Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF ATLANTIC CARTING, L.L.C. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Atlantic Carting, L.L.C. ("Atlantic Carting" or the "Applicant") (BIC-1914) has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for renewal of an exemption from licensing requirements and a registration to operate a trade waste business "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 Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a).

On October 3, 2014, the staff issued and served the Applicant with Notice of the Grounds to Deny the Renewal Application of Atlantic Carting, L.L.C. to Operate as a Trade Waste Business ("Notice of Denial"). The Applicant was given ten business days to respond, until October 20, 2014. See 17 Rules of the City of New York ("RCNY") §2-08(a). On or about October 15, 2014, the Applicant's attorney contacted the Commission's staff and requested an extension of time to submit a response to the Recommendation. The Commission's staff granted that request and extended the time to submit a response to October 27, 2014. On October 27, 2014, the Commission received the Applicant's response, which consisted of a letter claiming that efforts are being made to pay off the Applicant's debts owed to government authorities, and proof that some of those debts have been resolved (collectively, the "Response"). The Commission has carefully considered both the staff's Notice of Denial and the Applicant's Response. Based on the record as to the Applicant, the Commission now denies Atlantic Carting's exemption renewal application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

A. The Applicant has Failed to Pay Taxes, Fines, Penalties, or Fees that are Related to the Applicant's Business that are Owed to the Internal Revenue Service, to the State of New York, to the State of New Jersey, and to the City of New York.

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

Background and Statutory Framework

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See e.g., United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.); People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry has also been the subject of significant successful racketeering prosecutions. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992); United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367.

The Commission is charged with, *inter alia*, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. NY Admin. Code §16-505(a). It is this licensing scheme that continues to be the primary means of ensuring that an industry historically plagued with corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," commonly known as construction and demolition debris, or "C & D" removal, must apply to the Commission for an exemption from the licensing requirement. Id. If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption from the licensing requirement, it issues the applicant a Class 2 registration. Id. Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at §16-508(b). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing or registration decision:

> 1. failure by such applicant to provide truthful information in connection with the application;
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> 2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which

directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. §1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

> 9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
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> 10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Id. at §509(a)(i)-(x). Additionally, the Commission may refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by the Commission...or who has otherwise failed to demonstrate eligibility for a license. Id. at §509(b). The Commission may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license." Id. at §509(c). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at §509(d).

An applicant for a private carting license (including construction and demolition) has no entitlement to and no property interest in a license or registration and the Commission is vested with broad discretion to grant or deny a license or registration application. Sanitation & Recycling Industry, Inc., 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). NY Admin. Code § 16-116.

Statement of Facts

On or about December 16, 2004, Atlantic Carting applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. See Application for Registration as a Trade Waste Business ("Registration Application"). The Registration Application disclosed Jadranko Bijelonic as the sole principal. See Registration Application at 7. On or about March 31, 2005, the Commission granted the Applicant a trade waste registration. See Registration Order. The Applicant's registration was effective for two years, and expired on March 31, 2007. See id. The Applicant subsequently filed applications to renew its registration on February 14, 2007, March 27, 2009, and April 5, 2011. See 2007 Renewal Application, 2009 Renewal Application, and 2011 Renewal Application. After investigating the Applicant, the Commission granted each of the renewal applications. On or about April 12, 2013, the Applicant filed its fourth Renewal Application (the "2013 Renewal Application") with the Commission. See 2013 Renewal Application.

The Commission's background investigation of the Applicant in connection with the 2013 Renewal Application revealed that in addition to being the sole owner of the Applicant,

principal Jadranko Bijelonic was also the sole owner of J.R. Contracting & Environmental Consulting, Inc. ("J.R. Contracting"). J.R. Contracting and the Applicant were both located at 1142 Route 23, Wayne, NJ. See Registration Application at 7. J.R. Contracting had previously possessed a Class-2 Registration. J.R. Contracting's Class-2 Registration expired on February 28, 2013, and it did not seek to renew its registration, perhaps due to the fact that J.R. Contracting had significant tax debt.

The Commission's background investigation of the Applicant revealed:

- one New Jersey state tax lien against the principal, Jadranko Bijelonic, for $77,559.00;
- two federal tax liens against J.R. Contracting totaling $251,967.00

By letter dated July 9, 2013, the Commission's staff notified the Applicant about the federal and state tax liens. See July 9, 2013 letter from Commission staff to the Applicant. The Commission's staff gave a deadline of July 24, 2013 for the Applicant to provide proof that the liens filed by the IRS and the State of New Jersey had been satisfied or otherwise resolved. See id.

