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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 WHITNEY TRUCKING, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Whitney Trucking, Inc. (“Whitney” 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 2, 2000, Whitney applied to the Commission for an exemption from licensing requirements and 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 Whitney’s exemption application and refuses to issue Whitney a registration:¹

- (i) The Applicant Provided Materially False and Misleading Information in its Exemption Application to the Commission.
- (ii) The Applicant’s President Provided Materially False and Misleading Testimony at His Deposition Before the Commission and Provided Materially False and Misleading Information in a Sworn Deposition Questionnaire.
- (iii) The Applicant’s President was Convicted of Two Felony Counts, Offering a False Instrument for Filing in the First Degree and Perjury in the First Degree, and the Applicant’s Vice-President is Under Pending Criminal Indictment Charging him with the Felony of Offering a False Instrument for Filing in the First Degree.
- (iv) The Applicant Engaged in Long-Term Unregistered Activity and Administrative Charges Relating to Such Activity are Pending against the Applicant.
- (v) A Loaded, Unregistered and Illegally Altered Pistol was Found in an Office Desk Drawer of the Applicant, Pursuant to a Search Warrant.
- (vi) The Applicant’s Vice-President and Consultant/Manager Both Have Long Criminal Histories, Including Several Felony Convictions for Racketeering Activities, such as Extortion,

¹ On January 8, 2003, Whitney filed a lawsuit in New York County Supreme Court, requesting, *inter alia*, an order from the Court compelling the Commission to grant Whitney’s exemption application and to issue Whitney a registration. On April 8, 2003, Judge Walter Tolub issued a decision ordering the Commission to issue Whitney a registration. However, on January 20, 2004, that decision was unanimously reversed by the First Department of the Appellate Division. *See Attonito v. Maldonado*, 2004 NYSlipOp 00280 (1st Dept. January 20, 2004)(“Reversal”). The Applicant states in response that this description of Whitney’s lawsuit is incomplete. *See* Applicant’s Response to the Updated Staff’s Recommendation (“Response”) at 2. However, as the phrase “*inter alia*” plainly signals, the statement was not meant to be a complete description of the lawsuit. The fact that Whitney filed a second lawsuit challenging the first denial recommendation issued by the Commission staff (eventually dismissed by Judge Tolub) and a motion for contempt (granted by Judge Tolub and reversed by the First Department) is not sufficiently germane to determining Whitney’s good character, honesty and integrity to merit lengthy description here. Although it is true that the Applicant has filed several motions in an attempt to challenge the Reversal (*see* Response at 2), the Commission is not required to defer action until every avenue of appeal has been exhausted by the Applicant and may continue to exercise its discretion unless legally prohibited from doing so.

Pursuing a Scheme to Defraud and Joining a Conspiracy to Commit Mail Fraud.

- (vii) The Applicant is Under Pending Criminal Misdemeanor Charges for Illegal Dumping.
- (viii) The Applicant Operated an Illegal Waste Transfer Station and Obstructed Governmental Administration by Failing to Permit Government Inspectors to Enter and Inspect the Site.

I. REGULATORY BACKGROUND²

A. The New York City Carting Industry

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

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime’s longstanding and corrupting influence over the City’s carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found “that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct.” Local Law 42, § 1.

² The Applicant objects to the staff’s inclusion of this background history in its denial recommendation as prejudicial and irrelevant. See Response at 3-5. 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. The Commission does not subscribe to the Applicant’s assertion that it is “tainted with criminal association by the mere fact the convicts listed also are Italian.” See Response at 4. 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 (1st Dept. 2003); Matter of John J. Sindone v. City of New York, 2 A.D.3d 125 (1st Dept. 2003); Matter of Hollywood Carting Corp. v. City of New York, 288 A.D.2d 71 (1st Dept. 2001).

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).³

³ In response, the Applicant has characterized the staff's reference to the constitutionality of Local Law 42 as a "rant" and notes that it has complied with and is not challenging the law's constitutionality. See Response at 4. However, the Commission disagrees and incorporates the Regulatory Background section of the Staff Recommendation in its entirety. The Applicant's claim that it has "complied with Local Law

II. OVERVIEW OF THE APPLICANT⁴

Whitney was incorporated in 1997 by its President and sole owner, Thomas Attonito ("Thomas A."). Whitney is a trucking company located in Yonkers, NY, which hauls primarily rock and dirt and other forms of construction and demolition debris. Prior to forming Whitney, Thomas A. was an employee for several years of Morgan-Excel Trucking ("Morgan-Excel"), a trucking company owned by his father, Joseph Attonito ("Joseph A.") and his father's business partner, Christopher Uzzi ("Uzzi").

Morgan-Excel ceased operations upon the incorporation of Whitney. All of the equipment, employees, office space and customers of Morgan-Excel were transferred to Whitney. Apart from the cosmetic name change, the two companies are identical except that the purported retirement of Joseph A. led to the naming of Thomas A. as the President of Whitney. However, Joseph A. continued to exercise control of Whitney as a "hidden" principal. There were no significant changes in operations, employees or customers between Morgan-Excel and Whitney.

III. DISCUSSION

Whitney filed with the Commission an application for an exemption from licensing and a registration to haul construction and demolition debris on March 2, 2000. The staff has conducted an investigation of the Applicant and its principals. On February 4, 2004, the staff issued a 19-page updated recommendation that the application be denied.⁵ On February 23, 2004, the Applicant submitted a 23-page response⁶ and 13 exhibits. See Applicant's Response to the Updated Staff's Recommendation ("Response"). The Commission has carefully considered both the staff's recommendation⁷ and the Applicant's response. For the reasons set forth below, the

42" (Response at 4) by filing its application is belied by the evidence that the Applicant was operating without Commission authority for at least seven months *prior* to the filing of its application. See supra at 17.

⁴ The Applicant, apart from the first two sentences, disputes the entire overview of the Applicant and attributes it to "conjecture." See Response at 5. However, Thomas A. testified under oath (in the presence of his attorney) regarding all of the factual statements provided. See BIC Deposition of Thomas Attonito at 22-25.

