



The City of New York
BUSINESS INTEGRITY COMMISSION
100 Church Street · 20th Floor
New York · New York 10007
Tel. (212) 437-0500

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION RENEWAL APPLICATION OF ARMTECH INDUSTRIES CORP. TO
OPERATE AS A TRADE WASTE BUSINESS**

I. Introduction

On March 1, 2018, Armtech Industries Corp. (the “Applicant” or “Armtech”) (BIC #475035) applied to the New York City Business Integrity Commission for a renewal of its exemption from the Commission’s trade waste licensing requirements “to operate a trade waste business solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation.” Local Law 42 of 1996 authorizes the Commission to review and make determinations on such applications. *See* Title 16-A, New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 16-505(a).

On January 19, 2018, the Commission’s staff served the Applicant with the Notice to the Applicant of the Grounds to Deny the Class 2 Registration Renewal Application of Armtech Industries Corp. (BIC #475035) to Operate as a Trade Waste Business (the “2018 Notice”). The Applicant submitted a timely response. The Commission’s staff later amended its initial notice and, on January 17, 2019, the Commission’s staff served the Applicant with the First Amended Notice to the Applicant of the Grounds to Deny the Registration Application of Armtech Industries Corp. to Operate as a Trade Waste Business (the “2019 Notice”). The Applicant had 10 business days to respond, until February 1, 2019. *See* Title 17 Rules of the City of New York (“RCNY”) § 2-08(a). On February 1, 2019, the Applicant, through counsel, timely submitted a sworn statement which was signed by Wilson Arias. *See* Applicant’s response, dated February 1, 2019 (the “February 2019 Response”).

The Commission has completed its review of the registration renewal application, having carefully considered the 2019 Notice and the February 2019 Response. Based on the record herein, the Commission denies the Applicant’s registration renewal application based on the following four independently-sufficient grounds:

- 1. The Applicant knowingly provided false information to the Commission;**
- 2. The Applicant does substantial business with a previously-denied principal;**
- 3. The Applicant’s undisclosed principal was a principal in a previously-denied predecessor trade waste business; and**
- 4. The Applicant’s principal testified falsely during his sworn interviews.**

II. Statutory Background and 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, known as trade waste. 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. Int'l Brotherhood of Teamsters (Adelstein)*, 998 F.2d 120 (2d Cir. 1993); *People v. Ass'n of Trade Waste Removers of Greater New York Inc.*, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); *United States v. Mario Gigante*, No. 96 Cr. 466 (S.D.N.Y.); *People v. Ass'n of Trade Waste Removers of Greater New York*, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically 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*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri*, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the influence of organized crime and preventing its return to the City's private carting 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. *See Admin. Code § 16-505(a)*. This regulatory framework continues to be the primary means of ensuring that the private carting industry 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," also known as construction and demolition debris or "C&D," must apply to the Commission for an exemption from the licensing requirement. *Id.* If, after it reviews an application, the Commission grants the exemption, it issues the applicant a class 2 registration. *Id.* at § 16-505(a)-(b). In reviewing the application, the Commission must evaluate the "good character, honesty and integrity of the applicant." *Id.* at § 16-508(b); *see also id.* at § 16-504(a). The "applicant" includes the business entity and each principal of the business. *Id.* at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a decision on an application for a license or registration:

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 § 16-509(a)(i)-(x). *See also id.* at § 16-504(a).

The Commission also 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 § 16-509(b). *See also* 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial); *Elite Demolition Contracting Corp. v. City of New York*, 4 N.Y.S.3d 196, 125 A.D.3d 576 (1st Dep’t 2015); *Breeze Carting Corp. v. City of New York*, 52 A.D.3d 424 (1st Dep’t 2008); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”); leave denied 2 N.Y.3d 705 (N.Y. 2004). In addition, the Commission may refuse to issue a license or registration to an applicant that “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 § 16-509(c). *See also id.* at § 16-504(a). 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 § 16-509(d).

An applicant for a private trade waste hauling license or registration 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 Indus., Inc.*, 107 F.3d 985, 995 (2d Cir. 1997); *see also Daxor Corp. v. New York Dep’t of Health*, 90 N.Y.2d 89, 98-100 (N.Y. 1997).

