



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 A.V.F. CARTING COMPANY, INC. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

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

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant, who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). These illustrative factors include the failure to provide truthful information to the Commission, certain civil or administrative findings of liability, and certain associations with organized crime figures. Based upon the record as to AVF, the Commission finds that AVF lacks good character, honesty and integrity and denies its license application for the following reason:

- (1) The background investigation of the Applicant revealed several areas of concern that related to the Applicant's lack of good character, honesty and integrity, leading the Commission staff to inform the Applicant that they would recommend that a license be granted only if a monitor were in place to ensure the honesty and integrity of the Applicant's operations. The

Applicant has refused to agree to have a monitor and, therefore, has failed to demonstrate eligibility for a Trade Waste License.

I. BACKGROUND¹

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. Beginning in the late 1950's, and until only recently, the commercial carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life":

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

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

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anticompetitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council found:

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

¹ The Applicant objects to the staff's inclusion of this background history in its denial recommendation as irrelevant. See Applicant's Affidavit in Opposition to the Commission Staff's denial recommendation ("Response") at 1. The Commission disagrees. New York City's waste hauling industry was systematically corrupted by organized crime for decades. In response, Local Law 42 mandated that all applicants meet a fitness standard of good character, honesty and integrity. See Admin. Code §16-509. The brief recounting of the history of this entrenched corruption and efforts to eliminate it sheds light on how to construe the fitness standard and does not constitute unfair prejudice to the Applicant.

- (2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";
- (3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";
- (4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . effectively being the only rate available to businesses";
- (5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove";
- (6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms";
- (7) "that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations";
- (8) "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct"; and
- (9) "that a situation in which New York City businesses, both large and small, must pay a 'mob tax' in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy."

Local Law 42, § 1.

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

served, they "operate[d] in illegal ways" by "enforc[ing] the cartel's anticompetitive dominance of the waste collection industry." SRI, 107 F.3d at 999.

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

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

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

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of one of the City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay \$7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry,

enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a \$10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the City's carting industry.

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

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a \$1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from \$250,000 to \$750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the City's carting industry. The same day, Manhattan carters Henry 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 (1st Dep't 1999).

In sum, it is far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been

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

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry immediately challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, 940 F. Supp. 656 (S.D.N.Y. 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Although Local Law 42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a).

As the United States Court of Appeals has definitively ruled, an applicant for a carting license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). In determining whether to issue a license to an applicant, the Commission may consider, among other things, the following matters, if applicable:

- (i) failure by such applicant to provide truthful information in connection with the application;
- (ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
- (iii) conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
- (iv) a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
- (v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 *et seq.*) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;
- (vi) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
- (vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
- (viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association

does not operate in a manner inconsistent with the purposes of this chapter;

- (ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
- (x) failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code §16-509(a)(i)-(x). In addition, the Commission may "refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission ... or *who has otherwise failed to demonstrate eligibility for such license under this chapter or any rules promulgated pursuant hereto.*" Id. §16-509(b)(italics added).

II. DISCUSSION

AVF filed with the Commission an application for a trade waste removal license on August 28, 1996.² The Commission's staff has conducted an investigation of the Applicant. On May 30, 2002, the staff issued a 13-page recommendation that the application be denied. On June 13, 2002, the Applicant submitted a 4-page response opposing the recommendation. See Applicant's Affidavit in Opposition to the Commission's staff denial recommendation ("Response"). The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty and integrity, and, thus, does not qualify for a license.

A. INTRODUCTION

"The Commission may, in the event the background investigation ... produces adverse information, **require** as a condition of a license that the licensee enter into a contract with an independent auditor." Admin. Code §16-511(a)(emphasis added). The background investigation of this applicant, viewed in light of the history of the carting industry set forth above, raises substantial concerns that the continued operation of AVF poses dangers to the public interest unless the operations of AVF are subject to ongoing scrutiny by a qualified and diligent monitor.

² AVF was permitted to operate while its license application was pending because 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).

The problems disclosed by the background investigation of AVF that justify the imposition of a monitor are set forth in summary fashion below. These include: 1) a history of criminal charges that suggest AVF's vehicular operations could pose a danger to the public; 2) questionable financing of AVF that poses a reasonable likelihood that there are undisclosed debts and obligations; and 3) indications that AVF is involved in ongoing organized crime activities. These factors led the Commission to conclude that public safety could only be ensured if a monitorship were imposed as a condition of licensure. AVF, however, refuses to be licensed with a monitor. Accordingly, AVF is ineligible for a license, and the Commission hereby denies its license application.

