The City of New York
BUSINESS INTEGRITY COMMISSION
100 Church Street · 20th Floor
New York · New York 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE RENEWAL APPLICATION OF DOWNTOWN ENVIRONMENTAL RECYCLING, INC. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS AND DENYING THE APPLICATION OF DOWNTOWN CARTING CORP. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS.

Downtown Environmental Recycling Inc. ("Downtown Environmental") applied to the New York City Business Integrity Commission, formerly the Trade Waste Commission ("Commission"), for renewal of a license to operate a trade waste business pursuant to Local Law 42 of 1996. Downtown Carting Corp. ("Downtown Carting") applied to the Commission for a license to operate as a trade waste business pursuant to Local Law 42. See Title 16-A of the New York City Administrative Code ("Admin. Code") §§16-505(a), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). These illustrative factors include the failure to provide truthful information to the Commission, certain civil or administrative findings of liability, and certain associations with organized crime figures. The Commission denies Downtown Environmental's license renewal application and Downtown Carting's license application on the ground that these applicants lack good character, honesty, and integrity for the following independent reasons:

(1) Vincenzo Grasso, who is a principal of both Applicants, was recently convicted of a crime relating directly to the Applicants' fitness for licensure in the commercial carting industry.

(2) Downtown Carting Principal Fernanda Grasso was indicted for the crimes of insurance fraud in the third degree, grand larceny in the third degree, and falsifying business records in the first degree.

(3) Downtown Environmental knowingly failed to provide information and provided false and misleading information to the Commission in its renewal application.

(4) The Applicants failed to notify the Commission of the arrest and conviction of Vincenzo Grasso and the arrest of Fernanda Grasso.

(5) Downtown Environmental has failed to pay government obligations for which judgments have been entered.

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. Beginning in the late 1950's, and until only recently, the commercial 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":

> Like those dense stars found in the firmament, the cartel can not be seen and its existence can only be shown by its effect on the conduct of those falling within its ambit. Because of its strong gravitational field, no light escapes very far from a "black hole" before it is dragged back . . . [T]he record before us reveals that from the cartel's domination of the carting industry, no carter escapes.

Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI") (citation omitted).

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anticompetitive 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 found:

(1) "that the carting industry has been corruptly influenced by organized crime for more than four decades";

(2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";

(3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";

(4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . effectively being the only rate available to businesses";

(5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove";

(6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms";

(7) "that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations";

(8) "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct"; and

(9) "that a situation in which New York City businesses, both large and small, must pay a 'mob tax' in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy."

Local Law 42, § 1.

The criminal cartel operated through the industry's four leading New York City trade associations, the Association of Trade Waste Removers of Greater New York ("GNYTW"), the Greater New York Waste Paper Association ("WPA"), the Kings County Trade Waste Association ("KCTW"), and the Queens County Trade Waste Association ("QCTW"), all of which were controlled by organized crime figures for many years. See, e.g., Local Law 42, §1; United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993). As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have served, they "operate[d] in illegal ways" by "enforc[ing] the cartel's anticompetitive dominance of the waste collection industry." SRI, 107 F.3d at 999.

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted on enterprise corruption, criminal antitrust, and related charges as a result of a five-year investigation into the industry by the Manhattan District Attorney's Office and the New York Police Department. See People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). The defendants included capos and soldiers in the Genovese and Gambino organized crime families who acted as "business agents" for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. In essence, the carting industry's modus operandi, the cartel, was indicted as a criminal enterprise.

More carting industry indictments followed. In June 1996, both the Manhattan District Attorney and the United States Attorney for the Southern District of New York obtained major indictments of New York metropolitan area carters. The state indictments, against thirteen individuals and eight companies, were (like their 1995 counterpart) based upon undercover operations, including electronic surveillance intercepts, which revealed a trade waste removal industry still rife with corruption and organized crime influence. The federal indictment, against seven individuals and fourteen companies associated with the Genovese and Gambino organized crime families (including the brother and nephew of Genovese boss Vincent "Chin" Gigante), included charges of racketeering, extortion, arson, and bribery. See United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.). In November 1996, the Manhattan District Attorney announced a third round of indictments in his continuing investigation of the industry, bringing the total number of defendants in the state prosecution to thirty-four individuals, thirty-four companies, and four trade waste associations.

