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-1 MEDICAL WASTE REMOVAL, INC. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

A-1 Medical Waste Removal, Inc. ("A-1" or the "Applicant") has applied to the New York City Trade Waste Commission (the "Commission") for a license to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-508. Local Law 42, which created the Commission to license and regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The law 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 associations with organized crime figures and racketeers and certain criminal convictions. Based upon the record as to the Applicant, the Commission finds for the following independently sufficient reasons that the Applicant lacks good character, honesty, and integrity, and denies its license application:

(1) The Applicant's president knowingly associated over many years with a member of organized crime.

(2) The Applicant's president knowingly associated with a convicted racketeer.

(3) The Applicant's president gave perjurious testimony to a grand jury investigating organized crime corruption of the New York City carting industry and was convicted of perjury in 1974.

(4) In 1993, the Applicant and its president failed to disclose his perjury conviction to the New York State Department of Environmental Conservation; they were charged with offering a false instrument for filing, and he pleaded guilty to a reduced charge.

(5) In 1997, the Applicant and its president failed to disclose his 1993 false filing conviction and other material matters in sworn responses to questions in VENDEX questionnaires filed with the Mayor's Office of Contracts.

(6) The Applicant's president entered into a bogus "consulting" agreement in order to obtain favorable tax treatment for the proceeds of a carting route sale.

I. BACKGROUND
The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only 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 testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council found:

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

(2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";

(3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";

(4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . being the only rate available to businesses";

(5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove";

(6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms";

(7) "that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations";

(8) "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct"; and

(9) "that a situation in which New York City businesses, both large and small, must pay a 'mob tax' in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy."

Local Law 42, § 1.

The criminal cartel operated through the industry's four leading New York City trade associations, the Association of Trade Waste Removers of Greater New York ("GNYTW"), the Greater New York Waste Paper Association ("WPA"), the Kings County Trade Waste Association ("KCTW"), and the Queens County Trade Waste Association ("QCTW"), all of which 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 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 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.

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 corporations associated with the Genovese and Gambino organized crime families (including the brother and nephew of Genovese boss Vincent "Chin" Gigante), included charges of racketeering, extortion, arson, and bribery. See United States v. Mario Gigante et al., No. 96 Cr. 466 (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 a competitor from bidding on a "Vibro-owned" building, 200 Madison Avenue in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of what was once one of New York City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay $7.5 million in

fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a $10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the New York City carting industry.

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. Two carting companies and a transfer station run by Vigliotti's family under his auspices pleaded guilty to criminal antitrust violations. In his allocution, Vigliotti confirmed Ponte's admissions as to the scope of the criminal antitrust conspiracy in the carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors 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 New York City 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 New York City carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the

existence of the criminal cartel and admitted to specific instances of their participation in it.

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

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

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract and to violate the Taft-Hartley Act by making unlawful payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, 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 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 New York City 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 have followed.

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 and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, 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 "it shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the Commission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Although Local Law 42 became effective immediately, trade waste removal licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(1). The Applicant holds a DCA license and timely filed an application for a license from the Commission.

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

On August 28, 1996, A-1 filed with the Commission an application for a trade waste removal license. The Commission's staff conducted an investigation of the Applicant. On June 4, 1999, the staff issued a 21-page recommendation that A-1's license application be denied. On June 18, 1999, A-1's attorney, Michael L. Macklowitz, submitted a 13-page letter in response to the staff's recommendation. The letter was verified by the Applicant's president. The Commission has considered both the staff's recommendation and the Applicant's response. For the independently sufficient reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity and, therefore, denies its license application.

A. The Applicant, through its president, Sabino Colucci, knowingly associated with Anthony Lanza, a member of organized crime and a convicted racketeer.

