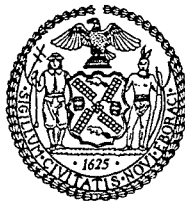


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THE CITY OF NEW YORK  
TRADE WASTE COMMISSION  
253 BROADWAY, 10TH FLOOR  
NEW YORK, NEW YORK 10007

**DECISION OF THE TRADE WASTE COMMISSION DENYING  
THE APPLICATIONS OF CARBONE CARTING CO., INC. AND  
CONSUMER RUBBISH REMOVAL, INC. FOR LICENSES TO  
OPERATE AS TRADE WASTE BUSINESSES**

Carbone Carting Co. ("Carbone") and Consumer Rubbish Removal, Inc. ("Consumer") (collectively, the "Applicants") have applied to the New York City Trade Waste Commission (the "Commission") for licenses to operate as trade waste businesses 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 the City of New York, 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 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 failure to provide truthful information in connection with the license application and engaging in anti-competitive and racketeering acts. See id. § 16-509(a)(i), (v). Based upon the record as to the Applicants, who have common principals and are operationally interrelated, the Commission finds, for the following independently sufficient reasons, that the Applicants lack good character, honesty, and integrity, and denies their license applications:

- (1) Victor Lazaro, the president of Carbone and a principal of both Applicants, served as a member of the Board of Directors of the mob-controlled Kings County Trade Waste Association ("KCTW") from 1990 until 1996.
- (2) The Applicants made claims for compensation for lost stops through the intermediary of Frank Giovinco, head of the mob-controlled Greater New York Waste Paper Association ("WPA").
- (3) Victor Lazaro and his brother, Joseph Lazaro, failed to provide truthful information to the Commission regarding Victor Lazaro's service on the Board of Directors of the KCTW, the Applicants' anti-competitive activity in connection with the KCTW and WPA, and the existence of the organized crime-controlled cartel.

## **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 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 . . . 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 WPA, the 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 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 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 waste 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 (1<sup>st</sup> Dep't 1999).

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

## **B. Local Law 42**

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

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



and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Although Local Law 42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a). Carbone and Consumer hold DCA licenses and timely submitted license applications to the Commission; thus, they are legally entitled to operate pending the Commission's determination of their applications.

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

### A. Background

Carbone and Consumer submitted their license applications to the Commission on August 29, 1996. On May 30, 2002, the Commission's staff issued a 22-page recommendation that the Commission deny the Applicants' license applications. The staff delivered a copy to each Applicant by hand the same day. Pursuant to the Commission's rules, the Applicants had 10 business days to submit a written response. See Chapter 17 of the Rules of the City of New York, Section 2-08(a). Neither Applicant submitted a response. The Commission has considered the staff's recommendation in rendering its determination, and for the independently sufficient reasons set forth below, the Commission finds that the Applicants lack good character, honesty, and integrity, and denies their license applications.

The Applicants are small, Brooklyn-based carters.<sup>1</sup> The Commission has considered them together because they have the same principals and share office space, equipment, and staff.

Carbone was incorporated in 1959 by Anthony Carbone, Frances Carbone, and Joseph Occhiogrosso. See Carbone License Application ("Carbone Lic. App.") at 5. Victor Lazaro ("Victor") started as an employee at Carbone, eventually becoming partners with Anthony Carbone. See Deposition of Victor Lazaro ("VL Dep."), October 22, 2001, at 10. Around 1980, when his partner passed away, Victor acquired 100% ownership by purchasing the interests of Anthony's wife, Frances. See id. at 10-11. Victor is the president of Carbone. Carbone Lic. App. at 86.

Currently, Victor (DOB: 4/30/41) and Joseph Lazaro ("Joseph") (DOB: 11/28/46) are the principals of Carbone. See id.<sup>2</sup> The office is located at 4118 2<sup>nd</sup> Avenue, Brooklyn. See id. at 1. The garage is next door,

<sup>1</sup> Carbone has approximately 300-350 customers and Consumer has approximately 60-70.

<sup>2</sup> Carbone's application listed Victor, Joseph, and Anthony Lazaro ("Anthony") (DOB: 3/5/65) as principals. See id. at 86-87. However, Anthony, Victor's son, is no longer a principal. See Deposition of Victor Lazaro, October 22, 2001, at 8.

at 4120 2<sup>nd</sup> Avenue. See id. The Lazaro brothers own these properties. See VL Dep. at 35.

