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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 CHINATOWN CARTING CORP. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

Chinatown Carting Corp., (“Chinatown” or the “Applicant”) has applied to the New York City Business Integrity Commission (formerly known as the Trade Waste Commission)(“Commission”) for renewal of its license to operate a trade waste business pursuant to Local Law 42 of 1996. 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. Based upon the record as to Chinatown, the Commission denies its license renewal application on the ground that this applicant lacks good character, honesty, and integrity for the following independent reasons:

- (1) The Applicant violated the terms of its Licensing Order.
- (2) The Applicant has failed to pay taxes related to the Applicant’s business for which judgment has been entered.

- (3) The Applicant sought to defraud its creditors, including the State of New York and the City of New York, by conveying money into personal checking accounts.

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 3⅓ 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. §16-509(a). Although Local Law 42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a).

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

In the 1950's, Nicholas Tragni Sr. ("Nicholas Sr.") and his partner, Anthony DeMarco, opened the Applicant trade waste removal business. See Transcript of Commission Deposition of Wayne Tragni ("Wayne Tragni Commission Tr.") at 7-8. DeMarco sold his share of the business to Nicholas Sr. and his wife Irene Tragni ("Irene") in 1986. See September 24, 2002 Affidavit of Wayne Tragni In Support of Plaintiff's Order to Show Cause ("9/24/02 Wayne Tragni Affidavit"); see also October 17, 2002 Affidavit of Damon Tragni Sr. In Opposition to Plaintiff's Order to Show Cause ("10/17/02 Damon Tragni Sr. Affidavit"). In 1991, Nicholas Sr. and Irene transferred 92 percent of the corporate stock of the Applicant to their four sons, Damon Tragni Sr. ("Damon Sr."), Wayne Tragni ("Wayne"), Peter Tragni ("Peter") and Nicholas Tragni Jr. ("Nicholas Jr."). See id. Nevertheless, Nicholas Sr. and Irene Tragni maintained all voting shares of corporate stock in the company. See id. Peter has been a full-time

employee of the Applicant from 1972 to approximately December 2004;¹ Wayne since 1981; Damon Sr. from 1983 or 1984² to 2003; and Nicholas Jr. since 1991. See Wayne Tragni Tr. at 9; see also Transcript of Commission Deposition of Damon Tragni Sr. (“Damon Tragni Sr. Commission Tr.”) at 9.

By approximately 1981, Nicholas Sr.’s role in the company had diminished, and he died in January 1999. See Wayne Tragni Tr. at 7, 11. Upon his death, Nicholas Sr.’s shares of corporate stock in the company (including all voting shares) were passed to Irene. See 9/24/02 Wayne Tragni Affidavit; see also 10/17/02 Damon Tragni Sr. Affidavit. The License Application submitted by the Applicant on August 30, 1996 stated that Nicholas Sr. was then the president and Irene, Damon, Peter, Wayne and Nicholas Jr. were all vice presidents. See License Application at 156-158.

After an extensive background investigation, the Commission’s staff advised the Applicant that it would recommend that its license application be denied. Then, in 2001, the Applicant sought the Commission’s approval to sell the Applicant to a new entity known as Chinatown Waste Corp. (“Chinatown Waste”). Chinatown Waste’s only disclosed principal was Damon Sr.’s son, Damon Tragni Jr. (“Damon Jr.”). Pursuant to the Commission’s rules, the Applicant and Chinatown Waste jointly submitted an Application for Permission to Proceed With Asset Sale or Transaction and an executed Agreement of Sale.³ Hidden from the Commission at the time was the existence of a secret side agreement entitled “Agreement of sale-side agreement.” See September 23, 2003 Wayne Tragni Deposition (“Tragni Deposition”) at 367-368. At his deposition related to a civil lawsuit,⁴ Wayne testified that this “side agreement” was a “back-up” to the original contract. See Tragni Deposition at 367. Wayne could not recall if this “side agreement” was to be kept confidential from the Commission. Indeed, the Commission was never to be advised of its existence, and thus, the Commission could not review the true details of this transaction. See Tragni Deposition at 367. Thus, from the outset, the Applicant sought to deceive the Commission.

In July 2002, Irene passed away. All of her shares in the Applicant were passed to her sons, Damon Sr., Wayne, Peter and Nicholas Jr. See 10/17/02 Damon Tragni Sr. Affidavit at 2-4; see also 9/24/02 Wayne Tragni Affidavit at 2. Amid confusion and family strife, the deal to sell the Applicant to Chinatown Waste was never completed and litigation among the Tragni brothers ensued.⁵

¹ Peter left the Applicant company in 1999. He returned to the company in 2000. See Transcript of Commission Deposition of Peter Tragni (“Peter Tragni Tr.”) at 14-15.

² Damon Sr. worked part time for Chinatown since the 1970’s. See Damon Tragni Sr. Tr. at 8.

³ Local Law 42 requires that license applicants apply for review by the Commission before acquiring, selling or merging with another trade waste removal, collection or disposal business. See 17 Rules of the City of New York (“RCNY”) Section 5-05 (b)(2).

⁴ Chinatown Carting Corp., et. al. v. Damon S. Tragni, Supreme Court of the State of New York, County of Westchester, Index Number 02/16029.

⁵ See Chinatown Carting Corp., et. al. v. Damon S. Tragni. In various pleadings and affidavits submitted to the Court, the Tragni brothers exhibited different opinions about who among them was responsible for the operations of the Applicant. See 10/17/02 Damon Tragni Sr. Affidavit at 2-4; see also 9/24/02 Wayne Tragni Affidavit.

Notwithstanding the litigation among the Tragni brothers, the Commission issued a Licensing Order to Chinatown Carting Corp. with an effective date of April 1, 2003. See Licensing Order. By signing the Licensing Order, the Applicant consented to, among other things, the following conditions of licensure and agreed “that violation of any one of these conditions constitutes sufficient grounds for revocation of its license”:

- “The Applicant shall timely file all tax returns and timely pay all taxes due and owing in any jurisdiction.” See Licensing Order at 4.
- “The Applicant shall not employ, retain the services of, or do business with any person or entity... who has consented or agreed not to be involved in the trade waste industry.” See Licensing Order at 5.
- “the Applicant shall have in place a monitor, with the mission of monitoring the good character, honesty, and integrity of the Applicant” See Licensing Order at 6.
- “The Applicant shall fully fund the operations of the monitor and shall pay all fees and expenses of the monitor and other professionals at usual and customary rates within thirty days of presentment.” See Licensing Order at 7.

On or about April 4, 2003, Damon Sr. executed a debarment affidavit that prohibits him from being involved in the trade waste industry in New York City.⁶ See Debarment Affidavit of Damon Tragni Sr. The Commission required that Damon Sr. be debarred from the trade waste industry due to his involvement in a conspiracy that involved illegal activities related to the trade waste removal industry in New York City. The conspiracy resulted in the indictment of eighteen individuals for charges including commercial bribery, conspiracy, grand larceny, money laundering and restraint of trade as a result of a individual banned from the trade waste industry attempting to gain re-entry by using legitimate companies as fronts and instituting a property rights system. See March 12, 2003 Business Integrity Commission Press Release. Besides the evidence that Damon Sr. used this Applicant in this criminal scheme, there is also evidence that Wayne had some involvement as well. For instance, Wayne admitted that he went to Brooklyn for a business meeting one day, and met an unnamed salesman whom he never met before or after. See January 5, 2004 Wayne Tragni Deposition at 529-532. Wayne also claimed that he had no knowledge about the Applicant’s involvement in an illegal carting scheme in Brooklyn. However, he admitted that customers in Brooklyn possessed contracts with his [Wayne’s] handwriting on them. See id. at 530. Wayne tried to explain that he “had pre-signed contracts. And I handed, maybe I had ten. And I handed them to” the salesman. See id. at 530-531. Wayne also admitted that he and Damon Sr. met “with a man named Phil” in a parking lot one evening with respect to the business in

⁶ According to the terms of his debarment affidavit, Damon was required to divest himself of any and all interest in the Applicant within six months of the final disposition of the lawsuit Chinatown Carting Corp., et. al. v. Damon S. Tragni. See Debarment Affidavit of Damon Tragni Sr. This matter was settled on or about May 2, 2005. See May 6, 2005 letter from Timothy P. Coon, Esq. to the Commission.

