



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 CROSTOWN RECYCLING, INC. FOR A
LICENSE TO OPERATE AS A TRADE WASTE BUSINESS**

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

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). These illustrative factors include the failure to provide truthful information to the Commission and certain criminal activities. Based upon the record as to the Applicant, the Commission finds, for the following independently sufficient reasons, that Crosstown lacks good character, honesty, and integrity, and denies its license application:

(1) the Applicant has engaged in unlicensed carting activity for at least six years;

(2) the Applicant offered to engage in a scheme to defraud the City of New York;

(3) one of the Applicant's principals recently operated an unlicensed car-towing business in New York City; and

(4) the Applicant failed to provide truthful information in connection with its license application.

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”:

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

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

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-

competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council 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 New York County District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry. 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.

B. Local Law 42

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

(E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "it shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the Commission." 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).

As the United States Court of Appeals has definitively ruled, an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). In determining whether to issue a license to an applicant, the Commission may consider, among other things, the "failure by such applicant to provide truthful information in connection with the application." Admin. Code §16-509(a).

II. DISCUSSION

On May 21, 1997, Crosstown submitted a license application to the Commission. On February 10, 1999, the Commission's staff issued a 15-page recommendation that Crosstown's license application be denied, which was sent by overnight mail to Crosstown at the address listed on its application. Pursuant to the Commission's rules, Crosstown had ten business days, or until February 25, 1999, to submit a written response to the staff recommendation. See 17 RCNY § 2-08(a). Crosstown did not respond to the staff's recommendation. The Commission has considered the staff's recommendation in rendering its determination.

Crosstown's application listed only one principal, Tracy Salm. At her deposition by the staff on July 21, 1997, it became clear that there was at least one additional principal of Crosstown, the deponent's husband, Simone Oliva. Oliva, not his wife, had experience in the carting industry.

The Commission conducted audio and videotape surveillance of Crosstown's operations.¹ The surveillance demonstrates that Crosstown, which does not have a DCA license, has engaged in unlicensed carting activity for at least six years. Crosstown's repeated offers to engage in a scheme to defraud the City of New York were also recorded on videotape. Additionally, the car-towing company formerly owned by Simone Oliva operated without a DCA license. Finally, Crosstown made numerous false statements and material omissions in connection with its license application.

A. Crosstown's Illegal Carting Activity

On January 7, 1998, Trade Waste Commission inspectors and New York City Department of Sanitation ("DOS") police assigned to the Commission began performing occasional drive-by inspections of Crosstown's storage location to determine whether any of its trucks was being used for an illegal purpose. The Applicant's truck (plate number 31266AN), was stored at the Cambeis truck yard at Third Street and First Avenue in Brooklyn. On March 30, 1998, the truck was missing from the yard, and in its place were 42 half-cubic-yard containers and 3 six-cubic-yard containers.

On April 14, 1998, the inspectors observed that the rear of the truck's body (the container section) had been changed, while the license plate, chassis, and cab of the truck remained the same. The name on the vehicle had been changed from "Crosstown" to "World Wide Waste Service of New York," but the telephone number remained the same. The inspectors also observed that the vehicle was carrying a broom and shovel, and a clipboard was mounted on the interior of the cab. Based upon their experience, the inspectors believed that the vehicle was being used to haul waste materials.

On April 25, 1998, an inspector observed a rear-load "packer" truck, bearing license plates registered to the Applicant, driving westbound on Hylan Boulevard at the intersection of Hylan Boulevard and New Dorp Lane on Staten Island. The truck was carrying, chained to the rear opening, a five-yard container marked "Crosstown Recycling." The inspector was unable to observe the contents of the container.

¹ The staff recommendation to the Commission noted that the audio and videotapes upon which the recommendation was based were available for review by the applicant.

Based upon their observations, the inspectors believed that the Applicant, which had no DCA or Commission carting license, might be carting waste illegally. Therefore, the inspectors, working undercover and posing as prospective buyers of Staten Island real estate from the City of New York, set up an appointment with the Applicant to determine whether it would agree to engage in a waste-carting transaction.

