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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 TRICON ENTERPRISES, INC. FOR AN EXEMPTION FROM LICENSING REQUIREMENTS AND A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Tricon Enterprises, Inc. (the "Applicant" or "Tricon") submitted an application to the New York City Trade Waste Commission ("TWC"), subsequently renamed the New York City Business Integrity Commission ("Commission") pursuant to Local Law 21 of 2002, for exemption from licensing requirements for the removal of construction and demolition debris. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Denise Petrizzo ("Denise") is the sole disclosed principal of the Applicant, a construction and demolition company.

Tricon has applied to the Commission for 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." 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); 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 reason:

- (i) The Applicant's President, Denise Petrizzo, knowingly associated with Thomas Petrizzo, a known member of an organized crime family and a convicted racketeer.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life." Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI").

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42 §1.

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures

and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

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

Moreover, the C & D sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many C & D haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988. During that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills

under the guise of clean fill. This was done by “cocktailing” the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

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

In sum, the need to root organized crime and other forms of corruption out of the City’s waste removal industry applies with equal force to the garbage hauling and the C & D sectors of the industry. Local Law 42 recognizes this fact in requiring C & D haulers to obtain registrations from the Commission in order to operate in the City. 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 (“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); Attonito, 3 A.D.3d 415.

II. DISCUSSION

On October 31, 2000, the Applicant filed an Application for Exemption ("registration application") from licensing requirements for removal of construction and demolition debris (the "Application"). The principal of the Applicant is Denise Petrizzo. See Application at 8. The staff has conducted a background investigation of the Applicant and its principal; and, in connection with that investigation, the staff deposed Denise on June 11, 2003. On April 27, 2005, the staff issued a nine-page recommendation that Tricon's application be denied. The Applicant was personally served with the recommendation on April 29, 2005 and had ten business days to submit a response pursuant to Section 2-08(a) of Title 17 of the Rules of the City of New York. Tricon did not submit a response to the staff's recommendation. The Commission has carefully considered the staff's recommendation, and for the reason set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application.

A. The Applicant's President, Denise Petrizzo, knowingly associated with Thomas Petrizzo, a known member of an organized crime family and a convicted racketeer.

The Commission may deny the registration application of a construction and demolition debris business whose principals have had business dealings with known organized crime figures and racketeers. See Admin. Code §16-509(a)(v), (vi); SRI, 107 F.3d at 998; supra, at 3-4. Thomas Petrizzo ("Thomas") has been publicly identified by law enforcement as a member of the Colombo organized crime family and is a convicted racketeer. His identification as a member of organized crime has been widely reported in the press. Notwithstanding Thomas's status in organized crime and despite his criminal convictions, the Applicant employed Thomas and continues to do business with him.

From 1997 through 2000, Tricon employed Thomas. See Deposition Transcript of Denise Petrizzo ("Denise Tr.") at 82. During this time, Thomas was employed as a site supervisor and exercised a decision-making role in Tricon. Id. at 82-85, 88-90. When Thomas left the Applicant's employ to work for another company, Mill Metals, Inc., ("Mill Metals"), the Applicant and its principal continued to do business with Thomas and Mill Metals. See Id. at 88, 95-96. Further, at her deposition before the Commission, Denise expressed her desire to continue to do business with Thomas and Mill Metals in the future. Id. at 91.

Before Thomas was employed by the Applicant, on September 8, 1995, he was indicted, along with various members and associates of the Colombo organized crime family, by the United States Attorney for the Eastern District of New York. See United States v. John T. Orena, et al., Indictment No. 95 Cr. 141 ("Indictment"). The indictment identified Thomas as a captain in the Colombo crime family and charged him with

furthering the racketeering enterprise of the Colombo crime family. See Id. Specifically, Thomas was charged with participating in a scheme to defraud the pension fund of Teamsters Local 707, a labor organization that represented workers who performed various trucking and warehousing jobs. Id.

On May 1, 1996, Thomas pled guilty to Pension Fund Embezzlement, a class D felony. See Judgment of case against Thomas Petrizzo, dated January 7, 1997 ("Judgment"). In pleading guilty, Thomas admitted that he embezzled over five hundred thousand dollars (\$500,000) from Local 707's pension fund. See United States v. Tomas Petrizzo, Superceding Information, No. 95 Cr. 141 ("Superceding Information"). Thomas also pled guilty to Bank Fraud, a class B felony, in that he falsified inventory and accounts receivable records of a company that he principally owned, A.J. Ross Logistics, Inc., in order to obtain six million dollars (\$6,000,000) in credit from the Bank of New York. See Superceding Information at 4-8.

