



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 EXEMPTION APPLICATION OF EDCIA CORP. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Edcia Corp. ("Edcia" or the "Applicant") has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for an exemption from licensing requirements and a registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-505(a). Local Law 42, which created the Commission to 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.

On February 11, 2005, Edcia applied to the Commission for an exemption from licensing requirements and 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 exemptions. See id. If, upon review and investigation of the exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

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

Based upon the record as to the Applicant, the Commission, for the following independently sufficient reasons, denies Edcia’s exemption application and refuses to issue Edcia a registration:¹

- A. The Applicant Has Failed to Demonstrate Eligibility For a Trade Waste Exemption from Licensing and a Trade Waste Registration
 - 1. The Applicant Has Business Associations With Theodore “Teddy” Persico, a Member of Organized Crime and Convicted Racketeer
 - 2. The Applicant Has Business Associations With Anthony O’Donnell, a Convicted Racketeer
- B. The Applicant Has Provided False and Misleading Information to the Commission

I. REGULATORY BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as “a ‘black hole’ in New York City’s economic life.” Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) (“SRI”).

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter,

¹ On April 4, 2006, Edcia filed a lawsuit in Richmond County Supreme Court, requesting, inter alia, an order from the Court enjoining the Commission from taking enforcement action against Edcia for hauling trade waste without a license. See Edcia Corporation v. Business Integrity Commission, Index No. 101140/06 (S. Ct. R. Cty. 2006). The lawsuit is currently pending. The Court has not enjoined the Commission from issuing a decision on Edcia’s exemption application.

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 guilty 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.

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 constitutional challenges (both facial and as applied) 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).

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases "where the applicant fails to provide the necessary information, or knowingly provides false information." It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
3. 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;
4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
5. 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;

6. 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;
7. 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;
8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;
9. 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;
10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. DISCUSSION

Edcia is a trucking company owned by Alicia DiMichele ("DiMichele"), President and 60% owner, and Debra Specchio ("Specchio"), Secretary and 40% owner. Edcia was incorporated in May 2003 and operates under the trade name "Big R Trucking." See Exemption Application of Edcia ("Application") at 1, 8. The majority of the business operations are handled by DiMichele's spouse, Edward Garofalo ("Garofalo"), and Specchio's spouse, Steven Marcus ("Marcus"). See DiMichele Deposition at 17, 33-35; Specchio Deposition at 12.

On February 11, 2005, Edcia filed an application for an exemption from licensing and a trade waste registration. The staff has conducted an investigation of the Applicant and its principals, including conducting depositions of DiMichele, Specchio and Garofalo. On October 26, 2005, the staff deposed DiMichele and Specchio. Both depositions were tape-recorded and transcribed. See Transcript of the Deposition of DiMichele ("DiMichele deposition"); Transcript of the Deposition of Specchio ("Specchio deposition"). On May 31, 2006, the staff deposed Garofalo. The deposition

was recorded by a court reporter. See Transcript of the Deposition of Garofalo (“Garofalo deposition”).

On August 18, 2006, the staff issued a 15-page recommendation that the application be denied. The Applicant was served with the recommendation on August 21, 2006 and was granted ten business days to respond (September 5, 2006). See 17 RCNY §2-08(a). The Applicant’s attorney, Joseph Giaimo, was also served with a copy of the recommendation on August 21, 2006. On August 21, 2006, the Applicant’s attorney requested copies of the non-public documents relied upon by the staff in the denial recommendation and an extension of time to respond until September 12, 2006. On August 23, 2006, the requested documents were provided to counsel and the request for additional time was granted. On September 12, 2006, the Applicant submitted a timely response, consisting of a 4-page affidavit from DiMichele and a 3-page affidavit from Specchio. See Affidavit of DiMichele, dated September 11, 2006 (“Response - DiMichele”); Affidavit of Specchio, dated September 12, 2006 (“Response – Specchio”). Despite being given the opportunity to “submit in writing any and all information and documentation that it wishes the Commission to consider in connection with its registration application” (see Recommendation at 15), the Applicant chose not to submit an affidavit from Garofalo.

