THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
100 CHURCH STREET, 20TH FLOOR
NEW YORK, NEW YORK 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE APPLICATIONS OF ALL-CITY INTERIOR CONTRACTING INC. AND A.C. CARTING OF NEW YORK INC. FOR A REGISTRATION TO OPERATE AS TRADE WASTE BUSINESSES

All-City Interior Contracting Inc. ("All-City") has applied to the New York City Business Integrity Commission ("Commission"), formerly named the New York City Trade Waste Commission, for renewal of its exemption from licensing requirements for the removal of construction and demolition debris, pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). A.C. Carting of New York Inc. ("A.C. Carting") has applied to the Commission, for an exemption from the licensing requirements for the removal of construction and demolition debris, pursuant to Local Law 42 of 1996. See id. Local Law 42 was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

These registrations, if granted, would enable these companies to operate trade waste businesses "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "C & D." Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the applications, the Commission grants registrations to All-City and A.C. Carting, the applicants become "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See Admin. Code §16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing

suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission's investigation and determination of a registration application is whether an applicant has business integrity. See 17 RCNY §1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008).

Based upon the record, the Commission denies the renewal application of All-City and the registration application of A.C. Carting, on the following grounds:

A. The applicants have failed to demonstrate eligibility for an exemption from the licensing requirement and a trade waste registration:

1) **All-City and A.C. Carting acted in a manner designed to obscure and minimize their association with the Luchese Organized Crime Family.**
2) **John Rodopoulos, a disclosed principal of All-City and an undisclosed principal of A.C. Carting, has been publicly identified as an associate of the Luchese Organized Crime Family.**
3) **John Rodopoulos, a disclosed principal of All-City and an undisclosed principal of A.C. Carting, committed racketeering activities.**
4) **A.C. Carting provided false and misleading information to the Commission by failing to disclose John Rodopoulos as a principal.**
5) **Dennis Santiago, A.C. Carting's sole disclosed principal, associated with John Rodopoulos, a publicly identified associate of the Luchese Organized Crime Family.**

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life." Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI").

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature

of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42 §1.

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the C & D sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the C & D sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many C & D haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988. During that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills Landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately $10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City's "cover" programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City's tipping fees. See United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); see also United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the C & D sectors of the industry. Local Law 42 recognizes this fact in requiring C & D haulers to obtain registrations from the Commission in order to operate in the City. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004).

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. §16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-

364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997); Attonito, 3 A.D.3d 415.

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases "where the applicant fails to provide the necessary information, or knowingly provides false information." It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Id.; accord Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008) (Commission denial not arbitrary and capricious where based on a criminal conviction, identification as an organized crime associate, and false and misleading statements). Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

1. failure by such applicant to provide truthful information in connection with the application;

2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefore, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. THE APPLICANTS

A. All-City Interior Contracting, Inc.

On August 30, 1996, All-City, an interior demolition contractor, filed an application with the Commission seeking an exemption from the licensing requirements and a registration to haul construction and demolition debris. See All-City Application, filed August 30, 1996 ("All-City's Registration Application"). According to All-City's Registration Application, the company's principals were John Rodopoulos (Secretary/Treasurer and 45% owner since April 3, 1990)("Rodopoulos"), Roxanne Russo (Vice President and 45% owner since April 3, 1990)("Russo") and Luigi Falciano (President and 10% owner since October 13, 1989)("Falciano"). Id. at 8-10.

During its investigation, the Commission determined that Russo was married to John "Johnny Hooks" Capra ("Capra"), who had a significant criminal record. Upon inquiry, Rodopoulos and Falciano represented to the Commission that Capra had no involvement in and was not a principal of All-City. The Commission relied on these representations, exercised its discretion and issued All-City a registration on June 1, 2003.