Sabino Colucci is the Applicant's president and majority owner. On April 23, 1997, Colucci was deposed by the Commission's staff. Colucci testified that he regularly associated over a period of more than thirty years with Anthony "Pee Wee" Lanza, see Deposition Transcript ("Dep. Tr.") at 130-62, who was repeatedly and publicly identified by law enforcement as a member of organized crime beginning at least as early as 1985.[1] Beginning in the 1960's, Colucci maintained a close relationship with Lanza despite Lanza's multiple criminal convictions and public identification as a "made" member of the Genovese organized crime family. Their long-time association was more than merely social; indeed, Colucci and Lanza planned and took significant steps toward becoming partners in a Florida medical waste business as recently as 1994. Id. at 158.

Anthony Lanza was a made member of the Genovese organized crime family and has been identified as such by law enforcement. See Affidavit of Det. Anthony Farneti, sworn to June 4, 1999. He has also been so identified by confessed members and associates of organized crime who became cooperating witnesses for the government, including Carmine Sessa, a former member of the Colombo organized crime family, and John Purtell, a former associate of the Genovese family.

In 1985, Lanza was identified as a member of organized crime in connection with his conviction on federal fraud and extortion charges in the Southern District of New York. See UPI wire service dispatch, Feb. 6, 1985 (citing court papers identifying Lanza as a "'made member' of the Genovese crime family"). In 1993, Lanza's name again surfaced in the federal criminal prosecution in the District of New Jersey of Genovese "capo" Salvatore "Sally Dogs" Lombardi and some of the members of Lombardi's "crew." At that trial, Purtell identified Lanza as a member of Lombardi's crew and his "number two guy" and "right-hand man" who gave the orders in Lombardi's absence. United States v. Salvatore Lombardi, No. 92 Cr. 0171 (D.N.J.), Record at 20.249. Purtell identified photographs of Lanza with Lombardi and other mob figures at the Giglio Boys Club in the Bronx,

[1] Lanza, who was Colucci's brother-in-law, recently died. Colucci acknowledged that Lanza went by the nickname "Pee Wee." Dep. Tr. at 167.

the base of operations of Genovese capo Angelo Prisco. Id. at 20.222, 20.244-49. Purtell further testified that he accompanied Lanza to a "sit-down," i.e., a meeting among mobsters to resolve a dispute, at a restaurant near the Giglio Boys Club. Id. at 20.243.[2]

In his deposition, Colucci admitted reading about Lombardi's trial in the newspaper. Dep. Tr. at 161. Colucci testified that he knew Lombardi as Lanza's "friend" and that he (Colucci) first met Lombardi in the late 1970's or early 1980's and saw him several times thereafter before Lombardi went to prison. Id. at 158-60. Colucci knew that Lombardi was serving a long prison sentence because Lanza told him, but Colucci professed not to know why Lombardi was in prison, nor what he did for a living. Id. at 160-62.

In 1995, Lanza was indicted on federal extortion and racketeering charges in the Middle District of Florida. The first count of the indictment identifies Lanza as a capo in the Genovese family. United States v. Lanza, et al., Ind. No. 95-132-Cr-T-24(E) (U.S. Dist. Ct., M.D. Fla.), at 1. At the trial in 1996, Carmine Sessa, a former member of the Colombo crime family, identified Lanza as a capo in the Genovese crime family. See Jury Rejects Notion of Link to Mob; One of Two Chiropractors is Found Guilty of Extortion of a Business Partner, Tampa Tribune, June 1, 1996. Colucci admitted receiving a news clipping about the case from Lanza's wife in Florida. Dep. Tr. at 161-62, 164.

Following his conviction for extortion in the Florida case, Lanza claimed he had heart trouble and was allowed to travel to Staten Island, ostensibly to visit his family prior to sentencing. While in New York, Lanza was arrested and charged with posing as a New York City police officer and attempting to steal at gunpoint millions of dollars of New York City payroll checks from a Staten Island businessman. During his "visit" to New York,