A. The Applicant Has Failed to Demonstrate Eligibility For a Trade Waste Exemption from Licensing and a Trade Waste Registration

1. The Applicant Has Business Associations With Theodore “Teddy” Persico, a Member of Organized Crime and Convicted Racketeer

“Association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person” is an independent ground upon which to deny a license application. Admin. Code §16-509(a)(vi). In determining whether an applicant possesses the good character, honesty and integrity required to operate a trade waste business, the Commission may also consider the Applicant’s “knowing association with a person who has been convicted of a racketeering activity.” See Admin. Code §16-509(a)(v).² The Applicant’s business dealings with Theodore “Teddy” Persico, Jr. (“Persico”) – who has been publicly identified by law enforcement authorities as a soldier in the Colombo crime family and a convicted racketeer - are evidence that the Applicant lacks business integrity and has failed to demonstrate eligibility for a registration.

² The prohibited associations with convicted racketeers or organized crime members must be “knowing” associations. The Commission considers “knowing” associations to be associations where the applicant either knew or should have known that the person was a convicted racketeer or a member of organized crime. Such knowing associations may be inferred from the duration and quality of the associations. U.S. v. IBT, 745 F.Supp. 908, 918 (S.D.N.Y. 1990), aff’d 941 F.2d 1292 (2d Cir. 1991)(six meetings between union officer and organized crime member constituted knowing association despite disclaimers of actual knowledge).

Persico has been publicly identified by law enforcement as a soldier in the Colombo crime family. See Indictment, United States of America v. Theodore Persico, Jr., Ind. No. 05 CR 351 (EDNY)(CBA) at 3; United States Attorney's Office (EDNY) Press Release, dated May 5, 2005 ("Persico Press Release") at 1. Persico was indicted for racketeering, including acts of extortion. Persico, the nephew of Colombo family boss Carmine Persico, was released from prison on April 28, 2004, after serving approximately 16 years in prison following his 1988 state conviction for narcotics trafficking. See Persico Press Release at 1. According to court-authorized wiretaps, after being released, Persico immediately returned to his position in the Colombo family and began engaging in criminal conduct. Id. On May 25, 2004, Persico was recorded discussing a weapon brought to him in advance of a potentially violent meeting with another Colombo family soldier. Persico stated, "they come there the [expletive] thing is dirty. How do you keep a pistol with [expletive] dirty bullets in it in the first place? You got an automatic pistol, you clean the bullets, you put them in the [expletive] clip, and the clip is ready, whenever you're ready." Id. In another conversation intercepted on November 23, 2004, Persico spoke about collecting a debt and instructed his co-defendant to bring an individual to him so he could give him a "[expletive] beating." Id. Persico further threatened that he would "take it out on his kids, that's all, until he [expletive] does the right thing." Id.

On March 14, 2006, Persico was convicted upon his plea of guilty to one count of racketeering, pursuant to Title 18, United States Code, Section 1962(c).³ Persico was sentenced to forty-two (42) months incarceration. See Judgment of Conviction, United States of America v. Theodore Persico, Jr., Ind. No. 05 CR 351 (EDNY)(CBA). Persico admitted during his plea allocution that he committed the racketeering acts in furtherance of his association with the Colombo crime family. See United States Attorney's Office Sentencing Letter, dated March 13, 2006, at 2.

Persico has been friends with Garofalo for almost thirty years, including the years Persico spent in prison for selling drugs. For approximately 13 years before Persico went to jail at 23 years old, Garofalo and Persico spent every day together, "play[ing] sports and just be[ing] friends with each other." See Garofalo deposition at 64 (they were friends "since [Garofalo] was about 9 or 10 years old" and later conducted business "[w]hen Ted came home from jail. He was in jail 17 years"). Garofalo, who addressed Persico by the nickname "Teddy," spoke to him while he was in prison and "knew, day one, he had to do something" to help Persico when he was eventually released from prison. Id. at 67 ("[Persico] couldn't stand still. In jail, he got up in the morning, they told him what to do. They told him to eat dinner and go to sleep, and then they let him go. He had no idea what to do with himself. ... They let him go with no rehab to fit him back into society, nothing"). Garofalo was aware that Persico was the "MVP of softball, football in every jail." Garofalo wanted to take care of Persico upon his release from prison since "[Persico] had nothing else going for him, no family. His father⁴ is in jail. His mother is an alcoholic." Id. at 64.⁵

³ Local Law 42 defines "racketeering activity" to include the crime of racketeering. See NYC Admin. Code §16-509(a)(v); 18 United States Code §1961.

