



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 EXEMPTION APPLICATION OF VARDO CONSTRUCTION CORP. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Vardo Construction Corp. (“Vardo” or the “Applicant”) applied to the New York City Trade Waste Commission (the “Commission”) for an exemption from licensing requirements and a registration to operate trade waste businesses 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.

Vardo applied to the Commission for a registration enabling it to operate as a trade waste businesses “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” – a type of waste commonly known as construction and demolition debris, or “C & D.” See 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 grants the applicant a registration, the applicant becomes “exempt” from the licensing requirement applicable to businesses that remove other types of waste. 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); compare 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 Vardo’s exemption application and refuses to issue a registration on the ground that this Applicant lacks good character, honesty and integrity for the following independently sufficient reasons:

1. Lorenzo DeVardo has a lengthy and violent criminal record spanning four decades;
2. The Applicant failed to notify the Commission of the October 11, 2000 arrest of principal Lorenzo DeVardo within ten calendar days of the arrest;
3. The Applicant has been deemed to be a “non-responsible bidder” by three City agencies.

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. 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 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, 2004 N.Y. App. Div. Lexis 411, January 20, 2004.

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. "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. DISCUSSION

The Applicant filed an application for exemption from licensing requirements for removal of demolition debris (the “application”). The disclosed principal of the Applicant is Lorenzo DeVardo (“DeVardo”). See Application at 8. The staff has conducted an investigation of the Applicant and its principal. On February 20, 2004, the staff issued a 9-page recommendation that Vardo’s application be denied. On March 5, 2004, the Applicant submitted opposition papers, consisting of a 15-page response (the “response”) to the staff’s recommendation and numerous exhibits. Based upon some of the undocumented assertions made in the response, the Commission postponed consideration of this application. During this postponement, the staff requested that the Applicant provide additional documentation to substantiate some of the assertions set forth in the response.¹ On August 26, 2004, the Applicant supplemented its response by submitting a 2-page letter and two exhibits. The Commission has carefully considered both the staff’s recommendation and the Applicant’s response. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application.

A. Lorenzo DeVardo Has a Lengthy and Violent Criminal Record Spanning Four Decades.

The Commission may refuse to issue a registration to an applicant that lacks “good character, honesty and integrity.” See Admin. Code §16-509(a)(applying the same fitness standard to license applicants). Commission of a racketeering act, or knowing association with a person who has been convicted of a racketeering activity, including any “criminal act” constituting enterprise corruption under New York’s Organized Crime Control Act, would be evidence that a registration applicant failed to meet the fitness standard. See Admin. Code § 16-509(a)(v); N.Y. Penal Law § 460.10(1). Among those “criminal acts” are felonies relating to robbery, weapons possession, assault, homicide, coercion, criminal mischief, possession of stolen property and arson. See Penal Law § 460.10(1)(a). The sole principal of the Applicant, Lorenzo DeVardo has committed several distinct racketeering acts and is unworthy of a registration permit.

On November 24, 1971, Lorenzo DeVardo was arrested and charged with assault with intent to cause physical injury to a police officer, resisting arrest and obstruction of government administration.² At his deposition before the Commission, DeVardo explained that he “got into a scuffle” with police officers when the police officers attempted to give him a ticket for parking his truck in a bus stop. See March 4, 2003 Deposition Transcript of Lorenzo DeVardo (“DeVardo Dep. Tr.”) at 12. Although DeVardo testified that the case was dismissed because it

¹ On March 24, 2004, a member of the Commission’s staff orally requested this information. Then, after waiting several months, the Commission’s staff requested this information in writing by August 5, 2004. However, the Applicant provided the information on August 26, 2004.

² DeVardo also testified that he was arrested in approximately 1964 for “driving with improper plates,” and operating a motor vehicle without insurance.

was not his fault, in reality, DeVardo pleaded guilty to disorderly conduct. See Id. at 13. As a result, he was sentenced to a conditional discharge.

Approximately five years later, on August 3, 1976, DeVardo was arrested and charged with armed hijacking of a meat truck.³ At his deposition under oath before the Commission, DeVardo sought to downplay the facts that led to the charges against him.⁴ For instance, when asked about the circumstances relating to the hijacking, DeVardo replied, "Nothing. We took the truck." See DeVardo Dep. Tr. at 15. DeVardo continued to minimize the significance of his violent actions:

Q.: Okay. How did you take the truck?