The accuracy of the sweeping charges in the indictments has been repeatedly confirmed by a series of guilty pleas and jury verdicts. On October 23, 1996, defendant John Vitale pleaded guilty to a state antitrust violation for his participation in the anticompetitive criminal cartel. In his allocution, Vitale, a principal of the carting company Vibro, Inc., acknowledged that he turned to the trade associations, and specifically to Genovese capo Alphonse Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing another carter from bidding on waste removal services for a "Vibro-owned" building in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of one of the City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay $7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a $10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the City's carting industry.

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. In addition, two carting companies and a transfer station run by Vigliotti's family under his auspices pleaded guilty to criminal antitrust violations. In his allocution, Vigliotti confirmed Ponte's admissions as to the scope of the criminal antitrust conspiracy in the City's carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors from entering the market through threats and economic retaliation. Vigliotti agreed to serve a prison term of one to three years, to pay $2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the City's carting industry.

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a $1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from $250,000 to $750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the City's carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it.

On February 24, 1997, defendants Michael D'Ambrosio, Robros Recycling Corp., and Vaparo, Inc. all pleaded guilty in allocutions before New York Supreme Court Justice Leslie Crocker Snyder. D'Ambrosio pleaded guilty to attempted enterprise corruption, and his companies pleaded to criminal antitrust violations.

On July 21, 1997, Philip Barretti, another lead defendant in the state prosecution and the former owner of the City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay $6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and $3^1/_3$ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract and to violate the Taft-Hartley Act by making unlawful payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined $900,000, and the GNYTW was fined $9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined $200,000.

On January 21, 1998, Patrick Pecoraro pleaded guilty to attempted enterprise corruption and agreed to serve a prison sentence of one to three years, to pay a $1 million fine, and to be barred permanently from the City's carting industry. On the same day, the QCTW pleaded guilty to a criminal antitrust violation and agreed to forfeit all of its assets. Numerous other guilty pleas followed. On December 21, 1999, all of the guilty verdicts were affirmed on appeal. See People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999).

In sum, it is far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been proven beyond a reasonable doubt. The proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched – extending to and emanating from all of the industry's trade associations, which counted among their collective membership virtually every carter – that it could not have escaped the notice of any carter. These criminal convictions confirm the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, to address this pervasive problem.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing of

businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry immediately 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, 940 F. Supp. 656 (S.D.N.Y. 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).

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." id.

As the United States Court of Appeals has definitively ruled, an applicant for a carting 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). In determining whether to issue a license to an applicant, the Commission may consider, among other things, the following matters, if applicable:

(i) failure by such applicant to provide truthful information in connection with the application;

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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;

(vi) 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;

(vii) 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;

(viii) 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;

(ix) 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;

(x) 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 therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

Vincenzo Grasso ("Vincenzo") is the sole disclosed principal of Downtown Environmental. See Downtown Carting License Application at 22. The Commission initially licensed Downtown Environmental for a two-year period on May 5, 2002.

Thereafter, Downtown Environmental submitted applications for renewal of its license at two-year intervals, all of which were approved by the Commission. Downtown Environmental filed its Third Renewal Application- the application at issue in this decision- in June 2008.[1]

