



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

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF PEBBLE ROCK, LTD. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

On January 19, 2006, Pebble Rock, Ltd. (the "Applicant" or "Pebble Rock") submitted an application 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 exemption from licensing requirements for the removal of construction and demolition debris.<sup>1</sup> See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). The principals of the Applicant, an excavation and waste hauling company, are Thomas Vendittelli and Joseph Vendittelli.

Pebble Rock has applied to the Commission for a registration enabling it to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "C & D." Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for 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

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<sup>1</sup> See infra fn 2.

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").

Based upon the record as to the Applicant, the Commission denies its registration application on the ground that this Applicant lacks good character, honesty and integrity for the following independent reasons:

- A. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration.
  - 1. The Applicant's President, Thomas Vendittelli, and Secretary/Treasurer, Joseph Vendittelli, were convicted of mail fraud in connection with their participation in an illegal dumping scheme at Fresh Kills Landfill.
  - 2. The Applicant's President, Thomas Vendittelli, and Secretary/Treasurer, Joseph Vendittelli, are convicted racketeers
  - 3. The Applicant engaged in unlicensed activity on multiple occasions and was found guilty of an administrative violation for such conduct.
  - 4. The Applicant failed to pay a fine resulting from its unlicensed activity for which a judgment has been entered.
- B. The Applicant knowingly failed to provide information and provided false and misleading information to the Commission.

## **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 (1<sup>st</sup> 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 (1<sup>st</sup> Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to “review” exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases “where the applicant fails to provide the necessary information, or knowingly provides false information.” It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

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

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;
6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

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

## II. THE APPLICANT

On January 19, 2006, the Applicant filed an application for exemption from licensing requirements for removal of construction and demolition debris (the "Registration Application").<sup>2</sup> The principals of the Applicant are Thomas Vendittelli ("Thomas") and Joseph Vendittelli ("Joseph"). See Registration Application at 9.

The staff has conducted a background investigation of the Applicant and its principals. As part of the Commission's investigation, on July 20, 2006, Commission staff deposed Thomas Vendittelli and Joseph Vendittelli. On January 26, 2007, the staff issued a 14-page recommendation that the Registration Application be denied (the "Recommendation"). Pursuant to the Commission's rules, the Applicant had ten business days to submit a response to the Recommendation. See 17 RCNY §2-08(a); see also Recommendation at 14. The Applicant did not submit any response to the staff's Recommendation.

The Commission has carefully considered the staff's Recommendation. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and has failed to demonstrate eligibility for a registration. Therefore, Pebble Rock's application is denied.

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<sup>2</sup> Pebble Rock submitted a second application on May 19, 2006. Commission staff deposed Thomas Vendittelli on July 20, 2006. During the deposition, Thomas testified that he submitted a second registration application because his attorney informed him that the first application was outdated. See Deposition Transcript of Thomas Vendittelli ("Thomas Tr.") at 16. Both applications, containing substantially similar information, are considered in this denial recommendation.

### III. GROUNDS FOR DENIAL

#### A. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration.

##### 1. The Applicant's President, Thomas Vendittelli, and Secretary/Treasurer, Joseph Vendittelli, were convicted of mail fraud in connection with their participation in an illegal dumping scheme at Fresh Kills Landfill.

In August 1994, Thomas Vendittelli, Joseph Vendittelli, and fifteen others were indicted on federal conspiracy and bribery charges in connection with an illegal waste-dumping scheme at the Fresh Kills Landfill ("the Landfill") on Staten Island. See United States v. Barbieri et al., No. 94 Cr. 518 (S.D.N.Y.) ("Indictment"). The scheme involved, among other things, fraudulent abuse of the City's "free cover program," under which the City allowed hauling and trucking companies to dispose of "clean fill" (i.e., soil generally free of debris) and "road material" free of charge at the Landfill because the Department of Sanitation ("DOS") required such material to operate the Landfill.<sup>3</sup> In essence, the illegal dumping scheme involved truckers, such as the Vendittellis, paying middlemen who acted as brokers between DOS employees and truckers who wished to dispose of material at the Landfill. Those middlemen, including Anthony Emmino and Robert Emmino ("the Emmino brothers"), in turn, bribed DOS employees to allow the Vendittellis and others, under the guise of the "free cover program," to dump non-qualifying material such as construction and demolition debris at the Landfill without paying the standard waste disposal fee. See generally Indictment at ¶¶1-14, 35-40.<sup>4</sup>

