



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

**DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE APPLICATION OF GRT TRUCKING CORP. D/B/A GRT CONSTRUCTION CO. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

GRT Trucking Corp. d/b/a GRT Construction Co. ("GRT" or the "Applicant") applied to the New York City Trade Waste Commission (the "Commission") for a registration to operate trade waste businesses pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-505(a). 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.

GRT applied to the Commission for a registration enabling it to operate trade waste businesses "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." See Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission grants the applicant a registration, the applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant 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 a registration 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, deceptive trade practices and failure to pay any tax, fine, penalty, fee); compare 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 finds that this Applicant lacks good character, honest and integrity for the following independent reasons:

1. The Applicant has failed to pay its registration and vehicle fees to the Commission.
2. The Applicant failed to pay its taxes and has numerous judgments and liens filed against it.
3. A principal of the Applicant has been convicted of a crime that directly relates to his honesty, integrity and character.

## **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. 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 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. 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 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, 2004 N.Y. App. Div. Lexis 411, January 20, 2004.

## **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 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 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, 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. DISCUSSION

The Applicant filed an application for exemption from licensing requirements for removal of demolition debris (the "application"). The disclosed principals of the Applicant are Gustavo Roben ("Roben") and Dinorah Rivera-Roben. See Application at 8. The Commission's staff has conducted an investigation of the Applicant. On September 24, 2004, the staff issued a 10-page recommendation that GRT's registration application be denied, which was delivered by hand to the Applicant on September 28, 2004. GRT did not submit a response to the staff's recommendation. The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth below, the Commission finds that GRT lacks good character, honesty, and integrity, and denies its registration application.

### A. The Applicant Has Failed to Pay Its Registration and Vehicle Fees to the Commission.

The Commission may refuse to issue a registration to an applicant that lacks "good character, honesty and integrity." See Admin. Code §16-509(a)(applying the same fitness standard to license applicants). Failure to pay a fee related to the Applicant's business for which liability has been admitted is evidence that a registration applicant fails to meet the fitness standard. See Admin. Code § 16-509(a)(x). This Applicant has failed to pay \$18,712.23 in registration and truck fees to the Commission that have accumulated unpaid since December, 1997.

The fee for a Class 2 registration pursuant to section 2-04 of this subchapter is six hundred dollars (\$600) and the fee for each vehicle operated pursuant to a Class 2 registration is five hundred dollars (\$500). See 17 Rules of the City of New York § 2-07. The Commission sent the Applicant an invoice for registration and vehicle fees on each of the following dates:

- December 1997;
- June 1998;
- August 1998;
- March 1999;
- July 1999;
- March 2000;
- July 2000;
- December 2000;
- July 2001;
- December 2001;
- September 2002;
- March 2003;
- February 2004.

However, the Applicant has failed to respond to the above-mentioned invoices and has failed to remit registration and vehicle fees.

On April 16, 2004, a member of the Commission's staff contacted Roben by telephone and informed him that the Applicant was delinquent in paying its Commission fees. At this time, the staff member informed Roben that the Applicant owed the Commission \$18,712.23 in fees. Roben acknowledged his debts to the Commission, asked for an invoice, and promised to promptly pay the fees. On April 19, 2004, the Commission sent the Applicant a letter, (and attached an invoice) which advised the Applicant that it owed the Commission \$18,712.23 in fees. Additionally, the Applicant was advised that its failure to remit said fees by April 30, 2004 could result in the denial of its application. Despite this warning, the Applicant failed to respond to the Commission and failed to pay its registration and vehicle fees. See April 16, 2004 letter from the Commission to the Applicant.

