



The City of New York
BUSINESS INTEGRITY COMMISSION
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION APPLICATION OF AMERICA'S BEST CORP. (HPP-178) TO
OPERATE AS A MARKET BUSINESS IN A PUBLIC WHOLESALE MARKET**

I. Introduction

On February 9, 2012, America's Best Corp. (HPP-178) applied to the New York City Business Integrity Commission for a registration to operate a business located or operating within a public wholesale market pursuant to New York City Administrative Code § 22-253 (the "Instant Application"). After a review of the Instant Application, the Commission denies the application because America's Best lacks good character, honesty and integrity.

On February 10, 2017, the Commission's staff served the applicant's principal (Marc Greenberg) via first class mail the Commission's Notice to the Applicant of the Grounds to Deny the Registration Application of America's Best Corp. to Operate as a Market Business in a Public Wholesale Market. The Applicant was given 10 business days to respond, until February 23, 2017. See 17 Rules of the City of New York ("RCNY") § 2-08(a). The Commission did not receive a response from Applicant. The Commission has completed its review of the Instant Application, having carefully considered the Notice of Denial and the Applicants' lack of response. Based on the record as to the Applicant, the Commission denies the Instant Application based on the following two independently sufficient reasons:

- 1. The Applicant provided false information to the Commission by not disclosing its sole principal's ownership interest in a company; and**
- 2. The Applicant's sole principal provided false information to the Commission regarding certain individuals with whom he associated.**

II. Background and Statutory Framework

Local Law 28 of 1997 ("Local Law 28") and its related rules require that wholesale businesses located or operating within a public wholesale market register with the Commissioner of the Department of Business Services. See Admin. Code § 22-253; 17 RCNY §§ 11-02, 11-04; 66 RCNY §§ 1-12, 1-13. The duties of the Commissioner of the Department of Business Services were later transferred to the Commissioner of the Organized Crime Control Commission, pursuant to a charter revision provision approved by the voters in November 2001. The Organized Crime

Control Commission was subsequently renamed the Business Integrity Commission, pursuant to Local Law 21 of 2001.

A “market business” is defined in Title 17 of the Rules of the City of New York (“RCNY”) § 11-02 as “any business located or operating within a market that is engaged in providing goods or services to wholesalers or retail purchasers in such market that are related to the conduct of a wholesale business of the purchase of food or related agricultural products or horticultural products by retailers or others, or that receives such goods within a market for delivery, forwarding, transfer or further distribution outside of such market. ‘Market business’ shall include, but not be limited to, the provision of security services within a market, the provision of services related to the collection of fees for entrance into a market and parking, the supply of ice, and the loading, unloading, transfer or distribution of food or related agricultural products or horticultural products.”

After a review of an application for a market registration, the Commission may refuse to issue such a registration when the applicant or any of its principals lacks business integrity, *i.e.*, good character, honesty and integrity. See New York City Charter § 2101(a), (b); Admin. Code §§ 22-253(b), 22-259(b). Local Law 28 sets forth a number of factors which the Commission may consider in determining the fitness of a wholesale or market business for a market registration. See Admin. Code § 22-259(b). Those factors include, but are not limited to, the following:

- i. failure by an applicant to provide truthful information in connection with the application;
- ii. a pending indictment or criminal action against such applicant for a crime which would provide a basis for the refusal of such registration, 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 registration or photo identification card is sought;
- iii. conviction of such applicant for a crime which, under article 23-A of the Correction Law, bears a relationship to the fitness of such applicant or person to conduct a business or work in a market;
- iv. commission of a racketeering activity when the applicant knew or should have known of such activity, including but not limited to, an offense 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 for 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;
- v. 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 for registration knew or should have known of the organized crime associations of such person;

- vi. a principal of the applicant was a principal in a predecessor wholesale business or market business where the commissioner would be authorized to deny registration to such predecessor business; or
- vii. in the case of an applicant business, 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 and such judgment has not been stayed.

See Admin. Code § 22-259(b)(i) – (vii). The Commission is not limited to consideration of those factors; the list is illustrative and not exhaustive. Admin. Code § 22-259(b).

III. DISCUSSION

A. Statement of Facts

1. The Application

On February 9, 2012, America's Best submitted the Instant Application, disclosing Marc Greenberg as the sole principal. See Application p. 22. Greenberg certified and swore under oath that all statements in the Application were true and accurate. See id. at 27. Greenberg also filed a Principal Information Form, setting forth his extensive history in the produce business both locally and abroad.

