



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 A&D CARTING CORP. FOR A LICENSE  
TO OPERATE AS A TRADE WASTE BUSINESS**

A&D Carting Corp. ("A&D" or "Applicant") has applied to the New York City Trade Waste Commission ("Commission") for a license 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), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant, who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). These illustrative factors include the failure to provide truthful information to the Commission, certain civil or administrative findings of liability, and certain associations with organized crime figures. Based upon the record of A&D, the Commission finds that A&D lacks good character, honesty, and integrity and denies its license application for the following independent reasons:

- (1) The Applicant has recently been convicted of engaging in unlicensed trade waste removal activity;
- (2) The Applicant pleaded guilty to a criminal violation of the Environmental Conservation Law for operating a solid waste management facility without the required permit and unlawfully releasing solid waste into the environment;
- (3) The Applicant has pending felony criminal charges pursuant to the Environmental Conservation Law for operating an unpermitted transfer station and unlawfully releasing solid waste into the environment;
- (4) The Applicant has pending misdemeanor criminal charges for Criminal Contempt in the Second Degree for violating a court order which prohibited the use of 451 Old Nepperhan Avenue, Yonkers, New York, as an unpermitted transfer station;
- (5) The Applicant failed to notify the Commission of the above-stated arrests and convictions;
- (6) The Applicant provided false and misleading information in connection with its license application.

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

### A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. Beginning in the late 1950's, and

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<sup>1</sup> The Applicant objects to the staff's inclusion of this background history in its denial recommendation as prejudicial and irrelevant. See Applicant's Response to the Commission Staff's denial recommendation ("Response") at 1-2. The Commission disagrees. New York City's waste hauling industry was systematically corrupted by organized crime for decades. In response, Local Law 42 mandated that all applicants meet a fitness standard of good character, honesty and integrity. See Admin. Code §16-509. The brief recounting of the history of this entrenched corruption and efforts to eliminate it sheds light on the application of the fitness standard and does not prejudice the Applicant.

until only recently, the commercial carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life":

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

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

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anticompetitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council found:

- (1) "that the carting industry has been corruptly influenced by organized crime for more than four decades";
- (2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";
- (3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";

- (4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . effectively being the only rate available to businesses";
- (5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove";
- (6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms";
- (7) "that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations";
- (8) "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct"; and
- (9) "that a situation in which New York City businesses, both large and small, must pay a 'mob tax' in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy."

Local Law 42, § 1.

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

“enforc[ing] the cartel’s anticompetitive dominance of the waste collection industry.” SRI, 107 F.3d at 999.

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted on enterprise corruption, criminal antitrust, and related charges as a result of a five-year investigation into the industry by the Manhattan District Attorney’s Office and the New York Police Department. See People v. Ass’n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). The defendants included capos and soldiers in the Genovese and Gambino organized crime families who acted as “business agents” for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. In essence, the carting industry’s modus operandi, the cartel, was indicted as a criminal enterprise.

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

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

Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing another carter from bidding on waste removal services for a "Vibro-owned" building in Manhattan.

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

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

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a \$1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of

trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from \$250,000 to \$750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the City's carting industry. The same day, Manhattan carters Henry Tamilly and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it.

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

On July 21, 1997, Philip Barretti, another lead defendant in the state prosecution and the former owner of the City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay \$6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and 3⅓ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

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

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

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined \$900,000, and the GNYTW was fined \$9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined \$200,000.

On January 21, 1998, Patrick Pecoraro pleaded guilty to attempted enterprise corruption and agreed to serve a prison sentence of one to three years, to pay a \$1 million fine, and to be barred permanently from the City's carting industry. On the same day, the QCTW pleaded guilty to a criminal antitrust violation and agreed to forfeit all of its assets. Numerous other guilty pleas followed. On December 21, 1999, all of the guilty verdicts were affirmed on appeal. See People v. GNYTW, 701 N.Y.S.2d 12 (1<sup>st</sup> Dep't 1999).

In sum, it is far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been proven beyond a reasonable doubt. The proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched – extending to and emanating from all of the industry's trade associations, which counted among their collective



membership virtually every carter – that it could not have escaped the notice of any carter. These criminal convictions confirm the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, to address this pervasive problem.

## B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the “DCA”) for the licensing of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry immediately challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff’d, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm’n, 940 F. Supp. 656 (S.D.N.Y. 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm’n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that “[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission.” Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may “refuse to issue a license to an applicant who lacks good character, honesty and integrity.” Id. §16-509(a). Although Local Law 42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a). Although A&D timely submitted a trade waste removal license application to the Commission, it held only a Class 7 DCA license. This more restrictive permit allows A&D to haul only construction and demolition debris.

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

- (i) failure by such applicant to provide truthful information in connection with the application;
- (ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
- (iii) conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
- (iv) a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
- (v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen

hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 *et seq.*) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

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

Admin. Code § 16-509(a)(i)-(x).

## II. DISCUSSION

A&D filed with the Commission an application for a trade waste removal license on August 30, 1996. The sole principal of the Applicant is Albert Tranquillo ("Tranquillo"). The Commission's staff has conducted an investigation of the Applicant and its principal. On November 30, 2001, the staff issued a 20-page recommendation that the application be denied. On December 14, 2001, the Applicant submitted a fifteen-page response (along with 16 exhibits) opposing the recommendation. See Applicant's Response to the Commission Staff's denial recommendation ("Response"). The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its license application.

