NYC
Business Integrity
Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE REGISTRATION APPLICATION OF J C TREE CARE NY CORP. TO OPERATE AS A TRADE WASTE BUSINESS

I. PRELIMINARY STATEMENT

J C Tree Care NY Corp. ("J C Tree Care" or the "Applicant") has applied to the New York City Business Integrity Commission ("Commission") for a registration to operate a trade waste business pursuant to New York City Administrative Code ("Admin. Code") §16-505(a). Specifically, J C Tree Care seeks an exemption from licensing requirements and a registration enabling it to operate a trade waste business "to remove, collect or dispose of trade waste that is generated in the course of operation of such person's business." Id.

On May 7, 2014, the staff issued and served the Applicant with a 10-page Notice of the Grounds to Recommend Denial of J C Tree Care NY Corp.'s Application (the "Recommendation"). Thereafter, in response to a request by counsel for the Applicant, the Commission provided the Applicant with the transcript and exhibits of the sworn interview of the Applicant's solely-disclosed Principal Martha Velasco, taken on June 26, 2013, July 23, 2013, and August 13, 2013. The Applicant was granted ten business days to respond, until May 21, 2014. See Title 17, Rules of the City of New York ("RCNY") §2-08(a). On May 21, 2014, the Commission received the Applicant's response (the "Response"), consisting of: (1) a three-page letter by the Applicant's attorney, the Law Offices of Jose A. Polanco, P.C. (hereinafter "Response Letter"), (2) a two-page affidavit, dated May 20, 2014, by the Applicant's solely-disclosed Principal Martha Velasco ("Velasco Affidavit"), with (3) two exhibits. The Commission has carefully considered both the staff's recommendation and the Applicant's Response. Based on the record as to the Applicant, the Commission now denies the registration application of J C Tree Care because J C Tree Care lacks good character, honesty and integrity for the following independently sufficient reasons:

A. The Applicant Has Knowingly Provided False and Misleading Information to the Commission by Failing to Disclose Juan C. Rivera as a Principal.

B. The Applicant Has Unlawfully Transported Trade Waste without a License or Registration Continuously for at Least One Year.

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 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, 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. 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.

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). Before issuing such license, 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 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;
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> 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;
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> 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 trade waste license or 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 Indus., Inc. v. City of New York, 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 § 16-116.

III. FACTS

A. The Applicant's Failure to Disclose Juan C. Rivera as a Principal

On April 23, 2013, J C Tree Care applied to the Commission for a class 1 self hauler registration. See J C Tree Care's Application for Class 1 Self Hauler Registration ("Application"). According to the New York State Department of State ("NYS DOS"), Division of Corporations, the Applicant was incorporated on December 4, 2012 as a domestic business corporation. See NYS DOS Entity Information Database search, dated May 24, 2013. The Application described the type of business the Applicant engages in as "landscaping and tree pruning." See Application at 3. The Application disclosed Martha J. Velasco ("Velasco") as the Applicant's sole principal. Id. at 11. The Application also disclosed 60-61 70th Avenue, Ridgewood, NY 11385, as both the Applicant's office address and Velasco's home address. Id. at 1, 11.

As detailed below, however, the evidence clearly demonstrates that Juan C. Rivera or Juan Carlos Rivera ("Rivera"), whose name does not appear anywhere on the Application, is a principal of the Applicant business, and was not disclosed as a principal (or in any other capacity) to the Commission.

On or about May 29, 2013, Commission staff, as part of its routine investigation, attempted to call the Applicant at (718) 456-1042, the sole business telephone number disclosed on its Application. A male voice in a voicemail recording answered the telephone and identified the Applicant business. Approximately one hour later, Commission staff called the telephone number again, and a man answered the telephone, identifying himself to Commission staff as Juan Rivera. It is undisputed that, when Commission staff asked to speak with Ms. Velasco, Mr. Rivera responded by stating that he was the supervisor in charge of the Applicant, that he could answer any of the staff's questions, and that Ms. Velasco was not available.[1] Given its