III. Statement of Facts

1. Background

On December 6, 2013, the Applicant applied for a registration to operate as a trade waste business that removes construction and demolition debris. *See* registration application of Armtech Industries Corp. (the “Initial Application”). The Initial Application disclosed Wilson Arias (“Arias”) as the sole principal and vehicle operator. *Id.* at pp.13, 18 (Schedules A and D). Arias certified that all of the information contained in the Initial Application was “full, complete and truthful.” *Id.* at p.20. On February 18, 2014, the Commission granted the Applicant a registration to operate as a trade waste business that removes construction and demolition debris, valid for the two-year period ending February 29, 2016. *See* registration order for Armtech Industries Corp., dated February 18, 2014 (the “Registration Order”).

On February 26, 2018, the Applicant submitted its first registration renewal application. *See* registration renewal application of Armtech Industries Corp. (the “First Renewal Application”). Like the Initial Application, the First Renewal Application disclosed Arias as the Applicant’s sole principal and vehicle operator. *Id.* at p.8, 12 (Schedules A and D). The Applicant disclosed no changes to its business location, but disclosed new garage and mailing addresses. *Id.* at p.2. Arias certified that all of the information contained in the First Renewal Application was “full, complete, and truthful.” *Id.* at p.13. Subsequent to submitting the First Renewal Application, the Applicant disclosed a second vehicle operator. *See* Armtech New Employee/Driver Form, dated February 21, 2017.

On March 24, 2016, the Commission requested additional information, including updated information on principals, employees and all customers and subcontractors of the Applicant. *See* request for information, dated March 24, 2016. In response, the Applicant submitted a notarized letter affirming that Arias is the sole principal of Armtech and that “no changes have occurred since the date of the application dated March 8, 2016.” *See* first letter from Applicant dated April 8, 2016. Additionally, the Applicant submitted a notarized letter affirming that it only services two customers: Wellbuilt Construction and Foundations Group. *See* second letter from Applicant dated April 8, 2016.

On April 6, 2017, a member of the Commission’s staff conducted a sworn interview of Arias in connection with the Commission’s review of the First Renewal Application. *See* transcript of sworn interview of Wilson Arias (“Arias Tr. 1”). Prior to the interview, Arias completed an 11-page questionnaire and certified that the answers he provided on the questionnaire were truthful. *See* questionnaire completed by Arias, dated April 6, 2017 (the “Questionnaire”).

Following the interview, the Commission requested financial documents from the Applicant and conducted a review and audit of the Applicant’s books and records. *See* letter from Commission’s staff to Armtech, dated April 20, 2017. As part of its request, the Commission also required a copy of the Applicant’s 2014 general ledger for purposes of completing its audit review since a portion of the financial activity under review was transacted in 2014. *See, e.g.*, letter from the Commission’s staff to Armtech, dated January 3, 2018. In response, Arias advised the Commission several times, including in writing, that it did not have a copy of its 2014 general ledger. *See, e.g.*, letter from the Applicant, dated January 9, 2018. The Applicant claimed that its computer was severely damaged from a virus which resulted in a loss of “all the stored and saved info,” and it had no backup. *Id.* The Commission’s Audit Unit conducted a review of the documents submitted and produced a report of its findings. *See* report by Commission’s Audit Unit regarding Armtech, dated December 11, 2017 (“Audit Report”).

After a full review of the First Renewal Application, in January 2018, the Commission’s staff served the Applicant with the 2018 Notice. In response to the 2018 Notice, the Applicant submitted an affidavit of Wilson Arias, dated February 13, 2018 (the “Arias Affidavit”).¹ After the 2018 Notice was served, but before the Commission voted on the Commission’s staff’s recommendation, the Applicant submitted its second registration renewal application. *See* registration renewal application for Armtech Industries Corp. (the “Instant Application”), dated March 1, 2018. The Instant Application is the application under consideration in this denial recommendation.

The Instant Application disclosed Arias as its president, sole owner and sole principal. *Id.* at p.8 (Schedule A). The Applicant also disclosed two vehicle operators, including Arias, and an employee. *Id.* at pp.11, 12 (Schedules C and D). Arias certified that all of the information contained in the Application and the updated form was full, complete and truthful. *Id.* at p.13. On May 10, 2018, at Arias’ request, a member of the Commission’s staff conducted a second sworn

¹ In addition to the Arias Affidavit, the Applicant submitted an affidavit of Angelo Markatos along with nine exhibits. All cites to statements made in response to the 2018 Notice refer to the sworn statement of Arias, not the sworn statement of Markatos.

interview of Arias in connection with the Commission's review of the Instant Application. *See* transcript of sworn interview of Wilson Arias, dated May 10, 2018 ("Arias Tr. 2").

