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

DECISION OF THE TRADE WASTE COMMISSION DENYING THE APPLICATIONS OF PATANO BROTHERS, INC., YORK CITY RECYCLE CORP., AND QUEENSBRIDGE SANITATION CORP. FOR LICENSES TO OPERATE AS TRADE WASTE BUSINESSES

By applications submitted on August 30, 1996, Patano Brothers, Inc. ("Patano Brothers"), York City Recycle Corp. ("York City"), and Queensbridge Sanitation Corp. ("Queensbridge") (collectively, the "Patano companies") applied to the New York City Trade Waste Commission for licenses to operate as trade waste businesses pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-508. Local Law 42, which created the Commission to license and 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.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant who it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. §16-509(a)(i)-(x). These illustrative factors include the failure to provide truthful information to the Commission, certain civil or administrative findings of liability, and certain associations with organized crime figures. Based upon the record as to the Patano companies, the Commission denies their license applications on the ground that these applicants lack good character, honesty, and integrity for the following independent reasons:

(1) the applicants, through their principal John Patano, have knowingly associated with an associate of organized crime;

(2) the applicants, through their principal John Patano, have knowingly associated with a convicted racketeer;

(3) the applicants and their principals engaged in illegal activities in connection with their purchase of carting stops from another carting company;

(4) the applicants, through their principal John Patano, committed perjury on several occasions in sworn testimony before the Commission by making materially false and misleading statements under oath concerning, among other things, their unauthorized purchase of carting stops; and

(5) the applicants, through their principal Michael Patano, committed perjury on several occasions in sworn testimony before the Commission by making materially false and misleading statements under oath concerning, among other things, their unauthorized purchase of carting stops.

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 forty years, and until only recently, 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 recently described that cartel as "a 'black hole' in New York City's economic life":

> Like those dense stars found in the firmament, the cartel can not be seen and its existence can only be shown by its effect on the conduct of those falling within its ambit. Because of its strong gravitational field, no light escapes

very far from a "black hole" before it is dragged back . . . [T]he record before us reveals that from the cartel's domination of the carting industry, no carter escapes.

Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) ("SRI") (citation omitted).

Extensive 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 found:

(1) "that the carting industry has been corruptly influenced by organized crime for more than four decades";

(2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";

(3) that to ensure carting companies' continuing unlawful advantages; "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";

(4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . being the only rate available to businesses";

(5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters improperly charge or overcharge for more waste than they actually remove";

(6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of

violence, and property damage to both customers and competing carting firms";

(7) "that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it furthers through the activities of individual carters and trade associations";

(8) "that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct"; and

(9) "that a situation in which New York City businesses, both large and small, must pay a 'mob tax' in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy."

Local Law 42, §1.

The criminal cartel operated through the industry's four leading New York City trade associations, the Association of Trade Waste Removers of Greater New York ("GNYTW"), the Greater New York Waste Paper Association ("WPA"), the Kings County Trade Waste Association ("KCTW"), and the Queens County Trade Waste Association ("QCTW"), all of which have been controlled by organized crime figures for many years. See, e.g., Local Law 42, §1; United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993). As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have served, they "operate in illegal ways" by "enforc[ing] the cartel's anticompetitive dominance of the waste collection industry." SRI, 107 F.3d at 999.

> [T]angential legitimate purposes pursued by a trade association *whose defining aim, obvious to all involved,* is *to further an illegal anticompetitive scheme* will not shield the association from government action taken to root out the illegal activity.

Id. (emphasis added).

The Second Circuit has roundly dismissed carting companies' rote denials of knowledge of the role their trade associations played in enforcing the cartel's criminal "property rights" system:

> The [New York State Legislature's] 1986 Assembly report stated that no carting firm in New York City "can operate without the approval of organized crime." Hence, even th[o]se carters not accused of wrongdoing are aware of the "evergreen" contracts and the other association rules regarding property rights in their customers' locations. *The association members--comprising the vast majority of carters--recognize the trade associations as the fora to resolve disputes regarding customers. It is that complicity which evinces a carter's intent to further the trade association's illegal purposes.*

SRI, 107 F.3d at 999 (emphasis added).

In June 1995, all four of the trade associations, together with seventeen individuals and twenty-three carting companies, were indicted as a result of a five-year investigation into the industry by the Manhattan District Attorney's office and New York City Police Department. Those indicted included capos and soldiers in the Genovese and Gambino organized crime families who acted as "business agents" for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. The evidence amassed at the City Council hearings giving rise to Local Law 42 comported with the charges in the indictment: evidence of enterprise corruption, attempted murder, arson, criminal antitrust violations, coercion, extortion, and numerous other crimes.

More carting industry indictments followed. In June 1996, both the Manhattan District Attorney and the United States Attorney for the Southern District of New York obtained major indictments of New York metropolitan area carters. The state indictment, against thirteen individuals and eight companies, was (like its 1995 counterpart) based upon undercover operations, including electronic surveillance intercepts, which revealed a trade waste removal industry still rife with corruption and organized crime influence. The federal indictment, against seven individuals and fourteen corporations associated with the Genovese and Gambino organized crime families (including the brother and nephew of Genovese boss Vincent "Chin" Gigante), included charges of racketeering,

extortion, arson, and bribery. In November 1996, the Manhattan District Attorney announced a third round of indictments in his continuing investigation of the industry, bringing the total number of defendants in the state prosecution to thirty-four individuals, thirty-four companies, and four trade waste associations.

The accuracy of the sweeping charges in the indictments has been repeatedly confirmed by a series of guilty pleas and a recent jury verdict. On October 23, 1996, defendant John Vitale pleaded guilty to a state antitrust violation for his participation in the anticompetitive criminal cartel. In his allocution, Vitale, a principal of the carting company Vibro, Inc., acknowledged that he turned to the trade associations, and specifically to Genovese capo Alphonse Malangone and Gambino soldier Joseph Francolino, to obtain their assistance in preventing a competitor from bidding on a "Vibro-owned" building, 200 Madison Avenue in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant and the owner of what was once one of New York City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay $7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a $10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the New York City carting industry. See People v. Angelo Ponte, et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Jan. 27, 1997) (Exhibit 1).*

On January 28, 1997, Vincent Vigliotti, Sr., became the fourth individual defendant to plead guilty to carting industry corruption charges. Two carting companies and a transfer station run by Vigliotti's family under his auspices pleaded guilty to criminal antitrust violations. In his allocution, Vigliotti confirmed Ponte's admissions as to the scope of the criminal antitrust conspiracy in the carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors through threats and economic retaliation from entering the market. Vigliotti agreed to

* Exhibits identified herein are part of the administrative record in this matter.

serve a prison term of one to three years, to pay $2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the New York City carting industry. See People v. Vincent Vigliotti, Sr., et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Jan. 28, 1997) (Exhibit 2).

