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THE CITY OF NEW YORK
TRADE WASTE COMMISSION
253 BROADWAY, 10TH FLOOR
NEW YORK, NEW YORK 10007

DECISION OF THE TRADE WASTE COMMISSION DENYING THE APPLICATION OF CREST CARTING CO. INC. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

By application submitted August 29, 1996, Crest Carting Co. Inc. ("Crest" or the "applicant") applied to the New York City Trade Waste Commission for a license to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-508. Local Law 42, which created the Commission to license and regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

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 criminal convictions or pending criminal charges, certain civil or administrative findings of liability, and certain associations with organized crime figures. Based upon the record as to Crest, the Commission concludes for the following reasons that the applicant lacks good character, honesty, and integrity, and thus denies this license application:

(1) the applicant and its principal, Raymond Polidori, recently pleaded guilty to the criminal charge of combination in restraint of trade and

competition, a Class E felony, in violation of the New York state antitrust provisions contained in the Donnelly Act, in connection with their participation in the organized crime-dominated cartel that controlled the carting industry in New York City until the mid-1990's; and

(2) the applicant, through its principal, has knowingly associated with members of organized crime.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the 250,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past forty years, and until only recently, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit recently 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 testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements

among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council 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 . . . 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 have been 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 in illegal ways" by "enforc[ing] the cartel's anticompetitive dominance of the waste collection industry." SRI, 107 F.3d at 999.

> [T]angential legitimate purposes pursued by a trade association whose *defining aim, obvious to all involved,* is *to further an illegal anticompetitive scheme* will not shield the association from government action taken to root out the illegal activity.

Id. (emphasis added).

The Second Circuit has roundly dismissed carting companies' rote denials of knowledge of the role their trade associations played in enforcing the cartel's criminal "property rights" system:

> The [New York State Legislature's] 1986 Assembly report stated that no carting firm in New York City "can operate without the approval of organized crime." Hence, even th[o]se carters not accused of wrongdoing are aware of the "evergreen" contracts and the other associational rules regarding property rights in their customers' locations. *The association members—comprising the vast majority of carters—recognize the trade associations as the fora to resolve disputes regarding customers. It is that complicity which*

evinces a carter's intent to further the trade association's illegal purposes.

SRI, 107 F.3d at 999 (emphasis added).

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted as a result of a five-year investigation into the industry by the Manhattan District Attorney's office. Those indicted 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. The evidence amassed at the City Council hearings giving rise to Local Law 42 comported with the charges in the indictment: evidence of enterprise corruption, attempted murder, arson, criminal antitrust violations, coercion, extortion, and numerous other crimes.

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 indictment, against thirteen individuals and eight companies, was (like its 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 corporations 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.

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. 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 a competitor from bidding on a "Vibro-owned" building, 200 Madison Avenue in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant and the owner of what was once one of New York 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 New York City carting industry. See People v. Angelo Ponte, V. Ponte & Sons, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Jan. 27, 1997) (copy attached as Exhibit 1).

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. 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 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 New York City carting industry. See People v. Vincent Vigliotti, Sr., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Jan. 28, 1997) (copy attached as Exhibit 2).

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 representative -- 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, the principal of the applicant here, pleaded guilty to criminal restraint of trade, as did Crest (the applicant) and a related company controlled by Polidori, RJP Recycling, Inc. 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 New York City 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. See People v. Frank Allocca, Daniel Todisco, Dominick Vulpis, VA Sanitation Inc., Lyn-Val Associates, Inc., Litod Paper Stock Corp., Silk, Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Feb. 13, 1997) (copy attached as Exhibit 3); People v. Raymond Polidori, Crest Carting, Inc., RJP Recycling, Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Feb. 13, 1997) (copy attached as Exhibit 4).

More guilty pleas have followed. 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, Sr., another lead defendant and the former owner of New York 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 Greater New York Waste Paper Association, 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, agreed to prison sentences of four to twelve and 3⅓ to ten years, respectively. All four defendants agreed to be permanently barred from the New York City carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to a Class E environmental felony and

commercial bribery, respectively, and agreed to be sentenced to five years probation.