⁴ According to a former member of the Luchese crime family and press sources, Persico's father (also named Theodore Persico) is a captain in the Colombo crime family. See FBI 302 report detailing interview of former Luchese acting boss Alphonse D'Arco by Special Agents Presutti and Confrey, dated December 13, 1991; John Marzulli, *Persicos' 2nd Home - Jail Cells*, Daily News, May 9, 2005; Alan Feuer, *Reputed*

Soon after Persico's release from prison, Garofalo suggested that Persico form a corporation for the purpose of leasing trucks to the Applicant. Garofalo was aware that Persico, despite his prison sentence, had "perfect credit" and a "perfect driver's license." Id. at 64. Garofalo testified that he and DiMichele advised Persico and "made him go buy a couple of trucks, got him an income." Id. at 64-65. As a result, on May 27, 2004 (approximately a month after Persico's release and during the same time period Persico possessed the gun charged in the indictment), Persico incorporated T&E Leasing Corp. ("T&E"). See Certificate of Incorporation of T&E. T&E stands for "Teddy & Eddie," namely, Persico and Garofalo. See Garofalo deposition at 67.

T&E was created for the sole purpose of providing Persico with an income. To that end, T&E purchased four trucks and leased all of them to the Applicant. See Application Exhibits (disclosed 3 trucks registered July 16, 2004 and one registered November 9, 2004); DiMichele deposition at 64. T&E even operated out of the same business address as the Applicant, 422 Spencer Street, Staten Island. See DiMichele Affidavit, dated August 8, 2005 ("DiMichele Affidavit"). Far from shunning Persico, the Applicant went out of its way to do business with and for him.

Persico called Garofalo from jail after he was arrested on the federal charges in May 2005. See Garofalo deposition at 66. Shortly after, Garofalo obtained a copy of the indictment from Persico's brother and became aware that Persico had been identified as a Colombo soldier. Id. at 69. Garofalo later learned from the internet that Persico had pleaded guilty to extortion. Id. at 67. After Persico went to prison, DiMichele and Garofalo continued running Persico's company - Garofalo took care of the trucks and DiMichele handled the books.⁶ Id. at 68. Garofalo admitted that he continued to speak to Persico after Persico was incarcerated and that Persico called him from prison frequently. Id. at 66. On July 19, 2006, while all four T&E vehicles remained titled in T&E's name, their registrations with the Department of Motor Vehicles were changed to "Big R Trucking," the trade name of the applicant. See DMV Registration Records.

Despite the indictment and Persico's racketeering plea, Garofalo claimed to refuse to believe that Persico was a member of organized crime.⁷ See Garofalo deposition at 69. With complete disregard for the purpose of the Commission and the intent of Local Law 42 to rid this industry of associations with organized crime, Garofalo and DiMichele continued to do business with Persico.⁸ Garofalo testified, "that's the choice we made,

Crime Boss Goes From Florida Prison to Brooklyn Court, Never Passing Go, New York Times, January 26, 2001.

⁵ *But see infra* at 9 fn. 6.

⁶ Perhaps not coincidentally, a substantial amount of financing for the Applicant company was provided by Persico's cousin, Michael Persico. *See infra* at 13. This contribution belies Garofalo's testimony that Persico had "no family" (*see supra* at 8) and suggests that Garofalo's stated motive for helping him is false.

⁷ Garofalo testified that he also refused to cooperate with the FBI who sought information about Persico. See Garofalo deposition at 17 ("I have a childhood friend who just came home from prison, who I helped along in business, and [the FBI] wanted to know all about him... I told them there was nothing I could help them with.")