Based on the timing of the respective applications, it appears likely that during the time that Vincenzo was engaging in the criminal acts discussed below, a "backup" plan was devised. It appears that the Downtown Carting application was filed in case Downtown Environmental's license to operate was suspended or revoked, or if Downtown Environmental's renewal application was denied and also to avoid the payment of debts generated by the company. Therefore, on February 25, 2008, Downtown Carting submitted a license application to the Commission. Vincenzo's wife, Fernanda Grasso ("Fernanda"), is the sole disclosed principal of Downtown Carting. Local Law 42 sets forth a broad definition of a principal. This term includes individuals with an ownership interest, as well as "all other persons participating directly or indirectly in the control of such business entity." See Admin. Code § 16-501(d). Vincenzo Grasso, as the husband of sole stockholder Fernanda Grasso, would be deemed by Local Law 42 to be a principal of Downtown Carting even if he did not participate in the control of Downtown Carting. See 16 Admin. Code §1-01. Similarly, Fernanda Grasso, as the wife of sole stockholder Vincenzo Grasso, would be deemed by Local Law 42 to be a principal of Downtown Environmental even if she did not participate in the control of Downtown Environmental. Id.

In addition, the evidence demonstrates that Vincenzo actively participates in the running of Downtown Carting and, therefore, is a principal of Downtown Carting apart from his spousal relationship with Fernanda. Although both applicants did not disclose their affiliation with each other, the evidence before the Commission establishes that Downtown Environmental and Downtown Carting are related. In addition to the familial relationship of their principals, Downtown Environmental and Downtown Carting share the same business, garage, and mailing addresses. See Third Renewal Application at 1; Downtown Carting License Application at 1. Fernanda has written checks on behalf of Downtown Environmental and Downtown Carting and has loaned money to Downtown Environmental and paid bills on behalf of Downtown Environmental. See check number 1012 drawn from the checking account of Downtown Carting, written to Lemcor, Inc. (a transfer station), and signed by Fernanda Grasso; See check numbers 129, 130, 131, and

[1] On December 3, 2008, the Commission suspended Downtown Environmental's license on an emergency basis. See Emergency Suspension Order. The Emergency Suspension Order was based on a finding that based on an indictment, it was likely that Vincenzo submitted false or fraudulent information in Downtown Environmental's Third Renewal Application and that based on an indictment, the continued operation of Downtown Environmental's business created an imminent danger to life or property. See id; see infra at 12. Downtown Environmental appealed the emergency suspension and the Chair of the Commission upheld the suspension. See December 9, 2008 letter from the Chair to Todd D. Greenberg, Esq. On December 15, 2008, a hearing on the emergency suspension was held before the Commission. After the hearing on December 15, 2008, the Commission issued a final determination of the emergency suspension and upheld the suspension pending the final disposition of the criminal proceeding against Vincenzo. See December 15, 2008 Final Determination of the Business Integrity Commission to Suspend Downtown Environmental Recycling, Inc.'s License to Operate as a Trade Waste Business.

132 drawn from Fernanda Grasso's personal checking account, written to the Business Integrity Commission (memo states "Loan to Downtown Environmental"), and signed by Fernanda Grasso.[2] Finally, Fernanda was also disclosed to the Commission to be an "office manager" of Downtown Environmental. See April 30, 2004 Renewal Application at 7. Therefore, it is apparent that Downtown Carting is merely the alter ego of Downtown Environmental and that Vincenzo and Fernanda are both principals of both companies. Accordingly, the Third Renewal Application of Downtown Environmental and the License Application of Downtown Carting are considered together.

On March 2, 2010, the staff issued a 17-page recommendation that both applications be denied. The Applicants and the Applicants' attorney were each served with the recommendation on or about March 3, 2010. The Applicants were granted ten business days to respond (March 16, 2010). See 17 RCNY §2-08(a). The Applicants failed to submit a response to the staff's recommendation.

The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth below, the Commission finds that Downtown Environmental and Downtown Carting lack good character, honesty, and integrity, and denies their license renewal application and license application, respectively.

III. GROUNDS FOR LICENSE DENIAL

1. Vincenzo Grasso, who is a principal of both Applicants, was recently convicted of a crime relating directly to the Applicants' fitness for licensure in the commercial carting industry.

On December 3, 2008, Vincenzo was indicted by a grand jury in Richmond County, New York. See Press Release, December 3, 2008, Office of the District Attorney, Richmond County ("Press Release"); People v. Vincenzo Grasso, 382/2008 ("Indictment"). Vincenzo was charged in a seventeen-count indictment with crimes including arson in the third degree, two counts each of falsifying business records in the first and second degrees, two counts of criminal possession of stolen property in the fourth degree, five counts of criminal possession of stolen property in the fifth degree, two counts each of offering a false instrument for filing in the first and second degrees, and one count of conspiracy in the first degree. See Indictment.

