

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

Capitol Carting Corp. ("Capitol" or "Applicant") has applied to the New York City Trade Waste Commission, subsequently renamed the Business Integrity 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 of Capitol, the Commission denies its license application on the ground that this applicant lacks good character, honesty, and integrity for the following independent reasons:

- (1) The Applicant's President, Josephine Morea, Requested and Accepted the Assistance of a Member of the Genovese Crime Family in a Business Matter Related to the Carting Industry.
- (2) The Applicant Engaged in Cartel Activity and was an Active Participant in the Property Rights System.

- (3) The Applicant Provided False, Contradictory and Misleading Information to the Commission.
- (4) The Applicant's Principals Had a Business Relationship with an Associate of the Gambino Crime Family.

I. BACKGROUND

A. The New York City Carting Industry

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

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

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

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

- (1) "that the carting industry has been corruptly influenced by organized crime for more than four decades";
- (2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";

- (3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";
- (4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . effectively being the only rate available to businesses";
- (5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove";
- (6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms";
- (7) "that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations";
- (8) "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct"; and
- (9) "that a situation in which New York City businesses, both large and small, must pay a 'mob tax' in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy."

Local Law 42, § 1.

The criminal cartel operated through the industry's four leading New York City trade associations, the Association of Trade Waste Removers of Greater New York ("GNYTW"), the Greater New York Waste Paper Association ("WPA"), the Kings County Trade Waste Association ("KCTW"), and the Queens County Trade Waste Association ("QCTW"), all of which were controlled by organized crime figures for many years. See, e.g., Local Law 42, §1; United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993). As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have served, they "operate[d] in illegal ways" by "enforc[ing] the cartel's anticompetitive dominance of the waste collection industry." SRI, 107 F.3d at 999.

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted on enterprise corruption, criminal antitrust, and related charges as a result of a five-year investigation into the industry by the

Manhattan District Attorney's Office and the New York Police Department. See People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). The defendants included capos and soldiers in the Genovese and Gambino organized crime families who acted as "business agents" for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. In essence, the carting industry's modus operandi, the cartel, was indicted as a criminal enterprise.

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

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

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of one of the City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay \$7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a \$10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the City's carting industry.

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

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a \$1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from \$250,000 to \$750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the City's carting industry. The same day, Manhattan carters Henry Family and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it.

On February 24, 1997, defendants Michael D'Ambrosio, Robros Recycling Corp., and Vaparo, Inc. all pleaded guilty in allocutions before New York Supreme Court Justice Leslie Crocker Snyder. D'Ambrosio pleaded guilty to attempted enterprise corruption, and his companies pleaded to criminal antitrust violations.

On July 21, 1997, Philip Barretti, another lead defendant in the state prosecution and the former owner of the City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay \$6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and 3⅓ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery,

respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract and to violate the Taft-Hartley Act by making unlawful payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined \$900,000, and the GNYTW was fined \$9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined \$200,000.

On January 21, 1998, Patrick Pecoraro pleaded guilty to attempted enterprise corruption and agreed to serve a prison sentence of one to three years, to pay a \$1 million fine, and to be barred permanently from the City's carting industry. On the same day, the QCTW pleaded guilty to a criminal antitrust violation and agreed to forfeit all of its assets. Numerous other guilty pleas followed. On December 21, 1999, all of the guilty verdicts were affirmed on appeal. See People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999).

In sum, it is far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been proven beyond a reasonable doubt. The proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched – extending to and emanating from all of the industry's trade associations, which counted among their collective membership virtually every carter – that it could not have escaped the notice of any carter. These

criminal convictions confirm the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, to address this pervasive problem.

B. Local Law 42

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

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

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

- (i) failure by such applicant to provide truthful information in connection with the application;
- (ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer

consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

- (iii) conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
- (iv) a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
- (v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;
- (vi) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
- (vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
- (viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;
- (ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
- (x) failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable

therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

Capitol filed with the Commission an application for a trade waste removal license on August 30, 1996.¹ The principals of the Applicant are Josephine Morea (“Josephine”), President, and her son, Michael Morea (“Michael”), Vice-President. The staff has conducted an investigation of the Applicant and its principals. On May 30, 2002, the staff issued a 20-page recommendation that the application be denied. On July 9, 2002,² the Applicant submitted a 38-page response³ and 25 exhibits. See Applicant’s Response in Opposition (“Response”). The Commission has carefully considered both the staff’s recommendation and the Applicant’s response. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its license application.

A. The Applicant’s President, Josephine Morea, Requested and Accepted the Assistance of a Member of the Genovese Crime Family in a Business Matter Related to the Carting Industry.

Prior to the formation of Capitol Carting, Josephine’s husband, John Morea (“John”), owned another carting company called Coney Island Rubbish Removal (“Coney Island”), along with his partner and brother, Vincent Morea (“Vincent”). See Deposition of Josephine Morea (“Josephine Dep. Tr.”) at 24.

According to Josephine, when John died intestate in 1983, Vincent tried to simply take over John’s part of the business. Josephine testified that Vincent threw her out of the business and told her to go on welfare. See Josephine Dep. Tr. at 23-24. Josephine subsequently sued Vincent for her husband’s share of the business.

