

**All City Interior Contr., Inc. v City of New York Bus.
Integrity Commn.**

2012 NY Slip Op 31888(U)

July 16, 2012

Supreme Court, New York County

Docket Number: 112381/2011

Judge: Doris Ling-Cohan

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

DORIS LING-COHAN

PRESENT: _____

PART 36

DORIS LING-COHAN

Justice

Index Number : 112381/2011
ALL CITY INTERIOR CONTRACTING
vs.
CITY OF NEW YORK BUSINESS
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this ~~motion to~~ Article 78 proceeding

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1, 2

Answering Affidavits — Exhibits _____ | No(s). 3

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this ~~motion to~~ petition is denied and this Article 78 proceeding is dismissed in accordance with the attached memorandum decision dated 7/16/12, as is related case, AC

Carting of New York & the NYC Business Integrity Comm'n, Index No. 112380/11.

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

FILED

JUL 18 2012

NEW YORK COUNTY CLERK'S OFFICE

Dated: 7/16/12

_____, J.S.C.
DORIS LING-COHAN

- 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 : TAS PART 36

-----X
Application of
All City Interior Contracting, Inc.,

FILED

Petitioner,

JUL 18 2012

For a Judgment Pursuant To
CPLR Article 78

NEW YORK Index Number:
COUNTY CLERK'S OFFICE 112381/2011

-against-

The City of New York Business
Integrity Commission, Michael J.
Mansfield, Commission Chair,

Motion Seq.
No: 001

Respondents.

-----X
Doris Ling-Cohan, J.:

Petitioner brings this proceeding to set aside a determination (the Determination) of the City of New York Business Integrity Commission (the Commission) dated August 2, 2011 that denied petitioner's application for a license to operate a trade waste business.

Underlying Facts and Procedural Background

Petitioner alleges that it is an interior demolition company and that John Rodopolous (Rodopolous) is its secretary-treasurer and 90% owner (petition, ¶ 1). It states that its initial application for permission to the Commission to haul trade waste was granted on June 1, 2003 and it received its first renewal on December 19, 2005, and that it subsequently was granted a second renewal (*id.*, ¶¶ 1, 3). It further states that, on May 1, 2009, it applied for another renewal, but that on August 2, 2011, the

Commission issued the Determination, denying petitioner's application for a license to operate a trade waste business (*id.*, ¶ 3).

Petitioner asserts that, while Rodopolous was indicted in the United States District Court for the Eastern District of New York for illegal gambling and conspiracy to commit illegal gambling, this indictment was dismissed and Rodopolous ultimately pleaded guilty in Supreme Court, Kings County to a Class A misdemeanor of promoting gambling in the second degree, without any admission of association with organized crime (*id.*, ¶¶ 5-8). It further states that the Commission erred in finding that Rodopolous was an undisclosed principal of A.C. Carting, whose president and alleged sole principal was Dennis Santiago (Santiago), since Santiago is Rodopolous's brother-in-law and he was employed by petitioner in the 5 years prior to A.C. Carting's application to the Commission for a permit to operate a trade waste business (*id.*, ¶¶ 9-10). Petitioner contends that, in making inferences from these relationships, the Determination was arbitrary and capricious and should, therefore, be set aside.

Respondents note that Rodopolous's indictment named him as an associate of the Luchese Organized Crime Family, and that A.C. Carting's application shortly after Rodopolous's indictment, combined with Santiago's prior employment with petitioner and his family ties and association with Rodopolous, raised questions as

to A.C. Carling's relationship to petitioner (Answer, ¶¶ 49, 55-57). In essence, the Commission chose not to believe the petitioner's evidence, including Santiago's testimony, that there was no relationship between the two companies and, instead, it found that they were acting "in a manner designed to obscure and minimize their clear connections to organized crime" (Determination, at 12), that Rodopolous was, in fact, an undisclosed principal of A.C. Carling (*id.* at 14-15) and that they, therefore, had failed to show that they had the "good character, honesty and integrity" necessary to warrant granting a registration to operate a trade waste business (*id.* at 18).

Arbitrary and Capricious

In reviewing an administrative agency's determination as to whether it is arbitrary and capricious under CPLR Article 78, the test is whether the determination "is without sound basis in reason and ... without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]; *Matter of Kenton Assoc. v Division of Hous. & Community Renewal*, 225 AD2d 349 [1st Dept 1996]). The court may not weigh conflicting choices by the administrative agency, if the agency's determination has a basis in reason (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *aff'd* 11 NY3d 859

[2008]).

The court notes that Administrative Code of the City of New York, Title 16-A, which established the Commission and set forth standards for regulation of the trade waste industry, was enacted to "overhaul ... [the] regulatory scheme governing commercial waste removal [in recognition that it] was an area dominated by organized crime" (*Grasso Pub. Carting v Trade Waste Commn. of City of N.Y.*, 250 AD2d 454, 455 [1st Dept 1998]). The Commission's decision as to whether to grant a license in this area is "not a ministerial act" (*Matter of Breeze Carting Corp. v City of New York*, 52 AD3d 424, 424 [1st Dept 2008]). Rather, this decision is "discretionary" (*Matter of DeCostole Carting v Business Integrity Commn. of City of N.Y.*, 2 AD3d 225, 225 [1st Dept 2003], *app dismissed* 2 NY3d 759, *leave denied* 3 NY3d 605 [2004]).

The Commission did not have to accept Santiago's testimony as truthful and it had a rational basis for the findings in the Determination that Rodopolous had organized crime affiliations and had committed racketeering activities. The Commission also had a rational basis to conclude that, A.C. Carting was, in substance, being used as a front for petitioner, that false information was submitted on behalf of petitioner's and A.C. Carting's applications and that, accordingly, petitioner had failed to demonstrate the requisite good character, honesty and

integrity to warrant granting of the license to operate a trade waste business (Determination, at 7-18; *DeCostole*, 2 AD3d at 225; *Matter of Sindone v City of New York*, 2 AD3d 125, 126 [1st Dept. 2003]; *Matter of Hollywood Carting Corp. v City of New York*, 288 AD2d 71, 71-72 [1st Dept. 2001]). Since "a rational basis exists [for the Commission's Determination], a court may not substitute its judgment for that of the agency ... ; indeed, an agency's determination, acting pursuant to legal authority and within its area of expertise, is entitled to deference" (*Matter of Tockwollen Assoc. v New York State Div. of Hous. & Community Renewal*, 7 AD3d 453, 454 [1st Dept. 2004]). "[E]ven if different conclusions could be reached ..., a court may not substitute its judgment for that of the agency [if there is a rational basis for the Determination]" (*Partnership 92 L.P. v State Div. of Housing and Community Renewal*, 46 AD3d at 429; see also *Awl Indus., Inc. v Triborough Bridge & Tunnel Auth.*, 41 AD3d 141, 142 [1st Dept. 2007]). Accordingly, the petition must be dismissed.

Order

It is, therefore,

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed; and it is further

ORDERED that within 30 days of entry of this order, respondents shall serve a copy upon petitioner, with notice of

FILED

JUL 18 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

entry.

Dated: July 16, 2012


Doris Ting-Cohan, J.S.C.

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