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 ANNEX GENERAL CONTRACTING INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS.

On December 5, 2007, Annex General Contracting Inc. (the "Applicant" or "Annex") submitted an application to the New York City Business Integrity Commission ("Commission") pursuant to Local Law 21 of 2002, for exemption from licensing requirements for the removal of construction and demolition debris. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Local Law 42, which created the Commission to regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Annex has applied to the Commission for a registration enabling it 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." Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission grants the Applicant a registration, the Applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code §16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any

rule promulgated pursuant thereto). Central to the Commission's investigation and determination of a registration application is whether the applicant has business integrity. See 17 RCNY §1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008).

Based upon the record as to the Applicant, the Commission denies its exemption/registration application on the ground that this Applicant lacks good character, honesty, and integrity for the following independent reasons:

(1) The Applicant's President, Steven Saggese, pled guilty to endangering public health, safety or the environment in the fourth degree, a class A misdemeanor.

(2) The Applicant has provided false and misleading information to 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. For the past four decades, and until only a few years ago, the private 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." Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI").

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive 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 made numerous factual findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found

"that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42 §1.

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the C & D sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the C & D sector of the carting industry has been a subject of significant federal prosecutions. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many C & D haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988. During that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean

fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately $10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City's "cover" programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City's tipping fees. See 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.); see also United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the C & D sectors of the industry. Local Law 42 recognizes this fact in requiring C & D haulers to obtain registrations from the Commission in order to operate in the City. See Attonito v. Maldonado, 2004 N.Y. App. Div. Lexis 411, January 20, 2004.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. § 16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated constitutional challenges (both facial and as applied) 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, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. City. 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). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal 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); Attonito, 3 A.D.3d 415.

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases "where the applicant fails to provide the necessary information, or knowingly provides false information." It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Id.; accord Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008) (Commission denial not arbitrary and capricious where based on a criminal conviction, identification as an organized crime associate, and false and misleading statements). Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

1. failure by such applicant to provide truthful information in connection with the application;

2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. DISCUSSION

On December 5, 2007, the Applicant filed an application for exemption from licensing requirements for removal of construction and demolition debris (the "Application"). The Applicant also filed a Certification for Temporary Permission to Operate Pending Decision on Application ("Certification for Temporary Permission"). The principal of the Applicant is Steven Saggese. See Application at 9. The Commission's staff has conducted a background investigation of the Applicant and its principal. Pursuant to the background investigation, on June 25, 2007, principal Steven Saggese provided the Commission with testimony under oath. On March 4, 2009, the staff issued an 11-page recommendation that the application be denied. The Applicant was served with the recommendation on or about March 4, 2009 and was granted ten business days to respond. (March 23, 2009). See 17 RCNY §2-08(a). On March 17, 2009, the Applicant's attorney requested an extension of time to submit a response to the staff's recommendation. The Applicant's attorney also requested a copy of the record relied upon by the staff in the recommendation. On or about March 17, 2009, the Commission extended the time to submit a response to April 3, 2009 and provided the Applicant's attorney with copies of all non-public documents relied upon in the recommendation. See March 17, 2009 letter from David Mandell to Kathryn E. Stein. On or about April 2, 2009, the Applicant submitted a response, which consisted of an affidavit signed by Steven Saggese ("Saggese Affidavit"), an affidavit signed by employee Angelo Perico and five exhibits. See Applicant's Response ("Response").[1] The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application.