In sum, it is now far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Local Law 42 was enacted, and the Commission was created, 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 and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "it 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 Commission," which license "shall be valid for a period of two years." 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). Similarly, after providing a licensee with notice and an opportunity to be heard, the Commission may revoke or suspend a license or registration. Id. §16-513(a). Although Local Law 42 became effective immediately, trade waste removal licenses previously issued by the DCA remain valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(1).

As the United States Court of Appeals has definitively ruled, an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI,107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 1997 N.Y. LEXIS 1357, *12-15 (N.Y. Ct. App. June 5, 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 for 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, 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, 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

Applying the above criteria, among others, and for the reasons explained below, the Commission concludes that Crest lacks good character, honesty and integrity and, accordingly, in the exercise of its discretion, the Commission denies this license application. [1]

[1] On August 9, 1996, the Commission denied Crest's application for a waiver of the provision in section 11 (iii) of Local Law 42 that "any contract entered into by a trade waste removal business...that has not received a license from the New York City Trade Waste Commission...shall be terminable on thirty days written notice." The Commission denied Crest's waiver application, among other reasons, because: (1) Crest had been indicted in connection with the Manhattan District Attorney's prosecution of the organized

On August 29, 1996, Crest Carting Co. Inc. submitted to the Commission an application to operate as a trade waste removal business. See License Application, certified by Raymond J. Polidori on August 28, 1996 ("Lic. App."). According to the application, Crest was a member of the KCTW from 1975 through 1996, and was represented there by Crest's president, Raymond J. Polidori. Lic. App. at 65-66. Polidori served as a member of the board of directors of the KCTW from 1975 through 1996. Id. at 66. Crest paid $4,400 per year to the KCTW in membership dues and "legal fees." Id. at 72. Polidori is also the sole principal of another company, RJP Recycling, Inc., which shares office space with the applicant. Id. at 63. As noted above, Crest, RJP, Polidori, and the KCTW, among numerous other defendants, were indicted in June 1995 in connection with the Manhattan District Attorney's prosecution of the organized crime-dominated cartel that has controlled and corrupted New York City's trade waste industry for decades. See Lic. App. at 74; People v. Ass'n of Trade Waste Removers of Greater New York Inc., et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). Those charges, including enterprise corruption, grand larceny, coercion, and Donnelly Act violations, were pending when Crest submitted its license application. See Lic. App. at 74. As discussed below, the applicant and its principal have since entered into a plea agreement (copy attached as Exhibit 5) in satisfaction of the charges.

On June 17, 1997, the Commission's staff issued a recommendation that Crest's application for a trade waste removal license be denied, and a copy of that recommendation was served on Crest that day. Pursuant to the Commission's rules, Crest had ten business days in which to submit a written response. See 17 RCNY §2-08(a). In response, Crest submitted a ten-page letter (with nine exhibits) from its attorneys, Coudert Brothers,

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crime-dominated, anticompetitive carting cartel; (2) Crest's principal and president, Raymond Polidori, had also been indicted in that criminal case; (3) RJP Recycling, Inc., a Polidori-owned company, had also been indicted in that criminal case; (4) Crest belonged to and illicitly benefited from its membership in an indicted trade association, the KCTW, which the Manhattan District Attorney had charged was used to enforce illegal customer-allocation and price-fixing schemes; (5) Raymond Polidori actively participated in KCTW affairs as a member of the board of directors of that association from 1975 to July 1996; (6) a New York State judge already had found a "substantial probability" that the Manhattan District Attorney would prevail on these charges and ordered the assets of Crest and other carters seized and placed in receivership; (7) Crest engaged in abusive contracting practices, including using standard contracts that featured several-year terms, excessive rates, and "evergreen" clauses; and (8) Crest failed to provide complete and accurate information in connection with its waiver application. See Commission's Decision Denying the Waiver Application of Crest Carting Co., Inc., dated August 9, 1996. Since the Commission rendered that determination, Crest, Polidori, and the KCTW all have pleaded guilty to corruption charges, as discussed herein.

