



156

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

**DECISION OF THE TRADE WASTE COMMISSION DENYING
THE APPLICATION OF D.V. CARTING CO., INC. FOR A LICENSE
TO OPERATE AS A TRADE WASTE BUSINESS**

By application submitted August 30, 1996, D.V. Carting Co., Inc. ("DV" or the "applicant") applied to the New York City Trade Waste Commission for a license to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-508. Local Law 42, which created the Commission to license and 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.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). Based upon the record as to DV, the Commission concludes that the applicant lacks good character, honesty, and integrity and, thus, denies this license application on the grounds that the applicant's sole principal (as well as his son, one of the applicant's employees) were convicted in 1995 of wire fraud as a result of an investigation conducted by the United States Attorney for the Southern District of New York, the Federal Bureau of Investigation and the New York City Department of Investigation into bribery, municipal corruption and fraud related to illegal dumping of non-qualifying materials at the Fresh Kills landfill, a felony offense directly related to the applicant's fitness for licensure in the carting industry.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, several hundred companies have provided those services. For the past forty years, and until only recently, 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 recently described that cartel as “a ‘black hole’ in New York City’s economic life”:

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

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

Extensive 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 found:

- (1) “that the carting industry has been corruptly influenced by organized crime for more than four decades”;

- (2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";
- (3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";
- (4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . being the only rate available to businesses";
- (5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove";
- (6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms";
- (7) "that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations";
- (8) "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct"; and
- (9) "that a situation in which New York City businesses, both large and small, must pay a 'mob tax' in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy."

Local Law 42, §1.

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

[T]angential legitimate purposes pursued by a trade association *whose defining aim, obvious to all involved, is to further an illegal anticompetitive scheme* will not shield the association from government action taken to root out the illegal activity.

Id. (emphasis added).

The Second Circuit has roundly dismissed carting companies' rote denials of knowledge of the role their trade associations played in enforcing the cartel's criminal "property rights" system:

The [New York State Legislature's] 1986 Assembly report stated that no carting firm in New York City "can operate without the approval of organized crime." Hence, even th[o]se carters not accused of wrongdoing are aware of the "evergreen" contracts and the other association rules regarding property rights in their customers' locations. *The association members--comprising the vast majority of carters--recognize the trade associations as the fora to resolve disputes regarding customers. It is that complicity which evinces a carter's intent to further the trade association's illegal purposes.*

SRI, 107 F.3d at 999 (emphasis added).

In June 1995, all four of the trade associations, together with seventeen individuals and twenty-three carting companies, were indicted as a result of a five-year investigation into the industry by the Manhattan District Attorney's Office and the New York Police Department. See People v. Ass'n of Trade Waste Removers of Greater New York Inc., et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). Those indicted included capos and soldiers in the Genovese and Gambino organized crime families who acted as "business agents" for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. The evidence amassed at the City Council hearings giving rise to Local Law 42 comported with the charges in the indictment: evidence of enterprise corruption, attempted murder, arson, criminal antitrust violations, coercion, extortion, and numerous other crimes.

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

The accuracy of the sweeping charges in the indictments has been repeatedly confirmed by a series of guilty pleas and a recent jury verdict. On October 23, 1996, defendant John Vitale pleaded guilty to a state antitrust violation for his participation in the anticompetitive criminal cartel. In his allocution, Vitale, a principal of the carting company Vibro, Inc., acknowledged that he turned to the trade associations, and specifically to

Genovese capo Alphonse Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing a competitor from bidding on a "Vibro-owned" building, 200 Madison Avenue in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant and the owner of what was once one of New York City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay \$7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a \$10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the New York City carting industry.

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

On February 13, 1997, the KCTW (of which the applicant was a member for so many years that its principal could not remember when its membership began) pleaded guilty to criminal restraint of trade and agreed to pay a \$1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did another

Brooklyn carter, Dominick Vulpis (the nephew of DV's principal, Daniel Vulpis). Brooklyn carter and KCTW secretary Raymond Polidori pleaded guilty to restraint of trade. These defendants agreed to pay fines ranging from \$250,000 to \$750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the New York City carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it.

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

On July 21, 1997, Philip Barretti, Sr., another lead defendant and the former owner of New York City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay \$6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption and agreed to prison sentences of four to twelve and 3 1/3 to ten years, respectively. All four defendants agreed to be barred permanently from the New York City carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to a Class E environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract

and to violate the Taft-Hartley Act by making unlawful payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW (of which the applicant was a member from February 1978 through September 1995), Gambino capo Joseph Francolino, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges -- the most serious charges in the indictment -- against all five of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined \$900,000, and the GNYTW was fined \$9 million.

