



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

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE APPLICATION OF MARRAFLO CONTRACTING, INC. FOR A LICENSE TO OPERATE AS TRADE WASTE BUSINESSES

Marraflo Contracting, Inc. (“Marraflo”) applied to the New York City Business Integrity Commission (“Commission”) for a license to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code (“Admin. Code”), §16-505(a), 508. Local Law 42, which created the Commission to license and regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). These illustrative factors include the failure to provide truthful information to the Commission, certain civil or administrative findings of liability, and certain associations with organized crime figures. Based upon the record as to the Applicant, the Commission finds that this Applicant lacks good character, honesty, and integrity for the following independent reasons:

- (i) The Applicant has failed to pay its taxes and has numerous judgments and liens filed against it.
- (ii) The Applicant knowingly failed to provide information and documentation required by the Commission.

I. BACKGROUND

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. Beginning in the late 1950's, and until only recently, the commercial 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 described that cartel as "a 'black hole' in New York City's economic life":

Like those dense stars found in the firmament, the cartel can not be seen and its existence can only be shown by its effect on the conduct of those falling within its ambit. Because of its strong gravitational field, no light escapes very far from a "black hole" before it is dragged back . . . [T]he record before us reveals that from the cartel's domination of the carting industry, no carter escapes.

Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI") (citation omitted).

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically plagued this industry revealed the nature of the cartel: an entrenched anticompetitive 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 found:

- (1) "that the carting industry has been corruptly influenced by organized crime for more than four decades";
- (2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";
- (3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";
- (4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . effectively being the only rate available to businesses";

- (5) “that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove”;
- (6) “that organized crime’s corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms”;
- (7) “that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations”;
- (8) “that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct”; and
- (9) “that a situation in which New York City businesses, both large and small, must pay a ‘mob tax’ in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.”

Local Law 42, § 1.

The criminal cartel operated through the industry’s four leading New York City trade associations, the Association of Trade Waste Removers of Greater New York (“GNYTW”), the Greater New York Waste Paper Association (“WPA”), the Kings County Trade Waste Association (“KCTW”), and the Queens County Trade Waste Association (“QCTW”), all of which were controlled by organized crime figures for many years. See, e.g., Local Law 42, §1; United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993). As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have served, they “operate[d] in illegal ways” by “enforc[ing] the cartel’s anticompetitive dominance of the waste collection industry.” SRI, 107 F.3d at 999.

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted on enterprise corruption, criminal antitrust, and related charges as a result of a five-year investigation into the industry by the Manhattan District Attorney’s Office and the New York Police Department. See People v. Ass’n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). The defendants included capos and soldiers in the Genovese and Gambino organized crime families who acted as “business agents” for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. In essence, the carting industry’s modus operandi, the cartel, was indicted as a criminal enterprise.

More carting industry indictments followed. In June 1996, both the Manhattan District Attorney and the United States Attorney for the Southern District of New York obtained major

indictments of New York metropolitan area carters. The state indictments, against thirteen individuals and eight companies, were (like their 1995 counterpart) based upon undercover operations, including electronic surveillance intercepts, which revealed a trade waste removal industry still rife with corruption and organized crime influence. The federal indictment, against seven individuals and fourteen companies associated with the Genovese and Gambino organized crime families (including the brother and nephew of Genovese boss Vincent "Chin" Gigante), included charges of racketeering, extortion, arson, and bribery. See United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.). In November 1996, the Manhattan District Attorney announced a third round of indictments in his continuing investigation of the industry, bringing the total number of defendants in the state prosecution to thirty-four individuals, thirty-four companies, and four trade waste associations.

The accuracy of the sweeping charges in the indictments was repeatedly confirmed by a series of guilty pleas and jury verdicts. On October 23, 1996, defendant John Vitale pleaded guilty to a state antitrust violation for his participation in the anticompetitive criminal cartel. In his allocution, Vitale, a principal of the carting company Vibro, Inc., acknowledged that he turned to the trade associations, and specifically to Genovese capo Alphonse Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing another carter from bidding on waste removal services for a "Vibro-owned" building in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of one of the City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay \$7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a \$10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the City's carting industry.

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. In addition, two carting companies and a transfer station run by Vigliotti's family under his auspices pleaded guilty to criminal antitrust violations. In his allocution, Vigliotti confirmed Ponte's admissions as to the scope of the criminal antitrust conspiracy in the City's carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors from entering the market through threats and economic retaliation. Vigliotti agreed to serve a prison term of one to three years, to pay \$2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the City's carting industry.

