



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 RENEWAL APPLICATION OF S.R.D. CONTRACTING CORP. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

S.R.D. Contracting Corp. (the "Applicant" or "SRD") has applied to the New York City Business Integrity Commission ("Commission"), formerly named the New York City Trade Waste Commission, pursuant to Local Law 42 of 1996, for renewal of its exemption from licensing requirements for the removal of construction and demolition debris. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Local Law 42 was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

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

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

See 17 RCNY §1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking “good character, honesty and integrity”).

Based upon the record as to the Applicant, the Commission denies its exemption/registration renewal 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 sole owner and principal is the subject of a pending indictment that charged her with the crimes of theft of union benefits, conspiracy to embezzle union benefits, mail fraud, and mail fraud conspiracy.¹
 2. The Applicant’s sole owner and principal has committed racketeering activities.
 3. The Applicant’s sole owner and principal knowingly associated with members and associates of organized crime.
- B. The Applicant knowingly failed to provide information and provided false and misleading information to the Commission in its renewal 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. 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

¹ As discussed infra at 7-9, the Applicant’s sole owner and principal, Sarah Dauria, pled guilty to one count of a Superseding Indictment in connection with this case.

agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42 §1.

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

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

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

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

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

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

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. §16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n. No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n. No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of

New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997); Attonito, 3 A.D.3d 415.

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases "where the applicant fails to provide the necessary information, or knowingly provides false information." It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Id.; accord Breeze Carting Corp. v. The City of New York, No. 107859/07 (Sup. Ct. N.Y. Cty. April 1, 2008) (Commission denial not arbitrary and capricious where based on a criminal conviction, identification as an organized crime associate, and false and misleading statements). Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;
6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;
9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

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

II. DISCUSSION

On or about May 11, 2005, SRD applied to the Commission for an exemption from the licensing requirement for the removal of construction and demolition debris. See SRD's Application for Exemption from Licensing Requirement for Removal of Demolition Debris ("Registration Application"). On or about February 1, 2006, the Commission granted the Applicant a trade waste registration. See SRD Registration Order. On February 16, 2006, Sarah Dauria ("Dauria") signed a Registration Order, thereby consenting to the terms and conditions therein. See Registration Order at 6. SRD's registration was effective for two years, and expired on January 31, 2008. See id. On January 3, 2008, the Applicant filed a Renewal Application with the Commission. See SRD's Renewal Application for License or Registration as a Trade Waste Business ("Renewal Application"). Dauria certified that the information contained therein was accurate and truthful. See Renewal Application at 9. The sole principal of the Applicant is Sarah Dauria. See Registration Application at 9; Renewal Application at 5.

The Commission's staff has conducted a background investigation of the Applicant and its principal. On May 14, 2008, the staff issued a thirteen-page recommendation that the Renewal Application be denied (the "Recommendation"). On or about May 14, 2008, by Express Mail, the Commission sent the Recommendation to the Applicant's business address.² United States Postal Service ("USPS") records indicate that the Recommendation was delivered on May 16, 2008 to a forwarding address provided by the Applicant to USPS. See United States Postal Service, Track and Confirm results. 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 13. The Applicant did not submit any response to the staff's Recommendation. On or about June 19, 2008, the Commission received the Recommendation in the original Express Mail envelope, stamped "unclaimed." See Express Mail envelope. All applicants are required to update material changes in information, which includes the business address. See 17 RCNY §2-05(b), §1-01; Registration Application.

Subsequent to the service of the Recommendation, on May 27, 2008, Dauria pled guilty to mail fraud conspiracy in violation of Title 18 United States Code ("USC") §1349. See Superseding Information, United States v. Agate, et al, Cr. 08-76, filed May 16, 2008 at 104-105 ("Superceding Indictment"); Criminal Docket for Case #:1:08-cr-00076-JBW-16, defendant Sarah Dauria at 24-25 ("Criminal Docket Sheet"). As discussed below, Dauria's plea stems from an indictment filed against Dauria and others on February 7, 2008. The conduct underlying the indictment and the pending indictment itself serve, at least in part, as a basis for this Denial Decision. Dauria is scheduled for sentencing on September 17, 2008. See Criminal Docket Sheet at 25.