### A. The Applicant Has Recently Been Convicted of Engaging in Unlicensed Trade Waste Removal.

On August 30, 1996, A&D filed with the Commission an application for a license to operate a trade waste business. At the time it submitted its license application, A&D held a Class 7 DCA license which permitted it to remove, transport, and dispose of construction and demolition waste.<sup>2</sup> By operation of law, A&D's Class 7 DCA license remained valid pending the Commission's determination of its license application. See Local Law 42, §14(iii)(a). However, at no time did A&D hold a DCA license for the removal of regular or putrescible garbage or for the removal of recyclable materials, such as cardboard and paper. Thus, A&D was only authorized to collect and remove construction and demolition debris during the pendency of its license application. At his deposition, Tranquillo testified that he was aware that A&D's DCA license was restricted to hauling construction debris. See Deposition of Albert Tranquillo on August 20, 1998 ("Deposition") at 67. Thus, until the Commission rendered a decision on the license application, A&D was not permitted to collect and remove regular or

<sup>2</sup> Local law defined construction and demolition debris as "non-putrescible waste materials resulting from building demolition, construction, alteration and excavation, including but not limited to materials such as dirt, earth, plaster, concrete, rock, clean fill, rubble, slag, ashes, waste, timber and lumber." 6 N.Y.C. Code §2-172(g).

putrescible waste, recyclable materials, or any other type of non-construction/demolition-type waste.

Despite this, A&D unlawfully engaged in the collection and removal of regular or putrescible waste and recyclable materials. The Applicant does not dispute this, and Tranquillo and A&D both pleaded guilty to unlicensed activity in October 2000. See infra at 14. These convictions are directly related to the trade waste industry and bear directly on the Applicant's fitness to conduct a trade waste business.

Moreover, Tranquillo himself admitted under oath that A&D was engaged in the removal of putrescible waste and recyclable materials in New York City, although he attempted to minimize the extent of its unlawful operations. Tranquillo estimated that A&D had no more than 10 illegal stops in the five boroughs.<sup>3</sup> However, physical surveillance of A&D's operations by Commission detectives produced incontestable evidence that A&D illegally serviced far more than 10 customers. On numerous occasions, detectives witnessed vehicles bearing A&D's logo collecting and transporting regular waste from New York City commercial establishments, including bakeries, supermarkets, restaurants and delicatessens. A portion of these observations are as follows:

On September 22, 1999, between the hours of 10:20 p.m. and 10:50 p.m., Commission detectives observed a truck bearing an A&D logo and New York State Department of Motor Vehicle ("NYS DMV") license plate 16738AT<sup>4</sup>, collecting regular waste from the following Bronx locations:

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<sup>3</sup> See Deposition at 50-52:

Q: Now how many customers – I'm not talking about C&D customers – I'm talking about regular customers with ... waste and recyclables, how many of those customers do you have in New York City?

A: In New York City? New York City, do you consider New York City the Bronx?

Q: Yes. The five boroughs.

A: Um, in New York City I would say, maybe we have ten stops.

Q: What kind of stops are these stops? Construction sites?

A: No, one uh, I know one that we just got recently is like a chicken market, a couple, a body shop, um, a couple luncheonettes.

<sup>4</sup> NYS DMV records indicate that license plate 16738AT is registered to the Applicant.

- All Boro Floor Service 133 East 233<sup>rd</sup> Street
- Fruit market 3494 Jerome Avenue
- Eddie's Bagels 3405 Jerome Avenue
- Fruit and vegetable store 3390 Jerome Avenue

On the same day, between the hours of 11:05 p.m. and 11:25 p.m., Commission detectives observed a different vehicle, bearing an A&D logo and NYS DMV license plate PS9474<sup>5</sup>, collecting regular waste from the following Bronx locations:

- Sal's Grocery 57 West Fordham Road
- Location 2320 Grand Concourse
- Location 2268 Grand Concourse
- Bronx Care Medical 2202 Grand Concourse
- Athletics 2000 store 2370 Grand Concourse
- Grocery store 314 East 188<sup>th</sup> Street

Again, on the same night, between the hours of 10:50 p.m. and 11:20 p.m., a third vehicle, bearing an A&D logo and NYS DMV license plate 16673AT, was observed by Commission detectives collecting regular waste from the following Bronx locations:

- Brother Produce 1154 East Gunhill Road
- Candy store 351 East Gunhill Road
- K & L Fruit Stand 314 East Gunhill Road
- Pameco Air Conditioning 3601 White Plains Road
- Total Blend Restaurant 3817 White Plains Road

The following day, September 23, 1999, between the hours of 10:45 p.m. and 11:15 p.m., Commission detectives observed a vehicle, bearing an A&D logo and NYS DMV license plate PS9474, collecting regular waste from the following Bronx locations:

- Hope Deli 242<sup>nd</sup> Street and White Plains Road

<sup>5</sup> NYS DMV records indicate that license plate PS9474 is registered to Tran Camp Contracting Corp. ("Tran Camp"). Tran Camp is also owned by Tranquillo and shares office space with the Applicant. See License App. at 27. Tran Camp has never applied for a trade waste license or registration from the Commission. As a result, Tran Camp is not licensed or authorized to haul any type of waste in New York City.