The Applicant failed to respond to this letter, and on August 2, 2013, the Commission's staff sent the Applicant another letter requesting the exact same information. See August 2, 2013, letter from Commission staff to the Applicant. The letter also informed the Applicant that the failure to respond may result in administrative penalties, including monetary fines and/or denial of its renewal application. See id.

By letter dated August 14, 2013, the Applicant responded to the Commission, stating that it did not have proof of payment or other solution but were working on it and "[hoped] to have it all resolved by the later part of [2013]." See August 14, 2013, letter from the Applicant to Commission staff. The Applicant did not provide any proof of satisfaction, resolution, or that the outstanding liens were the subject of a documented payment plan.

Therefore, by letter dated August 26, 2013, the Commission's staff again extended the time for which the Applicant was required to provide the previously requested proof. The Commission gave the Applicant until September 9, 2013, and directed it to provide "documentation showing all communications with the tax authorities to enter into ... a plan or agreement" if the Applicant was unable to pay the outstanding liens. See id. The Applicant was informed that its failure to provide the requested proof may result in additional administrative violations, additional penalties and/or the denial of its renewal application. See id. As of the date the Notice of Denial was served, the Applicant still had not provided any of the requested proof and/or documentation to the Commission.[1]

[1] The Commission did receive a telephone call from the Applicant's attorney, who stated that the Applicant was working on resolving the debts. Again, no documentary proof or supporting documentation was provided.

As noted above, the August 2, 2013, and August 26, 2013 letters from the Commission's staff both advised the Applicant that the failure to provide the requested information and/or documentation to the Commission may result in the withdrawal or denial of the renewal application. See August 2, 2013 and August 26, 2013 letters from Commission staff to the Applicant.

After previously sending three separate notices, and providing ample time for the Applicant to comply with the Commission's requests for documentation, by letter dated December 9, 2013, the Commission mailed another letter titled "Final Notice." See December 9, 2013, letter from Commission staff to the Applicant. In that letter, the Commission again required the Applicant to produce the outstanding information and/or documentation requested in its letters dated July 9, 2013, August 2, 2013, and August 26, 2013. See December 9, 2013 letter from Joanna Brooks to the Applicant. Again, the Applicant failed to respond.

On October 3, 2014, BIC served the Applicant with an eight-page Notice of Denial. At the time of the issuance of the Notice, not only had the Applicant failed to satisfy two of the three tax debts previously identified, but had further incurred additional significant tax debt, all of which totaled $912,160.00. Specifically, the Notice listed the following unresolved debts incurred by J.R. Contracting and its principal, Jadranko Bijelonic:

Creditor	Filing Number	Filing Date	Amount
Internal Revenue Service	998518414	May 14, 2014	$442,668.00
Internal Revenue Service	949536813	July 31, 2013	$198,643.00
Internal Revenue Service	902921512	August 14, 2012	$133,164.00[2]
State of New Jersey	DJ20442011	July 14, 2011	$77,559.00
City of New York	003128554	July 16, 2013	$30,398.00[3]
State of New York	E038905620W0024	August 20, 2013	$13,066.00
Internal Revenue Service	964981613	November 12, 2013	$10,365.00
City of New York	003210078	February 26, 2014	$2,181.00
State of New York	11414732	June 11, 2013	$1,239.00
Internal Revenue Service	936418513	May 8, 2013	$1,154.00
State of New York	11442010	July 23, 2013	$1,058.00
State of New York	11426414	June 28, 2013	$424.00
State of New York	E038905620W0019	August 20, 2013	$241.00

See Notice, citing Judgment and Lien Printout dated July 17, 2014.

[2] In its Response, the Applicant provided proof to the Commission that the federal tax lien in the amount of $133,163.00 had been released on or about August 27, 2014. On November 6, 2014, Commission staff conducted a debt search and confirmed the release of this lien.

[3] In its Response, the Applicant provided proof to the Commission that the New York City tax warrant in the amount of $30,398.00 had been satisfied on or about March 17, 2014. On November 6, 2014, Commission staff conducted a debt search and confirmed the release of this tax warrant.

By letter from its counsel dated October 27, 2014, the Applicant submitted its Response to the Notice. In its response, the Applicant provided proof to the Commission that it had resolved two of the thirteen debts that had been listed in the Notice. Specifically, the Applicant provided proof that it had resolved the federal tax lien in the amount of $133,163.00 and the New York City tax warrant in the amount of $30,398.00. With respect to the remaining open debts in the amount of $706,900.00, the Applicant simply stated that:

> ...[the applicant] has retained legal counsel, specializing in tax law, to assist with negotiating a settlement with the Internal Revenue Service for the remaining sums. As soon as such settlement is reached, we will forward confirming documentation.

