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Commissioner and Chair

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF PINNACLE DEMOLITION AND ENVIRONMENTAL SERVICES CORP. (#4571) TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

Pinnacle Demolition and Environmental Services Corp. (BIC #4571) ("Pinnacle" or the "Applicant"[1]) has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for 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 December 29, 2014, the Commission staff issued and served the Applicant with Notice of the Grounds to Recommend the Denial of the Application of Pinnacle Demolition and Environmental Services Corp. to Operate as a Trade Waste Business (the "Notice")[2]. The Applicant was given ten business days to respond. See 17 Rules of the City of New York §2-08(a). The Applicant did not submit any response before the statutory deadline. Based on the record as to the Applicant, the Commission now denies Pinnacle Demolition and Environmental Services Corp.'s exemption 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 New York City Environmental Control Board, the Internal Revenue Service, and the State of California.

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

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[1] "The Applicant" shall herein refer to Pinnacle Demolition and Environmental Services Corp. and its sole disclosed principal, Frank Roma.

[2] The Notice was also served on the Applicant's attorney.

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;

> 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

Pinnacle 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 Registration Application ("Application"). The Application disclosed Frank Roma as the sole principal. See Application at p. 13.

The Commission's background investigation of the Applicant in connection with the Application established that:

- There were twelve (12) open judgments against the principal, Frank Roma, and his other trade waste business, Deconstruction Specialists, Corp., totaling in $258,257.00 owed to the Internal Revenue Service and the State of California; and

- There were eleven (11) open Environmental Control Board ("ECB") violations issued to the Applicant totaling $15,140.00.

By letters dated June 27, 2013 and July 31, 2013, the Commission's staff notified the Applicant about the IRS federal tax liens, the California tax liens, and the ECB fines. See June 27, 2013 and July 31, 2013 letters from Commission Staff to the Applicant. The Commission's staff first extended a deadline of July 26, 2013 for the Applicant to provide "proof that these outstanding judgment debts have been paid or otherwise resolved." See June 27, 2013 letter. The Applicant failed to respond, and thus the Commission's staff sent the Applicant another letter

that was clearly marked "SECOND REQUEST FOR INFORMATION." See July 31, 2013 letter from Commission Staff to the Applicant. That letter provided a due date of August 14, 2013 for the Applicant to provide information and documentation related to the outstanding judgment debts.

The Applicant's attorney responded in a letter dated August 8, 2013, which provided documentary proof that the Applicant's principal entered into an installment plan with the IRS for approximately $84,000.00 of his more than $240,000.000 owed to the Federal government. That agreement with the IRS required that the Applicant pay the IRS $720 per month. The August 8, 2013 letter from the Applicant's attorney did not address the remaining issues or debt, nor did it provide the requested documentary proof that the remaining debts were satisfied. See August 8, 2013 letter and attachments.

On August 13, 2013, the Commission's staff spoke with the Applicant's attorney to inform him that additional response was still required. More than four months passed during which no additional information or documentation was provided to the Commission to indicate that the outstanding governmental judgment debts had been paid or otherwise resolved. Therefore, on January 30, 2014, the Commission's staff sent a third letter, clearly marked "FINAL REQUEST FOR INFORMATION." See January 30, 2014 letter from Commission Staff to Applicant. All three letters from the Commission's staff 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 application. See June 27, 2013, July 31, 2013 and January 30, 2014 letters from Commission Staff to the Applicant.

Having received no additional information in response to the January 30, 2014 Final Request for Information, the Applicant was extended yet another opportunity to comply with the Commission's request. On September 23, 2014, Commission staff sent a second "Final Request for Information" to the Applicant. Again, that notice specified the individual judgments and debts which the Applicant was still required to provide proof of satisfaction of, and identified new ECB Violations due and owing in the Applicant's name, totaling more than $15,140.00. See September 23, 2014 letter from Commission staff to Applicant. The September 23, 2014 request for information and documents, sent over fourteen months after the first request for information, provided the Applicant with a due date of October 6, 2014 to provide the documentation to the Commission.

By letter dated October 13, 2014, the Applicant purported to respond. However, the response was severely deficient[3]. Specifically, while the Applicant did provide the requested documentation related to *some* of the ECB Violations (five of the debts), it still failed to provide proof of satisfaction of the remaining six open ECB Violations. More significantly, with respect

[3] After not hearing from the Applicant on the due date, a Commission attorney sent the Applicant's counsel an email reminding him that October 6, 2014 was the final due date to provide the requested information to the Commission. The Applicant's attorney requested one additional week to provide the requested information, which the Commission's staff extended.

to the Applicant's over $285,000 tax liens and judgments, it provided no documentation whatsoever to indicate even a good faith effort to resolve these remaining unpaid judgments.[4]