[1] Subsequent to the Applicant's submission of the Response, Applicant's counsel and the Commission's staff engaged in extensive negotiations that resulted in the Applicant orally agreeing to pay a $10,000 fine for violating 17 RCNY §1-09 by submitting false, misleading, or incomplete information on an Application for Exemption From Licensing Requirement for Removal of Construction and Demolition Debris and on a Certification for Temporary Permission to Operate Pending a Decision on Application. See Stipulation of Settlement in Lieu of Notice of Violation and Hearing ("stipulation"), TW-3529. On or about April 30, 2009, the Commission advised the Applicant that its application had been provisionally approved and that it must remit the first of two installment payments and the signed stipulation. See April 30, 2009 Notice of Approval. On or about May 5, 2009, the Commission sent the Applicant a second notice that it must remit the first of two installment payments and the signed stipulation. See May 5, 2009 Notice of Approval. On or about January 26, 2010, a member of the Commission's staff contacted Saggese and Saggese stated that he needed six weeks to acquire the funds necessary to pay both the Commission registration fees and fine. On or about April 13, 2010, a member of the Commission's staff contacted Saggese and Saggese stated that he would have the requisite funds by May 1, 2010. Saggese stated that he would contact the Commission in early May 2010 to make an appointment. On May 20, 2010, Saggese advised a member of the Commission's staff that he could not afford both the registration fees and the fine that he previously agreed to pay in two installments. On or about May 25, 2010, the Commission advised the Applicant that it would "soon consider the staff's recommendation" and the Applicant's response. See May 25, 2010 letter from David Mandell to Steven Saggese. The Applicant was also advised that it could supplement its response to the staff's recommendation. See Id. As of the date of this Decision, the Applicant did not supplement its response.

A. The Applicant's President, Steven Saggese, pled guilty to endangering public health, safety or the environment in the fourth degree, a class A misdemeanor.

On November 1, 2000, Steven Saggese was arrested and charged with endangering public health, safety or the environment in the third degree, an E felony and unlawful release of solid waste into the environment, a class A misdemeanor. See Felony Complaint, Docket Number 015310. On May 21, 2002, Saggese pled guilty in Nassau County District Court to endangering public health, safety or the environment in the fourth degree, a class A misdemeanor. Saggese was sentenced to pay a $1000 fine and was granted a conditional discharge.

In this criminal case, Saggese and the Applicant removed more than two thousand pounds of contaminated soil from a construction site. See Felony Complaint Docket Number 015310. First, Saggese tried to dump the contaminated soil at one or possibly several concrete companies. However, the contaminated soil smelled so much that each of the concrete companies refused to accept the contaminated soil. Saggese then dumped some of the contaminated soil onto the lot where the Applicant parked its trucks. Saggese dumped the rest of the contaminated soil at a construction site upon which new homes were to be built. See id.; see also Jade Jackson, *Charges Over Tainted Soil*, NEWSDAY, July 12, 2001.

In determining whether an applicant possesses good character, honesty, and integrity, the Commission may consider prior convictions of the Applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also Admin. Code §16-501(a). Those factors are:

(a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license . . . sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law §753 (1).

In addition to these factors, the Commission must consider whether or not the Applicant received a certificate of relief from civil disabilities, which creates a presumption of rehabilitation. N.Y. Correct. Law §753(2).

Applying the above factors, the Commission finds that, notwithstanding the public policy of the State of New York to encourage licensure of persons convicted of crimes, the crime committed by Saggese is antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption from the trade waste industry. The conviction is recent, is for activity directly related to the waste industry, and happened when Saggese was approximately 31 years old. Here, the nature of the crime to which the principal pled guilty directly affects his fitness to operate in the trade waste industry, as it involved the removal and disposal of waste. Moreover, this crime relates directly to the honesty, integrity, and character of the Applicant and its principal, as the principal used the Applicant to illegally dump contaminated waste. Finally, the public interest in eliminating the entrenched corruption that has plagued the New York City carting industry for decades is clear.

The Applicant raises three main arguments in its Response. First, while admitting that it did dump contaminated soil, it claims that it did so with a "lack of knowledge regarding the underlying acts which constituted the criminal conduct," and that an unnamed general contractor "pressured Annex and its employees to hasten progress on the job." See Response at 2; Saggese Affidavit at 2. Second, the Applicant states that since the criminal case, it has eliminated "the improper pressure that led to the incident" by "rejecting offers to work for private builders." See Response at 5; Saggese Affidavit at 2. Third, the Applicant states that Saggese received a Certificate of Relief from Disabilities from the sentencing court and that that document precludes the Commission from denying Annex's registration application. Id. at 7.

