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THE CITY OF NEW YORK
TRADE WASTE COMMISSION
253 BROADWAY, 10TH FLOOR
NEW YORK, NEW YORK 10007

**DECISION OF THE TRADE WASTE COMMISSION DENYING
THE APPLICATION OF ROYAL PETROLEUM TRANSPORTING,
INC. FOR A LICENSE TO OPERATE AS A TRADE WASTE
BUSINESS**

Royal Petroleum Transporting, Inc. ("Royal" or the "Applicant") has applied to the New York City Trade Waste Commission (the "Commission") for a license to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-508. 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 law identifies a number of factors that, among others, the Commission may consider in making that determination. See id. §16-509(a)(i)-(x). These illustrative factors include the failure to provide truthful information to the Commission and administrative findings of liability bearing directly upon the applicant's fitness for licensure in the carting industry. See id. § 16-509(a)(i) & (iv). The Commission may also refuse to issue a license to a company that has engaged in unlicensed carting activity. See id. §§ 16-509

(c)(ii), 16-513(a)(i). Based upon the record as to the Applicant, the Commission finds, for the following independently sufficient reasons, that Royal lacks good character, honesty, and integrity, and denies its license application:

(i) Royal failed to provide truthful information to the Commission in connection with its license application. Among other things, Royal attempted to conceal the identity of its de facto principal and sole financial backer.

(ii) An affiliate of the Applicant was recently found to have operated a waste transfer station without a permit and to have engaged in illegal dumping.

(iii) Another affiliate of the Applicant was recently found to be a non-responsible bidder on City contracts due to its fraudulent billing practices and the participation of its principal (who also is Royal's undisclosed principal) in a separate scheme to defraud the City.

(iv) Royal engaged in unlicensed carting activity from 1996 to earlier this year.

I. BACKGROUND

A. The New York City Carting Industry

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

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

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded to or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros.

Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "it 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 Commission." 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). Other grounds for denial include the commission of any act that could be grounds for suspension or revocation of a license. See id. § 16-509(c)(ii). As the United States Court of Appeals has definitively ruled, an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997).

II. DISCUSSION

On February 19, 1998, Royal submitted to the Commission an application for a trade waste removal license. The Commission's staff investigated the application and, on October 20, 1999, issued a 13-page recommendation that it be denied. The staff's recommendation was provided to Royal and its counsel on that same day, and, pursuant to the Commission's rules, Royal was given an opportunity to respond in writing to the recommendation. See 17 RCNY § 2-08(a). Royal did not submit any response to the license denial recommendation.

A. The Applicant's Undisclosed Principal

Royal's license application lists Gerardo Mazzei as its sole principal and 100% owner. However, for the reasons set forth below, the Commission finds that Gerardo's brother, Marino Mazzei, is an undisclosed principal of the Applicant.

1. The Documentary Evidence

Schedule A to Royal's application, which requests information about the applicant's principals, lists only "Gerardo Marino Mazzei" and identifies him as Royal's president; his date of birth is listed as March 4, 1956, and his Social Security number as 126-52-8257. See Lic. App. at 22. Another, undated version of the application that was submitted to the Commission lists on Schedule A a different Social Security number for the same person; the number on that form was altered (written over in ink) to 124-52-5246.

Schedule F to the application, which requests information about the applicant's employees, lists "Gerardo Mazzei" as a "driver" and "Marino Mazzei" as "president." Schedule F also lists Gerardo's date of birth and Social Security number as December 7, 1962, and 124-52-6646, respectively, which do not match the information given for him on either Schedule A. Thus, Royal's application contains three different Social Security numbers and two different dates of birth for Gerardo Mazzei. Further, the information given for Marino Mazzei on Schedule F (DOB: 3/4/56; SSN: 126-52-8257) is the same as the information given for Gerardo Mazzei on the original Schedule A.