Brooklyn.” See id. at 562. “Phil” is likely Philip Fasulo, who pleaded guilty to the crime of Enterprise Corruption in connection to the scheme. The Applicant does not dispute any of this evidence in its response to the staff’s recommendation.

On or about April 9, 2003, Peter executed a debarment affidavit in which he agreed not to be involved in the trade waste industry in New York City beginning on April 10, 2003, and continuing for the remainder of his life.⁷ The Commission required that Peter be debarred from the trade waste industry based on his industry-related felony conviction, his association with a member of organized crime, and his false and misleading testimony about both matters before the Commission. See infra at Section A. Despite this agreement, Peter continued to be involved in the operations of this Applicant. See infra at Section A.

On or about February 14, 2005, the Applicant submitted a “Renewal Application for License as a Trade Waste Business” (“Renewal Application”) to the Commission.⁸ The only principals listed in the Renewal Application were Wayne, Nicholas, and Damon Sr.⁹ See Renewal Application at 5. The staff has conducted an investigation of the Applicant and its principals. On April 28, 2006, the staff issued a 26-page recommendation that the application be denied. Pursuant to the Commission’s rules, the Applicant had ten business days to submit a response to the recommendation. See 17 RCNY § 2-08(a); see also April 28, 2006 letter from Thomas McCormack, Chair of the Commission, to the Applicant; Recommendation at 26.

The Applicant requested several extensions of time to submit a response to the recommendation, and the staff extended the Applicant’s time to submit a response to June 5, 2006.¹⁰ See May 10, 2006 letter from David Mandell to Timothy Coon, Esq. After

⁷As late as October 20, 2004, the Applicant, through its attorney, requested the rescission of Peter’s agreement not to participate in the trade waste industry in New York City. See October 20, 2004 letter from Timothy Coon, Esq. to David Mandell. That request was denied. See January 25, 2005 letter from Thomas McCormack, Chair of the Commission, to Timothy Coon, Esq.

⁸Only Nicholas Jr. signed the Renewal Application. See Renewal Application at 9-10.

⁹As of the date of the renewal application, the matter Chinatown Carting Corp., et. al. v. Damon S. Tragni was still pending.

¹⁰By letter dated May 1, 2006, the Applicant, through its attorneys, requested “a copy of all non-public documents relied upon by the staff in its recommendation.” See letter from Timothy P. Coon, Esq., to David Mandell. The staff provided all non-public documents that it relied upon in its recommendation and extended the time for the Applicant to submit a response to the recommendation to May 26, 2006. See May 2, 2006 letter from David Mandell to Timothy Coon, Esq. The Applicant picked up a copy of the record that was relied upon by the staff on May 2, 2006. See Receipt signed by Wayne Tragni. By letter dated May 3, 2006, the Applicant’s attorney requested that the Commission produce non-public documents that were not relied upon by the staff and were irrelevant to the issues presented in the recommendation. See letter from Timothy P. Coon, Esq., to David Mandell. This request included “1. all documentary evidence demonstrating Damon Tragni’s compliance with his debarment affidavit; 2. all communications with the Deutsch, Coffey & Metz Law Firm; [and] 3. copies of all reports, correspondence, communications, etc. received from or to the monitor assigned to Chinatown, including such documents in electronic format.” See id. Although not relied upon by the staff and irrelevant to the issues presented in the recommendation, the Commission’s staff provided the Applicant with “portions of reports from the monitor to the Commission that concern Chinatown Carting Corp.’s failure to pay taxes.” The Commission’s staff explained that providing sections of the monitor’s report did not constitute a waiver to release the confidential reports in their entirety. See May 4, 2006 letter from David Mandell to Timothy

having been provided with the record, on June 5, 2006, the Applicant submitted a ten-page affirmation by attorney, Timothy P. Coon ("Coon Affirmation"), a fifteen-page affidavit by Wayne Tragni ("Tragni Affidavit"), and three exhibits in response to the staff's recommendation (collectively, the "Response").

The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its license renewal application.

III. GROUNDS FOR DENIAL

A. The Applicant violated the terms of its Licensing Order.

- 1. The Applicant has violated the terms of its Licensing Order by employing Peter Tragni, a person debarred from the carting industry and who was convicted of a felony directly related to both the carting industry and organized crime.**

- (i) The Applicant employed Peter Tragni after he was debarred from the trade waste industry in New York City.**

Although the Applicant agreed not to employ, retain the services of, or do business with Peter as a condition of licensure, the Applicant violated the terms of its Licensing Order by employing and funneling money to Peter. As stated above, on or about April 9, 2003, Peter Tragni executed a debarment affidavit, wherein he agreed that, among other things, effective April 10, 2003, and continuing for the remainder of his life, he would

not participate in any way, whether as a principal (as said term is defined in Local Law 42, enacted on June 3, 1996), employee, agent, consultant, representative or otherwise, in the affairs of any firm or business involved in or connected to the waste collection, removal or disposal (including recycling) industry of any kind in New York City, including but not limited to: hauling of waste materials of any sort from any location whether private, governmental, commercial, residential or other; operation of a transfer station, landfill, incinerator, recyclery or other waste destination or interim facility; transport by any means such as truck, rail or barge related to carting, transfer station, landfill or recycling operations; brokering related to any type of waste removal or transport related to

Coon, Esq. The Commission's staff also provided a "copy of the transcript of Wayne Tragni's deposition that was part of a lawsuit in which Chinatown Carting Corp. was a party and [Timothy Coon, Esq. was] counsel." Finally, the Commission's staff denied the Applicant's requests for other non-public documents that were not relied upon and were irrelevant to the issues in the recommendation. See May 4, 2006 letter from David Mandell to Timothy Coon, Esq.

waste removal; trade association or union office or activities related to any of the industries outlined above.

See Peter Tragni Debarment Affidavit. Similarly, the Applicant signed a Licensing Order on or about April 10, 2003, wherein it agreed that as a condition of licensure it would

not employ, retain the services of, or do business with any person or entity (or entity employing or retaining the services of such person) who has consented or agreed not to be involved in the trade waste industry.

See Licensing Order at 5.

Thereafter, on or about August 7, 2003, the Applicant's attorney advised the Commission that since Peter signed the above-mentioned debarment affidavit, he "has not participated in any capacity in the business of Chinatown Carting, Metropolitan Transfer Station (MTS) or any other entity in the carting industry." See August 7, 2003 letter from Timothy P. Coon, Esq. to the Commission. This is a far cry from the Applicant's admission that Peter continued to participate in the business of the Applicant. See Coon Affirmation at 8-9. Further, the Applicant's attorney advised the Commission that

Peter Tragni recognized his obligation to depose [sic] of the interest [in Chinatown Carting] in order to comply with the agreement. Towards this end, Chinatown has engaged an individual whose profession is business valuations so as to determine the fair market value of the company, in order to determine the pricing of his interests. This valuation was completed on August 7, 2003 and the documentation reflecting the sale of Peter Tragni's interest to his brothers Wayne and Nick are being finalized. The transfer will be effective April 10, 2003.

