



2002

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

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF ACA WASTE SERVICES, INC. FOR EXEMPTION FROM THE LICENSING REQUIREMENTS AND A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

On April 29, 2005, ACA Waste Services, Inc. (“ACA” or the “Applicant”) submitted an application to the New York City Business Integrity Commission (“Commission”) for exemption from licensing requirements for the removal of construction and demolition debris.

ACA has applied to the Commission for a registration enabling it to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” – a type of waste commonly known as construction and demolition debris, or “C & D.” Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission grants the Applicant a registration, the Applicant becomes “exempt” from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission’s determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code §16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York (“RCNY”) §§1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission’s investigation and determination of a registration application is whether the applicant’s past conduct and current circumstances reflect business integrity. See 17 RCNY §1-09 (prohibiting

numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking “good character, honesty and integrity”).

Based upon the record as to the Applicant, the Commission denies the Applicant’s exemption/registration application on the ground that this Applicant lacks good character, honesty and integrity for the following sufficient reason:

- (i) Andrew Campelli, the Sole Owner and Principal of ACA, Voluntarily Consented to a Lifetime Debarment from the Waste Collection, Removal, or Disposal Industry in New York City.

## **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. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as “a ‘black hole’ in New York City’s economic life.” Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) (“SRI”).

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime’s longstanding and corrupting influence over the City’s carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found “that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct.” Local Law 42 §1.

The City Council’s findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms

connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the C & D sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the C & D sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many C & D haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988. During that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks

arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately \$10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City's "cover" programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City's tipping fees. See United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); see also United States v. Caccio, et al., Nos. 94 Cr. 357, 358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the C & D sectors of the industry. Local Law 42 recognizes this fact in requiring C & D haulers to obtain registrations from the Commission in order to operate in the City. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1<sup>st</sup> Dept. 2004).

## **B. Local Law 42**

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. §16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that 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); Attonito, 3 A.D.3d 415.

## II. DISCUSSION

On April 29, 2005, ACA applied to the Commission for an exemption from licensing requirements for the removal of construction and demolition debris. See ACA Application. ACA's application discloses Andrew Campelli as the sole owner and principal of ACA. The staff has conducted an investigation of the Applicant and its principal. On August 30, 2005, the staff issued a six-page recommendation that ACA's application be denied. The Applicant was served with the Commission's recommendation on that date and had ten business days to submit a response pursuant to Section 2-08(a) of Title 17 of the Rules of the City of New York. The cover letter served with the Commission's recommendation directed that any factual assertions in the Applicant's response must be made under oath. See Letter dated August 30, 2005.

The Commission did not receive a response from the Applicant within ten days. On September 19, 2005, six days late, Andrew Campelli submitted a response, which consisted of an unverified one-page letter ("Response"). Although the Applicant's submission was untimely, the Commission has carefully considered both the staff's recommendation and the Applicant's response.<sup>1</sup> For the reason set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application.

### **A. Andrew Campelli, the Sole Owner and Principal of ACA, Voluntarily Consented to a Lifetime Debarment from the Waste Collection, Removal, or Disposal Industry in New York City.**

On August 30, 1996, South Side Carting Co. Inc. ("South Side") submitted an application to the Commission for a license to operate as a trade waste business. The Application disclosed Andrew Campelli as the Operations Manager of South Side.<sup>2</sup> On April 10, 1997, the Commission approved the sale of South Side to Waste Management of New York, Inc. ("WMX"). See Conditional Permission to Proceed with Sale Order ("Sale Approval"). As a condition of approval of the sale, Andrew Campelli agreed to a voluntary lifetime debarment from the waste collection, removal, or disposal industry in New York City. Accordingly, on April 17, 1997, Andrew Campelli signed an affidavit certifying that he:

... will not participate in any way, whether as a principal, employee, agent, consultant, representative, or otherwise, in the affairs of any firm or

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<sup>1</sup> Although both 17 RCNY Section 2-08(a) and the staff's recommendation state that any assertions of fact submitted in the Applicant's response must be made under oath, the Applicant's response failed to attach a *sworn* affidavit from its principal. See 17 RCNY Section 2-08(a); see also Commission's Recommendation at 6 (allowing the Applicant 10 business days to submit any assertions of fact "under oath" and any documentation that it wishes the Commission to consider).