Vincenzo was initially investigated for his participation in a scheme to steal waste containers from several other licensed carters. Investigators later found those containers in use by Downtown Environmental. In an attempt to conceal his illegal activity, Vincenzo committed additional crimes by submitting false customer registers and a false renewal application to the Commission, which concealed the number of customers, employees, and trucks involved in the business of Downtown Environmental.[3] The

[2] This also demonstrates the intermingling of funds between the two applicants.

[3] Licensees are required to maintain complete and accurate customer registers and are required to submit the same to the Commission every quarter. A customer register is required to contain, among other things,

investigation also revealed that Vincenzo conspired with one of Downtown Environmental's employees, Michael Norton ("Norton"), to set on fire a trade waste removal vehicle, a 1996 Freightliner dump truck on October 14, 2008 at the intersection of Bay and Prospect Streets in Staten Island.[4] Pursuant to his agreement with Vincenzo, Norton doused a trade waste removal vehicle with a flammable liquid and set the vehicle on fire so that Vincenzo could collect insurance proceeds.[5] See Affidavit of Michael Quinn.

On May 21, 2009, both Vincenzo and Fernanda, along with employee Edward Chimera, were indicted by a grand jury in Richmond County, New York. See People v. Vincenzo Grasso, et. al., 142/2009 ("Second Indictment"). In the Second Indictment, Vincenzo was charged with crimes including two counts of insurance fraud in the third degree, grand larceny in the third degree, and falsifying business records in the first degree. The Second Indictment also charged Fernanda with the crimes of insurance fraud in the third degree and grand larceny in the third degree. See Second Indictment. The Second Indictment charged employee Edward Chimera with the crimes of insurance fraud in the third degree and grand larceny in the third degree.[6]

On November 6, 2009, Vincenzo pled guilty to falsifying business records in the first degree, an E felony.[7] See Certificate of Disposition. The falsified business records plea related to a false customer register that was submitted to the Commission in an effort to conceal the number of customers Downtown Environmental provided service to. Vincenzo is scheduled to be sentenced on April 9, 2010. Under the terms of his plea agreement, Vincenzo will be sentenced to one and one third years to four years prison.

In making licensing determinations, the Commission is expressly authorized to consider prior convictions of the Applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also id. §16-501(a). Those factors are:

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the customer's name and address, the negotiated rate for trade waste removal, the types of trade waste collected, and the days and approximate time of collection. See 17 RCNY §5-03(g).

[4] The Downtown Environmental employee, Michael Norton, was arrested on October 28, 2008 and was charged with arson in the third degree. See Press Release.

[5] As a result of this investigation, a search warrant was executed at the residence of another Downtown Environmental employee, Kenneth Sizian. A total of sixty-nine grams of cocaine and $50,000 in cash were recovered from Sizian's residence. Sizian was charged with criminal possession and sale of a controlled substance in the first degree. See Press Release. Downtown Environmental never disclosed, as it was required to, that Sizian was an employee. Sizian is one of a number of Downtown Environmental employees with questionable backgrounds that could preclude them from working in the trade waste industry in New York City.

[6] The renewal application submitted by Downtown Environmental directed Downtown Environmental to identify in Schedule C the names of all employees. See Third Renewal Application at 8 (Schedule C-Employees of Licensee or Registrant). In response, Vincenzo certified that Downtown Environmental had three employees, Medardo Jara, Moise Lors, and Michael Norton. Id. at 8. This response was false. Downtown Environmental employed several additional people, including Vincent Spinnelli, Edward Chimera, Joseph Ostrowski, and Kenneth Sizian, all of whom were employed when the application was filed on or about June 5, 2008. See Affidavit of Investigator Michael Quinn.

[7] As part of Vincenzo's plea bargain, the remaining charges against Vincenzo and Fernanda were dropped.

