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

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF PERSICO CONTRACTING & TRUCKING INC. FOR RENEWAL OF ITS REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Persico Contracting & Trucking Inc. ("PCT" or the "Applicant") has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for renewal of its registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-505(a). Local Law 42, which created the Commission to regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

On May 26, 2005, PCT applied to the Commission for renewal of its 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. See id.

In determining whether to grant a renewal of 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 an exemption 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, for the following independently sufficient reasons, denies PCT’s renewal application and refuses to issue PCT a registration:

- The Applicant’s Vice President Engaged in Racketeering Activity by Conspiring to Extort Union Officials on Behalf of the Applicant Company.
- The Applicant Provided False and Misleading Information in Connection with its License Renewal Application.
- The Applicant’s President Knowingly Obstructed the Commission’s Investigation by Refusing to Appear for a Deposition and Provide Sworn Testimony.
- The Applicant is the Subject of Pending Administrative Charges Relating to Unlicensed Trade Waste Activity in Westchester County.
- The Applicant Failed to Pay Government Obligations for Which Judgments Have Been Entered.

I. REGULATORY 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 guilty 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.

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 constitutional challenges (both facial and as applied) 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).

II. DISCUSSION

PCT is a construction company based in Mt. Vernon, New York. When PCT's exemption application was filed on November 4, 2002, the company was jointly owned by two brothers, Richard Persico ("Richard P."), President and 50% owner, and Robert Persico ("Robert P."), Vice President, Secretary and Treasurer and 50% owner. See Exemption Application of PCT ("Application") at 8.

PCT was issued an exemption from licensing and a trade waste registration with an effective date of July 1, 2003. The registration was valid through June 30, 2005.¹ See Admin. Code §16-506(a)(registrations are valid for a period of two years). On May 26, 2005, PCT filed with the Commission an application for renewal of its trade waste registration. See Renewal Application For License Or Registration As A Trade Waste Business ("Renewal Application").

On March 2, 2005, an indictment was filed in the United States District Court for the Southern District of New York charging Robert P.² with the crimes of racketeering, racketeering conspiracy, Hobbs Act Extortion and Transportation/Receipt of Stolen Property, in violation of 18 USC §§371, 2313, 1951, 1962(c)-(d), 2314 and 2315. See Indictment, United States v. Squitieri, Persico, et. al., 05 CR 228 (SDNY)(AKH)("First Persico Indictment"). Such crimes are racketeering activities within the scope of 18 USC §1961. The indictment charged that Robert P. conspired with Gambino capo Gregory DePalma to extort another construction company and transport stolen luxury goods. The indictment specifically identified Robert P. and several of his codefendants as "associates of the Gambino family." See First Persico Indictment at 2.

On March 9, 2005, a second indictment was filed in the United States District Court in the Southern District of New York charging Robert P. with the crimes of conspiracy, mail fraud and unlawful receipt of labor payments, in violation of 18 USC §§371, 1341 and 29 USC §186. See Indictment, United States v. Persico, 05 CR 255 (SDNY)(MBM)("Second Persico Indictment"). Such crimes are racketeering activities within the scope of 18 USC §1961. The indictment charged Robert P. with bribing union officials during the years 2000-2001 while "acting on behalf of Persico Contracting and Trucking, Inc." Id. at 3.

According to the Renewal Application, Richard Persico was purportedly the sole owner; the application stated that Robert Persico was no longer a principal of the company "as of March 1, 2005." Id. at 6, 8. The Renewal Application contained documents describing Robert P.'s alleged divestment of his ownership interest in the company, effective March 1, 2005. See Letter to Zurich American Insurance Company, dated March 23, 2005; Resignation Letter of Robert P., dated "as of March 1, 2005";

¹ In order to accommodate the scheduling of depositions pursuant to an investigation of PCT's application to renew its permit, the Commission granted two thirty-day extensions of PCT's registration, extending the permit to August 31, 2005. Once PCT stopped cooperating with the Commission (*see infra* at 8-10), no further extensions were granted and its permit expired.

² The indictment charged thirty-two (32) defendants, including Robert P. Many of the defendants were members or associates of the Gambino crime family, including co-defendants Arnold Squitieri (acting boss), Gregory DePalma (acting capo) and Anthony Megale (acting underboss). See First Persico Indictment.

