

**Matter of Pure Earth, Inc. v New Yor City Bus.  
Integrity Commn.**

2011 NY Slip Op 32851(U)

October 5, 2011

Supreme Court, New York County

Docket Number: 113998/10

Judge: Emily Jane Goodman

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

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

EMILY JANE GOODMAN

DECEMENT.

PART 17

Index Number : 113998/2010

PURE EARTH, INC.

vs

NEW YORK CITY BUSINESS

Sequence Number : 001

ARTICLE 78

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

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

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

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

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

PAPERS NUMBERED  
**FILED**  
OCT 12 2011

Cross-Motion:  Yes  No

NEW YORK  
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that this motion

*Parties is  
decided for a Stated Interim  
Decision*

Dated: 10/5/11

*[Signature]*  
\_\_\_\_\_  
EMILY JANE GOODMAN 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: PART 17

-----X

In the Matter of the Application of  
PURE EARTH, INC., and JUDA CONSTRUCTION,  
LTD.,

Petitioners,

For a Judgment Pursuant to CPLR Article  
78

Index No. 113998/10

-against-

NEW YORK CITY BUSINESS INTEGRITY  
COMMISSION

**FILED**

OCT 12 2011

Respondent.

NEW YORK  
COUNTY CLERK'S OFFICE

-----X

Emily Jane Goodman, J.S.C.

In this Article 78 proceeding, petitioners Pure Earth, Inc. (Pure Earth) and Juda Construction, Ltd. (Juda), apply to set aside the determinations of respondent New York City Business Integrity Commission (BIC) (1) that Juda is not entitled to an exemption from the business of trade waste removal; and (2) directing the businesses which BIC regulates not to do business with petitioners or their principals, an action petitioners liken to "blacklisting." Verified Petition, at 4.

**I. Background**

BIC was created by Local Law 42 to oversee, among other

things, the trade waste business.<sup>1</sup> BIC is "responsible for the licensing, registration and regulation of businesses that remove, collect or dispose of trade waste" (New York City Administrative Code (NYC Code) § 16-503), that is, as distinguished from waste from private residences. BIC is charged with the establishment of "standards for the issuance, suspension and revocation of licensed and registration authorizing the operation of businesses engaged" in the trade waste removal business. NYC Code § 16-504

(a). In furtherance of this mandate, BIC is authorized to:

investigate any matter within its jurisdiction conferred by this chapter and to have full power to compel attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to the investigation.

NYC Code § 16-504 (c). NYC Code § 16-509 states that BIC, "by majority vote of its entire membership and after notice and the opportunity to be heard, may refuse to issue a license to an applicant who lacks good character, honesty and integrity." The notice "shall specify the reasons for such refusal." *Id.* The regulation sets forth the basis upon which such a finding may be made, including the failure to provide "truthful information in connection with the application" and proof of behavior involving criminal activity. NYC Code § 16-509 (a).

---

<sup>1</sup>BIC was previously part of the City of New York Organized Crime Control Commission, and was renamed BIC in 2002.

An exclusion is contained in NYC Code § 16-505 (a) for businesses which remove trade waste arising from "building demolition, construction, alteration or excavation . . . ." Such businesses do not need to be licensed, but must apply instead for an exemption, in the form provided by BIC. *Id.* The application must "contain the information prescribed by rule of the commission and shall be accompanied by a statement by the applicant describing the nature of the applicant's business and listing all principals of such business." *Id.*

In June 2004, Juda, then known as Abernathy Trucking, applied to BIC for an exemption to the licensing requirements so that it could operate as a hauler of demolition and construction debris. At the time, Juda's principal was Nicholas Paniccia (Paniccia). BIC issued a two-year exemption, entitled a "Registration Order" (Respondent's Ex. H), to Juda, commencing September 2005.

The Registration Order contained various admonitions to Juda, requiring, among other things, that Juda not knowingly associate with any members of organized crime. Specifically, Juda was to limit its dealings with Joseph Attonito and Thomas Attonito, principals of Whitney Trucking, a business which had been previously found by BIC to be "lack[ing] good character, honesty and integrity." *Id.*, ¶ 8.