Finally, on August 30, 2004, the Commission again advised the Applicant that it owed the Commission \$18,712.23 in registration and vehicle fees. The Commission established a deadline of September 3, 2004 to remit said fees, and advised the Applicant that the failure to remit the fees would result in the denial of the Applicant's registration application. See August 30, 2004 letter from the Commission to the Applicant. On September 3, 2004, the Applicant contacted the Commission by telephone and requested an additional extension to remit registration and vehicle fees, some of which date to 1997. The Applicant was orally informed that he should pay the amounts due, but that even if paid, the application might be denied. To date, the Applicant has failed to remit any registration and/or vehicle fees to the Commission.

The Applicant's failure to pay its fees to the Commission reflects adversely on the Applicant's good character, honesty and integrity and renders GRT unworthy of registration. The Applicant has not disputed this point. For this independent reason, this application is denied.

**B. The Applicant Failed to Pay Taxes and Other Government Obligations for Which Judgments Have Been Entered.**

"[T]he failure to pay any tax, fine, penalty or fee related to the applicant's business for which ... judgment has been entered by a court or administrative tribunal of competent jurisdiction" reflects adversely on an applicant's integrity. See NYC Admin. Code §16-509(a)(x).

Numerous judgments have been docketed against GRT by New York City and New York State. According to a judgment and lien search conducted by the Commission, GRT currently owes the following unsatisfied judgments:

**NYC Department of Finance:**

- Docket date 6/2/98 - \$440.86
- Docket date 6/4/98 - \$440.86

- Docket date 6/4/98 - \$440.86

**Criminal Court of the City of New York**

- Docket date 5/30/01 - \$90
- Docket date 12/7/01 - \$500
- Docket date 12/7/01 - \$500
- Docket date 12/7/01 - \$500
- Docket date 12/7/01 - \$500
- Docket date 12/6/01 - \$500
- Docket date 12/6/01 - \$500
- Docket date 12/7/01 - \$500
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- Docket date 3/7/02 - \$500
- Docket date 5/29/97 - \$1000
- Docket date 8/23/02 - \$540
- Docket date 11/9/94 - \$200
- Docket date 10/8/96 - \$1,500
- Docket date 8/22/96 - \$295
- Docket date 8/22/96 - \$295
- Docket date 6/12/98 - \$125
- Docket date 7/2/98 - \$100
- Docket date 4/20/99 - \$100

- Docket date 5/13/99 - \$525
- Docket date 8/19/99 - \$350

**People of the State of New York**

- Docket date 8/22/96 - \$295

**NYS Commissioner of Labor**

- Docket date 1/16/04 - \$501.37

**NYS Department of Taxation & Finance:**

- Docket date 6/18/04 - \$1,530.60
- Docket date 6/18/04 - \$1,091.60
- Docket date 6/18/04 - \$994.40
- Docket date 8/20/04 - \$319.26
- Docket date 12/24/03 - \$4,013.96
- Docket date 12/24/03 - \$12,600.29

**NYS Tax Commission**

- Filing date 6/18/04 - \$1,168
- Filing date 2/9/01 - \$123
- Filing date 2/9/01 - \$468
- Filing date 2/9/01 - \$53
- Filing date 12/24/03 - \$12,600

**Commissioner of the State Insurance Fund**

- Docket date 6/27/01 - \$124,426.27

The Applicant's failure to satisfy numerous debts that have been reduced to judgment is a sufficient independent ground for denial of its registration application. The Applicant has not disputed this point. For this independent reason, this application is denied.

**C. A Principal of the Applicant Has Been Convicted of a Crime That Directly Relates to His Honesty, Integrity and Character.**

The Commission may refuse to issue a registration to an applicant that lacks "good character, honesty and integrity." See Admin. Code §16-509(a) (applying the same fitness standard to license applicants). A conviction for a crime can be evidence that a registration applicant failed to meet the fitness standard. See Admin. Code § 16-509(a)(iii). A principal of the Applicant, Gustavo Roben, has been convicted of crimes that directly relate to his honesty, integrity and character.

