

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

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF DeCOSTELLO CARTING, INC. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS**

DeCostello Carting, Inc. (“DeCostello” or the “Applicant”) has applied to the New York City Trade Waste Commission, subsequently renamed the New York City Business Integrity Commission (the “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”), §§ 16-505(a), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in the City of New York, 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 law 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 failure to provide truthful information in connection with the license application and commission of a racketeering activity. See id. § 16-509(a)(i), (v). Based upon the record as to the Applicant, the Commission finds, for the following independently sufficient reasons, that the Applicant lacks good character, honesty, and integrity, and denies its license application:

- (1) Frank DeCostello, Sr., the Applicant’s sole owner and principal, engaged in numerous racketeering and other illegal acts, including hiring Raymond Ramos, a convicted criminal, to intimidate, extort, and physically harm individuals, including competitors.
- (2) Frank DeCostello, Sr. failed to provide truthful information to the Commission regarding his relationship with Raymond Ramos and the Applicant’s participation in the organized crime-controlled Greater New York Waste Paper Association. Frank DeCostello, Jr., an employee, provided false testimony about the trade waste associations and the illegal trade waste cartel.

## 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 anti-competitive 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 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 . . . 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 (the “DA”) and the New York Police Department (the “NYPD”). 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 DA 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 DA 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 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 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 waste 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 Tamilly 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 (1<sup>st</sup> Dept. 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). DeCostello holds a DCA license and timely submitted a license application to the Commission on August 28, 1996; thus, it is legally entitled to operate pending the Commission’s determination of its application.

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, 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

### A. Background

James (a/k/a "Jimmy") DeCostello, who is deceased, gifted the Applicant to his son, Frank DeCostello, Sr. (DOB: 08-20-48) in 1985. The Applicant is a sole proprietorship located at 4910 3<sup>rd</sup> Avenue, Brooklyn.<sup>1</sup> Frank's two sons, Frank, Jr. (DOB: 03-29-74) and James (DOB: 06-17-80), are employed by the Applicant as a driver/repair man and a helper, respectively. DeCostello was a member of the WPA from 1991 until 1996. See DeCostello License Application ("Lic. App.") at 6.

Subsequent to the staff's investigation, which included multiple depositions of the Applicant's principal,<sup>2</sup> the staff issued a 21-page recommendation that the Commission deny DeCostello's license application on June 7, 2002. The Applicant requested and received copies of certain evidence relied upon in the recommendation, including an affidavit by a detective of the New York City Police Department. The detective affirmed that the recommendation accurately recounted the contents of proffers made by Raymond Ramos to the District Attorney (the "DA") in October 1995 pursuant to criminal proceedings against Ramos. The Commission did not release the proffers, because they are confidential material. On or about July 12, 2002, the Applicant submitted an affidavit from Frank DeCostello, Sr. and several exhibits. See Affidavit in Partial Response to the Executive Staff Recommendation and In Support of DeCostello Carting Inc. License Application, dated July 10, 2002 (the "Response").<sup>3</sup>

The Response proceeds along two lines: first, that the staff's reliance upon the criminal proffers from Raymond Ramos deprives the Applicant of property and liberty without due process, and, second, that the staff did not sufficiently credit Frank DeCostello, Sr.'s denials of illegal activity in his depositions. Neither of these points is persuasive.

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<sup>1</sup> In 2001, DeCostello had approximately 260 customers. See Schedule J, DeCostello Sale Application, February 8, 2001. In 1997, it had approximately 40 customers. See Deposition of Frank DeCostello, Sr., August 30, 2001, at 22.

<sup>2</sup> Frank appeared for depositions before the Commission's staff on April 29, 1997 ("Frank Dep. 1"); August 20, 1997 ("Frank Dep. 2"); October 10, 1997 ("Frank Dep. 3"); and August 30, 2000 ("Frank Dep. 4"). Frank, Jr. was deposed on August 31, 2000 ("Frank, Jr. Dep."). The depositions were transcribed, except for the first one in April 1997, which was tape-recorded. Frank and Frank, Jr. were represented by the same counsel at all of the depositions.