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[2] The press coverage of this trial was extensive. See, e.g., Judge Denies Bid for Nameless Jury in the Genovese Mob Rackets Trial, Newark Star Ledger, Jan. 28, 1993; Rackets Trial Could Yield "Primer" on Crime Family's Violent Workings, Newark Star Ledger, Feb. 1, 1993; Jury Selection Opens in Genovese Rackets Trial, Newark Star Ledger, Feb. 2, 1993; The Family Way – Trial Hears of Mob "Lust for Power," Newark Star Ledger, Feb. 9. 1993; Expert Testifies Genovese Mob's Profit-Sharing Rivals Big Corporations, Newark Star Ledger, Feb. 10, 1993; Informer Says DiGilio Was Hit by Underling, Newark Star Ledger, Mar. 12, 1993; Mob Trial Hears of "Moose's" Violent Dining Habits – Informant Recounts Use of Utensils by Defendant to Coax Collections, Newark Star Ledger, Mar. 17, 1993; Informant Tells of Faking Mob Credentials in FBI Confession, Newark Star Ledger, Mar. 23, 1993; FBI Agent Tells Rackets Trial of Undercover Role, Newark Star Ledger, Mar. 30, 1993; Mob Defendant Pleads Guilty as Trial Nears End, Newark Star Ledger, Apr. 14, 1993; Split Verdict: 8 Mob Chiefs Convicted in Rackets Trial, Newark Star Ledger, May 12, 1993.

Lanza stayed at Colucci's home on Staten Island, where police executed a search warrant following Lanza's arrest. Dep. Tr. at 134. The object of the search was the police uniform used in the crime. Id. at 138. The arrest was widely publicized, as was Lanza's organized crime status. See Reputed Wiseguy's Heart Ploy a Failure, N.Y. Daily News, July 26, 1996.[3]

Lanza's 1996 arrest on Staten Island was only the latest in a long series of arrests and convictions dating back to the early 1960's, when Colucci and Lanza were neighbors in the Bensonhurst section of Brooklyn. Lanza's record is that of a career criminal. He was arrested in 1965 and 1966 on misdemeanor offenses. In 1966, he was arrested for running a "numbers" game and convicted of possessing "policy" slips, for which he was sentenced to five days in jail. In 1967, Lanza was arrested and charged with possession of heroin; he pleaded to a lesser attempt charge – a Class D felony – and was sentenced to a year in jail. In 1970, he was arrested on a felony assault charge; the disposition is unknown. In 1971, Lanza was arrested on federal conspiracy and gambling charges; the charges were later dismissed. In 1972, he was arrested on federal theft charges; he later pleaded guilty to conspiracy to receive and possess stolen property and was sentenced to two years in prison. In 1978, Lanza was arrested and charged with armed robbery; the charges were later dismissed. In 1984, he was arrested on federal conspiracy charges; he was convicted in the Southern District of New York in 1985 and sentenced to four years in prison. In 1985, while out on bail pending trial after his 1984 arrest, Lanza was arrested and charged with wire fraud; in 1987, he was convicted and sentenced to four years in prison. In 1992, Lanza was arrested in the state of New York and charged with possession of a loaded gun, a felony; in 1993, he pleaded guilty to a misdemeanor charge and was sentenced to thirty days in jail. In 1995, he was arrested and charged with federal racketeering and extortion offenses in the Middle District of Florida; he was convicted of extortion in 1996. Later that year, as recounted above, Lanza was arrested on armed robbery, extortion, and weapons possession charges while he was staying at Colucci's Staten Island home.

[3] At his deposition, Colucci insisted that Lanza came to New York to visit his family, despite the fact that Lanza did not stay with his family, that Lanza was arrested for extortion on this visit, and that a search warrant was executed at Colucci's house seeking evidence of the crime Lanza was charged with while "visiting." Dep. Tr. at 134-35. According to Colucci, Lanza was "just sleeping there and doing whatever he did." Id. at 135.

Despite Lanza's repeated state and federal arrests and convictions and the numerous public identifications of Lanza as a made member of the Genovese crime family, Colucci maintained a close relationship – familial, social, and business – with Lanza over more than three decades. Colucci's attitude about Lanza's organized crime status and record as a career criminal is one of utter nonchalance. Colucci himself tersely summarized his complete lack of concern about the organized crime ties of his brother-in-law, friend, and prospective business partner: "If he is, he is. I don't know, and I don't care." Dep. Tr. at 137.