On January 21, 1998, Patrick Pecoraro pleaded guilty to attempted enterprise corruption and agreed to serve a prison sentence of one to three years, to pay a \$1 million fine, and to be barred permanently from the industry. On the same day, the QCTW pleaded guilty to a criminal antitrust violation and agreed to forfeit all of its assets.

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

B. Local Law 42

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

Local Law 42 provides that "it shall be unlawful for any person to operate a business for the purpose of the collection of trade waste ... without having first obtained a license therefor from the Commission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Although Local Law 42 became effective immediately, trade waste removal licenses previously issued by the DCA remain valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(1). DV holds a DCA license and timely filed an application for a license from the Commission.

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

In exercising its discretion to determine whether to issue a license to an applicant, the Commission may consider, among other things, the following matters, if applicable:

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

enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

- (vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
- (viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;
- (ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
- (x) failure to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code §16-509(a)(i)-(x).

II. DISCUSSION

On August 30, 1996, D.V. Carting Co., Inc. submitted to the Commission an application to operate as a trade waste removal business. See License Application, certified by Daniel Vulpis on August 29, 1996 ("Lic. App.").¹ The Commission staff conducted an investigation. On April 23, 1998, the staff issued a 14-page recommendation that DV's license application be denied on the grounds that both its sole principal, Daniel Vulpis, Sr., and his son, Daniel Vulpis, Jr., a DV employee, had been convicted of felony offenses involving illegal activity directly related to the New York City waste removal industry.

Pursuant to 17 RCNY § 2-08(a), DV had until May 7, 1998 to respond to the staff's recommendation. On May 6, 1998, the Commission received a two-page letter of even date from Kevin J. Nash, Esq. of Finkel Goldstein Berzow Rosenbloom & Nash LLP, counsel to DV in connection with its bankruptcy filing in the United States District Court for the Eastern District of New York, asserting that the staff's recommendation "suffers from laches, waiver and estoppel" because the criminal convictions occurred in 1996.² On May 7, 1998, the Commission received a two-page letter dated May 4, 1997 [sic], from another DV attorney, Frank P. Gangemi, Esq., opposing the recommendation and mistakenly asserting that it was based in part on the organized-crime associations of DV's principal.

¹ On August 23, 1996, the Commission denied DV's application for a waiver of the provision in section 11 (iii) of Local Law 42 that "any contract entered into by a trade waste removal business ... that has not received a license from the New York City Trade Waste Commission ... shall be terminable on thirty days written notice." The Commission denied the waiver application on the grounds, among others, that (1) the applicant's founder and principal, Daniel Vulpis, was convicted in 1995 in the United States District Court for the Southern District of New York of wire fraud involving unlawful dumping; (2) the applicant's principal, Vulpis, is an associate of the Lucchese organized crime family and associated with several organized crime figures, including James Ida, the former consigliere of the Genovese organized crime family; (3) the applicant belonged to and benefited from its membership in two indicted (and since convicted) trade associations that the Manhattan District Attorney had charged with being used to enforce an illegal customer-allocation and price-fixing scheme; and (4) the applicant's contracts with its carting customers evidenced the unequal bargaining power and abusive contracting practices that Local Law 42 was designed to address.

² DV filed for bankruptcy pursuant to Chapter 11 of Title 11 of the United States Code on March 19, 1998. DV did not inform the Commission of its bankruptcy filing until April 24, 1998, when the Commission received a letter dated April 23, 1998, from Mr. Nash. DV's delay of more than five weeks in notifying the Commission of its bankruptcy filing is a serious violation of Commission rules. See 17 RCNY §2-05(a)(ii); *id.*, §1-01; Application for License as a Trade Waste Business, Part IV, Question 10.

The Commission has carefully considered the staff's recommendation, the applicant's letter responses, and the record as a whole in rendering its decision on this license application. Applying the criteria set forth in Administrative Code §16-509(a)(iii), among others, the Commission hereby concludes that DV lacks good character, honesty and integrity and, accordingly, in the exercise of its discretion, denies this license application.

The Applicant's Sole Principal Was Convicted of Felony Wire Fraud, a Crime Directly Related to the Purposes for Which It Now Seeks a License

In the early 1990's, the United States Attorney for the Southern District of New York, the Federal Bureau of Investigation ("FBI") and the New York City Department of Investigation ("DOI") conducted an investigation into municipal corruption and other criminal activities involving the City's landfills. New York City's Fresh Kills landfill on Staten Island requires a constant source of "clean fill" (*i.e.*, dirt) to cover the garbage in an environmentally appropriate fashion. The City meets this need without payment by allowing contractors to dump this type of material without charge at Fresh Kills. To monitor the quality of the materials dumped as part of this "free cover" program, the City requires inspection of the materials to determine whether they qualify as "clean fill." In the scheme uncovered as a result of this investigation, bribes corrupted the inspections, and trucking companies were able to pick up non-qualifying materials from transfer stations and dump them free of charge at the Fresh Kills landfill, when they should have paid the City a fee of at least \$40/cubic yard to dump such refuse.

