

FILED  
AND  
ENTERED  
ON OCT 25, 2004  
WESTCHESTER  
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----x  
PETAN, LLC d/b/a TRI COUNTY DISPOSAL,

Petitioner,

-against-

THE WESTCHESTER COUNTY SOLID WASTE  
COMMISSION,

Respondent.  
-----x

LANGE, J.

DECISION & ORDER

Index # 06481/04

**RECEIVED**  
OCT 27 2004

GERALD B. LEFCOURT, P.C.

This is a proceeding pursuant to Article 78 of the Civil Practice Law and Rules in which the petitioner seeks an order annulling a decision and determination of the respondent dated April 20, 2004, which denied petitioner's application for a Class A Hauling License.

Petitioner is a Limited Liability Corporation with a single shareholder, Alan Ferraro. In May 2002, petitioner applied for a Class A Hauler's license pursuant to the Westchester County Solid Waste and Recyclables Collection Licensing Law, Chapter 826-a of the Laws of Westchester County. Application was made in accordance with the law to the

Westchester County Solid Waste Commission. Information was forwarded to a private investigative firm retained to assist the commission with background investigations. In January 2003, the Commission issued a permit to operate, allowing the petitioner to conduct business pending completion of the background investigation.

On September 25 and October 21, 2003, an assistant Westchester County Attorney deposed Alan Ferraro in connection with the petitioner's application.

Commission staff prepared a recommendation that the licensed application be denied. On November 19, 2003, after receiving the license denial recommendation, the commission voted to authorize the commencement of the license denial proceeding against the petitioner.

Petitioner was given an opportunity to submit a memorandum in opposition to the denial. An extensive submission was made to the commission.

On February 25, 2004, at its regularly scheduled meeting, the respondent, Solid Waste Commission adjourned consideration of the petitioner's license application because two of its members were not present.

On March 25, 2004, at a regularly scheduled meeting, counsel for the petitioner addressed the commission in support of petitioner's license application.

On April 20, 2004, at a regularly scheduled meeting, the respondent voted to deny the petitioner's application and to adopt a resolution authorizing the executive director to issue an administrative order implementing the respondent's license denial decision and to serve petitioner copies of the administrative order and denial decision.

The decision was based on grounds that Alan Ferraro, the principal of Tri County Disposal had knowingly and intentionally conspired with Nicholas Milo to ensure that a company which had been formerly owned by Ferraro would be the sole bidder on a municipal solid waste contract and that the United States National Labor Relations Board had found that Ferraro's prior company and a company known as GEM Enterprises operated as alter egos and had engaged in unfair labor practices.

Thirty seven municipalities in Westchester County have entered into inter-municipal agreements by which they became members of the County Solid Waste District. As members of the district, their residential and some commercial waste is brought

directly to the county's incinerator or to county owned transfer stations and from their to the incinerator or to county owned transfer stations and from their to the incinerator.

The six towns which chose not to join the district are all located in central and northern Westchester. In or about 1986, these six towns issued a request for proposals in order to solicit bids from companies interested in hauling their municipal solid waste. APF Carting, a company which was owned by Alan Ferraro, the principal of Tri County Disposal, submitted the only bid and as a result was awarded a two year contract to collect waste in these six towns.

Subsequent to the awarding of the contract, investigation revealed criminal activity which affected the contract bidding process. In 1996 the United States Attorney for the Southern District of New York filed an indictment against seven individuals reputed to have ties to organized crime, charging them with conspiring to control the waste carting industry in Westchester and other counties. The twenty-seven count indictment alleges a racketeering conspiracy which was advanced by acts of extortion, arson and mail fraud. The indictment repeatedly charged the defendants with obtaining money "from and with the consent of the owner, operator and persons associated with a certain business... which consent had been induced by the wrongful use of actual and threatened force,

violence and fear..." [emphasis added].

