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THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
100 CHURCH STREET, 20TH FLOOR
NEW YORK, NEW YORK 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF RAPID DEMOLITION CONTAINER SERVICES, INC. FOR AN EXEMPTION FROM LICENSING REQUIREMENTS AND A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

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

RDCS applied to the Commission for an exemption from licensing requirements and a registration enabling it to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "c & d."¹ Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for exemptions. See id. If, upon review and investigation of the exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

In determining whether to grant an exemption from licensing requirements and a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's

¹ As discussed below, RDCS previously applied to the Commission for a trade waste license, which application was denied on the grounds that RDCS lacked the requisite good character, honesty and integrity. RDCS has now reapplied to the Commission for a trade waste registration. In these circumstances, the Commission is justified in denying this application based on RDCS's prior status as a company required to be licensed by the Commission. See Admin Code § 16-505(a); see also 17 RCNY § 2-03(a) (the Commission may deny an application for a registration as a construction and demolition hauler where a principal of such applicant (such as Francine Najjar and Joseph Najjar) is a principal of a business or a former business (such as RDCS) required to be licensed during the past ten years.)

determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code § 16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York (“RCNY”) §§ 1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§ 1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission’s investigation and determination of an exemption application is whether the applicant has business integrity. See 17 RCNY § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking “good character, honesty and integrity”).

Based upon the record as to the Applicant, the Commission denies its exemption/registration application on the ground that this Applicant lacks good character, honesty and integrity for the following independently sufficient reasons:

- (i) The Commission previously found that the Applicant lacked good character, honesty and integrity, and denied its Trade Waste License Application.
- (ii) The Applicant has repeatedly and knowingly failed to provide truthful information and/or documentation required by the Commission.
- (iii) The Applicant failed to pay taxes and other government obligations for which judgments have been entered.
- (iv) The Applicant has engaged in long-term unlicensed and/or unregistered activity.

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 guilty or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the c & d sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the c & d sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many c & d haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988; during that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill.

949 F.2d at 1188. The trial judge described this scheme as “one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States.” United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain “cover” programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the “free cover” program, transfer stations and carting companies could dispose of “clean fill” (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the “paid cover” program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including c & d) at Fresh Kills under the guise of clean fill. This was done by “cocktailing” the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately \$10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City’s “cover” programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City’s tipping fees. See United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); see also United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City’s waste removal industry applies with equal force to the garbage hauling and the c & d sectors of the industry. Local Law 42 recognizes this fact in requiring c & d haulers to obtain registrations from the Commission in order to operate in the City. See Attonito v. Maldonado, 2004 N.Y. App. Div. Lexis 411, January 20, 2004.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (“DCA”) for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. “Trade waste” is broadly defined and specifically includes “construction and demolition debris.” Id. § 16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated constitutional challenges (both facial and as applied) by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407

(S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997).

II. DISCUSSION

RDCS submitted its license application to the Commission on April 17, 2002. See RDCS Trade Waste License Application ("license application" or "Lic. App.") at 1, 3. The Commission's staff conducted an investigation of RDCS. On July 9, 2003, the staff issued a recommendation that the license application be denied. On July 23, 2003, RDCS submitted opposition papers, consisting of a 5-page affidavit signed by Joseph Najjar, a 17-page affidavit signed by Francine Najjar, ("First Response") and numerous exhibits in response to the staff's recommendation. After carefully considering both the staff's recommendation and RDCS's response, the Commission found that RDCS lacked good character, honesty, and integrity, and denied its license application in a 33-page decision. See Decision of the Business Integrity Commission to Deny the Application of RDCS a License as a Trade Waste Business ("Denial Decision").