On March 8, 2005, the United States Attorney for the Southern District of New York unsealed an indictment charging Capra and others with violations of the Racketeer, Influence and Corrupt Organization Act, 18 United States Code ("U.S.C.")§ 1961 et al. ("RICO").[1] Capra was identified as a caporegime of the Luchese Organized Crime Family and charged with the crimes of Conspiracy to Collect an Extension of Credit by Extortionate Means and Collection of Extensions of Credit by Extortionate Means in violation of 18 USC §§2, 894. [2] See Indictment, United States v. Squitieri et. al., 05 CR 228 (S.D.N.Y.) at 77-78; United States Attorney's Office Southern District of New York Press Release, dated March 9, 2005 at 4.[3]

On March 22, 2005, All-City filed an application to renew its registration. See All-City Application, filed March 22, 2005 ("First Renewal Application"). In the First Renewal Application, All-City failed to disclose that Russo's husband was identified as a member of the Luchese Organized Crime Family, or that he had pending criminal charges which constitute racketeering activities. See First Renewal Application at 4, 9. However, Rodopoulos certified

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[1] In total, the indictment charged thirty-two (32) defendants. Most were identified as members or associates of the Gambino Organized Crime Family, including the three defendants charged in the same counts as Capra. Co-defendant Gregory DePalma was identified as a member of the Gambino Organized Crime Family and acting caporegime, Robert Vaccaro was identified as a member of the Gambino Organized Crime Family and Joseph Fornino was identified as an associate of the Gambino Organized Crime Family. See Capra Indictment at 10-12, 77-78 (Counts 31 and 32).

[2] Organized crime families operate through groups of individuals headed by "captains," who were also referred to as "skippers," "caporegimes," and "capodecinas." These groups, which are referred to as "crews," "regimes" and "decinas," consisted of "made" members of the Luchese Organized Crime Family, also referred to as "soldiers," "friends of ours," "good fellows" and "buttons," as well as associates of the organized crime family. See Indictment at 2.

[3] On August 15, 2006, Capra waived indictment and pleaded guilty to a superseding felony information charging him with Conspiracy to Defraud the United States (Conspiracy to Operate Illegal Gambling Business). On January 5, 2007, Capra was sentenced to 18 months imprisonment; 3 years supervised release and a $3,000 fine. See Capra Indictment Docket Sheet.

that the information contained in the Registration application was accurate and truthful. See id. at 10.

To further investigate Capra's involvement in All-City, the Commission ordered Russo to appear for a deposition on April 8, 2005. See BIC Letter to All-City, dated March 22, 2005. All-City repeatedly adjourned Russo's deposition and proposed to partially divest her from All-City in lieu of providing sworn testimony about her connections to organized crime. See BIC Letter to All-City, dated April 18, 2005; See All-City letter to BIC, dated April 29, 2005.

Initially, the Commission did not accept All-City's divestment proposal: exchanging Russo's interest in All-City for ownership of 1174 Commerce Management, Inc., the real estate company that owned All-City's office and garage. The Commission rescheduled the deposition for June 7, 2005, and advised All-City that Russo's failure to appear might result in a denial of their First Renewal Application. See All-City letter to BIC, dated May 10, 2005; see All-City letter to BIC, dated May 16, 2005; and BIC Letter to All-City, dated May 24, 2005.

However, shortly after, All-City proposed that Russo be fully divested by having Rodopoulos purchase Russo's entire interest. See All-City letter to BIC, dated July 29, 2005. In addition, All-City assured the Commission that Russo and Capra would have no involvement with the company. The Commission accepted this proposal, exercised its discretion and approved All-City's First Renewal Application on December 19, 2005, after Russo's divestment was completed.[4]

On April 6, 2007, All-City filed another application to renew its registration. See All-City Application ("Second Renewal Application"). According to the Second Renewal Application, the principals of All-City remained Rodopoulos (Secretary/Treasurer and 90% owner) and Falciano (President and 10% owner). Id. at 7. After an investigation, the Commission approved All-City's Second Renewal Application.

On February 28, 2008, the United States Attorney for the Eastern District of New York ("USAO") indicted Rodopoulos and seven other members and associates of the Luchese Organized Crime Family for racketeering and various other crimes.[5] [6] See Indictment, United States v. Cutaia et. al., 08 CR 97 (EDNY) ("Indictment") at 5-6; USAO Press Release, dated February 28, 2008. The nineteen count RICO indictment, which was investigated and prosecuted in conjunction with the Kings County District Attorney's Office ("KCDAO"), charged various crimes including Racketeering, Racketeering Conspiracy, Extortion Conspiracy,

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[4] Additional conditions were inserted into All-City's registration order which prohibited the involvement of Russo and Capra in All-City.