Juda was also instructed to employ a monitor, having the

authority to "monit[or] the good character, honesty and integrity" of Juda, with a detailed list of authorized powers. *Id.*, ¶ 15. Juda retained FJL Associates, LLC (FJL Associates) as its monitor.

According to BIC, FJL Associates uncovered evidence linking Thomas Attonito, and another individual, Christopher Uzzi (Uzzi), to the ownership of Juda, which Paniccia staunchly denies. Respondents detail numerous business dealings among Paniccia, Thomas and Joseph Attonito and Uzzi, dealings which, allegedly, would violate the Registration Agreement.

According to Juda, a company called PEM acquired Juda's stock in 2006. Around that time, Pure Earth acquired Juda's stock from PEM, becoming Juda's parent company.

Juda sought another two-year exemption from BIC in 2007. Juda received A Registration Renewal Order, dated August 31, 2007, allowing Juda to continue doing business as a trade waste hauler for 153 additional days, even though BIC had noted "several integrity issues that require further investigation." Respondent's Ex. AA,<sup>2</sup> Fifth Whereas Clause. This Registration Renewal Order required that Juda keep working with a monitor.

According to Juda, in November 2007, shortly after filing

---

<sup>2</sup>BIC's submissions do not actually have an Ex. AA, although they refer to such exhibits. They have an Ex. A following Ex. Z. The Exhibit is referred to here as Ex. AA for purposes of clarity.

for the exemption, Juda decided to leave the trade waste business entirely, citing "economic conditions in the marketplace."

Respondent's Ex. BB, Withdrawal Request Letter. Juda sold all of its trucks, handed in its licence plates for each truck, and asked to withdraw its application for an exemption. *Id.*

BIC accepted Juda's license plates in November 2007, despite the temporary renewal of the exemption. However, in a letter dated November 30, 2007 (November 2007 Letter) (Respondent's Ex. CC), BIC refused to accept the withdrawal of Juda's application, and proposed to continue to investigate, and process the application, with an eye towards those alleged "integrity issues." *Id.* The November 2007 Letter contains a list of discovery due dates for Juda to respond to various questions in its application, and indicated that Juda had to comply with those requests.

Pure Earth provided some responses to BIC's discovery request after Juda's alleged withdrawal. Respondent's Ex. X. Shortly thereafter, in December 2007, Pure Earth released FJL Associates as Juda's monitor, claiming that Juda no longer needed FJL Associates' services, having left the trade waste business.

On May 11, 2010, over two and a half years after the renewal application was purportedly withdrawn, BIC issued a recommendation that the application be denied to both Juda and Pure Earth. Respondent's Ex. FF, Recommendation. The

Recommendation is lengthy and detailed, but the gist is set forth up front, in which BIC states:

A. The Applicant failed to demonstrate eligibility for a trade waste registration as it violated the terms and conditions of its registration:

1. The Applicant terminated the monitor without the Commission's permission and consent;
2. The Applicant knowingly associated with convicted racketeers;
3. The Applicant maintained a prohibited business relationship with both Joseph Attonito and Thomas Attonito;
4. The Applicant failed to supplement its application materials and timely notify the Commission of material changes.

B. The Applicant lacks good character, honesty and integrity as its corporate President Christopher Uzzi, is a convicted racketeer.

C. The Applicant lacks good character, honesty and integrity as its Principals made false and misleading statements to the Commission.

*Id.*, at 2. The Recommendation, in calling for the denial of Juda's application, concluded that both Juda "and thereby Pure Earth Inc.[] lack[] good character, honesty and integrity." *Id.* at 18.

Juda and Pure Earth were given the opportunity to contest the Recommendation, which they did. Respondent's Ex. GG. However, on June 28, 2010, BIC voted to deny the application in a formal Decision (Respondent's Ex. A), for the reasons set forth in the Recommendation.

In a "Notice To All Licensed/Registered Companies," dated August 4, 2010 (Notice) (Respondent's Ex. HH), BIC informed the industry that 19 companies, among them, Juda, had recently been denied applications, and that:

BIC Licensees and Registrants are prohibited from employing or otherwise retaining the services of, or doing business with "any person or entity at any time after the Commission has issued a finding that said person or entity lacks good character, honesty or integrity, or that said person was a principal of an entity that lacks good character, honesty and integrity . . . ."

