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

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE EXEMPTION APPLICATION OF VALES CONSTRUCTION CORP. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

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

On March 31, 2005, VCC applied to the Commission for an exemption from licensing requirements and for a registration enabling it to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "c & d." Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for exemptions. See id. If, upon review and investigation of the exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

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

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

Based upon the record as to the Applicant, the Commission, for the following independently sufficient reasons, denies VCC’s exemption application and refuses to issue VCC a registration:

- The Applicant Failed to Pay Government Obligations for Which Judgments Have Been Entered
- The Applicant Knowingly Failed to Provide Information and Documentation Required by the Commission

## I. REGULATORY BACKGROUND<sup>1</sup>

### A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as “a ‘black hole’ in New York City’s economic life.” Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) (“SRI”).

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

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<sup>1</sup> The Applicant objects to the staff’s inclusion of this background history in its denial recommendation as irrelevant. See Letter from Walter Ciacci, Esq. (“Response”) at 2. The Commission disagrees. New York City’s waste hauling industry was systematically corrupted by organized crime for decades. In response, Local Law 42 mandated that all applicants meet a fitness standard of good character, honesty and integrity. See Admin. Code §16-509. As numerous courts have recognized, the history of entrenched corruption that led to the passage of Local Law 42 and the creation of the Trade Waste Commission sheds light on how this agency should exercise its regulatory authority. See Matter of DeCostole Carting, Inc. v. Business Integrity Commission, 2 A.D.3d 225 (1<sup>st</sup> Dept. 2003); Matter of John J. Sindone v. City of New York, 2 A.D.3d 125 (1<sup>st</sup> Dept. 2003); Matter of Hollywood Carting Corp. v. City of New York, 288 A.D.2d 71 (1<sup>st</sup> Dept. 2001).

Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42, § 1.

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

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

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

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained

materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including c & d) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

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

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the c & d sectors of the industry. Local Law 42 recognizes this fact in requiring c & d haulers to obtain registrations from the Commission in order to operate in the City.

## **B. Local Law 42**

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. § 16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated constitutional challenges (both facial and as applied) by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the

Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997).

## II. DISCUSSION

VCC is a construction company owned by Agostinho Vales ("Vales"), President, and Albina Vales, Vice President. See Exemption Application of VCC ("Application") at 9-10. The other principals of the Applicant are John Vales, Treasurer, and Silvano Vales, Secretary. Id. On March 31, 2005, VCC filed with the Commission an application for an exemption from licensing and a trade waste registration. On April 19, 2005, VCC was granted a temporary permit to haul construction and demolition debris pending a final decision on its application. The permission was granted on the express condition that the Applicant fully cooperate in any investigation conducted by the Commission in connection with the Applicant's pending application. See Temporary Permission to Operate Without Registration.

The staff has conducted an investigation of the Applicant and its principals. On January 27, 2006, the staff issued a 9-page recommendation that the application be denied. See Recommendation of the Staff that the Business Integrity Commission deny the Exemption Application of Vales Construction Corp. for a Registration to Operate as a Trade Waste Business ("Recommendation"). The Applicant's President was personally served with the recommendation on February 1, 2006 and was granted ten business days to respond (February 14, 2006). See 17 RCNY §2-08(a). On February 14, 2006, the Applicant's attorney requested additional time and was granted an extension until February 21, 2006. The Applicant failed to submit a response (or another request for additional time) by that deadline. Nevertheless, on February 27, 2006, the Commission received a 3-page letter from the Applicant's attorney (in addition to a 4-page exhibit). See Letter from Walter Ciacci, Esq. ("Response").<sup>2</sup>

The Commission has carefully considered both the staff's recommendation and the Applicant's failure to submit a timely response. The Applicant's untimely response need not be considered by the Commission, thereby leaving the evidence against the Applicant uncontested. Regardless, despite the tardiness of the response, the Commission has considered the arguments raised by the Applicant and has found them to be unpersuasive. Furthermore, the Commission rejects the Applicant's response for being submitted in improper form; the denial recommendation clearly specifies that any "assertions of fact submitted to the Commission must be made under oath." See Recommendation at 9; Cover Letter to Recommendation dated January 31, 2006. For the reasons stated below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its license renewal application.