By way of Notice of Petition and Petition dated September 3, 2003, RDCS commenced an Article 78 proceeding to challenge the Commission's determination. Through this proceeding, RDCS sought an order vacating the Commission's determination to deny RDCS a trade waste license. On February 23, 2004, the Honorable Martin Schneier, Supreme Court, Kings County, issued a Decision and Order in which he denied RDCS's application to vacate the Commission's decision to deny the trade waste license application of RDCS. See Decision and Order of the Honorable Martin Schneier.

On May 12, 2004, RDCS submitted to the Commission an Application for Exemption From Licensing Requirement for Removal of Demolition Debris ("registration application" or "Reg. App."). There is little or no difference in the information RDCS disclosed (and did not disclose) in both its license application and its registration application. The staff has conducted an investigation of the Applicant and its principals. On May 3, 2005, the staff issued an 11-page recommendation that this RDCS application be denied. On May 20, 2005, the Applicant submitted an 11-page response ("second response") to the staff's recommendation consisting of an affidavit signed by Francine Najjar and attached 2 exhibits. The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the independently sufficient reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its exemption/registration application.

A. The Commission previously found that the Applicant lacked good character, honesty and integrity, and denied its Trade Waste License Application.

In denying RDCS's earlier application for a trade waste license, the Commission found that RDCS lacked good character, honesty, and integrity based on the following independent grounds:

1. RDCS provided false, incomplete and misleading information to the Commission on its License Application;
2. RDCS's affiliate, Rapid Demolition Co. Inc. is barred from conducting business with the City of New York and the State of New York for five years;
3. RDCS's affiliate, Rapid Demolition Co. Inc. owes over \$80,000 to the New York State Tax Commission;
4. RDCS's affiliate, Rapid Demolition Co. Inc. employed Philip Schwab, a convicted felon, as a superintendent;
5. RDCS provided false and misleading information through its principal's testimony and other submissions to the Commission;
6. RDCS failed to update the Commission with material changes to its application;
7. RDCS engaged in long-term unlicensed or unregistered activity;
8. RDCS obstructed the Commission's investigation by failing to provide documents required by the Commission pursuant to a licensing investigation and by failing to cooperate with the Commission at a licensing deposition.

See Denial Decision. This Applicant for a registration is identical to the Applicant whom the Commission previously found to lack good character, honesty and integrity. The second response admits that following the denial of its license application², it commenced an Article 78 proceeding "to declare null and void and vacate [the Commission's] denial of its' application for a trade waste removal license." See response at 2. Yet, as discussed above, the Honorable Justice Martin Schneier, Supreme Court, Kings County, dismissed that Article 78 proceeding. See supra. The second response also admits that on April 10, 2004, it filed a complaint in Supreme Court, New York County in a declaratory judgment action against the Commission. See response at 3. However, the Honorable Justice Faviola A. Soto, Supreme Court, New York County, dismissed this complaint as well. See Decision and Order of the Honorable Justice Faviola A. Soto.

² Although the second response acknowledges the fact that the Commission denied its application for a trade waste license, it only mentions one of eight independent grounds that the Commission based its decision on. See second response at 2; see also Denial Decision.

The second response essentially argues that this application “must be granted upon filing” because it filed a Notice of Appeal that seeks a reversal of Justice Soto’s decision. However, the second response does not include any information that leads the Commission to change its prior decision- a decision that was upheld in two different legal actions. See supra. Furthermore, the appeal does not have any impact on deciding this application. For all of the reasons that the Commission previously denied RDCS’s license application, RDCS’s registration application is denied as well.

B. The Applicant has repeatedly and knowingly failed to provide truthful information and/or documentation required by the Commission.

The Commission has the power “[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation.” Admin. Code §16-504(c). The Commission may refuse to grant a license or registration if an Applicant “has knowingly failed to provide the information and/or documentation required by the commission . . .” Admin. Code. §16-509(b); see also Attonito v. Maldonado, 2004 N.Y. App. Div. Lexis 411, January 20, 2004. The Applicant’s failure to provide truthful information and/or complete documents requested by the Commission constitutes another independent basis on which the Commission denies this application.