As the application had been made in Juda's name, Pure Earth was not mentioned, although BIC makes it clear in this proceeding that it considers that the prohibition applies to Pure Earth, too. Thus, Juda and Pure Earth claim to have been "blacklisted" in the industry of trade waste removal, even though Juda left that industry years ago, and Pure Earth claims that it never engaged in the business of trade waste removal.

## II. Petitioners' Arguments

Petitioners maintain that BIC acted arbitrarily in refusing to accept Juda's withdrawal of the application, and in addressing it at all, especially in the untimely way in which it allegedly did. Petitioners argue that a policy of addressing withdrawn applications would be considered a "rule" which must be promulgated under the City Administrative Procedure Act (CAPA), which would require that the policy be subject to public notice and scrutiny, a process which did not happen.

Petitioners next argue that BIC does not have the authority to rule that a company seeking an exemption (as opposed to a license) lacks "good character, honesty and integrity," but only has the power to rule that the applicant has "knowingly failed to provide the information and/or documentation required by the commission . . . ." NYC Code § 15-509 (b). Thus, it is argued that the Recommendation, Decision and Notice were all made in derogation of law.

Petitioners object to BIC's inclusion of Pure Earth in its condemnation of Juda. BIC's stance is based on its argument in the Decision that by Pure Earth's acquisition of Juda, in 2006, Pure Earth became the applicant under the 2005 Registration Order. However, petitioners maintain that BIC cannot bind Pure Earth to the Registration Order.

Finally, petitioners maintain that the Notice to the industry of Juda and Pure Earth's alleged lack of "good character, honesty and integrity" is unlawful, and argue, additionally, that the Notice, even if appropriate, should not apply to Pure Earth. Petitioners claim that BIC wants to put Pure Earth out of business, and has chosen an illegal way to do so.

### III. Discussion

Under Article 78 of the CPLR, "[i]t is well settled that a court may not substitute its judgment for that of the board or

body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion.'" *Matter of Arrocha v Board of Education of City of New York*, 93 NY2d 361, 363 (1999), quoting *Matter of Pell v Board of Education of Union Free School District No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 232 (1974); see also *Matter of Soho Alliance v New York State Liquor Authority*, 32 AD3d 363 (1st Dept 2006). An administrative decision can be overturned if it is "'taken without sound basis in reason'" or "'regard to the facts.'" *Matter of Wooley v New York State Department of Correctional Services*, 15 NY3d 275, 280 (2010), quoting *Matter of Pell*, at 231.

BIC first argues that petitioners do not have standing to bring this proceeding, because they cannot be said to have suffered any harm as a result of BIC's actions, because petitioners claim that Juda no longer has anything to do with the trade waste hauling business, and that Pure Earth never did. That is, they cannot be hurt by being barred from an industry in which they have no stake.

The question of standing is a "threshold determination." *Society of Plastics Industry, Inc. v County of Suffolk*, 77 NY2d 761, 769 (1991). "Generally, standing to challenge an administrative action turns on a showing that the action will have a harmful effect on the challenger and that the interest to

be asserted is within the zone of interest to be protected by the statute." *Matter of Gernatt Asphalt Products, Inc. v Town of Sardinia*, 87 NY2d 668, 687 (1996), citing *Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 10 (1975).

Petitioners provide the affidavit of Brent Kopenhaver (Kopenhaver), an officer of petitioners, in which he claims that petitioners have been harmed, and will continue to be harmed, in several ways, as a result of the alleged "blacklisting." Kopenhaver claims, among other things, that "[a] major government subcontract has been terminated on the sole stated ground that BIC issued an adverse decision concerning Pure Earth" and that "[a] private construction company has terminated its subcontract with a Pure Earth affiliate on the stated ground that BIC issued a determination referencing Pure Earth." *Id.* at 2. Kopenhaver states that Pure Earth has lost "roughly \$20 million" due to BIC's actions. *Id.*

BIC disputes the veracity of Kopenhaver's affidavit at every turn, and would have the court use Kopenhaver's alleged mendacity of further proof of petitioners' lack of good character, honesty and integrity. However, this court finds that Kopenhaver has set forth sufficient allegations of harm as to warrant a finding of standing on petitioners' part. This court notes that a finding by an administrative agency that a business lacks good character, honesty and integrity might have repercussions outside the

singular industry in which the assessment was made, and outside of BIC's jurisdiction, and thus, might cause harm to petitioners outside the carting industry, or outside the State of New York.

