



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

**DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE
RENEWAL APPLICATION OF NEW YORK DIRT CONTRACTING CORP. FOR A
REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

New York Dirt Contracting Corp. (the “Applicant” or “New York Dirt”) has applied to the New York City Business Integrity Commission (“Commission”), formerly named the New York City Trade Waste Commission, pursuant to Local Law 42 of 1996, for renewal of its exemption from licensing requirements for the removal of construction and demolition debris. See Title 16-A of the New York City Administrative Code (“Admin. Code”), §16-505(a). Local Law 42 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.

New York Dirt applied to the Commission for renewal of a registration enabling it to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” – a type of waste commonly known as construction and demolition debris, or “C & D.” Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission grants the Applicant a registration, the Applicant becomes “exempt” from the licensing requirement applicable to businesses that remove other types of waste. See id.

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

See 17 RCNY §1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking “good character, honesty and integrity”); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008).

Based upon the record as to the Applicant, the Commission, for the following independently sufficient reasons, denies its registration renewal application:

- A. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration because the Applicant’s President, Edward Raffetto, knowingly associated and did business with Greg DePalma, a member of an organized crime family and a convicted racketeer.
- B. The Applicant violated the terms of its Registration Order by knowingly associating with members and associates of organized crime and convicted racketeers.
- C. The Applicant failed to provide truthful information in Renewal Applications.

I. BACKGROUND

A. The New York City Carting Industry

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

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime’s longstanding and corrupting influence over the City’s carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found “that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct.” Local Law 42 §1.

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the C & D sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the C & D sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many C & D haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988. During that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills Landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived

at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately \$10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City's "cover" programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City's tipping fees. See United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); see also United States v. Caccio, et al., Nos. 94 Cr. 357, 358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the C & D sectors of the industry. Local Law 42 recognizes this fact in requiring C & D haulers to obtain registrations from the Commission in order to operate in the City. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004).

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." *Id.* §16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), *aff'd*, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997); Attonito, 3 A.D.3d 415.

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated

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

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission’s authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant’s good character, honesty and integrity. Id.; accord Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008) (Commission denial not arbitrary and capricious where based on a criminal conviction, identification as an organized crime associate, and false and misleading statements). Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.)

or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;
9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

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

II. DISCUSSION

New York Dirt applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business pursuant to Local Law 42 of 1996. See New York Dirt's Application for Exemption from Licensing Requirement for Removal of Demolition Debris ("Registration Application"). The sole principal of the Applicant is Edward Raffetto ("Raffetto"). See Registration Application at 64; February 15, 2007 Renewal Application for License or Registration as a Trade Waste Business ("First Renewal Application") at 5; April 17, 2009 Renewal Application for License or Registration as a Trade Waste Business ("Second Renewal Application") at 5. On or about February 3, 2005, the Commission granted the Applicant a trade waste registration. See New York Dirt Registration Order. On February 16, 2005, Raffetto signed the Registration Order, thereby consenting to the terms and conditions therein. See Registration Order at 6. New York Dirt's registration was effective for two years,

and expired on February 28, 2007. See id. On or about February 15, 2007, the Applicant filed the First Renewal Application with the Commission. See First Renewal Application. The Applicant was authorized operate pending a review of that application. On or about April 17, 2009, the Applicant filed the Second Renewal Application with the Commission. See Second Renewal Application. Raffetto certified that the information contained in the Registration Application, the First Renewal Application, and the Second Renewal Application was accurate and truthful. See Registration Application at 79-80; First Renewal Application at 11; Second Renewal Application at 11.

