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

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF ABSTRACT EQUIPMENT, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

On September 25, 2006, Abstract Equipment, Inc. (the "Applicant" or "Abstract") submitted an application to the New York City Business Integrity Commission ("Commission"), formerly named the New York City Trade Waste Commission, pursuant to Local Law 42 of 1996, for exemption from licensing requirements for the removal of construction and demolition debris. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). The principal of the Applicant, a construction and demolition debris hauling company, is Thomas Frangipane.

Abstract has applied to the Commission for a registration enabling it 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 applications for registration. See id. If, upon review and investigation of the application, the Commission grants the Applicant a registration, the Applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant 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 a registration 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 upon the record as to the Applicant, the Commission denies its registration application on the ground that this Applicant lacks good character, honesty and integrity for the following independent reasons:

A. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration.

1. The Applicant's President, Thomas Frangipane, knowingly associated with Mario Garafola, a known associate of an organized crime family and a convicted racketeer.

2. The Applicant's President, Thomas Frangipane, has committed racketeering activities in connection with the trade waste industry.

3. The Applicant failed to pay taxes and other government obligations for which judgments have been entered.

B. The Applicant knowingly failed to provide information and provided false and misleading 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. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit 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 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 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, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been 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 over the past decade. 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. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1st Dept. 2004).

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration 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 quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial

and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). 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); Attonito, 3 A.D.3d 415.

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. THE APPLICANT

On September 25, 2006, the Applicant filed an application for exemption from licensing requirements for removal of construction and demolition debris (the "Registration Application"). The sole principal of the Applicant is Thomas Frangipane ("Frangipane"). See Registration Application at 9.

The staff has conducted a background investigation of the Applicant and its principal. As part of the Commission's investigation, on November 16, 2006, Commission staff deposed Frangipane. On October 19, 2007, the staff issued a 16-page recommendation that the Registration Application be denied (the "Recommendation"). The Applicant was served with the Recommendation by certified mail on or about October 22, 2007. See Signed Certified Mail Return Receipt. Pursuant to the Commission's rules, the Applicant had ten business days to submit a response to the Recommendation. See 17 RCNY §2-08(a); see also Recommendation at 16. The Applicant did not submit any response to the staff's recommendation.

The Commission has carefully considered the staff's Recommendation. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and has failed to demonstrate eligibility for a registration. Therefore, Abstract's application is denied.

III. GROUNDS FOR DENIAL

A. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration.

1. The Applicant's President, Thomas Frangipane, knowingly associated with Mario Garafola, a known associate of an organized crime family and a convicted racketeer.

The Commission may deny a license application of a business whose principals have associated with known organized crime figures and racketeers. See Admin. Code §16-509(a)(v), (vi); SRI, 107 F.3d at 998. The Commission may consider this factor in determining an applicant's eligibility for a trade waste exemption from licensing and a trade waste registration. See supra at 5-7. Mario Garafola ("Garafola") has been publicly identified by law enforcement as an associate of the Gambino organized crime family and has been convicted of a racketeering activity. Notwithstanding Garafola's organized crime status, and despite his criminal conviction, the Applicant maintained a business relationship with him.

In 2003, Frangipane and Garafola formed a concrete/foundation company, Duramax Construction Corp. ("Duramax Construction"). See Deposition Transcript of Frangipane ("Frangipane Tr.") at 38-41, 50-54. Frangipane testified that Duramax Construction was a "partnership" in which Frangipane brought the customers into the business, and Garafola supplied the machinery and equipment. Id. Prior to starting Duramax Construction, the two had worked together over the years on various jobs. Id. at 40-41.