[5] Racketeering, Racketeering Conspiracy, Extortion Conspiracy, Marijuana Distribution Conspiracy, Mail Fraud Conspiracy, Extortionate Extension of Credit Conspiracy, Extortionate Collection of Credit Conspiracy, Illegal Gambling, Illegal Gambling Conspiracy, Bank Fraud Conspiracy, Extortion, and Extortion Conspiracy in violation of 18 U.S.C. §§ 892(a), 894(a)(1), 981(a)(1)(C), 892(a)(2)(B), 1341, 1344, 1349, 1951(a), 1955(a), 1955(d), 1963, 2 and 3551, 2 and 3551 et seq.; 21 U.S.C. §§846, 841(b)(1)(D) and 853(p); 28 U.S.C. §2461(c) . See Rodopoulos Indictment.

[6] All-City's Response argues that Rodopoulos was not charged under the RICO statute and therefore Rodopoulos acts cannot be classified as "racketeering:" However, an analysis of Rodopoulos' conduct under Admin. Code 16-509(a)(v) clearly supports the Commission's finding.

Marijuana Distribution Conspiracy, Mail Fraud Conspiracy, Extortionate Extension of Credit Conspiracy, Illegal Gambling Conspiracy, Illegal Gambling, Mail Fraud, Bank Fraud Conspiracy, Bank Fraud, and Extortion.

The Indictment named Rodopoulos as an associate of the Luchese Organized Crime Family and charged him with committing the crimes of Illegal Gambling and Conspiracy to Commit Illegal Gambling. See id. Specifically, Counts Nine and Ten charged Rodopoulos with felonies under 18 USC §1955(a) for violating New York State Penal Law ("P.L.") §225.05 Promoting Gambling in the Second Degree. The Indictment states that from January 2003 to December 2005, Rodopoulos and his co-conspirators, Domenico Cutaia, a publicly identified caporegime in the Luchese Organized Crime Family, and Steven Lapella, identified as an associate of the Luchese Organized Crime Family, conducted, financed, managed, supervised, directed and owned all or part of an illegal bookmaking operation which was in continuous operation for a period in excess of 30 days and which had gross revenue of at least $2,000.00 in a single day. Rodopoulos was charged with "among other things, pay[ing] out money on winning bets, receive[ing] money from losing bets, and in the process earn[ing] gambling fees or "vig."" United States v. Cutaia et. al., 08 CR 97 (SDNY) Government's Memorandum of Law at 3.

Rather than challenge the charges, on April 10, 2009, Rodopoulos executed a plea agreement with the USAO and the KCDAO to resolve all pending charges. According to the plea agreement, Rodopoulos agreed to plead guilty, as charged, to one count of Promoting Gambling in the Second Degree, a class "A" Misdemeanor, in violation of P.L. §225.05 and forfeited twenty-five thousand dollars ($25,000.00), which represented the "proceeds, substituted proceeds, or an instrumentality of the crime committed in furtherance of the illegal sports gambling operation that the defendant was a part of." See Plea Agreement.

In order to facilitate the execution of the Plea Agreement's terms, on or about April 10, 2010, KCDAO filed a criminal felony compliant ("Felony Complaint") in the Criminal Court of the City of New York, County of Kings ("Criminal Court"), against Rodopoulos which charged Promoting Gambling in the First Degree in violation of P.L. §225.10(a), a class "E" Felony, Promoting Gambling in the Second Degree in violation of P.L. §225.05, a class "A" Misdemeanor and Conspiracy in the Fifth Degree in violation of P.L. §105.05, a class "A" Misdemeanor.

The Felony Complaint provides additional information about Rodopoulos' conduct. It states that Rodopoulos "participated in [the] gambling conspiracy by, among other things, accepting proceeds of the gambling operation and controlling the manner and method by which gamblers placed wages with the gambling operation." See Felony Complaint. Additionally, the Felony Complaint states that conversations were intercepted in which Rodopoulos "discussed various administrative matters regarding the gambling operation, and on a weekly basis arranged meetings so that [Rodopoulos] could collect proceeds of the gambling operation." See id. Further, the Felony Complaint states that on various dates an "informant observed the defendant meeting with other participants in the gambling operation." Id. Furthermore, the Felony Complaint states that investigators from the KCDAO "via telephone, placed wagers on the

outcomes of sporting events... on a number of dates... and... in total placed more than five wagers, totaling more than five thousand dollars with the gambling operation." [7] Id.

