

At IAS Part 7 of the Supreme Court of the State of New York, County of New York, at the Courthouse thereof, located at 71 Thomas Street, 60 West New York, New York, on the 27th of August, 2018.

PRESENT: Hon. **HON. GERALD LEBOVITS**, J.S.C.

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

MS# 001 : PI

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In the Matter of the Application of
SANITATION SALVAGE CORP.,

Petitioner,

Index No. *157928/18*

For Judgment Pursuant to CPLR Article 78

- against -

ORDER TO SHOW CAUSE

THE CITY OF NEW YORK; THE BUSINESS INTEGRITY COMMISSION, an agency of the City of New York; DANIEL BROWNELL, in his official capacity as Commissioner and Chair of the Business Integrity Commission; BILL DE BLASIO, in his official capacity as Mayor of the City of New York; the NEW YORK CITY DEPARTMENT OF SANITATION, an agency of the City of New York; and KATHRYN GARCIA, in her official capacity as Commissioner of the New York City Department of Sanitation,

Respondents.

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Upon reading the annexed Verified Petition (“Verified Petition”) of Petitioner Sanitation Salvage Corp. (“Sanitation Salvage”) verified and filed on August 27, 2018; Affirmation of Avi Weitzman, dated August 26, 2018, and the exhibits thereto; Affidavit of Andrew Squitieri, dated August 26, 2018, and the exhibits thereto; Affidavit of David Ryan, dated August 26, 2018, and the exhibits thereto; ^{Affirmation} Affidavit of Christopher V. Della Pietra, dated August 26, 2018, and the exhibits thereto; ^{Affirmation} Affidavit of Jim Walden, dated August 26, 2018, and the exhibits thereto; Affidavit of Rudy Washington, dated August 26, 2018, and the exhibits thereto; Affidavit of Christine Mitsios, dated August 25, 2018; and Petitioner’s Memorandum of Law in Support of Its Article 78 Petition and Application by Order to Show Cause for a Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery, dated August 27, 2018, it is hereby:

^{LET}
~~ORDERED~~ that Respondents the City of New York, the Business Integrity Commission, Daniel Brownell, in his official capacity as Commissioner of the Business Integrity Commission, the New York City Department of Sanitation, Kathryn Garcia, in her official capacity as Commissioner of the New York City Department of Sanitation, and Bill De Blasio, in his official capacity as Mayor of the City of New York (collectively, “Respondents”), show cause before this Court, at IAS Part 5, of the Supreme Court of the State of New York, County of New York, located at the New York County Courthouse, ~~71 Thomas Street~~ ^{80 Canal Street}, Room 328, New York, New York, 10007, on the 11th day of Sept., at 9:30 o’clock p.m., why an order should not be issued, including pursuant to CPLR 6301, 6311, and 7805:

(i) preliminarily enjoining Respondents from ordering or otherwise enforcing Respondent Business Integrity Commission’s “emergency suspension order” of August 24, 2018, purporting to suspend the trade waste carting license issued to Sanitation Salvage; (ii) preliminarily enjoining Respondents from informing Sanitation Salvage’s customers or posting on their website that

Sanitation Salvage has "unsafe practices," has had its license suspended, and that its customers must arrange for "a new private carter"; (iii) preliminarily enjoining Respondents from contacting Sanitation Salvage's competitors, providing them information regarding Sanitation Salvage's routes and customers, and encouraging them to solicit business from Sanitation Salvage's customers; (iv) preliminarily enjoining Respondents from collecting, or directing Respondent the New York City Department of Sanitation to collect, waste from customers of Sanitation Salvage; (v) ordering Respondents to provide notice of this Order to any of Petitioner's customers that Respondents have previously contacted regarding the status of Petitioner's trade waste license; and (iv) granting such other and further relief as the Court deems just and proper; and it is further

~~ORDERED that~~ ^{LET} Respondents show cause before this Court at the same time and place why a judgment and order, pursuant to CPLR Article 78, should not be entered: (i) declaring that Respondents' "emergency suspension order" of August 24, 2018, was issued in violation of lawful procedure, was affected by errors of law, was arbitrary and capricious, was in excess of jurisdiction, or was an abuse of discretion; (ii) declaring that said order was issued in further violation of Petitioner's rights under the Fifth and Fourteenth Amendments to the U.S.