The indictment identified Thomas Vendittelli and Joseph Vendittelli as officers of both North 12<sup>th</sup> Street Transfer Corporation ("North 12<sup>th</sup> Street"), a transfer station, and Vendi Brothers, Inc. ("Vendi Bros."), a demolition and carting company. Id. at ¶25. The indictment charged that from September 1988 through April 1992, the Vendittellis made payments totaling between approximately \$200,000 and \$250,000 to a company, CJE Land Clearing Inc. ("CJE"), with the understanding that CJE's principals, the Emmino brothers, would use a portion of the money to bribe DOS employees to allow the Vendittellis' companies to dump non-qualifying material free of charge at the Landfill. Id. at ¶51.

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<sup>3</sup> Two programs were in effect from October 1988 through April 1992 that enabled entities to dump qualifying material at the Landfill free of charge. First, under the "free cover program," truckers were permitted to dispose of cover material or "road material," i.e., concrete rubble and broken asphalt, at the Landfill free of charge. Second, under the "paid cover program," companies obtained contracts with the City, which required them to bring a certain amount of cover material from pre-approved sites to the Landfill. Cover material is also referred to as "clean fill," which is primarily dirt, with some small amounts of stone, gravel, sand, clay and silt. Under both programs, DOS employees were required to inspect the sites from which the material was to be obtained in order to ensure that it contained appropriate material.

<sup>4</sup> See also fn 3.

In furtherance of this bribery conspiracy, the indictment charged that, on or about November 12, 1991, Joseph Vendittelli had a telephone conversation with Anthony Emmino, in which they discussed disguising the appearance of a load of unapproved material so that it could be dumped at the Landfill free of charge. Id. at ¶57(u). The indictment further charged that on or about October 10, 1991, Anthony Emmino spoke with another co-conspirator wherein they discussed Thomas Vendittelli's bribe payments to a DOS employee working at the Landfill. Id. at ¶57(v). Finally, the indictment charged that on or about May 16, 1991, Thomas and Joseph caused North 12<sup>th</sup> Street to use a dump ticket for an alleged site at 133<sup>rd</sup> Street in the Bronx (the "133<sup>rd</sup> Street Site") to dump unapproved material at the Landfill from a location other than the 133<sup>rd</sup> Street Site.<sup>5</sup> Id. at ¶57(w).

The indictment charged Thomas Vendittelli and Joseph Vendittelli each with one count of conspiracy to commit bribery in violation of Title 18, United States Code, Section 666(a)(2), and one count of bribery in connection with a federally funded program in violation of Title 18, United States Code, Sections 666(a)(2) and (2). Id. at ¶¶54, 81. In March 1995, Thomas and Joseph each pled guilty to superseding informations charging one count of mail fraud in connection with the submission to DOS of reports falsely stating the amount of clean fill or "road material" dumped by the Vendittellis' companies at the Landfill. See United States v. Thomas Vendittelli, Information No. S5-95 Cr. 518 (WK) (S.D.N.Y.) ("Thomas Information"); United States v. Joseph Vendittelli, Information No. S4-95 Cr. 518 (WK) (S.D.N.Y.) ("Joseph Information"). On September 15, 1995, Thomas and Joseph were sentenced to four months incarceration, and three years probation with a period of four months home confinement. See Thomas Vendittelli Judgment of Conviction; Joseph Vendittelli Judgment of Conviction. They were also ordered to pay the City restitution in the amount of \$40,000. See id.

As discussed above, Thomas Vendittelli and Joseph Vendittelli were principals of North 12 Street and Vendi Bros. In making licensing determinations, the Commission is expressly authorized to consider prior convictions of the applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also id. § 16-501(a). Those factors are:

- (a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license . . . sought.

