The City of New York
BUSINESS INTEGRITY COMMISSION
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Daniel D. Brownell
Commissioner and Chair

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION RENEWAL APPLICATION OF BLUE WATER INTERNATIONAL INC. (BIC # 1597) TO OPERATE AS A TRADE WASTE BUSINESS BROKER

I. Introduction

Blue Water International Inc. ("Blue Water" or the "Applicant") has applied to the New York City Business Integrity Commission (the "Commission") for a renewal of the previously-issued registration to operate as a trade waste broker pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code") § 16-505(b). 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.

Blue Water applied to the Commission for a registration enabling it to operate as a trade waste broker, "who, for a fee, brokers agreements between commercial establishments and providers of trade waste removal, collection or disposal services or conducts evaluations or analyses of waste generated by such commercial establishments in order to recommend cost efficient means of waste disposal or other changes in related business practices." See Admin. Code §16-505(b), §16-501(g). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id.

It is now recommended that the Commission refuse to issue the requested renewal broker license because Blue Water lacks good character, honesty and integrity. As set forth more fully below, the principal of Blue Water, Craig Shapiro ("Shapiro"), was convicted on September 23, 2011, top count Criminal Possession of Stolen Property in the 2nd Degree, a C felony, for illegally obtaining higher and more frequent commissions during his employment as a stock trader with Joseph Stevens & Company. Shapiro was sentenced to ten months in prison.[1]

II. 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

[1] Shapiro has since completed his prison sentence.

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 Commission is charged with, *inter alia*, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42 of 1996, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. 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. However, the licensing scheme is not limited to a mere decision as to whether an applicant has ties to organized crime, since Local Law 42 of 1996 grants the Commission broader discretion to make a determination as to the "good character, honesty and integrity" of applicants. *See Canal Carting, Inc. v. City of New York Business Integrity Commission*, 66 A.D.3d 609, 888 N.Y.S.2d 30 (1st Dep't 2009). Thus, the licensing scheme enables the Commission to fulfill its mission by authorizing it to refuse licensure or registration to an applicant that, *inter alia*, lacks such good character, honesty and integrity. Admin. Code § 16-509(a).

In determining whether to grant a registration as a trade waste broker, 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 trade 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); see also Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity").

Blue Water applied to the Commission for a registration enabling it to operate as a trade waste broker, "who, for a fee, brokers agreements between commercial establishments and providers of trade waste removal, collection or disposal services or conducts evaluations or analyses of waste generated by such commercial establishments in order to recommend cost efficient means of waste disposal or other changes in related business practices." See Admin. Code §16-505(b), §16-501(g).

Local Law 42 authorizes the Commission to review and determine such applications for registration. Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Admin. Code § 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;

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;

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.

11.

Admin. Code § 16-509(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 § 16- 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 § 16-509(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 § 16-509(d).

An applicant for a private carting license, an exemption from the licensing requirement and registration, or a trade waste broker registration, 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 985, 995 (2d Cir. 1997); *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); Admin. Code § 16-504(a); New York City Charter § 2101(b)(1).

III. Statement of Facts

A. Application

On January 23, 2002, Blue Water applied to the Commission for a trade waste license for brokers. See, Blue Water's Application for Trade Waste Broker License ("Initial License Application"). This application was approved effective October 1, 2004. Blue Water subsequently filed four renewal applications. The most recent renewal application was received on October 4, 2012. See, Blue Water Renewal Application for a License as a Trade Waste Broker ("Fourth Renewal Application"). This fourth renewal application is what the Staff now recommends the Commission deny.

In the Fourth Renewal Application, Blue Water's principal, Craig Shapiro, swore that the answers that he provided were "full, complete and truthful." See, Id at 12 and 13. In Blue Water's Initial License Application and the subsequent four renewal applications, Blue Water indicated that Shapiro has been the President of the company since November 2001. The Applicant described the nature of its business as "trade waste broker". *See, Initial Registration Application at 4.*

It should be noted that Shapiro did disclose his conviction and prison sentence in the Fourth Renewal Application.