<sup>2</sup> In its Response, the Applicant asserted that Campelli was employed as a "Dispatcher," not an "Operations Manager," for South Side. This distinction in terminology is irrelevant to the Commission's Decision.

business (including but not limited to WMX) involved in or connected to the waste collection, removal, or disposal (including recycling) industry of any kind in New York City, including but not limited to: hauling of waste materials of any sort from any location whether private, governmental, commercial, residential or other; operation of a transfer station, landfill, incinerator, recyclery or other waste destination interim facility; transport by any means such as truck, rail, or barge related to carting, transfer station, landfill or recycling operation; brokering related to any type of waste removal or transport related to waste removal; trade association or union office or activities related to any of the industries outlined above.

See Debarment Affidavit of Andrew Campelli (“Campelli Debarment”). Thus, Andrew Campelli affirmed that, commencing March 1, 1997 (or the closing date of the sale of South Side) and enduring for the remainder of his life, he would not participate in any way in any firm or business involved in or connected to the waste collection, removal, or disposal industry. Id.

In his response, Campelli did not dispute that he signed the debarment. Instead, he argued that WMX representatives forced him to sign the debarment. Campelli alleged that the WMX representatives advised him that he must sign the debarment in order to obtain employment with WMX. See Response. Even taking Campelli’s unsworn response as true and accurate, Campelli’s contention that he signed the affidavit in order to secure future employment does not in any way negate the fact that Campelli voluntarily agreed not to participate in the trade waste industry in New York City. Further, Campelli acknowledged that he “discussed the terms of [the debarment affidavit] with [his] attorney...” by signing the debarment affidavit before a notary public. See Campelli Debarment at 1, 2.

Moreover, during Campelli’s employment at WMX on Long Island, he attempted to have his debarment overturned. As Campelli concedes, the Commission considered that request and denied it. See Response. Therefore, the debarment is still in effect.

Pursuant to Admin Code §16-509 (b), the Commission may deny a license or registration to an applicant who has failed to demonstrate eligibility for such license. Here, the owner of the applicant business has agreed not to engage in any business involving the collection, removal, or disposal of trade waste. As Andrew Campelli has consented to a lifetime debarment from the waste collection, removal, or disposal industry, he is ineligible for a registration to haul trade waste. Therefore, ACA’s application for a registration is denied.

### III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that ACA falls short

of that standard. For the reason discussed above, the Commission hereby denies the registration application of ACA Waste Services Inc.

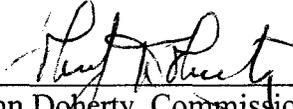
This exemption/registration denial decision is effective immediately. The Applicant shall not service any customers, or otherwise operate a trade waste removal business in the City of New York.

Dated: September 29, 2005

THE BUSINESS INTEGRITY COMMISSION



Thomas McCormack  
Chair



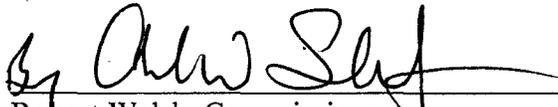
John Doherty, Commissioner  
Department of Sanitation



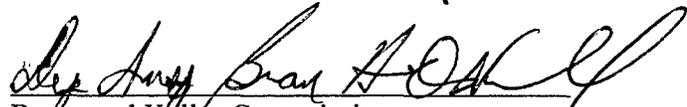
Jonathan Mintz, Acting Commissioner  
Department of Consumer Affairs



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Department of Investigation



Robert Walsh, Commissioner  
Department of Business Services



Raymond Kelly, Commissioner  
New York City Police Department