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

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF DeCOSTOLE CARTING, INC. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

DeCostole Carting, Inc. ("DeCostole" or the "Applicant") has applied to the New York City Business Integrity Commission (the "BIC" or the "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"), §§ 16-505(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 other non-enumerated factors, 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 Applicant, the Commission finds, for the following independently sufficient reasons, that the Applicant lacks good character, honesty, and integrity, and denies its license application:

(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 through the intermediary of Frank Giovinco, head of the Waste Paper Association.

(2) The Applicant failed to provide truthful information to the Commission by failing to disclose (a) its cartel-related activities and (b) a significant administrative violation.

(3) As recently as April 2002, the Applicant obstructed the BIC's investigation into its alleged deceptive trade practices.

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 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 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 (1st Dep't 1999).

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

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. The carting industry immediately challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997);

Universal Sanitation Corp. v. Trade Waste Comm'n, 940 F. Supp. 656 (S.D.N.Y. 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Although Local Law 42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a). The Applicant holds a DCA license and timely submitted a license application to the Commission; thus, it is legally entitled to operate pending the Commission's determination of the application.

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

DeCostole submitted its license application on August 26, 1996. Incorporated in 1979, it is a Brooklyn-based company jointly owned by three brothers: Frank, Richard, and Daniel DeCostole. The DeCostole brothers also own a construction and demolition transfer station at the same location. The brothers have overlapping responsibilities and make joint decisions. See Deposition Transcript of Richard DeCostole, May 15, 1997, ("RD1") at 70-71; Deposition Transcript of Daniel DeCostole, September 11, 2000, ("DD2") at 10-11.

Subsequent to the staff's investigation, which included multiple depositions of the Applicant's principals,[1] the staff issued a 23-page recommendation that the Commission deny DeCostole's license application on June 7, 2002. The Applicant then requested and received copies of certain evidence relied upon in the recommendation.[2] On June 24, 2002, the Applicant submitted lengthy opposition papers, consisting of three affidavits and numerous exhibits in an attempt to undermine the staff's recommendation. See Response of DeCostole Carting, Inc. to June 7, 2002 Recommendation in Support of License Application, dated June 24, 2002 (the "Response").

The specific deficiencies in the Applicant's Response are discussed in detail below. However, a general observation is warranted at the outset. Typical of litigants who cannot refute the "big picture" established by the evidence, the Applicant's strategy is to focus on only one of the three, independent grounds for denial – mischaracterizing it as the "central argument" – and then call into question immaterial facts related to that ground. This scattershot attack raises questions that are simply "red herrings." The evidence the staff obtained in connection with the cartel prosecutions and its investigation, which more than satisfies the applicable legal standard of substantial evidence, makes it altogether clear that DeCostole participated in the property rights system. No uncertainties about immaterial facts can undermine this basic, well-supported conclusion.

Ironically, the Applicant's attack on the recommendation provides substantial additional support for the staff's conclusions. Most notably, the proffered explanation for DeCostole's suspicious payments to Rosedale Carting, a company owned by a prominent defendant in the DA's prosecutions, completely backfires. The staff relied, in part, upon those payments to conclude that the Applicant had engaged in racketeering activity by paying compensation to Rosedale Carting for stops lost by Rosedale to the Applicant. The Response trumpets the fact that the Applicant made these payments over a much longer period of time and in even greater sums than the staff detailed in its recommendation. Yet, the significance the Applicant accords to both the payments and

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[1] Richard DeCostole and Daniel DeCostole were both deposed in May 1997 and again September 2000. Frank DeCostole was deposed in September 2000. The DeCostoles were represented at all the depositions by the same legal counsel. These depositions were tape-recorded.

[2] The staff had the deposition tapes transcribed for this purpose.

the underlying relationship with Rosedale Carting simply cannot be reconciled with the DeCostoles' deposition testimony. With the exception of a shard of testimony, they denied any business dealings - legitimate or otherwise - with this company.

The DeCostoles cannot have it both ways. They cannot emphasize the duration, frequency, and sum of the Rosedale payments to support their argument that the payments were legitimate while, simultaneously, claiming they "forgot" about the payments to explain their omitting this information from their testimony. Thus, their argument fails.