Both versions of Royal's license application were altered in answer to Part I, Question 3, requesting the name of an agent for service of process. Although the application lists "Gerardo Mazzei" for this purpose, "Gerardo" is written in blue ink over white correction fluid. See Lic. App. at 2. The name "Marino G." is discernible in black under the white-out if the documents are held up to the light. In addition, the certification and release forms accompanying the application both bear the printed name "Gerardo Mazzei" (whose title is "president"), but the first name in both signatures is "Marino." See, e.g., Lic. App. at 41-42.

The application's alterations and discrepancies suggest that Royal attempted, inartfully, to conceal from the Commission Marino Mazzei's role in the Applicant's business. Other sources of information, however, indicate that Marino Mazzei is in fact not only a principal of Royal but also its sole owner. Dun & Bradstreet reports that Royal was founded in 1993 by Marino Mazzei. Royal's 1995 application to the DCA for a carting license identifies Marino Mazzei as its sole principal and 100% owner. Royal's 1996 federal income tax return, dated November 19, 1997, was signed by Marino Mazzei

and identifies him as Royal's president and 100% owner. This documentary evidence clearly establishes that Marino Mazzei is a principal of Royal.

2. The Testimonial Evidence

The staff first deposed Royal's disclosed principal, Gerardo Mazzei. Gerardo maintained that he was Royal's sole principal, but the staff found his testimony unconvincing. The staff's subsequent deposition of Marino Mazzei eliminated the possibility that the license application's discrepancies and alterations were unintentional or innocent. Indeed, Marino's deposition testimony confirmed that Gerardo's testimony was misleading and that the brothers sought to conceal from the Commission the fact that Marino is Royal's sole owner.

a. The Deposition of "Gerardo Marino Mazzei"

On May 21, 1998, Gerardo Mazzei appeared for a deposition. He wrote his name as "Gerardo Marino Mazzei" and "M. Gerardo Mazzei," respectively, on a questionnaire and a list of industry names provided to him in preparation for his deposition. On the whole, Gerardo's testimony was vague, evasive, or unresponsive, particularly regarding his work history and the formation of Royal. Gerardo testified that he is Royal's president and sole principal, and that he started the company "from scratch" in January 1993.

Gerardo further testified that he did not recall borrowing any money to start Royal, but, if he did, he would have borrowed it from his brother Marino, who owns U.S. Bona Fide Fuel Oil Co. ("Bona Fide"). Gerardo's testimony demonstrated that Royal and Bona Fide are intertwined financially and operationally. At the time of the deposition, Royal and Bona Fide were located at the same address, 426-436 3rd Avenue, Brooklyn, on property owned by Marino. Gerardo testified that Royal does not pay rent to Marino. Gerardo's and Marino's personal finances are intertwined as well. Marino is Gerardo's residential landlord, and they share a joint checking account, which had a balance of \$30,000 as of the date of the deposition.

b. The Deposition of "Marino Gerardo Mazzei"

The staff then sought to depose Marino Mazzei. In February 1999, a staff attorney spoke by telephone with someone who identified himself as

"Marino Mazzei" and who agreed to appear for a deposition. At the appointed time, however, Gerardo Mazzei arrived at the Commission's offices instead, accompanied by counsel. When the staff asked for Marino Mazzei, Gerardo insisted that only he should be deposed because he is Royal's sole principal and Marino has no connection to Royal. The staff declined to depose Gerardo in Marino's stead.

On March 2, 1999, Marino Mazzei appeared for a deposition, accompanied by counsel. He gave his name as "Marino Gerardo Mazzei" and wrote his name as "Marino Gerardo Mazzei" on the questionnaire and "Marino Mazzei" on the industry names list.¹ Marino listed his employers as Bona Fide and Royal on his questionnaire, and testified that he has been the "manager" at Royal since 1993. See Dep. Tr. at 55-56. As for the relationship between Royal and Bona Fide, Marino testified that Royal delivers fuel to Bona Fide's customers, and that the companies share equipment. Id. at 14, 67.