¹ Subsequently, the Applicant filed a sale application requesting permission for Josephine Morea to sell her portion of the business to Michael Morea. It is within the Commission’s discretion to defer consideration of a pending license application in favor of a sale application. The Commission declines to exercise its discretion in this case to consider the Applicant’s sale application. In any event, the Commission would deny the sale application on the same grounds as stated in this license denial.

² Although the Applicant’s response was originally due on June 21, 2002, the Commission granted all three of the Applicant’s requests for additional time. Despite the extension of the due date to July 8, 2002, the Applicant’s response was still untimely. Regardless, the Commission has considered the Applicant’s arguments in opposition and finds them unpersuasive.

³ The Applicant chose to submit a “joint” affidavit in support of its response. As a result of using the pronoun “I” interchangeably in reference to either Josephine Morea or Michael Morea, it is impossible to tell which principal supports a particular assertion, and much of the contents of the “joint” affidavit are confusing and, at times, indecipherable. See Response at 1.

While the case was pending, Josephine sought out Joseph Schipani (“Schipani”), a member of the Genovese crime family,⁴ to assist her in her dispute with Vincent. Schipani, whom Josephine characterized as a close friend of her family,⁵ has a long history of involvement in the carting industry in Brooklyn. In the 1970s, he was the “business agent” of the Brooklyn Trade Waste Association, the predecessor of the KCTW. As such, he ran the association for the Genovese crime family in the same way Alphonse Malangone and Tommy Contaldo later ran the KCTW. Schipani was indicted in 1974 by the Brooklyn District Attorney on criminal restraint of trade and racketeering charges, along with most (53) of the members of the Brooklyn Trade Waste Association, including Coney Island Rubbish Removal and Michael Morea, Josephine’s father-in-law.

Josephine requested that Schipani help her in her dispute with Vincent over Coney Island Rubbish. As Josephine’s deposition testimony reflects, she made this request of Schipani with full knowledge that Schipani was connected to organized crime:

Commission: Has any other person who you understand – let’s just say, an organized crime connected person...
Josephine: Right.
Commission: Helped you with your business in any way?
Josephine: Yes, definitely.
Commission: And who was that?
Josephine: Joseph Shapani [phonetic].
Commission: Does Joseph Shapani [phonetic] have any nicknames that you know of?
Josephine: Joe Shep.
Commission: How has he helped you in your business?
Josephine: Negotiating the deal with my brother-in-law and my father-in-law to give me half of the business.⁶

See Josephine Dep. Tr. at 22.⁷

⁴ Schipani has been publicly identified by law enforcement as a member of organized crime for decades. See, e.g., “Bare 64 Indictments in Brooklyn Cart Racket,” by Richard Meserole, New York Daily News, March 29, 1974 (identifying Schipani as an alleged member of the Genovese crime family); “Organized Crime: 25 Years After Valachi,” Hearings Before the Permanent Subcommittee on Investigations, Committee on Government Affairs, United States Senate (1988) at 770, 795.

⁵ In her response, Josephine insisted that Schipani was not close to her family, but at the same time she conceded that Schipani was a very good friend of her husband. See Response at 2-3. This contradictory position cannot be reconciled. Josephine further notes that she was not *personally* close to Schipani, just to his wife and that only her husband and father-in-law were close to Schipani. Id. at 3. This contention misses the point. Josephine was never accused being a close personal friend of Schipani. However, the relationship between the families put her in position in which she was able to request and to accept financial assistance from him.

⁶ In her response, Josephine now claims that Schipani was only responsible for convincing Vincent to pay her \$10,000 in “unpaid salary,” not for helping to obtain half of the business after seven years of litigation. See Response at 6. This is contradicted by Josephine’s sworn deposition testimony. However, even if Schipani’s assistance was limited to the unpaid salary, her willingness to accept assistance from Schipani still makes her unworthy of licensure.

Josephine testified that Schipani went to Vincent at Josephine's request⁸ and told him that what he was doing was not right and that he should give Josephine her "salary." Id. at 26. When asked why Vincent Morea would listen to Schipani when he would not listen to her, she paused and then answered, "I guess because he respected him."⁹ Id. at 27. Even though, according to Josephine, "Uncle Joe" did not want to get involved because he "didn't get involved in family problems," he did it for her because she needed the money. Josephine testified that she "would have gone to anybody at that time to get the money." Id. at 27-28.

Josephine claimed in her testimony that Schipani also helped her to get money from Vincent Morea to help take care of her daughter's drug problem. She testified that "Uncle Joe" got \$10,000 from Vincent so she could put her daughter in a drug treatment program. Id. at 23-24. At times in her testimony, she would conflate the two reasons and later tried to claim that the only reason Schipani helped her was to get the money for the drug program and that the business dispute was settled by the lawyers.¹⁰

Josephine used the portion of Coney Island that she received as part of the settlement of the lawsuit to start Capitol Carting in the late 1980s.

Josephine has known Schipani since she was 18 years old and has been aware of allegations of his connection to organized crime for at least that long. Schipani and his wife, Ann, were very close friends with Josephine and her family. Schipani, whom she also knew as "Joe Shep" and "Uncle Joe," was, according to Josephine, "very close" to both her husband and her father-in-law, Michael Morea.¹¹

⁷ Michael testified that even though Josephine never specifically told him that she went to Schipani for help during the dispute with Vincent, he was fully aware that asking Schipani for help was something she "probably" would have done. See Michael Dep. Tr. at 345.