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<sup>5</sup> A DOS-approved site was referred to as a "borrow site." The 133<sup>rd</sup> Street Site was a fictitious borrow site created by Anthony Emmino. See Indictment at ¶¶11, 44. The Vendittellis used dump tickets issued for this site to dump unapproved material that was obtained from other sites in order to avoid payment of the required dumping fees.

- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law §753 (1).

Applying these factors, notwithstanding the public policy of the state of New York to encourage licensure of persons convicted of crimes, the crimes committed by Thomas Vendittelli and Joseph Vendittelli are so serious, and so closely related to both the purposes for which registration is sought here and the duties and responsibilities associated with such registration, that they should preclude the grant of a trade waste removal registration to this Applicant. By their own admission, the Vendittellis participated in a scheme to defraud the City of New York by bribing its employees and filing false statements. During the four-year period of their participation in the scheme, the Vendittellis were businessmen in their late 20's or early 30's – plainly old enough to know what the law is, how to obey it, and to recognize that the payments they made and the false statements they filed were certainly illegal. Their crimes were the result of a conscious decision to violate the law and are an all too accurate reflection of the cynical disregard for the law that corrupted the City's waste removal industry for decades. Thomas Vendittelli and Joseph Vendittelli are, quite simply, unworthy of registration in that same industry.<sup>6</sup>

For the principals' involvement in the above outlined illegal dumping scheme -- a point not refuted by the Applicant -- the Commission finds that the Applicant lacks good character, honesty, and integrity and has failed to demonstrate eligibility for a

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<sup>6</sup> Additionally, on December 3, 1993, Thomas Vendittelli was convicted of criminal trespass in the third degree, operating a solid waste management site without a permit; and disposing of solid waste at a non-permitted facility. See NYLJ Decision, September 15, 1994. The trespass conviction was later overturned. See NYLJ Decision, Appellate Term 2<sup>nd</sup> and 11<sup>th</sup> Judicial Districts, December 1, 1995. Thomas testified during his deposition that he dumped dirt at a baseball field on Staten Island without the required permits. See Thomas Tr. at 71-72.

registration. Therefore, the Commission denies Pebble Rock's application for this independently sufficient reason.

**2. The Applicant's President, Thomas Vendittelli, and Secretary/Treasurer, Joseph Vendittelli, are convicted racketeers.**

The Commission may deny a license application based on the "commission of a racketeering activity..." See Admin. Code §16-509(a)(v). As demonstrated above, Thomas and Joseph pled guilty to mail fraud, in violation of Title 18, United States Code, Section 1341. Section 16-509(a)(v) of the Administrative Code specifically states that racketeering activities include, but are not limited to, those delineated in Title 18, United States Code, Section 1961(1). Title 18, United States Code, Section 1961(1) defines "racketeering activity" to include any act involving mail fraud, a crime of which the Vendittellis were convicted.

Thomas and Joseph's commission of the above racketeering activities is evidence of their lack of good character, honesty and integrity and mandates the conclusion that the Applicant has failed to demonstrate eligibility for a registration. The Applicant does not refute this point. Consequently, Pebble Rock's application is denied on this independently sufficient ground as well.

**3. The Applicant engaged in unlicensed activity on multiple occasions and was found guilty of an administrative violation for such conduct.**

Pebble Rock was incorporated in 1995 and applied to the Commission for an exemption from the licensing requirements in 2006. The company has never held a DCA carting license and has never been legally authorized to operate in the City of New York. Nonetheless, by its own admission, Pebble Rock has been illegally operating in the City since its formation in 1995.

