

276



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

**DECISION OF THE TRADE WASTE COMMISSION DENYING
THE APPLICATION OF GTM CARTING INC. FOR A LICENSE TO
OPERATE AS A TRADE WASTE BUSINESS**

GTM Carting Inc. ("GTM" or the "Applicant") applied to the New York City Trade Waste Commission (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 others, the Commission may consider in making its determination. See *id.* §16-509(a)(i)-(x). These illustrative factors include failure to provide truthful information in connection with the license application and engaging in anti-competitive and racketeering acts. See *id.* § 16-509(a)(i), (v). Based upon the record as to the 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. Principal Pat Morea was an officer of the Kings County Trade Waste Association and participated in the resolution of disputes between carters in accordance with

the rules of the property rights system and the organized crime controlled cartel;

2. The Applicant made claims for compensation for lost stops both directly through its principal Pat Morea and through the intercession of the mob-controlled trade waste associations;
3. Principal Pat Morea knowingly associated with Alphonse Malangone, a member of an organized crime group;
4. Principal Pat Morea's testimony before the Commission lacks credibility.

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 Tamilly 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). GTM holds a DCA license and timely submitted a license application to the Commission; thus, GTM is legally entitled to operate pending the Commission’s determination of its 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

On August 30, 1996, the Applicant submitted a license application to the Commission. On May 30, 2002, the Commission's staff issued a 25-page recommendation that GTM's license application be denied, which was delivered by hand to Pat Morea on May 31, 2002. Pursuant to the Commission's rules, GTM had ten business days, or until June 14, 2002, to submit a written response to the staff recommendation. See 17 RCNY § 2-08(a). GTM did not respond to the staff's recommendation. The Commission has considered the staff's recommendation in rendering its determination, and for the independently sufficient reasons set forth below, the Commission finds that GTM lacks good character, honesty, and integrity, and denies its license application.

The Applicant is a Brooklyn-based carting business which was incorporated on March 6, 1959 by Gaetano Morea, the father of the current President and owner, Pat Morea. See GTM License Application ("Lic. App.") at 5. Morea began to work for the Applicant in 1968. See Pat Morea November 4, 1996 Deposition Transcript ("Pat Morea November 4, 1996 Tr.") at 23. Upon Gaetano's death in 1974, Pat Morea became a fifty percent owner of GTM with his mother, Noreda Morea. See Pat Morea November 4, 1996 Tr. at 24, 30. Morea purchased his mother's half of the business in 1977. See Id. GTM's application lists Pat Morea, ("President") his wife Patricia (Klimuk) Morea, ("Part-time Secretary") and his brother-in-law John Klimuk, ("Manager") as principals. See Lic. App. at 42.

B. GROUNDS FOR DENIAL OF THE LICENSE APPLICATION

1. PRINCIPAL PAT MOREA WAS AN OFFICER OF THE KINGS COUNTY TRADE WASTE ASSOCIATION AND PARTICIPATED IN THE RESOLUTION OF DISPUTES BETWEEN CARTERS IN ACCORDANCE WITH THE RULES OF THE PROPERTY RIGHTS SYSTEM AND THE ORGANIZED CRIME CONTROLLED CARTEL

GTM was a founding member of the Kings County Trade Waste Association ("KCTW") from approximately 1974 until May 8, 1996. See GTM Waiver Application at 43. Morea served in various leadership roles of the KCTW in the late 1980's and mid-1990's, and was involved in the resolution of disputes that were brought before that Board. These facts alone constitute sufficient grounds for the Commission to deny the Application of GTM.