Colucci first met Lanza when Colucci was sixteen years old and dating Lanza's sister Frances, who later became Colucci's wife. Dep. Tr. at 131, 146. For decades, Lanza and Colucci never lived far apart, until Lanza moved to Florida in 1994.[4] In the last ten years Lanza lived in New York, Colucci visited him at least 15-20 times and Lanza visited Colucci's house on a number of occasions. Dep. Tr. at 132-34. The Coluccis and the Lanzas usually celebrated Christmas together prior to 1994. Id. at 139. Colucci's wife was close to Lanza and visited him in prison. Id. at 131-32. Colucci met a number of Lanza's friends and was well acquainted with their occupations, as well as their children's ages and marital status. Id. at 137-42. Colucci also knew the names, ages, and occupations of Lanza's children. Id. at 142-43.

Despite knowing the occupations of these more distant acquaintances, Colucci claimed that he had no idea what Lanza himself did for a living (except that Lanza worked for American Express in the early 1960's and then "on the shipyards or something"). Dep. Tr. at 131, 144-46. We find this testimony evasive and not credible and infer from Colucci's convenient failure of memory on this point that he is well aware that, as Lanza's criminal record makes clear, Lanza committed crimes for a living. Similarly incredible is Colucci's testimony that over thirty-five years the extent of his conversations with Lanza was "'Hello, Tony.' That was it. I'd see him at someone's affair, his father's birthday. 'Hello, how you doing?' Boom, that

[4] Before moving to Florida in 1994, Lanza lived on Van Sicklen Street in Bensonhurst. From 1959 to 1969, Colucci lived on West 4th Street in the same area of Bensonhurst. Dep. Exhibit A at 3. When Colucci married Lanza's sister in 1969, they moved to 2038 East 15th Street in Brooklyn, less than a mile away. Id. In 1977, the Coluccis moved to Staten Island, still only a short car ride across the Verrazano Bridge from Bensonhurst. Id.

was it, you know." Id. at 146. Colucci's testimony was a transparent ploy to distance himself from Lanza.[5]

Colucci not only maintained a social relationship with Lanza over the years, but also sought to go into business with him. In 1994, well after Lanza had been publicly identified as a mobster, Colucci and Lanza laid plans to go into the medical waste business together. Colucci testified that Lanza was planning to "start a medical waste business in Florida," specifically in the Tampa area. Dep. Tr. at 147, 151. Colucci, who already had obtained a Florida medical waste transporter license, was planning to counsel and assist Lanza in the business, and "teach him and show him what to do and everything." Id. at 149. Not surprisingly, Lanza had no background in the business himself. Id. Lanza, who had recently moved to Florida, visited potential business locations there and sent Colucci "videos [and] pictures of the place[s] . . . . and I told him, 'No good. Good.'. . . " Id. at 151. Colucci planned to put up some of the money to start the business as an equal partner with Lanza and described it as "a joint thing down there, but I was going to be up here and he was going to be down there." Id. at 152-53. The business would be called "A-1 [Medical Waste] of Florida." Id. at 154. Colucci summarized the arrangement as follows: "if I was going to do a business, A-1 of Florida, and he [Lanza] was going to be a partner with me and run it down there, then. . . if I would put up $5,000, then he would put up $5,000. It's simple." Id.

Given Colucci's long-standing relationship with Lanza and Lanza's repeated prosecutions for racketeering crimes and public identification as a member of organized crime, the conclusion is irresistible that Colucci personally knew, and certainly should have known, before seeking to enter into the waste removal business with Lanza, that Lanza was a convicted racketeer and a reputed mobster. Indeed, Colucci knew that Lanza had been prosecuted for extortion and that he had been in prison. Dep. Tr. at 130. He admitted hearing that Lanza was a member of organized crime, though he

[5] In a similar vein is Colucci's testimony about Thomas Contaldo, known to Colucci and to law enforcement as "Crazy Tommy," a now deceased Genovese capo who used to run the Kings County Trade Waste Association before it was taken over by Genovese capo Alphonse Malangone. Colucci testified that although he had a Brooklyn carting business, was introduced to Contaldo at the KCTW by the KCTW president who described Contaldo as the KCTW's business agent, and thereafter met Contaldo on several occasions, Colucci and Contaldo never discussed the carting business. See Dep. Tr. at 169-71; id. at 170 ("[conversations] [r]elating to the garbage business, no; relating to conversations, 'How you doing? How are you? How's everything?' He used to tell you he used to jog. Stuff like that. That's all. Nothing - -").

claimed not to remember where he had heard it. Id. at 136. The applicant does not dispute that Lanza was a mobster. See Response at 2.

