



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 APPLICATIONS OF DUFFY WASTE & RECYCLING CORP.
AND DUFFY DISPOSAL CO. INC. FOR LICENSES TO OPERATE
AS TRADE WASTE BUSINESSES**

By applications submitted on or about August 29, 1996, Duffy Waste & Recycling Corp. and Duffy Disposal Co. Inc. (collectively "Duffy" or the "Applicants") applied to the New York City Trade Waste Commission for licenses to operate as trade waste businesses 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, certain criminal convictions, and certain associations with organized crime figures. Based upon the record as to Duffy and for the following independently sufficient reasons, the Commission finds that the Applicants lack good character, honesty, and integrity, and denies their license applications:

- (1) the Applicants and their president, Joseph Francolino, have engaged in enterprise corruption and criminal restraint of trade and competition in the trade waste removal industry, in violation of the New York state racketeering and antitrust statutes, in connection with

their participation in the organized crime-dominated cartel that controlled the carting industry in New York City for four decades;

- (2) the Applicants have committed racketeering acts – specifically, perpetrated enterprise corruption, extortion, criminal antitrust violations, and other associated racketeering crimes;
- (3) the Applicants, through their president – who is a Gambino organized crime family soldier -- have knowingly associated with members of organized crime;
- (4) the Applicants have refused to provide required information to the Commission, and their president invoked his Fifth Amendment privilege rather than incriminate himself regarding his involvement in organized crime corruption of the carting industry.

On November 7, 1997, the Commission's staff, in a recommendation to deny the Duffy companies' license applications, recited the evidence supporting denial, and gave Duffy ten (10) business days to respond. Duffy, however, submitted no response.¹

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 forty years, and until only

¹ By letter dated November 14, 1997, an attorney for Duffy requested "a full hearing." November 14, 1997 Letter of Elliot Schaefer. The Commission staff responded by letter facsimiled the same day that Duffy was entitled only to an opportunity to be heard which "consist[ed] of an opportunity to submit written documents and information on or before November 24, 1997." November 14, 1997 Letter of Deputy Commissioner Chad Vignola; see 17 RCNY §2-08(a). A subsequent voice-mail request by Duffy's attorney on November 20, 1997 for additional time to respond to the recommended denial was also denied that same day, because, *inter alia*, Duffy had failed to indicate any reason or justification for the request. In the absence of any asserted basis for the requested adjournment, the ten business days afforded by the Commission's standing rule, 17 RCNY §2-08(a), was sufficient.

recently, 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 recently 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 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 . . . 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 have been controlled by organized crime figures – such as Joseph Francolino, the president of these Applicants -- 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). Francolino served as the head of the GNYTW. As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have

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

[T]angential legitimate purposes pursued by a trade association whose *defining aim, obvious to all involved, is to further an illegal anticompetitive scheme* will not shield the association from government action taken to root out the illegal activity.

Id. (emphasis added).

The Second Circuit has roundly dismissed carting companies’ rote denials of knowledge of the role their trade associations played in enforcing the cartel’s criminal “property rights” system:

The [New York State Legislature’s] 1986 Assembly report stated that no carting firm in New York City “can operate without the approval of organized crime.” Hence, even th[o]se carters not accused of wrongdoing are aware of the “evergreen” contracts and the other associational rules regarding property rights in their customers’ locations. *The association members—comprising the vast majority of carters—recognize the trade associations as the fora to resolve disputes regarding customers. It is that complicity which evinces a carter’s intent to further the trade association’s illegal purposes.*

SRI, 107 F.3d at 999 (emphasis added).

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted as a result of a five-year investigation into the industry by the Manhattan District Attorney’s office and the New York Police Department. The Applicant Duffy Waste & Recycling Corp. and the Applicants’ president, Joseph Francolino, were among those indicted. The indicted 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. The president of the two Applicant companies, Joseph Francolino, a Gambino family soldier, served as the GNYTW “business agent.”

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 indictment, against thirteen individuals and eight companies, was (like its 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 corporations 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.

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 evidence amassed at the City Council hearings in late 1995 and 1996, which gave rise to Local Law 42, comported with the charges in these indictments: evidence of enterprise corruption, attempted murder, arson, criminal antitrust violations, coercion, extortion, and numerous other crimes.