As described above, the KCTW was the vehicle by which the rules of the property rights system were enforced in Brooklyn. It had played a central role in the mob-run cartel since its founding in the late 1970s, first under Genovese capo Tommy Contaldo, and later under Alphonse Malangone, also a capo in the Genovese crime family.¹ Any lingering doubt about the function of the KCTW and its Board was removed on February 13, 1997, when the KCTW pled guilty to criminal restraint of trade and was fined \$1 million. People v. Allocca, et. al, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), February 13, 1997 Plea Allocution ("KCTW Plea Tr.") at 63-67. The KCTW's plea followed that of its President Frank Allocca and Secretary Dan Todisco. Both specifically allocuted to the following:

Carters in the City of New York . . . operated by means of a "property rights" system, the purpose of which was to prevent meaningful competition in the carting industry. This system was enforced by a group known as the "cartel" composed of carters and their trade associations

¹ The KCTW's predecessor organization, the Brooklyn Trade Waste Association, was forced to disband after it, its officers, and virtually all of its member carters, were indicted on criminal trade restraint charges by the Kings County District Attorney in 1974. Notwithstanding these law enforcement efforts, it was able to reconstitute itself almost immediately as the KCTW and pick up where the Brooklyn Association had left off.

including . . . [the] Kings County Trade Waste Association . . .

KCTW Plea Tr. at 7-8 (Frank Allocca). See also Id. at 15. (Todisco). The plea allocutions specifically noted the role of the trade associations in achieving the central purpose of the cartel:

. . . to restrain competition in the private carting industry throughout the City of New York, and to keep carters' prices and profits artificially high to [sic] through implementation of the property rights system. *This system was enforced by the carters trade associations* through a number of methods, including price fixing, customer allocation and concerted economic retaliation against carters who broke the cartel's rules.

Id. at 16 (emphasis added).

Similarly, the United States Court of Appeals for the Second Circuit has found that that the trade associations "operate[d] in illegal ways" by "enforc[ing] the cartel's anti-competitive dominance of the waste collection industry." SRI, 107 F.3d at 999. The Court further found that "[t]he association members – comprising the vast majority of carters – recognize the trade associations as the *fora* to resolve disputes regarding customers." Id.

In addition to the proof adduced at the District Attorney of New York County's carting trial, the affidavits of two confidential informants (the "CIs") describe in more detail the functioning of the KCTW Board.² At the time the CIs executed their affidavits in 1997, both owned carting companies that had been members of a trade waste association and each had more than ten years experience in the industry. See Affidavit of CI #15613, dated February 6, 1997 ("15613 Aff."), at 1, ¶ 2; and Affidavit of CI# 15407, dated January 16, 1997 ("15407 Aff."), at 1, ¶2. Both CIs had direct knowledge of the functions and activities of the trade waste association boards. 15613 Aff. at 1, ¶2; 15407 Aff. at 1, ¶2.

² It has been the Commission's experience that, despite the vast amount of public record information available, carters are still reluctant to testify openly about the role of the trade waste associations and their boards. Morea was no exception. See infra.

The two CIs confirmed the central role of the associations in enforcing the property rights system. See 15407 Aff. at 1-2, 15613 Aff. at 2, ¶4 (“primary function”). Most carters abided by the central rule of non-competition and there was no need to involve the associations. See 15407 Aff. at 2, ¶5; 15613 Aff. at (“For the most part, all of the carters obeyed this rule [i.e., non-competition] and there was no need to ask the trade associations to enforce it.”) accord 15613 Aff. at 2, ¶5. When carters found it impossible to come to an agreement about a disputed stop, “[e]ach carter had the right to present his case to the Board of Directors of the association, made up of four to six elected member carters. The Board would listen to each carter, then vote its decision.” See 15613 Aff. at 3, ¶9. Although carters would abide by the Board’s decision “roughly 90% of the time,” when “one of the carters was not happy with the decision of the Board, he could request intervention by the ‘business agent’ for the association.” Id. at 3, ¶¶9 and 10. It was “common knowledge” that the business agents “were connected to organized crime” and that that connection was the reason they were business agents. Id. at 3, ¶10. The KCTW business agent was Alphonse “Ally Shades” Malangone. Id. “Everyone knew” that the decision of the business agent “had to be respected,” and in that sense, “[t]he business agents actually ran the associations, not the president or other officers of board members of those associations.” Id. at 4, ¶12. In essence, the Board worked for the business agent, not the other way around.