See Response at 2.[4] Notwithstanding this representation, as of the date of this decision, the Applicant has not provided proof of resolution of the significant amount of tax debt, nor has the Applicant forwarded any additional "documentation" reflecting a settlement or payment plan.

Basis for Denial

The Applicant has Failed to Pay Taxes, Fines, Penalties, or Fees that are Related to the Applicant's Business that are Owed to the Internal Revenue Service, to the State of New York, to the State of New Jersey, and to the City of New York.

The Commission may refuse to issue a registration to an applicant "upon the failure of the applicant to pay any tax, fine, penalty, fee related to the applicant's business...for which judgment has been entered by a[n] ... administrative tribunal of competent jurisdiction..." See Admin. Code §16-509(a)(x); see also §16-509(c)(ii); see also §16-513(a)(iv).

The Commission began requesting documentation from the Applicant in 2013. Since the Commission's initial contact, the Applicant has not only failed to pay the majority of the outstanding debts, but in addition, has continued to accumulate further debts. As of the date of this Decision, the Applicant has failed to resolve $748,598.00 in judgments and liens filed by the IRS, the State of New Jersey, the State of New York, and the City of New York.

As per the Applicant's Response, the company "has made great strides in paying off many of these judgments and liens." See Response at 2. In the Applicant's Response, it submitted documentation showing that just two of the thirteen outstanding judgments and liens

[4] In its response, the Applicant stated that in 2011, its business was "crippled" when its computers, networks, and property was damaged during Hurricane Irene. Such damage to property in 2011 does not sufficiently explain the Applicant's failure to pay its taxes, nor does it explain the Applicant's failure between 2013 to date to comply with BIC's directive to provide proof of satisfaction, or even at a minimum, proof of correspondence with the relevant tax authorities.

have been satisfied.[5] Yet, eleven of the judgments and liens are still outstanding and, even subsequent to the service of the Notice of Denial, one additional New Jersey State tax lien was filed against principal Jadranko Bijelonic in the amount of $5,463.00.

As of the date of this Decision, the Applicant has still failed to resolve $748,598.00 in judgments and liens filed by the IRS, the State of New Jersey, the State of New York, and the City of New York. On multiple occasions, the Commission's staff informed the Applicant that it owed numerous unsatisfied debts to governmental entities. Despite these warnings, the debts remain unsatisfied. As noted above, contrary to the Applicant's claims in its Response that it has made progress in paying these debts off, the amount of debt remains significant. Notably, the Applicant has also failed to provide any proof to substantiate such claims, such as evidence of communications with the tax authorities, despite initially being contacted by the Commission over one year ago.

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).

Despite repeated attempts by the Commission's staff, the Applicant failed to provide proof of satisfaction or other resolution of the outstanding liens owed to governmental entities. The Commission began asking the Applicant for proof of documentation starting in July 2013, and even after numerous months, and multiple attempts by the Commission, the Applicant only provided proof of satisfaction of an insignificant portion of the entire outstanding debt. Only upon being served with the Notice of Denial did the Applicant submit *any* documentation to the Commission regarding resolution of any of the debts. Notably, after being advised in August 2013 – albeit by unsupported claims – that the Applicant was working with tax authorities to resolve the debts, the Commission merely requested proof of those efforts and communications. No such proof was submitted to the Commission.

As mentioned above, now, in its Response, the Applicant claims that it has hired legal counsel to assist in negotiating a settlement. Yet, the Applicant has again failed to provide documentary or other proof of these purported negotiations. These vague assertions are supported by no documentation. Moreover, in its Response, the Applicant does not refute that it failed to respond to the Commission's requests. It simply claims that it "was not withholding any information." See Response at 2. In short, the Applicant has "knowingly failed to provide the information" required by the Commission by failing to respond to the Commission's repeated

[5] The Applicant also submitted proof of satisfaction of a federal tax lien in the amount of $118,803.32. As the Commission was previously aware of the satisfaction of this lien, as mentioned above, it was not included in the Commission's calculation of outstanding debts totaling $912,160.00.

requests for information and/or documentation. For this independently sufficient reason, the 2013 Renewal Application should be denied.

Conclusion

The Commission is vested with broad discretion to issue a registration or refuse to grant a registration to any applicant who it determines to be lacking in good character, honesty and integrity. The record as detailed above demonstrates that the Applicant falls short of that standard. Accordingly, based on the above independently sufficient reasons, the Commission denies Atlantic Carting L.L.C.'s registration Renewal Applications.

This registration denial is effective immediately. Atlantic Carting L.L.C. may not operate as a trade waste business in the City of New York.

Dated: November 20, 2014

THE BUSINESS INTEGRITY COMMISSION

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