



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 CLASS 2
REGISTRATION APPLICATION OF PARK SIDE CONSTRUCTION CONTRACTORS
INC. TO OPERATE AS A TRADE WASTE BUSINESS**

I. Introduction

On September 25, 2014, Park Side Construction Contractors, Inc. (“Park Side” or the “Applicant”) (BIC #485181) applied to the New York City Business Integrity Commission for an exemption from the Commission’s licensing requirements and a registration to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” (the “Application”). Local Law 42 of 1996 authorizes the Commission to review and make determinations on such applications. *See* Title 16-A, New York City Administrative Code § 16-505(a).

After a review of a trade waste registration application, if the Commission approves the application, the Commission will issue a registration to the applicant. *See id.* at § 16-505(a)-(b). The Commission’s review focuses on determining whether the applicant possesses business integrity, *i.e.*, good character, honesty and integrity. *See* Title 17, Rules of the City of New York (“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 § 16-504(a) (empowering the Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); Admin. Code § 16-509(a) (authorizing the Commission to refuse to issue licenses to applicants lacking “good character, honesty and integrity”).

On August 7, 2018, the Commission’s staff issued and served the Applicant with a Notice of the Grounds to Deny the Class 2 Registration Application of Park Side Construction Contractors Inc. to Operate as a Trade Waste Business (the “Notice”). The Applicant was given 10 business days to respond, until August 23, 2018. *See* 17 RCNY § 2-08(a). The Applicant did not submit a response to the Notice. The Commission has completed its review of the Application, having carefully considered the Notice and the lack of response from the Applicant. Based on the record herein, the Commission denies Park Side’s application because the Applicant lacks good character, honesty and integrity based on the following five independently sufficient reasons:

1. **The Applicant and the Applicant's principals are the subjects of pending indictments charging them with grand larceny, insurance fraud, scheme to defraud, and offering a false instrument for filing;**
2. **The Applicant and the Applicant's principals have committed racketeering activities;**
3. **A principal of the Applicant has been identified by the United States Attorney's Office for the Eastern District of New York as an associate of an organized crime group;**
4. **The Applicant provided false and misleading information to the Commission; and**
5. **The Applicant failed to timely notify the Commission of criminal charges brought against the Applicant and of the arrests of and criminal charges brought against principals Francesco and Salvatore Pugliese.**

II. *Statutory Background and Framework*

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates, known as trade waste. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. *See, e.g., United States v. Int'l Brotherhood of Teamsters (Adelstein)*, 998 F.2d 120 (2d Cir. 1993); *People v. Ass'n of Trade Waste Removers of Greater New York Inc.*, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); *United States v. Mario Gigante*, No. 96 Cr. 466 (S.D.N.Y.); *People v. Ass'n of Trade Waste Removers of Greater New York*, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically has also been the subject of significant successful racketeering prosecutions. *See United States v. Paccione*, 949 F.2d 1183, 1186-88 (2d Cir. 1991), *cert. denied*, 505 U.S. 1220 (1992); *United States v. Cafra*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri*, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. Admin. Code § 16-505(a). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," also known as construction and demolition debris, must apply to the Commission for an exemption from the

licensing requirement. *Id.* If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a Class 2 registration. *Id.* at § 16-505(a)-(b). Before issuing a registration, the Commission must evaluate the “good character, honesty and integrity of the applicant.” *Id.* at § 16-508(b); *see also id.* at § 16-504(a). An “applicant” for a license or registration means both the business entity and each principal of the business. *Id.* at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in determining whether to grant an application for a license or registration:

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

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

Id. at § 16-509(a)(i)-(x). *See also id.* at § 16-504(a).

