



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

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF MRC II CONTRACTING, INC. FOR AN EXEMPTION FROM LICENSING REQUIREMENTS AND A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

MRC II Contracting, Inc. (MRC II or the "Applicant") has applied to the New York City Business Integrity Commission ("Commission"), formerly known as the New York City Trade Waste Commission, for an exemption from licensing requirements and a registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Local Law 42, which created the Commission to regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

On February 11, 2005, MRC II applied to the Commission for an exemption from licensing requirements and for a registration enabling it to operate a trade waste business "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation" – a type of waste commonly known as construction and demolition debris, or "c & d." Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for exemptions. See id. If, upon review and investigation of the exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

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

(specifying information required to be submitted by registration applicant): see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission's investigation and determination of 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); Admin. Code §16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity").

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

- The Applicant has failed to demonstrate eligibility for a registration:
 - The Applicant's President, Ronald D'Agostino, was convicted of a crime defined as a racketeering activity, and
 - The Applicant has engaged in long-term unregistered activity and paid a \$10,000 fine to settle administrative charges relating to such activity.
- The Applicant's President knowingly provided false, misleading and contradictory information to the Commission and failed to provide required information.

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

and most serious frauds involving environmental crimes ever prosecuted in the United States.” United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

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

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately \$10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City’s “cover” programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City’s tipping fees. See United States v. Cafrà, 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 (“DCA”) for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. “Trade waste” is broadly defined and specifically includes “construction and demolition debris.” Id. §16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated constitutional challenges (both facial and as-applied) by New York City carters. See,

e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996). aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997); Attonito, 3 A.D.3d 415.

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant "who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]" or "who has otherwise failed to demonstrate eligibility for such license." Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to "review" exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases "where the applicant fails to provide the necessary information, or knowingly provides false information." It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

1. failure by such applicant to provide truthful information in connection with the application;
2. 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:

3. 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;
4. 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;
5. 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;
6. 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;
7. 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;
8. 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;
9. 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;
10. 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). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of

law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. DISCUSSION

On February 11, 2005, MRC II Contracting, Inc. filed an Application with the Commission for a registration to cart construction and demolition debris. See MRC II Contracting, Inc. Application (“Application”). The staff conducted an investigation of MRC II’s application, including conducting two depositions of Ronald D’Agostino (“Ronald” or “D’Agostino”) on October 18, 2005 and January 16, 2007. Both depositions were recorded by a court reporter. See Transcripts of the depositions of D’Agostino (“October 18th or 10/18/05 Deposition” and “January 16th or 1/16/07 Deposition”).

On March 5, 2007, the staff issued a nineteen-page recommendation that MRC II’s Application be denied. The Applicant was served with the Commission’s recommendation on March 6, 2007 and was granted ten business days to respond (March 20, 2007). See 17 RCNY §2-08(a). The Applicant’s attorney, Joseph O. Giaimo, was also served with a copy of the recommendation on March 6, 2007. On March 7, 2007, the Applicant’s attorney requested copies of the non-public documents relied upon by the staff in the denial recommendation. On March 8, 2007, the requested documents were provided to counsel. On March 12, 2007, the Commission received a letter from Applicant’s attorney requesting the withdrawal of MRC II’s Application. See Letter of Giaimo Associates, LLP to the Business Integrity Commission, March 9, 2007. On March 14, 2007, the request for withdrawal of MRC II’s Application was denied. See Letter of the Business Integrity Commission to Giaimo Associates, LLP, March 14, 2007.¹ Despite being given the opportunity to “submit in writing any and all information and documentation that it wishes the Commission to consider in connection with its registration application” (see Recommendation at 19), the Applicant chose to submit no response other than the request for withdrawal of the application.

A. The Applicant failed to demonstrate eligibility for a registration:

1. The Applicant’s President was convicted of Mail Fraud in violation of 18 U.S.C. §1341, a crime defined as a racketeering activity under 18 U.S.C. §1961(1).