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<sup>2</sup> Counsel claims that he was not able to submit a timely response due to "a delay in securing the documentary evidence" attached to his letter (consisting of a list prepared by the Applicant of paid summonses). See Response at 1-2. Since the purported reason for the delay was the Applicant's own actions, this excuse is not acceptable. Furthermore, this argument does not explain the failure to request an additional extension of time.

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

“[T]he failure to pay any tax, fine, penalty or fee related to the applicant’s business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction” reflects adversely on an applicant’s integrity. See NYC Admin. Code §16-509(a)(x). Seventy-three judgments totaling over \$68,000 have been docketed against the Applicant by the New York City Environmental Control Board (“ECB”) for administrative fines issued against the Applicant by various city and state agencies.<sup>3</sup> Despite several requests by the Commission over a six-month period for proof that the judgments had been satisfied, VCC only made a single payment of \$8,000 towards the total amounts due (resolving only eight of the 73 judgments). According to a judgment and lien search conducted by the Commission, the Applicant currently owes over \$60,000 for more the remaining sixty-five unsatisfied judgments:

<u>Violation #</u>	<u>Judgment Amount</u>	<u>Docketing Date</u>
#087751950	\$1200.00	1/31/97
#087751960	\$1200.00	1/31/97
#087751979	\$1200.00	1/31/97
#093708790	\$718.40	4/30/98
#098567700	\$1200.00	4/30/99
#098567710	\$1200.00	4/30/99
#098574805	\$1200.00	7/31/00
#104173053	\$750.00	1/31/02
#104173071	\$150.00	1/31/02
#113092165	\$750.00	10/31/00
#113092248	\$500.00	1/31/01
#113426767	\$350.00	10/31/01
#113426950	\$250.00	7/31/01
#113940018	\$1200.00	10/31/01
#113940027	\$770.00	10/31/01
#113592692	\$750.00	7/31/01
#113592701	\$750.00	7/31/01
#113592710	\$750.00	7/31/01
#113918750	\$800.00	10/31/01
#113930246	\$1200.00	10/31/01
#113942007	\$1200.00	10/31/01
#113916166	\$800.00	10/31/01
#113935856	\$800.00	1/31/02
#104173062	\$1200.00	1/31/02
#114126926	\$1200.00	1/31/02
#124081861	\$1200.00	7/31/02
#113699897	\$1200.00	7/31/02
#114063950	\$1200.00	7/31/02

<sup>3</sup> In addition, the Applicant has additional administrative charges that are currently pending: #140320887, #139626448, #139626439, #140909598, #140909589, #134657005, #134656996 and #139455883.

#114063979	\$800.00	7/31/02
#114063988	\$800.00	7/31/02
#119622306	\$800.00	7/31/02
#114063960	\$1200.00	7/31/02
#124080359	\$750.00	10/31/02
#124006457	\$770.00	1/31/03
#124069478	\$770.00	1/31/03
#124073896	\$350.00	1/31/03
#124073905	\$750.00	1/31/03
#124033883	\$1200.00	1/31/03
#124039713	\$1200.00	4/30/03
#124039722	\$1200.00	4/30/03
#124039731	\$150.00	4/30/03
#124378275	\$1200.00	1/31/03
#124378614	\$750.00	4/30/03
#124378623	\$1200.00	4/30/03
#124378632	\$1200.00	4/30/03
#124904753	\$770.00	4/30/03
#124378641	\$300.00	4/30/03
#134167752	\$1200.00	4/30/04
#134324805	\$1200.00	4/30/04
#134014706	\$3000.00	4/30/04
#134014697	\$750.00	4/30/04
#134352049	\$1200.00	4/30/04
#134352058	\$1200.00	4/30/04
#134578043	\$750.00	7/31/04
#134584790	\$750.00	7/31/04
#134257650	\$750.00	1/31/05
#135104164	\$1200.00	1/31/05
#134269493	\$750.00	1/31/05
#139465233	\$1200.00	1/31/05
#135229959	\$750.00	7/31/05
#134136622	\$750.00	7/31/05
#134136631	\$750.00	7/31/05
#135227620	\$750.00	7/31/05
#134306810	\$1200.00	1/31/04
#119586327	\$450.00	4/30/02

