



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 D&D MASON CONTRACTORS, INC. FOR AN EXEMPTION FROM LICENSING REQUIREMENTS AND A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

D&D Mason Contractors, Inc. (the "Applicant" or "D&D") submitted an application to the New York City Trade Waste Commission ("TWC"), subsequently renamed the New York City Business Integrity Commission ("Commission") pursuant to Local Law 21 of 2002, for an exemption from licensing requirements for the removal of construction and demolition debris. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Thomas DeMartino ("DeMartino") is the sole principal of the Applicant, a construction and waste hauling company.

D&D has applied to the Commission for a registration enabling it to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "C & D." Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission grants the Applicant a registration, the Applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.¹

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors

¹ In its response to the Commission staff's denial recommendation, the Applicant argues that the Commission mistakenly characterized the Applicant's business as a trade waste business. The Applicant incorrectly argues that because it is primarily a construction contractor, it does not operate a "trade waste business," and, therefore, the Commission does not have jurisdiction to issue a decision on its application. As discussed above, however, Local Law 42 specifically defines trade waste to include "construction and demolition debris." See Admin. Code §16-501(f). Additionally, the Applicant asserts for the first time that because it is currently inactive, the Commission's denial is irrelevant. As the Applicant has not withdrawn this application, the Commission must make a final determination on it.

that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code §16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission's investigation and determination of a registration application is whether the applicant has business integrity. See 17 RCNY §1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity").²

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

- (i) The Applicant, D&D Mason Contractors, Inc., pleaded guilty to Offering a False Instrument for Filing in the First Degree and Conspiracy in the Fifth Degree, and Thomas DeMartino pleaded guilty to Offering a False Instrument for Filing in the Second Degree.
- (ii) The Applicant's President, Thomas DeMartino, knowingly associated with Vincent Zollo, an associate of the Gambino crime family and a convicted racketeer.

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

² The Applicant argues that the Commission does not have authority to investigate and issue denial decisions on registration applications. In making this assertion, the Applicant incorrectly relies on the lower court decision of Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. N.Y. 2004). The lower court case, however, was unanimously reversed on appeal. The Appellate Division, First Department, concluded that the Commission has jurisdiction to investigate, and may deny, applications for exemption from the licensing requirements. See Attonito v. Maldonado, 3 A.D.3d 415.

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

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

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

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

Moreover, the C & D sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183,

1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many C & D haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988. During that period, “the City experienced a sharp decline in the tonnage of construction waste deposited” at its Fresh Kills landfill, as well as “a concomitant decline in revenue” from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as “one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States.” United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain “cover” programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the “free cover” program, transfer stations and carting companies could dispose of “clean fill” (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the “paid cover” program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by “cocktailing” the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

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

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

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (“DCA”) for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. “Trade waste” is broadly defined and specifically includes “construction and demolition debris.” Id. §16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff’d, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm’n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm’n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep’t of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997).

II. DISCUSSION

The Applicant filed an application for exemption from licensing requirements and a registration to haul construction and demolition debris (the “Application”). The sole principal of the Applicant is Thomas DeMartino. See Application at 8. The staff has conducted an investigation of the Applicant and its principal, and in connection with that investigation, the staff deposed DeMartino on January 6, 2000. On September 8, 2004, the staff issued a nine-page recommendation that D&D’s application be denied. The Applicant was served with the Commission’s recommendation on that date and had ten business days to submit a response pursuant to Section 2-08(a) of Title 17 of the Rules of the City of New York. The cover letter served with the Commission’s recommendation directed that any factual assertions in the Applicant’s response must be made under oath. See Letter dated September 8, 2004.

On September 15, 2004 the Applicant requested an extension of time to reply, and the Commission’s staff granted an additional week to respond, until September 29, 2004. See Letter dated September 15, 2004. On September 23, 2004, the Applicant requested an additional extension of time, and the Commission granted another extension, until Monday October 4, 2004 to respond. See Letter dated September 24, 2004. On October 4, 2004, the Applicant requested an additional week to respond, and the Commission granted another extension, until Wednesday, October 6, 2004. See Letter dated October 4, 2004. On October 8, 2004, a member of the Commission’s staff contacted the Applicant by telephone and offered it additional time to respond. At this time, the Applicant requested and was granted another extension, to October 12, 2004 to respond.