A.: We stopped them, the guy stopped and we took the truck.

Q.: How did you stop the truck?

A.: Put the car in the front, I stop with the guy and the buy [guy] stopped behind [by] necessity.

See DeVardo Dep. Tr. at 15. As if he was recounting a joke at his deposition, DeVardo laughed as he described how he and his accomplices took the truck and mistreated its driver:

Q.: How did you take the truck?

A.: Somebody drove the truck away.

Q.: Okay. And what happened to the driver of the truck?

A.: I have no idea.

Q.: Did any of you touch the driver of the truck?

A.: Yes.

Q.: Who touched the driver of the truck?

A.: This other fellow employees.

Q.: What did they do to the driver of the truck?

³ DeVardo testified that he believed the date of this criminal activity to be 1968.

⁴ DeVardo even laughed while discussing this criminal episode at his deposition.

A.: Put him in a trunk [of a car].

Q.: And did you and your friends have weapons for that incident?

A.: Yes.

Q.: What kind of weapons did you have?

A.: Two guns.

See Id. at 16-17. As a result, DeVardo pleaded guilty to robbery and gun possession. Consequently, he served twenty-one months in prison.

Not long after his release from prison, in or about April, 1984, Lorenzo DeVardo, the president and principal shareholder of Vardo Construction Corp., was arrested and charged with racketeering, conspiracy and weapons charges in connection with the federal organized crime case commonly known as the "Pizza Connection."⁵ At his deposition, DeVardo explained that the United States government alleged that he was "part of this association..." and that "they [DeVardo and his codefendants] were importing, exporting drugs." See DeVardo Dep. Tr. at 23.

At his deposition, DeVardo acknowledged that he possessed a gun with a silencer. Id. at 31. Yet, DeVardo could not explain why he had the gun. Id. Even more disturbing to the Commission is the fact that this gun did have a silencer, and that DeVardo testified that he had "no idea" why he needed to possess a gun with a silencer.⁶ Id. Finally, DeVardo claimed that he didn't even know if the serial number was filed off of this gun. Id. The response does not explain why DeVardo possessed this gun, and even more importantly, why DeVardo possessed this gun with a silencer. Regarding this gun, the response only states that it was found in the back of a closet, it was not loaded, that "there was a question of its operability," and that the gun had not been used in a crime. DeVardo had an even less credible explanation for keeping a scale with heroin residue on it in his garage.⁷ He did acknowledge that he entered a plea of guilty to gun possession.⁸ See Id. at 23. Indeed, on July 21, 1986, DeVardo pleaded guilty to the charge of felony gun possession and was sentenced to four years in federal prison. The remaining charges were dismissed under his plea agreement.

⁵ More specifically, DeVardo was charged with conspiring with Sicilian and American elements of organized crime, to smuggle more than \$1.6 billion worth of heroin into the United States.

⁶ By its very nature, a gun equipped with a silencer can only be used for nefarious purposes.

⁷ DeVardo claimed that the scale did not belong to him. Rather, DeVardo claims that he took the scale, among other things, from a tenant's apartment who failed to pay the rent. See DeVardo Dep. Tr. at 32-33; see also response.

⁸ The serial number on the gun was filed off. The Federal Bureau of Investigation ("FBI") also found a scale that contained heroin residue in DeVardo's garage. Although precluded at trial, the FBI found that additional evidence that heroin existed in DeVardo's car. The response does not address the additional evidence of heroin existing in DeVardo's car, as reported by the FBI.

Finally, on October 11, 2000, DeVardo was arrested and charged with assault with intent to cause physical injury, attempted assault in the third degree and harassment in the second degree. This matter was dismissed.⁹

Section 753 of the Corrections Law sets forth certain factors to be considered before a criminal conviction can be used as the basis of denying a company a registration. Those factors include: the relationship between the crime and the specific duties related to the license sought; whether the criminal offense will affect the individual's fitness or ability to perform the duties; the time which has elapsed since the occurrence of the offense; the age of the person at the time of the offense; the seriousness of the offense; any information by the person regarding his rehabilitation and good conduct; the legitimate interest of the public agency in protecting property and the safety and welfare of the public and whether the person received a certificate of relief from civil disabilities, which creates a presumption of rehabilitation. N.Y. Correct. Law 753(1), (2).