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a $1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did another Brooklyn carter, Dominick Vulpis. Brooklyn carter and KCTW secretary Raymond Polidori pleaded guilty to restraint of trade. These defendants agreed to pay fines ranging from $250,000 to $750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the New York City carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it. See People v. Frank Allocca, et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Feb. 13, 1997) (Exhibit 3).

On February 24, 1997, defendants Michael D'Ambrosio, Robros Recycling Corp., and Vaparo, Inc. all pleaded guilty in allocutions before New York Supreme Court Justice Leslie Crocker Snyder. D'Ambrosio pleaded guilty to attempted enterprise corruption, and his companies pleaded to criminal antitrust violations.

On July 21, 1997, Philip Barretti, Sr., another lead defendant and the former owner of New York City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay $6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the Greater New York Waste Paper Association, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption and agreed to prison sentences of four to twelve and 3⅓ to ten years, respectively. All four defendants agreed to be permanently barred from the New York City carting industry. On the same day, Philip Barretti,

Jr. and Mark Barretti pleaded guilty to a Class E environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, in September 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to commit tax fraud and, respectively, to bribing a labor official and defrauding Westchester County in connection with a transfer station contract. In their allocutions, Suburban and Milo admitted that one objective of the tax conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino capo Joseph Francolino, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges -- the most serious charges in the indictment -- against all five of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined $900,000, and the GNYTW was fined $9 million.

In sum, it is now far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been proven beyond a reasonable doubt. The proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched—extending to and emanating from all of the industry's trade associations, which counted among their collective membership virtually every carter—that it could not have escaped the notice of any carter. The jury verdict confirms the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, to address this pervasive problem.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "it shall be unlawful for any person to operate a business for the purpose of the collection of trade waste ... without having first obtained a license therefor from the Commission," which license "shall be valid for a period of two years." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Although Local Law 42 became effective immediately, trade waste removal licenses previously issued by the DCA remain valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(1). All of the Patano companies had DCA licenses and timely filed applications for a license from the Commission.

As the United States Court of Appeals has definitively ruled, an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997).

In determining whether to issue a license to an applicant, the Commission may consider, among other things, the following matters, if applicable:

(i) failure by such applicant to provide truthful information in connection with the application;

(ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

(iii) conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;

(iv) a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

(v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

(vi) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

(vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

(viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

(ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

(x) failure to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code §16-509(a)(i)-(x).

II. THE APPLICANTS

Patano Brothers, Queensbridge, and York City were licensed to operate by the Department of Consumer Affairs. Patano Brothers and Queensbridge each have customers in Manhattan and Queens. York City collects waste only "on call."

Patano Brothers was a member of the Queens County Trade Waste Association ("QCTW") from 1969 until its resignation in June 1996, a year after the association's indictment and shortly after Local Law 42 had become law. Queensbridge was a member of the "QCTW" from Queensbridge's incorporation in 1982 until its resignation in June 1996.

John Patano is the President of Patano Brothers, Michael Patano (the son of John Patano) is the President of Queensbridge, and Isabel Patano (the wife of John

Patano) is the President of York City. Isabel Patano is also the Secretary/Treasurer of Queensbridge.

John Patano has asserted that he is not a principal of Queensbridge or York City. It is clear, however, that the three companies are inextricably linked, and that John Patano is a "principal" of all three companies within the meaning of Local Law 42.

The Patano companies operate as a single entity. All three companies share office and garage space.[1] Most of the employees identified as employed by one of the Patano companies in fact work for all three companies.[2] Nevertheless, no inter-company payments are made to account for the sharing of employee services.[3]

Moreover, John Patano is not merely the father and husband, respectively, of the corporate officers of Queensbridge and York City; he has an interest in those two companies. John Patano admitted that he is involved in the activities of both Patano Brothers and Queensbridge.[4] Although he claimed not to have an ownership interest in Queensbridge, John Patano admitted that he made personal loans to Queensbridge,[5] and referred to trucks owned by Patano Brothers and Queensbridge as "my trucks."[6]

One consideration behind the Patano companies' formally splintered ownership structure may have been John Patano's criminal history, which although dated, is suggestive of both dishonesty and ties to organized crime. John Patano has a criminal record which includes a conviction for grand larceny in 1962 and a 1977 plea of guilty to a charge of conspiracy to transport fraudulently obtained securities. Patano Brothers was incorporated in 1959; Queensbridge was incorporated in 1982; York City was incorporated in 1995.

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[1] John Patano ("JP") Dep. (Exhibit 4) #1 at 27-28, 32.

[2] Id. at 36, 37, 38-39, 42, 46, 50, 78, 79, 82, 83, 84.

[3] Id. at 44-45.

[4] Id. at 10-11.

[5] JP Dep. #2 at 118.

[6] Id. at 78.

The 1962 conviction arose out of charges that John Patano knowingly received stolen property while cleaning out and hauling waste from a store that Patano Brothers was servicing.[7] Although Patano pleaded guilty, he denied under oath at his July 25, 1997 deposition that he knowingly received stolen property.[8]

In 1977, John Patano was indicted on charges of transporting fraudulently obtained securities and currency and of conspiracy to do so by a federal grand jury in the District of New Jersey.[9] Patano was one of 23 people indicted that day in unrelated schemes to steal over $550,000 from eight New Jersey lending institutions after an investigation prompted by the failure of three state banks.[10] (See abstracts and articles at Exhibit 5.) According to the indictment against him, Patano conspired with several individuals, including Arnold Daner and Winfield Scott, to defraud a New Jersey lending institution by falsely representing that two waste removal equipment companies had shipped equipment to Northeast Sanitation Services, Inc., a waste removal company that Patano partly-owned and operated.[11] The fraudulent scheme, which involved the use of numerous false invoices and receipts for waste removal equipment, enabled Patano and his co-conspirators to obtain $75,000 from the lending institution, including $40,000 deposited in Northeast's bank account at the Bank of Bloomfield in New Jersey (which collapsed on January 10, 1976).[12] John Patano pleaded guilty to the conspiracy charge on December 13, 1977.[13]

The fraud conspiracy that Patano engaged in was one of many such schemes, run by organized crime figures, to steal the assets of several New Jersey financial institutions. Patano's co-conspirator Arnold Daner (who cooperated with federal investigators)[14] was alleged to be involved in a scheme in which organized

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[7] JP Dep. #1 at 127.

[8] Id.

[9] United States v. Cocciaro, 77 Cr. 282, Indictment (D.N.J. July 26, 1977).

[10] New York Times (July 27, 1977; abstract).

[11] United States v. Cocciaro, 77 Cr. 282, Indictment (D.N.J. July 26, 1977).

[12] Id.; New York Times (Nov. 10, 1976; abstract).

[13] United States v. Cocciaro, 77 Cr. 282, Judgment (D.N.J. Dec. 13, 1977).