The accuracy of the sweeping charges in the indictments has been repeatedly confirmed by a series of guilty pleas and recent 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, the president of these Applicants, to obtain their assistance in preventing a competitor from bidding on a "Vibro-owned" building, 200 Madison Avenue in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant and the owner of what was once one of New York 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 New York City carting industry. See People v. Angelo Ponte, V. Ponte & Sons, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Jan. 27, 1997).

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. 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 carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors through threats and economic retaliation from entering the market. 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 New York City carting industry. See People v. Vincent Vigliotti, Sr., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Jan. 28, 1997).

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 New York City carting industry. The same day, Manhattan carters Henry Tamily 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. See People v. Frank Allocca, Daniel Todisco, Dominick Vulpis, VA Sanitation Inc., Lyn-Val Associates, Inc., Litod Paper Stock Corp., Silk, Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Feb. 13, 1997); People v. Raymond Polidori, Crest Carting, Inc., RJP Recycling, Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Feb. 13, 1997).

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, Sr., another lead defendant and the former owner of New York 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 Greater New York Waste Paper Association, 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 New York City carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to a Class E environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. 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 commit tax fraud and, respectively, to bribing a labor official and defrauding Westchester County in connection with a transfer station contract. In their allocutions, Suburban and Milo admitted that one objective of the tax conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

Finally, on October 21, 1997, the GNYTW, the Applicant Duffy Waste & Recycling Corp., and both Applicants' president, Joseph Francolino, were found guilty by a New York County jury of 35 counts of enterprise corruption, Donnelly Act violations, and related crimes.² 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.

In sum, the existence of a powerful organized crime-controlled criminal cartel in the New York City carting industry is now beyond any question. Local Law 42 was enacted, and the Commission was created, 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 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," which license "shall be valid for a period of two years." 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

² Genovese Family capo Alphonse "Ally Shades" Malangone was also found guilty on October 21, 1997, on similar counts.

Local Law 42 became effective immediately, trade waste removal licenses previously issued by the DCA remain valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(1).

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 following matters, if applicable:

- (i) failure by such applicant to provide truthful information in connection with the application;

* * *

- (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;

* * *

- (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;

* * *

- (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.

Admin. Code §16-509 (a).

II. DISCUSSION

Applying the above criteria, among others, and for the reasons explained below, the Commission finds that these two Applicants lack good character, honesty, and integrity, and denies these license applications. Numerous unassailable facts, summarized below, support this decision.

A. **Francolino's and the Applicants' Criminal, Organized Crime Activities**

(1). **Criminal Charges against One Applicant and Both Applicants' President**

In June 1995, the Applicant Duffy Waste & Recycling and the president of both Applicants, Joseph Francolino, were indicted for a number of criminal violations, including enterprise corruption, grand larceny, coercion, and Donnelly Act (criminal antitrust) violations. People v. Ass'n of Trade Waste Removers of Greater New York Inc., et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Co.). The indictment arose out of Francolino's leading role in enforcing the organized crime-controlled cartel in the New York City carting industry. Even before trial, the District Attorney disclosed substantial evidence of these defendants' guilt. A New York County jury recently convicted Francolino and Duffy Waste & Recycling. of all counts of this indictment.

(2). **Francolino's Organized Crime Involvement**

John Gotti, the Gambino family boss, confirmed Francolino's status as a "made" organized crime member in an electronic interception of Gotti speaking to Gambino family consigliere, Frank Locascio. See United States v. John Gotti, 90 Cr. 1051 (E.D.N.Y.) (ILG). See also United States v.

Conte, 93 Cr. 0085 (E.D.N.Y) (ILG), Tr. at 779. In the latter interception, Gotti refers to the “garbage club” and discusses the fact that Gambino capo James “Jimmy Brown” Failla along with Francolino control the garbage carting industry. Conte, Tr. at 775-79. The benefit of this control, Gotti notes, included payoffs of \$100,000 for carting stops. Id.

Moreover, the District Attorney’s office disclosed additional evidence before trial that Francolino was slated to and did succeed Failla as head of the GNYTW, the convicted trade association used to enforce the cartel’s anticompetitive criminal schemes. See Affidavit of Detective Joseph Lentini in Support of Applications for Search Warrants, sworn to June 1995, at 19 n.17; id. ¶ 61 at 35; see also id. ¶ 82 at 46 (discussion of payoffs to organized crime figures, including Genovese boss “Chin” Gigante, and that Francolino would take Gambino capo Failla’s place after his incarceration); id. ¶¶ 102-03 at 58; see also id. at 47 n. 45 (1995 statement of former high ranking Mafia member that Francolino continued the Gambino family’s control of Manhattan carting). Indeed, throughout the Manhattan District Attorney’s investigation, Francolino was observed associating on numerous occasions with made members and associates of organized crime. See, e.g., id. at 35 n. 34; ¶ 76 at 43; ¶104 at 58.