⁸ The Applicant's business dealings with Persico provide sufficient grounds for denial, regardless of whether Garofalo is considered a principal or an employee of the Applicant. *See infra* at 12-15.

because he is a friend, I guess.” See Garofalo deposition at 70. In response to the offer to make a closing statement at his deposition, Garofalo chose to reaffirm his relationship to a member of organized crime, “I’m still going to be his friend. I still don’t believe what they said about him.” Id. at 99. Therefore, in his own mind, Garofalo has no reason not to continue to do business with Persico. While Garofalo may disbelieve the government’s assertions and evidence about Persico, the Commission has no reason to simply credit his disbelief against the significant evidence that he is wrong.

In its response, the Applicant states that it is “ridiculous that the Staff would insist that [DiMichele’s] husband and [DiMichele] must believe that Persico is a member of organized crime and should therefore disregard a personal relationship that has absolutely nothing to with organized [crime].” See Response – DiMichele at 2. While the Commission does not dictate the beliefs of its applicants, the fact that DiMichele and Garofalo persistently refuse to acknowledge Persico’s status as a member of organized crime flies in the face of the overwhelming evidence to the contrary and reflects negatively on their business integrity. Furthermore, DiMichele’s repeated assertions that her and Garofalo’s relationship with Persico was merely “personal” directly contradict the evidence provided by them of a significant business relationship.⁹ The fact that their relationship also has a personal element does not immunize the business relationship.

While purely social contacts would not violate the Second Circuit’s delineation of the associational restrictions in Local Law 42,¹⁰ that is not the case here. The record demonstrates that DiMichele and Garofalo helped Persico incorporate a business, that Edcia became the sole client of Persico’s company and that DiMichele and Garofalo maintained Persico’s business after he went to prison. One of the clear purposes of Local Law 42 is to prevent members and associates of organized crime from deriving income from the New York City trade waste industry. However, that is precisely what this Applicant went out of its way to do.

In an apparent attempt to distance Edcia from Persico, DiMichele states, “Persico does not have any direct dealings in the day to day operations of Edcia.” Id. at 2. DiMichele’s statement is disingenuous; Persico’s current ability to interact with the Applicant is limited by his incarceration. In any event, despite Persico’s incarceration, DiMichele is still operating Persico’s business and Edcia is still making rental payments to it. All in all, Edcia still maintains a business association with a member of organized crime.

The Applicant’s business dealings with Persico, a person publicly identified by law enforcement authorities as a soldier in the Colombo crime family and a convicted racketeer, are evidence that the Applicant lacks business integrity and has failed to demonstrate eligibility for a registration. As a result, the application is denied on this independently sufficient ground.

⁹ Garofalo and DiMichele admittedly “tried to help [Persico] get a job and establish an income” upon his release from prison. See Response – DiMichele at 2. While the Applicant’s suggestion that it is commonplace to help friends and loved ones get jobs and earn money upon their release from prison may be true, it is not permissible to help friends and loved ones who happen to be members or associates of organized crime and convicted racketeers get jobs in the New York City trade waste industry.

¹⁰ See Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985 (2d Cir. 1997).

2. The Applicant Has Business Associations With Anthony O'Donnell, a Convicted Racketeer

In determining whether an applicant possesses the good character, honesty and integrity required to operate a trade waste business, the Commission may also consider the Applicant's "knowing association with a person who has been convicted of a racketeering activity."¹¹ See Admin. Code §16-509(a)(v). The Applicant's association with Anthony O'Donnell, a convicted racketeer, is evidence that the Applicant lacks business integrity, has failed to demonstrate eligibility for a registration.

On August 17, 1994, Anthony O'Donnell ("O'Donnell") was convicted upon his plea of guilty to racketeering, a felony, including acts of extortion. See Docket Report, *United States of America v. Brook, et al*, 93 CR 595 (LAP)(SDNY); Exemption Application of Roman Sand & Stone LLC at 5. Local Law 42 defines "racketeering activity" to include the crime of racketeering. See NYC Admin. Code §16-509(a)(v); 18 United States Code §1961. O'Donnell was sentenced to a term of 41 months in prison followed by three years of supervised release.