dated June 27, 1997 ("Response"). In addition, on July 16, 1997, at Crest's request, the Chair of the Commission (together with members of the executive staff) met with the applicant's principal and one of its attorneys in connection with Crest's license application. See id. In rendering this decision, the Commission has considered, among other things, all of Crest's submissions in connection with its license application.[2]

A. The Applicant's Criminal Convictions

In February 1997, Crest and Polidori (as well as an affiliated company, RJP Recycling, Inc.) each pleaded guilty to Combination in Restraint of Trade and Competition, a Class E felony, in violation of sections 340 and 341 of the New York General Business Law. See Exhibit 4 at 18-20. In his plea allocution, Polidori, individually and on behalf of Crest, admitted that he "knowingly and intentionally entered into and engaged in a contract, agreement, arrangement and combination in unreasonable restraint of trade and competition relating to carting services." Id. at 6-7. Specifically, Polidori admitted that, after a rival carter solicited and began to serve certain customer locations in the City that previously had been serviced by the defendants, he and other defendant members of the KCTW demanded and received from the rival carter "compensation" for the lost business, with Polidori personally receiving $12,000. See id. at 5-6.

This crime, of course, did not occur in a vacuum. As Polidori's criminal confederates Frank Allocca and Daniel Todisco confirmed in their plea allocutions, Polidori was a member of a group known as "the cartel," which enforced the "property rights" system by means of which New York City carters operated and the purpose of which was "to prevent meaningful competition in the carting industry." Exhibit 3 at 7, 18.

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

[2] In addition, Crest's attorneys provided the Commission's staff with draft papers in support of a judicial challenge to a denial of Crest's license application. The papers included draft affidavits from Crest's president, Raymond Polidori, and Crest's former court-appointed receiver, Burton S. Sherman. The Commission has reviewed these papers and found them to be substantially similar to the formal response filed by Crest with the Commission.

(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 these factors, the Commission finds that, notwithstanding the public policy of the state of New York to encourage licensure of persons convicted of crimes, the crimes committed by Crest and Polidori are so recent, so serious, and so closely related to both the purposes for which the applicant seeks a license, and the duties and responsibilities associated with such licensure, as to compel the conclusion that Crest and Polidori lack good character, honesty, and integrity. Crest and Polidori by their own admission engaged in criminal antitrust violations in the New York City carting industry, and the evidence is clear that they did so as part of the criminal cartel that corrupted the industry for decades. They are, quite simply, unworthy of licensure in that same industry again. Accordingly, in an exercise of its discretion, and in the legitimate interest of protecting the property, safety, and welfare of the general public, the Commission denies this license application.

B. Commission of Racketeering Activity

Local Law 42 expressly authorizes the Commission to consider a license applicant's commission of racketeering activity in determining whether the applicant lacks good character, honesty, and integrity and, therefore, should be refused a license. See Admin. Code §16-509(a)(v). The guilty pleas of Crest and Polidori to criminal antitrust violations compel the conclusion that Crest engaged in racketeering activity. See N.Y. Penal Law §460.10(1)(6). Thus, the Commission refuses to issue a license to Crest on this ground as well.

C. Association with a Member or Associate of an Organized Crime Group

In rendering its decision on an applicant's fitness for a trade waste removal license, the Commission is further authorized by statute to consider the applicant's association with any member or associate of an organized crime group, as identified by a federal, state, or city law enforcement or investigative agency, where the applicant knew or should have known that the person was associated with organized crime. See Admin. Code § 16-509(a)(vi). In rejecting a constitutional challenge to this provision by certain carters and their trade association, the Second Circuit confirmed that a carter's "knowing associations, having a connection to the carting business," with organized crime figures may properly be considered by the Commission in its licensing determinations, in order to further its "compelling interest in combating crime, corruption and racketeering—evils that eat away at the body politic." SRI, 107 F.3d at 998.

