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 AMERICAN COMPACTION SYSTEMS, INC. FOR RENEWAL OF ITS LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

American Compaction Systems, Inc. ("ACS" or "Applicant") has applied to the New York City Business Integrity Commission (formerly known as the Trade Waste Commission)("Commission") for renewal of its license to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §§16-505(a), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

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

(1) The Applicant's President and Sole Owner is the Subject of a Pending Federal Indictment Charging Him with the Crimes of Conspiracy and Bank Fraud.

(2) The Applicant Failed to Pay Taxes and Fees Related to Its Business for Which Judgments Have Been Entered.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. Beginning in the late 1950's, and until only recently, the commercial carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life":

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

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

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

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

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

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

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

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

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

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

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

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

Local Law 42, § 1.

The criminal cartel operated through the industry's four leading New York City trade associations, the Association of Trade Waste Removers of Greater New York ("GNYTW"), the Greater New York Waste Paper Association ("WPA"), the Kings County Trade Waste Association ("KCTW"), and the Queens County Trade Waste Association ("QCTW"), all of which were controlled by organized crime figures for many years. See, e.g., Local Law 42, §1; United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993). As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have served, they "operate[d] in illegal ways" by "enforc[ing] the cartel's anticompetitive dominance of the waste collection industry." SRI, 107 F.3d at 999.

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

companies they operated. In essence, the carting industry's modus operandi, the cartel, was indicted as a criminal enterprise.

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

The accuracy of the sweeping charges in the indictments has been repeatedly confirmed by a series of guilty pleas and jury verdicts. On October 23, 1996, defendant John Vitale pleaded guilty to a state antitrust violation for his participation in the anticompetitive criminal cartel. In his allocution, Vitale, a principal of the carting company Vibro, Inc., acknowledged that he turned to the trade associations, and specifically to Genovese capo Alphonse Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing another carter from bidding on waste removal services for a "Vibro-owned" building in Manhattan.

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

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

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a $1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from $250,000 to $750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the City's carting industry. The same day, Manhattan carters Henry 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 the City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay $6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and 3⅓ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

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

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick

Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined $900,000, and the GNYTW was fined $9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined $200,000.

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

In sum, it is far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been proven beyond a reasonable doubt. The proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched – extending to and emanating from all of the industry's trade associations, which counted among their collective membership virtually every carter – that it could not have escaped the notice of any carter. These criminal convictions confirm the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, to address this pervasive problem.

B. Local Law 42

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

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may

"refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Although Local Law 42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a).

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

(i) failure by such applicant to provide truthful information in connection with the application;

(ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

(iii) conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

(iv) a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

(v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

(vi) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

(vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

(viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

(ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

(x) failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

ACS was issued a trade waste license with an effective date of November 1, 2000. The license expired on October 31, 2002. See Admin. Code §16-506(a)(licenses are valid for a period of two years). On December 3, 2002, ACS filed with the Commission an application for renewal of its trade waste license for the period from November 1, 2002 to October 31, 2004. See First License Renewal Application. On October 29, 2004, ACS filed with the Commission an application for renewal of its trade waste license for the period from November 1, 2004 to October 31, 2006. See Second License Renewal Application. Both renewal applications are currently pending.

The sole principal and owner of ACS is Dominick Colasuonno ("Colasuonno"). Id. at 5. The staff has conducted an investigation of the Applicant and its principal. On May 3, 2006, the staff issued a 10-page recommendation that the application be denied. See Executive Staff's Recommendation to the Business Integrity Commission to Deny the Application of American Compaction Systems, Inc. for Renewal of its License to Operate as a Trade Waste Business ("Recommendation"). The Recommendation was personally served on the Applicant's President on May 3, 2006, and the Applicant was granted ten business days to respond (May 18, 2006). In addition, a copy of the Recommendation was sent to the Applicant's counsel, Richard Weiss ("Counsel"), via facsimile, on May 4, 2006. See 17 RCNY §2-08(a). At the Applicant's request, the

Applicant was granted two extensions of time to respond until June 2, 2006. On June 2, 2006, the Applicant submitted a 2-page response via facsimile.[1] See Letter from Richard Weiss dated June 2, 2006 ("Response").

The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its license renewal applications.