Additional evidence confirming Francolino’s organized crime status was introduced during his criminal trial. This evidence included electronic surveillance, physical surveillances (of Francolino with numerous organized crime figures such as Gotti at the Ravenite social club), and the expert testimony of FBI Supervisory Special Agent Brian Taylor, who identified Francolino as a member of the Gambino Organized Crime Family.

(3). Francolino’s and the Applicants’ Criminal Cartel Activities

The evidence of participation by the Applicants and Francolino’s central role in the criminal cartel was well-established both before and during the criminal trial. For example, as recited in the search warrant affidavit (to search the Applicants’ premises among others), Francolino stated to an undercover detective, “I’m the fucking boss,” and insisted that he take control of revising the list of citywide cartel payoffs that the undercover detective was coerced to make on behalf of a cooperating carter. Id. ¶¶ 102-03 at 58; see also id. ¶ 91 at 52-53 (directing the undercover officer to provide Francolino with a complete listing of cartel members’

extortion demands, so that he could “tell [the undercover] whom to pay and whom to defer”); *id.* ¶¶ 110-11 at 61-62 (arranging extortion payoff schedule with Genovese family capo Alphonse “Ally Shades” Malangone).

Likewise, during the course of the criminal trial against Francolino and the Applicant Duffy Waste & Recycling, the Manhattan District Attorney adduced substantial evidence regarding Francolino’s central involvement in the organized crime-run cartel in the New York City garbage industry. This extensive evidence need not be recited here as Francolino and Duffy Waste & Recycling were convicted on all counts by the jury.

(4). The Licensing Process

On or about August 29, 1996, the Applicants submitted to the Commission applications to operate as trade waste removal businesses. See License Applications, certified by Joseph Francolino on August 30, 1996 (“Lic. App.”). Rather than answer a number of questions related to the involvement of the Applicants and their principals in the indicted trade associations, the Applicants asserted the Fifth Amendment privilege against self-incrimination. Lic. App. at 54-60. Similarly, in response to questions regarding certain types of criminal activity, the Applicants again refused to provide information, asserting the Fifth Amendment privilege. *Id.* at 61-67. On February 6, 1997, Joseph Francolino appeared before the Commission to be examined under oath. Rather than provide information as requested, however, Francolino refused to testify regarding a number of subjects, including any matter related to the Applicants and related companies, any matter related to the Gambino or any other organized crime family, and any other questions related to his financial and business relationships, associations, and carting industry involvement.

The facts set forth herein establish at least four grounds on which to deny the Applicants’ applications for licenses.

B. Grounds for Denial of the License Applications

(1). Criminal Convictions

On October 21, 1997, Duffy Waste & Recycling and Joseph Francolino were found guilty by a New York County jury of enterprise corruption, a Class B felony and violation of section 462 of the New York Penal Law, combination in restraint of trade and competition, a Class E

felony and violation of sections 340 and 341 of the New York General Business Law, and numerous other crimes among the 35 counts of which they were convicted. Francolino was sentenced, on November 18, 1997, to a prison term of ten to thirty years, he and Duffy Waste were fined \$900,000, and the GNYTW was fined \$9 million.

In making licensing determinations, the Commission is expressly authorized to consider prior convictions of the Applicants (or any of their principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also id. §16-501(a). Those factors are:

- (a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license . . . sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law §753 (1).

Applying these factors, the Commission finds that, notwithstanding the public policy of the state of New York to encourage licensure of persons convicted of crimes, the crimes committed by Francolino and Duffy Waste & Recycling are so recent, so serious, and so closely related to both the purposes for which the Applicants seek licenses, and the duties and responsibilities associated with such licensure, as to compel the conclusion that Francolino and both Applicants lack good character, honesty, and integrity. Duffy Waste & Recycling and Francolino, as their convictions attest, engaged in enterprise corruption and criminal antitrust violations in the New York City carting industry, and the evidence is clear that they did so as part of the criminal cartel that corrupted the industry for decades. They are, quite simply, unworthy of licensure in that same industry again, as is any company controlled by Francolino, including Applicant Duffy Disposal Co. Inc. Accordingly, in the exercise of its discretion, and in the legitimate interest of protecting the property, safety, and welfare of the general public, the Commission denies these license applications.