- Fine Fare Supermarket      opposite of 4717 White Plains Road
- Dante Pastry Shop          4715 White Plains Road
- Deli Market                  857 Baychester Avenue
- A & M Bakery                4561 White Plains Road

Also, on the same day, between the hours of 11:25 p.m. and 11:45 p.m., another vehicle, bearing an A&D logo and NYS DMV license plate 16738AT, was observed by Commission detectives collecting regular waste from the following Bronx locations:

- Store                            2434 Creston Avenue
- Garcia Grocery                115 East 184<sup>th</sup> Street
- Masiel Grocery                97 East 184<sup>th</sup> Street
- Super Food                    83 East 184<sup>th</sup> Street
- African Restaurant          2364 Jerome Avenue
- Amoco Gas Station          North Street and Jerome Avenue

On October 22, 1999, Commission detectives observed a vehicle, bearing an A&D logo and NYS DMV license plate 69734AP<sup>6</sup>, collecting regular waste from Prince Bakery located at 2418 Belmont Avenue, Bronx, New York. The vehicle was followed to a yard in Yonkers, located at 451 Old Nepperhan Avenue, where the A&D truck emptied its garbage, disposed of the waste and left the lot.

On November 29, 1999, between 11:00 p.m. and 11:40 p.m., a truck bearing an A&D logo and NYS DMV license plate 16738AT was observed by Commission detectives collecting regular waste from the following Bronx locations:

- Salej Grocery                 646 East 241<sup>st</sup> Street
- Commercial location        4643B Bullard Avenue
- Furman Quality Auto        4557 Furman Avenue
- J Auto Body                  4506 White Plains Road
- Tony's Pizza                 1840 Nereid Avenue
- Mama Mia's Pizza          693 Nereid Avenue
- Commercial location        Nereid Ave. and White Plains Road

<sup>6</sup> NYS DMV records indicate that license plate 69734AP is registered to the Applicant.

On December 8, 1999, a Commission investigator spoke to Larry Piselli, the manager of A&D, regarding a complaint that Piselli had made to the Commission. Mr. Piselli had complained that another carting company, Republic Carting, was interfering with three of A&D's customers – two delis and one supermarket. By virtue of this complaint, Mr. Piselli admitted to the Commission that A&D was servicing putrescible waste customers. In response, the Commission investigator instructed Mr. Piselli that A&D's DCA license only allowed it to pick up construction and demolition debris, not regular waste. The Commission investigator further informed Mr. Piselli that A&D needed to wait for the Commission to complete its investigation of the license applicant and should not be servicing putrescible waste customers.<sup>7</sup> The Applicant thus received clear notice from the Commission that it was not permitted to remove any type of waste except for construction and demolition debris.<sup>8</sup>

Nonetheless, the Applicant ignored the Commission's directive and continued to illegally collect regular waste from New York City businesses. On December 14, 1999, between the hours of 10:00 p.m. and 10:40 p.m., a vehicle, bearing an A&D logo and NYS DMV license plate 16738AT, was observed collecting regular waste from the following Bronx locations:

- A & M Bakery White Plains Road
- AAA Best Auto 4454 White Plains Road
- King-size Laundromat Nereid and White Plains Road
- Store Nereid and Ely Avenue
- Store 237<sup>th</sup> Street and White Plains Road
- Laundromat 236<sup>th</sup> Street and White Plains Road
- Store Corner of 233<sup>rd</sup> Street and Bronxwood
- Store 226<sup>th</sup> Street and Bronxwood
- Bike shop 912 East Gunhill Road
- Lexington Plumbing 3619 White Plains Road

On the same night, at approximately 11:00 p.m., another truck, bearing an A&D logo and NYS DMV license plate PS9474, was observed

<sup>7</sup> The Commission's staff has identified the Commission Inspector as Eugene DiToro. See Memorandum of Inspector DiToro dated December 8, 1999 (describing the phone conversation between Inspector DiToro and Larry Piselli).

<sup>8</sup> Tranquillo testified at his 1998 deposition that he was aware that his DCA license was only for construction debris. See Deposition at 67.



picking up regular waste from C-Town Supermarket, located at 4265 Katonah Avenue, Bronx, New York.

On December 14, 1999, at approximately 11:30 p.m., after observing the two A&D trucks illegally collect regular waste for approximately an hour, Commission detectives confiscated and impounded two of A&D's vehicles for engaging in the operation of trade waste removal without the required license.<sup>9</sup> Police recovered the driver's route sheet, marked "WEDNESDAY ROUTE DRIVER ALI DATE 12-15," from the impounded A&D vehicle bearing NYS DMV license plate 16738AT. The route sheet contained a list of approximately 184 locations, including some of the above-mentioned businesses.

The record amply and incontestably proves that A&D has engaged in a pattern of unlawful waste removal activity without the required trade waste removal license. Furthermore, A&D has demonstrated an utter lack of concern for regulatory compliance<sup>10</sup> and continued to engage in unlawful removal of regular waste even after being notified by a Commission investigator that it did not have the requisite license to engage in such activity. These factors demonstrate A&D's lack of good character, honesty, and integrity and constitute independent grounds for denying A&D's license application.

Based on the observations of unlicensed removal of putrescible waste, Albert A. Tranquillo, the Applicant's sole principal, was arrested on December 15, 1999 and charged with engaging in unlicensed trade waste removal activity in violation of NYC Administrative Code § 16-505(a), a Class A misdemeanor. A&D was similarly charged as a corporation.

