



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 LMR SERVICES, CORP. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

LMR Services, Corp. ("LMR" or the "Applicant"), has applied to the New York City Business Integrity Commission (the "Commission") for a registration to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Local Law 42, which created the Commission to regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

LMR applied to the Commission for a registration enabling it to operate as a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "C & D." See Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See Id. If, upon review and investigation of the application, the Commission grants the applicant a registration, the applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See Id.

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin. Code § 16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§ 1-06 & 2-02 (specifying information required to be submitted by license applicant) with Id. §§ 1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission's investigation and determination of a registration application is whether the applicant has business integrity. See 17 RCNY § 1-09 (prohibiting numerous types of conduct reflecting lack of

business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); compare Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity").

Based upon the record, the Commission denies LMR's registration application for the following independently sufficient reasons:

- A. The Applicant failed to demonstrate eligibility for the registration it seeks in that:
 - (i) The Applicant failed to pay taxes and other government obligations for which judgments have been entered.
 - (ii) The Applicant knowingly failed to comply with a Commission directive to return property that is owned by the City of New York.
- B. The Applicant knowingly failed to provide information and documentation required by the Commission.

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. 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. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004).

B. Local Law 42

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

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. 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

LMR filed an application for exemption from licensing requirements and a registration to haul construction and demolition debris (the "Application"). The staff has conducted an investigation of the Applicant and its principals. On July 31, 2006, the staff issued a 7-page recommendation that the application be denied. The Applicant's principal, Christopher Bonsera, was served at his home address by certified mail on August 3, 2006 and signed a receipt that acknowledged service. See United States Postal Service Return Receipt. The Commission also served the Applicant's attorney by mail and facsimile.¹ As of the date of this Decision, the

¹ On or about July 28, 2006, the Commission attempted to personally serve the Applicant at the principal office address (133 Old Northport Road, Kings Park, NY 11754) listed on the Application. See Application at 1. However, service could not be completed at this time because the Applicant was no longer a tenant at the disclosed address. On July 31, 2006, the Commission also attempted to serve principal Michael Bonsera, Jr., by certified mail

Applicant has not submitted a response. The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth below, the Commission finds that LMR lacks good character, honesty, and integrity, and denies its registration application.

A. The Applicant Failed to Demonstrate Eligibility for the Registration it Seeks in that:

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

"[T]he failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's integrity. See NYC Admin. Code §16-509(a)(x).

Numerous judgments have been docketed against LMR by the Criminal Court of New York City, New York State, the New York State Commissioner of Labor, and the United States of America. According to a judgment and lien search conducted by the Commission on July 17, 2006, LMR currently owes the following unsatisfied judgments:

NYS Commissioner of Labor: \$12,335

- Docket date 10/19/04 – Docket Number 200410192153 - \$4,699
- Docket date 2/18/05 - Docket Number 20050311357 - \$862
- Docket date 2/5/03 - Docket Number JT 03003683 - \$2,059
- Docket date 4/26/06 – Docket Number 200604261536 - \$1,038
- Docket date – 5/1/06 – Docket Number 200605012430 – \$3,677

NYS Tax Commission: \$14,419

- Docket date 3/11/04 – Docket Number 200405034093- \$2,735
- Docket date 7/21/04 - Docket Number 200408033491 - \$2,712
- Docket date 2/11/05 - Docket Number 2005021528- \$2,874
- Docket date 2/28/05 - Docket Number 200504051751 - \$2,530
- Docket date 5/20/05 - Docket Number 20050610895 - \$3,0261
- Docket date 5/20/05 - Docket Number 20050610896 - \$408
- Docket date 10/24/05 - Docket Number 20051103244 - \$134

at the home address (30 Luyster Street, South Huntington, NY 11746) disclosed on the Application. See Application at 9. However, this envelope was returned to the Commission stamped "UNCLAIMED." See envelope. Finally, on July 31, 2006, the Commission also attempted to serve by certified mail the Applicant's disclosed registered agent for service of process (George Asimas, 212-04 35th Avenue, Bayside NY 11361). See Application at 2. However, this envelope was also returned to the Commission. "An applicant for a registration... shall notify the Commission within ten business days of... any material change in the information submitted" in the registration application. See 17 RCNY §2-05(4)(b). The Applicant's principal office address, the principal's home address and the Applicant's agent for service of process are such material information. See 17 RCNY § 1-01.

Criminal Court of New York City: \$275

- Docket date 5/12/05 - Docket Number 2004SQ103117 - \$100
- Docket date 8/11/05 - Docket Number 2005SN077096 - \$175

Federal Tax Lien/Internal Revenue Service: \$220,276

- Docket date 6/3/02 - \$25,137
- Docket date 3/24/03 - \$25,701
- Docket date 1/5/04 - \$41,496
- Docket date 4/12/04 - \$20,657
- Docket date 10/11/04 - \$23,512
- Docket date 11/8/04 - Docket Number 198315804 - \$62,962
- Docket date 4/25/05 - \$20,811

The Commission's staff warned LMR that LMR owed numerous unsatisfied judgments to state and federal tax authorities and the New York State Commissioner of Labor, and instructed LMR that unless it satisfied the debts or entered into payment plans, its Registration Application would be jeopardized. See December 30, 2005 letter from David Mandell to the Applicant; see Section B regarding correspondence history. Despite that warning, the judgments remain unsatisfied. The Applicant has not disputed this point.

