

**Matter of River Produce Corp. v Business Integrity
Commn. of the City of N.Y.**

2012 NY Slip Op 31323(U)

May 14, 2012

Supreme Court, New York County

Docket Number: 113436/2011

Judge: Alexander W. Hunter Jr

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: ALEXANDER W. HUNTER JR
Justice

PART 33

Index Number : 113436/2011
RIVER PRODUCE CORP.
vs.
BUSINESS INTEGRITY COMMISSION
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1-7
Answering Affidavits — Exhibits _____ No(s). 8-25
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, It is ordered that this motion is

See memorandum decision and judgment annexed hereto.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 5/14/12

AWH, J.S.C.
ALEXANDER W. HUNTER JR

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33

-----X

In the Matter of the Application of
River Produce Corp.,

Index No: 113436/2011

Petitioner,

Decision and Judgment

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

-against-

The Business Integrity Commission of the City
of New York, and Michael J. Mansfield, its
Chairman,

UNFILED JUDGMENT
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appear in person at the Judgment Clerk's Desk (Room
141B).

Respondents.

-----X

HON. ALEXANDER W. HUNTER, JR.

The application by petitioner for an order pursuant to C.P.L.R. Article 78, annulling and vacating respondent the Business Integrity Commission of the City of New York's ("BIC") decision issued on August, 2, 2011 to deny its application for registration to operate as a wholesale business in the New York City Terminal Produce Cooperative Market at Hunts Point ("Hunts Point"), is denied and the proceeding is dismissed, without costs and disbursements to either party.

Petitioner River Produce Corp. ("River Produce") was started in 2005 and is in the business of distributing salads to retailers and wholesalers. Vincent J. Bondi ("Bondi") is the sole principal/owner and president of River Produce. On or about October 13, 2009, petitioner filed with the BIC¹ a Wholesale Business Registration Application to operate its business at Hunts Point. The application was signed by Bondi. As part of the application, Bondi summarized his criminal history.

From 1971 to 1983, Bondi was convicted of various crimes, including petit larceny, criminal possession of a stolen credit card, unauthorized use of a motor vehicle, promoting gambling, and possession of gambling records. In 1982, Bondi pled guilty to the misdemeanors of promoting gambling and possession of gambling records. In 1983, he pled guilty to the misdemeanors of promoting gambling and possession of gambling records. On August 26, 2002, Bondi pled guilty in the U.S. District Court for the Southern District of New York to conspiracy

¹ Respondent BIC is charged with the registration and licensing of wholesale businesses located or operating within a public wholesale market.

to make an extortionate loan of credit. He was sentenced to twenty four months in prison, three years of supervised release, and ordered to pay a fine in the amount of \$25,000.00.

On August 25, 2010, Bondi appeared at a deposition in connection with petitioner's application before the BIC. On February 16, 2011, the BIC staff recommended the denial of petitioner's application. By letter dated March 14, 2011, petitioner's counsel objected to the BIC staff's recommendation. On August 2, 2011, the BIC issued its final decision and found that River Produce lacks the requisite good character, honesty, and integrity to register.

Petitioner asserts that the BIC's decision was affected by an error law, is arbitrary and capricious, or was an abuse of discretion. Petitioner argues that some of the BIC's findings are irrational, speculative, and wholly unsupported by any evidence in the record. Petitioner takes issue with the BIC's finding that: "Vincent Bondi is an associate of the Genovese crime family." Bondi has repeatedly denied that he is or has ever been an associate of the Genovese or any other organized crime family. River Produce also maintains that respondents have failed to present any evidence supporting Bondi's alleged association with members of any organized crime family since his release from prison.

Petitioner claims that the BIC's finding that: "Applicant has associated with organized crime figures and a convicted racketeer" is irrational, arbitrary, and capricious. Petitioner argues that this assertion is based upon its employment of John Donnadio, a convicted racketeer and associate of the Luchese crime family. Petitioner contends that in light of the evidence of his rehabilitation and good conduct since 2002, this association between Vincent Bondi and John Donnadio should not be given weight. Moreover, the probation officers responsible for Bondi's and John Donnadio's probation approved of the two men working together in business ventures.

Petitioner also argues that respondent's decision is violative of Correction Law Article 23-A because the BIC failed to properly consider the factors enumerated in Correction Law § 753. River Produce asserts that Bondi's criminal history involves largely minor convictions before his federal conviction in 2002, and he has presented evidence of his rehabilitation and good conduct since that time. Furthermore, petitioner contends that Bondi's federal conviction is unrelated to the activities, duties, and skills that are necessary for the sale of produce in a public market.