From 1975-2003, Greenberg worked for various produce companies in Texas and Israel. From 2003-2008, Greenberg was Head of Sales at Tricar, an Arizona produce company. In 2008, Greenberg left Tricar and began working at Mama Mia LLC in East Rutherford, New Jersey, stating he left Tricar to move "back to NYC to be close to father." See Principal Information Form at 4. Greenberg worked in "Sales and Buying" for Mama Mia until January 10, 2010, when he left for a "better opportunity," to become "Head Buyer" at Circus Fruits Wholesale Corp. ("Circus Wholesale"). Id. His supervisors at Circus Wholesale are owners Silvestro LoVerde and Ronen Yamini. Id.

In several questions, the Instant Application and the Principal Information Form sought information concerning Greenberg's current and previous business holdings. The Applicant and Greenberg provided the following answers to these questions:

- a. "Has the applicant business or any of its present principals presently or previously held any position(s), offices(s), trusteeship(s), directorship(s) or fiduciary positions with any other business entity?" The Applicant answered, "No." See Instant Application, Question 25.
- b. "List all persons or entities to who/which the applicant business or any principal of the applicant business has given gifts valued at \$1,000 or more during the past three years, excluding any organization recognized by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code." The Applicant and Greenberg both answered,

“None.” See Instant Application, Question 46 and Principal Information Form, Question 34.

- c. “Has the applicant business or any of its principals presently or previously held any position(s), office(s), trustee(s), directorship(s) or fiduciary position(s) with any other business entity?” The Applicant answered, “No.” See Instant Application, Question 25.
- d. “Do you know or have you ever knowingly been associated with, socially or professionally, any person known by you to be convicted of a felony or having ties with organized crime?” Greenberg answered, “No.” See Principal Information Form, Question 28.

2. Denial of R&S Circus Produce Corp.

On July 31, 2009, the Commission denied the registration application of R&S Circus Produce Corp. (HPP-151) (“R&S”) to operate in the Hunts Point Produce Market. LoVerde and Yamini (Greenberg’s supervisors at Circus Wholesale) were the principals of R&S, each owning 50% of the business. LoVerde has been in the produce business in Brooklyn for many years: he formed Circus Fruits, Inc. (“Circus Retail”) in 1995 and Circus Wholesale in 1999. See Decision of the Business Integrity Commission Denying the Application of R & S Circus Produce Corp. for Registration as a Wholesale Business at the New York City Terminal Produce Cooperative Market (“R&S Denial”).

In 2010, LoVerde submitted to a sworn interview with the Commission in connection with a review of the R&S application. LoVerde testified that, in 2003, he invested \$170,000 in a food import company in Brooklyn called Bontel USA Corp. (“Bontel”). See R&S Denial. Bontel is located at 75 Hamilton Avenue, Brooklyn, New York. See id. At that time, Bontel’s Chief Executive Officer was Frank Cali, an acting captain in the Gambino organized crime family. See id. Cali had personally invited LoVerde to invest in Bontel. See id. Interestingly, Bontel is located just two blocks from Circus Wholesale.

LoVerde’s interview made it clear that R&S would be the successor company to Circus Wholesale, simply with a different location. See R&S Denial. Among the similarities between the companies was that R&S would employ Circus Wholesale employees. See id. LoVerde testified that he anticipated that many Circus Wholesale customers would come to the market location, eliminating the need for product delivery. See id.

In denying the R&S application, the Commission found that LoVerde had provided the Commission with false and misleading information about both his relationship with Frank Cali and his knowledge of Cali’s involvement in organized crime. Cali’s ties to organized crime were well-publicized, yet “LoVerde seemed to argue that so long as he had no personal knowledge of Cali’s organized crime ties, he was free to ignore the evidence of such before him – sworn trial testimony, criminal proceedings and convictions and press accounts This attitude cannot be tolerated in a market historically influenced by organized crime.” See R&S Denial.

After the Commission denied R&S's application, R&S appealed. On June 9, 2011, the Appellate Division affirmed the denial. Eight months later, America's Best filed the Instant Application.

3. Sworn Interview of Marc Greenberg

In connection with the Commission's review of the Instant Application, the Commission directed Greenberg to appear for a sworn interview with the Commission's staff, which took place on October 2, 2012. Greenberg testified that he was currently employed by Circus Wholesale. See transcript of sworn interview of Greenberg ("Greenberg Tr.") at 6. He then detailed his 27-year career in the produce industry: in Israel for 15 years, and then in Texas and Arizona. See id. at 9,12. In 2008, Greenberg left his job in Arizona to return to New York because he and his wife "hadn't been home in 35 years, and my dad was getting old. I had an opportunity to move and we did." Id. at 12. When asked what that opportunity was, Greenberg stated, "Mama Mia. I was recruited by somebody who I knew from New York metro who was looking for a sales person." Id. at 13. Greenberg described himself as "one of the head sales people" at Mama Mia. Id. at 13.