Each Board had jurisdiction over disputes that occurred in its county. Id. at 4, ¶ 13.³ If a carter did not abide by the decision of the Board or the business agent, he could be designated an “Outlaw,” and his stops would no longer be protected by the association. See 15613 Aff. at 4, ¶ 14.

It follows from these accounts and other evidence of the functioning of the property rights system, that Board members – in order to do the job they were selected to do – had to be familiar with the rules of the property rights system. No carter would be elected to serve on the Board unless they were fully familiar with those rules and willing to live by and enforce them against others. Even assuming – and it is unlikely in the extreme -- the existence of a carter who was ignorant of the property rights system and who

³ See also Carting Tr. Exhibit 79B (transcript of September 12, 1994 audiotape of Gambino soldier and QCTWA and GNYTWA head Joseph Francolino: “When you are a New York member you abide by the New York rules. And if you’re a Brooklyn member, you abide by the Brooklyn rules when it pertains to Brooklyn. When it pertains to New York, it’s New York. So, it’s very simple. There’s nothing complicated.”).

somehow was mistakenly selected to be on the board, that carter would get a rapid education in the system and would be expected to conform. Certainly the first time two carters brought a dispute for resolution, the rules would be made clear and the collusion and criminal restraint of trade be made obvious. It is just as unlikely – given the relationship between the two -- that one could serve on the Board for any length of time without being aware of the true role of the business agent.

In Morea's case, however, no such assumptions or inferences are necessary. Morea demonstrated his familiarity with the rules when he pressed claims for compensation against the undercover detective. See infra at 16-17. There can be no question then that Morea was fully conversant with the rules of the cartel and willingly played an important role in maintaining and enforcing its rules. Indeed enforcement of cartel rules was the "primary function" of the Board on which he served. See 14613 Aff. at ¶4. Accordingly, the Commission denies GTM's License Application based on this independently sufficient ground.

2. THE APPLICANT MADE CLAIMS FOR COMPENSATION FOR LOST STOPS BOTH DIRECTLY THROUGH ITS PRINCIPAL PAT MOREA AND THROUGH THE INTERCESSION OF THE MOB-CONTROLLED TRADE WASTE ASSOCIATIONS

The investigation underlying the prosecution of People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.) (hereinafter "People v. GNYTW") produced evidence that directly implicated the Applicant in cartel activity. There was substantial evidence that the Applicant pressed claims for compensation against the undercover company for lost stops directly through its president Pat Morea and indirectly through the officers of the KCTWA. Such activity plainly supports the conclusion that the Applicant lacks good character, honesty and integrity.

During the trial of People v. GNYTW in 1997, the District Attorney relied heavily upon the testimony of Detective Richard Cowan, who worked undercover in the carting industry in the early 1990's as an employee of Chambers Paper Fibers ("Chambers"). As a witness, Cowan interpreted for the jury much of the evidence seized from the offices of the trade waste associations and carting companies. Evidence that proved the existence of

the property rights system included records of disputes between carters over particular stops.

At the beginning of the undercover operation, Chambers operated outside the rules of the WPA and took stops away from other carters, mostly by offering lower prices to customers. Eventually, Chambers was subjected to threats and violence and agreed to become a member of the WPA and the other trade waste associations. Once it became a member, Chambers went "on the board," i.e., its name was posted on a bulletin board in the association for 90 days during which other association members could make claims for compensation against Chambers for any stops they had lost to Chambers prior to its joining. Generally, the claims were presented to Cowan by the officers of the association who received them from the members. Unless the members informed the officers that they wished to make a claim, the officers would have no way of knowing that Chambers had taken the stop of any given member. See generally Testimony of Detective Richard Cowan, People v. GNYTW, June 19, 1997. In this way, Chambers received documents with the names of carters making such claims, one of whom was GTM.