Escrow Agreement dated "as of March 1, 2005"; Corporate Minutes dated March 29, 2005. The evidence before the Commission suggests that documents were backdated in order to avoid filing a renewal application that acknowledged that PCT was owned and operated by a principal under indictment for significant organized crime activity. *See infra* at 7-8.

On April 21, 2006, Robert P. pleaded guilty to charges on both indictments: (a) regarding the First Persico Indictment, Robert P. admitted that he was involved in a plot to send stolen cars from Westchester County to Ohio³ and (b) regarding the Second Persico Indictment, Robert P. admitted that he sent correspondence through the mail as part of a scheme on behalf of PCT to bribe union officials.⁴ *See* Docket Report on Second Persico Indictment; "Persico Denies Link to Gambino Family; Pleads Guilty to Mail Fraud," *The Journal News*, April 22, 2006. Sentencing is scheduled for July 26, 2006. *See* Docket Report.

The staff has conducted an investigation of the Applicant and its principals (the extent of which was hampered by the failure of the Applicant's President to cooperate with the Commission). On May 2, 2006, the staff issued a 12-page recommendation that the application be denied. *See* Recommendation of the Staff that the Business Integrity Commission deny the Application of Persico Contracting & Trucking Inc. for Renewal of its Registration to Operate as a Trade Waste Business ("Recommendation"). The Recommendation was personally served on the Applicant's Controller at the Applicant's place of business on May 4, 2006, and the Applicant was granted ten business days to respond (May 18, 2006). In addition, a copy of the Recommendation was also sent to the Applicant's counsel, Donald Carbone, via facsimile, on May 4, 2006. *See* 17 RCNY §2-08(a). The Applicant failed to submit a response, thereby leaving the evidence against it uncontested.

The Commission has carefully considered both the staff's recommendation and the Applicant's failure to submit a response. For the reasons stated below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its renewal application.

A. The Applicant's Vice President Engaged in Racketeering Activity by Conspiring to Extort Union Officials on Behalf of the Applicant Company.

In determining whether an applicant possesses the good character, honesty and integrity required to operate a trade waste business, the Commission may consider the "commission of a racketeering activity" by the Applicant or its principals. *See* Admin. Code §16-509(a)(v).

³ *See* First Persico Indictment at 86 (Conspiracy to Transport and Receive Stolen Automobiles, 18 USC 371, 2313).

⁴ *See* Second Persico Indictment at 4-5 (Mail Fraud, 18 USC §1341, 1346, 2).

Robert P. pleaded guilty to the federal crime of mail fraud in connection with a scheme to bribe union officials on behalf of the Applicant during the years 2000-2001.⁵ Mail fraud is a racketeering activity within the scope of 18 USC §1961. Not only did the Vice President and 50% owner of the company commit the crime, but he did so specifically to benefit the Applicant business.

The Applicant has failed to submit a response, thereby leaving the evidence against it un rebutted. Based on this independently sufficient ground, the Commission denies PCT's renewal application.

B. The Applicant Provided False and Misleading Information in Connection with its License Renewal Application.

On May 26, 2005, PCT filed a Renewal Application for a Registration as a Trade Waste Business and its President, Richard P., signed a sworn certification swearing to the truth of the contents of the application. See Renewal Application at 9.

The Renewal Application stated that Robert P. terminated his ownership and officer status in the company on March 1, 2005. Id. at 6, 8. Not coincidentally, the date of Robert P.'s purported resignation occurred the day before the indictment charging him with conspiring with a capo in the Gambino organized crime family was unsealed. See First Persico Indictment. Notably, none of the supporting documentation attached to the application was dated March 1, 2005; all of the documents were either misleadingly dated "as of March 1, 2005" or dated in late-March, several weeks *after* the First Indictment was unsealed. In addition, the purported divestment date is not specified in any of the documents; it is always referred to "*as of* March 1, 2005" (italics added). For example, Robert P. mailed a letter to Zurich American Insurance Company in order to terminate his indemnity obligations. See Zurich March 23, 2005 letter. However, the letter was not dated until March 23, 2005, and the divestment date was listed "*as of* March 1, 2005" (italics added), without stating when the divestment actually occurred. Similarly, Robert P.'s resignation letter did not contain the date it was actually written, but stated "*as of* March 1, 2005" (italics added), the attached escrow agreement detailing the purported transfer for Robert P.'s stock was merely dated "as of" March 1, 2005, and the corporate minutes from a meeting not held until March 29, 2005, mentioned that Robert P.'s resignation was accepted "effective March 1" without stating when the resignation actually occurred. See Resignation Letter; Escrow Agreement and Corporate Minutes.