⁸ In her response, Josephine now claims for the first time that the request for Schipani's assistance came not from her, but from Schipani's wife. See Response at 5 ("[Josephine] had never asked Schipani for anything and it was suggested by his wife Anne that he approach Vincent"). However, this argument is directly contradicted by Josephine's sworn deposition testimony.

⁹ In her response, Josephine claims this quote was "misread" because it did not include her answer to the next question that "he was older and he respected him." See Response at 5. Josephine's implication in her testimony that Schipani was respected merely because he was older (but not because of his organized crime connections) is not credible.

¹⁰ Even if Schipani's assistance was limited to helping Josephine obtain funds for the drug program, it still reflects negatively on Josephine's integrity that she requested financial assistance from a known organized crime figure.

¹¹ Josephine provided misleading information in the license application and the principal disclosure form concerning Schipani by claiming her only association with Schipani was that "his wife Ann is a friend and frequent lunch companion." See Lic. App. at 16; Josephine Principal Disclosure Form ("Josephine PDF") at 48. The license application and the Josephine PDF fail to mention Josephine's request for business assistance from Schipani himself. See supra at 17-18. In response, Josephine blames the misleading answer on her "accountant who filled out the form." See Response at 4. Regardless who filled out the form, Josephine must accept responsibility for the accuracy of the information submitted since she signed a sworn certification stating (in pertinent part) that "to the best of my knowledge the information given in response to each question and in the attachments is full, complete and truthful." See Lic. App. at 42; Josephine PDF at 60. Whether she filled out the application in a misleading fashion or she signed the certification page falsely does not matter; either situation reflects adversely on her fitness for licensure.

Michael testified that he did not remember meeting Schipani, but knew that Schipani and his wife were very close to his parents.¹² He remembered that Josephine always referred to him as “Uncle Joe” and that she told Michael to invite him to his wedding. See Michael Dep. Tr. at 343-44.

Josephine was aware of allegations that Schipani was connected to organized crime. Despite knowing him since she was a teenager, Josephine testified that she had no idea what Schipani did for a living. “I learned since I was a young girl not to butt into people’s business, and my husband taught me that a long time ago: ‘Keep your mouth shut and don’t ask questions’ and I never did.” See Josephine Dep. Tr. at 35. Josephine further testified that she was not naïve about organized crime: “I have been around this business since I am seventeen, and when Joe Shapani [sic] was, you know, my husband’s friend and my father-in-law’s friend, you sort of know what is going on, I mean, I am not stupid.” Id. at 43.

In response, Josephine stated that she “had no actual knowledge of [Schipani’s] organized crime activities and never knew of his occupation.” See Response at 4. Regardless of whether or not Josephine knew of specific acts committed by Schipani, she knew that Schipani was alleged to have organized crime connections. In addition to her deposition testimony about not being “stupid” about organized crime corruption in the garbage industry, she included Schipani’s name in the license application in response to the question about whether she was “associated with any person that you knew, or should have known, as a member or associate of an organized crime group.” See Lic. App. at 16. If Josephine did not at least suspect that Schipani was connected to organized crime, there would have been no reason to include the fact that she was a “frequent lunch companion” of Schipani’s wife. Id.

“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

Furthermore, her claim that her deposition testimony somehow cures the improprieties in her application is unpersuasive. See Response at 4. Josephine signed a sworn certification in August 1996 that the license application was truthful and accurate. Josephine did not testify at her deposition (which was not certain to occur at the time the application was filed) until almost six months later. So, for almost six months, Josephine misled the Commission and failed to correct the record.

¹² Although Michael testified that he was aware of the close relationship between Schipani and his parents, he misled the Commission about his knowledge of Schipani. When Michael was asked to examine a list of names of organized crime figures prior to his deposition, he made markings next to several names that he was familiar with – omitting Schipani, indicating he was unfamiliar with that name in any context. Despite the confusing “joint affidavit” response where the word “I” could refer to either Josephine or Michael, the Applicant appeared to argue that Michael did not attempt to mislead the Commission because he answered direct questions about Schipani when asked and blamed the omission on his attorney’s absence and Michael’s failure to read the instructions carefully. See Response at 6. However, Michael was given an opportunity to reread the list of names and make corrections during second day of deposition testimony, while his lawyer was present. See Michael Dep. Tr. at 325-328. In any event, it is the *deponent’s* obligation to be truthful and accurate at all times, not merely in response to a direct question, all the time hoping that the questioner forgets or fails to ask certain questions.

person” is an independent ground upon which to deny a license application. Admin. Code §16-509(a)(vi). Josephine’s request for and acceptance of assistance from a known member of the Genovese crime family in resolving a dispute with Coney Island Carting is precisely the type of association Local Law 42 sought to eliminate from the carting industry. Based on this independent ground, Capitol’s license application is denied.

B. The Applicant Engaged in Cartel Activity and was an Active Participant in the Property Rights System.

Capitol Carting was a member of the KCTW from January 1989 to August 1995.¹³ See License Application (“Lic. App.”) at 6. Capitol paid approximately \$25,500 in dues, in addition to \$10,000 in a “special legal assessment” over five years. *Id.* at 11. Michael learned from his mother, Josephine, that “Uncle Vinny” (i.e., Vincent Morea) had told them that they had to join, otherwise they would lose all their work. Michael attended approximately 8-10 meetings at the KCTW on 65th Street and Fort Hamilton Parkway.¹⁴ See Michael Dep. Tr. at 275-76. He testified that the President was Frankie Allocca and that his Uncle Ralph was on the board. *Id.* at 277. Josephine’s cousin, Pat Morea, was also a KCTW Board member for many years.