In particular, the District Attorney introduced into evidence five lined pages of yellow notebook paper with handwriting: Exhibits 396, 396A, 396B, 396C, and 396D. Cowan explained that these documents constituted one of the Claims Lists given to him by Frank Giovinco in 1993. See Id., June 25, 1997, at 5497-5498. Each page of this claims list had the name of a carter or several carters, most of which had one or more business names and addresses beneath them. See Id., Exhibits 396, 396A, 396B, 396C, 396D. Exhibit 396C, lists seven carting companies, including "G.T.M." Each of the companies lists one, two or three customers. GTM is followed by the customer "Walgreens, Neptune Ave. and W. 6th Street." Id., Exhibit 396C.⁴ Based on the entire record, the evidence establishes that the Applicant sought compensation from Chambers through the KCTW in accordance with the rules of the cartel.

⁴ Morea recalled servicing the Walgreens on Neptune Avenue. He did not recall whom he lost the stop to and claimed that he did not recall having any disputes over stops with Chambers. See Pat Morea October 19, 2001 Tr. at 69-70. Furthermore, he testified that other than complaining to Frank Giovinco about Chambers' owing him money for dumping cardboard at their facility, he never complained to anyone affiliated with any of the trade waste associations about Chambers. However, in complete contradiction to Morea's account, Detective Cowan testified that on November 16, 1994, Pat Morea "raised the issue of . . . a stop that he lost to [Chambers] Paper Service at McDonald Avenue in Brooklyn. He said it was not for sale. He wanted it back..." See People v. GNYTW, July 14, 1997 at 6406.

At his deposition, Morea testified under oath that he never had a dispute with another carter about a customer that was taken from GTM. See Pat Morea October 19, 2001 Tr. at 67. He also claimed that although he lost many customers to other carters while a member of the association, he never complained to anyone affiliated with any of the associations. See id. at 68. Likewise, Morea did not disclose the existence of any disputes on its license application, which it submitted in August 1996.⁵ Detective Cowan's testimony, the existence of the "claims list," and the testimony of other carters refutes Morea's testimony about not having disputes with other carters. Morea's dealings with other carting companies described above are classic examples of anticompetitive behavior typical of the cartel. GTM was not only a longstanding member of the KCTW, but also an active participant in the mob-run cartel.

The type of compensation scheme evidenced by the Claims List and the other evidence developed in People v. GNYTW, none of which was contested by the Applicant, provides ample basis for the conclusion that this applicant lacks good character, honesty and integrity.

3. PRINCIPAL PAT MOREA KNOWINGLY ASSOCIATED WITH ALPHONSE MALANGONE, A MEMBER OF AN ORGANIZED CRIME GROUP

In rendering its decision on an applicant's fitness for a trade waste removal license, the Commission is further authorized to consider the applicant's association with any member or associate of an organized crime group, as identified by a federal, state, or city law enforcement or investigative agency, where the applicant knew or should have known that the person was associated with organized crime. See Admin. Code § 16-509(a)(vi). In rejecting a constitutional challenge to this provision by certain carters and their trade association, the Second Circuit confirmed that a carting company's "knowing associations, having a connection to the carting business," with organized crime figures may properly be considered by the Commission in its licensing determinations, in order to further its "compelling interest in combating crime, corruption and racketeering – evils that eat away at the body politic." SRI, 107 F.3d at 998. Alphonse Malangone, is such a figure.

⁵ The license application specifically calls for such information. See Lic. App. at 16-17. This materially false statement by omission provides an additional basis for denial of GTM's license application. See Admin. Code §16-509(a)(i).

Regarding organized crime and the carting industry, Morea admitted that he:

“heard for years that organized crime controlled the whole garbage industry, that we were organized crime...”

and that he

“heard that everybody in the garbage business was organized crime.”

Yet he claimed that he never

“heard that [organized crime] controlled the associations.”

Q.: And you never heard that the associations in particular were controlled by organized crime?

