



The City of New York
BUSINESS INTEGRITY COMMISSION
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE
REGISTRATION RENEWAL APPLICATION OF TRI-STATE ENVIRONMENTAL
INC. (BIC #2501) TO OPERATE AS A TRADE WASTE BROKER**

I. Introduction

Tri-State Environmental Inc. applied to the New York City Business Integrity Commission to renew its registration to operate as a trade waste broker pursuant to Local Law 42 of 1996 (the “Instant Application”). See Title 16-A of the New York City Administrative Code § 16-505(b). A trade waste broker is a “person or entity who, for a fee, brokers agreements between commercial establishments and providers of trade waste removal, collection or disposal services or conducts evaluations or analyses of waste generated by such commercial establishments in order to recommend cost efficient means of waste disposal or other changes in related business practices.” See Admin. Code § 16-501(g). Local Law 42 authorizes the Commission to issue registrations for trade waste brokers. Id. at § 16-505(b).

On January 18, 2017, the staff issued and personally served the Applicant with the Notice to Tri-State Environmental Inc. of the Grounds to Recommend the Denial of the Registration Renewal Application of Tri-State Environmental Inc. to Operate as a Trade Waste Broker (“Notice of Denial”). See Affidavit of Service dated January 19, 2017. The Applicant had 10 business days to respond, which period expired on February 1, 2017. See Title 17 Rules of the City of New York (“RCNY”) § 2-08(a). The Applicant did not submit a response. The Commission has completed its review of the Instant Application, having considered the Commission staff’s Notice of Denial and the Applicant’s failure to respond. Based on the record in this matter, the Commission denies the Instant Application based on the following two independently sufficient reasons:

- 1. The Applicant provided false and misleading information on its applications to the Commission; and**
- 2. The Applicant’s principal provided false and misleading information during sworn testimony before the Commission.**

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, known as trade waste.

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. Int'l Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993); People v. Ass'n of Trade Waste Removers of Greater New York Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); United States v. Mario Gigante, No. 96 Cr. 466 (S.D.N.Y.); People v. Ass'n of Trade Waste Removers of Greater New York, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically 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, No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the influence of organized crime and preventing its return to the City's private carting industry, including among trade waste brokers. 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. See Admin. Code § 16-505(a). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by 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.

In determining whether to grant or renew a registration as a trade waste broker, the Commission considers the same types of factors that are pertinent to the Commission's determination as to whether to issue a license to a business seeking to remove trade waste. See Admin. Code § 16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); 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). If, after review of an application, the Commission grants or renews a registration, it issues the applicant a Class 2 trade waste broker's registration (or renews the existing registration). Id. at § 16-505(a)-(b). In determining whether to grant an application, the Commission must evaluate the "good character, honesty and integrity of the applicant." Id. at § 16-508(b); see also id. at § 16-504(a). The term "applicant" in this context encompasses both the business entity and each principal thereof. Id. at § 16-501(a).

The Administrative Code provides a non-exhaustive, illustrative list of relevant factors for the Commission to consider in making its determination on an application for a license or registration. Those factors are as follows:

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.

Id. at § 16-509(a)(i)-(x). See also id. at § 16-504(a).

The Commission also 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 § 16-509(b). See also Elite Demolition Contracting Corp. v. The City of New York, 4 N.Y.S.3d 196, 125 A.D.3d 576 (1st Dep’t 2015); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424 (1st Dep’t 2008); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”); leave denied 2 N.Y.3d 705 (N.Y. 2004). See also Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial). In addition, the Commission may refuse to issue a license or registration to an applicant that “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 § 16-509(c). See also id. at § 16-504(a). Lastly, 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 § 16-509(d); see also id. at § 16-504(a).

An applicant for a trade waste license or registration (including for a trade waste broker) 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.