The terms of the escrow agreement (including the modifications contained in the corporate minutes) do not support the statements in PCT's renewal application that Robert P. was no longer a principal in the company.⁶ According to the escrow agreement, attorneys were merely holding the stock in escrow; the shares would not be sold until the parties agreed to a purchase price. See Escrow Agreement at 1. According to the corporate minutes, the sale would not take place until the accountants of PCT

⁵ Robert P.'s subsequent resignation from PCT does not affect the sufficiency of this independent ground for denial of this application.

⁶ The Applicant's failure to amend its application within ten business days regarding this alleged material change is further evidence that Robert P. did not actually resign on March 1, 2005. See 17 RCNY §2-05(b)(iii).

conducted a valuation of Robert P.'s interest in the company. PCT never provided any documents to the Commission indicating that the valuation had taken place and the sale consummated. It is clear that at the time of the March 29, 2005 meeting, the valuation had not taken place and a purchase price had not been agreed upon. Based on the documents submitted by PCT, Robert P. was still a principal of the company and should have been disclosed in its renewal application.⁷

The burden is on the Applicant to provide truthful and non-misleading information to the Commission. The documents offered in support of PCT's renewal application not only fail to corroborate its claim that Robert P. was no longer a principal of the company as of March 1, 2005, but also affirmatively obfuscate (if not outright contradict) its assertions. As a result, the timing of Robert P.'s divestment is unclear, and the application raises more questions than it answers. Based on the confusing submission, the staff cannot place any confidence in PCT's application and finds it unreliable.

The Applicant has failed to submit a response, thereby leaving the evidence against it unrebutted. The failure of the Applicant to provide truthful and non-misleading information to the Commission is evidence that the Applicant lacks good character, honesty and integrity. The Commission hereby denies PCT's renewal application on this independently sufficient ground. See Admin. Code §16-509(a)(i).

C. The Applicant's President Knowingly Obstructed the Commission's Investigation by Refusing to Appear for a Deposition and Provide Sworn Testimony.

"The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." See Admin. Code §16-509(b). The Commission has the power "[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation." Admin. Code § 16-504(c).

The filing of PCT's renewal application raised significant integrity issues that the Commission wanted to investigate, including the circumstances and timing of Robert P.'s purported resignation and the allegation in the Second Indictment that Robert P. bribed union officials on behalf of the Applicant company several years earlier. In order to investigate PCT's renewal application, the Commission attempted on several occasions, albeit unsuccessfully, to take sworn testimony from Richard P. On June 28, 2005, a Commission staff attorney mailed a letter to Richard P. notifying him to appear for a

⁷ The corporate minutes also reveal that there was an agreement between Robert P. and Richard P. that any sale of stock would be void if the Applicant was found to be a non-responsible bidder for public jobs. See Corporate Minutes. Regardless of whether the Persico brothers would consider a denial by the Commission to be the equivalent of a non-responsibility finding, this agreement suggests that the purported sale of stock was not a legitimate transaction, but merely an attempt to appease government regulators.

deposition on July 12, 2005. The letter warned that failing to appear could negatively impact PCT's registration status before the Commission. See BIC June 28, 2005 letter. On June 28, 2005, Richard P. left a voice mail message for the BIC staff attorney. On June 29, 2005, the staff attorney spoke to Richard P., who confirmed his appearance for the July 12 deposition. A few days later, the Commission was contacted by Aaron Boyajian, Esq. ("Boyajian"), who stated that he was calling on behalf of Donald Carbone, Esq. ("Carbone"), that Carbone was the new lawyer for PCT and that he was requesting that the deposition be rescheduled. The staff attorney agreed to afford Carbone the standard courtesy of an adjournment to newly-retained counsel and Boyajian promised to call back promptly with a new date. Neither Boyajian nor Carbone contacted the Commission to reschedule the deposition. On July 28, 2005, a letter was sent to Richard P. and his new attorneys notifying them that the deposition had been rescheduled for August 9, 2005, and warning them that failing to appear would have negative implications for PCT's registration status before the Commission. See BIC July 28, 2005 letter. Later that same day, Boyajian contacted the Commission and requested that the deposition again be postponed. Boyajian and the Commission staff attorney agreed to postpone the deposition to the following day, August 10, 2005. The staff attorney agreed to that request. See Boyajian July 28, 2005 letter.