(a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license . . . sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law §753 (1).

Vincenzo was convicted of falsifying a business record that was submitted to the Commission in connection with its trade waste business. This crime is so recent, so serious, and so closely related to both the purposes for which licenses are sought here and the duties and responsibilities associated with such licenses, that it should preclude the grant of trade waste removal licenses to these Applicants. Vincenzo was in his 40's during his participation in the criminal schemes- plainly old enough to know what the law required, how to obey it, and to recognize that the schemes in which he was involved were illegal. In addition, the other charges against Grasso were recent, and also relate directly to the trade waste industry, the industry in which the Applicants are seeking to operate, and go to the crux of the Applicants' honesty, integrity and character. As charged, Vincenzo conspired to set on fire a truck used to transport trade waste. Such an uncontrolled fire, deliberately fueled by a flammable liquid and set alight on a public street, had the potential to cause injury and/or death to members of the general public, and the destruction of property. Moreover, Vincenzo was charged with stealing fifteen trade waste containers that belong to his competitors- tactics that are reminiscent of the way the industry functioned under the mob run cartel. In addition, Fernanda was charged with the crimes of insurance fraud and grand larceny- crimes that also go to the crux of a person's honesty, integrity and character. Vincenzo and Fernanda have shown themselves to be unworthy of licensure in that same industry. Notably, as stated above,

Vincenzo's guilty plea related to the submission of false documents to the agency with which he is seeking to be licensed.

The public interest in eliminating the entrenched corruption that has plagued the New York City carting industry for decades is clear. Public confidence in the integrity of the carting industry would be undermined if those proven to have ignored the law received licenses or registrations from the Commission. Vincenzo's guilty plea to a crime involving the waste industry compels the conclusion that these Applicants lack good character, honesty, and integrity. The Applicants did not dispute this point, leaving this ground uncontested. Based on this independent ground, Downtown Environmental's and Downtown Carting's applications are denied.

2. Downtown Carting principal Fernanda Grasso was indicted for the crimes of insurance fraud in the third degree, grand larceny in the third degree, and falsifying business records in the first degree.

As described above, on May 21, 2009, both Fernanda and Vincenzo, along with employee Edward Chimera, were indicted by a grand jury in Richmond County, New York. See Second Indictment. In the Second Indictment, Fernanda was charged with the crimes of insurance fraud in the third degree, grand larceny in the third degree, and falsifying business records in the first degree.[8]

The charges against Fernanda provide substantial evidence that Fernanda and the Applicants lack good character, honesty, and integrity. The Applicants did not dispute this point, leaving this ground uncontested. Based on this independent ground, Downtown Environmental's and Downtown Carting's applications are denied.

3. Downtown Environmental knowingly failed to provide information and provided false and misleading information to the Commission in its renewal application.

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a ground for denial of the application. See Admin. Code §16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied* 2 N.Y.3d 705 (2004); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). As described below, Downtown Environmental and Vincenzo intentionally submitted a false and misleading application as well as several customer registers to the Commission. Accordingly, these applications must be denied.

[8] On November 6, 2009, the same date that Vincenzo pled guilty to numerous crimes, the charges against Fernanda were dismissed.

a. Downtown Environmental provided false and misleading information on its Third Renewal Application.

In the third renewal application submitted to the Commission by Downtown Environmental, Vincenzo signed a sworn certification under penalty of perjury that he "read and understood the questions contained in the attached renewal application and its attachments" and "that to the best of [his] knowledge the information provided in response to each question and in the attachments is full, complete and truthful." See Third Renewal Application at 9. Despite signing this certification, Vincenzo provided the Commission with information that he knew was false and misleading.