III. Statement of Facts

A. Background

On January 10, 2007, the Applicant applied to the Commission for a registration to operate as a trade waste broker. See Tri-State Original Application for a Registration for Trade Waste Brokers (the “Original Application”). The Commission granted the Original Application and issued a registration order with an effective date of April 1, 2007. See Tri-State Original Registration Order. Jasmine Khan was the sole disclosed principal and employee on the Original Application. See Original Application at 4, 8. Khan certified that all the information contained in the Original Application was “full, complete and truthful.” Id. at 13.

Tri-State subsequently filed three renewal applications. See Tri-State’s First Renewal Application for a License or Registration as a Trade Waste Business dated March 24, 2009 (the “First Renewal Application”); Tri-State Second Renewal Application for a License or Registration as a Trade Waste Business dated April 12, 2011 (the “Second Renewal Application”); Tri-State Third Renewal Application for a License or Registration as a Trade Waste Business dated March 27, 2013 (the “Third Renewal Application”). On the First Renewal Application, Khan disclosed her email address as JNK125@yahoo.com. Notably, this email address has no apparent affiliation with the Applicant, i.e., it does not reference Tri-State in any manner. On the Second Renewal

Application, the company reported a previously undisclosed business telephone number and cell phone number of (917) 375-0506 and a previously undisclosed mailing address of P.O. Box 22, Syosset, New York. Id. Tri-State was required to submit an application fee with each of its registration applications. However, the checks that were submitted with the Second Renewal Application and the Third Renewal Application were returned for insufficient funds and a non-existent bank account, respectively. See Tri-State Environmental Check #153; BIC Staff Notes #1; Tri-State Environmental Check #1133.

Tri-State's most recent registration renewal had an expiration date of March 31, 2015. See Tri-State Third Renewal Registration Order. On March 30, 2015, Tri-State filed the Instant Application. Most of the information in the Instant Application is unchanged from the Third Renewal Application.¹ Id. Tri-State's application fee check was again returned for insufficient funds. See BIC Staff Notes #2. Just as in the Original Application, Khan was the sole disclosed principal on the application, and Khan certified that all the information contained in the Instant Application was "full, complete, and truthful." Id. at 7, 12.

B. Nick Rutigliano

Nick Rutigliano, a friend of Khan's, has a long history of involvement in the trade waste industry. From approximately 1987 to 2003, he owned J. Rutigliano Waste Removal Inc. (BIC #146), a company that applied for a trade waste license. See J. Rutigliano Waste Removal Inc. Application for License as a Trade Waste Business (the "J. Rutigliano Application") at 22-23. Rutigliano's parents were also principals of the company. Id. The Commission granted the J. Rutigliano Application on December 28, 1998. See J. Rutigliano Waste Removal Inc. Original Licensing Order. However, the Commission required that Rutigliano and his father agree to several conditions outlined in the licensing order, including that Rutigliano's father transfer his ownership interest in the business and agree to be debarred from the industry. Id. at 5. On January 6, 1999, Rutigliano and his father signed the conditional licensing order. Id. at 6. On January 11, 1999, Rutigliano's father signed a debarment affidavit in which he agreed to refrain from participating in any trade waste business. See Debarment Affidavit of John Rutigliano. On January 12, 1999, Rutigliano's parents sold their shares in the company to their son, making him the sole owner of the company. See J. Rutigliano Waste Removal Agreement dated January 12, 1999.

In 2003, Rutigliano Waste Services, LLC filed a sales application with the Commission for the purchase of J. Rutigliano Waste Removal Inc. See Application for Permission to Proceed with Asset or Business Sale Transaction of Rutigliano Waste Services, LLC (the "Rutigliano Waste Services Sales Application"). The sale was completed on January 21, 2004. See Closing Statement: Sale of Substantially All of the Assets of J. Rutigliano Waste Removal, Inc. On August 31, 2005, Rutigliano resigned from Rutigliano Waste Services and the company redeemed his shares. See Amendment to Limited Liability Company Agreement of Rutigliano Waste Services, LLC. Rutigliano has not been disclosed to BIC as a principal or employee of any trade waste business since.

¹ The Instant Application did not include the business address of PO Box 22, Syosset, NY that had been disclosed on the Applicant's Third Renewal Application. However, PO Box 22 is disclosed as Khan's home address on "Schedule C- Employees of Licensee or Registrant" of the Instant Application. See Instant Application at 7, 10.