In August 1994, the United States Attorney for the Southern District of New York obtained an indictment against seventeen individuals (involved in a total of eight transfer stations, six carting companies, and other trucking, construction and excavation companies) for mail fraud, wire fraud, bribery and other crimes in connection with this scheme. The defendants, including Daniel Vulpis, Sr., the applicant's president and sole shareholder, and Daniel Vulpis, Jr., his son and a DV employee, were charged with defrauding the Department of Sanitation of lawfully collectible dumping fees by bribing the

City's inspectors and by falsely representing that the materials dumped qualified for the "free cover" program when in fact they did not. See United States v. Mark Barbieri et al., No. 94 Cr. 518 (WK) (S.D.N.Y.)

On September 29, 1995, Daniel Vulpis, Sr. pleaded guilty to wire fraud, a felony, in satisfaction of the indictment. He was sentenced to six months incarceration, which was modified to home confinement due to his advanced age, one year of probation and a \$40,000 fine. His son, Daniel Vulpis, Jr., also pleaded guilty to felony wire fraud and was sentenced to four months incarceration, probation and a fine. These criminal convictions provide sufficient grounds for the denial of DV's license application. See Admin. Code §16-509(a)(iii).

DV has one principal, Daniel Vulpis, Sr., who owns 100% of the corporation. He drives one of the company's trucks, and his son, Daniel Vulpis, Jr., drives another. Their convictions for felony crimes involving fraud in the carting industry and unlawful dumping are directly related to the trade waste removal business for which the applicant now seeks a license. Consequently, the Commission is expressly authorized to consider these convictions and to conclude, based upon them, that DV lacks good character, honesty and integrity and, thus, will not be issued a license. See Admin. Code §16-509(a)(iii); N.Y. Correction Law § 753(1)(c), (f) (factors to be considered in assessing convictions for licensing purposes include the seriousness of the offenses and their bearing on the duties and responsibilities associated with the license sought).³

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty and integrity. Based upon Daniel Vulpis, Sr.'s conviction of a crime relating to the purpose for which the applicant seeks a license, as well as the conviction

³ DV's response to the staff's recommendation suggests, without benefit of supporting authority, that a wire fraud conviction will not suffice under the Correction Law to support denial of a trade waste removal license. There is no logic in this suggestion, and the facts underlying the conviction show conclusively that it is related to the business for which DV seeks a license and thus properly considered by the Commission in reaching its decision. DV's related suggestion, that the government's acceptance of a guilty plea from Daniel Vulpis, Sr. should somehow count in his favor, is frivolous.

of his son, an employee of the applicant, the Commission hereby denies this license application. These criminal convictions provide ample grounds for license denial.⁴

Finally, DV requests that the Commission not deny its license application but, rather, allow DV to continue operating until such time as it finds a buyer for its assets, including its customer accounts, and uses the sale proceeds to satisfy its creditors. The Commission declines this request. Having failed even to notify the Commission of its bankruptcy filing until after the staff issued a license denial recommendation, DV is poorly situated to request that the Commission not act on its finding that DV lacks good character, honesty, and integrity in deference to the company's financial difficulties. We note in this regard that DV has not submitted a sale application to the Commission. Moreover, DV's customers will benefit far more from a license denial than from a sale of their contracts to another carter. Data gathered and analyzed by the Commission demonstrate that customers achieve cost savings of more than 50% following a license denial, compared to a savings of less than 25% following a sale. See Report of the Executive Staff Concerning the Impact of Recent License Denial Decisions, dated December 22, 1997. The Commission has a statutory duty "to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices." Local Law 42 of 1996, §1. Denial of DV's license application will advance those objectives.

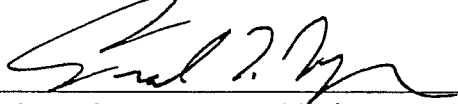
This license denial decision is effective fourteen days from the date hereof. In order that DV's customers may make other carting arrangements without an interruption in service, DV is directed (i) to continue servicing its customers for the next fourteen days in accordance with its existing contractual arrangements, and (ii) to send a copy of the attached notice to