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<sup>9</sup> Tranquillo later wrote to the Commission as well as to the Department of Sanitation to dispute a dumping bill for the loads contained on the impounded A&D trucks. Tranquillo complained that he was being charged full price for trucks that were not filled to capacity. In a letter dated January 7, 2000, Tranquillo stated, "I do not understand why I am being billed for my cardboard truck, that ... only had maximum at most, of two yards of cardboard, and my garbage truck only containing ten yards of waste ...." Even in the face of criminal charges, Tranquillo admitted without hesitation to picking up putrescible waste and recyclables in an attempt to save money.

<sup>10</sup> Not surprisingly, A&D failed to disclose all of the vehicles observed engaging in unlicensed activity in its Application for a License as a Trade Waste Business ("License Application"). See License Application at 30. We note that the Applicant finds it "absurd" that the staff pointed out this discrepancy. See Answer at 3. However, the Commission does not think it absurd to expect A&D to comply with its affirmative obligation to notify the Commission of any material changes in the information submitted in the license application. See Admin. Code §16-508(c).

The next day, December 16, 1999, A&D's lawyer, Stephen J. Schwartz, contacted the Commission and stated that A&D was discontinuing service to all of its putrescible waste removal accounts.<sup>11</sup> The Commission asked A&D to provide a list of the New York City customers to which it was discontinuing service. A&D provided a computerized customer list of eight pages, detailing approximately 400 customers (groceries, restaurants, stores and other locations). Clearly, A&D's unlicensed activity went far beyond the ten stops Tranquillo testified to in his deposition and the forty-five stops witnessed by the Commission detectives.

Not surprisingly, Tranquillo pleaded guilty in the face of the overwhelming evidence of unlicensed carting. On October 23, 2000, Tranquillo pleaded guilty in Bronx Criminal Court individually, under Docket Number 99X072776, and on behalf of A&D, under Docket Number 99X072777, to the misdemeanor criminal charge of Unlicensed Activity, Admin. Code §16-505(a). Both parties were each sentenced on the same day to a monetary fine of \$750.<sup>12</sup>

The Applicant raises two main arguments in its response. First, while admitting that it engaged in unlicensed carting, it claims to have done so with the "tacit" permission of the Commission. See Response at 6. Second, the applicant claims to have received a Certificate of Relief from Disabilities from the sentencing court and that that document precludes the Commission from denying A&D's license application. Id. at 4.

The Applicant's claim that the Commission gave A&D "tacit" permission to pick up putrescible waste is based on three grounds. First, the Applicant claims that the Commission sent A&D customer lists of carters whose applications had been denied (or who otherwise discontinued service) and invited A&D to solicit the work. The Applicant also states that A&D appeared on a list of carters that were legally allowed to operate in New York City. Finally, the Applicant claims that the Commission was obligated to inform A&D that it was carting putrescible waste illegally after Tranquillo admitted to doing so at his deposition in August 1998.

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<sup>11</sup> It is unfortunate and reflects adversely on the Applicant's integrity that the Applicant decided to comply with the law only after being arrested.

<sup>12</sup> The Applicant failed to notify the Commission regarding this arrest and conviction as required by 16 RCNY § 2-05(a)(1) and Admin. Code §16-508(c). See infra.

The short answer to the Applicant's "tacit permission" argument is that, by apparently failing to raise it as a defense in the criminal proceeding and choosing to plead guilty to unlicensed carting, the Applicant cannot now complain that it had a valid defense despite its guilty plea. The Applicant's plea establishes beyond a reasonable doubt that it committed the offense charged, and the Applicant should now be estopped from relitigating that conviction. See In the Matter of Hee K. Choi v. State of New York, 74 N.Y. 2d 933 (1989) (applying collateral estoppel to uphold a medical license suspension by the Commissioner of Education based on the Board of Regents' prior determination that physician was guilty of professional misconduct). A&D and Tranquillo had a full and fair opportunity to contest the accusations of unlicensed carting; yet, after carefully considering the charges for over 10 months, they chose to plead guilty rather than assert this alleged "tacit permission" defense at trial.

Despite this, and although the Applicant does not offer it as such, the Commission may consider the Applicant's tacit permission arguments in mitigation or by way of explanation. In the Matter of Levy, 37 N.Y. 2d 279, 280 (1975). Even so, the Applicant's arguments fall short.<sup>13</sup> The long-standing distinction between putrescible waste and construction and demolition debris is not a recent innovation in the carting industry, and Tranquillo testified that he was aware of it. A&D has been in existence since 1983 and is not a newcomer to the industry. See Lic. App. at 3. His awareness of the distinction should have led him to inquire whether he was permitted to haul putrescible waste, and not to simply assume that he could do so after receiving a mass mailing addressed to "all carters."<sup>14</sup>

Nor was the Applicant justified in assuming that it could service putrescible customers based on its inclusion on a list entitled "Carters who can operate in NYC." See Response Exhibit 14.<sup>15</sup> This list, which had only

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<sup>13</sup> The Commission questions Applicant's two-year delay in raising this issue for the first time. The Applicant never asserted these claims with the Commission's staff in correspondence on December 16, 1999, the day after Tranquillo's arrest for unlicensed activity, or at any time thereafter, until now. The delay is all the more surprising considering that the same attorney who represented A&D before the Commission at the time of Tranquillo's arrest and prepared the Applicant's response in this matter also made court appearances on behalf of the Applicant in the criminal matter.

