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THE CITY OF NEW YORK
BUSINESS INTEGRITY COMMISSION
100 CHURCH STREET, 20TH FLOOR
NEW YORK, NEW YORK 10007

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF KARTA CORP. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

Karta Corp. ("Karta" or "Applicant") has applied to the New York City Business Integrity Commission (formerly known as the Trade Waste Commission) ("Commission") for a license 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), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the 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 of Karta, the Commission denies its license application on the ground that this applicant lacks good character, honesty, and integrity for the following independent reasons:

- (1) The Commission previously found that the Applicant's alter ego lacked good character, honesty and integrity.
- (2) The Applicant has provided contradictory and incoherent information to the Commission on a material issue.
- (3) The Applicant has failed to demonstrate eligibility for a trade waste license and has displayed an unacceptable indifference to the dangers presented by organized crime corruption.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. Beginning in the late 1950's, and until only recently, the commercial carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life":

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

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

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anticompetitive 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 . . . effectively 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 were 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[d] in illegal ways” by “enforc[ing] the cartel’s anticompetitive dominance of the waste collection industry.” SRI, 107 F.3d at 999.

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted on enterprise corruption, criminal antitrust, and related charges as a result of a five-year investigation into the industry by the Manhattan District Attorney’s Office and the New York Police Department. See People v. Ass’n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). The defendants 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. In essence, the carting industry’s modus operandi, the cartel, was indicted as a criminal enterprise.

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 indictments, against thirteen individuals and eight companies, were (like their 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 companies 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. See United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.). 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 and jury verdicts. On October 23, 1996, defendant John Vitale pleaded guilty to a state antitrust violation for his participation in the anticompetitive criminal cartel. In his allocution, Vitale, a principal of the carting company Vibro, Inc., acknowledged that he turned to the trade associations, and specifically to Genovese capo Alphonse Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing another carter from bidding on waste removal services for a "Vibro-owned" building in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of one of the 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 City's carting industry.

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. In addition, 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 City's 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 City's carting industry.

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a \$1 million fine, and four individuals who were officers of or otherwise

closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from \$250,000 to \$750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the City's carting industry. The same day, Manhattan carters Henry Tamilly 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.

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, another lead defendant in the state prosecution and the former owner of the 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 WPA, 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 3½ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract and to violate the Taft-Hartley Act by making unlawful payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty

verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined \$900,000, and the GNYTW was fined \$9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined \$200,000.

On January 21, 1998, Patrick Pecoraro pleaded guilty to attempted enterprise corruption and agreed to serve a prison sentence of one to three years, to pay a \$1 million fine, and to be barred permanently from the City's carting industry. On the same day, the QCTW pleaded guilty to a criminal antitrust violation and agreed to forfeit all of its assets. Numerous other guilty pleas followed. On December 21, 1999, all of the guilty verdicts were affirmed on appeal. See People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999).

In sum, it is far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been proven beyond a reasonable doubt. The proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched – extending to and emanating from all of the industry's trade associations, which counted among their collective membership virtually every carter – that it could not have escaped the notice of any carter. These criminal convictions confirm the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, 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 of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry immediately 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, 940 F. Supp. 656 (S.D.N.Y. 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 "[i]t 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 [C]ommission." 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,

carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a).

As the United States Court of Appeals has definitively ruled, an applicant for a carting license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). In determining whether to issue a license to an applicant, the Commission may consider, among other things, the following matters, if applicable:

- (i) failure by such applicant to provide truthful information in connection with the application;
- (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 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;
- (v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;
- (vi) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

- (vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
- (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 16-520 of this chapter;
- (x) 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).

II. THE APPLICANT

Karta Corp. ("Karta") was incorporated on June 10, 1998. The principals of Karta are Kenneth J. Cartalemi ("Cartalemi"), his wife, Maria E. Cartalemi, and their young children, Kenneth Jon Cartalemi, Maria V. Cartalemi and Matthew Cartalemi.

