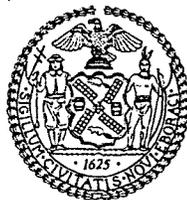


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THE CITY OF NEW YORK
TRADE WASTE COMMISSION
253 BROADWAY, 10TH FLOOR
NEW YORK, NEW YORK 10007

**DECISION OF THE TRADE WASTE COMMISSION DENYING
THE APPLICATION OF SMITH RECYCLING GROUP LTD. FOR A
LICENSE TO OPERATE AS A TRADE WASTE BUSINESS**

Smith Recycling Group Ltd. ("Smith" or the "Applicant") has applied to the New York City Trade Waste Commission (the "Commission") for a license to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §§ 16-505(a), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in the City of New York, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant that it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The law identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). These illustrative factors include knowing association with organized crime figures, commission of racketeering acts, and failure to provide truthful information in connection with the license application. See id. § 16-509(a)(i), (v)-(vi). Based upon the record as to the Applicant, the Commission finds that the Applicant lacks good character, honesty, and

integrity, and denies its license application, for the following independently sufficient reasons:

- (1) The Applicant, through its president, knowingly associated with members of organized crime in connection with the carting industry;
- (2) The Applicant's president has been identified by law enforcement as an associate of the Luchese organized crime family of La Cosa Nostra;
- (3) The Applicant engaged in anticompetitive racketeering activity in connection with the carting industry; and
- (4) The Applicant failed to provide truthful information in connection with its license application.

I. BACKGROUND

A. The New York City Carting Industry

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

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

from the cartel's domination of the carting industry, no carter escapes.

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

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anticompetitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council found:

- (1) "that the carting industry has been corruptly influenced by organized crime for more than four decades";
- (2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";
- (3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";
- (4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . effectively being the only rate available to businesses";
- (5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove";
- (6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical

violence, threats of violence, and property damage to both customers and competing carting firms”;

- (7) “that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations”;
- (8) “that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct”; and
- (9) “that a situation in which New York City businesses, both large and small, must pay a ‘mob tax’ in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.”

Local Law 42, § 1.

The criminal cartel operated through the industry’s four leading New York City trade associations, the Association of Trade Waste Removers of Greater New York (“GNYTW”), the Greater New York Waste Paper Association (“WPA”), the Kings County Trade Waste Association (“KCTW”), and the Queens County Trade Waste Association (“QCTW”), all of which were controlled by organized crime figures for many years. See, e.g., Local Law 42, §1; United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993). As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have served, they “operate[d] in illegal ways” by “enforc[ing] the cartel’s anticompetitive dominance of the waste collection industry.” SRI, 107 F.3d at 999.

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

Gambino organized crime families who acted as "business agents" for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. In essence, the carting industry's modus operandi, the cartel, was indicted as a criminal enterprise.

More carting industry indictments followed. In June 1996, both the Manhattan District Attorney and the United States Attorney for the Southern District of New York obtained major indictments of New York metropolitan area carters. The state indictments, against thirteen individuals and eight companies, were (like their 1995 counterpart) based upon undercover operations, including electronic surveillance intercepts, which revealed a trade waste removal industry still rife with corruption and organized crime influence. The federal indictment, against seven individuals and fourteen companies associated with the Genovese and Gambino organized crime families (including the brother and nephew of Genovese boss Vincent "Chin" Gigante), included charges of racketeering, extortion, arson, and bribery. See United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.). In November 1996, the Manhattan District Attorney announced a third round of indictments in his continuing investigation of the industry, bringing the total number of defendants in the state prosecution to thirty-four individuals, thirty-four companies, and four trade waste associations.

The accuracy of the sweeping charges in the indictments has been repeatedly confirmed by a series of guilty pleas and jury verdicts. On October 23, 1996, defendant John Vitale pleaded guilty to a state antitrust violation for his participation in the anticompetitive criminal cartel. In his allocution, Vitale, a principal of the carting company Vibro, Inc., acknowledged that he turned to the trade associations, and specifically to Genovese capo Alphonse Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing another carter from bidding on waste removal services for a "Vibro-owned" building in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of one of the City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay \$7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by

a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a \$10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the City's carting industry.

