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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 APPLICATIONS OF MULTI CARTING, INC. AND MULTI RECYCLING, INC. FOR LICENSES TO OPERATE AS TRADE WASTE BUSINESSES

Multi Carting, Inc. ("Multi Carting") and Multi Recycling, Inc. ("Multi Recycling") (collectively "the Applicants") have applied to the New York City Trade Waste Commission, subsequently renamed the New York City Business Integrity Commission, ("Commission") for licenses to operate as trade waste businesses pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §§16-505(a), 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 law 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 associations with organized crime figures and racketeers and the failure to provide truthful information to the Commission in connection with the license application. Based upon the record as to these Applicants, the Commission finds that the Applicants lack good character, honesty, and integrity, and denies their license applications for the following independently sufficient reasons:

- (1) Michael DiBenedetto, President of Multi Carting and a Principal of Multi Recycling, Knowingly Associated with Anthony Vulpis, a Convicted Racketeer;
- (2) Michael DiBenedetto, President of Multi Carting and a Principal of Multi Recycling, Knowingly Associated with Daniel Todisco, a Convicted Racketeer;

- (3) Michael DiBenedetto Provided Misleading and Contradictory Information to the Commission Regarding his Industry Ties;
- (4) Michael DiBenedetto Knowingly Associated with Members of Organized Crime and Provided False and Misleading Information to the Commission Regarding his Association with Organized Crime Figures;
- (5) The Applicants Did Not Cooperate with the Commission in that the Applicants Repeatedly and Knowingly Failed to Provide Documents Required by the Commission Pursuant to Its Licensing Investigations.

I. BACKGROUND¹

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only 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).

¹ While the Applicants concede that the factual recitation and historical background of the carting industry is “significant to understand and explore the Commission’s mandate and operations,” they emphasize that neither of the Applicants nor their principals is referred to in this section. See Applicants’ Response to the Commission Staff’s denial recommendation (“Response”) at 2. This brief recounting of the history of the entrenched corruption in the carting industry and efforts to eliminate it is included to explain how the Commission construes the fitness standard of good character, honesty and integrity in the context of the carting industry. It provides essential background for the Commission’s assessment of the Applications and it does not unfairly prejudice the Applicants in any way.

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 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 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.

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 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. 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 a competitor from bidding on a "Vibro-owned" building, 200 Madison Avenue in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution 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.

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.

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a \$1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from \$250,000 to \$750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the New York City carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it.

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 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 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 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. 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 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 New York City 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 have followed.

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 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, 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 "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." 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 remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(1). The Applicant holds 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, 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 APPLICANTS

Multi Carting was incorporated on February 5, 1991. See Multi Carting License Application ("MC Lic. App.") at 3, 4. Michael DiBenedetto ("DiBenedetto") has been the president and sole owner of Multi Carting since June 1992. Id. at 5. Yolanda Burgan ("Burgan") is a principal of Multi Carting, whose application identifies her as its "office manager" since June 1992.² Id. at 5. Burgan has also identified herself as an "Adm VP" of Multi Carting.³

Multi Recycling was incorporated on November 22, 1994. See Multi Recycling License Application ("MR Lic. App.") at 4. Burgan has been the president and sole owner of Multi Recycling since December 1995. Id. at 5.⁴ DiBenedetto is a principal of Multi Recycling, whose application identifies him as its "sales manager" since December 1995.⁵ Id. at 5.

For all intents and purposes, Multi Carting and Multi Recycling are one entity and will be treated as such in this decision.⁶ Both Applicants were originally located at 180

² The license application of Multi Carting is silent as to who owned and operated the company from its inception in February 1991 until June 1992. The Applicants attempted to clarify this omission in their response by stating that DiBenedetto was the president and sole owner since inception, that Multi Carting began operations in June 1991 and that the references to 1992 were typographical errors. See Response at 4, Exhibit B at 2.

³ See Letter from Multi Carting to the Trade Waste Commission dated July 30, 1997.

⁴ Oddly, although Burgan is Multi Recycling's nominal president, she signed correspondence for the company in the capacity of "office manager." See October 12, 1996 Letter. In their response, the Applicants claim this was Burgan's error. See Response Exhibit B at 2.

⁵ The license application of Multi Recycling is silent as to who owned and operated the company from its inception in November 1994 until December 1995. However, it does state that Burgan acquired her ownership interest when she "started [the] new company." MR Lic. App. at 5. The Applicants attempted in their response to clarify this discrepancy by stating that Burgan was the owner from inception, that Multi Recycling began operations in December 1994 and that the references to 1995 were typographical errors. See Response at 4, Exhibit B at 3.

⁶ In their response, the Applicants state that they "consider themselves separate and distinct corporate entities with separate and distinct business practices," yet provide no facts to support such conclusory assertions. See Response at 2-3, 19. Despite this claim, the Applicants concede that they have a

Varick Ave., Brooklyn, New York. MC Lic. App. at 1; MR Lic. App. at 1. Both Applicants moved to and are currently located at 9614 Ditmas Avenue, Brooklyn, New York.⁷ Both Applicants share the same phone number of (718) 495-7503 and the same facsimile number (718) 495-6572.⁸ Both Applicants have common principals – DiBenedetto is the president of Multi Carting and the sales manager of Multi Recycling, while Burgan is the president of Multi Recycling and the office manager of Multi Carting. Both Applicants also share office space and office staff. MC Lic. App. at 11; MR Lic. App. at 10. Both Applicants use the same vehicles: Multi Recycling rents vehicles from Multi Carting when needed. MC Lic. App. at 11; MR Lic. App. at 10. Both Applicants submitted identical customer lists with their applications. See infra fn. 21. Although they have separate accounts, both Applicants have checking accounts at the same bank.⁹ MC Lic. App. at 103; MR Lic. App. at 53. The fact that Multi Carting is a garbage hauler and that Multi Recycling is a construction and demolition debris hauler does not justify treating them separately in this denial. See Response at 3.

The license applications provide further evidence that the companies are basically the same entity. Question 6(j) of the license applications asks “Has the applicant business or any of its past principals ever associated with any person that you knew, or should have known was a member or associate of an organized crime group?” MC Lic. App. at 99; MR Lic. App. at 49. Both Applicants submitted identical nine-paragraph statements describing Multi Carting’s and DiBenedetto’s involvement in the Kings and Queens County Trade Waste Associations. MC Lic. App. at 101; MR Lic. App. at 50.

Similarly, the Disclosure Form that DiBenedetto submitted with Multi Carting’s License Application (“DiB MC Disc. Form”) and the Disclosure Form that DiBenedetto submitted with Multi Recycling’s License Application (“DiB MR Disc. Form”) not only contain identical information, they are exact photocopies of each other. See DiB MC Disc. Form at 1-19 and DiB MR Disc. Form at 1-19. The Disclosure Forms that Burgan submitted (“Burg MC Disc. Form” and “Burg MR Disc. Form”) are also exact photocopies of each other. See Burg MC Disc. Form at 1-18; Burg MR Disc. Form at 1-18. DiBenedetto did not make the few changes necessary to tailor the Disclosure Form to the appropriate Applicant.¹⁰ Burgan acted the same way.¹¹ The principals of these two

“symbiotic relationship” and share their office space, storage yard, storage depot, repair facilities and vehicles and conduct their banking at the same financial institution. Id. at 3-4, Exhibit B at 3.

⁷ See Facsimile Cover Sheet from Multi Carting dated December 28, 2000 and Facsimile Cover Sheet from Multi Recycling dated January 16, 2001.

⁸ Id.

⁹ Although Multi Recycling’s license application states that Burgan is the only person authorized to sign checks on behalf of the company, DiBenedetto has signed at least one Multi Recycling check – one made payable to the NYC Trade Waste Commission. MR Lic. App. at 53; Copy of MR Check #1333. The Applicants concede that DiBenedetto signed the check, although he was unauthorized to do so. See Response Exhibit B at 3.

¹⁰ In Schedule A (Other Trade Waste Interests) on both Disclosure Forms, DiBenedetto lists Multi Recycling. See DiB MC Disc. Form at 9; DiB MR Disc. Form at 9. This obviously makes no sense in connection with the Multi Recycling application. As a result of relying on photocopies, DiBenedetto omits Multi Carting from the MR Disc. Form making it materially misleading. Furthermore, DiBenedetto certified both Disclosure Forms as the President of Multi Carting. DiB MC Disc. Form at 20; DiB MR Disc. Form at 20. Thus, DiBenedetto himself does not distinguish between the Applicants and treats them

Applicants treat the companies as interchangeable, and there is no apparent reason why the Commission should not do so as well. Accordingly, it is appropriate to treat the two companies alike when evaluating their fitness for licensure.

III. DISCUSSION

The Applicants filed with the Commission applications for trade waste removal licenses on August 29, 1996. The Commission's staff has conducted an investigation of the Applicants. On May 30, 2002, the staff issued a 37-page recommendation that the applications be denied. On July 8, 2002, the Applicants submitted a joint response consisting of 20 pages and 2 exhibits. The Commission has carefully considered both the staff's recommendation and the Applicants' response. For the independently sufficient reasons set forth below, the Commission finds that the Applicants lack good character, honesty, and integrity and denies their license applications.

A. Michael DiBenedetto, Multi Carting's President and a Principal of Multi Recycling, Knowingly Associated with Anthony Vulpis, a Convicted Racketeer.

DiBenedetto has been a New York City carter since 1991, but has long been associated with the carting industry. As the owner of a trucking company that sold refuse equipment, DiBenedetto established business relations with numerous New York City carters during the 1980's. DiBenedetto Deposition Transcript ("DB Dep. Tr.") at 81-86, 102, 111, 117, 125, 497-99. Thus, according to DiBenedetto, he "knew the carting business" and the people in it even before he purchased his route. *Id.* at 166, 198, 209, 213.