⁵ The original Commission staff recommendation to deny Whitney's application was served on March 10, 2003. Instead of responding to the allegations, Whitney filed a lawsuit in Supreme Court and obtained a temporary restraining order to prevent the Commission from deliberating upon the staff's recommendation. The restraining order expired upon Judge Tolub's April 8, 2003 ruling that the lawsuit was moot.

⁶ Despite protesting the Commission staff's requirement that "[a]ny assertions of fact submitted to the Commission must be made under oath" (Recommendation at 19), the Applicant submitted its response under the sworn affirmation of its attorney, Michelle Bonsignore. See Response at 1. As a result, Ms. Bonsignore has placed her credibility before the Commission in connection with her client's application.

⁷ The Commissioners who collectively act as the "Commission" received a recommendation from the agency's staff, not from an individual attorney on that staff. That recommendation was researched, written, edited, prepared and approved by various members of the agency's staff. The Commission therefore disregards the Applicant's numerous references to "Counselor Levine" and "her" recommendation. See Response at 2, 5, 9-10, 13-16, 18-22. The Commission also notes that the Applicant's tendency to rely on personal invective and inflammatory rhetoric undermines the Applicant's credibility and raises serious questions about the Applicant's capacity to conform to its regulatory obligations.

Commission finds that the Applicant lacks good character, honesty and integrity and denies its exemption application.⁸

A. The Applicant Provided False and Misleading Information in its Exemption Application to the Commission.

An exemption applicant's failure to provide truthful information to the Commission in connection with the application is an independent ground for denial of the application. See Admin. Code §§16-509(a)(i); 16-509(b).

On March 2, 2000, Whitney applied to the Commission for an exemption from licensing requirements. In Whitney's exemption application, Question 6 asks "On Schedule A, identify all individuals who are or have been principals of the applicant business at any point during the past ten years. For each individual, provide full name (including maiden name where applicable), home address and telephone number (including, where applicable, cellular, fax and beeper numbers), date of birth, social security number, dates of association with the applicant, job title and/or function within the applicant's organization, and an explanation of how their ownership was acquired (e.g., purchase and purchase price, inheritance etc.) Each current principal shall appear at the Trade Waste Commission to be photographed prior to consideration of this application for an Exemption." On Page 27 of Whitney's application was "Schedule A – Principals of Applicant" stating that Principal #1 was "Thomas Carmine Attonito," and which set forth his pedigree information and stated that he was the 100% owner and President since inception. The spaces for additional principals were left blank.

Whitney also submitted a copy of the corporate by-laws as part of its application. Attached to the by-laws were the "Minutes of first meeting of the board of directors of Whitney." The minutes stated that on April 24, 1997, the meeting was called to order by Thomas Attonito for the purpose of taking "all steps necessary to complete the organization of the corporation and to enable it to commence business." This included the designation and/or election of officers. According to the minutes, Thomas Attonito was elected President and Secretary. The spaces next to Vice President and Treasurer were left blank.

Attached to Whitney's exemption application was a sworn, notarized certification signed by Thomas Attonito, President of Whitney Trucking, attesting that he had "read and understood the questions in the attached application and its attachments, which consist[ed] of 79 pages" and that "to the best of [his] knowledge the information given in response to each question and in the attachments is full, complete and truthful."

⁸ In its response, the Applicant "vehemently objects" to the Commission's "interpretation and application of Admin. Code §16-505(a)" and claims that the Commission's power to "review" an application does not include the power to "make a determination." See Response at 1. However, the First Department of the Appellate Division explicitly rejected the Applicant's interpretation of Local Law 42 when it ruled that the BIC may "review" an exemption application, may investigate any matter within its jurisdiction and may deny such application in those cases where the applicant failed to provide the necessary information or knowingly provided false information. See Attonito v. Maldonado, 2004 NYSlipOp 00280 (1st Dept. January 20, 2004).

Based on the evidence reviewed by the Commission's staff, the information in the application and the corporate minutes stating that Thomas Attonito was the sole principal is false. Whitney failed to disclose in its application that Joseph Attonito was the Vice President of Whitney⁹ and that Salvatore Ardivino was or had been the Secretary of Whitney. The evidence establishing that Joseph A. and Salvatore Ardivino were in fact principals of Whitney can be summarized as follows:

- On October 31, 2000, Joseph A. appeared in White Plains City Court in a criminal case there pending against Whitney Trucking and informed the Court that he was the Vice President of Whitney Trucking.
- On April 27, 2001, Joseph A. signed a sworn notarized affidavit that he was the Vice President of Whitney Trucking and filed it on behalf of Whitney in connection with criminal charges pending against Whitney in White Plains City Court.
- On September 21, 2001, Joseph A. signed a sworn notarized affidavit that he was the Vice President of Whitney Trucking and filed it on behalf of Whitney in connection with criminal charges pending against Whitney in White Plains City Court.
- On November 19, 2001, Joseph A. signed a sworn notarized affidavit (entitled "Corporate Verification") that he was the Vice President of Whitney Trucking and filed it on behalf of Whitney in connection to a civil lawsuit filed by Whitney against the New York City Department of Design and Construction.
- On November 27, 2001, Joseph A. filed a VENDEX form with New York City which listed him as the Vice President of Whitney Trucking and signed a sworn notarized certification attesting to the truth of the information submitted.
- On January 7, 2003, Joseph A. signed a sworn notarized affidavit that he was the Vice President of Whitney Trucking (entitled "Verification") in connection with a lawsuit filed by Joseph A., Thomas A. and Whitney Trucking against the Commission.
- On June 9, 1997, Thomas A. signed a sworn certification to a document entitled "Corporate Resolution Authorizing Banking Accounts, Loans and Related Matters" and filed it with the Bank of New York identifying Salvatore Ardivino as the Secretary of Whitney Trucking and stating that Ardivino had the authority to sign checks on behalf of the corporation.
- On November 14, 1997, Thomas A. signed a signature card (indicating which signatures were authorized on Whitney's account at the Bank of New York) bearing the signature of Salvatore Ardivino as Secretary of the company.