The Commission's staff has conducted a background investigation of the Applicant and its principal. Pursuant to the background investigation, on June 28, 2008, principal Edward Raffetto provided the Commission with testimony under oath. On June 11, 2009, the staff issued a 13-page recommendation that the renewal application be denied. The Applicant and the Applicant's attorney were served with the recommendation and were granted more than ten business days to respond (June 29, 2009). See 17 RCNY §2-08(a). On June 15, 2009, the Applicant's attorney requested an extension of time to submit a response to the staff's recommendation. See Email from Peter Sullivan, Esq. to David Mandell, Deputy General Counsel. On June 15, 2009, the Commission extended the time to submit a response to July 15, 2009. See Letter from David Mandell to Peter Sullivan. On July 13, 2009, the Applicant's attorney requested that the staff provide him with "all documents and information in the Commission file on the applicant..."¹ See Letter dated July 10, 2009 from Peter Sullivan to David Mandell. The Applicant's attorney also requested an additional extension of time to submit a response to the staff's recommendation. Id. On July 13, 2009, the staff provided the Applicant's attorney with copies of all non-public documents relied upon in the recommendation. See July 13, 2009 letter from David Mandell to Peter Sullivan. The Commission also granted an additional extension of time to submit a response to July 17, 2009. See July 13, 2009 letter from David Mandell to Peter Sullivan. On July 14, 2009, the Applicant's attorney requested that the staff provide him with a copy of Edward Raffetto's trial testimony. Although a public document, the staff provided Edward Raffetto's trial testimony to the Applicant's attorney on July 14, 2009. See July 14, 2009 Facsimile from David Mandell to Peter Sullivan. On July 15, 2009, the Applicant's attorney requested another extension of time to July 20, 2009 to submit a response to the staff's recommendation. See July 15, 2009 Email from Peter Sullivan to David Mandell. On July 15, 2009, the Commission extended the Applicant's time to submit a response to the staff's recommendation to July 20, 2009. See Letter from David Mandell to Peter Sullivan. On July 20, 2009, the Applicant submitted an unverified response, solely consisting of a 5-page letter from the Applicant's attorney.² See Response submitted by Peter Sullivan. ("Response").

¹ Although the letter from the Applicant's attorney was dated July 10, 2009, the Applicant's attorney emailed and facsimiled the letter to the Commission on July 13, 2009.

² Although the staff's recommendation and the cover letter that accompanied the recommendation state that any assertions of fact submitted in the Applicant's response must be made under oath, the Applicant's response failed to attach a *sworn* affidavit from its principal. See 17 RCNY Section 2-08(a); see also Recommendation at 13 (allowing the Applicant 10 business days to submit any assertions of fact "under oath" and any documentation that it wishes the Commission to consider). In addition, the Response submitted by the Applicant's attorney states that the Commission "provided a small part of the relevant documents in its possession." See Response at 5. The Applicant's attorney's assertion is false- the Commission provided the Applicant with all non-public documents that

III. GROUNDS FOR DENIAL

A. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration because the Applicant's President, Edward Raffetto, knowingly associated with Greg DePalma, a member of an organized crime family and a convicted racketeer.

The Commission may deny a license application of a business whose principals have had business dealings with known organized crime figures and racketeers. See Admin. Code §16-509(a)(v), (vi); SRI, 107 F.3d at 998. The Commission may consider this factor in determining an applicant's eligibility for a trade waste exemption from licensing and a trade waste registration. See supra at 5-7. Greg DePalma ("DePalma") has been publicly identified by the United States Attorney's Office, Southern District of New York as an acting captain of the Gambino organized crime family and has been convicted of racketeering activity, including, but not limited, to violations of the racketeer influenced and corrupt organizations act, conspiracy, extortion, loansharking, interstate transportation of stolen property, and union embezzlement.³ See United States of America v. Squitieri, DePalma, et. al., No. 05 Cr. 228 (SDNY). Notwithstanding DePalma's status as a captain in the Gambino crime family, and despite his criminal conviction, the Applicant initiated and maintained a business relationship with him.