DiBenedetto was also involved in the local trade waste associations.¹² DiBenedetto testified that he joined the KCTW in 1991 and the QCTW in 1992. DB Dep. Tr. at 165-66; but see MC Lic. App. at 16.¹³ DiBenedetto also attended meetings of the

as one and the same. In their response, the Applicants attribute the similarities between the applications to the fact that they were filled out without the advice of counsel. See Response at 4.

¹¹ In Schedule A (Other Trade Waste Interests) on both Disclosure Forms, Burgan lists Multi Recycling. See Burg MC Disc. Form at 8; Burg MR Disc. Form at 8. As a result, Burgan omits Multi Carting from the MR Disc. Form making it materially misleading. Furthermore, Burgan certified both Disclosure Forms as the Office Manager of Multi Carting. Burg MC Disc. Form at 18; Burg MR Disc. Form at 18. Thus, Burgan, too, does not distinguish between the Applicants and treats them interchangeably. In their response, the Applicants attribute the similarities between the applications to the fact that they were filled out without the advice of counsel. See Response at 4.

¹² The Commission does not base its denial decision on the Applicants' status as general members of the local trade associations. See Response at 10. DiBenedetto's involvement in the trade associations provides necessary background regarding his contacts with organized crime.

¹³ This testimony is at odds with the representation in Multi Carting's license application that it joined both associations in 1992. MC Lic. App. at 16. The Applicants responded that DiBenedetto joined both associations in 1991, in contradiction to the application and the deposition. The response further states that

GNYSW, although he was not a member. MC Lic. App. at 16, 101. DiBenedetto claims he first joined a trade waste association because he knew nothing about the carting business and applicable DCA regulations and believed that he could "learn and be able to meet people" through his association membership. DB Dep. Tr. at 167. He conceded that he understood union agreements, DCA regulations, and DCA forms to apply uniformly throughout different boroughs, yet claims he joined and paid dues to a second association, the QCTW, because "every borough is a different garbage business realistically. I couldn't pick up in Manhattan. I wouldn't even know how to start picking up the big buildings." *Id.* at 168-69.¹⁴ In their response, the Applicants now claim that they joined two different associations so they could conveniently attend meetings near the office as well as near the route location. See Response Exhibit B at 5.

DiBenedetto remained a member of the KCTW and the QCTW until May 1996, almost a full year after the associations were indicted.¹⁵ *Id.* at 16. In 1995, DiBenedetto was the sole nominee for and was elected President of the Council of Trade Waste Associations, Inc., also known as the Sanitation and Recycling Industry of New York, Inc. ("SRI"), which the Manhattan District Attorney named as an unindicted co-conspirator in its sweeping June 1995 indictment.¹⁶ DB Dep. Tr. at 246, 344, 409, 466. SRI and DiBenedetto served as the lead plaintiffs in the industry's ensuing unsuccessful challenge to the constitutionality of Local Law 42. See SRI, 107 F.3d 985.

In 1988, much of New York's private carting industry was controlled by Anthony Vulpis and Angelo Paccione. United States of America v. Paccione, et al., 949 F.2d 1183, 1186 ("Paccione"). Paccione and Vulpis were alleged to have strong ties to organized crime. *Id.* at 1192; see also, e.g., *Newsday*, June 13, 1990, Part II, p. 8. They and their companies generated income of roughly \$23 million a year. *Id.* at 1186. DiBenedetto has known and regularly associated with Anthony Vulpis for 25 years. DB Dep. Tr. at 22, 97.

In June 1989, Anthony Vulpis, Angelo Paccione, other individuals, and corporate defendants in which Vulpis held an interest, were indicted on racketeering and mail fraud charges in connection with their fraudulent operation of an enormous illegal landfill on Staten Island. Paccione at 1187. At least 550,000 cubic yards of medical waste, asbestos, hazardous material, and other refuse was dumped at the 110-acre site over a four-month period. *Id.* at 1188. The case has been described as the worst environmental

the error in the application was a typographical error, yet offers no explanation for the error at the deposition. See Response Exhibit B at 4. In any event, the discrepancies do not appear to be material.

¹⁴ This implausible explanation would have been more cogent had DiBenedetto actually joined the Manhattan Trade Waste Association (i.e., the GNYSW).

¹⁵ In their response, the Applicants attempt to justify their post-indictment membership of the associations on the basis that "they were indicted but not convicted. Innocent until proven guilty." See Response Exhibit B at 5. The Commission finds that the Applicants' disregard for the allegations of organized crime corruption in the indictment reflects negatively on their fitness for licensure. It is pertinent to note in this context that DiBenedetto continued his close friendship with Vulpis *subsequent* to Vulpis' conviction and sentence.

¹⁶ The indictment alleged that "[t]he cartel structured its criminal activity through the four defendant [trade waste] associations [and] a nondefendant association," i.e., SRI. See Indictment at 3-4. DiBenedetto testified that Pecoraro and the Association leased offices to SRI rent-free. DB Dep. Tr. at 467.

crime ever in the City of New York. See Statement of NYC Sanitation Commissioner Brendon Sexton, quoted in Newsday, June 13, 1990, p.8.

Vulpis' indictment, trial, conviction, and ties to organized crime were widely publicized.¹⁷ See, e.g., The New York Times, June 16, 1989, B2, col. 5; Newsday, June 13, 1990, Part II, p. 8; Newsday, June 16, 1989, p. 19; The Record, June 16, 1989, p. A03; The New York Times, November 28, 1990, p. B1, col. 2; The New York Times, August 24, 1991, p. 27, col. 2.; Newsday, September 12, 1989, p. 30; New York Times, September 12, 1989, Section B, p. 3, col. 1; The Associated Press, July 18, 1989. DiBenedetto testified at his deposition that there were "all kinds of articles about this horrendous thing," and he recalled specifically reading news articles about the indictment. DB Dep. Tr. At 74-75. DiBenedetto further testified that he had seen front-page news photographs depicting a trailer with what was reportedly blood running from it, the illegal landfill, and FBI agents in protective suits at the site. Id. at 75. DiBenedetto was present for Vulpis' arraignment, part of his trial testimony, and Vulpis' sentencing. Id. at 65-66, 313. He was also present for the testimony of Sal Spinelli. Id. at 33. He stated that he attended the proceedings because he is Vulpis' friend and because, as the putative purchaser of Vulpis' company, he wanted to learn as much as possible about the history of the business. Id. at 33, 69.

In September 1989, prior to Vulpis' trial, his co-defendant, Fred Weiss, who government investigators expected might testify against the other defendants, was found dead, having been shot in the back of the head at close range. Paccione, 949 F.2d at 1192. Evidence presented in support of a government motion at trial asserted that Paccione and Vulpis were associated with organized crime, that Weiss' murder probably had been arranged by one or more of the defendants, that Vulpis and his associates had threatened various persons, and that a government witness had received a middle-of-the-night anonymous call informing him that he would remain safe so long as he "remembered nothing." Id. at 1192-1193. The Weiss murder and its organized crime implications were well covered by the press.¹⁸ See, e.g., New York Times, September 12, 1989, Section B, p. 3, col. 1; Newsday, September 12, 1989, p. 30; UPI, June 8, 1990; Newsday, June 13, 1990, Part II, p. 8; New York Times, November 28, 1990, p. B1, col. 2. A confidential FBI source subsequently confirmed that Weiss's murder was, in fact, a mob hit carried out on the supposition that Weiss would "flip" or cooperate with the government in the landfill case. See Salvatore Gravano 302 dated November 14, 1991; June 20, 2002 press release by the U.S. Attorney's Office for the Southern District of

¹⁷ The Applicants object to the staff's inclusion of this background history regarding Vulpis' trial, conviction and sentencing as prejudicial and irrelevant. See Response at 7. The Commission disagrees. In light of Vulpis' long-standing friendship and business relationship with the Applicants' principal, DiBenedetto, the character of this convicted racketeer is directly related to the Applicants' fitness for licensure.

¹⁸ DiBenedetto concedes that he learned of Paccione's organized crime association through the Paccione/Vulpis case. See DB Dep. Tr. at 499 (Paccione was connected to organized crime because "he was indicted and convicted with Anthony Vulpis and it was mentioned that he was involved with organized crime.") Yet he claims that he never heard or read that Anthony Vulpis was affiliated with organized crime. DB Dep. Tr. at 53. His claim that he never heard that Vulpis was alleged to have close ties to organized crime is not credible.

New York (announcing the indictment of several members of the Gambino organized crime family for several racketeering acts, including the murder of Frederick Weiss).

On June 8, 1990, after a 12-week trial, both Vulpis and Paccione were convicted of racketeering and mail fraud for their role in operating the illegal landfill. United States District Court Judge Constance Baker Motley described the case as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." NYLJ, November 25, 1991, at 1 (quoting Judge Motley). In lieu of forfeiture, fines, and restitution, Vulpis, Paccione and the corporate defendants entered into a court-approved agreement to pay the government \$22 million within ninety days. Four months later, the defendants had made no payment whatsoever. On October 3, 1990, Judge Motley concluded that the defendants had fraudulently misrepresented to the government and to the court that they could produce the \$22 million dollars, describing it as "the biggest fraud. . . on the United States Government that [she had] seen since [she had] been on the bench." Paccione, 949 F.2d at 1206 (quoting 10/3/90 Sentencing Tr., at 57). Paccione and Vulpis each were sentenced to 12 years and seven months in prison, to be followed by a three-year term of supervised release. Id. at 1186.

