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

**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE EXEMPTION APPLICATIONS OF LAQUILA CONTRACTING, INC., LAQUILA CONSTRUCTION, INC., AND LAQUILA INDUSTRIES, INC. FOR REGISTRATIONS TO OPERATE AS TRADE WASTE BUSINESSES**

Laquila Contracting Inc., Laquila Construction Inc., and Laquila Industries Inc. (collectively, "the Laquila companies" or the "Applicants") have applied to the New York City Business Integrity Commission (the "Commission") for registrations 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.

The Laquila companies applied to the Commission for registrations enabling them 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, and deceptive trade practices); 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 Applicants, the staff recommends that the Commission, for the following independently sufficient reasons, deny the Laquila companies' registration applications:

1. Laquila Construction Inc. and one of its principals were convicted of Offering a False Instrument for Filing in the First Degree;

2. The Applicants failed to notify the Commission of convictions and arrests;

3. The Applicants have repeatedly engaged in prohibited conduct by operating a transfer station in violation of federal, state and local laws or regulations;

4. Laquila Construction Inc. was criminally charged with illegal dumping in New Jersey, and paid a $25,000 penalty in connection therewith;

5. The Applicants provided false and misleading information on their registration applications;

6. The Applicants have knowingly associated with several associates of organized crime groups and there is evidence implicating the Applicants in the commission of a racketeering activity;

7. The Applicants failed to provide information required by the Commission.

## 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 also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

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

In sum, the need to root organized crime and other forms of corruption out of the City's waste removal industry applies with equal force to the garbage hauling and the C & D sectors of the industry. Local Law 42 recognizes this fact in requiring C & D haulers to obtain registrations from the Commission in order to operate in the City.

**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

On February 20, 2004, the staff issued a16-page recommendation that the applications be denied. Pursuant to the Commission's rules, the Applicants had ten business days, or until March 5, 2004, to submit a written response to the staff recommendation. See 17 RCNY § 2-08(a). On or about February 27, 2004, the staff agreed to extend the time for the Applicants to submit a reply to the staff's recommendation to March 15, 2004. On or about March 11, 2004, the staff agreed to extend the time for the Applicants to submit a reply to the staff's recommendation to March 16, 2004. On March 16, 2004, the Applicants' attorney submitted a 2-page response to the staff's recommendation. The response does not dispute any of the facts recited in the staff's recommendation. See Response. Instead, in the response, the Applicants propose to "reorganize and adopt an internal integrity program." See Id. The Commission finds that it is far too late for these Applicants make such a proposition. As demonstrated below, the Applicants failed to cooperate with the staff's investigation, and in doing so, caused the staff to expend resources in connection to these applications. The Commission has carefully considered both the staff's recommendation and the response from the Applicants. For the independently sufficient reasons set forth below, the Commission finds that the Applicants lack good character, honesty, and integrity and denies these exemption/registration applications.

Laquila Construction, Inc., Laquila Contracting, Inc., and Laquila Industries, Inc. each filed an application for exemption from licensing requirements for removal of demolition debris (collectively, the "applications"). All of the applications are substantially similar. The staff has conducted an investigation of the Applicants. The disclosed principals of the Applicants are Dino Tomassetti ("Dino"), Serafino Tomassetti ("Serafino"), and Rocco Tomassetti ("Rocco").[1] See Applications at 8-9. Although not disclosed by the Applicants, the Commission finds that Angelo Sisca, the Operations Manager, has also been a principal of the Laquila companies.[2] As

[1] By letter dated April 22, 2002, just one day before the depositions of the Applicants' principals were scheduled to begin, the Applicants' attorney advised the Commission, for the first time, that Rocco and Serafino were no longer "officers or principals" of the Applicant. See letter from Louis Rosenthal to David Mandell dated April 22, 2002. It is clear from these circumstances that Rosenthal made this representation in an effort to circumvent these depositions and thereby obstruct the Commission's investigation. Assuming that Rosenthal's statement is true, the Applicants violated 17 RCNY §2-05(b) and Admin. Code §16-507(b) by failing to report this material change to the Commission within ten days.

[2] Another undisclosed principal of the Applicants was Executive Vice President Anthony Albicocco. See infra.

demonstrated below, Sisca in his actions (and as reflected in his title) participated directly or indirectly in the control of the Laquila companies and is therefore a principal. See 17 RCNY § 1-01 (definition "principal"). Because the Laquila companies are closely affiliated companies sharing, among other things, principals, business premises, and employees, their applications are considered together.