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a \$1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to

corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from \$250,000 to \$750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the City's carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it.

On February 24, 1997, defendants Michael D'Ambrosio, Robros Recycling Corp., and Vaparo, Inc. all pleaded guilty in allocutions before New York Supreme Court Justice Leslie Crocker Snyder. D'Ambrosio pleaded guilty to attempted enterprise corruption, and his companies pleaded to criminal antitrust violations.

On July 21, 1997, Philip Barretti, another lead defendant in the state prosecution and the former owner of the City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay \$6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and 3⅓ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract and to violate the Taft-Hartley Act by making unlawful payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On

October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined \$900,000, and the GNYTW was fined \$9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined \$200,000.

On January 21, 1998, Patrick Pecoraro pleaded guilty to attempted enterprise corruption and agreed to serve a prison sentence of one to three years, to pay a \$1 million fine, and to be barred permanently from the City's carting industry. On the same day, the QCTW pleaded guilty to a criminal antitrust violation and agreed to forfeit all of its assets. Numerous other guilty pleas followed. On December 21, 1999, all of the guilty verdicts were affirmed on appeal. See People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999).

In sum, it is far too late in the day for anyone to question that a powerful criminal cartel exercised control over the New York City carting industry. Its existence was proven beyond a reasonable doubt. The proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched – extending to and emanating from all of the industry's trade associations, which counted among their collective membership virtually every carter – that it could not have escaped the notice of any carter. These criminal convictions confirm the wisdom of enacting Local Law 42 and of creating the Commission, in order to address this pervasive problem and to ensure that the cartel not be permitted to infiltrate the industry again.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs for the licensing of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry immediately 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, 940 F. Supp. 656 (S.D.N.Y. 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).

Local Law 42 provides that “[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission.” Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may “refuse to issue a license to an applicant who lacks good character, honesty and integrity.” Id. §16-509(a). Although Local Law

42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a).

As the United States Court of Appeals has definitively ruled, an applicant for a carting 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). In determining whether to issue a license to an applicant, the Commission may consider, among other things, the following matters, if applicable:

- (i) failure by such applicant to provide truthful information in connection with the application;
- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) 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;
- (vi) 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;

- (vii) 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;
- (viii) 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;
- (ix) 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;
- (x) 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.

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

The Commission's staff has conducted an investigation of the Applicant. On September 28, 2004, the staff issued a 14-page recommendation that Marraflo's license application be denied, which was delivered by hand to the Applicant on September 29, 2004. Marraflo did not submit a response to the staff's recommendation. The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth below, the Commission finds that Marraflo lacks good character, honesty, and integrity, and denies its license application.

The only disclosed principals of the Applicant are Ana M. Nieto ("Ana") and Richard Nieto ("Richard"). Despite the fact that the Applicant was incorporated by Rey Nieto, ("Rey") the father of Richard and Ana, Rey Nieto's name does not appear anywhere on the application.¹ Furthermore, the background investigation into this Applicant has revealed evidence that suggests continued business connections between this Applicant, Rey and Rey's company, Allstate Specialty Services Co. ("Allstate").²

¹ Rey Nieto incorporated the Applicant on March 30, 1987. See Statement of Incorporator. On April 1, 1988, Rey allegedly transferred ownership in the Applicant to his daughter Ana. See id.

² Question 2 of the License Application asks for "Past name(s) of Applicant Business (including, but not limited to trade names, d/b/a's, and aliases) for the past 10 years; if none, state "none". For each name, list business addresses including garages." The Applicant did not respond to this question.

Allstate was the predecessor business to Marraflo

Notwithstanding the Applicant's failure to include this information, there is abundant evidence that Allstate was the predecessor business to Marraflo. Like Marraflo, Allstate engaged in janitorial services, construction and the real estate industries. See Judy Temes, *An Immigrant From Peru Cleans Up in Construction*, CRAIN'S NEW YORK BUSINESS, August 23 – August 29, 1993, at 24. In the Crain's New York Business article, Rey described Allstate as a \$15 million dollar cleaning service employing 400 people. See Id. The article also explains that Rey is "ready to pass the business to his son and daughter...[Rey and Ana]." See Id. Allstate and the Applicant share(d) the same business addresses.³ See Marraflo License Application at 1; see also Judgment and Lien Printouts. Marraflo and Allstate have/had the same telephone number. Allstate and Marraflo have also been named as co-defendants in numerous lawsuits and been represented by the same counsel. As United States Southern District of New York Judge Denise Cote concluded in a decision rendered in one such lawsuit, "Allstate has allegedly gone into bankruptcy⁴... and is succeeded in interest by Marraflo." See *Medina v. Union Local 32B-32J Service Employees International Union, et al.*, No. 97 CIV 5188 (S.D.N.Y. January 5, 1998).

