



DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF MUNOZ TRANSPORT LLC TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Munoz Transport LLC (“Munoz Transport” 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 “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 May 2, 2012, 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 May 16, 2012. See 17 RCNY §2-08(a). The Applicant did not submit any response. Based upon the record as to the Applicant, the Commission now denies Munoz Transport’s exemption application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

- A. The Applicant Has Provided False and Misleading Information to the Commission.
- B. The Applicant’s Disclosed Principal Admitted That the Applicant Operates a Cash Business and Does Not Pay Any Taxes.

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, 998 F.2d 120 (2d Cir. 1993); People v. Ass’n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.); People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep’t 1999). The construction and demolition debris removal sector of the City’s carting industry has also been the subject of significant successful racketeering prosecutions. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992); United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367.



The Commission is charged with, *inter alia*, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. NY Admin. Code §16-505(a). It is this licensing scheme that continues to be the primary means of ensuring that an industry historically plagued with corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," commonly known as construction and demolition debris, or "C & D" removal, must apply to the Commission for an exemption from the licensing requirement. *Id.* If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption from the licensing requirement, it issues the applicant a Class 2 registration. *Id.* Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." *Id.* at §16-508(b). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing or registration decision:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering



activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 etseq.) 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

Munoz Transport applied to the Commission for an exemption from licensing and registration as a trade waste business that removes construction and demolition debris. See Registration Application filed on October 20, 2010 ("Application"). The Application disclosed Stephanie Munoz ("Munoz") (age 20) as the sole principal. See Application at 13. Munoz certified that all of the information provided on the Application was true and accurate. Id. at 20. On March 29, 2011, Munoz appeared at the Commission for a deposition. See March 29, 2011 Deposition Transcript of Stephanie Munoz ("Munoz Tr.").¹ As set forth more fully below, at her deposition Munoz initially testified that the Applicant company was not operational. However, she later changed her testimony and admitted that Munoz Transport was already in operation. See id. at 63. Furthermore, during her deposition it became clear that Munoz knows little about the Applicant business and that her uncle, Manuel Munoz, and father, Jilver Munoz, whose names appear nowhere in the application, are undisclosed principals who control the company. See infra.

Testimonial Evidence of Munoz Transport's Operations

Munoz appeared at her March 29, 2011, deposition and testified falsely and misleadingly about whether or not the Applicant business was operating. Munoz began her testimony by swearing that the Applicant business was never active and that the Applicant's trucks had been parked in a lot since they were acquired in the summer of 2009 and the summer of 2010 respectively. See Munoz Tr. at 6-7, 7-8, 15-17, 25, 31. According to Munoz, over a two year period when the Applicant was purportedly not operational, she paid \$6,000 per year to rent space in a lot to park the Applicant's trucks. See id. at 30-33. When asked about sources of income, Munoz testified that her only income was \$11,000 per year (net) from her personal employment as a cellular telephone repair technician. See id. at 32-33. She further testified that she had a balance of \$300 to \$400 in her personal checking account. See id. at 47. Incredibly, Munoz insisted that she used her \$11,000 annual personal income to pay for the \$6,000 annual parking lot cost. See id. at 31-33.

¹ Munoz appeared for her deposition without counsel. She was informed that she could call an attorney at any time during the deposition, or that the Commission's staff would adjourn the proceedings if she changed her mind at any time about legal representation. Munoz proceeded without counsel. See Munoz Tr. at 5.



In addition to providing testimony about finances that was not credible, Munoz also offered nonsensical and misleading answers to repeated questions about why she would purchase a second truck in the Summer of 2010, when the dormant applicant business already had a truck purchased a year earlier that was idle:

Q.: My question is: You already had one truck that was sitting in the lot, so why would you buy a second truck when you already had one truck that wasn't working?

A.: Because I am positive that I am going to get - - I believe I am going to get the plates to get them operating.

See id. at 17. When asked why she waited so long between acquiring the trucks and filing an application with the Commission, Munoz testified "because I wanted to get everything in order before sending in the application." See id. at 18. Munoz's answers to seemingly simple questions became even more nonsensical:

Q.: What did you want to get in order?

A.: Well, I wanted to see if that is what I really wanted to do. Since there is [*sic*] no jobs here in Newark, my uncle said there is [*sic*] a lot of jobs here in New York, that that's where I really needed the plates, to start working over here.