The Commission must emphasize that the staff relied upon *two, separate* events to conclude that DeCostole engaged in racketeering activity. Only one involved Rosedale Carting. The second, distinct occasion involved the reverse scenario: DeCostole made a claim to *receive* compensation for stops it lost to another carter. Whatever questions the Applicant raises about Rosedale Carting do nothing to undermine the staff's conclusion regarding the second event, which independently supports the conclusion that DeCostole engaged in racketeering activity. By way of introduction, it suffices to say that the Response does not refute the staff's recommendation and the Commission concludes that the DeCostoles, with their selective memories, lack the requisite good character, honesty, and integrity for licensure.

B. Grounds for Denial of the License Application

1. DeCostole Committed Two Separate Anticompetitive, Racketeering Acts By Participating In the Mob-Controlled Cartel

The Applicant was a member of the KCTW from 1979 until at least the time of its license application in 1996. DeCostole License Application ("Lic. App."), August 26, 1996, at 6. Although the DeCostoles testified that the Applicant was a passive member that did not engage in illegal cartel activity, evidence obtained in the DA's investigation and prosecutions shows that DeCostole, quite to the contrary, was an active participant in the mob-controlled cartel.

a) The Criminal Investigation

The Manhattan District Attorney's (the "DA") successful investigation of the City's carting industry cartel was due in large part to the cooperation of one carting company ("Carter X"). See Search Warrant Affidavit of Det. Joseph Lentini, sworn to June 5, 1995 ("Lentini Aff."), ¶¶ 9-11, 13. Beginning in May 1992, an undercover detective, posed as a relative of the owner and an employee of Carter X. Id. ¶ 12. In June 1995, the DA obtained search warrants for numerous locations the undercover identified as likely sources of cartel evidence.

Among the locations, which included the trade waste associations, was the office of "Lyn-Val Associates" ("Lyn-Val"), see id. at 1, ostensibly a "consulting" company run by Dominick Vulpis, see id. at ¶¶ 7(o), 117. The undercover learned that Carter X had taken a Brooklyn customer (the "Guttman stop") away from one of Vulpis' carting companies. See id. at ¶ 16. That company was Rosedale Carting. See People v. Association of Trade Waste Removers of Greater New York, et al. (hereinafter "GNYTW"), June 30, 1997, at 5742. As a result of Vulpis' demand that Carter X return the Guttman stop, as well as similar demands from other carters, Frank Allocca and other KCTW officials pressured Carter X into joining the KCTW and WPA. See generally id. at ¶¶ 16-21.

Once a member, Carter X had to adhere to the property rights system and, most importantly, settle these disputes. See id. at ¶¶ 34-36, 50. To settle with Vulpis, Carter X disguised its compensation payments using phony invoices from, *inter alia*, Lyn-Val. See id. at ¶ 68. Thus, the basis of the DA's Lyn-Val search warrant was that Vulpis used Lyn-Val to launder compensation payments for Rosedale Carting. See id. at ¶ 199-200.

b) The Criminal Prosecutions

During the trial of People v. Association of Trade Waste Removers of Greater New York, et al., in 1997, the DA relied upon the undercover detective to interpret for the jury much of the evidence seized pursuant to the search warrants. That evidence proved potent. As described in detail above, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a $1 million fine. In the same case, in which Lyn-Val was a co-defendant, Dominick Vulpis pleaded guilty to attempted enterprise corruption, a class C felony. See People v. Allocca, et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Feb. 13, 1997), at 4-5, 28-30. Vulpis admitted in his allocution that he and Lyn-Val committed the crimes alleged in Pattern Acts 1, 38, and 44, supporting Count 1 of the indictment. Id. at 30. Pattern Act 44 related specifically to Vulpis' demand that Carter X pay him $320,000 compensation for the Guttman stop, thereby admitting that he committed the crime of combination in restraint of trade and competition, in violation of General Business Law §§ 340, 341. See id. at 12-13, 23-25.

