



**The City of New York**  
**BUSINESS INTEGRITY COMMISSION**  
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING  
THE RENEWAL APPLICATION OF NU WAY CONTRACTING INC.  
FOR A CLASS 2 REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

**I. *Introduction***

On March 7, 2017, Nu Way Contracting Inc. (the “Applicant” or “Nu Way”) (BIC #479399) applied to the New York City Business Integrity Commission to renew an exemption from the Commission’s trade waste licensing requirements “to operate a trade waste business solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” (the “Renewal Application”). Local Law 42 of 1996 (“Local Law 42”) authorizes the Commission to review and make determinations on such applications. *See* Title 16-A, New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 16-505(a).

On December 12, 2018, the Commission’s staff served the Applicant with the Notice to the Applicant of the Ground to Deny the Renewal Application of Nu Way Contracting Inc. for a Class 2 Registration to Operate as a Trade Waste Business (the “Notice”). The Applicant was given until January 4, 2019 to respond. *See* Title 17 of the Rules of the City of New York (“RNCY”) § 2-08(a). The applicant requested an extension to respond to January 25, 2019, which the Commission’s staff granted. On January 25, 2019, the Applicant submitted a response, which consisted of a two-page letter from the Applicant’s attorney (the “Response”). The Commission has completed its review of the Renewal Application, having carefully considered both the Notice and the Response. Based on the record as to the Applicant, the Commission denies the Renewal Application because the Applicant lacks good character, honesty and integrity based on the following three independently-sufficient grounds:

- 1. The Applicant’s sole-disclosed principal knowingly provided false and misleading information during her sworn testimony before the Commission;**
- 2. The Applicant knowingly provided false and misleading information on its applications; and**
- 3. The Applicant’s principal admitted to repeated violations of the Administrative Code and the Commission’s rules.**

**II. *Statutory Background and Framework***

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates, known as trade waste.

Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. *See, e.g., United States v. Int'l Brotherhood of Teamsters (Adelstein)*, 998 F.2d 120 (2d Cir. 1993); *People v. Ass'n of Trade Waste Removers of Greater New York Inc.*, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); *United States v. Mario Gigante*, No. 96 Cr. 466 (S.D.N.Y.); *People v. Ass'n of Trade Waste Removers of Greater New York*, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically has also been the subject of significant successful racketeering prosecutions. *See United States v. Paccione*, 949 F.2d 1183, 1186-88 (2d Cir. 1991), *cert. denied*, 505 U.S. 1220 (1992); *United States v. Cafra*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri*, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. *See Admin. Code § 16-505(a)*. This regulatory framework continues to be the primary means of ensuring that an industry once overrun by corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," also known as construction and demolition debris, must apply to the Commission for an exemption from the licensing requirement. *Id.* If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a class 2 registration. *Id.* at § 16-505(a)-(b). Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." *Id.* at § 16-508(b); *see also id.* at § 16-504(a). An "applicant" for a license or registration means both the business entity and each principal thereof. *Id.* at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a decision on an application for a license or registration:

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.

*Id.* at § 16-509(a)(i)-(x). *See also id.* at § 16-504(a).

The Commission also may refuse to issue a license or registration to any applicant who has “knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for a license.” *Id.* at § 16-509(b). *See also Elite Demolition Contracting Corp. v. The City of New York*, 125 A.D.3d 576 (1st Dep’t 2015); *Breeze Carting Corp. v. The City of New York*, 52 A.D.3d 424 (1st Dep’t 2008); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”); leave denied 2 N.Y.3d 705 (N.Y. 2004). *See also* Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial). In addition, the Commission may refuse to issue a license or registration to an applicant that “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” *Id.* at § 16-509(c). *See also id.* at § 16-504(a). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. *Id.* at § 16-509(d); *see also id.* at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) has no entitlement to and no property interest in a license or registration, and the Commission is vested with broad discretion to grant or deny a license or registration application. *Sanitation & Recycling Indus., Inc.*, 107 F.3d 985, 995 (2d Cir. 1997); *see also Daxor Corp. v. New York Dep’t of Health*, 90 N.Y.2d 89, 98-100 (N.Y. 1997).