[14] New York Times (Aug. 31, 1977; abstract).

crime figures obtained bank loans by depositing a waste-hauling union's welfare funds with the bank.[15] Patano's co-conspirator Winfield Scott was alleged to be involved in a scheme in which $4.3 million in funds from the Bank of Bloomfield were used by organized crime figures for illegal activities including loansharking.[16] Ultimately, several organized crime figures pleaded guilty to orchestrating schemes in which the Bank of Bloomfield was looted of millions of dollars in connection with leases of non-existent equipment.[17]

In short, John Patano has admittedly lied and defrauded – possibly at the behest of organized crime figures. His criminal history may well have motivated him to nominate his wife as an officer of Queensbridge and York City. It clearly bears on his credibility and intent.[18]

III. GROUNDS FOR LICENSE DENIAL

A. The Applicants, Through Their Principal John Patano, Knowingly Associated with Vincent Vigliotti, Sr., an Organized Crime Associate and Convicted Racketeer

Vincent Vigliotti, Sr. has been identified by the New York City Police Department as an associate of the Genovese organized crime family.[19] Moreover, Vigliotti pleaded guilty to racketeering charges in January 1997, and is currently incarcerated based upon that conviction. As noted above, in his allocution, Vigliotti confirmed the grand jury's charges regarding the criminal antitrust conspiracy in the carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors through threats and economic retaliation from entering the market.

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[15] Wall Street Journal (Nov. 10, 1977; abstract); Wall Street Journal (Sept. 14, 1977; abstract).

[16] New York Times (Nov. 10, 1977; abstract); Wall Street Journal (Sept. 14, 1977; abstract).

[17] Wall Street Journal (Oct. 17, 1977; abstract); Wall Street Journal (Sept. 14, 1977; abstract).

[18] As discussed below, the applicants have knowingly associated with an organized crime figure and convicted racketeer, engaged in illegal activities in connection with a stop sale, and perjured themselves regarding the stop sale. Accordingly, the Commission need not address the question of whether John Patano's criminal history would by itself warrant a denial of the Patano companies' applications. John Patano's criminal history, however, bears on his credibility and fraudulent intent.

[19] Affidavit of Detective Anthony Farneti, dated November 11, 1997 (Exhibit 6), ¶ 6.

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Vigliotti agreed to serve a prison term of one to three years, to pay $2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the New York City carting industry. (See Exhibit 2.) Two carting companies and a transfer station run by Vigliotti's family under his auspices also pleaded guilty to criminal antitrust violations.

John Patano admitted that he is friendly with Vincent Vigliotti and that they have met on numerous occasions. He specifically described Vigliotti as a friend.[20] During his deposition on August 13, 1997, John Patano admitted that he and his wife had socialized with Vigliotti and his wife in Florida,[21] and that the two couples sometimes got together for coffee.[22] In fact, in the early 1990's, the Patanos purchased their condominium in Florida from the Vigliottis.[23] Patano stated, "If [Vigliotti] called, if I was down [in Florida] we would go and have dinner or something like that. After we bought the apartment, he would come back to my place or go to his place and have coffee or something like that."[24] John Patano added that he had seen Vigliotti as recently as December 1996 or January 1997.[25] Although Patano denied that he had "socialized" with Vigliotti during those months, he admitted that during that period he had dinner or coffee with him once in a while.[26]

Isabel Patano's testimony confirmed that the two couples socialized together. She also confirmed that she and John Patano had purchased their condominium in Pompano, Florida from Vigliotti.[27] She admitted knowing Vigliotti prior to the purchase of the condo, having met him at the birthday party of the wife of another carter.[28] In addition, the Patanos' relationship to the

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[20] JP Dep. #1 at 123.

[21] JP Dep. #2 at 80-81.

[22] Id. at 83.

[23] Id. at 79-80.

[24] Id. at 81.

[25] Id. at 83.

[26] Id.

[27] Isabel Patano ("IP") Dep. (Exhibit 7) at 72.

[28] Id. at 73.

Vigliottis is so close that Isabel Patano knows the names of Vigliotti's three children, and also knew them personally.[29]

Michael Patano also confirmed that the Patanos socialized with the Vigliottis. He stated that his father, John Patano, bought a condominium from Vigliotti and that his mother and father socialized with the Vigliottis and sometimes "took [the Vigliottis] out to dinner."[30] According to Michael Patano, his father socialized with the Vigliottis at John Patano's house in New York, and they got together socially in Florida.[31] When they socialized in New York City, the Vigliottis would arrive at John and Isabel Patano's house, and then the two couples would all go out in one car.[32] Michael Patano testified that he believed that his parents socialized with Vigliotti at least twice after he was indicted.[33]

John Patano continued to associate with Vigliotti after he learned of Vigliotti's reputed organized crime ties and even after Vigliotti's racketeering conviction. When asked whether he had heard that any of the Vigliottis were connected to organized crime, John Patano initially stated that he had not.[34] However, he soon changed his testimony and stated that he had seen such an allegation in the media.[35] Indeed, Vigliotti's ties to organized crime have been well publicized. Even before the June 1995 indictments were issued, the Daily News reported that the "daily routine" of Liborio (Barney) Bellomo, the "acting boss of the Genovese crime family," includes "a drive to the Du-Rite Carting Co. . . part-owned by Gerald Fiorino and Vincent Vigliotti, whose family owns lucrative garbage hauling routes in the city and Long Island."[36] After the

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[29] Id. at 80-81.

[30] Michael Patano ("MP") Dep. (Exhibit 8) at 50.

[31] Id. at 50.

[32] Id. at 51.

[33] Id. at 50-51.

[34] JP Dep. #2 at 82.

[35] Id. at 82.

[36] Daily News at 12-13 (Dec. 12, 1993).

indictment Fortune noted that Vigliotti was "reputedly linked to the Genovese crime family."[37]

John Patano admitted that when he met with Vigliotti in late 1996 or early 1997, he already knew that Vigliotti had been indicted, having read about the indictment in a newspaper, and had also read that Vigliotti was alleged to be involved in organized crime.[38] When asked on August 13, 1997, how many times he had seen Vigliotti since Vigliotti was indicted, Patano admitted having met him approximately three or four times during that period.[39] Moreover, Isabel Patano confirmed that John Patano met with Vigliotti even after Vigliotti pleaded guilty in January 1997. She testified that the two couples last had dinner together at a steakhouse "about a month before he went to prison."[40] Vigliotti was sentenced and incarcerated on April 11, 1997.

John Patano's associations with Vigliotti were not fleeting or casual, but rather were voluntary and intentional -- planned events that included dining together in Florida, visiting each others' homes before or after going out to dinner in New York City, and meeting for coffee.

These associations were clearly inconsistent with the purposes of Local Law 42. Both Patano and Vigliotti were participants in the New York City waste removal industry. The Patano companies did business with the Vigliotti companies.[41] Naturally, John Patano and Vigliotti discussed industry matters when they met. Isabel Patano admitted that during some of their associations with the Vigliottis, they engaged in "general talk" about the carting business.[42] John Patano admitted that he and Vigliotti might talk about business "maybe if it comes up,"[43] and specifically mentioned to Vigliotti that he had used Vigliotti's transfer

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[37] Fortune at 28 (May 27, 1996); see also Fortune at 90 (Jan. 15, 1996) (Vigliotti has "reputed ties to the Genovese family").