Consumer was incorporated in 1975. See Consumer Lic. App. at 6. It shares the same office space and garage with Carbone. See id. at 1. Joseph and Victor equally own Consumer. See id. at 95. Joseph is the president of Consumer. With respect to both applicants, the brothers have overlapping responsibilities and make joint decisions. See Deposition of Joseph Lazaro (“JL Dep.”), January 7, 2002, at 29.

## **B. Grounds for Denial of the License Applications**

### **1. Victor Lazaro, the president of Carbone and a principal of both Applicants, served as a member of the Board of Directors of the mob-controlled Kings County Trade Waste Association (“KCTW”) from 1990 until 1996.**

Carbone and Consumer were long-standing members of the KCTW from 1976 until May 1996. See Carbone Lic. App. at 131; Consumer Lic. App. at 110. In addition, Victor Lazaro served on the Board of Directors of the KCTW (the “Board”) from 1990 until May 1996. See Carbone Lic. App. at 132; Consumer Lic. App. at 111. Victor resigned on May 2, 1996. See Letter to KCTW from Victor Lazaro, dated May 2, 1996, Carbone Lic. App. at 153. During its last five years of membership, Carbone paid \$10,200 in dues and \$15,000 in “legal fees.” Carbone Lic. App. at 143. In the same time frame, Consumer paid \$6,900 in dues and \$13,000 in “legal fees.” Consumer Lic. App. at 115.

As discussed in the introduction, the trade associations were convicted for enforcing a criminally anti-competitive “property rights” system. In addition to evidence presented in those prosecutions by the Manhattan District Attorney (the “DA”), the Commission’s staff, in the course of its own investigations, has accumulated a large body of evidence of the associations’ racketeering activity. Numerous carters have testified that it was common knowledge that organized crime was involved in the carting industry and controlled the trade associations. See, e.g., Transcript of Deposition of Dominick Incantalupo, May 7, 1999 (“TDI”), at 55-56; Transcript of Deposition of William Falletta, July 28, 1999, at 54-60;

Transcript of Deposition of Anthony DiNardi, August 4, 1999, at 80-81; Transcript of Deposition of William R. Falletta, August 24, 1999, at 63 (function of association “was to . . . straighten out any kind of disputes or settlements as far as stops or accounts”); Transcript of Deposition of Albert Capone, August 15, 2000, (“TAC”) at 34 (carting companies in trade associations had “a right to service particular customers that should be respected by other carters”; *id.* at 109 (“Well, it was always a known thing, you know. The association always went along with organized crime.”). The picture was clear:

[T]he primary function of the trade associations . . . was to enforce “rules” designed to protect the rights of member carters “in good standing.” A member “in good standing” was a carter who respected the property rights of other member carters and was willing to pay the pre-determined multiple price for any route or “stop” that changed hands. By virtue of the “rules” no carter would solicit another member carter’s customers. For the most part, all of the carters obeyed this rule and there was no need to ask the trade associations to enforce it.

CI #15613 Aff. ¶ 4; accord CI #15407 Aff. ¶¶ 3, 5.

In the event of a dispute between two member carters over which one had the “right” to service a particular customer, the carters ordinarily would try to resolve the dispute through “swaps” of customer stops or similar compensation arrangements. See CI #15407 Aff. ¶¶ 6-9; CI #15613 Aff. ¶¶ 5-9. If the carters could not resolve the dispute themselves, either carter could submit the dispute to the trade association for mediation and resolution. See CI #15407 Aff. ¶ 9; CI #15613 Aff. ¶ 9. The dispute would first be presented to the association’s board of directors, which would hear from each carter and then vote its decision; in most cases, the losing carter would abide by the board’s decision. See id. Occasionally, however, the losing carter would request intervention by the association’s “business agent,” *i.e.*, organized crime’s appointed representative, whose decision was final. See CI #15407 Aff. ¶¶ 10-12; CI #15613 Aff. ¶¶ 10-12. In short, “everybody knew what the rules were.” TDI at 82; see also TAC at 126 (regarding the cartel’s property rights system, “it is pretty much common knowledge of what went on since forever”); *id.* at 45-46 (“word on the streets my whole life”).

As the Second Circuit found in SRI, regardless of whatever limited legitimate purposes these trade associations might have served, they “operate[d] in illegal ways” by “enforc[ing] the cartel’s anti-competitive dominance of the waste collection industry.” SRI, 107 F.3d at 999. The Court further observed that “[t]he association members – comprising the vast majority of carters – recognize the trade associations as the *fora* to resolve disputes regarding customers.” Id.