<sup>3</sup> Due to its counsel's competing obligations, the Applicant requested and received an extension of time, which it acknowledges was "generous." Response, at 1 ¶ 3. Subsequently, because the Commission's staff inadvertently omitted the even-numbered pages of the transcript of Frank DeCostello, Sr. on September 10, 1997, the staff granted the Applicant a second extension of time. Despite the missing pages, the Applicant submitted the Response, which it deemed "partial" in anticipation of receiving the missing transcript pages and of possibly submitting a supplemental response. Subsequent to receipt of the Response, the Commission provided the Applicant with the missing transcript pages and granted it a third extension of time to submit a supplemental response if it so chose. The Response states that the Applicant did not receive the transcript of Frank DeCostello, Sr.'s deposition in October 1997. See Response, at 1 ¶ 3. The Applicant did not receive a transcript because one does not exist. As stated in footnote 2, the April 1997 deposition was only tape-recorded, not transcribed. The Applicant received a copy of that tape.

The Applicant's first argument – that it is improper to rely upon the proffers of Raymond Ramos – is legal wishful thinking. Notwithstanding the Applicant's assertions to the contrary, the Commission is not required to exclude hearsay evidence, and the sworn affidavit of the detective from the New York City Police Department concerning Ramos' proffers is competent evidence upon which the Commission may properly rely. It is noteworthy that the Applicant cites no case law or other authority, supporting its argument merely with constitutional buzzwords. The Applicant's argument in this regard should be summarily rejected.

As for the Applicant's evidentiary argument, the Response merely quotes large blocks of testimony that supposedly contradict the staff's conclusions. Frank DeCostello, Sr. concedes in his affidavit that "my testimony before the Commission was largely rambling, non-responsive and unintelligible because I did not directly answer the questions; did not really understand the questions; and was totally unprepared for the questions." Response at 3-4 ¶ 10. He blames his previous attorney for the fact that his testimony "made no sense[]" and, therefore, he had to testify three times. Id. Despite numerous examples of his "rambling testimony which never answers the questions," Frank DeCostello, Sr. generally asserts that the lengthy excerpts in the Response somehow refute the staff's recommendation. Id. at 4 ¶ 12. They do not. The staff did not credit his testimony – to the extent it could be deciphered – and neither does the Commission.

The Response also wastes much effort challenging immaterial facts. For example, Frank DeCostello, Sr. denies that his father and Ramos' father knew each other. See Response at 6 ¶ 15. Ramos made this claim in his proffers, as stated *infra* at 14. The strenuous defense of his father is accompanied by exhibits consisting of clippings about his parents' good works. (Only one of the seven exhibits accompanying the Response is relevant to the issue of racketeering activity.) The integrity (or lack thereof) of Frank DeCostello, Sr.'s parents is not relevant to the staff's recommendation or this Commission's decision to deny the license application.

Ironically, the Applicant's Response confirms the very proposition it is intended to refute. Frank DeCostello, Sr. complains that he was deprived of due process because he could not "challeng[e]" or "confront Ramos" or the proffers. Response at 2 ¶ 6. Yet, he emphasizes how many times (three) he was given the opportunity to testify about his relationship with Ramos and about many of the incidents referred to in the proffers. Frank DeCostello also complains that the staff did not credit his testimony. Yet, he admits, repeatedly, that his testimony was evasive and incomprehensible. For the reasons stated below, the Commission concludes that DeCostello lacks the requisite good character, honesty, and integrity for licensure.

## B. Grounds for Denial of the License Application

1. Frank DeCostello, Sr., the Applicant's sole owner and principal, engaged in numerous racketeering and other illegal acts, including hiring Raymond, Ramos, a convicted criminal, to intimidate, extort, and physically harm individuals, including competitors.

- a. Partners in crime: Raymond Ramos describes his relationship with Frank DeCostello, Sr. to the District Attorney.

