

2045



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

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE EXEMPTION APPLICATION OF DECOSTOLE CARTING, INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

DeCostole Carting, Inc. (“DeCostole” or the “Applicant”) has applied to the New York City Business Integrity Commission (“Commission”), formerly known as the New York City Trade Waste Commission, for an exemption from licensing requirements and a registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code (“Admin. Code”), § 16-505(a). Local Law 42, which created the Commission to 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.

On June 17, 2005, DeCostole applied to the Commission for an exemption from licensing requirements and a registration enabling it to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” – a type of waste commonly known as construction and demolition debris, or “c & d.” Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for exemptions. See id. If, upon review and investigation of the exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

In determining whether to grant an exemption from licensing requirements and a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission’s determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin Code § 16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York (“RCNY”) §§ 1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§ 1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto).

Central to the Commission's investigation and determination of an exemption application is whether the applicant has business integrity. See 17 RCNY § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity").

Based upon the record as to the Applicant, the Commission, for the following independently sufficient reasons, denies DeCostole's exemption application and refuses to issue DeCostole a registration:

- (1) DeCostole Does Not Meet the Statutory Requirements to be Eligible for an Exemption.
- (2) The Commission Previously Found that the Applicant Lacked Good Character, Honesty and Integrity.
- (3) The Applicant Provided False and Misleading Information in its Exemption Application.
- (4) The Applicant Has Failed to Demonstrate Eligibility for a Trade Waste License and Has Displayed an Unacceptable Indifference to the Dangers Presented by Organized Crime Corruption.

## **I. REGULATORY BACKGROUND**

### **A. The New York City Carting Industry**

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life." Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI").

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

findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct." Local Law 42, § 1.

The City Council's findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City's waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry's entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded guilty or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission's regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney's prosecution. In light of the close nexus between the c & d sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra's influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City's construction industry).

Moreover, the c & d sector of the carting industry has been a subject of significant federal prosecutions over the past decade. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many c & d haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988; during that period, "the City experienced a sharp decline in the tonnage of construction waste deposited" at its Fresh Kills landfill, as well as "a concomitant decline in revenue" from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as "one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States." United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the

“free cover” program, transfer stations and carting companies could dispose of “clean fill” (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the “paid cover” program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including c & d) at Fresh Kills under the guise of clean fill. This was done by “cocktailing” the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately \$10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City’s “cover” programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City’s tipping fees. See United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); see also United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City’s waste removal industry applies with equal force to the garbage hauling and the c & d sectors of the industry. Local Law 42 recognizes this fact in requiring c & d haulers to obtain registrations from the Commission in order to operate in the City. See Attonito v. Maldonado, 3 A.D.3d 415 (1<sup>st</sup> Dept. 2004); *leave denied* 2 N.Y.3d 705 (2004).

## **B. Local Law 42**

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (“DCA”) for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. “Trade waste” is broadly defined and specifically includes “construction and demolition debris.” *Id.* § 16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated constitutional challenges (both facial and as applied) by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), *aff’d*, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm’n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm’n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license

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

## II. OVERVIEW OF THE APPLICANT

DeCostole was incorporated on December 17, 1979. On August 26, 1996, DeCostole applied to the Commission for a trade waste license. See DeCostole License Application at 1. According to the license application, the principals of DeCostole were Daniel DeCostole, Frank DeCostole and Richard DeCostole. Id. at 22-23.

On August 15, 2002, the Commission denied DeCostole's license application for the following independently sufficient reasons: (1) the Applicant committed two separate anticompetitive racketeering acts by participating in the carting industry's mob-controlled cartel, including making claims for compensation for lost stops; (2) the Applicant failed to provide truthful information to the Commission by failing to disclose its cartel-related activities and a significant administrative violation; and (3) the Applicant obstructed the Commission's investigation into its alleged deceptive trade practices. See August 15, 2002 Commission Decision Denying the License Application of DeCostole ("DeCostole Denial"). The denial was upheld after several court challenges.<sup>1</sup>

On September 14, 2004, DeCostole commenced a second lawsuit, challenging the applicability of the trade waste licensing and regulatory scheme to its business. DeCostole maintained that, even though it hauled construction and demolition debris, it was entitled to operate its business in the City of New York without having obtained a license or an exemption from licensing from the Commission. On March 31, 2005, Kings County Justice Gloria Dabiri granted the Commission summary judgment and dismissed the complaint, finding that the Commission's interpretation of Local Law 42 as prohibiting a company from hauling construction and demolition debris from any