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. In addition, two carting companies and a transfer station run by Vigliotti's family under his auspices pleaded guilty to criminal antitrust violations. In his allocution, Vigliotti confirmed Ponte's admissions as to the scope of the criminal antitrust conspiracy in the City's carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors from entering the market through threats and economic retaliation. Vigliotti agreed to serve a prison term of one to three years, to pay \$2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the City's carting industry.

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

On February 24, 1997, defendants Michael D'Ambrosio, Robros Recycling Corp., and Vaparo, Inc. all pleaded guilty in allocutions before New York Supreme Court Justice Leslie Crocker Snyder. D'Ambrosio pleaded guilty to attempted enterprise corruption, and his companies pleaded to criminal antitrust violations.

On July 21, 1997, Philip Barretti, another lead defendant in the state prosecution and the former owner of the City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay \$6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and 3⅓ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

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

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph

Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined \$900,000, and the GNYTW was fined \$9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined \$200,000.

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

In sum, it is far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been proven beyond a reasonable doubt. The proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched – extending to and emanating from all of the industry's trade associations, which counted among their collective membership virtually every carter – that it could not have escaped the notice of any carter. These criminal convictions confirm the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, to address this pervasive problem.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. The carting industry immediately challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, 940 F. Supp. 656 (S.D.N.Y. 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Although Local Law 42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a). The Applicant holds a DCA license and timely submitted a license application to the Commission.

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

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

license to such predecessor business pursuant to this subdivision;

- (viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;
- (ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
- (x) failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

Smith filed an application for a trade waste removal license with the Commission on August 30, 1996. The Commission's staff has conducted an investigation of the Applicant, which included the deposition of its president, Salvatore Buttarò. On May 26, 2000, the staff issued a 19-page recommendation that Smith's license application be denied. On June 19, 2000, Smith responded to the recommendation, submitting a June 19 letter from its attorney, Susan E. Shepard, Esq. (the "Response"), and a June 17 letter from its president, Salvatore Buttarò (the "Letter"). The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the reasons explained below, the Commission finds that Smith lacks good character, honesty, and integrity, and denies its license application.

A. The Applicant, through its president, Salvatore Buttarò, knowingly associated with members of organized crime.

The Applicant was incorporated in 1940 under the name Smith Waste Material Corp., which was changed to Smith Recycling Group Ltd. in 1995. See Lic. App. at 2. The Applicant's president and sole shareholder is Salvatore Buttarò. Id. at 22. Buttarò joined Smith with a minority equity interest in the early 1980's and by 1986 had bought out both of his partners. See id.; Questionnaire, dated August 6, 1998, at 10; Transcript of Deposition of Salvatore Buttarò on August 6, 1998 ("Tr."), at 4-10; Response at 2. The Applicant's principal office is located at 316-334 Meserole Street in Brooklyn. Lic. App. at 1, 22. Smith's principal line of business is the collection and processing for resale of high-grade wastepaper. See Response at 2.

Buttarò, born in 1957, grew up in Brooklyn, living in the Carroll Gardens/Cobble Hill area until 1970 and then in Bensonhurst until 1985, when he moved to Staten Island. Questionnaire at 1, 3. In his deposition, Buttarò testified to numerous associations with individuals whom he knew to be connected to organized crime. See Tr. at 123 ("You have to remember, I grew up in Bensonhurst, Brooklyn. This was a neighborhood where they came from."): Among those individuals were Peter Chiodo and Alphonse Malangone. See id. at 123-39, 150-53. Evidence gathered during the staff's investigation of the Applicant, including, but not limited to, Buttarò's own admissions, demonstrates that he knowingly associated with both Chiodo and Malangone in connection with the waste removal industry.