⁴The bulk of DV's response to the staff's recommendation is based upon the mistaken assumption that it was based in part on an allegation that Daniel Vulpis, Sr. is a member of organized crime. The Commission has never asserted that Daniel Vulpis, Sr. is a member of organized crime. As noted above, the Commission's waiver decision was in part based upon Daniel Vulpis' association with members of organized crime. However, the staff did not rely on those grounds in its license denial recommendation, and the Commission need not reach that issue here. The convictions of Daniel Vulpis, Sr. and Daniel Vulpis, Jr. provide ample basis to conclude that DV lacks good character, honesty and integrity. DV's assertion that the Commission's consideration of those convictions is barred by "laches, waiver and estoppel" is frivolous; these equitable defenses fail on the merits and in any event cannot operate to confer a license upon an applicant that cannot meet the statutory standard for licensure.

each of its customers by first-class U.S. mail by no later than May 19, 1998. DV shall not service any customers, or otherwise operate as a trade waste removal business in New York City, after the expiration of the fourteen-day period.

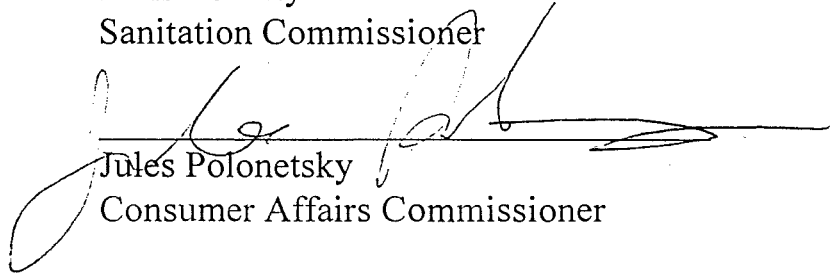
Dated: New York, New York
May 15, 1998

THE TRADE WASTE COMMISSION



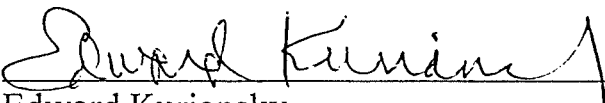
Edward Ferguson, Chair

John Doherty
Sanitation Commissioner



Jules Polonetsky
Consumer Affairs Commissioner

Earl Andrews
Business Services Commissioner



Edward Kuriansky
Investigation Commissioner



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

May 15, 1998

**NOTICE TO CUSTOMERS OF D.V. CARTING CO., INC.
REGARDING TERMINATION OF CARTING SERVICE**

Dear Carting Customer:

The New York City Trade Waste Commission, which regulates private carting companies in the City, has denied the application of D.V. Carting Co., Inc. ("DV Carting") for a license to collect trade waste. **As of May 30, 1998, DV Carting will no longer be legally permitted to collect waste from businesses in New York City. If DV Carting is collecting your waste, you will have to select another carting company to provide you with that service by May 30, 1998.**

The Commission has directed DV Carting to continue providing service to its customers through May 29, 1998. **If your service is interrupted before May 29, call the Commission at 212-676-6275.**

There are more than 300 carting companies that are legally permitted to collect waste from businesses in New York City. There are several ways that you can find out which ones are willing to service customers in your neighborhood:

- **Find out which company is servicing your neighbor.** A carting company cannot, without a business justification satisfactory to the Commission, refuse to service you if it already has another customer that is located within 10 blocks of your business. You can find out which carting companies service your area by looking at the **carting stickers** that many businesses display on their store-fronts.
- **Consult public directories, such as the Yellow Pages.**
- **Call the Commission at 212-676-6275.**

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

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

- The right to be offered a contract by your carting company. A **form carting contract** that has been approved by the Commission is enclosed for your convenience.
- The right to be charged a reasonable rate for waste removal services. The City sets the maximum rates that carting companies can charge. The City recently reduced the maximum rates for the removal of trade waste to **\$12.20 per loose cubic yard** and \$30.19 per pre-compacted cubic yard. Most businesses dispose of loose waste; only businesses that have trash-compactors dispose of pre-compacted waste. Under the new rule, businesses that dispose of loose trash in bags filled to 80% of capacity (as many businesses do) may not be legally charged more than:

\$2.66 for each **55** gallon bag of trash

\$2.42 for each **50** gallon bag of trash

\$2.17 for each **45** gallon bag of trash

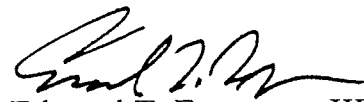
\$1.93 for each **40** gallon bag of trash

\$1.59 for each **33** gallon bag of trash

\$1.45 for each **30** gallon bag of trash

- The new rates are only **maximum** rates. Customers are encouraged to “shop around” and get bids from four or more carting companies to find a good price. Businesses should be able to get rates below \$10.00 per loose cubic yard and \$25.00 per pre-compacted cubic yard.

If you have any questions or complaints about commercial waste hauling in New York City, call the Commission at 212-676-6300.



Edward T. Ferguson, III

Chair and Executive Director