The Applicant's response does not address all of DeVardo's arrests and convictions. Specifically, the response does not address DeVardo's 1971 arrest and subsequent charge of assault with the intent to cause physical injury to a police officer. Nor does the response address the fact that these charges resulted in DeVardo's plea of guilty to disorderly conduct.

The response simply downplays the seriousness of DeVardo's 1976 arrest and conviction (referred to in the response as DeVardo's "1968 arrest") by stating that it did not involve theft, that DeVardo was not armed, and that DeVardo was "young... and became involved with the wrong people." The Commission finds Vardo's response unpersuasive. First, DeVardo's arrest did involve theft and violence, including the threatened use of a firearm, and occurred when DeVardo was thirty-one years old- an age when DeVardo should have known right from wrong. Indeed, this criminal episode concluded with DeVardo pleading guilty to the crimes of robbery and gun possession. Additionally, as demonstrated in the staff's recommendation, this was not an isolated incident. Furthermore, the response does not address the cavalier manner in which DeVardo recounted this incident during his deposition before the Commission on March 4, 2003.

Regarding DeVardo's 1984 arrest and conviction, (referred to in the response as DeVardo's "1984 arrest") the response seeks to retry the facts of the case. Yet, DeVardo admits that he had possession a gun equipped with a silencer, and all but admits that he had possession of a scale with heroin residue on it. The Commission finds that the excuses offered by DeVardo for his possession of the same are not credible, and finds that his plea of guilty to felony gun possession (which was accepted by a federal judge) in a case rife with organized crime alone is an independent basis for the denial of this application.

⁹Although the response addresses DeVardo's version of the facts of this case, by denying all "fault for this incident" with a New York City Police Officer, the Applicant has not provided any evidence that substantiates his explanation. Even if the Commission believes DeVardo's version of events, and excludes this case from its consideration, DeVardo still has a lengthy and violent criminal record that deem this Applicant unworthy of a registration.

Since DeVardo did not receive a certificate of relief from civil disabilities, he is not presumed to be rehabilitated. Nor should he be. As described above, DeVardo has had repeated contacts with the criminal justice system over the course of four decades. Despite the fact that some of his convictions are over 10 years old and do not specifically relate to the trade waste industry, each of the offenses was extremely serious and DeVardo was old enough to take responsibility for his actions. Even in the response submitted in 2004, DeVardo fails to take responsibility for his actions. The Commission has a significant and legitimate interest in protecting the safety of the public from an individual who repeatedly commits crimes. Serious crimes of this nature reflect adversely on the Applicant's good character, honesty and integrity and render DeVardo unworthy of registration. Accordingly, the Commission denies this application based on this independently sufficient ground.

B. The Applicant Failed to Notify the Commission of the October 11, 2000 Arrest of Lorenzo DeVardo Within Ten Calendar Days of the Arrest.

An applicant for a registration has the affirmative duty to notify the Commission, within 10 calendar days, of the *arrest*¹⁰ or criminal conviction subsequent to the submission of the application of any principal or any employee or agent... of which the applicant had knowledge or should have known. See 17 RCNY §2-05(a)(1), Admin. Code §16-507(b). The Applicant failed to so notify the Commission of his October 11, 2000 arrest.

The response admits that DeVardo was arrested on October 11, 2000 and that the Applicant failed to comply with Local Law 42 by not updating its application with material changes in information. In fact, the response states "DeVardo was unaware of any obligation on his part to report this arrest within a ten day period or otherwise," and claims that the Commission's staff "does not recite any authority for this requirement." The Commission finds that the response is incorrect on both counts. First, DeVardo's alleged ignorance of the law is not a valid excuse. Second, the staff's recommendation clearly and unequivocally cites 17 RCNY §2-05(a)(1) and Admin. Code §16-507(b) as authority for Vardo's "affirmative duty to notify the Commission within 10 calendar days, of the arrest or criminal conviction subsequent to the submission of the application..." See Staff's Recommendation at page 8. The Applicant's failure to comply with 17 RCNY §2-05(a)(1) constitutes another adequate and independent ground for the denial of this registration application. Accordingly, the Commission denies this application for this independently sufficient ground.