A major catalyst for the District Attorney's ("DA") investigation of the City's carting industry was a single incident: an act of arson. In May of 1992, Raymond Ramos set fire to a truck owned by Chambers Paper Fibres Corporation ("Chambers"). See Search Warrant Affidavit of Det. Joseph Lentini, sworn to June 5, 1995 ("Lentini Aff."), ¶¶ 10-11. Chambers was the victim of arson and other criminal acts because it operated as an "outlaw," i.e., a carter that did not belong to a trade waste association and did not abide by the rules of the property rights system. See generally *id.* The threats and violence were meant to force Chambers to join the KCTW and the WPA, of which the Applicant was a member at the time.

Chambers' owner, Salvatore Benedetto, reported the arson to the DCA, which alerted the DA. See *id.* at ¶ 11. While two New York Police Department detectives were with Benedetto at his office, Ramos and another individual arrived and threatened Benedetto and the two detectives, whom they presumed to be Chambers employees. See *id.* In June of 1992, Ramos physically assaulted Benedetto at the direction of Philip Barretti, see *id.* at ¶ 13, who would, five years later, plead guilty to corruption charges for his role in the illegal cartel, see *supra* at 7.

Ramos' long and violent criminal history began well before 1992, however, as did his relationship with Frank. See generally Affidavit of New York City Police Department Detective Andrew Vallas, June 7, 2000. Their fathers knew each other from working the same numbers racket. See *id.* Ramos first got in trouble in October 1978 when he was charged with robbery in the first degree (Penal Law § 160.15[1] [forcible theft with injury to a non-participant in the crime]). Criminal History of Raymond Ramos, State of New York Division of Criminal Justice Services ("Crim. Hist."), at 1. In early 1979, he pled guilty to petit larceny, a class A misdemeanor (Penal Law § 155.25), and received three years' probation. See *id.*

In May 1979, he was arrested for criminal possession of a weapon in the third degree (Penal Law § 265.02[03] [knowing possession of a machine-gun, firearm, rifle or shotgun which has been defaced for purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such (items)]), a class D felony. See *id.* at 2. Ramos pled guilty to criminal possession of a weapon in the fourth degree

(Penal Law § 265.01), a class A misdemeanor. See id. He received a conditional discharge. See id.

In July of 1980, Ramos was arrested and charged with robbery in the first degree (Penal Law § 160.15), a class B felony; assault in the second degree (Penal Law § 120.15), a class D felony; grand larceny in the second degree (Penal Law § 155.35), a class D felony; and criminal possession of a weapon in the fourth degree (Penal Law § 265.01), a class A misdemeanor. See id. In December of 1981, a jury found him guilty of the grand larceny charge and possession of stolen property in the first degree (Penal Law § 165.50), a class D felony. See id. at 2-3. He was sentenced to 1-3 years for the former crime and 1 year for the latter. See id. at 2.

Prior to conviction on these charges, in May of 1981, he was arrested for criminal tampering in the second degree (Penal Law § 145.15), a class A misdemeanor; criminal mischief in the fourth degree (Penal Law § 145.00[01] [intentional property damage]), a class A misdemeanor; and unlawful possession of marijuana (Penal Law § 221.05), a violation. See id. at 3. He pled guilty to the criminal mischief charge. See id.

In the 80's, Ramos' criminal career veered into providing strong arm services to Frank and other monopolistic carters. In one of many incidents, Frank believed that an individual connected to an oil company had bilked him and fellow carters, Neil Vaccaro and Daniel Todisco, out of money. See Vallas Aff. Frank offered Ramos \$1500 to assault the oil man, and Ramos seriously injured him with a kitchen knife. See id. Frank and Todisco were also involved in a "pyramid scheme" with a flower shop owner who was collecting money for them, but did not pay. See id. Ramos went to collect the money and slapped him around, stopping when Frank told him to "lay off the man." Id. Todisco was vice-president of the KCTW and he, too, later pled guilty to cartel crimes. See supra at 6.