DiBenedetto and Anthony Vulpis have been friends for over 25 years, since DiBenedetto's parents purchased Vulpis' parents' home. DB Dep. Tr. at 22; Response at 5 (uncle's house). DiBenedetto is also a friend or acquaintance of other members of the Vulpis family who worked in the carting industry. He has known Anthony's father, Michael Vulpis, for over 20 years. Id. at 96-97. Michael Vulpis stopped by DiBenedetto's office weekly. Id. DiBenedetto has known Anthony's brother, Dominick, for approximately 10 years and his uncle, Danny Vulpis, Sr., and nephew, Danny Vulpis, Jr., for approximately 20 years. Id. at 101-02, 109, 112. He knows the name of each man's wife and the names and ages of Anthony's children and nephew. Id. at 110-117. Over the years, DiBenedetto has performed what he jokingly described as "family counseling," and has been asked to assist with or provide advice on family conflicts, and medical, business, financial, and legal issues. Id. at 103-109.

His friendship with Anthony is well-known in the industry. James Failla, the "business agent" for the GNYTW and a Gambino capo himself, asked DiBenedetto how Vulpis was doing in jail.¹⁹ DB Dep. TR. at 51. DiBenedetto testified "it was common knowledge that I visited Anthony and, you know, and that I spoke to him." Id. at 546.

DiBenedetto was well aware that Dominick, Michael and Anthony Vulpis were all permanently banned from the New York City trade waste industry. Id. at 292.

Shortly after Vulpis was incarcerated in 1990, DiBenedetto purchased Vulpis' route, which he now operates as Multi Carting. DB Dep. Tr. at 70-73, 517-18. Vulpis had operated the route as All County Sanitation under a management agreement with its

¹⁹ The Applicants attempt to draw the distinction in their response that DiBenedetto responded to these inquiries *prior* to the formation of the Commission. See Response at 7. However, the Commission is permitted to examine *all* of the evidence in the record that reflects on the application of the fitness standard, not just evidence that post-dates the existence of the Commission.

prior owner, Frank Capalbo, but had not formally completed the purchase at the time of his conviction. Id. According to DiBenedetto, when All County was placed under monitorship²⁰ after Vulpis' indictment, DiBenedetto purchased Vulpis' route directly from Capalbo.²¹ Id. However, he assumed Vulpis' notes for monies Vulpis owed his creditors for equipment. Id. at 197. Multi Carting also satisfied an \$11,000 fine for unlicensed operation on the Capalbo route,²² and a \$42,520 debt owed to the City of New York for tipping-fees which had been incurred in Frank Capalbo's name. Id. at 328-329, 517-18; DCA CAMIS Violations Report; January 10, 1992 Stipulation of Settlement, DCA File #483188.²³ During his deposition, DiBenedetto routinely referred to the route as Vulpis' route. See, e.g., Id. at 23, 51.²⁴ At the closing, DiBenedetto was represented by the same attorney who represented Vulpis' interests in the sale of the route.²⁵ Id. at 213, 214, 216, 222.

²⁰ The Applicants respond that other governments entities had previously approved of DiBenedetto's background and character in other situations: the court-appointed monitor that approved the sale of the Capalbo route and the Federal prosecutors who approved DiBenedetto's cooperation with the Federal Government on a matter involving the concrete industry. See Response at 8. However, the Commission's staff never alleged that there was anything improper about the sale itself and only included such information as background to explain the nature of the DiBenedetto/Vulpis relationship. In addition, DiBenedetto's cooperation on matters which pre-date Vulpis' conviction is irrelevant to the issue of whether or not DiBenedetto knowingly associated with a convicted racketeer.

²¹ Both Multi Carting's and Multi Recycling's license applications include identical customer lists, which are printed on "Frank Capalbo" letterhead. MC Lic. App. at 38-59; MR Lic. App. at 25-37. Multi Recycling's application states that "Capalbo Inc. sold to Multi Carting the attached list of work" on June 1, 1992. MR Lic. App at 24.

²² The Applicants claim in their response that the payment of this fine did not inure to the benefit of Vulpis. See Response at 8. However, the fact that Multi Carting engaged in unlicensed carting and was found guilty of an administrative violation still reflects adversely on its fitness for licensure.

²³ On June 30, 1988, the New York City Board of Estimate approved an increase in tipping fees for the use of Department of Sanitation disposal facilities. See Affidavit for Judgment of Confession, Exhibit B to Stipulation and Order dated December 19, 1991, DCA File #483188. The increase was stayed by court order in an action on behalf of one of the trade associations. Id. Capalbo and/or Vulpis continued to dump at the previous lower rate for the duration of the stay. Id. When the stay was lifted and the fee increase upheld, the affected carters, including Capalbo and/or Vulpis, became liable for arrears which, in this instance, amounted to \$42,520. Id. Vulpis entered into a management agreement with Capalbo in January 1989. See Purchase and Sale Agreement, dated June 15, 1991, at 8, ¶5.6. A majority of the arrears were incurred when Vulpis serviced the route as All County Sanitation. Moreover, the purchase and sale agreement between Capalbo and DiBenedetto states that purchaser assumed no obligations, debts or liabilities incurred by the seller. Nothing in the sale transaction record suggests that the parties utilized any portion of the tipping fee arrears debt as an offset to the total route purchase price of \$3,450,000. Consequently, it can be reasonably inferred that Vulpis or his company was the primary beneficiary of DiBenedetto's assumption of this obligation.

²⁴ At various points during his testimony, DiBenedetto gave conflicting accounts of when he first determined to pursue the purchase. For example, DiBenedetto initially testified that he had attended Vulpis' trial, in part, because he planned to buy the business and wanted to learn as much as he could about its history. DB Dep. Tr. at 33-34, 69; 206. Elsewhere, DiBenedetto testified that it wasn't until after Vulpis had already been incarcerated that John Meglio, Vulpis' attorney, "suggested" to him that he purchase the route. DiBenedetto stated that he attended a meeting with Tommy Milo, a Gambino family associate, and Meglio to explore Milo's possible purchase of the route. According to DiBenedetto, he did not consider the purchase for himself until after Milo had already passed up the opportunity. Id. at 216.

²⁵ In their response, the Applicants dispute that fact that DiBenedetto used Vulpis' lawyer, John Meglio. See Response at 9, Exhibit B at 6. However, this is contradicted by DiBenedetto's sworn testimony at his deposition.

Subsequent to his incarceration, Vulpis continued to reap benefits from the route by virtue of its sale to DiBenedetto. For example, Multi Carting expended \$25,000 in legal fees in an effort to secure Vulpis' release from prison. Id. at 310.²⁶ Although DiBenedetto testified that this expenditure was recorded in Multi Carting's books as a "loan," he conceded that no written agreement or other document memorializes the "loan." Id. at 456. In addition, pursuant to a request Vulpis made of DiBenedetto when he visited him in prison, the Applicant began sending Vulpis' wife a \$250 postal money order every week. Id. at 296, 456. These payments also were ostensibly a "loan" for which no written agreement existed because, according to DiBenedetto, "you can't write in prison."²⁷ Id. at 296, 456. In addition, Multi Carting's office manager, Yolanda Burgan, regularly assisted Vulpis with personal, family and legal matters during the normal course of her workday at Multi Carting. Burgan sent birthday cards, gifts, and flowers on Vulpis' behalf and at DiBenedetto's personal expense.²⁸ Id. at 20-21, 294-295, 457-58, 546. She updated Vulpis on his son's and his father's medical conditions, sent him news articles and court decisions, and assisted him administratively on matters relating to his union pension. Id. Vulpis regularly telephoned Burgan at Multi Carting's offices. Id. at 294, 546.

During Vulpis' incarceration, he and DiBenedetto spoke weekly by telephone and DiBenedetto has visited Vulpis in prison. Id. at 20-21, 77, 546. Prison telephone records reveal that the two often spoke several times each week. DiBenedetto claimed under oath that he never discussed industry matters with Vulpis when he visited him in prison, ostensibly because it was an "open wound" for Vulpis, and because Vulpis' codefendant, Angelo Paccione, was incarcerated at the same facility and allegedly provided Vulpis with information about the industry. Id. at 281-284. DiBenedetto stated:

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- Q: With whom did you discuss your anticipated purchase of All County or Frank Capalbo?
A: My lawyer, John Meglio.
.....
Q: Whom did Mr. Meglio represent in the transaction?
A: He represented me.
Q: Who represented the seller?
A: Frank Capalbo? Stu Salinger, I believe his name was.
Q: Was there any other counsel involved in the transaction?
A: No.

See Dep. Tr. at 211, 222.

²⁶ In addition, DiBenedetto individually contributed \$5,000 towards Vulpis' initial defense. DB Dep. Tr. at 298.

²⁷ Yet, later in the same deposition, DiBenedetto testified that he received written letters from jail from Frank Allocca. DB Dep. Tr. at 316. In response, DiBenedetto insisted that there was no contradiction here because inmates could not write during *visits*. See Response Exhibit B at 7. Yet, DiBenedetto never obtained a loan agreement from Vulpis *in the mail* either. DiBenedetto further makes the puzzling argument that his testimony about Vulpis being unable to write in prison was to be taken not "literally, but figuratively." Id.

²⁸ The Applicants respond that the sending of cards, gifts, flowers and sums of money to Mrs. Vulpis were the only way that DiBenedetto could repay the "moral obligation" he owed to Vulpis. See Response at 7. The Applicants further note that such acts were not prohibited by the existing laws and regulations in effect at the time. The Commission finds that these acts, despite their apparent legality, still reflect negatively on the Applicants' fitness for licensure.

I keep it, I don't answer questions. . . I just try to avoid every – if he has questions, there's nothing to discuss, there's absolutely nothing. It's a bad memory, it's a bad issue, and he's just not enthused about talking about it.

Id. at 282. Yet he conceded that they discussed industry matters over the phone concerning Vulpis' old route, the Trade Waste Commission and SRI. Id. at 23-24.