In pleading guilty to criminal antitrust violations in the New York carting industry, Crest and Polidori essentially admitted their association with and participation in "the cartel," a criminal enterprise that enforced the industry's illegal "property rights" system. See Exhibit 3 at 7-8. Other members of the cartel (and co-defendants) included Genovese organized crime family capo Alphonse "Ally Shades" Malangone and Genovese associate and KCTW president Frank Allocca. As noted above, Polidori was a member of the board of directors of the KCTW from 1975 to 1996, and the evidence is clear that he acted as one of the association's principal representatives, together with Malangone, Allocca, and Daniel Todisco. For

example, at a February 23, 1993 meeting among Polidori, Allocca, and a carter cooperating in the Manhattan District Attorney's investigation, Polidori demanded that the carter give up certain customer stops he had acquired through competition and told the carter that he (Polidori) and Allocca were speaking "for the industry in Brooklyn" and that "for every action there's a reaction." See Affidavit of Detective Joseph Lentini in Support of Applications for Search Warrants, sworn to June 1995, ¶17 (copy attached as Exhibit 6). "[T]he industry in Brooklyn" operated under the watchful eye and according to the dictates of Malangone, the self-described "administrator" of the KCTW who "runs Brooklyn." Id. ¶104.

Thus, Polidori and Crest were not passive members of the KCTW but, rather, closely allied participants in the criminal activities of which that association has since been convicted. Polidori and Crest knew of, participated in, and advanced the interests of the criminal cartel by acting with co-defendant Allocca to advance the interests of co-defendant and Genovese capo Malangone, the "business agent" for the KCTW. Polidori's active and long-standing participation in the KCTW's activities further demonstrates his close association with those individuals. The totality of circumstances present here amply supports the conclusion that Polidori knew that Malangone and Allocca were organized crime figures. Accordingly, the Commission concludes that Crest and Polidori knowingly associated with organized crime figures and denies the license application on this ground as well.

* * *

In its response to the staff's license denial recommendation, Crest does not dispute that it committed serious criminal antitrust violations, nor that its crimes amounted to racketeering activity, nor that it, through Polidori, knowingly associated with organized crime figures in connection with the carting industry. Thus, Crest concedes that there are ample factual bases for denial of its license application. Nonetheless, Crest argues that the Commission should not deny its license application but, rather, should defer action on that application pending consideration of Crest's recently filed application to sell its assets to another carting company. For the reasons set forth below, the Commission declines to hold in abeyance action on Crest's license application pending consideration of its sale application.

The first wave of carting industry indictments was announced in June 1995. In the wake of those indictments (which included Crest and Polidori

as named defendants), a number of the indicted companies and their principals found it prudent to exit the New York City carting market rather than attempt to remain during what was likely to be an era of intense regulatory scrutiny. Thus, several indicted companies sold their assets to new market entrants who were not averse to the new regulatory climate. For example, in April 1996, defendant Philip Barretti, Sr. sold his carting assets to the New York subsidiary of a national, publicly traded company, USA Waste Services, Inc.

In June 1996, Mayor Giuliani signed Local Law 42, which created the Trade Waste Commission. Pursuant to the statute, carting companies holding valid DCA licenses had until August 30, 1996 to file license applications with the Commission. Carting companies filing applications by the deadline could continue to operate under their existing DCA licenses pending the Commission's consideration of the applications. If a company wished to sell its assets, it was required, in accordance with prior regulatory practice at the DCA, to apply to the Commission for approval.

As the August 30 deadline approached, the Commission considered the issue of the interplay between license and sale applications filed by the same carting company. The issue arose specifically with respect to companies whose license applications might well be denied by the Commission, such as companies under indictment. The Commission believed it to be in the public interest to facilitate the expeditious and orderly departure of such companies from the market, as well as to facilitate the entry into the market of companies without prior connections to the cartel. Encouraging the sale of problematic companies to new market entrants was a means of achieving these objectives.

The Commission also was concerned that a number of carting companies – specifically, companies under indictment or the threat of indictment who were attempting to exit the industry through asset sales – might not file license applications (or might not file truthful or complete applications) with the Commission because they believed that the Commission would deny their license applications before they could sell their assets, and thereby leave them with only tangible assets to sell. Widespread refusal by problematic carting companies to file license applications with the Commission might pose a significant risk of

disruption in the industry, including perhaps the suspension or curtailment of service to customers. A similar result might obtain if the Commission were to deny en masse the license applications of the indicted companies, some of which had among the largest customer bases in the City. The threat of disrupted service to customers was a serious matter, posing a potential public health hazard.