### **III. Statement of Facts**

#### **A. Registration Application and Renewal Application.**

On or about February 3, 2014, the Applicant applied to the Commission for an exemption from licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. *See* Application for Exemption From Licensing Requirement for Removal of Construction and Demolition Debris (the “Registration Application”). The Registration Application disclosed, among other things, that (1) Bonita Petrillo (“Petrillo”) was the Applicant’s sole principal and owner; (2) no other person had been a past principal of the company; and (3) Adam Dupree (“Dupree”) was the person who prepared or assisted in the preparation of the Registration Application. *See* Registration Application at 12-16. The Applicant did not disclose any vehicles or vehicle operators. *See id.* at 18-19. Petrillo certified under oath that all of the information contained in the Registration Application was “full, complete, and truthful.” *Id.* at 20.

On or about February 5, 2015, the Applicant updated the Registration Application by disclosing two vehicles. *See* February 5, 2015 Schedule E Update. The update was submitted by fax with the fax transmission data, “Double A 973-338-7076.”

On or about February 18, 2015, the Commission granted the Applicant an exemption and issued it a class 2 registration, *see* Registration Order issued to Nu Way Contracting Inc. (the

“Registration Order”), and two sets of Commission license plates. The Applicant’s registration was effective for two years and expired on February 28, 2017. *See* Registration Order.

On or about March 24, 2016, the Applicant disclosed four additional vehicles to the Commission. The Commission issued license plates to the Applicant for each of these four vehicles. *See* March 24, 2016, Roster of Vehicles. Therefore, as of March 2016, the applicant had disclosed six trucks to the Commission.

On or about March 7, 2017, the Applicant filed the Renewal Application. *See* Renewal Application. The Renewal Application again disclosed Petrillo as the Applicant’s sole principal and owner, and also disclosed three drivers and one employee. *See* Renewal Application at 8-9, 11, 12. At the time the Applicant filed the Renewal Application, it returned three sets of Commission-issued license plates. *See* March 7, 2017 Receipt for Returning BIC Trade Waste Plates. The Applicant’s three remaining vehicles with Commission-issued plates were disclosed in the Renewal Application. *See* Renewal Application at 10. As she did with respect to the Registration Application, Petrillo certified under oath that all of the information contained in the Renewal Application was “full, complete, and truthful.” *See id.* at 13.

***B. The sworn testimony of Bonita Petrillo before the Commission.***

On October 24, 2014, the Commission’s staff interviewed Petrillo under oath in connection with the Registration Application. *See* October 24, 2014 Transcript of Sworn Interview of Petrillo (“2014 Petrillo Tr.”). The Commission’s staff conducted a second sworn interview of Petrillo on March 23, 2018, in connection with the Renewal Application. *See* March 23, 2018 Interview of Petrillo (“2018 Petrillo Tr.”). Petrillo was represented by legal counsel, who was present at this interview. *See* Petrillo Tr. at 5. Subsequent to the 2018 sworn interview, on April 13, 2018, Petrillo submitted a sworn affidavit to the Commission (“Petrillo Affidavit”).

In the sworn interviews and in the Petrillo Affidavit, Petrillo provided false testimony regarding the individuals and companies involved in the operation and control of the company. Although Dupree was not disclosed as an employee or principal in the Registration Application or in the Renewal Application, in 2014, Petrillo testified that he was a manager for the Applicant; that in 2014, Dupree handled the purchase of a truck on behalf of the Applicant; and that he performs certain basic functions for the Applicant, such as finding and interfacing with customers, answering the Applicant’s business telephone, helping to fill out forms for the Applicant – including the Registration Application – and sometimes doing the invoicing. *See* 2014 Petrillo Tr. at 43-48. Moreover, Petrillo stated there is “no necessity” for her to go the Applicant’s yard because Dupree is at the yard. *Id.* at 62. When asked about Dupree’s future role with the Applicant, Petrillo stated that she foresaw Dupree overseeing the hiring of new employees, dispatching trucks, and finding new customers. *See id.* at 105, 126. Despite his clear involvement in running the Applicant business, the Applicant never disclosed Dupree as a principal, or even an employee.

In her 2018 interview, Petrillo testified that she alone is responsible for payroll, union welfare and pension, maintaining insurance, maintaining all business records, dispatching trucks and that she is the only person who has authority to sign and deposit checks. *See* 2018 Petrillo Tr. at 26, 31-32. She also testified that she has no business relationship with Dupree and denied that

Dupree ever helped the Applicant purchase a truck, answer the Applicant's phone, dispatch trucks, or find customers. *See id.* at 55-56, 93. Petrillo initially denied that Dupree even helped her complete the Registration Application, *see id.* at 57, until the Commission's staff confronted her with a prior statement that she made to that effect, *see id.* at 92-93.