In addition to Karta, Cartalemi either owns or controls numerous other entities, including Busy Beavers Inc., Karta Container & Recycling Inc. ("Container"), Global Land Inc. and Global Recycling & Collection Inc. ("Global"). Karta, Global and Container operate from the same addresses: 120 Travis Lane and 1011 Lower South Street in Peekskill, NY.¹ See Karta License Application at 1; Global Registration Application at 1; Letter from Cartalemi to BIC dated January 4, 2004 ("2004 Letter").

Global Recycling & Collection Inc. ("Global") previously applied to the Commission for an exemption from licensing requirements and a class-2 registration to haul construction and demolition debris. Although Global's application, filed May 27, 1997, stated that the sole owner of the company was Cartalemi's wife, Maria, an

¹ Cartalemi previously admitted that Global and Container are only separate companies on paper. According to Cartalemi, the companies "share everything," including employees, telephone lines, equipment, trucks and containers. Cartalemi oversees the operations of both companies. See Commission Decision Denying the Registration Application of Global ("Global Denial") at 12.

investigation by the Commission found that Cartalemi remained a principal of Global by virtue of the fact he managed and supervised all operations of the company. See Global Application at 8-9; Transcript of Deposition of Cartalemi on June 28, 1999 at 43-46. See also Admin. Code §16-501(d)(defining “principal” to include any person “participating directly or indirectly in the control”.of the applicant business).

Karta’s license application and Global’s exemption/registration application indicate that their businesses are located at the same Peekskill addresses, and the applications disclose similar business phone numbers and fax numbers. In addition to an overlap of principals, the Applicants share equipment and employees (including the same 1994 Peterbilt Truck - VIN #1XPAXBEX8RN358690 – and the same truck driver, Fausto Varrone). See Karta Application at Exhibits C, D; Global Application at 14, 16. The record strongly suggests that the two companies are identical. For all intents and purposes, Karta and Global are the same entity and will be treated as such in this decision.

On December 1, 1999, the Commission denied Global’s exemption/registration application for the following independently sufficient reasons: (1) Kenneth Cartalemi, the principal with operational control over Global, had knowingly associated with Joseph DiNapoli, a member of organized crime, in connection with the waste removal and related industries; (2) Global and one of its affiliates, Karta Container & Recycling Inc. (“Container”), unlawfully engaged in sustained and substantial waste removal activity in the City of New York without a license, registration or other authorization to operate a trade waste business in the City of New York. See Commission Decision Denying the Registration Application of Global (“Global Denial”).²

The Commission specifically found that Cartalemi, despite concededly knowing that Joseph DiNapoli was a capo (or captain) in the Luchese organized crime family, had business dealings with him for many years. See Global Denial at 6-11. Cartalemi had “always” and “forever” been familiar with the allegations, from both the newspapers and “basic street talk,” that DiNapoli was connected to organized crime.³ Id. at 8.

² Global/Karta unsuccessfully moved in federal court to enjoin the Commission from meeting to consider the denial but never challenged the decision on the merits in state Supreme Court.

³ In addition, Cartalemi and DiNapoli were criminal defendants together. In May 1995, they were indicted in the Southern District of New York (along with Anthony DiNapoli, a member of the Genovese crime family, and seven other individuals involved in the New York City waste removal and construction industries) on federal mail fraud conspiracy charges arising out of a scheme to defraud the New York State Insurance Fund of hundreds of thousands of dollars by making payoffs to obtain unwarranted reductions in workers compensation insurance premiums for their businesses. See United States v. Joseph DiNapoli, et. al., (S1) 95 Cr. 376 (JES)(SDNY). While Joseph DiNapoli pleaded guilty in that case, Cartalemi entered into a “deferred prosecution” agreement, whereby he was supervised on probation for eighteen months and made restitution to the NYSIF in the amount of \$48,684. At the end of his probationary period, an order of *nolle prosequi* was entered. See Cartalemi Deferred Prosecution Agreement, dated May 14, 1996. In its response, the Applicant claims the Commission staff incorrectly implied that there was a scheme to defraud and an association between DiNapoli and Cartalemi and that DiNapoli received probation in exchange for testifying against his codefendants. See Response at 21. In fact, the staff relies only on the fact that DiNapoli and Cartalemi were both charged in the same conspiracy, which necessarily implies some level of

DiNapoli's organized crime connections were a topic of discussion with Cartalemi's friends and relatives. Id. at 8.