See id. In a telephone conversation the next day, the Applicant's attorney advised a Commission staff member that Wayne and Nicholas Jr. would complete the "buy-out" of Peter's shares of the Applicant by August 8, 2003.

(a) Peter's participation in the operations of the Applicant.

Despite the Applicant's agreement to the conditions of its Licensing Order in April 2003 and despite Peter's agreement to be debarred from the industry in New York City, Peter continued to participate in the affairs of the Applicant at the direction of Wayne and Nicholas Jr. for nearly two more years until December 2004. See March 14, 2005 Affidavit of Peter Tragni.¹¹ For instance, on several occasions from April 10, 2003

¹¹ The Applicant's response attempts to impeach the character of Peter. See Tragni Affidavit at 7-12. However, as demonstrated in this Decision, Peter Tragni's allegations are corroborated by other evidence, including the Applicant's admissions that Peter "follow[ed]" a competitor's truck to "provide a listing" of a competitor's customers, "review[ed] all of the old Chinatown banking statements and categorize[ed] checks and charge card purchases." See Coon Affirmation at 8-9; Tragni Affidavit at 7. In addition, a number of the grounds for which denial is justified do not rely on statements by Peter.

to December 2004, Peter violated the terms of the Licensing Order and debarment affidavit by performing waste flow surveys for customers on behalf of the Applicant. See id. Wayne directed Peter to use his son Neil's name whenever he conducted a waste stream survey for the Applicant's customers. See id. In addition, on several occasions from April 10, 2003 to December 2004, Peter solicited business from potential customers on behalf of the Applicant. Wayne directed Peter to use his (Wayne's) name and provided Peter with his (Wayne's) business cards whenever Peter solicited business on behalf of the Applicant. See id.

Furthermore, on several occasions from April 10, 2003 to December 2004, Peter picked up the Applicant's mail from the post office and delivered it to the offices of the Applicant. See March 14, 2005 Affidavit of Peter Tragni. Also, on several occasions from April 10, 2003 to December 2004, Peter operated the Applicant's vehicles and even removed and transported containers on behalf of the Applicant. See id. Wayne and Nicholas Jr. directed Peter to perform all of these services on behalf of the Applicant. See id. Additionally, on several occasions from April 10, 2003 to December 2004, Peter assisted, supervised and gave directions to employees of the Applicant. Peter performed these services at the direction of Wayne. See id. Finally, on several occasions from April 10, 2003 to December 2004, Peter followed the trucks of a rival carter of the Applicant along the rival's route as they removed waste and recorded the identity of the customers of the rival carter. Again, Peter performed these services at the direction of Wayne and Nicholas Jr. See id. Since the rival carter began to operate after April 10, 2003, and Peter signed the debarment affidavit on April 10, 2003, it is clear that Peter performed these services after he signed the debarment affidavit and after the Applicant agreed to the terms of the Licensing Order. These activities were referred to in a transcript of a telephone message left for Peter by Nicholas Jr. The transcript of this message makes clear that the Applicant unlawfully employed Peter after he signed a debarment affidavit and after the Applicant agreed with the Commission as a condition of licensure that it would sever all business ties with Peter. In the message, Nicholas Jr. states that he asked Peter

to do something for Chinatown Carting. Now, as you know there was an argument. You're not willing to do what we ask for you but you're willing to take a check and you're on the phone constantly looking for a check every month. But when I call you to do something, I always get an argument. Now, we agreed today with the fact that Damon is soliciting our customers, Chinatown Carting. If you care about that, take that into consideration, that his salesman is quoting 50% sales to our customers. My reaction and Wayne's reaction was to have you follow the truck. Your answer to me was you haven't. Now what you have, and I know quite well is six or seven months old. I specifically said updated list. An updated list means do it tonight but you gave me an argument because you don't want to do it as usual. I didn't want six or seven months ago who he was picking up six or seven. I want it updated so that we can go and solicit the customers now and do to Damon exactly what he's doing to us. But as usual, you gave me an argument and you're just interested in getting a check. So do not do it. Don't bother doing it. You don't have to

do anything for us any longer. Okay? You hung up with me when I tried to tell- explain to you exactly what your behavior is. You don't want to hear it and you hang up on me. So don't bother calling me and don't bother doing anything for Chinatown Carting any longer. I'm going to notify Wayne of your reaction and we'll work on our own from now on. Thank you very much. Goodbye.

See Transcript of telephone message left by Nicholas Jr. at 14-16. Again, all of the activities described above were in violation of Peter's debarment affidavit and were in violation of the Applicant's Licensing Order.

**(b) Peter's continuing financial relationship
with the Applicant.**

Further evidence establishes that a business relationship between Peter and the Applicant continued after Peter signed the debarment affidavit and after the Applicant signed its Licensing Order. In exchange for the services that Peter performed for the Applicant, and in addition to payments to Peter that were specifically approved by the Commission for his shares in the Applicant company, Peter received numerous checks from the "Wayne Tragni Management Account" from April 2003 to December 2004. Wayne or Nicholas Jr. personally gave these checks to Peter. See id.; see also copies of checks from Wayne Tragni Management Account to Peter Tragni. The value of these checks exceeds \$60,000, and is further evidence this money represents more than just compensation for the "buy-out" or legitimate purchase of Peter's shares in the company.

On September 22, 2003, approximately five months after Peter's debarment, Wayne testified in a deposition related to a civil lawsuit. At this time Wayne testified that Peter was no longer an officer of the Applicant because Peter was debarred from the trade waste industry in New York City.¹² See September 22, 2003 Wayne Tragni Deposition at 19. Although Wayne claimed that he did not know the details surrounding Peter's debarment, Wayne did know that the Commission required Peter's debarment as a condition to the licensure of the Applicant. See September 22, 2003 Wayne Tragni Deposition at 19, 23. Wayne also understood that Peter's debarment from the trade waste industry in New York City meant that Peter "would have to step down as an employee or an officer of Chinatown Carting," and that Peter would have to relinquish his interest as a shareholder in the company. See id. at 23-24. Wayne initially denied that Peter was still a shareholder in the Applicant as of the date of the deposition. See id. at 25. Then, Wayne testified that "Nicky and I are buying out [Peter's] shares." See id. Yet, at this time, approximately five months after the effective date of Peter's debarment, Wayne claimed that he did not know how much he and Nicholas Jr. paid for Peter's shares in the Applicant. See id. at 26.

¹² The deposition transcript reflects that when asked if Peter Tragni was still an officer of the Applicant as of September 22, 2003, Wayne looked to his attorney. See September 22, 2003 Wayne Tragni Deposition at 20. When Wayne was asked if Peter was still a stockholder in Chinatown Carting, he answered "no." See id. at 25.

Wayne later testified that he and Nicholas Jr. did indeed enter into a contract with Peter to purchase Peter's shares in the Applicant company. See id. at 36. When Wayne was asked when the contract with Peter was entered into, Wayne admitted that the Applicant was in violation of its Licensing Order by answering, "it's on-going." See id. Then, when he was asked when the contract was signed, Wayne again admitted that the Applicant was in violation with the Licensing Order by stating "it [the contract] hasn't been signed yet."¹³ See id. at 36, 38.

According to Wayne's testimony, the unsigned contract called for Peter to sell his shares to the Applicant in exchange for \$60,000.¹⁴ See id. at 38-39. Wayne also testified under oath that as of the date of his deposition, September 23, 2003, Peter had not been compensated for his shares. See id. at 40. Wayne did, however, testify that the Applicant compensated Peter *after* his debarment became effective for a variety of other reasons, all in violation of the Licensing Order. Wayne initially claimed that the Applicant paid Peter \$15,000, which represented Peter's share of profits from the first quarter of 2003.¹⁵ See id. at 41. Wayne also testified that the Applicant did not provide Peter with any other money after Peter signed the debarment affidavit. See id. Then, after a conference with his attorney, Wayne amended his prior testimony to state that the \$15,000 was not in fact a profit distribution, but was a "retroactive pay increase."¹⁶ See id. at 46-48. Either way, it is clear that the Applicant was funneling additional money to Peter without the Commission's knowledge or consent, in violation of its Licensing Order.