The Commission may refuse to issue a license to an applicant that has committed a racketeering act, including any predicate crime listed in New York’s Organized Crime Control Act. See Admin. Code § 16-509(a)(v); N.Y. Penal Law § 460.10(1). Among those crimes are felonies under Article 22 of the General Business Law. See Penal Law § 460.10(1)(b). Among those felonies is combination in restraint of trade and competition, in violation of section 340 of the General Business Law. See N.Y. Gen. Bus. Law § 341.

As recounted above, in early 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a \$1 million fine. In addition, KCTW president Frank Allocca, vice-president Daniel Todisco, and secretary Raymond Polidori, pleaded guilty to enterprise corruption or criminal antitrust charges. See supra at 6. In their allocutions, they confirmed the existence of the criminal cartel in the City’s carting industry and admitted to specific instances of their participation in it. Victor Lazaro testified that these very same individuals were among his fellow Board members. See VL Dep. at 40. Apart from the Applicants’ unsupported assertions, there is nothing in the record that explains why Lazaro alone would be exempt from the rules to which all other Board members were subject. To the contrary, the vast weight of the evidence, including Victor’s service as a Board member during the time the KCTW and these individuals engaged in many of the criminally anti-competitive activities underlying their convictions abundantly supports the conclusion that he was also engaged in those same activities. In view of the record as a whole, Victor Lazaro’s service on the KCTW Board of Directors serves as a basis for concluding the Applicants lack good character, honesty, and integrity. See Admin. Code § 509(a)(v).

**2. The Applicants made claims for compensation for lost stops through the intermediary of Frank Giovinco, head of the mob-controlled Greater New York Waste Paper Association (“WPA”).**

**a. The evidence produced in the DA prosecutions.**

The DA’s successful investigation of the City’s carting industry cartel was due in large part to the cooperation of one carting company, Chambers Paper Fibres (“Chambers”). See Search Warrant Affidavit of Det. Joseph Lentini, sworn to June 5, 1995 (“Lentini Aff.”), ¶¶ 9-11, 13.<sup>3</sup> Chambers operated as an “outlaw,” i.e., a company that did not belong to the association and did not abide by the rules of the property rights system. See generally id. Because Chambers took the customers of association members, frequently by offering lower prices to customers, it was soon subjected to demands for payments by member carters and the officers of the associations and eventually threats and violence as a means of inducing it to join the KCTW and the WPA. Finally, Chambers agreed to join. Once a member, Chambers had to adhere to the property rights system and, most importantly, settle customer disputes with association members. See id. at ¶¶ 34-36, 50. See also Testimony of Detective Richard Cowan, People v. Association of Trade Waste Removers of Greater New York, et al. (hereinafter “TWR”), supra, June 19, 1997.

More specifically, Cowan testified that once Chambers became an association member, it was placed “on the board” at the association for 90 days, during which time other members could make a claim for compensation against Chambers for any stops they had lost to Chambers before it joined the KCTW and WPA. See id. at 4161-4162. Generally, such claims were presented to Cowan by the officers of the associations -- Allocca, Todisco, and Polidori for the KCTWA, and Giovinco for the WPA -- who received them from the members.<sup>4</sup> Allocca and Giovinco presented Cowan with the names of carters making such claims. See, e.g., id., June 23, 1997, at 4224-4225; id., June 24, 1997, at 5389, 5399, 5428-5429, 5465-

<sup>3</sup> During the DA’s prosecutions, the DA relied heavily upon the testimony of Detective Richard Cowan, who worked undercover in the carting industry in the early 1990s as an employee of Chambers. As a witness, Cowan interpreted for the jury much of the evidence seized from the offices of the trade waste associations and carting companies. Evidence that proved the existence of the property rights system included records of disputes between carters over particular stops.

<sup>4</sup> Unless the members informed the officers that they were claiming against Chambers, the officer would have no way of knowing that Chambers had “taken” the stop of any given member. Certainly, Chambers would not volunteer such information.

5466. These documents came to be known as the "Claims Lists." See, e.g., id., June 23, 1997, at 4224-4225.

One set of such claims lists consisted of five lined pages of yellow notebook paper with handwritten notes: Exhibits 396, 396A, 396B, 396C, and 396D. Frank Giovinco gave these lists to Cowan in late 1993. See id., June 25, 1997, at 5497-5498. Each page of this claims list had the name of a carter or several carters, most of which had one or more business names and addresses beneath them. See id., Exhibits 396, 396A, 396B, 396C, 396D. Exhibit 396B lists four carting companies, including "Consumers Rubbish." Two of the other carting companies are followed by the name of one or two customers, and the third carter is followed by the notation, "we'll get location[.]" See id. Ex. 396B. Consumer Rubbish is followed by the notation, "2 stop will get location for you". Id. Exhibit 396C, which is attached, lists Carbone. The names and locations of two establishments are listed underneath: "Rays 1280 Fulton St." and "Roy's Children Wear 1286 Fulton St." Exhibit 396C. That the Applicants serviced these customers was confirmed by the Lazaros' later deposition testimony before the Commission. See below at 16-17.

