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

REVISED DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE EXEMPTION APPLICATION OF BREEZE CARTING CORP. FOR REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

Breeze Carting Corp. ("Breeze" or the "Applicant") has applied to the New York City Business Integrity Commission, formerly the Trade Waste Commission (the "Commission"), for an exemption from licensing requirements and for issuance of a registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §-16-505(a). Local Law 42, which created the Commission to regulate the 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.

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

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

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

Based on the record, the Commission denies the Applicant's exemption application for the following independently sufficient reasons:

1. The Applicant failed to demonstrate eligibility for registration for the following reasons:

   a. The Applicant's president, Toby Romano, was convicted of federal felonies consisting of making or promising illegal payoffs to an EPA asbestos inspector, and a former acting boss of the Luchese crime family identified him as a Luchese associate.
   b. The Applicant rejected a condition required by the Commission for registration.
   c. The Applicant failed to pay various taxes, fines, penalties or fees relating to its business for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

2. The Applicant has knowingly failed to provide information and provided false information to the Commission.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. Beginning in the late 1950's, and until only a few years ago, 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." Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI").

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

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry. The industry's entire *modus operandi*, the cartel, was indicted as a criminal enterprise. All of those defendants were convicted of felonies; many were sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures were imposed.

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

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

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

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

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

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing of businesses that remove, collect or dispose of trade waste. See Admin. Code §16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. § 16-501(f)(1). The carting industry 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. 97 CV 0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation

Services, Inc. v. City of New York, No. 97 CV 364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997).

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases "where the applicant fails to provide the necessary information, or knowingly provides false information." It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

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.

Admin. Code § 16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. DISCUSSION

A. Introduction.

Breeze filed an application for exemption from licensing requirements for removal of demolition debris (the "application") as of August 30, 1996.[1] The Commission's staff has conducted an investigation of the Applicant and its principals. On May 12, 2006, the staff issued an 11-page recommendation that the application be denied. On June 6, 2006, the Applicant submitted a response, consisting of a 15-page attorney's letter in opposition to the recommendation (the "first response"). On August 30, 2006, in light of the Applicant's response, and after further investigation, the Commission's staff issued a 25-page revised recommendation that the application be denied. On September 15, 2006, the Applicant submitted a second response, consisting of a 14-page attorney's letter and one attachment, opposing the revised recommendation (the "second response"). Both the recommendation and revised recommendation instructed that any factual assertions made by the Applicant in its response must be under oath. Though the first response and second response are replete with factual assertions and even attribute feelings and motivations to the applicant's president, Toby Romano, no sworn statement by Mr. Romano, or anyone else with knowledge of the facts asserted, has been submitted to the Commission. The Commission has considered the staff's recommendation, as revised, and the Applicant's responses. For the reasons set forth below, the Commission denies the application.

B. The Applicant.

The Applicant has four principals: Toby Romano, his wife, Mary Romano, their son, Toby Louis Romano, and daughter, Erika Romano. Toby Romano is Breeze's president and a forty percent (40%) shareholder; his wife, son and daughter are all Breeze corporate officers and each is a twenty percent (20%) shareholder.[2]

The Applicant is one of several companies controlled, directly or indirectly, by Toby Romano that have, at one time or another, shared office space, staff and equipment.[3] The main business of

[1]Originally, Breeze filed an application for license as a trade waste business (the "license application") on August 30, 1996. When it was later determined that Breeze did not need a carting license because the company only hauls construction and demolition debris, the Applicant submitted the application presently at issue and was permitted to substitute it for the license application. The same effective filing date was retained for the instant application to afford the Applicant the benefit of any grandfathered rights stemming from licenses previously issued to the company by the Department of Consumer Affairs ("DCA"), the former regulator of the City's trade waste industry.

[2]See application, Schedule A ("Principals of Applicant").

[3]See license application, Part I, response to question 11; license application, Schedule E ("Non-Trade Waste Business(es) of Applicant Business"); and principal disclosure form for Toby Romano, Schedule B ("Non-Trade Waste Business(es)"). Included in this group of present or former Romano-controlled companies are Breeze National Inc., Breeze Contracting Corp., Breeze Demolition Inc. and A&B Metro Demolition Inc. (the last two entities are presently inactive according to records of the New York State Department of State). Another company that has shared premises and resources with Breeze and its affiliates is Amanda Carting Corp. ("Amanda"), whose reported principals are friends

Breeze and its affiliates is demolition and excavation work.[4] The Applicant hauls the debris generated by these activities.

C. Grounds for denial of registration.

1. The Applicant failed to demonstrate eligibility for registration for the following reasons:

a. The Applicant's president, Toby Romano, was convicted of federal felonies consisting of making or promising illegal payoffs to an EPA asbestos inspector, and a former acting boss of the Luchese crime family identified him as a Luchese associate.

Toby Romano has had a number of contacts with the criminal justice system, including a 1988 federal conviction on one count of bribing a public official and two counts of giving or promising a public official a gratuity.[5] The case arose out of an investigation by the United States Environmental Protection Agency ("EPA") into corruption in the construction and demolition industry. An EPA employee named Stecker, whose job was to inspect for compliance with asbestos regulations, was prosecuted for accepting illegal payments from contractors. Stecker cooperated in the EPA's investigation and tape recorded hundreds of his conversations with contractors, including Toby Romano, who then, as now, was in the interior demolition business. This led to a six-count indictment against Romano for crimes based on three transactions with Stecker in 1983, 1985 and 1986. After trial, a jury found Romano guilty of three of the six counts. He was sentenced to serve one year and one day in prison, fined $25,000 and placed on probation for three years.[6]

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and business associates of the Romanos. Amanda has also applied to the Commission for registration (#139). That application will be considered separately.

[4]See id.