Marino Mazzei's testimony made clear that he is the money man behind Royal and that Gerardo Mazzei lacks the financial wherewithal to operate the company. Gerardo contributed no start-up capital to Royal. Dep. Tr. at 65. Marino testified that the brothers have a joint bank account for Royal with a balance of approximately \$100,000, funded by customer receipts and infusions from Marino and his company, Bona Fide. Id. at 25-26, 66-67. Three weeks earlier, Gerardo had opened an individual checking account; as Marino put it, "I just got him his own line of credit." Id. at 25. Marino explained that his brother previously was unable to obtain credit because he had not lived steadily in the United States until two and one-half years ago, and that this inability had prevented him from running his own business. See id. at 26-27.

Marino maintained that he does not own and never has owned an interest in Royal. Dep. Tr. at 64. He admitted, however, that he loaned Gerardo money to start the company. Because Gerardo had neither capital nor credit, Marino used his bank line of credit to raise the \$60,000 – \$80,000 needed to start the company. See id. at 64-66. Marino confirmed that the

¹ In an attempt to determine the true names of the Mazzei brothers, the staff later inspected their passports. The passports bore the names "Gerardo Marino Mazzei" and "Marino Mazzei." There is no evidence that Marino Mazzei's middle name is in fact "Gerardo." When viewed in the context of the many discrepancies in Royal's license application concerning the brothers' identity, Marino's adoption of "Gerardo" as his middle name appears to be another attempt to create confusion about his and Gerardo's identity and to conceal their efforts to mislead the Commission.

funds and operations of Royal and Bona Fide are intertwined, see id. at 66-68, and that Royal pays no rent for the use of his property. Id. at 76.

When the staff confronted Marino Mazzei with the discrepancies concerning the identity of Royal's principals, his testimony confirmed that he is an undisclosed principal. For example, when the staff asked about the signature anomaly on the certification and release authorization forms, Marino responded that he and Gerardo had completed the license application together. See Dep. Tr. at 69-71. The following testimony and colloquy from Royal's counsel sum up the relationship:

Q. So just to be clear, you completed the application together and then the release authorization and certification you signed, so that's your signature?

A. Yes.

Q. What I don't understand is why it says "Gerardo Mazzei."

Counsel: Well, I think the whole thing is that everything was meant to be in Jerry's name, Gerard's name. I think the company is meant to be in Gerard's name and Marino signed because Marino has the understanding of basically most of the information, has the business acumen.

Q. Is that your understanding?

A. Yes.

Counsel: Because it said "president." I think the reason why is because in talking to my client, Gerard Mazzei regardless of whether the loans are in Marino's name, the principal of the business is meant to be Gerardo Mazzei. So when it said "principal," they put Gerardo's name. But the bottom line is that he is the answer man. Marino is the one that sought the applications for loans and put up the money, but Jerry is meant to be the principal and when he gets on his feet, he will be paid back.

Q. Is that your understanding?

Counsel: Did I say it right?

A. Yes.

Q. So basically you signed because you are the one who is ultimately responsible in terms of financially?

A. Yes.

Id. at 70-72.

The foregoing evidence demonstrates that Marino Mazzei has “participat[ed] directly or indirectly in the control” of Royal and, therefore, is an undisclosed principal of Royal under Local Law 42. See Admin. Code § 16-501(d). Indeed, without Marino’s financial backing, Royal would not exist, and Gerardo appears to be a mere “front” for Marino.²

B. Royal Lacks Good Character, Honesty, and Integrity

The following four factors, individually and collectively, warrant the conclusion that the Applicant lacks good character, honesty, and integrity.

1. Royal Failed to Provide Truthful Information to the Commission in Connection with Its License Application

The evidence recounted above establishes that Marino Mazzei is an undisclosed principal of Royal and has been a principal since the company was founded in 1993. Royal’s license application, however, did not identify

² After the March 1999 deposition of Marino Mazzei, the staff communicated to the Applicant that the investigation of the license application was nearly completed and that the results were troubling. By letter dated May 6, 1999, Royal purported to withdraw its license application. The Commission has previously rejected license applicants’ eleventh-hour purported withdrawals of their applications as “a transparent attempt to evade review of the merits of these applications and frustrate the purposes of Local Law 42.” See Decision Denying License Applications of Suburban Carting Corp. and Prime Carting, Inc., dated January 9, 1998, at 18-19 n.3. The Commission rejects this attempt as well. Indeed, Royal’s gambit is obvious. On June 10, 1999, an entity named Royal GM, Inc. (president: Gerardo Mazzei) submitted to the Commission an application for a registration as a hauler of construction and demolition debris. In determining that application, the Commission will take into account its determination of Royal’s application. See Admin. Code § 16-509(a)(vii).