The staff has reviewed thoroughly eight volumes of transcripts of approximately 40 telephone conversations between Vulpis and DiBenedetto, recorded between 1996 and 1997.²⁹ In virtually every conversation, the two discuss the carting industry in detail and with apparent enthusiasm.³⁰ For example, in just one volume, which is representative of others reviewed by the staff, DiBenedetto and Vulpis discussed: Vulpis' illegal landfill case and related ongoing legal proceedings; Angelo Paccione; DiBenedetto's anticipated purchase and permitting of Michael Vulpis' transfer station; speculation about who may be cooperating with the ongoing criminal investigation of the carting industry; indicted and convicted carters; Local Law 42 and related regulations and litigation; the Trade Waste Commission waiver and licensing process; the status of various carters' waiver and license applications; Multi Carting's route and its value; and route sales of New York carters. Tr. of Tape #12000 at 5, 6, 13, 15-16; 18, 21-25, 27, 31- 32, 34-35, 39, 44-45, 47-55, 60-70, 81-84. Conversations roughly contemporaneous to DiBenedetto's assertion that he did not discuss the carting industry with Vulpis included discussions of the Trade Waste Commission, convicted carters and new industry regulations. See Tr. of Tape #12437.

In a telephone conversation in 1997, Vulpis gave DiBenedetto advice about obtaining work, stating “. . . just go after the big one, you know? I mean, they'll take a cut. What the hell. You give them service. They don't care.” Tr. of Tape #12429 at 46. Vulpis then advised DiBenedetto about a prospective account in Westchester County:

VULPIS: Well there's this account – I meant – I wanted to tell you something. There's an account up in Peekskill, okay.

[Vulpis then provides DiBenedetto driving instructions]

DIBENEDETTO: Yeah, you used to do it.

²⁹ The tapes and transcripts referenced in the decision as well as other documentation relied on by the Commission staff in the recommendation (including DiBenedetto's deposition transcript) were all available for inspection and/or copying by the Applicants. See Response at 12.

³⁰ The Applicants claim in their response that the tapes contained no evidence of *criminal* activity. See Response at 9. However, the absence of aggravating circumstances does not mitigate the Applicants' association with convicted racketeers.

VULPIS: Well, he does it now, you know? You know? So there's this big complex over there where the Coca-Cola thing is. There's a UPS joint. A whole bunch of things over there... So good luck..

Id. at 47-48.³¹

Vulpis' and DiBenedetto's telephone conversations also revealed that they exchanged industry-related documents. For example, in one conversation, DiBenedetto thanked Vulpis for "saving the day" by supplying him with documents that DiBenedetto believed would be helpful to Vulpis' defense in a pending contempt proceeding arising out of the Paccione case.³² Tr. of Tape #12000 at 51. In another conversation, Vulpis asked DiBenedetto to locate and obtain a copy of what he believed might be new, potentially exculpatory documentary evidence relating to the presence of hazardous materials at the illegal landfill for which Vulpis was incarcerated. Id. at 28.

Other conversations disclosed that in 1995 Vulpis granted DiBenedetto Power of Attorney to execute documents and otherwise act in his stead in legal matters relating to assets derived or held by Vulpis or his corporate defendants in the illegal landfill case.³³ Id. at 72, 85, 90. In another representative conversation, Vulpis told DiBenedetto "we're in close to getting the permit [for the transfer station that DiBenedetto was purchasing from Michael Vulpis]." Tr. of Tape #12000 at 21. Later, in a reference to the illegal landfill, Vulpis asked DiBenedetto whether there was some "new kind of environmental report done on *our* property?" Id. at 28 (emphasis added). Describing a conversation with another individual about the illegal landfill case for which Vulpis was incarcerated, DiBenedetto stated "I said 'let's see if there's someone *we* can hire just to go to DEP,'" to which Vulpis replied "well, fine then...[y]ou know it's what *we* could use." Id. at 46-47 (emphasis added). Later in the same conversation, Vulpis asked "how'd *we* do with the [transfer station] permit?" and tells DiBenedetto, "*let's* get in line so *we* can get your waiver and then sell the business." Id. at 59, 70 (emphasis added). Discussing hazardous substances at the illegal landfill, DiBenedetto stated, "see ...if the DEP reports show up Anthony and *we* don't have the evidence that *we* need," and "now it's time that if *we* can prove that it's not, then you know it's - - ." Id. at 49-50 (emphasis added). In another conversation, after discussing what they believe will be a successful effort to have Vulpis' sentence reduced, DiBenedetto adds, "Yeah. Plus, ask them for some money-back. Tell them *we* need money." Tr. of Tape #12429, at 70 (emphasis added). Anthony

³¹ This and other industry-related contacts between Vulpis and DiBenedetto also appear to violate the terms of Vulpis' sentence, which prohibited him "from participating, in any form, in the private waste carting industry." October 3, 1990 Sentencing Memorandum of Judge Motley at 27-28. These phone conversations contradict the Applicants' claim in their response that the conversations were "casual" conversations about the "industry as a whole" and that they did not refer to Multi Carting's operations or its customer accounts. See Response at 9.

³² In their response, the Applicants claim that it was actually Vulpis thanking DiBenedetto for sending Vulpis a newspaper article. See Response Exhibit B at 7. However, the transcript of the tape clearly rebuts this claim.

³³ In their response, the Applicants claim that DiBenedetto acted as power of attorney at the request of the trustee of Rosedale Carting and Judge Motley. See Response Exhibit B at 8. However, DiBenedetto could not have legally acted as Vulpis' power of attorney without Vulpis' consent.

responded, "No, we do that, listen to me, we do that in the second phase." Id. (emphasis added). DiBenedetto replies, "Oh, on the second phase okay. I like that idea." Id.

Knowing association with a convicted racketeer constitutes grounds for the denial of a carting license under Local Law 42. See Admin. Code §§ 16-509(a)(v). The Second Circuit expressly upheld this basis for denial against constitutional challenge by SRI. See SRI, 107 F.3d at 998. In SRI, the Court held that the Commission may properly consider associational conduct in evaluating an applicant's good character, honesty and integrity when that conduct occurs "in connection with the waste disposal business." Id. Considering such associations, furthers the Commission's "compelling interest in combating crime, corruption and racketeering -- evils that eat away at the body politic." Id.

DiBenedetto's contacts with Anthony Vulpis, a convicted racketeer with widely publicized ties to organized crime, fall squarely within the standards enunciated by the Second Circuit. Those contacts are dominated by discussions of virtually every aspect of the waste disposal business. Moreover, subsequent to Vulpis' incarceration for racketeering activity, DiBenedetto and Vulpis each continued to benefit from the other's industry-related knowledge and participation. Even though Vulpis was the defendant in the contempt proceeding, *DiBenedetto* expressed his gratitude to *Vulpis* for "saving the day." Tr. of Tape #12000 at 51. Vulpis benefited from DiBenedetto's purchase of his route, which enabled the Applicant -- not DiBenedetto personally -- partially to finance Vulpis' unrelenting attempts to reduce his prison sentence for industry-related crimes. The Applicants -- not DiBenedetto personally -- also continued to send money to Vulpis' wife. In addition, Vulpis reaped the benefits, personally and in connection with his continued ties to the industry, of the work of Multi Carting's paid employee and Multi Recycling's president, Yolanda Burgan. Finally, the fact that Vulpis granted DiBenedetto Power of Attorney to act in his stead in a waste-business-related legal matter arising out of the Paccione case amounts to a patent delegation of DiBenedetto as Vulpis' alter ego. Clearly, DiBenedetto's contacts with Vulpis contradict the Applicants' response that "[w]ith the creation of the TWC and the filing of an application for a Trade Waste Removal License, Michael DiBenedetto's contacts with any one [sic] associated or thought to be associated with organized crime were kept to a minimum." See Response at 15.

Obviously, these improper contacts took place in connection with the waste disposal business. But they are particularly disturbing in light of the prominent leadership role DiBenedetto held in the industry as President of SRI.³⁴ Inasmuch as the SRI Court expressly held that the Commission may "penalize" (SRI, 107 F.2d at 998) a carter for improper knowing associations with convicted racketeers that occur in connection with the waste disposal business, DiBenedetto's association with Vulpis amply supports the denial of both license applications.

³⁴ The Second Circuit rendered its decision in SRI on September 9, 1996. Telephone conversations between DiBenedetto and Vulpis in mid-1997 continued to revolve around New York City's carting industry. See Tr. of Tape #12435 at 48 (discussing, inter alia, the Trade Waste Commission's July 1997 denial of carter Raymond Polidori's license to operate as a trade waste business).

In their response, the Applicants concede that DiBenedetto had a long-standing friendship with Vulpis, but deny that there was any business aspect to the friendship. They attempt to explain the innocent nature of the relationship by describing it as DiBenedetto's reciprocating the extraordinary year-long assistance Vulpis provided to DiBenedetto after DiBenedetto's incapacitation. See Response at 6. The Applicants claim that the friendship (which continued through Vulpis' trial, conviction and sentence) should not negatively impact DiBenedetto's good character, honesty and integrity since DiBenedetto was merely "repaying a debt of gratitude." See Response at 9. While loyalty to a friend is an admirable trait, DiBenedetto's decision to remain loyal to a convicted racketeer renders him ineligible for a trade waste license. Incredibly, DiBenedetto further claims in his response that he did not feel that his continued involvement (post-Local Law 42) with Vulpis ran afoul of the law because Vulpis' involvement with organized crime took place *prior* to Local Law 42 and his incarceration. DiBenedetto felt that since Vulpis was no longer in the trash removal business (due to his incarceration) that "his past affiliations were no longer valid." See Response Exhibit B at 8. This absurd position is further evidence that DiBenedetto neither understands nor meets the fitness standard and is unworthy of licensure.

The Commission hereby denies the Applicants' license applications on this independent ground.

B. Michael DiBenedetto, Multi Carting's President and a Principal of Multi Recycling, Knowingly Associated with Daniel Todisco, a Convicted Racketeer.