The evidence before the Court strongly indicates that Alan Ferraro was one of the victims of the criminal conspiracy alleged in the indictment. He testified for nineteen days before the Grand Jury which returned the indictment. He was offered an opportunity to enter the Federal Witness Protection Program. He was not charged with any wrongdoing or named as an unindicted co-conspirator in the indictment. He was repeatedly threatened, physically attacked, had property damaged, and received threats to himself and to his family. On one occasion, 13 of his trucks were doused with gasoline and two were set on fire. On another occasion, a trailer was set on fire. He was regularly forced to pay 80% and at times 100% of his profits to members of the conspiracy. The conclusion that in succumbing to this pressure, Mr. Ferraro became a willing, cooperating participant in a criminal enterprise is entirely unreasonable and is shocking to one's sense of fairness Pell v. Board of Education, 34 NY2d 222; Stolz v. Board of Regents, 4 AD2d 361. While a Court may not substitute its own judgment of the evidence, where no rational basis exists to support the findings upon which the agency's determination is predicated, the action of the agency is arbitrary and cannot be upheld. See, Pell, supra; See also Purdy v. Kreisberg, 47 NY2d 354.

The additional basis relief upon by the respondent for

denying the Petitioner's application is a decision by the National Labor Relations Board that APF Carting, a company in which Alan Ferraro had an ownership interest and Gem Enterprises, another carting company based in Westchester County were "alter egos" and as such, engaged in unfair labor practices.

As set forth in the decision and order of the National Labor Relations Board, (336 NLRB73, 2001 WL1187943), APF Carting was owned and operated by Alan Ferraro, Peter Ferraro, Emilia Ferraro and General Manager Gary Mueller. The three Ferraro's are identified in the decision as siblings.

On December 2, 1993, APF signed a conditional sales agreement with New York Connecticut Waste Recycling Inc, (NY Conn) conditional upon the granting of certain permits by the New York State Department of Environmental Conservation.

On December 3, 1993, Gem Enterprises was incorporated. Emilia Ferraro and Gary Mueller were the owners and operators of Gem.

On May 1, 1994, Gem Enterprises contracted with NY Conn for the carting of waste material from the Mt. Kisco facility, which work had previously been performed by APF.

The actions which constituted the unfair labor practices were actions which were taken by Gem Enterprises. Although the ownership and management relationships of Emilia Ferraro and Gary Mueller with both APF and Gem were sufficient to establish certain violations of the National Labor Relations Act, there was nothing to indicate that Alan Ferraro had any connection to these violations. These actions all took place after Alan Ferraro had divested himself of all financial, ownership or managerial positions in the operation. The Board specifically refused to make a finding that Gem Enterprises was created for illegal purposes.

This Court finds that to deny a license to the petitioner based on the tenuous connection of Alan Ferraro to this action which occurred more than ten years ago is arbitrary and capricious.

Accordingly, the petition is granted and the respondent is directed to issue a Class A Hauling License to the petitioner.

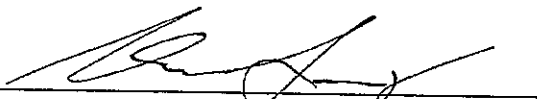
The Court considered the following papers in connection with this application: (1) Order to Show Cause dated April 28, 2004, with Affirmation in Support of Temporary Restraining Order and attached exhibits; (2) Petitioner's

memorandum of law in support of motion for temporary restraining order and preliminary injunction dated April 27, 2004; (3) Affirmation in Opposition dated April 30, 2004, with attached exhibits; (4) Notice of Motion To Dismiss in Lieu of Answer dated May 11, 2004, with Affirmation in Support dated May 11, 2004 and Affidavit sworn to May 11, 2004 and separate exhibits A-N; and Memorandum of Law in support of motion to dismiss; (5) Affidavit in Opposition to Motion to Dismiss sworn to May 18, 2004 with attached exhibits; (6) Petitioner's Memorandum of Law in Opposition to Motion to Dismiss dated May 19, 2004; (7) Decision and Order of this Court dated July 8, 2004, filed and entered July 9, 2004; (8) Respondent's Notice of Motion to reargue dated August 16, 2004, with Affirmation in Support of Motion to Reargue dated August 16, 2004 and exhibits; (9) Petitioner's Affidavit in Opposition to Motion to Reargue sworn to August 18, 2004; (10) Respondent's Reply Affirmation in Support of Motion to Reargue dated August 23, 2004; (11) Decision and Order of this Court, dated, filed and entered August 25, 2004; and (12) Answer and Objections in Point of Law verified August 18, 2004 with attached exhibits; (13) Letter dated September 10, 2004 from Senior County Attorney John A. Fico.



The foregoing constitutes the decision and order of  
this Court.

Dated: White Plains, New York  
October 25, 2004



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KENNETH H. LANGE  
Acting J.S.C.

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