Colucci's testimony concerning his planned venture with Lanza into the medical waste business was grudging and evasive. At first, Colucci testified that the Florida business was to be Lanza's alone. See Dep. Tr. at 148 ("He was down there looking for a business, that's all."); id. at 149 ("But was it going to be an offshoot of your business?" "No, separate, separate."). Eventually, Colucci admitted that only he, not Lanza, had experience in the medical waste business; that he was to be Lanza's equal business partner; and that their business was to bear the Applicant's name. See id. at 149-54. As to why their planned business venture did not become operational, Colucci repeatedly intoned the vague mantra that "it never materialized." Id. at 147, 149, 150-51, 153. Colucci now summarily claims that it was he who "decided against it." Response at 5. We decline to credit this newly minted assertion. If Colucci in fact had decided that he did not wish to pursue his business venture with Lanza, he surely would have said so in his deposition, in which he was striving to convey the impression that "[Lanza's] got nothing to do with me." Dep. Tr. at 131. The far more likely reason why "A-1 of Florida" did not open for business is Lanza's propensity for arrest and incarceration.

Knowing association with a convicted racketeer and an organized crime figure constitutes grounds for denial of a carting license under Local Law 42. See Admin. Code §§ 16-509(a)(v)-(vi).[6] Sabino Colucci's associations with Anthony Lanza were not fleeting or casual, but rather were voluntary and intentional – planned events that included not merely social gatherings but also a business venture in the waste removal industry. See SRI, 107 F.3d at 998. These associations are clearly inconsistent with the purposes of Local Law 42, and call into question the Applicant's character, honesty, and integrity. Colucci's knowing association with an organized crime figure and convicted racketeer is illustrative of the entrenched corruption in this industry that Local Law 42 was enacted to eliminate, and provides two independently sufficient grounds for denial of A-1's license application.

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[6] Several of the crimes of which Lanza was convicted constitute "racketeering activity" within the meaning of Local Law 42. See Admin. Code §16-509(a)(vi) (defining "racketeering activity" to include offenses listed in 18 U.S.C. § 1961(1), the federal RICO statute, or in N.Y. Penal Law § 460.10(1)). See, e.g., 18 U.S.C. § 1961(1)(B) (listing extortion in violation of the Hobbs Act, 18 U.S.C. § 1951, and wire fraud, 18 U.S.C. § 1343).

Colucci's associations with a well known mobster and racketeer are particularly disturbing in light of his admitted willingness to embrace the anticompetitive rules of the carting industry cartel. During his deposition, Colucci, whose carting company was a KCTW member in the 1970's and 1980's, see Dep. Tr. at 77-79, professed ignorance of the industry's "property rights" system and, indeed, of organized crime's influence over the industry. See, e.g., id. at 74 ("Did you ever suspect that organized crime was involved in the carting industry?" "Not really . . ."); id. ("Did you ever hear or read about any claim that some carting companies control a stop or have a stop and no other carting company is supposed to be able to take it?" "Well, I don't understand one thing about that."); id. at 76 ("Did you ever hear there was such an arrangement in existence?" "Not really, no."). Nonetheless, Colucci happily played by the cartel's rules. See, e.g., id. at 100 (". . . did you ever try and take, get a customer that was currently being serviced by another garbage company?" "No, I did my own thing."); id. at 101 (". . . did you ever go to those customers – instead of buying that route, going to those customers and offering a lower price?" "Why should I do that? If a man wants to sell a business to somebody, I should go in and undercut them? . . . You're talking about ethics here. . . . I wouldn't bother nobody."); id. at 102 (". . . if you have a name in the business that you do your work and don't bother anybody's accounts, customers, try to undercut them, nobody bothered you, you don't bother nobody.").