Vulpis and Lyn-Val also admitted that they committed the crimes alleged in Pattern Act 49, supporting Count 1 of the indictment. See id. at 25-27. Pattern Act 49 related specifically to Vulpis' issuing fraudulent Lyn-Val invoices to Carter X for consulting services so as to conceal the Guttman compensation payments, thereby admitting that they committed the crime of falsifying business records in the first degree in violation of Penal Law § 175.10. See id. Lyn Val entered a plea of guilty to the crime of combination in restraint of trade and competition, in violation of General Business Law §§ 340, 341, a class E felony. See id. at 44-45, 61-62. Vulpis was sentenced to 11/2 to 31/2 years in prison and a commitment of $750,000. See id. at 31.

1) DeCostole Committed The First Racketeering Act By Paying Compensation To Rosedale Carting: The Evidence Linking DeCostole To Lyn-Val and Rosedale Carting

The seized Lyn-Val evidence included lists of stops various carters took from Vulpis carting companies. See Lyn-Val Documents, Location 3, Box # 3, Item # 25. One document bears the following handwritten words: "DE COSTOLE" and "Stops Taken – 3." See id. The next page lists five businesses:

(591) JU DISCOUNT
(NOW) PERSONAL REAL ESTATE
2359 FLATBUSH AVE

(260) SEA KING
(NOW) DOT'S N DASHES
5902 AVE N

BILL'S BAR
6326 AVE N

See id.

The DeCostoles confirmed that the Applicant picked up in this area and had indeed serviced two of these customers, "Dot's N Dashes" and "Bill's Bar." See Deposition Transcript of Richard DeCostole, September 15, 2000 ("RD2"), at 67-70; DD2 at 45-46; Frank DeCostole Deposition Transcript, September 11, 2000 ("FD"), at 57-58. Their testimony also confirmed the fact established by the Lyn-Val documents, i.e. that Rosedale Carting had serviced "Bill's Bar" and "Sea King," which was the business that preceded Dot's N Dashes at the same location. See RD2 at 68-70; cf. FD at 57-58, 60.[3]

Because the Lyn-Val documents strongly suggested that DeCostole had customer disputes with Vulpis and that Vulpis made claims against DeCostole, the Commission's staff requested financial documents to investigate possible compensation payments to Vulpis or any of his carting companies. See Letter to DeCostole from Deputy Commissioner Chad Vignola, September 12, 1997. Specifically, the staff requested documents for the years 1993, 1994, and 1995. These records revealed that DeCostole

[3] One of the red herrings offered by the Applicant is its contention that "no proof has been submitted that [DeCostole serviced JU Discount or any customer at 2359 Flatbush Avenue.]" Affidavit of Frank DeCostole, June 23, 2002, at 3-4 ¶ 6. The staff made no such conclusion, nor does the Commission. Notably, the Applicant does not – because it *cannot* – dispute that it picked up customers in this area. Thus, it is entirely possible, especially in light of the principals' self-acknowledged lapses in memory, that the Applicant picked up a customer at that address.

paid $24,200 to Rosedale Carting during 1993 to 1995.[4] The payments were purportedly for dumping expenses.

Several considerations supported the staff's conclusion that these expenses were not bona fide and are instead examples of the sham transactions carters frequently used to disguise compensation for stops and other illicit payments. First, 11 of the 16 payments were exactly $1,500, three were exactly $1,000. This appeared inconsistent with sums resulting from dumping costs, which could be expected to vary. Second, Rosedale Carting was a carting company, not a transfer station for dumping. Third, the Applicant did not submit backup documentation (i.e., invoices). Fourth, the Rosedale payments occurred in the relevant time frame, just before the 1995 seizure of the Lyn-Val documents.[5] Fifth, as discussed in more detail below, the DeCostoles denied any business transactions with Rosedale Carting.

The Applicant's proffered defense is feeble. At the outset, the Commission rejects the Applicant's blanket statement that the evidence supporting the finding that DeCostole engaged in illegal cartel activity is unreliable, because it is, *inter alia*, without "context[.]" Response, Affidavit of Frank DeCostole, dated June 23, 2002 ("FD Aff."), at 2 ¶ 4a, 8 ¶ 14, 10 ¶17, 10-11 ¶ 19, 11-12 ¶ 21. As the Commission has done in this decision, the staff's recommendation set forth the general and specific contexts in which the evidence was obtained and used. In general, the Applicant's assertions rely upon principles and procedures applicable to criminal charges rather than an agency determination. They also fly in the face of the convictions obtained in carting prosecutions and the SRI decision. Therefore, they completely lack merit.