⁹ In the event that Whitney suggests in its response that Joseph A. did not become a principal until *after* the application was filed, the fact that Whitney did not amend its application is an alternative independent ground upon which to deny its exemption application. "An applicant for a registration ... shall notify the Commission within ten business days of: (i) the addition of a principal to the business of a registrant subsequent to the submission of the application for registration or exemption from the licensing requirement []; ... (iii) any other material change in the information submitted ..." 17 RCNY §2-05(b). Whitney never disclosed Joseph A. in its schedule of principals – when the application was filed or at any time subsequent to the filing. Failing to update material changes in its application may, and in the circumstances here does, indicate that the Applicant fails to meet the fitness standard of "good character, honesty and integrity" and provides an additional ground upon which to deny its application.

In its response, the Applicant argues that it is “patently untrue” that it provided false and misleading information in its application since the certification signed by Thomas A. stated that the information was provided “to the best of [his] knowledge.” See Response at 5. For the Commission to accept this defense, it would necessarily have to accept the conclusion that Thomas A. was completely unaware that his father and Ardivino were officers of Whitney. In the circumstances of this case and in light of the history of contact between the two men, that conclusion is patently absurd.

Furthermore, the Applicant claims that the Recommendation fails to demonstrate that the omitted “evidence is material in any manner as to the character and fitness of Whitney.” See Response at 5-6. Similarly, the Respondent argues that the omission of information regarding Joseph A.’s involvement in Whitney is only relevant if Joseph A. is involved in organized crime. See Response at 8. The Applicant’s argument in response misses the point: it is the *offering* of the false and misleading information itself that reflects poorly on the Applicant’s good character, honesty and integrity.¹⁰ By failing to provide the information in the first instance, not only has the Applicant obstructed the Commission’s investigation, but the Applicant has also demonstrated a “consciousness of guilt” about the information omitted from the Application.¹¹

The Applicant’s failure to provide truthful information to the Commission in connection with its application is an independent ground for denial of the application. See Admin. Code §§16-509(a)(i); 16-509(b).

B. The Applicant’s President Provided False and Misleading Testimony at His Deposition Before the Commission and Provided False and Misleading Information in a Sworn Deposition Questionnaire.

An exemption applicant’s failure to provide truthful information to the Commission in connection with its application is an independent ground for denial of the application. See Admin. Code §§16-509(a)(i); 16-509(b).

On January 18, 2002, Thomas A. gave sworn deposition testimony at the Commission (“Deposition”) and filled out a sworn questionnaire in connection with the deposition (“Questionnaire”). At that time, Thomas A. had numerous opportunities to set the record straight and to correctly identify the principals of Whitney. Instead, Thomas

¹⁰ Joseph A.’s criminal history and ties to organized crime merely provide evidence of the *motivation* for the Applicant’s omissions in its application.

¹¹ This is further corroborated by the Applicant’s unfounded accusation that the Commission somehow failed to investigate Salvatore Ardivino. The burden is on the Applicant to disclose, not on the Commission to discover, all the current and past principals of the Applicant. It was the Applicant who failed to disclose Ardivino in Schedule A of the Application, despite the fact that Application clearly asks for disclosure of “all individuals who are or have been principals of the applicant business *at any point during the past ten years.*” See Recommendation at 7-8 (emphasis added). The Applicant claimed that it had previously provided the Commission with a death certificate for that individual (attaching the death certificate for a Salvatore Ardivino as Response Exhibit C). However, the Commission staff never received any such document. In any event, the Applicant’s claim that Ardivino subsequently passed away does not relieve the Applicant from its obligation to truthfully disclose Ardivino’s existence in the first instance.

A. provided substantially misleading and false answers to several questions about the involvement of his father, Joseph A., in the company.

As is set forth more fully below, the following answers about the principals of Whitney were – at a minimum – substantially misleading and, at times, untruthful:

- Questionnaire #17 –

Q: What does your dad do for a living?

A: Retired from Morgan Excel.¹²

Although the answer standing alone is technically accurate,¹³ it is misleading in that it creates the impression that his father is retired and is no longer working. However, the evidence establishes that, *after* retiring from Morgan Excel, his father came back to work for the Applicant company and was still working for the Applicant as of the date Thomas A. filled out the sworn questionnaire.

Thomas A. continued to provide the Commission with false and misleading answers about his father:

- Deposition at page 53-54 –

Q: What has your dad been doing since Morgan Excel was closed down?

A: He was retired. Then we [Whitney] did some work for the World Trade Center [indicating 9/11/01] so I called him to see if he would come and help. So I brought him in to help me with the World Trade Center because there was a lot of work to do.

Q: What kind of work was he doing for you, your dad?

A: The World Trade Center demanded a lot of paperwork. We had a lot of trucks down there. So while I was out in the field, he stayed in the office and he helped get the paperwork together. It was an intense amount of paperwork, and we had a lot of trucks at work.

This answer is substantially misleading. Thomas A. clearly testified that his father first started to work at Whitney after September 11, 2001. However, the evidence, as described above, establishes that his father worked as a Vice President at the Applicant company *prior* to September of 2001.

¹² The Applicant misleadingly claims that there is a question mark next to this answer in the questionnaire. See Response at 9. However, the Applicant's own exhibit belies this assertion - There is no question mark next to the answers "Retired" and "Morgan Excel." See Response at Exhibit H. The only question mark is next to the question asking what position his father held in Morgan Excel, to which Thomas A. indicated "Officer?" Id. The only conclusion to be drawn from Thomas A.'s answer was that he was not sure if his father was an officer of Morgan Excel. Thomas A. *still* failed to answer that his father worked for Whitney.

¹³ In its response, the Applicant asserts that this statement by the Commission staff is exoneration from the charge of providing false and misleading information. See Response at 11. However, the Recommendation merely stated that the answer *standing alone* was technically accurate. Any answer – taken out of context – can arguably be true, but when coupled with the question, it is clear that the answer is false. Although it may be true that Joseph A. had at one point been retired from Morgan Excel, the evidence showed that at the time the question was asked, Joseph A. was in fact working as the Vice-President of Whitney.