Around this time, Rutigliano began amassing large amounts of personal debt. On August 3, 2005, Rutigliano's ex-wife, Lisa Rutigliano, filed a judgment against Rutigliano in the amount of \$386,850.60 for child support, maintenance, and equitable distribution arrears. See Rutigliano v. Rutigliano, Judgement, Index No. 02-200328. On February 7, 2008, a warrant was issued against Rutigliano for his failure to pay child support in the amount of \$444,881.82.² See New York State Child Support Enforcement Warrant Notice System, Warrant ID #C070016266W001. In addition to these judgments and warrants, Rutigliano has accrued \$330,120.03 in unpaid judgments and liens owed to creditors outside his immediate family. See Judgment and Lien Printouts dated January 11, 2017.

C. Rutigliano's Involvement in Tri-State

Although Rutigliano has never been disclosed on Tri-State's applications to the Commission, he has acted as a principal of Tri-State on numerous occasions. On November 2, 2007, Rutigliano signed a personal guarantee to a carter, Crown Container Co., who services one of the Applicant's customers. See Crown Container Personal Guarantee. The document states: "I Nicholas Rutigliano president of Tri-State Environmental Services Inc. will be personally responsible for all fees due to Crown Container, in case of non-payment of invoices from my company."³ Id. Thus, shortly after Tri-State applied to the Commission for a trade waste broker registration for the first time, Rutigliano presented himself as president of the company in his dealings with others in the trade waste industry.

Rutigliano has also acted on behalf of Tri-State in his dealings with the Commission on several occasions. On April 5, 2011, Rutigliano called the Commission to explain that Tri-State's Second Renewal Application was not filed by the March 31, 2011 deadline because the Applicant had not received a blank renewal application form from the Commission. See BIC Staff Notes #1.

On March 31, 2015, a member of the Commission's staff called the Applicant's business telephone number and spoke to Rutigliano, who assisted in their request for a missing Worker's Compensation Certificate for the company. See BIC Staff Notes #3. The same day, Rutigliano faxed the certificate to the Commission. See facsimile receipt dated March 31, 2015. The facsimile receipt that was transmitted along with the certificate indicates that the sender was Nick Rutigliano and that his email address is nick.tristate@aol.com.⁴ Id. Thus, Rutigliano's email address (unlike Khan's) clearly indicates his affiliation with the Applicant.

One day later, on April 1, 2015, Rutigliano faxed the Commission an amended Schedule A and B to be included with the Instant Application. See facsimile cover sheet dated April 1, 2015. The documents were sent with a facsimile cover sheet bearing the following message: "call to

² Although the warrant filed against Rutigliano remains active, the amount of money he owes in child support may have changed since 2008.

³ Crown Container Co. sued Rutigliano and Tri-State in New York County Supreme Court for failure to pay an outstanding balance of \$450,000 owed to Crown Container from one of the customers procured by Tri-State. See Crown Container Co., Inc. v. Nicholas Rutigliano, et al., Index Number 653753/2014.

⁴ On September 9, 2014, the Commission received a similar facsimile receipt from Khan. The sender information on the facsimile receipt included the same email address of nick.tristate@aol.com. See facsimile receipt dated September 9, 2014.

confirm- received both pages, (917) 375-0506, Thank You, Nick.” Id. The phone number listed on the facsimile cover sheet is one of Tri-State’s business telephone numbers disclosed on the Instant Application. See facsimile cover sheet dated April 1, 2015; the Instant Application at 7.

On May 14, 2015, a member of the Commission’s staff spoke with an unidentified male from the company regarding the bounced check submitted with the Instant Application. See BIC Staff Notes #2. The individual stated that the earliest he would be able to provide the Commission with alternate payment would be three weeks beyond the deadline set by the Commission. Id. As stated above, the only disclosed employee and principal on all of Tri-State’s applications is Khan. Thus, the unidentified individual, if not Rutigliano, is another undisclosed principal or employee of the business.