[1] Significantly, the Applicant, in its Response, concedes that Mr. Rivera stated to Commission staff that he was the supervisor. See Affidavit of Martha Velasco, dated May 20, 2014, ("Velasco Affidavit") at ¶ 3 ("[Rivera] should not have indicated he was [a supervisor]."). Other than the bald, legal conclusion that Rivera did not have the authority to make such a statement (see Response Letter at 1), the Applicant does not offer a scintilla of evidence nor any explanation as to the reason or the motive behind Rivera's making such a statement. The Applicant provided no affidavit from Rivera nor did the Applicant's Response even purport to explain why Rivera made such

innocuous context, this initial, spontaneous admission by Rivera appears to be credible, despite the Applicant's below-described attempts to backtrack.

Commission staff asked Rivera to have Ms. Velasco call the Commission, and a few hours later, Velasco returned the Commission staff's call. Commission staff asked Velasco about Mr. Rivera's role in the company, and contrary to Rivera's statement that he was the supervisor, Velasco claimed that Rivera was merely an employee who occasionally drives the Applicant's trucks. Notably, nowhere in the Application does the Applicant disclose Rivera as an employee or a driver of the Applicant. See Application. Rather, the Application states that, other than the Principal Ms. Velasco, the Applicant only has two employees, both of whom are drivers and neither of whom is identified as Juan Rivera. Id. at 3, 17. Accordingly, even if the Commission were to credit Velasco's claim that Rivera is simply an "employee" or driver (which it should not), Velasco still failed to properly disclose Rivera. However, the Commission's investigation demonstrates that Rivera is more than an employee, and in fact is a principal.[2]

In light of the Commission staff's initial conversation with Rivera, additional investigation was conducted. Specifically, in or about June 2013, Commission staff reviewed the Applicant's website, www.jctreecareny.com. As an initial matter, the Applicant failed to disclose the existence of its website at all, despite such information being requested as part of the application. Id. at 1.[3] The Applicant's website is further proof that the Applicant had not been truthful in its application to the Commission:

- The top of the Applicant's website homepage prominently displayed in all capital letters and in bold text: "**FREE ESTIMATES CALL NOW! (917) 721-5356 / (516) 255-7341.**" These telephone numbers also appear throughout the website and in photographs of the Applicant's trucks, where such numbers are seen painted. See screenshot of http://www.jctreecareny.com (visited on June 6,

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an impromptu and unsolicited statement that he was the Applicant's supervisor. Id. Given the Applicant's failure to provide any alternative reason or evidentiary support for Rivera's making the statement, the Applicant's conclusory assertion that Rivera is not a principal lacks credibility.

[2] Admin. Code §16-501(d) states, in relevant part, that a "'Principal' shall mean...of a corporation, every officer and director and every stockholder holding ten percent or more of the outstanding shares of the corporation...and...all other persons participating directly or indirectly in the control of such business entity."

[3] The Applicant does not dispute that www.jctreecareny.com is its website, nor does the Applicant dispute in its Response that it failed to provide the Commission with its website address. See Martha Velasco's Sworn Interview ("deposition"), taken on June 26, 2013, July 23, 2013, and August 15, 2013 (hereinafter "Velasco Deposition Transcript") at 166, 193-95; Response. To the extent that the Applicant claims that it did not include the email address or telephone numbers in its application because of ignorance, such assertion is unavailing. See Velasco Affidavit at ¶ 6 ("When I filled out the application, I was unsure or unaware of how to fill out all the entries. I did not retain an attorney or a professional in filling out the application, but an accountant who does my taxes...advised me to fill out all the necessary information.") It defies credulity, that the Applicant, who claims to manage her own tree removal and maintenance business, would need an attorney, an accountant or any other "professional," to tell her to provide such simple information requested on the application as website address and telephone numbers.

2013). Neither phone number had been disclosed to the Commission.[4] (The Applicant, in its Response does not dispute that it failed to disclose these telephone numbers to the Commission.)

