

1169



171
1169

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 APPLICATIONS OF CAPONE & DeNILO, INC., SUNSET
CARTING, INC., ADVANCED WASTE SERVICES INC., AND
SUPERIOR WASTE SERVICES, INC. FOR LICENSES TO
OPERATE AS TRADE WASTE BUSINESSES**

Capone & DeNilo, Inc. ("Capone & DeNilo"), Sunset Carting, Inc. ("Sunset"), Advanced Waste Services Inc. ("Advanced"), and Superior Waste Services, Inc. ("Superior") (collectively, the "Applicants") have applied to the New York City Trade Waste Commission (the "Commission") for licenses to operate as trade waste businesses 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 who 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 failure to provide truthful information in

connection with the license application, certain criminal convictions, and engaging in racketeering acts. See id. § 16-509(a)(i), (iii), (v). Based upon the record as to the Applicants, who have common principals and are operationally interrelated, the Commission finds, for the following independently sufficient reasons, that the Applicants lack good character, honesty, and integrity, and denies their license applications:

- (1) Albert Capone, a principal of all four Applicants, and Stephen Capone, a principal of Capone & DeNilo and Sunset, each have a 1996 federal mail fraud conspiracy conviction arising out of an illegal waste dumping and bribery scheme involving the City's Fresh Kills landfill on Staten Island.
- (2) Advanced and Superior failed to disclose that Albert Capone is a principal of the company.
- (3) Capone & DeNilo has repeatedly engaged in anticompetitive acts in connection with its participation in the carting industry's mob-controlled cartel, including the payment of compensation to, and the trading of customers with, other carting companies.
- (4) Advanced has engaged in unlicensed carting activity in the City over the past several years.
- (5) Superior provided materially false information to the Commission concerning the criminal history of its sole disclosed principal, Robert Catalano.

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 anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council 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 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 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 waste 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). Capone & DeNilo and Sunset hold DCA licenses and timely submitted license applications to the Commission; thus, they are legally entitled to operate pending the Commission’s determination of their applications. Superior and Advanced do not hold DCA licenses; thus, they

are prohibited from operating in the City of New York pending the Commission's determination of their license applications.

As the United States Court of Appeals has definitively ruled, 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). 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

A. Overview

The Commission's staff issued its recommendation to deny the Applicants' applications on September 15, 2000. Capone & DeNilo, Advanced, and Superior submitted a "Verified Response to Recommendation of Denial License Application" (the "Response") on October 3, 2000. Sunset did not submit a response to the recommendation.

Although the Commission's staff advised the Applicants that the Commission was not going to consider a sale application after the staff had issued its recommendation, the Response included an application requesting permission for K&J Carting, Inc. (the "Buyer") to purchase Capone & DeNilo. The Commission was to render its decision on these applications at a meeting scheduled for November 17, 2000. The Acting Chair of the Commission agreed to meet on November 14, 2000 with counsel for Capone & DeNilo, Advanced, and Superior to discuss the sale application. After those discussions, the Acting Chair sought postponement of the decision on the applications to allow Capone & DeNilo additional time to modify the sale agreement in a manner that might be acceptable to the Commission. To date, the Commission has not received a modified sale application. The Commission has decided to no longer hold its decision on these applications in abeyance.

The Commission has previously considered the issue of the interplay between license and sale applications filed by the same carting company. At a public meeting on August 26, 1996, the Commission advised the industry that it would consider sale applications before acting on timely filed license applications. In light of the potential (indeed, the likelihood) of changed circumstances, the Commission did not promulgate its advice to the industry in any formal manner, such as by published rule. Subsequently, the Commission concluded that its initial approach to the processing of sale applications had achieved its purposes and, moreover, was no longer appropriate. Taking into account changed circumstances in the industry, the Commission, at a public meeting on May 9, 1997, announced that, henceforth, it would decide on a case-by-case basis whether to defer action on a carting company's license application pending consideration of a sale

application filed by the company. In the Commission's view, except in rare circumstances, the goals of Local Law 42 are well served by vigorous, head-to-head competition for customers, but are not advanced by sales by cartel participants of customer accounts obtained under a corrupt property rights system.

The Commission's staff has conducted a lengthy, thorough investigation of the Applicants. As early as the summer of 1998, shortly after Marilena Capone's deposition, the Commission's staff advised her that Capone & DeNilo's chances of licensure were unlikely given her husband's trade waste-related conviction and involvement with the company. The staff encouraged a sale at that time. Subsequently, in the summer of 1999, after Capone & Denilo, Advanced, and Superior retained counsel, the staff reiterated this position to their counsel. Nonetheless, the first sale application received by the Commission came in the wake of the staff's recommendation, more than two years after Capone & DeNilo was initially advised of the staff's likely recommendation.

The Response does not advance rare circumstances warranting a departure from the Commission's policy on sale applications submitted after issuance of the staff's recommendation. A sale at this time would not be in the best interest of the City. This is especially true in light of the consideration given the sale application and Capone & DeNilo's lack of success, despite additional time, in reaching agreement with the proposed Buyer on a modified transaction that would have removed all beneficial interest of principals now associated with Capone & DeNilo and the related companies and further would be suitable to the Commission in all other respects. This decision does not preclude Capone & DeNilo from selling its fixed assets only for fair market value, without compensation for goodwill.