To address this situation, the Commission, at a public meeting on August 26, 1996 (pertinent transcript pages attached as Exhibit 7), advised the industry that, under the circumstances, it would consider sale applications before acting on timely filed license applications. See Exhibit 7 at 3-5. This approach was intended in part to encourage carting companies to submit truthful and complete license applications (or, at least, license applications legitimately invoking the Fifth Amendment privilege against compelled self-incrimination) by the August 30 deadline. The Commission emphasized that this method of proceeding was merely its "present intention," subject to change as circumstances might require or suggest. Id. at 4, 5. In light of the potential (indeed, the likelihood) of changed circumstances, the Commission did not promulgate its advice to the industry in any formal manner, such as by published rule.

The approach to sale applications taken by the Commission in August 1996 had benefits beyond encouraging carting companies to file license applications, but it also had drawbacks. As noted above, the Commission had an interest both in hastening the departure of indicted carting companies from the New York City market and in facilitating the entry into the market of new companies unconnected to the cartel. Sales of indicted company assets to new market entrants would accomplish both of those purposes – but at a cost. The "assets" being transferred were not merely tangible assets such as plant and equipment but also (and predominantly) the "goodwill" associated with a customer base acquired and maintained under the "property rights" system administered by the organized crime-controlled cartel. Allowing an indicted carting company to profit from the sale of such an "asset" could be viewed as tantamount to allowing it to profit from illegal activity. Mitigating this concern was the fact that, since the indicted companies and their principals were not only subject to criminal fines but also defendants in civil forfeiture proceedings commenced by the

Manhattan District Attorney, the sales proceeds could be used to satisfy such obligations.

Earlier this year the Commission concluded that its initial approach to the processing of sale applications had achieved its purposes and, moreover, was no longer appropriate. Many of the indicted carting companies had left the market. Through asset purchases, a number of new entrants – such as USA Waste Services, Inc., Waste Management, Inc., and Browning-Ferris Industries – had established a significant presence in the market. There was no longer any reason to permit carting companies whose license applications were at serious risk of denial to reap the benefits of the property rights system through asset sales. Moreover, the Commission was concerned that its initial approach might unduly benefit larger carting companies with the financial wherewithal to grow by acquisition; as a practical matter, the approach reduced the extent of head-to-head competition among carting companies for the customers of carters whose license applications would otherwise be denied before their customer accounts could be sold.

Acting on these changed circumstances and concerns, the Commission, at a public meeting on May 9, 1997 (pertinent transcript pages attached as Exhibit 8), announced that, henceforth, it would decide on a case-by-case basis whether to defer action on a carting company's license application pending consideration of a sale application filed by the company. See Exhibit 8 at 9-12. In the Commission's view, except in rare circumstances which do not now exist, the goals of Local Law 42 are well served by vigorous, head-to-head competition for customers, but are not advanced by sales by cartel participants of customer accounts obtained under a corrupt property rights system.[2]

Crest, however, did not file a sale application with the Commission until June 6, 1997. As noted above, Crest has conceded the validity of the factual bases for the staff's license denial recommendation. Accordingly, Crest has devoted the bulk of its response to the issue of whether the

[2] Although the Commission does not believe it is required to do so, it has thus far continued to follow its initial approach to the processing of sale applications with respect to those applications on file with the Commission on or before May 9, 1997. The Commission, of course, retains the authority to deny such sale applications on the merits, including on the ground that approval of a sale would be inconsistent with the objectives of Local Law 42.

Commission, in the exercise of its discretion, should defer action on Crest's license application pending consideration of its sale application.