In the Petrillo Affidavit – submitted after her 2018 sworn interview – Petrillo provided yet another contradictory story about who controls the operations of Nu Way, stating that she was under medical care from 2012 through 2015 and was “unable to devote her full time and attention” to the Applicant. Petrillo Affidavit at 2. Even though Petrillo was questioned extensively about the Applicant's operations during the 2014 and 2018 sworn interviews, in her affidavit she admitted for the first time that Alice Scarimbolo (“Scarimbolo”) and Double A Contracting (“Double A”) staff were in control of the Applicant's “bookkeeping, payroll, insurance, Worker's Compensation, and billing and invoicing” from 2013 through 2015, including at the time of Petrillo's 2014 sworn testimony. *Id.* Petrillo claimed in her affidavit that, despite her extensive medical treatment over the course of three years, she “forgot [that her] medical situation in 2012 through 2015 had an effect on [her] ability to operate [the Applicant] by [herself].” *Id.* at 3.

Petrillo's testimony also demonstrates that she is patently unfamiliar with the operations of the Applicant and that undisclosed individuals or companies are or have been in control of the Applicant. Strikingly, Petrillo is unfamiliar with and provided false testimony about what she admits are large sums of money flowing into and out of her business. For example, the Applicant's bank records show that in January and February 2014, the Applicant conducted over \$138,000 of business with MFM Contracting Corp. (“MFM”). *See Exhibit B to 2018 Petrillo Tr.* Yet, less than a year later, in October 2014, Petrillo testified that she “absolutely [does] not” do business with MFM, which she stated she believes is owned by her brother (Felix Michael Petrillo) and his sons (Felix John Petrillo and Michael Petrillo). *See 2014 Petrillo Tr.* at 27-30, 81-82, 91. Furthermore, in 2014 and again in 2018, Petrillo stated that she is estranged from all three of them and has “no dealings with them.” *See 2018 Petrillo Tr.* at 10; *2014 Petrillo Tr.* at 28-30.

In 2018, when confronted with copies of cashed checks from MFM to the Applicant, Petrillo provided conflicting explanations for the checks. First she stated that the money was a payment from MFM for renting trucks from the Applicant; then she denied that the Applicant rented trucks to MFM. *See 2018 Petrillo Tr.* at 69-70. Next Petrillo stated that Double A rented the Applicant's trucks and then re-rented them to MFM. *See id.* at 70.<sup>1</sup> Finally, in Petrillo's affidavit, she stated that Scarimbolo rented the Applicant's trucks to MFM without Petrillo's knowledge and was “shocked to see checks from [her] brother's company to [the Applicant].” Petrillo Affidavit at 2-3.

Petrillo also testified that the Applicant has never made payments to Double A. *See 2018 Petrillo Tr.* at 36. However, the Applicant's bank records show that it has paid Double A approximately \$300,000. *See Exhibit C to 2018 Petrillo Tr.* When confronted with copies of these checks, Petrillo claimed not to know what the checks were for. *See 2018 Petrillo Tr.* at 74-75. Petrillo's statements about the checks relating to MFM and Double A illustrate, at a minimum, that Petrillo lacks control over a company for which she claims to be the sole principal.

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<sup>1</sup> Despite Petrillo's claim of being estranged from her brother and his sons, she stated she recognized her nephew Michael Petrillo's signature on the checks. *See 2018 Petrillo Tr.* at 67.

Further demonstrating Petrillo's unfamiliarity with the Applicant's operations, Petrillo testified that the Applicant has been registered with the Westchester Solid Waste Commission ("WSWC") since she "started Nu Way" in 2013. *Id.* at 20-21. However, according to WSWC records, the Applicant first applied to the WSCW in August 2017. *See* Westchester Solid Waste Commission Application at 2.

Moreover, when asked about the Applicant's trucks, Petrillo testified that the Applicant has only ever used three trucks. *See* 2018 Petrillo Tr. at 25, 79. Again, at the very least, Petrillo is misinformed about basic information regarding the Applicant's operations. According to the Applicant's 2015 and 2016 Rosters of Vehicles, the Applicant has operated six different trucks with Commission-issued license plates since 2014. *See* Rosters of Vehicles, dated March 11, 2015 and March 24, 2016. Further, Petrillo testified that all three of the Applicant's trucks are painted royal blue. *See* 2018 Petrillo Tr. at 25, 44. In fact, according to the New York State Department records, one truck is gray. *See* New York State Department of Motor Vehicle Registration Card for VIN 1NKDX4TX4FJ445453.

