

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

PUTNAM COUNTY
CLERK

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In the Matter of the Application of AAA CARTING
AND RUBBISH REMOVAL, INC.,

Index No. 1054/13

Petitioner,

DECISION AND ORDER

For an Order and Judgment under and pursuant to
Article 78 of the CPLR and for other relief,

Motion Date: 5/22/13

Sequence No. 1

-against-

WESTCHESTER COUNTY SOLID WASTE
COMMISSION and COUNTY OF WESTCHESTER,

Respondents.
-----X

GROSSMAN, J.S.C.

The following papers numbered 1 through 38 were read on this Order to Show Cause for relief pursuant to CPLR Article 78:

PAPERS

NUMBERED

Order to Show Cause/Verified Petition/Exhs. A-N	1-16
Memorandum of Law	17
Verified Answer/Affidavit/Exhs. A-K	18-30
Memorandum of Law	31
Reply Affidavit/Exhs. A-E	32-37
Reply Memorandum of Law	38

This Article 78 Proceeding seeks to annul the determination of the Westchester County Solid Waste Commission (SWC) which required Petitioner, AAA Carting and Rubbish Removal, Inc. (AAA), to enter into a contract with an Auditor, as memorialized at meetings of the SWC on January 23, 2013, and February 28, 2013, pursuant to which the Executive Director of the SWC provided to AAA a proposed contract that required both an Auditor and a Monitor. AAA also

sought, and obtained, a stay of enforcement of the Determination. For the reasons set forth herein, the Petition is granted and the Determination is annulled.

AAA is a Domestic Corporation with its principal offices in Buchanan, New York. It has operated in the refuse collection industry in Westchester, Putnam and Rockland Counties since 1994, servicing commercial, industrial, and residential customers, both privately and pursuant to municipal contracts. It holds a license to operate a solid waste hauling business, which expires in March 2014, and it has not sought a renewal of the license.

The principals of AAA Carting are Pasquale P. Cartalemi, Jr. and Pasquale L. Cartalemi. On January 9, 2013, the United States Attorney for the Southern District of New York filed a sealed indictment against numerous individuals, including the principals of AAA.¹ The AAA principals were charged with extortion, in violation of 18 U.S.C. §§ 1951, 1952. More particularly, the indictment alleges that between October and December 2011, the principals of AAA obtained money and property by the actual and threatened use of force and violence, in an effort to take over a competitor's waste hauling business. AAA notified SWC upon learning of the indictment.

The SWC is charged with, among other things, issuing and renewing the licenses of solid waste haulers. It was created under the Westchester County Solid Waste and Recyclable Collection Licensing Law (Chapter 826-a, WCL). One of the purposes of this law was to address "the influence of organized crime in the solid waste and recycling industries" by encouraging competition, regulate and monitor customer contracts, and "to ensure the good character, honesty and integrity of licensees" Ch. 826-a.101(b).

Upon learning about the indictment, Bruce Berger, the Executive Director of the SWC, presented several options to the Commission at its January 23rd meeting, specifically: (i) to wait for the indictment to be resolved before taking action; (ii) to immediately initiate revocation proceedings against these companies; or (iii) to require the companies with whom the Defendants are currently associated to retain auditors (Section 826-a.700) or monitors (Section 826-a. 701) at their own expense, to oversee their operations during the pendency of the indictment and to report back to the Commission. The SWC also heard from Petitioner's counsel who opposed the hiring of an auditor or monitor, but asserted that if any action was taken, it should be limited to the retention of an auditor. Mr. Berger distributed a letter from Nicholas Caputo, Esq., the attorney for the Cartalemi Defendants, who argued that the facts of the case did not warrant that

¹Notably, the indictment that named AAA principals, but not the corporate entity, nor did it allege that AAA, or its principals, were part of a corrupt enterprise, or that AAA, or its principals, had any involvement with, or was under control of, organized crime, in contrast to the vivid description of a "Waste Disposal Enterprise [which] was a criminal organization whose members engaged in crimes including extortion, loansharking, mail fraud, and stolen property offenses, among other things." See generally Indictment 13 Crim 015, U.S. v. Franco, et. al. ¶¶ 1- 15.

the Cartalemis be required to hire an auditor or monitor; he added, though, that if the Commission decided that it needed to take action, they require the Cartalemis to retain an auditor. The Commission agreed, and unanimously decided, to require AAA Carting & Rubbish Removal to retain auditors to be selected by the Commission; the selection of the auditors would be made by the Commission no earlier than at the next Commission meeting. Mr. Berger informed the members that the Commission had a list of approved monitors and auditors that dated back to 2006. The Commission directed Mr. Berger to issue a "Request for Qualifications" to solicit inquiries from any additional individuals interested in becoming monitors and auditors for the Commission.

Several months of negotiation followed between SWC and AAA over the scope of the auditing agreement. When the parties could not agree, SWC insisted on a combined auditing and monitoring agreement with terms, functions, and responsibilities greater than that which would reasonably be contained in an auditing agreement. This challenge followed.

At issue is whether, under the particular circumstances here, the SWC can impose an oversight function that includes auditing and monitoring. These functions serve different purposes, and are separately required by different statutes with different criteria.

The retention of an Auditor is governed by WCL §826-a.700. On receipt of information by an "Applicant, Licensee, or Registrant," which might indicate a violation of the standards set forth in Article VI relating to Penalties and Enforcement, License Suspension (WCL §800-a.601), the SWC may "require...as a condition of the issuance reinstatement and/or renewal or registration" that the Applicant, at its cost and expense, enter into or contract with an independent auditor, approved or selected by the Commission. The functions of the auditor are set forth in WCL §826-a.700(4).

The retention of a Monitor requires that the "Applicant, Licensee, or Registrant," be the "subject of a pending indictment or criminal action for a crime that would provide a basis for the refusal to issue or renew a license or registration, or which would provide a basis to take action against the privileges of a Licensee or Registrant, including but not limited to the modification of a license or registration as provided under this Chapter, the Commission, in its sole discretion, may (a.) in the case of an Applicant, refrain from making a determination to issue the license or registration indefinitely until final disposition of the criminal case, or may require as a condition of the license or registration to be issued that the Applicant enter into a contract with an independent monitor approved or selected by the Commission, and (b.) in the case of a Licensee or Registrant, may require as a condition of the license or registration that the Licensee or Registrant enter into a contract with an independent monitor approved or selected by the Commission." WCL §826-a.701(1). Under these circumstances, the powers of a Monitor are substantially greater than that of an Auditor. See WCL §826-a.701(3).

As stated previously, AAA's license expires in March 2014. There is nothing before the Court to indicate that AAA has applied for a renewal of its license, nor is there any indication

that its license has been suspended or requires reinstatement. WCL §826-a.700(1). Consequently, the criteria for the appointment of an Auditor has not been met.

A closer question exists with respect to the appointment of a Monitor, but again, the threshold is not met. While AAA's two principals have been indicted and charged with extortion, arising from alleged attempts to control their competition, AAA, as a Licensee, has not been charged, and it has not applied for renewal of its existing license. While AAA's principals are individuals, only AAA can be considered a "Licensee," as the term is defined under WCL §826-a.200 (11) and (13), and only AAA holds the License.

Accordingly, the Petition is granted to the extent that the determination of the SWC to impose an Auditing/Monitoring Agreement on Petitioner is vacated and annulled as being in error of law.

This shall constitute the Decision and Order of the Court.

Dated: Carmel, New York
February 3, 2014


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