“Commission of a racketeering activity” is an independent ground upon which to deny a license application. See Admin. Code §16-509(a)(v). In determining whether to grant an exemption from licensing requirements and a registration to operate a construction and demolition debris removal business, the Commission may consider the same types of factors that are pertinent to the Commission’s determination whether to

¹ On March 20, 2007, Giaimo Associates LLP wrote to the Commission in a second attempt to withdraw MRC II’s Application. See Letter of Giaimo Associates, LLP to the Business Integrity Commission, March 20, 2007. On March 22, 2007, that second attempt to withdraw MRC II’s Application was also denied. See Letter of the Business Integrity Commission to Giaimo Associates, LLP, March 22, 2007.

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.).

On May 7, 1993, Ronald D'Agostino was convicted, by a plea of guilty, of one count of Mail Fraud, in violation of 18 U.S.C. §1341.² See *United States of America v. Ronald D'Agostino*, CR93-465, Transcript of Pleading before Hon. Denis R. Hurley ("Pleading"). On March 29, 1994, D'Agostino was sentenced to 18 months imprisonment, a fine of \$50,000 and a special assessment of \$50. See *United States v. D'Agostino*, CR93-465, Criminal Docket.³

The complaint filed in the case alleged that Ronald D'Agostino agreed with other demolition contractors to submit falsely inflated bids for demolition and excavation projects at Mount Sinai Hospital, 51 Beaver Street, and Columbus Circle, in New York City in order to control the awarding of the contracts for these projects. The agreement also provided that the winning bidder would compensate the losing bidders from funds received from the general contractors. The Complaint further alleged that Ronald D'Agostino then executed an affidavit, falsely certifying that his bid for the Columbus Circle project had not been collusively prepared and was accurate, which he thereafter placed in a U.S. Post Office-authorized depository for mail to be delivered by the Postal Service, in violation of 18 U.S.C. §1341. See *United States v. D'Agostino*, Complaint 92/2276M.

The President of the Applicant committed a crime that bears directly on the Applicant's "good character, honesty and integrity." D'Agostino's crime, which constitutes a "racketeering activity" under 18 U.S.C. §1961(1), was committed in the normal course of business and in furtherance of the interests of Cross Bay Contracting Corp., a predecessor demolition and excavation company with which he was associated as both principal and employee.

As the sole disclosed owner and President of MRC II, D'Agostino's lack of good character is directly attributable to MRC II. D'Agostino's conviction is evidence of his lack of good character, honesty and integrity and, as the sole principal of MRC II, necessarily demonstrates the lack of business integrity of the Applicant business as well. Consequently, the application is denied on this independently sufficient ground.

2. The Applicant engaged in long-term unregistered activity and paid a \$10,000 fine to settle administrative charges relating to such activity.

² Under that statute, "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . knowingly causes to be delivered by mail any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. . . ." See id.

³ On July 22, 1994 D'Agostino filed a motion to have his sentence reduced, which was denied by Judge Hurley on September 1, 1994. See id.

On February 2, 2005, Ronald D'Agostino was arrested, MRC II's trucks were seized and the Commission issued a violation for engaging in unlicensed waste removal activity in violation of Admin. Code §16-505(a). D'Agostino entered into a Stipulation of Settlement of this violation in which he admitted liability and he agreed to pay a \$10,000 fine. See Business Integrity Commission v. MRC II Contracting, Inc., Stipulation of Settlement of TWC-1094, March 2, 2005.

This was not an isolated instance of unlicensed activity. At his first deposition, D'Agostino admitted that MRC II had engaged in long-term unlicensed activity:

Q. [W]hen this company, when MRC II was started [on] June 29th, 2000, did the company immediately begin to operate at that time?

A. Yes.

See 10/18/05 Deposition at 24 – 27.

Later, when asked whether he had been operating illegally since 2000, he responded, "Guilty as charged." He stated further, "I was working without a license." Id. at 96, 97.

Long-term unregistered waste removal activity bears directly on the fitness of the Applicant to conduct the business for which the registration is sought and is further evidence of the Applicant's lack of business integrity through its principal's utter disregard for the law. Consequently, the application is denied on this independently sufficient ground.

B. The Applicant knowingly provided false, misleading, and contradictory information to the Commission and failed to provide required information.