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TOTAL: \$60,448.40

On July 12, 2005, the Commission's staff informed the Applicant that it owed numerous unsatisfied judgments to ECB and repeatedly informed the Applicant over the next several months about the outstanding debt. Other than a single payment of \$8,000

on September 23, 2005 that satisfied eight of the numerous pending judgments, the majority of the judgments currently remain unsatisfied.<sup>4</sup> See infra at 7-8.

The Commission is not required to consider the Applicant's untimely response, thereby leaving the evidence against it un rebutted. Furthermore, the Commission rejects the Applicant's response for being submitted in improper form; the denial recommendation clearly specifies that any "assertions of fact submitted to the Commission must be made under oath." See Recommendation at 12; Cover Letter to Recommendation dated January 31, 2006. The Applicant's refusal to address and satisfy numerous debts that have been reduced to judgment demonstrates that the Applicant lacks good character, honesty and integrity.<sup>5</sup>

Even if the Commission were to consider the Applicant's response, the arguments are rejected. Counsel has asserted that the Commission has accused the Applicant of acting in "bad faith towards the satisfaction of outstanding judgments" (see Response at 2), that the Commission has taken a "punitive posture towards VCC" (see Response at 3) and that the Commission has concluded that VCC is a "corrupt and dishonest contractor." (see Response at 3). Counsel's interpretation of the staff's Recommendation is unfounded. The staff merely complied with the dictates of the Administrative Code which sets forth the factors which reflect adversely on an applicant's integrity, including "the failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction." See NYC Admin. Code §16-509(a)(x). In fact, rather than immediately referring VCC's application to the Commission for denial, the staff generously granted VCC a significant period of time (over six months) to come into compliance with Local Law 42. The Commission is not required to grant unlimited unfruitful adjournments to judgment debtors, especially those who fail to cooperate with Commission. See supra at 8-10.

In his response, Counsel argues that "at least three quarters of the outstanding judgments were procured by default" due to the fact that they were sent to an old address from which VCC moved in early 2002 and that VCC was assessed the fines "with out [sic] due process." See Response at 2. The Commission is not in a position to relitigate the underlying basis of every docketed judgment against an Applicant, nor does the Administrative Code require such action. The staff granted the Applicant an extended period of time to resolve such issues with the administrative tribunal directly.<sup>6</sup> In any event, this argument fails to explain why the Applicant did not resolve over twenty judgments that were docketed *before* the Applicant moved offices.

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<sup>4</sup> In his response, Counsel claims that \$20,000 was paid towards the amount claimed due, without providing documentary evidence. See Response at 2. The Commission declines to consider this unsupported claim.

<sup>5</sup> The Applicant's response included a list of over 200 additional administrative violations for which over \$80,000 in fines had been paid to several different government agencies over the past several years. See Response at 2; Response Exhibit at 1-4. While Counsel states that these payments reflect positively on its good character, honesty and integrity (see Response at 3), the Commission believes that the sheer number of violations committed by this Applicant suggests otherwise.

<sup>6</sup> Counsel asserts that a staff member informed him that "the judgments would have to be paid and then fought thereafter." See Response at 2. In fact, counsel was informed that the judgments had to be resolved, but did not direct the manner by which that occurred (whether by payment, dismissal after a reopened hearing or other disposition).