(2). Commission of Racketeering Activity

Local Law 42 expressly authorizes the Commission to consider a license applicant's commission of racketeering activity in determining whether the applicant lacks good character, honesty, and integrity and, therefore, should be refused a license. See Admin. Code §16-509(a)(v). Francolino and Duffy Waste & Recycling were found guilty of enterprise corruption and criminal antitrust violations. These facts independently compel the conclusion that Duffy and Francolino engaged in racketeering activity. See N.Y. Penal Law §§ 462, 460.10(1)(6). Thus, the Commission refuses to issue licenses to the Applicants on this ground as well.

(3). Knowing Association with a Member or Associate of an Organized Crime Group

In rendering its decision on an applicant's fitness for a trade waste removal license, the Commission is further authorized by statute to consider the applicant's association with any member or associate of an organized crime group, as identified by a federal, state, or city law enforcement or investigative agency, where the applicant knew or should have known that the person was associated with organized crime. See Admin. Code § 16-509(a)(vi). In rejecting a constitutional challenge to this provision by

certain carters and their trade association, the Second Circuit confirmed that a carter's "knowing associations, having a connection to the carting business," with organized crime figures may properly be considered by the Commission in its licensing determinations, in order to further its "compelling interest in combating crime, corruption and racketeering -- evils that eat away at the body politic." SRI, 107 F.3d at 998.

Here, the evidence is overwhelming. As noted above, evidence disclosed both before and during Francolino's criminal trial unequivocally confirms Francolino's organized crime membership and his role as the Gambino family's enforcer of the carting cartel. Thus, at Francolino's criminal trial, the Manhattan District Attorney introduced extensive testimony to demonstrate that Francolino associated with organized crime members -- such as Gambino boss John Gotti, Gambino capo James "Jimmy Brown" Failla, and Genovese capo "Ally Shades" Malangone -- as the Gambino family's head of the GNYTW. Francolino has not -- and could not after his conviction -- deny the unimpeachable fact that he enforced the Mafia's property rights system, which imposed a \$500 million annual "mob tax" to the detriment of all law-abiding New York businesses.

In short, Francolino and Duffy were not passive members of the GNYTW but, rather, central participants in the criminal activities of that association, of which it has since also been convicted. Francolino and Duffy knew of, participated in, and advanced the interests of the criminal cartel. Accordingly, the Commission concludes that the Applicants and Francolino knowingly associated with organized crime figures and denies the license applications on this ground as well.

(4). Failure to Provide the Commission with Requested Information

Section 16-509(b) of Local Law 42 provides that the Commission may refuse to issue a license to an applicant that fails "to provide the information and/or documentation required by the commission...." As noted above, in their license applications, the Applicants repeatedly refused to provide required information, instead asserting a Fifth Amendment privilege against self-incrimination. Likewise, the Commission sought to take testimony from Francolino pursuant to Admin. Code §16-503(c). Again, Francolino refused to provide the requested information, asserting

his Fifth Amendment privilege. These refusals each provide additional grounds for denial of the two Duffy companies' license applications.

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. Based upon the overwhelming evidence of criminal conduct by Gambino family soldier Joseph Francolino and his Duffy companies in running the organized crime cartel in New York City, their racketeering activity, Francolino's knowing association with organized crime figures, and Francolino's refusal to provide the Commission with requested information, all of which the Commission is expressly authorized to consider under Local Law 42, the Commission denies these license applications.

This license denial decision is effective fourteen days from the date hereof. In order that Duffy's customers may make other carting arrangements without an interruption in service, each Duffy company is directed (i) to continue servicing its customers for the next fourteen days in accordance with its existing contractual arrangements, and (ii) to send a copy of the attached notice to each of its customers by first-class U.S. mail

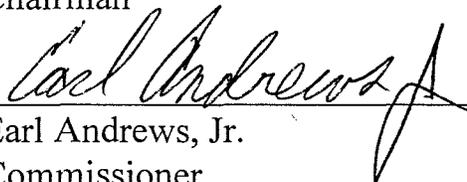
by no later than December 10, 1997. Neither of these Applicants shall service any customers, or otherwise operate as a trade waste removal business in New York City, after the expiration of the fourteen-day period.

