Business Integrity Commission

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE REGISTRATION APPLICATION OF SUMMIT DEVELOPMENT CORP. D/B/A SUMMIT WATERPROOFING & RESTORATION CO. TO OPERATE AS A TRADE WASTE BUSINESS

Introduction

On September 29, 2009, Summit Development Corp. d/b/a Summit Waterproofing & Restoration Co. ("Summit Development") applied to the Commission for an exemption from the licensing requirements and for a registration to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," commonly known as construction and demolition debris, or "c & d." Admin. Code § 16-505(a).

On May 2, 2012, the Commission served Summit Development with Notice of Grounds to Recommend Denial of the Registration Application ("Notice"). The Notice stated the grounds for denial of the application and notified Summit Development of its opportunity to submit a written response to the Notice and/or to provide other information it would have the Commission consider in connection with its exemption application. The Notice further stated that any factual assertions in Summit Development's response were to be made under oath. Response was due within ten (10) business days from the date of the notice. On May 14, 2012, the Commission received Summit Development's two page response ("Response"). Despite the stated requirement that factual assertions were to be made under oath, Summit Development's Response was not under oath, but rather consisted of a two page unsworn letter from counsel. A copy of the Response was provided to members of the Commission for their review despite Summit Developments failure to follow the Commission's requirements.

Based upon the record as to Summit Development, and after considering Summit Development's Response, the Commission now denies Summit Development's exemption application because Summit Development lacks good character, honesty and integrity based on the following independently sufficient reasons:

1. Summit Development's principal Pantelis Fakiris has significant ties to organized crime; and

2. Fakiris committed racketeering acts, to wit: payoffs to labor officials amounting to bribery and violations of the Taft-Hartley Act;

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Background and Statutory Framework

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. See e.g., United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.); People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry has also been the subject of significant successful racketeering prosecutions. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992); United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367.

The Commission is charged with, *inter alia*, combating the pervasive influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. NY Admin. Code §16-505(a). It is this licensing scheme that continues to be the primary means of ensuring that an industry historically plagued with corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," commonly known as construction and demolition debris, or "C & D" removal, must apply to the Commission for an exemption from the licensing requirement. Id. If, upon review and investigation of an exemption application, the Commission grants the applicant an exemption from the licensing requirement, it issues the applicant a Class 2 registration. Id. Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at §16-508(b). The New York City Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a licensing or registration decision:

> 1. failure by such applicant to provide truthful information in connection with the application;
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> 2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which

directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

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

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

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

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

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

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

Id. at §509(a)(i)-(x). Additionally, the Commission may refuse to issue a license or registration to any applicant who has "knowingly failed to provide information or documentation required by the Commission...or who has otherwise failed to demonstrate eligibility for a license. Id. at §509(b). The Commission may refuse to issue a license or registration to an applicant when such applicant was previously issued a license which was revoked or not renewed, or where the applicant "has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license." Id. at §509(c). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. Id. at §509(d).

An applicant for a private carting license (including construction and demolition) has no entitlement to and no property interest in a license or registration and the Commission is vested with broad discretion to grant or deny a license or registration application. Sanitation & Recycling Industry, Inc., 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). NY Admin. Code § 16-116.

Statement of Facts

A. Application History

On September 28, 2009, Summit Development applied to the Commission for an exemption from the licensing requirement and for a registration as a trade waste business that removes construction and demolition debris. See September 28, 2009 Class 2 Exempt Registration Application ("Application"). Pantelis Fakiris is the President and sixty percent owner of Summit Development. Id. at 9. Kostas Fakiris is Summit Development's Vice President and forty percent owner. Id. Upon information and belief, Pantelis Fakiris and Kostas Fakiris are father and son. The main office, mailing office, and garage address of Summit Development is 13-15 37th Avenue Long Island City, New York 11101. Its business telephone number is (718) 392-6858. Id. at 1. This was not the first time that Pantelis Fakiris sought to enter the trade waste business. On June 6, 1997, Summit Carting Corp. ("Summit Carting") submitted a transfer station permit application ("Transfer Station Application") to the New York City Department of Sanitation ("DSNY"). DSNY requested that the Business Integrity Commission (then named the Trade Waste Commission) perform a background investigation of Summit Carting and its principals. Pantelis Fakiris was the President and one hundred percent owner of Summit Carting.[1] Transfer Station Application at 15. Like Summit Development, Summit Carting's principal business office address was 13-15 37th Avenue, Long Island City, New York 11101, and its phone number was (718) 392-6858. Id. at 1, 2.

[1] A second principal, Greenpoint Recycling ("Greenpoint"), was also disclosed, but no specific details for Greenpoint were provided in the application.