The Applicant has a business relationship with O'Donnell, individually, and through his company, Roman Sand & Stone LLC ("Roman"). According to its application, Edcia leased four vehicles from Roman. See Application at 15 (including registration documents attached). DiMichele stated that Roman operates from the same premises as the Applicant and that her contact person is O'Donnell. See DiMichele Affidavit. Furthermore, Edcia's application discloses O'Donnell as an employee/driver of the Applicant company. See Application at 17. O'Donnell is yet another life-long friend of Garofalo, and Garofalo was aware that O'Donnell served time in prison prior to engaging in business with him. See Garofalo deposition at 73-74; DiMichele deposition at 54-55. O'Donnell was also hired as a dispatcher for Edcia's affiliate, DM Equipment, the corporate employer of the truck drivers who work on Edcia jobs.¹² See DiMichele deposition at 39-40; O'Donnell W-2 Wage and Tax Statement 2004.

In response, the Applicant states that "[a]s of September 1, 2006, Edcia ceased all business relations" with O'Donnell. See Response – DiMichele at 3. However, the Applicant did not dispute the evidence in the denial recommendation, thereby conceding the prior business relations and the fact that they knew or should have known of O'Donnell's status as a convicted racketeer. Furthermore, DiMichele stated that it was O'Donnell's decision to end the relationship, not her own. See Response – DiMichele at 3. As a result, the severance of this relationship does not serve to rehabilitate Edcia.

The Applicant's financial dealings with O'Donnell, a convicted racketeer, reflect negatively on the Applicant's business integrity. This "knowing association with a

¹¹ See *supra* at 7, fn. 2.

¹² DM Equipment is owned by Steven Marcus and his son, Jeremy Marcus. See Specchio deposition at 20. DiMichele operates the company out of her home and DiMichele does all of its books, payroll, union, and accounts payable. See DiMichele deposition at 36, 38-41; Garofalo deposition at 57. DiMichele is planning to move DM Equipment to the same Spencer Street location where Edcia operates. See Garofalo deposition at 59-60.

person who has been convicted of a racketeering activity” is evidence that the Applicant lacks business integrity and has failed to demonstrate eligibility for a registration. As a result, the application is denied on this independently sufficient ground.

B. The Applicant Has Provided False and Misleading Information to the Commission

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a ground for denial of the application. See Admin. Code §16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); leave denied 2 N.Y.3d 705 (2004). Edcia’s application and the deposition testimony of DiMichele, Garofalo and Specchio are false, misleading, contradictory and appear to have been tailored to disguise the true principals of this company from the Commission. Accordingly, the Commission cannot place any confidence in the accuracy of Edcia’s application and denies it on this additional and independent ground.¹³

i. The Applicant Failed to Disclose a Principal of the Company in Its Exemption Application

Question 6 of the application filed by Edcia asks, “On Schedule A, identify all individuals who are or have been principals of [the] applicant business at any point during the past ten years.” See Application at 3. Schedule A disclosed two principals – Alicia DiMichele (“DiMichele”) and Debra Specchio (“Specchio”).¹⁴ Id. at 8-9.

The definition of “principal” (which is included in the instructions for the application) includes corporate officers and directors, all stockholders holding ten percent or more of the outstanding shares of the corporation and all other persons participating directly or indirectly in the control of such business entity. An individual is considered to hold stock in a corporation where such stock is owned directly or indirectly by or for the spouse of such individual (other than a spouse who is legally separated from such individual pursuant to a judicial decree or an agreement cognizable under the laws of the state in which such individual is domiciled). See Admin. Code §16-501(d).

¹³ Even answers to basic questions, including the company business address, are false. The application states that Edcia’s principal office is located at “48 15th Street, Brooklyn, New York 11215.” See Application at 1. However, DiMichele testified that Edcia moved from that location to 422 Spencer Street, Staten Island, New York several months *before* the application was filed with the Commission containing DiMichele’s sworn certification attesting to the truth and accuracy of its contents. See Application attachment; DiMichele deposition at 44. DiMichele provided a copy of the lease to the Spencer Street location indicating that the lease started on August 1, 2004. See Lease Agreement. DiMichele testified that she was aware that the application contained false information when she signed the sworn certification page. See DiMichele deposition at 45-46. This cavalier attitude towards providing accurate information reflects poorly on the Applicant’s business integrity and any suggestion that the error is attributable to Edcia’s attorney is rejected. The Commission expects all applicants in this heavily regulated industry to do more than give a mere cursory review to both their submissions to the Commission and to the sworn certifications attesting to their truth and accuracy.