Shortly after DePalma's release from federal prison, in early 2003, Raffetto contacted DePalma to seek DePalma's help with the Applicant business.⁴ See Raffetto Trial Testimony, United States of America v. Squitieri, DePalma, et. al., No. 05 Cr. 228 (SDNY) ("Raffetto Trial Testimony") at 924-925. Raffetto knew that DePalma was connected to organized crime before he met with DePalma. See Deposition Transcript of Raffetto ("Deposition Transcript.") at 15; Raffetto Trial Testimony at 925. Nevertheless, Raffetto repeatedly met with, and sought to do business with DePalma. See id. at 925-926. Raffetto was not forced to meet with DePalma. He voluntarily met with DePalma. See Deposition Transcript at 20. After meeting with DePalma at

were relied upon in the recommendation- the documents that the Applicant was entitled to. As a courtesy to the Applicant's attorney, the Commission provided him with a copy of the public document that he requested.

³ Since at least 1995, Gregory DePalma has been publicly and repeatedly identified by the press as a member of the Gambino crime family. See, e.g., John Lehmann, *Geezers Get Off on "Hit" Charge*, NEW YORK POST, August 6, 2002, Robert Gearty, *Killer Pegs Mob In Hit*, NEW YORK DAILY NEWS, July 26, 2002, *Man And Son Sentenced as Part of Crime Family*, NEW YORK TIMES, June 13, 1999, Murray Weiss, *Feds Spy on Junior and Dapper Dad*, NEW YORK POST, April 4, 1998, Jerry Capeci, *Mob Plea Deal No Steal*, NEW YORK DAILY NEWS, August 16, 1995. In 1998, Gregory DePalma, along with John Gotti, Jr. (who was then acting boss of the Gambino Family) and others, were indicted on federal racketeering charges. DePalma eventually pleaded guilty and was sentenced to seventy months' imprisonment. DePalma served his prison sentence and was released on or about February 20, 2003. See June 29, 2004 Affidavit of FBI Special Agent Natale Parisi in Support of Application for Authorization to Intercept Oral and Wire Communications at 38-39 ("Parisi Affidavit").

⁴ Raffetto sought DePalma's help to secure places to dump waste in the Bronx and Westchester areas. See Raffetto Trial Testimony, United States of America v. Squitieri, DePalma, et. al., No. 05 Cr. 228 (SDNY) ("Raffetto Trial Testimony") at 924, 926. Robert Persico, who was subsequently identified by law enforcement as an associate of the Gambino organized crime family, referred Raffetto to DePalma. See Deposition Transcript of Raffetto ("Deposition Transcript.") at 14; see also United States of America v. Squitieri, DePalma, et. al., No. 05 Cr. 228 (SDNY). On June 20, 2006, the Commission denied the registration renewal application of a company in which Robert Persico is a principal, Persico Contracting & Trucking Inc. See Decision of the Business Integrity Commission Denying the Application of Persico Contracting & Trucking Inc. for Renewal of its Registration to Operate as a Trade Waste Business.

a diner approximately three times, DePalma “called [Raffetto] outside the diner” and told Raffetto that his services would cost Raffetto seven hundred dollars per week in cash to “maintain [their] relationship.” See Raffetto Trial Testimony at 926; see also Deposition Transcript at 23. Raffetto agreed and willingly started to make the weekly seven-hundred-dollar cash payments to DePalma. See Raffetto Trial Testimony at 926, 933. In addition to the weekly cash payments, Raffetto made at least two separate five-thousand-dollar cash Christmas payments to DePalma in 2003 and 2004. See id. at 928. All of the payments were made “under the table” in cash and Raffetto did not put any of the payments “on the books.”⁵ See id. at 933. Sometimes, Raffetto would personally bring the seven hundred dollar cash payments to DePalma.⁶ Other times, Raffetto directed Pat Cascione (“Cascione”), an employee of the Applicant, to make the weekly cash payments to DePalma.⁷ See id. at 926. Thus, Cascione, as an employee of the Applicant, knowingly associated with a member of organized crime on behalf of the Applicant.⁸

During the time that Raffetto was making the weekly cash payments to DePalma, DePalma told Raffetto that he was working with other members of the Gambino crime family to get Raffetto business. See Raffetto Trial Testimony at 930. Despite this reference to the possible assistance of the Gambino crime family to help Raffetto’s business, he continued to make the cash payments. At a certain point during their relationship, DePalma told Raffetto that DePalma was putting Raffetto “on record” or “under his umbrella.” See id. at 929-930. Raffetto understood this to mean that Raffetto “did not have to worry about anyone coming after me,” that he would be protected by DePalma.⁹ See Deposition Transcript at 32. Again, the Response

⁵ During his June 28, 2007 deposition, Raffetto testified that he did not know whether the cash payments were on the books or not. See Deposition Transcript at 27. Raffetto knew or should have known that such “off the books” cash payments were illicit payments.