DiBenedetto has also knowingly associated with Daniel Todisco ("Todisco"), convicted racketeer and former Vice President and board member of the KCTW. Prior to Todisco's conviction, DiBenedetto met Todisco at the KCTW Association. They saw each other several times a month, had frequent dinners after association meetings and even socialized with each other's families. DB Dep. Tr. at 25-26. DiBenedetto and Todisco traveled together to other states to attend various auto races. Id. at 29. In addition, when DiBenedetto could not get financing to buy a truck, Todisco agreed to purchase it and leased it to DiBenedetto with a "buyout at the end of the lease for a dollar." DB Dep. Tr. at 308.

Todisco pleaded guilty to Attempted Enterprise Corruption³⁵ on February 13, 1997. On the day that Todisco was arrested, Todisco's secretary immediately telephoned DiBenedetto to inform him of the arrest. DB Dep. Tr. at 313. On the morning that

³⁵ Attempted Enterprise Corruption, P.L. §§110/460.20, constitutes a racketeering activity within the definition of Local Law 42. See Admin. Code §16-509(a)(v). In his response, DiBenedetto defends his association with Todisco because he "was not convicted of racketeering but instead was convicted under the Donelson act a white-collar crime." See Response Exhibit B at 9. DiBenedetto finds no fault in associating with convicted white-collar felons, provided they were not specifically convicted of "racketeering." This attitude is further evidence that the Applicants are not worthy of licensure.

Todisco was to begin serving his sentence, DiBenedetto met with him for four hours at Todisco's home and then accompanied Todisco to court. Tr. of Tape #12430 at 9. In the courtroom, DiBenedetto asked Todisco whether there was anything he could do to assist Todisco's family while he was incarcerated.³⁶ DB Dep. Tr. at 64. Soon thereafter, DiBenedetto mounted an effort to manage Todisco's businesses, Silk, Inc. ("Silk"), and Litod Paper Stock Corp. ("Litod"). The management was to be organized pursuant to an operating agreement,³⁷ in anticipation of DiBenedetto's purchase of Todisco's hard assets and customer contracts. See August 29, 1996 Letter and Attachments from Joseph Benfante to TWC; Tr. of Tape #12430 at 13. DiBenedetto also sought to purchase the route serviced by convicted racketeer Ray Polidori. See Tr. of Tape #12000 at 61; DB Dep. Tr. at 502-04.

Subsequent to their incarceration, DiBenedetto kept abreast of where both "Danny" [Todisco] and "Frank" [Allocca] were imprisoned, and visited and spoke by phone with Todisco. See Tr. of Tape #12435 at 36; DB Dep. Tr. at 305, 311-312. DiBenedetto initially claimed that they discussed only "personal" matters, and that he (DiBenedetto) strove to stay "totally, totally clear" of discussing Todisco's business. *Id.* at 305-306. Thus, it is odd that DiBenedetto helped Todisco dispose of some of his carting-business assets. *Id.* at 305-06; See also Tr. of Tape #12437 at 38. DiBenedetto cleaned out Todisco's garages, took Todisco's truck and other equipment to Multi Carting's yard, and prepared the truck for sale on Todisco's behalf.³⁸ DB Dep. Tr. at 305-06; See also Tr. of Tape #12435 at 34 (telling Vulpis about going to Todisco's office); Tr. of Tape #12429 at 89 (telling Vulpis about removing the equipment).³⁹ DiBenedetto also discussed waste-industry matters with Todisco during his imprisonment, including litigation brought against the Trade Waste Commission by Grasso Public Carting ("Grasso"), and whether the outcome of the lawsuit would provide grounds for Todisco to sue the City of New York. DB Dep. Tr. at 311-12. DiBenedetto conceded that he discussed with Todisco "exactly what happened with Grasso, what happened at trial..." *Id.* at 312.

Like his continuing association with Anthony Vulpis, DiBenedetto's industry-related contacts with Todisco subsequent to his guilty plea constitute knowing association with a convicted racketeer that is anathema to the purposes of Local Law 42. Other than an unsubstantiated claim that he "didn't want to be involved with people that belonged to the old associations" (DB Dep. Tr. at 305), DiBenedetto did not once, over three days of

³⁶ DiBenedetto also asked Frank Allocca, who appeared in court the same day, whether there was "anything [he] could do for him." DB Dep. Tr. at 63.

³⁷ The TWC staff informed DiBenedetto and Todisco that the proposed operating agreement was an attempt to evade 17 RCNY §§5-05(b)(i) and (ii) by allowing DiBenedetto to obtain the benefits of a purchase prior to any action taken by the Commission on the sale application. See TWC Letter dated May 1, 1997. In their response, the Applicants attempt to legitimize this attempted purchase by claiming the negotiations took place with the TWC's knowledge. See Response at 11.

³⁸ In their response, the Applicants state the truck was prepared for the benefit of Multi Carting, the purchaser. See Response at 11. However, DiBenedetto testified at his deposition that the truck was prepared for a general sale to the public ("I have his truck in my yard. I took it, sanded the letters after it and everything and I put it for sale for him to try to sell for his wife."). DB Dep. Tr. at 306.

³⁹ According to DiBenedetto, Todisco's company remains indebted to Multi Carting for approximately \$3,000. DB Dep. Tr. at 307.

detailed deposition testimony about his contacts with Todisco and numerous other carters, express the slightest misgivings concerning his friends' industry-related crimes. In their response, the Applicants concede that DiBenedetto was friendly with Todisco, although they note that DiBenedetto did not feel the same "moral obligation" toward Todisco as he did toward Vulpis. It is clear from DiBenedetto's continuing industry-based associations with Vulpis and Todisco that he fails to appreciate the impropriety, as well as the appearance of impropriety, of his associations with convicted racketeers. This demonstrates that he lacks the diligence required of principals of licensees in the new corruption-free era of the trade waste industry that Local Law 42 was intended to create.

The Commission hereby denies the Applicants' license applications on this independent ground.

C. Michael DiBenedetto Provided Misleading and Contradictory Information to the Commission Regarding His Industry Ties.

Throughout his deposition, DiBenedetto attempted to distance himself from the carting industry's status quo. He tried to portray himself as a renegade, who was not known, accepted or liked by an industry he claims he was seeking to change through his stewardship of SRI. See, e.g., DB Dep. Tr. at 250-51 ("nobody knew me, didn't know who I was"); at 253 ("I was never well liked in the garbage business."); at 335 ("I didn't want to be involved with people that belonged to the old associations, I didn't want to get involved with anything that had to do with them . . . that's how I protected myself from these things.").

The record evidence tells a dramatically different story. DiBenedetto was not only known in the industry, but also earned, in his mere six years as a carter, the recognition and friendship of its most prominent players.⁴⁰ DiBenedetto cultivated early ties to the carting industry long before he purchased Anthony Vulpis' route and joined the ranks of New York City carters in 1991. During the 1980's, DiBenedetto sold roll-off containers and other refuse equipment to numerous carters, many of whom earned notoriety for carting-industry-related crimes or links to the source of the cartel's power -- organized crime. See DB Dep. Tr. at 102 (convicted racketeer Dominick Vulpis); 109-111 (Daniel Vulpis, indicted for bribing Fresh Kills landfill workers); 117-188 (Nick Pittas), 122 (Michael Marchini), 125-126; 479 (convicted racketeer Carl Dell'Olio); 500 (convicted racketeer and Gambino associate Patrick Pecoraro), 482-483 (Michael Ferone); 477-78 (Marcangelo Cotoia); 484-86 (Jimmy and Anthony Fiorillo); 494-496 (Gambino associate Thomas Milo [Suburban Carting], convicted of conspiracy to commit tax fraud); 497-498 (convicted racketeer and Gambino associate Angelo Paccione), 511 (Luchese associate Thomas Ronga, who pled guilty in 1986 to attempted coercion); 533 (Genovese associate Carmine Franco); 542 (Gambino soldier Edward Garafola).⁴¹

⁴⁰ This evidence arguably contradicts the Applicants' claim in their response that DiBenedetto's cooperation with the Federal Government in a concrete matter was "problematic" for him and his companies. See Response at 13.

⁴¹ In their response, the Applicants emphasize the "openness and candor in Michael DiBenedetto's deposition transcripts" concerning his associations. See Response at 12. However, the Commission does

DiBenedetto's repeated suggestions, throughout his deposition, that he was and is an industry outsider are belied by his claims -- when it better suited his purposes -- that he "knew the industry" and "the people in it." *Id.* at 55, 166, 209, 211, 213, 166. Or, as DiBenedetto characterized it, he has "been around so many years, everybody . . . knows [him]." *Id.* at 515.

In addition to convicted racketeers Anthony Vulpis and Daniel Todisco, DiBenedetto counted among his industry "friends" convicted racketeer Frank Allocca, who was president and a board member of the KCTW; Ray Polidori, who was the KCTW's secretary; and Carl Dell'Olio, who served as president of the WPA. *Id.* at 24, 61, 92-93, 271. DiBenedetto invited Allocca, Todisco, and Dell'Olio, among other long-time New York carters, to his daughter's wedding, and Allocca invited DiBenedetto to his daughter's wedding. *Id.* at 61-62; 136. DiBenedetto and his wife have dined with Todisco and his wife, and DiBenedetto and Todisco have attended auto races and done snowplowing work together. *Id.* at 26, 29, 308. In 1993, Todisco co-signed a loan for DiBenedetto to finance the purchase of a truck. *Id.* at 307-08; MC Lic. App. at 107.⁴² After weekly KCTW meetings, DiBenedetto, Todisco and Allocca routinely dined together at Gargiulio's restaurant. *Id.* at 29. DiBenedetto also did roll-off work with Polidori pursuant to a subcontracting arrangement. *Id.* at 502-03.