Another carter, Nick Piccininni, asked Ramos to beat up a witness. See id. Frank was present when he made this request. See id. Frank and Piccininni also directed Ramos to beat up some youths that were harassing a DeCostello customer. See id.

In the early '90s, at the Turquoise Bar in Brooklyn, Frank introduced Ramos to Anthony Sercia, a Barretti employee. See id. At DeCostello's office, Sercia asked Ramos how good he was at "roughing people up" and soliciting stops. Id. Apparently satisfied with Ramos' response, Sercia introduced him to Barretti, who paid Ramos for a campaign of terror against carters, including intimidation, arson, and physical violence. See id. As recounted before, two of Barretti's future "assignments" were torching Chambers' truck and assaulting Salvatore Benedetto. See id. Essentially, Ramos became an "enforcer" of the property rights system.

Ramos also enforced the cartel's rules on behalf of Frank. Along with Piccininni, Frank used Ramos to warn Benedetto to stay away from certain Brooklyn customers. See id. Ramos also poached customers of "M&M [Carting]" and gave them to Frank. See id.

Ramos was willing to do more than simply "rough up" somebody. He was possibly a contract killer as well, having entertained several offers to kill people in exchange for money. See id. Frank set up one such meeting at Ponte's, see id., a restaurant owned by Angelo Ponte, another future convict, see supra at 6. At the Ponte's meeting, two men offered Ramos \$20,000 to kill an unnamed person. See Vallas Aff.

Ramos was again arrested in 1992 on drug charges, and twice in 1994 on charges, inter alia, of robbery and criminal impersonation in the second degree (Penal Law § 190.25[03] [pretending to be a public servant]), a class A misdemeanor. See Crim. Hist. at 4-6. At the time of his arrest leading to the criminal impersonation charge, Ramos had a badge issued by the Department of Sanitation; Frank gave him the badge. See Vallas Aff. Eventually, Ramos pled guilty to criminal possession of a controlled substance in the seventh degree (Penal Law §220.03), a class A misdemeanor, attempted petit larceny (Penal Law §§ 110, 155.25), a class B misdemeanor, and attempted robbery in the third degree (Penal Law §§ 110, 160.05), a class E felony. See Crim. Hist. He was sentenced to a year in jail for the robbery conviction. See id. at 5.

The following year, 1995, marked Ramos' arrest on charges related to the carting industry. Ramos admitted the above crimes, committed on behalf of Frank, and many more crimes on behalf of other carters, in proffers conducted in October 1995 by the DA.<sup>4</sup> See Vallas Aff. The DA charged Ramos with arson in the third degree (Penal Law § 150.10[01]), a class C felony; two counts of attempted grand larceny in the second degree (Penal Law §§ 110, 155.40[02] [obtaining property through extortion]), a class C felony; attempted grand larceny in the second degree (Penal Law §§ 110, 155.40[01] [property value in excess of \$50,000]), a class C felony; criminal mischief in the second degree (Penal Law § 145.10), a class D felony; and attempted coercion in the first degree (Penal Law §§ 110, 135.65[01] [instilling in victim a fear of physical injury or property damage]). See Crim. Hist. at 6-7. Ramos pled guilty to the arson charge in 1996 and was sentenced to 42 months to 7 years in jail. See id. at 6.

**b. "I was a victim": Frank describes his relationship with Ramos to the Commission.**

Frank's testimony was consistent with Ramos' proffers insofar as acknowledging a close relationship with Ramos, including hiring him to do work for DeCostello. But Frank denied that Ramos was his hired henchman. Rather, Frank claimed he was generous to this troubled youth, going so far as to be godfather to Ramos' child, only to have Ramos later betray him. See, e.g., Frank Dep. 2 at 15-30; Frank Dep. 4 at 115-121.

The two versions of the relationship are not mutually exclusive. Ramos may indeed have victimized Frank later in their relationship, but that does not preclude his having acted as Frank's thug earlier. Moreover, many details of Frank's testimony are consistent with Ramos' proffers. Basically, their two versions of the relationship diverge only with respect to Frank's criminality.