On October 8, 2004, the Applicant submitted its response, which consisted of an unverified five-page letter with exhibits (“Response”).³ The Commission has carefully considered both the staff’s recommendation and the Applicant’s response.⁴ For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application.

A. The Applicant, D&D Mason Contractors, Inc., Pleaded Guilty to Offering a False Instrument for Filing in the First Degree and Conspiracy in the Fifth Degree, and Thomas DeMartino Pleaded Guilty to Offering a False Instrument for Filing in the Second Degree.

Between October 1, 1996 and March 22, 2000, the Applicant was under public contract with the New York City Department of Parks and Recreation, (“NYC Parks”), as either a prime contractor or sub-contractor on various construction projects in Manhattan, Brooklyn, Queens, and the Bronx. See People v. D&D Mason Contractors, Inc., Superior Court Information No. 702/2002 (Crim Ct. Kings Cty.) (“D&D Criminal Complaint”). All NYC Parks contracts require that workers be paid the prevailing wage and supplemental benefit rates, and that all contractors certify their payroll by signature and submit the certified payroll to NYC Parks. Id. at 3-4. During the time period that the Applicant was under public contract, it paid certain employees less than the prevailing wage and supplemental benefit rates, in violation of New York State Labor Law §220(3). See Plea Minutes of D&D Mason Contractors, Inc., February 21, 2002 at 2-8 (“D&D Plea”). Further, the Applicant concealed this underpayment by submitting numerous false certified payroll reports to NYC Parks. Id. These certified payroll reports were signed by DeMartino and falsely indicated that particular employees had been paid the prevailing wage and supplemental benefit rates. Id.

The scheme was revealed after a joint Commission/Department of Investigation (“DOI”) investigation. See Press Release dated February 21, 2002. At the outset of the investigation, detectives interviewed former D&D employees and obtained certified payrolls from NYC Parks. See NYPD Memo dated February 19, 2002. As a result of that initial investigation, a search warrant was obtained and executed at the Applicant’s premises on March 22, 2000. See D&D Criminal Complaint at 3-5. The search resulted in the recovery of employee time sheets, including those that covered the period from October 1, 1996 through March 22, 2000, pay-check stubs, and other corporate records. Id.

³ The Applicant submitted an initial response on October 5, 2004. After the Applicant requested and was granted an additional extension of time on October 8, 2004, the Applicant revised its initial response and re-submitted it on October 8, 2004.

⁴ Although both 17 RCNY Section 2-08(a) and the staff’s recommendation state that any assertions of fact submitted in the Applicant’s response must be made under oath, the Applicant’s response failed to attach a *sworn* affidavit from its principal. See 17 RCNY Section 2-08(a); see also Commission’s Recommendation at 9 (allowing the Applicant 10 business days to submit any assertions of fact “under oath” and any documentation that it wishes the Commission to consider).

A comparison was made between the employees' wages on the certified payroll, and the employees' time sheets, copies of paychecks issued, and copies of pay check stubs. Id. at 2-5. This comparison revealed that certain employees of the Applicant were paid less than the prevailing wage rate, as the wages listed on the Applicant's certified payroll reports were greater than the employees' pay checks and did not correspond in any way to the latter. Id. Further, this comparison confirmed that DeMartino falsified business records in this criminal scheme. Id.⁵

On February 21, 2002, the Applicant pleaded guilty to Offering a False Instrument for Filing in the First Degree, a class E Felony, and Conspiracy in the Fifth Degree a class A Misdemeanor. See D&D Plea. In its allocution, the Applicant admitted that on or about and between October 1, 1996 and March 22, 2000, it knowingly and willingly offered a false instrument for filing and did so with Thomas DeMartino as the President of the corporation. Id. at 5-8. The Applicant also admitted that Thomas DeMartino signed certified payrolls indicating that he was paying his employees the prevailing wage as required by the City of New York when in fact he was not paying them the prevailing wage. Id. Finally, the Applicant admitted to committing these crimes in Brooklyn, Bronx, Queens, and New York County. Id.

Thomas DeMartino pleaded guilty to Offering a False Instrument for Filing in the Second Degree. See Plea Minutes of Thomas DeMartino, February 21, 2002. In pleading guilty, he admitted that he knowingly filed a false certified payroll report with NYC Parks knowing that it would become part of the records of a public office. On February 21, 2002, DeMartino was sentenced to a conditional discharge. Id.