On July 30, 1986, Roben was arrested and charged with Offering to File a False Instrument in the 1<sup>st</sup> Degree, a Class E Felony, Making a False Sworn Statement in the 1<sup>st</sup>



Degree, a Class E Felony, and Perjury in the 2<sup>nd</sup> Degree, a Class E Felony. On April 25, 1988, he was convicted upon a plea of guilty to Offering to File a False Instrument in the 2<sup>nd</sup> Degree, a Class A Misdemeanor. As a result, Roben was sentenced to thirty days in prison and a five hundred dollar fine.

In the criminal scheme, documents submitted to the New York City and New York State Departments of Transportation by Nanco Contracting Corp. ("Nanco") and this Applicant falsely indicated that Nanco had complied with federal and state requirements in fulfilling contracts for federally financed road repairs. The fraudulent documents supported Nanco's claim that it had complied with regulations that obliged Nanco to subcontract at least 10 percent of the work to minority-owned business enterprises, and at least 5 percent to enterprises owned by women. In the fraudulent documents, this Applicant was listed as a minority business enterprise, defined by regulations as an enterprise which is 51 percent owned and controlled in its day-to-day operations by minority persons. Eventually, New York City learned that Roben was a Nanco employee and concluded that the Applicant was neither an independent business as required nor a State approved minority business enterprise. See People v. Mikuszewski, et. al., 73 N.Y.2d 407, 538 N.E.2d 1017, 541 N.Y.S.2d 196 (1989); see also Selwyn Raab, *Queens Company Indicted on Minority Contract Deal*, N.Y. TIMES, July 31, 1986, at B4.

Section 753 of the Corrections Law sets forth certain factors to be considered before a criminal conviction can be used as the basis of denying a company a registration. Those factors include: the relationship between the crime and the specific duties related to the license sought; whether the criminal offense will affect the individual's fitness or ability to perform the duties; the time which has elapsed since the occurrence of the offense; the age of the person at the time of the offense; the seriousness of the offense; any information by the person regarding his rehabilitation and good conduct; the legitimate interest of the public agency in protecting property and the safety and welfare of the public and whether the person received a certificate of relief from civil disabilities, which creates a presumption of rehabilitation. N.Y. Correct. Law 753(1), (2).

Since Roben did not receive a certificate of relief from civil disabilities, he is not presumed to be rehabilitated. Nor should he be. As described above, Roben was convicted of a crime directly relating to his honesty, integrity and character. Despite the fact that Roben's conviction is over 10 years old, the offense was directly related to the business of the Applicant, and Roben was 38 years old at the time— old enough to take responsibility for his actions. Crimes of this nature reflect adversely on the Applicant's good character, honesty and integrity and render GRT unworthy of registration. The Applicant has not disputed this point. For this independent reason, this application is denied.

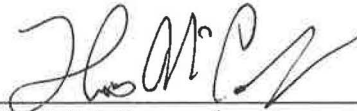
### III. CONCLUSION

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 convincingly that GRT Trucking Corp. falls far short of that standard. For the independently sufficient reasons discussed above, the Commission hereby denies GRT Trucking Corp.'s registration application.

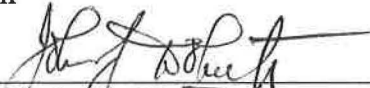
This license denial decision is effective fourteen days from the date hereof. The Applicant shall not service any customers, or otherwise operate a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: February 10, 2005

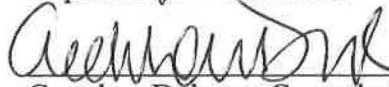
#### THE BUSINESS INTEGRITY COMMISSION



Thomas McCormack  
Chair



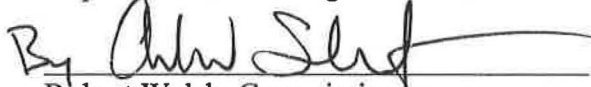
John Doherty, Commissioner  
Department of Sanitation



Gretchen Dykstra, 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