¹⁴ While the application states both DiMichele and Specchio were principals from inception; DiMichele testified that she started the company by herself and brought Specchio in as an investor at a later date. See DiMichele deposition at 22. Neither identified her spouse as a principal of the company.

Apart from the statutory definition, Garofalo should have been disclosed as a principal based on his significant involvement in the operations of this company. In contrast, neither of the disclosed principals provides a substantial contribution to the operations of the Applicant – Specchio does nothing and DiMichele merely handles the books. Specchio has no involvement in the daily operations of the Applicant; as she repeatedly testified during the deposition, “all I do is invest.” See Specchio deposition at 12; Garofalo deposition at 57. Even Specchio herself did not decide to invest in the Applicant; it was her husband’s decision. See Specchio deposition at 26. DiMichele handles the books and, at times, makes appearances for those who want to meet the owner;¹⁵ however, she has no prior experience in the trucking industry, unlike Garofalo, a self-proclaimed “expert” in demolition and trucks and machines. See Garofalo deposition at 28, 35, 56.

Although he was nowhere to be found on Edcia’s initial application, Garofalo was responsible for the initial creation of this company and the development of the business. Garofalo arranged the initial financing from his childhood friend, Michael Persico, Teddy Persico’s cousin. Michael Persico initially loaned \$100,000 to the Applicant on a handshake and an assurance from Garofalo that the loan would be paid within one year. See Garofalo deposition at 35-36; DiMichele deposition at 65. When Garofalo returned to him and stated, “I need help,” Michael Persico loaned an additional \$50,000 to Edcia in 2005 – also on a handshake from Garofalo. See Garofalo deposition at 37. Garofalo also procured the location from which Edcia currently operates and found several vehicles for the company to lease/purchase. See DiMichele deposition at 51; Garofalo deposition at 43. Garofalo “drum[s] up business” and places bids on jobs. See DiMichele deposition at 17, 33-35; Garofalo deposition at 26-27 (“we make sure Edcia Corporation is always busy”). Garofalo “pretty much oversees what’s going on.”¹⁶ See DiMichele deposition at 17. Garofalo refers to himself as his “wife’s fireman” - “If there is a fire, I go and put it out.” See Garofalo deposition at 61. DiMichele was not familiar with the details of how Edcia obtained its work: “Uh, I believe my husband got the job, or maybe Steve Marcus had got the job.” See DiMichele deposition at 74. On the other hand, Garofalo testified that he personally makes the decisions to turn down work for Edcia.¹⁷ See Garofalo deposition at 62 (“I’m turning away business every day.”). In addition, several public sources identify Garofalo as an executive of the Applicant company. See Lexis/Nexis SmartLinx report for Big R Trucking (identifying Garofalo as a “finance executive” and a “sales executive” of the Applicant); InfoUSA Business Directory (identifying Garofalo as the “VP Finance” and “VP Sales.”

Although the Applicant sought to convince the Commission that Garofalo was only an employee, they do not pay him a salary. See Garofalo Deposition Questionnaire at 10. Garofalo apparently has an expectation of being paid by Edcia in the future. See Garofalo deposition at 41 (he is “not yet” getting paid a salary by Edcia). The

¹⁵ See Garofalo deposition at 56 (“[S]ometimes people want to meet the owner of the company. That’s when she has to come out and put her work uniform on, and go meet project managers that want to be assured that we can do this job.”)

¹⁶ DiMichele’s description of Garofalo’s significant managerial involvement in the Applicant company renders her failure to answer questions about Garofalo’s position and salary materially misleading. See DiMichele Deposition Questionnaire at 4.

¹⁷ Evidence of Garofalo’s direct decision-making authority renders his sworn statement that his position at Edcia is merely “whatever assigned” materially misleading. See Garofalo Deposition Questionnaire at 10.