Q.: So what were you doing to see if you could operate the business?

A.: I was not sure yet, so I was just talking to my uncle, to my father and then just to get everything straight. That's when I just said, okay, I'm going to fill out the application.

See id. at 17-18. Munoz offered substantially different testimony later in her deposition about the status of the Applicant's operations. This change in position happened only after the Commission's staff told her that her testimony was not credible. Despite her previous insistence to the contrary, after an off the record discussion with the Commission's staff, Munoz admitted that the Applicant company *has* been operating as a business that removes and transports trade waste, purportedly outside of New York City, since 2009. See id. at 63. In contrast to her earlier sworn testimony that Munoz Transport was not operational, Munoz then testified that the business began to operate in 2009, and that the business generates \$3,000 per week in cash. See id. at 65. In contrast to her earlier sworn testimony that the trucks she had were dormant and parked in a lot, Munoz then testified that she employs a driver who is paid \$330 per week in cash. See id. at 68.

Munoz freely admitted that the Applicant does not pay any taxes on the \$3,000 she claims it has generated every week since 2009. See id. at 69. Munoz also admitted that the



Applicant does not generate any documentation concerning its driver's employment and compensation, and that there are no taxes paid in connection to his employment. See id. at 69-70.

Undisclosed Principals

The Application asks in Question 12, "On Schedule A, identify all individuals who are principals of [the] applicant business and provide the information requested." See Application at 3. Schedule A disclosed only one principal – Stephanie Munoz, "Owner" of Munoz Transport. See id. at 13. Further, Munoz certified under oath that she owned 100% of the company's stock beginning on May 25, 2010. Id. As explained below, Munoz's father, Jilver Munoz and uncle, Manuel Munoz, are undisclosed principals of the applicant business.

Munoz testified that the only thing she does for the Applicant business is visit the lot where the trucks are parked "once in a while" on Friday afternoons to "see the trucks" and to "talk to" Manuel, her uncle, who she testified is "always there." See Munoz Tr. at 10. Although she is disclosed to the Commission as the only principal, she had difficulty describing what the Applicant does, with whom the Applicant does business, and how the Applicant obtains business. See id. at 6-7, 20, 26-27. Munoz did not know where the Applicant dumps its waste or even how much it pays to dump waste- a basic and essential component of operating a trade waste business. See id. at 21, 27. During the deposition, Munoz could not provide the details about most of the company's expenses. See id. at 26-27, 59-60. It is also worth noting that the telephone call to the Commission to inquire about the status of the Applicant's application came not from Munoz, but from her cousin, Juan Munoz, someone with no disclosed connection to the Applicant business and who Munoz later testified she had not seen or talked to since December 2009. See Munoz Tr. at 37; see also Questionnaire at 5. When asked why her cousin would make an inquiry on behalf of her company, Munoz stated that she asked her father to ask Juan Munoz to call the Commission because she did not have the time to do so herself. See Munoz Tr. at 37-39.

Munoz explained that the Applicant company was her father's idea, and that he gave her one truck in 2009 and he sold her another truck for \$10,000 in 2010. See id. at 7, 14, 16-17. Both of these trucks are parked in a lot that is owned by Munoz's uncle, Manuel Munoz. See id. at 8. In addition to owning the lot where the Applicant's trucks are parked, Manuel Munoz maintains the Applicant's business records in *his* company's office.² See id. at 10, 22-24, 53-54. Manuel Munoz also insures the Applicant's trucks, selects its drivers, finds its customers, and chooses where to dump waste. See id. at 19-20, 53-55, 57-60. Munoz testified that she provides blank checks to Manuel Munoz, which Manuel Munoz uses to pay for the Applicant company's expenses. See id. at 58, 60. Munoz admitted that she does not even review the company's bank statements because she "trusts" her uncle, Manuel Munoz. See id. at 59-60. In sum, all of the evidence establishes that Manuel Munoz controls the Applicant business, that Jilver Munoz

² Munoz's uncles, Manuel Munoz and Orlando Munoz are principals of another company in the trade waste industry, Munoz Trucking Corp. See Munoz Tr. at 9, 11. Munoz Trucking Corp. parks its trucks at the same lot as the Applicant. See id. at 8-9. Munoz Trucking Corp. maintains an office located on this lot. See id. at 10-11.



provided the Applicant with trucks, and that Munoz does virtually nothing for the Applicant business.

