



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

MOE & SON CLEANING SERVICES,)
LLC AND WALTER MOORE,¹)

Petitioner,)

v.)

NEW JERSEY DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
SOLID AND HAZARDOUS WASTE)
MANAGEMENT PROGRAM,)

Respondent.)

ADMINISTRATIVE ACTION

FINAL DECISION

OAL DKT NO. EER-SW 11731-13

AGENCY REF. NO. 004742

PI#575345

This matter arises from the April 10, 2013, notice of denial of an A-901 license issued by the Department of Environmental Protection (Department) to Moe & Son Cleaning Services, LLC (Moe & Son) pursuant to the A-901 statute, N.J.S.A. 13:1E-126 to 135 (the Act), and implementing regulations, N.J.A.C. 7:26-16.1 through 16.23. Walter Moore (Moore) is the sole owner and officer of Moe & Son and acted on its behalf in filing the A-901 application.

FACTUAL AND PROCEDURAL BACKGROUND

In denying the application for licensure, the Department found that Moore had committed five disqualifying crimes between 1986 and 1997 (drug possession, burglary, receiving stolen

¹The caption of the Initial Decision in this matter references only Walter Moore as the Petitioner. However, as Moore is the sole owner and officer of Moe & Son and was debarred as part of the denial, both Moe & Son and Moore should be listed as Petitioners and the caption has been adjusted accordingly.

property, and two counts of theft). The Department further found that Moore failed to disclose material information in his sworn November 5, 2009, Personal History Disclosure Statement, including his criminal record, acquisition and use of a driver's license with a false birthdate between 1973 and 2003, the incurrence of more than forty driving violations, five outstanding arrest warrants, three driving-privilege suspensions, and a twenty-plus year marriage.² Finally, after reviewing the October 19, 2011, response to the Department's Request for Information on rehabilitation, the Department found that Moore had failed to affirmatively demonstrate, by clear and convincing evidence, rehabilitation from the five disqualifying crimes.³ Accordingly, the Department determined, based on Moore's criminal history, material omissions, and failure to prove rehabilitation, that he lacked the requisite reliability, integrity, competency, and expertise to participate in the New Jersey solid waste industry as required under the Act and denied Moe & Son's application. The Department further debarred Moore from acting as a key employee, equity holder, or debt holder of an A-901 company for five years from the date of the denial.

Moore, on behalf of Moe & Son, requested an administrative hearing to contest the denial and the matter was transmitted to the Office of Administrative Law (OAL), where it was assigned to Administrative Law Judge (ALJ) James A. Geraghty on August 12, 2013.

On March 10, 2014, the ALJ granted partial summary decision in favor of the Department, finding no material factual disputes regarding Moore's disqualifying crimes and failure to disclose information but found that an issue of material fact existed with regard to Moore's rehabilitation. In granting partial summary decision, the ALJ affirmed the Department's determinations that found that Moore had committed five disqualifying crimes and

² Moore simply stated "none" in response to questions related to his arrests and convictions.

³ As evidence of rehabilitation, Moore provided proof that the outstanding arrest warrants had been satisfied, claimed that his crimes were a result of drug addiction, provided details regarding his seventeen-year sobriety, and indicated he was attempting to have his criminal record expunged.

omitted material information in his application. The ALJ further found that Moore had certified the truth of his Personal History Disclosure Statement with the knowledge that any misrepresentation could subject him to criminal penalties and the denial of the A-901 application. The ALJ determined that the material omissions by Moore and the history of disqualifying crimes warranted denial under the Act. The ALJ ultimately concluded, however, that while his crimes reflected a pattern of offenses, Moore had provided sufficient information related to rehabilitation to warrant further fact-finding on that issue. The ALJ then scheduled a hearing on July 21, 2014 to determine whether Moore had demonstrated rehabilitation.

Moore failed to appear at the scheduled hearing. Thereafter, on August 4, 2014, the ALJ issued an initial decision finding that Moore had failed to establish rehabilitation, concluding that the Department's denial was not unsound and dismissing the appeal. The record does not indicate that Moore provided any reason for his failure to appear and neither party filed exceptions to the initial decision.

DISCUSSION

The Act imposes a licensing requirement on the solid waste industry to preclude those with criminal records, habits, or associations, or those who are known to be deficient in reliability, expertise, or competence, from participating in the industry to minimize the dangers of unsound, unfair, and illegal business activities. N.J.S.A. 13:1E-126; see also Trade Waste Mgmt. Ass'n v. Hughey, 780 F.2d 221 (3d Cir. 1985) (holding that the State of New Jersey had a compelling interest in keeping the solid waste industry free from the influence of organized crime). Organized crime associates, chronic environmental offenders, and individuals convicted of certain disqualifying crimes or lacking sufficient integrity, reliability, expertise, and

competency to engage in the solid waste industry are ineligible for licensure. N.J.S.A. 13:1E-133. Disqualifying crimes include, in relevant part, drug possession, burglary, and theft. Id. If the applicant has been convicted of a disqualifying crime, he or she must demonstrate “rehabilitation by clear and convincing evidence” to be granted a license. N.J.S.A. 13:1E-133.1(a). The Act requires an applicant to submit a personal history disclosure statement setting forth all information pertinent to the application, N.J.S.A. 13:1E-127(e). The applicant has a continuing duty to cooperate with the A-901 investigation, N.J.S.A. 13:1E-128(b), and failure to provide complete and truthful answers is grounds for denial. N.J.S.A. 13:1E-133. To grant a license, the Department must find that an applicant “has exhibited sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste.” N.J.S.A. 13:1E-133(a).

While the ALJ’s dismissal of the appeal was warranted, the appropriate ground for dismissal is Moore’s unexcused and unexplained failure to appear at the scheduled hearing rather than a finding that he did not demonstrate rehabilitation. Nevertheless, because Moore failed to appear for the hearing in this matter and failed to provide any explanation for that failure, I find that the ALJ appropriately dismissed the appeal. As the ALJ did not make any findings of fact regarding Moore’s alleged rehabilitation, I MODIFY the ALJ’s initial decision to conclude that the matter is dismissed as a result of Moore’s failure to appear at the required proceeding without explanation. Accordingly, the Department’s April 10, 2010 denial is final as to Moe & Son’s A-901 application. Specifically, having failed to attend the proof hearing and having failed to prosecute the appeal, Moe & Son’s application for an A-901 license is denied pursuant to the terms of the denial and, further, Moore is debarred from acting as a key employee, equity holder or debt holder of an A-901 company for five years from its date.

CONCLUSION

For the reasons set forth therein and above, I ADOPT the Initial Decision affirming the denial of Moe & Son's A-901 license, as modified to reflect that the appeal is dismissed for failure to prosecute.

IT IS SO ORDERED.

DATE: October 31, 2014

A handwritten signature in blue ink, appearing to read "Bob Martin", is written over a horizontal line.

Bob Martin, Commissioner
New Jersey Department of
Environmental Protection

MOE & SON CLEANING SERVICES, LLC,
AND WALTER MOORE

v.

NEW JERSEY DEPARTMENT OF
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SERVICE LIST

Genia C. Philip, Esq.
G Philip, LLC
972 Broad Street
Newark, NJ 07102-2533
gphilip@geniacphiliplawfirm.com

Raghu Murthy, DAG
Department of Law & Public Safety
Division of Law
R. J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, NJ 08625-0093
Raghu.Murthy@dol.lps.state.nj.us