[38] JP Dep. # 2 at 83-84.

[39] Id. at 85.

[40] IP Dep. at 74.

[41] MP Dep. at 53; JP Dep. #2 at 78-79.

[42] IP Dep. at 76.

[43] JP Dep. #2 at 81.

station.[44] John Patano's association with Vigliotti calls the applicants' character, honesty, and integrity into serious question. This type of association by a carter with a Genovese associate and convicted racketeer is highly suggestive of the entrenched corruption in this industry that Local Law 42 was enacted to eliminate.

B. The Patano Companies Engaged in Illegal Activities in Connection with Their Purchase of Stops from Joseph Savino & Sons, Inc.

In February 1995, the Patano companies purchased a number of carting stops from Joseph Savino & Sons, Inc. The transaction was not submitted to the New York City Department of Consumer Affairs for approval. Nor was it properly accounted for on the books and records of the various participants. The transaction was carefully disguised: first, by all the participants, as a "loan," then, by Joseph Savino & Sons, as a "consulting agreement," and then as an "unconsummated" route sale. In their effort to hide the illegal transactions, which by themselves reveal knowing participation by the Patano companies and their co-conspirators in the New York City carting cartel, the Patano companies falsified records, filed false documents with the City, perjured themselves, and engaged in a tax fraud conspiracy. Rather than incriminate themselves further, key participants in the transaction – including the owners of the Savino companies – declined to answer questions about the transaction by invoking the Fifth Amendment privilege against self-incrimination.[45] The Patano companies' activities with respect to the Savino transaction warrant the denial of their license applications.

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[44] Id. at 85-86.

[45] It is appropriate to draw an adverse inference from that invocation, see, e.g., Baxter v. Palmigiano, 425 U.S. 308 (1976); Brink's, Inc. v. City of New York, 717 F.2d 700 (2d Cir. 1983), and the Commission does so.

Background: The Savino Companies' Search for Cash

During the relevant period, Frank and Joseph Savino owned a number of related companies including Joseph Savino & Sons, Allegro Carting & Recycling, Inc., and Allegro Enterprises, Inc. (the "Savino companies"). From September 1994 through February 1995, the Savino companies attempted to generate cash by executing a series of route sales with other members of the New York City carting cartel, including the Patano companies and AVA Carting, Vigliotti & Sons Inc. ("Vigliotti"), and Du-Rite Carting Company, Inc. ("Du-Rite") (collectively, the "Vigliotti companies"). In each transaction, the buyer agreed to pay the Savino companies approximately 30 times the monthly revenue of the route being purchased. The high purchase prices were characteristic of the route sales that cartel members negotiated during the heyday of the cartel. However, in the Savino transactions, the buyers agreed to pay unusually large downpayments and to pay the balances due on unusually expedited schedules. In at least one instance, payment of the balance was to be excused if the cartel's operations were disrupted by competition from Browning-Ferris Industries, Inc. or by local legislation. None of these transactions was submitted to the New York City Department of Consumer Affairs for approval as required by law because the participants had agreed to disguise the transactions as "loans."

The Savino Companies Sold Routes to the Patano and Vigliotti Companies

Several employees of the Savino companies admitted that the sales were consummated. The books and records of the participants also reveal that payments were made and that the participating companies attempted to disguise the transactions.

Vincent Catanese

Vincent Catanese is a Director of Operations at the Savino companies. His duties include handling most of the Savino companies' New York City carting accounts.

Catanese admitted that Vigliotti, Du-Rite, and Patano Brothers, Inc. ("Patano") serviced Savino customers.[46] Catanese explained that Frank Savino

[46] Catanese Dep. #1 (Exhibit 9) at 15.

told Catanese that he "wanted to sell work or sell a route to Vigliotti." Sometime thereafter, Catanese was told by one of the Savino companies' dispatchers that Vigliotti was picking up garbage left out for collection by customers billed by the Savino companies.[47] Ultimately, Catanese learned that route sales had been consummated, and that Vigliotti, Du-Rite, and Patano were servicing customers billed by the Savino companies.[48]

In order to handle customer complaints, Catanese was given a list of the stops that had been sold.[49] He testified that approximately 20 to 30 stops were sold to Vigliotti.[50] Catanese identified three stops that were sold to Patano: the College of Insurance and the buildings at 130 West 25th Street and 150 West 28th Street in Manhattan.[51]

From time to time, a customer billed by the Savino companies and serviced by Vigliotti would complain that the Savino companies had missed the stop.[52] Catanese would respond by calling "Dominick" at Vigliotti in the Bronx.[53] Catanese also had contact with a representative of Patano. He identified a photograph of John Patano as the person from Patano to whom he gave the keys for 130 West 25th Street and 150 West 28th Street, "keyed stops" that the Savino companies sold to Patano.[54]

Even though the sales were consummated, the Savino companies continued to handle all contact with the customers whose accounts were sold to the other cartel members. For example, Catanese continued to make cash payments to building superintendents on the route that Patano bought even after Patano started

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[47] Id. at 69.

[48] Id. at 15, 99

[49] Id. at 70-72.

[50] Id. at 72.

[51] Id. at 101-02.

[52] Id. at 77.

[53] Id. at 83-84.

[54] Catanese Dep. #2 at 20-23.

servicing the buildings.[55] The participants anticipated, however, that the buyers would bill the customers directly once the buyers' obligations to the Savino companies were satisfied. Indeed, Catanese participated in office discussions about ways in which the customer billing for the route purchased by Patano could be transferred to the buyer.[56]

Joseph Mailloux

Joseph Mailloux, who was the Savino companies' Chief Operating Officer during the relevant period, also admitted that the Savino companies sold "collection[s] of customers" to "Vigliotti and Patano."[57] According to Mailloux, in 1995, Frank Savino said to Mailloux, "I'm helping with cash flow. We got rid of some goodwill. We'll have a downpayment in the area of two to $250,000 within the next week."[58] A week or ten days later, Frank Savino said, "The money came in from the goodwill we sold."[59] Mailloux explained that there were ultimately two downpayments that totaled somewhere between $200,000 and $500,000.[60]

Mailloux claims that, at some point, Frank Savino told Mailloux that Vigliotti was not "very happy with the work for whatever reason and said, 'I don't want it.'"[61] Mailloux claims that the Savino companies, therefore, took back the stops.[62] Frank Savino instructed Mailloux to begin refunding Vigliotti's deposit by making weekly payments of $1,500.[63] Mailloux claimed that he could not

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[55] Catanese Dep. #1 at 102-03.

[56] Catanese Dep. #2 at 24-25.

