard. *Id.* He then became “the maintenance head, maintenance guy to make sure all the trucks were in order and all the service on the trucks were up-to-date . . . supervising some of the field, you know, the work field with workers on the field. . . . The guys go out on their routes and [I] would make sure that they’re doing their work.” *Id.* at pp. 17-18.

Eleuterio confirmed that since the early 2000s, he was one of the main supervisors in the yard for V. Garofalo. In his last position at V. Garofalo, Eleuterio was earning \$3,000 per week. *Id.* at p. 20. Eleuterio had supervisory and management responsibilities at V. Garofalo dating back to the late 1990s. The Applicant does not contest these facts in the Response. Thus, it is clear that Eleuterio was involved in the numerous illegal, unauthorized and criminal activities V. Garofalo has been found to have committed.⁵ Among those activities was a scheme to defraud, a crime for which Eleuterio entered a guilty plea in 2000.

C. The Scheme to Defraud the Government

By Criminal Information dated September 26, 2000, in New York State Supreme Court, Suffolk County, Eleuterio (officially in the document as another version of his alias, “Amaya E. Martinez”) was charged with the crime of Scheme to Defraud in the First Degree, stemming from his role in V. Garofalo’s loading of non-residential construction and demolition debris into garbage trucks designated for collection of municipal solid waste pursuant to V. Garofalo’s contracts with the towns of Smithtown, Huntington, Islip and Brookhaven. By blending the nonresidential construction and demolition debris with municipal solid waste, V. Garofalo illegally obtained free services at town dumps. The Suffolk County Detective supervising the investigation reported that Eleuterio “Martinez was identified as being present from surveillance and photographs, during the illegal activity and at times directed it himself along with the Garofalos.” See Oct. 8, 2014 Letter from Det. Blaise Cimilluca, Shield # 804. In its Response, the Applicant does not contest these facts.

The charges against Eleuterio’s employer V. Garofalo also included Scheme to Defraud in the First Degree, as well as willful failure to pay prevailing wages, and five counts of construction or operation of a solid waste facility without a permit on various dates between May 24, 1999 and December 8, 1999. See People vs. Garofalo Carting Inc., Superior Court Information No. S-2120-2000 (County Court, Suffolk County). For his role in the scheme, Eleuterio was charged with violation of Section 190.65(1)(b) of the Penal Law of the State of

⁵ For a thorough summary and history of V. Garofalo’s numerous civil, administrative and criminal activities dating back to the 1980s and ongoing through the 2000’s, see Decision of the Business Integrity Commission Denying the Application of V. Garofalo Carting, Inc. Also Known As Garofalo & Sons for a Registration to Operate as a Trade Waste Business (October 24, 2006).

New York, Scheme to Defraud in the First Degree. See People vs. Amaya E. Martinez, Superior Court Information No. S-2139-2000 (County Court, Suffolk County).

On September 27, 2000, Eleuterio pleaded guilty to one count of Scheme to Defraud in the Second Degree, a class A misdemeanor, and was subsequently sentenced to three years of probation. In the same case, V. Garofalo pleaded guilty to five counts of Construction or Operation of a Solid Waste Facility Without a Permit, a misdemeanor, and Ralph Garofalo pleaded guilty to one count of Scheme to Defraud in the First Degree, a class E felony, and one count of willful failure to pay prevailing wages and supplements, a misdemeanor. He was sentenced to one-and-a-half to three years in prison and was fined \$500. In addition, both Ralph Garofalo and V. Garofalo agreed to pay \$300,000 in restitution to workers as part of a settlement with the United States Department of Labor and were fined \$25,000 for operating the waste facility. See September 27, 2000 Garofalo Transcript of Allocution.

In the Response, the Applicant attempts to excuse Eleuterio's conviction as a mistake committed by an unsophisticated, uneducated, illiterate individual who was represented by an attorney who did not have Eleuterio's best interests in mind. See Response at p. 3-4. The Applicant claims that Eleuterio "pled guilty . . . only because the company lawyer told him to take that plea in conjunction with the plea by the company principal that would resolve the entire case." See id. at p. 4. The Response states that Eleuterio's plea "was coerced upon him by the company and its lawyer, and Eleuterio only pled guilty because he could not afford his own attorney, because if he did not accept the plea agreement he could be fired, and because he was "culturally disadvantaged" in not having background knowledge that "the solid waste business was plagued by corruption and criminal enterprises due to the control of 'organized crime' by 'families' many of whom had Italian sounding names." Id. If all of this were true, then it would be an admission that Eleuterio lied to a judge under oath when he stated that he was guilty of the misdemeanor, which is further support of the Commission's finding of Eleuterio's lack of good character, honesty and integrity. However, when viewed in the context of all of the facts in this matter, as set forth herein, it is far more likely that Eleuterio pled guilty because he was, in fact, guilty. Furthermore, he sought to conceal the fact that he is the true principal of the Applicant in the Application because of his criminal history. Now that the Commission has discovered the true nature of his involvement in the Applicant, the Applicant unconvincingly seeks to excuse his conviction as the product of coercion by his prior employer and his lawyer.