⁶ Raffetto made at least some of the cash payments to DePalma at a Westchester nursing home where DePalma’s son lay in a coma. See Raffetto Trial Testimony at 927. DePalma routinely conducted mob business at the nursing home because he believed that he could avoid law enforcement scrutiny there. See March 9, 2005 United States Attorney, Southern District of New York Press Release at 5-6; see also Greg B. Smith, *FBI Mole Bites Deep Into Mob*, NEW YORK DAILY NEWS, March 10, 2005; Greg B. Smith, *Life and Times of New Donnie Brasco*, NEW YORK DAILY NEWS, April 18, 2005. When asked if he thought it was weird to have business meetings at a nursing home, Raffetto stated, “No. His son was so ill, Mr. DePalma was extremely touched by his son’s condition, and he spent a lot of time with his son.” See Deposition Transcript at 22.

⁷ The Federal Bureau of Investigation (“FBI”) confirmed, “Cascione is associated with New York Dirt, a company controlled by Gregory DePalma and the Gambino Crime Family.” See Parisi Affidavit at 53. The Response does not dispute the FBI’s assertion.

⁸ According to Raffetto, Cascione knew DePalma from other business dealings relating to the Westchester Premier Theatre that occurred “years ago.” See Deposition Transcript at 16. In 1978, DePalma and other members and associates of organized crime were indicted in a highly publicized case that related to the operation of the Westchester Premier Theatre. The indictment alleged that DePalma and his codefendants engaged in a pattern of racketeering activities, including securities fraud, bankruptcy fraud, and obstruction of justice. See United States of America v. DePalma, et. al., No. 78 Cr. 228 (SDNY). The Response does not address the fact that Cascione, an employee of the Applicant, had longstanding business dealings with a member of organized crime. Cascione is still employed by the Applicant.

⁹ DePalma’s understanding was correct. In a recorded conversation between an undercover FBI agent and DePalma that took place on June 6, 2003, DePalma explained, “well, I put you on record with me, with my Family. . . . You know what that means, right? . . . Nobody could bother you. Nobody could come near you, no wiseguys, nothing. I don’t care if they are the boss, the underboss of another crew.” See Government’s Memorandum of Law, United States v. Squitieri, et. al., S1 05 Cr. 228 (AKH) at 8. “When an individual is ‘put on record’ with a member of LCN,

does not address the fact that a captain in the Gambino crime family put Raffetto “on record” with him.

Raffetto claimed that he eventually came to believe that DePalma was not providing any services in exchange for the weekly cash payments. Raffetto, however, continued to make the weekly cash payments because “of the possibility [that] it could affect my business in a detrimental way.” See Raffetto Trial Testimony at 927. Raffetto explained that he “was concerned for the well-being of my business, you know, of knowing that Mr. DePalma had a reputation.” See Raffetto Trial Testimony at 928. By referring to DePalma’s reputation, Raffetto again admitted that he knew about DePalma’s membership in the Gambino organized crime family.