As discussed above, in previously denying RDCS’s license application, the Commission found, among other things, that RDCS provided false, incomplete and misleading information to the Commission on its license application; that RDCS provided false and misleading information through its principal’s testimony and other submissions to the Commission; that RDCS failed to update the Commission with material changes to its license application; that RDCS obstructed the Commission’s investigation by failing to provide documents required by the Commission; that RDCS failed to cooperate with the Commission at a licensing deposition. See Denial Decision. The second response only includes self-serving statements that Francine Najjar “never knowingly failed to provide truthful information either in my application for a trade waste removal license or my application for exemption,” and that “there is nothing in the record... that suggests... Joseph Najjar is an undisclosed principal...” of the Applicant. See second response at 4-5. Again, the Applicant’s second response to the staff’s recommendation barely merits a reply on this point. Nowhere does it address the factual basis for the staff’s conclusion that the Applicant provided false, incomplete and misleading information to the Commission concerning Joseph Najjar’s status as a principal of RDCS, and RDC and RDCS’ close affiliation with each other.

Further, the Applicant’s first response all but concedes this point. See first response at 3-5. (admitting connection between RDC and RDCS, and admitting Joseph Najjar’s involvement with both companies.) Similar to the first response, the second response also pretends that there is nothing in the record that suggests that Joseph Najjar is an undisclosed principal of the Applicant. However the first response conceded that there is obviously a close connection between RDC and RDCS because “obviously there

is a close connection between [Francine] and [Joseph] and more obviously... is the fact that many of RDC's former accounts will become accounts for the applicant." See first response at 3. The Commission's decision to deny this Applicant's license application lists numerous examples of Joseph Najjar's role as an undisclosed principal of this Applicant and numerous examples of this Applicant's failure to provide truthful information and documents to the Commission. See Denial Decision.

Against this clear and convincing evidence then, there is before the Commission only the unsupported assertion by Francine that her husband is "not employed by" and does not "have any connection with RDCS." See second response at 5. Instead, at her deposition, Francine sought to portray Joseph as a passive advisor or resource whom she occasionally called upon for encouragement and advice. See Najjar Tr. at 19.

In our previous decision to deny this Applicant's license application, we did not think the record supported Francine's assertions. Indeed, there is nothing in the second response that warrants a different conclusion in denying this registration application. Again, in addition to filling out RDCS' license application and principal disclosure form, Joseph Najjar drafted letters on behalf of RDCS. Among other things, he admitted in a letter that he would be driving trucks for RDCS and that RDCS was essentially a subsidiary of RDC. See June 26, 2002 letter from Joseph Najjar to Sheepshead Bay Brokerage. Joseph Najjar signed as a "co-buyer" of a truck used by RDCS and is listed as RDCS' "contact" on the invoice for the truck. Furthermore, evidence establishes that Joseph Najjar wrote checks on behalf of RDCS and RDCS' ledger even contains a draw account for "Joseph Najjar." Amazingly, Francine does not even have a draw account established in RDCS' ledger. The record thus abundantly establishes that Joseph Najjar participates directly in the control of RDCS and is therefore a principal, that RDCS and RDC are closely affiliated companies, and that the Applicant provided false, incomplete and misleading testimony about these subjects. See 16 NYC Code Section 1-01 (definition of principal). The second response does not address any of this evidence. Based on this independent ground, the Commission previously denied RDCS's license application and denies its registration application.

The Applicant also failed to submit a completed registration application to the Commission. For instance, the Applicant failed to provide a completed Schedule "I" to the Commission:

Section 2-03 of the Rules requires that an application for an exemption be accompanied by a statement explaining the nature of the applicant's business. Such explanation must include a statement that the applicant business removes no waste other than materials resulting from building demolition, construction, alteration or excavation, a description of the kinds of waste removed by the applicant business, the types of sites from which such waste is removed and the nature of the customer of the applicant.