At his continued deposition several months later on January 5, 2004, Wayne was asked if Peter received money from the Wayne Tragni Management Account.¹⁷ Wayne responded "not from that account. At a buy-out to the agreement." Wayne also stated that the contract to purchase Peter's shares was signed, and that the Applicant and Peter closed on the purchase of his shares in the Applicant company. See January 5, 2004 Wayne Tragni Deposition at 494-497.¹⁸

¹³ Wayne also testified that the contract to purchase Peter's shares was not signed yet even though the same attorney represented all of the parties involved. See September 22, 2003 Wayne Tragni Deposition at 36-37. No such contract was ever produced to the Commission. The response does not dispute this point.

¹⁴ Wayne also testified that although the agreement called for Peter to be paid over a period of time, that period of time had not been established yet at the time of Wayne's deposition on September 22, 2003. See September 22, 2003 Wayne Tragni Deposition at 63. Wayne later stated that he had a "rough idea" that Peter would be paid over five years. See id.

¹⁵ Wayne also testified that although the shareholders are "supposed to" divide all profits equally, he and Nicholas Jr. "left the money in the corporation." See September 22, 2003 Wayne Tragni Deposition at 41.

¹⁶ After the conference with his attorney, Wayne changed his testimony about the \$15,000 "profit distribution" and claimed that during a board meeting in May 2003, "we decided to give ourselves pay increases." See September 22, 2003 Wayne Tragni Deposition at 48. In the 2003 Audited Financial Statements that the Applicant submitted to the Commission and certified as true, the Applicant posted a loss of \$85,633. See 2003 Audited Financial Statements. The response does not dispute this point.

¹⁷ Sometime in May 2003, Wayne Tragni established the Wayne Tragni Management Account to avoid creditors like the State of New York from levying the Applicant's bank accounts. See infra.

¹⁸ Again, the Applicant never provided the Commission with a copy of this contract.

However, Wayne stated that he could not recall what the purchase price of Peter's share was:

Q: Did you agree to pay him - - did Carting agree to pay him more than one hundred thousand dollars?

A: I don't recall the amount.

Q: Did it agree to pay him one dollar?

A: We had an agreement, yes.

Q: What was the agreement?

A: I don't recall what the agreement was.

Q: Do you have - - was it a one-time payment or was it a payment over time?

A: Payment over time.

Q: Over what period of time?

A: I believe it's - - I'm not sure. I don't recall it right now.

Q: You don't have any recollection whatsoever?

A: Not right now, I don't have it in front of me.

Q: When did you sign the agreement?

A: October or November.

Q: Of 2003?

A: Yes.

Q: Have payments been made?

A: Yes.

Q: What is the payment per month?

A: Five thousand two hundred something dollars.

Q: Over how many months do these payments have to be made?

A: I don't want to give an answer that would be incorrect. I'm not sure.

Q: Give me your best estimate?

A: I'm not sure.

Q: Was a down payment made?

A: No.

Q: So it was simply financed?

A: Yes.

Q: Did he receive interest?

A: No.

Q: Was the money from the maintenance account- - did the money to pay him come from the maintenance account?

A: Management Account.

See January 5, 2004 Wayne Tragni Deposition at 494-497.

Thus, by January 5, 2004, Wayne testified that the stock purchase agreement was signed. See January 5, 2004 Wayne Tragni Deposition at 568. No stock purchase agreement was ever provided to the Commission. On April 12, 2005, the Commission's staff informed the Applicant's attorney of this fact and requested a copy of "any documentation reflecting the sale of Peter Tragni's interest in Chinatown Carting Corp. to Wayne Tragni and Nicholas Tragni." See April 12, 2005 letter from David Mandell to Timothy Coon, Esq. The Applicant failed to respond to this request. Then, on April 26, 2005, the Commission sent another letter and requested that the Applicant provide a copy of "any documentation reflecting the sale of Peter Tragni's interest in Chinatown Carting Corp. to Wayne Tragni and Nicholas Tragni Jr." The Commission established an April 29, 2005 deadline for the receipt of this documentation and reminded the Applicant that the failure to provide documentation required by the Commission could be a ground for denial of a license application. See April 26, 2005 letter from David Mandell to Timothy Coon, Esq. The Applicant's attorney then left a voice-mail message for a member of the Commission's staff before business hours on the morning of April 29, 2005. In his message, the Applicant's attorney stated that he has "been out of town," and requested an extension of time to May 6, 2005, to provide the requested documentation.

On May 4, 2005, the Applicant provided the Commission with the Minutes of an August 6, 2003 Board Meeting, a Promissory Note of Wayne and a Promissory Note of Nicholas. The Minutes of the Board Meeting stated, among other things, that,

Peter Tragni agreed to sell his interest in Chinatown Carting Corp. in equal shares to Wayne Tragni and Nicholas Tragni for the total amount of

\$50,000.00. The effective date of this transfer is April 10, 2003. This sum shall be paid in equal installments of \$5,000.00 beginning in October 2003.

See Board of Directors Minutes of Meeting Held August 6, 2003. However, the Applicant did not disclose to the Commission the existence of any additional payments to Peter.

Whatever the arrangement to compensate Peter for his shares really was, the payments should have ended on or about the effective date of Peter's debarment, April 10, 2003, or shortly thereafter. According to the Minutes of the Board of Directors Meeting, Peter should have been paid a total of \$50,000 in exchange for his shares in the Applicant. Even by Wayne's own sworn deposition testimony, the payments to Peter should have totaled only \$60,000 in exchange for his shares in the Applicant. However, the payments from the Applicant (or from the Wayne Tragni Management Account) continued until December 2004, and the total amount of the payments exceeded \$60,000. Bank records of the accounts used by the Applicant establish that Peter received at least \$82,248 from the Applicant between May 28, 2003 and December 20, 2004. See Copies of Checks to Peter Tragni. Either way, this Applicant was in violation of its Licensing Order, and this Applicant facilitated the violation of the terms and conditions of Peter's debarment.

The Applicant's response admits that the Applicant paid Peter monies that exceeded compensation for Peter's shares in the company. See Coon Affirmation at 7-8; Tragni Affidavit at 6-7. Although the response provides no proof, the Applicant now argues that the payments that exceeded the \$50,000 to Peter represented "back wages" owed to Peter from earlier years.¹⁹ See Coon Affirmation at 7; Tragni Affidavit at 6-7. The response clashes with Wayne's testimony on this subject. See supra. The fact that the Applicant only disclosed to the Commission payments totaling \$50,000 to Peter and secretly paid Peter additional moneys, whatever the actual reason, demonstrates it is in violation of Peter's debarment affidavit and the Applicant's Licensing Order and is an independently sufficient ground to deny this application.

The Applicant's response also clearly admits that in addition to making prohibited payments to Peter, the Applicant, through its attorney, "designated Peter" to "follow" a competitor's truck, to "provide a listing" of a competitor's customers, to "review all of the old Chinatown banking statements and categorizing checks and charge card purchases." See Coon Affirmation at 8-9; Tragni Affidavit at 7. It does not matter whether the Applicant or the Applicant's attorney "designated" or directed Peter to perform tasks that were in clear violation of his debarment affidavit and the Applicant's Licensing Order. In either case, the response concedes that the Applicant knowingly "employed, retained the services of, or did business with" a person who is debarred from the trade waste industry in New York City.