Frangipane was well aware of Garafola's organized crime connections before starting Duramax Construction with him. Garafola's father, Edward Garafola, is a soldier in the Gambino organized crime family.[1] Frangipane knew that Edward Garafola was a "gangster" and that he associated with people such as John Gotti and Salvatore "Sammy the Bull" Gravano ("Gravano"), notorious members of the Gambino organized crime family. Id. at 41-45. Edward Garafola's organized crime associations were widely publicized, as were his ties to the construction rackets of the Gambino organized crime family. See, e.g., Selwyn Raab, "How Gotti's No. 2 Gangster Turned His Coat," The New York Times, November 15, 1991; Jimmy Breslin, "The Main Event: Bill vs. the Mob," Newsday, March 3, 1992; Charles V. Bagli, "A Concrete Subcontractor for Trump Has Been Banned From City Contracts," The New York Times, November 7, 1997; William K. Rashbaum, "Mob's Shadow Still Falls Across Building Projects," New York Times, September 4, 2000; Kati Cornell Smith, "'Bull' In-Law Cops Plea in $40M Con," New York Post, November 3, 2001; "U.S. Indictments Target Organized Crime," CNN.com, June 20, 2002; "Peter Gotti Indicted for Alleged Plot against 'Sammy the Bull,'" CCN.com, August 18, 2003.

Gravano, who owned a construction company with Edward Garafola, controlled the Gambino organized crime family's construction interests until November 1991, when he became a cooperating witness for the government. See Richard Behar, "Organized Crime; An Offer They Cant Refuse; Weakened by Turncoats and Convictions, Mob Families are Considering a Strategic Solution: the Merger," Time Magazine, November 25, 1991; Bruce Frankel, "One-Time Gotti Deputy Ready to 'Sing' in Court," USA Today, March 2, 1992; Breslin, supra; Pete Bowles, "Working for the Boss," Newsday, March 5, 1992; Rashbaum, supra. Upon Gravano's cooperation with the government in 1991, Edward Garafola took over many of those interests for the Gambino family. See Rashbaum, supra; "Peter Gotti Indicted for Alleged Plot against 'Sammy the Bull,'" supra. See also Bagli, supra; Judy DeHaven, "Casino Panel Challenges a Contractor," The Star-Ledger (Newark, NJ), September 6, 2001; "U.S. Indictments Target Organized Crime," supra; Jerry Capeci, "New Informer Surfaces Against the Gottis," The New York Sun, December 26, 2002; "Peter Gotti Indicted for Alleged Plot against 'Sammy the Bull,'" supra.

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[1] Since the mid-1980's Edward Garafola has been publicly and repeatedly identified as a soldier in the Gambino crime family. See, e.g., U.S. v. Gotti, 91 CR 1051 (EDNY)(ILG)(testimony of former Gambino underboss Salvatore Gravano) at 3956, 4356; U.S. v. Local 1804-1 International Longshoremen Assoc., et. al., 90 CIV 0389 (SDNY)(JLM) at 755; U.S. v. IBT, 878 F. Supp. 14 (SDNY 1995); "25 Years After Valachi," Hearings Before the United States Senate Permanent Subcommittee on Investigations (1988); Declaration of Salvatore Gravano in U.S. v. Mason Tenders District Council, October 17, 1994 at ¶4.

Edward Garafola's organized crime connections, as well as his control over the Gambino family's construction rackets, should have, at a minimum, raised concerns with Frangipane about going into business, particularly a construction-related business, with Edward Garafola's son. Yet, when questioned by Commission staff at his deposition as to why he would form a business with someone whose father was a gangster, Frangipane answered "Yes, but, you know, it was a business relationship." Frangipane Tr. at 43. Frangipane appears to believe that Local Law 42 prohibits only association with organized crime figures or racketeers for an overtly criminal purpose. He is, of course, mistaken. The main thrust of Local Law 42 is to rid the carting industry of any and all influence of organized crime and prohibit precisely these business relationships with organized crime figures. See supra at 2-7. Therefore, despite what Frangipane knew and/or should have known, he disregarded the evidence before him and entered into business with Garafola because the two men supposedly worked well together. See id. at 42.[2] Then, merely one year later, Garafola was arrested for crimes related to various construction projects and was publicly named by law enforcement as an associate of the Gambino organized crime family.

