

**Absolute Trucking Inc. v City of New York**

2012 NY Slip Op 31039(U)

April 12, 2012

Sup Ct, NY County

Docket Number: 103233/11

Judge: Doris Ling-Cohan

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**SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY**  
**PRESENT: Hon. Doris Ling-Cohan, Justice** **Part 36**

**ABSOLUTE TRUCKING INC., LEONID BRENMAN,**  
**and PAVEL KOGAN,**

**Petitioners,**

**-against-**

**THE CITY OF NEW YORK BUSINESS INTEGRITY**  
**COMMISSION and MICHAEL J. MANSFIELD**  
**COMMISSIONER/CHAIR,**

**Respondents.**

**INDEX NO. 103233/11**

**MOTION SEQ. NO. 002**

**FILED**

**APR 18 2012**

**NEW YORK**  
**COUNTY CLERK'S OFFICE**

**The following papers, numbered 1-9 were considered on this Article 78 and cross-motions to dismiss and for an extension of time to serve:**

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Order to Show Cause, — Affidavits __ Notice of Petition	<u>1, 2, 3</u>
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____ (memo) _____	<u>9</u>
Cross-Motion: [ X ] Yes [ ] No	<u>4, 5, 6, 7, 8</u>

**Upon the foregoing papers, it is ordered that this Article 78 proceeding and the cross-motions are decided as indicated below.**

Petitioners first sought relief in this proceeding by order to show cause (OSC) dated March 16, 2011, which was not signed. Petitioners filed a second OSC, dated June 23, 2011. In a decision dated June 23, 2011, this Court declined to sign Petitioners' OSC. Petitioners Absolute Trucking Inc. (Absolute Trucking), Leonid Brenman, and Pavel Kogan (collectively the "Petitioners"), now move by notice of petition seeking an order pursuant to Article 78 of the CPLR: (i) compelling respondents the City of New York Business Integrity Commission (BIC) and Michael Mansfield Commissioner/Chair (collectively the "Respondents), to accept Petitioners' withdrawal of its application for relicensing to

remove, collect or dispose of trade waste and/or removal of waste materials resulting from building, demolition, construction, alteration, or excavation; and (ii) permanently enjoining Respondents from taking any action regarding relicensing of Absolute Trucking, to seal Respondents' investigation regarding the relicensing of Absolute Trucking, to forbid respondent BIC to disseminate any information obtained by its investigation, and to enjoin Respondents from using any and all authorizations obtained from Petitioners in seeking their relicensing.

### BACKGROUND

The facts of this case are not in dispute. Petitioner Absolute Trucking applied for a registration as a business solely engaged in the removal of waste materials resulting from building, demolition, construction, alteration, or excavation for a period of two years, which was granted by Respondents. Absolute Trucking had to periodically renew its license through petitioner Leonid Brenman, President and 50% shareholder of Absolute Trucking, and petitioner Pavel Kogan, Vice President and 50% shareholder of Absolute Trucking. Respondent BIC is a law enforcement and regulatory agency responsible for the licensing, registration and regulation of the businesses that remove, collect or dispose of trade waste, including construction and demolition debris in New York City. BIC conducts an extensive investigation into an applicant and its principals and employees to determine whether to grant a registration.

In 2009, Petitioners filed a renewal application with BIC which permitted Absolute Trucking to lawfully operate. As part of the renewal application, Petitioners provided releases to BIC waiving confidentiality and authorizing the release of private information to facilitate BIC's investigation into the applicants. On February 16, 2011, petitioner Leonid Brenman, on behalf of Absolute Trucking, surrendered Petitioners' trade waste license plates and registration permit and informed BIC that Petitioners were withdrawing their application for relicensing. BIC, by letter dated February 22, 2011

(BIC Determination), acknowledged receipt of Petitioners' license plates and registration permit but rejected Petitioners' withdrawal of its application for relicensing. Petitioners commenced this proceeding to challenge the BIC Determination. Thereafter, Respondents cross-moved to dismiss and Petitioners cross-moved for an extension of time to serve Respondents.