2. *Angelo Markatos is involved in the Applicant's business.*

The Commission's investigation, including both interviews of Arias, demonstrates that an individual named Angelo Markatos ("Markatos") is deeply involved in the Applicant's business. First, the Applicant's name is the same as that of a prior company connected to Markatos.² More importantly, Markatos owns, manages or is otherwise connected to entities which bear similar names to the Applicant: Armtec Services Inc. and Armteck and Associates Corp.³ These entities are linked to Markatos via related business addresses in Long Island City, Queens. Markatos also owns RJB Contracting Carting Corp., d/b/a Armteck Construction ("RJB Carting"), an entity that conducts a substantial amount of business with the Applicant. *See* Arias Tr. 2 at 122 (testifying that RJB Carting comprises about 50% of Applicant's business). Yet, the Applicant failed to disclose RJB Carting as a customer in its letter to the Commission dated April 8, 2016. *See* second letter from Applicant to the Commission, dated April 8, 2016; Arias Tr. 1 at 30, 38 (acknowledging the Applicant provided services to RJB Carting on March 4, 2016); Arias Tr. 2 at 85 (acknowledging RJB Carting was not disclosed as a client).

Markatos is linked to the Applicant in other respects. For example, the Applicant utilized vehicles previously owned by RJB Contracting Corp. (BIC # 4276, denied) ("RJB Contracting") and RJB Carting, both of which are owned or otherwise controlled by Markatos. *See* file for Department of Motor Vehicles records. The Applicant previously parked its vehicle at the same location as Mac Hudson Industries Corp. (BIC #4391, denied) ("Mac Hudson").⁴ *See* Initial Application at p.1; first license renewal application for Mac Hudson Industries Corp. at p.9 (Schedule B). And though the garage location is owned by Binjama Realty Inc., the Applicant's general ledger and bank records show payments by the Applicant to Mac Hudson for "yard/parking lot rent," from January through June 2015. *See* Audit Report at p.13.

The Applicant and RJB Carting utilized the same pool of employees from March 2014 through September 2016, and the same bookkeeper, Renald Koka. *Id.* at pp.12, 20.⁵ More recently, the Applicant hired one of Markatos' full-time employees, Heather Colon, as a part-time secretary. *See* Arias Tr. 2 at 50-51. The Applicant also used the same accounting firm as Mac Hudson. *See, e.g.,* federal corporate tax returns of Mac Hudson Industries Corp. and Armtech Industries Corp. for the year 2014. Finally, the Applicant utilized the same expeditor as RJB

² Prior to the Applicant's incorporation, the first Armtech Industries Corp. was operated by a George Neofytides. During his sworn interview, Arias acknowledged he knows Markatos through George Neofytides and that he was employed by George Neofytides' company in 1998 as a vehicle operator. *See* Arias Tr. 1 at 43-44; Arias Tr. 2 at 25-26.

³ Markatos acknowledged ownership of Armteck and Associates Corp. *See* affidavit of Angelo Markatos.

⁴ Mac Hudson is owned by Peter Neofytides, the son of George Neofytides, and a business associate of Markatos. In 2015, the Commission found both Neofytides and Markatos to be undisclosed principals of RJB Contracting. Notably, Mac Hudson operated out of the same location (a trailer in Long Island City, Queens) as RJB Contracting and RJB Carting. *See* Commission Decision denying the registration application of RJB Contracting Corp., dated June 22, 2016 ("Denial Decision of RJB Contracting Corp.").

⁵ Koka also served as the bookkeeper for RJB Contracting. *See* transcript of sworn interview of Jhonny Brito, dated February 29, 2016, at 8.

Contracting. *See* Applicant New York State Department of State filing for the year 2013; New York City Department of Finance filing for RJB Contracting Corp.

Financial records also demonstrate that the Applicant and RJB Carting are financially intertwined. First, copies of certain cancelled checks for the Applicant and RJB Carting bear strikingly similar handwriting, indicating that the same person endorsed the checks. *See, e.g.,* Audit Report at p.9; *see also* Applicant Chase Bank Check Nos. 281, 312; RJB Carting Alma Bank Check Nos. 5502, 5503 (for examples of similar handwriting on checks drawn by the Applicant and RJB Carting).⁶ A review of Arias' known handwriting demonstrates that the handwriting on those particular cancelled checks is not his. *Compare with* Applicant Chase Bank Check No. 442. Arias further acknowledged that he did not write those checks. *See* Arias Tr. 2 at 191-92. Yet, he is the only signatory on the Applicant's bank account. The handwriting on those checks appears to be that of Markatos.