Cartalemi and DiNapoli were both shareholders (along with Cartalemi's father and uncle) in Mid-Hudson Construction Corp. ("Mid-Hudson"), a closely held construction company based in Peekskill, New York, since approximately the mid-1980s. See Global Denial at 9. Mid-Hudson was located at the same address as Cartalemi's other companies – Karta Industries, Karta Container & Recycling, etc. Both Cartalemi and DiNapoli personally guaranteed promissory notes owed by Mid-Hudson. Cartalemi's companies (Global and Container) also gave undocumented loans totaling upwards of \$100,000 to enable Mid-Hudson to make payments on those notes.

Cartalemi also had business ties to organized crime via his interest in Travis Lane Associates, Inc. ("Travis Lane"), a closely held real estate company, along with his father, his uncle and Louis DiNapoli (Joseph DiNapoli's brother as well as a member of the Genovese organized crime family).⁴ See 2004 Letter at 3; Global Denial at 10. Cartalemi, via his company Global Land, Inc., was indebted to Travis Lane for mortgage payments relating to a prior real estate purchase. In 2002, Cartalemi obtained new financing with an institutional lender and satisfied the Travis Lane debt. Subsequently, Travis Lane was dissolved by corporate resolution on August 22, 2002. See 2004 Letter at 3.

Cartalemi's significant and long-standing business dealings with DiNapoli, a Luchese captain, are precisely the type of corruption that Local Law 42 sought to eliminate from the trade waste industry.

III. DISCUSSION

Karta filed with the Commission an application for a trade waste removal license on July 22, 2002. The staff has conducted an investigation of the Applicant and its principals. On September 12, 2005, the staff issued a 14-page recommendation that the application be denied. On September 26, 2005, the Applicant submitted a 26-page response and 3 exhibits (consisting of 30 pages). See Applicant's Response to the Staff's Recommendation ("Response"). The Commission has carefully considered both the

association. Karta's other allegation - that the Commission's staff wrongly claimed that Cartalemi was a cooperating witness - is simply false. The staff recommendation made no such claim.

⁴ In response, Cartalemi claims that he did not know that Louis DiNapoli was a member of organized crime and, regardless, there was insufficient proof of his status in Det. Farneti's conclusory affidavit. See Response at 23, 24. However, the Commission has previously found that Louis DiNapoli was a member of organized crime. See Global Denial at 10. Cartalemi's challenge to the substance of Det. Farneti's affidavit is untimely and irrelevant; at the very least, Cartalemi was certainly put on notice by the 1999 Global denial that law enforcement considered Louis DiNapoli to be a member of organized crime. In any event, Cartalemi was well aware of Joseph DiNapoli's long-standing organized crime ties (See Global Denial at 7-8) and *should have* known about Louis DiNapoli's ties by virtue of the fact that Cartalemi credits Louis with bringing Joseph – a notorious member of organized crime – into the business.

staff's recommendation and the Applicant's response. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty and integrity and denies its license application.