On the morning of June 1, 1998, one of the inspectors called the "800" number printed on the Applicant's truck. A woman answered the phone, "Thank you for calling Crosstown Waste and Recycling. Erica speaking. How may I help you?" The inspector told the woman that he needed an estimate to remove debris from property on Staten Island. She told him that he had reached the answering service and someone would call him back. The inspector left the phone number of his pager, which beeped a few minutes later with a callback number, 917-217-3673.

When the inspector called the number, a man answered. The inspector asked, "Is this Crosstown?" The man answered, "Yeah." The inspector explained that he had seen "your truck out on Staten Island about a month ago, and I've got a house that I'm buying from the City, and it's out on Staten Island, and I've got some debris and stuff there that, I guess they left - whoever had it before. I'm looking to try and get an estimate, . . . see if I can have a job done." The two briefly discussed where the house was located. The inspector then asked, "What's your name, guy?" The man answered, "Simone." Simone Oliva ("Oliva") and Tracy Oliva ("Ms. Oliva") are the two principals currently listed in Crosstown's application to the Commission.²

After discussing the precise location, Oliva asked, "Is someone going to be there tomorrow so we can come and take a look at it?" The two agreed to meet the next day. Oliva suggested, "How about I beep you in the morning, about nine, ten o'clock. Just to confirm. And I'll meet you over there, and we'll give you an estimate."

² As noted above, Crosstown's application initially disclosed only one principal, Tracy Salm. At her deposition, Salm testified that she and Simone Oliva had recently been married and she would be using the name Tracy Oliva. Crosstown added Simone Oliva to its application as a principal on August 27, 1997, the same day he submitted his personal disclosure forms.

The next morning, June 2nd, the inspector's pager beeped with the callback number 982-7099.³ He called that number, Oliva answered, and they agreed to meet later that morning at the location on Staten Island that the inspector provided.

Two inspectors ("DOS1" and "DOS2"), using a hidden videotape recorder, met with Oliva at the site of an abandoned house on Staten Island for approximately one-half hour. The house stood on an approximately one-quarter acre lot. Near the house were two piles of construction and demolition debris. The men introduced themselves, and Oliva examined the debris – a mixture of wood, sheetrock, plastic, metal, tires, and concrete. The inspectors explained that they were in the process of purchasing the property from the City and needed to have the debris removed. Oliva and the two inspectors then had the following conversation:

Oliva: "You guys got a couple of Mexicans? Or – it would be a lot cheaper."

DOS1: "Yeah? How much cheaper?"

Oliva: "Whatever you paid them."

DOS1: "Yeah? But how much to get rid of it, though?"

Oliva: "If I just take it away, it'll be like twelve hundred. 'Cause it's about two loads here."

DOS1: "Yeah?"

Oliva: "If I've got to bring a couple of guys here, you're looking at about eighteen hundred."

DOS1: "Really?"

Oliva: "It's a whole day's work here. Eighteen hundred to two thousand. I mean if you could get a couple of Mexicans or something."

³ The pager did not indicate the area code, which was "718."

DOS1: "Yeah."

Oliva: "Give them like fifty dollars a day. These guys are like pigs in shit."

DOS1: "Yeah."

Oliva: "But if I've got to send four or five guys here --"

DOS1: "Yeah, I hear you."

Oliva: "It's up to you, you know?"

After a brief discussion about the boundaries of the property, the conversation continued:

DOS1: "When I spoke to them, I told them we would clean up the front part, maybe they would clean up the back part."

Oliva: "The front part is nothing. The front part I could do for you for like two hundred, three hundred."

DOS1: "Yeah? And I've got to supply the guys?"

Oliva: "If you supply the guys. I mean, 'cause this is nothing. This'll take 'em two hours, three hours. This little area."

* * *

"You know where 39th Street and Fort Hamilton is, right?"

DOS1: "Yeah."

Oliva: "You go over there, there's Pollacks lined up like they're in prison."

