The City of New York
BUSINESS INTEGRITY COMMISSION
100 Church Street · 20th Floor
New York · New York 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF NEW YORK CONTAINERS, INC. FOR RENEWAL OF ITS LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

New York Containers, Inc. ("NY Containers" or "Applicant") applied to the New York City Business Integrity Commission, formerly the Trade Waste Commission ("Commission"), for a license to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code") §§16-505(a), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). These illustrative factors include the failure to provide truthful information to the Commission, certain civil or administrative findings of liability, and certain associations with organized crime figures. Based upon the record of NY Containers, the Commission denies its license renewal application on the ground that this applicant lacks good character, honesty, and integrity for the following independently sufficient reasons:

(1) The Applicant has exhibited a pattern of violating the rules of the Business Integrity Commission and has been found liable in several administrative actions that bear direct relationship to the fitness of the Applicant to conduct a trade waste business;

(2) The Applicant has failed to pay fines that are directly related to the Applicant's business for which the Department of Consumer Affairs and the Environmental Control Board have entered judgments;

(3) The Applicant has knowingly failed to provide information and/or documentation required by the Commission.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. Beginning in the late 1950's, and until only recently, the commercial carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life":

> Like those dense stars found in the firmament, the cartel can not be seen and its existence can only be shown by its effect on the conduct of those falling within its ambit. Because of its strong gravitational field, no light escapes very far from a "black hole" before it is dragged back . . . [T]he record before us reveals that from the cartel's domination of the carting industry, no carter escapes.

Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI") (citation omitted).

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anticompetitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council found:

(1) "that the carting industry has been corruptly influenced by organized crime for more than four decades";

(2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";

(3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";

(4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . effectively being the only rate available to businesses";

(5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove";

(6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms";

(7) "that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations";

(8) "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct"; and

(9) "that a situation in which New York City businesses, both large and small, must pay a 'mob tax' in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy."

Local Law 42, § 1.

The criminal cartel operated through the industry's four leading New York City trade associations, the Association of Trade Waste Removers of Greater New York ("GNYTW"), the Greater New York Waste Paper Association ("WPA"), the Kings County Trade Waste Association ("KCTW"), and the Queens County Trade Waste Association ("QCTW"), all of which were controlled by organized crime figures for many years. See, e.g., Local Law 42, §1; United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993). As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have served, they "operate[d] in illegal ways" by "enforc[ing] the cartel's anticompetitive dominance of the waste collection industry." SRI, 107 F.3d at 999.

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted on enterprise corruption, criminal antitrust, and related charges as a result of a five-year investigation into the industry by the Manhattan District Attorney's Office and the New York Police Department. See People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). The defendants included capos and soldiers in the Genovese and Gambino organized crime families who acted as "business agents" for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. In essence, the carting industry's modus operandi, the cartel, was indicted as a criminal enterprise.

More carting industry indictments followed. In June 1996, both the Manhattan District Attorney and the United States Attorney for the Southern District of New York obtained major indictments of New York metropolitan area carters. The state indictments, against thirteen individuals and eight companies, were (like their 1995 counterpart) based upon undercover operations, including electronic surveillance intercepts, which revealed a trade waste removal industry still rife with corruption and organized crime influence. The federal indictment, against seven individuals and fourteen companies associated with the Genovese and Gambino organized crime families (including the brother and nephew of Genovese boss Vincent "Chin" Gigante), included charges of racketeering, extortion, arson, and bribery. See United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.). In November 1996, the Manhattan District Attorney announced a third round of indictments in his continuing investigation of the industry, bringing the total number of defendants in the state prosecution to thirty-four individuals, thirty-four companies, and four trade waste associations.

The accuracy of the sweeping charges in the indictments has been repeatedly confirmed by a series of guilty pleas and jury verdicts. On October 23, 1996, defendant John Vitale pleaded guilty to a state antitrust violation for his participation in the anticompetitive criminal cartel. In his allocution, Vitale, a principal of the carting company Vibro, Inc., acknowledged that he turned to the trade associations, and specifically to Genovese capo Alphonse Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing another carter from bidding on waste removal services for a "Vibro-owned" building in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of one of the City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay $7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a $10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the City's carting industry.