A. The Commission previously found that the Applicant's alter ego lacked good character, honesty and integrity.

Karta and Global share similar principals, employees, equipment and locations. The conclusion is inescapable that Karta is merely a reincarnation or alter ego of Global. Therefore, evidence that one of the companies does not meet the fitness standard applies equally to both companies. As a result of the Commission's prior finding that Global (and, consequently, its principals, including Cartalemi) lacked good character, honesty and integrity, there is no need for the Commission to revisit whether Global's latest corporate form – Karta – meets the fitness standard under Local Law 42.⁵

The Applicant's response attempts to reargue the Commission's denial of Global and its prior findings. See Response at 2-3, 9-12, 22-24, 24-26 (attempting to narrow Local Law 42's associational restrictions, disputing the extent of the relationship between Joseph DiNapoli and Cartalemi and minimizing the significance of Global's unlicensed activity). The time for such arguments has passed. Global/Karta unsuccessfully moved in federal court to enjoin the Commission from meeting to consider the denial but never challenged the decision on the merits in state Supreme Court. By not appealing the Commission's previous decision, the Applicant has waived those arguments and cannot assert them now.⁶

Karta also argues that the staff had no intention of reviewing Karta's application on the merits by virtue of the prior denial. See Response at 16. Under the circumstances presented by this application, in which a principal of the applicant was a principal of a previously denied company, there is no legal requirement that the staff "re-invent the wheel" and conduct a wholly new investigation. In fact, however, the staff did conduct a new investigation, including a lengthy request for documents and other information, prior to issuing its recommendation. The Commission denies the instant application based on the earlier findings as well as the new investigation.

In addition, the Commission firmly rejects the Applicant's attempts to narrow Local Law 42's associational restrictions to those business associations with members of organized crime occurring solely within the waste disposal business – to the exclusion of business associations in all other industries. See Response at 11. The Second Circuit

⁵ In the alternative, the Commission denies the application on the ground that the president of the Applicant, Kenneth Cartalemi, was the principal of a company previously found by the Commission to lack good character, honesty and integrity. See Admin. Code §16-509(a)(vii)(authorizing denial of a license application for "having been a principal in a predecessor trade waste business" where the commission would be authorized to deny a license to such predecessor business).

⁶ The Commission rejects Karta's response on the merits as well. Karta's claim that unlicensed activity by Global should be excused because Cartalemi's violation of the law was merely ignorant, not intentional, is simply incorrect. See Response at 25.

sharply distinguished “pure business relationships” (which are not constitutionally protected) from “intimate associations,” such as “family associations and certain social contacts,” which are.⁷ The Court put the matter succinctly: “we think it plain ... that pure business relationships with organized crime members fall outside the [constitutionally] protected sphere.” See SRI, 107 F.3d at 996. The Commission declines to adopt the overly restrictive reading argued for by the Applicant. Even if we were to adopt the narrow interpretation of the case suggested by the Applicant, the result would be no different. A significant part of Karta’s business consists of “roll-off” work, i.e., providing waste containers of various sizes to different sites, including construction sites, for the disposal of, among other things, construction and demolition debris. We think it is clear that the construction business and the business of disposing of construction debris are closely related.

Accordingly, the Commission denies this application on this independently sufficient ground.

B. The Applicant provided contradictory and incoherent information to the Commission on a material issue.

The Commission previously found that Cartalemi’s long-standing business interest with a member of organized crime - his 15% interest in Mid-Hudson with DiNapoli – was evidence that Cartalemi’s company lacked good character, honesty and integrity. Cartalemi now claims he has divested himself of that interest, yet he has not provided a coherent account of what happened to the stock and has provided contradictory information about the recipient of Cartalemi’s stock interest.⁸ On several occasions Cartalemi has claimed that he gifted his interest to his father, while at other times, he has claimed that the interest was gifted to his uncle.⁹ Here is a chronological summary of the inconsistencies in Cartalemi’s account:

- March 26, 2002 (Cartalemi states stock given to *Uncle*): Cartalemi’s attorney, Robert Rattet, wrote a letter to the Westchester Solid Waste Commission in support of Karta’s Westchester application for a trade waste permit – “Mr. Cartalemi has divested himself of all interests in Mid-Hudson

⁷ In its response, Karta accuses the Commission of improperly relying on evidence of Cartalemi’s attendance at a DiNapoli family wake. See Response at 16-17. Such evidence was cited by the Commission merely to rebut Cartalemi’s claim that he has completely severed all contact with organized crime. Such evidence was not cited as a direct association with organized crime, but to provide context to Cartalemi’s assertions.