¹⁹ The Applicant never before disclosed to the Commission that it would pay Peter "back wages."

The response also claims, for the first time, that Peter attempted to “blackmail” the Applicant for additional payments. See Coon Affirmation at 8; Tragni Affidavit at 7. However, the Applicant never informed the Commission of such threats at the time that the threats allegedly were made while, in contrast, the Applicant has notified Commission staff of numerous other complaints. In addition, since Wayne was not shy about communicating problems and issues to Commission staff during this period, the most likely explanation for the failure to forward this complaint is that it would have led the Commission to discover that Peter still worked for the Applicant. In any event, even if these threats were true, they do not justify the Applicant’s admitted violation of its Licensing Order.

Finally, the response asserts that “the silence of the Monitor on the Peter Tragni issue screams out volumes.” See Coon Affirmation at 9. Whether or not the monitor uncovered Peter’s involvement does not excuse the conduct, and merely presents an argument that it is the monitor’s and/or Commission’s fault that the Applicant was not caught in its improper behavior. To the contrary, the lengths that the Applicant took to concoct a scheme to secretly utilize the services of a person who is debarred from the trade waste industry in New York City and to secretly funnel money to him speaks volumes and is further confirmation that this Applicant does not have the requisite good character, honesty, and integrity to have a trade waste license.

Thus, it is clear that this Applicant did business with a person who is debarred from the trade waste industry in New York City. This arrangement was in violation of its Licensing Order, and demonstrates this Applicant’s lack of honesty, integrity and character. As such, this application for renewal must be denied based on this independently sufficient reason.

(ii) Peter Tragni has a felony conviction that was directly related to the carting industry and directly related to organized crime.

The Commission issued a license to the Applicant with the condition, among others, that the Applicant “not employ, retain the services of, or do business with” Peter. As the Applicant continued to employ, retain the services of, or do business with Peter after the Licensing Order was issued, the underlying reasons for Peter’s debarment, including an industry-related felony conviction, Peter’s association with a member of organized crime, and Peter’s false and misleading testimony, are relevant and must be considered in denying this renewal application.

On January 26, 1981, Peter Tragni was arrested and charged with burglary in the third degree and attempted burglary in the third degree. See People v. Tragni, 449 N.Y.S.2d 923 (May 5, 1982). The charges were based on Peter’s participation in a scheme to illegally remove a safe from a jewelry store. To accomplish this, Peter and several others drilled holes through the wall of the jewelry store. The holes were apparently drilled on each side of a 3,000-pound safe located within the premises and adjacent to the exterior wall. See id. Peter Tragni and another Chinatown employee positioned two of the Applicant’s trucks in front of the jewelry store and revved their engines in an attempt to shield the activity from public view and to mask the sounds of

the drilling operation.²⁰ See id. Peter and four other men who worked for the Applicant were arrested. See Peter Tragni Tr. at 24-25.²¹ After trial, Peter was convicted of attempted burglary, a class E felony and later sentenced to five years probation. See Peter Tragni Tr. at 20.

One of Peter's codefendants was Elio "Chinatown" Albanese ("Albanese"). Law enforcement sources classify Albanese as a soldier in the Genovese Organized Crime Family.²² See United States v. Savarese, et. al., 2002 U.S. Dist. Lexis 3003 (February 22, 2002); United States Attorney, Southern District of New York, December 5, 2001 Press Release; see also United States Attorney, Southern District of New York, June 17, 2003 Press Release.

²⁰ According to the *Daily News*, two Chinatown garbage trucks were used to block the view in front of the jewelry exchange in lower Manhattan. The defendants planned to remove the safes and take them away in the garbage trucks. Elio Albanese, a soldier in the Genovese crime family, Peter Tragni, and several Chinatown employees were arrested and charged. See "'Garbage Gang' Dumped, 8 Charged In Attempt to Heist 30 Gem Safes," *Daily News*, January 28, 1981.

²¹ Although Peter readily acknowledged that these four men were "helping" him on the truck at the time of the arrest and performed "day and night work" for the Applicant, he refused to classify them as employees of the Applicant. See Peter Tragni Tr. at 24-25. At his deposition, Peter testified that he "had four individuals helping" him to lift a bail of cardboard onto the truck." See Peter Tragni Tr. at 24. However, he attempted to mislead the Commission staff by denying that these individuals were employees of the Applicant. At his deposition, Peter went to painstaking lengths to distance himself and his company from his accomplices:

Q.: Were those four people employees of Chinatown?

A.: They were not employees of Chinatown.

Q.: How did you know those four people?

A.: They used to come around the truck and ask me if I had work.

Q.: So they were basically like [independent] contractors?

A.: They'd come around looking for money or work. Day and night work.

See Peter Tragni Tr. at 24-25. Despite Peter's acknowledgment that he "had four individuals helping" who were performing work for the Applicant at the time of their arrests, he continued to distance himself from them:

Q.: Do you remember any of their names?

A.: No.

See Peter Tragni Tr. at 25. Later in the deposition, the Commission staff listed the names of all of the individuals charged in the scheme. One by one, Peter denied knowing their names. Finally, Peter admitted, "I believe- - I believe these names are the people that were on the truck the night I was arrested" See Peter Tragni Tr. at 49-50.

²² Association with any member or associate of an organized crime group as identified by 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 is an additional independent reason that this application should be denied. See Admin. Code §16-509(a)(vi).

Despite his conviction, Peter testified at his deposition on May 16, 2001, that he was not responsible and was essentially an innocent bystander. When asked to explain the underlying circumstances for his arrest and conviction, Peter explained:

“Okay. I was working at the time and I had stopped on Canal Street and a van pulled up behind my truck. I had a flat tire and they jumped out of the van, started drilling a hole on the jewelry exchange on the corner of Canal and the Bowery and I was watching what was going on when the police came to the scene. They arrested everyone and I was arrested.”

See Peter Tragni Tr. at 21. Where a jury has found Peter guilty beyond a reasonable doubt of the crime charged, the Commission can not accept at face value a self-serving version of events inconsistent with the jury’s verdict. Peter’s testimony as to his criminal record lacks credibility and can be charitably described as, at best, false and misleading. Moreover, Peter’s unwillingness to take responsibility for his actions, even many years after the event, demonstrates his lack of good character and justified the Commission’s insistence that he be debarred from further participation in the trade waste industry.

Accordingly, given Peter’s participation in the crime and his continued refusal to take responsibility for it, the Commission required that Peter be debarred from the trade waste industry in New York City as one of the conditions of licensure for the Applicant. Peter agreed to be debarred by signing a debarment affidavit. Had Peter not done so, the Commission’s staff would have recommended that Chinatown’s license application be denied. However, despite his debarment agreement, Peter continued to be involved in the operations of the Applicant. As such, the crime Peter committed, his association with a known member of organized crime and his lack of candor regarding the same must be considered in evaluating this application for renewal.

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:

- (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).

Applying the above factors, the Commission finds that, notwithstanding the public policy of the State of New York to encourage licensure of persons convicted of crimes, the crime committed by Peter Tragni is antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption from the trade waste industry. Peter was 31 years old at the time of the crime, and his criminal conduct cannot be described as a “youthful indiscretion.” Although the crime took place in 1981, Peter’s testimony in 2001 about the subject was false and misleading. Moreover, the conviction directly related to the waste hauling industry, as Peter used Chinatown trucks and Chinatown employees to execute the crime. In addition, one of Peter’s partners in crime was Elio “Chinatown” Albanese, a reputed member of the Genovese Organized Crime Family.

