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

**DECISION OF THE TRADE WASTE COMMISSION DENYING  
THE APPLICATION OF GRASSO PUBLIC CARTING, INC. FOR A  
LICENSE TO OPERATE AS A TRADE WASTE BUSINESS**

By application submitted August 29, 1996, Grasso Public Carting, Inc. ("Grasso" or the "applicant") applied to the New York City Trade Waste Commission for a license to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-508. Local Law 42, which created the Commission to license and regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). These illustrative factors include the failure to provide truthful information to the Commission, certain civil or administrative findings of liability, and certain associations with organized crime figures. Based upon the record as to Grasso, the Commission concludes for the following reasons that the applicant lacks good character, honesty, and integrity, and thus denies this license application:

- (1) the applicant, through its principal, Robert Grasso, committed perjury on numerous occasions in sworn testimony before the Commission in connection with Grasso's license

application, by making materially false and misleading statements under oath concerning, among other things, the extent of his association with Genovese organized crime family capo Alphonse "Ally Shades" Malangone and his discussions with Malangone regarding illegal gambling and matters related to the carting industry;

(2) the applicant filed false and misleading documents (including a sworn affidavit) in connection with its license application;

(3) the applicant, through its principal, Robert Grasso, has knowingly associated with a member of organized crime;

(4) the applicant, through its principal, Vito Brienza, testified falsely under oath in connection with a customer's overcharge complaint sustained against Grasso;

(5) the applicant has flouted for years the requirement that waste stream surveys be conducted and appears to have falsified its business records to conceal its overcharging of customers.

## **I. BACKGROUND**

### **A. The New York City Carting Industry**

Virtually all of the 250,000 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 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 for many years. See, e.g., Local Law 42, §1; United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993). As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have served, they “operate 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 association 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 of the 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. Those 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 evidence amassed at the City Council hearings giving rise to Local Law 42 comported with the charges in the indictment: evidence of enterprise corruption, attempted murder, arson, criminal antitrust violations, coercion, extortion, and numerous other crimes.

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 accuracy of the sweeping charges in the indictments has been repeatedly confirmed by a series of guilty pleas. On October 23, 1996, defendant John Vitale pleaded guilty to a state antitrust violation for his participation in the anticompetitive criminal cartel. In his allocution, Vitale, a principal of the carting company Vibro, Inc., acknowledged that he turned to the trade associations, and specifically to Genovese capo Alphonse Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing 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) (copy attached as Exhibit 1).

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 from entering the market through threats and economic retaliation. Vigliotti agreed to serve a prison term of one to three years, to pay \$2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the 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) (copy attached as Exhibit 2).

On February 13, 1997, the KCTW -- of which Grasso was a member, frequently attending its meetings -- 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 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 another Brooklyn carter, Dominick Vulpis. Brooklyn carter and KCTW secretary Raymond Polidori pleaded guilty to restraint of trade. These 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) (copy attached as Exhibit 3).

More guilty pleas have followed. 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.

In sum, it is now far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. 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 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). Grasso has a DCA license and timely filed an application for a license from the Commission.

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*, 1997 N.Y. LEXIS 1357, at \*12-15 (N.Y. Ct. App. June 5, 1997).

In determining whether to issue a license to an applicant, the Commission may consider, among other things, the following matters, if applicable:

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

perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

- (iii) conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
- (iv) a finding of liability in the civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
- (v) commission of a racketeering activity or knowing association with a person who has been convicted for 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, or the equivalent offense under the laws of any other jurisdiction;
- (vi) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
- (vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
- (viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the

commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

- (ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-1520 of this chapter;
- (x) failure to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code §16-509(a)(i)-(x).

## II. DISCUSSION

Applying the above criteria, among others, and for the reasons explained below, the Commission concludes that Grasso lacks good character, honesty and integrity and, accordingly, in the exercise of its discretion, the Commission denies this license application.<sup>1</sup>

On August 29, 1996, Grasso Public Carting, Inc. submitted to the Commission an application to operate as a trade waste removal business. See License Application, certified by Robert Grasso, Vito Brienza, Marie Brienza, and Robert Brienza on August 21, 1996 ("Lic. App."). The Commission's staff conducted an investigation of Grasso's fitness for a trade waste removal license. On June 27, 1997, the staff issued a recommendation that Grasso's license application be denied, and a copy of that recommendation was served on Grasso that day. Pursuant to the

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<sup>1</sup> On June 6, 1997, the Commission denied Grasso's application for a waiver of the provision in section 11 (iii) of Local Law 42 that "any contract entered into by a trade waste removal business ... that has not received a license from the New York City Trade Waste Commission ... shall be terminable on thirty days written notice." The waiver denial was based upon the Commission's findings that Grasso had committed perjury and filed false or misleading documents in connection with its license application and had knowingly associated with an organized crime figure. Grasso did not seek judicial review of the Commission's decision.

Commission's rules, Grasso had ten business days in which to submit a written response. See 17 RCNY §2-08(a). At Grasso's request, the Commission extended the submission deadline to July 18, 1997. On that date, Grasso submitted a 27-page memorandum (with three exhibits) from its attorneys, Tashjian & Padian (the "Response"), the factual assertions contained in which were (at the Commission's request) sworn to by Robert Grasso. In addition, on July 17, 1997, at Grasso's request, the Chair of the Commission (together with a member of the executive staff) met with another of Grasso's attorneys in connection with its license application. See id. In rendering this decision, the Commission has considered, among other things, all of Grasso's submissions in connection with its license application.

**A. The Applicant, through Its Principal, Committed Perjury by Swearing Falsely in Testimony before the Commission**

The evidence is compelling that the applicant's president, Robert Grasso, swore falsely in testimony before the Commission in connection with its license application. His false statements were plainly material, and there can be no serious question that they were intentional as well.