1. Peter Chiodo

Peter Chiodo, a/k/a "Fat Pete," born in 1950, has a criminal record dating back to 1970, when he was arrested on a number of narcotics-related charges. In 1975, he pleaded guilty to New York state charges of attempted robbery and criminal possession of a weapon and was sentenced to prison terms of one year and eleven months, respectively. He was paroled in 1976 and discharged from parole in 1977. In 1979, Chiodo was arrested on a federal charge of interstate transportation of stolen property. He was convicted the following year and sentenced to a prison term of two years.

Chiodo became a made member (or soldier) of the Luchese organized crime family of La Cosa Nostra in 1987. See Affidavit of Detective Anthony Farneti, sworn to May 24, 2000 ("Farneti Aff."), ¶ 6. In 1988, Chiodo was elevated to the position of capo (or captain) of the Luchese Family. Id. In May 1990, Chiodo and fourteen others were indicted on federal racketeering, extortion, fraud, and related charges arising out of organized crime's corruption of the window-installation sector of the construction industry in the City of New York. See, e.g., Pete Bowles, Gigante Tied to Window Scam, Newsday, May 31, 1990, at 5. In June 1990, Chiodo and eleven others were indicted on state racketeering, extortion, bribery, and related charges arising out of mob corruption of the painting sector of the City's construction industry. See, e.g., Selwyn Raab, 12 Indicted as Mob Rulers of Painting, N.Y. Times, June 22, 1990, at B1. In December 1990, Chiodo pleaded guilty to racketeering conspiracy in the federal case. In May 1991, after the mob came to suspect that Chiodo had begun to cooperate with the government, an attempt was made on his life on Staten Island. See, e.g., Pete Bowles, Shot 12 Times, Mob Defendant Now Will Testify, Newsday, Aug. 9, 1991, at 6.

According to his deposition testimony, Buttaro first met Chiodo in Bensonhurst in the early 1980's. See Tr. at 123-24, 129. A few years later, in the 1985-86 period, Buttaro and Chiodo entered into a business relationship: Chiodo agreed to use his contacts to obtain wastepaper accounts for Smith; in exchange, Buttaro agreed to pay Chiodo a commission for any accounts obtained and, further, gave Chiodo a company credit card for business development purposes. See id. at 124-27, 135, 138. At the time he entered into this business relationship with Chiodo, Buttaro knew that he was connected to organized crime. See id. at 131-35. According to Buttaro, his business relationship with Chiodo was short-lived and unsuccessful. Within eight months, Chiodo ran up a credit card bill of \$8,000 to \$9,000, which Smith paid. See id. at 124-25. Chiodo, however, never brought in any accounts for Smith. See id. at 124-25, 135-36. Buttaro testified that the relationship ended after no more than eighteen months, and that he has not seen or spoken to Chiodo since the mid-1980's. See id. at 125, 136-37.

Buttaro's deposition testimony concerning his relationship with Chiodo stands in marked contrast with Smith's position on the matter in its

response to the staff's recommendation. Smith, while not expressly disavowing the relationship with Chiodo described in Buttaro's testimony, now contends that he did not even meet Chiodo until 1988, and that at the time they were introduced (at "a club on MacDonald Avenue") he had never before seen or even heard of Chiodo. See Response at 4. This presumably suggests that Buttaro had not previously heard that Chiodo was connected to organized crime, even though Chiodo was made a capo that year. The Applicant, however, does not offer any other reason why Buttaro would approach Chiodo for help in regaining Smith's largest customer, Devon Lithographers, which it had recently lost to Atlantic Coast Fibers, described by Smith as "a mob company." See id.

We find that the truth of the matter is more closely approximated by an amalgam of the Applicant's conflicting accounts. We have no reason to doubt Buttaro's deposition testimony that he met Chiodo in the early 1980's, that he knew by no later than the mid-1980's of Chiodo's organized crime connections, and that Smith had an ongoing business relationship with Chiodo during that period of time. However, we reject Buttaro's testimony that his and Smith's relationship with Chiodo ended in the mid-1980's. Evidence from other sources, including Smith's later admissions in response to the staff's recommendation, demonstrates otherwise.