Greenberg claimed that, in January 2010, he left Mama Mia because "I really wasn't happy with the way the business was being run, and I didn't think that it would be a long-term opportunity. While I was there, I had the idea to possibly go to the market to start my own company." Id. at 15. However, instead of starting his own company, in January 2010, Greenberg went to work for LoVerde and Yamini at Circus Wholesale. See Greenberg Tr. at 22 ("And [Yamini] said, well, we're looking to expand, why don't you come see if you want to work for us. So I did.").

Greenberg was not just an employee of LoVerde's at Circus Wholesale; Greenberg also had a social relationship with him. In fact, shortly after Greenberg started working at Circus Wholesale, he attended LoVerde's wedding. See id. at 25. Notwithstanding this relationship, Greenberg claimed that he was unaware that both LoVerde and Yamini had been the principals of a company denied a registration by the Commission, *i.e.*, R&S. Curiously, Greenberg also testified that he took the unusual step of meeting with a Commission investigator to discuss his own chances of being approved for a market registration. See id. at 37. To explain his actions, Greenberg testified that he had heard that LoVerde had been denied a market registration from the Commission and he "wanted to find out the implications for myself. I wanted to apply. So I called, and [the Commission investigator] said, "Why don't you come talk to me?" . . . I had told him that I had heard that Silvestro was denied, and if I want to go, is it possible . . . what are the implications." See Greenberg Tr. 36-38.

Greenberg's purported understanding of the reasons for LoVerde's and Yamini's denial was that LoVerde and Cali "were partners at one time," and that "I guess [Cali] went to jail for some connection to organized crime." Id. at 36-40, 45-46. Greenberg stated that he had never before heard the name Frank Cali and did not inquire further about LoVerde's alleged organized crime connections. See Greenberg Tr. 36, 40. Greenberg testified, "I didn't think it was any of my business at the time, really," and he saw it as "no reason to leave" Circus Wholesale. Id. at 41, 49. In fact, rather than dissociating himself from LoVerde and Yamini, Greenberg stated that he expected them to be his customers at America's Best: "I would try to sell Circus Fruits Wholesale as well as the other people I know." Id. at 47. Greenberg also denied any knowledge of Bontel.

See id. at 57. As noted above, Bontel is also owned by LoVerde, is located only two blocks from Circus Wholesale and counts Cali as its Chief Executive Officer.

4. Audit of Greenberg's Financial Records

As part of the Commission's review of the Instant Application, the Commission performed a financial audit of Greenberg. During the audit, the Commission's staff reviewed numerous financial records, including those relating to several bank accounts. Greenberg also provided the Commission's staff with corporate and personal income tax returns from the years 2010 and 2011. The audit found several red flags.

Firstly, the auditors found payroll deposits from both Mamma Mia and Circus Wholesale in a Bank of America checking account in the name of Greenberg and his wife. In addition, \$113,450 in cash deposits were made into the account from February 26, 2009 to March 29, 2013. The source for \$108,450 of that cash is unknown.

Secondly, the Schedule K-1 (Partner's Share of Income, Deductions, Credits, Etc.) on Greenberg's 2010 personal income tax return identified Greenberg as being a 20% owner of Mama Mia from October 2007. See Greenberg 2010 Income Tax Return. This is in direct contradiction to the information on the Instant Application stating that Greenberg had never "held any fiduciary position with any other business entity;" nor had he been associated with "any corporation, partnership or any other business ventures as an officer, stockholder, principal, owner or related capacity." See Instant Application at 10. And, on both the Instant Application and in his sworn interview, Greenberg specifically told the Commission he was merely employed by Mama Mia, not that he owned the company. See id. at 5; Greenberg Tr. at 13.

Lastly, the audit also found five checks written from Greenberg's checking account to LoVerde and his wife during the period of April 2010 to June 2012. These checks totaled \$6,375.00. These payments roughly correspond to two life events in the LoVerde family: in April 2010, LoVerde married his wife; in early 2012, they had a child. Greenberg testified that he attended both the LoVerde wedding and the child's Christening. See Greenberg Tr. at 25, 32. The checks to the LoVerdes were likely gifts to mark these occasions. Regardless of the reasons for the payments, Greenberg did not disclose them as required by Question 34 of the Principal Information Form. See Principal Information Form. See id. at 14.