BIC's argument that this court should ignore Kopenhaver's affidavit in support of the petition is unavailing. Affidavits "may be used freely to preserve inartfully pleaded, but potentially meritorious, claims." *Thomas v Thomas*, 70 AD3d 588, 591 (1st Dept 2010), quoting *Rovello v Orifino Realty Co., Inc.*, 40 NY2d 633, 635 (1976); see also *AG Capital Funding Partners, L.P. v State Street Bank and Trust Co.*, 5 NY3d 582, 591 (2005) ("any deficiencies in the complaint may be amplified by supplemental pleadings and other evidence"). Petitioners' response to BIC's standing argument supplements any lack of information contained in the petition.

BIC next argues that petitioners raise arguments that they failed to raise at the administrative level, and therefore, cannot be raised here. Specifically, petitioners never argued below that BIC's policies of rejecting petitioners' attempt to withdraw the exemption application and BIC's prohibition against doing business with petitioners, are subject to the CAPA rule-making process. Further, BIC claims that petitioners never complained about administrative delay in bringing its investigation to a conclusion, and broadcasting its results to the industry.

Other arguments BIC claims did not come before it at the administrative level, and cannot now be a basis of overturning BIC's findings, are that BIC "had no authority under law to make the findings as to 'good character, honesty and integrity' of Juda and Pure Earth, that Juda's 2005 registration order did not bind Pure Earth, and that BIC's registration orders are contracts that must be filed with the New York City Comptrollers's office." BIC Memorandum of Law, at 25-26.

It is true, as BIC argues, that matters which a party failed to address at the administrative level may not be raised for the first time before the court on an Article 78 proceeding. *Matter of Peckham v Calogero*, 54 AD3d 27 (1st Dept 2008), *affd* 12 NY3d 424 (2009); *see also Matter of Yonkers Gardens Co. v State of New York Division of Housing and Community Renewal*, 51 NY2d 966 (1980). However, the issues which BIC dealt with below only involved the factual underpinnings of its decision and Notice. Petitioners very clearly state that they are not controverting the factual findings which BIC made concerning their alleged fraternization with racketeers. There was, however, no opportunity to raise an argument under CAPA, for instance, or to claim that the Registration Order was a contract which had to be registered pursuant to the New York City Charter § 328. No arguments raised here are barred by the arguments brought, or findings made, in the administrative proceeding below, and are

issues of law.

The court agrees with BIC's argument that the alleged delay in reaching a final determination of the exemption application is irrelevant to the present matter, as petitioners show no prejudice as a result of the delay. See *Matter of Louis Harris and Associates, Inc. v deLeon*, 84 NY2d 698, 702 (1994) ("the mere passage of time [in reaching an administrative determination] normally will not constitute substantial prejudice in the absence of some showing of actual injury ..."). Juda and Pure Earth were injured (if at all) by BIC's findings, not by any delay in issuing them.

Petitioners argue that BIC "promulgated a policy of refusing to deem withdrawn applications as 'withdrawn'" (Petitioners' Memorandum of Law, at 11), and that such a rule had to be promulgated according to CAPA as a "rule."

CAPA (New York City Charter, Chapter 45, section § 1041) defines "rule" as "the whole or part of any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency ... ." Section 1041 (5). This rule-making procedure "is mandated when an agency establishes precepts that remove its discretion by dictating specific results in particular circumstances." *Matter of DeJesus v Roberts*, 296 AD2d 307, 310 (1st Dept 2002). "[O]nly a fixed, general principle to

be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers constitutes a rule or regulation' that must be formally adopted." *Id.*, quoting *Matter of Roman Catholic Diocese of Albany v New York State Department of Health*, 66 NY2d 948, 951 (1985); see also *Matter of Ousmane v City of New York*, 22 Misc 3d 1136 (A), 2009 NY Slip Op 50468 (U) (Sup Ct, NY County 2009); *Matter of Gallo v Pataki*, 15 Misc 3d 824 (Sup Ct, Kings NY County 2007).