In addition to the multitude of documents and affidavits mentioned earlier, statements by Whitney's lawyer, Michelle Bonsignore ("Bonsignore") before the Westchester Solid Waste Commission ("WSWC") also prove that Thomas A.'s testimony was false and misleading. Although Thomas A. testified that his father did not join the company until September 2001, Bonsignore told a staff member of the WSWC during a WSWC deposition of Thomas A. on November 2 and 9, 2001, that Joseph A. started working at Whitney in April 2000 - a year and a half earlier. According to Bonsignore, Joseph A. came to work at Whitney in order to take personal responsibility for any jail time that might come from criminal charges that were pending against the company.¹⁴

Furthermore, payroll documents¹⁵ from Whitney also prove that Thomas A.'s testimony that Joseph A. did not join the company until September 2001 was false and misleading. Payroll documents for the year 2001 showed that Joseph A. was earning \$1,000 salary per week for the *entire* calendar year.

Thomas A. provided the Commission with false and misleading testimony about when and if his father ever stopped working for Whitney. For instance:

- Deposition at page 54-55 –

Q: Is Whitney still at Ground Zero?

A: Not anymore.

Q: When did you stop?

A: About – what is this January? The beginning of December you think? It was the beginning of December.

Q: When did you start working down there?

A: September 12th.

Q: So from September 12th until the beginning of December?

A: Yes.

Q: And during that time your dad came out of retirement and was doing paperwork in the office?

¹⁴ When a corporation is a defendant, the only legal sentences are fines, conditional discharges and unconditional discharges. A corporation may not be sentenced to jail time. P.L. §60.25. As a result, the claim that Joseph A. claimed to be Vice President solely for the purpose of taking responsibility for any jail time is not persuasive; the reasonable conclusion was that he was an active principal in Whitney for all purposes. In its response, the Applicant attempts to explain this contradiction away by asserting that "[n]either Joseph or Thomas Attonito is responsible for knowing Corporate Law." See Response at 8. Regardless, Ms. Bonsignore understands both corporate and criminal law and was the criminal attorney representing Whitney in the case in which Joseph A. swore that he was the Vice President of Whitney.

¹⁵ The Applicant asserts that these payroll records were not provided to the Applicant and that they were among the documents seized pursuant to a search warrant that was later ruled to be beyond the scope of the Commission's authority. See Response at 9. The Applicant is wrong on both counts. First, the Applicant was provided with copies of the documents relied upon in the denial recommendation on two separate occasions – on March 11, 2003 after the original staff recommendation was served (see receipt signed by Christopher Uzzi) and on February 11, 2004 after the updated staff recommendation was served (see receipt signed by Thomas Attonito). Furthermore, the payroll documents were not seized pursuant to the search warrant; they were provided by Ms. Bonsignore on March 13, 2002 in response to a document request from the Commission dated January 25, 2002. See January 25, 2002 letter to Ms. Bonsignore (requesting copies of paychecks to Joseph A.) and Response from Whitney dated March 13, 2002 signed "Thomas Attonito by Michele Bonsignore Attorney in Fact" (providing the payroll information and stating that copies of checks could not be provided since Hudson Valley Bank did not issue cancelled checks).

A: Yes.

Q: Since you stopped working at the site, is your dad still working at Whitney or did he stop?

Counsel for Whitney, Michelle Bonsignore: He stopped.

A: Well, yeah, he's not there. It ended, we got everything caught up. We stopped working and he stayed a little while longer because there was lingering things going on, but that was it. Everything is kind of back to normal now with our company.

Thomas A.'s testimony that his father stopped working shortly after December of 2001 is false. As outlined earlier, the evidence establishes that his father continued to work as a Vice President at the Applicant company after December 2001 and still worked there as of the date of the deposition.

Thomas A. continued to provide the Commission with false and misleading information, despite every opportunity to correct the record:

- Deposition at pages 88-89, 92-93 –

Q: Have you looked over your entire application for the trade waste commission. I believe it's 1 of 79 pages?

A: Yeah –yes.

Q: With regard to – did you see anything in this application that has changed since the time you filed it back on March 2 of the year 2000?

A: Yes, some of my personal information, such as my phone numbers and my address.

* * *

Q: Has anything else on this Schedule of Principals changed since you filed the application?

A: No – yes, the number of trucks.

Q: But I believe the number of trucks was in a different part of the application. I was just asking with regard to – other than the fact that your home address, phone number and cellphone number changed, has anything else regarding principals of Whitney Trucking changed on this Schedule A?

A: No.

Thus, Thomas A. testified that Schedule A (in which Thomas A. was the only principal listed) was accurate, except for his pedigree information. However, in light of the evidence that establishes that Joseph A. was the Vice President of the Applicant and Salvatore Ardivino was the Secretary of the Applicant, Thomas A.'s testimony about changes in principals is clearly false.

Thomas A. had other opportunities to correct the record. For instance:

- Deposition at pages 92-93 –

Q: And a copy of the bylaws for Whitney it's a document that appears to be a 24 page document. Have these bylaws changed at all?

A: No.

Q: It shows on Page 20 that you are the president of Whitney and these bylaws are dated April 24 of 1997. Has that ever changed that you were the president of Whitney since the time these bylaws were written?

A: Nope.

Q: And it also indicates that you are the secretary of Whitney Trucking?

A: Yes, I'm all that.

Q: And has that ever changed that you have been the secretary of Whitney Trucking from April 24, '97 until the present?

A: No.

Thus, Thomas A. testified that he is and has been the only secretary of Whitney Trucking. Despite every opportunity to do so, Thomas A. never testified that the bylaws needed to be updated to include Salvatore Ardivino as Secretary.

Thomas A.'s untruthful testimony about Whitney's bylaws and the status of Whitney's officers continued:

- Deposition at page 93 –

Q: And it appears that there is a blank next to vice president and a blank next to treasurer on the bylaws, is that because there is no vice president or treasurer?

A: Yeah, I guess. I guess I'm everything. I guess there's none.

Q: And that's never changed since the time of the bylaws until today?

A: Correct.

Q: If there was a vice president or treasurer, it wouldn't be anybody but you?

A: Correct.

These answers are untruthful. Thomas A. testified that he was and has been the only Vice President of Whitney Trucking. Despite every opportunity to do so, Thomas A. never testified that the bylaws needed to be updated to include Joseph A. as Vice President of the Applicant.