² 17 RCNY §1-02 provides "unless otherwise provided, all notice pursuant to this chapter, including but not limited to notice related to hearings, violations and subpoenae, may be served by first class mail addressed to the business address provided for an applicant, licensee, or registrant on the application submitted to the Commission or on the license or registration issued to the business.... Such notice may also be served by personal service or in any other manner reasonably calculated to achieve actual notice, including but not limited to any method authorized in the Civil Practice Law and Rules. The Commission served the Recommendation at the address that the Applicant provided as the business address in the Registration Application and Renewal Application. This address was also provided in the Registration Application as the address designated for the Applicant's agent for service of process. See Registration Application at 1.

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, SRD's Renewal Application is denied.

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 sole owner and principal is the subject of a pending indictment that charged her with the crimes of theft of union benefits, conspiracy to embezzle union benefits, mail fraud, and mail fraud conspiracy.

The Commission may deny a registration application based on the "pending indictment or criminal action against such applicant or person for a crime which under this subdivision would provide a basis for the refusal of such [registration]." See Admin. Code §16-509(a)(ii); *supra* at 5-7.³

On February 7, 2008, Dauria, along with numerous members and associates of the Gambino organized crime family, was indicted by a federal grand jury in the Eastern District of New York. See Press Release, February 7, 2008, United States Attorney, Eastern District of New York ("Press Release"); United States v. Agate, et al, Cr. 08-76 ("Indictment"). The defendants were charged in an eighty-count indictment with crimes including racketeering conspiracy, extortion, mail fraud, bribery, and murder.⁴

The Indictment charged that Dauria acted and conspired with Mario Cassarino ("Cassarino") and Joseph Spinnato ("Spinnato"), a member and associate in the Gambino organized crime family, respectively. Dauria was charged with theft of union benefits conspiracy, theft of union benefits, mail fraud conspiracy, and mail fraud. See Indictment at 9-10, 101-106, 110-115.

Mario Cassarino, also known as "Lanza" is identified in the Indictment as a soldier in the Gambino organized crime family. See Indictment at 9-10; Memorandum of Law in Support of

³ The Commission has the discretion to defer consideration of an application until a decision has been reached on a pending indictment. See Admin. Code §16-509(b)(ii). A plea of not guilty without more is an insufficient reason to defer consideration of an indictment; doing so would mandate deferral in every case involving a pending indictment and is inconsistent with the statutory provision specifically authorizing the Commission to deny a license application based upon a pending indictment. See Admin. Code §16-509(b)(ii). Given the long history of corruption in this industry, the Commission is not required to wait extended periods of time, often years, for a resolution of an indictment. Given the serious nature of the criminal charges in this case, the evidence of organized crime corruption, and the connection to the trade waste industry, the staff recommends that the Commission decline to exercise such discretion in this case. Moreover, Dauria pled guilty to mail fraud conspiracy thereby admitting her guilt and strengthening the argument in favor of proceeding with this Denial Decision.

⁴ On or about May 16, 2008, a Superseding Indictment was filed against Dauria and others. As to Dauria, the Superseding Indictment charged her with the same crimes as charged in the Indictment.

the Government's Motion for Permanent Orders of Detention ("Detention Memo") at 42. As alleged in the Indictment, Cassarino controlled various companies: Jo-Tap Industries, Inc., Jo-Tap Equipment Leasing, Inc., and MBM Industries, Inc. See id. Spinnato, who is identified in the Indictment as an associate in the Gambino organized crime family, together with others, controlled Andrews Trucking Corp., Master Mix, Inc., Master Mix enterprises, Inc., Dump Masters of NY, Inc., and Dumpmasters, Inc. See Indictment at 10-11.