Saggese's plea establishes beyond a reasonable doubt that he committed the crime of endangering public health, safety or the environment in the fourth degree, a class A misdemeanor. Saggese had a full and fair opportunity to contest the accusations; yet, after carefully considering the charges for over 18 months, he chose to plead guilty rather than assert a defense at trial. The Applicant's argument that a general contractor pressured the Applicant to hasten progress on a job by committing a crime makes little or no sense. Saggese knew that the soil was contaminated after several sites rejected it. Nevertheless, he chose to commit a crime by dumping soil he knew to be contaminated on his lot and on a construction site upon which he also knew that homes were to be built. The crime committed by Saggese was the result of his own conscious decision to cut

costs. These types of decisions will always exist in this industry, with and without third party external pressures. Consequently, the Commission is not satisfied that the rejection of private work will alleviate these pressures on the Applicant. Finally, although a certificate was issued,[2] the Commission is still not persuaded that the Applicant deserves to be registered. A certificate merely creates a *presumption* of rehabilitation, not a mandatory blanket of immunity. The presumption may be overcome in the exercise of the Commission's discretion, which is guided by the factors above. Matter of Bonacorsa v. VanLindt, 71 N.Y.2d 605 (1988).

The Applicant's principal's guilty plea to a crime that involved the waste industry and which endangered public health, safety, or the environment, compels the conclusion that the Applicant lacks good character, honesty, and integrity. Accordingly, the Commission denies the Applicant's registration application on this independently sufficient ground.

B. The Applicant has provided false and misleading information to the Commission.

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a sufficient ground upon which to deny the application. See Admin. Code §16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied* 2 N.Y.3d 705 (2004).

1. The Applicant provided the Commission with false and misleading information on its Certification for Temporary Permission to Operate Pending Decision on Application.

On or about December 5, 2007, the Applicant submitted a Certification for Temporary Permission to the Commission. Saggese swore that the information contained in the Certification for Temporary Permission was complete and truthful. See Certification for Temporary Permission at 2. Question 1 of the Certification for Temporary Permission asks, "has the applicant business or any past or current principal of the applicant business been convicted of any misdemeanor or felony in any jurisdiction during the past 15 years? Include misdemeanor charges, felony charges, and all non-traffic violations (including DWIs)." In response, Saggese falsely answered "No."[3] See id. at 1. As described above, on May 21, 2002, Saggese was in fact convicted when he pled guilty to endangering public health, safety or the environment in the fourth degree, a class A misdemeanor.

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[2] The Commission notes that Criminal Court judges may not always have the complete history of a defendant before them when called upon to grant such certificates, nor do they have the same interests as the Commission in preserving the regulatory integrity of the carting industry.

[3] The Certification for Temporary Permission also contained questions about pending criminal charges, contact or dealings with persons or entities connected to organized crime, and government subpoenas received by the applicant or the current principal of the Applicant. The Applicant did not answer these questions. See Certification for Temporary Permission at 2.

During his deposition on June 25, 2008, Saggese was asked about the false and misleading statement he made on the Certification for Temporary Permission. Saggese stated that someone else answered Question 1 of the Certification for Temporary Permission and that Saggese "really didn't read it properly":

> Q.: Now I'm going to show you a document, [a] two page document called certification for temporary permission to operate pending [decision] on application. Can you take a look at that and tell me if you recognize that?
>
> A.: Yes.
>
> Q.: Whose handwriting is that?
>
> A.: Angelo Perco, my associate.
>
> Q.: I'm just going to direct your attention to page two where it has the certification line; is that your signature?
>
> A.: Yes, I see what you are saying. I really didn't read [the Certification for Temporary Permission] properly.
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> ***
>
> Q: The answer to [Question 1 of the Certification for Temporary Permission] is incorrect?
>
> A.: Yes.

See June 25, 2008 Deposition Transcript of Steven Saggese ("Saggese Tr.") at 14-15. Thus, only after being confronted did Saggese admit that he provided the Commission with false and misleading information.