In accordance with the plea agreement and in contemplation of disposition, the USAO dismissed the federal Indictment after the plea agreement was executed and the Felony Complaint was filed. Rodopoulos pleaded to Count Two of the Felony Complaint and was sentenced to a Conditional Discharge for the period of one year. See Rodopoulos Plea Agreement; Rodopoulos' Certificate of Disposition.

On May 1, 2009, All-City filed another application to renew its registration. See All-City Application, filed May 1, 2009 ("Third Renewal Application"). According to the Third Renewal Application, the principals were Rodopoulos (Secretary/Treasurer and 90% owner) and Falciano (President and 10% owner). See id. at 6.

B. A.C. Carting of New York, Inc.

On August 20, 2008, approximately six months after Rodopoulos was indicted, A.C. Carting, a construction and demolition debris hauling company, filed an application with the Commission seeking an exemption from the licensing requirements and a registration to haul construction and demolition debris. See A.C. Carting's Application filed August 20, 2008 ("A.C. Carting's Application").[8] According to A.C. Carting's Application, the sole principal was Dennis Santiago (President and 100% owner)("Santiago"). See id. at 9. Santiago certified that the information contained in the Registration application was accurate and truthful. See id. at 16.

After reviewing A.C. Carting's application it was apparent that A.C. Carting might be associated with All-City. In order to investigate, among other issues, Rodopoulos' potential involvement in A.C. Carting, Santiago was ordered by the Commission to appear for a deposition on April 27, 2009.

Santiago testified at his deposition that his wife, Gina Marie Santiago nee Rinaldi, is the sister of Rodopoulos' wife, Carol Rodopoulos nee Rinaldi. See Deposition Transcript at 13-15. He also testified that his family socialized regularly.[9] See id. at 19. While he claimed a closer relationship with other family members, Rodopoulos had been a guest at Santiago's residence the night before Santiago's deposition. See id. at 19, 74-75.

Santiago also testified that he had been employed at All-City for the five year period immediately proceeding A.C. Carting's Application. In addition, he had been previously employed as a principal of S&T II Auto Center, a business partially owned by Rodopoulos' wife.[10] See id. at 44, 62.

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[7] The details of the investigation which are provided in the Felony Complaint are sworn to be true under penalty of criminal charges by Detective Investigator Shaun Winter of the KCDAO Special Investigations Unit.

[8] A.C. Carting was incorporated June 4, 2008 approximately 3 months after Rodopoulos was indicted by USAO.

[9] Santiago also testified that he shares his residence with his in-laws, Carol Rodopoulos owns the house, and he contributes to household expenses for his portion of the rent. See Deposition Transcript at 44.

[10] It is interesting to note that in A.C. Carting's Application, it shared a business address with S&T II, then Santiago changed A.C. Carting's address to his residence, which is owed by Carol Rodopoulos. See A.C. Carting's Application at 1-3; See Deposition Transcript at 44, 62; See Letter from John Stebe, Esq. dated February 20, 2009.

With regard to Rodopoulos' involvement in A.C. Carting, Santiago testified that Rodopoulos had conceived the company name and arranged for an attorney to form and incorporate the company.[11] [12] Moreover, Santiago admitted that he did not own the five trucks disclosed in the A.C. Carting Application. He explained that upon obtaining a registration from the Commission, he intended to purchase the trucks from All-City and obtain the financing directly from Rodopoulos.[13] See id. at 98-99. In addition, Santiago explained that he planned to garage the five trucks at All-City's garage[14] and hire All-City's drivers. Finally, Santiago stated that A.C. Carting would initially obtain all its business through referrals from Rodopoulos and would pay Rodopoulos commissions.[15] See id. at 53-54.

As these companies are closely associated, the Commission considers the All-City's Third Renewal Application and A.C. Carting Application together.

On June 27, 2011, the staff issued a 16-page recommendation that the applications of All-City and A.C. Carting be denied. The Applicants were served with the recommendation on June 27, 2011 and were granted ten business days to respond. Subsequently, the Applicants requested additional time to respond and were granted until July 22, 2011.

All-City submitted a response (All-City's Response"), which made several unsupported legal arguments and denied many of the facts contained in the Commission's recommendation. However, All-City's Response failed to provide additional evidence, other than Rodopoulos' sworn statement.