According to its license application, Grasso was a member of the KCTW from at least 1986 through May 1996, and was represented there by Grasso's president, Robert Grasso. Lic. App. at 21-22. As noted above, the KCTW, among numerous other defendants, was indicted in June 1995 and pleaded guilty in February 1997 in connection with the Manhattan District Attorney's prosecution of the organized crime-dominated cartel that has controlled and corrupted New York City's trade waste industry for decades. See 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 KCTW has been controlled for many years by Genovese capo Alphonse "Ally Shades" Malangone. See id. Robert Grasso's perjurious testimony regarding his association and involvement with Malangone, as well as that association itself, are independently sufficient bases for denial of Grasso's license application.

In a deposition taken in connection with Grasso's license application by the Commission's staff on October 30, 1996 (pertinent transcript pages attached as Exhibit 4), Robert Grasso was asked questions concerning his relationship with Malangone, who is a major defendant in the pending criminal proceeding based on the June 1995 indictments, widely known as a capo in the Genovese organized crime family, and the self-described "administrator" of the KCTW, of which Grasso was a member from the 1970's to May 1996. Mr. Grasso testified that, although he saw Malangone at the Kings County Trade Waste Association on occasion, he never spoke with him other than to exchange the occasional "hello":

Q. Did you have conversations with him?

A. No. Truthfully, he never liked me and I never liked him, so I stayed away from him.

Q. Did you speak with him on any matters?

A. No, never.

Q. You didn't discuss any matters with him?

A. No. He would come in and say hello and I would say hello.

Q. And that was it?

A. Yes.

Exhibit 4 at 110.

After consultation with his attorney, Mr. Grasso further testified to one conversation with Malangone at Pastels, a Brooklyn discotheque owned by Malangone. Grasso stated that he was summoned to Pastels, where Malangone asked him to consider changing truck insurance companies, that he declined to do so, and that that was the end of the matter. Exhibit 4 at 111. Grasso also noted that he may have seen Malangone in a restaurant and exchanged a wave with him, without any conversation. Id. at 112. Grasso then testified:

Q. And other than the insurance matter there was no other legitimate business discussions you had with Mr. Malangone?

A. No.

Q. Any discussions with your carting industry or carting companies or any other carting companies?

A. None whatsoever.

Q. There's no other people connected with Grasso Public Carting that ever met with Mr. Malangone?

A. No.

Id. at 112-13.

On January 22, 1997, the Commission's staff took further deposition testimony (pertinent transcript pages attached as Exhibit 5) from Robert Grasso in connection with Grasso's license application. He testified that his "insurance" conversation had taken place on the street outside Pastels. Exhibit 5 at 51-53, 55. Mr. Grasso went on to assert that that was the only time he had been to Pastels:

Q. Is that the only time you went to Pastels?

A. Yes, I believe so.

Q. Going from, say, 1989 to 1994 through 1994, is that the only time that you can remember being at Pastels?

A. I believe so.

\* \* \*

Q. Where did you have the conversation that you had with him about the insurance?

A. Right there on the spot. We walked a few feet up and he asked me.

Q. It was all outside on the street?

A. Yes. Yes.

Q. You didn't go inside?

A. No. No.

Q. Have you ever been inside Pastels?

A. I don't think so. No.

Id. at 53-54, 55.

Later in the deposition, Mr. Grasso testified as follows:

Q. Have you ever been inside Pastels Disco?

A. No.

Q. So you have never been inside the small office room where Mike Rosenbaum sits?

A. No.

Ms. Ferrall: Objection. How could he possibly know about any of this?

Ms. Richroath: I'm asking him.

A. No. No. No.

Q. You were never inside either the main room or the office at Pastels Disco?

A. Right.

Exhibit 5 at 93-94.

During his January 22, 1997 deposition, Mr. Grasso was asked a series of pointed questions about whether he had conversations with Malangone on certain subjects on certain dates inside Pastels. In the face of these specific, detailed questions, Grasso continued to deny that he had been inside Pastels and that he had had any such conversations with Malangone. First, Grasso was asked about specific conversations with Malangone related to the carting industry:

Q. Do you remember in August of 1991 when DCA moved to decrease the rate, the maximum rate that the carters could charge?

A. Yes, I do.

Q. Do you remember going to Pastels in August of 1991 to speak to Alphonse Malangone about the decrease in the rate?

A. No.

Q. You did not go in August of 1991?

A. No. No. I do not remember being there. No, I don't.

- Q. Take a minute and think about it. In 1991, did you go -- in August of 1991, specifically August 2, 1991, did you go to Pastels and talk to Alphonse Malangone about the decrease in the rate that DCA was moving to have?
- A. No, I did not.
- Q. Do you remember complaining about Sal Spinelli telling the guys that they shouldn't demonstrate, or strike, or do anything illegal in front of City Hall?

Ms. Ferrall: Wait a minute.

- Q. Mr. Grasso, do you remember going to Pastels on August 2nd of 1991 and complaining to Alphonse Malangone that Sal Spinelli was telling the guys that they shouldn't strike or demonstrate outside of City Hall about the rate decrease?
- A. No. Never made that conversation. I don't know anything about it.
- Q. You never went to Pastels?
- A. No.
- Q. Do you remember complaining to Alphonse Malangone that Sal Spinelli was working both sides of the fence on this?
- A. No.
- Q. Do you remember Alphonse Malangone telling you that he was going to straighten Sal Spinelli's ass out?
- A. Oh, my God, no. Definitely not.
- Q. You were never there on that day?
- A. No.

Exhibit 5 at 80-82.