Yet another example showing Petrillo's clear lack of familiarity with the Applicant's operations is her testimony that the Applicant maintains a website, [www.nuwayinc.com](http://www.nuwayinc.com). *See* 2018 Petrillo Tr. at 39. A website with that address does exist, but it is for a concrete form manufacture and rental business with locations in Missouri and Illinois, not for the Applicant's business. *See* [nuwayinc.com](http://nuwayinc.com), last visited May 23, 2018.

### ***C. False statements on Registration Application and Renewal Application.***

By Petrillo's own admission, Scarimbolo, Adam Dupree, and Double A are or were – directly or indirectly – in control of the Applicant's operations, as further demonstrated by Petrillo's lack of knowledge on the subject. *See* Petrillo Affidavit at 2 (admitting Scarimbolo and Double A took over many aspects of the Applicant's business during 2013 through 2015); 2018 Petrillo Tr. at 20-21, 25, 39, 44, 79 (providing false information about the Applicant's registration status with the WSCW, Applicant's trucks, and Applicant's website); 2014 Petrillo Tr. at 43-48, 62, 105, 126 (admitting Dupree is a manager for the Applicant and is actively involved in many aspects of the business). Yet, the Applicant did not disclose any of them as past or current principals. *See* Renewal Application at 8-9; Registration Application at 13-16.

The Renewal Application lists three drivers. *See* Renewal Application at 12-13. When asked about those drivers, Petrillo stated that the Applicant had never employed two of them. *See* 2018 Petrillo Tr. at 59. Thus, Petrillo either admitted that the Renewal Application contained false information, or simply is unaware of who is driving the Applicant's vehicles.

### ***D. Violations of the Administrative Code and the Commission's Rules.***

Commission-issued registrations "shall not be transferred or assigned to any person or used by any person other than the licensee or registrant to whom is was issued." Admin. Code § 16-505(c). During her sworn testimony, Petrillo admitted that on a daily basis from the time the Applicant's Registration Application was approved until about January 2018, the Applicant rented

its trucks bearing Commission-issued plates to other contractors. *See* 2018 Petrillo Tr. at 27-28, 30, 33, 82. Petrillo admitted that, when the Applicant rented out its trucks, Petrillo had no control over who drove the Applicant's trucks or where the trucks went and that the trucks may have entered New York City. *See id.* at 27-28, 30, 81-82. Therefore, the Applicant has repeatedly and continuously violated the Administrative Code by unlawfully transferring its Commission registration to other companies by renting its trucks bearing Commission license plates to those companies.

Registrants are required to notify the Commission within 10 business days of all changes to material information submitted to the Commission. *See* 17 RCNY § 2-05(c). This includes changes to employee and vehicle operator information. *See* Renewal Application at 1, 11, 12; Registration Application at 1, 4. During her 2018 sworn testimony, Petrillo testified that that the Applicant has two drivers in addition to those disclosed on the Renewal Application. One driver has worked for the Applicant since 2015, the second driver since January 2018. *See* 2018 Petrillo Tr. 46-47, 53. In addition to the drivers, Petrillo admitted that the Applicant has employed an office assistant since the spring of 2017 and a mechanic since February 2018, neither of whom have been disclosed to the Commission. *See id.* at 26, 45-46, 61. Therefore, the Applicant also violated the Commission's rules by failing to timely disclose employees to the Commission.

#### **IV. *Applicant's Response***

The Applicant's Response to the Commission's Notice does not dispute the Commission's three independently-sufficient grounds to deny Nu Way's Renewal Application – that Petrillo provided false and misleading testimony to the Commission; provided false and misleading information on Nu Way's Registration Application and Renewal Application; and admitted to repeatedly and continuously violating the Administrative Code and the Commission's rules. Instead, the Response attempts to minimize Petrillo's false and misleading oral sworn testimony before the Commission while completely disregarding the Commission's second and third ground for denial of the Renewal Application.