The Applicant provided no such statement to the Commission on its registration application.³ Although the second response states that “RDCS is engaged solely in the removal of construction of demolition debris” and that Francine Najjar “has no qualms about submitting a statement detailing the nature of the business as required,” as of the date of this decision, the Applicant has still failed to do so in accordance with Section 2-03 of the Commission’s Rules.

The Applicant’s registration application also contains false and misleading information. In the registration application, Question 7 asks:

On Schedule A, identify all individuals who are or have been principals of applicant business **at any point during the past ten years** (emphasis added). For each individual, provide full name (including maiden name where applicable), home address, telephone number(s) (including where applicable cellular, fax and beeper numbers,), date of birth, social security number, dates of association with the applicant, job title and/or function within the applicant business organization, and an explanation of how their ownership was acquired (e.g. purchase and purchase price; inheritance etc.) . . .

See Reg. App. at 3. In response, the Applicant disclosed “Francine Najjar” on Schedule “A.”⁴ Based on the evidence, the Commission finds that this answer is incomplete and misleading, as the Commission previously found that Joseph Najjar was an undisclosed principal⁵ of the applicant business. The second response has not produced and the Commission has not discovered any new evidence that warrants any change in the Commission’s prior determination that Joseph Najjar is (or was) a principal of RDCS.⁶

Also in the registration application, Question 19 asks:

Has judgment been entered against the applicant or any principal of the applicant business in any civil case related to the conduct of a business that removes or recycles trade waste, a trade waste broker business or the operation of a dump, landfill, or transfer station, in any jurisdiction?

³ The Applicant also failed to disclose the employment of two of its vehicle operators who were arrested for operating a trade waste business without a license or registration. The second response does not even address this point. See *infra*.

⁴ Francine Najjar also failed to disclose her maiden name on the registration application, as required. The second response does not address this point either. See Reg. App. at 8.

⁵ Local Law 42 sets forth a broad definition of a principal. This term includes individuals with an ownership interest, as well as “all other persons participating directly or indirectly in the control of such business entity.” See Admin. Code § 16-501(d). Furthermore, Joseph Najjar, as the husband of majority stockholder Francine Najjar, would be deemed by Local Law 42 to be a principal of RDCS even if he did not participate in the control of RDCS. See 16 NYC Code § 1-01.

⁶ Furthermore, in a letter to Mayor Michael R. Bloomberg signed by both Francine and Joseph Najjar, Joseph Najjar contradicts RDCS’s earlier submissions to the Commission by stating, “with our determination and drive our new company Rapid [Demolition] Container Service is doing construction and demolition [debris] removal...” See March 22, 2004 letter from Francine and Joseph Najjar to Mayor Bloomberg (“March 22, 2004 letter”) at 2 (*italics added*). The second response does not address the admissions made in this letter.

See Reg. App. at 7. In response to this question, the Applicant answered “no.” Based on the evidence, the Commission finds that the Applicant’s answer to Question 19 was false. On or about March 17, 2003, GE Capital Modular Space filed a civil judgment (Docket Number 7555402) against the Applicant in the amount of \$7,463. See Judgment/Lien printout. The second response states that this judgment “did not involve RDCS although it was named. The action involved my husband’s company, RDC, yet GE Capital Modular Space named RDCS as a way of protecting its’ rights because it was under the erroneous impression that RDCS was the same company as RDC.” See second response at 6. Regardless of whether or not there was confusion over the identity of RDC and RDCS, the Applicant admits, and the Commission finds that this judgment was entered against this Applicant, and that this Applicant failed to provide the truthful answer to Question 19 of the application.