---

<sup>1</sup> This decision was challenged in court. On August 25, 2002, DeCostole commenced an Article 78 proceeding in New York County Supreme Court. On June 16, 2003, Justice Lewis Bart Stone dismissed the Article 78 petition in its entirety, having found, inter alia, that the Commission's decision to deny DeCostole's application for a trade waste license "was neither arbitrary nor capricious and was based on substantial evidence in the record." See DeCostole Carting Inc. v. Business Integrity Commission of NYC, Index #119053/02 (Sup. Ct. N.Y. Cty. 2003)(decision of Hon. Lewis Bart Stone). On December 11, 2003, the First Department affirmed Justice Stone's order. See DeCostole Caring, Inc. v. Business Integrity Commission of NYC, 2 A.D.3d 225 (1<sup>st</sup> Dept. 2003). DeCostole attempted to appeal as of right to the Court of Appeals. However, on April 6, 2004, the Court of Appeals dismissed the appeal on the ground that there was no substantial constitutional issue. See DeCostole Caring, Inc. v. Business Integrity Commission of NYC, 2 N.Y.3d 759 (2004). Following this denial, DeCostole moved in the Appellate Division for permission to appeal to the Court of Appeals. That application was denied on May 27, 2004. See DeCostole Caring, Inc. v. Business Integrity Commission of NYC, 2004 N.Y.App.Div. LEXIS 7411 (1<sup>st</sup> Dept. 2004). On June 5, 2004, DeCostole moved in the Court of Appeals for permission to appeal. That motion was denied by the Court of Appeals on September 2, 2004. See DeCostole Caring, Inc. v. Business Integrity Commission of NYC, 3 N.Y.3d 605 (2004).

location without obtaining a license or an exemption/registration was neither unreasonable or irrational, or inconsistent with the regulatory scheme.<sup>2</sup>

On June 17, 2005, DeCostole applied to the Commission for an exemption from licensing requirements and for a registration as a trade waste business. See DeCostole Exemption Application at 1. According to the exemption/registration application, DeCostole maintained the same business address, phone number and fax number as previously disclosed in its license application. The only apparent difference between the two applications was the number of principals. According to the exemption/registration application, the principals were Richard DeCostole and Daniel DeCostole; Frank DeCostole was no longer disclosed as a principal of the company.<sup>3</sup> Id. at 8. Attached to the application was a December 2004 (day omitted) Stock and Membership Sale Agreement purporting to sell the ownership interest of Frank DeCostole in the Applicant business (plus one-third of any future sale of the property owned by the Applicant) to Richard and Daniel DeCostole over a nine-year payment plan. Id.

The staff has conducted an investigation of the Applicant and its principals. On January 27, 2006, the staff issued a 9-page recommendation that the application be denied. The Applicant's President was personally served with the recommendation on January 31, 2006 and was granted ten business days to respond. The Applicant was notified that the response was due by 4:30 p.m. on February 14, 2006. On February 2, 2006, the Applicant's attorney requested copies of the non-public documents relied upon by the staff in the denial recommendation and additional time to respond. On February 2, 2006, the requested documents were provided to counsel and the request for time was granted until 4:30 p.m. on February 17, 2006. The Commission did not receive a response from the Applicant by the deadline. On February 21, 2006, the Commission received a response consisting of a 5-page affidavit by Daniel DeCostole and lengthy exhibit containing the legislative history of Local Law 42. See Affidavit in Response to Executive Staff's Recommendation ("Response"). The Applicant's response is untimely and need not be considered by the Commission, thereby leaving the evidence against it uncontested. Regardless, despite the tardiness of the response, the Commission has considered the arguments raised and has found them to be unpersuasive. For the reasons stated below, the Commission denies DeCostole's exemption application and refuses to issue a trade waste registration.

---

<sup>2</sup> See DeCostole Caring, Inc. v. Business Integrity Commission of NYC, Index #29281/04 (Sup. Ct. N.Y. Cty. 2005)(decision of Hon. Gloria M. Dabiri). The Applicant's appeal of that decision is currently pending before the Second Department.

<sup>3</sup> DeCostole attached a copy of its purported exemption application to its complaint filed September 14, 2004. According to that copy of its application, the principals disclosed were identical to those in the previous license application.