⁸ Cartalemi has also provided inconsistent information regarding the *dates* of this divestment. See Karta Application Exhibit G (March 18, 2002); 2004 Letter (October-November 2002). The Commission is not comforted by Cartalemi’s claims that the date errors were “innocuous.” See Response at 14. The Commission relies heavily, as it must, on the accuracy of documents submitted in connection with applications. Inaccuracies are rarely innocuous and are certainly not so in this case.

⁹ Cartalemi has a history of failing to provide a coherent account to the Commission. See Global Denial at 10, fn. 1 (“[D]espite presumably having every incentive to be clear about the ‘*de minimis*’ extent of his business dealings with the DiNapolis, Cartalemi has opted for ambiguity.”)

Construction Co. by gifting his minority stock interest to his uncle Angelo Carbone.”

- June 20, 2002 (Cartalemi states stock given to *Father*): Cartalemi submitted an application for a trade waste license to the Commission and signed a certification swearing to the truth of its contents. On page 15, Cartalemi stated that he had “gifted his interest in Mid-Hudson to his father and resigned from Mid-Hudson.”¹⁰
- June 20, 2002 (Cartalemi states stock given to *Uncle*): Cartalemi resubmits the 3/26/2002 letter from attorney Rattet as Exhibit G of the license application, stating that he transferred his interest to Carbone. As a result, the information in the application form is directly contradicted by the attached exhibits.
- July 15, 2002 (Cartalemi states stock given to *Father*): Cartalemi’s attorney, Paul Casowitz wrote a letter to counsel for another trade waste company, Garito Contracting Inc., in response to their request for potential derogatory information regarding a prospective non-trade waste relationship between Cartalemi and Garito. While Casowitz acknowledged that Joseph DiNapoli was an organized crime figure with an interest in Mid-Hudson, he stated that Cartalemi “gifted his interest in Mid-Hudson to his father and severed all contact with Mid-Hudson.” Garito submitted Casowitz’s letter to the BIC.
- May 25, 2004 (Cartalemi states stock given to *Uncle*): Attorney Casowitz resubmitted the 3/26/2002 letter from attorney Rattet to the Commission stating that Cartalemi transferred his interest to Carbone.
- January 4, 2004 (Cartalemi states stock given to *Uncle*): Cartalemi stated in a notarized affidavit that he gifted his interest to Carbone. See 2004 Letter.

In its response, Karta asserts that the Commission has necessarily accused Cartalemi of lying and has suggested that he wants to “secretly remain a shareholder” in Mid-Hudson. See Response at 14, 16. This is false. The Commission has not accused Cartalemi of lying, but of submitting false information. His accounts of the disposition of his stock in Mid-Hudson are contradictory. Necessarily, then, one of them must be false. Since the issue is so important, the Commission is well within its discretion in denying this application on the ground that Cartalemi has submitted false information on this vital point. The Commission does not know what truth is here, but in the absence of any clear statement by the Applicant and the seriousness of the issue, the Commission is entitled to deny this application.¹¹ The Global Denial put Cartalemi on notice this issue was important. Accordingly, there is no justifiable reason for errors on such a critical point.

¹⁰ In Karta’s response, Karta’s lawyer, Paul Casowitz, has attempted to take the blame for the false statements that Cartalemi’s Mid-Hudson interest was transferred to his father. See Response at 14. While this may excuse false statements in the letter to Garito Contracting, it fails to explain the false statements contained in the Karta License application. Casowitz’s affidavit is belied by the sworn certification signed by Cartalemi, swearing to the truth of the contents contained in the license application.