Mr. Grasso was then asked about specific conversations at Pastels with Malangone related to illegal gambling. Again, Grasso denied that the conversations occurred:



Q. Tell me about the arrangement that you and Alphonse Malangone had with respect to placing illegal gambling machines in carting stops.

Ms. Ferrall: I object to the form. Tell about the arrangement that he had?

A. No arrangement.

Q. Do you know what an illegal gambling machine is, joker poker machine is?

A. I seen them around, yes.

Q. And the carting stops that you service, do some of those carting stops have the illegal gambling machines in them?

A. I think so.

Q. Are there some grocery stores or delis that have these illegal joker poker machines, maybe video machines that you can switch over?

A. I think so, yes.

Q. Now, in 1991, was there a deli that opened on your route that was owned by an Arab guy? Do you remember that particular deli?

A. I have many Arab guys. Delis, too. They have many Arab guys.

Q. Do you remember going to a particular Arab deli who had just moved in -- he was doing a brand new business -- going into him and showing him a photo of an illegal gambling machine and suggesting to him that it would be a good idea that he put this illegal gambling machine into his grocery store?

Ms. Ferrall: Object to form.

A. No, I don't.

Q. Did you ever have a conversation like that with one of your customers, one of your Arab customers? Did you ever show him a photo of an illegal gambling machine?

A. No.

Q. Do you remember going to Pastels on October 31st of 1991 and meeting with Alphonse Malangone?

A. No, I don't remember.

Q. Did you go on October 31st of 1991 to meet with Alphonse Malangone at Pastels?

A. Not that I remember. No.

Q. Did you go there and complain that the Arab guy that you had wanted to put an illegal gambling machine into his deli now had an illegal gambling machine in his deli because someone else had paid him \$5,000 and that's why he put it in?

Ms. Ferrall: Object to form.

A. No. No, I did not.

Q. Do you remember having a conversation with an Arab guy who did not want to put an illegal gambling machine in his store because it would be against his religion?

A. No.

Q. Do you remember telling Alphonse Malangone on August 31st of 1991 at Pastels that it would be worthwhile to pay the guy \$5,000 to put the illegal gambling machine into the spot because it was costing people \$20,000 to buy a carting spot anyway?

Ms. Ferrall: Object to form.

A. No, I don't. No, I don't.

Q. You never had this kind of a conversation with Alphonse Malangone at Pastels?

A. That's right.

Q. You did not?

A. Never, never.

Q. The illegal gambling machines that you have seen in spots that you service, do you have anything to do with their placement in those stores?

A. No, I do not.

Q. Do you collect any money from any of those customers as a result of the illegal gambling machines that are in the stores?

A. What do you mean 'collect money'? You mean for garbage?

Q. No, not for the garbage. They are your customers for the garbage. Do you collect any additional money because they have illegal gambling machines in their store?

A. No, I do not.

Exhibit 5 at 83-86.

Finally, Mr. Grasso was asked another series of pointed questions about whether he had been to Malangone's home. Grasso continued the pattern of stalwart denials:

Q. Do you know where Alphonse Malangone lives?

A. I was told in Staten Island.

Q. Have you been to his home?

A. No.

Q. Weren't you to his home on June 14, 1991?

A. June 14, 1991?

Ms. Ferrall: Do you have a document or --

A. No. No. Somebody does his pool work, but I know there's a fellow that does his pool work, and it might have passed like that, but I really don't recall. I was never inside of his home. Definitely not.

Q. Have you been to 14 Delphine Terrace in Staten Island?

A. What is that place at 14 Delphine Terrace?

Q. That's Alphonse Malangone's address in 1991.

- A. Oh, I don't know. I don't recall the street.
- Q. Do you know a man named Ralph Romano?
- A. Yes.
- Q. How do you know him?
- A. I seen him down at the Association years ago.
- Q. Who was he?
- A. I believe, I think it was a relative of somebody in the business. I don't remember who. I believe that he was a relative to somebody in the business.
- Q. Was he a relative of Carmine Romano from the Fish Market?
- A. I really don't know.

Ms. Ferrall: Off the record. [Grasso has a discussion with counsel.]

- A. I really don't know, to tell you the truth.
- Q. When was the last time you saw Ralph Romano?
- A. A couple of years ago.
- Q. Do you remember going with Ralph Romano or meeting up with Ralph Romano and meeting up at Alphonse Malangone's on June 14, 1991?
- A. June 14th? I don't remember the date. Really I don't remember. I really don't.
- Q. So can you say that you were not there or--
- A. I don't know his house, so how can I be in a place I don't know. You know what I mean?
- Q. Well, did you meet with Alphonse Malangone in his house on June 14, 1991?
- A. No. Never inside of his house at all. No. Never was.
- Q. Did you meet with Alphonse Malangone in a house on Staten Island in June of 1991?
- A. No. Never did.

Exhibit 5 at 91-93.

Independent investigation conducted by the Commission demonstrates unequivocally that Robert Grasso's sworn deposition testimony

before the Commission was laced with lies. On January 21, 1997, the Commission applied to the New York County Supreme Court for an order unsealing certain materials pertaining to eavesdropping and video surveillance conducted pursuant to warrant inside Pastels. That order issued, and materials were provided by the Manhattan District Attorney's office. See Exhibit 6.<sup>2</sup> That evidence reveals that Robert Grasso was captured on eavesdropping and video surveillance in place pursuant to warrant and that Grasso in fact met and conversed with Malangone inside Pastels. Specifically, the evidence shows the following:

On October 31, 1991, Grasso and Malangone discussed illegal gambling machines and their placement in carting customer locations. Grasso complained to Malangone about an Arab customer who had obtained an illegal gambling machine from another source. Malangone sent his driver, Rocky Cimato, to take care of the situation. When Grasso suggested paying the customer to take the machine, Malangone vetoed the idea. This conversation demonstrates that Grasso and Malangone participated in an illegal gambling conspiracy. The conversation, which included references to the Arab store owner refusing to take the machine from Grasso because it was against his religion, is of the sort that would be remembered. Moreover, the fact that Grasso would seek Malangone's intervention and follow his lead on an illegal matter shows that Grasso was aware of Malangone's organized crime status. See Exhibit 6 at 2-5.