<sup>14</sup> Notably, Applicant's failure to include a sworn affidavit from Tranquillo or Piselli (or any A&D employee at all) attesting to the actual receipt of these letters by A&D and why it allegedly relied upon them prevents the Commission from crediting Applicant's arguments. Even assuming such facts were presented, we still find this argument unpersuasive.

<sup>15</sup> Again, the failure to submit sworn factual allegations regarding this undated list of carters prevents the Commission from seriously considering Applicant's response.

been sent out to *customers*,<sup>16</sup> was not even created until September 24, 1999,<sup>17</sup> *after* the Applicant was well underway illegally servicing putrescible customers. Regardless, the list accurately indicates all companies who had applied for trade waste licenses and specifies all approved companies by marking them with the letter "A" (which A&D did not have). Although a more descriptive document heading would have been preferable, it is not misleading and cannot be relied on to support Applicant's position. Furthermore, a search of the Commission's records indicates that the previously distributed list contained only approved companies - dated September 24, 1998 - and did not include the Applicant. Applicant knew better than to *assume* he could pick up putrescibles, instead of merely making a simple inquiry to resolve any questions.

It is more significant, however, and more indicative of Tranquillo's state of mind, that the Applicant did not file its customer register until *after* Tranquillo was arrested and A&D's trucks were impounded in December 1999. All licensees are required to file a customer register with the Commission on a quarterly basis. The register identifies the licensee's customers and the terms of service. See RCNY §5-03(g). It is reasonable to infer from A&D's failure to file a customer register that it did not think it was permitted to service these customers.<sup>18</sup> Additionally, contrary to the Applicant's argument that the Commission's staff had an obligation to "advise" Tranquillo during his deposition that he was illegally acting beyond the scope of his permit, the Commission had no duty to do so. The deposition's purpose is to gather information about the Applicant, not to bring admissions to his attention. In any event, even though Tranquillo was not "advised" *on the record* during the deposition, he was in fact instructed to cease his illegal activities by the Commission's staff.<sup>19</sup> Finally, these circumstances do not give A&D *carte blanche* to violate the conditions of its permit.

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<sup>16</sup> Applicant's failure to attach an affidavit from Tranquillo allows it to avoid having to explain why A&D was relying on a document that was not sent to them.

<sup>17</sup> The exhibit attached to Applicant's response conveniently omits the date of the document that is printed at the bottom of each page - Friday, September 24, 1999.

<sup>18</sup> By failing to file a customer register, A&D also deprived the Commission of the means to verify or disprove its claims that A&D serviced approximately 10 putrescible waste customers in August 1998 and 400 by December 1999. See Response at 5-6. A&D should not benefit from its own nonfeasance.

<sup>19</sup> At the completion of the deposition, Tranquillo was advised by a Commission staff member that A&D was not permitted to collect and remove putrescible waste, that A&D's DCA license only permitted the collection and removal of construction and demolition debris and that A&D must wait until the Commission approves its license application before hauling putrescible waste.

In making licensing determinations, the Commission is expressly authorized to consider prior convictions of the Applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also id. §16-501(a). Those factors are:

- (a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license . . . sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law §753 (1).

In addition to these factors, the Commission must consider whether or not the Applicant received a certificate of relief from civil disabilities, which creates a presumption of rehabilitation. N.Y. Correct. Law §753(2). We note that the Applicant *claims* to have received such a certificate. See Response at 4. However, the Applicant has failed to submit any

documentation or proof of this claim. Additionally, the Applicant has failed to attach a *sworn* affidavit from Tranquillo attesting to this fact, a transcript of the court proceedings or even a copy of the certificate itself, despite being given an opportunity to do so. See Recommendation at 20 (allowing the Applicant 10 business days to submit any assertions of fact "under oath" and any documentation that it wishes the Commission to consider). We note that the certified copies of the judgments maintained by the Bronx Criminal Court regarding these cases ("Certificates of Disposition") make no mention of any such certificate.

Even if we were to consider this unsubstantiated claim that a Certificate was in fact issued,<sup>20</sup> the Commission is still not persuaded that the Applicant deserves licensure. The Applicant incorrectly claims that the certificate "removes any negative effect of a conviction in the determination of an application." See Response at 4. Rather, a certificate merely creates a *presumption* of rehabilitation, not a mandatory blanket of immunity. The presumption may be overcome in the exercise of the Commission's discretion, which is guided by the factors above. Matter of Bonacorsa v. VanLindt, 71 N.Y.2d 605 (1988).

Applying the above factors, the Commission finds that, notwithstanding the public policy of the State of New York to encourage licensure of persons convicted of crimes, the crimes committed by A&D and Tranquillo are antithetical to the very purpose of Local Law 42, which is to root out corruption from the trade waste industry. Tranquillo was 53 years old in the fall of 1999, and his criminal conduct cannot be described as a "youthful indiscretion." Moreover, the convictions are recent and are for activity directly related to the waste hauling industry.<sup>21</sup> In addition, we find that the underlying facts (apart from the conviction itself) are ample proof of the Applicant's blatant disregard for the law and the Commission's regulations. Finally, the public interest in eliminating the entrenched corruption that has plagued the New York City carting industry for decades is clear. Public confidence in the integrity of the carting industry would be

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<sup>20</sup> The Commission notes that Criminal Court judges may not always have the complete history of a defendant before them when called upon to grant such certificates, nor do they have the same interests as the Commission in preserving the regulatory integrity of the carting industry.