[5]Toby Romano was convicted in the United States District Court for the Eastern District of New York. The conviction was upheld on appeal. See U.S. v. Romano, 879 F.2d 1056 (2d Cir. 1989). Romano's criminal history also includes four arrests in New York City within a five-year time span in the 1970's when he was in his 20's. In 1972, he was arrested for burglary in the second degree, a class C felony, possession of stolen property in the first degree, a class D felony, and grand larceny in the third degree, a class E felony; in 1973, he was arrested for assault with intent to cause serious physical injury, a class D felony, and resisting arrest, a class A misdemeanor; in 1974, he was arrested for petit larceny, a class A misdemeanor, and possession of stolen property in the third degree, a class A misdemeanor; and, in 1976, he was arrested for assault in the second degree, a class D felony. None of these earlier arrests resulted in a conviction. Mr. Romano was acquitted of the 1973 charges, the District Attorney declined to prosecute him on the 1976 charge, and the 1972 and 1974 charges were dismissed. While these arrests did not result in convictions, they show that Romano's 1988 federal bribery conviction was not his only contact with the criminal justice system.

[6]U.S. v. Romano, 879 F.2d at 1056-1058. The Second Circuit's opinion includes a discussion of the factual and procedural record. Romano paid a total of $7,500 to Stecker, although more was promised. Id.

Bribing or giving an illegal gratuity to a government official, or promising to do so, is a serious offense, and particularly so when its purpose is to avoid compliance with regulations relating to the handling of hazardous waste. By definition, hazardous waste, such as asbestos, poses a threat to the public's health and safety. As a participant in this industry, Toby Romano had to be aware of the dangers of asbestos and the rationale behind the regulations governing its safe removal and disposal. Nevertheless, in exchange for monetary payoffs, actual or promised, to a government inspector, Romano sought to exempt himself from enforcement of those EPA regulations. It is worth noting that the 1983 payment to Stecker related to Romano's failure to file asbestos notices with the EPA for work he was doing at a school. When Stecker appeared and told Romano he was in violation of EPA regulations, Romano paid Stecker $6,000 for his silence.[7]

The facts and circumstances that led to his federal bribery conviction demonstrate, at best, Romano's careless indifference to the effects of his actions on the health and safety of others, as well as a level of corruption that is antithetical to business integrity.

In addition to his criminal record, Romano has been linked to organized crime. In testimony at the 1992 federal racketeering trial of Luchese capo Joseph Giampa and others, Alphonse D'Arco, an admitted former acting boss of the Luchese crime family, identified Romano as a Luchese associate.[8] D'Arco, a cooperating witness for the government, testified at a dozen or more trials of major organized crime figures, the vast majority resulting in convictions. The following exchange took place during D'Arco's direct examination in the 1992 Giampa case:

> Q. Directing your attention to the same time period, approximately the winter of 1991, did you participate in a conspiracy to murder a man by the name of Toby Romano?
>
> A. Yes, I did.
>
> Q. Who is Toby Romano?
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> A. Toby Romano was an associate of the Luchese family. He owns a big construction company, demolition company called Breeze, they do major demolition jobs, and Anthony Casso spoke to me on the phone and told me that Toby had received a prison sentence for bribing on asbestos, bribing an inspector. He did get a year in prison. And at that time Anthony Casso says, guess what? He says, Toby was going

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[7] Id. at 1057.

[8] See U.S. v. Giampa, S92 Cr. 437 (SDNY). Joseph Giampa was acquitted in that case. Subsequently, in 1995, Giampa was convicted of conspiracy in a case brought in the United States District Court for the District of New Jersey and sentenced to prison for twenty-seven months, fined $6,000 and placed on probation for three years. See U.S. v. Giampa, No. 94-00403-1 (DNJ).

to – I got word from the law enforcement[9] that Toby was going to sign a statement against me and you.

I says, what kind of statement between me and you? What do you got to do with Toby?

He said, well, he was going to say that that [sic] we were trying [sic] shake him down for $1500 a week and he was going to rat.

He says, I want you to kill him, he says.

I said, well, what happened?

He says, he balked at it because he figured we were on the lam, meaning him and Casso, and he was scared because his family still lived in Brooklyn, Toby's family, and therefore, he didn't sign the thing and he went to jail.

But he said, I want you to kill him anyway.

Q. As a result of receiving this order, what actions did you take?

A. I assigned two associates, one member and two associates, Petey Vario, Rugsy, and the two brothers, the bones brothers, Mikey Carcione and Al Carcione to kill – and another one to help them was Frank Trappiani, to show them where the house was and business and everything. And they proceeded to track him and do it.

Q. Did you thereafter have discussions with these brothers that you've just identified about their attempts to kill Toby Romano?

A. Yes, they were laying in his alleyway. They told me it was a dead-end block, like a cul-de-sac, and Toby Romano came out of the thing and opened the trunk of his car, and they went to shoot him and the gun jammed.

And Toby saw them and started screaming and ran into his house, and they were on a dead-end at that time. They were

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[9]The Commission's staff does not know the identity of Casso's law enforcement source.

concerned about getting away, because he had made – he got back into the house and they got out of there.

They were worried that they were going to get killed or something because they botched a contract.

Q. To your knowledge, was Toby Romano ever killed?

A. No. He was not killed, no.[10]

Alphonse D'Arco is one of the highest ranking members of organized crime ever to become a government witness. As noted, he has testified in at least a dozen trials of other organized crime figures, most resulting in convictions, including Anthony Spero, boss of the Bonanno crime family, Vittorio Amuso, boss of the Luchese crime family, Victor Orena, head of the Colombo crime family, and Vincent Gigante, the boss of the Genovese crime family. After more than a decade of testimony and successful cooperation with the government, D'Arco was sentenced to "time served" in October 2002.

In his Giampa testimony, D'Arco had no apparent motive to lie about the plot to kill Romano or his identification of Romano as an associate of the Luchese family. To the contrary, D'Arco testified pursuant to a cooperation agreement with the government, the terms of which subjected him to severe penalties if he failed to testify truthfully. Moreover, through his testimony, D'Arco implicated himself in the murder conspiracy. It is highly unlikely that anyone would testify about participating in such a serious crime unless it were true.

Whatever the details of Toby Romano's associations with and knowledge of the Luchese family, they were sufficient for D'Arco to believe that he was a Luchese associate and that disclosures Romano was in a position to make would subject his organized crime associates to criminal liability. The identification of Romano as a Luchese associate, taken together with his criminal history, forms a substantial basis to conclude that the Applicant lacks good character, honesty and integrity and that the application should be denied.