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<sup>4</sup> The DA interviewed Frank about Ramos, but did not subpoena him.

The most important consistency between Ramos' proffers and Frank's testimony is the stabbing incident at DeCostello's office. At first, Frank denied Ramos had injured anyone at the Applicant's office. See Frank Dep. 3 at 18-19. When asked specifically if Ramos had "stabbed somebody with one of your knives," Frank admitted such an incident occurred around 1997. See id. at 19. Frank denied that the incident had anything to do with an oil deal, legitimate or otherwise, although he referred to the victim as "Bobby Oil." See id. at 20. Frank denied seeing the stabbing, but he admitted that he found the victim bleeding in DeCostello's office and that Ramos was present. See id. at 23-25. After he took Bobby Oil to a hospital, he returned to the office, where Ramos explained that he had stabbed the victim in self-defense. See id. at 27. Frank did not call the police, because "you don't get involved." See id. at 31. The Commission's staff found Frank's extensive testimony on this incident to be so convoluted that it could not be credited.

Frank's testimony was consistent with Ramos' proffers in many other respects. Frank testified that he has known Philip Barretti and Daniel Todisco since the early '90s. See Frank Dep. 1. He acknowledged a friendship with Nick Piccininni. See Frank Dep. 3 at 17. He testified that he has been many times to the Turquoise Bar in Brooklyn, where he has had drinks with Anthony Sercia. See Frank Dep. 4 at 85-86. And he specifically stated that he introduced Ramos to Sercia. Id. at 87-88. Frank also testified that he has been to Ponte's a couple of times. See id. at 112. Thus, Frank's testimony confirmed that he had relationships with the cartel criminals described by Ramos. Additionally, Frank's testimony was consistent with regard to the context, i.e. the time and place, for criminal acts described by Ramos, including the stabbing incident. Obviously, the Applicant's only hope of receiving a license was for Frank to deny any criminal relationship with Ramos. The Commission credits Ramos' proffers, not Frank's self-serving testimony.

**c. Frank DeCostello, Sr.'s pattern of criminal activity renders the Applicant unfit for licensure.**

The Commission may refuse to issue a license to an applicant that has committed a racketeering act, including any "criminal act" constituting enterprise corruption under New York's Organized Crime Control Act. See Admin. Code § 16-509(a)(v); N.Y. Penal Law § 460.10(1). Among those "criminal acts" are felonies relating to assault, homicide, coercion, criminal mischief, arson, criminal usury, and dangerous weapons. See Penal Law § 460.10(1)(a). Other "criminal acts" are felonies under Article 22 of the General Business Law, see id. § 460.10(1)(b), which include combination in restraint of trade and competition, in violation of section 340 of the General Business Law. See N.Y. Gen. Bus. Law § 341.

Ramos' proffers are credible evidence that Frank engaged in numerous crimes, as well as racketeering acts, including conspiracy to commit an assault, see Penal Law § 460(1)(a), and combination in restraint of trade, see id. § 460(1)(b). Ramos' proffers are especially persuasive in light of the conviction of the WPA, of which DeCostello was a

member, and the convictions of many individuals named by Ramos, including Frank's business and social acquaintances. The evidence is compelling: in colloquial terms, Ramos was Frank's hired "thug" used to "shake down" and "rough up" people. It is hard to imagine an Applicant less fit for licensure. See Admin. Code § 16-509(a)(v). Accordingly, the Commission denies DeCostello's license application. See id.

2. **Frank DeCostello, Sr. failed to provide truthful information to the Commission regarding his relationship with Raymond Ramos and the Applicant's participation in the organized crime-controlled WPA. Frank DeCostello, Jr., an employee, provided false testimony about the trade waste associations and the illegal trade waste cartel.**

- a. **Frank DeCostello, Sr.**

Frank's testimony regarding Ramos is set forth in section 1. For the reasons set forth above, the staff could not credit Frank's testimony. Frank's failure to be candid and truthful serves as an independent basis for the Commission's determination that the Applicant lacks good character, honesty, and integrity. See Admin. Code § 509(a)(i).