<sup>21</sup> By the time of this conviction, Tranquillo had also pleaded guilty in Westchester County to a violation of the Environmental Conservation law and also had multiple pending felony and misdemeanor criminal charges relating to the trade waste industry. See infra at 23-25. This pattern of criminal conduct relating specifically to the same industry in which the Applicant desires a license reveal that the Applicant was not rehabilitated, despite any presumption in its favor.

undermined if those proven to have repeatedly ignored the law received licenses from the Commission whose governing law and regulations they have been convicted of persistently violating. A&D's and Tranquillo's guilty pleas to unlicensed carting compel the conclusion that the Applicant lacks good character, honesty, and integrity. Accordingly, the Commission denies A&D's license application on this ground.

**B. The Applicant Pleaded Guilty to a Criminal Violation of the Environmental Conservation Law for Operating a Solid Waste Management Facility Without the Required Permit and Releasing Solid Waste into the Environment.**

On March 11, 1998, A&D disposed of more than 70 cubic yards of construction and demolition debris at the southwest corner of Barney Street and Route 9A in Yonkers, New York. A&D did not have the necessary state permits from the New York State Department of Environmental Conservation ("NYS DEC") to operate a debris processing station or solid waste management facility at that location. On the same day, A&D and Tranquillo were both charged with a criminal violation of the Environmental Conservation Law ("ECL") §71-2703(2)(a)(i), which penalizes people and companies that operate solid waste management facilities without the required permits, thereby illegally and dangerously releasing solid waste into the environment. On March 19, 1999, Tranquillo pleaded guilty individually, under Docket Number 98-1785, and on behalf of A&D, under Docket Number 98-1784, in Yonkers City Court to the charges against them. They were each sentenced on the same day to a conditional discharge and a monetary fine.<sup>22</sup>

In making licensing determinations, the Commission is expressly authorized to consider prior convictions of the Applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also id. §16-501(a).

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<sup>22</sup> The Applicant failed to notify the Commission regarding this arrest and conviction as required by 16 RCNY § 2-05(a)(1) and Admin. Code §16-508(c). See infra.

As in the case of its conviction for unlicensed carting, and applying the same statutory factors, the Commission finds that the Applicant's convictions<sup>23</sup> here preclude licensure. A&D's and Tranquillo's guilty pleas to operating an illegal transfer station compels the conclusion that Tranquillo and the Applicant lack good character, honesty, and integrity. Accordingly, the Commission independently denies A&D's license application on this ground.

**C. The Applicant Has Pending Felony Criminal Charges for Violations of the Environmental Conservation Law for Operating an Unpermitted Transfer Station and Unlawfully Releasing Solid Waste into the Environment.**

Despite being convicted for illegally operating an unpermitted transfer station, A&D blatantly ignored the law and continued to operate an illegal and dangerous transfer station. In an unsuccessful attempt to avoid detection, A&D changed the location of the unpermitted transfer station from Barney Street and Route 9A to 451 Old Nepperhan Avenue, Yonkers, New York.

From March 20, 1999 through April 22, 1999, A&D illegally disposed of debris at 451 Old Nepperhan Avenue and released more than seventy cubic yards of solid waste into the environment. As a result, on September 30, 1999, A&D and Tranquillo were charged with felony criminal violations of the Environmental Conservation Law, in violation of E.C.L. §71-2703(2)(c)(ii).<sup>24</sup> The charges were upgraded to felonies based on the Applicant's prior conviction for the same illegal behavior. These charges are currently pending. See People v. Tranquillo, Dkt. No. 99-4351; People v. A&D Carting, Dkt. No. 99-4352.

In determining whether an applicant possesses the good character, honesty and integrity required to operate a trade waste business, the Commission may consider the criminal proceedings pending against the

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<sup>23</sup> In its response, the Applicant attempts to minimize the seriousness of its offense by blaming it on a supposedly overzealous DEC "zero tolerance" policy toward contaminated debris. See Response at 12. The Applicant does not contest any significant aspect of the offense, the disposition, or the Applicant's failure to inform the Commission of the offense.

<sup>24</sup> The Applicant failed to notify the Commission regarding this arrest as required by 16 RCNY § 2-05(a)(1) and Admin. Code §16-508(c). See infra.



Applicant (or its principal) for crimes which are directly related to the Applicant's fitness for participation in the industry.<sup>25</sup> See Admin. Code §16-509(a)(ii). The pending criminal charges for illegally operating an unpermitted transfer station bear directly on the Applicant's fitness to participate and operate in the carting industry. Accordingly, the Commission independently denies A&D's license application on this ground as well.

**D. The Applicant Has Pending Misdemeanor Criminal Charges for Criminal Contempt in the Second Degree for Violating a Court Order Which Prohibited the Use of 451 Old Nepperhan Avenue, Yonkers, NY as an Unpermitted Transfer Station.**

Despite being arrested for illegally using 451 Old Nepperhan Avenue as an unpermitted transfer station and facing pending felony charges, A&D continued to blatantly flout the law.