A.: No, just it was a blanket of everybody. You are in the garbage business, you are in organized crime...

Q.: Do you think there is any basis for people believing that?

A.: Yes. There seems to be a lot of basis for it now.

See Pat Morea October 19, 2001 Tr. at 76-77. Thus, even Morea himself acknowledged that the industry was controlled by organized crime. By virtue of his position in the KCTW, Morea associated with people he knew or should have known had organized crime connections. For instance, Morea knew that the business agent or “administrator” of the KCTW was Alphonse “Allie Shades” Malangone.⁶ Morea testified that as administrator of the KCTW, Malangone:

⁶ Morea’s relationship with Malangone is demonstrated by the fact that he admitted that he met Malangone “once or twice at Pastels,” and other times that he coincidentally “ran into” Malangone at restaurants “and stuff like that.” See Pat Morea November 8, 1996 Tr. at 94-95. Pastels was a nightclub which Malangone was known to frequent. (“You can find him [Malangone] there every day, practically.”) See People v. GNYTW, July 15, 1997 at 6658. Also, “I have been at some social functions with Mr. Malangone, fund raisers. I was also at his son’s wedding.” See Pat Morea November 8, 1996 Tr. at 93. It is unlikely that Morea would have such a close relationship to Malangone while remaining ignorant of his organized crime ties.

“would take care of the financial duties,... or maybe overlook account receivables or oversee accounts payables. I know he played a predominant part in union negotiations. Outside of that, he was just basically there.”

See Pat Morea November 4, 1996 Tr. at 70.

Malangone has notorious and well-known connections to organized crime.⁷ It is unlikely that any KCTW member, let alone any KCTW board member could long remain ignorant about the organized crime connections of Alphonse Malangone. Morea's claim that he did not know about Malangone's connections to organized crime until after the indictments simply cannot be believed.⁸

The Applicant's futile attempt to distance itself from Malangone is strikingly similar to its attempts to distance itself from its now-convicted trade association. The very fact that Morea was nominated to the board of directors and to the position of secretary of a trade association that enforced an anticompetitive cartel and was controlled by organized crime is telling of both his stature in the association and his relationship with Malangone. Moreover, Morea's standing in and connections to the KCTW leadership and Malangone are further evidenced by the fact that Morea's wife owned the premises at 6316 Bay Parkway in Brooklyn where the KCTW was located. See Pat Morea November 8, 1996 Tr. at 14.

According to Morea, his wife Patricia⁹ purchased the property in the middle of 1990 from Genaro Contaldo, the son of Thomas Contaldo, the Genovese family capo who ran the KCTW before Malangone. See Pat Morea November 8, 1996 Tr. at 14, 25. It appears that Morea purchased the property with the convenience of the KCTW in mind. Morea explained that

⁷ Morea could not recall if he ever discussed association matters with Malangone outside of the KCTW. He did admit to having discussions about trade waste industry matters with Malangone outside of the KCTW. See Pat Morea November 8, 1996 Tr. at 95.

⁸ Likewise, Morea knew that Malangone's predecessor at the KCTW was Thomas "Crazy Tommy" Contaldo. See Pat Morea November 8, 1996 Tr. at 25-28. Contaldo was classified by law enforcement sources as a capo in the Genovese Organized Crime Family. As discussed below, (and probably not coincidentally) Morea's wife purchased real estate from Thomas Contaldo's son, Genaro Contaldo. Id. The relationship between Morea and Tommy Contaldo is further evidenced by the fact that Morea attended Contaldo's wake and funeral. See Pat Morea November 8, 1996 Tr. at 29.

⁹ Although Morea's wife Patricia purchased the property, Morea routinely referred to the property as his own at his depositions.

in 1990 the KCTW was about to purchase the 6316 Bay Parkway property¹⁰ and then decided not to:

“So I said, well, if I was to buy the property, would you [Malangone, Allocca and Todisco] want to rent it? And they said yeah, so I did.”