The Applicant's corollary argument is that the evidence is unreliable because the principals' testimony is inconsistent. In essence, the Applicant argues that the evidence is unreliable because the principals did not admit that they engaged in illegal cartel activity. This assertion is preposterous and certainly does nothing to undermine the evidence. In fact, the principals' false testimony provided an additional, independently sufficient ground for denial.

Aside from its broad attack on the evidence of cartel activity, DeCostole specifically contends that the payments to Rosedale Carting were for "legitimate dumping services." Id. at 1 ¶ 1. DeCostole claims that it ran up such a large debt – over $70,000 -- that a collection agency took over the account. See id. at 4-5 ¶¶ 7-8. DeCostole further claims its payments to Rosedale were in consistent, round figures because they were made pursuant to a payment schedule. See id. 5 ¶ 5. The Commission

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[4] In 1993, DeCostole made nine monthly payments to Rosedale Carting of exactly $1,500. In 1994, it made monthly payments of that same amount twice, payments in the exact amount of $1,000 for three months, another payment of $2,300 one month, and a payment of $2,400 another month.

[5] The import of the Applicant's argument regarding the timing of the Rosedale payments and the seizure of the Lyn-Val documents is unclear. See Affidavit of Frank DeCostole, dated June 23, 2002, at 8 ¶ 13. The financial documents relied upon in the staff's recommendation show, and the Applicant does not contest, that DeCostole made payments to Rosedale Carting in 1993 and 1994. The seizure of the Lyn-Val documents in 1995, subsequent to those payments, is not inconsistent with the staff's conclusion.

rejects the Applicant's alternative explanation and agrees with the staff's conclusion, if not for every one of the recommendation's five reasons.

The primary reason the Commission is not persuaded of the bona fides of the payments to Rosedale Carting is the principals' false testimony. Their denials of business transactions with Rosedale Carting is contrary to the financial records they supplied to the Commission, as well as the evidence they submitted in response to the recommendation. The Applicant lamely asserts that its principals did not deny a relationship with Rosedale Carting, inflating the following snippet of testimony from Richard DeCostole:

> [Staff]: Did you ever dump at Rosedale Carting's transfer station?"
> Witness: *I might have dumped there once or twice* but not really.

RD 2 at 114 (emphasis added). Not surprisingly, the Applicant did not refer to the testimony immediately following that statement:

> [Staff]: No. Okay. Did you ever have any business dealings with Rosedale?
> Witness: *No.*
> [Staff]: Any containers or anything like that?
> Witness: There weren't even really in my area where I [unintelligible].

Id. at 114 (emphasis added). Richard DeCostole's statement regarding the *possibility* of having dumped at Rosedale Carting is the full extent to which the Applicant acknowledged any relationship to Rosedale Carting *prior* to the staff's recommendation.

Neither Frank DeCostole nor Daniel DeCostole offers a reason why they denied the existence of a supposedly *legitimate* business relationship with Rosedale Carting. See generally FD Aff.; Response, Affidavit of Daniel DeCostole, dated June 23, 2002. Richard DeCostole, the only one to try to explain the black hole in the their collective memory, offers the "passage of time." Response, Affidavit of Richard DeCostole, dated June 23, 2002, at 2 ¶ 15. This argument is weak as an explanation for false testimony in 2000, the year of his second deposition. It is especially weak as an explanation for false testimony in his *first* deposition in 1997, only three years after the final payments to Rosedale Carting. At that first deposition, the staff asked him, "Rosedale Carting? How do you know that name?" Deposition Transcript of Richard DeCostole, May 15, 1997 ("RD1"), at 57. He replied, "I think it was owned by one of the [phonetic] and *I didn't have any dealings with them* and I don't know any other partners." Id. (emphasis added). The Commission finds it particularly hard to credit Richard DeCostole's recent affidavit when numerous checks written to Rosedale Carting are signed by him. See Response, Exhibit F. Additionally, the correspondence regarding the repayment plan is between the collection agency and him. See id., Exhibit E.