On April 12, 2002, the Applicant was sentenced to a conditional discharge. See Certificate of Disposition No. 39445. The conditions were that the Applicant pay restitution in the amount of \$180,000 to the New York City Comptroller's Office, and that a \$20,000 civil penalty be paid to the City of New York. See D&D Plea at 2-6. The Corporation also signed an affidavit for confession of judgment, which allowed the Corporation Counsel to collect any unpaid restitution or civil penalty if the Applicant breached the conditional discharge. Id. Finally, the Applicant agreed not to do business with New York City for five years. Id.

The laws that DeMartino and the Applicant violated are incorporated into every city contract. They are devised to ensure that contractors do not gain an unfair advantage over contractors who employ union workers and pay union wages. The Applicant and its principal attempted to circumvent these laws by presenting fraudulent certified payroll reports to NYC Parks. The Applicant and its principal intended to defraud NYC Parks, conceal the violation of the Labor Law, and deny workers the wages to which they were

⁵ In addition to the jurisdictional claims previously discussed, the Applicant argues that the Commission did not have jurisdiction to conduct the instant investigation with DOI because New York Labor Law §220 permits the fiscal officer to investigate prevailing wage practices. Notwithstanding any authority that another entity may have to investigate prevailing wage violations, as discussed earlier, the Commission has independent authority to investigate applications for exemption. See Admin. Code §16-504; Attonito v. Maldonado, 3 A.D.3d 415. For this reason, the Commission finds the Applicant's argument unpersuasive.

legally entitled. These acts demonstrate the Applicant's lack of good character, honesty, and integrity.

Section 753 of the Corrections Law sets forth certain factors to be considered before a criminal conviction can be used as the basis of denying a company a registration. Those factors include: the relationship between the crime and the specific duties related to the license sought; whether the criminal offense will affect the individual's fitness or ability to perform the duties; the time which has elapsed since the occurrence of the offense; the age of the person at the time of the offense; the seriousness of the offense; any information by the person regarding his rehabilitation and good conduct; the legitimate interest of the public agency in protecting property and the safety and welfare of the public; and whether the person received a certificate of relief from civil disabilities, which creates a presumption of rehabilitation. N.Y. Correct. Law §753 (1), (2).

Here, the nature of the crimes to which the Applicant and its principal pled guilty directly affects their fitness to operate in the trade waste industry.⁶ Further, these crimes occurred before and during the pendency of the instant application, indicating an ongoing, existing, and brazen disregard for the public interest and public authorities. Moreover, these crimes relate directly to the honesty, integrity, and character of the Applicant and its principal.⁷ In its response, the Applicant seeks to diminish the magnitude of the crimes to which it and its principal pled guilty by arguing that it should not be held accountable for this criminal activity because the prevailing wage issues "resulted from systemic problems in the marketplace" that were subsequently rectified. See Applicant's Response at 4. Additionally, the Applicant seeks to re-litigate the facts of the criminal case in its response. The Commission finds the Applicant's response unpersuasive. First, the Applicant's unsworn assertions do not in any way nullify the criminal convictions of the Applicant or DeMartino. Second, if the Applicant had any defenses to the criminal charges, then these defenses should have been litigated during the criminal case. Finally, the Applicant does not dispute the fact that it certified and filed false payroll records; it merely claims that other contractors behaved similarly so the Applicant should not be held accountable here. Therefore, based on this independent and

⁶ The Applicant argues that the activities underlying the criminal convictions do not relate to the trade waste industry and, therefore, should not be considered as a basis for denial. This argument is without merit. It is disingenuous to argue that paying less than prevailing wages on the performance of construction contracts and then certifying false records related to those construction contracts, i.e., contracts involving a trade waste business, is not directly related to the trade waste industry.

⁷ Indeed, the Mayor's Office of Contracts ("Office") also determined that the Applicant lacked the business integrity to be a responsible contractor. Procurement Policy Board ("PPB") Rules require that City agencies award contracts to responsible contractors only. 9 RCNY §2-08 (a)(1). Pursuant to §2-08 of the PPB Rules, a prospective contractor must demonstrate his responsibility, that is, that he has both the capability to perform the contract requirements and the requisite business integrity. 9 RCNY §2-08 (a), (b). On October 1, 1999, the NYC Parks Agency Chief Contracting Officer ("ACCO") determined that D&D was not a responsible contractor based on unsatisfactory performance in connection with three NYC Parks projects. See Decision of Claude M. Millman, Director of the Mayor's Office of Contracts ("Decision"). Although the Office did not address the ACCO's factual findings, it found that D&D was not a responsible contractor due to the above-discussed criminal investigation, which was pending against D&D at the time, and its bearing upon D&D's business integrity.

sufficient ground, the Commission denies this Applicant's exemption/registration application.