Because the Applicant did provide some of the documentation the Commission had requested, Commission's staff extended one final opportunity for the Applicant to provide the missing information and documents. On November 17, 2014, Commission staff sent one final letter (despite having sent two previous letters titled "Final Request") to Pinnacle and its counsel, clearly marked "Outstanding Information." That letter once again set forth and itemized the particular judgments and debts for which no documentary proof of satisfaction had been submitted. See November 17, 2014 letter from Commission Staff to Applicant. Furthermore, the letter specifically informed the Applicant that his dispute of certain federal tax liens "does not in and of itself satisfy the Commission's demand to see documentation of settlement, payment, or entry into a payment plan in satisfaction of the federal tax liens. If [the Applicant] alleges that the federal tax liens listed. . .are duplicative and overstated, as he has in his letter, he must resolve the matter with the IRS and provide the Commission [with] documentation of such resolution." See id. The November 17, 2014 letter extended the Applicant additional time, until December 1, 2014, in which to provide proof of payment or satisfaction of the enumerated debts. The letter again stated that failure to do so were grounds for denial of the Application. See id. The Applicant failed to respond. As of the date of the Notice, and more than eighteen months after the Commission's first request for information from the Applicant, the Applicant failed to send any response whatsoever to the Commission.

According to a judgment and lien search conducted on December 17, 2014, the following judgments and liens have been docketed against the Applicant and remain unsatisfied **(totaling $343,668.00)**:

Creditor	Filing Number	Amount
Internal Revenue Service	2007008662	$136,874.00
Internal Revenue Service	20091243329	$58,928.00
Internal Revenue Service	20101041352	$31,346.00
Internal Revenue Service	20101756431	$31,346.00
Internal Revenue Service	09-1611602	$56,644.00
State of California	12-7308648201	$4,527.00
State of California	09-1430310	$10,736.00
State of California	11-1049943	$4,435.00
State of California	12-1519007	$1,328.00

[4] In the Applicant's October 13, 2014 letter, its principal, Mr. Roma, expressed that he disputed certain of the federal tax liens he owed, but that does not in and of itself satisfy the Commission's demand to see documented resolution of the federal tax liens. If Mr. Roma alleges that the federal tax liens in his name are duplicative and overstated, as he has in his October 13, 2014 letter, he should have resolved the matter with the IRS and provided the Commission with documentation of such resolution. Additionally, Mr. Roma admitted in the October 13, 2014 letter that Deconstruction Specialists, Corp., another company of which he is the principal and owner, owes debts indicated in the Commission's numerous letters to various California state agencies, and writes that he "would be willing to finish resolving the issues with the California agencies and pay them if the BIC issued me a license for Pinnacle to operate as a class 2 waste hauler." Nevertheless, as of the date of this Decision, the Applicant has failed to resolve the debts described in the Notice and below.

State of California	12-7334299585	$1,333.00
State of California	12-7341337627	$1,327.00
State of California	12-1961695	$1,325.00
State of California	13-0428058	$1,752.00
State of California	13-7352933692	$1,767.00

See Judgment and Lien Printout dated December 17, 2014. As of the date of the Notice, the abovementioned judgments and liens remain open and unpaid.

In addition, according to a search of the ECB database dated December 17, 2014, the following fines have been docketed against the Applicant (**totaling $18,530**):

Creditor	Violation Number	Amount
NYC Environmental Control Board	180844300	$1,200.00
NYC Environmental Control Board	184009605	$5,000.00
NYC Environmental Control Board	184009614	$5,000.00
NYC Environmental Control Board	187063425	$430.00
NYC Environmental Control Board	187063416	$1,230.00
NYC Environmental Control Board	187066808	$780.00
NYC Environmental Control Board	183981097	$1,830.00
NYC Environmental Control Board	187150123	$1,230.00
NYC Environmental Control Board	185679982	$1,830.00

See ECB Database Search Results dated December 17, 2014. As of the date of the Notice, the abovementioned ECB violations remain open and unpaid. Furthermore, three additional ECB Violations remain pending, totaling in $4,000.000 of additional penalties.

Basis for Denial

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 New York City Environmental Control Board, the Internal Revenue Service, and the state of California.

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 §16-509(c)(ii); see also §16-513(a)(iv).

As of the date of this Decision, the Applicant has failed to pay $18,530.00 in fines ordered by the ECB, has failed to resolve $315,138.00 in judgments and liens filed by the IRS, and $28,530.00 in tax warrants owed to the state of California. 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. The Applicant has not disputed this point. Accordingly, the Commission denies Pinnacle Demolition and Environmental Service Corp.'s application on this independently sufficient ground.

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

"The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the 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, and the granting of numerous extensions of time requested by the Applicant, the Applicant has failed to provide proof of satisfaction or other resolution of the outstanding fines, judgments and liens owed to governmental entities.

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. The Applicant did not dispute this point. The Commission denies Pinnacle Demolition and Environmental Services Corp.'s application on this independently sufficient ground.

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 Pinnacle Demolition and Environmental Services Corp.'s exemption application and registration.

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This exemption/registration denial is effective immediately. Pinnacle Demolition and Environmental Services Corp. may not operate as a trade waste business in the City of New York.

Dated: March 6, 2015

THE BUSINESS INTEGRITY COMMISSION

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