### III. DISCUSSION

#### A. DeCostole Does Not Meet the Statutory Requirements to be Eligible for an Exemption.

In certain limited circumstances, a company that carts trade waste may apply to the Commission for an exemption from licensing and, if approved, the company will receive a registration. Businesses that may ordinarily apply for an exemption from licensing include certain companies that specifically limit themselves to hauling solely construction and demolition debris. See Admin. Code 16-505(a). However, in situations where a principal of the construction and demolition debris removal company is also a principal of another business or a former business that is or was required to be licensed pursuant to either Local Law 42 or the former DCA licensing regulations, the construction and demolition debris removal company is not eligible for an exemption from licensing. Id. In these situations, the company must obtain a trade waste license in order to remove construction and demolition debris.

Under the former DCA regulations, DeCostole operated as a licensed trade waste hauler. See DeCostole Carting Inc. v. Business Integrity Commission of NYC, Index #119053/02 (Sup. Ct. N.Y. Cty. 2003)(decision of Hon. Lewis Bart Stone). Thus, even if it is true that DeCostole now hauls solely construction and demolition debris,<sup>4</sup> it is not eligible to apply for an exemption from the trade waste licensing requirement. See Admin. Code 16-505(a).

In its response, DeCostole fails to address the argument that it is ineligible for an exemption by virtue of its prior status as a licensed trade waste hauler, other than to argue generally that Local Law 42 does not give the Commission jurisdiction over construction and demolition debris haulers. See Response at 4-5. However, each court that has addressed this issue has consistently ruled that the Commission does in fact have jurisdiction over such haulers, including DeCostole. See Rapid Demolition Container Services, Inc. v. Business Integrity Commission, 21 A.D.3d 812 (1<sup>st</sup> Dept. 2005); DeCostole Carting, Inc. v. Business Integrity Commission of NYC, Index #29281/04 (Sup. Ct. N.Y. Cty. 2005)(decision of Hon. Gloria M. Dabiri). DeCostole's reliance on the legislative history of Local Law 42 to support its argument is unfounded.

Since DeCostole is not eligible for an exemption, the Commission denies this application on this independently sufficient ground.

---

<sup>4</sup> It is not entirely clear what kind of business DeCostole currently operates. In its exemption application, the Applicant states that it is in the business of "removal of construction debris from residential and other non commercial premises", but both principals swore under oath on the certification pages that the company "removes waste solely from commercial sites." See Exemption Application at 3, 18, 20. If DeCostole provided contradictory information regarding the types of premises it removes waste from, then DeCostole's claim that it limits its hauling to construction debris should be suspect as well.

**B. The Commission Previously Found that the Applicant Lacked Good Character, Honesty and Integrity.**

The Applicant is the same corporate entity that was previously found by the Commission to lack good character, honesty and integrity. Under the circumstances presented by this application, in which the principals of the applicant were the principals of a previously denied (in fact, the exact same) company, there is no legal requirement that the staff “re-invent the wheel” and conduct a wholly new investigation.

According to the August 15, 2002 license denial, the Applicant committed a racketeering act by paying compensation to Rosedale Carting, a carting company owned by Dominick Vulpis, a prominent defendant in the carting prosecutions by the New York County District Attorney’s office,<sup>5</sup> for stops lost by Rosedale to the Applicant. See DeCostole Denial at 12-15. In addition, the Applicant committed a second racketeering act by receiving compensation for lost stops using the assistance of Frank Giovinco, a manager of the mob-controlled cartel. Id. at 15-17. All three DeCostole brothers denied their cartel activity in sworn submissions to the Commission and in their deposition testimony. Id. at 17-19. The Commission based its denial, in part, on the false testimony of all three principals. Id. at 15. The Commission found substantial evidence that the Applicant played by the rules of the illegal cartel as enforced by the mob-controlled trade waste associations. Id. at 17.

Furthermore, the Commission found that Richard DeCostole also provided false information to the Commission during a separate investigation of a customer complaint and was uncooperative, cavalier and dismissive with the Commission’s investigators, thereby obstructing the Commission’s investigation. Id. at 20.

The Commission denial decision clearly demonstrated that each of the company’s principals lacked good character, honesty and integrity by affirmative acts of misconduct, not merely by passively holding an officer title. The fact that Frank DeCostole is no longer disclosed as a principal<sup>6</sup> does not mitigate the corrupt conduct of Richard and Daniel DeCostole and the company itself.