In the Response, the Applicant unsuccessfully attempts to minimize the fact that false and misleading information that was certified as true was submitted to the Commission by arguing that an employee of the Applicant who was unaware that Saggrese was convicted of a crime, provided the false and misleading information and that Saggese did not "properly review the certification prior to signing it." See Response at 11-12. Regardless who filled out the form, Saggese must accept responsibility for the accuracy of the information submitted since he signed a sworn certification stating (in pertinent part) that "to the best of my knowledge the information given in response to each question is full, complete and truthful." See Certification for Temporary Permission at 2. Whether he filled out the application in a misleading fashion or he signed the certification page falsely does not matter; either situation reflects adversely on his fitness for a registration.

In the Response, the Applicant also argues that the Certificate of Relief "rendered the misdemeanor a nullity and exempt[ed] it from disclosure." See Response at 11-12. To the contrary, the certificate clearly states, "a conviction of the crime or the offense specified on the face of this certificate shall NOT prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified on the reverse side of this certificate as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or renew any license, permit or other authority or privilege."

Saggese's failure to provide truthful information to the Commission demonstrates that the Applicant lacks the requisite good character, honesty and integrity to operate such a business in New York City. For this independently sufficient reason, the Applicant's registration application is denied. See Admin. Code §§16-509(b); 16-509(a)(i).

2. The Applicant provided the Commission with false and misleading information on its Application for Exemption From Licensing Requirement For Removal of Construction and Demolition Debris.

On or about December 5, 2007, Saggese submitted a Registration Application on behalf of the Applicant. The Registration Application that was submitted to the Commission contained false and misleading information. Saggese certified that the information contained in the Registration Application was complete and truthful. See Registration Application at 16. Question 26 of the Registration Application asks, "Has the applicant business, or any current principal, or any past principal who was a principal in the last three (3) years of the applicant business, ever been convicted of any misdemeanor or felony in any jurisdiction? Do not include traffic violations." In response, the Applicant answered both "Yes" and "No." The Applicant also circled the answer "No," and Saggese placed his initials next to Question 26. See Registration Application at 5. Again, there is no ambiguity about whether Saggese was convicted of a misdemeanor.

During his deposition, Saggese was asked about the false and misleading statement he made on the application. He stated that he "was not sure how to answer" the question about criminal convictions:

Q: I am going to refer you to page five of the application, question 26. The question is: Has the applicant business or any current principal or any past principal who was a principal in the last three years of the applicant business ever been convicted of any misdemeanor or felony in any jurisdiction? Do not include traffic violations?

A: I have a misdemeanor.

Q: On the application you checked "yes" and you also checked "no" with a circle around "no" and you initialed that. Can you explain that?

A: I wasn't quite sure how to answer. Supposedly the one thing I had was a misdemeanor and another thing was supposed to be closed. I didn't know if I was supposed to answer yes or no.

See Saggese Tr. at 9-10. Again, Saggese admitted that he provided the Commission with false and misleading information only after the Commission confronted him with his false and misleading submission.

Consequently, it is clear that Saggese provided patently false and misleading information to the Commission. In the Response, the Applicant argues that "Saggese's negative response to this question was an honest one." See Response at 9. Again, the Applicant's reasoning is that Saggese thought that the certificate "nullif[ied] the conviction in terms of government work, such that the conviction cannot be considered or used against Saggese as a basis for denying such benefits or work." See Response at 9.

The Applicant's arguments in the Response fail because the certificate does not, in fact, nullify Saggese's criminal conviction. See supra.

This failure to provide truthful and accurate information and failure to be initially forthright with the Commission demonstrates that Saggese lacks the requisite good character, honesty and integrity to operate a trade waste business in New York City. For this independently sufficient reason, Annex's registration application is denied.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that Annex General Contracting, Inc. falls far short of that standard. Based upon the above independently sufficient reasons, the Commission denies Annex General Contracting, Inc.'s registration application. This exemption/registration denial is effective immediately. Annex General Contracting, Inc. may not operate as a trade waste business in the City of New York.

Dated: August 3, 2010

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Commissioner/Chair

John Doherty, Commissioner
Department of Sanitation

Andrew Eiler, Director of Legislative Affairs (designee)
Department of Consumer Affairs

Jayme Naberezny, Inspector General (designee)
Department of Investigation

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

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