- The largest photograph on the homepage is of Rivera posing in front of a truck with "J.C. Tree Care" painted on its side.[5] Beneath Rivera's photograph reads, "**Juan is here: Call or Text me at: / (917) 721-5356 / 'JC Tree Care.'**" Id.
- The Applicant's website includes photographs of trucks painted with the name "JC Land and Tree Service," and *not* the name of the Applicant, J C Tree Care. See screenshots of www.jctreecareny.com/gallery.html (visited on June 6, 2013). Additionally, included in the website's "gallery" of photographs, is what appears to be a billboard advertisement not for the Applicant, but for "Tree Service, Corp." J C Land & Tree Service Corp. ("J C Land & Tree Service") is a company owned by Rivera.[6] The Applicant did not disclose any affiliated company, or any "D.B.A.," nor did it disclose that it shares any staff or equipment with any other business or organization, as required by the application. See Application at 2.

The Applicant's website – which is replete with photographs of Rivera, and text indicating that Rivera is the main contact for the company – is not the only evidence that Rivera is in fact an undisclosed principal. In fact, Rivera's home address appears to be the actual address of the Applicant company. According to the New York State Department of Motor Vehicles ("NYS DMV") records, Rivera resides at the following address:

Juan C. Rivera
260 Babylon Turnpike
Freeport, NY 11520

See NYS DMV COMPASS database search, dated May 24, 2013. According to Google Maps, Rivera's Freeport, NY, address is listed as the location of the J C Tree Care. See screenshot of Google Maps webpage for 260 Babylon Turnpike, Freeport, NY, (last visited on October 25, 2013). Moreover, when the Google Maps hyperlink to "JC Tree Care" at Mr. Rivera's Freeport home address is clicked on once, "**JC Tree Care**" appears in bold letters, together with the telephone number: (917) 721-5356, the same undisclosed number that appears on the Applicant's website. Id. The Google Maps hyperlink for "JC Tree Care" leads to a page on Google Plus for JC Tree Care. See screenshot of

[4] The sole business telephone number that the Applicant did, in fact, disclose to the Commission was the third telephone number posted in the middle of the page on the Applicant's homepage. See copies of Applicant's Website (visited on May 24, 2013 and June 6, 2013).

[5] Ms. Velasco identified Mr. Rivera in this photograph on her website at her deposition. See Velasco Deposition Transcript at 203-05.

[6] On or about June 6, 2013, Rivera told Commission staff that J C Land & Tree Service Corp. was a business he had started and owned. According to the U.S. Department of Transportation ("USDOT"), the NYS DMV and the NYS DOS, JC Land & Tree Service is also located at Rivera's residence in Freeport, NY (see p. 6, *infra*). See USDOT, SAFER Web Company Snapshot JC Land and Tree Service Corp., dated October 28, 2013; NYS DMV COMPASS database search; NYS DOS State Tax Warrant Notice System, dated June 7, 2013.

https://plus.google.com/108850328167685768699/about?gl=us&hl=en#108850328167685768699/about (last visited on October 25, 2013). That page, which is linked to Rivera's home address in Freeport, contains four photographs, all of which are identical to photographs that were, until recently, also on the Applicant's own website, http://www.jctreecareny.com/. See screenshot of www.jctreecareny.com/gallery.html (visited on June 6, 2013). The four identical photographs consist of pictures of equipment used for the removal and care of trees; significantly, one of the photographs is clearly a photograph of Mr. Rivera, himself, standing next to some of the equipment.[7] Id.

On or about June 6, 2013, Commission staff again called the Applicant's Principal Ms. Velasco on the telephone to briefly discuss her business, including the photographs of Mr. Rivera on the Applicant's homepage. Notably, less than three weeks later, when Commission staff again visited the Applicant's homepage, the large photograph of Mr. Rivera had been removed from the Applicant's website. *Compare* screenshot of Applicant's Website (visited on June 6, 2013) *with* screenshot of Applicant's Website (visited on June 25, 2013). Likewise, following the June 6, 2013 conversation between Commission staff and Velasco, the undisclosed telephone number that the Applicant's website provided for calling or texting Rivera, (917) 721-5356, was also removed from the website. Id.[8]