In its first response, the Applicant addresses Romano's conviction by attempting to portray him as a victim of the illegal dealings of a corrupt government official rather than a willing participant, but this view of Romano is inconsistent with the facts found at Romano's criminal trial.

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[10] U.S. v. Giampa, S92 Cr. 437 (SDNY), trial transcript, pp. 282-284. When D'Arco became a cooperating witness for the federal government in the fall of 1991, he was extensively debriefed by the FBI about the full range of his criminal activities, including the plot to murder Toby Romano. In these sessions, and as he would later testify, D'Arco identified Toby Romano as a Luchese associate and described Romano's conviction and the contract on Romano's life that was arranged to prevent him from disclosing his knowledge of criminal conspiracies to law enforcement. See two FBI reports, one dated October 25, 1991 and the other dated November 22, 1991. D'Arco is not named in the November 22, 1991 report but is identified as the "confidential source" or "source." Both reports were previously made public.

(First Resp. at 2-3)[11] That record establishes that Romano initially offered a bribe to Stecker without prompting and that he reached out preemptively to Stecker two years later to "smooth the way" in preparation for another job. According to the Second Circuit's summary of those facts:

> Defendant Romano, who was in the interior demolition business at the time, first met Stecker in October 1983. Romano was doing work at a school, for which he had failed to file asbestos removal notices with the EPA. Stecker went to Romano's job site after hearing that work there was being done in violation of EPA regulations. When Stecker informed Romano that he was in violation, Romano asked, "What can we do about it," to which Stecker replied, "for ten thousand dollars I'd forget about it." Soon afterwards, Romano gave Stecker $6,000 in cash.
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> Two years later, in October 1985, Romano called Stecker and requested a meeting, at which Romano explained that he was doing a demolition job and wanted Stecker to insure that he would not be cited for any EPA violations. Stecker agreed to protect Romano for $5,000, and although Stecker went to Romano's job site and attempted to contact Romano numerous times, the money was not paid. The two did not meet again until after Stecker began cooperating with the government.
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> After Stecker's arrest, whenever he met with Romano, Stecker wore a recording device. In December 1986, Stecker arrived at Romano's Manhattan job site in his government vehicle, and the two men went to a luncheonette, where they discussed the $5,000 that Romano had failed to pay to Stecker in October 1985. Romano said that he was having trouble getting his money from the company for which he had done that job and asked Stecker to put pressure on the company by requesting paperwork that Romano had. Romano would turn over the paperwork to the company after he had been paid. Stecker agreed, and the two made arrangements for payment of the $5,000 in two installments. The following week, Stecker and Romano met again, and Romano gave Stecker $1,500 in cash, which Stecker counted on the table in a diner so that the surveilling agents could see it. The two men never met again, although Stecker tried to contact Romano numerous times.[12]

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[11]References to the prefix "First Resp." are to the respective pages of the first response.

[12]U.S. v. Romano, 879 F.2d at 1057-1058.

Assuming, for the sake of argument, that Romano's actions were coerced in some sense and he himself was reluctant to participate, the fact remains that he chose to engage in these corrupt dealings rather than refuse to pay bribe money and either comply with the regulations or pay the fine for non-compliance. He also could have sought the aid of law enforcement authorities. Even a "victim" – which Romano was not – has other options. For whatever reason, Romano chose not to take them. While the Applicant contends that there was no asbestos condition to remediate at the job sites in question, it cites no evidence to substantiate this claim and there is nothing in the Second Circuit's decision to support it. On the contrary, the quoted factual discussion from that decision indicates asbestos was likely present at Romano's job sites, and there would be no reason to pay a bribe if, in fact, there was no asbestos. In any case, this argument misses the point and does not demonstrate that Romano's actions were coerced.

The Applicant also complains of disparate treatment from the Commission, claiming that "the integrity of at least one other individual convicted of being victimized by Stecker has been approved by the Commission" (First Resp. at 3). The Applicant provides no details to support this statement: neither the individual nor the company in question are identified, and no information is given about that person's criminal case and other background history, or about the company and its application.

In addition to Romano, the Commission is aware of two other individuals convicted in connection with this EPA bribery sting who are or were principals of companies whose applications for registrations to haul c&d debris were approved. One company's application was approved, but was withdrawn before any registration was issued. The second company was granted a registration that is currently in effect. While the principals of these companies had similar convictions as Romano's, that conviction is not the only basis for denial in this case. The other two applications did not involve the other grounds cited in this decision for denying Breeze's application, or other comparably serious issues. Accordingly, they are clearly distinguishable and do not support the Applicant's effort to downplay Romano's federal bribery conviction.

Claiming that "the Commission has repeatedly licensed entities with far greater criminal concerns than that expressed in the Staff Recommendation," but without identifying any specific companies, the Applicant argues that it is comparatively "better" than "the various garbage hauling companies that composed and implemented the organized crime monopoly of retail garbage customers in New York City." (First Resp. at 12) That comparison is hardly a ringing endorsement of the Applicant's good character, honesty and integrity and fails to take into account Romano's status as a convicted felon. An important fact overlooked by the Applicant is that the Commission required many individuals who were principals of cartel-era carting companies to sign debarment affidavits, usually agreeing to be barred from the New York City carting industry for life, as a condition for licensing their companies. In many instances, the Commission also conditioned licensure on the appointment of a monitor during the initial licensing period. The Applicant resisted the Commission's attempts to reach a mutually acceptable solution by refusing either to agree to the appointment of a monitor or to consider the debarment of Romano from the industry, or even his

removal from the company.[13] Ultimately, while taking into account any applicable precedent, the Commission must consider the circumstances of each application on a case-by-case basis.[14]

The Applicant also argues that, due to their age, Romano's federal bribery conviction and his earlier arrests are not probative in considering the application and cites various Commission forms and rules which set a reporting period of ten years or less. Notwithstanding these arguments, the Applicant is forced to make the following concession:

> The Code did not set any time limit on the age of the information. Thus, the Commission was free to request information going as far back as it felt probative. (First Resp. at 13)

The Commission has treated any specified reporting period in an application question as a starting point in the investigation, rather than a limitation. The Commission's investigations have never been subject to a limitations period.

