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

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF TRIPLE M REALTY CORP. FOR AN EXEMPTION FROM LICENSING REQUIREMENTS AND A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Triple M Realty Corp. ("Triple M" or the "Applicant") has applied to the New York City Business Integrity Commission, formerly known as the New York City Trade Waste Commission, ("Commission") for a registration 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"), §16-505(a). Local Law 42, which created the Commission to 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.

Triple M has applied to the Commission as a trade waste business exempt from the requirement that it obtain a license, on the ground that it is "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "C & D." Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission finds that the applicant is entitled to be "exempt" from the licensing requirement applicable to businesses that remove other types of waste, it grants the applicant a registration. See id.

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code §16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing

suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission's investigation and determination of a registration application is whether the applicant has business integrity. See 17 RCNY §1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity").

Based upon the record as to the Applicant, the Commission denies its registration application on the ground that this Applicant lacks good character, honesty and integrity for the following independent reasons:

(i) The Applicant failed to pay taxes and other government obligations for which judgments have been entered.

(ii) The Applicant knowingly failed to provide information and documentation required by the Commission.

I. BACKGROUND

A. The New York City Carting Industry

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

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

"that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42, § 1.

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

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

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

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean

fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including c & d) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

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

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the c & d sectors of the industry. Local Law 42 recognizes this fact in requiring c & d haulers to obtain registrations from the Commission in order to operate in the City. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004).

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. § 16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals

has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997).

II. THE APPLICANT

Emil Braun ("Braun") is the sole owner and principal of Triple M. Triple M was incorporated on September 12, 1995, and was created in part to serve other business entities owned and operated by Braun. See Transcript of Deposition of Emil Braun ("Braun Tr.") at 6-7. Those entities include AIA Environmental Corp. ("AIA"), a now defunct company, and its successor, Extreme Building Services Corp. ("Extreme"). Notwithstanding that Triple M, AIA, and Extreme are individually incorporated, as discussed below, they are essentially the same business entity.

AIA was incorporated on June 23, 1993, and performed environmental remediation and demolition work. See New York State Department of State, Division of Corporations, record for AIA ("AIA DOS Record"); Braun Tr. at 8. According to the New York State Department of State, AIA is currently inactive. See AIA DOS Record.[1]

On April 12, 2000, Extreme was incorporated. See New York State Department of State, Division of Corporations, record for Extreme ("Extreme DOS Record"). Extreme, similar to AIA, performs environmental remediation and construction work. See National Labor Relations Board Decision ("NLRB Decision") at p. 2. According to the New York State Department of State, Extreme is currently active. See Extreme DOS Record.

There is substantial evidence that Extreme is AIA's successor. First, Extreme operates out of the same address that AIA did. See Business Phonebook record for Extreme; Lexis/Nexis judgment filed against AIA on 3/13/02 ("3/13/02 Judgment"). Further, Extreme is owned and operated by the same individual who owned and operated AIA, Emil Braun. See D&B Comprehensive Report for Extreme ("Extreme D&B Report"); NLRB Decision at p. 3; Braun Tr. at 8-9. Moreover, Extreme conducts the same business that AIA did. Thus, it is reasonable to conclude that Extreme is the successor business to AIA.

Triple M, an environmental contracting and demolition company, was established to transport debris from demolition projects performed by Triple M and Braun's other companies.[2] See Braun Tr. at 6-7; Braun letter to the Commission dated 6/24/97; Registration Application at 3. Triple M owns and operates all the vehicles used by

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[1] AIA was debarred from receiving any public work contract, from 1999 until March 2004, for failing to pay prevailing wages. See NYS Department of Labor Debarred Contractor List.

[2] See infra at fn 5 for other companies owned and operated by Braun.

Braun's other companies. See Braun Tr. at 5-6, 7-8. Additionally, Triple M leases machinery and office space to Braun's other companies. See Braun Tr. at 12-13, 16. Triple M was therefore created as an alter ego of AIA and then of Extreme, its successor.[3] All three companies -- Triple M, AIA, and Extreme -- operated out of the same business address. See Extreme D&B Report; 3/13/02 Judgment; Braun correspondence to the Commission dated 9/16/03.