The Applicant's failure to satisfy numerous debts that have been reduced to judgment is a sufficient independent ground for denial of its registration application. Accordingly, this application is denied.

2. **The Applicant knowingly failed to comply with a Commission directive to return property that is owned by the City of New York.**

By Commission Directive dated May 1, 2006, the Commission reminded the Applicant that its temporary permission to operate in New York City expired. The Commission further reminded the Applicant that,

You may not haul construction and demolition debris in New York City and must immediately surrender the three sets of trade waste plates that were previously issued to you.

See Letter from Ronald Cohen, Assistant Commissioner for Investigations and Enforcement, to the Applicant. The Commission directed the Applicant to return the three sets of trade waste license plates before the close of business on May 16, 2006. See *id.* As of the date of this decision, the Applicant has not complied with the Commission's May 1, 2006 directive. For this independently sufficient ground, this application is denied.

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

“The 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); *Attonito*, 3 A.D.3d 415. By failing to respond to the Commission’s requests, the Applicant has “knowingly failed to provide the information” required by the Commission. Therefore, the Commission denies LMR’s registration application on this independently sufficient ground.

On numerous occasions beginning on December 30, 2005, the Commission requested proof of satisfaction of the outstanding judgments against LMR docketed by governmental entities,² and for information regarding principal Michael Bonsera Jr.’s March 22, 2004 arrest for petit larceny.³ See December 30, 2005 letter from David Mandell to LMR; January 25, 2006 letter from David Mandell to LMR; February 10, 2006 letter from David Mandell to Randy Scott Zelin, Esq.; March 3, 2006 letter from David Mandell to Randy Scott Zelin, Esq.; See March 31, 2006 letter from David Mandell to Randy Scott Zelin, Esq.; May 3, 2006 letter from David Mandell to Randy Scott Zelin, Esq.

On numerous occasions, the Applicant’s attorney requested extensions of time to comply with the Commission’s request for information. See February 10, 2006 letter from Randy Scott Zelin, Esq., to David Mandell; February 28, 2006 letter from Randy Scott Zelin, Esq., to David Mandell; March 30, 2006 letter from Randy Scott Zelin, Esq., to David Mandell; April 28, 2006 letter from Randy Scott Zelin, Esq. to David Mandell. In response, the Commission granted the Applicant several generous extensions of time to comply. The Applicant did not respond to the final letter from the Commission. See May 3, 2006 letter from David Mandell to Randy Scott Zelin, Esq.

The Applicant was warned on several occasions that its application could be denied for knowingly failing to provide the Commission with information. Despite these warnings, as of the date of this Decision, the Applicant has knowingly failed to provide information and documentation required by the Commission. The Applicant has not contested this point. For this independent reason, this application is denied.

² In the alternative, the Commission’s staff requested proof that LMR has written payment plans with the various government authorities.

³ On or about March 30, 2006, the Applicant eventually did provide certificates of disposition with respect to the petit larceny arrest and other criminal matters (resulting in dismissals) of which the Commission was previously unaware.

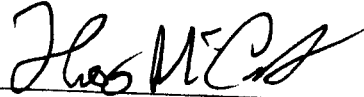
III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates that LMR falls far short of that standard.

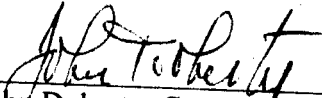
Despite being notified of the staff's recommendation, the Applicant chose not to submit a response, thereby leaving the evidence against it un rebutted. Based upon the above independently sufficient reasons, the Commission denies LMR's exemption application and registration. This registration denial is effective immediately. LMR may not operate as a trade waste business in the City of New York. LMR is again directed to immediately surrender the three sets of Commission trade waste registration plates that were previously issued to it.

Dated: October 24, 2006

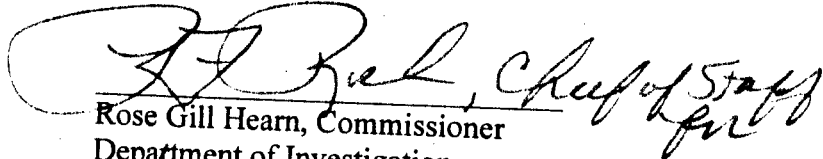
THE BUSINESS INTEGRITY COMMISSION



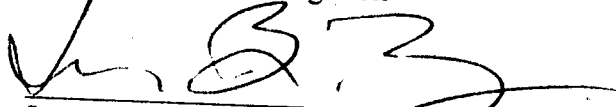
Thomas McCormack
Chair



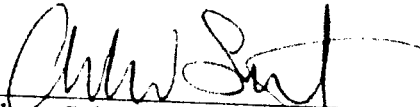
John Doherty, Commissioner
Department of Sanitation



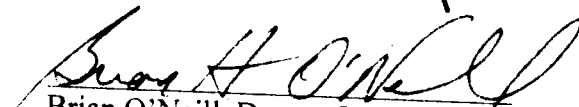
Rose Gill Hearn, Commissioner
Department of Investigation



Jonathan Mintz, Commissioner
Department of Consumer Affairs



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



Brian O'Neill, Deputy Inspector (designee)
New York City Police Department