Dated: New York, New York
December 5, 1997

THE TRADE WASTE COMMISSION

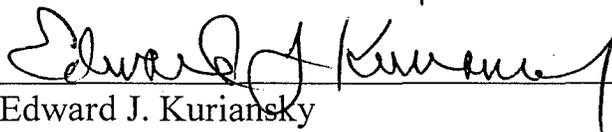


Edward T. Ferguson, III
Chairman



Earl Andrews, Jr.
Commissioner
Department of Business Services

John J. Doherty
Commissioner
Department of Sanitation



Edward J. Kuriansky
Commissioner
Department of Investigation

Jose Maldonado
Commissioner
Department of Consumer Affairs



THE CITY OF NEW YORK
TRADE WASTE COMMISSION
253 BROADWAY, 10TH FLOOR
NEW YORK, NEW YORK 10007

December 5, 1997

**NOTICE TO CUSTOMERS OF DUFFY WASTE & RECYCLING
CORP. AND DUFFY DISPOSAL CO. REGARDING
TERMINATION OF CARTING SERVICE**

Dear Carting Customer:

The New York City Trade Waste Commission, which regulates private carting companies in the City, has denied the applications of Duffy Waste & Recycling Corp. and Duffy Disposal Co. (the "Duffy companies") for a license to collect trade waste. **As of December 20, 1997, the Duffy companies will no longer be legally permitted to collect waste from businesses in New York City. If the Duffy companies are collecting your waste, you will have to select another carting company to provide you with that service by December 19, 1997.**

The Commission has directed the Duffy companies to continue providing service to their customers through December 19, 1997. **If your service is interrupted before December 19th, call the Commission at 212-676-6275.**

The Commission has received information that Fast Container Service Inc., Quick Interior Corp., and/or Staten Island Carting Co. may have represented to customers of the Duffy companies that they will provide service to the customers of the Duffy companies. Please note that any transfer of customers was **not authorized** by the Commission. You are free to choose **any** carting company to provide you with service, even if you are already being serviced by one of these companies.

There are more than 300 carting companies that are legally permitted to collect waste from businesses in New York City. There are several ways that you can find out which ones are willing to service customers in your neighborhood:

- **Find out which company is servicing your neighbor.** A carting company cannot, without a business justification satisfactory to the Commission, refuse to service you if it already has another customer that is located within 10 blocks of your business. You can find out which carting companies service your area by looking at the **carting stickers** that many businesses display on their store-fronts.

- Consult public directories, such as the Yellow Pages.
- Call the Commission at 212-676-6275.

The carting industry is changing for the better and **prices have been falling for more than a year**. Customers that shop around have been able to cut their carting bills by a third, and often by a half or more. You should use this opportunity to get the best rates and service by soliciting bids from at least four carting companies before signing a carting contract.

You have many rights under Local Law 42 of 1996, which Mayor Rudolph W. Giuliani signed last year to address the organized crime corruption and anti-competitive practices that have long plagued the commercial waste industry in New York City, including:

- The right to be offered a contract by your carting company. A **form carting contract** that has been approved by the Commission is enclosed for your convenience.
- The right to be charged a reasonable rate for waste removal services. The City sets the maximum rates that carting companies can charge. The City recently reduced the maximum rates for the removal of trade waste to **\$12.20 per loose cubic yard** and \$30.19 per pre-compacted cubic yard. Most businesses dispose of loose waste; only businesses that have trash-compactors dispose of pre-compacted waste. Under the new rule, businesses that dispose of loose trash in bags filled to 80% of capacity (as many businesses do) may not be legally charged more than:

\$2.66 for each 55 gallon bag of trash
\$2.42 for each 50 gallon bag of trash
\$2.17 for each 45 gallon bag of trash
\$1.93 for each 40 gallon bag of trash
\$1.59 for each 33 gallon bag of trash
\$1.45 for each 30 gallon bag of trash

- The new rates are only **maximum** rates. Customers are encouraged to “shop around” and get bids from four or more carting companies to find a good price. Businesses should be able to get rates below \$10.00 per loose cubic yard and \$25.00 per pre-compacted cubic yard.

If you have any questions or complaints about commercial waste hauling in New York City, call the Commission at 212-676-6300.



Edward T. Ferguson, III
Chair and Executive Director