On August 2, 1991, Malangone and Grasso met inside Pastels. At that time, the DCA was attempting to reduce the maximum rate carters could charge, and the issue arose whether any action should be taken in response. Grasso complained to Malangone that Salvatore Spinelli, an attorney for the KCTW and himself a mob associate, was telling carters not to strike or demonstrate and was playing both sides of the fence on the issue. Malangone promised to "straighten his ass out." See Exhibit 6 at 5-6. These are, again, the types of statements which would be recalled; yet Grasso categorically denied that the conversation took place.

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<sup>2</sup> The materials provided by the District Attorney's office erroneously refer to Robert Grasso as "Anthony" Grasso. Subsequent investigation by the Commission's staff (including review of video surveillance tapes) confirmed that the "Anthony" Grasso referred to in these materials is in fact Robert Grasso of Grasso Public Carting, Inc. See also Exhibit 6 at 2 n.\* ("Anthony" Grasso observed at KCTW and using car registered to the applicant business).

In addition, physical surveillance evidence independently obtained by the Commission's staff shows unequivocally that on June 14, 1991, Grasso and Ralph Romano were observed at Malangone's home on Staten Island.

Based upon the foregoing, it is clear that Robert Grasso perjured himself repeatedly during his sworn depositions before the Commission on October 30, 1996 and January 22, 1997. It is also clear that Grasso's statements in its license application (Part III, Questions 6(j) and 7) that Robert Grasso knew Alphonse Malangone only from the KCTW, had no other association with him, and had no reason to believe he was associated with organized crime, are all false.

Grasso concedes that its president, Robert Grasso, testified falsely under oath on numerous occasions. See Response at 12-13. Indeed, the applicant essentially concedes that Mr. Grasso intended to deceive the Commission; he is said to have "foolishly attempted to distance himself from Malangone while trying to be responsive" because he "did not want the Commission to believe that he was guilty by virtue of his limited contact with Malangone." Id. at 11, 14. Grasso nonetheless asserts that these transgressions should not be considered in connection with its license application because Robert Grasso is "borderline illiterate," was "frightened during his deposition," and in any event "has not had any significant role in its management for several years." Id. at 1, 3, 14. These contentions are meritless.

First, Grasso has ventured well beyond the bounds of poetic license in describing its president and 50% owner as "borderline illiterate." Robert Grasso graduated from a Roman Catholic grammar school in Brooklyn in the early 1950's; presumably, after eight years of parochial school instruction, he was able to read and write. See Exhibit 4 at 8, 13-15. He then attended two years of high school before leaving to work in his father's business. Id. at 13-15. While he might not be "the best of readers," he knows how to read the stock tables, id. at 74-75, and he personally certified to the accuracy of the statements in Grasso's license application. In any event, however, Robert Grasso's reading level is simply irrelevant; the depositions in which he committed perjury were oral, not written, examinations. No claim is made that he did not understand what he was asked.

Second, the applicant's repeated assertions that Robert Grasso was "frightened" during his two deposition sessions (see Response at 2, 7, 12, 14) are not persuasive. Mr. Grasso expressed no fear during the course of his testimony. Although he might well have been concerned that truthful answers to questions he was asked would jeopardize Grasso's ability to obtain a license, that is no excuse for deliberately false sworn testimony.

Third, the applicant's assertion that Robert Grasso is only peripherally involved in its affairs (see Response at 1, 4, 22) is belied by his own deposition testimony. Robert Grasso has been making the "major decisions" for the applicant since 1990. See Exhibit 4 at 20-22. He does the bill collection work and is Grasso's principal contact with its customers. Id. at 16; see id. at 42-47. He also solicits new customer accounts. Id. at 52-53. Robert Grasso is at the applicant's office virtually every day during business hours. Id. at 48-49. He also was Grasso's sole representative at KCTW meetings from 1990 to May 1996, when Grasso resigned from that trade association. Id. at 96-98. While another of the applicant's principals, Vito Brienza, may have attended one KCTW meeting, Robert Grasso "was the one who always had the say." Id. at 98. Taken as a whole, this testimony vitates the applicant's newly minted contention that Robert Grasso "has not has any significant role in [Grasso's] management for several years." Response at 1.<sup>3</sup>

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<sup>3</sup> The fact that Robert Grasso has sworn to the accuracy of the factual statements in the Response raises further concerns about his credibility and, as a consequence, Grasso's fitness for a trade waste removal license. As demonstrated above, there are direct contradictions between Robert Grasso's sworn deposition testimony and his sworn Response with respect to the extent of his participation in the applicant's business affairs. Thus, he is (once again) lying; the only question is, where? In view of the fact that at the time of his deposition testimony he had no motive to lie about the extent of his involvement in Grasso's management and operations, while he did have such a motive at the time of the Response, the Commission finds that Robert Grasso lied in the Response (and not in his deposition testimony) with respect to that issue.

