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

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE APPLICATION OF CITY WIDE WASTE SERVICES FOR A LICENSE TO OPERATE A TRADE WASTE BUSINESS

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

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant, who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The 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 as to the Applicant, the Commission finds that City Wide lacks good character, honesty, and integrity and denies its license application for the following independent reasons:

(1) The Applicant has previously been found to lack the "requisite reliability, competence, expertise and integrity" to participate in the State of New Jersey's solid waste industry.

(2) City Wide Waste Services failed to disclose information regarding principal Thomas DeCuollo's licensing history in New Jersey and provided false and misleading information in connection with its license application.

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).

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

City Wide filed with the Commission an application for a trade waste removal license on April 4, 2000. The Commission's staff has conducted an investigation of the Applicant. On September 15, 2003, the staff issued a 25-page recommendation that the application be denied. The staff mailed copies of the recommendation to the Applicant and to the Applicant's attorney, Ronald Bergamini the same day. Pursuant to the Commission's rules, the Applicant 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). On September 24, 2003, Thomas DeCuollo, the president of the Applicant, orally informed a member of the Commission's staff, that he did not receive the recommendation because his home and business address changed.[1] The staff then mailed a second copy of the recommendation to the Applicant at its new address the same day. See September 24, 2003 letter from

[1] "An applicant for a license... shall notify the Commission within ten calendar days of any material change... in the information submitted in an application or disclosure form..." See 17 Rules of the City of New York §2-05(a)(2). "Notification... shall be sworn and notarized and shall be signed..." See 17 Rules of the City of New York §2-05(c). The changes in business and personal addresses are plainly material. See Rules of the City of New York §1-01.

David Mandell to Thomas DeCuollo. The Commission's staff also extended the Applicant's time to submit a response, sua sponte, by an additional 10 business days to October 8, 2003. See Id. On or about October 3, 2003, the Applicant's attorney sent the Commission a facsimile, and requested an additional "10 day extension to respond" to the staff's recommendation. See October 3, 2003 facsimile from Angella D'Ambrosio of attorney Ronald Bergamini's office to David Mandell. On October 8, 2003, the Commission's staff extended the Applicant's time to submit a written response to reply to October 24, 2003. See October 8, 2003 letter from David Mandell to Ronald Bergamini. The Applicant has failed to submit a response to the recommendation. The Commission has carefully considered both the staff's recommendation and the Applicant's failure to respond. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application.

III. THE APPLICANT

The Applicant business was organized on January 14, 2000. See License Application at 3. The sole principal of the Applicant is Thomas DeCuollo ("DeCuollo"). Although not yet in operation, the Applicant maintains an office at 2300 West 7th Street, Brooklyn, New York. See id. at 1.

From 1981 to 1998, Thomas DeCuollo was the sole owner of DeCuollo Disposal, a trade waste business. In 1989, DeCuollo also established TDC New Jersey Recycling, Inc., ("TDC") a recycling company. Both companies were located in Plainfield, New Jersey. A summary of DeCuollo's licensing history in the State of New Jersey is set forth below.

In 1986, Thomas DeCuollo t/a "DeCuollo Disposal" ("DeCuollo Disposal") filed an application before the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste ("DEP") to retain its solid waste license under N.J.S.A. 13E-126 *et seq.*, also known as the A-901 Act ("A-901"). Since DeCuollo Disposal was engaged in the transportation and disposal of solid and hazardous waste prior to the 1984 enactment of the A-901 program, it was considered a "grandfathered" transporter, and was allowed to continue to operate pending A-901 review. See State of New Jersey Department of Environmental Protection Final Decision ("Final Decision") at 4.

While its A-901 application was pending, between March 13, 1990 and April 3, 1991, the Union County Utilities Authority ("UCUA"), issued seven summonses to DeCuollo Disposal alleging numerous violations of the New Jersey Solid Waste Management Act. The summonses alleged that DeCuollo Disposal operated a solid waste facility illegally, failed to dispose of solid waste at the designated transfer facility, and stored solid waste in excess of twenty-four hours. Id.

On August 8, 1991, the UCUA moved by Order to Show Cause why DeCuollo Disposal should not be enjoined from operating the facility. On September 9, 1991, DeCuollo Disposal was enjoined by New Jersey Superior Court Judge John M. Boyle from operating a solid waste facility and/or transfer station. See Id. at 4-5.