One of the central problems posed by this application arises out of the applicant's relationship to its premises at 242 Nevins Street (and two adjacent parcels). The testimony, affidavits, and other written statements of Ronald D'Agostino are conflicting and misleading and are contradicted by property records and other official documents. What is clear, however, is that D'Agostino made material misrepresentations to the Commission regarding real property transactions involving 242 Nevins Street (and the two related parcels) as it sought to investigate this applicant. Significantly, the material misrepresentations concerned Marino Mazzei ("Mazzei"), a convicted felon and a previous applicant to the Commission, which twice found that his companies lacked good character, honesty and integrity.⁴

1. D'Agostino provided false, misleading and contradictory information to the Commission.

⁴ Mazzei's background is discussed in Section I.c. *infra*.

D'Agostino provided false, misleading and contradictory information to the Commission in his testimony and his written statements with regard to the nature and extent of his relationship with Marino Mazzei, and with regard to real estate transactions that took place between 1998 and 2005 concerning three properties that D'Agostino owned, through a partnership named, Anron Realty Company ("Anron"), of which he and his brother, Anthony D'Agostino ("Anthony") were the sole partners.⁵ See 10/18/05 Deposition 16, 22.

Anron Realty Company owned the three properties from the 1980's to July 27, 2005.⁶ On that date, D'Agostino, on behalf of Anron Realty, deeded the properties to 242 Nevins, Inc., the principal of which is Marino Mazzei.⁷ The properties included MRC II's business address, 242 Nevins Street (Block 418, Lot 1), and two adjacent properties at 563 Sackett Street (Block 426, Lot 44), and 560 DeGraw Street (Block 426, Lot 17) ("the Anron Properties" or "the three Anron Properties"). See Deeds between Anron Realty Company and 242 Nevins, Inc., July 27, 2005 ("7/27/05 Deeds")

D'Agostino's false, misleading and contradictory testimonial and written statements were made by him in an attempt to conceal from the Commission the fact that Anron had continued to own the three Anron properties during the years 1998 – 2005. In furtherance of his effort to conceal this fact, he represented to the Commission that it was Marino Mazzei who owned the properties from 1998 onward, and that the Applicant, MRC II, had been Mazzei's tenant since September 1, 2000. D'Agostino's false denial of Anron's ownership of the properties, necessitated that he also conceal from the Commission his knowledge of the fraudulent conveyance of the three properties in April 2005, and led him to falsely deny such knowledge.

D'Agostino's false, misleading and contradictory statements regarding title to the three Anron properties during 1998 – 2005, were made in reference to two sets of real estate transactions:

- those that took place between Ronald D'Agostino, on behalf of Anron Realty Company, and Marino Mazzei;
- those that took place between Arlene D'Agostino⁸, on behalf of Anron Realty Company, and Mikey Manor, Inc.; and

⁵ Anthony D'Agostino died on April 30, 2001. See 1/16/07 Deposition at 60.

⁶ A cloud on Anron's title was created in April 2005 by the conveyance of the three properties by a fraudulent Deed, which was later invalidated by Court Order. See *242 Nevins, Inc. v. Mikey Manor, Inc., et al.* Index #8088/07, Order for Default Judgment, July 10, 2007, Bernadette F. Bayne, Supreme Court Justice. D'Agostino's knowing false and misleading testimony and written statements with regard to the fraudulent conveyance, in which his sister-in-law, Arlene D'Agostino, was involved, is fully discussed in Section I.b., *infra*.

⁷ The Real Property Transfer Reports ("RPTR") filed with the Deeds to the three properties show that Marino Mazzei signed the Certifications on behalf of 242 Nevins, Inc., as buyer. See RPTR, dated July 27, 2005, for Block 418 Lot 1 and Block 426 Lots 17 and 44.

⁸ Arlene D'Agostino was identified by Ronald D'Agostino as "Anthony's wife." See 10/18/05 Deposition.

subsequently, between Mikey Manor, Inc., Manhattan Avenue Equities, LLC, and SDN Group, LLC

D'Agostino's false, misleading and contradictory statements to the Commission regarding these real estate transactions were made during his 10/18/05 Deposition, in his letter on behalf of MRC II to the Business Integrity Commission dated November 30, 2005 ("11/30/05 Letter") and in his Affidavit, submitted to the Business Integrity Commission on February 8, 2006 ("2/8/06 Affidavit"), in response to the Commission's demand for a statement describing his relationship with Mazzei. D'Agostino's false testimony and written statements were later confirmed and repeated by him at his Deposition on January 16, 2007. See 1/16/07 Deposition 97 – 104, 113 – 125.