Finally, Thomas A. was given the opportunity to discuss any and all changes to Whitney's application. Instead, Thomas A. chose to orally certify that the application was truthful and accurate.

- Deposition at page 93 –

Q: So other than the changes that we mentioned, you certify today that your license application is truthful and accurate?

A: Yes.

This answer is untruthful. Thomas A. testified that the application (which stated that Thomas A. was the sole principal of the Applicant) was truthful and accurate as of the date of the deposition. Despite every opportunity to do so, Thomas A. never testified that Schedule A needed to be updated to include his father, Joseph A., as Vice President or Salvatore Ardivino as Secretary.

As detailed above, numerous pieces of evidence prove that Thomas A. provided substantially misleading, if not outright false, testimony about the officers of Whitney at

his deposition.¹⁶ In the same manner that the documents and testimony referenced earlier demonstrate that the Applicant filed a false and misleading application, they also prove that much of Thomas A.'s testimony was false and/or misleading. See supra at 9.

The Applicant claims that Thomas A. did not provide false and misleading testimony at his deposition because the Commission staff member "simply did not ask the proper question." See Response at 6. The Applicant asserts that the proper question to ask would have been "Is your father a principle [sic] or not?" See Response at 7. Interestingly, despite an opportunity to do so, the Applicant fails to offer in its response what Thomas A.'s answer would have been had the so-called "proper" question been asked.

Regardless of whether a more artfully phrased question could have been posed to Thomas A., the Commission finds that the questions actually asked were clear and that Thomas A. could have answered truthfully had he chosen to do so. Instead, Thomas A. decided to provide false and misleading information in response to the questions asked at his deposition.¹⁷ (Even if Thomas A. was "not the necessarily most articulate guy,"¹⁸ it does not relieve Thomas A. of his obligation to testify truthfully. One does not need to provide the most descriptive and lyrical answers to truthfully answer the question "Has anything on this Schedule of Principals changed since you filed the application?" The truthful answer would have been "yes" and the false and misleading answer, which Thomas A. provided, was "no.")

¹⁶ Whitney's in-house lawyer, Michelle Bonsignore, notarized Whitney's exemption application, notarized all of the affidavits in which Joseph A. swore that he was the Vice President of Whitney Trucking and appeared in court on behalf of Whitney in the criminal case in which Joseph A. represented on the record that he was the Vice President of Whitney. She also was the lawyer who advised Thomas A. throughout his sworn depositions at both the Commission and the Westchester Solid Waste Commission ("WSWC") and who, as demonstrated in the excerpt previously quoted, sometimes orally supplemented Thomas A.'s testimony. Ms. Bonsignore's complicity in the contemporaneous submissions of contradictory statements regarding the identity of Whitney's principals is further evidence that Whitney lacks the business integrity to be registered with the Commission. The Applicant claims in its response that "[a]ttributing un-sworn statements by [Bonsignore] in an in [sic] artful effort to make Thomas seem like a liar is ineffective. Moreover, it is inadmissible." See Response at 10. The Commission finds the statements by Ms. Bonsignore (both her unsworn statements at the deposition and her sworn statements in the Applicant's Response) are both probative and persuasive corroboration of the Applicant's lack of good character, honesty and integrity. Whether Ms. Bonsignore's comments would be admissible as vicarious admissions at trial is irrelevant; the Commission is permitted to consider statements by an agent of the Applicant in evaluating Whitney's fitness under Local Law 42.

¹⁷ The Commission places little weight on Judge Atlas' off-hand comment made at sidebar and prompted by defense histrionics that "what the Commission did stinks." See Response at 7. It is pertinent to note that Judge Atlas' comment was made at a time when Judge Tolub's misguided decision holding the Commission in contempt was still in effect. As already noted, the Appellate Division by a unanimous vote reversed Judge Tolub's mistaken ruling. Furthermore, the jury, which was fully instructed by Judge Atlas as to the legal definition of a "perjury trap," unanimously rejected defense contentions that there had been governmental misconduct.

¹⁸ The Applicant asserts in its response that the Commission staff member "pathetically" was "too busy" during the deposition trying to ascertain whether Thomas A. and Ms. Bonsignore were having an affair (see Response at 7), yet fails to cite any portion of the deposition transcript where this so-called "investigation" was taking place. In any event, the staff member's brief comments in an internal agency memo (that was only later turned over as discoverable material in the criminal case by the District Attorney's Office) were merely impressions of seemingly inappropriate behavior between the Applicant's President and his attorney and nothing more.

Notably, the Applicant's response fails to note the presence of Ms. Bonsignore (who affirmed and signed the response under penalty of perjury) at the deposition and the omission of any objections by her during the deposition to any allegedly "unfair" or "unclear" questions and the omission of any requests by her to confer with her client for the purposes of correcting his testimony. By failing to correct the record when she had the opportunity to do so, the Commission finds that Ms. Bonsignore tacitly endorsed her client's testimony and acquiesced in her client's failure to fulfill the regulatory obligation to keep the Commission fully and fairly informed. As a result, her arguments in response are not persuasive.

In its response, the Applicant claims that Thomas A. was "never given an opportunity to correct anything." See Response at 10. However, a careful reading of the transcript reveals that Thomas A. was asked several times throughout the deposition about the principals of Whitney and about his father's employment. See Deposition at 53-54, 54-55, 88-89, 92-93. Furthermore, at the very end, Thomas A. and his attorney were both given an opportunity "to put anything on the record that you want to" and they chose not to. See Deposition at 105. For each question, Thomas A. had an opportunity to acknowledge his earlier omissions and tell the truth and chose not to do so.