Marino as a principal, nor even as a holder of a beneficial interest in the company. See Lic. App., Schedule's A & C. Moreover, there is ample evidence – in both the application itself and Gerardo Mazzei's deposition testimony – that these omissions were a deliberate attempt to mislead the Commission concerning Marino's prominent role in the company.

An applicant's failure to provide truthful information to the Commission in connection with its license application is grounds for denial of the application. See Admin. Code § 16-509(a)(i). Accordingly, Royal's application is denied.

2. An Affiliate of Royal Recently Engaged in Unlawful Operation of a Transfer Station and in Illegal Dumping

Royal Recycling Corp. ("Royal Recycling") is an applicant before the City's Department of Sanitation ("DOS") for a permit to operate a solid waste transfer station. Royal Recycling's application lists Gerardo Mazzei as the sole owner of the company and its address as 242 Nevins St., Brooklyn, the current address of Royal. Marino Mazzei testified that he used Royal's line of credit to finance the start-up of Royal Recycling, which also uses equipment from Royal and Bona Fide. Dep. Tr. at 81-82.

In May 1998, DOS charged Royal Recycling with operating a transfer station without a permit. In June 1998, the Environmental Control Board (the "ECB") sustained the charge and imposed a \$2,500 fine. In August 1999, DOS charged Royal Recycling with three counts of illegal dumping; the ECB sustained the charges and imposed a \$4,500 fine.

At his March 1999 deposition, Marino Mazzei at first flatly denied that Royal Recycling had ever operated. See Dep. Tr. at 76-77. He then corrected his testimony to state that DOS shut down the facility on its first day of illegal operation. See id. at 77-80. His purported explanation for Royal Recycling's unlawful activity was ignorance of the requirement of a DOS permit to operate a transfer station in New York City. See id. at 77-79. Marino further claimed that Royal Recycling was no longer operating pending DOS review of its permit application. See id. at 79. This statement is undercut by DOS's subsequent citation of Royal Recycling for illegal dumping in August of this year.

In determining a license application, the Commission is expressly authorized to consider "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." Admin. Code § 16-509(a)(iv). Royal Recycling plainly is a company closely affiliated with Royal. The ECB's findings that Royal Recycling engaged in unlicensed activity and illegal dumping in the waste removal industry thus bear adversely upon Royal's fitness for licensure in that same industry. Accordingly, Royal's license application is denied on this ground as well.

3. Another Affiliate of Royal Was Declared a Non-Responsible Bidder on City Contracts

Royal's motive for concealing Marino Mazzei's connection to the company becomes clear upon closer examination of his affiliated company, Bona Fide. According to VENDEX, the system that tracks vendors for the City of New York, Bona Fide had contracts with the City's Department of Citywide Administrative Services ("DCAS") to provide fuel to the City's Department of Housing Preservation and Development ("HPD"). VENDEX carries an "advice of caution" against Bona Fide because DCAS in 1997 issued a non-responsibility determination against the company.

In August 1997, DCAS informed Marino Mazzei that it had found that Bona Fide was "not a responsible bidder" and, therefore, was ineligible to be awarded an HPD contract for fuel oil and repairs. DCAS explained its determination as follows:

The basis for this determination is that we have been informed by an Inspector General for the New York City Department of Investigation ("DOI") that an ongoing investigation conducted by DOI has revealed that Marino Mazzei participated in a scheme to defraud the City by introducing property owners to a corrupt Department of Finance employee with the knowledge that the employee would illegally eliminate or reduce real property taxes for the landlords. We have been further informed that Marino Mazzei failed to disclose that he is the subject of a criminal investigation in his VENDEX Affidavit of No Change completed on May 12, 1997 and submitted to this agency in support of a recent bid submission, although this information was known to him prior to submission of

VENDEX documents. In addition, we have been advised that a recent fuel audit of a City-owned building conducted by the New York City Comptroller's Office identified BonaFide as claiming deliveries and billing the City for fuel in excess of the building's tank capacity on twenty-one (21) occasions.