On June 26, 2013, Velasco appeared before the Commission for a sworn interview (hereinafter, "deposition"). That interview continued on July 23, 2013, and August 13, 2013. See Transcript of Sworn Interview of Martha Velasco ("Velasco Deposition Transcript"). Velasco admitted at her deposition that she made the changes to the photographs on her website because of the conversation she had with Commission staff and because "people could get confused" by the identity of the Applicant with Rivera's company JC Land & Tree Service. Id. at 205-06. Velasco also testified that that she had put the large photograph of Rivera on her website's homepage to get more clients "[b]ecause he [Rivera] knew a lot of people." Id. at 204-05.

Velasco conceded at her deposition that Rivera had, in fact, worked for the Applicant. Id. at 180-81, 51-52. However, Velasco self-servingly claimed that Rivera "is not a permanent employee." Id. at 180-81. Velasco also claimed that, despite the fact that Rivera identified himself as a supervisor, and despite the fact that Rivera is a significant presence on her website, and despite the fact that Rivera's home address appeared to be the address listed on Google for the Applicant, Velasco is the only principal of the Applicant.[9] Id. at 157.

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[7] Velasco identified Rivera in a photograph on her website when she was under oath at her sworn interview. See Velasco Deposition Transcript at 203-05. Here, based upon Velasco's prior identification of Rivera, it is clear that the photograph in question on the Google Plus site is a picture of Rivera standing next to equipment.

[8] As early as June 25, 2013, an entirely new telephone number appeared throughout the Applicant's website: (917) 618-7377. *Compare* color copy of Applicant's Website (visited on June 6, 2013) *with* color copy of Applicant's Website (visited on June 25, 2013). Once again, this new telephone number did not appear anywhere in the Application, nor did the Applicant notify the Commission in writing of its new telephone number, despite its requirement to do so. See Application at 1; Admin. Code § 16-507(b).

[9] Velasco's claim that she is the Applicant's only principal is also belied by her lack of knowledge of the Applicant's tree removal and pruning business: for example, despite her claim that she recently purchased for nearly

With respect to the website, Velasco initially testified at her deposition that she created a website for the Applicant beginning in December 2012. She testified that she was responsible for providing the photographs, information and instructions concerning the website's content to an individual named "Joe" who was responsible for posting such information. See Velasco Deposition Transcript at 167-72. Specifically, the Applicant provided the following testimony when asked: "Q. Did you give him ["Joe"] the photographs to put onto the website? A. Yes." See Velasco Deposition Transcript at 177:20 – 22.

However, when later shown the website's multiple photographs of trucks with Rivera's company's name, "J.C. Land & Tree Service" – and various derivatives of that name, such as "J.C Tree Svc." – painted on the side of the trucks, Velasco attempted to change her story, claiming that she never gave any photographs to her website designer, "Joe":

> Q. Well, the photographs you took and you put on the website were the photographs that you gave to your website designer; correct?
> A. I didn't give it to him. We wanted to put. He had them.
> Q. .... How would your website designer get these photographs other than you giving them to him?
> A. He had these pictures, as I said before. He worked with similar people. He worked with Juan Carlos [Rivera]....
> Q. So, you didn't give him any photographs to put on your website from this gallery website?
> A. No.

Id. at 209:16 – 210:5. After being confronted with website content that clearly undermined her claim, Applicant provided inconsistent and self-serving testimony. The Commission should not credit such testimony.

Not surprisingly, following the conclusion of Velasco's deposition on August 15, 2013, the Applicant removed the entire "Gallery" page from its website, which contained the aforementioned multiple photographs of trucks with Rivera's company name painted on the side. *Compare* color copy of Applicant's Website's Gallery Page, available at http://www.jctreecareny.com/gallery.html (visited on June 6, 2013) with "Page not found" Error Page, available at http://www.jctreecareny.com/gallery.html (last visited on October 29, 2013). The Commission should find that the Applicant deliberately removed the Applicant's entire Gallery webpage in order to conceal Mr. Rivera's involvement as a Principal of the Applicant and the Applicant's affiliation with Rivera's corporation JC Land & Tree Service.