The City of Yonkers, pursuant to an Order to Show Cause, obtained a Temporary Restraining Order, dated October 7, 1999, against the Applicant and the owner of the property, Douglas Arred, to enjoin them from operating an unpermitted transfer station at 451 Old Nepperhan Avenue, Yonkers, New York, pending a final determination on the motion.<sup>26</sup> See City of Yonkers v. Douglas Arred and A&D Carting, Docket #3337C/99. On October 23, 1999, A&D flagrantly violated the Temporary Restraining Order by illegally dumping over 70 cubic yards of debris at 451 Old Nepperhan Avenue, Yonkers, New York.<sup>27</sup>

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<sup>25</sup> The Applicant argues without citation to authority or evidence of legislative intent, and in defiance of the plain text of the statute, that the intent of §16-509(a)(ii) is to mandate deferral of licensing decisions until pending criminal actions are resolved. See Response at 3. On the contrary, the statute explicitly commits the decision whether to proceed or not to the Commission's discretion. The Applicant has stated no reason why the Commission should exercise its discretion to defer action on A&D's license application while the criminal action is pending. The Applicant's repeated violations of the law and failure to comply with simple disclosure obligations under Local Law 42 provide ample grounds for issuing this license denial decision at this time.

<sup>26</sup> The temporary restraining order remained in effect until November 19, 1999, when a full preliminary injunction was issued against A&D and Arred.

<sup>27</sup> Commission detectives coincidentally observed additional evidence of contemptuous behavior during surveillance of A&D for illegal carting. On October 22, 1999, during surveillance of unlicensed carting activity in New York City, Commission detectives observed an A&D vehicle, bearing NYS DMV license

On October 28, 1999, Tranquillo was arrested again and charged with felony criminal violations of the Environmental Conservation Law, in violation of E.C.L. §71-2703(2)(c)(ii). The charge was upgraded to a felony based on the prior conviction for the same illegal behavior. Tranquillo was further charged with misdemeanor Criminal Contempt in the Second Degree, in violation of P.L. §215.50(3), for violating the temporary restraining order. A&D was similarly charged as a corporation. These charges are also currently pending. See People v. Tranquillo, Dkt. Nos. 99-4822, 99-4823, 99-4824; People v. A&D Carting, Dkt. Nos. 99-4819, 99-4820, 99-4821.<sup>28</sup> These pending criminal charges<sup>29</sup> further impugn the Applicant's good character, honesty and integrity, and bear directly and negatively on its fitness for licensure. Accordingly, the Commission denies A&D's application on this additional independent ground as well.

**E. The Applicant Failed to Notify the Commission of the Convictions and Arrests for Itself and its Principal.**

An applicant for a license to remove waste has the affirmative duty to notify the Commission, within 10 calendar days, of the arrest or criminal conviction subsequent to the submission of the application. See 16 RCNY §2-05(a)(1), Admin. Code §16-508(c). The Commission notes that this is an affirmative duty on the part of the *Applicant*, not on the part of the Commission's staff. See Response at 13. Even if the Commission were aware of an arrest,<sup>30</sup> this does not relieve the Applicant of its independent affirmative legal obligations. A&D failed to so notify the Commission. First, A&D did not notify the Commission of its and Albert Tranquillo's Bronx arrests. Second, A&D did not notify the Commission of its and

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plate 69734AP, collect regular waste from Prince Bakery located at 2418 Belmont Avenue, Bronx, New York and then dispose of the waste at 451 Old Nepperhan Avenue, Yonkers, New York.

<sup>28</sup> Not surprisingly, the Applicant failed to notify the Commission regarding these charges as well. See 16 RCNY § 2-05(a)(1) and Admin. Code §16-508(c). See *infra*.

<sup>29</sup> There is no more reason to defer deciding this application on the ground of pending misdemeanor charges than there is to defer to pending felony charges and we decline to do so. See *supra* n. 19. The Applicant has presented no reason why the Commission should defer action. See Response at 14.

<sup>30</sup> We note the Applicant's assertion that "the staff is charged with constructive knowledge of all court records since they are public records and available to it." Response at 13. The Applicant cites no authority for this proposition which, in addition, is contrary to the statute and regulations which place the burden on the Applicant to disclose, not the Commission to discover, the Applicant's recent arrests and convictions. 16 RCNY §2-05(a)(1), Admin. Code §16-508(c)

Tranquillo's Yonkers arrests resulting in the March 19, 1999 convictions. Third, the Applicant failed to notify the Commission of the arrests of itself and Albert Tranquillo in connection with the pending criminal actions outlined above. Similarly, Tranquillo failed to notify the Commission regarding the same arrests and convictions. The Applicant's repeated failures to comply with §2-05(a)(1) constitute adequate and independent grounds for denial of its license application.<sup>31</sup>

**F. The Applicant Provided False and Misleading Information in Connection With its License Application.**

A&D filed an Application for a License as a Trade Waste Business ("License Application") and its principal, Albert Tranquillo, filed a Disclosure Form for a Principal of a Trade Waste Business with the Commission ("Disclosure Form") on August 30, 1996. In addition, Tranquillo testified under oath before the Commission's staff ("Deposition") on August 20, 1998.