The Response also seems to suggest that because Eleuterio pled guilty to a misdemeanor, while the principal of Garofalo pled to a felony and was sentenced to prison time, Eleuterio was somehow not complicit in the crime to which he pled guilty. See Response at p. 3. The fact that Eleuterio pled guilty to a reduced charge (he was charged with a felony) does not change the fact that he admitted participating in a scheme to defraud directly related to the trade waste industry: as described in the Response, the scheme was "to mix construction and demolition debris with municipal solid waste and then to bring the mixture to Suffolk County town dumps where the cost to 'dump' was less than that to access private facilities for construction and demolition waste materials." Id.

D. Eleuterio Continued to Work for the Garofalos After Conviction With Knowledge of Criminal Activity

In the July 2014 Interview, Eleuterio admitted he was aware of certain other illegal activities V. Garofalo continued to be involved with even after his arrest and subsequent guilty plea. For example, he stated that he knew about Mario Garofalo's 2004 arrest by the NYPD for unlicensed and unregistered trade waste activity. See Int. Tr. p. 25. Eleuterio also acknowledged that his employer took part in other illegal activities, including illegal dumping without permits. See id. at p. 64.⁶ Despite this knowledge of further illegal activity, Eleuterio continued to work at V. Garofalo after his arrest and guilty plea, and in fact worked there as recently as July 2014. When asked why he returned to work at V. Garofalo, Eleuterio simply said, "I don't know. I guess I never thought to get another job." Id. at p. 41. According to Eleuterio, he continued to work for V. Garofalo until July 22, 2014, when he reported to the Commission he was fired after a dispute with Ralph Garofalo. Id. at pp. 12-13.

E. The Applicant's Unregistered Trade Waste Activity

Like his former employers, Eleuterio and the Applicant have also been violating the City's laws and rules by operating without a license or registration from the Commission. During his July 2014 Interview, Eleuterio admitted that he has worked in New York City, despite knowing that doing so was a violation of the laws of the City of New York (the "City"). See Int. Tr. p. 44. For example, he stated that Landsource took a job in the City shortly after Hurricane Sandy for about a month. Id. at 65.

On September 16, 2014, a roll-off dump truck belonging to the Applicant was stopped by a Commission investigator for transporting trade waste. Eleuterio was driving at the time the vehicle was stopped, and received a trade waste violation (TW-210696) for unregistered trade waste activity. The Applicant paid the Commission a fine of \$2,500 to settle the violation on December 24, 2014. The Response does not dispute these facts.

The Response argues that one instance of a violation should not disqualify the Applicant from obtaining a registration with the Commission. See Response at p. 5. This argument ignores the fact that the Applicant admitted under oath to having previously taken other jobs in New York City. See Int. Tr. pp. 44, 65. Furthermore, as noted throughout this Decision, the Commission has based its determination on a number of factors in addition to the unregistered activity, each which may serve as an independently sufficient ground for denial.

⁶ When asked what other illegal activities Ralph Garofalo engaged in, Eleuterio said, "Just like dumping containers, we're not supposed to be dumping on the yard. We're supposed to have a permit." The Response does not dispute Eleuterio's knowledge of Garofalo's illegal activity. Rather, the Response "suggest[s] that at that point in time, he had to continue to work and that there was a question of his understanding of the Environmental Rules. . . . He submits that responsibility for the decision making in the facility and abiding by those Environmental Rules were the responsibility of facility ownership and superiors." See Response at p. 4. This argument does not change the fact that Eleuterio knew the company was engaged in illegal conduct and that he helped to facilitate it.

IV. Basis for Denial

A. The Applicant lacks good character, honesty and integrity because principal Eleuterio Martinez-Amaya pled guilty to scheme to defraud the government, a crime directly connected to the trade waste industry.

In determining whether an applicant possesses good character, honesty, and integrity, the Commission may consider prior convictions of the Applicant (which includes its principals, disclosed or undisclosed) for crimes which, after analyzing 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 Admin. Code §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 the above factors, the Commission finds that the crime committed by Eleuterio (participating in a scheme to defraud the government) is a serious crime, and is generally antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption from the trade waste industry. The criminal case against Eleuterio involved, among other things, the theft of government services, illegal transportation of commercial trade waste, and illegal dumping of commercial trade waste.