**B. The Applicant Filed False or Misleading Documents with the Commission in Connection with Its License Application**

Having lied in his testimony before the Commission, and apparently realizing he had been caught, Robert Grasso turned to damage control. On January 23, 1997, Grasso's attorneys filed with the Commission an affidavit (copy attached as Exhibit 7) sworn to that day by Robert Grasso, allegedly to "supplement" his deposition testimony. This affidavit, if it could be believed, would document a remarkable feat of recovered memory. In any event, the affidavit did not "supplement" the sworn testimony of the day before; "rewrite" would be a more accurate description. Robert Grasso's categorical denials of meetings with Malangone were "supplemented" with information that somehow had "slipped [his] mind" one day earlier. The conclusion is irresistible that the filing of the affidavit was an attempt to recant perjurious testimony prior to any criminal referral. See N.Y. Penal Law §210.25. The affidavit certainly has nothing to do with the search for truth. Rather, it is an exercise in hedged obfuscation, carefully tailored to address only the specific information with which Grasso was confronted, not to provide candid answers to the questions asked. Indeed, when it is compared to the true facts as disclosed by the Commission's investigation, the affidavit is exposed as simply another link in a chain of deception.

In paragraph 3 of his affidavit, Mr. Grasso claims that he "understood the [deposition] questions as relating solely to discussions [he] had with Mr. Malangone about the carting business." This claim is disingenuous at best. Grasso was quite clearly asked whether he had *ever* had conversations with Malangone, and whether those conversations took place at Pastels. Grasso was equally clear in his denials. See, e.g., Exhibit 4 at 110; Exhibit 5 at 93.

In paragraphs 4 and 5 of the affidavit, Mr. Grasso describes two occasions when he went to Pastels in the early 1990's, both allegedly for innocuous reasons. This part of the affidavit apparently was crafted to deal with the probability that the Commission had independent evidence that Grasso has been inside Pastels. In contrast to his testimony on two prior occasions, where he swore that he had never been inside Pastels in his life, Grasso now suddenly remembers that he had two conversations with



Malangone inside Pastels -- the same Malangone who Grasso previously testified he "stayed away from" out of mutual dislike. See Exhibit 4 at 110; see also Exhibit 5 at 44 ("[I]f I had five words to say to the man in all the times I seen him, it was probably a lot. You know what I mean? 'Hello,' and that was it.").

The Grasso affidavit does another complete about-face concerning Ralph Romano. In contrast to Mr. Grasso's deposition testimony about Romano, which suggests that Grasso barely knew who he was, Grasso's affidavit describes him as a "friend" (of both Grasso and Malangone) and business associate. See Exhibit 7, ¶¶11-17. Moreover, after testifying the day before that he had no idea where Malangone lived and therefore no idea whether he had ever been to Malangone's home, see Exhibit 5 at 91-93, Grasso in his affidavit now remembers that he went there with Romano. See Exhibit 7, ¶¶19-20.

In his affidavit, Mr. Grasso claims to have no recollection of any discussion with Malangone concerning a potential carters' demonstration at City Hall, or Salvatore Spinelli's actions with respect to such a proposition. Grasso is careful to leave the door open, however, speculating that he might have been involved in such a discussion at the Kings County Trade Waste Association. Exhibit 7, ¶¶6-7. Grasso's sure denial of such a conversation -- "Oh, my God, no. Definitely not." (Exhibit 5 at 82) -- in his deposition shows that Malangone's comment that he would "straighten [Spinelli's] ass out" was the sort of comment that Grasso would remember if he were of a mind to be truthful. And the fact is that Grasso did have such a conversation with Malangone, in Pastels. See Exhibit 6 at 5-6. Grasso, however, cannot bring himself to admit the whole truth -- that he discussed carting industry business with Malangone without the "cover" ostensibly provided by the KCTW but, rather, at the Genovese capo's personal hangout.

Finally, on the subject of illegal gambling machines, Mr. Grasso admits in his affidavit that he did in fact show photos of gambling machines to his customers in the early 1990's, but claims that when he did so, he thought that the machines were legal. See Exhibit 7, ¶¶11-14. The day before, Grasso could remember no more than that he had "seen them around." Exhibit 5 at 83. As to conversations with Malangone about

gambling machines, Grasso's careful choice of words (Exhibit 7, ¶17) speaks volumes:

I testified that I had no recollection of speaking with Mr. Malangone about the machines. I still have no specific recollection of any such conversations, but, in thinking it over, it certainly is possible that, on an occasion when I saw Mr. Malangone, he could have asked me about Mr. Romano, whom I knew was a friend of his, and whom he knew was a friend of mine. If he asked me, during the period that Mr. Romano was talking to me about trying to get machines in stores, I certainly would not have hesitated to comment to Mr. Malangone about what Mr. Romano was then doing.

As for his professed ignorance of the machines' illegality, it must also have "slipped [Grasso's] mind" that Malangone specifically reminded him (as if he somehow needed reminding), "[Y]ou're talking about something that's illegal." Exhibit 6 at 4.

The applicant asserts that Robert Grasso's affidavit, "read in its entirety . . . is clearly not false and misleading." Response at 15. The Commission rejects this contention. The affidavit both confirms that Robert Grasso committed perjury in his deposition and was itself deliberately calculated to mislead and conceal the truth about the nature and extent of his relationship with Genovese capo Alphonse Malangone. In this regard, it is of a piece with Grasso's license application itself, which, as noted above, seriously misrepresented that relationship.

**C. The Applicant, through Its Principal, Knowingly Associated with a Member of Organized Crime**

Based upon the foregoing, it is abundantly clear that Grasso, through its president, Robert Grasso, knowingly associated with Alphonse Malangone, a member of organized crime, in connection with matters pertaining to the carting industry. Malangone's status as the mobster who "runs Brooklyn" (i.e., the KCTW, of which even Grasso acknowledges Malangone was the "administrator," see Exhibit 7, ¶ 3) for the Genovese organized crime family cannot be disputed. See Affidavit of Detective Joseph Lentini in Support of Applications for Search Warrants, sworn to June 1995 (copy attached as Exhibit 8), ¶¶ 61, 104. Malangone held no official position, elective or appointive, in the KCTW; his control over that trade association derived solely from his position as a capo in the Genovese family.