To counter D'Arco's identification of Romano as a mob associate, the Applicant's attorney lauds his client as a "hero." In counsel's account, Romano is a brave man who refused Anthony Casso's extortion demands and "was willing to cooperate with the authorities concerning the matter, but withdrew his cooperation for fear that his family would be harmed." (First Resp. at 4) With no factual support for this version of events, the Applicant mistakenly attributes it to the Commission's staff. (First Resp. at 4)

The Applicant makes several baseless, even inconsistent, arguments in an effort to show that Romano could not have been a Luchese associate. First, the Applicant makes the unsupported statement that "the term associate . . . includes anyone who has made a payment to the mob." Trying to build an argument on this premise, the Applicant goes on to say:

> Thankfully, in this instance, D'Arco provided the actual basis for his indiscriminate "associate" labeling by describing the reason he labeled Romano an 'associate' of his crime family: Mr. Romano was to be an extortion victim. Fortunately, D'Arco specifically explained

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[13]Romano's debarment or removal was discussed with the Applicant's counsel as a possible alternative to denial of the application.

[14]Without any factual support, the Applicant also claims that the Commission has licensed many entities with criminal histories, then mentions submitting a request under the Freedom of Information Law for "a list of licensees and registrants with a felony history in the company name or that of a principal." (First Resp. at 13) The actual request, conveyed in a letter dated June 2, 2006 from the Applicant's counsel, was for "a list of all licenses and registrations with criminal convictions." The Applicant's request was denied because the information was not separately maintained, was not readily available, could not be located without substantial effort, and would be overly burdensome to compile since no indices containing that information exist. See BIC letter to Sullivan Gardner PC, dated June 7, 2006.

that Mr. Romano spurned the extortion attempt to make him an "associate" of the mob. (First Resp. at 4-5)

Nothing that D'Arco says in his testimony in Giampa or his FBI interviews can be construed as the Applicant claims. D'Arco does not say that he "labeled Romano an associate" because he "was to be an extortion victim," nor does he "specifically explain that Romano spurned the extortion attempt." These alleged statements have no basis in fact.

Next, the Applicant uses a different interpretation of the term "associate" to construct another argument and, by doing so, contradicts its first definition of that term. Speculating that D'Arco incorrectly and negligently identified Toby Romano as a Luchese "associate," the Applicant offers this reasoning: "It is natural to denigrate the person one is trying to kill, and using the term 'associate' is better than a contractor who simply refused to pay." (First Resp. at 8) This statement illogically concludes that the term "associate," normally applied to someone considered to be aligned with the one using the word, would be used to describe someone who is perceived to be an enemy. The Applicant's argument is that D'Arco was simply mistaken when he identified Romano as a Lucchese associate. Given D'Arco's stature in the Luchese family at the time in question, it is difficult to believe that he was not familiar with the significance of designating someone an "associate." Furthermore, he was also in a position to know who was, or was not, a Luchese associate.

The Applicant also analyzes one particular sentence that appears in D'Arco's Giampa testimony concerning Romano – "What do you got to do with Toby?" – and concludes that it means, "Romano was a stranger to Casso's business" and therefore could not have been an associate. (First Resp. at 9) The Applicant appears to misconstrue who is saying what to whom, and while anything is possible, there is more than enough evidence to conclude that D'Arco knew what he was talking in his identification of Romano as an associate. The Applicant's interpretation is more a product of imagination than a plausible reading of D'Arco's testimony.

Additionally, the Applicant attacks D'Arco's credibility, citing three decisions by the Second Circuit Court of Appeals, U.S. v. Avellino, 136 F.3d 249 (2d Circ. 1998), U.S. v. Locascio, 6 F.3d 924 (2d Circ. 1993), and U.S. v. Amuso, 21 F.3d 1251 (2d Circ. 1994), to support the allegation that D'Arco lied on multiple occasions either in courtroom testimony or during interviews with law enforcement agents. The Applicant misinterprets these decisions.

In Avellino, the government disclosed during pretrial discovery that D'Arco would be the main witness against the defendant, Carmine Avellino, and Avellino was provided with extensive discovery material relating to D'Arco, including transcripts of his testimony at prior trials. The material revealed that D'Arco admitted engaging in drug-related activity for more than a decade prior to his 1983 narcotics conviction and running the day-to-day activities of the Luchese crime family, which included the distribution of drugs. D'Arco testified at prior trials that he personally had ceased drug-dealing activities in 1982 when he became a member of the Luchese family.

A few months after Avellino pleaded guilty, his attorney obtained an affirmation by a New York County Assistant District Attorney referring to evidence from a New York State criminal investigation purportedly indicating that D'Arco was involved in narcotics transactions from 1989 to 1991.[15] Avellino moved to withdraw his guilty plea, claiming that he would not have pleaded guilty if he had known about the State evidence concerning D'Arco's alleged narcotics activity after 1982 because that evidence could have established at Avellino's trial that D'Arco had deliberately lied to the government and to juries in other trials. On appeal, the Court of Appeals affirmed the District Court's denial of Avellino's motion.[16]

The Applicant quotes from the Avellino decision to support the statement that "the Second Circuit noted the various reasons why D'Arco would falsely accuse people of criminal conduct." (First Resp. at 6) However, the quoted portion of the Court's opinion is merely a hypothetical discussion about impeaching D'Arco's credibility by attempting to demonstrate on cross-examination (if the case had gone to trial and D'Arco had testified) that he was biased in favor of the government because of the plea agreement benefits that he was to receive in return for his cooperation, absent the non-disclosed document. Any witness who cooperates with the government in the face of criminal charges is subject to this method of impeachment. Therefore, the Court's discussion about this topic does not support the Applicant's point.