For all intents and purposes, Triple M, AIA, and Extreme are one entity and will be treated as such in this decision.

III. DISCUSSION

On March 23, 1998, the Applicant filed an Application for Exemption from Licensing Requirements for Removal of Construction and Demolition Debris ("application"). The staff has conducted an investigation of the Applicant and its principal. On April 28, 2005, the Commission's staff issued a nine-page recommendation that Triple M's application be denied ("Recommendation"). The Applicant was served with the Commission's recommendation on April 28, 2005 and had ten business days to submit a response pursuant to Section 2-08(a) of Title 17 of the Rules of the City of New York.

By letter dated May 3, 2005, Richard Kestenbaum, the attorney for the Applicant, acknowledged receipt of the recommendation on his client's behalf. See Kestenbaum letter dated May 3, 2002. In the letter, Kestenbaum asserted that he did "not agree with [the] staff's legal conclusions or factual findings." Id. No further response was submitted. The Commission has carefully considered the staff's recommendation and the Applicant's failure to submit a detailed and particularized response, and for the independently sufficient reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application.

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). Further, as demonstrated above and below, Braun's pattern of incorporating new businesses to avoid the payment of debts incurred by predecessor businesses is additional evidence of the lack of the Applicant's business integrity.

Numerous judgments and liens have been docketed against AIA and Extreme by New York City, New York State, and the United States of America. A judgment and lien

[3] The application submitted to the Commission disclosed that the Applicant used the trade name "AIA Demolition." After Extreme was incorporated, the Applicant amended its application and deleted AIA Demolition as a trade name.

search conducted by the Commission reveals the following outstanding judgments and liens have been docketed against AIA:

NYS Commissioner of Labor: $786,746.44

- Filing date 1/30/02 - $640,404.54
- Filing date 2/27/02 - $3,296.62
- Filing date 8/1/02 - $1,027.15
- Filing date 8/13/02 - $140,990.98
- Filing date 11/29/02 - $1,027.15

NYS Department of Taxation and Finance: $3,142.44

- Filing date 1/7/00 - $1,346.52
- Filing date 7/5/02 - $1,179.14
- Filing date 7/5/02 - $356
- Filing date 1/21/03 - $260.78

NYC Department of Finance: $24,731.04

- Filing date 11/6/00 - $82.42
- Filing date 10/21/02 - $3,040.01
- Filing date 7/28/03 - $21,608.61

Federal Tax Lien/Internal Revenue Service: $80,102

- Filing date 8/7/01 - $80,102

Additionally, the following outstanding judgments and liens have been filed against Extreme:

Federal Tax Lien/Internal Revenue Service: $614,244.37

- Filing date 12/16/02 - $130,014.85
- Filing date 12/8/03 - $456,356.04

NYS Commissioner of Labor: $28,859

- Filing date 2/5/03 - $15,708
- Filing date 8/5/03 - $489
- Filing date 12/31/03 - $12,662

NYC Department of Finance: $477.60

- Filing date 2/10/03 - $477.60

NYS Tax Commission: $27,987

- Filing date 11/14/03 - $27,987

The judgments filed against AIA total $894,721.92. The total amount owed by Extreme is $671,567.97. Consequently, the Applicant owes a total of $1,566,289.89 in

outstanding judgments and liens filed on behalf of tax authorities and other government authorities.

On or about July 23, 2004, a Commission staff member informed Braun in writing that AIA and Extreme owed numerous unsatisfied judgments to state and federal tax authorities and the New York State Commissioner of Labor. See Letter to Emil Braun dated July 23, 2004 ("July 23, 2004 Letter"). In that letter, the Commission staff listed the above-referenced judgments, provided the Applicant with supporting documentation, and advised the Applicant that before the application could be processed further, the judgments had to be satisfied or shown to have been docketed in error.[4] Id. The Applicant failed to respond to the Commission's letter, and as of the date of this decision, the judgments remain unsatisfied.[5] Moreover, despite being informed of these outstanding judgments, the Applicant incurred additional debt. On October 25, 2004, an additional judgment was filed against Extreme on behalf of the New York State Commissioner of Labor.[6] There is a more than adequate basis to conclude that it is Braun's practice to incorporate new businesses as a means of avoiding payment of legitimate debts incurred in the operation of his environmental contracting and demolition business. This deceptive practice is proof that Triple M lacks good character, honesty, and integrity.