Nor can Robert Grasso's knowledge of Malangone's organized crime status be seriously disputed. Grasso went to Malangone to discuss putting illegal gambling machines in carting customer locations; illegal gambling, of course, is classic racketeering activity. Grasso's report to Malangone of Spinelli's playing "both sides of the fence" and Malangone's response that he would "straighten [Spinelli] out" also suggest that Grasso was expecting that Malangone would take action consistent with that of an organized crime figure. Finally, Grasso's deception and evasiveness with respect to whether he had ever been to Pastels, Malangone's club and headquarters, and to Malangone's home make it clear that he recognized exactly who Malangone was, and the implications of admitting that he had associated with him. See also Response at 7 (Grasso aware he was being asked questions about "alleged mafia capo").

Grasso cavalierly dismisses its president's meetings with Malangone as "insignificant and incidental" and "nothing more than red herrings." Response at 15, 19. The Commission rejects this attempt to minimize the importance of Robert Grasso's contacts with a powerful organized crime figure on matters directly involving the carting industry. Those contacts – concerning how to respond to a proposed decrease in carting rates and how to place illegal gambling machines in customer locations – call Grasso's character, honesty, and integrity into serious question. That Grasso and its

principals have not been indicted (see Response at 2, 11, 19) is no endorsement of the applicant's fitness for a license. This type of association by a carter with a known mobster is at the core of the entrenched corruption in this industry that Local Law 42 was enacted to eliminate.

**D. The Applicant, through Its Principal, Gave False Testimony in a Hearing before the DCA**

In 1996, one of Grasso's customers, Viking Glass and Mirror, Inc., filed an overcharge complaint against the applicant. The DCA held a hearing on the overcharge violation on May 7, 1996. On May 10, 1996, a DCA administrative law judge issued a recommended decision finding the applicant guilty of overcharging the customer, imposing a fine of \$5,600, and ordering restitution to the customer in the amount of \$757.68. The DCA adopted the recommendation. On August 7, 1996, the DCA denied the applicant's appeal and upheld the administrative law judge's decision in its entirety. (Copies of the various decisions are attached as Exhibit 9.)

The case centered on Grasso's having charged Viking \$25.00 (plus tax) per month over a 28-month period even though Viking generated virtually no refuse at the location (a showroom) Grasso ostensibly was servicing and Grasso in fact collected none. This bit of chicanery was accomplished when Grasso's general manager, Vito Brienza, convinced the customer that it needed to have a carting company decal on its premises (and pay Grasso a fee for it) in order to avoid a Department of Sanitation fine. Brienza, however, denied under oath ever having such a conversation with the customer. The administrative law judge specifically found Brienza's testimony not credible. Under the circumstances, it appears quite likely that Brienza's sworn denial was not merely false, but deliberately false. Brienza did not simply testify that he did not recall such a conversation with the customer; he swore, falsely, that no such conversation ever took place.<sup>4</sup>

Grasso contends that Brienza's transgression should not be held against the applicant because he is a mere "office manager" and, thus, not a

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<sup>4</sup> Grasso notes that the administrative law judge did not expressly find that Brienza perjured himself. Response at 17. That is true; the issue was not before her, and such a finding was not necessary to her decision.

“principal” of Grasso. Response at 17, 19. This is plainly wrong. Local Law 42 defines “principal” to include a carting company’s “chief operating officer . . . irrespective of organizational title” and any person “participating directly or indirectly in the control” of the company. Admin. Code §16-501(d). According to the applicant, Vito Brienza “has been instrumental in running Grasso since . . . 1990.” Response at 5. Thus, by Grasso’s own account, Vito Brienza is a principal. Moreover, Brienza is also a principal of Grasso because his spouse, Marie Brienza (Robert Grasso’s sister) is a 50% owner of the company. See id. at 4; Admin. Code §16-501(d)(ii).

**E. The Applicant Has Violated the Requirement That Waste Stream Surveys Be Conducted and Appears to Be Overcharging Several of Its Customers**

DCA and Commission rules have long required that a carting company conduct a waste stream survey before charging a customer a “flat fee.” Grasso’s submissions to the Commission in connection with its waiver application, and a subsequent Commission audit of its customer records, confirm that Grasso has long flouted this requirement. First, during the waiver application process, the Commission demanded production of all waste stream surveys conducted by Grasso (which charges most of its customers a flat fee). Only eight such surveys were produced -- all of which were conducted in October and November 1996, after the Commission’s request.

Second, the Commission recently conducted a field audit of Grasso’s customer records. As of May 1, 1997, Grasso was required to adjust its customer billing to reflect the Commission’s reduction of the maximum chargeable rate from \$14.70 per cubic yard of loose waste to \$12.20.<sup>5</sup> It appears, however, that to avoid reducing its charges to customers, Grasso responded to the rate reduction by adjusting upward the volume of waste it purportedly was collecting. For example, all of the following customers were charged at rates above \$12.20 per cubic yard before the maximum rate reduction went into effect; instead of decreasing their monthly charges, however, Grasso kept those charges high by recording increases in the amount of garbage allegedly collected:

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<sup>5</sup> The rule reducing the maximum rate became effective on April 25, 1997. By letter to all license applicants dated April 18, 1997, the Commission announced that it would not enforce the new rule before May 1, 1997.