The trade associations enforced the “property rights” system in the carting industry, and if a dispute arose between carters, a carter could register a “claim” for the association to resolve. The KCTW was controlled for many years from late-1980 until 1995 by Alphonse “Ally Shades” Malagone, a capo in the Genovese crime family.

Michael testified that he was familiar with the property rights system and the role the association played in resolving disputes. Michael testified that the property rights system meant that “nobody takes your route, you don’t take their route.” See Michael

¹³ Michael Morea testified that he believed, well before its indictment in June 1995, that the KCTW was affiliated with organized crime. He was present at the KCTW when police, wearing jackets that identified them as organized crime detectives, conducted a raid on the premises. See Michael Dep. Tr. at 285-87. Although Capitol claims to have resigned from the KCTW in October 1995, it was unable to produce a letter of resignation. *Id.* at 312. Counsel for the Applicant informed the Commission that Capitol made at least 2 additional dues payments after June 1995. The Applicant’s failure to terminate its membership in an entity it believed to be corrupted by organized crime is evidence that Capitol aligned itself with the cartel and reflects adversely on its fitness for licensure. The Applicant’s claim in its response that it stopped paying dues once the authorities were “going after” the Association is belied by the record. See Response at 7. An examination of the Applicant’s cancelled checks from 1995 submitted to the Commission (all signed by Josephine) showed monthly dues payments to the KCTW of \$425 through June 1995 and then a large check to the KCTW in the amount of \$3,525 dated August 10, 1995 (over two months subsequent to the indictment). Furthermore, the Applicant’s claim that the conveniently “missing” resignation letter was among the records previously submitted to the Commission is false. See Response at 12. The only records subpoenaed were bank statements, cancelled checks and the payment ledger. The resignation letter was not requested, nor was it submitted. The Applicant’s attempt to blame the Commission for the failed production of the resignation letter reflects adversely on its fitness for licensure.

¹⁴ In its response, the Applicant claims that “I ... never attended meetings” at the KCTW. See Response at 7. Despite the confusing nature of the Applicant’s “joint affidavit,” it appears the “I” refers to Josephine. However, Capitol was still represented at 8-10 meetings (at a minimum) by her son, Michael.

Dep. Tr. at 302. "If it wasn't in your area you wasn't supposed to go there. Once you had your stops in your area you weren't supposed to go to no other area." Id. at 307. He testified about a "downstairs room" at the association where members were often summoned by the Board. Id. at 298. Michael himself was summoned one day when "they" wanted to "speak to him about some stops he was aggressively going after." Id. at 300. "They" mentioned an address and told him it wasn't his area. Michael understood that to mean "stay out of there." "They told me not to take those stops and that was that." Id. at 303-305. He did not ask why. He vaguely remembered that the stops he was trying to take belonged to Rutigliano Paper Stock. Id. at 301. Based on that order from the KCTW, he just gave up trying to get the stop and just walked away "because [he] didn't want to mess around with nobody." Id. at 304. Although he acknowledged the existence of the property rights system, he claimed to be ignorant about what the consequences would be for violating the rules and said, "he didn't know what would happen but didn't want to find out." He stated that he was not scared for his physical safety and that his only worry was other carters stealing his work by undercutting him and putting him out of business.¹⁵ Id. at 309-310.

Notwithstanding Michael's claim that he did not fear for his safety, he allowed the KCTW to dictate how he ran his business:

Q: So you let the association tell you which was your stop and which wasn't your stop?

A: 100%, yes. You're a hundred percent right.

Id. at 319.¹⁶

Michael understood the property rights system and took full advantage of its benefits when a competing carter, Chambers Paper Fibres ("Chambers"),¹⁷ "stole" a stop from Capitol – a discount department store in Brooklyn called "Bobby's." Michael had several interactions with "Dan Benedetto" ("Benedetto"), the undercover detective working at Chambers, including one at the KCTW Christmas Party on December 14,

¹⁵ In his response, Michael now makes self-serving allegations that he was in fear of the Association members, in contradiction to his deposition testimony ("It wasn't like I was afraid like I feared my life." Michael Dep. Tr. at 281). See Response at 13-14, 22. In spite of this so-called "fear," Michael still attended about 8-10 KCTW meetings, feeling comfortable enough to stay and eat dinner and listening to them laugh and refer to him as a "renegade." See Michael Dep. Tr. at 303.

¹⁶ Michael now attributes this answer to fear as well ("I have no hesitancy in saying that I was afraid for my physical safety") and claims that his testimony concerning his fear of his life was "unequivocal." See Response at 22-3. However, the Applicant cites the portion of Michael's testimony that contradicts this position: "Were you afraid for your physical safety?" "Of being physically harmed, no." See Michael Dep. Tr. at 309.

¹⁷ Chambers cooperated with New York City's successful criminal investigation into the carting industry. An undercover officer, posing as an employee of Chambers, provided law enforcement with a window on the inner workings of the cartel. Chambers became involved after it was the victim of a May 1992 arson incident and a June 1992 assault on its president, Sal Benedetto, as a result of having won a competitive bid to service a Manhattan office building previously serviced by Barretti Carting. See Search Warrant Affidavit of Det. Joseph Lentini, sworn to June 5, 1995 at ¶¶ 9-11, 13. Because Chambers was not a member of one of the local trade associations, it enjoyed no protection against this type of retaliation. Beginning in May 1992, an undercover detective, using the cover name Dan Benedetto, posed as a relative of Sal Benedetto and an employee of Chambers. Id. at ¶ 12.