¹¹ Cartalemi’s account is unclear and muddled, making it impossible to attribute any particular motivation to his statements. Other previous claims by Cartalemi include: (1) by the late 1980’s, the DiNapolis had removed their financial interest in Mid-Hudson and that (2) Cartalemi had “made every effort to purchase” the DiNapolis’ financial interests from them. See Global Denial at 10, fn 1.

The Commission rejects Karta's claim that the burden was on the staff to ask for clarification. See Response at 13-14. The burden was on Karta to provide truthful and accurate information, especially after having been put on fair notice about what issues were important. The Commission is not obligated to assist applicants in the preparation of their submissions, especially in a matter such as this where the applicant is in possession of all the facts. Regardless, the Commission has the discretion to ask for clarification when it appears that it will be fruitful. The Commission finds that such a request would not be fruitful in this case; Karta had every opportunity to provide a coherent account and failed to do so.

By providing contradictory and inconsistent accounts of the stock transaction to the Commission and other entities, the applicant has failed to provide the information and documentation required by the Commission on this key point. The Commission therefore denies this application on this independently sufficient ground.

C. The Applicant has failed to demonstrate eligibility for a trade waste license and has displayed an unacceptable indifference to the dangers presented by organized crime corruption.

Despite Karta's current claim that it has "cured" the concerns cited by the Commission in the Global Denial, Karta has not satisfied its burden of demonstrating its eligibility for a trade waste license. "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).

Cartalemi now claims that he has eliminated the business dealings cited in the Global denial by gifting the interest he held in Mid-Hudson and by refinancing the mortgage on his property held by Travis Lane. Based on those two actions, Cartalemi stated in his application "neither Karta nor any of its principals has any business involvement with Travis Lane, Mid-Hudson Construction, or Louis DiNapoli, Jr. and Joseph DiNapoli." See Karta Application at 15. In its response, Karta again asserts that the associations with Joseph and Louis DiNapoli were "irrevocably severed over three and a half years ago, and Cartalemi has had no contact with either of the DiNapolis since then." See Response at 15. As a result of Cartalemi's lack of credibility based on the contradictory statements discussed above, the Commission does not credit these uncorroborated and self-serving statements.

Despite being put on notice by the Commission as early as 1999¹² that Cartalemi was business partners with a member of organized crime, Cartalemi did not seek to extricate himself from Mid-Hudson until sometime "between October and November

¹² In his response, Cartalemi tried to excuse the lengthy time period of the divestment between 1999 and 2002 (See Response at 17-19), yet never explained his failure to divest after the 1995 indictment put him on notice of DiNapoli's organized crime connections. In direct conflict with his sworn testimony before the Commission that he was aware of DiNapoli's organized crime ties for years, Cartalemi now claims that he had only "had a vague idea that Joseph DiNapoli was affiliated with organized crime." See Response at 15.

2002.”¹³ See 2004 Letter at 3-4. Furthermore, the mortgage with Travis Lane was not refinanced until March 2002 nor was Travis Lane dissolved until April or May of 2002. Notably, these actions did not take place until several years later and only in the few months surrounding Cartalemi’s filing of a new license application with the Commission in July 2002.¹⁴

It is a reasonable inference from this record that Cartalemi was not concerned about doing business with members of organized crime until he had an application pending before the same regulatory body that originally found the issue to be fatal to his prior application. In addition, despite requests from the Commission, Cartalemi has provided no documentation regarding this supposed “divestment” of Mid-Hudson stock other than his own statements – the stock certificates were allegedly “lost.” See Karta Application Exhibit G (affidavit by Cartalemi that the original Mid-Hudson stock certificates could not be found).¹⁵