This Applicant cannot distance itself from the criminal activities of Peter Tragni, a past principal, who, even by the Applicant’s own admission, continued to have significant involvement with the Applicant after the date of his debarment. In addition to Peter Tragni, two of the Applicant’s trucks and several of the Applicant’s employees were involved in this criminal scheme. Thus, there can be no mistake that this crime not only was directly related to the carting industry, but also was directly related to the Applicant itself. Finally, 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 and associated with members of organized crime received licenses from the Commission. Peter Tragni’s conviction for attempted burglary and the underlying facts and circumstances in which the crime was committed compel the conclusion that the Applicant lacks good character, honesty, and integrity. The Applicant’s response only claims that Peter “was debarred, not because of his felony, but rather because [the Commission] determined that he was untruthful when given his deposition.” See Tragni Affidavit at 7. Conveniently, the Applicant’s response does not discuss, and therefore does not dispute, the fact that Peter was convicted of an industry-related felony along with a member of organized crime. Accordingly, the Commission denies Chinatown’s license renewal application based on this independent reason.

2. The Applicant has violated the terms of its Licensing Order by failing to timely pay all taxes and other government obligations.

The Applicant violated the terms of its Licensing Order by failing to timely pay a substantial amount of taxes. The Applicant signed a License Order on or about April 10, 2003, wherein it agreed that as a condition of licensure it would

timely file all tax returns and timely pay all taxes due and owing in any jurisdiction.

See Licensing Order at 4. However, numerous judgments have been docketed against the Applicant by New York State and New York City. When the Applicant updated its application with the Commission on March 5, 2003, it disclosed the existence of judgments and liens totaling hundreds of thousands of dollars. However, it claimed that Damon Sr. was responsible for all of its delinquent taxes and stated that its tax amnesty application was "pending." See Updated Application at 19. Nearly two years later, the Applicant stated on its renewal application, "all corporate taxes have been paid timely since being licensed but Wayne and Nick Tragni's personal returns for 2003 and 2004 are on extension." See Renewal Application at 3. The response repeats the claim that the Applicant should not be responsible for the payment of its taxes and fails to mention the existence or status of the tax amnesty application. Although Damon Sr. blames this Applicant's debts on Wayne (See October 17, 2002 Damon Affidavit at 6), and Wayne blames this Applicant's debts on Damon Sr. (See Tragni Affidavit at 4-5), one thing is clear: that *this Applicant* owes over one million dollars to the State of New York and to the City of New York. According to a judgment and lien search conducted by the Commission on June 6, 2006, the Applicant owes the following unsatisfied judgments:

NYS Tax Commission: \$1,186,518

- E001962356W0105 3/5/04 \$1,272
- E001962356W0119 3/5/04 \$50,123
- E001962356W0124 3/5/04 \$1,153
- E001962356W0162 10/28/04 \$1,289
- E001962356W0176 10/28/04 \$135
- E001962356W0033 1/31/03 \$265,550
- E001962356W0047 1/31/03 \$4,765
- E001962356W0065 8/27/003 \$92,283

- E001962356W0066 8/27/03 \$92,283
- E001962356W0071 9/15/03 \$204,799
- E001962356W0201 4/12/05 \$216
- E023877136W0016 4/18/05 \$472,650

The response disputes the fact that there is a \$472,650 judgment, which has been converted into a tax lien against this Applicant. The response states “New York State, then based on evidence before it, including Damon Tragni’s 10/17/02 affidavit, determined that the sales tax due and owing was the obligation of Damon Tragni, as the responsible party.” See Coon Affirmation at 5; Tragni Affidavit at 5. However, the Applicant did not provide the Commission with any evidence of New York State’s determination, if there was one at all. Furthermore, the Applicant did not provide the Commission with any proof that the tax lien against this Applicant in the amount of \$472,650 does not exist. Finally, the Applicant’s response provided the Commission with proof that only one of the other judgments and tax liens listed in the staff’s recommendation is paid and satisfied.²³ The Applicant’s response claims that “the current amount due for taxes to New York State” is \$1,793.36. See Tragni Affidavit at 5. However, the response does not provide any proof that only \$1,793.36 is due or that it has been paid.

NYC Department of Finance: \$95,507

- 6492040 5/22/01 \$1,640.26
- 7108577 6/2/03 \$57,818.34
- 001419220 6/4/01 \$1,640
- 5936343 7/14/03 \$34,409.35

Again, the Applicant’s response argues that all of the above monies owed to New York City were incurred prior to 2003, when the Applicant was being operated solely by Damon Sr. and that it should not be held responsible.²⁴ See Coon Affirmation at 5. The

²³ The Applicant provided sufficient proof that the New York State Tax Warrant with identification number E001962356W0181, which was cited in the staff’s recommendation as being unpaid, has in fact been paid and satisfied.

²⁴ Wayne’s own testimony contradicts the assertion in the Applicant’s response that prior to 2003, Damon Sr. was in “full and complete control” of the Applicant or “exclusively” ran the Applicant. See Coon Affirmation at 2; Tragni Affidavit at 1. For instance, at a deposition on April 10, 2000, Wayne was asked:

Q.: In terms of actually running the [Applicant’s] business it’s the three of you?
 A.: No. my brother Damon and myself.

Applicant's response also argues that a representative of the New York City Department of Finance "persists in his refusal to acknowledge that the [tax] returns were filed and no taxes are due." See Coon Affirmation at 6. An alternative argument advanced in the response is that "these [judgments] were only recently learned by me [Wayne Tragni]." See Tragni Affidavit at 5. The Applicant continues to argue "there is such confusion and misinformation at [the Department of] Finance so as to render this assessment of taxes due to be meaningless." See Coon Affirmation at 6. We find none of these arguments to be credible. The response provides no evidence that proves that the Applicant has paid the taxes it owes to New York City. As of the date of this Decision, none of the above judgments filed against this Applicant have been paid and satisfied.²⁵

On numerous occasions prior to issuing the denial recommendation, the Commission's staff had informed the Applicant that it must resolve all of its debts to government authorities or enter into a formal agreement to do so before the expiration of its license. Despite these warnings, the judgments remain unsatisfied and no formal agreements with the tax authorities exist. Although the response states that "through negotiation with the State of New York, the company accountant was able to reach an agreement on Chinatown's sales tax obligations," the Commission has never been provided with a copy of that agreement or with proof that the Applicant has been abiding by the terms of such an agreement, if one exists at all. See Coon Affirmation at 5; Tragni Affidavit at 4-5. Although the response claims that there have been attempts to remedy the tax obligations owed to New York City, the Commission has never been provided with proof that these obligations have been paid and satisfied or that an agreement to pay exists. Rather, the Applicant provided the Commission with self-serving statements that "there are no taxes due." See Coon Affirmation at 6. The Applicant's denial of these substantial tax liabilities is demonstrative of its lack of good character, honesty, and integrity.

See Wayne Tragni Commission Tr. at 27. Wayne also testified that he [Wayne] attended business meetings on behalf of the Applicant with *and* without Damon Sr. in the spring of 2002. See January 5, 2004 Wayne Tragni Deposition at 534; see footnote 7. Furthermore, the evidence establishes that in September 2002, Wayne signed a labor contract on behalf of the Applicant. See September 25, 2003 Decision of Administrative Law Judge ("ALJ") Raymond P. Green. Therefore, Wayne's own admissions and other evidence contradict the assertion in the Applicant's response that Damon Sr. was in "full and complete" control of the Applicant prior to 2003. As such, the Applicant's argument that it should not be held responsible for paying its taxes is entirely without merit.

²⁵ In addition, the following judgments remain outstanding against the Applicant:

Criminal Court of the City of New York: \$500

- 0042996360 4/20/05 \$500

The response does not address the fact that it has failed to satisfy this recent judgment filed by the Criminal Court of the City of New York.