See Pat Morea October 19, 2001 Tr. at 53. Morea admitted that he consulted with Alphonse Malangone, Frank Allocca and Daniel Todisco for approval before purchasing the property and renting it to the KCTW. See Pat Morea October 19, 2001 Tr. at 53. This demonstrates that, in essence, Morea purchased the property from a Genovese capo's son (Genaro Contaldo) for the convenience and benefit of another Genovese capo, Alphonse Malangone. To purchase the property, Morea obtained a mortgage from Salvatore Spinelli¹¹ (“Spinelli”). See Pat Morea October 19, 2001 Tr. at 54-55. Ultimately, the KCTW moved into the premises “right after I bought it...” See Pat Morea November 8, 1996 Tr. at 14-15; See also Pat Morea October 19, 2001 Tr. at 51; See also May 1990 Lease between *Patricia Morea* and *Kings County Trade Waste Association, Inc.*¹² Certainly, this real estate transaction was not ordinary. From the beginning, Morea planned this deal with the assistance of members and associates of organized crime. This evidence plainly indicates that Morea was a trusted and integral component of organized crime's grip on the carting industry.

The above facts are further evidence that Pat Morea knowingly associated with members of organized crime. His admitted role as landlord to the KCTW solidifies his connections to convicted racketeers and to organized crime. For this additional independent reason, the Commission denies this application.

¹⁰ The fact that Morea was privy to this information further demonstrates his closeness to the leadership of the association and to members of organized crime such as Malangone.

¹¹ Several law enforcement sources classify Salvatore Spinelli as an associate of the Gambino Organized Crime family. In describing efforts by organized crime to thwart the orderly disposition of the assets of Rosedale Carting, a mob-controlled company seized by the federal government after its principal, Gambino associate Angelo Paccione, was convicted of running a massive illegal garbage dump on Staten Island, Judge Constance Baker Motley noted the central role Spinelli played in the carting industry during decades of organized crime domination. *United States v. Paccione*, 751 F. Supp. 368, 379-80 (S.D.N.Y. 1990), *aff'd*, 949 F.2d 1183 (2d Cir. 1991), *cert. denied*, 505 U.S. 1220 (1992) (“One attorney [Spinelli] provided legal work for the overwhelming majority of transactions in the carting industry.”). Spinelli also represented Paccione in a route sale transaction with Morea in 1977. See Lic. App. at 25-34.

¹² The term of the lease began on May 1, 1990 and was to end on April 5, 2005. This lease was signed by “Patricia Morea” and “Frank Allocca.” The KCTW stopped paying rent in May or June, 1996. See Pat Morea November 8, 1996 Tr. at 16.

4. PRINCIPAL PAT MOREA'S TESTIMONY BEFORE THE COMMISSION LACKS CREDIBILITY

Given the facts stated above, Morea, if he were inclined towards honesty and candor, could have been expected to testify fully and accurately about his relationship with the KCTW and with Malangone. Instead, Morea chose to deny responsibility for his involvement in the cartel system and to minimize his relationship with Malangone. As discussed above, the dispute-settling function of the boards of the trade waste associations is proven and has been described many times and admitted to by the principals and representatives of the associations themselves. Morea, however, failed to acknowledge the truth of this central function of the KCTW board, despite being under oath. Moreover, Morea would not admit to the role he played as a member of the Board. The Commission therefore finds that Pat Morea lacks the requisite good character, honesty, and integrity, and denies GTM's license application.

At his deposition in 2001, Morea acknowledged that he "heard" about the property rights system. See Pat Morea October 19, 2001 Deposition Transcript (Pat Morea October 19, 2001 Tr.) at 65-66. He even went so far as to say that the property rights system functioned in the New York City carting industry:

"it [the property rights system] functioned. I don't know if its [sic] exactly how you described it, but I had nothing to do with it."