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. In addition, two carting companies and a transfer station run by Vigliotti's family under his auspices pleaded guilty to criminal antitrust violations. In his allocution, Vigliotti confirmed Ponte's admissions as to the scope of the criminal antitrust conspiracy in the City's carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors from entering the market through threats and economic retaliation. Vigliotti agreed to serve a prison term of one to three years, to pay $2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the City's carting industry.

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a $1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from $250,000 to $750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the City's carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it.

On February 24, 1997, defendants Michael D'Ambrosio, Robros Recycling Corp., and Vaparo, Inc. all pleaded guilty in allocutions before New York Supreme Court Justice Leslie Crocker Snyder. D'Ambrosio pleaded guilty to attempted enterprise corruption, and his companies pleaded to criminal antitrust violations.

On July 21, 1997, Philip Barretti, another lead defendant in the state prosecution and the former owner of the City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay $6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and $3^1/_3$ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract and to violate the Taft-Hartley Act by making unlawful payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which

testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined $900,000, and the GNYTW was fined $9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined $200,000.

On January 21, 1998, Patrick Pecoraro pleaded guilty to attempted enterprise corruption and agreed to serve a prison sentence of one to three years, to pay a $1 million fine, and to be barred permanently from the City's carting industry. On the same day, the QCTW pleaded guilty to a criminal antitrust violation and agreed to forfeit all of its assets. Numerous other guilty pleas followed. On December 21, 1999, all of the guilty verdicts were affirmed on appeal. See People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999).

In sum, it is far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been proven beyond a reasonable doubt. The proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched – extending to and emanating from all of the industry's trade associations, which counted among their collective membership virtually every carter – that it could not have escaped the notice of any carter. These criminal convictions confirm the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, to address this pervasive problem.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry immediately challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, 940 F. Supp. 656 (S.D.N.Y. 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." id.

As the United States Court of Appeals has definitively ruled, an applicant for a carting license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). In determining whether to issue a license to an applicant, the Commission may consider, among other things, the following matters, if applicable:

(i) failure by such applicant to provide truthful information in connection with the application;

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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;

(vi) 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;

(vii) 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;

(viii) 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;

(ix) 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;

(x) 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.

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

On or about January 24, 2003, NY Containers submitted a license application to the Commission. Franco Colarusso and Giovanni Marmo were the only disclosed principals of NY Containers. On June 1, 2004, after an extensive background investigation, the Commission granted that Application. On April 18, 2006, NY Containers submitted a Renewal Application for License as a Trade Waste Business ("First Renewal Application") to the Commission. On May 2, 2006, the Commission granted the First Renewal Application. On April 24, 2008, NY Containers submitted a Renewal Application for License as a Trade Waste Business ("Second Renewal Application"). The Second Renewal Application is currently pending.

The staff has conducted an investigation of the Applicant and its principals. On January 7, 2009, the staff issued a 13-page recommendation ("Recommendation") that the Second Renewal Application be denied. The staff attempted to serve the Recommendation on the Applicant at the Applicant's disclosed main office address (151-45 6th Road, Whitestone, NY 11357). The Recommendation was returned to the Commission because the Postal Service could not deliver the Recommendation to the

disclosed address.[1] On or about January 27, 2009, the Applicant was served with the Recommendation at principal, Franco Colarusso's home address, and was granted ten business days to respond (February 12, 2009). See 17 RCNY §2-08(a). The Applicant failed to submit a response (or request for additional time) by that deadline.

The Commission has carefully considered both the staff's recommendation and the Applicant's failure to submit a response, thereby leaving the evidence against the Applicant uncontested. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its license renewal application.

III. GROUNDS FOR LICENSE DENIAL

A. The Applicant has exhibited a pattern of violating the rules of the Business Integrity Commission and has been found liable in several administrative actions that bear 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 an administrative action that bears a direct relationship to the fitness of the applicant to conduct the business." See Admin. Code §16-509(a)(iv); see also §16-509(c)(ii); see also §16-513(a)(i).