Additionally, a judgment (Index Number 601564/03) was entered against Francine Najjar on or about February 3, 2004 by Lumbermen’s Mutual Casualty Company in the amount of \$3,479,085. The second response asserts that this action was settled on or about January 31, 2005. However, the settlement does not change the fact that the Applicant failed to disclose the existence of this judgment when it submitted its registration application on May 12, 2004. Numerous other judgments and liens have been filed against Joseph Najjar and RDCS’s affiliated company, Rapid Demolition Co., none of which have been disclosed to the Commission. The response does not address any of the judgments and liens filed against Joseph Najjar and RDCS’s affiliated company, Rapid Demolition Company.

This Applicant has repeatedly and knowingly failed to provide truthful and complete information and/ or documentation to the Commission throughout both the licensing and registration process. Based on this independently sufficient ground, RDCS’s license application was denied and based on this independent ground, RDCS’s registration application is denied.

C. 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).

On or about April 23, 2004, the New York State Tax Commission filed two state tax liens (Docket Numbers 002029572 and 002029574) against the Applicant in the amount of \$1,795 and \$104 respectively. In addition, on March 8, 2004, the New York State Tax Commission filed two judgments (Docket Numbers 002014138 and 002014417) against Joseph Najjar in the amount of \$129, 249 and \$126, 594 respectively.

Without providing any proof, the second response asserts that the tax liens filed against the Applicant in the amount of \$1,795 and \$104 “have been paid in full and RDCS has settled its obligations to the New York State Tax Commission.” See second response at 6. However, the second response did not provide any proof that these tax

liens were paid and satisfied. Upon further review, the Commission finds that the Applicant has paid and satisfied the state tax lien in the amount of \$104. However, the Commission also finds that the Applicant has other judgments still outstanding, including a judgment filed on August 25, 2004 by the Commissioner of Labor of New York in the amount of \$207; a judgment filed on December 16, 2004 by the Commission in the amount of \$200; a judgment filed on March 17, 2005 by the New York State Department of Taxation and Finance in the amount of \$184; and a judgment filed on March 24, 2005 by the Commissioner of Labor of New York in the amount of \$1,030. See May 20, 2005 Judgment and Lien printout.

The applicant has thus failed to pay debts related to its business in a timely fashion, if they were paid in full at all. Similarly, it is apparent that the Applicant's undisclosed principal (Joseph Najjar) has failed to pay his debts to government authorities in a timely fashion, if they were paid in full at all. The failure of the Applicant to settle its obligations to the New York State Tax Commission, the Commissioner of Labor of New York, and the Business Integrity Commission, and its disregard for liens filed against it directly relate to the Applicant's fitness for a trade waste registration. Likewise, the failure of the Applicant's undisclosed principal to settle his obligations to the New York State Tax Commission, and his disregard for judgments filed against him directly relate to the Applicant's fitness for a trade waste registration. The Applicant's second response only addresses a fraction of the judgments that are still outstanding. Based on this sufficient independent ground, the Commission denies the Applicant's registration application.

D. The Applicant has engaged in long-term unlicensed and/or unregistered activity.

As discussed above, RDCS was incorporated on March 27, 2002, and applied to the Commission for a trade waste license on April 17, 2002. Then, after having its trade waste license application denied by the Commission, RDCS applied to the Commission for a registration on May 12, 2004. The company and its predecessor never held a Department of Consumer Affairs carting license or registration and have never been legally authorized to operate in the City of New York. Nonetheless, the company's president testified on December 20, 2002 that RDCS has been operating for "a couple of months." See Najjar Tr. at 18-19. Francine Najjar also testified that RDCS had two employees, owned two trucks, and had numerous regular customers and many more one-time customers.

By letter dated December 20, 2002, the Commission directed RDCS to cease and desist its unlicensed and unregistered carting activity. This letter, which was sent both to RDCS, and to its attorney states:

"Rapid Demolition Container Services Inc. is not (and has never been) legally permitted to remove, collect or dispose of trade waste in New York City. To avoid any possibility of ambiguity, Rapid Demolition Container Services Inc. is hereby directed to **immediately cease and desist** from any such activity in New York City until it has obtained a license from the Commission. If Rapid Demolition Container Services continues to haul such waste without a license, the Commission may bring civil and criminal

sanctions against Rapid Demolition Container Services Inc. and/or Francine Najjar. Furthermore, such activity could be considered in evaluating the application of Rapid Demolition Container Services Inc.”