1994. At the party, Benedetto was speaking to Ralph Morea (Michael's uncle) of Brooklyn Carting, when Ralph called Michael over. Benedetto recognized Michael, having met him on a previous occasion when Michael expressed an interest in the paper recycling business. At this meeting, Michael acknowledged meeting Benedetto before and recalled going to Chambers with an associate from a mill in southern New Jersey. Michael mentioned that he had placed a claim with the association for "Bobby's" on Church Avenue and 17th Street in Brooklyn and gave Benedetto his business card (indicating he was Michael Morea from Capitol Carting).

At his deposition, Michael acknowledged that he had previously serviced Bobby's department store on Church Avenue in Brooklyn at least 10 years ago. He could not remember if he had serviced that stop as Capitol or as Coney Island, but did remember that their waste consisted of 60" bales mixed with garbage and cardboard. The stop was "taken away" from him by a "paper guy. I can't remember the name. I know it was a paper company." See Michael Dep. Tr. at 122-123. Despite his knowledge of the property rights system and the association, he falsely claimed under oath that he had no potential recourse for the loss of the stop. Id. at 123. His testimony was self-serving and directly contradicted the police report of the undercover officer.

In his response, Michael asserts that all of the allegations concerning the claim over "Bobby's" are "totally untrue," that he never submitted a claim to the Association and that he never even spoke to Dan Benedetto, the undercover detective.¹⁸ See Response at 25, 27. Despite initially claiming that the conversation never happened, Michael makes the alternative argument that *if* the conversation actually occurred, then it was for "less than a minute" and that he only acknowledged that Chambers took the Bobby's stop "by way of introduction." Id. at 28. The Commission rejects these inconsistent defenses. This long-term investigation was conducted by an experienced undercover detective in an extremely dangerous industry over a *five*-year period resulting in numerous indictments and convictions. The Commission credits the detective's experience in evaluating the difference between a passing comment and cartel activity.

The Applicant's support and active participation in the property rights system of the cartel is an independent ground upon which the Commission denies the Applicant's license application.

¹⁸ The Applicant's claim that this conversation (if it actually occurred) would have been included in Detective Joseph Lentini's affidavit in support of a search warrant in connection with the long-term investigation is frivolous. See Response at 28-9. The affidavit did not purport to be an all-inclusive repository of evidence detailing every conversation the undercover detective had during the five-year investigation.

C. The Applicant Provided False, Contradictory and Misleading Information to the Commission.

A license applicant's failure to provide truthful information to the Commission in connection with the application is an independent ground for denial of the application. See Admin. Code §§16-509(a)(i); 16-509(b). Michael was not truthful in his deposition about the Bobby's stop, the Applicant filed a false and misleading license application concerning the claim over the Bobby's stop and Josephine provided misleading information concerning her relationship with Joseph Schipani.

1. Michael's Testimony About Bobby's Discount Store

Credible information provided by the undercover detective established that Michael provided false and misleading information in his deposition concerning the claim he made against Dan Benedetto for the Bobby's stop. Michael testified as follows:

- Q: Isn't it true that you accused Dan Benedetto at a Kings County trade association Christmas party of stealing Bobby's stop from you?
- A: Accused him of stealing Bobby's stop from me?
- Q: Yes.
- A: From what I can remember, no.
- Q: Did you ever accuse anybody of stealing that stop from you?
- A: A lot of people stole stops from me all the time.
- Q: I'm specifically interested in Bobby's Discount Store. Do you remember accusing someone at the trade association's Christmas party of stealing that stop from you?
- A: I don't know. I don't remember. I'm being honest, I don't remember.

See Michael Dep. Tr. at 124-125.

- Q: Did you take any steps to get that stop back?
- A: No.
- Q: Why not?
- A: What am I going to do? I went and spoke to the owner. He didn't want to deal with me. He found a better deal. What am I going to do?

Id. at 123.

Despite Michael's claim that he took no action regarding the stolen stop, he pointedly told Benedetto at the KCTW Christmas party that he had placed a claim for the stop with the association. Michael's deposition testimony was demonstrably false and self-serving, and on this independent ground the Commission denies the Applicant's license application.

Furthermore, the Applicant failed to provide truthful information in its license application concerning the stops the Applicant lost, including Bobby's. The license application asks applicants whether they gained or lost accounts while a member of an indicted association and whether the trade association played any role in the loss or acquisition. Since the associations enforced the property rights system, the purpose of this threshold question is to discover some of the specifics of how the associations help a particular carter retain (or lose) accounts. Capitol answered that it acquired a route it purchased from Vulpis, a carting company, and certified that the trade association played no role in this transaction, but failed to mention that it had lost several stops to other carters as well. See Lic. App. at 7-9. The Commission learned from the undercover investigation, however, that this was false. Capitol filed a claim against Chambers through the Association for the lost "Bobby's" stop. Michael confirmed that Capitol lost the Bobby's stop to another carter and independent evidence showed that he put in a claim with the association for the Bobby's stop. See Michael Dep. Tr. at 124-25. By failing to include the details regarding the lost Bobby's stop, the Applicant filed a materially misleading application. The Commission also relies on this independent ground to deny the Applicant's license application.