In 1995, Chiodo was interviewed by law enforcement concerning his knowledge of Buttaro. According to Chiodo, in approximately 1988, Buttaro asked for his help in obtaining the wastepaper account of a brokerage firm where Buttaro's wife was employed. See Farneti Aff., Ex. A at 1.¹ Chiodo told Buttaro to go to the brokerage firm and cause "a problem" for the carting company servicing that location, and to tell anyone who complains to go to Chiodo's social club on McDonald Avenue in Brooklyn. Id. The next day, Genovese Family capo Alphonse Malangone, who controlled the KCTW for organized crime, visited his close friend and Luchese Family capo Peter Chiodo at his house. Id. Malangone, who also controlled a number of carting companies, told Chiodo that the carter servicing the brokerage firm was "with" Malangone. Id. Chiodo and Malangone agreed that the "stop" would be given to Smith in exchange

¹ Chiodo recalled that the firm was Kidder, Peabody. Id. Other evidence indicates that it See Questionnaire at 4 (stating that Buttaro's wife worked at Dean Witter from 1980 to 1985).

\$50,000 payment. Id. Buttaro later met with Chiodo and paid him the \$50,000, which he split evenly with Malangone. Id.

The Applicant does not expressly disavow this account. Smith does, however, offer a different version of either the same or a similar transaction. In Smith's version, the customer was Prudential Bache, from which Smith collected wastepaper (but not regular garbage). See Response at 3, 5. According to Smith, in 1988, Chiodo told Buttaro that the Prudential Bache account belonged to a carter linked to his "friend" – namely, Malangone. Id. at 5. A few days later, Buttaro met with Chiodo and Malangone and was told that Smith would have to buy the account for \$50,000. Id. Buttaro, fearful of losing the customer, paid the money to Chiodo. Id. Two weeks later, Buttaro met again with Chiodo and Malangone and was told to pay another \$50,000, which he did over the next several months. Id.

To the extent that there are any material inconsistencies between Chiodo's recollection and the Applicant's version of events, we accept Chiodo's account. We are unable to discern any motive on Chiodo's part to misrepresent the facts or to falsely inculcate Smith. On the other hand, the Applicant plainly has an interest in putting the best possible face on this episode, consistent with having to acknowledge it at all, which it now must do. In addition, Buttaro's failure to refer to this episode in his prior deposition testimony inspires little or no confidence in the veracity of the Applicant's account of it now.

But even if we were to credit Smith's version of events, the result is deeply troubling. Smith paid \$100,000 to the mob to keep a customer, indeed to insulate itself from competition for the account. Smith's motives in this transaction were purely economic; Buttaro's only "fear" was the loss of the account. He apparently was not intimidated by Malangone, ridiculing his view of the account's worth and threatening to walk away from the deal. See Response at 5. Moreover, faced with the loss of a valuable customer, Smith apparently did not even approach Prudential Bache – a firm with the financial clout and sophistication to put its waste removal contracts out for bid – about the issue. See id. Under these circumstances, we cannot conclude that Smith was simply a "victim" of the cartel. See id. at 7. Although Smith doubtless would have preferred not to pay compensation to retain this account, the company received a clear economic benefit in

exchange for its payment – a year’s worth of business from Prudential Bache – that it apparently considered worth the cost.