B. BACKGROUND OF THE APPLICANT

General

The sole principal of AVF is Anthony Ferrantello ("Ferrantello") who incorporated AVF in 1993 when he was 20 years old. AVF's business address is in Garden City Park, NY, at a residence where Ferrantello's grandmother and aunt reside. AVF also has a garage in Mineola, NY. License Application ("Lic. App.") at 1-3.

Criminal Charges

Ferrantello has had several contacts with the criminal justice system. First, he was arrested in 1990 and charged with criminal mischief for a road rage incident. Ferrantello claimed that he "basically stood there and got in trouble for doing nothing," but resolved the case by paying restitution. See Deposition Transcript of Ferrantello ("Transcript") at 20. The case was ultimately dismissed.

In October 1995, a complaint of Aggravated Harassment against Ferrantello was filed with the Nassau County Police Department by Eric Rosenberg. Ferrantello was questioned about the allegations by the police, but was not arrested.³ See DD5 Report of Sgt. Barbour, ¶3.

In addition, Ferrantello was arrested on November 8, 1997 for vehicle and traffic law ("VTL") violations and resisting arrest. The arresting officer reported that while responding to the scene of a fight in the street, he observed a black 1990 Lincoln apparently fleeing the scene. He pursued the vehicle, which he observed commit several VTL violations on route to a rear driveway and garage bay where the officer was confronted by Ferrantello and three unidentified men. Ferrantello refused to identify himself or produce his license or registration. When the officer informed Ferrantello that he was under arrest, Ferrantello became abusive and threatening. The officer was able to

³ Ferrantello failed to disclose this investigation in the Principal Disclosure Form ("PDF"), Question 10(a), which asks if during the past 10 years the principal was the subject or target of any investigation involving any alleged violation of criminal law. PDF at 4.

place him under arrest after some initial resistance.⁴ See DD5 of Sgt. Stephanie Rich (detailing an interview of Nassau County Police Officer Dave Hickey). Ultimately, the case was adjourned in contemplation of dismissal and later sealed. Ferrantello's pistol permit was temporarily suspended after this arrest and the Nassau County police seized his handguns. Id.

These incidents, all of which involve excessively volatile responses to the ordinary vicissitudes of traffic operations, raise a substantial concern that the Applicant's principal may act abusively in dealing with the public.

Ferrantello, in his response, claims that the staff's characterizations of the incidents as "road rage" and "resisting arrest" are inflammatory and a distortion of the facts, yet fails to support this claim with his version of events. Furthermore, Ferrantello claims that he should not be held accountable for conduct that "a court had determined never occurred and was not criminal in nature." See Response at 2. Based on the record before the Commission, the staff's characterizations were fair and accurate. Nor should the Commission be forced to ignore evidence of Ferrantello's behavior simply because the criminal proceedings were dismissed. A dismissal pursuant to an adjournment in contemplation of dismissal ("ACD") is not the equivalent of a finding of innocence; it merely means that the prosecutor has decided not to expend resources pursuing the case. The Commission may still consider the underlying facts in its determination of whether the Applicant and its principal meet the fitness standard. At a minimum, the evidence respecting "road rage" and "resisting arrest" justify the Commission's requirement that a monitor be put in place to ensure that AVF is operated in a manner that does not endanger the public.

Initial Financing

AVF was financed in a suspicious manner. Ferrantello testified that he partially financed AVF with \$40,000 in "gambling winnings." Initially, Ferrantello stated that he won the money "at a casino down in Florida" during 1991, 1992, and "probably" 1993. However, he could not identify which casino it was. He later stated that it was not really a casino at all, but a "bingo hall." See Transcript at 11. Ferrantello claimed that he obtained an additional \$20,000 from his personal savings account. Id. Though possible, the fact that the 20-year-old Ferrantello had, if this is true, such a large amount of money from savings raises additional unsettling (and unanswered) questions. Ferrantello's testimony, which was contradictory and lacking in candor about the actual source of the funds, suggests that there may be undisclosed obligations and secret creditors who could

⁴ Ferrantello's version of this arrest was different. According to Ferrantello, Officer Hickey was backing out of a driveway, but could not see out of his back window because it was fogged up. Ferrantello "persisted to lean on [his] horn." The officer then followed Ferrantello "back to [his] place of business" where there was a "confrontation," "the officer had a problem" and he arrested Ferrantello. See Transcript at 15.

control the Applicant's business operations.⁵ The Applicant has not contested these facts in its response.