Respondents assert that the BIC denied the application based upon Bondi's extensive criminal history involving crimes going directly against petitioner's good character, integrity, and honesty. Respondent BIC's determination was based on four independently sufficient grounds: 1) Bondi's numerous criminal convictions; 2) Bondi's association with the Genovese crime family; 3) Bondi's racketeering conviction; and 4) Bondi's association with organized crime figures and a convicted racketeer. Respondents argue that the BIC considered testimony and documentation provided by Bondi, federal criminal proceedings, information from law enforcement authorities and the eight enumerated factors in Correction Law § 753 when making its final determination.

Local Law 28 is codified as amended at Administrative Code of the City of New York § 22-251 *et seq.* Local Law 28 requires food wholesalers and businesses located in public wholesale markets to register with the BIC. Administrative Code § 22-259 provides that the BIC may refuse to register an applicant who lacks good character, honesty, and integrity. The BIC is also expressly authorized to consider the commission of crimes by an applicant or any of its principals which would provide a basis to deny a license under Correction Law Article 23-A, racketeering offenses, and the association with any member or associate of an organized crime group. **See, Administrative Code § 22-259(b).**

Correction Law § 752 prohibits public agencies or private employers from denying a license or employment to an applicant based solely on his or her status as an ex-offender. However, there are two exceptions to this general rule either: 1) where there is a direct relationship between the prior criminal offense and the license or employment being sought; or 2) where the granting of the license or employment would pose an unreasonable risk to property, safety of specific individuals or the general public. **Correction Law §§ 752(1) and (2).** In making its determination, an employer must consider the following eight factors: 1) the public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses; 2) the specific duties and responsibilities necessarily related to the license or employment sought or held by the person; 3) 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 or responsibilities; 4) the time which has elapsed since the occurrence of the criminal offense or offenses; 5) the age of the person at the time of occurrence of the criminal offense or offenses; 6) the seriousness of the offense or offenses; 7) any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct; and 8) the legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public. **Correction Law § 753.**

It is well settled that a determination is arbitrary and capricious when it is made "without sound basis in reason and is generally taken without regard to the facts." **See, Matter of Pell v. Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d 222, 231 (1974).** "Even though the court might have decided differently were it in the agency's position, the court may not upset the agency's determination in the absence of a finding, not supported by this record, that the determination had no rational basis." **Matter of Mid-State Mgt. Corp. v. New York City Conciliation and Appeals Bd., 112 A.D.2d 72, 76 (1st Dept. 1985).** Therefore, this court's role is limited to whether or not respondents' final determination was made without a rational basis.

In the case at bar, this court finds that there was a rational basis for respondents to deny petitioner's application for registration to operate as a wholesale business at Hunts Point. The BIC found that Vincent Bondi's lengthy criminal history provided substantial evidence that he lacked good character, honesty, and integrity. The crimes for which Bondi was convicted, promoting gambling, possession of gambling records, and conspiracy to make extortionate

extensions of credit, are directly related to the purpose for registering with the BIC, namely the elimination of organized crime and other forms of corruption at public wholesale markets. Not only did the BIC rationally conclude that Bondi was an associate of the Genovese crime family, but it also found that he associated with organized crime figures and a convicted racketeer evidenced by dealings with Joe Guiliano, an associate of the Genovese crime family, and John Donnadio, an associate of the Luchese crime family.

Respondents also considered all eight factors and balanced the positive factors against the negative factors when making its determination. See e.g., Matter Acosta v. New York City Dept. of Educ., 16 N.Y.3d 309 (2011); Matter of Arrocha v. Board of Educ. of City of N.Y., 93 N.Y.2d 361 (1999); Matter of Bonacorsa v. Van Lindt, 71 N.Y.2d 605 (1988). Ultimately, the BIC found that petitioner's evidence of rehabilitation and good conduct since his release from prison was insufficient in light of the seriousness of his criminal offenses as it relates to the registration. Annuling respondents' determination would require a reweighing of the factors and that is beyond the limits of judicial review.

Accordingly, it is hereby,

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs and disbursements to either party.

Dated: May 14, 2012

ENTER:



J.S.C.

UNFILED JUDGMENT

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