On September 15, 2004, Garafola was indicted, along with his father, by a federal grand jury in the Eastern District of New York. See Press Release, September 15, 2004, United States Attorney, Eastern District of New York ("Press Release"). The indictment identified Garafola as an associate of the Gambino organized crime family. See id. at 2. The indictment also charged Garafola with furthering the racketeering enterprise of the Gambino organized crime family through criminal schemes involving fraud, bribery, kick backs, extortion, and obstruction of justice related to Gambino-controlled construction projects at 2 Broadway in Manhattan, New York (the "2 Broadway project"). See id. at 1-10. See also United States v. Mario Garafola, Superceding Information, Cr. No. 04-732 (S-2), filed November 29, 2004 at 1-15 ("Superceding Information"). Garafola's criminal activity resulted in the defrauding of the Metropolitan Transportation Authority ("MTA") and the owner of the property, Zar Realty Management, of more than ten million dollars. See Press Release at 3.

The 2 Broadway project, renovated under the direction of the MTA, was supposed to be a "union job," i.e., the work was to be performed by union members. See Press Release at 4; Superceding Information at 2-5. Through various criminal schemes involving different contracts, contractors or subcontractors owned or controlled by Garafola and/or his father and others, the co-conspirators used non-union labor, which permitted them to pay lower wages and avoid paying benefits. See Superceding Information at 1-15. Garafola and his co-conspirators then billed and submitted false bids as if they had employed union labor. See id. at 3-10, 12-14. Additionally, Garafola

[2] In addition to forming Duramax Construction with Garafola, as discussed infra, Frangipane worked for another of Garafola's companies, Peregrine Management. Frangipane administered the payroll for Peregrine Management and was present at the business site when federal agents executed a search warrant there on November 25, 2003. See infra at 15-16.

and others demanded illegal kickbacks from contractors and subcontractors at the site. See Press Release at 6-7; Superceding Information at 3-6, 12-13.

On November 22, 2004, Garafola pled guilty to a charge of conspiracy to commit an offense or to defraud United States in violation of 18 USC §371 to satisfy a superceding information. See Judgment, dated September 30, 2005 ("Judgment"); 18 USC §371. See also Superceding Information. This superceding information, filed November 29, 2004, alleged that Garafola owned Duramax Construction though a nominee owner who put all the shares of the company in his name so as to conceal Garafola's ownership interest. See Superceding Information at 1-2. Frangipane testified at his deposition that only he and Garafola had any interest in Duramax Construction. Frangipane Tr. at 38-41, 50-51. Therefore, as charged by the grand jury, Frangipane, an unindicted co-conspirator, was that nominee owner.[3]

On September 30, 2005, Garafola was sentenced to 36 months imprisonment, three years' probation, and ordered to pay restitution in the amount of $1,920,591. See Judgment at 6. The restitution was payable to the MTA, Carpenters & Joiners Union, and District Council Cement & Concrete Workers Union. Id.

During his deposition before the Commission, Frangipane acknowledged that he was aware of Garafola's arrest and conviction. Frangipane Tr. at 45-48. Although Frangipane's testimony was vague about the details of the charges against Garafola, Frangipane admitted knowing that they involved the MTA and involved "some kind of money thing with elevators."[4] See Frangipane Tr. at 45-47. Frangipane testified that he believed Garafola was convicted of mail fraud and was sentenced to three years in prison. Id.

Frangipane also testified that due to Garafola's arrest, Garafola "dragged [Frangipane's] name though the mud." Id. at 48. Frangipane claimed that as a result the two had a "falling out" and "parted ways." See id. at 47, 48. According to Frangipane, they "closed" Duramax Construction, and Frangipane opened his own company, Duramax Heavy Excavation and Foundation ("Duramax Heavy"). Id. at 47-48, 50-51. Frangipane formed Duramax Heavy on September 7, 2005. See NYS Department of State, Division of Corporations, Duramax Heavy printout; Frangipane Tr. at 51.

Contrary to Frangipane's assertion that he and Garafola "parted ways" after Garafola's arrest, Frangipane did not sever business ties with Garafola until years after Garafola's arrest. As of September 17, 2007, Duramax Construction was still classified as "active" by the New York State Department of State, Division of Corporations. See NYS Department of State, Division of Corporations, Duramax Construction printout. Moreover, Frangipane had a telephone conversation with Garafola on November 15,

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[3] See infra at 11-14 for a discussion of Frangipane's involvement in these criminal schemes.