Tranquillo failed to disclose the fact that he was arrested for the misdemeanor crime of Assault in the Third Degree on the Disclosure Form as well as on the License Application. Failure by a license applicant to provide truthful information in connection with its license application is an adequate independent basis upon which the Commission may rely in denying the application. Admin. Code §16-509(a)(i).

Part III, Question 5b of the License Application asks: "During the past five years has the applicant business or any past principal of the applicant business been charged with any misdemeanor or felony criminal offenses in any jurisdiction?" Tranquillo answered the question, "No."<sup>32</sup> Question 10b of the Disclosure Form asks: "During the past ten years have

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<sup>31</sup> The Applicant claims that this violation was not intentional because "[t]his requirement was not definitely known by the Applicant." See Response at 13. This is no defense or excuse. If the Applicant is aware of the arrest or conviction, it must disclose. RCNY §2-05(a)(1). Local Law 42 imposes affirmative obligations on all carters to inform the Commission of certain facts, including arrests. The failure of the Applicant to perform its legal obligations is more evidence that it lacks "good character, honesty and integrity."

<sup>32</sup> License Application at 14. Furthermore, Tranquillo certified that all of the answers in the License Application were truthful. Lic. App. At 43.

you been charged with any misdemeanor or felony criminal offenses in any jurisdiction?" Tranquillo answered the question, "No."<sup>33</sup>

Based upon the record in this matter, these responses were clearly false. According to the State of New York Division of Criminal Justice Services, Tranquillo was arrested on November 12, 1992 in North Castle, New York, for the misdemeanor crime of Assault in the Third Degree, P.L. §120.00(1).<sup>34</sup> Furthermore, the responses were clearly contradictory to his sworn testimony under oath at his deposition. Tranquillo testified about the arrest at his deposition:

Q: Okay. You mean you had a ticket? Was this an arrest or something?

A: Yes.

Q: Okay, do you know what this arrest was about?

A: Yes.

Q: Why don't you tell us about it?

A: Uh, a couple kids threatened to stab my son at school and uh, when I went up there, there was a, you know, a fight broke out, and then they arrested me and my wife and my nephew.<sup>35</sup>

Q: When did this take place?

A: He's 20 years old, so he was probably about 15. So it had to be like, I'd say '93.<sup>36</sup>

Q: You got arrested. So what happened with that case? What was the disposition? Did you plead guilty?

A: I think I pleaded guilty to disorderly conduct, winded up with, they gave me an order of protection. I couldn't go to the school for a year.<sup>37</sup>

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<sup>33</sup> Disclosure Form at 4.

<sup>34</sup> Tranquillo was arraigned in North Castle Town Court under Docket Number 92110148 and charged with Assault in the Third Degree. On February 23, 1993, Tranquillo was convicted upon his guilty plea to the criminal violation of Harassment, P.L. §240.26(1) and sentenced to a conditional discharge. The Applicant misleadingly notes that Tranquillo was not *convicted* of a misdemeanor charge. However, the question specifically asked about *arrests*, not *convictions*.

<sup>35</sup> Deposition at 36.

<sup>36</sup> Deposition at 37.

<sup>37</sup> Deposition at 38.

Tranquillo offered false and misleading information about his criminal history in his Disclosure Form and in A&D's License Application. The failure of the Applicant to provide truthful information to the Commission constitutes an additional independent basis for the conclusion that the Applicant lacks good character, honesty and integrity and that its license application should be denied. See Admin. Code §16-509(a)(i).

### III. CONCLUSION

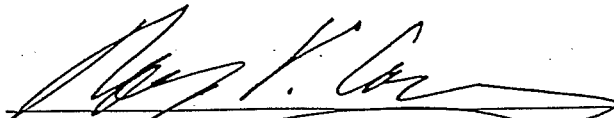
The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that A&D falls far short of that standard.

It is of grave concern to the Commission that the Applicant and its principal have engaged in conduct is intentional and in flagrant disregard of the law. For the independently sufficient reasons discussed above, the Commission denies A&D's license application.

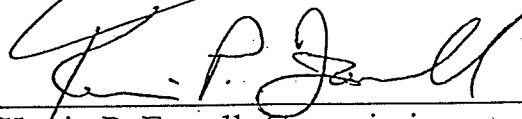
This license denial decision is effective fourteen days from the date hereof. In order that the Applicant's customers may make other carting arrangements without an interruption in service, the Applicants are directed (i) to continue servicing their customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to send a copy of the attached notice to each of their customers by first-class U.S. mail by no later than January 2, 2002. The Applicants shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: December 27, 2001

THE TRADE WASTE COMMISSION



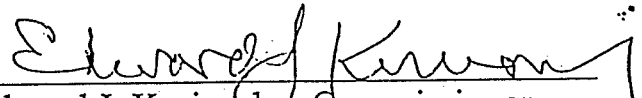
Raymond V. Casey  
Chairman



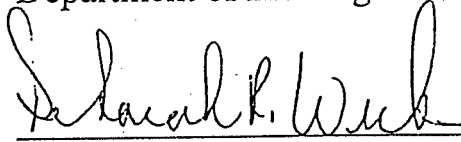
Kevin P. Farrell, Commissioner  
Department of Sanitation

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Janie Hoffman, Commissioner  
Department of Consumer Affairs



Edward J. Kuriansky, Commissioner  
Department of Investigation



Deborah R. Weeks, Commissioner  
Department of Business Services