D. Khan’s Sworn Testimony

As part of the Commission’s review of the Instant Application, the Commission noticed Khan for a sworn interview. On June 6, 2016, Khan appeared at the Commission’s offices with her attorney and provided sworn testimony.

Khan testified that she formed Tri-State on her own because she wanted to work in a male-dominated industry. See transcript of sworn interview of Jasmine Khan, dated June 6, 2016 (“Khan Tr.”) at 12, 13. When Khan was asked about the extent of Rutigliano’s involvement in the company, she testified that Rutigliano is a friend who acts as an unpaid consultant for Tri-State and that he assists her in interactions with other men in the business. Id. at 26, 30. However, despite Rutigliano’s willingness to work without pay and Khan’s heavy reliance on his expertise, Khan testified that they are not very close and that she has no knowledge of Rutigliano’s occupation or experience in the trade waste industry. Id. at 31.

During her testimony, Khan could not explain Rutigliano’s numerous contacts with the Commission between 2011 and 2015. She admitted that Rutigliano should not have been listed as a contact person on the April 1, 2015 facsimile cover sheet to the Commission, but offered no explanation as to why he was, in fact, the contact person.⁵ Id. at 29. Nor could Khan explain why Rutigliano’s email address, listed on the facsimile receipt dated March 31, 2015, contains the name Tri-State. Id. at 32. Khan testified that she was unaware that Rutigliano had called the Commission in 2011 to state that he had not received a renewal application, and she could not explain why he was keeping track of Tri-State’s renewal applications. Id. at 33.

Khan was also ignorant of the details of Tri-State’s finances. She testified that she was not aware that any Tri-State checks to the Commission had bounced. Id. at 33-34. Additionally, Khan admitted that she did not sign the application fee check dated March 29, 2015, which was submitted with the Instant Application; nor did she recognize the signature. See Khan Tr. at 46-47. In sum, Khan appeared to have little understanding of significant aspects of the business that she claims to operate independently.

⁵ Khan agreed that the handwriting on the April 1, 2015 facsimile cover sheet from Rutigliano to the Commission appeared similar to that on the certification page included with the Instant Application. See Khan Tr. at 42.

IV. Basis for Denial

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a ground for denial of 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); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). As discussed above, the Applicant provided false and misleading information to the Commission in applications, other submissions, and sworn testimony about who is involved in the operations and management of the company. Although Khan disclosed herself as the sole principal of the company, clearly Rutigliano (who has never been disclosed as having any affiliation to the Applicant in any of its applications) plays a significant role in Tri-State that raises him to the level of principal. In fact, based on the Commission's staff's investigation, it is likely that Rutigliano is actually running the company's operations.

1. The Applicant provided false and misleading information on its applications to the Commission.

Schedule A of the Trade Waste Broker Registration Renewal Application seeks all information about the principals of the Applicant. "Principal" is defined as "every officer and director and every stockholder holding ten percent or more of the outstanding shares of a corporation ... and all persons participating directly or indirectly in the control of such business entity." Admin. Code § 16-501(d).

The Instant Application, certified as true by Khan, disclosed Khan as the sole owner and officer of the Applicant business. See Instant Application at 13. There is no mention of Rutigliano in the Instant Application, even as a mere employee. Yet, the evidence establishes that Rutigliano is actually a principal of Tri-State: he has direct control over the operations of the company. Rutigliano has extensive experience in the trade waste industry. Moreover, he has held himself out to the Commission and others in the trade waste industry as a representative of the Applicant. In fact, in one instance, he identified himself as Tri-State's president. Likely, the Applicant concealed Rutigliano's involvement in the company because it sought to shield its assets from Rutigliano's creditors, in particular his ex-wife. By failing to disclose Rutigliano's involvement in the company, the Applicant misled the Commission and Rutigliano's creditors, including his own family. Such behavior demonstrates a lack of good character, honesty and integrity.