[57] Mailloux Dep. (Exhibit 10) #1 at 72, 74-75, 96.

[58] Id. at 72, 81-83.

[59] Id. at 81-82.

[60] Id. at 75-76, 83, 96.

[61] Id. at 92-93.

[62] Id.

[63] Id. at 94-95, 98, 118.

recall whether the Savino companies began refunding Patano's deposit.[64] Mailloux testified that, to his knowledge, the Savino companies did not perform any consulting services for Vigliotti and Patano.[65]

The Dispatchers

Three employees who worked in the dispatch office of the Savino companies confirmed that the Savino companies relinquished certain stops to Vigliotti and Patano. John Davis, the Operations Manager at the Savino companies, testified that in late 1994 or early 1995, when he was working in the dispatch office, he received a list of customers that the Savino companies would no longer service and that would be serviced by Vigliotti instead.[66]

Richard Parker, the Route Manager for the Savino companies during the relevant period, testified that he was asked to remove and subsequently add certain stops from the route lists of the Savino companies.[67] He testified that the College of Insurance was among the stops that the Savino companies stopped servicing for a while and then recommenced servicing. Parker testified that, about two years ago, the Savino companies stopped servicing the College of Insurance. The Savino companies, however, ultimately got the stop back. In the spring of 1997, Parker learned that the Savino companies were going to start picking up from College of Insurance again. Parker was asked for advice on how to route the stop.

Carl Pantaleo, a dispatcher for the Savino companies, testified that in 1995, Frank Savino told him to remove stops from the routes, because Vigliotti was going to be doing the work, and asked him to consolidate the routes.[68] Pantaleo also testified that in a discussion with Robert Maffetone,[69] who was at that time employed as a salesman by the Savino companies, about Patano, they might have

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[64] Id. at 95.

[65] Id. at 128-30.

[66] Davis Dep. (Exhibit 11) at 35.

[67] The testimony of Richard Parker was tape-recorded but not transcribed and is summarized in a memorandum from Deputy Commissioner Claude Millman to Deputy Commissioner Chad Vignola (Exhibit 12).

[68] Pantaleo Dep. (Exhibit 13) at 18-19.

[69] Maffetone asserted his Fifth Amendment privilege in response to all questions concerning these transactions.

discussed the fact that Patano was collecting waste from the customers of the Savino companies.[70]

Finally, during an audit of the Patano companies, the Commission obtained a document entitled "Discontinued Customers." The document identified "College of Insurance" as a discontinued customer, i.e., a customer that Patano at one time in fact serviced. (See Exhibit 14.) As discussed below, when confronted with this document at his deposition, John Patano falsely testified that none of the Patano companies had ever serviced the College of Insurance.

The Scheme to Conceal the Transactions

The books and records of the participants in the sale transactions reveal that they attempted to conceal the route sales. The effort to conceal the sales evolved over time as three disguises were attempted: (1) the transactions were "loans"; (2) the Savino companies provided "consulting services" to the Vigliotti and Patano companies; and (3) the route sales were "never consummated" because the buyers failed to secure DCA approval, and the deposits were, accordingly, returned.

The "Loans"

Between September 1994 and February 1995, the Savino companies received at least $672,065.49 in route sale deposits. On September 21, 1994, Joseph Savino & Sons deposited a $200,000 check that it received from Vigliotti & Sons; on February 3, 1995, Allegro Enterprises deposited a $300,000 check that it received from Vigliotti & Sons; on February 16, 1995, Allegro Enterprises deposited a $130,000 check that it received from John Patano; and on February 28, 1995, Allegro Enterprises deposited a $42,065.49 check that it received from AVA Carting.

The deposits, however, were not recorded on the Savino companies' books as such. Initially, they were described as "loans." On September 30, 1994, Joseph Savino & Sons recorded the receipt of $200,000 as "Set Up Short Term Note" under the account entitled "Short-Term Notes Payable." On December 31, 1994, the receipt of $200,000 was reclassified and moved to the account "N/P Vigliotti"

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[70] Pantaleo Dep. at 37-38.

with the notation "Reclass A/C Balance." On February 28, 1995, Allegro Enterprises recorded the receipt of $472,065.49 ($300,000 from Vigliotti, $42,065.49 from AVA, and $130,000 from Patano) in the "Short-Term Notes Payable" account.

These could not have been bookkeeping errors. Apparently, the Savino, Vigliotti, and Patano companies had all agreed that the downpayments would be concealed as loans. In response to a subpoena, Vigliotti produced the check stub for its $200,000 check to Joseph Savino & Sons dated September 21, 1994. The stub states that the payment was "For Loan."[71] John Patano, Michael Patano, and Isabel Patano were deposed concerning John Patano's payment of $130,000 to Allegro Enterprises. They testified that John Patano made a personal loan to Allegro Enterprises and denied that the payment was made in connection with a route sale.

The "Consulting Agreements"

Until June 1995, the "loan" schemes proceeded as planned. As noted above, the Savino companies continued to bill the customers that were the subject of the route sales. In June 1995, Vigliotti & Sons, Inc. and AVA were indicted for their role in the cartel conspiracy. After these companies were placed in receivership, the Savino companies took back the stops that had been sold and recharacterized the route-sale deposits as payments to the Savino companies for "consulting services" that they would falsely claim to have provided to the Vigliotti and Patano companies.

Several employees of the Savino companies admitted that the Savino companies ultimately took back the stops sold to the Vigliotti and Patano companies. The Savino companies' records, as well as documents obtained from Vigliotti, indicate that the deals were unraveled due to the indictments, after they became public. According to these records, the route-sale payments from the Vigliotti companies were supposed to continue for 36 months. The last payment, however, was made on October 2, 1995 – a few months after the indictment was announced. Presumably, the payments stopped when the Savino companies took back the stops and began servicing them again.

[71] The $300,000 check from Vigliotti & Sons Container Service Co. dated February 3, 1995 has a notation that is difficult to read. It appears, however, to say "IN/Act," which may be a reference to the "loan account" on the company's books.

The Savino companies' books reflect this reclassification of deposits from loans to consulting payments. On December 21, 1995, Joseph Savino & Sons reclassified its receipt of $200,000 from Vigliotti by recording it under "Accrued Expenses" and describing it as "Reclass Consult Payment." On December 31, 1995, Allegro Enterprises reclassified its receipt of $472,065.49 (including the $130,000 received from Patano) by recording it under "Accrued Expenses" and describing it as "Reclass Consult Payment Rec."

The reclassification of the deposits had tax reporting implications. At the end of 1995, for the first time, the Savino companies recognized the receipt of a portion of the route-sale deposits as income. Allegro Enterprises made two entries under "Accrued Expenses" on December 31, 1995 that reflected the accrual of that income: $104,520 was recorded with the notation "11/36 Consult -- Vig/AVA" and $79,444 was recorded with the notation "11/18 Consult – Patano." On the same day, Joseph Savino & Sons acknowledged the accrual of $61,111 with the notation "11 Mos Consulting Income" under the "Misc. Income" account.[72]

The "Unconsummated Route Sales"

Sometime before April 1997, a third scheme to conceal the route sales was devised: characterizing them as "unconsummated" transactions. This ruse would enable the Savino companies to avoid recognizing the receipt of funds from Vigliotti, AVA, and Patano as taxable income, and explain the participants' failure to disclose the route sales to the Department of Consumer Affairs.