As a threshold matter, however, Crest appears to argue that the Commission lacked authority to change its procedure for processing sale applications (at least as to Crest) because Crest received no "notice" of the change and had "relied" on the Commission's initial practice in settling the District Attorney's criminal and civil forfeiture proceedings against it. See Response at 3. This contention lacks merit. The Commission plainly was free to change the way it handled sale applications in order to respond to changing circumstances. "An initial agency interpretation is not instantly carved in stone." Chevron U.S.A. Inc. v. Natural Resources Defense Council, 467 U.S. 837, 863 (1984) (quoted in Rust v. Sullivan, 500 U.S. 173, 181 (1991)). Rather, an agency "must be given ample latitude to 'adapt [its] rules and policies to the demands of changing circumstances.'" Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 42 (1983) (quoting Permian Basin Area Rate Cases, 390 U.S. 747, 784 (1968)); accord DIRECTV, Inc. v. FCC, 110 F.3d 816, 1997 U.S. App. LEXIS 7596, at *21 (D.C. Cir. Apr. 18, 1997) (agency "'is entitled to reconsider and revise its views as to the public interest and the means needed to protect that interest'") (quoting Black Citizens for a Fair Media v. FCC, 719 F.2d 407, 411 (D.C. Cir. 1983)); Gotbaum v. Lewis, 110 A.D.2d 1, 11, 492 N.Y.S.2d 716, 723 (1st Dep't 1985) ("An administrative agency's own view of what is in the public interest may change . . . and an agency charged with furtherance of the public interest is not bound by rigid adherence to precedent.") (citations omitted).

Crest's assertion that the Commission lacked power to alter its procedures for the consideration of sale and license applications is strange indeed. Those procedures did not impose any standard of conduct or obligation, much less confer any rights, on Crest or any other carting company. In the absence of a statutory mandate, how an agency chooses to prioritize the tasks it is called upon to perform is a matter committed exclusively to the good-faith exercise of its discretion. Here, the Commission in August 1996 announced its "present intention" to defer consideration of license applications pending review of sale applications. This "policy" (if a mere statement of current practice even rises to that

prioritize the tasks it is called upon to perform is a matter committed exclusively to the good-faith exercise of its discretion. Here, the Commission in August 1996 announced its "present intention" to defer consideration of license applications pending review of sale applications. This "policy" (if a mere statement of current practice even rises to that level) was expressly subject to change. When the circumstances underlying the Commission's initial practice changed, the Commission changed the practice, and announced that change prospectively, in May 1997. Crest's notion that it is somehow entitled to have the Commission forever adhere to one means of ordering its internal procedures is completely at odds with the flexibility the Commission needs to respond in the public interest to changed circumstances.

Crest's contention that it received no notice of the change in the Commission's practice is rather disingenuous. The Commission announced its change in approach in the same way it had initially advised the industry — at an open meeting, notice of which had been duly published in the ordinary course in the City Record. Crest does not even assert that it was entitled to any further, individualized notice, and it was not. As a regulated entity, Crest was on constructive notice of actions taken by the Commission on the record at public meetings and could reasonably be expected to inform itself of those actions. This is particularly true if, as Crest states, it was relying on a practice which the Commission had previously emphasized was merely its "present intention" to follow.

On the issue of how the Commission should exercise its discretion in this case, Crest asserts that processing its sale application would be "more consistent" with Local Law 42 and the Commission's policies than denying its license application. Response at 2. To the contrary, Crest appears to be among the least appropriate candidates for a favorable exercise of the Commission's discretion. Crest and its principal, Polidori, were indicted on enterprise corruption and related criminal charges arising out of an organized crime-controlled cartel's anticompetitive activities in the New York City carting industry. Crest and Polidori pleaded guilty to felony antitrust charges in satisfaction of that indictment. They concede that they engaged in racketeering activity and knowingly associated with organized crime figures in connection with the carting industry. Polidori, a board member of the now-convicted KCTW from 1975 to 1996, was a spokesman

Crest's license application in order to allow Crest to reap the benefits of a criminal property rights system it admittedly supported and enforced.[3]

Crest's principal argument for deferral of its license denial is that it has proceeded diligently to sell its assets. See Response at 3, 5-6. However, during the twenty-month period from Crest's indictment in June 1995 to its guilty plea in February 1997, Crest apparently made no effort to find a buyer for the company. Such efforts began only after Crest and Polidori entered into a plea agreement permanently barring them from the carting industry in New York City. Not until June 1997, four weeks after the Commission announced the change in its practice concerning sale applications and less than two weeks before the Commission's staff issued its license denial recommendation, did Crest file a sale application with the Commission.