[4] The most significant criminal scheme involved a fraudulent contract related to the use of temporary elevator operators to run the elevators during the term of the construction project. See Press Release at 5-6. Frangipane's apparent lack of interest in the criminal charges against his business partner is remarkable. See infra at 15-16 for a further discussion of Frangipane's statements to the Commission.

2006, the day before Frangipane testified before the Commission. See Frangipane Tr. at 47-48. Frangipane testified that he spoke to Garafola, who was still incarcerated, during the course of a meeting with Garafola's wife to "finalize" outstanding issues involved in the closing of Duramax Construction. See id. at 47-50. At the time, Duramax was still receiving income, and Garafola was still Frangipane's partner. See id. at 49-50 ("because Mario was my partner, the accountant had to speak to both of us" on November 15th). The lateness of this meeting and conversation, two years after Garafola's arrest, demonstrates a lack of any sense of urgency to sever business ties with Garafola. Thus, despite Frangipane's knowledge of Garafola's arrest, indictment, racketeering conviction, and ties to organized crime, Frangipane continued to have a business relationship with Garafola until at least the day before Frangipane's deposition with the Commission and two years after Garafola's arrest.

The Commission is expressly authorized to deny the license application of a carting company whose principals have knowingly associated with known organized crime figures and racketeers. See Admin. Code §16-509(a)(v), (vi); SRI, 107 F.3d at 998. The Commission is similarly authorized to deny the registration application of a construction and demolition debris business. See supra at 3-4, 5-7. The evidence recounted above – which was not refuted by the Applicant – demonstrates that the Applicant's principal started a business with and has continued to do business with a Gambino organized crime family associate, Mario Garafola, dealings which directly involved the construction industry. Frangipane, who knew or should have known of Garafola's organized crime status, conducted this business with a complete disregard for Local Law 42. These types of associations are plainly repugnant to Local Law's 42's central goal of eliminating the influence of organized crime from the industry. Both Frangipane's actual business dealings with Garafola and his willingness to continue in a business relationship with Garafola, despite his criminal history and organized crime associations, demonstrate that Frangipane lacks the good character, honesty, and integrity required for him to obtain a registration. Accordingly, the Commission denies Abstract's application on this independently sufficient ground.

2. The Applicant's President, Thomas Frangipane, has committed racketeering activities in connection with the trade waste industry.

Admin. Code §16-509(a)(v) allows the Commission to consider "the commission of a racketeering activity..." in refusing to issue a license to an applicant. See Admin. Code §16-509(a)(v). Similarly, the Commission may consider such factor in determining the applicant's eligibility for a registration. See supra at 5-7. A conviction for a racketeering activity is not required. As discussed below, the Commission has a rational basis to find that Frangipane, an unindicted co-conspirator in United States v. Garafola, Cr. No. 04-732 (S-2), committed a racketeering activity. This Applicant does not refute this point. Therefore, the Commission finds that Frangipane lacks good character, honesty, and integrity and denies the Applicant's Registration Application on this independently sufficient ground.

Duramax Construction was not a signatory to any union collective bargaining agreement ("CBA") and used non-union labor on its job sites. See Superceding Information at 2. Garafola owned Duramax Construction through Frangipane, a nominee owner who agreed to put the shares of the company in his name in order to conceal Garafola's ownership interest. See id; Frangipane Tr. at 38-41, 50-51.[5] In addition to owning Duramax Construction, Garafola owned Peregrine Management, LLC and Peregrine Management Corp (collectively "Peregrine"), companies that also were not signatories to any CBA and used non-union labor on their job sites. See Superceding Information at 1. Garafola also owned 5 Boro Construction Company ("5 Boro"), a company which was a signatory to various CBAs, including with the Cement and Concrete Workers Union Locals 6-A, 18-A, and 20 (the "Cement and Concrete Workers") and The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America (the "Carpenters and Joiners"). Id. at 2.