At their depositions, both Thomas and Joseph acknowledged that they have been illegally hauling dirt and debris from excavation sites since the company's inception. See Joseph Tr. at 13, 38-39; Thomas Tr. at 49. In fact, on September 1, 2005, a Commission investigator observed one of the Applicant's trucks while it collected and transported waste from an excavation site in Brooklyn, New York. Consequently, on September 19, 2005, the Applicant was charged with operating an unlicensed or unregistered waste removal business, in violation of §16-505(a) of the New York City Administrative Code. See Department of Consumer Affairs ("DCA") Notice of Hearing, #TW-1215. On January 26, 2006, a hearing was held at the DCA before Administrative Law Judge ("ALJ") Mitchell B. Nisonoff. Subsequently, by Decision and Order dated March 1, 2006, ALJ Nisonoff found Pebble Rock guilty of violating the New York City Administrative Code §16-505(a) and ordered Pebble Rock to pay a fine of \$5,000 to the Business Integrity Commission. See Decision and Order.<sup>7</sup>

<sup>7</sup> As of the date of this recommendation, Pebble Rock has failed to pay this fine. See *infra* at 12.

The Commission is authorized to deny the license application of a company that has engaged in unlicensed carting activity in the City of New York. See Admin. Code §§ 16-505(a), 16-509(c)(ii), 16-513(a)(i). Further, as discussed above, the Commission may consider such activity in determining overall eligibility for a registration. Pebble Rock plainly engaged in unlicensed carting activity, for a minimum of eleven years. The Applicant does not refute this point. Therefore, Pebble Rock's application is denied on this independently sufficient ground as well.

**4. The Applicant failed to pay a fine resulting from its unlicensed activity for which a judgment has been entered.**

The Commission may deny a license application when the applicant has failed "to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefor or for which judgment has been entered ...", and the Commission may consider such when determining an applicant's eligibility for a registration. See Admin. Code §16-509(a); supra at 5-7. The Applicant has failed to pay an outstanding fine resulting from a violation being issued against Pebble Rock for unregistered activity.

As discussed above, on March 1, 2006, by Decision and Order, ALJ Mitchell B. Nisonoff found Pebble Rock guilty of violating Administrative Code Section 16-505(a) and ordered Pebble Rock to pay a fine of \$5,000 to the Business Integrity Commission. See Decision and Order. As of the date of this recommendation, approximately eleven months have passed since the DCA entered judgment against Pebble Rock. To date, Pebble Rock has not paid any money to the Business Integrity Commission towards this fine. The Applicant does not refute this point.

The Applicant's failure to pay the fine related to operating without a trade waste license or registration is another independently sufficient ground to deny the Applicant's registration application.

**B. The Applicant knowingly failed to provide information and provided false and misleading information to the Commission.**

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. As stated, Commission staff deposed Thomas and Joseph on July 20, 2006. During their sworn depositions, both provided false and misleading information to the Commission. In 1995, the Vendittellis pled guilty and accepted responsibility for the crime of mail fraud. Yet, when they testified before the Commission, they denied responsibility for their actions and claimed to be innocent. The evidence demonstrates that their recent denials of responsibility are in fact false.

During their depositions, Thomas and Joseph denied all the elements of the crime they previously admitted. They claimed that they had no knowledge of the scheme at the

Landfill or that the Emmino brothers were paying bribes to DOS officials. See Thomas Tr. at 60-70; Joseph Tr. at 46-58. Both claimed that they believed the material they dumped at the Landfill was acceptable material. See id. They testified that they were innocent and only pled guilty to save the time and expense of a trial. See Thomas Tr. at 66-67; Joseph Tr. at 57-58. These recent claims of innocence flatly contradict their earlier pleas, also made under oath. Consequently, either they are lying now or they lied to the sentencing court a decade ago. Moreover, the Venditellis' refusal to testify truthfully and appreciate the wrongfulness of their conduct frustrates the Commission's inquiry into the facts and circumstances of their earlier convictions and moots any inquiry into whether they learned anything from the experience.

In fact, the indictments, the Venditellis' pleas of guilty, and the evidence against them belie these recent claims of innocence. Contrary to Thomas and Joseph's assertions under oath at their depositions, the evidence established that they were in fact aware that the material they dumped at the Landfill was unacceptable and therefore could not legally be dumped free of charge. For instance, Joseph was heard incriminating himself on wiretapped recordings. On or about November 12, 1991, Joseph Venditelli, during a telephone conversation with Anthony Emmino, discussed disguising the appearance of a load so that it "look[ed] good" when it was dumped. See Indictment at ¶57(u); Wire Transcription, 11/12/91 Conversation. This evidence directly contradicts Joseph's claims that he was permitted to dump the material at the Landfill without paying dumping fees because it was acceptable material.