New York State Commissioner of Labor: \$284

- 46674140 11/7/05 \$284

Similarly, the response does not address the fact that it has failed to satisfy this recent judgment filed by the New York State Commissioner of Labor.

Finally, besides failing to pay the abovementioned obligations to government authorities, Wayne has acknowledged in sworn testimony that the Applicant has had customers who "were off-the books," and that he collected cash payments from these customers. See September 22, 2003 Wayne Tragni Deposition at 125. Furthermore, Wayne admitted that the Applicant paid at least four of its employees "off-the books." See id. at 128, 208-209.²⁶ The response does not even attempt to address this unlawful behavior. Thus, it is clear that the Applicant has fraudulently concealed cash payments from government authorities, including the Commission,²⁷ and has failed to pay additional taxes, including payroll taxes. In addition, the existence of a previously unaccounted for cash flow suggests a greater ability to meet its financial obligations and fulfill the terms of its license than is claimed.

Again, the Applicant's refusal to satisfy numerous debts that have been reduced to judgment is in violation of the terms of the Licensing Order it agreed to, and is a sufficient independent ground for denial of its registration application.

3. The Applicant has violated the terms of its Licensing Order by failing to timely pay all fees and expenses of its monitor, thereby impeding the duties of the monitor.

As discussed above, the Commission issued a license to the Applicant conditioned upon the Applicant retaining, and funding the operations of a monitor to monitor and investigate all aspects of its business and operations. The Applicant agreed to these terms by executing the Licensing Order. See Licensing Order.²⁸ Furthermore, the Commission issued the license to the Applicant conditioned upon the Applicant's agreement to "fully fund the operations of the monitor and... pay all fees and expenses of the monitor and other professionals at usual and customary rates within thirty days of presentment." See Licensing Order at 7. Despite the Applicant's agreement, it repeatedly failed to pay all fees and expenses of the monitor within thirty days, thereby impeding the duties of the monitor.²⁹

On June 24, 2004, the Commission's staff reminded the Applicant that pursuant to the terms of the Licensing Order, it agreed to "fully fund the operations of the monitor and shall pay all fees and expenses of the monitor and other professionals at usual and

²⁶ A Decision by the National Labor Relations Board found that from as early as 1995, the Applicant "had a practice of employing people as drivers or helpers and keeping their names secret from the union so as to be able to pay them in cash, at rates that were below those contained in the applicable collective bargaining agreements." Also the Applicant "did not make payments on their behalf to the various benefit funds provided in the labor agreements." See September 25, 2003 Decision of ALJ Raymond P. Green. It is also likely that the Applicant did not pay the applicable taxes of being an employer. Wayne's September 22, 2003 testimony confirms as much and also confirms to the Commission that this Applicant lacks good character, honesty and integrity.

²⁷ Local Law 42 requires that Licensees maintain extensive records concerning their businesses. See 17 RCNY §5-03.

²⁸ The License Order specifies that the term of the monitorship is two years. The monitorship is renewable at the sole discretion of the Commission.

²⁹ The Applicant never challenged the accuracy or appropriateness of the monitor's fees and expenses.

customary rates within thirty days after presentment.” See June 24, 2004 letter from David S. Mandell to Chinatown Carting Corp. The staff also directed the Applicant to “address the outstanding balance with the monitor by July 8, 2004.” See id. Again, by letter dated July 20, 2004, the Commission’s staff advised the Applicant that the Applicant’s monitor reported that the Applicant had continually failed to pay its monitor’s expenses within thirty days after presentment. See July 20, 2004 letter from David S. Mandell to Chinatown Carting Corp. The staff also directed the Applicant to “immediately address the outstanding balance with the monitor.” See id. In response, on or about July 22, 2004, the Applicant’s attorney advised the Commission that the Applicant recently sent partial payment to the monitor, and admitted, “this is not full payment.” See July 22, 2004 letter from Timothy P. Coon, Esq., to the Commission.

Although the Applicant entered into the Licensing Order that conditioned, among other things, that it retain and fund a monitor to oversee its operations for a period of two years, by letter dated November 16, 2004, the Applicant’s attorney requested that the Commission “terminate the imposition of the monitor before the expiration of the two-year period.”³⁰ See November 16, 2004 letter from Timothy Coon, Esq. to Thomas McCormack, Chair of the Commission. In this letter, the Applicant, through its attorney, acknowledged that it had not been timely in paying its monitor’s fees and expenses.³¹ See id.

In its response, the Applicant does not dispute the fact that the Applicant violated the terms of its Licensing Order by failing to timely pay the fees and expenses of the monitor. See Tragni Affidavit at 13, 15. Instead, the Applicant argues in its response that it had too many financial obligations, including legal fees, to be able to timely pay the fees and expenses of its monitor. See Coon Affirmation at 9-10; Tragni Affidavit at 13-15.³² We do not find this argument to be persuasive, as the Applicant disregarded the terms of the Licensing Order it entered into and disregarded the repeated warnings of the Commission’s staff to timely pay the fees and expenses of its monitor.

³⁰ Although the Applicant agreed that as a condition of licensure, it would pay all of the monitor’s fees and expenses within thirty days, the Applicant’s attorney proposed that “Chinatown would agree to this payment of all outstanding invoices from the monitor as a condition” of early termination of the monitorship. See November 16, 2004 letter from Timothy Coon, Esq. to Thomas McCormack, Chair of the Commission.

³¹ A review of the Applicant’s business records establishes that throughout the term of its license, from May 1, 2004 to March 1, 2005, the Applicant made regular payments totaling more than \$87,352.57 to the law firm it retained. See Copies of Checks to “Wilson Elser Moskowitz, Edelman & Dicker LLP.” The response indicates that the Applicant still owes legal fees in excess of \$53,000. The overdue status of the Applicant’s legal bills is irrelevant to the issue of timely paying the monitor. However, the amount of the legal bills paid during this time period indicates that Applicant had funds available to meet financial obligations. In addition, timely payment of its monitor’s fees, not its legal bills, was a condition of licensure. Also, the Commission notes that the Applicant’s failure to timely pay the fees and expenses of the monitor it agreed to fund cannot be attributed to anyone besides the Applicant.

³² In the response, the Applicant’s attorney states that in addition to taxes, the Applicant has not been able to pay its legal fees. See Coon Affirmation at 9-10; Tragni Affidavit at 14. The fact that this Applicant cannot meet the basic obligations of doing business and pay its debts is another reason why this application for renewal must be denied.

Only upon the conclusion of the monitorship did the Applicant pay off the fees and expenses of its monitor. Due to the fact that the Applicant repeatedly failed to timely remit payment to the monitor, it impeded the monitor's mission and violated the terms of the license issued by the Commission. For this independently sufficient ground, this license renewal application is denied.

B. The Applicant has failed to pay taxes related to the Applicant's business 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. NYC Admin. Code §16-509(a)(x).

As discussed above, numerous judgments obtained by the New York State Tax Commission, the New York City Department of Finance, the Criminal Court of the City of New York, and the New York State Commissioner of Labor totaling at least \$1,340,366 have been entered against the Applicant. In its response, the Applicant blames others for its unpaid taxes, claims that some if not all of the unpaid taxes do not exist, and disputes the amount of unpaid taxes. However, the response does not contain a scintilla of evidence that the Applicant does not owe any taxes related to the Applicant's business for which judgment has been entered. To the contrary, some of the evidence cited by the Applicant actually establishes that the Applicant has still failed to pay taxes related to the Applicant's business. See id. Thus, it is clear that the Applicant has failed to pay taxes related to the Applicant's business for which judgment has been entered.