A.C. Carting submitted a response ("A.C. Carting's Response"), which also denied many of the facts contained in the Commission's recommendation. Similarly, A.C. Carting's Response failed to provide additional evidence, other than Santiago's sworn statement. Both responses will be addressed in the forgoing.

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[11] Santiago was vague and illusive in his deposition, particularly when he was questioned about the circumstances of A.C. Carting's formation. Santiago claimed to have paid the legal fee; however, he could not remember the amount he paid or the lawyer's name. See Deposition Transcript at 33-39. When questioned further, Santiago admitted that he never actually met with the attorney, and that Rodopoulos arranged for the company to be incorporated and chose the lawyer. See id. Further, Santiago says that he did not conceive of the name "A.C. Carting," but that it was proposed to him by the lawyer and he only gave the name his approval. See id. at 33. Clearly, the name A.C. Carting was chosen to demonstrate the affiliation with Rodopoulos' company. Santiago claims that Rodopoulos did not conceive of the company name, however Rodopoulos does not dispute it. Given the surrounding facts and circumstance, the Commission finds it likely that Rodopoulos also provided the company name to Santiago.

[12] Notably A.C. Carting was represented by the same law firm that represented Rodopoulos on the Indictment: The law offices of Santangelo, Randazzo & Mangone, LLP. See Letter from Anthony Mangone, Esq. dated March 6, 2008, A.C. Carting's Application at Exhibit A; Deposition Transcript at 37-38.

[13] When he was asked how much he would pay monthly to finance the trucks and to garage them in All-City's yard, he claimed that he and Rodopoulos never discussed the issue. See id.

[14] The garage is owned by Rodopoulos as he acquired it in the course of the Russo divesture. See Supra at 8.

[15] A.C. Carting's Response claims that the Commission was mistaken by stating that A.C. Carting would pay Rodopoulos commissions. See A.C. Carting Response at 5. However, it appears that A.C. Carting failed to finish reading the section that the Commission sited which clearly supports that paying Rodopoulos Commissions would be an "option." See Deposition transcript at 53. Ultimately, the fact that Rodopoulos would be compensated for referring business to A.C. Carting cannot be disputed, regardless of the actual arrangement and method of payment.

The Commission has carefully considered the staff's recommendation and the Applicants' responses. For the independently sufficient reasons set forth below, the Commission finds that All-City and A.C. Carting lack good character honesty and integrity and denies their registration applications.

III. GROUNDS FOR DENIAL OF REGISTRATION

A. The applicants have failed to demonstrate eligibility for a trade waste exemption from licensing requirement and a trade waste registration.

1) All-City and A.C. Carting acted in a manner designed to obscure and minimize their association with the Luchese Organized Crime Family.

Admin Code §16-509(a) and (b) provides the Commission with factors to consider when making its determination. However, the Commission is not limited to the specific factors. Here, a review of the totality of the record before the Commission demonstrates that All-City and A.C. Carting lack the requisite good character, honesty and integrity.

The Applicants have consistently acted in a manner designed to obscure and minimize their clear connections to organized crime and corruption. In 1998, when All-City filed its First Registration Application, in which failed to disclose Russo's full married name Roxanne Russo Capra, a fact that was particularly significant in light of Capra's significant criminal record. Then, when the Commission raised concerns about Capra's possible role in All-City, Rodopoulos and Falciano represented that Capra was not involved in All-City and provided supporting documents in order to obtain a Commission registration. Shortly thereafter, Capra was indicted and named as a caporegime and member of the Luchese Organized Crime Family leadership.

Notably, All-City did not immediately severe all ties with Russo upon learning that Capra was a caporegime in the Luchese Organized Crime Family. Instead, All-City repeatedly resisted the Commission's attempts to depose Russo about Capra's role in the Applicant and offered only to partially divest Russo. Only when the Commission insisted that Russo provide sworn testimony did All-City finally completely divest Russo from the business. All-City represented to the Commission that divesture of Russo would completely remove the taint of organized crime from the company. See supra at 8.