2. Josephine's Disclosures About Joseph Schipani

Josephine provided misleading information in the application and principal disclosure form concerning her relationship with Joseph Schipani. Question 6(j) of the license application asks "Has the applicant business or any of its past principals ever associated with any person that you knew, or should have known was a member or associate of an organized crime group?" The applicant answered "yes." See Lic. App. at 16. Josephine also answered "yes" to the same question in the principal disclosure form. See Josephine PDF at 48.

The follow-up questions ask for details about the organized crime association. In the license application, the following information was provided regarding Schipani: "Joseph Schipani – personal friend of his wife Ann who was a frequent lunch companion." See Lic. App. at 16. In Josephine's PDF, she answered "Joseph Schipani – his wife Ann is a friend and frequent lunch companion." See Josephine PDF at 48.

The implication in the disclosures is that the relationship with Schipani is merely with his wife Ann. At no time in either the license application or the principal disclosure form did Josephine ever state that she had a relationship with Schipani directly (apart and distinct from his wife), nor did she ever state that she went to him for assistance in a

business-related dispute. Given the extensive relationship between Josephine and “Uncle Joe” and his assistance to her in obtaining the assets with which Capitol was formed, these disclosures were materially misleading.

In response, Josephine blames the misleading answer on her “accountant who filled out the form.” See Response at 4. Regardless who filled out the form, Josephine must accept responsibility for the accuracy of the information submitted since she signed a sworn certification stating (in pertinent part) that “to the best of my knowledge the information given in response to each question and in the attachments is full, complete and truthful.” See Lic. App. at 42; Josephine PDF at 60. Whether she filled out the application in a misleading fashion or she signed the certification page falsely does not matter; either situation reflects adversely on her fitness for licensure. Furthermore, her claim that her deposition testimony somehow cures the improprieties in her application is unpersuasive. See Response at 4. Josephine signed a sworn certification in August 1996 that the license application was truthful and accurate. Josephine did not testify at her deposition (which was not certain to occur at the time the application was filed) until almost six months later. So, for almost six months, Josephine misled the Commission and failed to correct the record. Based on this independent ground, the Commission denies the Applicant’s license application.

D. The Applicant’s Principals Had a Business Relationship with an Associate of the Gambino Crime Family.

In January 1995, Michael and Josephine became co-owners of Prime Time Video Games a/k/a E.T. Funhouse¹⁹ with Michael’s friend, Hunter Adams (“Adams”), who was subsequently identified as an associate of the Gambino crime family by the United States Attorney’s Office for the Eastern District of New York. The record as to this business venture is far from clear, due to vague, evasive, conflicting and self-serving testimony, as well as the lack of any documents from the business.²⁰ In light of the record as a whole, the Commission finds that the Moreas’ business venture with Hunter Adams reflects adversely on their good character, honesty and integrity and precludes licensure.

On March 8, 2001, Adams was indicted on federal securities fraud, wire fraud and money laundering charges by the United States Attorney’s Office for the Eastern District of New York. The indictment charged Adams with funneling money from First United Equities Corp. to Gambino mob handlers. The alleged scheme was a classic “pump and dump” – pumping up prices while holding large blocks of stock (without disclosing) and then dumping their holdings and sending stock prices plummeting. The indictment also identified Adams as an associate in the Gambino organized crime family.

¹⁹There is no relationship between Capitol and Prime Time other than the overlap of principals, Michael and Josephine. See Michael Dep. Tr. at 223.

²⁰ After failing to produce the documents that the Commission requested in November 2001, the Applicant conveniently discovered and annexed the documents as exhibits to its July 2002 response to the denial recommendation. See Response Exhibits A – X.

Michael met Hunter at Lawrence High School.²¹ They were not friends in school; actually, Michael “just didn’t like him. [He] didn’t know what he was about. [He] didn’t like the people he hung out with.” He wouldn’t describe what kind of people Hunter hung out with – “just not my kind of people.” See Michael Dep. Tr. at 212. After high school, he didn’t see Hunter until 1995 when they started working out together at the gym. Michael still claimed that they were never friends – just hello, goodbye. Michael “took him in” because he had experience with the video game business. When asked specifically about what type of video game experience Hunter had, Michael said, “I don’t know what kind of business he was in, but I know that he had, you know, like in bars, jukeboxes, cigarette machines. He had like routes, soda machines. You know, like a route.” Michael said he did not know about Hunter’s route from talking to him personally, but he “knew that he was very successful in the business.” He knew he was successful because he “always had nice cars and nice houses and all that other stuff.” Id. at 215. When pressed on how he knew about Hunter’s business, Michael said he knew people from high school who knew and had worked for Hunter.

Although Michael initially stated that it was *Hunter* who had asked him to be partners, Michael later testified that he had approached Hunter first. After speaking to the real estate agent about the arcade, he approached Hunter and asked him for some advice about the arcade. Hunter said it was a good spot and Michael asked him if he was interested. So they both put in money and put a down payment on the machines and got a license from Consumer Affairs. “How much did he invest and how much did you invest? I’m not exactly sure. Was it even? Of course.” Id. at 218.

Michael also testified that his mother was part of the video business.²² “Anything I do in my life I do with my mother. She has no husband. I’m her son. I take care of my mother always. It’s been that way since my dad died. She fought for me for the business.” Michael then disclosed that his mother was the one who put up the money for the business, not Michael.²³ Michael at first refused to estimate how much money his

²¹ In contradiction to his sworn deposition testimony, Michael now claims that he and Hunter attended separate high schools. See Response at 33.