A. The Applicants' Common Principal: Albert Capone

Capone & DeNilo and Sunset submitted their license applications to the Commission on August 30, 1996; Superior submitted its license application on May 7, 1998; and Advanced submitted its application on May 19, 1998. These applications should be considered together because the Applicants share a number of principals and share, or have until recently shared, office space, equipment, and staff.

Local Law 42 sets forth a broad definition of a principal. This term includes individuals with an ownership interest, as well as "all other persons participating directly or indirectly in the control of such business entity." See Admin. Code § 16-501(d). The purpose of this broad definition is to combat one of the favorite methods of organized crime to infiltrate and control a company without detection through the use of "surrogates" or "fronts." These individuals hold property, stock, or other interests of a company in their name, but for the benefit of those likely to be found undesirable by government and regulatory agencies. As shown below and in section C.2, Albert Capone and Stephen Capone both adopted this method and used their wives or other family members as surrogates to conceal the fact that the principals actually running one or more of these companies are convicted felons.

Capone & DeNilo, which was incorporated in 1959, has three identified principals: Rosalee (née DeNilo) Capone; Albert Capone, her son; and Marilena Capone, Albert Capone's wife. Rosalee Capone owns 50% of the company; Albert Capone owned the other 50% from 1979 to August 1995, when he transferred his equity interest in the company to his wife. See Capone & DeNilo Lic. App. at 95, 311-14. Sunset was incorporated in 1985 and has two identified principals with equal ownership: Albert Capone and his brother, Stephen Capone. See Sunset Lic. App. at 89, 109.¹ According to Dun & Bradstreet, as of 1990, Stephen Capone had also been an officer of Capone & DeNilo since 1977. Advanced, which was incorporated in September 1995, has one identified principal: Marilena Capone. See Advanced Lic. App. at 22. Superior, which was incorporated in May 1996, also has one identified principal: Robert Catalano, the son of Marilena Capone and stepson of Albert Capone. See Superior Lic. App. at 22.

The license applications of Capone & DeNilo, Sunset, and Advanced all identify the same location as their principal business office, mailing address, and garage: 60-55 Strickland Avenue in Brooklyn. The three companies share office space, equipment, and staff at that location. See

¹ Although Albert Capone supposedly resigned from Sunset Carting in March 1997, Sunset never amended its application to reflect the change, as required. See Admin. Code § 16-508(c). The sole reference to such resignation was in passing in a letter, received in March 1999, addressed a routine regulatory matter. See Letter, dated March 16, 1999, from Sunset Administrative Assistant Judy Matouk ("I am now in the process of writing a letter to your Licensing Department explaining some changes in their corporation. Mr. Albert Capone resigned from Sunset Carting in March of 1997.")

Capone & DeNilo Lic. App. at 1, 96; Sunset Lic. App. at 1, 90; Advanced Lic. App. at 1, 4.²

The Applicants are plainly related given their locations and the familial relationship of their principals. Moreover, the staff's investigation revealed that Capone & DeNilo, Advanced, and Superior all are controlled by the same person, Albert Capone – this despite the fact that neither Advanced nor Superior disclosed him as a principal on their license applications. Indeed, in the view of Advanced's sole disclosed principal, Marilena Capone, the company is simply an operating division of Capone & DeNilo. See Transcript of Deposition of Marilena Capone on August 7, 1998 ("M. Capone Tr."), at 6-7, 26-27 ("Advanced Waste works under Capone & De[N]ilo . . ."), 47 ("They are affiliated, so it's – to me it's kind of the same thing. They both do the same thing.").

Marilena Capone testified that Advanced was formed by Albert Capone, and that he manages the company, bought its equipment, and hired its employees. See M. Capone Tr. at 8-9, 23, 30. Although she owns Advanced, Marilena Capone, a self-described housewife who spends the bulk of her work-related time running a beauty salon, did not invest any money in the company. See id. at 6, 24-25, 46-47. Rather, her son, Robert Catalano, invested money from an inheritance in both Advanced and Superior at the instance of his stepfather, Albert Capone. See id. at 25-26 (" . . . my husband took care of it."). Marilena Capone's testimony leaves no doubt that Albert Capone controls Capone & DeNilo, Advanced, and Superior. See id. at 9 ("Q. So, your husband and you are both actually managing [Capone & DeNilo]? A. Yes. Well, my husband basically. And I follow instructions and I have people working for us."), 10 (" . . . and my husband oversees everything that we do. Q. For all three companies? A. Right, for all three. Right."), 61 ("He watches over all of us. I mean, he teaches us everything we know.").