During his second interview, Arias testified that he did not recognize any of the handwriting on the face of some of his checks, though he admitted that the front and back of the checks were filled out by the "same person." *See, e.g., id.* 2 at 192, 198-99.⁷ Yet, when confronted with a copy of check number 293, Arias suddenly recognized the handwriting on the face of the Applicant's checks as being that of his "friend Ernesto Gutierrez," who Arias said would come to his house to help with Arias' Quickbooks. *Id.* at 197-98; Exhibit 9.⁸

Second, the Applicant misclassified payments from customers as "loans from RJB," instead of revenue. *See* Audit Report at pp.6-8, 17. The Applicant then redirected those funds to RJB Carting on the same day or within a few days, characterizing them as "repayment of loans." *Id.* at 6-8. In total, the Applicant misclassified \$325,709 as "loans from RJB," and paid \$323,509 to RJB Carting as loan repayments. *Id.* By misclassifying the customer payments as loans, the Applicant underreported its revenue, and failed to record the expenses associated with the money paid to RJB Carting. *Id.* at 17. Additionally, those maneuvers would also allow RJB Carting to underreport its revenue by receiving income improperly classified as loan repayments. During his sworn interview, Arias was asked about the misclassifications:

- Q.: [C]heck number 1035 was paid by a customer, correct?
A.: Yes.
Q.: But it is classified on your general ledger as –
A.: -- "loan received from RJB."
Q.: Okay. But, in fact, it wasn't a loan?
A.: It's not a loan.
Q.: It was a payment by a customer, correct?
A.: Yes.

⁶ During his testimony, Arias admitted that the person endorsing the back of the checks is the same person writing on the face of the check. *See* Arias Tr. 2 at 193 (testifying, "and the person fulling [sic] out these is the same person").

⁷ Arias' testimony during his second interview is in stark contrast with his first testimony where he immediately recognized Markatos as endorsing checks on behalf of RJB Carting. *See, e.g.,* Arias Tr. 1 at 38, 40.

⁸ Check number 293 was payable to "RJB Contracting Carting Corp." in the amount of \$21,945.25 for "repaying back of loan." *See* Exhibit 9. Meanwhile the back of check number 293 was endorsed, "For Deposit Only RJB Contracting Carting," in a strikingly identical handwriting as the check's front handwriting. *Id.* Arias, however, testified he did not recognize this handwriting.

See Arias Tr. 2 at 203; Exhibit No. 8. Shortly after the Applicant was paid by its customer (Check No. 1035), the Applicant issued a separate check (Check No. 293) in the exact amount of \$21,945.25 to RJB Carting. On this issue, Arias testified:

- Q.: [S]o check number 293 you classified as repayment of a loan?
- A.: Yes, but it's not a loan. Maybe I did it like that because money coming in and money go out, you know, it's the same money, the same transaction.
- Q.: Why would you classify it as a loan?
- A.: Because I don't want to classify it like income because it's not income for – the money not stay in my account.

See Arias Tr. 2 at 204; Exhibit 8. Again, when asked the reason for the misclassification, Arias responded, "because the money came in and went out." See Arias Tr. 2 at 205.

Furthermore, the Applicant made payments to RJB Carting's creditors from June 2014 through August 2015, totaling \$46,237, and paid payroll expenses on behalf of RJB Carting from May to August 2015 for a total of \$17,764. See Audit Report at pp.10-11. When questioned as to why the Applicant recorded payments to employees as being payable to RJB Carting on its general ledger, Arias could not provide a satisfactory answer, ultimately stating, "Listen, something is wrong here." See Arias Tr. 2 at 185; Exhibits 3, 4. Later, Arias testified:

- Q.: [I]f you made a check payable to Daniel, why did you record it as payable to RJB?
- A.: Really, I don't know. You're talking about four years ago.

See Arias Tr. 2 at 186.

This is not the first time that Markatos has had a controlling interest in a trade waste company without being disclosed as a principal. Jhonny Brito, the sole disclosed principal of RJB Contracting, testified before the Commission's staff that Markatos was the "mastermind" of RJB Contracting and exercised direct control over the affairs of the company. See transcript of sworn interview of Jhonny Brito, dated February 29, 2016, at 19-20.⁹ The Commission denied RJB Contracting's registration application because the company failed to disclose all of its principals, among other issues. See Denial Decision of RJB Contracting Corp. Notably, Arias was an undisclosed vehicle operator for RJB Contracting. See Notice of Violation for Unlicensed or Unregistered Activity TW-3716.