According to Chiodo, in 1989, Buttaro again approached him for assistance in securing a wastepaper account. An existing Smith customer in New Jersey, Automated Data Processing, was being approached by a carting company owned by Angelo Ponte, who Chiodo knew controlled the WPA and was associated with the Genovese organized crime family. See Farneti Aff., Ex. A at 1-2. Chiodo, accompanied by two Luchese soldiers, met with Ponte and the nephew of Genovese boss Vincent Gigante at a Manhattan restaurant to discuss the matter. Id. at 2. Ponte based his claim to the customer on his son’s upcoming marriage to a company executive’s daughter and asserted that, in terms of the application of the property-rights system to customer locations, New Jersey was a “grey area.” Id. Chiodo, effectively pulling rank on Ponte, told him that his son’s relationship to the stop did not matter, noting that Buttaro had had to pay for the brokerage firm stop even though his wife worked there. Id. Chiodo also pointed out that if New Jersey really were a “grey area,” then he would have the right to go after all of Ponte’s stops in the state. Id. Chiodo told Ponte that he must either pay Buttaro for the stop or give him another stop of equal value. Id. Sometime after this meeting, Buttaro told Chiodo that Ponte had offered him \$35,000 for the stop, but that Buttaro believed it was worth \$100,000. Id. Chiodo advised Buttaro to counteroffer \$125,000. Id. Buttaro later told Chiodo that Ponte had agreed to pay \$100,000 in four installments. Id. Buttaro eventually paid Chiodo \$50,000 of that amount, \$10,000 of which Chiodo passed on to Luchese consigliere Anthony Casso. Id.

The Applicant again offers a different version of events. According to Smith, the company in question was Fleetwood Lithographers (not Automated Data Processing), a longtime customer that was moving to New Jersey. See Response at 5. Buttaro learned that Ponte wanted the account, and Smith in fact lost it. Id. Chiodo later told Buttaro that he would speak to Ponte about the situation, but he did not speak to Buttaro about the matter again. Id. Buttaro himself spoke to Ponte about getting the account back, but he never received any money from Ponte for the account. Id. at 5-6. Nor did Buttaro pay Chiodo any money in this matter. Id. at 6. As for the meeting among organized crime figures described above, Chiodo told Buttaro that it pertained to an attempt by Chiodo to obtain other customers

from Atlantic Coast Fibers to compensate Smith for the loss of the Devon Lithographers account to that firm. Id.²

Again, although we accept Chiodo's recollection of events for the reasons stated above, even if we were to credit the Applicant's account, its business integrity would still be called into serious question. Instead of approaching Smith's longtime customer, Fleetwood Lithographers, about getting its business back, Buttaro approached Ponte and tried to work out an arrangement with him. Moreover, Smith acquiesced (at the very least) in Chiodo's efforts to regain the account and to obtain compensation for the loss of another of its customers. Whether successful or not, this was classic cartel behavior on Smith's part.

Buttaro's contact with Chiodo did not end with the 1980's. On March 15, 1991, law enforcement observed Buttaro parked in the driveway of the residence of Alphonse Malangone, located at 14 Delphine Terrace on Staten Island. See New York Police Department surveillance report, dated March 15, 1991. Buttaro was joined by another man coming out of Malangone's house, and they drove to the nearby residence of Chiodo, at 118 Overlook Terrace, where they picked him up and drove back to Malangone's house. Id. Chiodo and Buttaro entered Malangone's house, where they stayed for three hours before driving back to Chiodo's house. Id.

The Applicant's response to this evidence is instructive. Smith asserts that Buttaro was not present during the lengthy meeting between Chiodo and Malangone and that it had nothing to do with him. See Response at 6. That might well be true, inasmuch as two Mafia capos can reasonably be expected to avoid having illicit business discussions in the presence of persons who are not "made" members of organized crime. If true, however, Smith's assertion raises the question of what Buttaro was doing there. The Applicant notes that "at that time Chiodo's former associates were staying away from him" (perhaps because they, too, were under indictment or because they

² The Applicant asserts that the meeting was attended by Mario Gigante on behalf of Atlantic Coast Fibers. Id. Mario Gigante is the brother of Genovese Family boss Vincent "Chin" Gigante and is himself a Genovese soldier. Chiodo recalled that the meeting was attended by Vincent Gigante's nephew, Salvatore Gigante (who is Mario Gigante's son). See Farneti Aff., Ex. A at 2. Although we need not decide the issue, we tend to credit Chiodo's account. While both Mario and Salvatore Gigante have been linked to Atlantic Coast Fibers, Chiodo emphasized that at the meeting he was not dealing with a fellow made member of organized crime. See id.