See Letter from Howard Altschuler, Assistant Commissioner/ACCO, to Marino Mazzei, dated August 8, 1997.

In October 1998, DCAS again determined that Bona Fide was "not a responsible bidder" on another HPD contract, based upon the same reasons as its prior determination. DCAS also noted that it had confirmed that Bona Fide was under active investigation. See Letter from Howard Altschuler, Assistant Commissioner/ACCO, to Marino Mazzei, dated October 28, 1998. Bona Fide did not appeal either non-responsibility determination. DCAS's findings – which Bona Fide, a close affiliate of Royal, has not challenged – call into serious question the business integrity of Royal's undisclosed principal, Marino Mazzei, and thus provide another independent ground for denial of Royal's license application.

4. Royal Has Engaged in Unlicensed Carting Activity for Several Years

Although Royal previously held a carting license issued by the DCA in 1995, it expired by operation of law more than three years ago. Pursuant to Local Law 42, if Royal wished to maintain a valid DCA-issued carting license during the pendency of the investigation of its license application by the Commission, Royal was required to submit its application to the Commission by no later than August 30, 1996. See Local Law 42, § 14(iii)(a)(2); 17 RCNY § 2-01(a). Royal did not submit its license application until February 1998, well after the deadline.

During their depositions, the Mazzeis acknowledged that Royal has in fact been operating as a carting company in the City of New York. For example, Marino Mazzei testified that Royal picks up construction and demolition debris from construction sites and takes it to various transfer stations. See Dep. Tr. at 57-60. On April 22, 1999, the Commission ordered Royal to cease and desist from operating without a license by no later than April 23, 1999.

Royal engaged in unlicensed carting activity from September 1, 1996, the day after its DCA license expired, until at least April 23, 1999, the deadline set in the Commission's cease-and-desist order. Royal's illegal activity provides another independent basis for denying its license application. See Admin. Code § 16-509(c)(ii) (authorizing Commission to refuse to issue a license to an applicant that has been determined to have committed any act that would be a basis for the suspension or revocation of a license); id. § 16-513(a)(i) (authorizing suspension or revocation of license if licensee has been found in violation of Local Law 42); id. § 16-505(a) (declaring it unlawful to operate a trade waste removal business without a license).

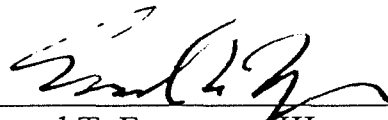
III. CONCLUSION

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. For the independently sufficient reasons set forth above, the Commission concludes that Royal lacks good character, honesty, and integrity and, accordingly, denies its license application.

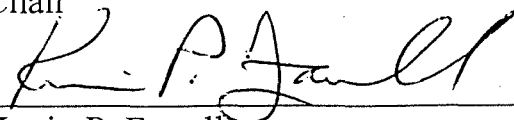
This license denial decision is effective immediately.

Dated: November 19, 1999

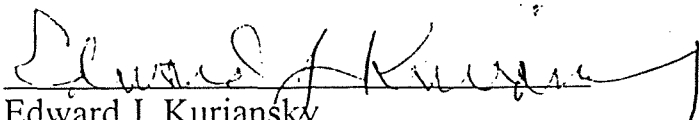
THE TRADE WASTE COMMISSION




Edward T. Ferguson, III
Chair



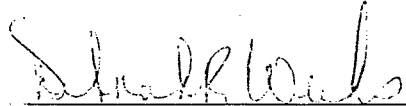
Kevin P. Farrell
Sanitation Commissioner



Edward J. Kuriansky
Investigation Commissioner



Jules Polonetsky
Consumer Affairs Commissioner



Deborah R. Weeks
Acting Business Services Commissioner