²² The application indicates that Michael Morea had 25% and Josephine had 25% (leaving 50% for Hunter Adams).

²³ Michael’s testimony is contradicted by Exhibit H of the Applicant’s response – a copy of a check signed by Michael Morea to Ed Moore, the seller, for \$12,800 towards the purchase price and a copy of a check signed by Josephine Morea to Ed Moore for \$15,000. See Response at 30, Exhibit H. These checks are suspicious by virtue of the fact that both checks are drawn on the same account and that neither check indicates the name and address of the account holder in the upper left-hand corner. Furthermore, Michael Morea signed his check as “VP.” This evidence suggests that the start-up funds for Prime Time Video Games were not individual funds of Josephine Morea or Michael Morea, but corporate funds of an unknown corporation. The Applicant’s claim in its response that the funds came from Cardboard Services, another company of Josephine and Michael Morea, is also suspect. See Response at 33 (“As Capitol did not have the available funds, Josephine transferred \$60,000.00 from her other business, Cardboard Services, Inc. to start up the new arcade business.”). Yet, Capitol’s license application indicated that *Capitol* loaned *Cardboard Services* \$20,000 in January 1995 (the same time period that Michael and Josephine’s Principal Disclosure Forms indicate they began Prime Time Video Games). See Lic. App. at 36; Michael PDF at 69; Josephine PDF at 51.

mom invested for their 50% of the company, but then approximated \$55,000-60,000. Id. at 219-220.

The company was originally owned by Ed Moore, the father of one of Capitol's drivers, John Moore. At that time it was called E.T. Funhouse. When Michael, Josephine and Hunter purchased the arcade, Michael changed the name to Prime Time Video Games.²⁴ Ed Moore stayed on as an employee for a while to run things. Michael did not know to whom they paid rent ("some lawyer"), who did the books or who wrote the checks. Id. at 220-221. Nor could Michael remember any dates about the company – how long ago it was formed, how long it was in existence, when it shut down. He guessed he had it for 3-4 years and that it went out of business 5-6 years ago.²⁵

According to Michael's testimony, Michael's grandfather, Michael Morea ("Grandpa"), bought out Hunter's share of the business about 2 years after they opened.²⁶ At that point, they had not made any money, but they had almost finished paying off the machines. Michael had no idea why Hunter decided to get out of the business. He said that Hunter was not doing anything for the business (i.e., he was a partner in name only) and that Michael complained to him that it was not fair. As a result, Hunter said it was not going to work out and told Michael to buy him out.²⁷ Michael testified that Grandpa decided to buy Hunter out because he wanted "something to do"). Michael had no idea how much Grandpa paid, but said it was probably about ½ of the \$130,000 the machines cost (minus depreciation). Grandpa worked there about 2 years before they shut down because they never made any money. Id. at 224-227. After the Commission staff requested financial documents regarding the revenues of the business, Michael testified that he could not provide any of the business documents because his grandfather kept everything when the business failed. Although Michael offered to subpoena his grandfather's estate for the documents, he never submitted any paperwork related to Prime Time Video Games to the Commission. Id. at 228. The Applicant's failure to comply with the Commission staff's request for documents reflects adversely on the Applicant's fitness for licensure.

An auctioneer was used to sell the assets, although Michael had no idea who bought the machines or how much money they generated. Id. at 229. They auctioned off the equipment and lost a lot of money: "How much money, I don't know." See Michael Dep. Tr. at 209-238.

Michael continually insisted that he did not like Hunter Adams and tried to distance himself from Adams in his testimony. He claimed that he stayed in business for two years with someone he did not like solely in order to try to make some money.

²⁴ Michael called the business "Fun Time" and posted a sign on the business calling it "Fun Time."

²⁵ The license application indicates that Prime Time Video Games was formed in January 1995.

²⁶ Michael later testified that Hunter was bought out after only one year. Both of Michael's versions contradict Josephine's testimony that Hunter was bought out *before* the business even opened. Josephine Dep. Tr. at 61. The latest version in the response indicates that Hunter was bought out within *three* months. See Response at 34.

²⁷ Michael later testified that he told Hunter "you gotta get out" and that Hunter "had no choice" about selling out.

When pressed for details about his relationship with Hunter, Michael complained: "You're asking me questions about a person that I barely knew..." The only thing he knew is that Hunter was in the video business and he wanted to get a partner with experience in the video business. But Michael could only give generalities about Hunter's supposed video experience. He said Hunter was involved in video games – jukeboxes, pacman, space invaders, but he was vague or otherwise unresponsive when asked about Hunter's experience. He said he needed someone with expertise because it was necessary to fix the machines when they break down all the time, yet Hunter never fixed any of the machines: "That was my job. I learned. He never did no work in the business. He never came." When asked what kind of experience Hunter had: "I really don't know. I don't know what – I don't know anything about his business or what he did with his business. That never had anything to do with me." He thought Hunter was successful because he seemed to have luxuries – a Rolls Royce, a boat, etc., yet admitted that he "didn't know where he got his money from" and it could have been family money. Id. at 261-72.