believed, incorrectly at the time, that he was a cooperating witness) and that Chiodo had asked Buttaro to come to his house. Id. Buttaro thus was serving as Chiodo's chauffeur, transporting him (and his uncle) back and forth between Chiodo's and Malangone's houses. The Applicant offers no reason why Buttaro would knowingly facilitate a private meeting between two Mafia captains, particularly in light of Smith's allegedly unfortunate experiences with them several years earlier. We can think of no reason beyond a desire to curry favor with the mob.

2. Alphonse Malangone

Alphonse Malangone, a/k/a "Allie Shades," is and has long been a capo in the Genovese organized crime family. See, e.g., Affidavit of Det. Joseph Lentini, sworn to June 5, 1995, submitted in support of search warrant applications in the Manhattan District Attorney's carting industry investigation ("Lentini Aff."), ¶ 61 n.33. Evidence developed during the course of the investigation demonstrated that Malangone, the self-styled "administrator" of the KCTW, controlled that trade association for the Genovese Family. See id. ¶¶ 61 n.33, 82 n.45, 104-05, 110-11, 119-20; see also Farneti Aff., Ex. A at 1 (statement by Peter Chiodo that in late 1980's he knew that Malangone controlled KCTW). As noted above, Malangone was indicted on enterprise corruption and related charges in the carting industry prosecution, went to trial, was found guilty on all counts, and was sentenced to five to fifteen years in prison.

Salvatore Buttaro testified that he has known Malangone "from the neighborhood" since the early 1970's, when Buttaro was a teenager. See Tr. at 150-51. The Applicant now claims that Buttaro had never met or even seen Malangone before 1988. See Response at 5. We reject this contention as flatly contradicted by Buttaro's sworn deposition testimony. Buttaro further testified that he has long known that Malangone was connected to organized crime, but professed not to know that he was involved in the carting industry and denied having any business dealings with him. See Tr. at 151-52. According to Buttaro, his interactions with Malangone have been strictly social, and fleeting at that – "like a wave, hello." See id. at 150-53.

Again, evidence from other sources indicates otherwise. As recounted above, in the late 1980's, Malangone, together with Chiodo, was directly involved in the resolution of a dispute between Smith and another carting

company, controlled by Malangone, over who had the "right" to service a particular account. The dispute was resolved by the payment of at least \$50,000 by Buttaro to Chiodo and Malangone. See Farneti Aff., Ex. A at 1; Response at 5.

In addition, on March 11, 1991, Buttaro was observed meeting with Malangone at the Sunrise Restaurant on 5th Avenue in Brooklyn. See New York Police Department surveillance report, dated March 15, 1991. The Applicant has offered no explanation for this meeting. Four days later, as described above, Buttaro and Chiodo spent three hours at Malangone's house. Id.

* * *

The Commission is authorized to deny the license application of a carting company whose principal has knowingly associated with a member of organized crime in connection with the waste industry. See Admin. Code § 16-509(a)(vi); SRI, 107 F.3d at 996, 998. Based upon the evidence recounted above, including the Applicant's belated acknowledgments, it is beyond dispute that Smith, through its president, Salvatore Buttaro, had business dealings with two members of organized crime, Peter Chiodo and Alphonse Malangone, in connection with the carting industry and that, at the time of those dealings, Buttaro knew that he was dealing with organized crime figures. These types of business relationships reflect a lack of good character, honesty, and integrity on the part of Smith; indeed, they are anathema to the goals of Local Law 42. Accordingly, Smith's license application is denied on this ground.