This third scheme is mostly clearly revealed by the Savino companies' response to the Commission's inquiries. In June 1997, members of the Commission audit staff gave Steven Schertz, who was at that time the Savino companies' Chief Financial Officer, copies of check stubs reflecting payments

[72] The amounts acknowledged as accrued are fractions of the route sale deposits. Apparently, the Savino companies planned to claim that they had agreed to provide consulting services to Vigliotti and AVA for a period of 36 months and to the Patano companies for a period of 18 months. In this way, they could delay reporting the receipt of some of the route-sale deposit income. The amounts clearly relate to the route-sale deposits: $104,520 divided by 11 and multiplied by 36 equals $342,065.45 (four cents less than the sum received by Allegro Enterprises from Vigliotti and AVA in 1995); $79,444 divided by 11 and multiplied by 18 equals $129,999.27 (seventy-three cents less than the sum received by Allegro Enterprises from John Patano); $61,111 divided by 11 and multiplied by 36 equals $199,999.63 (thirty-seven cents less than the sum received by Joseph Savino & Sons from Vigliotti in 1994).

made to Vigliotti and Du-Rite in 1995. The auditors asked Schertz to explain why the payments were made. According to Schertz, who joined the Savino companies in May 1997, he told the auditors that he would research the matter and get back to them.[73]

Schertz testified that he showed the check stubs to Joseph Savino and told him that the auditors wanted an explanation why the payments were made.[74] According to Schertz, Joseph Savino said: "[T]here was a point in time where cash flow was very poor, the company needed an infusion, and so they decided to sell some of its assets. A downpayment was made on the sale of those assets, that downpayment deposited into the checking account, and the assets to be sold needed Department of Consumer Affairs approval, which was supposed to be requested by Vigliotti. Sometime thereafter, after prodding by the Savino companies, it was determined that Vigliotti was not requesting approval and so the transaction was voided, never consummated. Subsequent to that, the Savino companies started making repayment on the deposit."[75] Joseph Savino suggested that the checks were drawn to repay the deposit. Schertz informed the auditors of what Savino said.[76]

Schertz ultimately memorialized this explanation in a letter to the auditors: "As previously represented, Allegro entered into agreements with three Carters, Vigliotti, AVA and Durite, in order to raise capital by selling portions of its business. Pursuant to DCA regulations, the purchaser and seller are required to notify DCA of this type of transaction. These individual companies did not conform to these guidelines. Accordingly, Allegro felt that it was not in its best interest to consummate these transactions. The payments (to them) are repayments of the original down payments from these companies. I was not able to locate any agreements concerning these transactions."[77] (See Schertz letter at Exhibit 16.)

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[73] Schertz Dep. (Exhibit 15) at 73.

[74] Id. at 77-82.

[75] Id.

[76] Id.

[77] Letter from Steven P. Schertz to Commission Auditor Nagy Mahomed, dated June 18, 1997 (Exhibit 16), at 2.

In July 1997, the audit staff wrote to Schertz and requested that he explain the Savino companies' business transactions with Patano.[78] Schertz requested that Joseph Savino explain the transactions, and Joseph Savino replied: "Basically it was the same type of transaction as the Vigliotti transaction, that they [the Savino companies] were looking to sell some assets and the transaction was never consummated. There was a deposit made and there were payments being made towards that deposit."[79]

Shortly after the Vigliotti companies were released from receivership, the Savino companies began making payments to Vigliotti and Patano. Between April 21 and May 30, 1997, Allegro Enterprises issued five $1,500 checks to Vigliotti, totaling $7,500. Between April 30 and May 30, 1997, Allegro Enterprises issued four $1,500 checks to John Patano, totaling $6,000. The payments were described on the check stubs of the Savino companies as "route deposit refund[s]." Initially, the payments to Vigliotti were recorded on the Allegro Enterprises general ledger under the account entitled "Deposits" and the payments to John Patano were recorded under the account entitled "Employee Benefits" with the description "John Pananeo" [sic]. On May 31, 1997, however, the payments to both Vigliotti and Patano were reclassified and recorded on Allegro Enterprises' general ledger under accounts entitled "Due to Vigliotti" and "Due to Patano Brothers."

The Transactions Demonstrate a Lack of Good Character, Honesty, and Integrity

These route sales and the various machinations engaged in by the participants to conceal them warrant denying the license applications of the Patano companies for the following independent reasons: (1) the route sales evince the Patano companies' participation in the mob-controlled carting cartel; (2) the route sales were not submitted for approval by the DCA; (3) the route sales were not reflected on the Patano companies' 1995 financial statements filed with the DCA; (4) the Patano companies fraudulently attempted to conceal the route sales as "loans"; (5) an integral part of the Patano companies' agreement to treat its route purchase as a "loan" was the understanding that the Savino companies would evade taxation by failing to report the receipt of the route sale deposits as income

[78] Schertz Dep. at 82-85.

[79] Id.

to the taxing authorities; and (6) the Patano companies did not disclose their purchase of the stops on their license applications filed with the Commission.

C. The Patano Companies, through Their Principals John Patano and Michael Patano, Committed Perjury in Sworn Deposition Testimony before the Commission

To conceal their participation in the illegal stop sales with the Savino companies, John Patano and Michael Patano gave false testimony before the Commission in response to direct questions about the transaction and their relationship with the participants. Their false statements were plainly material, and there can be no serious question that they were intentional as well.

1. John Patano's Perjured Testimony

John Patano was deposed by the Commission staff on July 25, 1997 and August 13, 1997. On the first day, he denied having any dealings with the Savino companies and any knowledge of the stops that he bought from them. Each of the following statements made by John Patano was a lie:

- John Patano and the Patano companies never had business dealings with Joseph Savino.[80]

- John Patano never had any contact with Frank Savino, never spoke to him on the telephone, and never had any business dealings with him.[81]

- John Patano and the Patano companies never had any business dealings with Allegro Enterprises.[82]

- John Patano and the Patano companies never had any business dealings with Allegro Carting & Recycling.[83]

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[80] JP Dep. #1 at 149.

[81] Id. at 149, 156-57.

[82] Id. at 148-49.

[83] Id.