B. Criminal Conviction Of Principal Craig Shapiro by Plea of Guilty

(1) Criminal Conviction of Craig Shapiro for Criminal Possession of Stolen Property (New York County, State of New York)

On May 20, 2009, Manhattan District Attorney Robert Morganthau announced the indictment of eleven stockbrokers, three traders and two principal owners of Joseph Stevens & Company, Inc., a defunct securities firm that had been based in Manhattan, for operating a racketeering scheme that netted $6.2 million in unlawful commissions. The defendants, including the firm itself, were indicted on charges of enterprise corruption, grand larceny, criminal possession of stolen property, securities fraud

and falsifying business records. Between January 2001 and December 2005, the defendants were alleged to have defrauded 800 victims in more than 5000 trades valued at over $151 million. By manipulating the market value of carefully selected stocks, the defendants generated more than $6.2 million in unlawful, undisclosed commissions. See, Press Release, New York County District Attorney's Office, May 20, 2009.

On September 23, 2011, in Supreme Court, New York County, Craig Shapiro pleaded guilty to four counts of Indictment #2394/09, namely:

§ 352(c)(5) General Business Law, Securities Fraud Scheme (Count 2)
§ 165.52 NYS PL Criminal Possession of Stolen Property 2nd Degree (Count 18)
§ 165.50 NYS PL Criminal Possession of Stolen Property 3rd Degree (Count 22)
§ 352(c)(6) General Business Law, Securities Fraud Scheme (Count 56)

During Shapiro's allocution, Shapiro stated the following to Honorable Marcy L. Kahn, a Justice of the Supreme Court, while Shapiro was under oath:

Judge: "I am going to ask you a few questions about it. Is it true, Mr. Shapiro, that from on or about January 1, 2005 to on or about April 1, 2005 you, along with Joseph Stevens & Company, the firm you worked for, Joseph Sorbara, Steven Markowitz, Peter Orthos, Alan Ferraro, Charles Raspa, Scott Tierney, Michael Tripodi, Douglas Constabile, Matthew Menies and Harry Mucovic, intentionally engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud, at least ten people; and to obtain property from, at least, ten people, by false and fraudulent pretenses, representations, and promises; and did obtain property from, at least, one such person, while engaged in inducing and promoting the issuance, distribution, exchange, sale and purchase of securities, those being securities issued by Antigenics as charged in Count 2 of the indictment? Is that true sir?"

Shapiro: "Yes, Your Honor."

Judge: "Is it true that you were a proprietary trader for Joseph Stevens & Company's firm account from 1998 to 2008?"

Shapiro: "Yes."

Judge: "And during that time you participated in the firm's business of buying and selling over-the-counter stocks on behalf of retail customers. Is that true?"

Shapiro: "Yes."

Judge: "Is it true also that you were aware of and participated in firm-wide schemes in order to generate excessive and undisclosed commissions in stocks during that time? I'm going to say the time between 2001 and 2005? Is that true?"

Shapiro: "Yes."

Judge: "Is it true that you, along with other traders, including Massimo Martinucci and John Moraitis had an ongoing practice of engaging in a pattern of fraudulent trading techniques to generate excessive and hidden commissions which involved accumulating blocks of stock for the purpose of generating extra commissions on stocks on which the firm made markets?" (mark-ups?)

Shapiro: "Yes."

Judge: "Is it true that because the brokers you were working with did not disclose relevant trading information when marketing the shares of these stocks to their customers by engaging in these schemes, the firm stole money from its customers by engaging in false and fraudulent pretenses, while inducing and promoting the distribution, exchange, sale and purchase of securities?"

Shapiro: "Yes."

Judge: "And these actions were concealed from customers and Regulators in an ongoing manner, is that right?"

Shapiro: "Yes."

Judge: "Is it true that the firm, the other traders I've mentioned, and the brokers I've mentioned, or at least some of them with whom you worked, would work together to accumulate stocks sometimes over a period of days and then manipulate the price of the shares higher so that the customers actually paid more for the shares than they ordinarily would have had to had you not done that?"

Shapiro: "Yes."

Judge: "Is it also true that sometimes you and other traders would secure purchase commitments for securities from the brokers before actually purchasing the shares of stock?"

Shapiro: "Yes."

Judge: "Is it true also that the trades were executed at a higher price after you and other traders manipulated the price of the shares higher before executing orders received from the customers?"

Shapiro: "Yes."

Judge: "And you knew the brokers were doing this, right? You were aware that the brokers were working with you to do what I'm describing, is that right?"

Shapiro: "Yes."

Judge: "So, by owning quantities of stock at a price lower than the execution price, the firm was able to realize additional profits not disclosed to customers, is that true sir?"

Shapiro: "Yes."

Judge: "And the brokers, the traders, as well as the firm's principals, of course, I'm talking about you particularly, individually all shared in the profits generated by these schemes, is that right, Mr. Shapiro?"