In 1991, even as he was just entering the industry, DiBenedetto was sufficiently well-known in the industry to help seven carters, including Todisco and Allocca, "spec out" and collectively purchase their trucks. *Id.* at 55-60. In approximately 1995, shortly before the Manhattan District Attorney's five-year investigation of the carting industry culminated in industry-wide indictments, DiBenedetto had been working towards forming a "co-op" with some of the later-indicted carters to jointly purchase and operate a transfer station owned by Michael Vulpis. Among the carters invited to participate were Allocca, Todisco, Polidori, Fred Lomangino (who was a member of the KCTW board of directors) and Pat Morea (who served as Secretary of the KCTW). *Id.* at 98-100. Moreover, because it was "common knowledge" (*Id.* at 546) that DiBenedetto visited Vulpis in prison and that he had purchased Vulpis' route, many industry members, including Genovese capo Alphonse Malangone, Gambino capo James "Jimmy Brown" Failla and Gambino associate Patrick Pecoraro, asked DiBenedetto about Vulpis and "the route." *Id.* at 50 (Failla asking where and how Vulpis is, whether there was "any way of getting him out early"); 85-86 (Pecoraro and DiBenedetto discussing Vulpis' and Pecoraro's lost customers); 544-547 (Malangone asking about Vulpis and "how it was going, how the route was going"). DiBenedetto admitted in his response that he "was the only route of information regarding Vulpis." See Response Exhibit B at 10.

not find that DiBenedetto was entirely truthful at his deposition. Regardless, the Commission refuses to look favorably on testimony, albeit truthful, concerning associations with convicted racketeers and organized crime figures.

⁴² The license application lists Silk, Inc., Todisco's company, as the creditor on an indebtedness of \$33,717.64. The loan officer is listed only as "Daniel." In fact, another of Todisco's companies, Litod Paper Stock, purchased the truck and executed a lease agreement with Multi Carting, whereby Multi Carting would make 48 monthly lease payments to Litod in the amount of \$2,570, for a total of \$123,360. MC Lic. App. at 107; November 15, 1993 Lease Agreement. Litod purchased the vehicle for \$67,093.23. November 16, 1993 Mack Truck Sales Invoice.

Furthermore, many carters, including the son Frank Allocca left behind to run the family carting business after he was incarcerated, not only knew DiBenedetto, but routinely sought his advice on a variety of carting and trucking matters. See Id. at 107, 122-23, 131-32, 133, 135, 318-319, 514, 515.

DiBenedetto also remained close to the industry's heavy-hitters after they were indicted. In fact, it was DiBenedetto who crafted the explanation Todisco would offer to the court when he faced charges for criminal and civil contempt shortly before Todisco entered his guilty plea for attempted enterprise corruption. After Todisco's indictment in June 1995, his companies' assets were frozen. Todisco then unlawfully diverted \$123,000 to himself through salary raises and other payments. In an August 1997 telephone conversation with Anthony Vulpis, DiBenedetto explained what transpired when Todisco appeared in court to explain the diversion:

VULPIS: How'd our friend Danny make out?

DIBENEDETTO: Uh, pretty decent. . . . so what they did was cut him loose until September 13. [The judge] told him he wants him back there. He wants the money back in the account the same way, you know, it should have been. . .

VULPIS: I hope he feels himself lucky.

DIBENEDETTO: Well he feels lucky in a way. But this guy then told him you screwed your whole deal up. He says "I'm telling you right now. You blew that deal out the window. He says, "You're gonna pay for this. Don't think I'm gonna let you go home today." He says, "You're not. This is gonna get added to your time." He says "And it also blew your deal."

* * *

DIBENEDETTO: So what happened was, the judge was talking, you know, in his -- back in his chambers. So his lawyer comes out and his lawyer da, da, da, da, da and says, "you know he wants you to put the money back." So I says to the guy, "Hey, so you put the money back. What is the problem? What are we doing here? Well, you know, how we gonna do this?" I says, "It's very, very simple. Danny stole the money out of the company in cash. Brought it home, put it in a shoebox. He's saving it because he don't want his wife and kids out in the street when he goes to jail. He knows he's going to jail". He says -- I says, "He has a taste in his mouth from two friends of ours that are in jail and their families are out in the street," I says, "and he didn't want that to happen to his." I said, "He committed a crime. He stole the money for his wife and kids. You tell the judge that." I says, "Tell him tomorrow morning that shoe box will be back at the bank and that money will be back in the God damn bank."

VULPIS: That's all? Case closed?

DIBENEDETTO: *So he looks at me and says to me, "Is that what you wanna do?" "Yeah, that's what I want to do. . . We're admitting that he stole the money. . . So he went in and he told the judge straight out that that's the way it was (emphasis supplied).*

* * *

VULPIS: Hey, a lot can happen between now and September.

DIBENEDETTO: Yeah, Anthony. But these people have a -- you know, they really got a terrible attitude. They really do. You know they -- I don't know. They're not too bright. They're not too smart. And even the guy with the glasses,⁴³ told him the other day -- really blew up at him. He says, "you know something? I'm mad at you." He said, "I'm really mad at you. I gotta tell ya, it's for two reasons." He says, number one, "I didn't ever realize how stupid you are. I never realized how stupid you are." He said, "The day I got indicted was the last time I left my house." He says, "I make sure every penny is in that bank account. I make sure that I go from work to home to" --

VULPIS: Yeah, I know.

DIBENEDETTO: -- And I says, "that's how I live my life." He says, "He's stupid enough to turn around and do something like this. Not only did you ruin it for yourself," he says, "I'm sure you ruined it for all of us," he says. Which the judge said that too today. He said that basically -- he says, you know this is gonna -- this is really gonna hurt the whole deal for everybody. But what are you gonna do? You know? But it's wild. You gotta see it on the street. They were lined up today. The Lomanginos, everybody, to sell their work -- their routes today. I mean, they were running. They were running all over the place to sell their routes today.

Tr. of Tape #12000, at 41-43. Todisco ultimately pleaded guilty to three misdemeanor contempt charges and served a 30-day sentence prior to his anticipated February 1997 racketeering trial and subsequent guilty plea in the underlying racketeering case. DiBenedetto, accompanied by Frank Allocca, visited Todisco during that first incarceration. Tr. of Tape #12428 at 14-15.

⁴³ This is undoubtedly a reference to Genovese capo Alphonse Malangone, who was referred to as "Allie Shades" because he wore dark glasses. Search Warrant Affidavit of Detective Joseph Lentini, Ind. #5614/95 at 35, ¶ 61, n. 33. He was also referred to as "guy with the glasses." *Id.* On October 21, 1997, a jury found Malangone guilty of enterprise corruption charges -- the most serious charges in the indictment -- and of a host of other criminal charges.

In sum, despite his disingenuous assertions that he was not well liked or known in the industry and that he did not want to be involved with people that belonged to the "old associations," DiBenedetto's friendships, business relations, and industry history reveal that he circulated amiably among their ranks, including their leadership. Simply put, DiBenedetto was an insider of the corrupt New York City carting industry in its heyday.

The Commission hereby denies the Applicants' license applications on this independent ground.

D. Michael DiBenedetto Knowingly Associated with Organized Crime Figures and Provided False and Misleading Information to the Commission Regarding His Association with Organized Crime Figures.

In its license applications, Multi Carting and Multi Recycling were required to disclose *all* their associations with individuals that they knew or should have known were associated with organized crime and the attendant circumstances. MC Lic. App. at 99, MR Lic. App. at 49. Multi Carting stated that, during its 4-year membership in the KCTW and the QCTW:

there have been occasions where Michael DiBenedetto as representative for Multi was in the presence of alleged organized crime figures who appear on your list. It was not known at the time that these people were alleged crime figures. The first indication that Michael DiBenedetto new [sic] of any alleged crime ties was when James Failla was brought to trial and subsequently upon reviewing the list distributed by the NYC Trade Waste Commission.⁴⁴

During meetings at the Kings County Association, Michael DiBenedetto was in the presence of Alphonse Malangone. While in attendance at the New York Association, Michael DiBenedetto was in the presence of James Failla and Joseph Francolino.

MC Lic. App. at 101; accord, MR Lic. App., at 50.

These statements are false and misleading. In fact, DiBenedetto's contacts with notorious organized crime figures amounted to far more than merely having been in their "presence" at the QCTW, KCTW and GNYTW. In a deposition, DiBenedetto stated that his first contact with Alphonse "Ally Shades" Malangone, a Genovese capo, was in approximately 1993, when Todisco pointed out Malangone to him and identified Malangone as the KCTW's "director." DB Dep. Tr. at 544-45. DiBenedetto claimed he first spoke with Malangone a couple of months later, when he next attended a meeting at the KCTW. *Id.* at 545. According to DiBenedetto, Malangone approached him at that meeting and inquired about Anthony Vulpis and how Vulpis was doing." *Id.* Malangone

⁴⁴ While the Commission uses various lists for investigative purposes, it has never disseminated those lists outside the agency.

inquired further about DiBenedetto's route. *Id.* at 546-47. DiBenedetto admitted in his deposition that he believed at that time that Malangone was associated with organized crime based on "37 years of experience in New York." *Id.* at 547-48. That was not the only occasion on which they met and spoke. DiBenedetto saw Malangone at industry Christmas parties and at the KCTW, and spoke with him at an industry trade show in Chicago about their respective evening plans. *Id.* at 549-50. DiBenedetto stated that he also "met" Malangone one night when Malangone "happened to be" in a restaurant when DiBenedetto walked in. *Id.* at 355. DiBenedetto also accompanied Todisco one evening when Todisco told him he had "to stop and see Ally" at Pastel's, Malangone's nightclub. *Id.* at 549-54. After Todisco and Malangone had been indicted, DiBenedetto was at Todisco's office when Malangone arrived. Malangone greeted DiBenedetto before going into a back room with Todisco. *Id.* at 554-55.

DiBenedetto disclosed none of these contacts in either license application.⁴⁵ Those omissions themselves constitute sufficient grounds to deny the license applications. *See* Admin. Code § 16-509(a)(i). Moreover, these contacts obviously amount to far more than merely being "in the presence of" Malangone. MC Lic. App. at 101.