Moreover, as stated above, Cartalemi has not provided a coherent account of what happened to his stock interest in Mid-Hudson: on several occasions he has claimed that he gifted his interest to his father, while at other times, he has claimed that the interest was gifted to his uncle. See *supra* at 12-13. Both scenarios are equally troubling. By gifting his stock interest to a close family member (whether it be his father *or* his uncle), Cartalemi appears to minimize the Commission’s concerns and demonstrates his willingness to have his family perpetuate business interests with members of organized crime. While claiming to divest himself of his business ties to organized crime members, Cartalemi simultaneously facilitates the continued business relationship of his relatives to the same members.¹⁶ Rather than providing evidence of a clear severing of relations between himself and the DiNapoli, Cartalemi now asks the Commission to approve the

¹³ In other correspondence, Cartalemi stated the date of the divestment was several months earlier – March 18, 2002. See Karta Application Exhibit G. Even under the most charitable view, Cartalemi maintained his business arrangement with a member of organized crime for at least one additional year *after* learning of the Commission’s denial of his application.

¹⁴ Cartalemi claims divestment took a very long time due to financial reasons. See Response at 17-19. Financial considerations, while important, are not controlling in this context. While the Commission certainly understands the Applicant’s reluctance to lose money, the Commission cannot turn a blind eye to the Applicant’s waiting for years for the divestment from his business with a member of organized crime to become sufficiently profitable before he does so. While the Commission will work (and has worked) with applicants who find themselves to be involved in a business relationships with unsavory partners to help them divest themselves in a reasonable time and manner, the delay and calculations of self-interest in this case are inconsistent with the desire to make a clean break with organized crime that the Applicant professes elsewhere.

¹⁵ It does not inspire confidence that the document claimed to have been lost after previous requests for production has now somehow been located.

¹⁶ In his response, Cartalemi claims that his gift of Mid-Hudson stock to his uncle did not demonstrate a “comfort with having his family perpetuate business interest with organized crime” since his uncle’s involvement in Mid-Hudson began *prior* the gift of stock. See Response at 18. The Commission cannot accept Cartalemi’s apparent claim that he did not taint his uncle by the transfer because his uncle was already tainted.

indirect continuation of those direct dealings that the Commission has previously found objectionable.¹⁷ The Commission declines to do so.

Cartalemi's failure to treat this issue seriously is longstanding.¹⁸ Cartalemi, acting as Global, previously asserted in 1999 that his business dealings with Joseph DiNapoli were "de minimus." See Global Denial at 10.¹⁹ The Commission specifically rejected that claim, finding that the "cumulative weight of the evidence ... dispel[led] that assertion." Id. at 10. The Commission further found that "in light of the long history of organized crime's corrupting influence over the waste removal industry in the New York metropolitan area, even minor dealings between a carter and a mobster would call into serious question the carter's ability to meet the character and integrity standards mandated by Local Law 42." Id. at 10.

Cartalemi's explanation regarding how he came to be business partners with Joseph DiNapoli is also troubling. Cartalemi blames his status upon the "unilateral decision" of Louis DiNapoli to transfer a portion of his stock to Joseph in 1985 and that his business relationship with Joseph was not voluntary. See Response at 7, 15. Had Cartalemi been troubled by this supposedly forced partnership, he could presumably have disassociated himself at any time; instead, he maintained that business relationship for more than fifteen years. The Commission expects that licensees to take immediate steps to disassociate themselves from members of organized crime, whether such associations are intentional or inadvertent.

It is worth noting that Cartalemi has offered an explanation concerning only two of the business relationships – Travis Lane and Mid-Hudson - cited in the Global Denial. Cartalemi fails to offer any evidence concerning the status of his twenty-year relationship with Joseph DiNapoli and other business connections. For instance, the Global Denial cited evidence that Cartalemi served as an informal consultant to DiNapoli in connection with a leaf-composting contract in Harrison, New York, and the Hunts Point Recycling transfer station in the Bronx. See Global Denial at 9.²⁰ The denial also cited evidence

¹⁷ In his response, Cartalemi claims that DiNapoli's incarceration since 1995 necessarily ended his business relationship. See Response at 19 (relationship was "merely on paper"). It is reasonable for the Commission to reject the idea that members of organized crime cease conducting business when they enter prison.