A. The Applicant's President and Sole Owner is the Subject of a Pending Federal Indictment Charging Him with the Crimes of Conspiracy and Mail Fraud.

On October 25, 2005, an indictment was filed in the United States District Court in the Southern District of New York charging Colasuonno (and his brother, Philip Colasuonno) with the crimes of conspiracy and bank fraud in violation of 18 USC §1344.[2] See Indictment, United States v. Colasuonno, et. al., 05 CR 1110 (SDNY)(AKH)("Colasuonno Indictment"). Such crimes are racketeering activities within the scope of 18 USC §1961.

According to the indictment, Colasuonno and his co-defendant, owners of a check-cashing company called Prima Checking Cashing Inc. ("Prima"), fraudulently inflated the amount of assets reflected in the Prima's audited financial statements (for fiscal years 2001, 2002 and 2003) by almost four million dollars. Id. at 2. The indictment charged Colasuonno and his co-defendant with conspiring to defraud a financial institution, JP Morgan Chase Bank, by providing the false financial statements to the bank in order to obtain financing. Id. at 4; see also Criminal Complaint, United States v. Colasuonno, et. al, 05 MAG 988 (SDNY).

In response, Counsel stated that Colasuonno entered a plea of not guilty and that "there is a presumption of innocence." See Response at 2. Counsel has claimed Colasuonno is mounting a "vigorous defense" to the charges, but has refused to share it

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[1] The Applicant requests an opportunity to appear before the Commission. See Response at 2. This request is denied. It is well established that Commission licensing and registration decisions need not be based on full-fledged, adversarial hearings with witnesses subjected to cross-examination and documents introduced into evidence. See Sanitation and Recycling Industry, Inc. v. City of New York, 107 F.3d 985 (2nd Cir. 1997). Instead, the staff of the Commission prepares a written report summarizing the evidence against the applicant (known as the "recommendation"). The Applicant is then given the opportunity to respond to the written report and may submit written opposition papers, in which the Applicant can submit documents or other evidence and can raise whatever factual questions or policy issues the Applicant deems appropriate. The final decision of Commission is based on the Commission staff's recommendation and the Applicant's response.

[2] According to 18 U.S.C. §1344, "Whoever knowingly executes, or attempts to execute, a scheme or artifice – (1) to defraud a financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both."

with the Commission. Id. Instead, Counsel merely offered the unsupported claim that "the Government never reviewed the financial records" that are the subject of the indictment.

The Commission notes that the presumption of innocence is a legal concept that applies only to criminal trials and not to administrative proceedings before the Commission. Local Law 42 specifically provided that an indictment – a finding of probable cause by a grand jury that a crime had been committed and not a finding of guilt beyond a reasonable doubt - can serve as the basis of a license denial. See Admin. Code §16-509(a)(ii). By failing to offer a substantive or factual defense to the pending indictment and merely relying on Colasuonno's not guilty plea (see Response at 2), the Applicant has not satisfied its burden of demonstrating its eligibility for a trade waste license. "The commission may refuse to issue a license or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter." See Admin. Code §16-509(b).

In determining whether an applicant possesses the good character, honesty and integrity required to operate a trade waste business, the Commission may consider the criminal proceedings pending against the Applicant (or its principal) for crimes that are directly related to the Applicant's fitness for participation in the industry. See Admin. Code §16-509(a)(ii).[3] The pending criminal charges for conspiracy and bank fraud[4] bear directly on the Applicant's fitness to participate and operate in the carting industry. Accordingly, the Commission denies ACS's license renewal applications on this independently sufficient ground.

B. The Applicant Failed to Pay Taxes and Fees Related to Its Business for Which Judgments Have Been Entered.

"[T]he 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" reflects adversely on an applicant's integrity. See NYC Admin. Code §16-509(a)(x).