In addition to his false statements regarding the three Anron properties, D'Agostino materially misrepresented the nature and extent of his business relationship with Mazzei. See 10/18/05 Deposition at 73; 1/16/07 Deposition 152 – 153.

a. Real Estate Transactions between Ronald D'Agostino and Marino Mazzei

At his 10/18/05 Deposition, D'Agostino testified:

- that Mazzei was his landlord at 242 Nevins Street;
- that Mazzei was the owner of the premises;
- that he was "not quite sure" if Mazzei had assumed ownership of the property in the early 90's or mid 90's;
- that he didn't know whether Mazzei owned the property in his own name or through a company;
- that he knew there was a foreclosure on the property and that he was "sufficiently under the impression that Mazzei owned the property" that he paid rent to him; and
- that MRC II paid the rent for its occupancy by checks made payable either to Mazzei or to Bona Fide, a company that Mazzei owns.⁹

See 10/18/05 Deposition at 60-62 (Check cit.)

In his 11/30/05 Letter, D'Agostino stated:

. It is our only understanding that Mr. Mazzei purchased the premises in foreclosure on or around 1998. I am unsure how foreclosure works or how long it takes in foreclosure to actually assume the deed, but it is my understanding that Mr. Mazzei purchased said premises. . . .

See 11/30/05 Letter.

⁹ As discussed in detail in Section 2 *infra*, D'Agostino failed to submit sufficient documentary evidence to support this assertion.

In his 2/8/06 Affidavit, D'Agostino attested:

[I]n or about 1997 . . . [A]nron was having financial trouble and difficulty paying the mortgage and was in jeopardy of losing the property. Mr. Mazzei, an avid Real Estate Investor, seized the opportunity to purchase the property and became a Mortgagee in Possession of the property. Mazzei offered to allow us to remain on the premises as a tenant and we accepted. . . [A]s detailed above, the properties were lost in the foreclosure and thereafter Anron no longer had any assets. . . .

See 2/8/06 Affidavit.

D'Agostino's testimony on October 18, 2005 that Mazzei assumed ownership of the properties in the 1990's was directly contradicted by the fact that he had executed the 7/27/05 Deeds on behalf of Anron, conveying the three properties to 242 Nevins, Inc. for a sum of \$3,608,762.00. See 7/27/05 Deeds.¹⁰

The 7/27/05 Deeds contradict D'Agostino's 2/8/06 Affidavit as well, and show that he knew, when he submitted his Affidavit to the Commission, that Mazzei's acquisition of Assignments of the Mortgages on the properties in 1998 had not conferred title to the properties upon Mazzei at that time. See 2/8/06 Affidavit. Those Deeds also contradict D'Agostino's 11/30/05 Letter and show that he knew that Mazzei had not "purchased the premises in foreclosure on or around 1998." See 11/30/05 Letter.

Although records on file at the City Register show that Mazzei had indeed brought foreclosure actions regarding the three Anron properties in 1998, documents on file at Supreme Court, Kings County show that between July 22, 1998, when the foreclosure actions were filed by Mazzei, and November 3, 2006, when the Judgments of Foreclosure were signed, the actions had been variously marked-off the Court's Calendar, withdrawn by the plaintiff (Mazzei), and deemed by the Court to be abandoned. The actions were restored to the Calendar three times. See *Mazzei v. Anron, et al*, Index Nos. 18546/98 and 18547/98, <https://courtlink.lexisnexis.com/DocketNumberSearch>.