The Response asserts that Marilena Capone did not know about cartel activity. This assertion merely provides further support for the conclusion

² The business address of Superior is identified as 2400 National Drive in Brooklyn, which is the residence of the company's owner, Robert Catalano, as well as his mother and stepfather. See Superior Lic. App. at 1, 4, 22; Capone & DeNilo Lic. App. at 311-12. In addition, according to Sunset, in 1999 the company moved to 900 East 92nd Street in Brooklyn. See Transcript of Deposition of Stephen Capone on August 24, 2000, at 16-19. According to Capone & DeNilo, in 1999, the company moved to 5322 Avenue N in Brooklyn.

that Marilena Capone is a surrogate put in place merely to create the perception that Capone & DeNilo and Advanced were disassociated from her husband's influence and control. Her deposition testimony revealed she knew little about her companies specifically or the trade waste industry generally. She had no occasion to acquire such knowledge because the evidence shows that her husband, Albert Capone, was running the companies.

Based upon the foregoing, it is clear that Albert Capone is, or until recently has been, a "principal" of all four of the Applicants under Local Law 42. He was a 50% owner of Sunset, and he has "participat[ed] directly or indirectly in the control of" Capone & DeNilo, Advanced, and Superior. See Admin. Code § 16-501(d).³

B. The Criminal History of Albert Capone and Stephen Capone

The failure of Advanced and Superior to disclose on their license applications any connection or affiliation with Albert Capone is highly material in light of his criminal record in the City's waste removal industry. In August 1994, Albert Capone, Stephen Capone, and fifteen others were indicted on federal conspiracy and bribery charges in connection with an illegal waste dumping scheme at the Fresh Kills landfill on Staten Island. See United States v. Barbieri et al., No. 94 Cr. 518 (S.D.N.Y.). The scheme involved, among other things, fraudulent abuse of the City's "free cover program," under which the City allowed hauling and trucking companies to dispose of "clean fill" (i.e., soil generally free of debris) free of charge at Fresh Kills because the Department of Sanitation ("DOS") required such material in operating the landfill. The essence of this aspect of the illegal dumping scheme was that the defendants bribed DOS employees to allow them, under the guise of the free cover program, to dump nonqualifying material (such as construction and demolition debris) at Fresh Kills without paying the standard waste disposal fee of \$50 per cubic yard. See generally Indictment ¶¶ 1-14, 35-40.

The indictment identified Albert Capone and Stephen Capone as officers of Capone & DeNilo and Strickland Recovery Corp. ("Strickland"),

³ The Response asserts without citation to any facts or cases or any argument beyond mere assertion that the Commission's inclusion of these four companies in a single licensing decision somehow constitutes a due process violation. Without more, this argument is meritless.

a transfer station. Indictment ¶ 16. The indictment charged that from September 1988 through April 1992, the Capones made payments totaling approximately \$75,000 to a company, CJE Land Clearing Inc. ("CJE"), with the understanding that CJE's principals would use a portion of the money to bribe DOS employees to allow the Capones' companies to dump nonqualifying material free of charge at the landfill. *Id.* ¶¶ 28, 42. As overt acts in this bribery conspiracy, the indictment charged that on September 18, 1991, Albert Capone and CJE principal Anthony Emmino had a telephone conversation about dumping nonqualifying material at Fresh Kills, and that on September 25, 1991, Stephen Capone and Emmino had a telephone conversation about disguising the appearance of a load of nonqualifying material and about paying a bribe to DOS employee Anthony Sessa. *Id.* ¶ 57(b)-(c). The indictment charged Albert Capone and Stephen Capone each with one count of conspiracy to commit bribery and one count of bribery in connection with a federally funded program. *Id.* ¶¶ 54, 61; see 18 U.S.C. §§ 371, 666(a)(2).

In October 1995, Albert Capone and Stephen Capone each pleaded guilty to a superseding information charging one count of conspiracy to commit mail fraud in connection with the submission to DOS of reports falsely stating the amount of clean fill dumped by the Capones' companies at Fresh Kills. See United States v. Albert Capone Jr., No. S13 94 Cr. 518-02 (WK) (S.D.N.Y.), Presentence Investigation Report, dated December 29, 1995, ¶¶ 68-80. On February 5, 1996, Albert Capone was sentenced to five months' imprisonment, five months' home confinement, and two years' supervised release. Three days later, due to factors unrelated to the strength of the government's case against the Capones, United States District Judge Whitman Knapp reconsidered his sentence, departed downward from the applicable sentencing guidelines (which yielded a range of ten to sixteen months) and declined, upon reconsideration, to impose any prison term. See United States v. Albert Capone Jr. and Stephen Capone, No. S13 94 Cr. 518 (WK) (S.D.N.Y.), Tr. of Proceedings on February 8, 1996, at 5 (the Court, as to Albert Capone: "There wasn't any question in anybody's mind that if this defendant went to trial, he would be convicted."). Accordingly, Albert Capone was sentenced to three years' probation, and Stephen Capone was sentenced to three years' probation and ordered to pay the City restitution in the amount of \$75,200.

In July 1996, DOS, relying upon the Capones' criminal convictions, declined to renew Strickland's transfer station permit.