However, in fact, only three years later, Rodopoulos, a 90% shareholder of All-City, was also indicted for criminal activity and named as an associate of the Luchese Organized Crime Family. Rodopoulos ultimately pleaded guilty to the charge in the Criminal Court, thereby admitting the sum and substance of the charges proffered in the Indictment and Felony Complaint. [16]

[16] Without citing to authority, All-City's response argues that the Commission must rely solely on the charge to which Rodopoulos has pleaded guilty, ignoring the facts and circumstances that predicated the indictment and the

Notably, Rodopoulos' crimes involved long term close association with organized crime figures, including a Luchese Organized Crime Family caporegime. In addition, the gambling operation and Rodopoulos' associations with the Luchese Organized Crime Family had been ongoing for the entire time period that All-City has had its registration.[17]

Significantly, even in the face of the Rodopoulos' indictment and public identification as an associate of the Luchese Organized Crime Family, All-City has taken no steps to severe its ties with Rodopoulos. Instead, All-City and Rodopoulos started a "new" company, A.C. Carting, and filed a registration application with the Commission – an application which did not disclose any of the connections to All-City, Rodopoulos or organized crime.

A review of A.C. Carting's application further demonstrates the Applicants' concerted attempt to conceal from the Commission their connection to Rodopoulos and organized crime. Significantly, Rodopoulos conceived, established, provided legal counsel and arranged for the incorporation of A.C. Carting. In addition, Rodopoulos planned to provide A.C. Carting with drivers, trucks, a garage, financing and business. Moreover, in addition to paying Rodopoulos rent for garaging the trucks and interest for providing financing, A.C. Carting would also pay Rodopoulos on a commission basis. None of this material and relevant information, including Rodopoulos' status as a principal, was disclosed in A.C. Carting's Application.

The totality of the record before the Commission clearly demonstrates that All-City and A.C. Carting have failed to demonstrate the requisite good character, honesty and integrity to obtain an exemption from the licensing requirement and trade waste registration. See Admin Code §§ 16-509(a) and (b). For this independently sufficient reason, the Commission finds that All-City and A.C. Carting lack good character, honesty and integrity and deny their registration applications.

2) John Rodopoulos, a disclosed principal of All-City and an undisclosed principal of A.C. Carting, has been named as an associate of the Luchese Organized Crime Family.

The Commission is expressly authorized to deny a registration application of an applicant which lacks good character, honesty and integrity. In making this determination, the Commission considers certain factors, including "association with any member or associate of an organized crime group as identified by a federal, state, or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime association or such person." See Admin. Code §16-509(a)(vi); SRI, 107 F.3d at 998. Admin. Code §16-

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case's ultimate disposition. The Commission is empowered to review and make its own determination based upon all of the evidence and the circumstances surrounding the charges. Therefore, the Indictment, Felony Complaint and Plea Agreement may be considered. Moreover, Local Law 42 specifically provided that an indictment – a finding of probable cause by a grand jury that a crime had been committed and not a finding of guilt beyond a reasonable doubt - can serve as the basis of a registration denial. See Admin. Code §16-509(a)(ii).

[17] Moreover, Rodopoulos was named an associate of the same crime family in which Capra was also a member showing All-City's lasting association with the Luchese Organized Crime Family.

509(a)(vi) clearly also applies to instances where the principal of a company has been named as an associate of an organized crime group.

As stated above, the USAO indicted and publicly identified Rodopoulos as an associate of the Luchese Organized Crime Family. It charged that Rodopoulos, Luchese Organized Crime Family caporegime Domencio Cutaia and other members and associates of the Luchese Organized Crime Family conducted, financed, managed, supervised, directed and owned all or part of an illegal bookmaking operation.

Rodopoulos is a disclosed principal of All-City and an undisclosed principal of A.C. Carting. Therefore, his public identification as an associate of the Luchese Organized Crime Family and the associations with other members and associates of the Luchese Organized Crime Family demonstrate that the Applicants lack good character, honesty and integrity. [18] [19] Therefore, the Commission denies All-City's Third Renewal Application and A.C. Carting's registration based upon this independently sufficient ground. See Admin. Code §16-509(a) (vi).

3) John Rodopoulos, a disclosed principal of All-City and an undisclosed principal of A.C. Carting, committed racketeering activities.

The Commission is expressly authorized to deny a registration application of an applicant which lacks good character, honesty and integrity. In making this determination, the Commission considers certain factors, including the "commission of a racketeering activity[.]" See Admin. Code §16-509(a)(v). Racketeering activity is defined to include the offenses listed under RICO. See id.