On October 28, 1991, the Union County Utilities Authority commenced an enforcement action against DeCuollo Disposal. On August 9, 1993, following a twenty-six day bench trial, Judge Christopher Dietz found that DeCuollo Disposal had failed to dispose of solid waste at the Automated Modular Systems Transfer Station on July 25, 1990 and August 9, 1990 as required by N.J.A.C. 7:26-6.5(u)(4); had permitted solid waste to be stored in a solid waste vehicle for more than twenty-four hours during the period from July 26, 1990 to March 6, 1991, in violation of N.J.A.C. 7:26-3.4(c); and had operated a solid waste facility or transfer station without a permit on March 31, April 2, and August 8, 1991, in violation of N.J.A.C. 7:26-2.8(f) and (g). See id. at 5.

As a result of the above findings, Judge Dietz assessed penalties of $155,000 against DeCuollo Disposal. In addition, Judge Dietz found DeCuollo Disposal liable for attorneys fees and for the costs of the UCUA's investigation. Judge Dietz also directed the company to cease and desist operating as a solid waste facility and appointed a receiver to review its business operations. Later, in his penalty opinion, Judge Dietz noted that:

> "DeCuollo believes that the Environmental Protection laws are not designed to protect the environment, but to harass business people;"

See November 9, 1995 Opinion of Justice Christopher Dietz ("Dietz Decision") at 8.

On appeal, the Appellate Division affirmed the trial court's findings of liability against DeCuollo but vacated the sanctions and remanded with instructions to the trial court to justify the fees, costs and sanctions imposed. On remand, by decision dated November 9, 1995, the Court reaffirmed its prior imposition of penalties against DeCuollo but deferred and held in abeyance $70,000 until August 8, 1998, unless a further violation was adjudicated during that period. The conditional reduction in the sanctions was a result of the Court finding one mitigating factor: that DeCuollo Disposal had been "infraction free" for two years. In reimposing the fees, costs and sanctions, Judge Dietz found that Thomas DeCuollo had a "cavalier indifference to the environment," and that:

> "[DeCuollo's] business activity which resulted in determinations of violations of N.J.A.C. 7:26-1 et seq. and his conduct at trial manifested a lack of responsibility to the environment. The mere words in the trial transcript cannot document the casual indifference and nonconcern exhibited. It was apparent that environmental regulation was a tolerated harassment incident to the cost of doing business."

See Dietz Decision at 8. Judge Dietz also stated that:

> "During trial, defendant's conduct and inconsistent testimony lacked credibility and created a cloud undermining any reasonable expectation for future integrity."

See Id. at 11.

On June 2, 1994, the DEP issued a Notice of Revocation to DeCuollo Disposal, which alleged that the company's violation of environmental regulations established that it could not demonstrate the requisite reliability, competence, and expertise under N.J.S.A. 13:1E-133(a). It was further alleged that DeCuollo Disposal pursued economic gain in an occupational manner or context which violated the civil policies of the State of New Jersey, and was thus disqualified under N.J.S.A. 13:1E-133(e). See id.

On July 27, 1994, DeCuollo Disposal requested a hearing on the Notice of Revocation. On November 21, 1994, the matter was transmitted to the Office of Administrative Law for determination as a contested case. On September 25, 1995, the DEP moved for a summary decision. On February 2, 1996, the motion was denied, but the Administrative Law Judge ("ALJ") found that DeCuollo Disposal had violated the solid waste laws and regulations as determined in the prior Superior Court proceeding. ALJ Mumtaz Bari-Brown ruled that the company could not re-litigate the violations found by Judge Dietz but was entitled to a plenary hearing on the "ultimate issue" of whether or not license denial and revocation was warranted. See February 8, 1996 Summary Decision.

On February 26, 1996, a hearing was held before ALJ Bari-Brown on the notice of revocation of grandfather[ed] operating status issued to DeCuollo Disposal. At the hearing, DeCuollo's testimony contradicted the evidence in the record on several important points. First, DeCuollo testified that other than the seven violations found by Judge Dietz, he had never received a summons from the DEP. See February 26, 1996 DEP Hearing Tr. at 124. However, at least one of his annual A-901 disclosure statements submitted to the DEP Bureau of Background Disclosure Review listed numerous summonses or citations issued by the DEP. See id. at 126-128. Moreover, Judge Dietz had found that prior to the Superior Court action, DeCuollo Disposal had pled guilty to six waste flow violations charged by DEP. See Dietz Decision at 10.