Customer	Contract Date	Contract Rate <sup>6</sup>	Contract Fee	Contract Volume (Highest)	Register Rate <sup>7</sup>	Register & May Bill Fee	Register Volume
Gondola Bake Shop	01/18/96	\$16.17	\$139.99	8.66	\$ 6.47	\$139.99	21.65
Carvel	11/30/96	\$13.10	\$183.29	14.00	\$ 9.99	\$173.00	17.32
Crown Florist	06/17/96	\$13.46	\$323.00	24.00	\$ 9.32	\$323.00	34.64
Benson Sales	11/18/96	\$13.34	\$240.00	18.00	\$ 7.92	\$240.00	30.31
Joey Bubble Laundromat	04/22/96	\$14.31	\$100.12	7.00	\$11.56	\$100.12	8.66
C C Original Art	05/30/96	\$13.86	\$ 13.86	1.00	\$11.09	\$ 13.86	1.25
GBI Wholesale	04/18/96	\$12.32	\$ 18.48	1.50	\$ 8.52	\$ 18.48	2.17

These examples are striking. According to Grasso's most recent customer register, the amount of waste generated by Gondola Bake Shop increased by 150% in less than eighteen months; Benson Sales experienced a 68% increase in about six months; and Crown Florist and GBI Wholesale each had 44% volume increases over less than a year.

In defense of these remarkable figures, Grasso has submitted waste stream surveys for these customers purportedly performed in April. See Response, Exhibit C. These surveys set forth monthly waste volumes that are different from (and generally even higher than) the volumes reflected in Grasso's April customer register.

According to the survey forms Grasso submitted, the seven waste stream surveys were purportedly performed by Grasso from April 11 to (at the latest) April 23. All of the survey forms were purportedly signed on Grasso's behalf by Robert Brienza on April 25. However, the official Commission forms submitted by Grasso with its Response did not even exist in April. The Commission first issued a waste stream survey form to the industry on April 18. The Commission then revised the form slightly and distributed the revised version to all license applicants on May 2. The forms that Grasso appended to its Response are in the revised format. Robert Brienza, in a deposition taken by the Commission's staff on August 7, 1997, repeatedly insisted that he signed each of the survey forms on April

<sup>6</sup> The contract rate was calculated by dividing the stated contract fee by the highest figure in the range of waste volume stated in the contract.

<sup>7</sup> Grasso's customer register was required to be accurate as of April 15, 1997.

25. This appears to be yet another instance of perjury by a principal of Grasso.

All seven surveys submitted by Grasso are accompanied by waiver forms purportedly executed in May by the customers to waive their right to check the accuracy of the survey results. After Grasso filed its Response, Commission staff interviewed these seven customers to determine whether they have experienced increases in waste volume since contracting with Grasso in 1996. The staff obtained relevant information from five of the customers, all of whom reported no such increase.

It thus appears that the purported increases in these customers' waste volumes are fictitious, invented by Grasso to avoid lowering its monthly charges to account for the reduction in the maximum rate. It also appears that Grasso deliberately misrepresented the circumstances under which it conducted the waste stream surveys, if indeed it performed them at all. This deception provides another independently sufficient ground for denial of Grasso's license application.

\* \* \*

Grasso offers three, more generalized arguments why its license application should not be denied. None has any merit.

First, Grasso contends that it is entitled to an evidentiary hearing before its license application may be denied. See Response at 23-26. The law is otherwise. As noted above, the Second Circuit already has held that an applicant for a trade waste removal license from the Commission has no entitlement to such a license and, therefore, no constitutionally protected property interest in such a license. SRI, 107 F.3d at 995. In the absence of such a property interest, the applicant has no constitutional right to a hearing on its application. Id. Remarkably, Grasso does not even cite the SRI decision.

Local Law 42 affords a license applicant the right to "notice and the opportunity to be heard" before the Commission may deny its application. Admin. Code §16-509(a). Grasso concededly received the requisite notice and was given (and availed itself of) the opportunity to make a written submission in response to the staff's license denial recommendation. An

evidentiary hearing is not required. See, e.g., Daxor Corp. v. New York Dep't of Health, 1997 N.Y. LEXIS 1357, at \*10-15 & n.3 (N.Y. Ct. App. June 5, 1997) (citing Mathews v. Eldridge, 424 U.S. 319, 335 (1976)). The Commission already has defined the content of the opportunity to be heard afforded to license applicants by Local Law 42, and it does not include the right to an evidentiary hearing. See 17 RCNY §2-08(a). Where, as here, the federal constitutional right to due process is not implicated, see SRI, 107 F.3d at 995, Grasso can insist only that the Commission follow its own rules. The Commission has done so, and Grasso does not claim otherwise. Indeed, at Grasso's request, the Chair of the Commission and one of its Deputy Commissioners met with a Grasso representative in connection with its license application. See 17 RCNY §2-08(a). In the Commission's judgment, an evidentiary hearing is not necessary here; we note that Grasso has not made an offer of proof in that regard.

Second, Grasso asserts that denying its license application based on Robert Grasso's conduct would be "unfair" to the applicant's other 50% owner, his sister, Marie Brienza, as to whom no adverse findings were made. See Response at 22. The statute already has resolved this issue. Local Law 42 expressly permits the Commission to refuse to issue a license to an applicant if *any* of its principals is found to lack good character, honesty, and integrity. See Admin. Code §§16-501(a), 16-509(a). The law imposes no requirement that *all* of the applicant's principals must fail to meet that standard before the Commission may refuse to issue a license.