The second reason the Applicant's assertion that these payments were legitimate does not hold water is that carters routinely generated false invoices and engaged in sham financial transactions to conceal fraudulent activity. Indeed, two of the most prominent

defendants in the DA prosecutions, Thomas Milo and his company, Suburban Carting, admitted this fact in their plea allocutions. See *supra* at 7. Most importantly, Vulpis and Lyn-Val specifically admitted that they issued fraudulent invoices so as to conceal compensation payments and pleaded guilty to the crime of falsifying business records. See *supra* at 14-15. In the context of an industry previously rife with fraudulent activity, and where the owner of Rosedale Carting, was convicted for falsifying business records, the Applicant's argument is unpersuasive.

It stands to reason that DeCostole had something to hide and the Commission concludes it was indeed hiding its cartel activity. The Lyn-Val list is evidence that Dominick Vulpis, a convicted carter, monitored stops lost by his company, Rosedale Carting, for the purpose of making compensation claims, in accordance with the illegal property rights system enforced by the trade waste associations. Cumulatively, the Lyn-Val documents, the principals' false testimony, and the Applicant's long-standing membership in the KCTW[6] supports the conclusion that DeCostole paid compensation to Rosedale Carting for the "lost stops" on the Lyn-Val documents or for some other illegitimate purpose in accordance with the rules of the property rights system.

2) The Second Racketeering Act: WPA Administrator, Frank Giovinco, Assisted DeCostole In Obtaining Compensation From Carter X For Lost Stops

During the carting prosecution, the undercover detective testified about another list, similar to the Lyn-Val documents, upon which the Applicant's name appeared. See generally Testimony of Detective Richard Cowan, GNYTW, supra, June 19, 1997. As stated earlier, other carters besides Vulpis made claims for compensation against Carter X for stops they had lost to Carter X before it joined the KCTW and WPA. See id. at 4161-4162. Carter X received documents with the names of these carters. See, e.g., id., June 23, 1997, at 4240-4242, 5274-5275; id., June 24, 1997, at 5389, 5399, 5428-5429, 5465-5466. At trial, the undercover referred to these documents as the "Claims Lists." See, e.g., id., June 23, 1997, at 4224-4225.

These Claims Lists were similar to the Lyn-Val documents in that they represented a cartel player monitoring lost stops. In particular, the DA introduced into evidence five lined pages of yellow notebook paper with handwriting: Exhibits 396, 396A, 396B, 396C, and 396D. The undercover detective explained that these documents constituted one of the Claims Lists given to him in 1993 by Frank Giovinco. See id., June 25, 1997, at 5497-5498. Giovinco was a defendant in GNYTW, in which the prosecution described him as the "day-to-day" manager of the WPA. GNYTW, May 28, 1997, at 2003.

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[6] The Applicant paid the KCTW $30,000 from 1991 to 1995. See Lic. App. at 11. Thus, the Applicant was paying the KCTW significant sums of money during the time the Applicant was making the payments to Rosedale Carting.

Each page of this particular 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 June 25, 1997, Exhibits 396, 396A, 396B, 396C, 396D. Exhibit 396B lists four carting companies, including "DeCostole Carting." 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, "2 stop will get location for you". Id., Ex. 396B. DeCostole is followed by the notation, "we'll get location[.]" Id.

With respect to this Claims List, the undercover detective testified that the document enabled him to determine what customers the carters were claiming to have lost to Carter X. See id. at 5498-5500. He also testified that he recognized many of the customers as having been serviced by Chambers. See id. at 5500-5501. He also testified that the carters, including DeCostole (spelled phonetically as "DeCastel" in the transcript) were members of the WPA. See id.