The Indictment charged that on or about and between June 27, 2002 and January 31, 2008, Dauria and Spinnato, together with others, conspired to and did steal from the employee benefit plans of the International Brotherhood of Teamsters Local 282 Health and Welfare Benefit Fund and the International Brotherhood of Teamsters Local 282 Pension Fund ("Local 282 Funds"). See id. at 102-104; 18 USC §664. Dauria is alleged to have defrauded the Local 282 Funds by submitting and causing to be submitted false information regarding hours worked by employees who were covered by labor contracts with Local 282. Id. at 101-107. Dauria and her co-conspirators falsely claimed that certain hours had been worked by such employees who had, in fact, worked more hours thereby underreporting and underpaying contributions to the Local 282 Funds, which were owed to the funds and required by federal law to be made on behalf of the employees. Id. The Indictment also charged that during numerous conversations in 2005 and 2006, Dauria spoke with Spinnato and others about falsifying trucking records in connection with a Local 282 audit. Id. at 102-103. In furtherance of this scheme, Dauria and Spinnato and others mailed false remittances to the Local 282 Funds, thereby committing mail fraud, in violation of 18 USC §1341. Id. at 104-107.

On May 27, 2008, Dauria pled guilty to count six of a Superseding Indictment, mail fraud conspiracy. See Superseding Indictment at 104-105; Criminal Docket Sheet at 24-25. In pleading guilty, Dauria admitted that on or about and between June 27, 2002 and January 31, 2008, she and Spinnato, together with others, conspired to and did steal from the Local 282 Funds by submitting and causing to be submitted false information regarding hours worked by employees who were covered by labor contracts with Local 282 thereby underreporting and underpaying contributions to the Local 282 Funds. See Superseding Indictment at 104-105. Dauria admitted that in furtherance of this scheme, she and Spinnato and others mailed false remittances to the Local 282 Funds. See id.

The Indictment charged that Dauria engaged in similar activity with Mario Cassarino, a Gambino soldier. Specifically, on or about and between November 2004 and December 2005, Dauria and Cassarino, along with others, conspired to embezzle and steal assets of the Local 282 Funds in violation of 18 USC §664, and did in fact steal those assets. See id. at 110-115. Dauria and Cassarino defrauded the Local 282 Funds by submitting and causing to be submitted false information regarding hours worked by employees covered by labor contracts with Local 282, falsely claiming that certain hours had been worked by such employees who had, in fact, worked more hours thereby under reporting and under paying contributions to the Local 282 Funds, which were owed to the funds and required by federal law to be made on behalf of the employees. See id. The Indictment charged that in furtherance of this conspiracy, Dauria informed Cassarino of the steps she was taking in order to falsify trucking records. Id. at 110-112. Dauria also acted as a representative of a trucking company controlled by Cassarino during an audit performed by Local 282, and reported the results of the audit to Cassarino. Id. Further,

Dauria committed mail fraud in that she and Spinnato and others mailed false remittances to the Local 282 Funds, in violation of 18 USC §1341. Id. at 113-115.

In addition to Dauria's plea of guilty, she has admitted in another context that she had a long-term business relationship with Spinnato's companies. In documents submitted to the New York City School Construction Authority ("SCA"), for example, Dauria confirmed the existence of long-term business relationships with Spinnato's companies, Master Mix Enterprises, Inc., Andrew's Trucking Corp. and Dump Masters of New York, Inc. See SRD Contracting Corp. SCA Prequalification Supporting Documents ("SCA Prequalification Documents"). As recently as 2006, Dauria submitted documentation to SCA evidencing that she handled various duties, including accounts payable and receivable, insurance issues, bidding, and "Local 282 consulting and audits," for Spinnato's trucking companies. See SCA Prequalification Documents.

As the Commission may deny a registration application due to a pending indictment or criminal action that would provide a basis for the refusal of such registration, see Admin Code §16-509(a)(ii); supra at 5-7, the Commission must evaluate the crimes charged in light of the factors set forth in §753 of the Correction Law, which 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.
- (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, the crimes charged against Sarah Dauria, including that to which she pled guilty, 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.