* * *

Oliva: "I know when we get a big job, my brother 'gloms' them up over there. Throws them all in a van. And they're happy for

like forty, fifty dollars a day. You know. I'm just telling you. I could tell you eighteen to two thousand and I got the job, but I'm not like that."

As the conversation progressed, Oliva admitted that he and his brother had been working in the carting business in the City together for six years. At no time has Oliva or any of his relatives ever held either a DCA or Trade Waste Commission permit or license that would allow such operation.

DOS1: "What's it, you and your brother?"

Oliva: "Yeah."

DOS1: "That's nice. Nice."

Oliva: "I'm getting out of New York soon."

DOS1: "Yeah?"

Oliva: "It's finished."

DOS1: "No good?"

Oliva: "It's over. It was good while it lasted."

* * *

"Now, everybody and their mother is a garbage man. Everybody and their mother all of a sudden is a garbage man."

DOS1: "You and your brother been in business for a long time?"

Oliva: "Six years now."

Oliva then described recent work in New York:

Oliva: "Some of these jobs – some of these buildings – we just did the G.M. Building, 767 Fifth Avenue in Manhattan. We did four floors in that building. I mean, we did decent money. Don't

get me wrong. But in the long run, it wasn't worth it. You've got to pay a two million dollar insurance policy on each floor."

Oliva later told his "customers" about another instance in which he had been prepared to cart waste in New York City:

Oliva: "Staten Island, they're building everywhere. Staten Island's getting bad."

DOS2: "Yeah, we noticed that."

Oliva: "My friend's got a house in Prince's Bay [on Staten Island]. . . . I said, 'Tony, why don't you buy the property [adjacent to you]? We'll clean it out for you, and you'll pay me as you go along. . . .'"

Finally, Oliva told the two inspectors that he and his brother had been hauling waste for builders:

Oliva: "These builders are another one out of control. They suck. We were doing work with them. They suck."

DOS1: "Bad? They don't pay?"

Oliva: "They don't pay! Thirty days, they're supposed to pay. You go there. They owe you ten thousand, and they give you a check for three thousand. 'Well, where's the other seven? I've got bills to pay, too, you know. I dumped all this shit for you.' You know, and everything with them is they want the dump receipts."

DOS1: "Why is that?"

Oliva: "Because they've got to prove that everything was gone out [sic] the right way."

DOS1: "There goes your [inaudible]."

Oliva: "No, I don't mind it, but when I'm fronting five thousand a month for the fucking dump, show me where – you pay me,

give me three thousand. You paid half the dump. What about my money? I've got drivers and workers that get paid every week, you know?"

Based upon the facts revealed by this undercover operation, and Crosstown's lack of any DCA or Trade Waste Commission license, the Commission concludes that Crosstown has engaged in unlicensed carting for at least six years. Such illegal activity plainly supports the conclusion that the Applicant lacks good character, honesty, and integrity.

B. Crosstown's Offer to Defraud the City of New York

During his June 2, 1998 conversation with the two "customers," Oliva proposed an alternative to his earlier suggestion of illegally obtaining cheap labor. The inspectors had told Oliva that they were buying the property from the City of New York and were seeking to have the City defray part of the cost of debris removal from the property. Oliva told them that he would submit to the City a fraudulent estimate of the cost to dispose of the debris:

Oliva: "Either that, or tell them like this: tell them you've got an estimate of three thousand. 'Let's cut it down the middle.'"

* * *

"This way, worse comes to worst, it costs you anywhere from three hundred to five hundred. And they're paying the first fifteen hundred. It would be like you're paying for the front clean-up and they're paying for the back. Tell them I've got an estimate of three thousand dollars for five or six guys to come in here. Two truckloads to take this shit out."

Oliva reiterated his plan several times:

Oliva: "Give them my card. Have them call me, and I'll tell them, 'Yeah, I gave them an estimate of three thousand dollars.'"

DOS1: "If they ask for a written estimate, it's no problem?"