**b. The Claims List and the Lazaros' testimony establish that the Applicants participated in, and benefited from, the KCTW's anti-competitive activity.**

The Applicants, two small businesses, paid \$35,100 to the KCTW in just five years. This large sum of money far exceeds the value of any legitimate benefits that membership might confer. Instead, as the Claims List demonstrates, membership gave the Applicants the right to invoke the rules of the property rights system. Membership yielded the valuable, but illegitimate, benefit of compensation for lost stops.

The staff questioned the Lazaros about the customers on the Claims List and customer disputes generally, without disclosing that the staff had obtained this evidence. Victor testified that he remembered he serviced "Ray's" at "1280 Fulton Street." VL Dep. at 62. He also recalled Carbone serviced "Roy's Children-wear" "next door" at 1286 Fulton Street. Id. at 63. Joseph did not recall if Carbone serviced these particular customers, but he stated that "we" pick up on Fulton Street in Brooklyn. JL Dep. at 59. Carbone's file contains its 1995 customer list, which includes numerous businesses on Fulton Street in Brooklyn, including two customers at 1269



and 1270. See Customer List, Waiver Application of Carbone Carting Co., Inc. (#W-97-0092). The evidence irrefutably establishes that Carbone serviced the customers on the Claims List, and it is more than sufficient to establish Carbone serviced these customers prior to 1993, when Frank Giovinco gave the Claims List to the undercover.

Faced with evidence including the Claims Lists, Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption, a felony, and agreed to a prison sentence of 3½ to 10½ years. Based on the entire record, the evidence shows the Applicants engaged in anti-competitive acts specifically by seeking compensation from Chambers for the two stops on Giovinco's Claims List. This type of compensation arrangement epitomized the anti-competitive cartel's modus operandi. These facts plainly support a finding that the Applicants lack good character, honesty, and integrity, and the denial of its license application. See Admin. Code § 509(a)(v).

3. **Victor Lazaro and his brother, Joseph Lazaro, failed to provide truthful information to the Commission regarding Victor Lazaro's service on the Board of Directors of the KCTW, the Applicants' anti-competitive activity in connection with the KCTW and WPA, and the existence of the organized crime-controlled cartel.**

- a. **Victor Lazaro's Testimony**

Victor testified before the Commission's staff that he did not hear until the mid-90s that organized crime was involved in the trade waste associations. See VL Dep. at 50-51. He also testified that he did not hear until the mid-90s that the trade waste associations, in particular, were connected to organized crime. Id. at 50-52. He claimed he learned this information from the media, which covered extensively the Manhattan District Attorney's prosecutions in the mid-90s (the "DA prosecutions"). See id. at 52. Victor acknowledged hearing about the property rights system, yet he insisted that he did not have any part of it: "[I] wouldn't support it. I don't condone that stuff." Id. at 85-86.

Victor testified that he attended meetings of the KCTW about three times a month during the 90s. See id. at 84. He named some of his fellow Board members: Frank Allocca, Dan Todisco, Carl Bivona, Raymond Polidori, Ralph Morea, and Pat Morea. See id. at 40. Victor recognized the name Alfonse Malangone, whom he identified as the KCTW's "administrator." Id. at 74-75.<sup>5</sup> Victor admitted hearing that Malangone was connected to organized crime, but claimed the source was only the media and then not until 1995 or 1996. See id. at 75.

Victor testified that as a member of the Board he sometimes listened to carter's grievances, but he never participated in resolving them. See id. at 41-47, 86-87. He denied ever attending a meeting where the Board decided that one carter's right to service a particular customer trumped the claim of another carter to service that customer. See id. at 42-44. It was possible that

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<sup>5</sup> "Administrator" was the same title sardonically assumed by Malangone, a Genovese capo, and the other members of organized crime who ran the various trade waste associations. See June 24, 1997, at 5453 (Gambino capo James Failla laughingly refers to himself as the "administrator" of the GNYTW). See also Affidavit of Detective Joseph Lentini, June 1995, at ¶104. Occasionally, organized crime figures were more candid. See Lentini Aff. at ¶100, 102 (Gambino soldier and GNYTW business agent Joseph Francolino describes himself as "the f\*\*ing boss") when introducing Malangone to Cowan).

other Board members made such decisions outside of his presence, but he denied knowing their identity. See id. at 45. He denied hearing that the Board ever told a carter to give a stop back to another carter, but “that could have happened.” Id. at 46-47. He also denied participating in any Board decision to make a carter swap a stop. Id.