Organized Crime Intelligence

In October 1997, TWC detectives received confidential information that Ferrantello was going to be a "front" for the Genovese organized crime family. The detectives learned that the owner of Atlas Sanitation was contacting other carters and individuals in the industry to set up a new company that would be controlled by the Genovese crime family. The plan was to solicit carters who might have licensing problems to "throw their routes in the street," meaning that the carters would "seemingly" go out of business and leave their routes up for grabs. In fact, however, those who were part of the scheme would ensure by various means that the customers would end up sooner or later with this "new company." According to the confidential information, the new company would be run by the owner of "a Long Island carting company known as AVF Carting."

Independent surveillance by TWC investigators corroborated a connection between AVF and Atlas.⁶ On February 9, 1998, investigators observed an Atlas container amid AVF containers at AVF's storage location at 4 Hempstead Gardens Drive.⁷ They further observed an AVF truck, bearing NY License Plate XM8578 (indicated in AVF's license application), drive onto the lot. See DD5 of Det. Daniel Galella, dated February 10, 1998. On February 17, 1998, investigators observed the original Atlas container plus a second Atlas container among the AVF containers at the same location. See DD5 of Det. Daniel Galella, dated February 18, 1998. TWC detectives observed that the Hempstead Gardens Drive site was being used as a transfer station, yet NYS Department of Environmental Conservation, the agency in charge of permitting transfer stations, had no record of a licensed transfer station at that location.⁸ See DD5 of Sgt. Barbour. Furthermore, on February 26, 1998, investigators observed Ferrantello at the offices of Atlas Sanitation at 18-05 38th Street, Astoria, NY. At the same time, a vehicle bearing NY License Plate J4J-526 (which Marchini had been observed driving on several prior occasions and which was registered to Atlas Sanitation) was observed at the location. See DD5 of Det. Grace Prince. Phone records from

⁵ The TWC staff was unable to obtain any of Ferrantello's personal tax returns or any other documents demonstrating the legitimacy of these "gambling" funds.

⁶ The owner of Atlas Sanitation, Michael Marchini, was indicted in 1985 along with Matthew "Matty the Horse" Ianiello, a Genovese Capo, for racketeering, extortion and mail fraud. The indictment charged that Ianiello, Marchini and others used Atlas and another carting company as fronts to obtain Con Edison contracts that Ianiello could not bid on due to his organized crime ties. The defendants were acquitted in 1986.

⁷ The address was also referred to as 2 Hempstead Gardens Drive. Neither address was disclosed by AVF in its license application.

⁸ The Applicant, in its response, disputes the claim that this property was being used as an unpermitted transfer station. The Commission does not consider this discrepancy to be material to its decision in this matter.

September 28, 1997 through January 27, 1998 showed numerous phone calls between AVF and Atlas. According to the information developed here, it is not coincidental that Ferrantello has a relationship with the individual who planned to use him as a "front."

In addition, the confidential report also stated that Gambale Sanitation ("Gambale") was one of the companies that would "throw their routes into the street." This information was corroborated by the fact that, on October 2, 1997, Raymond Gambale, an officer of the indicted Kings County Trade Waste Association, simply shut down his company (Gambale Rubbish Removal) without notice, apparently abandoning a large stream of income.

During the same period, TWC staff received information from a different source that Ferrantello was also associated with people close to Salvatore Avellino, the Lucchese capo who once oversaw the Lucchese crime family's interests on Long Island. The TWC was also informed from this source that Ferrantello was friendly with a young crew of Lucchese organized crime associates in Suffolk County whose headquarters was in Farmingdale.

In his response, Ferrantello denies participating in the scheme to take over routes from carters with licensing problems and asserts that he had never associated with Lucchese associates or people close to Salvatore Avellino. See Response at 2-4. The Commission rejects Ferrantello's denials as self-serving and credits the corroborated information obtained by two separate, independent and disinterested confidential informants.