C. Grounds for Denial of the License Applications

1. Albert Capone and Stephen Capone Have Federal Felony Convictions Directly Related to the City's Waste Removal Industry

As discussed above, Albert Capone is a principal of Capone & DeNilo, Advanced, and Superior. Until at least 1997, if not longer, he was also a principal of Sunset. Stephen Capone is a principal of Sunset and a past principal of Capone & DeNilo. In making licensing determinations, the Commission is expressly authorized to consider prior convictions of the applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code § 16-509(a)(iii); see also id. § 16-501(a). Those factors are:

- (a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license . . . sought.
- (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 Commission finds that, notwithstanding the public policy of the state of New York to encourage licensure of persons convicted of crimes, the crimes committed by Albert Capone and Stephen Capone are so serious, and so closely related to both the purposes for which licensure is sought here and the duties and responsibilities associated with such licensure, that they preclude the grant of trade waste removal licenses to these Applicants. The Capones, by their own admission, participated in a scheme to defraud the City of New York by bribing its employees. As the sentencing judge found, the evidence against them was overwhelming. During the four-year period of their participation in the scheme, the Capones were established businessmen in their late 30's or early 40's – plainly old enough to know what the law is and how to obey it. Their crimes were the result of a conscious decision to choose another path and are an all too accurate reflection of the cynical disregard for the law that corrupted the City's waste removal industry for decades. Albert Capone and Stephen Capone are, quite simply, unworthy of licensure in that same industry again, as DOS recognized in declining to renew Strickland's transfer station permit.

The Response cannot and does not contest any of the facts underlying the convictions of Albert and Stephen Capone or the convictions themselves, but urge that Albert Capone's "culpability . . . should be put into the proper context."⁴ Response at 4. The response then quotes a single paragraph from Albert Capone's presentence report that notes that Albert and Stephen Capone committed their crimes while holding legitimate DOS contracts and that they were the only defendants so situated. We fail to see how this mitigates Albert Capone's culpability for his part in conspiring to bribe City officials to allow the Capones to dump unauthorized material in a City-

⁴ The Response discusses only the conviction of Albert Capone.

owned landfill and evade fees legitimately owing to the City. Nor does the sentence imposed by the court alter the nature of the crime committed by the Capones or its significance to the City of New York.

Accordingly, in the exercise of its discretion, the Commission concludes that, by reason of the Capones' crimes, the Applicants lack good character, honesty, and integrity, and denies the license applications of Capone & DeNilo, Advanced, Superior, and Sunset.

2. Advanced and Superior Failed to Disclose Albert Capone as a Principal

The Commission is authorized to deny the license application of a company that fails to provide truthful information in connection with the application. See Admin. Code § 16-509(a)(i). As shown above, Albert Capone is a principal of Advanced and Superior; indeed, he was the driving force behind their creation. Yet, his name does not appear anywhere in the license applications of Advanced and Superior – not as a principal, nor as an employee, nor as the holder of a beneficial interest in the company. This omission was plainly material: Had Advanced and Superior disclosed Albert Capone as a principal, their license applications would have been subject on their face to denial due to his recent felony conviction in the City's waste removal industry.⁵

This omission was apparently the latest step in a continuing effort to create a purported distance between Albert Capone and the carting companies that he actually owns or controls, so that his companies may avoid the adverse consequences of his crimes. He was indicted in August 1994. In August 1995, he gifted his 50% interest in Capone & DeNilo to his wife. In September 1995, Advanced was formed. In October 1995, he pleaded guilty. In February 1996, he was sentenced. In May 1996, Superior was formed. In August 1996, the Commission, relying principally upon the criminal conviction of Albert Capone and his brother, denied Capone & DeNilo's application for a waiver of Local Law 42's contract terminability provision. Notably, it was after Albert Capone was put on notice by the waiver denial of the Commission's view of his waste industry-related

⁵ Rosalee Capone, Marilena Capone, and Robert Catalano, the mother, wife, and stepson, respectively, of Albert Capone, were knowing participants in the subterfuge. They each certified that the information contained in the applications was true. As shown above, the applications were not truthful in that they did not disclose Albert Capone's status as a principal in Capone and DeNilo, Advanced, and Superior.

convictions that in May 1998, Superior and Advanced submitted their license applications to the Commission, without mentioning Albert Capone.⁶

Based upon this sequence of events and the testimony of Marilena Capone, it is fair to conclude that Albert Capone caused Advanced and Superior to be incorporated, and placed the formal ownership of these companies in his wife and his stepson, respectively, so that he may continue carrying on his carting business through nominees and surrogates in what he apparently considers the likely event that the Commission denies the license applications of the Capones' first-generation companies, Capone & DeNilo and Sunset. See A. Capone Tr. at 38-39 (in the event that Advanced receives a license, "probably Capone & DeNilo would be dissolved at that time . . . that's why I started Advanced . . ."), 39 (as to Robert Catalano, "I thought he would want a business if Capone & DeNilo didn't get licensed[,] maybe he would get a license and I would give him the business"). Local Law 42 prescribes a broad definition of "principal" in order to foreclose precisely this type of maneuver.

The Response argues that Albert Capone has never been a principal of Advanced or Superior and is not a principal of Capone & DeNilo, and therefore they could not have been obligated to disclose that which wasn't true. This statement lacks credibility and is inconsistent with the testimony taken by the Commission's staff during the disclosed principals' depositions. The Response makes much of the supposed fact that Albert Capone has never sought to hide his role in Capone & DeNilo allegedly because no one from the Commission answered his August 1996 letters to then-Commission Chair, Randy Mastro. Response at 6. Albert Capone claims, falsely, that he "has never tried to cover-up his involvement in [Capone & DeNilo]." Id.