Furthermore, Eleuterio's conviction is for activity directly related to the trade waste industry, and happened when he was an adult, old enough to know what the law is and how to obey it. His conscious decision to choose to continue to work for V. Garofalo after witnessing and even participating in their criminal activities demonstrates a cynical disregard for the law similar to that which corrupted the City's waste removal industry for decades. While the Response concedes Eleuterio exhibited "poor judgment"⁷ in maintaining his employment with a company he knew to be committing illegal activity, it contends that that alone should not serve as the basis for denying the Application. In making this argument, the Response ignores the numerous other factors the Commission has considered in reviewing Eleuterio's criminal history and the choices he made in the 15 years since his guilty plea.

For example, in his July 2014 Interview, Eleuterio denied responsibility for his crime, even after pleading guilty under oath to the scheme to defraud the government. This avoidance of responsibility is a poor reflection on the state of his rehabilitation. When the Commission asked him why he was arrested and charged with the crime, Eleuterio said,

"I wasn't that familiar with the rules and regulations. . . in reality, I don't know why I got arrested, why I got charged. . . everybody pointed at me. They say that I was the boss; said I know what Ralph was doing because. . . I was doing it for—like I was kind of like, you know—which I wasn't. And the lawyer that I have was a company's lawyer so they told me what the law, you've got to plead guilty with scheme to defraud. At that time, I didn't even know exactly what that word means, you know."

See Int. Tr. at pp. 36-37. However, when asked whether he knew about the comingling of municipal and commercial waste on the municipal trucks, Eleuterio admitted that "many times [he] was with Ralph to do that." *Id.* at p. 62. Eleuterio has not taken responsibility or expressed remorse for his crime and continues to make excuses for his criminal history. Moreover, Eleuterio continued to work for the Garofalos for 14 years after his guilty plea, even though he claims Ralph Garofalo and the company's lawyer coerced him into pleading guilty to the crime. Viewed together, these factors bear poorly upon Eleuterio's rehabilitation and good conduct.

Finally, the public interest in eliminating the entrenched corruption that has plagued the New York City carting industry for decades is clear. Public confidence in the integrity of the carting industry would be undermined if those proven to have broken or ignored the law received licenses or registrations from the Commission. Eleuterio's guilty plea to a crime involving the waste industry, and subsequent return to work for a company he knew systemically violated trade waste regulations and committed illegal activities, compels the conclusion that the Applicant lacks good character, honesty, and integrity. Accordingly, in the exercise of its discretion, the Commission concludes that, by reason of his crime, Eleuterio lacks good character, honesty, and integrity. As a result, the Commission denies the Application on this independently sufficient basis.

⁷ See Response at p. 5.

B. The Applicant has engaged in unregistered trade waste activity.

Landsource has been operating and hauling debris in the City without a license or registration from the Commission. On September 16, 2014, the Commission charged the Applicant administratively with operating an unlicensed or unregistered waste removal business in violation of §16-505(a) of the New York City Administrative Code. See Notice of Violation for Unlicensed or Unregistered Activity #TW-210696. On or about December 15, 2014, Landsource and the Commission entered into a Stipulation of Settlement, wherein Landsource agreed to pay a total fine of \$2,500 dollars. See Stipulation of Settlement TWC-210696. The Response does not dispute these facts.

Furthermore, the Applicant's principal admitted that he sometimes takes jobs in New York City, despite knowing that doing so is in violation of the laws of the City. See Int. Tr. pp. 44, 65. The Applicant's behavior exhibits a pattern of violating Local Law 42 and disregarding the consequences. Unregistered trade waste removal activity is further evidence of the Applicant's lack of good character, honesty, and integrity. Thus, the Commission denies the Application on this independently sufficient ground.

C. The Applicant lacks good character, honesty and integrity because it knowingly failed to provide truthful information required by the Commission in connection with the Application.

The Commission may consider an applicant's failure to provide truthful information to the Commission in connection with the application in making its determination of the applicant's good character, honesty and integrity. See Admin. Code §16-509(a)(1). Additionally, "[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). All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a ground for denial of the application. See Admin. Code §16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); leave denied 2 N.Y.3d 705 (2004); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008).

Question 12 of the Application filed by Landsource on August 8, 2012 directs, "On Schedule A, identify all individuals who are principals of applicant business and provide the information requested." See Application at p. 3. Schedule A of the Application disclosed only one principal – "Santa Martinez." In the column provided to disclose a second principal, the Applicant wrote "N/A." See Application at p. 13. Eleuterio's name does not appear anywhere in the original application submitted by Landsource.