Ramos was not the only subject about which the Applicant provided false information to the Commission; another subject was its participation in the WPA regarding lost customers. The license application states that DeCostello lost the three stops during membership. See Lic. App. at 7. In his depositions, Frank testified that one of the stops, lost to Joseph Vitarelli, was a "big stop." Frank Dep. No. 2, at 161-162. He also testified to losing six more stops, including Balance Poultry and Dial Poultry, owned by Paul Castellano. See Frank Dep. No. 4 at 45-46. Nonetheless, Frank testified that he never complained to the WPA about losing any of these stops. See, e.g., id. at 46-48, 50, 55. He also testified that DeCostello never received any compensation for lost stops, and the WPA played no role in the losses. See, e.g., id. at 48, 50.

- b. **Frank DeCostello, Jr.**

The Applicant did not designate Frank, Jr. as a principal or an employee subject to the Commission's disclosure requirements. Nonetheless, the Commission's staff deposed him because of his familial relationship to the Applicant's sole principal and he was a proposed buyer for the Applicant.

Frank, Jr. denied knowledge of the illegal cartel, despite having worked in the industry since the mid-90s. See, e.g., Frank, Jr. Dep. at 9-14, 18-27, 43-46. He worked at Jumbo Carting, owned by Philip Barretti, Sr., as a helper. See id. at 10. He then worked for AC Modern Carting, East Coast Cartage, USA Waste, and Waste Management as a driver. See id. at 10-14. He denied ever having heard about the

existence of the trade waste associations before 1995, when the media covered the DA's prosecutions. See id. at 18-21, 43. Frank, Jr. also denied any specific cartel activity on the part of DeCostello. See id. at 26-27. For the reasons set forth immediately below, Frank, Jr.'s denials of knowledge of cartel activity are not believable.

**c. "Everybody knew the rules."**

The trade associations were convicted for enforcing an anti-competitive "property rights" system. The Second Circuit Court of Appeals acknowledged the role of the associations, observing that "[t]he association members – comprising the vast majority of carters – recognize the trade associations as the *fora* to resolve disputes regarding customers." SRI, 107 F.3d at 999.

In addition to evidence presented in the DA's prosecutions, the Commission's staff has accumulated a large body of evidence of racketeering activity in the course of its own investigations. Numerous carters have testified that it was common knowledge that the primary benefit of membership in the trade associations was to protect their stops. See, e.g., Transcript of Deposition of Dominick Incantalupo, May 7, 1999 ("TDI"), at 55-56; Transcript of Deposition of William Falletta, July 28, 1999, at 54-60; Transcript of Deposition of Anthony DiNardi, August 4, 1999, at 80-81; Transcript of Deposition of William R. Falletta, August 24, 1999, at 63 (function of association "was to . . . straighten out any kind of disputes or settlements as far as stops or accounts"); Transcript of Deposition of Albert Capone, August 15, 2000, ("TAC") at 34 (carting companies in trade associations had "a right to service particular customers that should be respected by other carters"; id. at 109 ("Well, it was always a known thing, you know. The association always went along with organized crime.")). The picture was clear:

[T]he primary function of the trade associations . . . was to enforce "rules" designed to protect the rights of member carters "in good standing." A member "in good standing" was a carter who respected the property rights of other member carters and was willing to pay the pre-determined multiple price for any route or "stop" that changed hands. By virtue of the "rules" no carter would solicit another member carter's customers. For the most part, all of the carters obeyed this rule and there was no need to ask the trade associations to enforce it.

CI #15613 Aff. ¶ 4; accord CI #15407 Aff. ¶¶ 3, 5.

