The City of New York
BUSINESS INTEGRITY COMMISSION
100 Church Street · 20th Floor
New York · New York 10007
Tel. (212) 676-6219 · Fax (212) 676-6204

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION APPLICATION OF MIKE MASONRY CORP. (#483007) TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Mike Masonry Corp. ("Mike Masonry" or the "Applicant")(BIC-483007) has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for 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 February 11, 2015, the staff issued and served the Applicant with Notice of the Grounds to Deny the Application of Mike Masonry to Operate as a Trade Waste Business ("Notice"). The Applicant was given ten business days to respond, until February 26, 2015. See 17 Rules of the City of New York ("RCNY") §2-08(a). On February 26, 2015, the Commission received the Applicant's response, which consisted of a one-page letter from principal Miguel Sanchez Quintero ("Response"). The Commission has carefully considered both the staff's Notice of Denial and the Applicant's Response. Based upon the record as to the Applicant, the Commission now denies Mike Masonry's exemption application because the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

A. The Applicant Violated the Rules of the Business Integrity Commission Which Bear a Direct Relationship to the Fitness of the Applicant to Conduct a Trade Waste Business.

B. The Applicant Has Failed to Pay Fines That Are Directly Related to the Applicant's Business For Which Liability Has Been Admitted by the Applicant.

C. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

D. 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;
>
> 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.

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

The Applicant 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 on April 7, 2014. See Mike Masonry Corp. Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris ("Application"). The Application disclosed Miguel Sanchez Quintero as the sole principal. See Registration Application at 13. As set forth more fully below, the Applicant owes a significant amount of money to the Commission and to other government agencies.

Administrative Violation Issued by the Commission

During the pendency of the instant application, the Commission issued an administrative violation against the Applicant on April 15, 2014. The Commission issued Notice of Violation TWC-209620 against the Applicant for unregistered trade waste removal activity. See Notice of Violation, TWC-209620. Prior to a scheduled hearing, the Applicant agreed to settle the administrative violation for Two Thousand Five Hundred ($2,500.00) Dollars, payable in five monthly installments of Five Hundred ($500.00) dollars each. The Applicant's principal signed a Stipulation of Settlement which memorializes this agreement. See Stipulation of Settlement for TWC-209620.

The Commission's staff reminded the Applicant on several occasions that it agreed to resolve the above-mentioned administrative violation and warned the Applicant about the consequences of not resolving it. See October 7, 2014 and December 30, 2014 letters from Jonathan Jacobs to the Applicant. Despite this agreement, as of the date of this Decision, the Applicant has breached the Stipulation of Settlement by failing to make any payments. In its Response, the Applicant admitted that it agreed to pay a fine to settle this administrative violation, and that it has failed to do so. See Applicant's Response.

Taxes and Other Government Obligations

On several occasions, Commission's staff notified the Applicant that there were numerous open Environmental Control Board ("ECB") fines, liens filed by the New York State Department of Taxation and Finance, and liens filed by the New York State Department of Labor that were docketed against the Applicant. See July 19, 2014 email from Ivette Escobar to the Applicant; September 3, 2014 letter from Jonathan Jacobs to the Applicant; October 7, 2014 letter from Jonathan Jacobs to the Applicant; and December 30, 2014 letter from Jonathan Jacobs to the Applicant. Subsequent to these letters, the Commission advised the Applicant of an additional $3,250.00 in fines owed to the ECB. See Notice at page 5.

A search of the ECB database on January 29, 2015, revealed the following outstanding fines, which total $3,000:

Creditor	Violation Number	Amount
NYC Environmental Control Board	0180105018	$750.00
NYC Environmental Control Board	0180757592	$750.00
NYC Environmental Control Board	0182578010	$750.00
NYC Environmental Control Board	0182577790	$750.00

Numerous judgments totaling $2,821.39 have also been entered against the Applicant by New York City and New York State. According to a judgment and lien search conducted by the Commission on January 29, 2015, the following judgments remain unsatisfied:

Creditor	Warrant ID Number	Amount
NYS Dept. of Taxation and Finance	E-036557347-W001-1	$320.95
NYS Dept. of Taxation and Finance	E-036557347-W002-5	$1,154.72

Creditor	Filing Number	Amount
NYS Department of Labor	382434	$1,052.00
NYS Department of Labor	377246	$293.72

Further, the Commission advised the Applicant of an additional $18,000.00 in fines owed to the New York State Department of Labor. See Notice at page 6.