Omitted from this account in the Response is any reference to the Commission's August 1996 denial of Capone & DeNilo's application for a "waiver" from the 30-day contract termination provision of Local Law 42.

⁶ On July 31, 1998, Superior's sole disclosed principal, 22-year-old Robert Catalano, apparently unaware that a week later his mother would be candid with the Commission about Albert Capone's continuing role in the Applicants' businesses, testified that his stepfather was not involved in the trade waste industry. See Transcript of Deposition of Robert Catalano on July 31, 1998 ("Catalano Tr."), at 42. Catalano's attempts to distance himself from Albert Capone were clumsy and transparent. See, e.g., id. at 12 ("My mother and my mother's husband's mother [are] in the business . . ."), 26 (identifying his mother by her maiden name), 39 (describing 75-year-old Rosalee Capone as "the boss" at Capone & DeNilo and denying that "anyone else in the family helps her run the business"); compare Transcript of Deposition of Albert Capone on August 15, 2000 ("A. Capone Tr."), at 26, 124-25 (describing Rosalee Capone as "semi-retired" from Capone & DeNilo since 1985-86).

In 1996, the Commission denied Capone & DeNilo's waiver application, in part because Albert Capone tried to conceal his status as a principal of Capone & DeNilo. Capone & DeNilo submitted its application for a waiver in July 1996, one month before its license application. In that waiver application, Capone & DeNilo failed to disclose Albert Capone as a principal. Waiver Application at 2-3. In denying that application, the Commission stated that Capone & DeNilo "misleadingly claim[ed] that the company ha[d] been transferred to Albert and Stephen Capone's wives, who now ostensibly run the business. Although the Capone [brothers] apparently have transferred their ownership on paper, physical surveillances of Capone & DeNilo's facilities confirm that [the] husbands and not the wives continue to operate Capone & DeNilo." The Trade Waste Commission Decision regarding the Waiver Application of Capone & DeNilo, Inc., August 23, 1996, at 11 ("Waiver Denial"). Although the Response complains that no one answered Albert Capone's letters, the waiver denial was a sufficient response. In any case, it was not surprising that the Applicants chose in Capone & DeNilo's license application not to attempt to hide behind the fiction that their wives operated their various carting companies. Obviously, no favorable inferences should accrue to them for doing so.

Accordingly, the license applications of Advanced and Superior are denied on the independent ground that they failed to disclose Albert Capone as a principal.

3. Capone & DeNilo Has Repeatedly Engaged in Anticompetitive Acts in Connection with the Carting Industry Cartel

Albert Capone was fully familiar with the cartel's rules, and Capone & DeNilo abided by and invoked them. Albert Capone acknowledged that carting companies in trade associations had "a right to service particular customers that should be respected by other carters." See A. Capone Tr. at 34; id. at 126 (regarding the cartel's property rights system, "it is pretty much common knowledge of what went on since forever"). Disputes between carting companies that arose when one carter took another carter's customer were resolved by paying compensation, returning the customer, or trading stops. See id. at 45. It was common knowledge that organized crime was involved in the carting industry and controlled the trade associations. See id. at 45-46 ("word on the streets my whole life"), 109 ("Well, it was always a known thing, you know. The association always went along with

organized crime.”). When Capone & DeNilo joined the KCTW in the late 1970’s, the trade association was controlled by Genovese capo Thomas “Crazy Tommy” Contaldo. See id. at 29-30. Contaldo was succeeded by Genovese capo Alphonse “Allie Shades” Malangone. See id. at 99, 102 (“Q. Now, when did you first hear he was connected to organized crime? A. It was just always known since I have known him.”).⁷

Moreover, Albert Capone was thoroughly familiar with the mob’s role in resolving disputes between association member carters. In a dispute between Capone & DeNilo and Anthony Vulpis of Rosedale Carting over Faden Paper, a customer located on Pitkin Avenue in Brooklyn. See A. Capone Tr. at 46-47, 52. Although the customer was a new business at the time Capone & DeNilo began servicing it, Vulpis claimed that the stop belonged to his company because Rosedale had previously serviced the location. See id. at 47-48. After Albert Capone rejected his claim, Vulpis complained to Alphonse Malangone, who summoned Capone to his Brooklyn discotheque, Pastels, and told him that the dispute would have to be presented to the KCTW’s board of directors. See id. at 100-01. Capone and Vulpis then appeared before the KCTW board, which heard the dispute and ruled in Capone & DeNilo’s favor. See id. at 48-50. Albert Capone admitted these facts in his deposition. Furthermore, the Response’s characterization of Capone’s participation as that of a “victim” is self-serving and absurd in view of his meeting with a Genovese crime family capo prior to “winning” the dispute before the KCTW board.