Shapiro: "Yes."

Judge: "You learned from others at the firm that brokers should mark their customer orders as "not held" without explaining or securing the consent of the customers on that in order to delay the execution of the trades, is that right?"

Shapiro: "Yes."

Judge: "And so, you advised the brokers to mark customer orders "not held" so that you did not have to execute the trades promptly or immediately; but, rather, you could delay their execution until an artificially inflated price was achieved; is that right, Mr. Shapiro?"

Shapiro: "Yes."

Judge: "And that was not really to benefit the customers at all; but, rather, to enrich yourself and those at the firm you were working with, including people I mentioned, is that right?"

Shapiro: "Yes."

Judge: "And this resulted in the firm's customers paying more than they should have when selling stock, because the firm, the principals of the firm, the other traders and you, systematically handled the trades with the specific purpose of making extra illegal money for yourselves; is that correct, Mr. Shapiro?"

Shapiro: "Yes."

Judge: "Is it also true, sir, that on or about August 17, 2004, along with the firm, Jospeh Sorbara, Steven Markowitz, Douglas Costabile, and Harry Mucovic, you knowingly possessed stolen property, that being money, generated as a result of the manipulations of Antigenics securities with the intent to benefit yourself or somebody other than the owner of the money, and that value of the property exceeded $50,000 as charged in Count 18?

Shapiro: "Yes."

Judge: "Is it also true that on or about January 27, 2005, along with the firm, Mr. Sorbara, Mr. Markowitz, Mr. Ferraro, and Mr. Mucovic, you knowingly possessed stolen property, that being money, generated as a result of the manipulations of the securities of Discovery Laboratories, Inc., with the intent to benefit yourself or a person other than an owner of those securities or that money, and the value of the property exceeded $3,000.00 as charged in Count 22?"

Shapiro: "Yes."

Judge: "Is it also true, sir, that from on or about January 22, 2003 to on or about November 30, 2005, along with Joseph Stevens & Company, Mr. Sorbara, Mr. Markowitz, Mr. Moraitis, Mr. Martinucci, Mr. Raspa, and Mr. Tierney, you intentionally engaged in fraud, deception, concealment, suppression, false pretense, and fictitious and pretended purchase and sale, and with intent to deceive and defraud, made material false representations and statements, while engaged in inducing and promoting the issuance, distribution, exchange, sale and purchase within and from New York of securities, thereby wrongfully obtaining property in excess of $250 from Robert Arnold as charged in Count 56? Is it true sir"

Shapiro: "Yes."

Judge: "And the way you benefitted was that you would earn a percentage of the trading profit generated on these trades, is that right?"

Shapiro: "Yes."

Judge: "Did you participate in these and other fraudulent trading practices with Scott Gutmanstein, Mark Berg, Massimo Martinucci and John Moraitis?"

Shapiro: "Yes."

Judge: "And were you aware that the firm maintained and reviewed internal records which calculated sales credit being earned by traders and brokers, including the hidden sales credit on the transactions we've been discussing?"

Shapiro: "Yes."

Judge: "And were you aware that Joseph Sorbara and Steven Markowitz were aware of these fraudulent and manipulative practices, based on conversations you had with them?"

Shapiro: "Yes."

Judge: "Are you pleading guilty because you are guilty of these charges?"

Shapiro: "Yes."

See, Court Minutes, People of the State of New York v. Craig Shapiro, Indictment # 2394/09, Plea, September 23, 2011, page 9 line 16 – page 16 line 13.

C. Sentence of Craig Shapiro

On January 27, 2012, Craig Shapiro was sentenced by Judge Marcy L. Kahn to ten months in prison, 75 hours of Community Service and $100,000.00 restitution. According to the sentencing minutes, the initial payment of restitution to the victims of his crimes, an amount of $12,500, was taken from funds of Blue Water International (See, Craig Shapiro deposition, July 1, 2014, page 59, lines 9-10).

At sentencing, Assistant District Attorney Michael Kitsis addressed the Court and described Craig Shapiro's central culpability in the scheme, stating:

"The Defendant's crimes at Joseph Stevens were critical to the entire criminal enterprise operating. There were really three categories of people who participated in the firm in a major scale in these crimes. There were the brokers who had contact with the customers and obtained the orders. There were the owners, who oversaw everything. But there were the traders who were at the epicenter. In essence, as the Court knows, the traders would get orders in and inflate the prices of the stocks so that customers paid more than they should have. It amounted to pennies per share of stock. But when all added together over the period of five years of the indictment, it came out to millions of dollars. The Defendant's role was central in making this happen."