See December 20, 2002 letter from the Commission’s staff to RDCS and to Gerald McMahon, Esq. Despite the Commission’s directive and warnings, the Applicant’s own business records and dumping records prove additional unlicensed/unregistered activity.⁷

Despite Francine’s testimony and documentary evidence, the Applicant’s first response to the staff’s recommendation to deny RDCS’s license application incredibly denies that it ever operated a trade waste removal business. However, as the Commission affirmed in its decision to deny RDCS’s previous license application, Local Law defines “trade waste” as

“all putrescible and non-putrescible materials or substances, ... that are disregarded or rejected... including but not limited to garbage, refuse, street sweepings, rubbish, tires, ashes, contained gaseous material, incinerator residue, **construction and demolition debris** [emphasis added]...”

See Admin. Code §16-501(f). Furthermore, Admin. Code §16-505(a) states that any person or company engaged in the removal or disposal of trade waste is required to obtain the appropriate license or registration from the Commission. However, the Verified Petition submitted to the Supreme Court, Kings County signed by RDCS’s attorney in connection to its Article 78 proceeding contradicts RDCS’s assertions that it never operated a trade waste removal business and admits that RDCS “has been engaged in the construction and demolition waste removal business since March, 2002...”⁸ See Verified Petition at 2. Similarly, the March 22, 2004 letter signed by Francine and Joseph Najjar all but admits that Rapid [Demolition] Container Services “is doing small construction and demolition removal with our three trucks.” See March 22, 2004 letter at 2.

Despite the Commission’s decision to deny RDCS’s trade waste license application, and despite Local Law 42, RDCS continued to operate in New York City without first obtaining the appropriate license or registration from the Commission. For instance, on or about March 22, 2004, two drivers employed by RDCS (John Nichols and Vince MacFlater)⁹ were arrested and were issued Desk Appearance Tickets for having

⁷ Francine Najjar testified that RDCS “presently dumps its waste” at the following transfer stations within New York City: “Citywide, Pebble Lane and Atlas.” See Najjar Tr. at 43. Such an admission reveals a per se violation of Local Law 42. Furthermore, a review of some of RDCS’s own business records indicates that it provides trade waste removal services to many entities that can only be interpreted as commercial.

⁸ The Verified Petition also admits that “pending the conclusion of the [license] application process, [RDCS] continued to conduct her construction and demolition removal business.” See Verified Petition at 2. Since the Commission never approved of such activity, RDCS acted in violation of Local Law 42. Yet, in a July 17, 2003 letter, RDCS’s attorney stated that “our client [RDCS] has not operated a trade waste removal business pending the [license] application, but has merely attempted to learn that business from Bay Ridge Carting’s principal...” See July 17, 2003 letter by Joseph Giaimo, Esq.

⁹ Both RDCS’s license application and registration application fail to identify John Nichols and Vince MacFlater as employees or operators of vehicles. Thus, although the Applicant has a duty to advise the Commission of any material changes in its application within ten days, RDCS has failed to do so. See 17 Rules of the City of New York § 2-05.

engaged in the collection of trade waste without the license or registration required by Local Law 42.¹⁰ This is yet another example of the Applicant's disregard for Local Law 42. The second response is filled with so many inconsistencies and frivolous arguments on this point, that it barely merits a response.¹¹ For example, the second response asserts that "the applicant is not operating a trade waste removal business, but is engaged in the C&D business..." See second response at 7. However, the record is replete with examples that prove otherwise, especially in light of the definition of "trade waste" as set forth in Local Law 42. See Admin. Code § 16-501(f); see also Denial Decision.