On cross-examination, a defense attorney asked Cowan the meaning of the notation "will get papers" on Exhibit 396A. See id., July 30, 1997, at 8024. (The notation was actually "we'll get papers," which is the same notation as appeared under DeCostole on Exhibit 396B). Cowan replied, "I guess the Association didn't receive to [sic] their claim and they were going to send them some time in the future." Id. Thus, the claiming carters did not necessarily have to provide all the information required to resolve their disputes at the time Giovinco compiled the list.[7] Faced with the Claims List and other evidence, Giovinco pleaded guilty to attempted enterprise corruption, a felony, and agreed to a prison sentence of 3½ to 10½ years. See *supra* at 7. Notwithstanding the fact that the Claims List did not include the name of the customer, it clearly shows that DeCostole registered a claim against Carter X for compensation for one lost customer.

The Applicant contends that the staff may have confused DeCostole with another carting company, DeCostello Carting. See Response, FD Aff. at 9 ¶ 15. This argument is absurd given that both the Lyn-Val documents and the Claims List correctly spell "DeCostole." For this reason, the Applicant focuses on phonetic spellings in intercepts (found here in footnotes 7 and 9). The Commission rejects this argument, primarily because it decision relies in chief upon the Lyn-Val documents and the Claims List for its determination. Moreover, the Commission is satisfied that the phonetic spellings in the intercepts are sufficiently closer to DeCostole than to DeCostello to provide further support for its determination.

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[7] The following conversation between Frank Allocca and Frank Giovinco demonstrates that a carter had to do little more than say a few words to an officer of one of the associations to get its claim on the list:

> Allocca: Yeah, listen, I just had uh, you know, one of my guys walk in. Add on to that list –
> Giovinco: Okay.
> Allocca: DeCostele [sic] Carting.
> Giovinco: All right, that's all.

GNYTW, People's Exhibit 190A (Transcript of telephone call intercepted on December 1993), at 5.

In defending against the Claims List, the Applicant also emphases that no evidence supports a finding that it was a member of the WPA. See Response, FD Aff. at 10-11 ¶ 19. Having propped up a straw man, the Applicant then purports to knock it down. The staff did not conclude, nor does the Commission, that the Applicant was a member of the WPA. Membership in the WPA is of no moment. The Applicant was a long-standing member of the KCTW and, therefore, had the right to make claims against other KCTW members or the members of *other* trade waste associations. Coupled with the undercover's testimony, the Claims List is more than sufficient evidence to conclude that DeCostole made a claim for compensation for a lost customer. The identity of that customer, contrary to the Applicant's contention, is irrelevant.[8]

3) DeCostole Participated In, and Benefited from, the Racketeering Activity of the WPA and the KCTW

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.

The dispute resolution function of the association boards and their negotiation of compensation arrangements epitomized the anticompetitive cartel's modus operandi. The Lyn-Val documents, the Claims List, and other evidence demonstrates that the Applicant played by the rules of the illegal cartel as enforced by the trade waste associations.[9] Together, they plainly support a finding that the Applicant was actively engaged in the racketeering activities of the convicted WPA and KCTW on at least two separate occasions. Thus, the Commission should determine that DeCostole lacks good character, honesty, and integrity.

2. DeCostole Repeatedly Failed To Provide Truthful Information To The Commission

a. DeCostole Failed To Disclose Its Racketeering Activity

The DeCostoles denied their cartel activity both in sworn submissions to the Commission and in their testimony, as discussed above. The license application asks whether, during trade association membership, an applicant has ever sold, purchased or

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[8] Carters could assert their right to service certain locations, which could have a succession of businesses, as well as to service certain customers wherever they moved. Accordingly, it would sometimes be difficult to readily ascertain the identity of a customer.

[9] See, e.g., GNYTWA, People's Exhibit 154A (intercept of a telephone conversation on September 9, 1991 between Robert Grasso [a carter] and Alphonse Malangone), at 4 (Grasso: "I got a call from Costole, [he said] that's my stop. Here, Frank, I gave it back to him. How do, how do I know? The stop is his stop, I gave it back to him.").

otherwise acquired or lost any routes or customer locations ("stops"). See Lic. App. at 7 (Question 2, Part II). DeCostole left this answer blank but, for the related questions soliciting details about any such transactions and the role of the trade waste association, DeCostole made the notation "N/A." See id. at 7-9. DeCostole made the same notation for questions regarding any customer disputes. See id. at 9-11 (Question 3, Part II).