As a result of the Commission’s prior finding that DeCostole (and, consequently, its principals, including current principals Richard and Daniel DeCostole) lacked good character, honesty and integrity, there is no need for the Commission to revisit whether DeCostole currently meets the fitness standard under Local Law 42.<sup>7</sup>

---

<sup>5</sup> Vulpis was convicted of falsifying business records in the first degree in violation of Penal Law §175.10 and was sentenced to one and one-half to three and one-half years in prison and a fine of \$750,000.

<sup>6</sup> The fact that Frank DeCostole is not disclosed as a principal in the application is not dispositive on that issue. The undated Stock and Membership Sale agreement attached to the application raises additional questions about Frank DeCostole’s status in the applicant business. For example, the agreement maintains the financial ties between Frank DeCostole and the Applicant business by scheduling the compensation payments over a nine-year period as well as by providing for one-third of the proceeds of any future sale lease of the property owed by the Applicant business. See Stock and Membership Sale agreement at 2-3.

<sup>7</sup> In the alternative, the Commission should deny the application on the ground that the president and vice president of the Applicant were the principals of a company previously found by the Commission to lack good character, honesty and integrity. See Admin. Code §16-509(a)(vii)(authorizing denial of a license



In its response, DeCostole argues that it should be treated as a new business since its business operations have changed as a result of ceasing its trade waste removal business and operating instead as a c&d business. See Response at 2. DeCostole's position is legally and factually incorrect. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. § 16-501(f)(1). All trade waste removal haulers (including the subset of haulers who exclusively haul c&d) are required to obtain either licenses or registrations from the Commission in order to operate in the City and must satisfy the universal fitness standard of good character, honesty and integrity. See Attonito v. Maldonado, 3 A.D.3d 415 (1<sup>st</sup> Dept. 2004); *leave denied* 2 N.Y.3d 705 (2004).

In addition, DeCostole argues that the Commission should not rely on the prior denial since it was "wholly unfounded and unsupported." See Response at 2. However, several courts have already rejected this argument. See supra at 8, fn. 1 (the denial "was neither arbitrary nor capricious and was based on substantial evidence in the record"). The Commission rejects it here as well.

Accordingly, the Commission denies this application on this independently sufficient ground.

**C. The Applicant Provided False and Misleading Information in its Exemption Application.**

An exemption applicant's failure to provide truthful information to the Commission in connection with the application is an independent ground for denial of the application. See Admin. Code §§16-509(a)(i); 16-509(b).

The exemption application clearly asks if the applicant business ever held a trade waste license during the past ten years. Question 13 of the application states: "Currently, or at time during the past ten years, has the applicant business or any principal or past principal of the applicant business held a license for trade waste removal? If "yes", provide license number(s), class of license, if applicable, and name under which licensed, below." In response, the Applicant marked the "No" answer. See Application at 4.

The Applicant held a trade waste license from the Department of Consumer Affairs (#480950, #482773) at the time it filed its license application with the Commission on August 26, 1996, which remained in effect until the Commission denied its application on August 15, 2002. As a result, the Applicant's answer was false and Richard and Daniel's sworn certifications that the information in the exemption application was truthful and accurate were also false.

In its response, DeCostole claims that the omission was unintentional and "purely a clerical error." See Response at 4. DeCostole further argues that there is no reason to omit an answer to a question that was clearly known to the Commission. Id. The

---

application for "having been a principal in a predecessor trade waste business" where the commission would be authorized to deny a license to such predecessor business).

Commission is not persuaded by these arguments. The Commission expects all applicants in this heavily regulated industry to apply more than a mere cursory review to both their submissions to the Commission and the sworn certifications attesting to their truth and accuracy. Mistakes cannot be explained away by the glib response that it was a "clerical error." Id. DeCostole had an affirmative duty to provide truthful and accurate responses, despite the public nature of the information or the existence of such information in the Commission's files.

The Commission denies the exemption application on this independently sufficient ground as well.

**D. The Applicant Has Failed to Demonstrate Eligibility for a Trade Waste License and Has Displayed an Unacceptable Indifference to the Dangers Presented by Organized Crime Corruption.**

DeCostole has not satisfied its burden of demonstrating its eligibility for a trade waste registration. "The commission may refuse to issue a license or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter". See Admin. Code §16-509(b).