To Colucci, it is "a rule of ethics" (Dep. Tr. at 103) not to "bother" other carters by offering their customers lower prices. Competition, in Colucci's cartel world, is disreputable. Indeed, Colucci lamented the more competitive conditions in the medical waste industry, where customers seeking better prices and firms offering them are, in his view, "whores." Id. at 108-09. It would be wholly inconsistent with the purposes of Local Law 42 to grant a carting license to a company whose president would not hesitate to go into business with a mobster and a racketeer and considers market competition a crime against morality.

The Applicant contends that to deny its license application due to Colucci's association with Anthony Lanza would be to punish Colucci merely for falling in love with and marrying Lanza's sister. See Response at 3, 6. This disingenuous contention cannot withstand the slightest scrutiny. Indeed, the Applicant's assertion that "Colucci did everything in his power to distance himself with [sic] his brother-in-law" (id. at 6) is absurd on its face. Colucci's devil-may-care attitude about Lanza's status as a Genovese

capo is, in itself, surely cause for serious concern. But it is Colucci's demonstrated willingness to enter the waste removal industry with a career criminal whom he concedes to be a mobster that vitiates all doubt about A-1's lack of fitness for a carting license.

B. The Applicant's president, Sabino Colucci, has a criminal record directly related to the carting industry.

In 1974, Colucci was convicted of perjury in the third degree, a class A misdemeanor. Significantly, Colucci's false testimony related directly to the carting industry. In 1993, Colucci was charged with the misdemeanor offense of offering a false instrument for filing, and pleaded guilty to a violation of the Environmental Conservation Law. Both convictions bear directly upon Colucci's character, honesty, and integrity.

In 1974, Colucci was arrested and charged with a felony perjury offense. Colucci's account of the facts underlying the charges is as follows: Colucci was called to testify before a Kings County grand jury about organized crime in the private sanitation industry. The prosecutor asked Colucci whether he knew an individual named James Failla. Colucci answered that he did not. The prosecutor then showed him a photograph of Colucci shaking hands with Failla. Colucci then admitted that he knew that individual by his nickname, "Jimmy Brown." See Dep. Tr. at 89-90, 92. Colucci pleaded guilty to a reduced misdemeanor perjury charge and was sentenced to pay a fine of $250. See People v. Sabino Colucci, No. 1515-74 (Sup. Ct. Kings Cty.), Certificate of Relief from Disabilities, dated April 8, 1975.

At his deposition, Colucci attempted to explain his perjurious grand jury testimony by asserting that he did not know that James Failla (a capo who oversaw the Gambino family's interests in the New York City carting industry until his incarceration in the early 1990's) was widely known in the industry as "Jimmy Brown." Dep. Tr. at 92. Colucci also maintained that he did not know and had not even heard that Failla was a member of organized crime. Id. at 96. In light of Colucci's history in the industry and association with Genovese capo Anthony "Pee Wee" Lanza, his explanation is difficult to believe, and his guilty plea suggests that Colucci thought a jury would not believe it. Also difficult to credit is Colucci's assertion that he never met, spoke to, or even saw Failla except on the one occasion when he

was picked up on a physical surveillance and photographed shaking Failla's hand. See id. at 95-96. It is far more likely that Colucci tried to stonewall the grand jury but had to backpedal when shown a surveillance photograph. See id. at 90 ("But, see, . . . I went to the grand jury without a lawyer. Now, if I would have went with a lawyer, his question would be, 'Do you have pictures?' I would have had no counts of perjury.").

In 1993, A-1 and Colucci were charged with offering a false instrument for filing in the second degree, a class A misdemeanor. See N.Y. Penal Law § 175.30. The charges stemmed from their failure to disclose his earlier perjury conviction in a submission to the New York State Department of Environmental Conservation (the "DEC") in connection with A-1's application to vary or modify a medical waste storage facility. Colucci pleaded guilty to a violation of section 71-4402(2)(a) of the Environmental Conservation Law and was fined $1,500. See People v. Sabino Colucci, No. 932000005(s) (Crim. Ct. Richmond Cty.), Certificate of Disposition, dated October 29, 1993.