Ferrantello further claims that the surveillance establishing a relationship between Atlas and AVF was insufficient corroboration for the scheme. The Commission disagrees. While Ferrantello minimizes his relationship with Marchini, he concedes the existence of a business relationship. See Response at 3. In the Commission's view, this corroborates the confidential information that Marchini apparently trusted Ferrantello enough to carry out the scheme. The Commission also finds additional corroboration by the fact that one of the carters acted in accordance with the proposed scheme: Gambale Sanitation suddenly shut down and "threw its routes into the street." Ferrantello's claim that he never did business with Gambale Sanitation misses the point. Gambale Sanitation's act of going out of business in the manner it did corroborates the information that it was part of a scheme to allocate customers for the benefit of organized crime, a scheme in which it was also alleged that AVF was to play a part. In sum, the information before the Commission regarding connections between the Applicant and organized crime amply justifies the Commission's requirement that a monitorship be imposed on AVF as a condition of licensure.

C. The Applicant Has Failed to Demonstrate Eligibility for a Trade Waste License by Rejecting the Licensing Conditions Required by the Commission.

Because of the adverse information detailed above, the Commission's staff concluded that AVF should only be offered a trade waste license if AVF agreed to be monitored by an independent auditor. See Copy of Licensing Order (with monitorship condition). However, AVF rejected the license through counsel on April 2, 2002 (via phone) and on April 29, 2002 (via mail). According to counsel, Ferrantello rejected the monitorship because he claimed there was "no reasonable basis for a denial of his license." In his response, Ferrantello further claims that he rejected the monitor because it "presupposes the existence of some problem that might exist with a company." See Response at 4.

The Administrative Code specifically provides that "[t]he Commission may, in the event the background investigation ... produces adverse information, **require** as a condition of a license that the licensee enter into a contract with an independent auditor." Admin. Code §16-511(a)(emphasis added). "Such contract, the cost of which shall be paid by the licensee, shall provide that the auditor investigate the activities of the licensee with respect to the licensee's compliance with the provisions of [Local Law 42], other applicable federal, state and local laws and such other matters as the commission shall determine by rule. The contract shall provide further that the auditor report the findings of such monitoring and investigation to the commission on a periodic basis, no less than four times a year." Id.

Whether taken individually or collectively, the adverse information uncovered in the course of the background information of AVF made the inclusion of a monitorship a reasonable provision in the licensing order. The Applicant's response consists largely of conclusory denials of the allegations and does not render the Commission's reliance on the adverse information unreasonable. The Commission finds that the evidence reasonably shows several credible problems within the company worthy of closer supervision. This denial is not based on the adverse information uncovered during the background investigation, but on the Applicant's rejection of the monitorship necessitated by the adverse information.

Given the history of organized crime corruption and cartel activity in the waste industry, the Commission can not turn a blind eye to evidence that Ferrantello planned to act as a front for the mob or associated with members of organized crime or that others viewed him as a suitable candidate for such a role. As a result, the Commission is fully justified in requiring a monitor as a condition of AVF's license. Since AVF rejected reasonable conditions of licensure, its application must be denied.

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. The evidence recounted above demonstrates convincingly that AVF falls short of that standard.

It is of grave concern to the Commission that the Applicant and its principal refuse to allow a monitor to examine their operations, and this refusal mandates a finding that the Applicant lacks the good character, honesty and integrity required for a license. For the reasons discussed above, the Commission hereby denies AVF's license application.

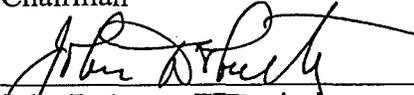
This license denial decision is effective fourteen days from the date hereof. In order that the Applicant's customers may make other carting arrangements without an interruption in service, the Applicant is directed (i) to continue servicing their customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to send a copy of the attached notice to each of their customers by first-class U.S. mail by no later than July 5, 2002. The Applicant shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: June 27, 2002

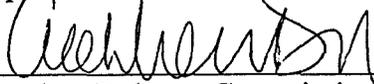
THE TRADE WASTE COMMISSION



José Maldonado
Chairman

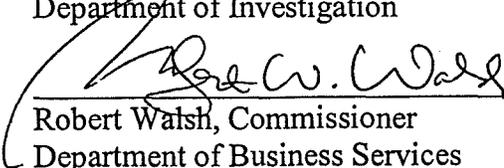


John Doherty, Commissioner
Department of Sanitation



Gretchen Dykstra, Commissioner
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Business Services