Mazzei's foreclosure actions were finally restored to the Court's Calendar after the innocent purchasers of one of the Anron properties from Mikey Manor made a motion to the Court seeking to restoration of the foreclosure action regarding that property, and upon restoration, to intervene in the action, in an effort to gain good title to the property. See *Mazzei v. Anron, et al*, Index No. 18546/98, Motion to Restore and Upon Restoration to Intervene ("Motion to Restore").¹¹

¹⁰ The 7/27/05 Deeds transferring 560 DeGraw Street and 563 Sackett Street were filed on October 18, 2005, the date of D'Agostino's first Deposition, and the 7/27/05 Deed transferring 242 Nevins Street was filed on January 12, 2006. See ACRIS.

¹¹ Mazzei moved for Judgments of Foreclosure and Sale regarding the three properties on October 27, 2005, nine days after D'Agostino's testimony to the Commission. See *Mazzei v. Anron*, Index Nos. 18546/98 and 18547/98, Motions for Foreclosure and Sale. It is clear from a reading of the Judgments of Foreclosure and Sale issued on November 3, 2006, that the Court had never been informed of the prior sale of the properties that were its under its jurisdiction, as the Judgments provide for the supervised sale of the

D'Agostino's statements in an Affidavit submitted on August 12, 2005 in Opposition to the Motion to Restore ("8/12/05 Affidavit"), unequivocally show that he knew his testimony and written statements to the Commission regarding the ownership of the Anron properties during the years 1998 – 2005 were false.¹²

D'Agostino's 8/12/05 Affidavit states in pertinent part:

- *I am a partner of Anron Realty Corp. [sic], a partnership formed under the laws of the state of New York the fee owner of the property known as 212-220 Third Avenue. . . .*¹³ [Par. 1.]
- I submit this Affidavit in Opposition to the motion seeking (i) restoration of an . . . [action]. . . *previously marked off the calendar; [and] (ii) upon restoration to allow the Proposed Intervenors to intervene in the foreclosure action. . .* [Par. 2.]
- *[M]arino Mazzei. [I]s the holder of the mortgages encumbering the premises. . . .* [Par. 3.]

See 8/12/05 Affidavit (emphasis added).

b. Real Estate Transactions between Arlene D'Agostino and Mikey Manor, Inc.; and subsequently, between Mikey Manor, Inc., Manhattan Avenue Equities, LLC, and SDN Group, LLC

As of D'Agostino's 10/18/05 Deposition, the most recent documents on file at the City Register had been the Deed executed on April 13, 2005 by Arlene D'Agostino on behalf of Anron Realty, conveying the three Anron properties to Mikey Manor, Inc., the principal of which was Maria D'Occhio; and the Deeds executed on April 21, 2005 by Maria D'Occhio on behalf of Mikey Manor, Inc., transferring the properties to Manhattan Avenue Equities, LLC and SDN Group, LLC.¹⁴ See ACRIS, Block 418, Lot 1, Block 426, Lots 17 and 44.

properties before a Referee appointed by the Court, public notice of the sale to be published in the Brooklyn Record, and closing of title in the office of the Referee within 30 days after the sale. See *Mazzei v. Anron*, Index Nos. 18546/98 and 18547/98, Judgments of Foreclosure. D'Agostino's sale of the properties to Mazzei prior to the finalization of the foreclosure actions is but one of many irregularities in the transactions involving the Anron properties

¹² The 8/12/05 Affidavit makes no statement regarding the existence of the 7/27/05 Deeds conveying the three Anron properties to 242 Nevins, Inc. And that fact, taken together with the late filings of the 7/27/05 Deeds, suggests that the 7/27/05 Deeds were not executed on 7/27/05. The filing of the Deeds to 560 DeGraw Street and 563 Sackett Street on October 18, 2005 shows that they had been executed by that date. The Deed to 242 Nevins Street, however, was not filed until January 12, 2006.

¹³ The 8/12/05 Affidavit cites the 560 DeGraw Street property, one of the three Anron Properties, by its alternative address. See ACRIS, Block 426, Lot 17.

¹⁴ On May 23, 2006, Maria Albertina a/k/a Maria D'Ochio was convicted, by a plea of guilty, of Grand Larceny in the first degree, in violation of §155.42 of the NYS Penal Law, for selling properties in Brooklyn (including the Anron properties) without the owners' permission. See Webcrims Case Information System, www.iapps.courts.state.ny.us. See also Melissa Grace, Home Scam Suspect Lands in Hot Water Again, New York Daily News, December 7, 2005, Suburban, Page 1.