On January 7, 1997, Thomas was sentenced to 33 months imprisonment, five years' probation, and ordered to pay a \$60,000 fine. See Judgment at 2. Thomas was also ordered to pay restitution of over nine hundred thousand dollars (\$900,000) to the Bank of New York and five hundred seventy thousand dollars (\$570,000) to the Local 707 pension fund. Id.

The above sentence also covered another guilty plea for racketeering activities undertaken by Petrizzo in New Jersey. See William K. Rashbaum, "Fraud Lands Building Big 33 Mos. In Jail," Daily News, January 8, 1997. In the New Jersey case, the United States Attorney, District of New Jersey, charged Thomas with extortion. In this criminal scheme, Thomas obtained money from a Swiss engineering firm that was building a monorail system at Newark International Airport in exchange for ensuring labor peace and keeping other elements of organized crime out of the project. See Selwyn Raab, "Contractor Admits Extortion and Role in Mafia," New York Times, May 2, 1996. On May 16, 1996, Thomas pled guilty in New Jersey to extorting 1.3 million dollars from the firm. See "Petrizzo Pleads Guilty to Fraud," Engineering News-Record, May 27, 1996; "Contractor Admits Extortion and Role in Mafia," supra.

Subsequent to the 1995 indictment, Thomas's membership in the Colombo crime family was widely reported in the media. See e.g. Rashbaum, supra; Pete Bowles, "Goodbye, Colombo," Newsday, January 8, 1997; "Contractor Admits Extortion and Role in Mafia," supra. Moreover, even prior to the 1995 indictment, it was widely reported in the press that Thomas was involved with organized crime. See e.g., Mike Beirne, "New Jersey Steel debtor associated with fraud case; A.J. Ross Logistics," American Metal Market, June 13, 1995; Selwyn Raab, "Double Portrait of a Man on Trial Astounds Friends," New York Times, April 11, 1995; Selwyn Raab, "Mafia Tale: Looting the Steel of the West Side Highway," New York Times, May 9, 1993. In fact, Thomas was charged in 1993 with conspiring with other members of the Colombo crime family to murder rivals in a war to control the Colombo crime family. See "Double Portrait of a Man on Trial Astounds Friends," supra; Robert W. Greene, "Threat Sparks Mob Civil War," Newsday, December 11, 1991; Helen Peterson, "Alleged Mobster is

Nailed in Fraud” Daily News, May 2, 1996; “Contractor Admits Extortion and Role in Mafia,” supra.¹

As early as 1994, prosecutors had maintained that Thomas was promoted to the position of captain or “capo” because he was the liaison for the Colombo family on the organized-crime construction panel that had a strong hold on the New York City construction industry. See “Double Portrait of a Man on Trial Astounds Friends,” supra; Greene, supra.

Although Denise first attempted to minimize her knowledge of Thomas’s criminal activity, it is clear that she knew about his criminal convictions and organized crime membership. When asked at her deposition about her knowledge of Thomas’s criminal background and his status as a captain in the Colombo crime family, Denise first responded, “I don’t really know anything. All I know is the same thing you heard in the news.” See Denise Tr. at 99-100. She denied that she had any knowledge of his organized crime status “until it started circulating” and when Thomas, her father, began going to court. Id. at 100-101. In fact, Denise was referring to Thomas’s arrest for conspiracy to commit murder involving the Colombo family war, and his subsequent trial for those charges. See Id. at 101, 104-105, 125-126. She acknowledged that she knew about the allegations that Thomas was a captain in the Colombo crime family. Id. at 125-126. Although Denise claimed that she did not recall the details of the trial, she recalled that Thomas was in jail for two years and then was acquitted of the charges. Id. at 104-105.

Denise also acknowledged that she was aware of Thomas’s pleas to racketeering and extortion charges. Id. at 109-11, 126-127. Although she tried to portray Thomas as a victim, she was familiar with his guilty plea to extorting \$1.3 million from the developer of the Newark Monorail. See Id. Furthermore, Denise was familiar with the criminal cases involving the pension fund of Local 707 and the Bank of New York, although she incredibly claimed to be unknowledgeable about the details of these charges. See Id.