Also, DeCuollo testified before Judge Dietz, that he had not received any waste flow summons since the 1991 summonses from the UCUA. See February 26, 1996 DEP Hearing Tr. at 44-45. However, before the ALJ, DeCuollo stipulated that since 1991, DeCuollo Disposal has been issued and received 148 Notices of Violations ("NOVs") from Middlesex County for alleged violations of the State's solid waste laws. Seventy-four of the NOVs resulted in penalty assessments for waste flow violations, while the remaining seventy-four NOVs were for falsifying origin and destination forms. Each of these 148 NOVs resulted in penalty assessments. To date, none of the NOVs issued by Middlesex County have been adjudicated. DeCuollo also stipulated that DeCuollo Disposal received thirteen NOVs from Somerset County for alleged violations of the state's waste flow rules. None of these NOVs have been adjudicated. Furthermore, DeCuollo stipulated that on or about April 15, 1993, the Union County Utilities Authority filed three complaints against DeCuollo Disposal alleging waste flow violations and falsifying destination forms. None of these NOVs have been adjudicated.

Moreover, DeCuollo brazenly testified that his facility had never been ordered to be closed despite Judge Dietz's prior cease and desist order against DeCuollo Disposal. See id. at 120. On re-direct examination, DeCuollo stated that although he had been ordered not to operate a solid waste facility, he had never been ordered not to operate a recycling center.

DeCuollo further displayed his lack of honesty when he testified that the backdating of a June 1992 letter to the UCUA to March 30, 1989, had been accidental. See id. at 108-110. Before Judge Dietz, however, he had admitted intentionally backdating the letter in order to convince the UCUA that DeCuollo Disposal should be deemed "grandfathered in" as a recycling center. Judge Dietz characterized this as a "blatant manipulation of the truth for personal gain" and appointed a receiver "to oversee future responsible conduct." See Dietz Decision at 12. In summary, Judge Dietz found that DeCuollo's:

> "conduct and inconsistent testimony lacked credibility and created a cloud undermining any reasonable expectation for future integrity." See Id. at 11.

With respect to the operations of TDC, DeCuollo testified that TDC collected source-separated recycling, and that he had instructed his customers to separate their disposal and recycling wastes. See February 26, 1996 DEP Hearing Tr. at 111-114. Although DeCuollo maintained that the amounts of solid waste which became mingled with these loads were generally small, Judge Dietz found that on at least one occasion more than ninety percent of the materials at DeCuollo's facility were non-recyclable. See Dietz Decision at 11.

On November 1, 1996, ALJ Bari-Brown filed the Initial Decision. The ALJ found that the prior Superior Court decision together with DeCuollo's inconsistent testimony at the hearing constituted grounds for denial of DeCuollo Disposal's application for A-901 approval, and for revocation of his grandfathered transporter's registration under N.J.S.A. 13:1E-133(a) and (e). The Initial Decision noted:

1. Since 1991, DeCuollo Disposal has been issued 148 Notice of Violations from Middlesex County for violations of State solid waste laws. Seventy-four of the Notice of Violations were for waste flow violations. Seventy-four of the Notice of Violations were for falsifying origin and destination forms.

2. DeCuollo Disposal has been issued 13 Notice of Violations from Somerset County for violations of the state's waste flow rules.

3. On or about April 5, 1993, the UCUA filed three complaints against DeCuollo Disposal alleging waste flow violations and falsifying origin and destination forms.

See November 1, 1996 Initial Decision at 6-7.

On May 20, 1997, the Supreme Court of New Jersey denied certification of the petition for review of the liability portion of the case. Supreme Court Docket No. 43, 137 (May 20, 1997). See Final Decision at 7.

On September 17, 1997, DEP Commissioner Robert C. Shinn, Jr. adopted the findings and conclusions of the Initial Decision, with one modification,[2] revoked DeCuollo's license and denied its A-901 application. Commissioner Shinn relied on the findings that DeCuollo had an "indifferent and irresponsible attitude" as providing "further reason to find that [DeCuollo] does not possess the necessary reliability to possess an A-901 license." See Final Decision at 23. For instance, in response to the question, "did Judge Dietz ever enter an order precluding DeCuollo Disposal from operating as a solid waste facility?," he answered that he did not believe so. See February 26, 1996 DEP Hearing Tr. at 120. Commissioner Shinn found DeCuollo's revision of testimony on this topic to be "unpersuasive in light of the explicit nature of the question. See Final Decision at 24. Commissioner Shinn listed numerous other instances of inaccuracies and untruths in DeCuollo's testimony:

> "He (DeCuollo) also testified that the Department had issued no summons against him, despite the fact Judge Dietz found DeCuollo had pled guilt[y] to six such violations. See February 26, 1996 Hearing before Administrative Law Judge transcript at 124. He testified that no waste flow NOVs had been issued against him since 1991, when at least ninety had been issued. See Id. at 44-45. Finally, DeCuollo stated twice in the course of the hearing that he had never been found guilty of violating New Jersey's statutes or regulations other than the violations found in the Union County Superior Court matter, when in fact he had pled guilty to six other New Jersey waste flow violations, and settled four waste flow and other NOVs with Middlesex County. See Id. at 56-57 and 96. Mr. DeCuollo's testimony cannot be accepted as believable or persuasive, and his professions that he had no intent to violate the law ring hollow when viewed together with all the adverse findings made by Judge Dietz."

See Final Decision at 23-24. Furthermore, in adopting the Initial Decision, Commissioner Shinn found "reason to believe DeCuollo lacks the "integrity" to be licensed for solid waste activities." See Final Decision at 25.

On February 28, 1998, the DEP entered into a stipulation of settlement with Thomas DeCuollo t/a DeCuollo Disposal. The settlement agreement provides for DeCuollo to withdraw his notice of appeal, agree not to sue several State agencies, agree to dismiss his bankruptcy adversarial proceeding against the DEP, agree to dismiss the State, DEP and Commissioner Robert Shinn as defendants in DeCuollo, et. al. V. State of New Jersey, Shinn, et. al., agree not to engage in the industry for five years from the date

[2] The Initial Decision was modified to clarify that the burden of proof on the question of fitness to continue to operate as a solid waste transporter is on DeCuollo Disposal, not the DEP.

of the sale of the business,[3] and agree not to apply for a license for five years. The DEP agreed to allow DeCuollo to sell his business.

IV. GROUNDS FOR LICENSE DENIAL

A. The Applicant has previously been found to lack the "requisite reliability, competence, expertise and integrity" to participate in the State of New Jersey's solid waste industry.

The Commission may consider 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. Admin. Code §16-509 (a) (iv). As noted above, Thomas DeCuollo has a long history of violating laws and regulations in the state of New Jersey. His history of violations is so extensive that the State of New Jersey revoked his A-901 license. In a settlement following the revocation, DeCuollo agreed to sell his businesses and to stay out of the trade waste industry in New Jersey for a period of five years.

Based on the findings by the State of New Jersey, that DeCuollo lacks the "requisite competence, expertise and integrity," to participate in the State's waste industry, the Commission finds that DeCuollo lacks the good character, honesty and integrity to do business in the City of New York. The Applicant has not disputed the Commission's findings. Based on this sufficient independent ground, the Commission denies City Wide's application.

B. City Wide Waste Services Failed to Disclose Information Regarding Thomas DeCuollo's Licensing History in New Jersey and Provided False and Misleading Information in Connection with its License Application.

Failure by a license applicant to provide truthful information in connection with its license application is another adequate independent basis upon which the Commission may rely in denying this application. Admin. Code §16-509(a)(i). City Wide filed an Application For License as a Trade Waste Business ("License Application") and its principal Thomas DeCuollo filed a Disclosure Form for a Principal of a Trade Waste Business ("Disclosure Form") with the Commission on or about April 4, 2000. Additionally, Thomas DeCuollo testified under oath before the Commission's staff on March 21, 2001.

In the License Application, Part III, Question 3 asks:

> **"During the past ten years, has the applicant business or any past principal of the applicant business been found in violation of the administrative rules or regulations of any municipal, state or federal agency where the violation related to activities of the applicant business and resulted in suspension or revocation of any license,**

[3] The businesses were sold sometime in 1998.

permit or registration, which resulted in the imposition of a fine of $5,000 or more or the imposition of an injunction of six months or more?"

Likewise, in the Disclosure Form, Question 8 (a) and 8 (b) ask:

"During the past ten years, have you been found in violation of the administrative rules or regulations of any municipal, state or federal agency where the violation related to activities of the applicant business and resulted in suspension or revocation of any license, permit or registration, or the imposition of a fine of $5,000 or more or an injunction of six months or more?
During the past ten years, has the applicant business been found in violation of the administrative rules or regulations of any municipal, state or federal agency, based on your actions with respect to the applicant business, where the violation resulted in suspension or revocation of any license, permit or registration, or in the imposition of a fine of $5,000 or more or an injunction of six months or more?"