In Locascio, the co-defendants, John Gotti and Frank Locascio, were convicted after a jury trial of racketeering, among other offenses, stemming from their involvement in the Gambino crime family. Salvatore Gravano, identified as Gotti's *consiglieri*, or advisor, was named in the same indictment returned against Gotti and Locascio, but he later pleaded guilty to a superseding racketeering charge. In his plea bargain and testimony against Gotti and Locascio, Gravano stated that he had admitted all the crimes that he had committed, and he testified to that effect at trial. However, several months after Gotti and Locascio were sentenced to life imprisonment, prosecutors obtained evidence that Gravano had committed several other murders not previously admitted. The evidence included information obtained from D'Arco of uncorroborated allegations by D'Arco that Gravano had committed three additional murders. The defendants' motions for a new trial were denied.

On appeal, the Court of Appeals noted that the District Court "denied the motion for a new trial without an evidentiary hearing, finding that the information in the reports was untrustworthy and unsubstantiated, and that the government's failure to disclose the allegations to defense counsel

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[15]The affirmation was submitted to the New York State Supreme Court in support of a request for an order allowing postponement of the required notice to persons whose conversations had been intercepted during court-authorized electronic eavesdropping.

[16]U.S. v. Avellino, 136 F.3d at 254. As discussed in the Court of Appeals' decision, the District Court also "noted that an abundance of 'devastating impeachment material' had been timely produced, and Avellino was well aware that D'Arco had admitted involvement in a panoply of serious crimes, including narcotics trafficking, arson, extortion, labor racketeering, hijacking, burglary, fraud, and nine murders." Id. Therefore, the State evidence would only have been cumulative. Id.

did not violate the requirements of Brady v. Maryland, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963)."[17] The Court of Appeals agreed with the District Court's finding that "these reports would have had no effect on Gravano's credibility, not only because they were untrustworthy, but also because they would merely have been cumulative."[18] A careful reading of the Locascio decision shows that the fact that the D'Arco information was unsubstantiated was an important factor in the conclusion of both Courts that the reports were "untrustworthy" and the determination itself was limited to the Brady claim. This was not a finding regarding the credibility of D'Arco. D'Arco himself did not testify in the Locascio case, so his credibility as a sworn trial witness was not at issue and the Courts did not find he was untruthful, contrary to the Applicant's assertion.

In Amuso, the defendant, Vittorio Amuso, was convicted after a jury trial of racketeering, extortion, fraud, bribery and murder, and was sentenced to life in prison. Amuso appealed. The primary evidence against Amuso included the testimony of D'Arco, identified in the Court of Appeals' decision as a former Luchese captain. At trial, Amuso offered documentary evidence to show that in 1984 D'Arco submitted false sworn statements to a court. The documents, including a sworn affidavit and an appellate brief, were filed by D'Arco *pro se* to obtain his release on bail pending appeal of a drug conviction. The trial court allowed the affidavit into evidence but excluded the brief, a ruling which the Court of Appeals affirmed on appeal.

The falsified 1984 bail motion that is discussed in Amuso predates D'Arco's cooperation agreement. Although D'Arco submitted falsified motion papers to a court in 1984, he testified truthfully about that misconduct, in addition to his other misdeeds, as a witness for the prosecution in Amuso. If anything, this serves to bolster, not undermine, D'Arco's credibility as a government witness, as the Applicant conceded. (First Resp. at 7-8)[19]

b. The Applicant rejected a condition required by the Commission for registration.

The background investigation of the Applicant, particularly that of Romano, revealed information that alone would constitute sufficient grounds to deny the application. Nevertheless, the Applicant was given an opportunity to avoid a denial recommendation by the Commission's staff by accepting a monitor. The staff informed the Applicant that registration would be granted if, and only if, an independent monitor was appointed to oversee the Applicant's business operations.

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[17] U.S. v. Locascio, 6 F.3d at 948.

[18] Id. at 949.

[19] The Applicant incorrectly states that D'Arco testified in Amuso "a few months after court manipulation with fraudulent documents." (Second Resp. at 4) In fact, D'Arco's testimony in the 1992 Amuso trial occurred eight years after the falsified bail motion in 1984. Additionally, in both Avellino and Amuso, D'Arco's statements that are at issue concern himself, not others.

Charged with the responsibility of licensing and regulating New York City's trade waste industry,[20] the Commission is vested with broad powers under Local Law 42.[21] Requiring that an independent monitor be appointed to oversee an applicant's business as a condition of receiving either a license or registration is a reasonable exercise of discretion well within the Commission's statutory authority.[22] In this case, given the evidence of Toby Romano's ties to organized crime figures, as well as his criminal history, appointment of a monitor was a reasonable condition of registration.[23] Such a condition would have afforded the Applicant a chance to obtain the registration it seeks and to demonstrate fitness for continued registration, a burden which rests on the Applicant. At the same time, appointment of a monitor would have allowed the Commission an opportunity to address the concerns raised by the Applicant's record. The Applicant, however, has refused to accept monitoring as a condition of registration and, therefore, has failed to demonstrate eligibility for such registration.[24] In light of the derogatory information in the record, the Applicant's rejection of this reasonable condition constitutes an independently sufficient basis to conclude that the Applicant lacks good character, honesty and integrity and to deny the application.

c. The Applicant failed to pay taxes, fines, penalties or fees relating to its business for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

The "failure to pay any tax, fine, penalty, fee related to the business . . . for which judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's character and integrity.[25]

A recent judgment and lien search shows that since 1989, a total of 57 civil judgments have been entered against the Applicant in favor of various government entities, including the Criminal Court of the City of New York (with 37 judgments in Queens County and 11 judgments in Kings

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[20]See Admin. Code § 16-503.

[21]See Admin. Code § 16-504. As stated in the statute, the "powers and duties of the commission shall include but not be limited to . . . issue and establish standards for the issuance, suspension and revocation of licenses and registrations . . .; investigate any matter within the jurisdiction conferred by this chapter . . .; establish standards for service and for the regulation and conduct of businesses licensed or registered pursuant to this chapter . . . ." Id. § 16-504(a), (c) and (d).

[22]See A.V.F. Carting Company, Inc. v. Trade Waste Commission, Index No. 114391/02 (Sup. Ct., NY Cnty., August 14, 2002).