The definition of "principal" (which is included in the instructions for the application) includes corporate officers and directors, all stockholders holding ten percent or more of the outstanding shares of the corporation *and all other persons participating directly or indirectly in the control of such business entity*. See Admin. Code § 16-501(d) (emphasis added).

Eleuterio is a principal of Landsource. In his first deposition with Commission staff, Eleuterio admitted as much. See 8/8/13 Sworn Interview of Eleuterio Martinez Transcript pp. 7-8. When asked what Santa Martinez's duties at Landsource consisted of, Eleuterio stated, "Not much." Id. at p. 48. Further, Santa Martinez works full time for a nursing home, has no background in the trade waste industry or in the construction industry, and does not do any work on a day-to-day basis for the Applicant. See Sworn Interview of Santa Martinez Transcript Dated August 8, 2013, pp. 15-17. In fact, Santa Martinez confirmed that Eleuterio runs the company, saying, "He is in charge." Id. at p. 18. This admission came a full year after the Applicants had submitted their application for a trade waste license only disclosing Santa Martinez as a principal.

Once the Applicant amended the Application to include Eleuterio, the Amended Schedule A disclosed his name as "Eleuterio Martinez." See Amended Schedule A. At no point during the one-and-a-half year period of the Commission's investigation, during Eleuterio's first testimony under oath, or during his conversations with Commission's staff members did he indicate that his full legal name included the name "Amaya." Not until Eleuterio appeared for his second sworn interview did he address this. Only then did he inform Commission staff that his legal name is "Eleuterio Martinez Amaya." See Int. Tr. pp. 3-4. It is likely that the Applicant deliberately excluded Eleuterio from the Application, and then deliberately failed to disclose his full legal name and/or alias, because of the likelihood that such a disclosure would cause the Application to be denied based on Eleuterio's criminal record and history in the trade waste industry.

The failure of the Applicant to disclose Eleuterio as a principal, to disclose his full legal name and/or alias, and to disclose his criminal history all indicate that the Applicant lacks good character, honesty and integrity. As Eleuterio is a person who participates directly or indirectly in the control of Landsource, he is a principal. Even once the Applicant modified its application to disclose Eleuterio as a principal, it failed to disclose his full legal name. Accordingly, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies the Application on this independently sufficient ground. See Admin. Code §§16-509(a)(i). Moreover, the Applicant's failure to disclose information in connection with the Application required by the Commission by failing to disclose Eleuterio as a principal (and likewise not disclosing his legal name and his criminal history) is an independent basis to deny the Application under Admin. Code §16-509(b). The Commission denies the Application on this independently sufficient basis. See Admin. Code §16-509(b).

V. 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, in fact, lacks the good character, honesty and integrity required to receive a registration to conduct business in the trade waste industry. Moreover, the Applicant knowingly failed to provide information required by the Commission, which is an independent ground for denial of the Application and further evidences the Applicant's lack of good character, honesty and integrity. Accordingly, based on the above independently sufficient reasons, the Commission denies Landsource's registration application.

This denial is effective immediately. Landsource Container Services, Inc. may not operate as a trade waste business in the City of New York.

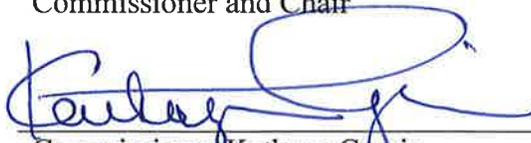
Dated: June 22, 2015

THE BUSINESS INTEGRITY COMMISSION

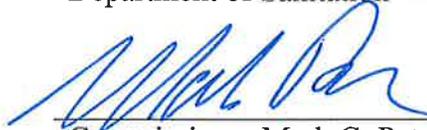
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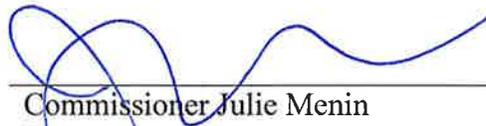
Daniel D. Brownell
Commissioner and Chair



Commissioner Kathryn Garcia
Department of Sanitation



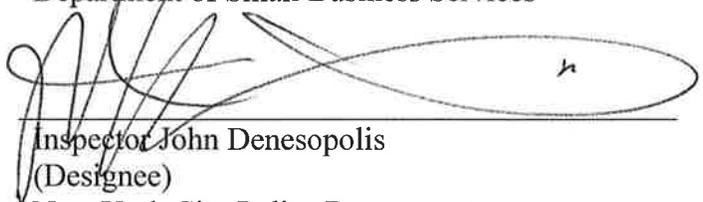
Commissioner Mark G. Peters
Department of Investigation



Commissioner Julie Menin
Department of Consumer Affairs



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



Inspector John Denesopolis
(Designee)
New York City Police Department