- John Patano does not know who owns Allegro Carting & Recycling.[84]

- Patano Brothers has not bought a carting stop in the past ten years.[85]

- John Patano never used any of his personal bank accounts to write a check or have a bank write a check to a company in the carting industry.[86]

- John Patano has not made a payment to any carting company (other than the Patano companies) in the past ten years.[87]

- Patano Brothers never serviced a customer while another carting company (other than J. Cafaro Inc.) was billing the customer.[88]

- The Patano companies "never had" the College of Insurance stop.[89]

- John Patano and the Patano companies did not buy the College of Insurance stop from another carting company.[90]

- John Patano does not know where the College of Insurance is, and is "absolutely certain" that he did not know anything about that stop.[91]

At the end of the deposition on July 25, 1997, Commission staff directed John Patano to produce his personal bank account statements. Recognizing that the Commission would discover a $130,000 bank check from John Patano's

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[84] Id. at 149.

[85] Id. at 141-42.

[86] Id. at 126.

[87] Id. at 144.

[88] Id. at 146-47.

[89] Id. at 163.

[90] Id. at 165-66.

[91] Id. at 168-69.

personal account to Allegro Enterprises, Inc., John Patano decided to admit that he had dealt with the Savino companies, and to describe the payment as a "loan."

On the second day of his deposition, on August 13, 1997, John Patano claimed that, around February 1995, Frank Savino asked him to loan Allegro Enterprises, Inc. $130,000. Patano claimed that he gave Frank Savino, a man whom he barely knew,[92] $130,000 because John Patano's parents and uncle knew Frank Savino's father "a number of years ago."[93] John Patano testified that his only prior dealing with Frank Savino was in 1986, when the Patano companies bought a truck (that did not work) from the Savino companies.[94] John Patano asserted that he nevertheless loaned out $130,000 without discussing the interest due or the duration of the loan, and without obtaining a promissory note or any other documentation regarding the transaction.[95]

John Patano testified that he is not related to Frank Savino, and that he was not scared of him or concerned that he might be connected to organized crime.[96] Indeed, Patano stated that he gave Frank Savino the money "completely freely and without fear."[97] Patano claimed that he was hopeful that, if Frank Savino failed to pay the money back, the Patano companies might get some work from the Savino companies.[98] Patano claimed that he spoke to Frank Savino on the telephone a few times to try to get the money back and, in fact, suggested that Frank Savino give him carting stops in lieu of the money, but that Frank Savino refused to do so.[99]

John Patano identified six $1,500 checks made payable to John Patano from Allegro Enterprises, Inc., as loan repayments that were made from April through

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[92] JP Dep. #2 at 9 ("Just 'hello' if I saw him someplace at a function.").

[93] Id.

[94] Id. at 10, 32.

[95] Id. at 15-17 (no documentation), 21 (no agreement as to when money would be paid back although Frank Savino promised to "start giving" it back in "about six, seven months"), 21 (no discussion of interest).

[96] Id. at 25-26.

[97] Id. at 26.

[98] Id. at 25.

[99] Id. at 66, 68.

June 1997.[100] He claimed that he instructed his counsel to file suit against the Savino companies to collect on the loan.[101]

To conceal the sale transaction during the second day of his deposition, John Patano, once again, repeatedly lied under oath. The following statements were intentional falsehoods:

- John Patano and the Patano companies were not involved in any stop sales in 1995.[102]
- John Patano and the Patano companies never had any contact and never did any business with Allegro Carting & Recycling, Inc.[103]
- John Patano and the Patano companies never had any contact and never did any business with Joseph Savino & Sons, Inc.[104]
- The Patano companies never collected any waste from any customers of any of the Savino companies.[105]
- The Patano companies never got any work from the Savino companies temporarily or permanently.[106]
- The Patano companies did not get any subcontracting work from the Savino companies.[107]

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[100] Id. at 27-28

[101] Id. at 71-73.

[102] Id. at 110-11.

[103] Id. at 93.

[104] Id. at 94.

[105] Id. at 30-31.

[106] Id. at 25.

[107] Id.

- The Patano companies never received any information about customers from the Savino companies. [108]

- The Patano companies did not want any stops that the Savino companies had in the West 20's in Manhattan.[109]

- The only times that John Patano saw Frank Savino were when Savino came to the office of the Patano companies to pick up the $130,000 check and at a few Christmas functions; John Patano never met with Frank Savino in any restaurants or coffee shops.[110]

- The Patano companies never serviced a stop while another carting company was billing the stop with the understanding that the Patano companies would ultimately take the stop over.[111]

- John Patano never personally transacted business in the carting industry (without using one of his companies).[112]

- The Patano companies were never involved in a transaction in which stops were sold and then taken back by the seller.[113]

- The payments made by Allegro Enterprises, Inc. to John Patano were not given to John Patano for any reason other than the fact that John Patano had loaned money to Allegro Enterprises, Inc. [114]

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[108] Id. at 30-31.

[109] Id. at 70.

[110] Id. at 95.

[111] Id. at 114-15.

[112] Id. at 115.

[113] Id. at 117-18.

[114] Id. at 27.

2. Michael Patano's Perjured Testimony

Michael Patano was also deposed on August 13, 1997. He embellished his father's "loan" story even further. Moreover, he offered a completely bogus explanation of why the College of Insurance appeared on Patano Brothers' discontinued customers' list.

Michael Patano claimed that his father had loaned $130,000 to Frank Savino. He asserted that he, his father, and Frank Savino met on two occasions to discuss Savino's repayment of the loan. On the first occasion, in around October or November 1996, the three men supposedly discussed the matter while sitting in a parked car on the corner of Second Avenue and 34th Street in Manhattan.[115] During that discussion, Frank Savino complained that he was strapped for cash, and offered to sell the Patano companies a carting stop at Laguardia Hospital in Queens in lieu of repaying the loan.[116] After discussing the matter in the car, the three men ate at a coffee shop on the corner. [117] Michael Patano claimed that the three men discussed the matter again in early April 1997 at the Market Diner on Eleventh Avenue and 43rd Street in Manhattan. [118] On that occasion, Savino promised to start repaying the loan. [119]

Michael Patano admitted that Savino and the Patanos had discussed two stops in the West 20's in Manhattan as well as the College of Insurance.[120] He also said that the Patano companies might have collected waste from customers of the Savino companies "once or twice" to test out the stops while determining whether to buy them.[121] Finally, Michael Patano admitted that the Patano companies had collected waste at the College of Insurance. He asserted, however, that the Patano companies' servicing of the College of Insurance had nothing to do with a stop sale.

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[115] MP Dep. at 33-34.

[116] Id. at 38-39.

[117] Id. at 34.

[118] Id. at 35, 40-41.

[119] Id. at 40.

[120] MP Dep. at 42.

[121] Id. at 54-55.

Michael Patano claimed that he had attempted to solicit the College of Insurance account, and had in fact collected waste there on two occasions: a Christmas party in 1994 and a New Years' party in 1995. He testified that he placed the College of Insurance on the Patano Brothers' discontinued customers list as a reminder to him that he should attempt to solicit the account. Michael Patano claimed that his girlfriend's brother, Angelo Riggio,[122] attended the College of Insurance at night in 1994 and 1995, and that Angelo Riggio had asked Michael Patano to collect waste after two holiday parties that were held at the school. Patano testified that the waste was left in containers owned by Allegro Carting & Recycling, Inc. He testified that Patano Brothers collected waste from the College of Insurance only on those two occasions, and that Patano Brothers did not pay the Savino companies for the right to collect waste there. He asserted that he collected the waste for free, as a favor to Angelo Riggio.[123] As demonstrated above, this story was a complete fabrication.

