



## **DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF S.V. TRUCKING CORP. TO OPERATE AS A TRADE WASTE BUSINESS**

### **Introduction**

S.V. Trucking Corp. (“S.V.” 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 renewal of an exemption from licensing requirements and a registration to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” – a type of waste commonly known as construction and demolition debris, or “c & d.” See Title 16-A of the New York City Administrative Code (“Admin. Code”), §16-505(a).

On March 25, 2013, the staff issued and served the Applicant with Notice of the Grounds to Recommend that the Application be Denied. The Applicant was granted ten business days to respond, until April 10, 2013. See 17 Rules of the City of New York §2-08(a). The Applicant did not submit any response. Based upon the record as to the Applicant, the Commission now denies S.V.’s exemption renewal application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

- A. The Applicant Violated the Rules of the Business Integrity Commission and Has Been Found Liable Administrative Actions That Bear a Direct Relationship to the Fitness of the Applicant to Conduct a Trade Waste Business.
- B. The Applicant Has Failed to Pay Fines That Are Directly Related to the Applicant’s Business For Which Liability Has Been Admitted by the Applicant.

### **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 (1<sup>st</sup> 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). 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.

### **Statement of Facts**

S.V. applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. See Registration Application (“Application”). The Application disclosed Luis Villacis as the sole principal. See Registration Application at 9. On or about March 27, 2008, the Commission granted the Applicant a trade waste registration. See Registration Order. The Applicant’s registration was effective for two years, and expired on January 31, 2010. See id. On or about March 12, 2010, the Applicant filed its first Renewal Application with the Commission. See First Renewal Application. The Commission granted the First Renewal Application and authorized the Applicant to operate for another two years, until January 31, 2012. Twenty-eight (28) days after its registration expired, on March 1, 2012, the Applicant filed its second Renewal Application with the Commission. See Second Renewal Application. Consequently, the Commission issued an administrative violation against the Applicant for operating as an unregistered trade waste removal business for twenty-eight (28) days. As set forth more fully below, in addition to its failure to address significant debts owed to the Commission, the Applicant has compiled a lengthy record of flouting the Commission’s authority.

### **Administrative Violations Issued by the Commission and Adjudicated by the Department of Consumer Affairs**

On June 29, 2012, the Commission issued Notice of Violation, Violation Number TW-8592, charging the Applicant operating an unlicensed or unregistered trade waste removal business for twenty-eight (28) days. See Notice of Violation, Violation Number TW-8592. On September 13, 2012, the date of the scheduled hearing, the Applicant failed to appear, and failed to contest the charges. As a result, the Applicant was found guilty upon default. See September 21, 2012 Default Decision and Order by David Paul, Administrative Law Judge (“ALJ”) for the Department of Consumer Affairs (“TW-8592 Default Decision and Order”). ALJ Paul ordered



the Applicant to pay a total fine of One Hundred Forty Five Thousand (\$145,000) Dollars.<sup>1</sup> See TW-8592 Default Decision and Order.

On July 10, 2012, the Commission issued Notice of Violation, Violation Number TW-8733, charging the Applicant with operating a trade waste vehicle that had improper markings. See Notice of Violation, Violation Number TW-8733. On September 20, 2012, the date of the scheduled hearing, the Applicant failed to appear, and failed to contest the charges. As a result, the Applicant was found guilty upon default. See September 28, 2012 Default Decision and Order by E. DeFontes, ALJ for the Department of Consumer Affairs (“TW-8733 Default Decision and Order). ALJ DeFontes ordered the Applicant to pay a total fine of Five Thousand (\$5,000) Dollars. See TW-8733 Default Decision and Order.

On November 25, 2012, the Applicant and the Commission entered into a Stipulation of Settlement regarding both Notice of Violation, Violation Number TW-8592 and Notice of Violation, Violation Number TW-8733. See Stipulation of Settlement. By signing the Stipulation of Settlement, the Applicant, by its principal, Luis Villacis, “admit[ed] to the charged violation(s).” The Applicant also agreed to pay a total fine of Three Thousand (\$3,000) Dollars, payable in three monthly installments due on December 1, 2012, January 1, 2013, and February 1, 2013. On December 3, 2012, the Commission received the first installment of One Thousand (\$1,000) Dollars. The Applicant failed to pay the final two installments. The Commission’s staff reminded the Applicant on several occasions of its agreement to resolve the above mentioned administrative violations and warned the Applicant about the consequences of not resolving them. See February 11, 2013 letter from David Mandell to the Applicant; March 1, 2013 letter from David Mandell to the Applicant. As of the date of this Decision, the Applicant has not responded to the staff’s correspondence and has breached the Stipulation of Settlement by failing to make the final two payments.