**A. The Applicant and One of Its Principals Were Convicted of Offering a False Instrument for Filing in the First Degree.**

On June 28, 1989, Laquila Construction Inc. was awarded a $2,495,000 contract by the New York City Health and Hospitals Corporation ("HHC") for construction of a hospital facility under renovation and construction. Laquila's contract with HHC specifically limited the use of subcontractors to no more than 25% of the work performed and required prior HHC approval of any major subcontractor. Furthermore, the contract required Laquila to utilize a "Locally Based Enterprise" ("LBE") to perform the first 10% of any subcontracted work.[3] Despite the specific limitations contained in the contract, Laquila subcontracted almost the entire project to J. Luchese & Son Contracting, ("Luchese"). Laquila was to pay Luchese $1,395,000 for the work, ensuring Laquila a profit of approximately $1 million. See April 7, 1997 City of New York Department of Investigation Press Release.

Luchese, a non-LBE owned by the late Ciro Luchese, completed 90% of the project with Laquila performing the rest. Between the years 1990 and 1992, in an effort to conceal Luchese's participation and avoid the imposition of fines for the failure to use an LBE on the project, Laquila's operations manager, Angelo Sisca,[4] and executive vice president, Anthony Albicocco, acting on behalf of Laquila, filed certain payrolls and other documents with HHC, falsely stating that no subcontractors were used on the job. Laquila also submitted payment requests which inflated the real cost of Luchese's work and then, claiming it as its own, Laquila fraudulently collected an additional $18,000 from HHC. See Id.

This scheme came to light after Ciro Luchese's death, when his family attempted to settle his estate and collect the balance on the contract with Laquila. When Laquila refused to pay, the Luchese family asked HHC to intervene. Until receiving this request, HHC had been unaware of Luchese's participation in the project. HHC then notified the agency's inspector general and opened an investigation along with the New York City Department of Investigation and the Manhattan District Attorney's Office. See Id.

Thereafter, on April 4, 1997, Laquila Construction Corp. and Angelo Sisca each pleaded guilty before Manhattan Supreme Court Justice Brenda S. Soloff to the charge of Offering a

[3] Locally Based Enterprises are local New York City firms doing business in areas considered economically depressed and employing disadvantaged individuals. Failure to use an LBE subcontractor when required was deemed a material breach of the contract and subjected Laquila to fines for work performed in breach thereof.

[4] Although not disclosed, Angelo Sisca meets the statutory definition of "principal." See 17 RCNY § 1-01 (definition "principal"). The Commission is authorized to deny the registration application of a company that fails to provide information required by the Commission. The failure to disclose Sisca as a principal is such a failure. See Admin. Code § 16-509(b).

False Instrument for Filing in the first degree under Docket Number 2707-97 in Supreme Court, New York County.[5] On May 23, 1997, Sisca was sentenced to a one-year conditional discharge. On September 25, 1997, Laquila was sentenced to a one-year conditional discharge. Laquila agreed to immediately pay Luchese $179,000 in owed fees. In addition, Laquila agreed to pay a $225,000 contractual penalty to HHC. See Id.

Additionally, the Applicants have established a pattern of filing false documents with government agencies.[6] For instance, in September 1989, Laquila filed a School Construction Authority ("SCA") Prequalification Form. Based on the information submitted by Laquila, the SCA prequalified Laquila in May 1990 and allowed it to bid on projects. Later, in May 1990, Laquila was awarded a $7.97 million contract by the SCA. Then, in May 1991, the SCA revoked Laquila's qualification, rescinded the contract and barred Laquila from doing work for the SCA for a period of three years because Laquila failed to disclose material information in its prequalification forms.[7] Thereafter, Laquila commenced an Article 78 proceeding seeking to vacate the SCA determination. By decision dated October 30, 1991, the Supreme Court, Queens County vacated the SCA determination and ordered the SCA to hold a hearing. Subsequently, the parties settled the matter and entered into an agreement whereby Laquila and all of its principals agreed not to work for the SCA for a period of three years commencing May 10, 1990. See December 9, 1991 Settlement Agreement between Laquila Construction Inc. and New York City School Construction Authority.

On May 13, 1993, Dino Tomassetti and Laquila Construction were arrested and charged with fourteen counts of offering to file a false instrument in the first degree, a class E felony. (Indictment number 7994/93). The evidence presented to the grand jury established that the defendants filed a bidding proposal for a construction contract with the New York City Transit Authority which contained a false statement that the defendants had not been the subject of an indictment. However, contrary to their assertion, at the time of the filing of the bidding proposal there was an indictment pending against the defendants in New Jersey. See People v. Tomassetti and Laquila Construction, Inc., 607 N.Y.S. 2d 588 (December 20, 1993).