Based on all of the evidence above, including the admissions made in the Verified Petition, the March 22, 2004 letter from Francine and Joseph Najjar, and observations made by the New York City Police Department, it is clear that the Applicant operated a trade waste removal business without first obtaining the appropriate license or registration from the Commission. The Commission is authorized to deny the license application of a company that has engaged in unlicensed or unregistered carting activity in the City of New York. See Admin. Code §§ 16-505(a), 16-509(c)(ii), 16-513(a)(i). RDCS plainly engaged in such activity. Under the circumstances, RDCS's unlicensed and unregistered carting merits denial of RDCS's registration/exemption application. Based on this independent ground, the Commission denies RDCS's registration/exemption application.

¹⁰ On or about April 2, 2004, RDCS moved by Order to Show Cause in Supreme Court, New York County for a declaratory judgment that the Commission has "no jurisdiction to interfere with or terminate [RDCS's] statutory right to operate a construction and demolition hauling business." See Affirmation in Support for a Preliminary Injunction.

¹¹ Although sometimes the Applicant admits that it engages in trade waste removal activity, (which includes construction and demolition debris) other times it seems to deny that it engages in such activity. Nevertheless, the Applicant applied for a license to remove trade waste, which was previously denied, and has applied to a registration to remove trade waste, which is denied herein.

III. CONCLUSION

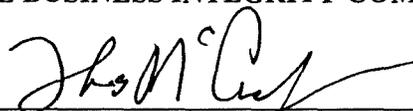
The Commission is vested with broad discretion to refuse to issue an exemption/registration to any applicant that it determines lacks good character, honesty and integrity. The evidence recounted above demonstrates convincingly that RDCS falls far short of that standard.

It is of grave concern to the Commission that this Applicant, which we previously found lacked the good character, honesty and integrity to operate as a trade waste business in New York City, has continued to operate without a trade waste license or registration. For the independently sufficient reasons discussed above, the Commission hereby denies RDCS's registration/exemption application.

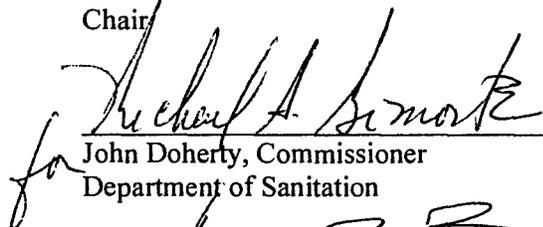
This registration denial decision is effective immediately. RDCS shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York.

Dated: June 9, 2005

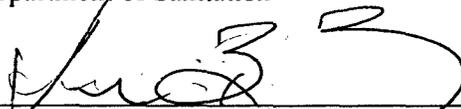
THE BUSINESS INTEGRITY COMMISSION



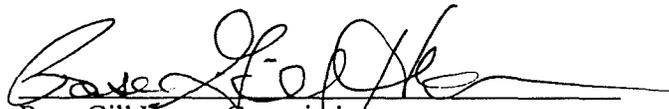
Thomas McCormack
Chair

for 

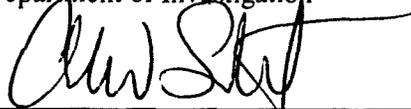
John Doherty, Commissioner
Department of Sanitation



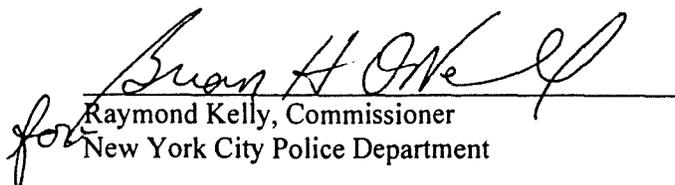
Jonathan Mintz, Acting Commissioner
Department of Consumer Affairs



Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Business Services

for 

Raymond Kelly, Commissioner
New York City Police Department