[23]The concerns raised by the record are serious enough that the Commission could have denied the application outright without allowing the Applicant an opportunity to show its fitness for registration under the supervision of a monitor.

[24]The rejection was communicated by the Applicant's counsel by telephone on or about March 1, 2005 and April 20, 2005, and counsel reiterated the rejection on a number of subsequent occasions.

[25]See Admin. Code § 16-509(a)(x).

County), the People of the State of New York (7 judgments), and the New York City Department of Finance (one judgment).[26] The judgments are for various sums, mostly ranging up to $1,000, except for two in the amount of $10,000 each. Only three of these judgments have been fully satisfied and two others were partially satisfied. The rest, 52 judgments in all, remain wholly unsatisfied.

Additionally, the Department of Environmental Protection ("DEP") found the Applicant guilty of 13 administrative violations on various dates since 1998, and DEP imposed fines against the Applicant ranging in amount from $400 to $1,200. One of these fines was partially paid; the rest remain entirely unsatisfied.[27]

The Applicant's failure to satisfy numerous obligations owed to the government, including liabilities that have been reduced to civil judgments and fines resulting from adjudicated violations, is a sufficient independent ground for denial of its application.

In its second response, the Applicant dismisses the large number of civil court and administrative judgments that are outstanding against Breeze. The Applicant does not deny responsibility for these unpaid judgments, most of which were docketed four or more years ago, or claim that they were actually satisfied. In addition, no assurance is offered that they ever will be paid. Instead, the Applicant criticizes the Commission's staff for raising the issue, calling it a "silly allegation," and complains that other applicants are given an opportunity to clear up open judgments. (Second Resp. at 6-7)[28] The Applicant's objections have no merit. While many of these open judgments are quite old, there has been an influx of newer ones and, more importantly, relatively few of the Breeze judgments have been satisfied, in whole or in part. The net effect is that the backlog of open judgments has increased substantially over the years. The Applicant has shown no inclination to satisfy these judgments, even berating the Commission's staff for pointing out that they exist and, even after being served with the Staff's Revised Recommendation, as of October 16, 2006, none of these judgments have been satisfied.

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[26] See judgment records obtained through LexisNexis. The Applicant's first response includes the following statement: "Despite operating one of the largest New York City businesses in a demolition industry rife with opportunity for corruption and illegality, the staff has not pointed to even minor regulatory violations during these twenty years." (First Resp. at 2) The oversight has now been corrected.

[27] See printout of DEP records.

[28] References to the prefix "Second Resp." are to the respective pages of the second response.

The Applicant cannot, and does not, contend that it was unaware of so many unpaid judgments (all of which, for some unexplained reason, the Applicant attributes to the Environmental Control Board, collectively referring to them as "ECB violations"). Indeed, in an apparent attempt at mitigation, the Applicant proudly claims that the judgments identified by the Commission's staff are insignificant compared to the "incalculable" number of violations actually incurred by Breeze since 1989. (Second Resp. at 7) If this is true, it certainly does not mitigate, much less excuse, the Applicant's neglect of its legal obligations.[29]

2. The Applicant has knowingly failed to provide information and has provided false information to the Commission.

The Commission may refuse to issue a registration to an applicant who has knowingly failed to provide the information and/or documentation required by the Commission.[30] The Applicant submitted false information and documents to the Commission.

Originally, Breeze submitted an application for a trade waste business license (the "license application"), which was received by the Commission on August 30, 1996.[31] After the process of reviewing the license application and investigating Breeze and its principals was well underway, the pending exemption application was filed in place of the license application.[32] As the license application was the source of the grandfathered rights under which Breeze has operated for the past 10 years, it was advantageous for Breeze to preserve the connection with the license application. For this reason, Breeze substituted the pending application for the original one, instead of starting the application process anew, and the Commission permitted the substitution.[33] However, this procedural step did not nullify the license application or any of the documents and information

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[29]Additionally, if any of the violations so freely acknowledged by the Applicant should have been reported previously to the Commission (for instance, in the application, or the license application, or Romano's disclosure form or questionnaire), then the failure to do so constitutes yet another violation of the Commission's reporting requirements.

[30]Admin. Code §16-509(b). See also Whitney Trucking Inc. v. Business Integrity Commission, Index No. 106336/04 (Sup. Ct., NY Cnty., 2005) (the Commission "may deny an application for exemption where the applicant fails to provide the necessary information, or knowingly provides false information"); Attonito v. Maldonado, 3 AD3d 415 (1st Dept. 2004), lv. denied 2 NY3d (2004), rearg. denied 3 NY3d 702 (2004) (citing Whitney).

[31]See the discussion in footnote 1.

[32]The pending exemption application was actually submitted in late 1998.

[33]As stated previously, the August 30, 1996 filing date of the license application was used as the effective filing date for the exemption application in order to maintain continuity in the Applicant's regulatory filings and preserve any grandfathered rights that the Applicant had from licenses previously issued to it by the Department of Consumer Affairs. See footnote 1. Additionally, instead of performing a new background investigation of the Applicant and its principals for the exemption application, the background investigation that was done for the license application was used for the exemption application. By the same token, whatever investigation and review that the Commission's staff accomplished in connection with the license application provided a starting point for any further investigation and review necessitated by the filing of the exemption application.

submitted to the Commission in support of the license application. All this material, including a principal disclosure form that Romano, as a Breeze principal, submitted with the license application (the "disclosure form"), a questionnaire (the "questionnaire") that he completed and submitted on June 16, 1998, and lists of names of various individuals and companies (the "lists of names") that he reviewed and notated on the same date,[34] is part of the record on the pending application.[35]

The record contains numerous examples of materially false or misleading statements made to the Commission by the Applicant and Romano. They include false statements concealing the Applicant's adverse regulatory history. Question 17 in the exemption application asks,

> During the past ten years, has the applicant business or any current or past principal of the applicant business been found in violation of the administrative rules or regulations of any municipal, state or federal agency relating to the conduct of a business that removes . . . trade waste . . . where the penalty imposed for the violation resulted in the suspension or revocation of any license, permit or registration . . . ?