The CBAs required the owners of companies it covered to make payments to union benefit funds for all work supposed to be performed by union masons and carpenters, even if that work was actually performed by non-union labor employed by another company in which the owner of the covered company (under the CBA) had an interest. Id. at 9-10. Additionally, contractually required payments to a union benefit fund constituted assets of the fund and were therefore required to be paid into the fund. Id. Between October 2002 and December 2003, laborers working for Duramax Construction and Peregrine, both non-union companies owned by Garafola, performed work covered by the Cement and Concrete Workers CBA and the Carpenters and Joiners CBA. Id. Consequently, Duramax Construction and Peregrine were contractually obligated to contribute to the union pension, welfare, and annuity funds for each hour of work by all employees covered by those unions. Id. Instead of making those required payments to the various funds, Frangipane, an unindicted co-conspirator, Garafola, and others embezzled the assets of those funds by retaining the money that Duramax Construction and Peregrine were required to pay. Id.

Specifically, the information charged that from between July 1998 through October 2004, Frangipane, along with Garafola and others, conspired to:

> (a) devise a scheme and artifice to defraud the MTA and Halpern,[6] and to obtain money and property from them by means of materially false and fraudulent pretenses, representation and promises, and for the purpose of executing and attempting to execute such scheme and artifice to cause mail matter to be delivered by the United States Postal Service, in

[5] As discussed supra at 9, the superceding information filed on November 29, 2004 alleged that Garafola owned Duramax Construction though a nominee owner, "John Doe #1," so as to conceal Garafola's ownership interest. See Superceding Information at 1-2. Frangipane testified at his deposition that only he and Garafola had any interest in Duramax Construction. Frangipane Tr. at 38-41, 50-51. Therefore, Frangipane was that nominee owner.

[6] Halpern Construction ("Halpern") was the prime contractor hired to renovate the bathrooms and a mailroom at 2 Broadway. Id. at 3-4.

> violation of Title 18, United States Code, Section 1341; (b) to pay, lend and deliver money and other things of value from employers, to wit: 5 Boro and the defendant Mario Garafola, to a representative of employees, to wit: Junior Campbell, a Local 79 shop steward, who was then employed in an industry affecting commerce to wit: the New York City construction industry, in violation of Title 29, United States Code, Sections 186(a)(1) and 186(d)(1); (c) to conduct financial transactions, in and affecting interstate commerce, which in fact involved the proceeds of specified unlawful activity, to wit: interstate transportation of property converted and taken by fraud, knowing that the property involved in the financial transactions, to wit: cash payments, represented the proceeds of some from of unlawful activity, and knowing that the financial transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the specified unlawful activity, in violation of Title 18, United Stated Code, Section 1956(a)(1)(B)(i); (d) to corruptly persuade another person with the intent to hinder, delay and prevent the communication of information relating to the commission and possible commission of a federal offense to law enforcement officers of the United States, in violation of Title 18, United States Code, Section 1512(b)(3); (e) to corruptly conceal records, documents and other objects with the intent to impair their ability for use in an official proceeding, in violation of Title 18, United States Code, Section 1512(c)(1); and (f) to embezzle, steal and convert to his own use the moneys, property and other assets of the employee welfare benefit plans and employee pension benefit plans of the Mason Tenders, the Cement Workers and the Carpenters, and of funds connected with such plans, in violation of Title 18, United States Code, Section 664.

Id. at 10-12.

As stated above, Garafola pled guilty to count one of the Superceding Information. In pleading guilty, Garafola admitted the charges contained therein, actions taken by himself as well as by Frangipane. More specifically, Garafola admitted that he owned Duramax through Frangipane. Garafola also admitted that on or about July 1998 through October 2004, he, Frangipane, and others conspired to commit the acts as outlined above, including conspiring to defraud the MTA and to commit mail fraud.

The violations of the United States Code that Frangipane conspired to violate, including mail fraud, are racketeering activities as defined by Title 18, United States Code, Section 1961(1). Section 16-509(a)(v) of the Administrative Code provides that the Commission may deny an application based on the commission of a racketeering activity, including those delineated in Title 18, United States Code, Section 1961(1).

Thus, Frangipane committed a racketeering activity in connection with construction projects, which is directly related to the trade waste industry. Where the Commission finds that an applicant has committed a racketeering activity as defined in

the statute, licensure may be denied. Admin. Code § 16-509(a)(v). Accordingly, the Commission denies Abstract's Registration Application on this independently sufficient ground.

3. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.

Admin. Code §16-509(a)(x) allows the Commission to consider "the failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" in refusing to issue a license an applicant. See Admin. Code §16-509(a)(x). The Commission may also consider this factor in determining an applicant's eligibility for a registration. See supra at 5-7.

Abstract was created in order to service Duramax Heavy, to haul construction and demolition debris from Duramax Heavy's job sites. See Frangipane Tr. at 58-63. Abstract does not service customers other than Duramax Heavy, and both companies share a common address. See id. at 62, 8, 60. Further, as stated above, both Duramax Heavy and Abstract are wholly owned and operated by Frangipane. Id. at 55, 62-63. Thus, Abstract is essentially an alter ego of Duramax Heavy and should be treated as such.

Three judgments have been docketed against Duramax Heavy by the federal government and New York State. A judgment and lien search conducted by the Commission on September 17, 2007 reveals the following outstanding judgments against Duramax Heavy:

• Federal Tax Lien	Filed 2/26/07	$421,589.98
• NYS Commissioner of Labor	Filed 3/7/07	$9,146.19
• NYS Department of Taxation and Finance	Filed 3/13/07	$87,747.12

The judgments filed against Duramax Heavy total $518,483.29.[7] See Lexis/Nexis printouts, Duramax Heavy Excavation and Foundation, Monday, September 17, 2007.

[7] A judgment and lien search conducted on January 9, 2008 revealed that the above judgments were still outstanding. Further, on December 20, 2007, an additional judgment for $4,635.39, filed on behalf of the NYS Commissioner of Labor, was docketed against Duramax Heavy. Additionally, a judgment and lien search conducted on September 17, 2007 revealed the following outstanding judgments and/or liens filed against Duramax Construction, Duramax Heavy's predecessor: Federal Tax Lien, filed 2/20/06, $117,765.46; Federal Tax Lien, filed 4/17/06, $73,453.83; Federal Tax Lien, filed 8/7/06, $14,226.48; NYS Commissioner of Labor, filed 4/19/06, $4,342.30; NYS Department of Taxation and Finance, filed 4/22/06, $444.79; NYS Department of Taxation and Finance, filed 4/22/06, $48,252.85; NYC Department of Finance, filed 12/18/06, $1,315.13. A subsequent search, conducted on January 9, 2008, revealed that these judgments and liens were still outstanding and that an additional judgment for $167.39 was filed on December 13, 2007, on behalf of NYC Department of Finance against Duramax Construction. Therefore, the total amount owed by Duramax Construction is $259,968.23. Consequently, the Applicant and its affiliates owe a total of $783,086.91 in outstanding judgments and liens filed on behalf of tax authorities and other government authorities. During his deposition, Frangipane acknowledged that Duramax

The Commission would deny an application from Duramax Heavy for its failure to pay the above-mentioned judgments. Abstract, as the alter ego of Duramax Heavy, should not be treated differently. In addition, the Applicant does not refute these points. Accordingly, the Applicant's Registration is denied on this independently sufficient ground.

B. The Applicant knowingly failed to provide information and provided false and misleading information to the Commission.

The Commission may refuse to issue a registration to an applicant who has failed "to provide truthful information in connection with the application." See Admin. Code §16-509(b); Attonito, 3 A.D.3d 415. Frangipane submitted false information in Abstract's Registration Application filed with the Commission on September 25, 2006. Further, Frangipane provided false and misleading information to the Commission during his testimony before the Commission on November 16, 2006.

Frangipane certified that the information contained in the Registration Application was complete and truthful. See Registration Application at 16. Question 26 of the application filed with the Commission on September 25, 2006 asks, "Has the applicant business, or any current principal, or any past principal who was a principal in the last three (3) years of the applicant business, ever been convicted of any misdemeanor or felony in any jurisdiction?" Frangipane responded to the question by answering "no." In fact, Frangipane was convicted of assault, a class A misdemeanor, in 1991.

During his deposition, Frangipane was asked about the false statement he made on his application. He stated that it was a "mistake."