The application requires Downtown Environmental to identify in Schedule C the names of all employees. See Third Renewal Application at 8 (Schedule C- Employees of Licensee or Registrant). In response, Vincenzo certified that Downtown Environmental had three employees, Medardo Jara, Moise Lors, and Michael Norton. Id. at 8. This response was false. Downtown Environmental employed several additional people, including Vincent Spinnelli, Edward Chimera, Joseph Ostrowski, and Kenneth Sizian, all of whom were employed when the application was filed on or about June 5, 2008.[9] See Affidavit of Investigator Michael Quinn. Further, as discussed above, at least one of these undisclosed employees, Kenneth Sizian, lacks good character as demonstrated by his arrest for criminal possession and sale of a controlled substance in the first degree. See footnote 5.

In addition, Question 7 of the application asks, "Have you or any of your principals been charged with any civil or administrative violations by any agency?" See Third Renewal Application at 3. Downtown Environmental failed to answer this question. See id. In fact, the Commission charged Downtown Environmental with twenty administrative violations from March 10, 2003 to October 10, 2008, which have

[9] These employees were never disclosed to the Commission on Downtown Environmental's License Application or any other License Renewal Applications. Furthermore, Downtown Environmental never updated its Applications by providing the names of these employees to the Commission. See Affidavit of Assistant Commissioner for Licensing and Custodian of the Commission's records, Hector Serrano.

resulted in fines totaling $77,250.[10] None of these charges were disclosed by Downtown Environmental in its application.[11]

Finally, Question 9 of the application asks, "Have you and your principals timely filed all tax returns and timely paid all taxes due and owing in all jurisdictions?" See Third Renewal Application at 3. Downtown Environmental failed to answer this question. See id. The New York State Commissioner of Labor, the New York State Tax Commission, the New York State Workers' Compensation Board, the New York City Department of Finance, and the State of New York have docketed numerous judgments against Downtown Environmental.[12] See Judgment and Lien printout. According to a judgment and lien search conducted by the Commission, Downtown Environmental currently owes the following unsatisfied judgments:

NYS Commissioner of Labor:
- Docket date 1/3/07 - $833

NYS Tax Commission:
- Docket date 2/8/07 - $1,068

New York State Workers' Compensation Board:
- Docket date 12/7/06 - $14,750

New York City Department of Finance:
- Docket date 12/28/06 – $573

State of New York:
- Docket date 7/17/07 – $3,944

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[10] Downtown Environmental entered into a global Stipulation of Settlement regarding Violation Numbers, TW-2004, TW-2006, TW-2026, TW-2081, TW-2203, TW-2239, TW-2240, TW-2241, and TW-2263, which called for four monthly payments of $4,375 each. Although the final payment was due on June 1, 2008, Downtown Environmental failed to remit this payment. More recently, on October 10, 2008, the Commission issued violation number TW-2931 against Downtown Environmental for failing to submit an audited financial statement in violation of 17 RCNY §5-03(f). Although a hearing on this matter was scheduled to take place on January 8, 2009, Downtown Environmental did not appear. Accordingly, on or about February 9, 2009, Administrative Law Judge Mitchell B. Nisonoff issued a Default Decision and Order finding Downtown Environmental guilty and ordering Downtown Environmental to pay a $10,000 fine. See February 9, 2009 Default Decision and Order. As of the date of this recommendation, Downtown Environmental has not appealed the Default Decision and Order and has not paid the $10,000 fine. Thus, Downtown Environmental has exhibited a pattern of repeatedly violating the rules of the Business Integrity Commission.

[11] Downtown Environmental's duty to disclose these charges on its Renewal Application should not be excused because the Commission itself issued them, and would have been aware of them. Downtown Environmental has a duty to disclose all civil and administrative violations.

[12] "[T]he failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's integrity. See NYC Admin. Code §16-509(a)(x). These applications are denied based on this independently sufficient ground as well. See infra at 15-16.

b. Downtown Environmental provided false and misleading information on the customer registers it filed with the Commission.