Again, the Applicant's refusal, or, if the Applicant's response is to be believed, inability to satisfy numerous debts that have been reduced to judgment is a sufficient independent ground for denial of its license renewal application. The Applicant's avoidance of paying taxes by keeping customers and employees "off-the books" is additional evidence that this Applicant lacks good character, honesty and integrity and is unfit to have its license renewed. Again, the response does not address the fact that Wayne admitted that the applicant engages in the unlawful and dishonest activity of keeping cash payments from customers and cash payments to the Applicant's employees "off the books." For this independently sufficient ground, this renewal application is denied.

C. The Applicant sought to defraud its creditors, including the State of New York and the City of New York, by conveying money into personal checking accounts.

The crime of fraud in insolvency occurs "when a person... with the intent to defraud any creditor and knowing that... a composition agreement or other arrangement for the benefit of creditors has been or is about to be made, he (a) conveys, transfers, removes, conceals, destroys, encumbers or otherwise disposes of any part of any interest in the debtor's estate." See New York Penal Law § 185.00. Fraud in insolvency is a class A misdemeanor. Id. There is substantial evidence in the record that, by

establishing the Wayne Tragni Management Account to elude the State of New York and others from levying money from its accounts, this Applicant's principals committed fraud by insolvency.³³ Wayne testified that when he opened the Wayne Tragni Management Account "there was a levy against my account. In order to keep the business active and not have them [the State of New York] close me out."³⁴ See January 5, 2004 Wayne Tragni Deposition at 488, 570. Wayne also testified that he deposited all proceeds from customers into the Wayne Tragni Management Account.³⁵ See id. at 571.

At his deposition on January 5, 2004, Wayne stated that he established the Wayne Tragni Management Account "a year ago," and that he did so without anyone's advice. See id. at 488-489. Yet he also testified that he spoke to his accountant about this subject, and that the accountant suggested that he set up the Wayne Tragni Management Account "right after the second levy from the State of New York."³⁶ See id. at 504. Wayne readily acknowledged that the source of the funds deposited in the Wayne Tragni Management Account originated from the Applicant's business.

Q: After the state levied on Chinatown Carting's accounts, you then started to take all of the money that was obtained from Carting's customers, and put it into that account (referring to the Wayne Tragni Management Account)?

A: That's correct.

See January 5, 2004 Wayne Tragni Deposition at 489, 494. After the State took \$8,000 out of the Applicant's account, Wayne "wasn't sure what they [the State of New York] were going to levy after that." See id. at 506.

Q: So you set this up to make sure that the monies would not be captured; correct?

A: That's correct.

³³ Although Wayne claimed that he was never advised about the "potential criminal penalties for attempting to remove assets from levy," he did claim that he asked his attorney about certain unspecified "real property" that was the subject of a possible "fraudulent conveyance" or "illegal transfer of assets." See January 5, 2004 Wayne Tragni Deposition at 500-504.

³⁴ Throughout the term of the license, the Applicant has represented to the Commission that it was engaging in negotiations with the State of New York and the City of New York to enter into a payment agreement regarding its past due taxes.

³⁵ The response states that Wayne "consulted with Chinatown's accountant and together we decided that Chinatown should deposit its income in the Wayne Tragni Management Account. See Tragni Affidavit at 4. Interestingly, the exhibits submitted along with the Applicant's response indicate that the Applicant's accountant is Philip Colasuonno. On October 25, 2005, an indictment was filed in United States District Court in the Southern District of New York charging Philip Colasuonno with the crimes of conspiracy and bank fraud in violation of 18 USC §1344. See Indictment United States v. Colasuonno, et. al., 05 CR 1110 (SDNY) (AKH).

³⁶ According to Wayne, the first levy was in August 2003, and the second levy was in October 2003. See January 5, 2003 Wayne Tragni Deposition at 505. The first levy was in the amount of \$8,000, and the second levy was in the amount of \$30,000.

See id. at 506.

In July 2004, the Applicant opened a third bank account. This account was in Wayne's name. When asked about this account by the Commission auditors on February 2, 2004, Wayne explained that this account was opened due to the ongoing litigation with his brother Damon. This explanation conflicts with the explanation Wayne gave during his deposition testimony on January 5, 2004.

The response admits that the Wayne Tragni Management Account was established as a new bank account with the sole purpose of preventing New York State and others from freezing the Applicant's bank accounts. The Applicant argues that the concealment of these funds permitted "the operations" of the Applicant to continue. See Coon Affirmation at 4; Tragni Affidavit at 4. The fact that the Applicant admits that it established a bank account with the intent to defraud New York State and other creditors does not justify this dishonest, if not criminal act.³⁷ Businesses that have honesty, integrity, and good character and cannot afford to pay their debts borrow money, reduce expenses, raise revenues, or cease operations. Instead, this Applicant established bank accounts to conceal money owed to the State of New York and other creditors.

As described above, this Applicant's principal established various bank accounts with the purpose of concealing money from the State of New York, thereby arguably committing fraud in insolvency. Such activities establish that this Applicant does not have honesty, integrity and good character. For this independently sufficient reason, this application for license renewal is denied.

IV. SUMMARY

The Applicant and its representatives made numerous representations and promises to the Commission without regard for their ability to live up to their words in order to be granted a license. Even assuming that the Applicant had a good faith intent to adhere to the terms of the Licensing Order, once it became apparent that it could not abide by the terms it agreed upon with the Commission, the Applicant embarked on a course of misrepresentations, denial, and concealment, rather than disclosing its problems to the Commission and seeking relief. Thus, it was the Applicant's own willfully chosen actions that have resulted in this Denial Decision.

V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty and integrity. Based upon the foregoing independent grounds, including numerous violations of the terms of the Licensing Order, the failure of the Applicant to pay taxes related to the Applicant's business, and the defrauding of the Applicant's creditors, all of which the Commission is

³⁷ The Applicant's response states, "if this arrangement constituted a fraud, it is difficult, if not impossible, to explain the inaction on the part of the B.I.C. and its Monitor once they had knowledge of the alleged fraud." See Coon Affirmation at 4. To the contrary, the Commission, after giving the Applicant ample time to work out its problems, has taken action in the form of this Decision.

expressly authorized to consider under Local Law 42, the Commission denies the license renewal application of Chinatown Carting Corp.

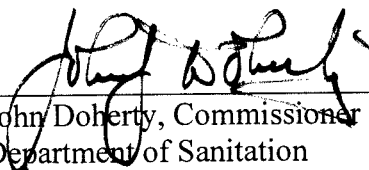
This license denial decision is effective fourteen days from the date hereof. In order that the Applicant's customers may make other carting arrangements without an interruption in service, the Applicant is directed (i) to continue servicing its customers for the next fourteen days in accordance with the existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to immediately notify each of its customers of such by first-class U.S. mail. The Applicant shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: June 20, 2006

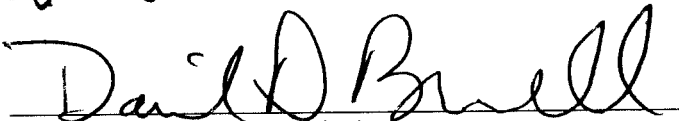
THE BUSINESS INTEGRITY COMMISSION



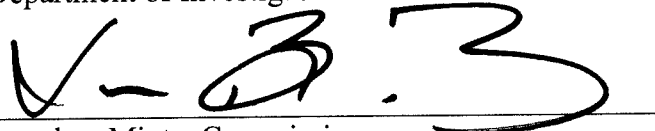
Thomas McCormack
Chair



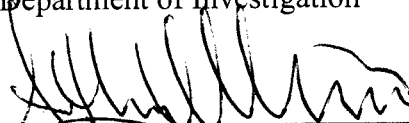
John Doherty, Commissioner
Department of Sanitation



Rose Gill Hearn, Commissioner
Department of Investigation



Jonathan Mintz, Commissioner
Department of Investigation



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

For



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