See, Court Minutes, People of the State of New York v. Craig Shapiro, Indictment # 2394/09, Sentence, January 27, 2012, page 8 line 3 – line 19.

D. Deposition by the Business Integrity Commission

On July 1, 2013, Craig Shapiro was deposed at the Business Integrity Commission offices by Commission attorneys Amy Bedford and John Curry. The objective was to hear from Shapiro directly about the scheme and his guilty plea.

Throughout his deposition testimony, Shapiro minimized his involvement in the wrong doing by stating that he was just trading the way he had been taught (See, Craig Shapiro deposition, July 1, 2013, page 14 lines 20-21; page 15 lines 12-18). Shapiro further stated that he pled guilty because he was concerned that jurors would not understand how Wall Street works and therefore would unfairly convict him. Shapiro also felt that a trial would be lengthy, expensive and that he would not be able to earn money to support his family during the pendency of the trial. These factors further convinced Shapiro to plead guilty.

Shapiro further minimized his culpability by stating "It's hard to say now – deep down in my heart, the way I was thinking and the way I always felt, I always felt like I did the right thing for my customers when I was trading but the District Attorney had a different view on it. I try all the time to take their perspective from the outside looking in, and I can understand where they're coming from, and how they could see it was not right but I was, also, thought, when I was doing it, to do it this way, that this was the right way to do it, all the years I was with them." (See, Craig Shapiro deposition, July 1, 2013, page 18 lines 15-25).

IV. Basis for Denial

The criminal conviction of the Applicant's principal, Craig Shapiro, demonstrates a lack of good character, honesty and integrity of the Applicant.

As previously discussed, the Principal of Blue Water was convicted of charges related to Enterprise Corruption and Securities Fraud in September, 2011.

In making a determination regarding an applicant's good character, honesty and integrity in connection with an application for a license or registration, Admin. Code § 16-509(a)(iii) expressly permits the Commission to consider the conviction of an applicant for a crime which, considering the factors set forth in Correction Law § 753, would provide a basis under such law for the refusal of such license or registration. Upon consideration of the factors in such law, the balance falls in favor of the denial of the Fourth Renewal Application of Blue Water. Despite the public policy of New York State to encourage the licensure of persons previously convicted of one or more criminal offenses, the Registration Application should nonetheless be denied because there is a direct relationship between Shapiro's criminal conviction and the specific registration sought. *See* Correction Law §§ 752(1) and 753(1)(a). Shapiro is the sole principal of Blue Water. If the Fourth Renewal Application were granted, Shapiro would have the specific duty and responsibility of ensuring that wages are properly paid to employees and that necessary governmental forms are completed honestly and truthfully in accordance with applicable law. However, Shapiro has shown his failings when it comes to handling other people's

money. Thus, the specific duties and responsibilities held by Shapiro argue against approval of the Registration Application. *See* Correction Law § 753(1)(b).

Similarly, the conviction of Shapiro bears heavily on his fitness and ability to properly perform payroll duties and responsibilities in accordance with the law. This conviction also lends itself to a determination that Shapiro markedly lacks good character, honesty and integrity when it comes to business dealings in general. *See* Correction Law § 753(1)(c).

Additionally Shapiro was 25 years old in 2003, the earliest date of the multiple charges relating to failure to pay (stealing money). Accordingly, it cannot be maintained that such charges were attributable to youthful indiscretion. *See* Correction Law § 753(1)(e).

Additionally, the seriousness of the offenses that Shapiro was convicted of can be measured by the sentence imposed. The sentence required Shapiro to serve ten months in prison, the longest prison sentence of any of the defendants in the case, longer than even the owners of firm Joseph Stevens.

Finally, the Commission has a very legitimate interest in protecting the welfare of those whom the Applicant would contract with, as well as the general public from dishonest and unscrupulous behavior and the denial of the Fourth Renewal Application herein directly furthers that interest. *See* Correction Law § 753(1)(h).

V. Conclusion

The Commission is vested with broad discretion to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license, 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, it is recommended that the Commission deny the Applicant's exemption renewal application.

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This denial is effective immediately. Blue Water International Inc. may not operate as a trade waste broker in the City of New York.

Dated: March 6, 2015

THE BUSINESS INTEGRITY COMMISSION

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