⁹ Markatos' control over RJB Contracting was such that, despite working for both RJB Contracting and RJB Carting, Arias could not tell which company he worked for, what years he worked or whether he worked for either or both entities. See Arias Tr. 2 at 31, 36, 93-94. This is further evidence that Markatos controlled both companies.

3. *The Application contained other misstatements and omissions.*

In addition to failing to disclose Markatos' role in the company, the Applicant failed to disclose all of its employees and to notify the Commission when it hired new employees, as required. The Commission found a total of seven undisclosed employees. *See* Application at p.11; Audit Report at p.20. The Applicant also failed to disclose several vehicle operators on a timely basis, even though Arias claimed he was aware of his requirement to do so. *See, e.g.,* Arias Tr. 2 at 62-63, 101-05.

4. *Arias provided false testimony to the Commission.*

During his sworn testimony, Arias testified falsely in several respects regarding RJB Carting, at times even contradicting himself. First, he denied knowing who owned the company. *See* Arias Tr. 1 at 15 (“I don’t know who is the owner.”). When asked who hired him at RJB Carting, Arias testified merely that he filled out an online application. *Id.* at 16. Yet, in later testimony, when asked to explain the relationship between the Applicant and RJB Carting, Arias responded that he has known Markatos for 25 years, had worked for him around 1997 or 1998, and when he returned from Florida in 2011, he asked Markatos to get him a job as a driver. *Id.* at 42; *see also* Arias Tr. 2 at 36. When presented with a check signed by RJB Carting, Arias recognized the signature as belonging to Markatos. *See* Arias Tr. 1 at 38, 40, 45-46. Furthermore, Arias described Markatos as his “friend in business . . . for too many years,” and testified he worked with Markatos for years. *Id.* at 42, 44. Despite admitting he had spoken to Markatos two weeks prior to his testimony, Arias thereafter testified that he “wants nothing to do with Angelo.” *Id.* at 45.

During his sworn interview, Arias denied that the Applicant ever paid RJB Carting for services. *Id.* at 41, 47-48. Yet, when confronted with a copy of a check issued by Armtech to RJB Carting for \$10,000, Arias testified that the check was “because we do a job on 680 Fifth Avenue and that’s -- I got to make a payment to RJB.” *Id.* at 50. When asked to explain, Arias testified, “I do the cleanup and I pay to RJB the \$10,000.” *Id.* at 51. Later, when asked again why the Applicant issued a check to RJB Carting for \$10,000 for a job for which the Applicant provided the services, Arias changed his testimony, stating that Markatos may have given him a loan. *Id.* at 54, 55. This contradicts earlier testimony in which Arias repeatedly denied taking out a loan on behalf of the Applicant from any individual or entity. *Id.* at 33-37; *see also* Arias Tr. 2 at 45, 153-54. Instead, Arias only acknowledged receiving a personal “regular loan” of \$2,000 or \$5,000 from family. *See* Arias Tr. 1 at 33, 35-36; *see also* Arias Tr. 2 at 153-54. Ultimately, Arias claimed that he did not know what the payment was for, stating, “I don’t know. I have to check. I can’t tell you yes 100 percent for this special amount.” *See* Arias Tr. 1 at p.55.

Arias did not disclose his prior employment with RJB Carting or RJB Contracting on the Commission’s questionnaire. *See* Questionnaire at p.8. During his testimony, however, Arias stated he worked for RJB Carting between 2012 and 2014, and thereafter opened his company. *See* Arias Tr. 1 at 16. Yet, Arias received payroll checks from RJB Carting from 2014 through 2016 and declared income from RJB Carting on his 2014 state individual tax return and 2015 federal and state individual tax returns. *Id.*; Arias individual state tax returns for the year 2014 and individual state and federal tax returns for the year 2015. Additionally, the Audit Report noted payroll checks from the Applicant to Arias, who appears to have been paid on an hourly basis. *See*

Audit Report at p.15. Arias received a total of \$38,307.19 and \$18,475.91 from the Applicant in 2014 and 2015, respectively. *Id.*