The Commission would deny an application from AIA or Extreme for their failure to pay the above-mentioned judgments, and declines to treat Triple M, the defacto successor to these companies, any differently. The Commission notes that the Applicant failed to contest these points so there is no factual dispute for the Commission to resolve. Accordingly, the Commission denies this Applicant's registration application on this independent and sufficient ground.

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

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[4] Subsequent to this correspondence, various additional judgments were disclosed against Extreme: NYS Commissioner of Labor (1/2/03, $1,027; 4/21/04, $42,080; 3/22/04, $7,702); NYS Tax Commission (10/23/03, $376).

[5] Judgments against Braun's other companies – Asbestos Industries of America, Inc., Braun Katzman Industries, Inc., and Union Wrecking Corp. – remain unsatisfied as well. Asbestos Industries of America, Inc. currently owes the following judgments: NYS Commissioner of Labor (9/19/00, $77,713); NYC Department of Finance (9/14/98, $399.49); NYS Tax Commission (9/15/99, $52,759.29 and 9/24/99, $52,759); State of NY (4/4/00, $226,222 and 4/26/00, $226,742). Braun Katzman Industries, Inc. currently owes the following judgments: NYC Department of Finance (11/11/03, $9,294.90); NYS Department of Taxation and Finance (6/7/93, $3,307.53 and 8/19/94, $2,065.08); Commissioner of State Insurance Fund (8/9/93, $63,060); NY Surety Co. (7/8/98, $44,559). Union Wrecking Corp. currently owes the following judgments: Criminal Court of the City of NY (11/28/01, $5,000 and 3/29/02, $5,000).

[6] This judgment was for $7,708.

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 July 23, 2004, a Commission staff attorney sent a letter to Braun notifying him of various outstanding liens and judgments that had been filed against the Applicant by governmental agencies. See Letter dated July 23, 2004. . The letter requested documentation from the Applicant that the outstanding judgments had been satisfied or otherwise addressed. Id. The Commission directed that a response be provided by Monday, August 16, 2004. Id.

On August 6, 2004, Braun contacted a Commission staff member by telephone. At this time, Braun stated that he was unable to provide any proof that any of the judgments had been satisfied or otherwise resolved. Specifically, he stated that he was "not in a position to deal with any" of the judgments. See Commission Memorandum dated 8/6/04. The only lien that Braun stated that he intended to pay was a New York State Tax Commission lien filed against Triple M for $375.00. Id. The Commission's staff member also advised Braun that he could alternatively provide proof that these debts were being addressed. Braun repeatedly asserted that he did not intend to take any steps and stated, "Do what you have to do." Id.

As of the date of this decision, the Commission has not received any documentation that any of the above-referenced judgments, including the one against Triple M, have been satisfied, otherwise resolved, or even addressed.

Not only did the Applicant fail to respond to the Commission's repeated requests, the Applicant unequivocally stated that he had no intention of providing the requested information. Therefore, the Applicant has "knowingly failed to provide the information" required by the Commission. See Admin. Code §16-509(b). Consequently, the Commission denies the Applicant's registration application on this independent ground.

IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that Triple M falls short of that standard.

Based upon the outstanding judgments against the Applicant and the failure of the Applicant to provide information to the Commission, the Commission hereby denies Triple M's registration application.

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

Dated: June 9, 2005

THE BUSINESS INTEGRITY COMMISSION

Thomas McCormack
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for Department of Sanitation

Jonathan Mintz, Acting Commissioner
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation

Robert Walsh, Commissioner
Department of Business Services

for Raymond Kelly, Commissioner
New York City Police Department