The Commission also may refuse to issue a license or registration to any applicant who has “knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for a license.” *Id.* at § 16-509(b). *See also* 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial); *Elite Demolition Contracting Corp. v. The City of New York*, 4 N.Y.S.3d 196, 125 A.D.3d 576 (1st Dep’t 2015); *Breeze Carting Corp. v. The City of New York*, 52 A.D.3d 424 (1st Dep’t 2008); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”); *leave denied* 2 N.Y.3d 705 (N.Y. 2004). In addition, the Commission may refuse to issue a license or registration to an applicant that “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” *Id.* at § 16-509(c); *see also id.* at § 16-504(a). Finally, the Commission may refuse to issue a license or registration to any applicant when the applicant or its principals have previously had a license or registration revoked. *Id.* at § 16-509(d); *see also id.* at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) has no entitlement to and no property interest in a license or registration and the Commission is vested with broad discretion to grant or deny a license or registration application. *Sanitation & Recycling Indus., Inc. v. City of New York*, 107 F.3d 985, 995 (2d Cir. 1997); *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).

III. *Statement of Facts*

A. *The Application.*

On or about September 25, 2014, the Applicant applied to the Commission for an exemption from its licensing requirements and a registration to operate as a trade waste business that removes solely construction and demolition debris. *See* Application. Question 12 and Schedule “A” on the Application seek information as to the identity of all individuals who are principals of the applicant business. *See* Application at 3, 13. The Applicant disclosed that Francesco Pugliese (“Francesco”) is the “President” and sole principal of the Applicant business. *See id.* at 13. Francesco signed the certification attesting that all of the information provided in the Application was “full, complete and truthful.” *See id.* at 20.

The Applicant did not disclose Francesco’s brother, Salvatore Pugliese (“Salvatore”), on the Application in any capacity. *See id.* Yet, the New York County District Attorney’s Office found that, beginning in at least 2014, Salvatore “jointly managed” the Applicant. *See* New York County District Attorney’s Office press release, dated May 16, 2018 (“DA Press Release”), at 3. This was potentially problematic for the Applicant because, in 1999, Salvatore was indicted in the United States District Court for the Eastern District of New York and charged with conspiracy to commit armed robbery and use of a firearm to commit robbery. *See* Superseding Indictment, *United States v. Buscemi, et. al.*, 99 CR 536 (E.D.N.Y. 2000).

The federal indictment stemmed from Salvatore’s activities as an associate of the “Giannini Crew,” which committed various crimes of violence, including armed robberies, arson, extortion, and other criminal activity, including gambling, drug trafficking and weapons sales. The Giannini Crew used violence – including murder – and threats of violence in furtherance of its criminal activities. Members and associates of the Giannini Crew often committed crimes with, for, and with the approval of members and associates of the Bonanno, Colombo and Gambino Organized Crime Families of La Cosa Nostra. *See* Indictment, *United States v. Amato*, 99 CR 00536 (E.D.N.Y. 1999); *see also* Alan Feuer, *Revisiting a Café’s Society of Brazen Violence*, THE NEW YORK TIMES, June 30, 2000. In addition, the United States Attorney’s Office for the Eastern District of New York identified the Giannini Crew as “an organized criminal group” and Salvatore as an associate of the group. *See* Indictment, *Amato*, 99 CR 00536. Ultimately, Salvatore pled guilty to harboring a fugitive and was sentenced to 24 months’ imprisonment and three years of supervised release. *See* Judgment in a Criminal Case, *United States v. Pugliese*, 99 CR 0536 (E.D.N.Y. 2001) (pled guilty May 16, 2000 and sentenced on April 3, 2001).

B. *The sworn testimony of Francesco Pugliese.*

On July 7, 2016, the Commission’s staff interviewed Francesco under oath in connection with the Application. *See* transcript of sworn interview of Francesco Pugliese (“Pugliese Tr.”). During the interview, Francesco testified that he is the only principal of the Applicant business, and specifically stated that Salvatore is not a principal (or a manager) of the Applicant business. *See* Pugliese Tr. at 14, 20, 26, 33-34. However, for the first time, Francesco acknowledged that Salvatore was an employee of the Applicant. *See id.* at 20. When the Commission’s staff questioned Francesco about a document from a construction general contractor named Tutor

Perini, which listed Salvatore as a “contact” person for the Applicant, Francesco claimed not to know what Tutor Perini is, let alone why Salvatore would be listed as a contact. *See id.* at 16; *see also* Tutor Perini Subcontractor list.