B. Basis for Denial

The Commission may deny an application if an applicant knowingly fails to provide truthful information in connection with the application to the Commission. See Admin. Code § 22-259(b)(i). As demonstrated below, the Applicant and its sole principal provided false and

misleading information to the Commission in connection with the Instant Application in several respects.

1. The Applicant provided false information to the Commission by not disclosing its sole principal's ownership interest in a company.

The Applicant provided false and misleading information to the Commission regarding Greenberg's involvement in the company Mama Mia. The Instant Application disclosed Greenberg's position with that entity as "Sales and Buying." See Principal Information Form at 4. During his sworn interview, Greenberg was significantly less clear as to his role at the company, stating only that he had been recruited to join Mama Mia by the owner of Mama Mia. See Greenberg Tr. at 13. Those statements are false and misleading. Greenberg's own personal income tax return from the year 2010 demonstrates that he was actually an owner of 20% of Mama Mia, not a mere employee. See Greenberg 2010 Schedule K-1. When Greenberg left Mama Mia in 2010, the company paid him \$82,696. See *id.* Although Greenberg was given ample opportunity to disclose this ownership interest during his sworn interview, he declined to do so. Instead, Greenberg attempted to hide it.

The Applicant's false and misleading statements regarding its principal's relationship to Mama Mia demonstrates that the Applicant lacks the good character, honesty and integrity required to operate a wholesale business in the public wholesale markets in New York City. The Applicant has not disputed the Commission's staff's assertions on this point. Therefore, the Commission denies the Instant Application based on this independently sufficient ground.

2. The Applicant's sole principal provided false information to the Commission regarding certain individuals with whom he associated.

In several instances, the Applicant provided false and misleading information to the Commission regarding its knowledge of LoVerde's business and social relationship with Frank Cali, a high-ranking member of the Gambino crime family. In his sworn interview, Greenberg claimed that he had only passing knowledge of the Commission's denial of R&S's application to operate in the Produce Market. The bases of that denial (associations with organized crime and providing false information to the Commission) are at the heart of the mission of the Commission: ensuring that organized crime is out of the market and only those with business integrity can operate there. Given Greenberg's relationship with both LoVerde and Yamini, who were both principals of R&S, his claims of ignorance are not credible. In fact, Greenberg was so concerned that his application might be denied due to his associations with R&S and its owners that he sought out a Commission investigator to discuss the chances of America's Best being approved.

Additionally, the Applicant failed to disclose all gifts from Greenberg to anyone totaling \$1,000 or more, as required. See Instant Application at 21. Bank records demonstrate that there were five checks written from Greenberg's personal checking account to LoVerde, totaling \$6,375.00. Those payments were likely gifts to LoVerde, as they roughly coincided with LoVerde's wedding and the Christening of LoVerde's child. The timing of the checks, their significant sums and likely purpose demonstrate that Greenberg had a closer relationship with LoVerde than he has admitted to the Commission. Greenberg likely sought to distance himself

from LoVerde due to the fact that the Commission denied the application of R&S (which is co-owned by LoVerde).

All of the false information that the Applicant provided to the Commission was aimed at concealing the true nature of Greenberg's relationship with the principals of R&S, their connections to a denied company and, ultimately, their connections to organized crime. This conduct demonstrates that the Applicant lacks the good character, honesty and integrity required to operate as a market business. The Applicant has not disputed the Commission's staff's assertions on this point. Therefore, the Commission denies the Instant Application based on this independently sufficient ground.

IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a wholesaler registration to any applicant it determines lacks good character, honesty and integrity. The record, as detailed above, demonstrates that the Applicant lacks these qualities. Accordingly, based on the two independently sufficient grounds set forth herein, the Commission denies the Instant Application. This registration denial is effective immediately. America's Best Corp. may not operate as a market business in a public wholesale market.

Dated: March 31, 2017

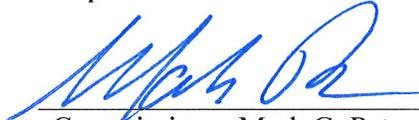
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BUSINESS INTEGRITY COMMISSION



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Commissioner and Chair



Commissioner Kathryn Garcia
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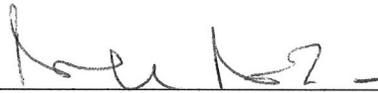
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