DeCuollo answered "**no**" to all of the above questions. See License Application at 13; Disclosure Form at 3. As noted above, on August 9, 1993, DeCuollo was found to have violated numerous administrative regulations that resulted in sanctions of $155,000.00 and led to the revocation of his New Jersey A-901 license.

In the License Application, Part III, Question 6 asks:

"Has the applicant business or any of its past principals ever:

a. **filed with a government agency or submitted to a government employee a written instrument which the applicant or any of its principals knew contained a false statement or false information?**

b. **falsified business records?"**

Also, in DeCuollo's Disclosure Form, Question 11 asks:

"Have you ever engaged in any of the following practices:

a. **filed with a government agency or submitted to a government employee a written instrument which you knew contained a false statement or false information?**

b. **falsified business records?"**

DeCuollo answered "**no**." to all of the above questions. See License Application at 15; Disclosure Form at 6. As noted above, DeCuollo admitted that he intentionally

backdated a letter to convince the UCUA that he should be deemed "grandfathered in" as a recycling center. ALJ Bari-Brown found DeCuollo's explanation for this false submission to be "spurious," and Judge Dietz found the false submission to be a "blatant manipulation of the truth for personal gain..." See supra at 14.

In the License Application, Part IV, Question 5 asks:

> **"Has the applicant business or any predecessor trade waste business been subject to forfeiture, receivership or independent monitoring in the last ten years?"**

The Applicant answered "**no**." See License Application at 18. As noted above, Judge Dietz appointed a receiver to review the daily business operations of DeCuollo Disposal[4] until satisfaction of all sanctions and costs.[5]

In the Principal Disclosure Form, Question 10 asks:

> c. **"During the past ten years have you been the subject or target of any investigation regarding an alleged violation of any other federal, state or local statute?**
>
> d. **During the past ten years have you received a subpoena or been asked to testify before any court, grand jury, or legislative, civil, criminal or administrative body involving any criminal matter or any other matter related to the trade waste industry?**
>
> ***
>
> i. **During the past ten years have you ever been subject to an injunction in any judicial action or proceeding with respect to the trade waste industry?"**

DeCuollo answered "**no**" to all of the above inquiries. See Disclosure Form at 4. As noted above, DeCuollo was the subject or target of numerous alleged violations of state and local statutes in the State of New Jersey. Additionally, the record is clear that Thomas DeCuollo testified on February 26, 1996 at the Office of Administrative Law before ALJ Bari-Brown in a matter directly related to the trade waste industry; to wit, the revocation of grandfathered operating status issued to DeCuollo Disposal. Furthermore, DeCuollo testified in the Superior Court of New Jersey, Union County Courthouse before

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[4] Local Law 42 defines a predecessor trade waste business as "any business engaged in the removal, collection or disposal of trade waste in which one or more principals of the applicant were principals *in the five year period* preceding the application." See Admin. Code Section 16-508. As the application of City Waste was submitted to the Commission on or about April 4, 2000, and Thomas DeCuollo was a principal of DeCuollo Disposal as late as 1998, the Commission considers DeCuollo Disposal to be a predecessor trade waste business to this applicant.

[5] Jerry Fitzgerald English, Esq., a former Environmental Protection Commissioner, was appointed receiver of DeCuollo Disposal in 1993.

Judge Christopher Dietz in a matter directly related to the trade waste industry; to wit, the trial for DeCuollo's numerous violations of the New Jersey Solid Waste Management Act.

Furthermore, on the date of his deposition under oath before the Commission, DeCuollo continued his pattern of untruthfulness and deception when he filled out a questionnaire and certified its truthfulness. Question 28 of the questionnaire asks:

> **"Have you ever been denied a license or permit or certification by any governmental agency?"**

DeCuollo answered "**no**." See Questionnaire at 7. However, as discussed above, DeCuollo Disposal's Solid Waste Transporter License application was denied on September 17, 1997. See Final Decision.

Question 29 of the questionnaire asks:

> **"Has any permit, license or certification which you personally held ever been suspended or revoked?"**

DeCuollo answered "**no**." and printed the words "**voluntarily surrendered**." See id. However, as extensively discussed above, DeCuollo Disposal's Solid Waste Transporter License was revoked on September 17, 1997. See Final Decision.

In addition, Question 53 of the questionnaire asks:

> **"Have any licenses, permits or certifications which the applicant business has held ever been suspended or revoked?"**

DeCuollo answered "**no**." See id. at 10. However, as extensively discussed above, DeCuollo Disposal's Solid Waste Transporter License was revoked on September 17, 1997. See Final Decision.