Although the defendants avoided conviction, their conduct was far from blameless. In dismissing this case against Dino and Laquila, Judge Alan Marrus found that the New York City Transit Authority is not a political subdivision of the state, and that the element of the crime charged which makes it a felony is "the intent to defraud the state or any political subdivision thereof." See Penal Law 175.35. Judge Marrus noted that "this court would then normally reduce the crimes charged to offering a false instrument for filing in the second degree, a misdemeanor. This cannot be done here since the criminal action was commenced more than two years after the alleged criminal acts took place. The Statute of Limitations thus bars prosecution." See People v. Tomassetti and Laquila Construction, Inc., 607 N.Y.S. 2d 588

[5] See Certificates of Dispositions for Sisca and Laquila, No. 2707-97, filed on April 4, 1997. Offering a false instrument for filing in the first degree is a class E felony.

[6] The Applicants have also filed false and misleading documents with the Commission. See infra.

[7] Laquila did not disclose the fact that it was indicted in 1987 for illegal dumping in New Jersey.

(December 20, 1993). Thus, although this case was dismissed, the Applicants demonstrated their willingness to submit false and misleading documents to government agencies.

Another instance in which the Applicants were found to have filed false and misleading documents with a government agency occurred on March 30, 1994, when the New York City Department of Transportation, Bureau of Bridges ("NYC DOT") determined that Laquila Construction Inc. be "held Non-Responsible under Section 5-02(b) of the PPB Rules.[8] This determination was based on the following:

> "1. Beginning in 1988 and continuing to the present day, Laquila and its principals have consistently failed to disclose material facts in its submissions of background questionnaires in connection with obtaining contracts from New York City agencies and public authorities.
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> 2. Laquila and Principal Rocco Tomassetti have failed to disclose to DOT the Non-Responsibility determination issued by DOS against Red Hook Crushers, a company for which Mr. Rocco Tomassetti has identified that he has been affiliated as an officer and which Laquila lists as an affiliated business."

See March 30, 1994 letter by Peter M. Syrdahl, Assistant Commissioner, Agency Chief Contracting Officer ("ACCO"); see also Memorandum from Peter Pizzuco, Assistant Commissioner, Division of Design-Bridges.

Laquila unsuccessfully appealed the above determination. In upholding ACCO Peter Syrdahl's March 30, 1994 determination, Chief Engineer George A. Krause found that "Laquila principal Rocco Tomassetti is a principal and officer of Red Hook, and, as such, was required to disclose on his questionnaire the Red Hook non-responsibility determination made by the Department of Sanitation on March 14, 1994... Based upon Laquila's principal's failure to disclose material information in his VENDEX Questionnaires," the ACCO's determination of non-responsibility was upheld. See August 18, 1994 letter by Chief Engineer George A. Krause. Laquila appealed the determination again, and again the determination that Laquila was a non-responsible bidder was upheld by Richard M. Bonamarte, Director, Mayor's Office of Contracts, City Chief Procurement Officer. See December 12, 1994 decision by Richard M. Bonamarte.

Additionally, in 1999, another company of which Rocco is a principal, Empire Transit Mix, Inc., brought an action against the City of New York seeking to compel the City to revoke its prohibition on allowing Empire to supply concrete to contractors working on City construction contracts. This lawsuit arose out of the fact that in March, 1999, the City obtained

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[8] Procurement Policy Board Rules ("PPB Rules") §5-02(a)(1) provides that contracts "shall be awarded to... responsible contractors only." PPB Rules §5-02(b)(1) defines a responsible contractor as one which "has the capability in all respects to perform fully the contract requirements and [one which has] the business integrity to justify the award of public tax dollars." Thus, by finding the Applicant "non-responsible," the NYC DOT determined that it "did not have the business integrity to justify the award of public tax dollars."

"significant negative information" concerning Empire through its Vendor Information Exchange System database ("VENDEX").[9]

> "Laquila [was] indicated in VENDEX to have seven "advices of caution" denominating negative information concerning the contractor's business integrity. These include 1991 findings of non-responsibility by the City's Department of Citywide Administrative Services[10] and Department of Sanitation[11] for Laquila's failure to disclose a 1987 New Jersey indictment on VENDEX disclosure forms; a 1993 New York City Transit Authority adverse determination based upon a 14 count indictment charging filing false written statements with that public entity[12]; a 1993 Comptroller's objection to contract registration based upon the fact that Laquila, among other things, failed to disclose OSHA[13] and labor law violations; a 1994 non-responsibility determination by the City's Department of Transportation based upon Laquila's consistent failure to disclose material facts on VENDEX questionnaires; and the 1997 arrest of two Laquila principals on charges of offering a false instrument for filing. As to the most recent of these categories of negative information, Laquila and one of its principals both pled guilty to offering false instruments for filing to the City's Health and Hospitals Corporation."

See Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for a Preliminary Injunction and in Support of Motion to Dismiss, Empire Transit Mix, Inc. v. Giuliani, et. at., 99 CIV. 2348. In his decision, United States District Judge Lewis A. Kaplan ruled that Empire "is not likely to succeed on the merits," and denied Empire's motion. In the decision, Judge Kaplan explained that, "This information appears to have been the subject of an article that was being prepared by the New York Times regarding Empire's alleged affiliation with the Laquila Construction Company, a firm with a somewhat checkered past." See Empire Transit Mix, Inc. v. Giuliani, et. al., 99 Civ. 2348.

In connection with this lawsuit, Rocco Tomassetti submitted an affidavit, "as president of" Empire, and stated that he does "not believe [he] made any so-called false statements" to a City agency in June 1991 and to the Metropolitan Transit Authority in October, 1991. "But clearly, I am unable to provide a specific denial because neither the court nor I have been informed what the allegedly false statements were." See April 5, 1999 Affidavit of Rocco Tomassetti at 1-2. It is worth noting that the Tomassetti affidavit only addressed two of the

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[9] This system is a computer database, which provides comprehensive vendor information to ensure that the City does business only with responsible vendors.

[10] See printout of this VENDEX search.

[11] See printout of this VENDEX search.

[12] See printout of this VENDEX search.

[13] In 1988, Laquila was cited by the Occupational Safety and Health Administration ("OSHA") for violations on two separate occasions, including violations that may have contributed to the death of a Laquila employee. See Section 328(c) objection of Comptroller Elizabeth Holtzman dated March 25, 1993.

thirteen allegations raised in the Declaration of Jeffrey L. Broder, Director of Contract Administration, Capital Projects Division of the New York City Department of Parks and Recreation.[14]

In the affidavit signed by Rocco, he stated that "while it is true that I am a sixteen and two-thirds percent shareholder of Laquila, that stock is and always has been non-voting stock. I have never exercised any control over the operations of Laquila, nor have I ever been involved, directly or indirectly, with any of the matters cited by the" City.[15] See April 5, 1999 Affidavit of Rocco Tomassetti at 3. The information contained in Rocco's affidavit is false; Rocco has been directly and indirectly involved in the operations of Laquila.

In their response, the Applicants do not dispute any of the above-mentioned facts. Applicants for registrations are prohibited from "mak[ing], fil[ing], or submit[ing] a false statement or claim to a government agency or employee. See 17 RCNY § 1-09. As discussed above, one of the Applicants[16] admitted that it filed false documents with a government agency at least once. Therefore, the crimes committed by one of the Applicants are antithetical to the purpose of Local Law 42, which is to root out organized crime and other corruption from the trade waste industry. The Applicant's guilty plea to offering a false instrument for filing in the first degree compels the conclusion that these Applicants lack good character, honesty, and integrity. They are, quite simply, unworthy of obtaining a registration to operate in New York City. Based on this independent ground, the Commission denies the Applicants' exemption registration applications.

### B. The Applicant Failed to Notify the Commission of Convictions and Arrests.

An applicant for an exemption from the requirement for a license has the affirmative duty to notify the Commission within 10 calendar days, of the arrest or criminal conviction subsequent to the submission of the application. See 17 RCNY §2-05(a)(1). The Applicants failed so to notify the Commission. First, the Applicant did not notify the Commission about the 1997 arrests and conviction of Laquila and principals Angelo Sisca and Anthony Albicocco. Second, the Applicant failed to notify the Commission of the arrests and convictions of Laquila,

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[14] The Declaration of Jeffrey L. Broder listed thirteen separate allegations against the Applicants, including, among other things, making false statements or submitting false records to governmental entities. See Declaration of Jeffrey L. Broder.