> Q: I am referring now to your registration application, question number 26, would you please read it?
>
> A: This is supposed to be yes.
>
> Q: Okay. Right there it's checked of no, to the question if you were ever convicted of a crime; correct?
>
> A: It's a mistake. It's supposed to be yes. I just told you that [it] was.

Frangipane Tr. at 35.

In addition to being untruthful about his criminal history, Frangipane was dishonest about his involvement in the criminal activity surrounding Garafola's arrest and indictment. When asked about Garafola's arrest, Frangipane said that Garafola did "something with the MTA" and that it was "some kind of money thing with elevators and stuff like that, I heard." See Frangipane Tr. at 46. Frangipane also testified that Garafola's criminal activity related to Garafola's company, 5 Boro, and that it occurred

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Construction owed money to the IRS, but claimed the company did not have any other tax liabilities. See Frangipane Tr. at 56-58.

prior to Frangipane becoming partners with Garafola. See id. at 45-46. As previously discussed, however, the criminal activity occurred between 1998 and 2004 and directly involved Frangipane as well as Duramax Construction. See Superceding Information at 2, 9-12.

Moreover, as part of the criminal investigation into Garafola and his companies, United States Department of Labor personnel interviewed Frangipane. Specifically, on November 25, 2003, the day a search warrant was executed at Peregrine, Special Agent Marcus Rivera, Office of Labor Racketeering (OLR), interviewed Frangipane at Peregrine's offices. See OIG Form 103, Investigation on 5 Boro, dated 11/25/03 ("Form 103"); Email from Marcus Rivera, Assistant Special Agent in Charge, NY Office of Labor Racketeering and Fraud Investigations ("6/13/07 Rivera email").

When Special Agent Rivera arrived at the site, Frangipane was present. See Form 103; 6/13/07 Rivera email. The agents identified themselves to Frangipane and informed him about the nature of the interview. Id. When asked by Special Agent Rivera about his role at Peregrine, Frangipane represented that he was in charge of the payroll for the company. Special Agent Rivera asked Frangipane how Peregrine's employees were paid and if they were members of a union. In response, Frangipane stated that no employees of Peregrine were paid in cash and that all of Peregrine's employees were members of the union. Special Agent Rivera confronted Frangipane with evidence to refute these statements. Rivera told Frangipane that various employees stated to other interviewing agents that in fact the employees were paid in cash and were not members of any union. At that time, Frangipane refused to continue to speak with the interviewing agents. Id.

Thus, Frangipane's vague assertions at his deposition before the Commission about the circumstances surrounding Garafola's arrest and prosecution are belied by the facts, including Frangipane's own statements to investigators. In addition to being Garafola's business partner, Frangipane himself was implicated in the criminal case as an unindicted co-conspirator. Indeed, although not indicted, he himself furthered the criminal schemes. See Superceding Information 2, 9-12; supra at pages 11-13. It is therefore difficult to believe that Frangipane was unaware of Garafola's criminal conduct as charged in the information, particularly since he was involved. It is also implausible that Frangipane thought the criminal conduct only involved Garafola's company, 5 Boro, when in fact, Frangipane's own company, Duramax Construction, was named in the information. Finally, Frangipane's statements to investigators when the search warrant was executed at Peregrine directly contradict his more recent claims of ignorance at his deposition.

Consequently, it is clear that Frangipane provided patently false and misleading information to the Commission, and the Applicant does not refute this point. This failure to provide truthful information and failure to be forthright with the Commission demonstrates that Frangipane lacks the requisite good character, honesty and integrity to operate a trade waste business in New York City. For this independently sufficient reason, Abstract's Registration Application is denied.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that Abstract falls short of that standard. For the reasons discussed above, the Commission hereby denies Abstract's Registration Application.

This exemption/registration denial decision is effective immediately. The Applicant shall not service any customers or otherwise operate a trade waste removal business in the City of New York.

Dated: January 29, 2008

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Chairman

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation

Alba Pico, Deputy Commissioner (designee)
Department of Consumer Affairs

Kathleen Ahn, Deputy General Counsel (designee)
Department of Small Business Services

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