Furthermore, the principals denied any customer disputes or compensation arrangements in their testimony before the Commission's staff. Richard DeCostole testified that he would represent the Applicant at KCTW meetings. See RD2 at 72-73. He testified that he had heard of the property rights system in the early 90s, but he never asked the trade waste association to intervene on his behalf. See RD1 at 20-23. He learned about the "property rights" system from the media. See id. at 21-22. In his 2000 deposition, Richard again acknowledged that the "property rights" system existed, but denied that the Applicant ever engaged in illegal cartel activity. See, e.g., RD2 at 46-49.

Richard further testified that several carters complained to him about taking their customers, but he never had any "disputes" with them (i.e. the carters never complained to the trade waste association). See, e.g., id. at 52-58, 71-72. In particular, Richard denied business dealings with Lyn-Val Associates, Rosedale Carting, or Dominick Vulpis, but for the statement discussed above regarding the possibility of dumping. See id. at 61-64. He denied ever having taken a customer from Rosedale and denied having paid to, or received from, Rosedale Carting any compensation for either taking or losing a stop with Rosedale. See id. at 63-65. He specifically denied that Rosedale ever complained to him that DeCostole started servicing Dots-n-Dashes after Sea King left. See id. at 68-69. Richard denied any compensation payments or other transaction with Rosedale Carting related to Dots-n-Dashes. See id. at 71.

Daniel DeCostole denied the Applicant ever had a dispute with another carter. See, e.g., at DD2 at 39. He denied that the Applicant had ever asked the KCTW to intervene in any matter on its behalf. See, e.g., DD2 at 40. He denied that either the Applicant or Rosedale ever complained to each other about a lost customer. See id. at 43-44 He also denied that DeCostole ever paid compensation to Rosedale for a stop. See id. He denied having a dispute with Rosedale over the "Sea King", JU Discount, or Dots-n-Dashes accounts. See id. at 44-49.[10]

In 2000, Frank DeCostole acknowledged hearing about the property rights system, but testified that he first learned about it in the mid-90s. FD at 48-49. He denied the Applicant ever had a dispute with another carter, although he admitted hearing that

[10] During Daniel's deposition in 2000, the Commission's staff requested details as to how the Applicant incurred the following liabilities and proof of payment:

- $26,812 judgment in favor of the Internal Revenue Service in 1991;
- $8,000 fine imposed by the Department of Consumer Affairs in 1991 for violations regarding improper contracts and failure to keep records;
- $13,484 judgment in favor of the New York State Insurance Fund in 1992.

The Applicant never complied with these document requests. This is another basis for the determination that the Applicant failed to provide truthful information to the Commission during the licensing process. See Admin Code § 509(a).

other carters would take customer disputes to the associations for resolution. See id. at 51-53. He denied the Applicant ever had a dispute with Rosedale Carting or any of the Vulpises. See FD at 54. He denied that the Applicant ever complained to the KCTW or anybody else about losing a customer to Rosedale or the Vulpises. See id. He never heard that anyone helped the Applicant to get a stop back or get compensation or a swap in exchange for a lost stop. See id. Frank denied having a dispute with Rosedale over customers called "JU Discount" or "Dots-n-Dashes." See id. at 59-60.

DeCostole's application and its principals' testimony are clearly at odds with the evidence discussed above showing that DeCostole had customer disputes and resolved them either directly with the other carter involved or through the WPA and KCTW by mediation and compensation claims and payments. Simply challenging the staff's credibility determination without more is unpersuasive. DeCostole failed to provide truthful information to the Commission, thereby demonstrating its lack of good character, honesty, and integrity required for licensure. See Admin. Code § 509(a)(i).

b. DeCostole Failed to Disclose A Significant Administrative Violation

The DCA fined the Applicant $8,000 in 1991 for improper customer contracts. DCA also fined the Applicant $1,000 in 1989 for failure to maintain records and $750 in 1990 for improper container labeling. The Applicant did not report the 1991 violation and fine in the application, as required. See Question 3, Lic. App. at 4. In response to the staff's request for information, Frank DeCostole submitted a signed, sworn statement, dated June 1997, stating that neither the Applicant nor Tiger Recycling had received any administrative violations within the past ten (10) years. The staff's 2000 audit confirmed that the Applicant paid the 1991 and 1989 DCA fines. Frank DeCostole's affidavit constituted a false statement to the Commission.[11]