C. *The Indictment of the Applicant, constituent companies, and principals Francesco and Salvatore Pugliese.*

On May 16, 2018, the Applicant, several of its constituent companies, and principals Francesco and Salvatore Pugliese were indicted in New York State Supreme Court, New York County. *See* Indictment, *People v. Francesco Pugliese, et. al.*, Docket No. 00771-2018 (the “Wage Theft Indictment”); *see also* DA Press Release. The defendants were charged with grand larceny, insurance fraud, scheme to defraud, and offering a false instrument for filing, among other crimes. *See* Wage Theft Indictment.

According to the Wage Theft Indictment, the Applicant, its constituent companies, and its principals stole more than \$1.7 million in wages from employees. In order to keep track of employees’ earnings, the Applicant – which employed over 500 workers – used computerized face-recognition machines at worksites to record workers’ hours. However, as part of the wage theft scheme, printouts from the on-site time-keeping machines were later altered to reflect lower weekly hours than those actually worked. *See id.* In addition, principals of the Applicant directed their accountant, Michael DiMaggio, and others to pay some workers’ wages with so-called “expense reimbursement” checks to hide the fact that the payments were compensation – thereby avoiding the payment of withholding taxes and unemployment insurance contributions.¹ *See id.*

The Wage Theft Indictment also charged that the Applicant and its principals hid more than \$42 million in payroll from the New York State Insurance Fund (“NYSIF”) in order to maintain workers’ compensation coverage at fraudulently low premiums. *See id.* The Applicant’s and the Applicant’s principals’ false statements and submissions to NYSIF resulted in their evasion of more than \$7.8 million in insurance premiums. *Id.*

In a separate indictment, the Applicant and Francesco were charged with offering a false instrument for filing in the first degree, a class E felony. *See* Indictment, *People v. Francesco Pugliese and Parkside Construction Contractors, Inc.*, Docket No. 00772-2018 (the “False Filing Indictment”). According to the False Filing Indictment, Francesco and the Applicant knowingly filed the Application with the Commission containing “a false statement and false information . . .” *i.e.*, the omission of Salvatore Pugliese as a principal of the Applicant. *See id.*

D. *Failure to timely notify the Commission of the arrests of the Applicant and Francesco and Salvatore Pugliese.*

The Applicant failed to notify the Commission within 10 calendar days of its indictment and the arrests of principals Francesco and Salvatore Pugliese, as required by the Commission’s regulations. *See* 17 RCNY § 2-05(a)(i). On May 16, 2018, the indictment of the Applicant and Francesco and Salvatore Pugliese was unsealed, and Francesco and Salvatore Pugliese were arrested. The Applicant was required to disclose this information to the Commission by May 29,

¹ Michael DiMaggio also “prepared or assisted in the preparation of the Application.” *See* Application at 12.

2018. As of the date of this Decision, the criminal case remains pending, and the Applicant, Francesco and Salvatore have yet to notify the Commission of the charges.

IV. *Basis for Denial*

1. **The Applicant and the Applicant's principals are the subjects of pending indictments charging them with grand larceny, insurance fraud, scheme to defraud, and offering a false instrument for filing.**

The Commission may deny a registration application based on the "pending indictment or criminal action against such applicant or person for a crime which under this subdivision would provide a basis for the refusal of such [registration]." *See* Admin. Code §16-509(a)(ii). While the Commission may defer consideration of an application until the pending criminal case has been resolved, it is not required to do so. *See* Admin. Code §16-509(b)(ii). Given the serious nature of the criminal charges in this case, the evidence that the Applicant and its disclosed principal provided false information to the Commission, the Commission should not defer consideration of the Application.

The Wage Theft Indictment charges the Applicant, several of its constituent companies, principals Francesco and Salvatore Pugliese, and others with crimes related to schemes involving the theft of more than \$1.7 million in wages, as well as workers' compensation insurance fraud totaling approximately \$7.8 million. *See* Wage Theft Indictment. Francesco and the Applicant were separately charged with offering a false instrument for filing in the first degree (a class E felony) for knowingly filing an Application with the Commission that "contained a false statement and false information . . ." *i.e.*, the failure to disclose Salvatore Pugliese as a principal of the company. *See* False Filing Indictment.