See October 19, 2001 Tr. at 76. This testimony is specifically contradicted by Detective Cowan's testimony and the evidence produced at trial wherein it was established that Morea did press claims for lost stops against the undercover detective. This alone is direct evidence both that Morea participated in the property rights system, and that he testified falsely under oath before the Commission.

Even if Morea did not press claims for lost stops, he offered false and misleading testimony to the Commission about the rules that the association enforced. Morea's false assertion that he did not have anything to do with the property rights system is further undermined by the fact that he was unable to testify who did have "to do with" the property rights system if officers or board members of the associations (like himself) did not. It

strains credulity that a founding member, a board member, and an officer of the KCTW such as Morea could have only "heard" about the property rights system, be unsure of how it operated, and not participated in any aspect of it. See supra. Thus, Morea offered the Commission false and misleading testimony about the property rights system that engulfed the carting industry in New York City for as long as he was in the business.

Likewise, Morea's testimony before the Commission about the functions of the KCTW was false and misleading. Although a founding member of the KCTW, Morea claimed that he did not know what the KCTW's original purpose was. See Pat Morea November 4, 1996 Tr. at 55-56. He described the functions of the association as those of a legitimate "trade association." See Pat Morea November 4, 1996 Tr. at 67-68. In light of all the evidence and Morea's involvement in the KCTW, the Commission should reject as incredible Morea's assertions of ignorance concerning the true functions of the association.

Morea's testimony about the functions of the KCTW board and his own activities as a member of the board was also false and misleading. When first asked about the functions of the board, Morea did not mention settling disputes. See Pat Morea November 4, 1996 Tr. at 63-64. Indeed, although Morea rambled about the myriad of supposed board functions, he failed to testify truthfully about the most important function of the board- to settle disputes between carters.¹³

¹³"The Board of Directors, it almost was -- had a lot to do in name alone. We didn't have many applicants, but it kind of just took care of the day-to-day operation of things, where we were going to -- what we were going to call home, where we were going.

Q: Where you were going to call home?

A: We had some problems with locations, with break-ins, with -- it was much like operating a business. It was -- you never wanted to make a decision like you do with your own company, so it was something that you just sat there and discussed even the day-to-day, "Are we going to afford to buy insurance? Are we going to do this? Are we going to stay in this location? Can we afford to pay that rent? We need new office equipment. Are we going to hire a secretary?"

Then there were lots of things there were -- whatever new regulations would come down would be addressed. We tried to address united buying subjects, like maybe all getting together and uniformly buying tires, buying truck parts."

See Pat Morea November 4, 1996 Tr. at 63-64.

For example, Morea stated that the association did not have rules that applied to disputes among carters. See Pat Morea November 8, 1996 at 47. See Pat Morea October 19, 2001 Tr. at 66. Morea's testimony on this subject is simply not believable. As detailed above, the central role of the KCTW was non-competition. Morea also submitted false and misleading testimony about the mechanism and rules the KCTW used to preserve the status of noncompetition. See supra. When specifically asked about what action the board took in response to disputes among carters, Morea claimed that the "there was no action taken." See Pat Morea November 4, 1996 at 73. According to Morea, when a carter brought such a dispute to the KCTW,

"The Board of Directors didn't do anything with that kind of a problem. You lost an account. We have lost plenty of accounts. Everybody has lost plenty of accounts. There was not something done over a general complaint like, 'I lost an account.'"¹⁴

See Pat Morea November 4, 1996 Tr. at 72. He then freely acknowledged that while he was on the Board, the Board heard disputes from carters and rendered decisions, although he preferred to call them "opinions." See Pat Morea November 8, 1996 Deposition Transcript ("Pat Morea November 8, 1996 Tr.") at 49-50. According to Morea, member carters "would bring" their disputes to the association "to discuss it" rather than have disputes settled by the Board. See Pat Morea November 8, 1996 at 49.

"I'm not sure what mediate means, but we [the board] listened to the problem. We also- - some of the guys were like the - - we listened, we gave an opinion and then they were on their own. That's how that was- -."