The Applicant answered "No" to this question. That answer is false. In a decision dated February 6, 1990, the Department of Consumer Affairs ("DCA") revoked two licenses issued to Breeze to operate as a commercial refuse remover.[36] The DCA's decision was based on a finding that Toby Romano failed to respond truthfully to a question contained in applications to renew Breeze's DCA licenses.[37] The pertinent portion of the question asked whether "any of the individuals, partners, officers, or stockholders (owning 10% or more of stock)" had any convictions since the last license was issued. Romano's response "no" to that question in both DCA license renewal applications was untruthful in view of his 1988 federal bribery conviction.

The DCA licenses clearly were revoked for a violation "relating to the conduct of a business that removes . . . trade waste" and the revocation occurred well within the ten-year reporting period under application question 17. Nevertheless, the Applicant falsely answered "no" to that question and failed to disclose any information about the revocation of its DCA licenses. The same response to the same question was given both by the Applicant in the license application and by

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[34]Romano's wife, son and daughter also completed principal disclosure forms and questionnaires, and they reviewed and notated separate lists of names.

[35]Also for the sake of continuity, the same file number (#159) originally assigned to the Applicant's license application was retained when the exemption application was received. As a result, both applications, including all supporting documents and information submitted by the Applicant, are part of the same file.

[36]Later, in an administrative appeal brought by Breeze, the DCA affirmed its decision. See DCA Appeal Determination dated July 3, 1990. At the time, DCA was the licensing authority for the City's carting industry

[37]Romano is identified in the DCA decision as Breeze's sole officer and shareholder.

Romano in his disclosure form.[38] The questionnaire that Romano completed also has a similar question and his response to it was also "no."[39] Romano also responded "no" to question 42 in the questionnaire – "Has any company with which you have been affiliated ever been the subject of administrative charges brought by a government agency?" – which, again, is a false answer.[40]

The Applicant and Romano have sought to conceal their various misrepresentations to the Commission through further misrepresentations. Question 6 in the license application asks,

> Has the applicant . . . ever:
>
> a. filed with a government agency or submitted to a government employee a written which the [a]pplicant or any of its principals knew contained a false statement or false information?

Question 11 in the disclosure form is similar and asks,

> Have you ever engaged in any of the following practices:
>
> a. filed with a government agency or submitted to a government employee a written instrument which you knew contained a false statement or false information?

Both of these questions were answered "No." Considering the falsified DCA license renewal applications that resulted in the revocation of Breeze's DCA's licenses, the responses to license application question 6(a) and disclosure form question 11(a) should have been answered in the affirmative. Romano's answers "no" are also false.

Moreover, repeating the same type of misconduct that resulted in the revocation of Breeze's DCA licenses, Romano has again submitted false or misleading information about his criminal history, this time to the Commission. Question 32 of the questionnaire Romano completed asks,

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[38] See license application, Part III, question 3; and Romano disclosure form, question 8(b).

[39] See Romano questionnaire, question 53 ("Have any licenses, permits or certifications which the applicant business has held ever been suspended or revoked?").

[40] In addition to the administrative proceeding that resulted in the revocation of its DCA licenses, the Applicant was the subject of other administrative charges that should have been disclosed but were not, including a DCA charge that the company failed to file financial documents, resulting in a $1,250 fine on March 12, 1990, and a DCA charge of improper container labeling, which was settled for $175 on July 11, 1996.

> Have you ever been charged with any criminal violations? Include misdemeanor, felony charges, and all non-traffic violations (including DWI).

Question 33 in the questionnaire asks,

> Have you ever been arrested? Include misdemeanor charges, felony charges, and all non-traffic violations (including DWI).

Romano falsely answered "no" to both of these questions as well. In addition to his arrest and subsequent indictment on federal felony charges for bribing an EPA inspector, Romano was arrested and charged with various crimes, including felonies, under New York law on four separate occasions earlier in his life.[41] Furthermore, since Romano must have been a witness to his own attempted assassination, his "no" response to question 36 in the questionnaire – "Have you ever been a witness to a crime?" – is also false.

Romano has also made false statements to the Commission about his organized crime associations. Question 11 in the disclosure form asks,

> Have you ever engaged in any of the following practices:
>
> j. associated with any person that you knew, or should have known was a member or associate of an organized crime group?

[41] As the Applicant points out, Romano's federal bribery conviction was disclosed in the application documents. However, Romano falsely answered questions about his criminal history by omitting that conviction in his responses. For example, Question 10 in the disclosure form asks,

> During the past ten years have you:
>
> a. been the subject or target of any investigation involving any alleged violation of criminal law?
> b. been charged with any misdemeanor or felony criminal offenses in any jurisdiction?

Romano falsely answered both questions "No." Within the ten-year reporting period covered under question 10, Romano was investigated, arrested and then indicted by federal authorities for bribing the EPA inspector: the Federal Bureau of Investigation arrested Romano on January 11, 1988, and he was indicted in February. Romano's disclosure of his federal conviction in response to some questions and not others is the only example where undisclosed or falsely reported information was provided elsewhere.

Romano falsely answered "No" to this question. He also failed to provide pertinent details as required under question 12 when the answer to question 11(j) is "Yes."[42]

D'Arco's Giampa testimony and FBI interviews provide compelling evidence of Romano's connection to organized crime. D'Arco's testimony makes it clear that he and Anthony Casso, another high-ranking Luchese member, were personally acquainted with Romano.[43] In the conversation about ordering Romano's murder that D'Arco recounts having with Casso, D'Arco and Casso refer to Romano by his first name, and they know about his business, family and even his legal troubles. Romano certainly knew that he was dealing with mobsters – for one thing, they attempted to murder him, as the Applicant concedes. (First Resp. at 4) He was sufficiently acquainted with their activities for them to fear that he would harm them if he cooperated with law enforcement authorities. Additionally, when Romano reviewed and notated the lists of names on June 16, 1998, he put the letters "OC" next to D'Arco's name, admitting his awareness of D'Arco's connection to organized crime.[44] It is reasonable to conclude that Romano's answer to disclosure form question

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[42] Question 12 reads as follows:

> If the answer is "yes" to any portion of question 11, provide the following information, on separate sheets as necessary, for each relevant incident:
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> a. Agency, labor union, or trade waste business involved.
> i. Name of person(s) (including public and labor union officials) involved
> b. Date of occurrence
> c. Document/amount of money
> d. Reason for engaging in practice.