All licensees' must "maintain a complete and accurate Customer Register on a form or computer format approved by the Commission, and file the Customer Register and updates thereto with the Commission..." See 17 RCNY §5-03(g). On or about August 8, 2008, Downtown Environmental filed its customer register with the Commission. Vincenzo signed a sworn certification under penalty of perjury that he "read and understood the information provided in the customer register for the period January 1, 2008 through June 30, 2008... and to the best of my knowledge, the information submitted to the Business Integrity Commission is full, complete and truthful." See Customer Register Certification. However, the customer register submitted by Downtown Environmental was false and misleading when Vincenzo submitted it. Downtown Environmental's customer register disclosed a mere eighteen customers for the period January 1, 2008 through June 30, 2008. See Customer Register printout. However, a computer seized pursuant to a search warrant at Downtown Environmental's office, together with the observations of Commission investigators and the location of stolen containers establish that Downtown Environmental's customer list included at least two hundred ninety customers during the period of January 1, 2008 through June 30, 2008.[13] See Affidavit of Investigator Michael Quinn. Thus, Downtown Environmental failed to disclose over two hundred fifty customers to the Commission.

"[T]he commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." Admin. Code §16-509(b). By failing disclose employees, customers, unpaid taxes, and its history of administrative violations, Downtown Environmental has "knowingly failed to provide the information" required by the Commission.[14] The Applicants did not dispute this point, leaving this ground uncontested. The Commission denies Downtown Environmental's license renewal application and Downtown Carting's license application based on this independently sufficient ground.

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[13] The underreporting of customers in the 2008 Customer Register was not an aberration. The Customer Register submitted by Downtown Environmental for 2007 disclosed the existence of only eleven customers and stated that four of those customers were "closed." See 2007 Customer Register printout. The Customer Register submitted by Downtown Environmental for 2006 disclosed the existence of just eleven customers. See 2006 Customer Register printout.

[14] By failing to "at all times cooperate fully with the Commission, including providing requested information on a timely basis," the Applicant also violated the terms of the Licensing Order it agreed to sign. See Licensing Order at 5.

4. The Applicants failed to notify the Commission of the arrest and conviction of Vincenzo Grasso and the arrest of Fernanda Grasso.

An applicant for a license to remove waste has the affirmative duty to notify the Commission, within 10 calendar days, of the arrest or criminal conviction subsequent to the submission of the application. See 17 RCNY §2-05(a) (1), Admin. Code §16-508(c). Both Applicants failed to so notify the Commission. First, Downtown Environmental did not notify the Commission of Vincenzo Grasso's December 3, 2008 arrest. Second, Downtown Carting did not notify the Commission of Fernanda Grasso's May 21, 2009 arrest. Third, Downtown Environmental failed to notify the Commission of the November 6, 2009 conviction of Vincenzo Grasso. The Applicants did not dispute this point, leaving this ground uncontested. The Applicants' repeated failures to comply with §2-05(a) (1) constitute adequate and independent grounds for denial of their license applications.

5. Downtown Environmental has failed to pay government obligations for which judgments have been entered

"[T]he failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's integrity. See NYC Admin. Code §16-509(a)(x).

As described above, according to a judgment and lien search conducted by the Commission on December 17, 2008, the New York State Commissioner of Labor, the New York State Tax Commission, the New York State Workers' Compensation Board, the New York City Department of Finance, and the State of New York have docketed numerous judgments that total at least twenty one thousand one hundred sixty eight ($21,168) dollars against Downtown Environmental. Again, Downtown Environmental's failure to satisfy numerous debts that have been reduced to judgment demonstrates that the Applicants lack good character, honesty and integrity. The Applicants did not dispute this point, leaving this ground uncontested. Based on this sufficient independent ground, the Commission denies these applications.

IV. 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 Downtown Environmental and Downtown Carting fall far short of that standard. Based upon the above independently sufficient reasons, the Commission denies Downtown Environmental Recycling, Inc.'s license renewal application and Downtown Carting Corp.'s license application.

This license denial is effective immediately. Downtown Environmental Recycling, Inc. and Downtown Carting Corp. may not operate as trade waste businesses in the City of New York.

Dated: March 18, 2010

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Commissioner/Chair

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation

Andrew Eiler, Director of Legislative Affairs (designee)
Department of Consumer Affairs

Deborah Buyer, General Counsel (designee)
Department of Business Services

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