The charges against Dauria are antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption from the carting industry. Moreover, the crimes charged relate directly to the construction industry, the industry in which the Applicant is seeking to operate, and go to the crux of the Applicant's honesty, integrity and character. As charged, during the approximately six-year participation in the criminal schemes commencing in 2002, Dauria was in her late 20's and early 30's – plainly old enough to know what the law required, how to obey it, and to recognize that the schemes in which she was involved were illegal.⁵ Dauria's crimes as charged and admitted to were the result of a series of conscious decisions to violate the law and are a disturbing reminder of the cynical disregard for the law that corrupted the City's waste removal industry in the past. Dauria has shown herself to be unworthy of registration in that same industry. The charges against Dauria, which are corroborated by her plea of guilty and documents Dauria submitted to another City agency, provide substantial evidence that both Dauria and the Applicant lack good character, honesty, and integrity. The Applicant does not refute this point. Accordingly, the Commission denies SRD's application on this independently sufficient ground.

2. The Applicant's sole owner and principal has committed racketeering activities.

Admin. Code §16-509(a)(v) allows the Commission to consider "the Commission of a racketeering activity..." in refusing to issue a license to an applicant. See Admin. Code §16-509(a)(v). Similarly, the Commission may consider such factor in determining the applicant's eligibility for a registration. See supra at 5-7. A conviction for a racketeering activity is not required. As discussed above, as charged in the Indictment and by Dauria's own admissions the Commission has a rational basis to find that Dauria committed racketeering activities.⁶

The violations of the United States Code that Dauria is charged with violating and to which she pled guilty, including mail fraud and theft of union benefits, are racketeering activities as defined by 18 USC §1961(1). Section 16-509(a)(v) of the Administrative Code provides that the Commission may deny an application based on the commission of a racketeering activity, including those delineated in 18 USC §1961(1). Dauria's commission of racketeering activities

⁵ In fact, from 1993 to 1998, Dauria was arrested numerous times for shoplifting-related offenses. At the time of the investigation into SRD's initial Registration Application, Dauria stated that these arrests stemmed from an addiction to crack-cocaine. Dauria entered a drug rehabilitation facility in 1999, and successfully completed probation in 2002. Notwithstanding Dauria's criminal history, the Commission reasoned that the arrests were confined to a problematic period in Dauria's life and granted SRD's Registration Application. Dauria has proven that the Commission's conclusion was incorrect and that she continually engaged in criminal activity since the completion of her probation notwithstanding her claims to the contrary.

⁶ By engaging in this criminal activity, the Applicant also violated the terms of its Registration Order, which states that the "Applicant shall not violate any law of the United States of America or the State of New York..." See Registration Order at 3.

in connection with trucking projects directly related to the trade waste industry – a point not refuted by the Applicant – is a sufficient ground upon which to deny the Applicant's application. See Admin. Code §16-509(a)(v). Accordingly, the Commission denies SRD's application on this independently sufficient ground.

3. The Applicant's sole owner and principal knowingly associated with members and associates of organized crime.

The Commission may deny a license application of a business whose principals have had business dealings with known organized crime figures. See Admin. Code §16-509(a)(vi); SRI, 107 F.3d at 998. The Commission may consider this factor in determining an applicant's eligibility for an exemption from licensing and a trade waste registration. See supra at 5-7. Mario Cassarino and Joseph Spinnato have been publicly named by law enforcement as a member and associate, respectively, in the Gambino organized crime family. Notwithstanding their organized crime status, Dauria maintained a business relationship with them and engaged in criminal activities with them.

As discussed above, the Indictment charged that from approximately 2002 through 2008, Dauria conspired with Spinnato and/or Cassarino in an effort to defraud the Local 282 Funds of union benefits. Dauria falsified documents and submitted false remittances to the Local 282 Funds. Moreover, Dauria admitted by her guilty plea that she engaged in such activities with Spinnato during that time period.

The Indictment identifies Cassarino as a soldier in the Gambino crime family and charged him with numerous crimes, some of which were allegedly committed with Dauria. Other charges against Cassarino include racketeering conspiracy and multiple extortions, all crimes commonly committed by members and associates of organized crime. See Indictment at 14, 40-46, 68-70, 108-115; Detention Memo at 43. Additionally, Spinnato was identified as an associate in the Gambino organized crime family. He was charged with multiple crimes including racketeering conspiracy, theft of union benefits, and mailfraud. See id. at 35-38, 42-48, 66-67, 91-94, 101-108.