[15] Rocco's assertion that he "never exercised any control in the operations of Laquila" is false. Besides Rocco's admission during his May 13, 1999 allocution in Kings County Criminal Court that he was Laquila's secretary treasurer and had acted as such, the Commission has independent evidence that Rocco exercises control in the operations of Laquila. See May 13, 1999 Transcript of Allocution at 7-8. When he was arrested on August 19, 1997 at Laquila's property, Rocco acknowledged that Laquila was operating a C & D transfer station without a DOS permit. Rocco demonstrated his exercise of control when he produced DEC transfer station material logs and explained how Laquila operated to Commission personnel. Furthermore, Rocco stated that **he** [Rocco] had applied to DOS for permits at intervals over the last ten years. Rocco also inquired as to what steps **he** [Rocco] had to take to acquire a DOS permit. In sum, Rocco detailed the specifics of how Laquila did business. See November 20, 2003 Affidavit by Commission Deputy Commissioner Thomas McCormack.

[16] Angelo Sisca, a principal of the Applicants was also convicted. See supra.

Dino and Rocco in 1999 for the operation of an illegal transfer station. See infra. Third, the Applicant failed to notify the Commission of the arrest of Serafino on July 16, 2001 for assault in the second degree.[17] In their response, the Applicants do not dispute this point. The Applicants' repeated failures to comply with §2-05(a)(1) constitute adequate and independent grounds for denial of their license applications. Based on this independent ground, the Commission denies the Applicants' exemption/registration applications.

### C. The Applicants Have Repeatedly Engaged in Prohibited Conduct by Operating a Transfer Station in Violation of Federal, State and Local Laws or Regulations.

Applicants for registrations are prohibited from operating a transfer station in violation of any federal, state or local law or regulation. See 17 RCNY § 1-09. However, the record establishes that the Applicants have operated an illegal transfer station on several occasions.

First, on or about August 15, 1985, the Applicants constructed and operated an illegal solid waste transfer station without the required permits. See New York State Department of Environmental Conservation ("NYS DEC") February 4, 1992 Order on Consent. This constituted a violation of Environmental Conservation Law ("ECL") § 27-0707 and 6 New York Civil Rules and Regulations ("NYCRR") Part 360.[18] Although the Applicants did attempt to obtain a permit by submitting a series of partial permit applications, (and partial responses to the NYS DEC's requests for additional information regarding these applications) they never answered the NYS DEC's request for additional information. See Id. at 2. As a result, in 1992, the NYS DEC ordered Laquila Contracting and Dino to pay a $24,000 penalty for violation of solid waste laws, including operating a transfer station without a permit. See NYS DEC February 4, 1992 Order on Consent.

Despite the resolution of the above matter in 1992, the Applicant apparently continued to ignore the law. On or about and between July 14, 1997 and August 19, 1997, Laquila Contracting Co., Laquila Construction, Inc., Laquila Industries, "a/k/a Laquila, Aquila Concrete Corp., Dino Tomassetti and Rocco Tomassetti disposed of more than 70 cubic yards of construction and demolition debris at 4201 Avenue H, Brooklyn, New York. The defendants did not have the necessary permits from the NYS DEC to operate a debris processing station (transfer station) or solid waste management facility at that location.[19]

As a result of an investigation conducted by the Commission, on October 16, 1997, Dino, Rocco and Laquila were each charged with two counts of a criminal misdemeanor, ECL §27-0707(1). In addition, the above noted defendants were charged with eight counts of a criminal misdemeanor, in violation of the Administrative Code of the City of New York, §16-119(a) and eight counts of a criminal misdemeanor, in violation of the Administrative Code of the City of

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[17] This case was dismissed.

[18] Part 360 of 6 NYCRR sets forth requirements and standards for the operation of solid waste management facilities, including the operation of solid waste transfer, recyclables handling and recovery, processing and disposal facilities.

[19] See Information dated October 16, 1997 and signed by Judge Alex M. Calabrese.

New York, §16-130(b). Specifically, these statutes penalize people and companies that operate solid waste management facilities without the required permits, thereby illegally and dangerously releasing solid waste into the environment.

On May 13, 1999, Dino and Rocco each pleaded guilty individually, and Dino pleaded guilty on behalf of Laquila, under Docket Numbers 97K088779, 97K088809, and 97K088810, in Kings County Criminal Court to violations of ECL §71-2703(2a) and §27-0707(1). They were sentenced the same day to the maximum fine of $10,000 each. See May 13, 1999 Transcript of Allocution in Kings County Criminal Court before Justice Margarita Lopez Torres ("May 13, 1999 Transcript of Allocution").[20] In their response, the Applicants do not contest this point. These guilty pleas demonstrate that the Applicants' lack good character, honesty and integrity. Based on this independent ground, the Commission denies the Applicants' exemption/registration applications.