¹⁰ Local Law 42 requires that the Commission be notified of the arrest or conviction of a principal of an applicant within ten business days. See 17 RCNY §2-05(a)(1), Admin. Code §16-507(b). The ultimate disposition of the charges is irrelevant for these purposes.

C. The Applicant has been deemed to be a “non-responsible bidder” by three City agencies.

On December 22, 1995, Vardo Construction and DeVardo filed VENDEX¹¹ Business Entity and Principal Questionnaires that failed to disclose DeVardo’s July 21, 1986 conviction. See November 21, 1997 Decision by Beth A. Kaswan, Director of the Mayor’s Office of Contracts (“Decision”). In July, 1997, upon first learning of DeVardo’s conviction, the Agency Chief Contracting Officers (“ACCO”) of each of the New York City Parks Department, New York City Department of Housing Preservation and Development and the New York City Department of Design and Construction, notified Vardo Construction that its outstanding City contracts were being rescinded. *Id.* Shortly thereafter, in August 1997, each Agency Chief Contracting Officer advised Vardo Construction that as a result of the non-disclosure of DeVardo’s conviction in its VENDEX forms, Vardo Construction had been determined to be a “non-responsible” contractor under the Procurement Policy Board (“PPB”) rules, 9 RCNY §5-02. PPB Rule §5-02(a)(1) provides that contracts “shall be awarded to... responsible contractors only.” *Id.* PPB Rules §5-02(b)(1) defines a responsible contractor as one which “has the capability in all respects to perform fully the contract requirements and [one which has] the business integrity to justify the award of public tax dollars.” *Id.* Thus, by finding the Applicant “non-responsible,” the several city agencies determined that the Applicant “did not have the business integrity to justify the award of public tax dollars.”

Vardo Construction appealed each ACCO’s decision to his or her respective Commissioner. *Id.* In each case, each Commissioner sustained the respective ACCO’s determinations. *Id.* Vardo Construction then appealed the final determinations of the Parks Department, the Department of Housing Preservation and Development and the Department of Design and Construction to the Mayor’s Office of Contracts. *Id.* In its decision to sustain the final determinations of the Parks Department, the Department of Housing Preservation and Development, and the Department of Design and Construction, the Mayor’s Office of Contracts explained that the PPB Rules “require that City agencies award contracts only to responsible contractors. *Id.* Responsibility has been defined to mean that a contractor must have both the capability to perform the contract and business integrity. 9 RCNY §5-02(b)(1). *Id.* A prospective contractor’s failure to disclose material information—which includes a felony conviction of its principal—is an appropriate consideration for evaluating the contractor’s business integrity to receive public contracts.”

The response claims that the Applicant’s designation as a “non-responsible bidder,” and its debarment from receiving city contracts “can only be described as political” because there were no allegations made of the Applicant’s incompetence. The response also claims that DeVardo was truthful when he submitted a VENDEX Business Entity Questionnaire to the city. However, a review of the evidence establishes that Question 19 (c) of the VENDEX Business Entity Questionnaire submitted by Vardo asks, in relevant part,

¹¹ This system is a computer database, which provides comprehensive vendor information to ensure that the City does business only with responsible vendors.

Has any current or former director, owner or officer... in the past ten years, been convicted after trial or by plea, of any felony and/or any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business?

The Commission has no reason to disagree with the November 21, 1997 decision of Beth A. Kaswan, the Director of the Mayor's Office of Contracts, wherein Kaswan states,

Notwithstanding the inadequacies of VENDEX form question 19(c)'s sentence structure, only a contractor bent on evading its import would embrace the disingenuous interpretation proposed by Vardo Construction. If the form was intended to reach only those crimes bearing on truthfulness or a principal's business dealings, no separate reference to "felony" would have been necessary in question 19(c) – would merely have referred to "all crimes." Vardo Construction's position is also inconsistent with question 19(d)'s requirement that every misdemeanor, without limitation, occurring during the prior (5) years, must be disclosed. Thus, read in context, the VENDEX form requires the disclosure of:

- (1) All felonies occurring within the last 10 years;
- (2) All misdemeanors occurring within the last 5 years; and
- (3) Criminal offenses less serious than a felony, including but not limited to, misdemeanors, occurring within the last 10 years but only if the offense involved truthfulness or was business related.