Consequently, after D'Agostino testified on October 18, 2005 that it was Mazzei who owned the properties, he was asked if he knew a company by the name of Mikey Manor, Inc., and he responded, "No." See 10/18/05 Deposition at 64. Following this response, D'Agostino was informed that the Commission had obtained a copy of the Deed, signed by Arlene D'Agostino, transferring the three Anron properties to Mikey Manor, Inc. Id. at 67. The following colloquy ensued:

Q. You didn't know of the sale?

A. No.

Q. Aren't you still a partner in Anron?

A. Yes, I thought I was.

Q. Did Arlene tell you about it?

A. No. *I am finding out for the first time right here.*

Q. So, it's not your understanding that Marino Massei (sic) is the principal of Manhattan Avenue Equities and/or Mikey Manor?

A. I don't know Manhattan Equities and *I don't know Mikey Manor.*

Id. at 68 (emphasis added).

D'Agostino then confirmed this testimony in his letter to the Commission dated November 30, 2005, in which he stated:

In regard to the transfer of the deed from Anron Realty to Mikey Manor, we have absolutely no knowledge of such a transaction. . . . As far as Mikey Manor is concerned in all of this, I heard only of this entity during my interview with the BIC.

See 11/30/05 Letter (emphasis added).

Once again, it is D'Agostino's 8/12/05 Affidavit that serves to impeach his testimony and written statement regarding his knowledge of Arlene's conveyance of the three Anron properties to Mikey Manor.

D'Agostino's 8/12/05 Affidavit further states, in pertinent part:

- *[N]either Anthony D'Agostino nor myself. . . ., the only partners in Anron¹⁵ and thus the only parties with the capacity or authority to convey the Premises, had knowledge of or consented to the conveyance of the Premises[Par.2.]*
- *[A]rlene D'Agostino was not a partner in Anron Realty Co., and so had no capacity to execute any Deed to partnership property. [Par.6.]*
- *The Deed was allegedly thereafter conveyed from Mikey Manor, Inc. to the Proposed Intervenors. [Par. 7.]*
- *The Deed was fraudulently conveyed and as a result, the Proposed Intervenors' motion. . . . should be denied. . . . [Par. 8.]*

¹⁵ The Affidavit does not inform the Court that Anthony had died four years earlier.

- Anron will be severely prejudiced if the relief is granted [and] if its interest in the Premises will be terminated by virtue of a fraudulent deed. *The proper course of this foreclosure is to proceed as it is without interference by unauthorized strangers. [Par. 9.]*

See 8/12/05 Affidavit (emphasis added).

D'Agostino's 8/12/05 Affidavit thus demonstrates that D'Agostino, at the time of his 10/18/05 Deposition and thereafter, knew that Arlene had conveyed the Anron properties, that she conveyed the properties to Mikey Manor, and that Mikey Manor had conveyed the properties to innocent purchasers. Consequently, it is clear that D'Agostino's false, misleading, and contradictory testimony and written statements were intentionally made to frustrate the Commission's investigation into the ownership and conveyances of the three Anron properties and the parties involved in the transactions.

c. D'Agostino's Relationship with Marino Mazzei

The relationship between D'Agostino and Mazzei is more extensive than D'Agostino sought to portray with his false, misleading, and contradictory statements to the Commission regarding Mazzei's ownership of the three Anron properties and MRC II's tenancy at 242 Nevins Street. D'Agostino also made false, misleading and contradictory statements to the Commission regarding other business dealings he has had with Mazzei

D'Agostino's involvement with Mazzei since 1998 with regard to the Anron properties is noteworthy because the Commission had prior knowledge of Mazzei through its denials of the applications of two companies of which Mazzei was the principal. See Decision of the Business Integrity Commission Denying the Registration Application of Royal GM, Inc., June 9, 2005; Decision of the Trade Waste Commission Denying the License Application of Royal Petroleum Transportation, Inc., November 19, 1999.¹⁶ Additionally, the Commission had recommended to the Department of Sanitation that it deny the application of a third Mazzei-owned company to run a transfer station at 242 Nevins Street.¹⁷ See Recommendation of the Trade Waste Commission to Deny the Transfer Station Permit Application of Royal Recycling Corp., December 21, 1999. The Commission's investigation of those applications revealed that another Mazzei company had twice been found to be a non-responsible bidder by the Department of Citywide Administrative Services ("DCAS").¹⁸ See Correspondence of Department of Citywide

¹⁶ The companies were denied for several reasons, including the failure to provide truthful information to the Commission by attempting to conceal the identity of its de facto principal and sole financial backer, Mazzei.