Throughout his relationship with DePalma, Raffetto never sought the assistance of law enforcement. Instead, in June 2005, after FBI agents visited Raffetto’s office, Raffetto retained an attorney, because he “had some concern about how [his] implication may be involved,” thus recognizing his potential for criminal exposure. See Raffetto Trial Testimony at 940-941; see also Deposition Transcript at 9. At his June 28, 2007 deposition, Raffetto reasoned that he did not seek help because “it’s a hard line to do. I did not at that point know what was right, wrong or indifferent. I did not know if going to the FBI and you know, or the police and pressing charges was the right thing to do in the sense of safety or whatever, or however you want to put it in your head. It was something upsetting me tremendously. I did not know how to handle it.” See id. at 30. Raffetto only stopped making the weekly seven-hundred-dollar cash payments to DePalma when DePalma was arrested in March 2005. See Raffetto Trial Testimony at 926.

In its Response, the Applicant appears to rely upon a two-paragraph letter (the Letter) written by AUSA Christopher Conniff on behalf of Raffetto, his cooperating witnesses, when it states that “the Office of the United States Attorney concluded that the Registrant and his company were victims of an extortion by Gambino Family Capo Gregory DePalma and others.” See Response at 1. The Letter, while largely conclusory, states that AUSA Conniff considered Raffetto a “victim of extortion” at some point during the three year span of the charges in the indictment. However, the assessment of Raffetto’s good character, honesty and integrity is subject to a different analysis under the Commission’s mandate to eradicate all influences of organized crime from the trade waste carting industry than the trial prosecutor’s post-trial characterization of Raffetto’s “victim status.”

The record establishes that Raffetto affirmatively sought out and contacted DePalma for assistance with his business. Raffetto cannot be characterized as a “victim” of extortion throughout his entire business relationship with DePalma because even he concedes that initially he willingly made payments to DePalma, a known capo of the Gambino crime family, in an attempt to obtain a benefit. While Raffetto did eventually cooperate with the federal government and testify against DePalma, Raffetto did not seek the government’s help. In fact, as stated above, Raffetto initially rebuffed the government’s attempt to speak with him because he believed that he had potential for criminal exposure. Notably, at DePalma’s sentencing hearing, AUSA Conniff, himself, acknowledged that Raffetto was not a victim throughout his entire

it means that the individual is officially aligned with the member and that if any other member or associate of LCN has a problem with the individual, they have to resolve it with the member. See Parisi Affidavit Footnote 14 at 41.

relationship with DePalma when he stated, “Your honor, if you look at the testimony of Mr. Raffetto, for instance, when he said he went up [to DePalma] because he was in hope of getting these dumps: *After a short period of time [Raffetto] realized that nothing was materializing and, you know, [Raffetto] started to get a little upset about that*” (emphasis added). See United States of America v. DePalma, S1 05 Cr. 228, September 26, 2006 at 33. Perhaps even more significantly, at DePalma’s sentencing hearing, Judge Alvin K. Hellerstein asserted that Raffetto was not a mere innocent victim when he stated, “... As you recognize yourself (responding to AUSA Conniff), benefits [to Raffetto] were conferred” in exchange for the cash payments [to DePalma]. Id. In describing Raffetto’s behavior, Judge Hellerstein found that “... there was an element of fear and there was an element of avarice...” Id. at 36-37. Judge Hellerstein also noted that “some people [like Raffetto] are willingly entering into these types of arrangements because they see it in a way to obtain an unlawful benefit...” Id. Judge Hellerstein concluded, “I think those two Christmas payments [from Raffetto to DePalma] are classic extortions, but I am a little concerned with regard to the full amount of the monthly payments.” Id. at 37-38. Raffetto’s conscious and calculated attempt to obtain benefits from a relationship with a member of organized crime is inimical to the fundamental purpose of Local Law 42.