See Pat Morea November 8, 1996 Tr. at 50. Then Morea clarified that:

". . . It really had nothing to do with me telling them what to do. It was telling them, 'Guys, work this out.'

¹⁴This statement contradicts the information provided in GTM's license application. In its license application, GTM denied that it acquired or lost any route(s) or customer location(s) ("stops") during its membership in the KCTW. Either the license application contained false information or Morea testified falsely under oath. See Lic. App. at 11; see also Admin. Code §16-509(a)(i).

You have been in this business for 100 years together.’ One of the biggest things to come out of my mouth would be, ‘Who did the customer want?’ And that’s really the way it was supposed to be done. And as far as I am concerned, that’s what was done. I mean, that’s what they were told.”

See Pat Morea November 8, 1996 Tr. at 51. Morea offered similar false and misleading testimony at his deposition in 2001:

“I heard the guys and I listened to them complain about this guy did that and that guy took my account, and the end result of that is you had a Department of Consumer Affairs, the customer calls the Department of Consumer Affairs and puts it there whoever he wants in there. This was not a forum for that.”

See Pat Morea October 19, 2001 Tr. at 67. Yet, at the same time that Morea conceded hearing complaints about accounts being taken, he insisted that he personally did not play any part in the resolution of disputes, testifying that:

“it didn’t affect me. So was it out there, I can’t tell you yes or no whether it was out there or not, and it had no effect on me and I had no part of it.”¹⁵

As demonstrated above, Morea was part of the KCTW’s inner circle. It is inconceivable that he could be so ignorant of a system in which he was an integral part. The Applicant’s and its principal’s failure to provide truthful information to the Commission about Morea’s role as a member of the Board of Directors and as Secretary of the KCTW constitutes an additional basis for the conclusion that this Applicant lacks good character, honesty, and integrity, and Commission denies this license application based on this independent ground. See Admin. Code § 16-509(a)(i).

¹⁵ Morea’s statement that he “had no part of it” is contradicted by Detective Cowan’s testimony. See supra.

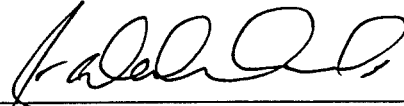
III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any Applicant that it determines lacks good character, honesty and integrity. Here, principal Pat Morea was on the Board of Directors of the KCTW, and participated in the resolution of disputes among carters in accordance with the property rights system. Additionally, Pat Morea engaged in racketeering activities in connection with the trade waste industry, and has associated with people who he knew or should have known were members or associates of organized crime (all of which facts the Commission is expressly authorized to consider under Local Law 42). Accordingly, based on the actions of the applicant and its principal, the Commission finds that G.T.M. Carting Inc. lacks good character, honesty, and integrity, and denies its license application.

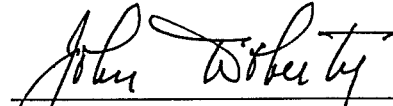
This license denial decision is effective fourteen days from the date hereof. In order that GTM's customers may make other carting arrangements without an interruption of service, the Applicant is directed (i) to continue servicing its customers for the next fourteen days in accordance with their existing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

Dated: June 27, 2002

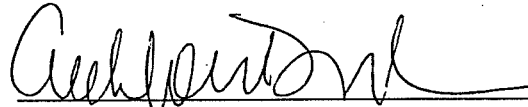
THE TRADE WASTE COMMISSION



José Maldonado
Chairman

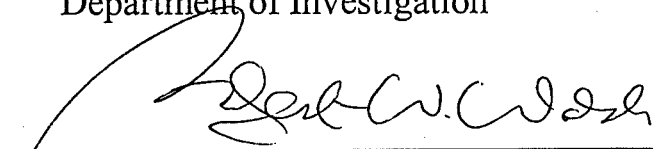


John Doherty, Commissioner
Department of Sanitation



Gretchen Dykstra, Commissioner
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Business Services