$20,000.00 a machine for removing heavy branches, Velasco testified that she could not recall the names of the manufacturer of the machine, the dealer that sold the Applicant the machine nor even the internet site where she purportedly found the machine for sale, see Velasco Deposition Transcript at 135-39; she could not recall the manufacturer, model or year of one of the Applicant's only two trucks, id. at 153, nor could she recall the manufacturer or model of the machine to grind branches, id. at 146-49; finally, Velasco admitted she did not even know the names of the types of machines that are used for pruning or for removing trees, id. at 130.

The Applicant, in its Response, does not dispute the vast majority of facts, and, other than self-serving, conclusory assertions that Rivera is not a principal of the Applicant, the Applicant fails to provide evidentiary support for this claim.[10] It remains undisputed that: Rivera identified himself as a supervisor; the Applicant failed to provide the Commission with its website address, or with several phone numbers associated with the company; the Applicant's website was replete with photographs of Rivera and his company; the Applicant changed the website following her conversations with Commission staff and her deposition; and Rivera's home address was listed as the address for "JC Tree Care" in Google Maps and Google Plus.[11] The Response admits that the Applicant put photographs of Rivera on the website because the Applicant "knew that Mr. Rivera has experience in this field and is known in this industry, so [I] believed it would help in bringing in business." See Velasco Affidavit at ¶ 5. Significantly, the Applicant's Response fails to address or to dispute the self-serving change in her testimony concerning the custodian of the photographs that were posted on the Applicant's website. Rather, the Response continues to insist upon the Applicant's second, self-serving version of events – that "Joe," "the webpage developer" "had control" of the photographs on the website (see Response Letter at 2) – without acknowledging the Applicant's prior, inconsistent testimony that the Applicant herself provided the photographs to the webpage developer. The Applicant's failure to provide any reasonable, alternative explanation for this overwhelming set of undisputed facts and circumstantial evidence, leads the Commission to make the only logical conclusion of fact under the circumstances: that Rivera is an undisclosed Principal.

Although the Commission is not required to attribute a motive for the Applicant's failure to disclose Rivera as a principal, it is likely that the Applicant did so in order to conceal Rivera's affiliated company's significant, outstanding tax warrants, totaling almost $35,000.00. See NYS DOS State Tax Warrant Notice System Printout for JC Land & Tree Service, dated June 7, 2013. On December 1, 2011, Rivera's affiliated corporation JC Land & Tree Service had three NYS tax warrants docketed against it that are all currently outstanding, totaling $34,886.84. Id.

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[10] The Response's citation to the Applicant's Articles of Incorporation for its argument that Velasco is the sole principal and shareholder is unavailing. Pursuant to Admin. Code §16-501(d), a "Principal" is defined as, *inter alia*, "all other persons participating directly or indirectly in the control of such business entity." Accordingly, holding stock is not a prerequisite for a Principal under the statutory definition.

[11] While the Applicant's Response does not dispute the fact that Rivera's home address in Freeport, NY, was listed as the address for "JC Tree Care" in Google Maps and Google Plus (see Response Letter at 2), the Response appears to argue that a current search on the Google search engine of the search term "JC Tree Care" "lists the applicants [*sic*] information." Id. (citing the screenshot attached as Exhibit "B" to the Response). As an initial matter, the Commission notes that it was not until *after* the Applicant's deposition testimony – when it was brought to the Applicant's attention that the address in Freeport, NY, is the address for "JC Tree Care" in Google Maps and Google Plus (see Velasco Deposition Transcript at 191-93; Exhibit JC-3 to the Deposition) – that (again, not surprisingly) Velasco's home and business address in Ridgewood, Queens, NY, appeared in Google Maps and Google Plus as the Applicant's address. Moreover, when Commission staff conducted its own, contemporaneous Google search of "JC Tree Care," both Rivera's undisclosed Freeport address and the Applicant's solely-disclosed address in Ridgewood appear as addresses for the Applicant in the search results. See screenshot of Google search results of "JC Tree Care," available at https://www.google.com/webhp?source=search_app#q=jc%20tree%20care (last visited on May 21, 2014). Other than to claim complete ignorance at her deposition (see Velasco Deposition Transcript at 191-93), the Applicant utterly fails to address or to provide any evidence as to the reason why, in the first place, Rivera's home address is the Applicant's address in Google Maps and Google Plus.