Prior to entering into the business relationship with DePalma, Raffetto also made cash payments to others he knew or believed were connected to organized crime. For instance, in the early 1990’s, Raffetto made payments to Dominick “Skinny Dom” Pizzonia (“Pizzonia”) and to another individual he believed was connected to organized crime. See Deposition Transcript at 36. At the time, Raffetto knew or believed that both were connected to organized crime.¹⁰ Id. at 35-36. Raffetto made sporadic cash payments to the individual he believed to be connected to organized crime, who, according to Raffetto, promised to help Raffetto with legitimate business related items like insurance. Raffetto claims that this individual took Raffetto’s money but never helped him in any way. Both Pizzonia and the individual Raffetto believed to be connected to organized crime stopped visiting Raffetto in 2000 or 2001. See id. at 38. Raffetto admitted that he complained to DePalma about Pizzonia and the other individual he believed to be connected to organized crime and asked DePalma to “please have his guys leave me alone.” See id. at 38-39. Raffetto’s request to DePalma was granted. See id. 38-39. In another instance, which Raffetto did not disclose to the Commission, “on January 5, 2004, Cascione sought protection from DePalma when an individual named Randy, who was associated with the Bonanno Organized Crime Family of LCN, attempted to extort New York Dirt in connection with a construction project New York Dirt was working in Brooklyn. DePalma informed Cascione that New York Dirt was with DePalma and that DePalma would take care of the problem.” See Parisi Affidavit at 53. Thus, Raffetto and the Applicant did get something from DePalma in exchange for the weekly seven hundred dollar cash payments after all - mob protection. The Response does not address the fact that the Applicant was protected as an asset of the Gambino crime family.

Raffetto’s explanation for contacting DePalma for business help is not credible and DePalma’s organized crime connections should have, at a minimum, raised concerns with

¹⁰ Pizzonia’s organized crime connections have been publicized, as were his ties to John Gotti, the former boss of the Gambino organized crime family. See, e.g., Pete Donahue, *Sports Bet Rings Raids Collar* 15, NEW YORK DAILY NEWS, December 7, 1995; John Marzulli, *Skinny Dom Gets Fat 15-Year Sentence for Murder Plot*, NEW YORK DAILY NEWS, September 6, 2007.

Raffetto about going into business with him. Yet, when questioned by Commission staff at his deposition as to why he would go into business with someone who has organized crime connections, Raffetto answered, "... at that time in [DePalma's] life, he was looking to do something legitimate, because he reflected that in his conversation. Not necessarily that he wanted to be legitimate, he reflected he was going into business, in doing recycling, and he had dump sites lined up that was going to be properly permitted, and we discussed Mr. DePalma at that point in his life was going to go to the right route, and you know, that he reflected to us he had a site." See Deposition Transcript at 18-19. Raffetto's elusive explanation that DePalma "was going to go the right route," disregards the fact that Raffetto knew that DePalma was a member of the Gambino organized crime family *before* he ever met with and spoke to him. The main thrust of Local Law 42 is to prohibit precisely these business relationships with organized crime figures. Despite all that Raffetto knew, he disregarded the evidence before him and went into business with DePalma. Moreover, Raffetto initiated contact with DePalma and sought out this relationship. The Response does not address the fact that Raffetto affirmatively sought to do business with a person whom he knew to be a member of organized crime.

The Response does not address the fact that Raffetto also made cash payments to several other people he believed were connected to organized crime. The Commission is expressly authorized to deny the license application of a carting company whose principals have had business dealings with known organized crime figures and racketeers. See Admin. Code §16-509(a)(v), (vi); SRI, 107 F.3d at 998. The Commission is similarly authorized to deny the registration application of a construction and demolition debris business. See supra at 4-6. The evidence recounted above demonstrates that the Applicant's principal affirmatively initiated a business relationship with a member of the Gambino organized crime family and a convicted racketeer, Greg DePalma, dealings which directly involved the construction industry. Raffetto, who knew of DePalma's organized crime status, conducted this business with a complete disregard for Local Law 42. Raffetto also associated with Dominick Pizzonia and another individual he believed to be connected to organized crime. These types of associations are plainly repugnant to Local Law's 42's central goal of eliminating the influence of organized crime from the industry. Both Raffetto's actual business dealings with DePalma and his willingness to continue in a business relationship with DePalma, despite his criminal history and organized crime associations, demonstrate that Raffetto lacks the good character, honesty, and integrity required for him to obtain a registration. Accordingly, New York Dirt's Renewal Application is denied on this independent ground.