Victor also denied that the Applicants had any customer disputes. He specifically denied having any disputes regarding the customers on the Claims List. VL Dep. at 64. Victor also denied ever having any customer disputes with Chambers, specifically. Id. at 66. He testified that he lost the stops, but he denied having a dispute over them with another carter. Id. at 64. He added quickly, though, “I mean in a conversation, not specifically that I would go to them and say I lost a stop. It could be a conversation of yes, I lost a stop too.” Id. He denied he complained to the carter that took the stop, because he did not know who it was. See id.

Victor was just as equivocal about complaining to the KCTW about losing these stops:

Q: Do you recall ever complaining to another member of the association or to the [B]oard that you lost these two stops?

A: I might have mentioned it. It could have been anybody. We could have been talking and I mentioned it.

Q: I mean specifically to a member with the purpose of trying to get the stop back or to get compensation for it?

A: Not that I know of, no.”

Id. at 64-65. Initially, he also denied knowing Frank Giovinco. See id. at 65. But then he testified that he did not know if he ever met him. See id. He also denied losing any stops to Chambers and ever having a dispute with Chambers. See id. at 65-66.<sup>6</sup>

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<sup>6</sup> The Applicants’ failed to disclose these two lost stops and the compensation claims in their license application, which they submitted in August 1996 (prior to the 1997 guilty pleas described above.) The license application form specifically calls for such information. See Part II, Questions 2-3, Carbone Lic. App. at 132; id., Consumer Lic. App. at 111. This is another instance in which the Applicants failed to provide the Commission with truthful information.

## b. Joseph Lazaro's Testimony

Joseph feigned even greater ignorance than Victor. He acknowledged reading in the media about organized crime's involvement in the trade waste industry. JL Dep. at 47. He claimed, however that he only acquired this information two to three years before his deposition, which took place in 2001, six years after the DA prosecutions. Id. at 74. The only specific crime Joseph could remember was bid-rigging, although he further testified that the Commission came into existence because carters were also "falsifying records" and "inflating prices." Id. at 51. Joseph claimed he had no independent experience to support what he read. See id.; see also id. at 47.

Initially, Joseph acknowledged hearing that organized crime was involved specifically in the trade waste associations. See id. at 47. Later in his deposition, he contradicted himself, not once but twice. He testified that he had never heard, even up until the day of his deposition, that organized crime was involved in the trade waste associations. See id. at 75-76. Joseph was aware of the Applicants' KCTW membership, but he offered the familiar carters' incantation when asked the reason for joining. See id. at 39-40. He listed all of the legitimate benefits, omitting the illegal ones. See id. Joseph flatly denied any knowledge of the property rights system. See id. at 55-57.

Joseph was also aware that his brother was a member of the Board. See id. at 46. Nevertheless, he claimed to know virtually nothing about the KCTW, the Board, or his brother's role. His testimony was especially vague and convoluted when the staff asked him what caused the Applicants to resign from the KCTW in May 1996, almost a year after the DA's indictments. See generally JL Dep. at 44-51. Victor testified that the KCTW had ceased to function, but he claimed he did not know why. Id. at 44. When asked how he could not know – given his brother was on the Board, Joseph's explanation can best be summarized as a "don't ask, don't tell" policy with Victor concerning the KCTW. See id. at 44-46. When pressed, Joseph was unwilling or unable to state why he did not want to ask Victor any questions about the KCTW:

Q: \* \* \* What did your brother tell you in terms of what the problems are or were at the [KCTW]?

A: \* \* \* I didn't even want to hear it, didn't even want to hear it. I never wanted to be bothered with it.

Q: Why didn't you want to hear it? What was \* \* \* to be avoided that you didn't want to hear about what happened? What was it that concerned you that would hear, sounds like a see no evil hear no evil approach.

A: \* \* \* I said, "Vic, I'm not concerned, take care of it. \* \* \*  
\* I'll keep the truck rolling as long as I can and service the customers as long as I can.