The administrative violations are not so derogatory as to warrant license denial independently. However, the Applicant's failure to disclose the largest one in the license application and any of them in a sworn affidavit reveals, at a minimum, an indifference towards its reporting obligations and, in fact, strongly suggests a pattern of deception on the part of the Applicant.[12] The only response the Applicant can muster is to plead incompetency with regard to record-keeping. See FD Aff. at 15-16 ¶¶ 27- 28. The Applicant goes so far as to include a picture of a disorderly storage room to support this argument. See id., Ex. N.

The Applicant also complained that the staff did not follow up all the staff's requests made in the depositions by writing the Applicant and repeating the requests. See id. at 13 ¶ 24. This argument is equally fanciful. The Applicant was represented by legal counsel at all of the depositions. Neither the Applicant nor its counsel had no reason to

[11] The Response erroneously declares that the same statement in the staff's recommendation referred to the omission in the license application. See Response, RD Aff. At 16 ¶ 29.

[12] It is worth noting that at the time the Applicant submitted its application, in August 1996, the Commission had not yet announced its intention to depose the principals of license applicants.

believe the Applicant was relieved of its obligation to provide requested information because the staff did not make repeated or written requests. That the staff sent written requests on some occasions does not change this conclusion. These contentions barely warrant mention. The Commission concludes that the Applicant's omissions above further support the finding that it lacks good character, honesty, and integrity. See Admin Code § 509(a).

3. As Recently As April 2002, the Applicant Obstructed the BIC's Investigation Into Alleged Deceptive Trade Practices By the Applicant.

In April 2002, the BIC received a complaint from a customer whose allegations constituted deceptive trade practices by the Applicant. Specifically, the customer alleged that, in early April, the Applicant, represented by Richard DeCostole, leased the customer a roll-off container for four days in exchange for $300 cash upon delivery. See Closing Memorandum, BIC #2002-00016, April 17, 2002. The Applicant did not give the customer a receipt and removed the receptacle after only one day without notice. See id. When the customer complained to Richard DeCostole, he agreed to fax a receipt, but refused to replace the container unless the customer paid an additional $200. See id.

A BIC Inspector inquired about the allegations by telephone with Richard DeCostole, who vehemently denied any service arrangement or contact with the customer. See id. He further stated that the customer must prove a service agreement existed and that he was not obligated to cooperate with the Commission's investigation. See id. Subsequently, Frank DeCostole provided proof that the Applicant had refunded the customer's $300. See id. Later, the BIC Inspector met with Frank DeCostole, who, admitted many of the facts, previously denied by Richard, which supported the customer's complaint. See id. He also provided relevant documents. See id.

Whether or not the Applicant is found to have violated BIC regulations regarding deceptive trade practices in a future administrative proceeding, the incident has ramifications for the Applicant's licensing application. It is fresh proof that Richard DeCostole is no more inclined today to provide the Commission with truthful information than he was before. What little he said in response to the BIC's inspector – flatly denying the customer's contract -- was false and uncooperative. The Applicant continues its pattern of obstructing the Commission's investigations. The only defense the Applicant raises to this ground for denial is that Richard DeCostole had a "bad day." Affidavit of Frank DeCostole, dated June 23, 2002, at 18 ¶ 37. This defense hardly excuses the behavior. Clearly, the Applicant's cavalier and dismissive attitude towards the enforcement powers of the Commission do not bode well for its future conduct and is another reason, if not the best, to determine it is unfit for licensure. See Admin Code § 509(a).

III. CONCLUSION

A clear theme underlies the Applicant's Response to the staff's recommendation. The principals have bad memories, they have bad files, and one of them had a "bad day." 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, three independently sufficient grounds establish that the Applicant is a bad candidate for licensure. Accordingly, the Commission concludes that the Applicant lacks good character, honesty, and integrity, and denies its license application.

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

Dated: August 15, 2002

THE BUSINESS INTEGRITY COMMISSION

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Chairman

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Department of Consumer Affairs

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