B. Salvatore Buttaro has been identified by law enforcement as an organized crime associate.

Based upon his long association and repeated business dealings with high-ranking members of organized crime, particularly Peter Chiodo, the New York Police Department has identified Salvatore Buttaro himself as an associate of the Luchese Organized Crime Family. See Farneti Aff. ¶ 7. Plainly, a carting company whose president and sole owner is an associate of organized crime cannot satisfy Local Law 42's licensing standard of "good character, honesty and integrity." See Admin. Code § 16-509(a)(vi) (authorizing Commission to refuse to issue license to applicant associating with person identified by law enforcement agency as organized crime

associate). Therefore, Smith's license application is denied on this ground as well.

C. Smith engaged in racketeering activity in connection with the carting industry.

The Commission may refuse to issue a license to an applicant that has committed a racketeering act, including any predicate crime listed in New York's Organized Crime Control Act. See Admin. Code § 16-509(a)(v); N.Y. Penal Law § 460.10(1). Among those crimes are felonies under Article 22 of the General Business Law. See Penal Law § 460.10(1)(b). Among those felonies is combination in restraint of trade and competition, in violation of section 340 of the General Business Law. See N.Y. Gen. Bus. Law § 341.

The evidence recounted above demonstrates that Smith traded customer stops with other carters for cash. Indeed, the Applicant's own account of events acknowledges that Smith paid \$100,000 to retain one of its customers. These types of anticompetitive arrangements between ostensible competitors, whereby customers were treated like chattel to be bought and sold by carters upon payment of appropriate compensation for the right to service the stop, constitute classic cartel behavior and were a principal focus of the criminal case against the property-rights system. Many carting companies and their principals pleaded guilty to combination in restraint of trade and competition for entering into precisely the same types of arrangements. Simply put, Smith's compensation payments, whether made or received, were criminal and provide another independent basis for denial of its license application.

D. Smith failed to provide truthful information in connection with its license application.

In his deposition, Salvatore Buttaro testified under oath that he last spoke to Peter Chiodo during the mid-1980's, specifically the 1985-87 period, and that he last saw Chiodo in 1985 or 1986. See Tr. at 125, 136-37. Buttaro also indicated that, other than an unsuccessful commission-based arrangement that did not yield any customer accounts, he had no business dealings with Chiodo. See *id.* at 124-25, 138. As demonstrated above, this

testimony was false. Buttaro had substantial business dealings with Chiodo, involving the payment of \$100,000 to him, in 1988 and again in 1989, and met with Chiodo in March 1991, less than two months before the attempted murder of Chiodo and his ensuing decision to renounce the Mafia. The Applicant now acknowledges these dealings, thus confirming that Buttaro's deposition testimony was false. See Response at 4-6.

Buttaro described his interactions with Alphonse Malangone as follows:

Have I run into him being in Brooklyn in my lifetime as a kid? Probably a lot more. Have I seen him lately? I have seen him in a restaurant here or there[, i]f I go out to eat in a restaurant in Brooklyn. If you said to me[,] Sal, did you see him a dozen times? Yes, I have seen him a dozen times. If you say, Sal[,] have you socialized with him a dozen times? No, it has been like a wave, hello.

Tr. at 150-51. Buttaro further testified that he never had any business dealings with Malangone and did not even know that he was involved in the carting industry. See id. at 151-52. This sworn testimony, too, was false. As shown above, Malangone helped resolve a business dispute between Smith and another carting company and received \$25,000 from Smith as a result. The Applicant, again belatedly, has confirmed Buttaro's business dealings with Malangone. See Response at 5. In sum, Buttaro's contacts with Malangone went far beyond the perfunctory greetings described in his deposition testimony.

Moreover, Buttaro's false sworn testimony was not inadvertent but, rather, admittedly deliberate. The Applicant concedes that in his deposition Buttaro "tried to bury Chiodo and Malangone deeper in his past and paint the[m] as neighborhood acquaintances." Response at 6; accord Letter at 2 ("I tried to avoid the issues of knowing some unsavory people in this industry."). Whatever might be said or argued about the nature, significance, or voluntariness of Smith's business dealings with members of

organized crime, there is no justification for Buttaro's deliberate failure to tell the truth about those dealings in sworn testimony in a Commission licensing investigation.