On August 9, 2005, the afternoon before the scheduled deposition, the Commission received a fax communication from Carbone stating that PCT "had decided to withdraw its pending [renewal] application" and that Carbone believed that PCT's decision rendered the deposition "moot." See Carbone August 9, 2005 letter. Neither Richard P., Carbone nor Boyajian appeared at the Commission on August 10, 2005 for the scheduled deposition.

On February 17, 2006, a letter was sent by fax and by U.S. Mail to Carbone and Richard P. informing them that their withdrawal offer had been rejected, that Carbone's belief that the deposition had been rendered moot was mistaken and that the deposition had been rescheduled for March 1, 2006. Richard P. was notified that the Commission would consider his refusal to provide information in its decision on his renewal application. See BIC February 17, 2006 letter. Neither Carbone nor Richard P. appeared at the Commission on March 1, 2006 for the scheduled deposition. See March 1, 2006 Transcript.

The following day, March 2, 2006, the Commission received a letter via U.S. Mail from Carbone (dated February 27, 2006) stating, among other things, that Richard P. would not be appearing for *any* deposition since PCT's application was withdrawn and the Commission "no longer had jurisdiction over this matter." See Carbone February 26, 2006 letter.⁸ Carbone's statements are incorrect. First, the Commission does not allow applicants to unilaterally decide to withdraw an application after it has been filed;

⁸ Carbone accused the Commission of wasting resources attempting to investigate PCT since its registration already expired and the company ceased hauling waste. See Carbone February 27, 2006 letter. However, the expiration of PCT's registration does not change the fact that PCT had a pending renewal application that was being investigated. Furthermore, the Commission is not required to accept Carbone's representation that PCT had ceased hauling waste. In contrast, the recent administrative charges of unlicensed activity in Westchester County belie counsel's statements. *See infra* at 10-11.

withdrawals can only occur with the Commission's consent and approval.⁹ To hold otherwise would allow those companies on the verge of denial or wishing to avoid an investigation to frustrate the Commission's statutory powers and duties to investigate and regulate all businesses that remove, collect or dispose of trade waste. See Admin. Code §§16-503; 16-504(c). Furthermore, the Commission has jurisdiction over the *entire* trade waste industry, regardless of whether a specific company has filed an application. Id.

Despite repeated requests, the Applicant failed to provide the required information and obstructed the Commission's investigation. "[T]he commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." Admin. Code §16-509(b). By failing to respond to the Commission's repeated requests, the Applicant has "knowingly failed to provide the information" required by the Commission and has demonstrated that it lacks good character, honesty and integrity.

The Applicant has failed to submit a response, thereby leaving the evidence against it un rebutted. Based on this independently sufficient ground, the Commission denies the Applicant's renewal application.

D. The Applicant is the Subject of Pending Administrative Charges Relating to Unlicensed Trade Waste Activity in Westchester County.

On January 14, 2004, PCT was issued a trade waste license by the Westchester Solid Waste Commission ("WSWC"), BIC's equivalent in Westchester County, New York. After the indictments were unsealed against Robert P., the WSWC informed PCT that it would be required to retain an independent monitor to supervise PCT's operations until the criminal cases were resolved. On September 16, 2005, Carbone informed the WSWC that it would relinquish its license. To effectuate the surrender, PCT removed the WSWC decals from its trucks and returned them to the WSWC on December 21, 2005. By letter dated December 22, 2005, the WSWC Director acknowledged receipt and warned PCT that it could no longer operate as a trade waste hauler in Westchester County. See WSWC Amended Notice of Hearing, Violation No. 07A/2006.

On February 9, 2006, a WSWC inspector observed a PCT vehicle illegally hauling trade waste without a license. A review of the records of the Karta transfer station revealed that PCT had dumped a total of 68 loads of construction and demolition debris on 12 different dates between January 25 and February 8, 2006. At the February 16, 2006 meeting of the WSWC, administrative charges were issued against PCT for 68 instances of unlicensed hauling. On March 1, 2006, PCT was served with the Notice of Hearing scheduling a hearing for March 7, 2006. The hearing was later rescheduled for March 28, 2006. Id.