On March 24, 1998, the Commission recommended that DSNY find that Summit Carting and its principals Pantelis Fakiris and Greenpoint lacked good character, honesty, and integrity because of Pantelis Fakiris' and Greenpoint's significant ties to the Luchese Organized Crime Family, and therefore refuse to renew Summit Carting's transfer station permit. See March 24, 1998 Commission Recommendation Regarding Summit Transfer Station Permit Application. Relying on the Commission's recommendation, DSNY refused to renew Summit's transfer station permit. Summit appealed the denial of its transfer station permit renewal application. The Supreme Court denied Summit Carting Corp.'s Article 78 petition and the Appellate Division affirmed. Matter of Summit Carting Corp. v Commissioner of Dept. of Sanitation of City of N.Y. 104605/1999 (Sep. 30, 1999), aff'd, Summit Carting Corp. v Commissioner of Dept. of Sanitation of City of N.Y., 281 AD2d 336 (2001).

B. Pantelis Fakiris has a long history of significant ties to organized crime that were uncovered by the Commission's investigation.

Pantelis Fakiris, the President of Summit Development, has been publicly identified as an associate of the Luchese Organized Crime Family. During the murder and racketeering trial of Luchese boss Victor Amuso, the United States Attorney for the Eastern District of New York elicited the testimony of Peter Chiodo.[2] United States v. Amuso, No. 90 Cr. 446, E.D.N.Y. (1992) ("Chiodo Test. of 5/20/92"), aff'd, 21 F.3d 1251 (2d Cir. (N.Y.) 1994), cert. denied, 513 U.S. 932 (1994). Chiodo identified himself, inter alia, as a Luchese captain responsible for overseeing the operations of what law enforcement sources have described as the "Greek Mafia", or the Greek faction of the Luchese crime family.[3]

At that widely publicized trial, Chiodo testified that Pantelis "Pete" Fakiris was under the control of the Luchese organized crime family and answered directly to Spyredon "Spiros" Velentzas, whom law enforcement sources have identified as the "Greek godfather." Id. Tr. at 1445; see Press Release by the Queens County District Attorney and the School Construction Authority Inspector General, December 23, 1991 at 1; Pete Bowles, 'Greek Godfather' Guilty, N.Y. Newsday, June 20, 1992 at 70, available at 1992 WLNR 320235. Velentzas, in turn, answered directly to Chiodo. See Chiodo Test. of 5/20/92 at 1446; 1455-56.

Chiodo testified that in 1988, Pete Fakiris, owner of a waterproofing company called Summit Restoration, and his brother, George Fakiris, owner of Apollon Restoration, routinely paid over $250,000 a year to organized crime members and labor union officials. Chiodo stated that Pete and George Fakiris hired cheap non-union labor to work at the companies they owned; their payments prevented the enforcement of union work requirements and helped them avoid union resistance. Id. at 1446-62. Fakiris made payments directly to organized crime for the same purposes. Id. at 1451-59. Chiodo described going with Velentzas to Fakiris' office to collect money from Fakiris. Id. at 1454-55. Chiodo also testified to the proportion of the money

[2] On June 15, 1992, a jury found Amuso guilty of 54 counts of racketeering, including nine murders and three attempted murders. Later that year, the Eastern District of New York sentenced Amuso to life imprisonment, a fine and a special assessment.

[3] The former underboss of the Gambino crime family, Salvatore Gravano, has also testified about the Greek faction of the Luchese family. See U.S. v. John Gatti, 90 Cr.1051 (E.D.N.Y.) (Mar. 3, 1992 Tr. at 4328-4331).

he kept, the proportion Velentzas kept and the proportion that was forwarded to the Luchese Family bosses. Id. at 1457-59.

Chiodo explained Fakiris' importance to the Luchese Family, as well as the benefit of Luchese patronage. Chiodo recalled a Gambino soldier he called "Johnny G", who sought illegal payments from Fakiris while Fakiris was also paying the Luchese Family.[4] Id. at 1448. According to Chiodo, Fakiris asked the Luchese Family for help, specifically from Velentzas and Chiodo. Id. at 1445-48. Chiodo described a meeting with then Gambino underboss Sammy "the Bull" Gravano. Chiodo informed Gravano that "Johnny G" approached Fakiris for payments. Gravano "brought this John to the table and asked him about it. John told him, yes, he in fact was trying to do some things with this Pete Fakiris. That's when Sammy told him he wanted him to stay away from the guy; that the guy belonged to the Luchese Family, they had him for a real long time and not to go near him anymore." Id. at 1449.

In its May 14, 2012 Response to the Commission's Notice of Grounds for Denial, Summit Development claims Pantelis Fakiris was a victim, not a member, of the Luchese organized crime family. Fakiris argues that he was "forced to pay" the Luchese Family, and claims he was "extorted."[5] After reviewing Chiodo's detailed testimony, the Commission does not find Summit's argument (made in a letter submission with no sworn testimony) credible. Chiodo's sworn testimony, elicited by the United States Attorney's Office, is unequivocal: Fakiris asked Spiros Velentzas, the "Greek godfather" of the Luchese crime family for "favors" relating to "problems [Fakiris] was having with the unions, other contractors trying to undermine them, just to create problems with [Summit Restoration]." Id. at 1450-1. Similarly, when Fakiris was having "problems"[6] with a member of the Gambino crime family, Fakiris met with Chiodo to ask for help from the Luchese crime family. Id. at 1448. While Summit Development points out in its response that Fakiris paid, not received, a substantial amount of money to the Luchese crime family, this does not alter the Commission's conclusion. Chiodo's testimony clearly explains that money paid to the Luchese crime family was in return for "favors" discussed above. Id. at 1451, 1453. Paying the Luchese crime family for services rendered is a far cry from the victim that Fakiris portrays himself as. Just as with his last attempt to enter the industry, the Commission remains unconvinced that Fakiris's interactions with numerous members of the Luchese crime family (or for that matter, members of the Gambino crime family) were not at Fakiris's own behest.