Nor can this Office accept Vardo Construction's contention that DeVardo innocently confused the legal terms of "arrest" and "conviction" in counting out the 10-year disclosure requirement. Presumably, even a lay person knows the significance of the words "after trial or by plea" contained in question 19(c) and service of a multi-year criminal sentence should have kept the timing of the events fresh in DeVardo's mind as the VENDEX forms were prepared.¹²

Moreover, given the notoriety of the Pizza Connection prosecutions, DeVardo must have realized that his criminal role and plea would surely give any City Official evaluating his firm's responsibility pause- - well beyond the 10 years following the criminal conduct. Thus, it may be inferred that DeVardo fully appreciated and took advantage of omitting the reference to his conviction on the VENDEX form.

Thus, it was determined that Vardo Construction lacked the necessary business integrity to receive City contracts. Despite his self-serving statements to the contrary, the Applicant has not provided any evidence to dispute this fact. Instead, the response only provided a copy of a civil complaint filed against the City in Supreme Court, New York County, and Judge Phyllis

¹² Thus, it may be inferred that DeVardo fully appreciated and took advantage of omitting the reference to his conviction on the VENDEX form.

Gangel-Jacob's short order decision to withdraw a motion for summary judgment because the case was settled.

Even after the staff issued its recommendation that this Application be denied, this Applicant was found to be ineligible to submit bids for public work by the state of New York for reasons that directly relate to its honesty, integrity and character.¹³ On March 4, 2004, the State of New York Department of Labor finally determined that the Applicant "willfully failed to pay prevailing wages and/or supplements within the meaning of Labor Law Section 220-b(3)(b)... a final determination which involves the falsification of payroll records render an employer... ineligible to bid on or be awarded any public work for a period of five years from the first determination." Accordingly, Lorenzo DeVardo and Vardo Construction Corp. were notified that they placed on a list of employers who are ineligible to submit a bid or be awarded "any public work contract from the State, any municipal corporation, or public body until January 8, 2009." See March 4, 2004 letter from New York State Department of Labor to Vardo Construction Corp. In fact, the Applicant stipulated with the New York State Department of Labor that its failure "to pay prevailing wages and/or supplements... was a WILLFUL violation and involved the falsification of records..." See Stipulation, Case ID# 34990024-1

A finding of non-responsibility by three City agencies and a recent final determination by the New York State Department of Labor that the Applicant is ineligible to bid on public works for five years each compel the conclusion that the Applicant lacks good character, honesty, and integrity. Accordingly, for this independent reason, the Commission denies this application.

¹³ The Applicant stipulated that it falsified business records. See Stipulation, Case ID# 34990024-1.

III. CONCLUSION


The Commission is vested with broad discretion to refuse to issue an exemption/registration to any applicant that it determines lacks good character, honesty and integrity. The evidence recounted above demonstrates convincingly that Vardo falls far short of that standard.

It is of grave concern to the Commission that the Applicant's sole principal has a lengthy and violent criminal record, that the Applicant failed to notify the Commission about the most recent arrest of its only principal, and that this Applicant has been deemed a "non-responsible bidder" by the City of New York. For the independently sufficient reasons discussed above, the Commission hereby denies Vardo's registration application.

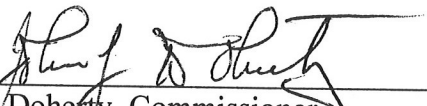
This registration denial decision is effective fourteen days from the date hereof. In order that the Vardo's customers may make other trade waste collection arrangements without an interruption in service and in order that Vardo has sufficient time to retrieve all of its trade waste containers from New York City customers, Vardo is directed (i) to continue servicing its customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to immediately notify each of their customers by first-class mail that they must find an alternative trade waste collection arrangement within the next fourteen days. Vardo shall not service any customers, or otherwise operate as 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



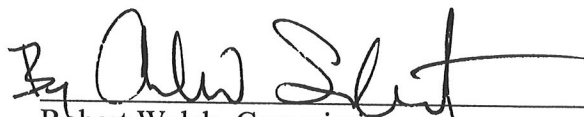
John Doherty, Commissioner
Department of Sanitation



Gretchen Dykstra, Commissioner
Department of Consumer Affairs



Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Business Services



Raymond Kelly, Commissioner
New York City Police Department