In determining whether to deny a registration application due to a pending indictment or criminal action that would provide a basis for the refusal of such registration, the Commission must evaluate the crimes charged in light of the factors set forth in Section 753 of the Correction Law, which would provide a basis under that statute for refusing to issue a license. *See* Admin. Code §16-509(a)(iii). Those factors are as follows:

- (a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license . . . sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.

- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law §753 (1).

Despite New York State's public policy encouraging the licensure of persons previously convicted of a crime, the crimes charged against the Applicant, Francesco, and Salvatore Pugliese are so recent, so serious, and so closely related to the purposes for which registration is sought here and the duties and responsibilities associated with such registration that they should result in the denial of the Application. The charges are antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption from the carting industry. Moreover, the crimes charged relate directly to the trade waste industry, in which the Applicant seeks to operate, and demonstrate that the Applicant and its principals (disclosed and undisclosed) lack good character, honesty and integrity.

During the approximately three years covered by the Wage Theft Indictment commencing in 2014, Francesco was in his late 30's and Salvatore was in his early 40's – plainly old enough to know what the law required, how to obey it, and to recognize that the schemes in which they were involved were illegal. The Applicant's and Francesco and Salvatore Pugliese's alleged crimes were the result of a series of conscious decisions to violate the law and are a disturbing reminder of the cynical disregard for the law that corrupted the City's waste removal industry in the past. The charges – which are corroborated by documents including the Application, NYSIF workers' compensation insurance applications, NYSIF simplified audit information forms, NYSIF exit interview forms, employee check registers and payroll reports that were submitted to the Commission and to other government agencies – provide substantial evidence that the Puglieses and the Applicant lack good character, honesty, and integrity. The Applicant has not disputed this point. Therefore, the Commission denies the Application on this independently sufficient ground.

2. The Applicant and the Applicant's principals have committed racketeering activities.

Admin. Code § 16-509(a)(v) allows the Commission to consider the “commission of a racketeering activity . . .” in refusing to issue a license to an applicant. *See* Admin. Code §16-509(a)(v). Similarly, the Commission may consider such factor in determining the applicant's eligibility for a registration. A conviction for a racketeering activity is not required. As discussed above and as charged in the Wage Theft Indictment and the False Filing Indictment, there is

adequate information demonstrating that Salvatore and Francesco Pugliese have committed racketeering activities.

The crimes with which the Applicant and the Puglieses are charged, including grand larceny, offering a false instrument for filing, insurance fraud, and scheme to defraud are racketeering activities as defined by Penal Law § 460.10(1)(a). Those offenses were committed with respect to construction projects directly related to the trade waste industry. Therefore, those racketeering activities are sufficient grounds on which to deny the Applicant's application. *See* Admin. Code § 16-509(a)(v). The Applicant has not disputed this point. Therefore, the Commission denies the Application on this independently sufficient ground.

3. A principal of the Applicant has been identified by the United States Attorney's Office for the Eastern District of New York as an associate of an organized crime group.

The Commission is authorized to deny the license application of a carting company when it finds that an applicant or a principal of an applicant has associated "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." *See* Admin. Code § 16-509(a)(vi). The Commission may consider this factor in determining an applicant's eligibility for a trade waste registration. Here, the United States Attorney's Office for the Eastern District of New York identified principal Salvatore Pugliese as an associate of an organized crime group, the Giannini Crew. In addition to naming the Giannini Crew itself as an organized crime group, the United States Attorney's Office stated that the Giannini Crew often committed crimes with, for, and with the approval of members and associates of the Bonanno, Colombo and Gambino Organized Crime Families of La Cosa Nostra. *See* Indictment, *Amato*, 99 CR 00536. As Salvatore was named as an associate of the Giannini Crew in a federal indictment, there can be no doubt that he and his brother Francesco – both principals of Park Side – were aware of his organized crime associations. The Applicant has not disputed this point. Therefore, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies the Application based on this independently sufficient ground.