A second dispute between Capone & DeNilo and Rosedale concerned two customers on Flatbush Avenue in Brooklyn that were serviced by Capone & DeNilo at or near locations previously serviced by Rosedale. See A. Capone Tr. at 54-55. Albert Capone resolved that dispute with a \$3,000 compensation payment to Michael Vulpis, representing a multiple of about

⁷ The Response relies on the testimony of Albert Capone for the proposition that “Capone” did not belong to any Trade Waste Association prior to the late 1970s. Response at 2 and 8. It goes on to suggest that Capone & DeNilo joined only out of fear at a time just after the death of Albert Capone in 1977. Id. at 3. This is highly misleading, to say the least. First, Capone does not say that Capone & DeNilo did not belong to any trade waste association prior to the late 1970s, merely that it did so at that time. As to the KCTW, Capone & DeNilo could not have joined any earlier than it did, because the KCTW did not exist until the late 1970s. Its predecessor, the Brooklyn Trade Waste Association, was dissolved in the late 1970s as a result of a criminal restraint of trade and racketeering case brought against it and some 50 or more of its member carters and many of their owners in 1974 by the Kings County District Attorney’s office. So, Capone & DeNilo joined the KCTW as soon as that association came into existence, or shortly thereafter, in the late 1970s. Moreover, according to contemporaneous press accounts, two of the defendants in the District Attorney’s case against the predecessor Brooklyn Trade Waste Association case were Albert Capone and Capone & DeNilo.

fifteen times the monthly revenue from the two accounts. See id. at 54-56. In addition to paying compensation, Capone & DeNilo on occasion traded stops with other carters as well. See id. at 57.

Despite Albert Capone's knowledge that the KCTW was controlled by organized crime, he did not hesitate to enlist the aid of the trade association in enforcing the cartel's rules. In the early 1990's, one of Philip Barretti's carting companies won a contract to service a chain of Taco Bell fast-food restaurants, one of which had been serviced for many years by Capone & DeNilo. See A. Capone Tr. at 59-60, 64. Capone complained to the KCTW board, whereupon Barretti resolved the dispute by offering to subcontract the one account to Capone & DeNilo; this arrangement lasted for about two years until Barretti was indicted. See id. at 60-62. On another occasion, a dispute over a store in The Wiz chain, Capone did not have to ask the KCTW board for help in enforcing the cartel's rules; the other carter involved, Frank Lomangino & Sons, agreed to give Capone & DeNilo a Pintchik paint-store stop in exchange for the Wiz stop. See id. at 71-72.

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, such as combination in restraint of trade and competition. See Penal Law § 460.10(1)(b); N.Y. Gen. Bus. Law §§ 340, 341.

Capone & DeNilo's dealings with other carting companies described above are classic examples of anticompetitive behavior typical of the cartel. Indeed, the payment or receipt of compensation, in the form of either current cash or future income streams, by and between carting companies in connection with the acquisition or loss of customers is precisely the type of unlawful combination in restraint of trade and competition that was repeatedly and successfully charged against numerous carters in the Manhattan District Attorney's criminal prosecution. Capone & DeNilo was not only a longstanding member of the KCTW but also an active participant in the mob-run cartel. The company's cartel crimes provide an additional ground for denial of its license application, as well as the applications of the

other three Applicants inasmuch as Albert Capone is or was a principal of them all.⁸

4. Advanced Has Engaged in Unlicensed Carting Activity in the City of New York for the Past Several Years

As noted above, Advanced was formed in September 1995 and applied to the Commission for a carting license in May 1998. The company has never held a DCA carting license and has never been legally authorized to operate in the City of New York. Nonetheless, the company's president testified in August 1998 that Advanced has been operating in the City since the summer of 1997. See M. Capone Tr. at 21, 32; accord Catalano Tr. at 40. Marilena Capone further testified that Advanced has its own employees, its own trucks, its own routes, and several hundred of its own customers. See M. Capone Tr. at 21-22, 28, 29, 30. An August 1998 customer register submitted to the Commission by Advanced listed 233 customers.

On January 27, 1999, the Commission directed Advanced to cease and desist its unlicensed carting activity. On February 3, Advanced asserted that it was not operating on its own but, rather, that Capone & DeNilo was doing business in Brooklyn as Advanced – a fact of which Capone & DeNilo did not apprise the Commission despite its duty to do so. See Admin. Code § 16-508(c); 17 RCNY § 2-05(a)(ii); Lic. App. Form, Part I, Question 1. On February 5, 1999, the Commission advised Advanced that, regardless of whether the company was operating independently or as a "d/b/a" of Capone & DeNilo, Advanced was operating illegally. On February 17, the Commission advised Advanced that it may either (i) withdraw its license application and continue operating solely as a "d/b/a" of Capone & DeNilo, or (ii) continue pursuing its license application and cease all operations pending the Commission's decision on the application. On February 22, 1999, Advanced advised the Commission that the company had chosen the second option.

⁸ Moreover, in its license application Capone & DeNilo affirmatively misrepresented the nature of its disputes with other carters during the cartel era. While acknowledging that it had some such disputes concerning customers, Capone & DeNilo stated that it "did not pay for or receive money or any other form of remuneration for stops." Capone & DeNilo Lic. App. at 101 (Part II, Question 2(d)). This materially false statement is an additional basis on which the Commission denies Capone & DeNilo's license application. See Admin. Code § 16-509(a)(i).