B. The Applicant violated the terms of the Registration Order by knowingly associating with members and associates of organized crime and convicted racketeers.

On or about February 3, 2005, the Commission issued a Registration Order to the Applicant.¹¹ See Registration Order. Among other things, as a condition of the registration, the Applicant agreed that it would:

¹¹ Raffetto signed the Registration Order on or about February 16, 2008.

... not knowingly associate with any member or associate of organized crime or any racketeer in any manner, whether the association is related to the trade waste removal industry or not related to the trade waste removal industry.

See Registration Order at 3. As described above, Raffetto violated the terms of the Registration Order by knowingly associating with members and associates of organized crime. Raffetto associated with and continued to pay DePalma, a captain in the Gambino organized crime family, for at least one month after Raffetto signed the Registration Order. See Raffetto Trial Testimony at 926. He only stopped making payments when DePalma was arrested in March 2005. See id. At Raffetto's deposition, the Applicant's attorney would not allow Raffetto to answer questions about Raffetto's breach of this condition. See Deposition Transcript at 50.

The Response attempts to minimize the fact that Raffetto violated the terms of the Registration Order by stating that "the finding concerning the violation of the Registration Order is based solely upon an allegation of the rendering of one or two extortion payments..." See Response at 2. As described above, Raffetto only stopped making payments to DePalma when DePalma was arrested. While purely social contacts may not violate the Second Circuit's delineation of the associational restrictions in Local Law 42¹² (and in the Registration Order), that is not the case here. The record demonstrates that over the course of over two and one half years, Raffetto and an employee of the Applicant made cash payments to DePalma; that Raffetto had regular business meetings with DePalma at a nursing home to avoid the scrutiny of law enforcement; and that at the very least, DePalma provided Raffetto and the Applicant with mob protection

Thus, the Applicant violated the terms of the Registration Order, terms to which the Applicant previously agreed to. This violation, and the severity of the underlying conduct, demonstrate the Applicant's lack of honesty, integrity and character. As such, this Renewal Application is denied based on this independently sufficient reason.

C. The Applicant failed to provide truthful information in Renewal Applications.

The Commission may refuse to issue a registration to an applicant who has failed "to provide truthful information in connection with the application." See Admin. Code §16-509(a), (b); Attonito, 3 A.D.3d 415. See also Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). On or about February 15, 2007, Raffetto filed the Applicant's First Renewal Application with the Commission. On or about April 17, 2009, Raffetto filed the Applicant's Second Renewal Application with the Commission. As the sole principal of the Applicant business, on January 17, 2007, Raffetto certified that the information contained in the First Renewal Application was true and accurate. See First Renewal Application. at 11. Similarly, as the sole principal of the Applicant business, on March 24, 2009, Raffetto certified that the information contained in the Second Renewal Application was true and accurate. See Second Renewal Application at 11. In both Renewal Applications, Raffetto provided false, misleading, and incomplete information to the Commission.

¹² See Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985 (2d Cir. 1997).

Question 10 of the both Renewal Applications submitted by the Applicant asks, “Have you or any of your principals, employees, affiliates or representatives knowingly associated in any manner with any member or associate of organized crime?” In response, the Applicant stated, “Mr. Raffetto has had several conversations with Mr. Gregory DePalma. Mr. Raffetto will provide whatever additional information required by the Commission.” See First Renewal Application at 4; Second Renewal Application at 4. However, the Applicant failed to disclose in both Renewal Applications Raffetto’s associations with Dominick Pizzonia, a captain in the Gambino organized crime family, and Robert Persico, an associate of the Gambino organized crime family.¹³

At his deposition, Raffetto testified that he should have disclosed his association with Persico. See Deposition Transcript at 47. In regard to the Applicant’s failure to disclose associations with Pizzonia and another individual he believed to be connected to organized crime, Raffetto testified that the omissions were because “there were no dealings.” See Deposition Transcript at 48. Here, Raffetto clumsily attempted to parse the words of a simple question in the Renewal Application. Nevertheless, based on his own admissions, Raffetto failed to fully disclose in the Renewal Applications that he knowingly associated with several members or associates of organized crime.