The Commission is authorized to refuse to issue a license to an applicant that has failed to provide truthful information in connection with its license application. Admin. Code § 16-509(a)(i). The evidence shows that Smith's president, Salvatore Buttaro, in numerous instances deliberately provided false testimony in a deposition taken by the staff as part of its investigation of Smith's application. The false statements, particularly when taken as a whole, minimized the frequency and significance of Buttaro's associations with organized crime figures and thus were material to the investigation. Accordingly, Smith's license application is denied on this ground as well.

* * *

The Applicant requests that the Commission consider licensing Smith with certain restrictive conditions, such as limiting its operations to the paper recycling industry or requiring that a monitor oversee its operations. See Response at 8. However, inasmuch as we cannot conclude that Smith meets the licensing standard of "good character, honesty and integrity," we cannot issue Smith a carting license, no matter how limited its scope might be. In addition, since the Commission's licensing concerns are centered on the organized crime associations and deliberately false testimony of Smith's president and sole owner, a monitorship arrangement would be unworkable.

The Applicant also requests that, if the Commission is not inclined to issue Smith a license, the company be permitted to withdraw its application "so that the Commission's findings are not part of the public record." Response at 8. We have previously rejected eleventh-hour attempts at application withdrawal in order to avoid license denial as contrary to the purposes of Local Law 42. See Decision Denying License Application of Royal Petroleum Transporting, Inc., dated November 19, 1999, at 9 n.2; Decision Denying License Applications of Suburban Carting Corp. and Prime Carting, Inc., dated January 9, 1998, at 18-19 n.3. We reject this attempt as well. It will further the goals of Local Law 42 for the

Commission to consider and decide the merits of Smith's license application.³

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. Here, the evidence demonstrates that the Applicant's president and sole owner, Salvatore Buttarò, (i) knowingly associated with high-ranking organized crime members Peter Chiodo and Alphonse Malangone in connection with the carting industry, (ii) has himself been identified by law enforcement as an associate of the Luchese organized crime family, (iii) caused Smith to engage in anticompetitive criminal activity in the carting industry, and (iv) gave deliberately false sworn testimony concerning his and Smith's dealings with organized crime figures. Based upon these facts, the Commission concludes that Smith lacks good character, honesty, and integrity, and denies its license application.

This license denial decision is effective fourteen days from the date hereof. In order that Smith's customers may make other carting arrangements without an interruption in service, the Applicant is directed (i) to continue servicing its customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to send a copy of the attached notice to each of its customers by first-class U.S. mail by no later than July 3, 2000. The Applicant shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: June 30, 2000

³ We note in this regard that in October 1999, the staff informed Smith's president that it was likely to recommend denial of the company's license application due in substantial part to Buttarò's business dealings with Chiodo. The staff also advised Smith that it might wish to explore a sale of its assets to a licensed carting company. Smith elected instead to pursue its license application.

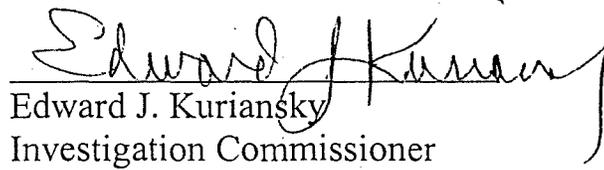
THE TRADE WASTE COMMISSION



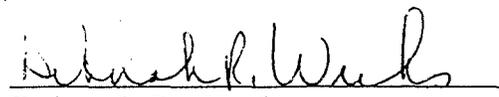
Edward T. Ferguson, III
Chairman

Kevin P. Farrell
Sanitation Commissioner

Jane Hoffman
Consumer Affairs Commissioner



Edward J. Kuriansky
Investigation Commissioner



Deborah R. Weeks
Acting Business Services Commissioner