In substance, the Response asserts that Advanced was created only for estate planning purposes. Although this assertion is a creative excuse for unlicensed activity, it is wholly lacking in credibility. The conclusion compelled by the evidence garnered from the Commission staff's investigation and the chronology of events is that Advanced was born of the Capones' fear that the Commission would deny the applications of Capone & DeNilo and Sunset based upon Albert and Stephen Capone's convictions. It is more than coincidence that Capone & DeNilo claimed that Advanced was its "d/b/a" after it received notice that Advanced was operating illegally. It is more plausible that Capone & DeNilo deliberately constructed the "d/b/a" scenario, as asserted in the Response, as a defense against the charge of unlicensed activity.

Notwithstanding the above, the Commission is authorized to deny the license application of a company that has engaged in unlicensed carting activity in the City of New York. See Admin. Code §§ 16-505(a), 16-509(c)(ii), 16-513(a)(i). Advanced plainly engaged in such activity; whether the company did so independently or as an alter ego of Capone & DeNilo is irrelevant. Indeed, the plan seems to have been that Capone & DeNilo would continue servicing its existing customers while new accounts would be serviced by Advanced. See M. Capone Tr. at 21 ("... Capone & DeNilo has had their [sic] stops ... for many years ... And now Advanced ... get[s] new stops and new accounts to build up for our children and their future."). In addition, by operating now, Advanced would be in position to obtain Capone & DeNilo's accounts in the event that company's license application were to be denied. Under these circumstances, Advanced's unlicensed carting, particularly when coupled with Capone & DeNilo's failure to inform the Commission of the companies' supposed "d/b/a" arrangement until the Commission warned Advanced that it was operating illegally, merits denial of Advanced's license application.

5. Superior Provided Materially False Information as to the Criminal History of Its Sole Disclosed Principal, Robert Catalano

In its license application, certified under oath as truthful by its president, Robert Catalano, on May 1, 1998, Superior stated that, during the past five years, no principal of the company had been "charged with any misdemeanor or felony criminal offenses in any jurisdiction," and that no principal of the company had ever "submitted to a government employee a

written instrument which [he] knew contained a false statement or false information." Superior Lic. App. at 14-15 (Part III, Questions 5(b), 6(a)). In a disclosure form certified under oath as truthful on August 3, 1998, Catalano made the same representations concerning himself. See Principal Disclosure Form at 4-5 (Questions 10(b), 11(a)). In sworn answers to a written questionnaire that he completed in connection with his deposition on July 31, 1998, Catalano denied that he had "ever been charged with any criminal violations . . . [i]nclud[ing] misdemeanor charges, felony charges, and all non-traffic violations (including DWI)." Questionnaire at 8 (Question 32).

All five of these representations were false. On March 29, 1995, Robert Catalano was arrested on Staten Island and arraigned on charges of possession of a forged instrument in the third degree (a class A misdemeanor), criminal impersonation in the second degree (also a class A misdemeanor), and driving while intoxicated (an unclassified misdemeanor). See N.Y. Penal Law §§ 170.20, 190.25(1); N.Y. Veh. & Traf. Law §§ 1192(3), 1193(1)(b). The first two charges arose out of Catalano's tender of a false identification card to a police officer. On October 11, 1995, he was convicted upon a plea of guilty in Criminal Court, Richmond County, to a charge of driving while ability impaired, and sentenced to a conditional discharge upon the payment of a \$300 fine, the performance of fifty hours of community service, and the suspension of his driver's license for ninety days. The Response does not dispute any of these facts. In addition, on January 3, 1997, Catalano was arrested in New Jersey on state charges of possession of marijuana and possession of drug paraphernalia. On July 14, 1997, the charges were dropped.

It need hardly be said that the Commission expects license applicants and their principals to be entirely truthful in all of their dealings with the Commission and its staff. Complete candor and honesty is of particular importance in the context of licensing investigations. Indeed, failure to provide truthful information in connection with a license application is grounds for denial of the application. See Admin. Code § 16-509(a)(i).

Catalano's apology for his lies under oath and made only when he became aware that the Commission's staff had uncovered them is irrelevant to the Commission's decision on those facts. Catalano's misrepresentations concerning his criminal history, particularly when taken together with his

false testimony concerning Albert Capone's involvement in the Applicant's businesses, shows his lack of good character, honesty, and integrity.⁹ Accordingly, the Commission denies Superior's license application on this independent ground as well.

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, as demonstrated above, there are numerous independently sufficient grounds for a finding that all four Applicant companies are unfit for licensure. Sunset failed to respond to the recommendation and the other Applicants' Response is unpersuasive. Accordingly, the Commission concludes that Capone & DeNilo, Sunset, Advanced, and Superior lack good character, honesty, and integrity, and denies their license applications.

This license denial decision is effective fourteen days from the date hereof. In order that the Applicants' customers may make other carting arrangements without an interruption in service, the Applicants are directed (i) to continue servicing their 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 their customers by first-class U.S. mail by no later than December 20, 2000. The Applicants shall not service any customers, or otherwise operate as trade waste removal businesses in the City of New York, after the expiration of the fourteen-day period.