Dauria's relationship with Spinnato and/or Cassarino spanned at least six years. In light of the length of time during which the illegal business dealings took place and the type of behavior in which Dauria engaged with these two individuals – defrauding union funds and related crimes – it is reasonable to conclude that Dauria was likely aware of the organized crime ties of Spinnato and Cassarino. Further, Dauria should have at a minimum inquired and was certainly on notice that the individuals with whom she was committing crimes were associates or members of organized crime.

The Commission is expressly authorized to deny the license application of a carting company whose principals have had business dealings with known organized crime figures. See Admin. Code §16-509(a)(vi); SRI, 107 F.3d at 998. The Commission is similarly authorized to deny the registration application of a construction and demolition debris business. See supra at 3-4, 5-7. The evidence recounted above demonstrates that the Applicant's principal not only engaged in business dealings with organized crime figures, but engaged in criminal activity with

these individuals. The Applicant does not contest this point. Moreover, the dealings directly involved the construction industry. Dauria knew or should have known of Spinnato and Cassarino's organized crime status, particularly in light of the activities in which they were involved, activities commonly associated with organized crime. Dauria, however, engaged in this behavior with a complete disregard for Local Law 42. These types of associations are plainly repugnant to Local Law 42's central goal of eliminating the influence of organized crime from the industry. Both Dauria's actual dealings with Spinnato and Cassarino and her willingness to engage in criminal conduct with them despite their organized crime status, demonstrate that Dauria lacks the good character, honesty, and integrity required for her to obtain a registration.⁷ Accordingly, SRD's application is denied on this independent ground.

B. The Applicant knowingly failed to provide information and provided false and misleading information to the Commission in its renewal application.

The Commission may refuse to issue a registration to an applicant who has failed "to provide truthful information in connection with the application." See Admin. Code §16-509(a), (b); Attonito, 3 A.D.3d 415. See also Breeze Carting Corp. v. The City of New York, No. 107859/07 (Sup. Ct. N.Y. Cty. Apr. 1, 2008). On January 3, 2008, Dauria filed SRD's Renewal Application with the Commission. In the Renewal Application, Dauria provided false and misleading information to the Commission.

Question 10 of the Renewal Application asks if the applicant business or its principal has "knowingly associated in any manner with any member or associate of organized crime?" The Applicant responded, "no." See Renewal Application at 4. As the sole principal of the Applicant business, on January 2, 2008, Dauria certified that the information contained in the Renewal Application was true and accurate. See id. at 9.

As discussed above and as charged in the Indictment, between June 2002 and January 2008, Dauria engaged in illegal business dealings with a Gambino associate and a Gambino soldier. Further, the Indictment specifies numerous conversations between Dauria and her co-defendants regarding the criminal activity in which they engaged wherein she implicitly acknowledges the criminal nature of the business dealings. Moreover, on May 27, 2008, Dauria admitted that she engaged in racketeering activities with Spinnato and others.

As discussed above, Dauria knew or should have known that she had associated with members and associates of organized crime. Thus, Dauria provided false and misleading information to the Commission in SRD's Renewal Application, and the Applicant does not refute this point. Dauria's refusal to provide truthful information to the Commission demonstrates that the Applicant lacks the requisite good character, honesty and integrity to operate such a business in New York City. For this independently sufficient reason, SRD's application is denied.

⁷ Dauria also violated the Applicant's Registration Order, which prohibits the Applicant from "knowingly associat[ing] with any member or associate of organized crime or any racketeer in any manner." See Registration Order at 3.

IV. 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 SRD falls short of that standard. For the reasons discussed above, the Commission hereby denies SRD's Renewal 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: June 24, 2008

THE BUSINESS INTEGRITY COMMISSION



Michael J. Mansfield
Chairman



John Doherty, Commissioner
Department of Sanitation



Rose Gill Hearn, Commissioner
Department of Investigation



Jonathan Mintz, Commissioner
Department of Consumer Affairs



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



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