Moreover, in addition to its outstanding governmental debts, the Applicant was debarred by the New York State Worker's Compensation Board for the period of December 12, 2014 to December 12, 2015. See Appendix A, Mike Masonry Corp. Debarment.[1]

The Commission's staff informed the Applicant about the existence of numerous unsatisfied judgments to City and State government agencies. See July 19, 2014 email from Ivette Escobar to the Applicant; September 3, 2014 letter from Jonathan Jacobs to the Applicant; October 7, 2014 letter from Jonathan Jacobs to the Applicant; and December 30, 2014 letter from Jonathan Jacobs to the Applicant.

Despite repeated warnings, the judgments and fines remain unsatisfied. On February 11, 2015, the BIC served the Applicant with the Notice of Denial. See Notice. At the time of the issuance of the Notice, the Applicant had failed to satisfy any of the debts listed above. In its Response, the Applicant states that it has commenced litigation against two previous customers in an effort to obtain money to pay the debts listed above, as well as various other expenses. See Applicant's Response. Yet, the Applicant provides no information about these two cases, and has provided absolutely no proof of even an attempt to satisfy of any of the debts it owes.

[1] Pursuant to the New York State Worker's Compensation Board, "New York State governmental entities including State, county and municipal agencies may not contract with businesses that are listed on a Debarment List." See http://www.wcb.ny.gov/content/main/Employers/debarmentList_np.jsp.

Basis for Denial

A. The Applicant Violated the Rules of the Business Integrity Commission Which Bear a Direct Relationship to the Fitness of the Applicant to Conduct a Trade Waste Business.

The Commission may refuse to issue a license to an applicant after "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." See Admin. Code §16-509(a)(iv).

The Applicant violated the rules of the Business Integrity Commission and disregarded the consequences. The Applicant admitted that it violated §16-505(a) of the administrative code when it operated a trade waste business without a license or registration. See Stipulation of Settlement of TWC-209620. The Applicant did not dispute this point. Accordingly, the Commission denies Mike Masonry Corp.'s application on this independently sufficient ground.

B. The Applicant Has Failed to Pay Fines That are Directly Related to the Applicant's Business That Were Agreed Upon by Stipulation of Settlement Between the Applicant and the Commission.

The Commission may refuse to issue a license 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 §16-513(a)(iv).

The Applicant entered into a Stipulation of Settlement, when it agreed to pay a fine of Two Thousand Five Hundred ($2,500.00) Dollars. In its Response, the Applicant acknowledges that it owes this fine, in total, to the Commission. See Applicant's Response. For this independently sufficient ground, this Application is denied.

C. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

The Commission may refuse to issue a license 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 §16-513(a)(iv).

As of the date of this Decision, the Applicant has failed to pay $3,000.00 in fines owed to the ECB. Additionally, the Applicant has failed to pay $2,821.39 in taxes owed to the NYS Department Taxation and Finance and liens owed the NYS Department of Labor. On multiple occasions, the Commission's staff informed the Applicant of the existence of several unsatisfied violations and judgments filed by governmental entities. Rather than providing proof of satisfaction of any of the government debts, or a real attempt to resolve the monies owed, the Applicant instead states that its bank account is frozen and vaguely mentions litigation it brought against third parties for various amounts that would not even fully satisfy its outstanding debts. See Applicant's Response.

Despite repeated warnings from the Commission, the Applicant's fines, taxes and liens remain unsatisfied. The Applicant's refusal to address and satisfy numerous debts demonstrates that the Applicant lacks good character, honesty and integrity. For this independently sufficient reason, the Commission denies this Application.

D. 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 has failed to provide proof of satisfaction or other resolution of its outstanding fines, judgments and liens owed to governmental entities including the Commission. See July 19, 2014 email from Ivette Escobar to the Applicant; September 3; 2014 letter from Jonathan Jacobs to the Applicant, October 7, 2014 letter from Jonathan Jacobs to the Applicant; and December 30, 2014 letter from Jonathan Jacobs to the Applicant.

The Applicant has "knowingly failed to provide the information" required by the Commission by failing to respond to the Commission's repeated requests for information and/or documentation. In its Response, the Applicant acknowledges that it did not respond to the Commission's various requests for information or documentation. The Commission denies Mike Masonry's Application on this independently sufficient ground.

THIS PORTION INTENTIONALLY LEFT BLANK

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, based on the above independently sufficient reasons, the Commission denies Mike Masonry Corp.'s registration application.

This registration denial is effective immediately. Mike Masonry Corp. may not operate as a trade waste business in the City of New York.

Dated: March 6, 2015

THE BUSINESS INTEGRITY COMMISSION

Daniel D. Brownell
Commissioner and Chair

Commissioner Kathryn Garcia
Department of Sanitation

Commissioner Mark Peters
Department of Investigation

Senior Director of Policy Shira Gans
(Designee)
Department of Consumer Affairs

Deputy Commissioner Andrew Schwartz
(Designee)
Department of Small Business Services

Inspector John Denesopolis
(Designee)
New York City Police Department