On October 18, 2006, the Commission issued Notice of Hearing, Violation Number TW-1582, charging the Applicant with failing to submit its 2005 audited financial statement to the Commission, in violation of 17 RCNY §5-03(f). See Notice of Hearing, Violation Number TW-1582. A hearing on this matter was scheduled before the Department of Consumer Affairs on November 30, 2006. The Applicant failed to appear at the hearing, and failed to contest the charges. As a result, the Applicant was found guilty upon default. See December 20, 2006 Default Decision and Order ("Default Decision and Order") by Mitchell B. Nisonoff, Administrative Law Judge ("ALJ") for the Department of Consumer Affairs. ALJ Nisonoff ordered the Applicant to pay a total fine of ten thousand ($10,000) dollars.[2] As of the date of this decision, the Applicant has failed to pay the fine.

On January 15, 2008, the Commission issued Notice of Violation, Number TW-2099, charging the Applicant with failing to submit its 2006 audited financial statement, in violation of 17 RCNY §5-03(f). See Notice of Violation, Number TW-2099. A

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[1] "An applicant for a license or a licensee shall notify the Commission within ten calendar days of any material change... of the information submitted in an application." See 17 RCNY §2-05(a)(2). The Applicant violated 17 RCNY §2-05(a)(2) by changing its main business address without notifying the Commission.

[2] The December 20, 2006 Default Decision and Order informs the Applicant: "If you wish to file a **MOTION TO VACATE** this decision, you must submit the motion to the Director of Adjudication, Department of Consumer Affairs... **within 15 days** from the date you knew or should have known of this decision..." See December 20, 2006 Default Decision and Order. Thus, the Applicant's time to file a motion to vacate this Default Decision and Order has expired.

hearing on this matter was scheduled before the Department of Consumer Affairs on February 28, 2008. The Applicant failed to appear at the hearing, and failed to contest the charges. As a result, the Applicant was found guilty upon default. See March 28, 2008 Default Decision and Order by Bruce Dennis, Administrative Law Judge for the Department of Consumer Affairs. ALJ Dennis ordered the Applicant to pay a total fine of ten thousand ($10,000) dollars.[3] As of the date of this decision, the Applicant has failed to pay the fine.

Since 2006, the Applicant has exhibited a pattern of violating the rules of the Business Integrity Commission and disregarding the consequences.[4] Two ALJ's for the Department of Consumer Affairs found the Applicant liable in two separate actions that bear direct relationship with the Applicant's ability to conduct business in compliance with Local Law 42 in the New York City trade waste industry. The Notices of Hearings and Violation resulted in total fines and penalties of twenty thousand ($20,000) dollars, which the Applicant has failed to pay. The Applicant failed to submit a response to the recommendation, leaving the evidence against it uncontested. For this independently sufficient ground, this license renewal application is denied.

B. The Applicant has failed to pay fines that are directly related to the Applicant's business for which the Department of Consumer Affairs and the Environmental Control Board have entered judgments.

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 discussed above, by decision dated December 20, 2006, Department of Consumer Affairs ALJ Mitchell B. Nisonoff found the Applicant guilty of violating 17 RCNY §5-03(f), and ordered the Applicant to pay a fine of ten thousand ($10,000) dollars. As of the date of this recommendation, over two years later, the Applicant has not paid the fine ordered by the Department of Consumer Affairs. Then, by decision dated March 28, 2008, Department of Consumer Affairs ALJ Bruce Dennis found the Applicant guilty of violating 17 RCNY §5-03(f), and ordered the Applicant to pay a fine of ten thousand ($10,000) dollars. As of the date of this decision, the Applicant has not paid the fine ordered by the Department of Consumer Affairs.

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[3] The March 28, 2008 Default Decision and Order informs the Applicant: "If you wish to file a **MOTION TO VACATE** this decision, you must submit the motion to the Director of Adjudication, Department of Consumer Affairs... **within 15 days** from the date you knew or should have known of this decision..." See March 28, 2008 Default Decision and Order. Thus, the Applicant's time to file a motion to vacate this Default Decision and Order has expired.

[4] Subsequent to serving the Applicant with the recommendation, on or about February 9, 2009, the Commission issued Notice of Violation, TW-3420, charging the Applicant with failing to submit its 2007 audited financial statement to the Commission, in violation of 17 RCNY §503(f). See Notice of Violation TW-3420. A hearing on this matter is scheduled for April 16, 2009.