DeCostole was denied a trade waste license for engaging in precisely the type of typical mob activity that Local Law 42 was meant to eliminate. The Commission found that DeCostole engaged in racketeering activity and its principals lied to cover up their involvement. Despite having exhausted all possible avenues of appeal of the Commission's decision, the Applicant continued to haul trade waste in the city without a license or registration, in violation of the law. See Letter from Coney Island Hospital to the Commission dated October 6, 2004 (stating that DeCostole carted its construction and demolition debris and discarded furniture); Admin. Code §16-505(a). Instead, the Applicant commenced a second lawsuit, attempting to challenge the scope of Local Law 42 to its business. Rather than comply with the law, the Applicant argued that the law did not apply to them. When the Applicant's lawsuit failed, it filed the instant exemption/registration application.

However, the exemption application demonstrates no appreciation for the integrity concerns of the Commission and Local Law 42. Despite the fact that DeCostole filed a new application before the same government agency that previously found it to lack good character, honesty and integrity, it fails even to mention the prior denial in its submission (consisting of a 17 page application and approximately 60 pages of exhibits). DeCostole failed to submit a statement concerning the derogatory evidence cited in the denial and made no attempt to submit evidence of mitigation or rehabilitation between the denial and the filing of the instant application. DeCostole's significant omission, in light of its history before the Commission, is additional evidence that it lacks good character, honesty and integrity.

In its response, DeCostole argues that it had no obligation to address the issue since there is no question in the application asking about prior denials or any requirement in Local Law 42 to do so. See Response at 2-3. The Applicant is incorrect. Under the

rules promulgated under Local Law 42, an application for an exemption shall contain a "listing of any judgments finding liability of the applicant in a civil or administrative action related to the conduct of a business bearing a relationship to the removal of trade waste." See 17 RCNY §2-03(b)(8). The exemption application asks for disclosure of any administrative proceedings resulting in the suspension or revocation of any license, permit or registration.<sup>8</sup> See Exemption Application at 6 (Question 17).

In any event, the Commission finds that the burden of proving good character, honesty and integrity is an affirmative duty on the part of the Applicant; the Commission is not required to prove a negative – that the Applicant lacks good character, honesty and integrity. The Applicant who has already been found to lack good character cannot simply sit back and wait for the Commission to conduct new depositions before it discloses its negative history before the Commission.<sup>9</sup> Given the lengthy regulatory history of the Applicant before the Commission and its familiarity with strict integrity standards of Local Law 42, the failure of the Applicant to mention the prior denial, much less explain or offer evidence in mitigation, reflects poorly on its business integrity.

DeCostole has ignored the lessons to be learned from its prior experiences before the Commission and, as a result, has not sustained its burden of proof to show that it meets the eligibility standard for a trade waste registration. The Commission denies its application on this independently sufficient ground.

#### IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates that DeCostole falls far short of that standard.

It is of grave concern to the Commission that the Applicant and its principals have not learned from past behavior. Rather than make a sincere effort to rehabilitate themselves, they have stubbornly refused to accept the overwhelming derogatory evidence against them, filed a succession of unsuccessful lawsuits, and as a last resort, filed a new application (containing significant omissions and false statements). Based upon the above independently sufficient reasons, the Commission denies DeCostole's exemption application and registration.

---

<sup>8</sup> Question 17 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 the conduct of a [sic] that removes or recycles trade waste, a trade waste broker business or the operation of a dump, landfill or transfer station where the penalty imposed for the violation resulted in the suspension or revocation or any license, permit or registration, the imposition of a fine of \$5,000 or more or the imposition of any injunction of six months or more? If "yes," provide details in Schedule C." The Applicant answered "No." See Exemption Application at 6.

<sup>9</sup> While the Applicant accuses the Commission of failing to conduct new depositions of its principals to find evidence of mitigation or rehabilitation, it concedes that such evidence does not exist since "neither DeCostole nor its principals have ever been involved in any illegal activity." See Response at 3. The Applicant cannot have it both ways.

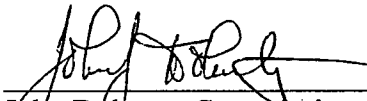
This exemption/registration denial is effective immediately. DeCostole Carting, Inc. may not operate as a trade waste business in the City of New York.

Dated: March 14, 2006

THE BUSINESS INTEGRITY COMMISSION



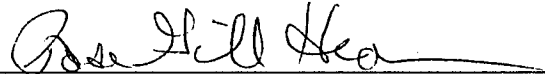
Thomas McCormack  
Chair



John Doherty, Commissioner  
Department of Sanitation



Jonathan Mintz, Acting Commissioner  
Department of Consumer Affairs



Rose Gill Hearn, Commissioner  
Department of Investigation



Robert Walsh, Commissioner  
Department of Business Services



Raymond Kelly, Commissioner  
New York City Police Department