Oliva: "I'll fax them one, yeah."

DOS1: "Really?"

Oliva: "Yeah. Whatever you want. You know?"

* * *

"Call them up and say, 'Listen. I got an estimate of three thousand dollars for the two trucks and the men to take care of this. Let's meet somewhere down the middle.'"

DOS1: "Yeah, alright."

Oliva: "Say, 'You know, I'm going for my [inaudible] here.' You know. Cry on his shoulder. Let the guy feel the tears through the phone. Tell them, 'Here's the guy's number.' You got my card. 'Here's his number. Call him up. I'm not looking to make three cents on this. I'm just looking for someone to meet me in the middle.' And I'll fax them whatever they want."

DOS2: "All right."

* * *

Oliva: "Tell them, 'Listen. I got an estimate of three thousand dollars. I need help here. Who's gonna meet me halfway?'"

DOS1: "Yeah, I hear you. If you've got to fax it to me, though, it's not a problem?"

Oliva: "Yeah, no problem at all."

DOS1: "Either deal with me or my brother."

Oliva: "Yeah. I'll write it to them, to whoever they want."

Based upon this evidence, the Commission concludes that the Applicant repeatedly offered to defraud the City of New York. Crosstown's willingness to defraud the very entity from which it seeks a carting license amply demonstrates its lack of good character, honesty, and integrity.

C. Oliva's History of Unlicensed Activity in New York City

Oliva, a principal of the Applicant, also previously engaged in a different form of unlicensed commercial activity – again flouting City permit requirements and further demonstrating the Applicant's lack of good character, honesty, and integrity. Simone Oliva's disclosure statement indicates that he owned a car towing company, "Cartoon Towing Corp.," from approximately 1993 to 1996. Commission staff asked Oliva to provide a copy of the company's DCA license or license number. In a letter dated September 11, 1997, he claimed to be unable to provide any paperwork on Cartoon because he had sold the company and thrown out his papers when he moved residences. No record of a towing license for a Cartoon Towing was found in a search of the DCA's records. On or about January 11, 1999, DCA counsel confirmed to the Commission staff that the Commission may therefore conclude that Oliva never possessed a license for his towing company. Based upon this evidence, the Commission finds that Oliva operated his towing company for three years without a license.

D. Crosstown's Failure to Provide Truthful Information

On several occasions, Crosstown failed to disclose material information. Initially, Crosstown failed to disclose at least one of its principals. Then, Crosstown's two listed principals lied on their disclosure forms and when they testified at their depositions.

At first, Crosstown's application listed only one principal, Tracy Salm. Salm, who did not report her married name, Oliva, to the Commission until her deposition,⁴ failed to report either her husband or his brother as principals or even employees. At Ms. Oliva's deposition, Commission staff asked a number of questions about her husband's occupation – waste hauling in New Jersey – and Ms. Oliva's own lack of experience in carting. Although Ms. Oliva did not admit as much at her deposition, it became clear that her husband would necessarily be involved in running Crosstown. After Ms. Oliva's deposition, Crosstown amended its application to include Simone Oliva as a principal. Crosstown, however, never added Oliva's brother's name to the application.

⁴ Although Ms. Oliva claims that she submitted a formal amendment to Crosstown's application, listing her married name, the Commission has no record of any such amendment. In any event, if she did formally amend the application, the amendment came only after requests from Commission staff to do so.

Oliva also completed the Commission's investigative questionnaire falsely and testified falsely at his deposition when he stated that he had completed it truthfully and accurately. At his deposition, Oliva testified that he had completed the questionnaire by himself, "in a truthful and honest way," and that it was "accurate, to the best of [his] ability." Question 19 requested the names of his siblings' current employers. Oliva wrote that his brother Vito worked for "NYC Police Dept.," his brother Paul worked for "Par Plumbing"; and his brother Angelo worked for "Lifeline Ambulance." None of his brothers was listed as working in the carting industry. In fact, as Oliva freely admitted to the undercover inspectors, one of his brothers has been working in Crosstown's unlicensed business for at least six years.