Crest complains that it would be unfair not to allow it to sell its assets since the Commission has previously allowed other indicted and convicted carting companies to sell. See Response at 7. Those companies, however, took advantage of the Commission's pre-May 1997 practice favoring the consideration of sale applications. Crest did not.[4] Crest is more aptly compared to the other indicted and convicted carting company that filed a sale application in June 1997, V.A. Sanitation, Inc. – whose license application was also denied by the Commission without first acting on the sale application.[5]

Crest notes that in February 1997, it entered into a letter of intent to sell its assets to Multi-Carting, Inc., but the transaction was abandoned after

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[3] Crest's assertion that other defendants admitted to even worse crimes (Response at 3, 7, 8, 9) misses the mark. The vast majority of New York City carting companies were not even indicted. Crest's membership in the select group of those who were indicted fatally undercuts its attempt to minimize the seriousness of its crimes.

[4] Crest suggests that the national companies involved in those earlier acquisitions were not interested at that time in purchasing small local companies such as Crest. See Response at 3. The suggestion is inaccurate. By end-1996, for example, one of the national companies had applied to the Commission to purchase six local carting companies with monthly revenues lower than Crest's.

[5] Crest's attempt to distinguish itself from V.A. Sanitation – essentially by asserting that V.A. and its principal were more culpable criminals than Crest and Polidori (see Response at 7-8) – is unavailing. In this connection, Crest states that it entered into a "letter of intent" to sell its assets to USA Waste on April 3, 1997, before the Commission's May 9 announcement. Id. at 8 & Exh. E. The "letter of intent," however, is nothing of the sort; it is, rather, a standard "confidentiality" letter allowing USA Waste access to Crest's files for due-diligence purposes. As such, it marks the beginning of an evaluation process, not the end of a negotiation of basic terms.

the Commission staff insisted that the buyer pay at least 50% of the purchase price in up-front cash. See Response at 5-6. The staff, however, stated no such "50% rule" but, rather, simply expressed its concern that selling carters (particularly indicted and convicted ones) not retain a significant economic interest in the purchased company over the long term. In any event, no Crest/Multi Carting sale application was ever filed with the Commission, and it does not advance Crest's position to argue that if one had been filed, the Commission would have rejected it.

Crest also argues that its plea agreement with the District Attorney's office was premised on its ability to sell its assets. See Response at 4-5; see also Exhibit 5, ¶¶ 6(b), 11. While the plea agreement itself raises no obstacle to Crest's sale of its assets, it does not affect the Commission's authority to refuse to approve such a sale (see 17 RCNY §5-05(b)(ii)), much less its authority to refuse to issue licenses. See Admin. Code §16-509(a). In this regard, Crest never sought, much less obtained, assurances from the Commission that its "present intention" on August 26, 1996 to consider sale applications before license applications would remain unchanged until whenever Crest managed to sell its business. Crest is thus hard put to argue that its purported reliance on continued adherence to that Commission practice was reasonable.

Finally, Crest contends that permitting it to sell its customer accounts will not adversely affect competition in the market because the buyer is legally obligated to inform the purchased accounts of their right to change carters within 90 days. See Response at 9. This contention is unpersuasive. The change in the Commission's practice with respect to sale applications in May 1997 was based in part on the judgment that the economic goals of Local Law 42 are better achieved by actively encouraging head-to-head competition among carting companies for customers rather than the growth of customer bases by acquisition – a method more readily available to larger, well capitalized companies than to smaller firms. The 90-day contract cancellation period, while procompetitive, is no substitute for open competition among carters for a customer list which none of them has already purchased.