[43] Anthony "Gaspipe" Casso was later indicted in the Eastern District of New York and, on March 1, 1994, pleaded guilty to 70 crimes, including substantive and conspiracy counts of racketeering, murder and extortion. During his allocution, Casso admitted to having conspired with other Luchese members and associates to murder 15 people. See U.S. v. Casso, 9 F. Supp. 2d 199, at 200-201 (EDNY 1998).

[44] The instructions accompanying the lists of names are as follows:

> If you have ever heard or read about the person or entity (including through media reports, gossip, or direct contact), place a "K" next to the name.
>
> If you have ever heard or read an allegation or rumor that the person or entity is or was connected to organized crime (including through media reports, gossip, or direct contact), place an "OC" next to the name.
>
> If you have ever had any dealings with the person or entity (including business dealings and social or family contacts), place a "C" next to the name.
>
> Note that some names may fall into two or more categories, in which case you should use two or more codes (e.g., "K, OC").

D'Arco's name appears as "D'Arco, Alfonso or 'Al.'" Although he obviously had contact with D'Arco, Romano did not place the letter "C" next to D'Arco's name, and he did not make any notation at all next to Anthony Casso's

11(j) was false. He should have answered "Yes," and he should have provided the relevant details in response to question 12.

In order to justify the failure to provide complete and truthful written responses in connection with the application, the Applicant first faults the wording and presentation of the questions, and then claims that there was no deception in the responses. All of the questions are in concise, plain English and do not support multiple interpretations. The claim that the deficient responses were not designed to deceive has no merit, especially since there is no sworn statement by Romano asserting that he was confused by the questions or explaining his responses. Furthermore, it is telling that all of the information omitted by the Applicant either is either derogatory or raises a serious integrity question.

Romano's failure to disclose his association with Alphonse D'Arco and Anthony Casso is a grave matter. Given the length of time that he has conducted a demolition business and related waste hauling activities in New York City, Romano was certainly aware of the history of mob control of the City's trade waste industry, including that part of the industry involved in construction and demolition debris removal. The Commission's mandate to rid the industry of the influence of organized crime was also common knowledge to industry participants. Romano cannot pretend not to understand the import of a question concerning his associations with persons known or believed to be part of organized crime. Similarly, his failure to disclose the criminal attempt on his life, which was ordered and orchestrated by D'Arco and Casso, is most likely an attempt to deliberately conceal important information pointing to his association with two highly-placed members of the Luchese crime family.

As for the failure to disclose the revocation of its DCA licenses, the Applicant claims, without offering any factual support, that the Commission's staff "was aware of the DCA license history." (Second Resp. at 13) Even if true, this does not excuse the Applicant's failure to disclose this information when required to do so. Considering that Breeze's DCA licenses were revoked for falsifying renewal applications, the Applicant was on notice to properly disclose all required information in any application submitted to the Commission, DCA's successor in regulating the trade waste industry. Moreover, the repeated failure to disclose the DCA license revocations points to deliberate concealment. The Applicant also feigns belief that the DCA licenses were restored in settlement of an appeal of a subsequent DCA decision, and alleges that this view is supported by a July 18, 1991 Stipulation between Breeze and DCA, a copy of which is attached to the second response. (Second Resp. at 13) One need only read the Stipulation to see that the Applicant's representations are neither complete nor accurate. As recited in the Stipulation, after the revocation of its licenses, Breeze was served with two Notices of Violation for removing c&d debris without a license. After a hearing at DCA, Breeze was found guilty of both violations and fined $4,700. Breeze appealed and it was that appeal (not, as one might be led to believe from reading the second response, the prior appeal resulting from the license revocation decision that was already decided against Breeze) that served as the context for the settlement memorialized in the Stipulation. Far

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name, which is also on the list. These are further examples of Romano's non-compliance with the Commission's disclosure requirements.

from vindicating Breeze in any way, the settlement required that Breeze pay the full amount of the fine for its unlicensed activity and also file a new application with DCA to obtain a license (so that it would no longer be operating illegally). Rather than shining a more favorable light on the Applicant, this information merely shows that Breeze was found by DCA to be operating illegally, that the two additional adjudicated violations should also have been reported to the Commission, and that the Applicant's failure to do so constitutes yet another reporting violation.

Finally, the Applicant insists that the Commission must issue a registration to Breeze "as a ministerial act" unless the Applicant "fail[ed] to provide the necessary information or knowingly provid[ed] false information." (Second Resp. at 4) In support of this proposition, the Applicant cites the opinion of the Appellate Division, First Department, in Attonito v. Maldonado, 3 AD3d 415, 771 NYS2d 97 (1st Dept. 2004). The Attonito decision, however, does not require that a registration be granted to the Applicant nor does it preclude the Commission from denying an exemption application on grounds other than those cited in Attonito.

The Applicant's failure to provide complete and truthful information to the Commission constitutes a sufficient, independent ground for denying the application.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or to refuse to grant an exemption from the license requirement and issue a registration in lieu of a license to any applicant who it determines to be lacking in good character, honesty and integrity. The record as detailed above demonstrates that the Applicant falls short of that standard. Additionally, the Commission may deny an application for exemption if the applicant has knowingly failed to provide information and/or documentation required by the Commission. The Applicant failed to provide information required by the Commission and also provided false information to the Commission,

and these omissions and misrepresentations were material. Accordingly, the Commission denies the Applicant's exemption application.

This decision is effective immediately.

Dated: May 8, 2007

THE BUSINESS INTEGRITY COMMISSION

Thomas McCormack
Chair

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation

Jonathan Mintz, Commissioner
Department of Consumer Affairs

Anthony Dell'Olio, General Counsel (designee)
Department of Small Business Services

Brian O'Neill, Inspector (designee)
New York City Police Department