Even so, DiBenedetto omitted still other contacts he has had with Malangone. A photograph taken in the vicinity of the KCTW during the Manhattan District Attorney's investigation depicts DiBenedetto alone in conversation with Malangone while walking down the street. *See* Photograph; Affidavit of Detective Anthony Farneti, sworn to April 18, 2002.

Similarly, DiBenedetto materially misrepresented the scope of his contacts with Gambino soldier Joseph Francolino when he characterized them as simply having been in Francolino's "presence" at the GNYTW. In fact, in or about November 1995, DiBenedetto met with Francolino and Pecoraro at Brooklyn diner at Pecoraro's request for the express purpose of discussing the carting industry and DiBenedetto's stewardship of SRI. DB Dep. Tr. at 245; 250.⁴⁶ At the time of the meeting, DiBenedetto was aware

⁴⁵ The Applicants note in their response that these contacts and conversations with Malangone and Failla took place prior to the creation of the TWC. *See* Response at 15. However, the timing of the contacts is irrelevant with regard to the Applicants' obligations to make truthful disclosures. DiBenedetto's defense to the failure to disclose is that he "was not given an actually [sic] list of people until his application was filed and he was being disposed [sic]." *See* Response Exhibit B at 10. Yet, in the license applications themselves, the Applicants make reference to having reviewed the Commission list. MC Lic. App. at 101; MR Lic. App. at 50. In any event, DiBenedetto, based on his industry contacts and his position as President of SRI, did not need any such list in order to be familiar with which carters were alleged to have ties to organized crime. His disclosures at the deposition *over a year later* do not compensate for his omissions and materially misleading information in his application.

⁴⁶ DiBenedetto failed to disclose this contact in the license applications and testified inconsistently when he was questioned at his deposition about each of his contacts with Pecoraro. DiBenedetto initially testified that he did not see Pecoraro subsequent to his June 1995 indictment. DB Dep. Tr. at 86. However, DiBenedetto met with Pecoraro on at least three occasions subsequent to Pecoraro's indictment: in November 1995, with Francolino; in or about 1996 at the office of SRI's counsel (*Id.* at 260); and again in approximately May 1997, at SRI's offices in Queens (*Id.* at 85). In the meeting at SRI, the two discussed Pecoraro's criminal case and Anthony Vulpis, who Pecoraro planned to visit in prison. *Id.* at 85-86.

that Francolino was associated with organized crime and that he was the "director" of the GNYTW. *Id.* at 257; 407.⁴⁷ DiBenedetto denied knowing that Francolino would attend the meeting, but conceded that he was not surprised that Francolino arrived with Pecoraro. *Id.* at 409-11. He knew that Pecoraro was closely associated with Francolino. *Id.* at 409-10. According to DiBenedetto, Francolino and Pecoraro sought to determine through the meeting what DiBenedetto's plans were with respect to SRI and where SRI was "going to get money." *Id.* at 250-52. DiBenedetto self-servingly and gratuitously described the meeting as contentious. He stated that Francolino "wasn't very happy with [him]," that the two were "cold" to one another, that a power struggle had emerged between SRI and the indicted associations, and that the indicted parties "got their feelings hurt" because they felt SRI was "shunning" them. *Id.* at 251-52; 259. DiBenedetto stated "I didn't back down and I guess he didn't back down," and hollowly proclaimed that "he wasn't going to be bullied by anybody." *Id.* at 256, 258. Although DiBenedetto contended elsewhere that he did not meet with carters individually on industry matters (*Id.* at 439), DiBenedetto apparently made an exception for these two indicted organized crime figures because:

Mr. Pecoraro and Mr. Francolino were the head of the two of the old associations. And I just showed them the respect that, to sit with them and find out what their problems were and what their grievance was with me.

Id. at 440-41. DiBenedetto expressed no hesitation to Pecoraro or Francolino about meeting with a member of the Gambino crime family and conceded that Pecoraro's association with Francolino did not affect his assessment of Pecoraro. *Id.* at 422-23.

Subsequent to the meeting at the diner with Francolino and Pecoraro, DiBenedetto arranged for a private meeting of all of the indicted carters at the office of SRI's counsel. DB Dep. Tr. at 259-66. DiBenedetto called for the meeting to assure them that he was not "shunning them because they were indicted," and that SRI's counsel was "there for their disposal like any other carter." *Id.* at 259-61; 270-75. At approximately the same time, Francolino telephoned DiBenedetto to inquire on behalf of an unnamed friend whether DiBenedetto had any dump trucks for sale. *Id.* at 488. Finally, at Pecoraro's request, DiBenedetto attended one of a number of strategy meetings that the indicted parties, including Francolino, Pecoraro and Joe Vitale, held with their attorneys and investigators to discuss their cases. *Id.* at 489. Furthermore, DiBenedetto kept abreast of the status of the plea negotiations and eventual sentences and incarceration of Allocca, Todisco, Pecoraro, Malangone, Vigliotti and Barretti, and routinely reported on those matters to Anthony Vulpis. *See, e.g.,* Tr. of Tape #12428 at 57 ("they didn't reduce [Dominic Vulpis'] time...Just Frank, Allie's and Danny's at this point."); Tr. of Tape #12429 at 58-59 (Pecoraro's severance from case; status of plea bargaining by

⁴⁷ DiBenedetto's credibility is undercut by his inconsistent testimony regarding when he learned that Joseph Francolino was associated with organized crime. At one point, DiBenedetto stated he first heard that Francolino was associated with organized crime "four years ago." DB Dep. Tr. at 409. Elsewhere, DiBenedetto stated that his belief that he was associated with organized crime was solely based on reading about Francolino in the newspaper after the indictment. *Id.* at 491. It is clear, however, that the meeting occurred *after* DiBenedetto learned of Francolino's organized crime ties. *Id.* at 250.

Francolino, "Allie" [Malangone], and Barretti); Tr. of Tape #12435 at 36-38 ("Frank is in Watertown" Danny is 30 miles one direction...Vigliotti is 30 miles the other direction"; work release; sentences).

DiBenedetto's testimony that he "didn't want to be involved with people that belonged to the old associations" is plainly false. That falsehood is part of a transparent attempt to obscure DiBenedetto's cozy relationships with the most powerful members of the carting industry cartel -- the leadership of the indicted associations.⁴⁸ At no time did DiBenedetto take *any* steps -- not even the most rudimentary -- to determine whether the very serious charges against the carters were true. Indeed, he did not appear to have considered that possibility. Rather, his operating assumption as the head of SRI was that so long as a carter paid its dues and had not yet been convicted, he was entitled to all the benefits of membership in his association.⁴⁹ DiBenedetto apparently regarded it as none of his concern whether SRI's members were accused of organizing the industry -- which he claimed he wanted to take in a wholly new direction (DB Dep. Tr. at 448, 450-51) -- into an anti-competitive cartel that victimized every business in New York City and enforced its rules with the sanction of organized crime. Indeed, when one of those indicted carters, a made member of the Gambino crime family and known to DiBenedetto as an organized crime figure, expressed concern that DiBenedetto was not adequately representing him or the other indicted carters, DiBenedetto's response was to immediately invite all of the indicted carters to a meeting at SRI's lawyers offices for the sole purpose of reassuring them that SRI counsel "represented all the people from SRI, not just the unindicted ones." *Id.* at 261.

Moreover, as DiBenedetto has demonstrated through his continuing association with Anthony Vulpis and Daniel Todisco, even racketeering convictions do not affect his demeanor towards and support of those proven to have committed criminal racketeering acts. DiBenedetto goes out of his way to assist convicted racketeers with their business and personal affairs, even if it means that Multi Carting will pick up the tab. DiBenedetto's actions display an apparent willingness to be as helpful as he can be to indicted, convicted and incarcerated racketeers. The Commission would be hard pressed to identify a more striking example of Applicants lacking the good character, honesty and integrity to be issued a license to operate as a trade waste business. Indeed, DiBenedetto's character is revealingly illustrated by his assessment of Frank Allocca, the day he was marched off to prison, as "a gentleman of high standards." DB Dep. Tr. at 63.

In their response, the Applicants argue that DiBenedetto's extensive deposition testimony cured whatever misleading defects were present in the license applications.

⁴⁸ DiBenedetto was also at the very pulse of their plea negotiations, reporting in a telephone conversation with Anthony Vulpis, before any agreements were reached and before Francolino and Malangone went to trial, that the defendants had been offered deals. He explained that "Patty [Pecoraro] got cut loose from that case," that Joe Francolino "was down to 2 to 6," that "Allie" [Malangone] was "down to 1 to 3," and that Barretti was "willing to take more time" than other defendants because "they cut the two kids [Barretti's sons] loose." Tr. of Tape #12429 at 58-59.

⁴⁹ DiBenedetto used his position as the head of SRI as *justification* for his continued association with organized crime figures since "he was compelled to keep abreast of criminal developments surrounding the industry." See Response at 15.

See Response at 13. The Commission finds this argument unpersuasive. DiBenedetto signed a sworn certification in 1996 that the license application was truthful and accurate. Almost a year later, DiBenedetto testified at his deposition (which was not certain to occur at the time the application was filed). So, for almost a full year, DiBenedetto misled the Commission and failed to correct the record. In addition, the Applicants refuse to accept responsibility for their actions and appear to blame counsel for the misleading nature of the answers.⁵⁰ Id. at 14. Surprisingly, the Applicants also justify including the misleading answers since they were already contained in previously submitted waiver applications. Id. at 14. "It was not known at the time the application was completed and submitted as to the specific details and explanation which might have been required by the Commission and the knowledge only came to light during the depositions." Id. The only requirement the Commission imposed on the Applicants was to tell the truth; the truth does not change depending upon the expectation of the listener.