¹⁷ Two of the reasons for the Denial Recommendation were that the Environmental Control Board ("ECB") found that: (1) Royal Recycling had operated a transfer station at 242 Nevins Street without a permit in 1998; and (2) Royal Recycling had engaged in illegal dumping at 242 Nevins Street in 1999. D'Agostino denied knowledge of the illegal transfer station, though he was the owner and an occupant of the premises that time. See 1/16/07 Deposition 150 - 151.

¹⁸ The reasons cited by DCAS for its decisions were that the Department of Investigation had discovered that Mazzei had participated in a scheme to defraud the City by introducing property owners to a corrupt

Administrative Services to Marino Mazzei, President, Bona Fide Fuel & Oil, August 8, 1997 and October 28, 1998. The Commission's investigation of Royal GM's Application also revealed that Mazzei was convicted, on a guilty plea, of Insurance Fraud in the Third Degree, pursuant to New York State Penal Law §176.20.¹⁹

Documentary evidence of the nature and extent of the relationship between D'Agostino and Mazzei exists in the property records. Each Real Property Transfer Report ("RPTR") that was filed with the 7/27/05 Deeds transferring the three properties from Anron to Mazzei's company, 242 Nevins, Inc., states that the subject property transfer was a "Sale between related companies or partners in business." Each RPTR was certified to be true, under provisions of the Penal Law, by both D'Agostino and Mazzei. See Real Property Transfer Reports for Block 418 Lot 1, Block 426 Lot 17, and Block 426 Lot 44, July 27, 2005.

D'Agostino's false and misleading statements concerning Mazzei were not limited to the three Anron properties. In his first deposition, D'Agostino denied having any business dealings with Mazzei other than those surrounding the three Anron properties. See 10/18/05 Deposition at 73.²⁰ In his second deposition, he admitted also having rented equipment to Mazzei for his building enterprises, but denied any additional business dealings with Mazzei. However, there were other business dealings. For example, on April 28, 2006, D'Agostino executed a deed, on behalf of Anron Realty Company, selling 137 Park Avenue, Block 2030, Lots 53 and 54, in Brooklyn to 141 Park Avenue Realty, Inc. See 4/28/06 Deed. Mazzei signed the Real Property Transfer Report, on behalf of 141 Park Avenue Realty, Inc., as buyer. See RPTR, Block 2030, Lots 53 and 54, April 28, 2006. When confronted with this documentary evidence, D'Agostino repeatedly denied memory of this sale, although he authenticated his signature on the deed. See 1/16/07 Deposition at 152-153.

The Commission cannot clearly determine the true extent of D'Agostino's relationship with Mazzei, but it need not do so, as it is clear from the factual record that the relationship is more extensive than D'Agostino disclosed to the Commission, and that D'Agostino intended to frustrate the investigation of that relationship by his false, misleading and contradictory statements to the Commission.

D'Agostino's knowing false, misleading and contradictory testimony and written statements provide an independently sufficient basis to deny MRC II's registration application. See Admin. Code §16-509(b); *Attonito v. Maldonado*, 3 A.D. 3^d 415 (1st Dept. 2004), *leave denied*, 2 N.Y. 3^d 705 (2004).

Department of Finance Employee, with the knowledge that the employee would illegally eliminate or reduce real property taxes for the landlords; and that an audit of a City-owned building had revealed that Bona Fide Fuel & Oil had fraudulently billed the City for fuel in excess of the building's tank capacity on 21 occasions.

¹⁹ NYS Penal Law §460.10 defines Insurance Fraud as a "racketeering activity." Admin Code §16-509(v) lists commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity as an independent ground for refusal to issue a license.