Arias also provided false testimony about the financial relationship between the Applicant and RJB Carting. Arias testified that every time the Applicant's account was utilized, it was to pay for fuel for the Applicant's trucks or Arias' personal vehicle. *See* Arias Tr. 2 at 157-159. Arias further testified that he did not pay for fuel for other companies under the Applicant's account. *Id.* In fact, Arias testified that fuel for RJB Carting's trucks was paid under RJB Carting's account and never under the Applicant's account. *Id.* at 158-59. After making those statements, Arias was presented with copies of checks paid for the Applicant's truck fuel, but which bore "RJB" on the face or memo of the checks. *Id.* at 161-163; *see, e.g.*, Applicant's Check No. 151. When asked to explain, Arias initially testified that "maybe they used Angelo's trucks in my account and we split it." *See* Arias Tr. 2 at 163. Arias explained that the guy at the gas station "put the RJB, to make sure they not confused for RJB and Armtech for the same account." *Id.* at 164. When asked to explain why the check's memo indicated "RJB Contracting Carting," Arias could not provide a satisfactory answer, ultimately testifying: "really, I don't know." *Id.* at 164-168. Importantly, the Applicant's 2015 general ledger shows that the Applicant accounted for those transactions as relating to trucks which were registered to RJB Carting. *See* Audit Report at p.10.

IV. Basis for Denial

1. The Applicant knowingly provided false 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. City of New York*, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008).

a) The Applicant failed to disclose Angelo Markatos as a principal.

Despite the fact that Markatos plays a major role in the Applicant's business, the Applicant failed to disclose him as a principal on the Instant Application. *See* Application at p.13 (Schedule A). Section 16-501(d) of the Administrative Code defines a principal as, among other things, a person "participating directly or indirectly in the control of such business entity." Admin. Code § 16-501(d). Without Markatos, the Applicant could not function. Clearly, he participates directly in the control of the Applicant and, as such, is a principal of the company.

Several factors lead to this conclusion. Markatos owns two other trade waste businesses – RJB Carting and RJB Contracting – both of which are financially intertwined with the Applicant. For example, the same individual signed checks on RJB Carting's and the Applicant's business accounts, suggesting that both companies are operated by the same individual. *See* Audit Report at p.9. Financial records demonstrate that Markatos asserts direct control over the Applicant's financials. This includes checks that Markatos signed on behalf of the Applicant and the fact that the Applicant misclassified payments received from customers as "loans" from RJB Carting

instead of revenue and immediately remitted these same payments to RJB Carting as “repayment of loans.”

Further, the Applicant and RJB Carting share employees, including a bookkeeper and secretary. *Id.* at p.12, 20; Arias Tr. 2 at 50-51. The Applicant utilized the same accounting firm as Mac Hudson, a company also connected to Markatos. *See, e.g.*, federal corporate tax returns for Mac Hudson Industries Corp. and Armtech Industries Corp. for the year 2014. The Applicant utilized the same expeditor as RJB Contracting. *See* file for the Applicant’s New York State Department of State filing for the year 2013; New York City Department of Finance filing for RJB Contracting Corp. for the year 2011. The Applicant also utilized vehicles previously owned by RJB Contracting and RJB Carting, parked the vehicles at the same location as Mac Hudson and paid Mac Hudson rent. *See* Audit Report p.13. And the Applicant is named after a company connected to Markatos and bears a strikingly similar name to other entities owned or connected to Markatos. Clearly, Markatos should have been disclosed as a principal of the Applicant. The Applicant does not refute this point in the February 2019 Response. *See* February 2019 Response.

b) The Applicant provided false information regarding its employees.

The Applicant also provided false information by not disclosing its full roster of employees. Specifically, the Applicant failed to disclose seven employees and to timely disclose several vehicle operators. *See* Audit Report at p.20; Arias Tr. 2 at 62-63, 101-05. It further failed to disclose the fact that those employees were shared with RJB Carting and that the Applicant made payroll payments on behalf of RJB Carting. *See* Audit Report at pp.6, 12. The Applicant does not refute this point in the February 2019 Response. *See* February 2019 Response.

The Applicant repeatedly made false statements and material omissions on the Initial Application, the First Renewal Application, and the Instant Application. This conduct demonstrates that the Applicant and its principals (both disclosed and undisclosed) lack good character, honesty, and integrity. Accordingly, the Commission denies the Instant Renewal Application based on this independently-sufficient ground. *See* Admin. Code §§ 16-509(a)(i); 16-509(b).

2. The Applicant does substantial business with a previously-denied principal.

As part of its registration requirement, an applicant must sign a registration order and abide by the conditions therein. *See* Admin. Code §§ 16-503; 16-504(a), (d); 16-505(a); 16-505(b); *see also* RCNY § 1-09 (“prohibiting registrants from, among other things, violating or failing to comply with any order or directive of the Commission”). Accordingly, on February 18, 2014, the Applicant signed a registration order and agreed, among other conditions, “[n]ot to employ or otherwise retain the services of, or do business with, any person or entity at any time after the Commission has issued a finding that said person or entity lacks good character, honesty, or integrity . . .” *See* Registration Order at p.4.