BIC argues that its decision to refuse the attempted withdrawal of Juda's application, and to continue to investigate, was a discretionary act, based on the fact that BIC's investigation thus far, and its experience with Juda (including the execution of, and action taken under, the Registration Order), had uncovered suspicious activity, requiring that the investigation be continued in order to protect the industry from possible later attempts by Juda, in one incarnation or another, to infiltrate the industry without sufficient investigation. The court agrees that BIC's refusal to accept Juda's withdrawal was discretionary, and was not an example of rulemaking subject to CAPA.

The court also finds that BIC's decision not to accept the withdrawal of Juda was not arbitrary and capricious. Although the issue is not well documented in New York, other jurisdictions

have found a reasonable basis for allowing for administrative agencies to continue investigations when requests for administrative licenses have been withdrawn. See e.g. *Simms v Napolitano*, 205 Ariz 500, 503, 73 P3d 631, 634 (Ariz App Div 1, 2003) (finding that "the power to deny withdrawal of an application may fairly be implied from the governing statutes"); *Perry v Vermont Medical Practice Board*, 169 Vt 399, 404, 737 A2d 900, 904 (1999) ("the statutory authority to issue or deny a medical license necessarily implies the discretionary authority to deny leave to withdraw a license application").<sup>3</sup>

Petitioners reason that the right to withdraw an exemption application differs from right to withdraw either a licence or registration application. The NYC Code does distinguish between licenses, registrations and exemptions. Licenses and registrations are required under NYC Code § 16-505. A license is meant for a party requesting to "operate a business for the purpose of collection of trade waste from the premises of a commercial establishment required to provide for the removal of

---

<sup>3</sup>Compare *RHPC, Inc. v Department of Health and Rehabilitative Services*, 509 So 2d 1267 (Fla App, 1st Dist 1987) (applicant had no right to reinstated hearing after agency accepted voluntarily dismissal of administrative hearing; agency without jurisdiction to reinstate application); *Humana of Florida, Inc. v Department of Health and Rehabilitative Services*, 500 So 2d 186 (Fla App, 1st Dist 1986) (intervener to administrative action had no right to appear in formal hearing which had been voluntarily dismissed by applicant, the agency having lost jurisdiction upon voluntary dismissal).

such waste . . . ." NYC Code § 16-505 (a). A person must register if he or she seeks to "remove, collect or dispose of trade waste that is generated in the course of operation of such person's business or to operate as a trade waste broker" (*id.*), both conditions irrelevant to the present matter.

Regardless, this court finds that Juda's right to withdraw its application for an exemption was governed, in part, by the existence of the Registration Order, and the Registration Renewal Order, which created a duty on Juda's part to comply with any of BIC's investigations into Juda's activities. As such, BIC had the right to deny the exemption, and continue its investigation. In this regard, there is no distinction between the denial of an application for a license and the denial of an exemption from a license (as here), as, with regard to the Registration Order, and Juda's past dealing with BIC, both actions require investigation by the agency into the worthiness of the applicant. Therefore, BIC had the right to continue to investigate Juda, and did not act in violation of the law in refusing to accept Juda's withdrawal of its application.

The court does not agree with petitioners that the Registration Orders were contracts which had to be registered with the Comptroller under New York City Charter, Chapter 13, §§

328, and 93,<sup>4</sup> so as to render them illegal. Chapter 13, by its title refers to "procurement" contracts, and section 328 refers to "vendor[s]" (section 328 [b] [iii]) and "contractor[s]" (section 328 [c]). The "scope" of Chapter 13 is found in section 310, which refers to contracts for "goods, services or construction to be paid for out of the city treasury ... ," implying, as BIC argues, that the registration requirement of section 328 is meant to apply to procurement contracts involving city expenditures. The Registration Orders were not procurement contracts.