Rey's continued involvement in the Applicant business

In addition to past associations, the evidence also indicates that Rey Nieto continues to play an active role in the business of this Applicant. For instance, Rey Nieto is presently listed as the Applicant's agent for service of process with the New York State Department of State. See New York State Department of State Printout. Furthermore, recent permit applications filed with the New York City Department of Buildings indicate that Rey Nieto is active in the Applicant's business. See New York City Department of Buildings Permit List Printouts. As described below, the history of both Rey and Allstate would preclude them from licensure by the Commission.

Rey's criminal background

On March 16, 1994, Rey Nieto was arrested and charged with the felonies of Perjury in the Second Degree, Offering a False Instrument for Filing in the First Degree, Falsifying Business Records in the First Degree, and Bribery in the Third Degree, and the misdemeanors of Commercial Bribery in the Second Degree and Offering an Unlawful Gratuity. The criminal charges arose out of a \$386,000 New York City high school restroom renovation project in

³ The Applicant's financial statements dated March 31, 2000 states without providing the name of the affiliate, that "the Company engaged an affiliate to render management consultant and related services. Payment consisted primarily of non-interest cash advances. The company paid \$131,000 of cash advance for the year ended March 31, 2000. Also, the Company leased its premises from an affiliated company and paid an annual rental of \$60,000 for the year ended March 31, 2000." Records on file with the Queens County Clerk indicate that Rey is an owner of the premises.

⁴ In the License Application submitted by Marraflo, Part IV, Question 10 asks "During the past ten years, has the applicant business, any predecessor trade waste business or any predecessor in interest, or any principal of the applicant business, been a debtor in a bankruptcy or reorganization proceeding?" In response, the Applicant answered, "No." Yet on January 27, 1995, Allstate did file for bankruptcy.

which Allstate participated. As required by the contract between Allstate and the City, Nieto and his project manager, Wojciech Szpilowski filed certified payroll reports with the School Construction Authority stating that Allstate workmen on the job site were being paid the legally mandated prevailing wage rates for their job titles.

The criminal scheme was discovered when a School Construction Authority project manager became troubled by the fact that while most of the names on the certified payroll reports appeared to be Hispanic, most of the workmen on the site appeared to be Polish. It was then discovered that the workers on the job site were recent immigrants from Poland who were being paid far less than the payrolls claimed. When the project manager confronted Allstate with the discrepancy between the names on the payrolls and the workers on the job site, Nieto and Szpilowski promised to "take care" of him if he allowed them to re-submit amended certified payrolls. The project manager reported the bribe offer to the School Construction Authority's Inspector General. Nieto was charged with making \$2,000 in payments to the project manager. Szpilowski was charged with making a \$500 payment to the project manager. See Seth Faison, *New York Accuses Employer of Underpaying and Bribery*, THE NEW YORK TIMES, March 18, 1994, at B3; see also John Harrington, *Accused of Underpaying*, CRAIN'S NEW YORK BUSINESS, March 21, 1994-March 27, 1994 at 26.

Allstate was found to be a non-responsible contractor by the
New York City Department of Correction

On July 28, 1992, Robert Daly, the Agency Chief Contracting Officer of the Department of Correction ("DOC") determined that Allstate was a non-responsible bidder for the award of a city contract to provide "cleaning services at the correction academy." This determination was based on the fact that Allstate failed to disclose on VENDEX⁵ Questionnaires that it had been the subject of an investigation by the Office of the New York City Comptroller in 1989 and that the investigation resulted in a finding that Allstate had willfully violated Section 230 of the New York State Labor Law. Allstate appealed the non-responsibility determination to the Commissioner of DOC. On September 4, 1992, the Acting Director of the Legal Division of DOC, Joseph Guarino, upheld the finding of non-responsibility. Allstate appealed the Acting Director of the Legal Division's determination to the City Chief Procurement Officer. On January 15, 1993, Michael C. Rogers, the City Chief Procurement Officer, upheld the determination of the DOC that Allstate was "a non-responsible bidder."

⁵ This system is a computer database, which provides comprehensive vendor information to ensure that the City does business only with responsible vendors.