Counsel also claims in defense that he had difficulties in dealing with the Environmental Control Board. See Response at 2-3. However, his claim that they ignored his requests for an omnibus hearing is belied by his later statement that he was informed that each summons was required to be adjudicated separately (thereby rejecting his request for an omnibus hearing). See Response at 2. While one large universal hearing would certainly have been more convenient for the Applicant, the Commission does not accept its argument that some difficulties in navigating a city bureaucracy should serve as an absolute defense to its failure to comply with the law. The Commission notes that during the six-month period in which the Applicant claimed to be resolving these matters, not one summons was restored to the calendar to be adjudicated. As a result, Counsel's request for a "reasonable, short extension of time to comply" (see Response at 3) is denied as untimely and speculative. Counsel's suggestion for the first time on the eve of denial to post a bond (see Response at 3) is also denied as untimely.

Based on this sufficient independent ground, the Commission denies the Applicant's exemption/registration application.

**B. The Applicant Knowingly Failed to Provide Information and Documentation Required by the Commission.**

"The commission may refuse to issue a license or registration to an applicant for such license or an applicant for registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto." See Admin. Code §16-509(b).

On July 12, 2005, a Commission staff attorney sent a letter to VCC requesting proof of satisfaction of the outstanding judgments against VCC docketed by ECB and payment of an outstanding Commission invoice for registration and truck fees. The letter requested the information and documentation by the due date of July 28, 2005. See BIC July 12, 2005 letter. The Applicant failed to respond.

On August 3, 2005, VCC was notified that its temporary permission to operate was terminated based on its failure to respond. See BIC August 3, 2005 letter; Temporary Permission to Operate Without Registration. In response to the termination letter, Silvano Vales called the Commission and asked for additional time to respond. He was informed that if VCC paid the outstanding Commission invoice, the temporary permit would be restored and he would be given additional time to resolve the ECB matters. On August 8, 2005, VCC paid the outstanding Commission invoice in full. See VCC August 8, 2005 letter. On August 9, 2005, a Commission staff attorney sent a letter to VCC rescinding the termination notice and restoring the temporary permission to operate. In addition, VCC was informed that if a good faith payment were made towards the ECB judgments by August 30, 2005, additional time would be given to resolve the remaining judgments. See BIC August 9, 2005 letter.

On August 29, 2005, Jennifer Amicucci, Esq. contacted the staff attorney on behalf of VCC. She stated that VCC had not yet made any payments towards the ECB

matters and requested additional time. She claimed they were making a good faith effort to resolve the situation. See Amicucci August 29, 2005 letter. On September 26, 2005, Ms. Amicucci informed the staff attorney by phone that VCC had paid off \$8,000 worth of ECB judgments and that she would be sending documentation to that effect to the Commission. She stated that she was working on the remainder of the judgments and the staff member informed her that if VCC reduced the outstanding amount to a manageable amount (under \$30,000), that the Applicant's registration would be granted subject to the condition that the remaining amount be satisfied before the expiration of the two-year permit. A new due date of October 31, 2005 was agreed upon for a further update.

On October 3, 2005, Ms. Amicucci sent the Commission a copy of the check used to make the \$8,000 payment. See Amicucci October 3, 2005 letter. According to the database maintained by ECB, the \$8,000 payment was posted on September 23, 2005.

On November 1, 2005, a different attorney – Walter Ciacci, Esq. – left a voice mail with the Commission on behalf of the Applicant. He explained that he was newly retained on the case and had obtained the file from prior counsel. On November 7, 2005, a staff attorney spoke to Mr. Ciacci and explained that VCC still owed over \$60,000 in ECB judgments and has failed to make substantial headway towards reducing that balance over the past four months. Mr. Ciacci stated that he would continue to work on the matter and would contact the Commission. However, those phone calls were the only two instances in which Mr. Ciacci communicated with the Commission. After that date, not only did Mr. Ciacci fail to contact the Commission, he also failed to return phone calls from a Commission staff member on December 5, 2005 and December 12, 2005. His next contacts with the Commission were the return of VCC's trade waste plates on February 3, 2006 (see supra at 10, fn. 7) and the service of the Response on February 27, 2006.