Specifically, the State of New York docketed the following tax warrants against Mr. Rivera's affiliated corporation JC Land & Tree Service:

NYS Tax Warrant ID #	Amount
E-033754546-W001-9	$330.67
E-033754546-W002-4	$25,103.43
E-033754546-W003-8	$9,452.84

Id.

B. The Applicant's Extensive Period of Unlicensed Activity

It is undisputed that since, at the very latest, December 2012, the Applicant has unlawfully transported trade waste without first having obtained from the Commission a registration to operate as a trade waste business. See Velasco Deposition Transcript at 157-62; Application. The Principal Ms. Velasco testified at her deposition that the Applicant has continuously, from December 2012 through August 15, 2013 (the date of the deposition), had multiple "jobs" per week in Brooklyn and Queens. Id. The Applicant's "jobs" entail transporting trees and branches (trade waste) away from its jobsites. Id. Despite having transported trade waste since December 2012, the Applicant failed to apply to the Commission until almost five months later, on or about April 23, 2013; and, to date, the Applicant has not received from the Commission the requisite registration to remove trade waste.

Although Velasco testified at her deposition that the Applicant transported trade waste from locations in New York City, the Applicant, for the very first time in its Response, claims that another company transported "heavy items." See Response Letter at 2; Velasco Affidavit at ¶ 8. While it is not entirely clear what the Applicant means by "heavy items," the Commission will assume for argument's sake that the Applicant refers to "heavy items of trade waste."[12] The Commission notes, however, that the Response does not dispute that the Applicant transported non-heavy items of trade waste, such as leaves and smaller branches of trees. Accordingly, it remains undisputed that the Applicant has transported some trade waste (the non-heavy items) without first having obtained a registration from the Commission.

The Commission also finds that it is likely that the Applicant and Rivera's apparent affiliate company JC Land & Tree Service have been transporting trade waste without a

[12] The Applicant further claimed for the first time in its Response that Mega Landscaping & Decoration, located at 85-55 262nd Street, Floral Park, NY 11001, transported the "heavy items." While no company with the name "Mega Landscaping & Decoration" has registered with the Commission, there is an MG's Landscaping and Decoration, Ltd. ("MG's Landscaping"), that is registered with the Commission and that is located at the same above-mentioned address. Commission records, however, show that MG's Landscaping did not receive its registration to remove "trade waste that is generated in the course of operation of such person's business" until its registration first became effective on August 1, 2013. Accordingly, although the Applicant failed to provide any of MG's Landscaping purported dates of service, assuming *arguendo* that MG's Landscaping transported "heavy items" of trade waste for J C Tree Care from, at the very latest, December 2012, until August 1, 2013, MG's Landscaping also did not yet have its requisite registration to do so.

registration for a much longer period of time. The Applicant's website claims that, "**JC Tree Care NY** is a complete land management and tree care company that has been serving New York City since 1990....**QUEENS, BROOKLYN, BRONX**...." See screenshot of Applicant's (visited on June 6, 2013) (emphasis in original). The Applicant's website goes on to state that, "We are one of the largest tree and landscape companies in New York City...." Id. Additionally, the Applicant's website states on the "About Us" page that, "We are a [sic] 11-year-old tree service." See Applicant's Website's About Us Page, available at http://www.jctreecareny.com/about_us.html (visited on June 6, 2013) ("Applicant's Website's About Us Page"). Despite these statements on its website that the Applicant has many years of experience in the tree management industry in New York City, neither the Applicant nor its affiliate JC Land & Tree Service has submitted a registration application with the Commission until the Applicant did so on or about April 23, 2013.