### DISCUSSION

In seeking dismissal of this proceeding, Respondents maintain that this court lacks personal jurisdiction and that Petitioners failed to state a cause of action. Specifically, Respondents argue that Petitioners lack standing to bring this action as Petitioners have not suffered an injury in fact. "To have standing to challenge a governmental action, a party must show injury in fact, such that he will actually be harmed by the challenged administrative action. ...[T]he injury must be more than conjectural." *McAllan v NYS Dep't of Health*, 60 AD3d 464, 464 (1<sup>st</sup> Dep't 2009). See also *Matter of Bradford Central School Dist. v Ambach*, 56 NY2d 158, 164 (1982), *Citizens Emergency Committee to Preserve Preservation v Tierney*, 70 AD3d 576, 576 (1<sup>st</sup> Dep't 2010). The injury must have already happened or be imminent rather than speculative. *Rent Stabilization Assoc. of NYC, Inc. v Miller*, 15 AD3d 194, 194 (1<sup>st</sup> Dep't 2005). As explained further below, Petitioners have failed to establish an injury resulting from the BIC Determination.

Petitioners, in their cross-motion, claim an injury based on an alleged violation of their constitutional rights under the New York Constitution, Article 1, Section 12, and the 4<sup>th</sup> Amendment of the US Constitution; both granting people the right to be secure in their persons and free from searches and seizures. The 4<sup>th</sup> Amendment of the US Constitution serves to "safeguard the privacy and security of individuals against arbitrary invasions by government officials." *Camara v Municipal Court of the City and County of San Francisco*, 387 US 523, 528 (1967). Here, Petitioners have not been subject to an unreasonable search and seizure within the meaning of the New York or US constitutions. Petitioners

voluntarily submitted an application for the renewal of their license and now seek withdrawal of such application. Even assuming that the review of such application, and the resulting investigation of the applicant, constitutes a search, it is clear that Petitioners consented to the alleged search and seizure, by submission of the application.

Further, Respondents correctly argue that the BIC investigation is ongoing, and no adverse decision has been rendered against Petitioners. The BIC maintains broad authority to investigate matters related to the trade waste industry. *See Sindone v City of New York*, 2 AD3d 125, 126 (1<sup>st</sup> Dep't 2003). Respondents allege that, during the course of its investigation, evidence emerged that Petitioners are associated with organized crime, and Petitioners' request to withdraw their application was merely an attempt to stop the ongoing investigation and avoid a potential adverse finding which has not been rendered. Thus, Petitioners have suffered no injury in fact from the BIC Determination, and therefore, lack standing to bring this proceeding.

Moreover, this Court, in its decision dated June 23, 2011, declined to sign Petitioners OSC on several grounds, including "that [P]etitioners seek to enjoin a law enforcement agency's investigation and prevent the law enforcement agency from disseminating the findings of its investigation without citing to any law." Decision/Order, dated June 23, 2011. The Court notes that Petitioners have again failed to cite to any legal authority in support of their claim that, under such facts, a law enforcement agency may be enjoined from further investigation and prevented from disseminating the findings of such investigation. As such, Respondents' cross-motion to dismiss is granted and Petitioners' petition dismissed.

As this Court has already determined that Petitioners lack standing to bring this Article 78 proceeding, it need not address Petitioner's cross-motion for an extension of time to serve Respondents, as it is moot.

Accordingly, it is

ORDERED that Respondents' cross-motion to dismiss is granted; and it is further

ORDERED that the petition is dismissed; and it is further

ORDERED that within 30 days of entry of this order Respondents shall serve a copy upon all  
Petitioners with notice of entry.

This constitutes the decision of this Court.

Dated: 4/12/12

  
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DORIS LING-COHAN, J.S.C.

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Check if Appropriate:  DO NOT POST

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