The Applicant accuses the Commission of engaging in a "miserable attempt" to "trap Thomas." See Response at 10. By way of support, the Applicant cites to Judge Atlas' decision to instruct the criminal jury on the definition of a "perjury trap." See Response at 7. However, the mere fact that a charge was read to the jury means little, especially since the judge must submit the charge to the jury if there is any possible reasonable view of the evidence that supports it, no matter how small. In any event, the jury unanimously rejected the perjury trap defense *beyond a reasonable doubt* in reaching a guilty verdict. The Commission places greater weight on the jury's verdict (and its rejection of the perjury trap defense) than on the arguments of the Applicant.¹⁹

The Applicant cites CPLR §3116 (which requires the witness to review his/her testimony before it may be used as evidence in civil litigation) in support of its argument that the deposition was improper, "bad practice" and "inflammatory gibberish." See Response at 10-13. However, the CPLR ("Civil Practice Law and Rules") merely governs civil judicial proceedings. See CPLR §101, 105(d). As a result, CPLR §3116 only governs depositions taken in the context of civil litigation and does not apply to depositions taken by administrative agencies in the course of their investigations.²⁰ Notably, despite the Applicant's argument that they never were given a chance to review the transcript, the Applicant does not claim that the transcript was not accurately transcribed, nor do they proffer any alleged "corrections" to Thomas A.'s testimony. The

¹⁹ Even in the event that the Applicant is successful in challenging the criminal conviction of Thomas A. on appeal or collateral attack, the Commission finds that Thomas A. provided false and misleading information to the Commission and lacks good character, honesty and integrity.

²⁰ Actually, the term "deposition" has been used by the Commission as shorthand for "testimony under oath." Local Law 42 makes no references to "depositions" in either the administrative code sections or the rules promulgated therefrom. Rather, the powers and duties of the commission include the power to "examine and take testimony under oath of such persons as it may deem necessary in relation to [an] investigation." Admin. Code §16-504(c).

Applicant's arguments in this regard elevate form over substance and the Commission rejects them.

The Applicant's failure to provide truthful information to the Commission in connection with its application is an independent ground for denial of the application. See Admin. Code §§16-509(a)(i); 16-509(b).

C. The Applicant's President was Convicted of Two Felony Crimes, Offering a False Instrument for Filing in the First Degree and Perjury in the First Degree, and the Applicant's Vice-President is Under Pending Criminal Indictment Charging Him with the Felony of Offering a False Instrument for Filing in the First Degree.

On June 25, 2002, the Manhattan District Attorney's Office unsealed the indictments of the principals of Whitney containing felony criminal charges directly related to their lack of honesty and integrity. Thomas A. was indicted for two counts of perjury in the first degree and two counts of offering a false instrument for filing in the first degree for lying about ties to organized crime in Whitney's application, questionnaire and deposition. Joseph A. was indicted for offering a false instrument for filing in the first degree for lying on a completed New York City Vendor Information Exchange System Business Entity Questionnaire ("VENDEX" form) regarding companies closely-affiliated with Whitney. The indictment against Joseph A. is currently pending.

On December 16, 2003, a jury found Thomas A. guilty of one felony count of offering a false instrument for filing in the first degree and one felony count of perjury in the first degree.²¹

The Applicant argues in response that the Commission should not consider the conviction of Thomas A. because of a "motion to dismiss which is being considered by Judge Atlas." See Response at 14. The Commission notes that the motion to set aside the verdict pursuant to CPL §330.30(1) has not as of yet been filed. Nevertheless, the Commission is not required to defer action until every avenue of appeal has been exhausted by the Applicant and it is entitled to rely on the jury's verdict until such time, if ever, that it is vacated or reversed.²²

The Applicant claims that the statement in the recommendation that Thomas A. was indicted for "lying about ties to organized crime in Whitney's application, questionnaire and deposition" is an "outright lie" since the indictment itself did not contain any allegation of organized crime. See Response at 14. However, the indictment is merely a bare bones document tracking the statutory language of the criminal offenses charged and does not contain a description of the evidence supporting

²¹ The remaining two counts of the indictment were dismissed by Judge Atlas before trial and not submitted to the jury.

²² Even in the event that the Applicant is successful in challenging the criminal conviction of Thomas A. on appeal or collateral attack, the Commission's finding that Thomas A. provided false and misleading information to the Commission and lacks good character, honesty and integrity is an independent ground upon which it denies this Application.

each charge. However, after a grand jury investigation, the New York County District Attorney's Office issued a press release dated June 25, 2002 announcing the indictment using the disputed language. The Commission, in the exercise of its discretion, chooses to rely on the District Attorney's summary of the evidence presented to the grand jury.

The principals are charged with crimes that go directly to the heart of Whitney's "good character, honesty and integrity." The conviction²³ of Thomas A. and the indictment against Joseph A. are each an independent and sufficient basis to deny Whitney's exemption application. See Admin. Code §16-509(a)(ii); §16-513(a)(vii).

D. The Applicant Engaged in Long-Term Unregistered Activity and Administrative Charges Relating to Such Activity are Pending against the Applicant.

From the time Whitney was first incorporated, it has been operating and hauling debris in the five boroughs of New York City without a registration from the Commission. (Whitney is following in the tradition of its alter ego, Morgan-Excel, which operated for several years without obtaining the proper permits from the agency responsible for licensing trade waste businesses prior to the Commission, the Department of Consumer Affairs ("DCA").)

On December 9, 2002, Whitney was charged administratively with operating an unregistered waste removal business during the period from August 1, 1999 to the present, on at least 534 dates at approximately 26 different locations, in violation of §16-505(a) of the New York City Administrative Code. See DCA Notice of Hearing, #TW-462. Said charges are currently pending.

In response, the Applicant asks what provision in Local Law 42 states that "an exempt applicant" cannot operate while awaiting a determination on its application. See Response at 15. Section 16-505(a) of the Administrative Code states that it "shall be unlawful for any person to operate a business for the purpose of the collection of trade waste from the premises of a commercial establishment required to provide for the removal of such waste ... or to engage in, conduct or cause the operation of such a business, *without having first obtained a license thereof from the commission*" (emphasis added). Although the section goes on to state that a company engaged solely in the removal of materials resulting from construction and demolition may apply for an exemption from licensing, a company does not become "exempt" until granted an exemption by the Commission after review of its application. As a result, until a company is deemed "exempt" by the Commission from licensing, it needs a license to operate. Since Whitney's application for an exemption had not yet been ruled upon,²⁴ any hauling of trade waste by Whitney without a license was in violation of Local Law

²³ Although Thomas A. has not yet been sentenced, he stands "convicted" under the law. See CPL §1.20(13)(conviction means "the entry of a plea of guilty to, *or a verdict of guilty upon*, an accusatory instrument other than a felony complaint, or to one or more counts of such instrument.") (italics added).