Third, Grasso asks the Commission not to deny its license application at this time but, rather, to allow the company to continue operating until it is able to sell its assets (principally its customer accounts) to another carting company. See Response at 1-2, 5-6, 26-27. With its Response, Grasso submitted a draft asset purchase agreement between it and a New York-based affiliate of Waste Management, Inc. (see id., Exhibit A) but did not submit a sale application for the Commission's review. See 17 RCNY §5-05(b)(ii). On August 5, 1997, Grasso (through Waste Management) submitted a sale application to the Commission.

The Commission declines to defer action on Grasso's license application pending consideration of its eleventh-hour sale application. On May 9, 1997, the Commission announced that it would decide on a case-by-



case basis whether to defer action on a company's license application in favor of consideration of a pending sale application involving the company.<sup>8</sup> The Commission's prior practice, which generally favored the consideration of sale applications in advance of license applications, had by that time achieved its central purpose of hastening the orderly departure from the industry of companies with little or no prospect of licensure by the Commission and, at the same time, facilitating the entry into the market of firms able and willing to compete in the post-cartel era. At this juncture, the Commission is generally averse to allowing companies whose licensing prospects are problematic to sell their customer accounts, since such a transaction implicitly views customers in much the same way they were viewed under the cartel's property rights system – as chattel that may be bought and sold. The Commission is also mindful that, as a practical matter, growth by acquisition of companies that are unlikely to be licensed is a business strategy unavailable to most carting companies in this marketplace; the Commission is loth to encourage acquisitions that can be accomplished only by a small group of large, well capitalized firms. Where a carting company's license application, in the good-faith exercise of the Commission's discretion, ought to be denied, it is more consonant with the purposes of Local Law 42 to deny the application, and thereby permit its customers to enjoy the long-awaited benefits of full-fledged, head-to-head competition among carting companies for their business.

Under these circumstances, we see no reason to defer action on Grasso's license application pending consideration of its recently submitted application to sell its customer accounts.<sup>9</sup> Indeed, it would be highly anomalous for the Commission to ignore Grasso's lies and misrepresentations during the licensing process until such time as Grasso has managed to sell its assets. The Commission has repeatedly emphasized that it will not tolerate dishonesty or lack of truthfulness or candor on the

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<sup>8</sup> From August 26, 1996 to May 9, 1997, it had been the Commission's practice routinely to defer action on a license application if the applicant also had filed a sale application. The rationale for this initial approach, as well as the changed circumstances that led the Commission to alter its approach, are described in detail on pages 15 through 22 of the Decision of the Trade Waste Commission Denying the Application of Crest Carting Co. Inc. for a License to Operate as a Trade Waste Business, dated July 25, 1997, which is incorporated by reference herein.

<sup>9</sup> Grasso suggests that it was not "[u]ntil very recently" that the large national firms became interested in acquiring relatively small companies such as Grasso. See Response at 5. This suggestion is inaccurate. For example, by end-1996, one of the national companies had applied to the Commission to purchase five local carting companies for amounts lower than Grasso's contemplated sale price.

part of carting companies in their dealings with the Commission, and will take any lack of forthrightness into account in its licensing decisions. See, e.g., Transcript of Open Meeting on June 6, 1997, at 3-4. In sum, deferring denial of Grasso's license application so that the company may sell its customer accounts would do nothing to advance the goals of Local Law 42 and, instead, would in effect condone the fact that this applicant lied to the Commission with impunity. This we decline to do.

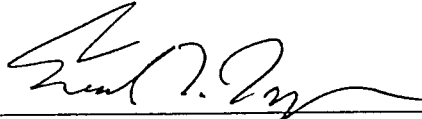
### III. CONCLUSION

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 Grasso's many false and perjurious statements under oath and in filed documents, and its principal's knowing association with an organized crime figure, all of which the Commission is expressly authorized to consider under Local Law 42, the Commission denies this license application.

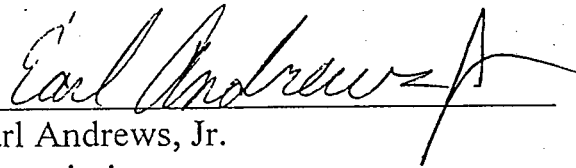
This license denial decision is effective fourteen days from the date hereof. In order that Grasso's customers may make other carting arrangements without an interruption in service, Grasso is directed (i) to continue servicing its customers for the next fourteen days in accordance with its existing 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 August 11, 1997. Grasso shall not 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  
August 8, 1997

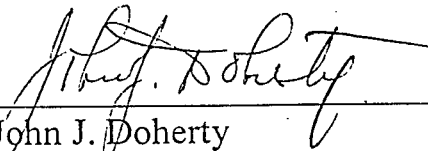
THE TRADE WASTE COMMISSION



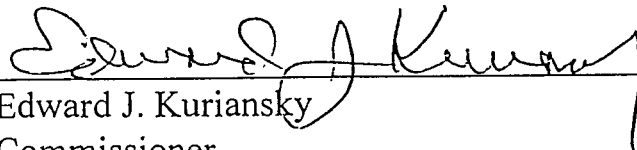
Edward T. Ferguson, III  
Chairman



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

August 8, 1997

**NOTICE TO CUSTOMERS OF GRASSO PUBLIC CARTING  
INC. 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 application of Grasso Public Carting Inc. ("Grasso") for a license to collect trade waste. **As of August 23, 1997, Grasso will no longer be legally permitted to collect waste from businesses in New York City. If Grasso is collecting your waste, you will have to select another carting company to provide you with that service by August 23, 1997.**

The Commission has directed Grasso to continue providing service to its customers through August 22, 1997. **If your service is interrupted before August 23, call the Commission at 212-676-6275.**

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

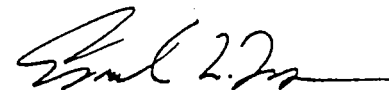
\$1.93 for each 40 gallon bag of trash

\$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*