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).

Applying these factors, the Commission finds that, notwithstanding the public policy of the state of New York to encourage licensure of persons convicted of crimes and the age of the 1975 perjury conviction, the crimes committed by Sabino Colucci – the Applicant's president and controlling shareholder – are serious and are so closely related to the purposes for which the Applicant seeks a license, and the duties and responsibilities associated with such licensure, as to compel the conclusion that Colucci and, therefore, the Applicant lack good character, honesty, and integrity. Colucci in essence lied to a grand jury about his knowledge of organized crime's influence in the carting industry. Years later, he lied to a government agency about his perjury conviction. In both instances, Colucci's lies bore a direct relationship to the waste removal industry. Under these circumstances, Colucci's crimes manifest a lack of good character, honesty, and integrity, and provide another independent ground for refusing to grant the Applicant a license.

C. The Applicant and its president, Sabino Colucci, filed materially false and misleading documents in connection with an application to do business with the City of New York.

In his deposition, Colucci claimed that he and A-1 failed to disclose his prior perjury conviction to the DEC in 1993 because he believed that his Certificate of Relief from Disabilities permitted them to conceal his conviction when responding to governmental inquiries. Dep. Tr. at 31-32.

In 1993, the Criminal Court judge who sentenced Colucci disabused him of this purported misimpression, explaining to him that he must reveal his entire criminal record even though he has such a Certificate. Id. at 32.

Yet, in December 1997 – only four years later – A-1 and Colucci filed certified VENDEX Business Entity and Principal Questionnaires with the Mayor's Office of Contracts in which they failed to disclose the 1993 charges against A-1 and Colucci and his 1993 conviction in response to several questions calling for that information. In answer to questions 17 and 18 on its questionnaire, A-1 stated that within the past five years it and its owners had not been the subject of a criminal investigation by any prosecutive or investigative agency and had not been the subject of any investigation by any government agency. In answer to question 9(f) on his questionnaire, Colucci stated that he had not been found in violation of any administrative or statutory provision during the past five years. In answer to questions 10(a) and (b), Colucci stated that within the past five years he had not been the subject of a criminal investigation by any prosecutive or investigative agency concerning activities performed on behalf of A-1, and A-1 had not been the subject of a criminal investigation or any other type of investigation by any government agency.

All five of these statements were false. As discussed above, in October 1993, Colucci and A-1 were charged with offering a false instrument for filing, and Colucci was later convicted of a lesser charge under the Environmental Conservation Law. This episode marks the third time Colucci has lied to the government and provides another independent ground for refusing to issue A-1 a license.

The Applicant points out that Colucci did disclose his guilty plea in response to question 11 on his VENDEX questionnaire, which pertains to sanctions imposed in proceedings concerning professional licenses, and enclosed a copy of his Certificate of Disposition. See Response at 9-10. The 1993 criminal case against Colucci plainly was not such an administrative proceeding. Moreover, the half-page Certificate contained no description of the underlying offense. Far from demonstrating Colucci's probity, as the Applicant contends, this selective disclosure indicates that Colucci, aware of his obligation to reveal and describe his criminal record, chose to mislead the City by mischaracterizing it.

D. The Applicant's president, Sabino Colucci, entered into a bogus "consulting agreement" in connection with a carting route sale.

In 1986, Colucci sold the company that he inherited from his father, Dominick Colucci, Inc., to John Bivona Carting Corp. ("Bivona") for $1.3 million. Dep. Tr. at 48, 60. Pursuant to the sale agreement, Bivona was to pay Colucci $14,000 per month. Id. at 61. Part of the purchase price was later arranged to be paid via a consulting agreement, set up for "tax consequences." Id. at 49-50. The consulting agreement or, as Colucci also called it, "employment contract" provided that Colucci would receive a salary of $1,000 per week. Id. at 54.[7] According to Colucci, he has acted as a "consultant" for Bivona since 1986 and was doing so at the time of his deposition in April 1997. Id. at 48-50.