III. 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 Crest's criminal convictions, racketeering activity, and knowing association with organized crime figures, all of which the Commission is expressly authorized to consider under Local Law 42, the Commission denies this license application.

This license denial decision is effective fourteen days from the date hereof. In order that Crest's customers may make other carting arrangements without an interruption in service, Crest is directed (i) to continue servicing its customers for the next fourteen days in accordance with its existing contractual arrangements, and (ii) to send a copy of the attached notice to each of its customers by first-class U.S. mail by no later than July 28, 1997. Crest shall not service any customers, or otherwise operate as a trade waste removal business in New York City, after the expiration of the fourteen-day period.

Dated: New York, New York
July 25, 1997

THE TRADE WASTE COMMISSION

Edward T. Ferguson, III
Chairman

Earl Andrews, Jr.
Commissioner
Department of Business Services

John J. Doherty
Commissioner
Department of Sanitation

Edward J. Kuriansky
Commissioner
Department of Investigation

Jose Maldonado
Commissioner
Department of Consumer Affairs

THE CITY OF NEW YORK
TRADE WASTE COMMISSION
253 BROADWAY, 10TH FLOOR
NEW YORK, NEW YORK 10007

July 25, 1997

NOTICE TO CUSTOMERS OF CREST CARTING CO. INC. REGARDING TERMINATION OF CARTING SERVICE

Dear Carting Customer:

The New York City Trade Waste Commission, which regulates private carting companies in the City, has denied the application of Crest Carting Co. Inc. ("Crest") for a license to collect trade waste. **As of August 8, 1997, Crest will no longer be legally permitted to collect waste from businesses in New York City. If Crest is collecting your waste, you will have to select another carting company to provide you with that service by August 8, 1997.**

The Commission has directed Crest to continue providing service to its customers through August 7, 1997. **If your service is interrupted before August 8, call the Commission at 212-676-6275.**

There are more than 300 carting companies that are legally permitted to collect waste from businesses in New York City. There are several ways that you can find out which ones are willing to service customers in your neighborhood:

- **Find out which company is servicing your neighbor.** A carting company cannot, without a business justification satisfactory to the Commission, refuse to service you if it already has another customer that is located within 10 blocks of your business. You can find out which carting companies service your area by looking at the **carting stickers** that many businesses display on their store-fronts.

- **Consult public directories, such as the Yellow Pages.**

- **Call the Commission at 212-676-6275.**

The carting industry is changing for the better and **prices have been falling for more than a year**. Customers that shop around have been able to cut their carting bills by a third, and often by a half or more. You should use this opportunity to get the best rates and service by **soliciting bids from at least four carting companies** before signing a carting contract.

You have many rights under Local Law 42 of 1996, which Mayor Rudolph W. Giuliani signed last year to address the organized crime corruption and anti-competitive practices that have long plagued the commercial waste industry in New York City, including:

- The right to be offered a contract by your carting company. A **form carting contract** that has been approved by the Commission is enclosed for your convenience.

- The right to be charged a reasonable rate for waste removal services. The City sets the maximum rates that carting companies can charge. The City recently reduced the maximum rates for the removal of trade waste to **$12.20 per loose cubic yard** and $30.19 per pre-compacted cubic yard. Most businesses dispose of loose waste; only businesses that have trash-compactors dispose of pre-compacted waste. Under the new rule, businesses that dispose of loose trash in bags filled to 80% of capacity (as many businesses do) may not be legally charged more than:

  $2.66 for each **55** gallon bag of trash
  $2.42 for each **50** gallon bag of trash
  $2.17 for each **45** gallon bag of trash
  $1.93 for each **40** gallon bag of trash
  $1.59 for each **33** gallon bag of trash
  $1.45 for each **30** gallon bag of trash

- The new rates are only **maximum** rates. Customers are encouraged to "shop around" and get bids from four or more carting companies to find a good price. Businesses should be able to get rates below $10.00 per loose cubic yard and $25.00 per pre-compacted cubic yard.

If you have any questions or complaints about commercial waste hauling in New York City, call the Commission at 212-676-6300.

Edward T. Ferguson, III
Chair and Executive Director