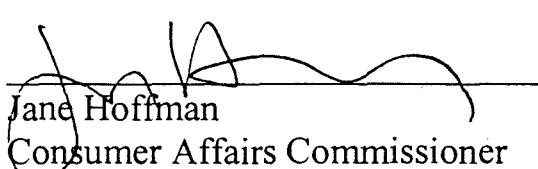
Dated: December 15, 2000

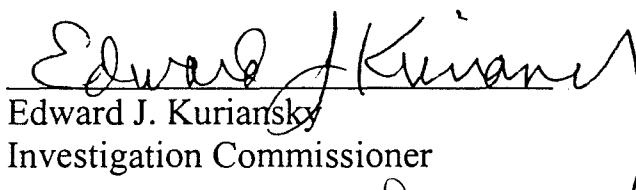
⁹ After being advised that, despite his denials, the staff was aware of his criminal history, Catalano submitted an affidavit on the subject, in which he attempted to explain away his misrepresentations. He asserted that he "answered some of the questions without proper reflection and without understanding their full significance," that he believed that his conviction would be "expunged" from his record because he received a sentence of a conditional discharge, and that he believed that the drug charges against him were not part of his record because they were eventually dismissed. See Affidavit of Robert Catalano, sworn to October 29, 1999, ¶¶ 2, 6-7. This attempt at mitigation is fundamentally beside the point. However, the documents containing Catalano's false statements were executed on three different dates. The questions were clear, specific, and phrased to elicit answers not dependent upon subjective beliefs.

THE TRADE WASTE COMMISSION


Raymond V. Casey
Acting Chairman


Kevin P. Farrell
Sanitation Commissioner


Jane Hoffman
Consumer Affairs Commissioner


Edward J. Kuriansky
Investigation Commissioner


Deborah R. Weeks
Business Services Commissioner



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

December 15, 2000

**NOTICE TO CUSTOMERS OF CAPONE & DeNILO, INC.,
SUNSET CARTING CORP., ADVANCED WASTE SERVICES,
INC., AND SUPERIOR WASTE SERVICES, INC. REGARDING
TERMINATION OF CARTING SERVICE**

Dear Carting Customer:

The New York City Trade Waste Commission, which regulates private carting companies in the City, has denied the applications of Capone & DeNilo, Inc., Sunset Carting Corp., Advanced Waste Services, Inc., and Superior Waste Services, Inc. (the "companies") for licenses to collect trade waste. As of December 15, 2000, the companies will no longer be legally permitted to collect waste from businesses in New York City. If these companies are collecting your waste, you will have to select another carting company to provide you with that service by December 30, 2000.

The Commission has directed these companies to continue providing service to its customers (if they so desire) through December 29, 2000. If your service is interrupted before December 30, 2000, call the Commission at 212-676-6275.

There are more than 200 carting companies that are legally permitted to collect waste from businesses in New York City. To find out which ones are willing to service customers in your neighborhood:

- **Find out which companies are servicing your neighbors.** A carting company cannot, without a business justification satisfactory to the Commission, refuse to service you if it already has another customer that is located within 10 blocks of your business; or
- **Call the Commission, at 212-676-6275, for a list of licensed carters.**

To assist you further, we are giving all 200 plus carting companies in New York City a list of these companies' customers.

The carting industry is changing for the better, and prices have been falling over the past four years. Customers that shop around have been able to cut their carting bills by a third, and often by a half or more. You should use this opportunity to get the best rates and service by soliciting bids from at least four carting companies before signing a carting contract.

You have many rights under Local Law 42 of 1996, which Mayor Rudolph W. Giuliani signed to address the corruption and anticompetitive practices that long plagued the commercial waste industry in New York City, including:

- The right to be offered a contract by your carting company. A **form carting contract** that has been approved by the Commission may be obtained by calling the Commission at (212) 676-6208.
- The right to be charged a reasonable rate for waste removal services. The City sets the maximum rates that carting companies can charge for removal of commercial waste (except construction and demolition debris). In 1997, the City reduced the maximum rates for the removal of commercial waste to **\$12.20 per loose cubic yard** and \$30.19 per pre-compactd cubic yard. Most businesses dispose of loose waste; only businesses that have trash-compactors dispose of pre-compactd waste. Businesses that dispose of loose trash in bags filled to 80% of capacity (as many businesses do) may not be legally charged more than:

\$2.66 for each 55 gallon bag of trash
\$2.42 for each 50 gallon bag of trash
\$2.17 for each 45 gallon bag of trash
\$1.93 for each 40 gallon bag of trash
\$1.59 for each 33 gallon bag of trash
\$1.45 for each 30 gallon bag of trash

- These rates are only **maximum** rates. Customers are encouraged to "shop around" and get bids from four or more carting companies to find a good price. Most businesses should be able to get rates below \$10.00 per loose cubic yard and \$25.00 per pre-compactd cubic yard. You may also want to insist upon the right to terminate your contract with the carter on thirty days' notice. (There is no requirement that you give the same right to the carting company.)

If you have any questions or complaints about commercial waste hauling in New York City, call the Commission at 212-676-6275.

Sincerely,

Raymond V. Casey
Acting Chair and Executive Director