In an attempt to minimize Petrillo's false and misleading oral testimony, the Response alleges the Commission's Notice is based "exclusively upon an allegation of inaccurate statements" by Petrillo. Response at 1. This is simply not true. To characterize Petrillo's statements under oath as "merely inaccurate" implies that Petrillo's statements were mostly true or that she was only unable to recall minor details. In fact, Petrillo misled the Commission about who was actively involved in running Nu Way over several years. Compare, *e.g.*, Renewal Application and Petrillo Aff. Additionally, Petrillo was unable to demonstrate even a basic knowledge about the operations of Nu Way, including who Nu Way does business with, how many trucks it operates, and whether it even has a website. *See* 2018 Petrillo Tr. at 10, 20-21, 25, 39, 69-70, 74-75, 79. Further, this claim in the Response ignores the Commission's second and third grounds for denial, which have no relation to one's ability to immediately and accurately recall facts while under oath.

The Response attempts to explain that Petrillo "was inaccurate in certain answer [sic] due to her pride." Response at 2. Again, the Response does not dispute that Petrillo provided false and misleading testimony to the Commission; nor does it dispute that Petrillo provided false and



misleading information on Nu Way's initial Registration Application and the Renewal Application. This attempt to excuse her testimony does not change the fact that on three occasions she provided conflicting testimony under oath to the Commission and for over four years failed to correct inaccurate information on the Registration and Renewal Applications.

At the same time, the Response also implies Petrillo was not able to testify truthfully because she was "suffering from symptoms of a tumor causing bleeding in the brain." Response at 1. Such an injury does not explain why she did not notify the Commission at the outset of either her 2014 or 2018 sworn interview of her injury and inability to answer truthfully. Notably, Petrillo was represented by counsel during the 2018 interview. During both of Petrillo's sworn interviews, the Commission's staff inquired whether Petrillo was under the care of a doctor, taking any medication, or whether there was any reason Petrillo could not answer the Commission's staff's questions truthfully. *See* 2018 Petrillo Tr. at 4-5; 2014 Petrillo Tr. at 4-6. In 2014, Petrillo stated she had an operation on her adrenal gland over the prior summer. *See* 2014 Petrillo Tr. at 5. Yet, despite allegedly being in the middle of the "strain and stress of undergoing hundreds of test and seeing numerous doctors" (Petrillo Affidavit at 2), Petrillo did not mention having a brain injury during the 2014 sworn interview. *See* 2014 Petrillo Tr. Neither did Petrillo mention such an injury during the 2018 sworn interview – when she was represented by counsel. *See* 2018 Petrillo Tr. Petrillo did not disclose to the Commission until April 2018 that she suffered a brain hemorrhage in 2012 and continued to be under the care of doctors until 2015. *See* Petrillo Aff. at 1-2.<sup>2</sup>

Again, such an injury does not explain the failure by Petrillo, or those who were actually operating Nu Way during her illness, to provide truthful information to the Commission on the Registration Application or Renewal Application. Neither does it excuse repeatedly violating the Administrative Code and Commission's rules by illegally transferring the Applicant's registration to someone other than to whom it was issued.

The Response claims the Notice recommends "the closure of a business with no allegation of impropriety or illegality." Such a claim is without merit. The Response again ignores the Commission's third ground for denial – Nu Way's repeated violation of the Administrative Code and Commission's rules by illegally transferring the Applicant's registration to someone other than to whom it was issued. It also ignores that failing to disclose principals of a company registered with the Commission and providing false and misleading information about such principals is itself a violation of the Commission's Code and Rules. *See* Admin. Code §§ 508(c), 509(a)(i), 509(b). Petrillo was provided numerous opportunities to provide accurate and truthful information to the Commission, twice during sworn testimony and every day since Nu Way submitted the Registration Application in January 2014.

Finally, the Response states that Petrillo "offered to accept an approval based upon various conditions, including providing an independent monitor to ensure that the inaccurate have not meaning [sic] as to the operation of the company." Response at 1. A monitor does not address the fact that Petrillo provided false and misleading testimony to the Commission and is not an appropriate remedy in such circumstances.

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<sup>2</sup> The Response incorrectly states the Commission's staff ignored this submission. Both the Notice and Decision repeatedly refer to Petrillo's April 2018 submission. *See* references to Petrillo Aff. *supra* and *infra*.

## **V. *Basis for Denial***

### **1. The Applicant's sole-disclosed principal knowingly provided false and misleading information during sworn testimony before the Commission.**

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a basis to deny an application. *See* Admin. Code § 16-509(b); *Attonito*, 3 A.D.3d at 415; *Breeze Carting Corp.*, 52 A.D.3d at 424. As set forth above, Petrillo testified in two sworn interviews that she is and has been the sole principal and person in control of all aspects of the Applicant's business. Yet, the evidence demonstrates that other individuals directly or indirectly control the Applicant business.