Thus, the statement on the Instant Application that Khan is the only principal of Tri-State Environmental is false and misleading. The Applicant has not refuted this point. The failure to truthfully disclose the principals of the Applicant demonstrates that Tri-State lacks good character, honesty and integrity. Accordingly, the Commission denies Tri-State's Instant Application based on this independently sufficient ground.

2. The Applicant's principal provided false and misleading information during sworn testimony.

Khan provided false and misleading testimony under oath before the Commission regarding several issues. As discussed above, Khan testified that she formed Tri-State on her own

and that she is the sole principal of the business. Additionally, she testified that Rutigliano “doesn’t have any involvement” in the company, calling him merely a friend who consults for Tri-State without pay. The credible evidence demonstrates Khan’s testimony on this subject is clearly false. Not only is Rutigliano involved in Tri-State, he likely is running the company.

Khan’s own statements indicate that she is not involved in the operations of the business in any substantial way. First, she admitted that she did not sign the check submitted with the Instant Application. This is a clear indication that, although she disclosed no other principals or employees, someone else is signing checks for Tri-State. Second, Khan testified that she was unaware that any of the company’s checks bounced, even though each of the checks submitted with the last three renewal applications bounced. Khan’s lack of knowledge indicates that she certainly does not run the operations of Tri-State alone and, likely, not at all.

In contrast, Rutigliano has demonstrated that he is decidedly knowledgeable about the company. Rutigliano has had contact with the Commission’s staff on at least four occasions regarding various Tri-State applications. Those communications demonstrate Rutigliano’s familiarity with the company’s applications. Moreover, the phone number that Rutigliano used in communicating with the Commission is the same as Tri-State’s phone number. And Rutigliano uses an email address that expressly references Tri-State, unlike Khan, who uses a generic Yahoo address. Rutigliano has even held himself out as president of Tri-State in his dealings with other trade waste businesses.

The evidence demonstrates that Khan, the Applicant’s sole-disclosed principal, has provided false testimony to the Commission. The Applicant has not disputed this point. Khan’s false sworn statements demonstrate that the Applicant lacks the good character, honesty, and integrity required to participate in the trade waste hauling industry. Accordingly, the Commission denies the Instant Application on this independently sufficient basis.

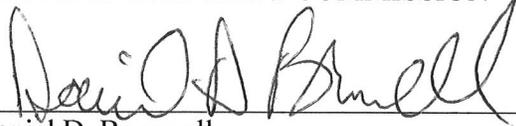
V. Conclusion

The Commission is vested with broad discretion to refuse to grant a trade waste broker registration to any applicant who it determines to be lacking in good character, honesty and integrity. The record in this matter demonstrates that the Applicant lacks those qualities. Accordingly, the Commission denies the Instant Application for the two independently sufficient reasons set forth herein.

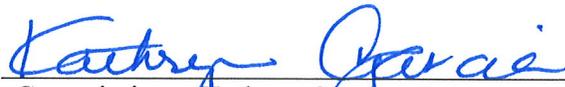
This denial decision is effective immediately. Tri-State Environmental may not operate as a trade waste broker in the City of New York.

Dated: March 31, 2017

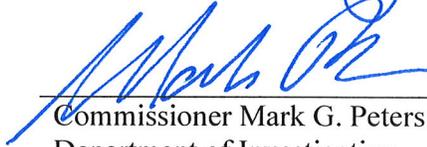
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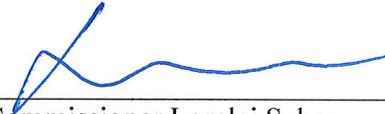
Daniel D. Brownell
Commissioner and Chair



Commissioner Kathryn Garcia
Department of Sanitation



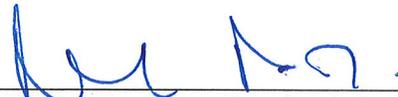
Commissioner Mark G. Peters
Department of Investigation



Commissioner Lorelei Salas
Department of Consumer Affairs



Deputy Commissioner Andrew Schwartz
(Designee)
Department of Small Business Services



Deputy Inspector Dominick Dorazio
(Designee)
New York City Police Department