IV. BASIS FOR DENIAL

A. The Applicant Has Knowingly Provided False and Misleading Information to the Commission Because Juan C. Rivera Is an Undisclosed Principal.

Applicants must provide truthful and non-misleading information to the Commission. The failure to do so is a ground for denial of the application. See Admin. Code §§ 16-509(a) (i) and (b); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied* 2 N.Y.3d 705 (2004); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). As an initial matter, as set forth above, the Applicant failed to provide the Commission with its website address, or with several telephone numbers associated with the company. More significantly, the Applicant also failed to disclose to the Commission that Rivera is a principal. That Rivera is a principal is demonstrated by Rivera's first, unsolicited and spontaneous statement to Commission staff that he was the supervisor in charge of the Applicant. It is also demonstrated by the fact that the Applicant's website contained a large photograph of Rivera on its homepage with a caption that reads, "**Juan is here: Call or Text me....**" Google Maps and Google Plus identify Rivera's residence in Freeport, NY, as the Applicant's address. Finally, the Applicant's website contained multiple photographs of trucks with the name of Rivera's company J C Land & Tree Service on the side of the trucks.

The Applicant claims that Rivera is simply a part-time employee (albeit undisclosed), and not a principal. However, the Applicant offers no explanation of why Rivera answered the company's telephone and held himself out as a person with authority. The Applicant offers no explanation of why Rivera's address is listed on Google as the company's address. Further, the Applicant's explanation as to why its website predominately featured Rivera as the company's contact, and featured Rivera's former company's trucks, falls flat. Specifically, while Velasco initially testified that she provided the photographs for her company, after she was confronted with images from her website, the Applicant then testified that she was *not* responsible for the content of her website. Such a belated claim is not credible as it is contradictory and self-serving. What remains is that the Applicant's website (the content of which was removed by the

Applicant following her deposition), is additional proof that Rivera is much more than a temporary employee. Rather, Rivera has a significant role in the company. Rivera was not disclosed to the Commission as a principal (or as an employee at all), perhaps because of his significant government debt.

B. The Applicant Has Unlawfully Transported Trade Waste without a License or Registration Continuously for, at the Very Least, One Year.

Admin. Code §§ 16-505(b) states in relevant part that, "It shall be unlawful for any person to remove, collect or dispose of trade waste that is generated in the course of operation of such person's business...without first having registered with the commission." Here, as discussed above, it is undisputed, based upon the Applicant's own admissions under oath, that the Applicant has illegally transported trade waste generated in the course of operation of its business since, from at the very least, December 2012 through August 2013. Despite the Applicant's continuous transport of trade waste from jobsites in Brooklyn and Queens during this timeframe, the Applicant failed to submit an application to register with the Commission until the end of April 2013. The Applicant also testified at her deposition that the Applicant continues to transport trade waste in New York City despite not having received its registration from the Commission to date. As discussed above, the Applicant's belated claim for the first time in its Response that another company transported its "heavy items" of trade waste falls short. It remains undisputed that the Applicant still transported at least the non-heavy items of trade waste. The Commission should also find that the Applicant likely has been removing trees and branches from its jobsites for many more years than the Applicant admitted to at her deposition. Given the statements on the Applicant's website about its extensive experience in the tree removal industry and the 2006 date of incorporation of the Applicant's affiliate, it is likely the Applicant, in one form or another, has been illegally removing trade waste, since at the very latest, 2006.

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V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines is 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 J C Tree Care NY Corp.'s registration application.

This denial is effective immediately. J C Tree Care NY Corp. may not operate as a trade waste business in the City of New York.

Dated: June 2, 2014

THE BUSINESS INTEGRITY COMMISSION

Christopher Mallon
Acting First Deputy Commissioner and Chair

Kathryn Garcia, Commissioner
Department of Sanitation

Julie Menin, Commissioner
Department of Consumer Affairs

Robert A. Gigante, Inspector General (designee)
Department of Investigation

Andrew Schwartz, Deputy Commissioner
(designee)
Department of Small Business Services

Inspector John Denesopolis (designee)
New York City Police Department