²⁰ D'Agostino was forthcoming in admitting that he also rented his residence from Mazzei. See 10/18/05 Deposition at 61.

2. D'Agostino failed to provide required information to the Commission.

The Commission directed that D'Agostino document his testimony that he paid rent to Mazzei for MRC II's occupancy at 242 Nevins Street by the submission of cancelled checks for the period January 2001 through September 2005. See Correspondence of Business Integrity Commission to MRC II, October 27, 2005. In response to that demand, D'Agostino submitted copies of the front of three checks and a copy of a document purported to be MRC II's "accounts payable schedule evidencing those rent payments not shown by way of cancelled check." See Letter from MRC II to the Business Integrity Commission, November 30, 2005; MRC II Checks numbered 10012, 11110 and 11285.

The Commission notified D'Agostino that the production of copies of the front of three checks and the "accounts payable schedule" was not adequately responsive to the Commission's demand. The demand for the front and back of all checks in payment of rent for the requested period was renewed, and a new demand was made for a copy of MRC II's General Ledger for the period January 2001 through November 2005. See Letter from the Business Integrity Commission to MRC II, December 15, 2005. On February 1, 2006, the Commission notified D'Agostino that the deadline for submission of these documents had passed, and that attempts to gain MRC II's compliance through the intervention of its attorney had not been successful. See Letter from the Business Integrity Commission to MRC II, February 1, 2006.

On May 17, 2006, nearly illegible copies of only twelve additional checks, payable to either Marino Mazzei or Bona Fide Realty by MRC II, were submitted by MRC II's attorney. See Letter from Giamo Associates, LLP to the Business Integrity Commission, May 17, 2006; cancelled MRC II checks numbered 7114, 9606, 8822, 7925, 7926, 7418, 1067, 4949, 5431, 5215, 3991, and 4253. At D'Agostino's second deposition on January 16, 2007, Commission staff again notified him and his attorney that the Commission's demand for the checks and for MRC II's General Ledger had not been met. See 1/16/07 Deposition at 94-97. The demanded documents were never submitted.

In addition, at D'Agostino's second deposition, a demand was made for the closing statements regarding the July 27, 2005 sale of the three Anron properties to support his testimony that he received no money from the sale. See 1/16/07 Deposition at 129, 138. The demanded documents were never submitted.

The failure of the Applicant to provide information to the Commission is further evidence that the Applicant lacks good character, honesty and integrity. Consequently, the application is denied on this independently sufficient ground.

III. CONCLUSION

MRC II Contracting, Inc. has not satisfied its burden of demonstrating its eligibility for a trade waste registration. "The commission may refuse to issue a license

or registration to an applicant ... who has otherwise failed to demonstrate eligibility for such license under this chapter". See Admin. Code §16-509(b). In addition, MRC II "has knowingly provided false and misleading information to the Commission and has failed to provide the information and/or documentation required by the Commission." Id.

Based upon the above independently sufficient reasons, the Commission denies MRC II's exemption application and refuses to issue MRC II a registration.

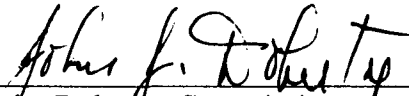
This exemption/registration denial is effective immediately. MRC II Contracting, Inc. may not operate as a trade waste business in the City of New York.

Dated: ~~February~~, 2008
JUNE 24, 2008

THE BUSINESS INTEGRITY COMMISSION



Michael J. Mansfield
Commissioner/Chair



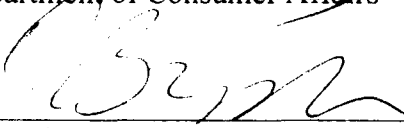
John Doherty, Commissioner
Department of Sanitation



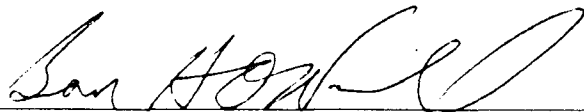
Rose Gill Hearn, Commissioner
Department of Investigation



Jonathan Mintz, Commissioner
Department of Consumer Affairs



Deborah Buyer, General Counsel (Designee)
Department of Small Business Services



Brian O'Neill, Deputy Inspector (designee)
New York City Police Department