**D. Laquila Construction Inc. Was Criminally Charged With Illegal Dumping in New Jersey, and Paid a $25,000 Penalty in Connection Therewith.**

The Applicant was named in a 1987 Hudson County, New Jersey indictment (indictment number SGJ176-86-1) and was charged with Conspiracy to Commit Racketeering in the second degree, Racketeering in the second degree, Theft of Services in the second degree, Falsifying Records in the fourth degree and Tampering with Public Records in the third degree. See State of New Jersey, Division of Criminal Justice "Fact Sheet"; see also State of New Jersey v. Edward Garafola, et. al., 252 N.J. Super. 356 (March 18, 1988). The case revolved around a conspiracy to bribe landfill officials to dump construction debris illegally in a New Jersey landfill. See Id. The indictment also charged Edward Garafola, a reputed member of the Gambino organized crime family.[21] In the scheme, the Applicant's drivers allegedly presented false "origination and destination" forms that stated that the loads originated from Passaic County when they actually originated in New York. In July, 1991, the indictment against Laquila was dismissed upon the motion of the New Jersey Attorney General after Laquila paid the State of New Jersey the sum of $25,000 as a civil settlement in lieu of forfeiture of the Laquila truck used in the alleged unlawful dumping.[22]

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[20] The Applicant failed to notify the Commission of this arrest and conviction as required by 17 RCNY §2-05(a)(1). See supra.

[21] Edward Garafola is identified as a member of the Gambino crime family by the State of New Jersey Commission of Investigation in its September 1992 report entitled Local Government Corruption. According to the Commission's report, Edward Garafola pleaded guilty to Conspiracy to Commit Racketeering and was sentenced on January 8, 1990 to 364 days in jail, five years probation, 2,000 hours of community service and a $7,500 fine. See Section 328(c) objection of Comptroller Elizabeth Holtzman dated March 25, 1993. The commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity constitutes an adequate and independent ground for registration denial. Furthermore, 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 is an adequate and independent ground for registration denial. See 17 RCNY § 1-09.

[22] See Section 328(c) objection of Comptroller Elizabeth Holtzman dated March 25, 1993.

In their response, the Applicants do not dispute this point. The Applicant's involvement in this criminal scheme which included members and associates of organized crime constitutes an adequate and independent ground for the denial of these applications. Based on this independent ground, the Commission denies the Applicants' exemption/registration applications.

**E. The Applicants Provided False and Misleading Information on Their Registration Applications.**

Laquila Construction, Inc., Laquila Contracting, Inc., and Laquila Industries, Inc. each filed an application for exemption from licensing requirements for removal of demolition debris on August 30, 1996. Furthermore, Dino, Serafino, and Rocco each certified that the answers in the Applications were truthful. See Applications at 19-20, 22-23, 25-26.

The Commission may refuse to issue a registration to an Applicant who has knowingly failed to provide information and/or documentation required by the Commission. See Admin. Code §16-509(b). In the Applications, Laquila failed to disclose the details of numerous administrative violations and judgments. For instance, Question 18 of the Applications ask:

> Are there any administrative charges by any municipal, state or federal agency, relating to the conduct of a business that removes or recycles trade waste, . . . or the operation of a dump, landfill or transfer station, presently pending against the applicant business or any current or past principal of the applicant business faces where the applicant business or any current or past principal of the applicant business faces the possible sanction of suspension or revocation of any license, permit or registration or where a fine of $5,000 or more or an injunction of six months or more could be imposed?

The Applicant answered "yes." See Applications at 7. However, the Applicants failed to provide the details of the administrative charges on Schedule "D." See Applications at 13. Also, Question 19 of the Applications asks:

> Has judgment been entered against the applicant business or any principal of the applicant business in any civil case related to the conduct of a business that removes or recycles trade waste, a trade waste broker business or the operation of a dump, landfill or transfer station, in any jurisdiction?

The Applicants answered the question, "Yes." See Applications at 7. However, the Applicant failed to provide the details of the judgments on Schedule "E." See Applications at 14.

Additionally, the registration applications require the Applicants to provide a statement as described on Schedule "I":

> Section 2-03 of the Rules requires that an application for an exemption be accompanied by a statement explaining the nature of the applicant's business:

> Such explanation must include a statement that the applicant business removes no waste other than materials resulting from building demolition, construction, alteration or excavation, a description of the kinds of waste removed by the applicant business, the types of sites from which such waste is removed and the nature of the customers of the applicant business.

See Applications at 17. However, the Applicants did not provide statements in response to Schedule "I."