Knowing association with an organized crime figure constitutes grounds for denial of a carting license under Local Law 42. See Admin. Code § 16-509(a)(iv). DiBenedetto's associations with Malangone and Francolino are clearly inconsistent with the purposes of Local Law 42, and demonstrate the Applicants' lack of good character, honesty, and integrity, as do the Applicants' false and misleading statements to the Commission about those associations. The Commission hereby denies the Applicants' license applications on this independent ground.

E. The Applicants Did Not Cooperate with the Commission in that the Applicants Repeatedly and Knowingly Failed to Provide Documents Required by the Commission Pursuant to Its Licensing Investigations.

The Commission has the power "[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation." Admin. Code § 16-504(c). The Commission may refuse to grant a license if an Applicant "has knowingly failed to provide the information and/or documentation required by the commission" Admin. Code. § 16-509(b). . . . Throughout the licensing process, the Applicants have knowingly failed to provide information to the Commission.

Initially, the Audit Division of the TWC ("Audit") sent a letter to both Applicants on June 15, 2000, requesting the standard books and records (including bank records, bank statements, deposit slips, cancelled checks, cash receipts ledger, cash disbursements ledger, payroll records, wire transfer documents, loan agreements, lease agreements and equipment purchase or sale transactions) for the period from January 1, 1995 to the date of the letter. The documents were due by June 26, 2000.

⁵⁰ The Applicants claimed earlier in their response that the application mistakes were due to the fact that they were *not* represented by counsel. See Response at 4. The Applicants even provided contradictory information in their own response.

Multi Carting's Response to Document Requests

Eight boxes of documents were provided by June 26, 2000. On June 29, 2000, Audit received correspondence from Multi Carting requesting an extension to July 5, 2000 to deliver the cash disbursements and cash register receipts. Although the extension was granted, the documents were still not received more than two weeks past the new due date. On July 17, 2000, Audit sent Multi Carting a letter stating that request for the cash disbursements and cash register receipts was still outstanding. Also, the letter indicated that the boxes submitted did not contain bank records subsequent to April 1, 2000. In addition, the letter requested corporate and shareholder tax returns, general ledgers, trial balances, financial statements, payroll records and payroll tax returns.

On July 20, 2000, Multi Carting submitted 42 monthly binders. However, many of the requested documents were missing. On August 24, 2000, Audit sent Multi Carting a letter detailing the omitted materials:

- Cash disbursement ledgers from January, February, March and April 1995
- All of the requested documents for the months April through November 1996
- All of the requested documents for the months March and April 1997
- All of the requested documents for December 1998
- All of the requested documents for January, August and September 1999
- All of the requested documents for April and May 2000
- Numerous cancelled checks corresponding to the submitted bank statement envelopes
- Invoices for numerous carting, recycling, construction and trucking companies
- Invoices for toll and office expenses
- Insurance policies, substantiation for funding, loan agreements with Truck Centers of America and Multi Recycling
- Credit card statements
- Copies of money orders to Lorraine Vulpis

Audit received a letter on August 30, 2000 that was not dated, not signed and lacking letterhead, stating that the binders for April through November 1996 "were mistakenly disposed of during our move and cannot be replaced." An offer was made to "create a new ledger by going through the checkbook and statement."

Other documents that Multi Carting failed to submit are:

- Cash disbursement itemizations for January through April 1995
- All of the requested documents for March and April 1997, January, August and September 1999 and April and May 2000
- Cash disbursements for February 2000
- Shareholder tax returns for 1995 through 1999
- American Express credit card statements

- Advises indicating payee names to accompany certified check debits totaling \$118,192
- Debit advises indicating payee names to accompany bank debits totaling \$22,852
- Cancelled checks totaling \$425,275 to accompany bank statements from January 1995 to November 1999⁵¹

See Memorandum of Diane Lalondriz, TWC Auditor.

Multi Recycling's Response to Document Requests

On June 26, 2000, Burgan arrived at the offices of the TWC with "one big plastic bag" of documents. On August 15, 2000, Audit sent a letter to counsel for Multi Recycling, Susan Shepard, that the plastic bag was missing several of the requested records. The documents that Multi Recycling failed to submit are:

- General ledger from January 1, 1996 to the date of the initial request letter
- 1999 financial statement
- Adjusting journal entries from 1996 to 1999
- Adjusted trial balance from 1996 to 1999
- 1997 cash disbursements for February and October
- 1999 cash disbursements for September and October
- Cash receipts ledger from 1996 to 1999
- Lease agreements relating to the premises and all equipment
- Loan agreements from and to shareholders and any outside parties

The due date for the documents was August 22, 2000. The requested documents were never submitted. See Memorandum of Nagy Mohamed, TWC Auditor.

To date, the Applicants have failed to respond. Furthermore, Audit does not believe that the financial statements received from both Applicants were in fact audited by the CPA, and the Applicants' CPA failed to respond to any of Audit's attempts to reach him. The Commission staff's investigation into these matters has therefore been obstructed by the Applicants.

In their response, the Applicants raise several defenses. First, they claim that the document request was extremely broad and the time period to respond was too short. See Response at 16-18. However, the documents that were requested were simply documents that the Applicants were responsible for maintaining on a regular basis and did not have to be generated anew. See 17 RCNY §5-03. Further, the arguments about the short time

⁵¹ The August 30, 2000 correspondence indicated that the cancelled checks were "filed in the folder of the vendor name and that a listing of the names and checks are needed to find them." However, Audit could not provide the names solely with cancelled check numbers and amounts taken from the bank statement. Also, since Multi Carting's cash disbursement lists changed check numbers, it was not a reliable source to determine payee names.

period for response are not persuasive given that the documents were never submitted during the two years prior to the denial recommendation.

Second, the Applicants rely on the fact that the Commission stopped asking for the documents in August 2000. Id. However, it is the *Applicants'* obligation to disclose, not the Commission's responsibility to continually make futile requests for documents.

The Applicants' claim that there was no finding of wrongdoing in the documents that were actually submitted misses the point. The ground for denial is based on the Applicants' failure to disclose, not any alleged underlying substantive wrongdoing. Furthermore, based on the actions of the Applications, it is impossible to know whether or not the Applicants engaged in any wrongdoing. The Applicants obstructed the investigation by failing to fully comply with the document requests and the extent of the obstruction is impossible to determine.

The Commission hereby denies the Applicants' license applications on this independent ground.

IV. 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. The evidence recounted above demonstrates convincingly that Multi Carting and Multi Recycling fall far short of that standard.⁵²

DiBenedetto's knowing association with convicted racketeers (Anthony Vulpis and Daniel Todisco) and with organized crime figures (Joseph Francolino and Alphonse Malangone) reveals that the industry will not easily rid itself of the influence of its most corrupt participants. Given DiBenedetto's actions his statement in his waiver application rings hollow: "I now understand that it is even more important that [my companies] as well as I maintain the appearance of propriety in all respects." Multi Carting Waiver Application at 59.

Based upon DiBenedetto's knowing association with convicted racketeers and with organized crime figures, the false and misleading information provided by the Applicants to the Commission in connection with their license applications and the failure of the Applicants to provide information to the Commission, all of which the

⁵² The Applicants respond that Multi Recycling should be treated differently from Multi Carting because the recommendation primarily focused on the actions of DiBenedetto and only referred to Burgan "a handful of times." See Response at 19. However, DiBenedetto is a principal of both companies and his failure to live up to the fitness standard of good character, honesty and integrity applies equally to both companies. In addition, Burgan directly assisted DiBenedetto in his association with Vulpis; it was *Burgan* who regularly assisted Vulpis with personal, family and legal matters by sending cards, gifts and flowers on Vulpis' behalf, by updating Vulpis on members of his family, by sending Vulpis copies of news articles and court decisions, by assisting him with union pension matters and by regularly speaking to Vulpis over the phone. See infra at 20. Burgan also failed to provide documentation to the Commission. The Commission finds sufficient evidence to deny the license applications *solely* on the actions of Burgan.

Commission is expressly authorized to consider under Local Law 42, the Commission hereby denies Multi Carting's and Multi Recycling's license applications.

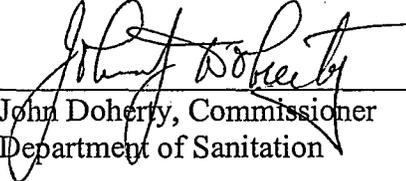
This license denial decision is effective fourteen days from the date hereof. In order that the Applicants' customers may make other carting arrangements without an interruption in service, the Applicants are directed to continue servicing their customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and to immediately notify each of their customers of such by first-class U.S. mail. The Applicants shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: August 15, 2002

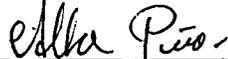
THE BUSINESS INTEGRITY COMMISSION



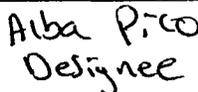
José Maldonado
Chairman



John Doherty, Commissioner
Department of Sanitation



Gretchen Dykstra, Commissioner
Department of Consumer Affairs

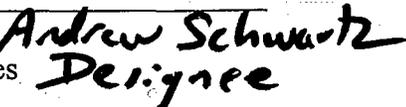

Alba Pico
Designee

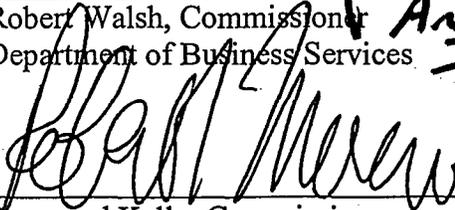


Rose Gill Hearn, Commissioner
Department of Investigation

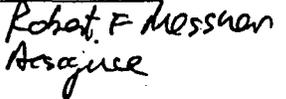


Robert Walsh, Commissioner
Department of Business Services


Andrew Schwartz
Designee



Raymond Kelly, Commissioner
New York City Police Department


Robert F. Messner
Associate