4. The Applicant provided false and misleading information to the Commission.

All applicants must provide the information and/or documentation required by the Commission. *See* Admin. Code § 16-509(b). A knowing failure to do so is a ground for denial of the application. *See id.* As set forth above, the Applicant provided false and misleading information regarding the identity of all principals of the company, as required by question 12 and Schedule "A" of the Application. *See* Application at 3, 13. Specifically, the Applicant disclosed that Francesco Pugliese is the sole principal of the Applicant business and failed to disclose Salvatore as a principal. *See id.* at 13. According to the New York County District Attorney's Office, Salvatore and Francesco Pugliese "jointly managed" the Applicant. *See* DA Press Release at 3. The Applicant likely failed to disclose Salvatore as a principal – or in any other capacity – because it assumed that Salvatore's criminal record and association with an organized crime group would result in the Commission denying the Application. As fully set forth above, in 2001, Salvatore was convicted in the United States District Court for the Eastern District of New York

of harboring a fugitive. In 1999, the United States Attorney's Office for the Eastern District of New York identified Salvatore as an associate of the Giannini Crew organized crime group.

At his sworn interview, Francesco also provided false and misleading information to the Commission's staff. Initially, reaffirming the false disclosure in the Application, he testified that Salvatore is not a principal of the Applicant business. Francesco later admitted that Salvatore is an employee, but refused to admit that he is a principal or manager of the Applicant business.

In sum, the Applicant and Francesco provided false and misleading information to the Commission and its staff on numerous occasions, through certified answers in the Application and in sworn testimony. This conduct demonstrates that the Applicant lacks good character, honesty and integrity. The Applicant has not disputed this point. Therefore, the Commission denies the Application on this independently sufficient ground.

5. The Applicant failed to timely notify the Commission of criminal charges brought against the Applicant and of the arrests and criminal charges brought against principals Francesco and Salvatore Pugliese.

An applicant for a registration has a duty to notify the Commission within 10 calendar days of an arrest of a principal subsequent to the submission of the application. *See* 17 RCNY § 2-05(a)(i). Francesco and Salvatore Pugliese were arrested on May 16, 2018, and the charges against the Applicant were unsealed in court that same day. To date, the Applicant has not notified the Commission of these arrests and charges. The failure of the Applicant to perform its legal obligations demonstrates that it lacks good character, honesty and integrity. The Applicant has not disputed this point. Therefore, the Commission denies the Application on this independently sufficient ground.

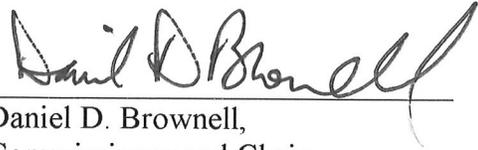
V. Conclusion

The Commission is vested with broad discretion to refuse to issue a license or an exemption from the license requirement to any applicant it determines lacks good character, honesty and integrity. The record as detailed herein demonstrates that Park Side lacks those essential qualities. Accordingly, based on the five independently sufficient grounds detailed above, the Commission denies the registration application of Park Side Construction Contractors, Inc.

The denial is effective immediately. The Applicant is not authorized to operate as a trade waste removal business in the City of New York.

Dated: October 9, 2018

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



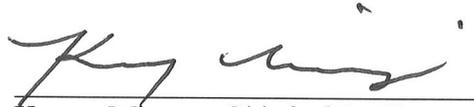
Daniel D. Brownell,
Commissioner and Chair



Kathryn Garcia, Commissioner
Department of Sanitation



Christopher Tellet, Assistant General Counsel
(Designee)
Department of Investigation



Kenny Minaya, Chief of Staff
(Designee)
Department of Consumer Affairs



Andrew Schwartz, Deputy Commissioner
(Designee)
Department of Small Business Services



Dominick C. D'Orazio, Deputy Inspector
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