Despite several indictments and Thomas’s guilty pleas in 1996, and despite the numerous press accounts of Thomas’s criminal activities, Denise employed and maintained a business relationship with Thomas. During her deposition before the Commission on June 11, 2003, Denise admitted that the Applicant employed Thomas from 1997 through approximately 2000. See Id. Thus, this Applicant employed Thomas as a “Project Manager” even after Thomas was convicted for racketeering. See id. at 82. As a “Project Manager,” Thomas made important decisions for the Applicant, including the determination of what the Applicant would do on particular job sites. Id. at 88-90. Thomas also supervised several major demolition projects for Tricon. Id. at 83-85. Therefore, although Denise claimed that Thomas was not a principal, see id. at 52, 82, it is clear that he had at least some decision-making role in the company. Denise’s

¹ In June 1995, Thomas was acquitted of these charges. See Peterson, supra; “Contractor Admits Extortion and Role in Mafia,” supra; “7 in Colombo Family Acquitted,” The Commercial Appeal, July 1, 1995.

testimony confirms that Thomas was in fact functioning as a principal as that term is defined under Local Law 42:²

Q: So when [Thomas Petrizzo] was working for Tricon he would conduct business as a project manager or site supervisor?

A: Yes.

Q: What did that entail?

A: Ordering trucks, telling the guys what to do, what we were doing for the day.

Q: When someone is site supervisor or project manager such as your dad when he was at Tricon, he would order the trucks, tell people what to do. What else, anything?

A: Plan out the day and how things are going to be done.

Q: Structure the day?

A: The best way to do them, you know.

Denise Tr. at 89-90.

In approximately 2000 to 2001, after Thomas left Tricon's employ, he began to work for another company, Mill Metals, Inc. Id. at 86. However, Thomas continues to maintain a business relationship with this Applicant by giving business advice to Denise regarding Tricon. Id. at 93-94. In addition, this Applicant conducts extensive business with Mill Metals, including renting equipment from and to Mill Metals. Id. at 88, 95-96. Whenever Tricon rents equipment from Mill Metals, Denise orders the equipment directly from Thomas. See Id. at 91. Finally, Denise admitted that despite Thomas's organized crime status and his criminal convictions for racketeering, she would conduct even more business with Mill Metals through Thomas in the future. Id.

The Commission is expressly authorized to deny the license application of a carting company whose principals have had business dealings with known organized crime figures and racketeers. See Admin. Code §16-509(a)(v), (vi); SRI, 107 F.3d at 998. Similarly, the Commission is authorized to deny the registration application of a construction and demolition debris business. See supra, at 3-4. The evidence recounted above demonstrates that the Applicant's principal employed and has continued to have regular business dealings with a Colombo organized crime family member, Thomas Petrizzo, many dealings of which directly involved the trade waste industry. This business was conducted with the full knowledge of Thomas's organized crime status and with a complete disregard for Local Law 42. These types of associations plainly are

² 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, Thomas Petrizzo, as the father of the majority stockholder Denise Petrizzo, would be deemed by Local Law 42 to be a principal of Tricon even if he did not participate in the control of Tricon. See 16 NYC Code §1-01.

repugnant to Local Law's 42's central goal of eliminating the influence of organized crime from the industry. Denise's business dealings with Thomas and her willingness to continue to do business with him demonstrate that she lacks the good character, honesty, and integrity required for her to obtain a registration. The Applicant did not dispute this point. Accordingly, Tricon's application is denied on this ground.

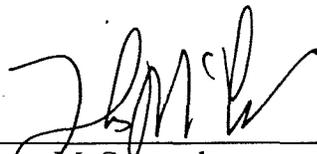
III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that Tricon falls short of that standard. For the reason discussed above, the Commission hereby denies Tricon's registration application.

This exemption/registration denial decision is effective immediately. The Applicant shall not service any customers or otherwise operate a trade waste removal business in the City of New York.

Dated: June 9, 2005

THE BUSINESS INTEGRITY COMMISSION



Thomas McCormack
Chair

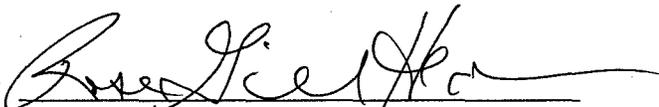


John Doherty, Commissioner
Department of Sanitation

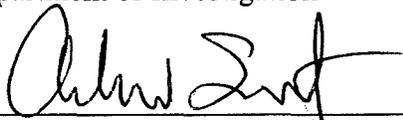
for



Jonathan Mintz, Acting Commissioner
Department of Consumer Affairs



Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Business Services



Raymond Kelly, Commissioner
New York City Police Department

for