*JFK Holding Co. LLC v City of New York* (68 AD3d 477 [1st Dept 2009]), a case referenced by petitioners, is not to the contrary. *JFK Holding* is concerned with the assumption of the obligations of a lease, which would necessarily involve a service "to be paid for out of the city treasury." Section 310. The Appellate Division's broad statement in *JFK Holding* that "any enforceable agreement with the City must be in writing, approved as to form by the Corporation Counsel, and registered with the Comptroller" (*id.* at 478) specifically references section 328, which, as above, refers to procurement contracts involving "vendors" and "contractors."

Likewise, section 93 (p) merely recites the Comptroller's

---

<sup>4</sup>Petitioners raise section 93 of the Charter for the first time in their reply papers.

powers with respect to the registration of contracts pursuant to section 328.

However, there are two interrelated issues which need further briefing, and oral argument, given the implications of any determination. Petitioners argue that BIC did not have the authority to issue the August 4, 2010 proclamation directing its licensees not to do business with petitioners. As petitioners point out, while there are grounds in the NYC Code for making findings concerning a party's character, upon the denial of a license, under NYC Code § 16-509, BIC has not shown the basis for its right to proclaim that its licensees boycott parties to whom exemptions have been denied, on the basis of character, honesty and integrity. Nothing in the NYC Code specifically provides for such an action, and petitioners claim that such action does not appear as a natural extension of any power conferred by the NYC Code. BIC argues in a cursory manner that "[b]y engaging with individuals or entities who have already been found by the Commission to lack good character, honesty or integrity, often due to their criminal activities and organized crime ties, a licensee or registrant places in jeopardy its continued lawful operation of a trade waste business in New York City." Respondent Mem Of Law at 44. Further briefing and oral argument is needed on the issue of whether BIC's decision to issue the boycott order against petitioners was arbitrary and capricious,

and whether it was within BIC's power to issue such a prohibition.

Further briefing and argument is also needed on the issue of whether BIC acted arbitrarily in including Pure Earth in both of its determinations. As petitioners note, Juda is a separate corporation entitled to do business separate and apart from its parent. "Parent and subsidiary or affiliated corporations are, as a rule, treated separately and independently so that one will not be held liable for the contractual obligations of the other absent a demonstration that there was an exercise of complete dominion and control." *Sheridan Broadcasting Corp. v Small*, 19 AD3d 331, 332 (1st Dept 2005). However, BIC maintains that after Pure Earth's acquisition of Juda on January 19, 2006, through a stock purchase agreement, Pure Earth became the applicant and was bound to a registration order, in existence prior to the acquisition. Accordingly, BIC contends that it properly determined that Pure Earth lacked good character, honesty and integrity, because it should not have maintained a business relationship with Joseph and Thomas Attonito and Christopher Uzzi, should not have terminated a monitor, and should have notified BIC of the stock purchase in a timely manner (BIC also maintains that Pure Earth's corporate leadership, Christopher Uzzi and LeVan made misrepresentations regarding its involvement with Thomas Attonito). To support its contention that Pure Earth

became the applicant, BIC points out that the registration order binds "affiliates" of the applicant and further maintains that Pure Earth was a successor or that a defacto merger occurred. The briefs should address whether the evidence supports BIC's conclusion, and, whether, assuming the existence of such evidence, it is arbitrary and capricious to find the latter company can be deemed the applicant, along with the original applicant.

In sum, BIC's determination, dated June 28, 2010, that Juda did not have good character, honesty and integrity so as to qualify for an exemption, and BIC's decision not to accept Juda's alleged withdrawal of the exemption application, were rationally based and were not made in error of law. However, the petition is held in abeyance as the issues of whether BIC erred both in including Pure Earth in the June 28, 2010 determination, and in proclaiming, in the August 4, 2010 determination, that the industry was precluded from dealing with both Juda and Pure Earth, must be further briefed and argued. It is hereby

ORDERED that the petition is held in abeyance pending further briefs to be submitted to the Court by November 28, 2011 and oral argument, which shall be held on January 5, 2012 at 2:15 PM.

Dated: October 5, 2011

**FILED**  
ENTER

OCT 12 2011

NEW YORK  
COUNTY CLERK'S OFFICE

20 --

  
**EMILY JANE GOODMAN**  
J.S.C.