### **Basis for Denial**

#### **The Applicant Violated the Rules of the Business Integrity Commission and Has Been Found Liable in Administrative Actions That Bear a Direct Relationship to the Fitness of the Applicant to Conduct a Trade Waste Business.**

The commission may refuse to issue a license to an applicant “after a finding of liability in an administrative action that bears a direct relationship to the fitness of the applicant to conduct the business.” See Admin. Code §16-509(a)(iv); see also §16-509(c)(ii); see also §16-513(a)(i).

The Applicant violated the rules of the Business Integrity Commission and disregarded the consequences. Two ALJs for the Department of Consumer Affairs found the Applicant

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<sup>1</sup> ALJ David Paul found the applicant guilty of operating an unlicensed or unregistered trade waste business for twenty-nine (29) days.



liable in administrative actions that bear direct relationship with the Applicant's ability to conduct business in compliance with Local Law 42 in the New York City trade waste industry. The Notices of Violation resulted in total fines and penalties of One Hundred Fifty Thousand (\$150,000) Dollars, which the Applicant has failed to pay and has failed to fully address. For this independently sufficient ground, this Renewal Application is denied.

**The Applicant Has Failed to Pay Fines That Are Directly Related to the Applicant's Business For Which Liability Has Been Admitted by the Applicant.**

The commission may refuse to issue a license to an applicant "upon the failure of the applicant to pay any tax, fine, penalty, fee related to the applicant's business...for which judgment has been entered by a[n] ... administrative tribunal of competent jurisdiction..." See Admin. Code §16-509(a)(x); see also §16-509(c)(ii); see also §16-513(a)(iv).

As of the date of this Decision, the Applicant has failed to pay the fines ordered by the Department of Consumer Affairs. By entering into the Stipulation of Settlement, the Applicant "admit[ed] to the charged violations." See Stipulation of Settlement. On multiple occasions, the Commission's staff reminded the Applicant about the existence of these fines and warned the Applicant about the consequences of not resolving them. Despite these warnings, the fines remain unsatisfied. The failure of the Applicant to abide by the terms of the Stipulation of Settlement and the Applicant's negotiations in bad faith establish this Applicant's lack of good character, honesty and integrity. For this independently sufficient reason, the Commission denies this Renewal Application.

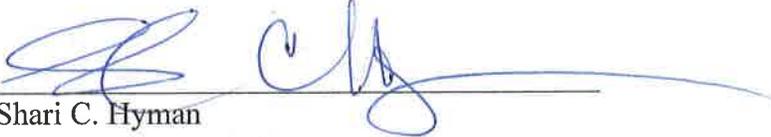
Conclusion

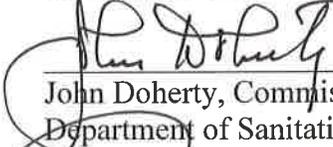
The Commission is vested with broad discretion to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license, to any applicant who it determines to be lacking in good character, honesty and integrity. The record as detailed above demonstrates that the Applicant falls short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies S.V. Trucking Corp.'s exemption renewal application and registration.

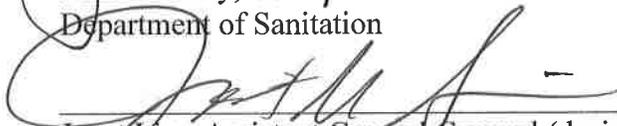
This exemption/registration denial is effective immediately. S.V. Trucking Corp. may not operate as a trade waste business in the City of New York.

Dated: May 13, 2013

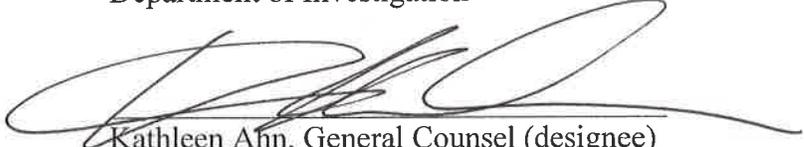
THE BUSINESS INTEGRITY COMMISSION

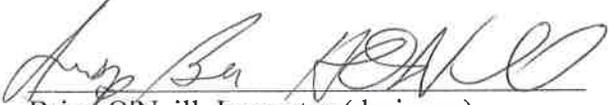
  
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Department of Consumer Affairs

  
John Kantor, Chief Inspector (designee)  
Department of Investigation

  
Kathleen Ahn, General Counsel (designee)  
Department of Small Business Services

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