Finally, Munoz testified about what she believed her future role with the Applicant business would be:

me, I will just be going over there, talk to my uncle since he knows more, and to see where they are going to be sent, tell them where they are going to have to go. Since they are going to be my drivers, I have to tell them where they have to go. I guess I am going to be there now in his office getting the papers that they are going to send me to do on Fridays, because my uncle was showing me all of this. They get the tickets. I have to get their wages, what they are going to get, the amount.

Id. at 22.

Basis for Denial

The Applicant Has Provided False and Misleading Information to the Commission.

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a ground for denial of the application. See Admin. Code §16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied* 2 N.Y.3d 705 (2004); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). The Applicant's disclosed principal provided the Commission with false and misleading testimony under oath and submitted an application to the Commission that contained false and misleading information as to the activities of the Applicant and the principals operating the business on a day to day basis. Accordingly, the Commission cannot place any confidence in the Applicant's application, finds it unreliable and denies Munoz Transport's application.

1. Disclosed Principal, Stephanie Munoz, Provided the Commission With False and Misleading Testimony Under Oath.

Munoz initially provided the Commission with false and misleading information about the operational status of the Applicant company. As set forth above, Munoz initially insisted, despite the fact that she purchased two trucks in 2009 and 2010, respectively, that the Applicant company was not operating. When pressed about her finances, she insisted that she paid for the purported annual parking lot cost of \$6,000 out of her personal \$11,000 annual income. This testimony was admittedly false, and Munoz eventually changed her testimony and admitted that the Applicant was fully operational. The failure of the Applicant to initially provide truthful and non-misleading testimony to the Commission on this topic is evidence that the Applicant lacks good character, honesty and integrity. The Applicant did not dispute this point. The



Commission denies Munoz Transport's application on this independently sufficient ground. See Admin. Code §§16-509(b); 16-509(a)(i).

2. The Applicant Provided False and Misleading Information on its Exemption Application.

In addition to providing the Commission with false and misleading information about the state of the Applicant company's operations, the Applicant also provided the Commission with false and misleading information by not disclosing on its application that Manuel Munoz and Jilver Munoz are the true principals of the Applicant business. Manuel Munoz and Jilver Munoz should have been disclosed as principals based on their significant involvement in the formation and operations of the Applicant company. In contrast, the disclosed principal contributes little, if anything to the operations of the business. All of the available evidence establishes that Munoz has never been in control of the Applicant company and has no plans to assume control of the company in the future. It is crucial that applicants provide truthful and accurate disclosure of principals and employees. Such information is crucial to the Commission's mission of preventing the re-emergence of the criminal activity that historically had a stronghold in the commercial carting industry. The failure of the Applicant to provide truthful and non-misleading information on its application to the Commission is evidence that the Applicant lacks good character, honesty, and integrity. The Applicant did not dispute this point. The Commission denies Munoz Transport's application on this independently sufficient ground. See Admin. Code §§16-509(b); 16-509(a)(i).

The Applicant's Disclosed Principal Admitted That the Applicant Operates a Cash Business and Does Not Pay Any Taxes.

Since Munoz was fully prepared to offer the Commission false and misleading testimony about whether the Applicant business had been operating, she was not prepared to testify about the money that the business generates. Munoz testified that the Applicant is a cash business and that as a cash business, the company does not pay any taxes and does not generate any documentation regarding the compensation of its driver. See Munoz Tr. at 69-70. The failure of the Applicant to make any of the tax filings required of a legitimate business is evidence that the Applicant lacks honesty, integrity and good character. The Applicant did not dispute this point. The Commission denies Munoz Transport's application on this independently sufficient ground.




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 Munoz Transport's exemption application and registration.


This exemption/registration denial is effective immediately. Munoz Transport LLC may not operate as a trade waste business in the City of New York.

Dated: June 5, 2012

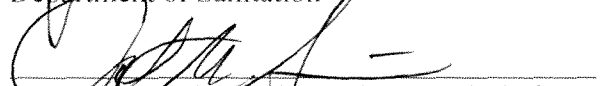
THE BUSINESS INTEGRITY COMMISSION



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Commissioner and Chair



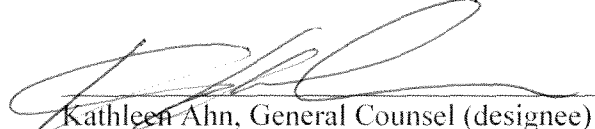
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