In addition, according to a judgment and lien search dated October 15, 2008, the following outstanding judgments have been docketed against the Applicant and its principals (totaling $23,880):

1. New York City Environmental Control Board, #0141210127, filed 10/31/05;$750
2. New York City Environmental Control Board, #0138562894, filed 1/31/05; $750
3. New York City Environmental Control Board, #0155705981, filed 1/31/07; $2,400
4. New York City Environmental Control Board, #034283418L, filed 7/31/04; $2,500
5. New York City Environmental Control Board, #034283417J, filed 7/31/04; $7,000
6. New York City Environmental Control Board, #034437494M, filed 10/31/05; $480
7. New York City Environmental Control Board, #034264276L, filed 10/31/02; $2,500
8. New York City Environmental Control Board, #034264278P, filed 10/31/02; $2,500
9. New York City Environmental Control Board, #034258624H, filed 10/31/02; $2,500
10. New York City Environmental Control Board, #034264277N, filed 4/30/003; $2,500

See Environmental Control Board Printouts, dated October 15, 2008. As of the date of this decision, the judgments remain open and unpaid.

Again, as of the date of this decision, the Applicant has failed to pay the fines ordered by the Department of Consumer Affairs and the Environmental Control Board. The Applicant failed to submit a response to the recommendation, leaving the evidence against it uncontested. For this independently sufficient reason, this application is denied.

C. The Applicant has knowingly failed to provide information and/or 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).

1. The Applicant provided false and misleading information on its Second Renewal Application.

Giovani Marmo and Franco Colarusso each certified that the Renewal Application submitted to the Commission by NY Containers was complete and truthful. See Renewal Application at 9, 11. Yet, the Applicant falsely answered "no" to the question, "Have you or any of your principals been charged with any civil or administrative violations by any agency?" See Renewal Application at 3. As described above, in reality, the Commission has charged the Applicant with several administrative violations. None of these charges were disclosed by the Applicant in its Renewal Application.[5]

[5] The Applicant's duty to disclose these charges on its Renewal Application is not excused because the Commission itself issued them, and would have been aware of them.

2. The Applicant has failed to respond to numerous Commission Directives and requests for documentation and information.

On or about May 31, 2006, the Commission directed the Applicant to provide its annual financial statement for the year 2005 to the Commission on or before August 15, 2006. See May 31, 2006 letter from Thomas McCormack, Chairman of the Commission, to the Applicant.[6] Again, as of the date of this decision, the Applicant has not responded to the Commission's Directive.

After the Department of Consumer Affairs found the Applicant guilty of failing to submit its 2005 audited financial statement, the Commission's staff directed the Applicant to comply with the December 20, 2006 Default Decision and Order before the close of business on February 9, 2007. See January 26, 2007 Commission Directive from Ellen Ryan, Directory of Regulatory Enforcement, to the Applicant. The Applicant failed to respond to this Commission Directive.

On or about March 16, 2007, the Commission's staff sent the Applicant another Commission Directive that directed the Applicant to comply with the December 20, 2006 Default Decision and Order before the close of business on March 30, 2007 or the Commission would consider denying the Applicant's license renewal application. See March 16, 2007 letter from David Mandell, Special Counsel to the Applicant. The Applicant failed to respond to this Commission Directive as well.

In another instance, on or about May 31, 2007, the Commission directed the Applicant to provide its annual financial statement for the year 2006 to the Commission on or before August 15, 2007. See May 31, 2007 letter from Thomas McCormack, Chair of the Commission, to the Applicant. The Applicant failed to respond to this Commission's Directive.

After the Department of Consumer Affairs found the Applicant guilty of failing to submit its 2006 audited financial statement, the Commission's staff directed the Applicant to comply with the March 28, 2008 Default Decision and Order before the close of business on July 14, 2008. See June 18, 2008 Commission Directive from Patricia Corrigan to the Applicant. Again, the Applicant failed to respond to this Commission Directive.

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[6] 17 RCNY §5-03(f) requires that "on or before June 30 of each year but not later than six (6) months following the end of the licensee's fiscal year, all licensees shall file a report on a form or computer format prescribed by the Commission. In the event that a revision of the report is required by the Commission subsequent to review by an auditor on the Commission's staff, an amended report shall be submitted to the Commission no later than the date specified by the Commission. The Commission may require that the annual report include the financial statement described in subdivision e of this section and other information and documents concerning the licensee's operations, including but not limited to: financial information reported on a calendar year basis, the management letter issued by the licensee's auditor to the licensee, information concerning affiliations with other licensees; organization and control of the licensee; corporate control over the licensee; corporations controlled by the licensee; officers and directors of the licensee; allocation of recyclables and non-recyclables; security holders of and voting powers within the license; subcontracting, management, engineering and contracts of the licensee."