As stated above, Rodopoulos was initially charged under 18 USC §1955(a), for operating a large-scale gambling enterprise in violation of P.L. 225.05. Rodopoulos ultimately pleaded guilty to that charge before the Criminal Court, thereby admitting to the sum and substance of the charges in the Indictment and Felony Complaint.

A violation of 18 USC §1955(a) is by definition a racketeering activity according to Admin. Code §16-509(a)(v). Moreover, the conduct detailed in the Indictment and Felony

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[18] All-City's response argues that the Commission had knowledge of Rodopoulos' indictment and alleged ties to organized crime since 2008 and therefore the lapse of time "should serve to estop the [C]ommission based upon the doctrine of "laches"." See All-City Response at §9. This argument is erroneous because the doctrine of "laches" simply does not apply to administrative proceeding. See In the Matter of Parkview Associates v. City of New York, et. al., 71 N.Y.2d 274 (1988)(laches may not be invoked against a municipal agency to prevent it from discharging its statutory duties). Moreover, the argument that the Commission should be foreclosed from taking action against an applicant with ties to organized crime because its ongoing investigation was lengthy conflicts with the Commission's statutory duties pursuant to Local Law 42.

[19] Falciano also knew or should have known that Rodopoulos was an associate of organized crime, especially after Rodopoulos was publicly identified. It is evident from All-City's Third Renewal Application that Falciano has taken no action to distance himself or his company from Rodopoulos as they both as listed as principals. As Admin. Code §16-509(a)(vi) specifically authorized the Commission to consider an Applicant's associations with members or associates of organized crime, Falciano's association with Rodopoulos could provide an additional ground for denial.

Complaint clearly constitutes racketeering activity.[20] Therefore, the Commission finds that Rodopoulos committed racketeering activities.

As Rodopoulos is a disclosed principal of All-City and an undisclosed principal of A.C. Carting, eligibility for exemption from the licensing requirements cannot be demonstrated. Therefore, the Commission denies All-City's Third Renewal Application and A.C. Carting's registration based upon this independently sufficient ground. See Admin. Code §16-509(a)(v).

4) A.C. Carting provided false and misleading information to the Commission in their Registration Application by failing to disclose John Rodopoulos as a principal.

The Commission may refuse to issue a registration to an applicant who has failed "to provide truthful information in connection with the application." See Admin. Code §16-509(a)(i) and (b). On August 20, 2008, A.C. Carting filed a registration application with the Commission and Santiago certified the application was "full, complete, and truthful."

According to the Admin. Code § 16-501(d), a principal is defined as "all persons or entities having an ownership interest of ten percent or more; and with respect to business entities, all other persons participating directly or indirectly in the control of such business entity." As explained above, the record before the Commission clearly establishes that Rodopoulos' participation in the formation and operation of A.C. Carting makes him a principal in the company. See supra at 13; Admin Code §16-501(d). [21]

Question 12 of A.C. Carting's Application directs, "On Schedule A, identify all individuals who are or have been principals of [the] applicant business at any point during the past ten years." A.C. Carting's application listed only Santiago on Schedule A. See A.C. Carting Application at 2.

As such, Rodopoulos should have been disclosed as a principal in question 12. Consequently, A.C. Carting made a false statement to the Commission by failing to disclose Rodopoulos.

Question 14 asks, "Currently, or at any point during the past ten (10) years, has the applicant business or any currently or past principal of the applicant business been issued a license, permit, registration or authorization to operate in the trade waste industry, including but not limited to waste removal companies transfer stations, recycling centers and landfills, in New York City, New York State, New Jersey, and/or Connecticut?" Question 14 then directs "If, yes," provide the requested information below." Santiago answered, "No" and failed to provide any additional information. See A.C. Carting Application at 3.

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[20] The evidence provided in Felony Complaint alone, clearly substantiate that Rodopoulos committed racketeering activities as defined by the Admin. Code §16-509(v).

[21] All-City's Response erroneously claims that Rodopoulos would not be a principal in A.C. Carting because "Rodopoulos had no formal position with A.C. Carting nor any decision making power." See All-City Response at 4. However, the totality of Rodopoulos' involvement as discussed supra is the basis of the Commission's findings.