²⁴ The Commission encourages the staff to investigate applications as expeditiously as possible without forsaking the spirit and intent of Local Law 42 and disagrees with the Applicant's assertion that pending background investigations will "effectively shut the city down." See Response at 15.

42. Furthermore, Whitney was operating without a license for at least seven months *prior* to the filing of its exemption application.

Large-scale unregistered activity, displaying utter disregard for the law, is further evidence of Whitney's lack of business integrity and is another independent, sufficient basis upon which to deny its exemption application.

E. A Loaded, Unregistered and Illegally Altered Pistol was Found in an Office Desk Drawer of the Applicant, Pursuant to a Search Warrant.

On March 26, 2002, members of the New York City Police Department conducted a search of the offices of Whitney Trucking pursuant to a court-ordered search warrant. The premises of the Applicant consisted of approximately 5-6 offices spread over two floors connected by a spiral staircase. Members of the public can only gain access to the offices by being buzzed in by an employee. Most of the offices and desks were located on the upper floor. There appeared to be enough seating to accommodate a maximum of 12-15 employees.

During the course of the search warrant execution, the officers recovered, among other items, a loaded and unregistered pistol (which was illegally altered by having its identifying serial number obliterated).²⁵ The pistol was found inside a desk drawer of the largest office on the second floor, an office not immediately accessible to the public or low-ranking employees.

As the officers were about to enter the office in which the gun was recovered, Michelle Bonsignore ("Bonsignore"), Whitney's attorney, stated that the office belonged to her and sat behind the desk containing the gun, smoking a cigarette. She attempted to obstruct the search by claiming that the office belonged to her and contained her legal files that were protected by attorney-client privilege. (Notably, she previously claimed to a Commission staff member on a routine office visit earlier that month that the office actually belonged to Thomas A., but that she used it on several occasions to conduct legal business.) While the search was in progress, Joseph A. entered the office, claiming that the office belonged to him. The office was decorated with several framed certificates and plaques praising the contribution and/or assistance of "Joseph Attonito" in various activities.

The Applicant argues that the evidence of its possession of a loaded and defaced weapon should be disregarded by the Commission since Judge Atlas ruled that the Commission did not have statutory authority to apply for the search warrant. Regardless of whether the weapon would be suppressed as evidence in a criminal case, the Commission is within its discretion to consider the underlying facts.²⁶ Notably, the Applicant does not dispute the underlying facts. See Response at 15-17. The

²⁵ Possession of a defaced firearm constitutes the Class D felony of criminal possession of a weapon in the third degree. See Penal Law §265.02(3). The term "deface" means "to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark." See Penal Law §265.00(7).

²⁶ Similarly, the fact that no individuals were criminally charged with possession of the weapon does not lessen the seriousness of the underlying facts.

Commission thereby finds that Whitney has conceded that it possessed an illegal, loaded and defaced gun.

The integrity and fitness of Whitney's management is plainly open to question when its three highest executives (the President, Vice President and General Counsel) each exercised dominion and control over the private office where an illegal, loaded and defaced gun was immediately accessible and usable.

F. The Applicant's Vice-President and Manager/Consultant Both Have Long Criminal Histories, Including Several Felony Convictions for Racketeering Activities, Such as Extortion, Pursuing a Scheme to Defraud and Joining a Conspiracy to Commit Mail Fraud.

The Vice-President of Whitney, Joseph A., and Whitney's Manager/Consultant,²⁷ Christopher Uzzi, have extensive criminal histories. In 1982, Joseph A. and Uzzi were both convicted of extortion in Federal Court in a case involving "extortion for labor peace." In that case, Joseph A. and Uzzi demanded \$25,000 for labor peace at a Toys-R-Us construction site in Yonkers.²⁸

In 1983, Joseph A. and Uzzi were both convicted in New York State Supreme Court of scheme to defraud in the first degree for a phony bond sales scheme. Also in 1983, Joseph A. and Uzzi were convicted in Federal Court of conspiracy to commit mail fraud.

The Applicant, in its response, does not deny that Joseph A. and Uzzi have serious criminal records, but argues that the convictions are too remote to be relevant (especially because the application only asks for disclosure of convictions within the last ten years). See Response at 17-18. However, the fact that the application limits the amount of disclosure required does not mean the Commission must ignore crimes that occurred prior to the time limit. There is no bright line test regarding the age upon which a criminal conviction no longer is relevant to the issue of good character, honesty and integrity. In this case, the Commission finds the convictions of Joseph A. and Uzzi probative, despite the fact they are over 20 years old, since the convictions were for racketeering offenses and behavior typical of organized crime, the convictions were not isolated occurrences, the convictions involved two principals of Whitney who were co-defendants for each of the convictions and the crimes were committed by individuals who were not disclosed in the application or deposition.

²⁷ According to Thomas A.'s testimony before the Commission, Uzzi acted as a "consultant" to Whitney. Deposition at 28. However, Thomas A. testified before the WSWC that Uzzi was a "manager" of Whitney. Whitney's decision to retain Uzzi (whether as a "manager" or as a "consultant"), notwithstanding Uzzi's significant criminal history, reflects adversely on the Applicant's ability to meet the fitness standard of "good character, honesty and integrity."

²⁸ On March 26, 2002 (the day Thomas A. was arrested for perjury), Joseph A. was interviewed by members of the NYPD and Commission staff in connection with their investigation. In that interview, Joseph A. admitted that he helped resolve labor union disputes on behalf of organized crime interests and continues to do so currently. The Applicant's claim that a suppression hearing is necessary before Joseph A.'s statements can be considered by the Commission (Response at 16) is misplaced. The exclusionary rule for violations of the 4th, 5th and 6th Amendments does not apply to administrative proceedings.