On February 17, 2006, Waste Services of New York Inc. filed a judgment against ACS in the amount of $34,364 for failure to pay transfer station tipping fees for the disposal of trade waste. See Judgment, Waste Services of New York, Inc. v. American

[3] The Commission has the discretion to defer consideration of an application until a decision has been reached on a pending indictment. See Admin. Code §16-509(a)(ii). A plea of not guilty without more is an insufficient reason to defer consideration of an indictment; doing so would mandate deferral in every case involving a pending indictment and is inconsistent with the statutory provision specifically authorizing the Commission to deny a license application based upon a pending indictment. See Admin. Code §16-509(a)(ii). Given the long history of corruption in this industry, the Commission is not required to wait extended periods of time, often years, for a resolution of an indictment. Given the serious nature of the criminal charges in this case (*see supra* at 9) and the Applicant's failure to offer a substantive response to the staff's recommendation, the Commission declines to exercise such discretion in this case.

[4] The incorrect reference to "mail fraud" in the Recommendation has been corrected to "bank fraud." See Recommendation at 9; Response at 2.

Compaction Systems, Inc., Index #05/18509, filed February 17, 2006 ("Judgment");[5] Lexis/Nexis Judgment and Lien Filing Search Results.[6]

Again, the Applicant fails to offer a substantive response.[7] Instead, Counsel notes that he was unable to locate information concerning this judgment on various Internet websites.[8] He further claims that the Applicant was never served. See Response at 1. Notably, the Applicant does not dispute the underlying debt and has failed to provide any documentation (e.g., invoices, cancelled checks, etc.) demonstrating that all necessary payments were made.

The Applicant attempts to place the burden on Commission to inquire further regarding this judgment. See Response at 1. However, the burden is on Applicant to demonstrate its eligibility for trade waste license. By failing to offer a substantive or factual defense to the outstanding judgment, the Applicant has not satisfied its burden. "The commission may refuse to issue a license or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter." See Admin. Code §16-509(b).

The Applicant's failure to satisfy a business debt that has been reduced to judgment demonstrates that the Applicant lacks good character, honesty and integrity. Based on this sufficient independent ground, the Commission denies the Applicant's renewal applications.

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[5] According to the document on file in the Nassau County Clerk's Office, the actual amount of the judgment is $34,364.11. See Judgment. The Recommendation incorrectly stated that the amount was $345,364 due to a typographical error in the Lexis/Nexis reporting of the judgment. See Recommendation at 10 (citing the Lexis/Nexis Judgment and Lien Filing Search Results).

[6] The staff's recommendation also cited a judgment filed against ACS on September 12, 2005, by the New York State Commissioner of Labor in the amount of $2,051. See Recommendation at 10. The staff has since received documentation from the Applicant that this judgment was satisfied on April 21, 2006.

[7] Furthermore, the Applicant's response has been submitted in improper form; the denial recommendation clearly specifies that any "assertions of fact submitted to the Commission must be made under oath." See Recommendation at 10.

[8] However, a visit to the County Clerk's office in Nassau County where the judgment was filed would have uncovered the document. Regardless, a copy of the actual judgment was obtained by the Commission's staff and provided to Counsel on June 8, 2006. In response, Counsel indicated that he planned to file court papers seeking to vacate the judgment due to improper service at "an address that [his] client moved from," 44 North Saw Mill River Road. See Letter from Richard Weiss, dated June 8, 2006. The Commission notes that the Applicant has repeatedly provided the Commission with the address of 44 North Saw Mill River Road as its main office location and its mailing address. Moreover, the Applicant was recently successfully served with the Recommendation at this purportedly invalid address. Even if the Applicant had moved from that address, as Counsel claims, it had an affirmative obligation to update the Commission regarding this material change in its application information, and its failure to do so reflects poorly on its business integrity. See Admin. Code §16-508(c).

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that ACS falls far short of that standard. It is of grave concern to the Commission that the Applicant's President is the subject of a pending federal indictment charging him with the crimes of conspiracy and bank fraud and that the Applicant has failed to satisfy its business debts that have been reduced to judgment. Based upon the above independently sufficient reasons, the Commission denies ACS's renewal applications.

This license denial decision is effective fourteen days from the date hereof. In order that the Applicant's customers may make other carting arrangements without an interruption in service, the Applicants are directed (i) to continue servicing their customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to immediately notify each of their customers of such by first-class U.S. mail. The Applicant shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: June 20, 2006

THE BUSINESS INTEGRITY COMMISSION

Thomas McCormack
Chair

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner by Daniel D. Brownell designee
Department of Investigation Deputy Commissioner

Jonathan Mintz, Commissioner
Department of Consumer Affairs

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

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