This statement is false. In fact, Rodopoulos, A.C. Carting's undisclosed principal, was also a principal of All-City which was issued a trade waste registration within the specified times period. See supra at 7.

Moreover, question 15 asks, "At any time during the past ten (10) years, has the applicant business or any currently principal or past principal of the applicant business ever been a principal in another trade waste business?" Question 15 then directs, "If "yes," provide the requested information on Schedule C." In response to this question, Santiago answered "No," and failed to provide any additional information. See A.C. Carting Application at 3.

This statement is false because Rodopoulos, A.C. Carting's undisclosed principal, was also a principal of All-City which was issued a trade waste registration within the specified times period. See supra at 7.

Similarly, question 27 asks, "Are there any misdemeanor or felony charges pending against the applicant business or any principal of the applicant business in any jurisdiction?" It then directs "If, yes," provide the requested information below." In response to this question, Santiago answered "No," and failed to provide any additional information. See A.C. Carting Application at 6.

This statement is false because Rodopoulos, A.C. Carting's undisclosed principal, had the above mentioned Indictment pending against him when A.C. Carting filed its registration. See supra at 8.

While the Commission is not required to attribute a motive for an applicant's false statement, it appears likely that Santiago did not disclose Rodopoulos as a principal of A.C. Carting because Rodopoulos had been committing racketeering activities and been publicly identified as an associate of the Luchese Organized Crime Family.

As A.C. Carting has made numerous false statements in their registration application, it has failed to demonstrate eligibility for a trade waste registration. Therefore, the Commission denies A.C. Carting's Registration Application based upon this independently sufficient ground.

5) Dennis Santiago, A.C. Carting's sole disclosed principal, associated with John Rodopoulos, a publicly identified associate of the Luchese Organized Crime Family.

The Commission is expressly authorized to deny a registration application of an applicant which lacks good character, honesty and integrity. In making this determination, the Commission considers certain factors, including "association with any member or associate of an organized crime group as identified by a federal, state, or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime association or such person." See Admin. Code §16-509(a)(vi); SRI, 107 F.3d at 998.

As stated above, the USAO indicted and publicly identified Rodopoulos as an associate of the Luchese Organized Crime Family. Rodopoulos chose not to challenge the charges and instead pleaded guilty to the charge in the Criminal Court, thereby admitting the sum and substance of the charges proffered in the Indictment and Felony Complaint.

Santiago knew or should have known that Rodopoulos had been identified as an associate of the Luchese Organized Crime Family, as the Indictment was well publicized and Santiago shares a close familial and business association with Rodopoulos. See supra at 8, 10.

Regardless, Santiago established and planned to maintain a business relationship with Rodopoulos through A.C. Carting. This close business relationship with Rodopoulos is a clear association.[22]

As Santiago is the sole disclosed principal of A.C. Carting, eligibility for exemption from the licensing requirements cannot be demonstrated. Therefore, the Commission denies A.C. Carting's registration based upon this independently sufficient ground.[23] See Admin. Code §16-509(a) and (vi).

[22] A.C. Carting's Response argues that the businesses relationship never commenced and therefore the association with Rodopoulos is irrelevant. This argument cannot stand as Santiago established the business association which he would have exploited, had the Commission had not discovered Rodopoulos' role in the company.

[23] A.C. Carting's Response argues that Santiago has closed his company. See A.C. Carting's Response at 1 and 5. A search of the New York State Department of State Division of Corporations shows that A.C. Carting is still an actively registered business entity in New York State. In addition, All-City's Response claims that A.C. Carting's application was "withdrawn," however, to date, the Commission's records show that A.C. Carting's application is still pending and that the Commission has not received a request to withdraw A.C. Carting's Application.

III CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty and integrity. The evidence recounted above demonstrates convincingly that All-City and A.C. Carting fall short of that standard. Based upon the above independently sufficient reasons, the Commission denies All-City's and A.C. Carting's exemption application and registration.

This denial is effective immediately. All-City and A.C. Carting may not operate a trade waste business in the City of New York

Dated: August 2, 2011

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Commissioner/Chair

John Doherty, Commissioner
Department of Sanitation

Janet Lim, Assistant General Counsel (designee)
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation

Andrew Schwartz, First Deputy Commissioner (designee)
Department of Business Services

Brian O'Neill, Inspector (designee)
New York City Police Department