Constitution; (iii) declaring that said order was issued in further violation of Petitioner's rights under Article I, Section 7 of the New York State Constitution; (iv) declaring that said order was issued in further violation of Petitioner's rights under Article I, Section 6 of the New York State Constitution; (v) granting Petitioner expedited discovery in connection with its preliminary injunction application in advance of any hearing on that application; and (vi) granting such other and further relief as this Court deems just and proper; and it is further

ORDERED that, pursuant to CPLR 6301, 6313 and 7805, pending ^{the} a hearing and

declined

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PROF. GENAD LEBOVITS

~~determination~~ of this application, Respondents, their agents, officers, employees, successors, assigns and all persons acting in concert with them or on their behalf who receive notice of this Order are hereby: (i) temporarily restrained and ordered to refrain from ordering or otherwise enforcing Respondent Business Integrity Commission's "emergency suspension order" of August 24, 2018, purporting to suspend the trade waste carting license issued to Sanitation Salvage; (ii) temporarily restrained and ordered to refrain from informing Sanitation Salvage's customers that Sanitation Salvage has "unsafe practices," has had its license suspended, and that its customers must arrange for "a new private carter"; (iii) temporarily restrained and ordered to refrain from contacting Sanitation Salvage's competitors, providing them information regarding Sanitation Salvage's routes and customers, and encouraging them to solicit business from Sanitation Salvage's customers; (iv) temporarily restrained and ordered to refrain from collecting, or directing Respondent the New York City Department of Sanitation to collect, waste from customers of Sanitation Salvage; and (v) ordered to provide notice of this Order to any of Petitioner's customers that Respondents have previously contacted regarding the status of Petitioner's trade waste license; and it is further

ORDERED that Petitioner is hereby granted leave to file a Memorandum of Law in Support of the Verified Petition and this application by order to show cause; and it is further

ORDERED that Petitioner shall serve upon Respondents a copy of this Order, and the papers upon which it is based, ^{including the Verified Petition,} by ^{hand delivery} ~~hand~~ delivery on or before the ~~27th~~ ^{29th} day of August, 2018; and it is further

ORDERED that, pursuant CPLR §§ 408, 3101(a), 3102(b), 3106(a), and 3120, Petitioner shall be permitted to serve its requests for production of documents, and Respondents shall produce all documents responsive to Petitioner's request no later than September 10, 2018;

TRO declined. The Commission has the authority under §16-514 to suspend, pending a hearing, a certain company that creates an imminent danger to life and property. The Commission is also charged about accidents involving unregistered employees and employees driving without valid licenses raise issues of public safety. A hearing in front of a judge will be held. The Commission is not a decision in their business days; there is no basis to bring a lawsuit.


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ORDERED that Respondents shall serve upon counsel for Petitioner, Randy M. Mastro, Esq., Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, any answering and responsive papers to the Application by Order to Show Cause for a Temporary Restraining Order, Preliminary Injunction, Discovery and Expedited Proceeding, and Its Article 78 Petition by hand delivery on or before the 6th day of September, 2018, and Respondents are hereby granted leave to file a Memorandum of Law, if any, not to exceed 35 pages (exclusive of the signature page); and it is further

ORDERED that Petitioner is hereby granted leave to file reply papers, if any, including a Reply Memorandum of Law, that shall be served upon Respondents, or their attorneys, if any, so as to be received no later than the day before the time set forth herein for the hearing of this Application; and it is further

ORDERED that a hearing and oral argument are directed on Petitioner's Application by Order to Show Cause on the 11th day of ~~August~~ ^{Sept}, 2018, at 9:30 o'clock A.m., or as soon thereafter as counsel may be heard.

ENTER:



HON. GERALD LEBOVITS
J.S.C.

ORAL ARGUMENT
DIRECTED
J.S.C. 8/27/18
HON. GERALD LEBOVITS
J.S.C.