

**Matter of Breeze Carting Corp. v City of New York**

2008 NY Slip Op 30971(U)

April 1, 2008

Supreme Court, New York County

Docket Number: 0107859/2007

Judge: Edward H. Lehner

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EDWARD H. LEHNER  
*Justice*

PART 19

BREEZE CARTING CORP.

- v -

THE CITY OF NEW YORK

INDEX NO.

107859/07

MOTION DATE

11/2/07

MOTION SEQ. NO.

001

MOTION CAL. NO.

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

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

\_\_\_\_\_ motion is decided in accordance

with accompanying memorandum decision

**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 1478).

Dated: APR 01 2008

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 19

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In the Matter of the Application of  
BREEZE CARTING CORP.,

Petitioner,

Index No.  
107859/07

-against-

THE CITY OF NEW YORK, THOMAS  
McCORMACK, individually and as Chairman of  
the New York City Business Integrity Commission,  
and THE CITY OF NEW YORK BUSINESS  
INTEGRITY COMMISSION,

Respondents.

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EDWARD H. LEHNER, J.:

Petitioner moves to vacate the decision dated May 8, 2007 (the "Revised Decision") that denied petitioner's application "for a registration to operate as a trade waste broker." Respondent New York City Business Integrity Commission (the "Commission") denied the application based upon the conviction of petitioner's president, Toby Romano, of a federal felony; Romano's association with organized crime; petitioner's rejection of monitoring; and petitioner's failure to pay certain taxes and fines (Revised Decision at p. 2).

Petitioner initially filed an application for exemption from licensing on August 30, 1996 with the New York City Trade Waste Commission (now known

as the Commission) (Exhibit A), and later submitted a questionnaire to the Commission (Exhibit B). The Commission granted approval "conditioned upon the appointment of a single monitor to oversee the operations of (petitioner and another company) during the initial two-year registration period" (letter of Jack Laudon dated February 10, 2005), but petitioner rejected the monitor. The Commission staff recommended rejection of the application based upon Romano's criminal conviction and association with organized crime. After additional submissions by petitioner, the Commission ultimately rejected petitioner's application.

Petitioner asserts that if the statements in the application are found to be "true and complete," the Commission "must ministerially issue the registration" (tr. p. 17), and that if the application accurately states a criminal conviction by a principal of petitioner, it cannot be turned down (*id.* p. 18). On this issue the court in *Edcia Corporation v. McCormack*, 44 AD3d 991 (2<sup>nd</sup> Dept. 2007), wrote:

"In 1996, the City of New York enacted Local Law No. 42 (Administrative Code of City of New York title 16-A) to fully regulate the waste carting business to deter infiltration of the business by organized crime... Under Local Law No. 42, all businesses removing trade waste from commercial establishments, including those businesses which had been previously licensed, were required to obtain a license from the New York City Trade Waste Commission, now the defendant City of New York Business Integrity Commission .... (pp. 991-992).

"The plaintiff contends that the granting of an exemption was 'automatically required' upon the filing of its application with the BIC. An application for an exemption, however, is not a ministerial act and there is no clear legal right to such relief .... Contrary to the plaintiff's contention, the defendants are empowered to review, investigate, and, if warranted, deny the application." (p. 994)

The Commission "was not precluded from investigating the accuracy of the information provided by petitioners in their application" [Matter of Attonito v. Maldonado, 3 AD3 415, 418 (1<sup>st</sup> Dept. 2004)]. In reviewing whether the refusal "to grant a carting license where (the Commission) has found that the applicant 'lacks good character, honesty and integrity' ... (the Court reviews whether) respondent ... (acted) arbitrarily and capriciously, or irrationally in denying petitioner a license" [Tocci Brothers, Inc. v. Trade Waste Commission of the City of New York, 251 AD2d 160 (1<sup>st</sup> Dept. 1998)].

Here, the Commission relied upon: Romano's criminal conviction for bribery, upheld on appeal, [United States v. Romano, 879 F 2d 1056 (2<sup>nd</sup> Cir. 1989)] (Revised Decision at p. 8); its finding that Romano's "identification ... as a Luchese associate (in testimony in a 1992 Federal racketeering trial), taken together with his criminal history, forms a substantial basis to conclude that the Applicant lacks good character, honesty and integrity" (Id. p. 11); the rejection by the Applicant of an independent monitor (Id. p. 18); that the Applicant has a total 57 civil judgments, of which 52 are wholly unsatisfied (Id. p. 18-19) and 13

administrative fines imposed by the Department of Environmental Protection of which 12 are unsatisfied (Id. p. 19); and the giving of false information, especially as to Romano's criminal history and associations with organized crime (Id. p. 22-23).

Based on the foregoing, the court concludes that the Commission's determination cannot be said to be arbitrary or capricious, or lack a rational basis, and is therefore upheld. Accordingly, the petition is dismissed.

This decision constitutes the order and judgment of the court.

Dated: April 1, 2008

  
\_\_\_\_\_  
J.S.C.