Summit Development further argues in its Response that the Commission may not evaluate its good character, integrity and honesty, because Summit Development "does not seek to operate a trade waste business," and therefore it only seeks an exemption from the licensing

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[4] "Johnny G" is John Gammarano, a Gambino soldier active in construction rackets. See U.S. v. Peter Gotti, 02 Cr. 0743 (E.D.N.Y.) (DiLeonardo Test. of 12/8/04 Tr. at 2517-18); U.S. v. Grammarano, 06 Cr. 0072 (E.D.N.Y.) (11/30/16 Indictment).

[5] Notably, in Summit's Response, counsel falls short of explicitly denying that Fakiris is an associate of the Luchese family. Rather, counsel seeks to advance his strained argument by criticizing the manner in which the "staff" describes the record.

[6] Chiodo explained that Farikis's "problems" involved Johnny G. demanding money and favors from him. Id. at 1448.

requirement. Response at 1. In its sworn Application to the Commission, Summit Development stated that it plans to remove "[c]onstruction debris" from "[c]onstruction [s]ites." Application at 4. In its recently submitted Response, in a belated and vain attempt to avoid scrutiny, Summit Development now states that it seeks only to haul waste generated from its own construction and demolition projects. Summit Development argues that because it now "does not wish to enter into contracts with third parties for waste removal and disposal of waste," it therefore does not seek permission from the Commission to operate a trade waste business. Response at 1. This is a difference without a distinction. The Commission has jurisdiction over and may investigate and regulate the *entire* trade waste industry in the City of New York, not only those trade waste businesses which contract with other businesses. NY Admin. Code §§ 16-503; 16-504(a), (c); Matter of Attonito v Maldonado 3 AD3d 415 (2004). Any segmentation of the Commission's authority to review applications within the trade waste industry would frustrate the very purpose of Local Law 42: to ensure that the entire waste industry in the City of New York is free from the influence of corruption and organized crime. Accordingly, the Commission rejects Summit Development's assertion that it is entitled to the requested exemption/registration despite the fact that its principal is an associate of the Luchese Organized Crime Family.

Basis for Denial

The president of Summit Development, Pantelis "Pete" Fakiris, has significant associations with organized crime. Fakiris has been publicly identified in sworn testimony as an associate of the Luchese Organized Crime Family. See supra. Further, Fakiris was engaged in additional unlawful activity. Specifically, and as set forth more fully above, according to the sworn trial testimony of Peter Chiodo, Pantelis "Pete" Fakiris routinely made more than $250,000 per year in payoffs to labor union officials and organized crime members. Such payments constitute commercial bribery in the first degree and, at minimum, violations of the Taft-Hartley Act. See N.Y. Penal Law § 180.03; 29 U.S.C. § 186(c). Both of these crimes are predicate racketeering acts under the RICO statute, see 18 U.S.C. § 1961(1)(A), (C), and therefore constitute independent grounds for a finding of lack of good character, honesty, and integrity under Local Law 42. See Admin. Code § 16-509(a)(v).

The denial of a company where the company's owner has significant associations with organized crime and has engaged in payments that constitute racketeering acts is entirely consistent with the Commission's core mission to ensure an industry historically plagued by criminality remains free of corruption. This mission applies uniformly to all aspects of the trade waste industry, including the removal of construction and demolition debris, and including the removal of such debris when it is self-generated. Moreover, the fact that Farkiris is not the sole owner, but reportedly owns 60% of the company does not alter the Commission's conclusion. The Commission is not required to attribute individual wrongdoing to each principal or key employee involved. The Commission has before it an application from a business, one of whose principals is an associate of the Luchese Organized Crime Family, and further engaged in Racketeering acts. On these bases, the Commission finds that the applicant business, Summit Development, lacks good character, honesty, and integrity.

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Conclusion

The Commission is vested with broad discretion to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license, to any applicant who it determines to be lacking in good character, honesty and integrity. The record as detailed above demonstrates that Summit Development falls short of that standard. Accordingly, the Commission denies Summit Development's exemption application.

This exemption/registration denial is effective immediately. Summit Development Corp. d/b/a Summit Waterproofing & Restoration Co. may not operate as a trade waste business in the City of New York.

Dated: June 5, 2012

THE BUSINESS INTEGRITY COMMISSION

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