B. The Applicant's President, Thomas DeMartino, Knowingly Associated with Vincent Zollo, an Associate of the Gambino Crime Family and a Convicted Racketeer.

Vincent Zollo ("Zollo") has been publicly identified as an associate of an organized crime family. See infra. On January 21, 1998, Zollo was indicted along with John Gotti, Jr.⁸ ("Gotti") and 37 other defendants in four separate racketeering indictments by the United States Attorney, Southern District of New York. See United States Attorney Southern District of New York Press Release dated January 21, 1998. The indictment identified Zollo as an associate of the Gambino crime family and charged him with furthering the racketeering enterprise of the Gambino crime family, individually and through his companies, including Zollo Construction. See Plea Minutes of John A. Gotti, Jr. and Vincent Zollo, April 5, 1999, at 67-68, 82-84 ("Zollo Plea"). Additionally, the indictment alleged that Zollo conspired with Gotti to defraud public agencies on construction projects within New York City. Id.

Subsequent to the indictment, Zollo's association with Gotti and the Gambino crime family was widely reported in the news media. See, e.g., Greg B. Smith, "Feds Indict Younger Gotti, Catching Him on Tape Just as They did his Famous Father," January 28, 1998; Patricia Hurtado, "Gotti Loses Lawyers / But Judge Allows Cutler to Stay on in Racketeering Defense," Newsday, June 16, 1998; Greg B. Smith, "Junior Weighs Deal Would Get 8 Years in Slammer," Daily News, June 25, 1998; Jim Fitzgerald, "400 Citizens to be Potential Gotti Jurors," The Associated Press, February 12, 1999; Selwyn Raab, "Jurors Will See Dueling Images of John Gotti," The New York Times, April 4, 1999; Jeff Shields, "'Junior' Gotti's Chum Gets 46 Months," The Journal News (Westchester County, NY), September 11, 1999. The Applicant's response all but admits the numerous press accounts of the organized crime connections between Zollo, John Gotti, Jr., and the Gambino crime family. See Response at 5. Despite these press accounts of Zollo's organized crime connections, which DeMartino admittedly knew about, DeMartino maintained contact with Zollo and even consulted him on business-related issues.

On April 5, 1999, Vincent Zollo pled guilty to racketeering charges and admitted his association with organized crime. See Zollo Plea at 67-69, 82-84, 88-91. In his allocution, Zollo admitted that in furtherance of the racketeering enterprise, as a

⁸ In addition to being charged in the instant indictment as a captain in the Gambino crime family, John Gotti, Jr. has been widely reported as the acting head of the Gambino crime family since his father, John Gotti went to prison in 1992. See, e.g., United States Attorney SDNY Press Release dated January 21, 1998; "Alleged Mob Boss Pleads Innocent," United Press International, December 23, 1996; James Bone, "Crime Boss Guilty," The Times (London), April 7, 1999; "'Dapper Don' John Gotti Dead," CNN.com, June 10, 2002; Larry McShane, "N.Y. Mafia Left Without Heirs," Associated Press Online, November 1, 1997; Benjamin Weiser, "U.S. Charges John Gotti Jr. With Extortion," The New York Times, January 22, 1998; Murray Weiss, "'Baldie' Heads Genovese," The New York Post, August 12, 2001.

subcontractor, he represented to prime contractors and the NYC School Construction Authority that he was paying workers the prevailing wages, as mandated by New York State Labor Law, when in fact he was not. *Id.* Zollo also admitted that he submitted false certified payrolls and then was paid as a subcontractor according to the prevailing wage rate. *Id.* On September 10, 1999, Zollo was sentenced to 46 months imprisonment and ordered to forfeit \$500,000. *See* Zollo Plea at 73-81; Shields, *supra*, at 2B.