⁹ Carbone also accused the Commission of "laches" and asserted that PCT's withdrawal was "*de facto* accepted" due to the five-month delay in rejecting the withdrawal offer. See Carbone February 27, 2006 letter. The doctrine of laches (along with statute of limitations) does not apply to administrative proceedings. In any event, five months is not an unreasonable amount of time and any delay serves to prejudice the Commission, not the Applicant.

On March 8, 2006, the WSWC Director observed a PCT vehicle illegally hauling trade waste without a license. A review of the records of the Waste Management transfer station reviewed that PCT had dumped a total of 20 loads of waste between December 28, 2005, and March 3, 2006. The Notice of Hearing was amended to include 20 additional instances of unlicensed activity. *Id.* PCT faces a potential total fine of \$440,000 for 88 instances of unlicensed activity. As of the date of this decision, the charges are still pending.

In determining whether an applicant possesses the good character, honesty and integrity required to operate a trade waste business, the Commission may consider the administrative charges pending against the Applicant for acts that are directly related to the Applicant's fitness for participation in the industry. *See* Admin. Code §16-509(a)(ii).¹⁰ The Applicant has failed to submit a response, thereby leaving the evidence against it un rebutted. Based on this independently sufficient ground, the Commission denies PCT's renewal application.

E. The Applicant Failed to Pay Government Obligations for Which Judgments Have Been Entered.

"[T]he failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's integrity. *See* NYC Admin. Code §16-509(a)(x). Four judgments totaling \$16,000 have been docketed against the Applicant by the New York City Environmental Control Board ("ECB") for administrative fines issued against the Applicant by various city and state agencies.¹¹ According to a judgment and lien search conducted by the Commission, the Applicant currently owes \$16,000 for four unsatisfied judgments:

Violation #	Judgment Amount	Docketing Date
#0124018162	\$4,000.00	4/30/04
#0124018171	\$4,000.00	4/30/04
#0124018180	\$4,000.00	4/30/04
#0124916514	\$4,000.00	4/30/04
TOTAL:		\$16,000.00

Again, the Applicant's failure to satisfy numerous debts that have been reduced to judgment demonstrates that the Applicant lacks good character, honesty and integrity. The Applicant has failed to submit a response, thereby leaving the evidence against it un rebutted. Based on this sufficient independent ground, the Commission denies the Applicant's renewal application.

¹⁰ The Commission has the discretion to defer consideration of an application until a decision has been reached on the pending charges. *See* Admin. Code §16-509(a)(ii). Given the serious nature of other independent grounds for denial, the Commission declines to exercise such discretion in this case.

¹¹ Two additional administrative summonses are currently pending before ECB and have not been reduced to judgment - Violations #134188790 and #134188991.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty, and integrity. "The commission may refuse to issue a license or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter". See Admin. Code §16-509(b). The evidence recounted above demonstrates convincingly that PCT falls far short of that standard.

It is of grave concern to the Commission that the Applicant filed a misleading and contradictory application and obstructed the Commission's investigation into the matter. Based upon the above independently sufficient reasons, the Commission denies PCT's renewal application.

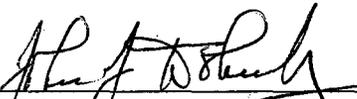
This denial is effective immediately. PCT may not operate as a trade waste business in the City of New York.

Dated: June 20, 2006

THE BUSINESS INTEGRITY COMMISSION



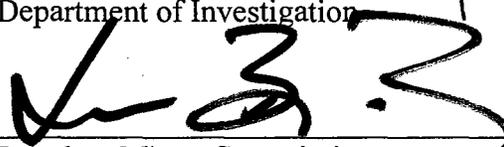
Thomas McCormack
Chair



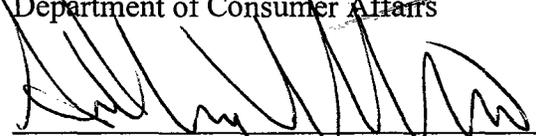
John Doherty, Commissioner
Department of Sanitation



Rose Gill Hearn, Commissioner by Daniel D. Brownell, designee
Department of Investigation Deputy Commissioner



Jonathan Mintz, Commissioner
Department of Consumer Affairs



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



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