In the unverified Response, the Applicant unsuccessfully attempts to minimize Raffetto’s relationships with Robert Persico and Dominick Pizzonia. The assertion in the unverified Response that Raffetto saw Persico once at a construction site and never again is misleading. See Response at 4. At his deposition, Raffetto admitted that he and Persico were evidently close enough for Persico to call Raffetto to tell Raffetto that he was out of prison. See Raffetto Tr. at 40. Raffetto also admitted that he “maintained doing business with Persico. Not necessarily Persico, but his company.” Id. The unverified Response also asserts, without any explanation or proof, that Raffetto “spoke to Dominick Pizzonia once, when compelled to attend a dinner meeting.” See Response at 4. Yet, at his deposition, Raffetto testified about how Pizzonia and another person Raffetto thought was connected to organized crime met with Raffetto at his office, at a jobsite at Kennedy Airport, and even at the individual’s house. See Raffetto Tr. at 34-40. Raffetto’s relationship with Pizzonia and the individual he believed to be connected to organized crime only ended when DePalma interceded on Raffetto’s behalf. Id. at 38-39. The unverified Response does not address any of these facts, which establish the extent of Raffetto’s relationship with various members and associates of organized crime. Furthermore, the unverified Response is contradicted by Raffetto’s own testimony.

Additionally, Question 6 of both Renewal Applications submitted by the Applicant asks, “Have you or any of your principals, employees, or affiliates been convicted of any criminal offense in any jurisdiction, or been the subject of any criminal charges in any jurisdiction?” In response, the Applicant answered, “No.” See First Renewal Application at 2; Second Renewal Application at 2. However, on August 24, 2003, Raffetto was arrested and charged with driving

¹³ Raffetto also testified that he associated with another individual he believed was connected to organized crime. Despite Raffetto’s belief that this individual was connected to organized crime, Raffetto paid him cash “off of the books.” See Deposition Transcript at 59.

while intoxicated, an unclassified misdemeanor.¹⁴ On August 27, 2003, Raffetto pled guilty to driving while ability impaired by alcohol. He was sentenced to a three hundred dollar fine, a conditional discharge, and a 90-day suspension of his driver's license. See Edward Raffetto rap sheet. In the Response, the Applicant's attorney states that the "omission of [this] information was the mistake of counsel, admitted in the deposition." See Response at 5. Nevertheless, Raffetto certified that the information contained in the Second Renewal Application was true and accurate even though it was not.

As discussed above, and as admitted throughout his trial testimony and deposition before the Commission, Raffetto knew that he had associated with members and associates of organized crime. Thus, Raffetto provided false and misleading information to the Commission in New York Dirt's First and Second Renewal Applications by providing incomplete answers. Similarly, Raffetto provided false and misleading information to the Commission in New York Dirt's First and Second Renewal Applications by failing to disclose his arrest. Raffetto's failure to provide truthful information to the Commission demonstrates that the Applicant lacks the requisite good character, honesty and integrity to operate such a business in New York City. For this independently sufficient reason, the Applicant's registration renewal application is denied.

¹⁴ The Applicant also violated the Commission's rules by failing to notify the Commission of Raffetto's arrest. See 17 RCNY Section 2-05(a)(1).

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that New York Dirt Contracting Corp. falls far short of that standard. Based upon the above independently sufficient reasons, the Commission denies New York Dirt Contracting Corp.'s registration renewal application. This exemption/registration denial is effective immediately. New York Dirt Contracting Corp. may not operate as a trade waste business in the City of New York.

Dated: July 31, 2009

THE BUSINESS INTEGRITY COMMISSION



Michael J. Mansfield
Commissioner/Chair



John Doherty, Commissioner
Department of Sanitation



Jonathan Mintz, Commissioner
Department of Consumer Affairs



Rose Gill Hearn, Commissioner
Department of Investigation



Deborah Buyer, General Counsel (designee)
Department of Business Services



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