In the early 1990's, Zollo Construction employed DeMartino as a laborer, a driver, and an estimator. *See* Transcript of Deposition of Thomas DeMartino ("DeMartino Tr.") at 12-15. From the mid-to-late 1990's, after the Applicant was formed and DeMartino left Zollo's employ, DeMartino and Zollo maintained a business relationship. DeMartino Tr. at 70-72, 109-112. DeMartino consulted Zollo with respect to issues such as business advice, referrals, solicitation of work, and other business-related topics. *Id.* Zollo referred DeMartino to customers and recommended workers for DeMartino's jobs. DeMartino Tr. at 109-111. Zollo Construction also subcontracted work to this Applicant. DeMartino Tr. at 70-71, 109-110.

At his deposition, DeMartino testified that he was aware that Zollo was indicted and convicted. DeMartino Tr. at 111-113. DeMartino also said that he understood that Zollo was "partners with John Gotti" and involved in organized crime. *Id.* DeMartino said that he first learned about Zollo's organized crime ties when Zollo's offices were "raided" and when newspapers, people in the business community, and people in the neighborhood discussed Zollo's connections to organized crime. *Id.*

For the approximately eighteen months after DeMartino acknowledged that he knew about Zollo's association with the Gambino crime family, DeMartino continued to have regular contact with Zollo.⁹ For instance, DeMartino stated that he had continued to speak with Zollo, a known associate of organized crime and a convicted racketeer, about business-related matters, just as they had discussed in the past. DeMartino Tr. at 109-113, 71-72. DeMartino and Zollo even discussed Zollo's criminal charges. DeMartino Tr. at 112-113.¹⁰

The Commission is expressly authorized to deny the application of a company whose principals have had associations with known organized crime figures and racketeers. *See* Admin. Code §16-509(a)(v), (vi); SRI, 107 F.3d at 998; *supra*, at 3-4. The evidence recounted above demonstrates that the Applicant's principal had numerous business dealings with Gambino associate Vincent Zollo, most, if not all, of which

⁹ At his deposition on January 6 2000, DeMartino estimated that he heard about Zollo's organized crime connections approximately one year to eighteen months earlier. DeMartino Tr. at 111-112. In fact, the indictment was unsealed on January 21, 1998, approximately two years before DeMartino's deposition. Despite this fact, DeMartino continued to associate with a known associate of organized crime.

¹⁰ Additionally, in early 1998, Zollo arranged for a parolee who was employed by Zollo Construction to reside in DeMartino's house. *See* DD5 Report by Det. Prince dated May 4, 1998. This is further evidence of the close relationship between Zollo and DeMartino. In his unsworn response to the staff's denial recommendation, DeMartino denies that Zollo ever arranged for a parolee to reside in DeMartino's residence. The Commission rejects DeMartino's unsworn self serving statement to the contrary.

directly involved the trade waste industry. These types of associations plainly are repugnant to Local Law's 42's central goal of eliminating the influence of organized crime from the industry. DeMartino's dealings with Zollo demonstrate that DeMartino lacks the good character, honesty, and integrity required for him to obtain a registration. In its response, the Applicant admits its association with Zollo and argues that DeMartino's contacts with Zollo were legitimate and that the Applicant was not involved in Zollo's criminal activities.¹¹ It is clear that DeMartino continued to have personal and business dealings with Zollo despite concededly knowing of Zollo's organized crime connections. This knowing association with an associate of organized crime demonstrates that this Applicant lacks good character, honesty, and integrity required for participation in the waste removal industry in New York City. Based on this independent ground, the Commission denies the Applicant's exemption/registration application.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that D&D falls short of that standard. For the independently sufficient reasons discussed above, the Commission hereby denies D&D's registration application.

This exemption/registration denial decision is effective fourteen days from the date hereof. The Applicants shall not service any customers, or otherwise operate a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

¹¹ The Commission notes that the staff's recommendation did not allege that the Applicant was involved in Zollo's criminal activities.

Dated: February 10, 2005

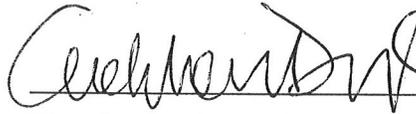
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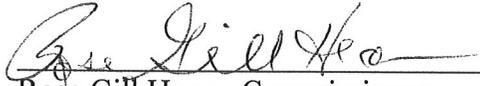
Thomas McCormack
Chair



John Doherty, Commissioner
Department of Sanitation



Gretchen Dykstra, Commissioner
Department of Consumer Affairs



Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Business Services



Raymond Kelly, Commissioner
New York City Police Department