¹⁸ Cartalemi continues to downplay his involvement with DiNapoli in his response. See Response at 22. The Commission is nonplussed by the suggestion that "if he were going to become associated with the DiNapolis ... he would have done so by now." Furthermore, the Commission fails to understand Cartalemi's claim that he had no direct dealings with Louis or Joseph DiNapoli, despite the fact that they were business partners. See Response at 8.

¹⁹ In an attempt to minimize his relationship with Joseph DiNapoli, the response provides a misleading cite to the Cartalemi deposition transcript that Cartalemi was only in DiNapoli's company "two or three times." See Deposition at 92-93. However, a fair reading of the transcript demonstrates that the question had directed Cartalemi to provide the number of meetings with DiNapoli for the specific purpose of discussing the composting operation. See Response at 23.

²⁰ Karta claims in response that Cartalemi did not offer explanations about these associations because they were "illusory." See Response at 20. This response is not timely given that the Commission previously made this factual finding in the Global Denial. Regardless, the Global Denial put Cartalemi on notice about the Commission's concerns. His failure to address them is unacceptable. Cartalemi also claimed his

that DiNapoli communicated with Cartalemi on business matters (involving Mid-Hudson as well as other matters) indirectly through family members. Id. The relationship between Cartalemi and DiNapoli is too extensive to be dispelled by providing (inadequate) explanations about two discrete business dealings between them. The Commission is entitled to presume that a leader of an organized crime family does not lightly or casually enter into a lifetime of business with another individual.²¹ The evidence submitted is not sufficient to support Cartalemi's claim that a twenty-year relationship has been completely severed.

Cartalemi ignored the lesson to be learned from his prior experiences before the Commission and, as a result, has not sustained his burden of proof to show that he meets the eligibility standard for a trade waste license.

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. Karta repeatedly claimed, "it would not serve the Commission's purpose to deny Karta's application." See Response at 22. However, the Commission's purpose is to ensure that applicants convincingly demonstrate their fitness to hold a trade waste license. The evidence recounted above demonstrates convincingly that Karta falls far short of that standard.

It is of grave concern to the Commission that the Applicant and its principals have not learned from past behavior. Rather than make a sincere effort to cure their mistakes, they have merely filed a new application under a different corporate form filled with incoherent and contradictory information regarding lifelong business connections to organized crime interests. For the independently sufficient reasons discussed above, the Commission denies Karta's license application.

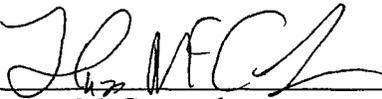
relationship was with Richard Bizenza, not Joseph DiNapoli, despite his deposition testimony that both Bizenza and DiNapoli were using him as a consultant. See Deposition at 84.

²¹ The social relationship with Joseph DiNapoli has remained intact. In 2003, Cartalemi attended a wake for Joseph DiNapoli's daughter. See 2004 Letter at 5. While condolence calls, considered in isolation, do not violate the Second Circuit's delineation of the associational restrictions in Local Law 42, they certainly give context to Cartalemi's assertions that he has severed ties with known members of organized crime. Cartalemi's claim that someone requested his presence other than Joseph or Louis DiNapoli is irrelevant. See Response at 18.

This license denial is effective immediately. Karta Corp. may not operate as a trade waste business in the City of New York.

Dated: September 29, 2005

THE BUSINESS INTEGRITY COMMISSION



Thomas McCormack
Chair



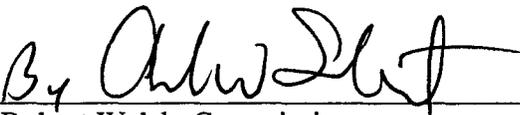
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Jonathan Mintz, Acting Commissioner
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Department of Investigation



Robert Walsh, Commissioner
Department of Business Services



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