Commission staff is unaware of any other sources of income available to Garofalo, and he is not a volunteer worker. Garofalo presumably and understandably shares in Edcia's profits with his wife. See Garofalo deposition at 99 ("this company feeds my children"). Together with his extensive involvement in Edcia's operations, the extent to which Edcia attempts to avoid direct salary payments to Garofalo makes clear that DiMichele's and Specchio's status as the sole principals of Edcia is the merest of formalities. In all likelihood, without Garofalo, there would be no Edcia. While still striving to maintain the fiction that Edcia is not his company, he had to agree that he did perhaps treat it as if it was his own: "Do I treat the company like it is mine? Yes, I do. Why? If my wife owned a Dunkin Donuts I would treat it like it's mine, because it's my wife's. I would expect her to do the same for me."¹⁸ See Garofalo deposition at 99.

After DiMichele's deposition, the Commission staff notified the Applicant about the deficiencies in its application and provided an opportunity to amend its application to include Garofalo as a principal. See BIC Letter, dated October 31, 2005. To date, the Applicant has not done so. Garofalo's repeated assertions at his deposition that he is not a principal ("as long as they understand I'm not a principal, I'll answer questions as an employee")¹⁹ are directly contradicted by his testimony and his wife's testimony. While the Commission is not required to attribute a motive for an applicant's false filing, it appears that Garofalo is unwilling to disclose his true role in the Applicant company due to his business dealings with an organized crime member and convicted racketeers, his significant tax issues (a federal conviction for failure to file tax return²⁰ and a debt to the Internal Revenue Service of approximately \$400,000²¹) as well as the fact that he has himself been identified by several confidential informants and cooperating witnesses to the United States Attorney's Office for the Southern District of New York as an associate in the Colombo crime family who is very close to Persico.²² See United States Attorney's Office Sentencing Letter, dated March 13, 2006 at 3, fn. 1.²³ The Applicant did not submit an affidavit from Garofalo as part of its response, thereby leaving this evidence uncontested.²⁴

¹⁸ Garofalo's statements support the statute's definition finding spouses of principals who own 10% or more of the company to be principals of the company themselves. See NYC Admin. Code §16-501(d).

¹⁹ See Garofalo deposition at 5.

²⁰ See Garofalo deposition at 13-14.

²¹ See Garofalo deposition at 38 ("I'm in a mess with the IRS, a tax mess"). A judgment was filed by the IRS against Garofalo in New York on July 17, 2001 in the amount of \$452,117. See Lexis Judgment Record.

²² See supra at 7-10.

²³ Garofalo's father, Edward "Eddie the Chink" Garofalo ("Eddie") was a Gambino associate who reported to Sammy "the Bull" Gravano, who later had Eddie killed because Gravano feared Eddie was cooperating with the authorities. See Testimony of Michael DiLeonardo, United States v. Peter Gotti, et al, 02 CR 743 (RCC)(SDNY). Garofalo testified that his father was killed by organized crime members, but denies that his father was involved in organized crime activities. See Garofalo deposition at 18. If anything, Garofalo appears to believe that the death of his father should immunize him from scrutiny. Id. at 99 ("As far as organized crime, they killed my father in the street. I had to go to the Kings County Morgue and tell my mother and my sister he got killed in the street, and I'm getting scrutinized? That's bullshit. I didn't do anything wrong. I have tax issues. I didn't kill anybody. I didn't do anything wrong, and this is bullshit. That's all I have to say").

²⁴ If it were true that Garofalo is an associate of the Colombo crime family, it would help to explain his significant financial support to Persico, a Colombo soldier. See supra at 7-10.

In response, DiMichele continues to deny that Garofalo is a principal of the company. DiMichele argues that the Recommendation “misconstrue[s] the use of [her] husband’s business contacts to procure financing, equipment and customers as his exercising an executive control over Edcia.” See Response – DiMichele at 4. The Commission disagrees. It is precisely the significant involvement by Garofalo in the critical business operations of the company that gives him principal status. To the extent that DiMichele suggests that Garofalo’s involvement was limited to the “initial creation” of Edcia and that he is no longer involved in the company (id.), the record before the Commission refutes that suggestion.