G. The Applicant is Under Pending Criminal Misdemeanor Charges for Illegal Dumping.

On March 1, 2000, Whitney was arraigned on a misdemeanor criminal complaint in White Plains City Court in Westchester. The complaint charged Whitney with four misdemeanor crimes under the Environmental Conservation Law, namely operating a solid waste management facility resulting in the release of more than seventy cubic yards of solid waste to the environment (see 27 ECL §71-2703(2)(c)(i)), for disposing of several truckloads of construction and demolition debris between December 1999 and January 2000 on the grounds of Archbishop Stepinac High School without a permit from the New York State Department of Environmental Conservation.²⁹ These criminal charges are currently pending.

Again, Whitney fails to dispute the truth of the accusations, merely noting that several counts relating to this case were previously dismissed. See Response at 18. As a result, Whitney implicitly concedes the charged conduct, which reflects poorly on Whitney's business integrity.³⁰

H. The Applicant Operated an Illegal Transfer Station and Obstructed Governmental Administration by Failing to Permit Government Inspectors to Enter and Inspect the Site.

Whitney rents property located at 300 Fullerton Avenue in Yonkers, NY, from Fullerton Avenue Land Development Corporation, a company partly owned by Joseph A. On June 15, 2000, officers from the New York State Department of Environmental Conservation ("DEC") observed several Whitney trucks at the site along with a large pile of construction and demolition debris consisting of soil, brick, wire, wood, nails, plastic bags, metal, tile, glass, cloth fabric, cardboard and asphalt next to two large screener/processing machines as well as a pile of processed material. No permits were obtained for such debris processing activity. On July 12, 2000, DEC Officers attempted to gain access to the site and were denied access by Thomas A. and Michelle Bonsignore, in violation of 6 NYCRR §360-1.4(b), which authorizes Environmental Conservation Officers to "enter and inspect a solid waste management facility ... at all reasonable times, locations, and hours, whether announced or unannounced, for the purpose of ascertaining compliance or noncompliance with a permit, the ECL and this Title."

²⁹ Currently, there are two charges pending against Whitney. Whitney's motion to dismiss has been pending since September 2003 without a decision.

³⁰ The Commission also notes that Whitney engaged in illegal dumping on a prior occasion in November 1999. Officers from the New York State Department of Environmental Conservation observed six employees of Whitney Trucking, including its President – Thomas A., illegally dumping solid waste – tires, rubbish and construction and demolition debris – on private property in Dutchess County, New York. Criminal charges were brought against Thomas A., the other employees and the company; however, the charges were ultimately dismissed on speedy trial grounds. In response, the Applicant does not dispute the underlying facts, but claims the charges were dismissed "in the interests of justice." See Response at 19. Although the Applicant submitted over 600 pages of exhibits, the Applicant chose not to submit any documentation in support of this assertion. In any event, despite the dismissal of the criminal charges, the Commission finds that Whitney's illegal dumping activities reflect poorly on Whitney's fitness for a trade waste registration.

On February 15, 2001, the DEC brought administrative charges against Fullerton Avenue Land Development Corporation, Joseph Attonito and Juda Construction (another company owned by Joseph A. for the purpose of leasing equipment to Whitney). The charges were later settled.

In its Response, the Applicant does not dispute the fact that an unpermitted solid waste management facility was operating at 300 Fullerton Avenue and that DEC Officers were prevented from inspecting the site. Instead, the Applicant argues that “there are no underlying actions by Whitney in that matter.” See Response at 19. Although Whitney itself was not charged, the Commission credits the observations of the DEC officers that Whitney trucks were present at the site, along with piles of debris. In any event, the Commission can take into account the actions of the Attonitos and other Attonito-owned companies when evaluating Whitney’s business integrity for a trade waste registration.

Furthermore, the Applicant claims that the refusal to allow DEC officers on the site was made by Ms. Bonsignore alone. See Response at 19 (“I am an attorney and I used my discretion”). Although being an attorney is not a defense, it appears to be offered to deflect blame from Thomas A. However, the Commission credits the observations of the DEC officers that both Thomas A. and Ms. Bonsignore refused to permit access and thereby obstructed governmental administration.

IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue an exemption and registration to any applicant that it determines lacks good character, honesty and integrity. The Commission finds no support in the law for the Applicant’s argument that the exemption is a constitutional right. See Response at 21. Rather than constituting the “quagmire of waste” referred to by the Applicant (Response at 20), the Commission finds that the evidence recounted above demonstrates convincingly that Whitney falls far short of the fitness standard of good character, honesty and integrity.

The Applicant requests a hearing, while conceding that Local Law 42 does not require one. This request for a hearing is denied. It is well established that Commission licensing and registration decisions need not be based on full-fledged, adversarial hearings with witnesses subjected to cross-examination and documents introduced into evidence. See Sanitation and Recycling Industry, Inc. v. City of New York, 107 F.3d 985 (2nd Cir. 1997). Instead, the staff of the Commission prepares a written report summarizing the evidence against the applicant (known as the “recommendation”). The Applicant is then given the opportunity to respond to the written report and may submit written opposition papers, in which the Applicant can submit documents or other evidence and can raise whatever factual questions or policy issues the Applicant deems appropriate. The final decision of Commission is based on the Commission staff’s recommendation and the Applicant’s response.

It is of grave concern to the Commission that the Applicant and its principals have engaged in conduct that is intentional and in flagrant disregard of the law. For the independently sufficient reasons discussed above, the Commission hereby denies Whitney’s exemption/registration application.

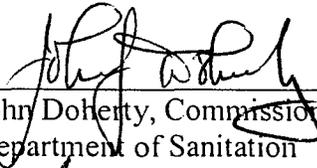
This exemption/registration denial is effective immediately. Whitney Trucking, Inc. may not operate as a trade waste business in the City of New York.

Dated: March 23, 2004

THE BUSINESS INTEGRITY COMMISSION



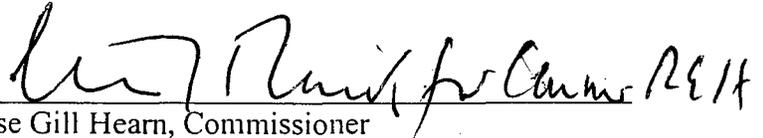
Robert Schulman
Acting Chairman



John Doherty, Commissioner
Department of Sanitation



Gretchen Dykstra, Commissioner
Department of Consumer Affairs



Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Business Services



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