III. GROUNDS FOR LICENSE DENIAL

A. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

“[T]he failure to pay any tax, fine, penalty or fee related to the applicant’s business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction” reflects adversely on an applicant’s integrity. See NYC Admin. Code §16-509(a)(x).

The United States of America, New York State and the New York State Department of Labor have docketed numerous judgments against Marraflo and Marraflo’s predecessor. According to a judgment and lien search conducted by the Commission, Marraflo currently owes the following unsatisfied judgments and liens:

Federal Tax Lien/Internal Revenue Service

- \$146,042.81 Filed on 6/21/99
- \$187,225.18 Filed on 9/13/99
- \$76,081.53 Filed on 12/13/99
- \$62,756.08 Filed on 3/20/00
- \$124,494.42 Filed on 3/20/00
- \$108,248.06 Filed on 1/6/03
- \$83,168.79 Filed on 2/24/03
- \$4,204.00 Filed on 3/3/03
- \$18,495.04 Filed on 4/7/03
- \$12,663.93 Filed on 6/23/03

New York State Department of Taxation and Finance

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|----------------|----------------------|-----------------------|------------------------------|
| • \$58,735.28 | Docket Date 6/11/01 | Index No.: E004054054 | Transaction No.: 41000621917 |
| • \$105,853.23 | Docket Date 6/11/01 | Index No.: E004054054 | Transaction No.: 41000621918 |
| • \$151,994.17 | Docket Date 6/7/02 | Index No.: E004054054 | Transaction No.: 41000703297 |
| • \$68,350.03 | Docket Date 6/23/03 | Index No.: E004054054 | Transaction No.: 41000788752 |
| • \$54,914.28 | Docket Date 6/23/03 | Index No.: E004054054 | Transaction No.: 41000788753 |
| • \$8,465.03 | Docket Date 8/21/03 | Index No.: E004054054 | Transaction No.: 41000800785 |
| • \$1,143.72 | Docket Date 10/17/03 | Index No.: E004054054 | Transaction No.: 41000814910 |
| • \$19,531.48 | Docket Date 1/8/04 | Index No.: E004054054 | Transaction No.: 41000834158 |
| • 68,733.54 | Docket Date 2/15/01 | Index No.: E004054054 | Transaction No.: 41000598561 |
| • \$227,568 | Filing Date 6/23/03 | Docket No.: 000788755 | |
| • \$113,618 | Filing Date 6/19/03 | Docket No.: 000788756 | |
| • \$49,785 | Filing Date 1/8/04 | Docket No.: 000834160 | |

New York State Department of Labor

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|---------------|---------------------|------------------------------|
| • \$10,660.96 | Docket Date 4/14/04 | Transaction No.: 41000862255 |
| • \$25,310.42 | Docket Date 5/21/02 | Transaction No.: 41000699937 |
| • \$16,408.41 | Docket Date 5/30/02 | Transaction No.: 41000701875 |

- \$19,598.97 Docket Date 9/30/02 Transaction No.: 41000727903
- \$5,443.92 Docket Date 11/29/02 Transaction No.: 41000743477
- \$32,296.94 Docket Date 1/3/03 Transaction No.: 41000750258
- \$50,960.22 Docket Date 7/01/03 Transaction No.: 41000790937
- \$29,672.34 Docket Date 10/3/03 Transaction No.: 41000810806

Marraflo's predecessor business, Allstate, also left behind numerous debts to various governmental authorities:

New York State Department of Taxation and Finance

- \$27,066.18 Docket Date 2/6/04 Index No.: E000542449 Transaction No.: 41000848694
- \$100,530.69 Docket Date 7/5/00 Index No.: E001279143 Transaction No.: 31001297685
- \$4,230.36 Docket Date 2/17/95 Index No.: D005659-95 Transaction No.: 41000230000
- \$204,757.20 Docket Date 2/2/98 Index No.: E000542449 Transaction No.: 41000374293
- \$47,285.24 Docket Date 2/2/98 Index No.: E000542449 Transaction No.: 41000374294
- \$37,737 Filing Date 6/22/99 Docket No.: 000483542
- \$1,207,913 Filing Date 2/2/98 Docket No.: 000374292
- \$1,145,798 Filing Date 7/5/00 Docket No.: 001297684
- \$37,737 Filing Date 7/5/00 Docket No.: 001297686

New York State Department of Labor

- \$170,159.40 Docket Date 5/18/98 Index No.: DO07505/98 Transaction No.: 41000397564

Finally, Ana Nieto also personally owes the following unsatisfied judgments to the New York State Tax Commission:

New York State Tax Commission

- \$227,568 Filing Date 6/23/03 Docket No.: 000788755
- \$113,618 Filing Date 6/23/03 Docket No.: 000788756
- \$139,228 Filing Date 1/8/04 Docket No.: 000834159
- \$49,785 Filing Date 1/8/04 Docket No.: 000834160

Again, the Applicant's refusal to satisfy numerous debts that have been reduced to judgment is a sufficient independent ground for denial of its license application. The Applicant did not dispute this point. For this independently sufficient ground, this application is denied.