Likewise, Oliva answered "no" to Question 22:

Does/did any member of your family (including relatives by marriage) or any friend of your family, work in or have any connection with the waste hauling or waste disposal business, such as carting companies, transfer stations, recycling centers, paper dealers, scrap metal dealers, back-hauling, and landfill operations?

Commission staff read Question 22 to Oliva at his deposition, and Oliva again answered, "No."

At the beginning of her deposition, Tracy Oliva testified that her husband worked for a construction and demolition debris hauling company, Bergen Disposal, in New Jersey. She did not mention his work for Crosstown. When she was later asked to explain the fact that she had checked "yes" to Question 22 of the investigative questionnaire – regarding all family members' connection with the waste hauling industry – she again referred only to her husband's work for Bergen Disposal, and failed to mention her brother-in-law altogether. At the time of her deposition, she was married to Simone Oliva, and had lived with him for some time prior to that. It is inconceivable that she did not know that her husband and brother-in-law were operating Crosstown.

Finally, Simone Oliva provided false information to the Commission when he informed the staff in writing that Cartoon Towing, the car-towing

company he had previously owned, was duly licensed by the New York City Department of Consumer Affairs.

For the foregoing reasons, the Commission concludes that Crosstown failed to provide it with truthful information. 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. Admin. Code §§ 16-509(a)(i); 16-509(b). The lies and failures to disclose recounted above plainly cast a pall on the Olivas' – and, therefore, Crosstown's – character, honesty, and integrity. The identity of a carting company's principals and employees obviously is of material significance to the Commission, and the Olivas' misrepresentations on the subject warrant denial of Crosstown's license application.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty, and integrity. For the independently sufficient reasons enumerated above, the Commission denies Crosstown's license application.

This license denial decision is effective immediately. Crosstown shall not service any customers, or otherwise operate as a trade waste removal business, in New York City.

Dated: March 12, 1999

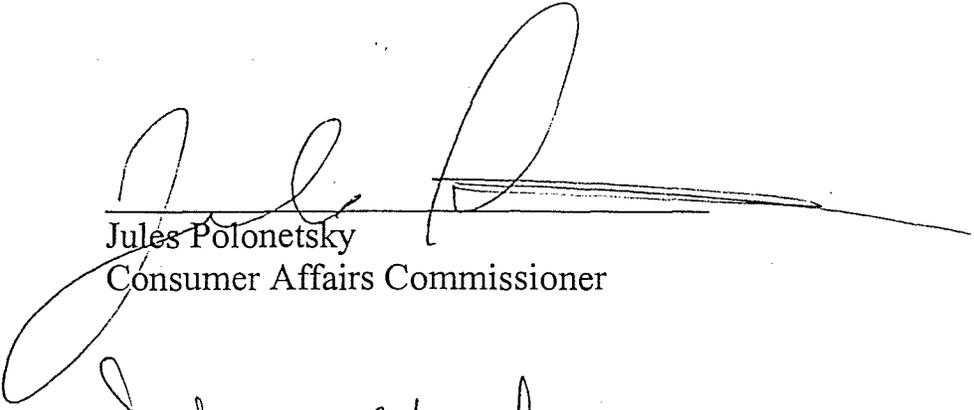
THE TRADE WASTE COMMISSION



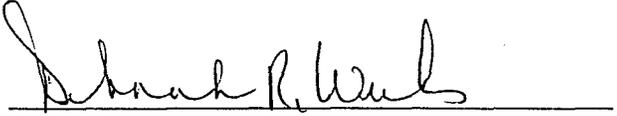
Edward T. Ferguson, III, Chair



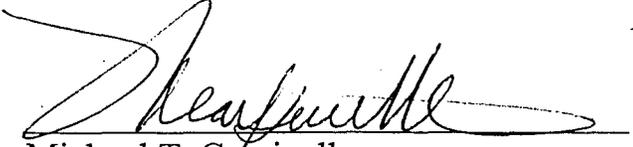
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