Furthermore, Question 53(a) of the questionnaire asks:

> **"Has the applicant business ever been denied any licenses, permits, or certifications?"**

DeCuollo answered "**no**." See Id. However, as discussed above, DeCuollo Disposal's Solid Waste Transporter License application was denied on September 17, 1997. See Final Decision.

At his deposition, DeCuollo continued to provide incomplete, false and misleading information to the Commission regarding numerous subjects. For instance, DeCuollo admitted that DeCuollo Disposal was charged with waste flow violations by the state and several New Jersey counties in the early 1990's. (Transcript at 22-23). He

testified that the allegations were that "garbage went to the wrong places," and that this matter was resolved by settlement. Id. However, DeCuollo failed to mention the numerous other instances when various other charges were filed against his companies. See supra.

In 1998, DeCuollo sold his companies (DeCuollo Carting and TDC New Jersey Inc.) to Eastern Environmental Corp. for $1,300,000.00. DeCuollo offered false and misleading testimony regarding the circumstances of the sale when he was asked:

Q.: Why did you sell the business to Eastern Environmental?

A.: Why did I sell the business?

Q.: Right.

A.: It was a – how can I put? It was a good transaction. For money. The money was right. I just felt it was time to get out at the time for the offering.

***

Q.: Were you actively trying to sell the business?

A.: No.

Q.: Did someone from Eastern Environmental come to you?

A.: Yes. (Transcript at 9).

The Commission finds that DeCuollo was misleading and untruthful when he testified that he sold his companies because "the money was right" and because he "just felt it was time to get out at the time for the offering." It is obvious from the facts in the record that DeCuollo actively attempted to sell his business because his solid waste transporter license was being revoked.

In addition, DeCuollo's testimony was false when he claimed that he voluntarily withdrew his New Jersey A-901 license in 1998 because of the sale of his business.

Q.: Do you presently have an A-901 license from the State of New Jersey?

A.: Pardon me?

Q.: Do you presently have an A-901 license in the State of New Jersey?

A.: No.

Q.: Have you ever held an A-901 license?

A.: Yes.

Q.: When was the last time you held an A-901 license?

A.: 1998.

Q.: When did you apply for that license?

A.: 1980.[6]

Q.: You held it continuously through 1998?

A.: Yes. (Transcript at 50).

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Q.: Did you ever withdraw your license from the State of New Jersey?

A.: Yes.

Q.: When did you do that?

A.: In 1998.

Q.: Why did you withdraw your license in 1998?

A.: Sale of business. (Transcript at 51-52).

The Commission finds that DeCuollo was misleading and untruthful when he testified that he voluntarily withdrew his A-901 license in New Jersey because of the sale of his businesses.

Based upon the record in this matter, these responses were clearly false. As shown above, the Applicant's predecessor business was found to be in violation of administrative rules or regulations which resulted in the revocation of a license and a fine of over $5,000.00; Thomas DeCuollo filed false statements with a government agency; the Applicant's predecessor business was placed in receivership; the Applicant's predecessor business was the target of government investigations; Thomas DeCuollo did testify in court in a matter related to the trade waste industry; the Applicant's predecessor business was subject to an injunction issued with respect to the trade waste industry; the Applicant's predecessor business was denied a license by a governmental agency; and a

[6] As noted above, since DeCuollo was engaged in the transportation and disposal of solid and hazardous waste prior to the 1984 enactment of the A-901 program, his business was allowed to continue to operate pending submission and review of his A-901 license application.

license was revoked from the Applicant's predecessor business by a government agency. Furthermore, the record establishes that Thomas DeCuollo has engaged in a pattern of providing false, deceptive and misleading testimony in regard to his activities in the trade waste industry. Therefore, the Applicant failed to provide truthful information in connection with his license application. The Applicant's failure to provide truthful information to the Commission constitutes an additional basis for the conclusion that it lacks good character, honesty, and integrity. The Applicant has not disputed these findings. Based on this sufficient independent ground, the Commission denies City Wide's application.

V. 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 City Wide falls far short of that standard. For the independently sufficient reasons discussed above, the Commission hereby denies City Wide's license application.

This license denial decision is effective fourteen days from the date hereof. The Applicant shall not service any customers, or otherwise operate a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: March 23, 2004

THE BUSINESS INTEGRITY COMMISSION

Robert Schulman
Acting Chairman and First Deputy Commissioner

John Doherty, Commissioner
Department of Sanitation

Gretchen Dykstra, Commissioner
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation

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Department of Business Services

Raymond Kelly, Commissioner
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