B. The Applicant Knowingly Failed to Provide Information and Documentation Required by the Commission.

"The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." See Admin. Code §16-509(b).

On August 4, 2003, the Commission's staff requested that the Applicant provide proof that all judgments and liens held against had been paid and satisfied, or in the alternative, proof that formal payment plans had been entered into to satisfy all debts to governmental authorities. See August 4, 2003 letter from the Commission's staff to the Applicant. On August 13, 2003, the Applicant responded to the Commission's request and represented that it was in negotiating to enter into formal payment plans with several governmental entities by stating, "we do not have anything in writing yet from these agencies..." See August 13, 2003 letter from the Applicant to the Commission's staff.

On September 2, 2004, the Commission again requested that the Applicant provide proof that the judgments and liens have been paid and satisfied, or that payment plans have been entered into to satisfy all debts to government authorities. See September 2, 2004 letter from the Commission's staff to the Applicant. In this letter, the Commission's staff warned the Applicant that the failure to provide the above mentioned information could result in the denial or withdrawal of its application. The Applicant responded to the Commission's request on September 3, 2004, but failed to provide the Commission with proof that the judgments and liens had been paid and satisfied, or that formal payment plans had been entered into.⁶ Instead, the Applicant provided the Commission with a letter dated September 16, 2003 from the New York State Department of Taxation and Finance. This letter states that the Applicant "requested" a payment agreement, and that Ana Nieto, "is currently in the process of submitting requested documentation... Ms. Nieto has been sending payments towards this liability." See September 16, 2003 letter from New York State Department of Taxation and Finance. However, nearly one year later, the Applicant has failed to provide the Commission with evidence that it actually entered into a payment agreement. Furthermore, the Applicant has also failed to provide the Commission with evidence that it submitted the required documentation to the New York State Department of Taxation and Finance in order to enter into a payment agreement. The Applicant's September 3, 2004 submission to the Commission also included an unsigned "Installment Payment Agreement" with the State of New York Department of Labor, dated October 15, 2003. Besides providing the Commission with this unsigned agreement, the Applicant has failed to provide the Commission with any proof that it has been making any payments to the Department of Labor. Notwithstanding the Applicant's response to the Commission's request, the Applicant has still failed to address its tax liabilities with the federal government/ Internal Revenue Service.

"[T]he commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." Admin. Code §16-509(b). By repeatedly failing to provide complete information requested by the Commission, the Applicant has "knowingly failed to provide the information" required by the Commission. The Applicant has not disputed this point. For this independent reason, this application is denied.

⁶ The Applicant's September 3, 2004 submission to the Commission also stated that on June 2, 2004, it filed for Chapter 11 bankruptcy.


III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty and integrity. The evidence recounted above demonstrates convincingly that Marraflo Contracting, Inc. falls far short of that standard. For the independently sufficient reasons discussed above, the Commission hereby denies Marraflo Contracting, Inc.'s license application.

This license denial decision is effective fourteen days from the date hereof. The Applicant shall not service any customers, or otherwise operate a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: February 10, 2005

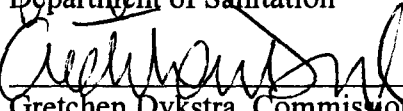
THE BUSINESS INTEGRITY COMMISSION



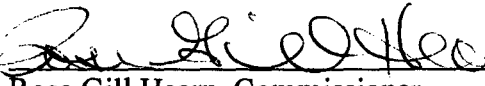
Thomas McCormack
Chair




John Doherty, Commissioner
Department of Sanitation



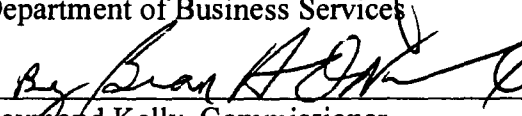
Gretchen Dykstra, Commissioner
Department of Consumer Affairs



Rose Gill Hearn, Commissioner
Department of Investigation

By 

Robert Walsh, Commissioner
Department of Business Services

By 

Raymond Kelly, Commissioner
New York City Police Department