In 2014, Petrillo testified that Dupree is a manager for the Applicant and was actively involved in many aspects of the business. *See* 2014 Petrillo Tr. at 43-48. Yet, in 2018, Petrillo directly contradicted that statement when she testified that Dupree has never participated in the operation of the Applicant and that she alone is and always has been the sole person responsible for all aspects of the business. *See* 2018 Petrillo Tr. at 26, 31-32, 55-56, 93. In the Petrillo Affidavit, Petrillo provided yet another story, in which she admitted for the first time that Scarimbolo was in control of the Applicant business from 2013 through 2015. *See* Petrillo Affidavit at 2. Clearly, Petrillo provided false and misleading testimony to the Commission on this account.

Petrillo's claim that she is and always has been the sole person responsible for all aspects of the business is belied by her lack of knowledge regarding the Applicant's operations. During her sworn testimony, Petrillo could not explain why the Applicant had received over \$138,000 in payments from MFM or made payments of approximately \$300,000 to Double A. *See* 2018 Petrillo Tr. at 69-70, 74-75. It was only after she had an opportunity to consult with Scarimbolo, the person who had been operating the Applicant at the time of the payments, that Petrillo was able to provide an explanation – which she did in the Petrillo Affidavit. *See* Petrillo Affidavit at 2-3. Petrillo also provided misleading testimony as to when the Applicant registered with the WSWC, the number of trucks the Applicant has operated since 2015, the color of the trucks, and the Applicant's website. *See* 2018 Petrillo Tr. at 20-21, 25, 39, 44, 79.

Because Petrillo is the sole-disclosed principal of the Applicant, her false and misleading statements under oath demonstrate that the Applicant lacks the good character, honesty, and integrity required to participate in the trade waste industry. The Response attempts to excuse, but does not dispute that Petrillo provided false and misleading testimony before the Commission. Accordingly, the Commission denies the Renewal Application on this independently-sufficient basis.

### **2. The Applicant knowingly provided false and misleading information on its applications.**

In addition to providing false testimony to the Commission, the Applicant also provided false information on the Registration Application and Renewal Application. Question 12 of the Registration Application and Schedule A of the Renewal Application require disclosure of all principals of the Applicant. Question 13 of the Registration Application requires disclosure of all

past principals of the Applicant. “Principal” is defined as “every officer and director and every stockholder holding ten percent or more of the outstanding shares of a corporation . . . and all persons participating directly or indirectly in the control of such business entity.” Admin. Code § 16-501(d). The Registration Application and Renewal Application, both of which Petrillo certified under oath, disclosed Petrillo as the only past and present principal of the Applicant business. *See* Renewal Application at 8-9; Registration Application at 13-15. There is no mention of Scarimbolo or Dupree in the Registration Application or Renewal Application as past or present principals – or even as mere employees. Yet, it is clear that Petrillo does not control the operations of Nu Way. And it is equally clear that, at various times, Scarimbolo and Dupree – and potentially others – either have controlled or currently control Nu Way. None of them have been disclosed as principals.

Perhaps the starkest example of the Applicant’s failure to disclose its principals is the case of Scarimbolo: Petrillo admitted that, from 2013 through 2015, Scarimbolo was in charge because Petrillo was too ill to run Nu Way. *See* Petrillo Affidavit at 2-3. Yet, Scarimbolo was not disclosed in any capacity on the Registration Application, much less as a principal, despite the fact that the Registration Application was submitted during the time that Scarimbolo was in control of the company.

Since 2015, others have continued to operate and control Nu Way, while Petrillo served as the principal of the company only on paper. Petrillo lacks basic knowledge of Nu Way’s operations and equipment. For example, Petrillo does not know with whom the Applicant does business, as demonstrated by her conflicting statements and confusion when confronted with over \$400,000 in payments made by the Applicant; how many trucks the Applicant has owned over the course of its existence; and when the Applicant registered with the WSWC. 2018 Petrillo Tr. at 21-21, 25, 44, 69-70, 74-75, 79. Petrillo simply does not possess the knowledge necessary to run Nu Way. And it is clear that she is not doing so.