Additionally, under either program – free cover program or paid cover program – DOS employees were required to inspect the sites from which material was to be brought into the Landfill. This was necessary in order to ensure that the site contained appropriate material. Contrary to the Venditellis' assertions that they only brought appropriate material into the Landfill, they used a dump ticket for the 133<sup>rd</sup> Street Site, a fictitious borrow site, to dump material at the Landfill that was not approved and was not in fact from the 133<sup>rd</sup> Street Site. See Indictment at ¶57(w). The Commission cannot credit such blatantly and provably false testimony.

Moreover, the Venditellis pled guilty under oath on March 24, 1995. In doing so, they admitted that they were guilty of mail fraud; they admitted that from on or about late 1988 through April 1992, they knowingly participated in a scheme to deprive New York City of dumping fees by falsely representing that material was approved material when it was not. See Thomas Information; Joseph Information. In furtherance of this scheme, they admitted to filing documents with the City which falsely described the amount of approved material they dumped at the Landfill.<sup>8</sup> See id.

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<sup>8</sup> The Venditellis conceded that they paid the Emminos hundreds of thousands of dollars, but claim that they did not know that any of that money went to pay bribes. See Thomas Tr. at 60-70; Joseph Tr. at 46-58. If the material was acceptable to DOS as the Venditellis claimed to have believed, then they would not have had to pay hundreds of thousands of dollars to the Emmino brothers. Rather, they would have been permitted to dump the material free of charge.

Thus, Thomas and Joseph provided false and misleading information to the Commission during their depositions before the Commission. The Applicant does not refute this point. Thomas and Joseph's consistent failure to be forthcoming and take responsibility for their actions demonstrates their lack of business integrity and frustrates the investigative functions of the Commission. Their unwillingness to deal honestly with the Commission, the agency responsible for regulating their business, 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, Pebble Rock's registration application is denied.

### 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 Pebble Rock falls short of that standard. For the reasons discussed above, the Commission hereby denies Pebble Rock's registration application.

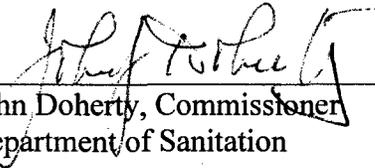
This exemption/registration denial decision is effective immediately. The Applicant shall not service any customers or otherwise operate a trade waste removal business in the City of New York.

Dated: May 8, 2007

#### THE BUSINESS INTEGRITY COMMISSION



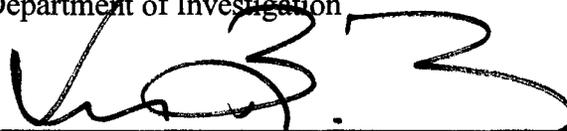
Thomas McCormack  
Chair



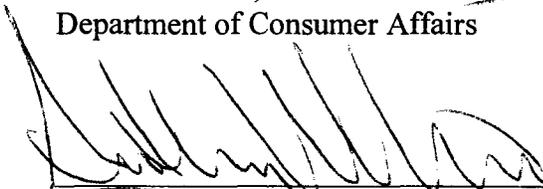
John Doherty, Commissioner  
Department of Sanitation



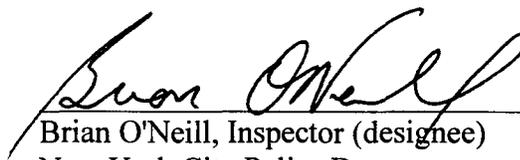
Rose Gill Hearn, Commissioner  
Department of Investigation



Jonathan Mintz, Commissioner  
Department of Consumer Affairs



Anthony Dell'Olito, General Counsel (designee)  
Department of Small Business Services



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