On or about October 30, 2008, the Commission sent the Applicant a "FINAL NOTICE" regarding both violations, TW-1582 and TW-2099. See October 30, 2008 letter from David Mandell, Special Counsel to the Applicant. The final notice advised the Applicant that "the Commission may deny the renewal of your license for failing to pay fines or civil penalties imposed by the Department of Consumer Affairs and for failing to respond to the Commission's Directives. See id. On October 31, 2008, the Applicant's accountant contacted the Commission's staff by telephone. During this conversation, the staff informed the accountant that the Applicant must resolve all of the fines assessed against it. See Affidavit by David Mandell. By email dated November 13, 2008, the Applicant's accountant advised the Commission's staff: "I am almost finished with the audits. Either tomorrow or Monday. The client [Applicant] will bring the statements in personally." See November 13, 2008 Email message from Paul Miller. As of the date of this recommendation, the Applicant has failed to submit the audited financial statements and has failed to address the fines assessed against it.

Finally, on June 6, 2008, the Commission directed the Applicant to provide its annual financial statement for the year 2007 to the Commission on or before August 15, 2008. See June 6, 2008 letter from Michael J. Mansfield, Commissioner/Chair of the Commission, to the Applicant. The Applicant requested and the Commission granted the Applicant several extensions to file its annual financial statement for the year 2007 to September 30, 2008. See September 2, 2008 letter from Sarah Nasir, Director of Audit for the Commission, to the Applicant; see also September 8, 2008 letter from Paul Miller, CPA, Accountant for the Applicant to the Commission; see also September 8, 2008 letter from Sarah Nasir, Director of Audit for the Commission to Paul Miller, Accountant for the Applicant. As of the date of this decision, the Applicant failed to respond to this Commission's directive. Consequently, on or about February 9, 2009, the Commission issued Notice of Violation, TW-3420, charging the Applicant with failing to submit its 2007 audited financial statement to the Commission, in violation of 17 RCNY §503(f). See Notice of Violation TW-3420. A hearing on this matter is scheduled for April 16, 2009.

"[T]he 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." Admin. Code §16-509(b). By failing disclose its history of administrative violations and by failing to respond to the Commission's directives for information and/or documentation, the Applicant has "knowingly failed to provide the information" required by the Commission.[7] The Applicant failed to submit a response to the recommendation, leaving the evidence against it uncontested. NY Containers' license renewal application is denied based on this independently sufficient ground.

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[7] Among other things, the Applicant also violated 17 RCNY §1-09 by "refus[ing] to answer an inquiry from the Commission," and "violat[ing] or fail[ing] to comply with any order or directive of the Commission." See 17 RCNY §1-09. Additionally, by failing to "at all times cooperate fully with the Commission, including providing requested information on a timely basis," the Applicant also violated the terms of the Licensing Order it agreed to sign. See Licensing Order at 5.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that New York Containers Inc. falls far short of that standard. For the independently sufficient reasons discussed above, the Commission denies New York Containers Inc. license renewal application.

This license renewal denial decision is effective fourteen days from the date hereof. In order that the Applicant's customers may make other carting arrangements without an interruption in service, the Applicant is directed (i) to continue servicing its customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to immediately notify each of their customers of such by first-class U.S. mail.

New York Containers, Inc. shall not service any customers, or otherwise operate as trade waste removal businesses in the City of New York, after the expiration of the fourteen-day period. New York Containers, Inc. shall immediately surrender its trade waste license plates to the Commission at the expiration of the fourteen-day period.

Dated: April 14, 2009

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Chairman

John Doherty, Commissioner
Department of Sanitation

Jayme Naberezny, Inspector General (designee)
Department of Investigation

Jonathan Mintz, Commissioner
Department of Consumer Affairs

Deborah Buyer, General Counsel (designee)
Department of Small Business Services

Brian O'Neill, Inspector (designee)
New York City Police Department