As fully discussed above, the Applicant engages in substantial business with Markatos, who the Commission previously determined lacks good character, honesty and integrity. *See, e.g.*, Arias Tr. 2 at 122 (testifying that RJB Carting comprises about 50% of Applicant’s business); Denial Decision of RJB Contracting Corp. By doing business with a previously-denied principal,

the Applicant violated the terms and conditions of its registration order. *See* 17 RCNY § 1-09. The Applicant's failure to abide by the conditions of its registration order demonstrates that the Applicant lacks good character, honesty, and integrity.

The Applicant argues that Arias, like many entrepreneurs, stayed connected to former employers, and that alone is not "evidence of a criminal underworld conspiracy." *See* February 2019 Response at p.3. While it is true that many new entrepreneurs rely on their old connections to grow their business, the Applicant is operating in a highly-regulated industry where associations matter. The Applicant is expressly prohibited from employing or otherwise retaining the services of a previously-denied principal, much less having one as its principal. The fact that Markatos was also not disclosed as a principal compounds the problem. This conduct speaks directly to the Applicant's lack of good character, honesty and integrity. The fact that the Applicant may have belatedly cut ties – once the Commission discovered the truth – is unavailing. Accordingly, the Commission denies the Instant Renewal Application based on this independently-sufficient ground. *Id.*

3. The Applicant's undisclosed principal was a principal in a previously-denied predecessor trade waste business.

In determining whether an applicant possesses good character, honesty and integrity, the Commission may consider whether a principal of the applicant was a "principal in a predecessor trade waste business . . . where the commission would be authorized to deny a license to such predecessor business . . ." *See* Admin Code. at § 16-509(a)(vii). The term "predecessor trade waste business" is defined as "any business engaged in the removal, collection or disposal of trade waste in which one or more principals of the applicant were principals in the five-year period preceding the application." *Id.* at § 16-508(b).

As demonstrated above, Markatos is an undisclosed principal of the Applicant. Similarly, the Commission determined that Markatos was also an undisclosed principal of RJB Contracting, having been extensively engaged in the entity's affairs from its inception in 2006 until it ceased doing business approximately in 2014 – within five years preceding the Instant Application. *See* denial decision of RJB Contracting Corp. at p.10. On June 22, 2016, the Commission denied RJB Contracting's registration application, in part because it failed to properly disclose Markatos as a principal of that company.

Thus, Markatos is a principal of the Applicant, and – within five years preceding the Instant Application – was a principal of RJB Contracting Corp. (albeit undisclosed in both instances). The Applicant does not refute this point in its February 2019 Response. *See* February 2019 Response. Therefore, the Commission denies the Instant Application because the Applicant's principal was also a principal in a predecessor trade waste business for which the Commission would be authorized to deny, and in fact did deny, a registration. *See* Admin. Code §§ 16-509(a)(vii); 16-508(b).

4. The Applicant's principal testified falsely during his sworn interviews.

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.” *See* Admin. Code § 16-504(c). The Commission may refuse to issue a registration to an applicant who has “knowingly failed to provide the information and/or documentation required by the Commission.” *Id.* at §16-509(b).

The Applicant argues that it has readily complied with the Commission's extensive document requests, including general ledgers, payroll data, canceled checks, tax returns, invoices and contracts for projects. *See* February 2019 Response at p.1. While the Applicant has provided several items, including copies of its tax returns and its general ledger, it only provided the general ledger for 2015 and 2016. In fact, the Commission notes the Applicant's failure to produce its 2014 general ledger despite the Commission's request and the relevance of the information. *See, e.g.*, letter from the Commission's staff to Armtech, dated January 3, 2018. Instead, the Applicant claims that its computer was severely damaged from a virus which resulted in a loss of “all the stored and saved info,” and it had no backup. *See* letter from the Applicant, dated January 9, 2018.

The Applicant also argues that had it known that items in its general ledger may have been misclassified, it would not have so readily and willingly produced all of its financial documents intact and unrevised. *See* February 2019 Response at p.3. The Applicant was required by law to provide the documents. Its argument that such compliance is evidence of good faith is unconvincing; rather it is evidence that it did not seek to compound its problems by providing falsified documents to the Commission or refusing to comply at all.