Based upon the record, the Applicants did not fully disclose information required by the Commission. In their response, the Applicants do not address this point. The failure of the Applicants to provide truthful information to the Commission constitutes an additional independent basis for the conclusion that the Applicants lack good character, honesty and integrity. See Admin. Code §16-509(a)(i); §16-509(b). Based on this independent ground, the Commission denies the Applicants' exemption/registration application.

F. **The Applicants Have Knowingly Associated with Several Associates of Organized Crime Groups and there is Evidence Implicating the Applicants in the Commission of a Racketeering Activity.**

The Applicant and Dino Tomassetti have been implicated in bribing a union official in a case which arose from an investigation of the Carpenter's Union. Much of the evidence was secured by use of an official of that Union, Melvin Eckhaus, who was caught taking a bribe and then agreed to cooperate with the district attorney's office. In the case, People v. Moscatiello and Schepis, the People contended that defendant Louis Moscatiello, an official of Local 530 of the Operative Plasterers and Cement Masons International Association, the defendant Benedetto "Benny" Schepis, an official of Local 17 of the Carpenters Union and Eckhaus were engaged in a "criminal enterprise." See People v. Moscatiello and Schepis, Indictment No. 8081/89 (Supreme Court, New York County, Dec. 19, 1990). The People asserted that Moscatiello would arrange or transmit bribes from contractors (such as Laquila) to Eckhaus to influence Eckhaus in his capacity as a union official. Schepis was accused of assisting Moscatiello in this activity. See Indictment No. 8081/89. As the indictment stated, "the criminal enterprise arose in part out of, and its activities were facilitated by, its association, and that of the defendant Moscatiello, with the Genovese Crime Family. The association of the defendant Moscatiello, and certain of the construction companies that used the services of the criminal enterprise, with the Genovese Crime Family enabled the criminal enterprise to pursue and accomplish its criminal purposes." See Indictment at 3.

In the indictment, the Applicant was named as an unindicted coconspirator. Specifically, Laquila Construction, Inc. was identified as a company that paid bribes to Eckhaus "...throughout the operation of the criminal enterprise." See Indictment at 3. It was alleged that "on a date during a period from in or about February through in or about March 1987 in the County of New York, [Moscatiello] intentionally aided Eckhaus in soliciting, accepting, and agreeing to accept a benefit of two thousand dollars from Laquila Construction, upon agreement and understanding

that this benefit would influence Eckhaus in respect to his acts, decisions and duties as a labor official." See Indictment at 8. On March 26, 1991, Moscatiello pleaded guilty to three counts of bribing a labor official.[23]

The investigation led the Deputy Attorney General in charge of the New York State Organized Crime Task Force to assert that there was probable cause to believe that Dino Tomassetti discussed and engaged in "unlawful, labor racketeering activities in which the crimes of Bribing a Labor Official, Bribe Receiving by a Labor Official and Conspiracy to commit those crimes have been, are being and are about to be committed." See Application for Seventh Extended Eavesdropping Warrant of Ronald Goldstock at ¶3.

Furthermore, "Court-ordered electronic surveillance conducted by the Federal Government revealed that [Dino] Tomassetti has in recent years regularly met with Ralph Scopo, a leading official of the Cement and Concrete Workers District Council and a reputed member of the Columbo organized crime family, to discuss with Scopo union payoffs, no-show jobs, and allocation of market share between contractors." See Affidavit in Support of Application for Seventh Extended Eavesdropping Warrant of Joseph J. Coffey, Principal Investigator with the New York State Organized Crime Task Force at 23. Said Application was granted by Justice Stephen G. Crane on March 11, 1986.

In their response, the Applicants do not dispute this point. Knowing association with members or associates of organized crime and the commission of racketeering activities constitute additional independent bases for the denial of these applications. Based on this independent ground, the Commission denies the Applicants' exemption/registration applications.

**G. Failure to Provide Information Required by the Commission**

The Commission has the power "[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation." Admin. Code § 16-504(c). On numerous occasions, the applicants have delayed the Commission's requests for its principals to appear for depositions, culminating in the Applicants' willful failure to provide requested information.

On March 4, 2002, the Applicants were advised that the Commission wished to take the depositions of its principals, Dino on March 13, 2002; Serafino on March 14, 2002; and Rocco on March 15, 2002. See letter from Commission to applicant dated March 4, 2002. On March 11, 2002, the Commission's staff reminded Dino about the depositions scheduled to begin on March 13, 2002 orally and in writing. See Id.[24] At this time, Dino confirmed that he would appear for his deposition on March 13, 2002.