Id. at 45-46. Not surprisingly, with regard to the customers on the Claims List, Joseph's testimony consisted of the same denials as Victor's testimony. See generally id. at 57-61.

The Lazaros professed ignorance, until the mid-90s or even up until the time of their depositions, of the following facts: 1) organized crime controlled the carting industry, 2) it exercised that control through the trade waste associations, and 3) carters operated under a property rights system. This was a self-defeating tactic in light of the overwhelming evidence from multiple authoritative sources that these facts were widely known, for decades, to anyone in the industry.<sup>7</sup> In addition to these general denials, they denied any customer disputes or compensation claims specific to the Applicants. Not a shred of credibility remains in light of the Claims List, evidence of the Applicants' complicity in a large-scale compensation scheme orchestrated by WPA "administrator," Frank Giovinco, at the height of his power

Given the criminal history of the KCTW and its Board members, Victor's spin on his Board service as passive and benign is not surprising. Victor would have the Commission believe that, despite the DA prosecutions proving, with enormous success, that all the trade waste associations were beehives of criminal activity, Victor personally heard not so much as a buzz. Joseph's portrait of himself as having erected a "Chinese Wall" between himself and his brother on Board matters is no more believable. While Joseph was less active vis-à-vis the Board, his "see-no-

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<sup>7</sup> Once before, the Commission explicitly denied the Applicants' "conclusory assertions" that they did not participate in, nor were aware of, the unlawful activities of KCTW during their membership. The Trade Waste Commission's Decision Denying the Waiver Application of Carbone Carting Co., Inc., November 22, 1996, at 15; The Trade Waste Commission's Decision Denying the Waiver Application of Consumers Rubbish Removal, Inc., November 22, 1996, at 15. Notably, the Applicants did not avail themselves of the opportunity to respond to the recommendation of the Commission's staff to deny their waiver applications. Likewise, as noted *supra*, the Applicants did not respond to the recommendation of the Commission's staff to deny these license applications.

evil" approach, even if credited, cannot save him. He obviously knew the Board was up to no good or he would not have turned a blind eye and a deaf ear to news of the KCTW. Accordingly, Joseph's studied avoidance demonstrates no better integrity than his brother.

By stonewalling, the Lazaros showed their failure to break with the past and with the culture of corruption that gripped the industry. Complete candor is crucial in the context of licensing investigations, particularly given that depositions are conducted under oath. Indeed, failure to provide truthful information in connection with a license application is one of the enumerated grounds for denial of the application. See Admin. Code § 16-509(a)(i). Given the Lazaros' false testimony on matters both general and specific, the Commission determines that the Lazaros lack good character, honesty, and integrity.<sup>8</sup>

### 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, two independently sufficient grounds establish that the Applicants are unfit for licensure. Accordingly, the Commission concludes that the Applicants lack good character, honesty, and integrity, and denies their license applications.

This license denial decision is effective fourteen days from the date hereof. In order that the Applicants' customers may make other carting arrangements without an interruption in service, the Applicants are directed (i) to continue servicing their customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to send a copy of the attached notice to each of their customers by first-class U.S. mail by no later than July 5, 2002. The Applicants shall not service any customers, or otherwise operate as trade waste removal businesses in the City of New York, after the expiration of the fourteen-day period.

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<sup>8</sup> In March 2002, Mo's Carting, Inc., a TWC Licensee, submitted an application to purchase the Applicants. The Commission's staff reviewed this application and determined that it was not viable. Moreover, the Applicants cannot avoid a denial by submitting a sale application at the eleventh hour.

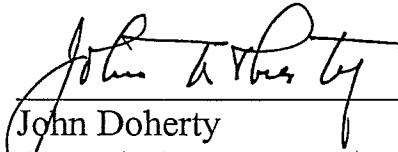
Dated: June 27, 2002

THE TRADE WASTE COMMISSION



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José Maldonado  
Chairman



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John Doherty  
Commissioner  
Department of Sanitation

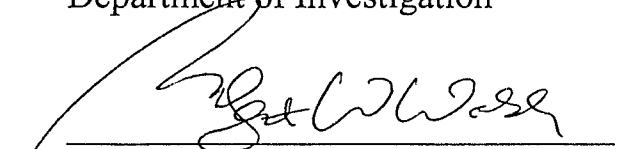


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Gretchen Dykstra  
Commissioner  
Department of Consumer Affairs

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Rose Gill Hearn  
Commissioner  
Department of Investigation



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Robert Walsh  
Commissioner  
Department of Business Services