And, regardless of the document production – and Arias' assertion to the contrary – he did testify falsely, in both of his interviews. *See* February 2019 Response at p.2. Specifically, Arias denied knowing who owned RJB Carting, despite later testifying that he had known Markatos for 25 years and regularly worked with him. *See* Arias Tr. 1 at 15, 42. Arias also testified falsely about how he got the job at RJB Carting, first stating that he had merely filled out an online application, and later admitting that he asked Markatos for a job. *Id.* at 16, 42.

Additionally, Arias testified falsely about the finances of the Applicant – initially testifying that the Applicant never took any loans, or made payments to RJB Carting; but later admitting that the Applicant paid \$10,000 to RJB Carting. *See, e.g., id.* at 41, 51-54. Finally, Arias testified falsely when he denied paying for fuel for RJB Carting's trucks. *See* Arias Tr. 2 at 157. The checks and the Applicant's 2015 general ledger make it clear that the payments were not made for the Applicant's own fuel, as Arias testified, but for vehicles registered to RJB Carting. *See, e.g.,* Applicant's Check No. 151; Audit Report at p.10.

The Applicant also claims that the Applicant attempted to cooperate with the Commission in the second sworn interview to resolve various inaccuracies, and that the Commission is using that as evidence of lying. *See* February 2019 Response at p.2. The Applicant attributes the inaccuracies to misunderstanding the question. *Id.* (“When Wilson Arias understood the question, he testified accurately.”) To illustrate its point, the Applicant cites several sections of the 2019

Notice. *Id.* Although the Applicant now attributes the inaccuracies in Arias' testimony to misunderstanding the questions, it is telling that he only revised his testimony after being confronted with contradictory evidence. *Id.*; Arias Tr. 2 at 56-57, 100 (for an example of the Applicant's admission only after the Commission specifically asked about certain employees).

Furthermore, the Applicant maintains that Arias' first deposition was unfair because it was conducted without assistance of counsel or an interpreter. Yet, during his first sworn interview, Arias was provided ample opportunity to request a translator or a lawyer. *See* Arias Tr. 1 at 5-6, 9. He was specifically asked if he could read, write and understand English well, to which he answered affirmatively. *Id.* at 19. In fact, throughout the first sworn interview, Arias answered all questions without issue and only once expressed his inability to understand the question: "Mr. Arias, do you acknowledge you have been sworn in today," before it was rephrased. *Id.* at 4. As admitted in his own response, "Wilson Arias speaks perfectly fine English." February 2019 Response at p.2.

The February 2019 Response concludes with the claim that a " cursory review of Armtech's ledgers, invoices, contracts, payroll, etc. from 2017 to present will show that the Armtech [sic] has moved on [from associating with prior employers] and has procured its own clients. Armtech, as always, in good faith and cooperation, is willing to provide these documents to the BIC and Wilson Arias is once again willing to provide further testimony." *Id.* at 4. Although the Applicant does not mention Markatos by name, it appears to be referring to him in this assertion. Yet, the Applicant did not provide the Commission with the records it claims will show the belated separation. Moreover, the fact that Markatos was ever an undisclosed principal of the Applicant is more than sufficient to deny the Instant Application. As for the offer of a third sworn interview, Arias has had two chances to be fully transparent with the Commission and has failed both times.

Thus, Arias' failure to provide truthful information during his sworn interviews with the Commission's staff demonstrates that he and the Applicant lack good character, honesty, and integrity. The Applicant's arguments to the contrary in the February 2019 Response are unavailing. Accordingly, the Commission denies the Instant Application based on this independently sufficient basis. *See* Admin. Code §§ 16-509(a)(i); 16-509(b).

V. Conclusion

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant who it determines lacks good character, honesty and integrity. The record herein demonstrates that the Applicant and its principals lack good character, honesty and integrity. Accordingly, based on the aforementioned independently sufficient grounds, the Commission denies the registration renewal application of Armtech Industries Corp.

This denial decision is effective immediately. Armtech Industries Corp. may not operate as a trade waste business in the City of New York.

Dated: March 20, 2019

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



Daniel D. Brownell,
Commissioner and Chair



Margaret Garnett, Commissioner
Department of Investigation



Lorelei Salas, Commissioner
Department of Consumer Affairs



Anthony Dell'Olfo, Deputy General Counsel
(Designee)
Department of Small Business Services



Christopher Fasano, Lieutenant
(Designee)
New York City Police Department