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[23] These counts did not include the count involving the alleged $2,000 payment on behalf of Laquila.

[24] The Commission's letter to Laquila, dated March 4, 2002 was sent to the Applicants via facsimile on March 8, 2002.

On March 12, 2002, one day before depositions were to begin, the Commission's staff was contacted by the Applicants' attorney, Louis Rosenthal, who requested that the depositions be adjourned. In accordance with this request, the Commission's staff and Rosenthal agreed to reschedule the depositions for April 9, 2002, April 10, 2002, and April 11, 2002. See letter from Louis Rosenthal to the Commission dated March 12, 2002; See also letter from Commission to applicant dated March 18, 2002.[25] Then, on April 8, 2002, Louis Rosenthal contacted the Commission and again requested that the depositions scheduled for April 9, 2002, April 10, 2002, and April 11, 2002 be adjourned. As per this request, the Commission's staff and Louis Rosenthal rescheduled the depositions to take place on April 18, 2002, April 19, 2002, and April 22, 2002. See letter from Commission to Applicants dated April 8, 2002.

On April 16, 2002, Louis Rosenthal requested that the depositions again be adjourned. Again, the Commission's staff agreed to reschedule the depositions for April 23, 2002, April 24, 2002, and April 25, 2002. See letter from Commission to Applicants dated April 16, 2002. Then, on April 22, 2002, at approximately 3:39 P.M., the Applicants' attorney left a voice-mail message for the Commission's staff. The message advised the Commission's staff that Serafino and Rocco were no longer principals of the Applicant companies, and therefore need not appear for their depositions scheduled for April 24, 2002 and April 25, 2002, respectively. The message also stated that Dino would require an interpreter for his deposition the next day. The Commission's staff subsequently contacted Louis Rosenthal and advised him that all of the depositions would go forward, as previously scheduled. At this time, Rosenthal was also advised that the failure to appear for depositions is an adequate ground upon which to deny the registration applications. Then, at approximately 4:44 P.M., Rosenthal sent a letter to the Commission's staff via facsimile which states that "neither Rocco Tomassetti nor Serafno Tomassetti are currently officers or principals" of the Applicants and that Dino Tomassetti "will require an Italian translator when and if he is examined." See letter from Louis Rosenthal to the Commission dated April 22, 2002.

On April 23, 2002, Dino Tomassetti did not appear at the Commission's offices for his deposition. Although the deposition was scheduled to commence at 10:00 A.M., the Commission's staff waited until 11:00 A.M. for Dino to appear. At 11:00 A.M., after waiting for Dino for one hour, the Commission's staff placed a statement on the record which chronicles the delaying tactics and non-cooperation of the Applicants in connection with their registration applications. See April 23, 2002 Transcript.

In their response, the Applicants do not address this point. The Commission may refuse to grant a registration if an applicant "has knowingly failed to provide the information and/or documentation required by the commission . . . ." Admin. Code. § 16-509(b). The refusal of Dino Tomassetti, Serafino Tomassetti, and Rocco Tomassetti to provide sworn testimony in

[25] The applicants' attorney also requested that the Commission provide him with copies of the applicants' applications. On March 14, 2002, the Commission's staff provided the applicants' attorney with courtesy copies of the applications. See letter from Commission to Louis Rosenthal, Esq., dated March 14, 2002.

connection with the registration applications of the Laquila companies constitutes another independent basis on which the Commission denies these applications.

## III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue an exemption/registration to any applicant that it determines lacks good character, honesty and integrity. The evidence recounted above demonstrates convincingly that the Laquila companies falls far short of that standard. For the independently sufficient reasons discussed above, the Commission hereby denies Laquila's registration applications.

This registration denial decision is effective fourteen days from the date hereof. In order that the Laquila companies customers may make other trade waste collection arrangements without an interruption in service and in order that Laquila has sufficient time to retrieve all of its trade waste containers from New York City customers, Laquila 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 immediately notify each of their customers by first-class mail that they must find an alternative trade waste collection arrangement within the next fourteen days. Laquila 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: March 23, 2004

**THE BUSINESS INTEGRITY COMMISSION**

Robert Schulman
Acting Chairman & First Deputy Commissioner

John Doherty, Commissioner
Department of Sanitation

for Dykstra
Gretchen Dykstra, Commissioner
Department of Consumer Affairs

for Commissioner Hearn
Rose Gill Hearn, Commissioner
Department of Investigation

by
Robert Walsh, Commissioner
Department of Business Services

Raymond Kelly, Commissioner
New York City Police Department