In the event of a dispute between two member carters over which one had the "right" to service a particular customer, the carters ordinarily would try to resolve the dispute through "swaps" of customer stops or similar compensation arrangements. See CI #15407 Aff. ¶¶ 6-9; CI #15613 Aff. ¶¶ 5-9. If the carters could not resolve the dispute themselves, either carter could submit the dispute to the trade association for mediation and resolution. See CI #15407 Aff. ¶ 9; CI #15613 Aff. ¶ 9. The dispute would first be

presented to the association's board of directors, which would hear from each carter and then vote its decision; in most cases, the losing carter would abide by the board's decision. See id. Occasionally, however, the losing carter would request intervention by the association's "business agent," i.e., organized crime's appointed representative, whose decision was final. See CI #15407 Aff. ¶¶ 10-12; CI #15613 Aff. ¶¶ 10-12. In short, "everybody knew what the rules were." TDI at 82; see also TAC at 126 (regarding the cartel's property rights system, "it is pretty much common knowledge of what went on since forever"); id. at 45-46 ("word on the streets my whole life").

Raymond Ramos was the most significant subject about which Frank provided false testimony. Second in significance is the Applicant's participation in the property rights system and, specifically, the WPA's role concerning lost stops. Apart from Frank's self-serving testimony, nothing in the record explains why DeCostello would not have exercised its rights as a WPA member to bring disputes over lost stops to the WPA and make claims for compensation. On the contrary, DeCostello's license application shows it was a dues-paying member, contributing \$18,000 to the WPA from 1991 to 1995. Lic. App. at 11. Moreover, Frank's testimony is not credible when stacked against the following: the DA prosecutions, the SRI decision, Ramos' proffers, and evidence gathered by the Commission's staff in other investigations. Frank, Jr.'s credibility was equally low. By stonewalling, Frank, Jr. showed that he is locked into the culture of corruption that gripped the industry. His testimony undercut any likelihood that the Applicant would be better off with the next generation of DeCostellos.<sup>5</sup> Failure to provide truthful information to the Commission is a basis for concluding DeCostello lacks good character, honesty, and integrity. See Admin. Code § 509(a)(i). On this independently sufficient ground, the Commission denies DeCostello's license application.

### 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 on the two independently sufficient grounds discussed above, the Commission concludes that the Applicant lacks good character, honesty, and integrity, and denies its license application.

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<sup>5</sup> Although the doubtful credibility of Frank, Jr.'s testimony was not reassuring, the Commission's staff determined the sons' sale application was not viable for different reasons: namely, 1) the proposed transaction called for the sons to pay only 10% of the purchase price and their father to hold a promissory note for the balance for 10 years. Thus, for all practical purposes, Frank would remain a principal of DeCostello. That result -- allowing Frank to remain in the trade waste industry -- would have been inimical to the purposes of Local Law 42. Moreover, the Commission may exercise its discretion and reject sale applications that are not submitted in good faith, but submitted in the eleventh hour to avoid a license denial. Giving the timing of the submission, the staff took the latter view.

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 Applicants are directed (i) to continue servicing their customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to immediately notify each of their 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: August 15, 2002

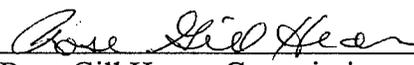
THE BUSINESS INTEGRITY COMMISSION

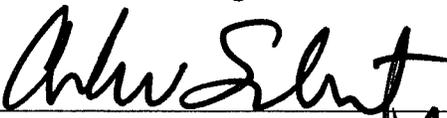
  
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Jose Maldonado  
Chairman

  
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John Doherty, Commissioner  
Department of Sanitation

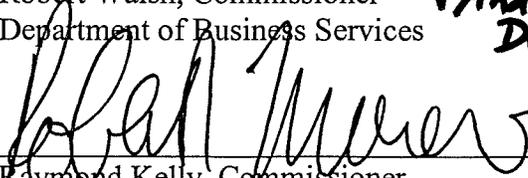
  
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Gretchen Dykstra, Commissioner  
Department of Consumer Affairs

*Alba Pico  
Designee*

  
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Rose Gill Hearn, Commissioner  
Department of Investigation

  
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Robert Walsh, Commissioner  
Department of Business Services

*Andrew Schwartz  
Designee*

  
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Raymond Kelly, Commissioner  
New York City Police Department

*Robert F. Messler  
Resignee*