Colucci's testimony reveals that he has not done any work for Bivona under his so-called consulting agreement. For example, upon hearing of Bivona's loss of accounts, Colucci told Bivona, "It's not my problem." Dep. Tr. at 56. Colucci has not helped Bivona find new accounts or otherwise discussed business matters with Bivona's principals. Id. Colucci's definition of consulting is illuminating: "Really, the consulting is I just want to get my money. That's the deal here." Id. at 59. In June 1997, Bivona went into bankruptcy; in April 1998, its assets were sold to a national firm. It is obvious that Colucci's consulting agreement with Bivona was a sham designed to obtain favorable tax treatment for part of the proceeds of a carting route sale. This was yet another deception of the authorities by Colucci and provides another basis for denial of A-1's license application.[8]

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[7] While Colucci did submit a sale application in 1985 to the DCA, then the City agency responsible for oversight of the trade waste industry, the application did not allude to the consulting agreement. The one-page consulting agreement was signed in March 1986 - after the DCA had granted permission to consummate the sale transaction. This two-document mechanism was apparently an attempt to avoid the DCA's scrutiny of the consulting agreement, again manifesting Colucci's lack of honesty and integrity.

[8] The Applicant's assertion that Colucci's consulting agreement was a typical feature of a business sale to facilitate a smooth transition of customer accounts (see Response at 10-11) is well wide of the mark. Colucci sold his business in 1986 and ostensibly was still "consulting" eleven years later. As to the Applicant's contention that Colucci's participation in the bogus consulting-agreement transaction conferred a tax benefit only upon Bivona (see id. at 11), it seems obvious that such a tax savings would have been accounted for in a higher purchase price payable to Colucci.

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. Here, the Applicant's principal, Sabino Colucci, knowingly associated with Anthony Lanza, a member of organized crime and convicted racketeer. Colucci himself has been convicted of perjury before a grand jury and submitting false filings to a government agency, all with respect to matters pertaining directly to the carting industry. He also has knowingly failed to disclose his criminal record when required to do so, as well as entered into sham business arrangements. Based upon these facts, all of which the Commission is authorized to consider under Local Law 42, the Commission denies this license application.

On June 3, 1999, the day before the issuance of the staff's license denial recommendation, A-1 submitted to the Commission an application for approval of a transaction pursuant to which Sabino Colucci would sell his interest in A-1 to his son, Dominick Colucci, for $1.15 million payable over ten years. Such proposed transactions are subject to advance written approval by the Commission. See 17 RCNY § 5-05(b)(2). Moreover, it is settled law that the Commission, in its discretion, may decline to consider such a sale application when the subject company's license application is pending before it. See Patano Bros., Inc. v. Trade Waste Comm'n, No. 1778 (1st Dep't June 30, 1998) (citing Tocci Bros., Inc. v. Trade Waste Comm'n, No. 1633 (1st Dep't June 18, 1998)). We decline to defer action on A-1's license application pending consideration of its eleventh-hour sale application, as we are unable to identify any goal of Local Law 42 that would be advanced thereby. Indeed, the goals of Local Law 42 will be well served by the exit, without further delay, from the waste removal industry of a company as lacking in good character, honesty, and integrity as this Applicant.

This license denial decision is effective fourteen days from the date hereof. In order that A-1's customers may make other carting arrangements without an interruption in service, A-1 is directed (i) to continue servicing its customers for the next fourteen days in accordance with its existing contractual arrangements, and (ii) to send a copy of the attached notice to each of its customers by first-class U.S. mail by no later than June 29, 1999. A-1 shall not service any customers, or otherwise operate as a trade waste

removal business in New York City, after the expiration of the fourteen-day period.

Dated: June 25, 1999

THE TRADE WASTE COMMISSION

Edward T. Ferguson, III
Chair

Kevin P. Farrell
Sanitation Commissioner

Edward J. Kuriansky
Investigation Commissioner

Jules Polonetsky
Consumer Affairs Commissioner

Deborah R. Weeks
Acting Business Services Commissioner