Michael testified that he did not stay in touch with Hunter Adams after he left the business. At most, they greeted each other briefly at the gym. He had not seen him in at least 2 years. Michael volunteered in an unresponsive answer²⁸ to another question that he read in the newspaper that Hunter got into trouble a couple of months ago regarding "something with stock and took people for \$50 million or something." "It was Hunter Adams and Michael Ryder, something with IPOs, defrauded thousands of customers for up to \$50 million." He also read (in Newsday) that Hunter had "something to do with the Gambino thing."²⁹ Michael described himself as having been surprised to read about the organized crime connection because "he never seemed like the type...he comes from a family with a lot of money. His uncle owns US Steel. They're very rich people." He also heard about Hunter's arrest from his mom (who lives about 15 houses away) and several others. It was "the talk of the town" when the cops came and boomed the door and arrested Hunter. Id. at 233-36.

"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" is an independent ground upon which to deny a license application. Admin. Code §16-509(a)(vi). Simply put, Michael and Josephine got involved in a business that never made any money with Adams – an individual that Michael claimed he hardly knew or liked, who never did a stitch of work and who coincidentally happened to be an associate of organized crime. Michael's testimony regarding his relationship with Adams

²⁸ This was typical of Michael's demeanor throughout the entire deposition. He was very talkative (under the guise of appearing to be cooperative), yet most of the answers were unresponsive and served as a distraction to the question at hand.

²⁹ In his response, Michael claimed that he was "surprised" that he was questioned about Adams, despite his awareness of the allegations that Hunter had organized crime connections. See Response at 35. Michael's ignorance of the intent of Local Law 42 and the mandate of the Business Integrity Commission does not enhance the Commission's estimate of his good character, honesty and integrity.

was evasive, vague and self-serving and conflicted with his mother's testimony.³⁰ In addition, he failed to produce any documents legitimizing the business relationship. Based on this independent ground, Capitol's license application is denied as well.

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 Capitol falls far short of that standard.

It is of grave concern to the Commission that the Applicant and its principals have engaged in conduct that is intentional and in flagrant disregard of the law. For the independently sufficient reasons discussed above, the Commission hereby denies Capitol's license application.

³⁰ Michael's and Josephine's testimony conflicted on other subjects as well. For example, their testimony concerning plans to dispose of the assets of Capitol into an affiliated company owned by Josephine and Michael called Capitol Construction and Demolition was contradictory. Josephine testified that she was having a problem with her daughter and that "she is suing me now, so I might have to bankrupt this company." See Josephine Dep. Tr. at 30. "I am trying to transfer everything, all the construction work into Capitol Construction, because my daughter is suing the pants off me, she is going to take Capitol Carting ... so if I don't do something real fast, I am out of business. So that's why we opened that company." Id. at 62. However, Michael testified that "Capitol Construction and Demolition is all Capitol. It basically all goes into Capitol." See Michael Dep. Tr. at 119. "Capitol Construction and Demolition is Capitol Carting. It's basically the same exact company ... It's just a name." Id. at 173. Michael directly contradicted his mother's testimony:

- Q: Your mother indicated at her deposition that you're trying to move all of the construction work from Capitol Carting into Capitol Construction and Demolition. Is that fair to say?
- A: No, that's not fair to say. I don't understand what she –
- Q: You're not trying to move any Capitol Carting business into –
- A: Why would I try to do something like that? I don't even own a piece of equipment in Capitol Construction.
- Q: Your mother indicated that one of your sisters is suing Capitol again and that you wanted to move assets from Capitol Carting into Capitol C&D to protect them.
- A: I don't know nothing about that and I think whoever wrote that down misunderstood what she said because that is not being done at all. You could check the books, you could check my checking account, the work. It's all there for you.

Id. at 177-78.

Michael testified that he did not know how it would even be possible to move work from Capitol Carting to Capitol C&D since "Capitol C&D don't own a truck, they don't have any employees, they don't have anything, so it's physically impossible to move work from Capitol Carting into Capitol C&D." Id. at 180. Apart from the question of Josephine's intent to fraudulently convey the assets of Capitol in order to shield them from a possible adverse legal decision, their testimony cannot be reconciled and reflects adversely on their fitness for licensure.

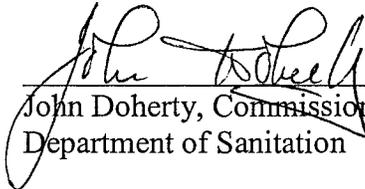
This license denial decision is effective fourteen days from the date hereof. In order that the Applicant's customers may make other carting arrangements without an interruption in service, the Applicants are directed (i) to continue servicing their customers for the next fourteen days in accordance 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



Jose Maldonado
Chairman

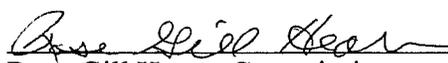


John Doherty, Commissioner
Department of Sanitation

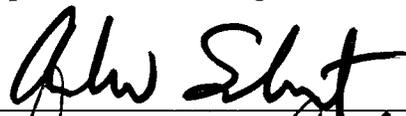


Gretchen Dykstra, Commissioner
Department of Consumer Affairs

*Alba Pico
Designee*

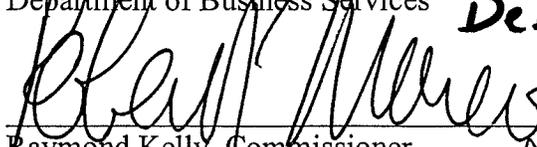


Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Business Services

*Andrew Schwartz
Designee*



Raymond Kelly, Commissioner
New York City Police Department

*Robert F. Mossler
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