The failure of the Applicant to provide truthful and non-misleading information to the Commission is evidence that the Applicant lacks good character, honesty and integrity. The Commission denies Edcia’s application on this independently sufficient ground. See Admin. Code §§16-509(b).

ii. Debra Specchio, the Applicant’s Secretary and 40% Owner, Provided False and Misleading Testimony About Her Finances

Specchio provided false and misleading testimony about her sources of income, suggesting that she is not the true investor in the Applicant company and rendering her testimony unreliable.

Specchio testified that she had absolutely no involvement in the decision to invest in Edcia and that the decision to invest was her husband’s. See Specchio deposition at 12, 26 (“all I do is invest”). While Specchio testified that she mortgaged her home (owned solely by her) to raise the money to invest in Edcia, public real estate records do not reveal any mortgage by Specchio. Instead, the records reveal that her husband took a \$152,000 mortgage on the property (despite having no ownership interest in the property, according to Specchio). See Lexis/Nexis Property Report on “2 Lisa Ct, Englishtown, NJ.”²⁵

Specchio also demonstrated her ignorance about her purported involvement in two other companies – Specchio Carting and DAS Disposal. While conceding that she is the owner of Specchio Carting and that the company is in her name, she asserted that she “had nothing to do with [it].” Id. at 15. She also claims that she had nothing to do with DAS. Id. at 17. While she testified under oath that she received no salary from either company (id. at 18), cancelled checks reveal that she received payments from both companies from January 2001 to May 2003 totaling \$288,538. See Report of Cecilia Chien, BIC Director of Audit, dated October 14, 2004. Notably, Specchio stated that she “never questioned [her] husband” and that she “knows nothing about the checks.” See Specchio Deposition at 20, 23, 25. Nor did she ever ask about her husband’s conviction for which he spent time in jail. Id. at 28-29 (“I never questioned him about it, and to tell you the truth, I don’t remember if he did say something about it. I didn’t care, because I fell in love with him”). According to Marcus’ criminal history, he was convicted of federal bank fraud on September 24, 1991 and was sentenced to eighteen months in

²⁵ While Specchio disputes the involvement of Marcus in the transaction, she offered no explanation as to why his name appears in the Lexis/Nexis property records database nor did she provide copies of the loan documents to contradict the evidence in the Recommendation. See Response – Specchio at 2.

prison. See Marcus Criminal History printout. In response, Specchio does not address this evidence, thereby leaving it un rebutted. See Response – Specchio.

The failure of the Applicant to provide truthful and non-misleading information to the Commission is evidence that the Applicant lacks good character, honesty and integrity. The Commission denies Edcia's application on this independently sufficient ground. See Admin. Code §§16-509(b).

III. CONCLUSION

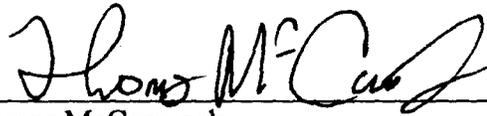
Edcia has not satisfied its burden of demonstrating its eligibility for a trade waste registration. "The commission may refuse to issue a license or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter". See Admin. Code §16-509(b). In addition, Edcia "has knowingly failed to provide the information and/or documentation required by the commission" by providing false and misleading information in its application. Id.

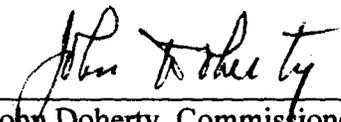
Based upon the above independently sufficient reasons, the Commission denies Edcia's exemption application and refuses to issue Edcia a registration.

This exemption/registration denial is effective immediately. Edcia Corp. may not operate as a trade waste business in the City of New York.

Dated: October 24, 2006

THE BUSINESS INTEGRITY COMMISSION


Thomas McCormack
Chair


John Doherty, Commissioner
Department of Sanitation


Rose Gill Hearn, Commissioner
Department of Investigation


Jonathan Mintz, Commissioner
Department of Consumer Affairs


Andrew Schwartz, First Deputy Commissioner (designee)
Department of Small Business Services


Brian O'Neill, Deputy Inspector (designee)
New York City Police Department