Thus, the Applicant provided false answers to Question 12 and 13 on the Registration Application and Schedule A on the Renewal Application, which demonstrates a lack of good character, honesty and integrity. The Response does not dispute the Commission’s staff’s assertions on this point. Accordingly, the Commission denies the Renewal Application on this independently-sufficient basis.

### **3. The Applicant’s principal admitted to repeated violations of Administrative Code and the Commission’s rules.**

The Commission may refuse to issue a registration to an applicant that “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” Admin. Code § 16-509(c). One of the grounds for suspension or revocation of a registration is where the applicant is “found to be in violation of this chapter or any rules promulgated pursuant thereto.” Admin. Code § 16-513(a)(i). The Applicant has repeatedly violated the Commission’s rules and regulations through both illegally transferring its registration to another entity, and by failing to disclose changes to material information provided in the Applicants applications.

Commission-issued registrations may not be transferred to or used by any person other than the registrant to whom it was issued. *See* Admin. Code § 16-505(c). Yet Petrillo admitted that, on a daily basis from the time the Registration Application was approved until about January 2018, the Applicant permitted its trucks bearing Commission-issued plates to be used by other companies. *See* 2018 Petrillo Tr. at 27-28, 30, 33, 82. During this time, the Applicant did not provide drivers to operate these trucks, Petrillo had no control over who drove the Applicant's trucks or where the trucks went, and the trucks may have entered New York City. *See id.* at 27-28, 30, 81-82. By permitting other companies to use the Applicant's trucks in this manner, the Applicant illegally transferred the Applicant's registration, allowing the registration to be used by someone other than the registrant to whom it was issued, in violation of Administrative Code § 16-505(c).

Registrants are required to disclose changes to material information to the Commission within 10 business days. *See* 17 RCNY § 2-05(b). The identity of a registrant's vehicle operators and employees was designated as material information by the Registration Application and the Renewal Application. *See* Registration Application at 4 and 18 (question 18 on page 4 and corresponding Schedule D on page 18 are marked with an asterisk designating the responses as material information); Renewal Application at 11-12 (Schedules C and D on pages 11 and 12 are marked with an asterisk designating the responses as material information). During Petrillo's sworn testimony, she admitted that that Applicant has two drivers in addition to those disclosed on the Renewal Application. One driver has worked for the Applicant since 2015; and the second driver has worked for the Applicant since January 2018. *See* 2018 Petrillo Tr. 46-47, 53. In addition to the drivers, Petrillo admitted that the Applicant has employed an office assistant since the spring of 2017 and a mechanic since February 2018, neither of whom were disclosed to the Commission. *See id.* at 26, 45-46, 61. Thus, the Applicant violated 17 RCNY § 2-05 by failing to disclose the vehicle operators and employees within 10 business days of their hire date.

By Petrillo's own admission, the Applicant has repeatedly violated the Administrative Code and the Commission's rules. The Response does not dispute the Commission's staff's assertions on this point. Accordingly, pursuant to Administrative Code § 16-509(c), the Commission denies the Renewal Application on this independently-sufficient basis.

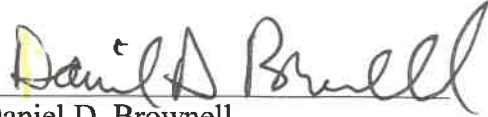
## ***V. Conclusion***

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant it determines lacks good character, honesty and integrity. The record herein demonstrates that the Applicant and its principals – both disclosed and undisclosed – lack good character, honesty and integrity. Accordingly, based on each of the three independently sufficient grounds detailed above, the Commission denies the Renewal Application.

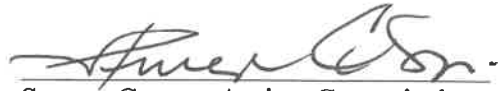
This denial is effective immediately. Nu Way Contracting Inc. may not operate as a trade waste business in the City of New York.

Dated: March 20, 2019

THE NEW YORK CITY  
BUSINESS INTEGRITY COMMISSION



Daniel D. Brownell,  
Commissioner and Chair



Steven Costas, Acting Commissioner  
Department of Sanitation



Margaret Garnett, Commissioner  
Department of Investigation



Lorelei Salas, Commissioner  
Department of Consumer Affairs



Anthony Dell'Olio, Deputy General Counsel  
(Designee)  
Department of Small Business Services



Christopher Fasano, Lieutenant  
(Designee)  
New York City Police Department