On December 13, 2005, a Commission staff attorney sent a letter to the Applicant (with a copy to Mr. Ciacci) granting a final opportunity to provide the requested information to the Commission regarding the outstanding judgments by the due date of January 6, 2006. See BIC December 13, 2005 letter. The only response to this letter was the Response, which still failed to provide any further update regarding the status of the outstanding judgments.

Despite repeated requests over a six-month period, the Applicant failed to provide the required information<sup>7</sup> and, over time, simply stopped responding to the Commission's requests for information about the open judgments. "[T]he commission may refuse to issue a license or registration to an applicant for such license or an applicant for

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<sup>7</sup> The Applicant belatedly complied with a separate request by the Commission staff for the return of the license plates issued by the Commission. On January 12, 2006, a Commission staff attorney notified VCC that its temporary permission to operate had been rescinded and that it was directed to immediately surrender its four pairs of trade waste license plates. See BIC January 12, 2006 letter. The Commission staff noted in its January 27, 2006 denial recommendation that VCC had not yet complied with the Commission directive. On February 1, 2006, a police detective assigned to the Commission served the denial recommendation on the Applicant and requested the return of the trade waste plates. Two days after the police visit, the Commission received a package from VCC's attorney containing the trade waste license plates. The Applicant's belated compliance with a Commission request, only in response to a police visit, is further evidence of its lack of business integrity.

registration who has knowingly failed to provide the information and/or documentation required by the commission pursuant to this chapter or any rules promulgated pursuant hereto.” Admin. Code §16-509(b). By failing to respond to the Commission’s repeated requests, the Applicant has “knowingly failed to provide the information” required by the Commission and has demonstrated that it lacks good character, honesty and integrity.

The Commission is not required to consider the Applicant’s untimely response, thereby leaving the evidence against it unrebutted. Furthermore, the Commission rejects the Applicant’s response for being submitted in improper form; the denial recommendation clearly specifies that any “assertions of fact submitted to the Commission must be made under oath.” See Recommendation at 12; Cover Letter to Recommendation dated January 31, 2006. Even if the Commission were to consider the arguments raised in the response ultimately submitted, the Commission notes that the response failed to address the evidence cited in the recommendation regarding the Applicant’s knowing failure to provide information required by the Commission.

Based on this independently sufficient ground, the Commission denies the Applicant’s exemption/registration application.

### III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates that VCC falls far short of that standard.

It is of grave concern to the Commission that the Applicant has failed to satisfy its significant financial obligations and has failed to comply with repeated Commission requests for information.<sup>8</sup> Based upon the above independently sufficient reasons, the Commission denies VCC’s exemption application and registration.

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<sup>8</sup> According to the Applicant’s response, VCC is concerned that the Commission denial would prevent it from obtaining contracts with the NYC Department of Design and Construction. See Response at 3. Notably, VCC appears more concerned with the impact of this Commission denial than the fact that it owes NYC a considerable sum of money. The Commission’s denial is limited to denying VCC a permit to haul trade waste (including construction and demolition debris) in New York City and does not preclude it from other types of construction work. The collateral consequences of the denial, if any, are speculative, as well as irrelevant to the Commission’s finding that VCC does not meet the fitness standard of good character, honesty and integrity.

This exemption/registration denial is effective immediately. Vales Construction Corp. may not operate as a trade waste business in the City of New York.

Dated: March 14, 2006

THE BUSINESS INTEGRITY COMMISSION



Thomas McCormack  
Chair



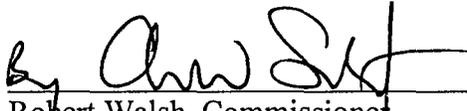
John Doherty, Commissioner  
Department of Sanitation



Jonathan Mintz, Acting Commissioner  
Department of Consumer Affairs



Rose Gill Hearn, Commissioner  
Department of Investigation



Robert Walsh, Commissioner  
Department of Business Services



Raymond Kelly, Commissioner  
New York City Police Department