Indeed, like his father, Michael Patano repeatedly perjured himself to conceal the purchase of stops from the Savino companies. The following statements made by Michael Patano during his deposition were intentionally false:

- The Patano companies have not been involved in any stop or route sales since 1993.[124]
- The Patano companies never bought any stops from the Savino companies.[125]
- John Patano loaned money to Frank Savino.[126]
- The only stop that the Patano companies serviced in the West 20's in Manhattan was a construction and demolition stop.[127]

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[122] "Riggio" appears as "Riccio" in the deposition transcript. Counsel for the Patano companies, however, provided the Commission with Angelo Riggio's name and address by letter after the deposition.

[123] MP Dep. at 43-47.

[124] Id. at 20.

[125] Id. at 54.

[126] Id. at 29-30.

- Since 1990, the Patano companies never collected waste from a Savino company stop other than once or twice to test out a stop that they were contemplating buying and at Christmastime in 1994 and on New Year's Day in 1995 at the College of Insurance.[128]

- Michael Patano put the College of Insurance on Patano Brothers' discontinued customers list as a reminder to him to solicit the account.[129]

3. The False Statements Are Incredible

The tales invented by John and Michael Patano are absurd. No reasonable person would make an unsecured loan of $130,000 to a virtually unknown competitor simply on the ground that their parents knew each other. According to John Patano, the only prior interaction that he had with Frank Savino was to purchase a truck which, it turned out, did not work. The absence of any documentation, interest, or terms of repayment of the purported "loan" renders his story even more bizarre. Moreover, even if John Patano had made such a loan, he would have remembered it when he was asked about Frank Savino on July 25, 1997, the first day of his deposition. He would not have described Frank Savino – a man who, a few months before the deposition, ostensibly promised to pay Patano back $130,000 and who apparently had stopped making payments to Patano a few weeks before the deposition – merely as a person he said "hello" to at a few Christmas parties. His sudden "recollection" of the "loan" during the second day of his deposition is not credible.

Nor is it believable that a night student would arrange for free waste removal services at two school parties. In fact, upon being interviewed by a Commission investigator, Angelo Riggio stated that in 1995 he attended one four-day course at the College of Insurance, which took place on four consecutive Thursdays from 8 a.m. to 4 p.m. He was not a night student at the College of Insurance. Riggio stated that he had never spoken to anyone at the College of

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[127] Id. at 48.

[128] Id. at 56, 61.

[129] Id. at 81-82.

Insurance who might be responsible for the removal of garbage at the College, such as cleaners and maintenance workers. He also stated that he never set up trash to be removed from the College. When asked whether he had ever attended any parties at the College of Insurance, Riggio stated, "No, I was only there for four days." (See DD5's of Detective Kenneth Slizewski at Exhibit 17.)

Moreover, including a carting stop on a discontinued customers list would be an odd way of reminding oneself that the potential customer needs to be solicited. The claim that the Patano companies "tested" or "tried out" stops before purchasing them, and thus hauled the waste for free, is similarly incredible. No other carter has ever described such a practice to the Commission. Further, it would be difficult to test a stop such as the College of Insurance, where the customer expects the waste to be collected at an agreed-upon hour. Testing "keyed" stops, such as the buildings on West 28th and West 25th Streets, would pose even greater difficulties.

The strangeness of the stories devised by John and Michael Patano, coupled with John Patano's criminal history and his nervous demeanor when asked about the College of Insurance and the Savino companies, fully warrant the conclusion that these license applicants were not forthright with the Commission staff during its investigation into their backgrounds.

4. The False Statements Are Contradicted by Overwhelming Evidence

In this case, moreover, there is direct evidence that principals of these license applicants perjured themselves. Indeed, John and Michael Patano's stories are contradicted by both documentary and testimonial evidence.

John Patano's claim that the $130,000 payment to Allegro Enterprises, Inc. was a "loan" rather than a route-sale deposit is directly contradicted by the evidence. Two witnesses connected to the Savino companies, Vincent Catanese and Joseph Mailloux, testified that the Savino companies sold stops to Patano Brothers. Carl Pantaleo, a dispatcher employed by the Savino companies, testified that a salesman employed by the Savino companies might have told Pantaleo that Patano Brothers was collecting waste from customers of the Savino companies. Richard Parker testified that, when he worked as a dispatcher for the Savino companies, he was directed to stop collecting waste from the College of Insurance, and later heard that the Savino companies would be servicing that stop again. Of

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course, the College of Insurance appeared on Patano Brothers' "Discontinued Customers" list. Finally, the four $1,500 checks issued by Allegro Enterprises, Inc., to John Patano in April and May 1997 have notations indicating that the payments were "route deposit refund[s]."

Michael Patano's story was also a complete fabrication. First, when the College of Insurance was subpoenaed concerning the attendance of Angelo Riggio at that institution, it responded that Angelo Riggio was not a regularly enrolled student at the school. (See letter from Assistant Registrar at Exhibit 18.) This was confirmed by Mr. Riggio himself, as noted above. Second, two employees at the College of Insurance reported that Patano Brothers had serviced the school. One employee confirmed that Patano Brothers had at one time collected waste at the College of Insurance, and informed a Commission investigator that the Savino companies had only recently begun collecting waste at the school. When asked whether Patano Brothers had collected waste there before, he responded affirmatively, but noted that he was not sure whether that was the name of the prior carter. A second employee informed the Commission investigator that, until recently, the waste was collected by "Patan" [sic] Carting. (See Exhibit 17.)

In short, it is beyond dispute that John Patano and Michael Patano perjured themselves repeatedly during the Commission's investigation of the Patano companies' license applications.

5. John and Michael Patano Continued to Perjure Themselves Even When Confronted with the Commission's Evidence of the Stop Sale

On November 20, 1997, the Staff afforded John and Michael Patano a final opportunity to admit that the Patano companies in fact purchased stops from the Savino companies. The two principals were asked to appear for additional depositions.[130]

At the November 20, 1997 depositions, each witness was informed that the Staff believed that he had lied on this subject at his prior deposition. They were

[130] The November 20, 1997 depositions of John Patano and Michael Patano were tape recorded but not transcribed. Their deposition testimony was summarized by the Commission staff in memoranda from Deputy Commissioner Claude Millman to Deputy Commissioner Chad Vignola and from Special Counsel Julie Lubin to Chair Edward T. Ferguson. See Exhibit 19. Copies of the tapes and memoranda were provided to the Patano companies on December 1, 1997. The applicants did not challenge the accuracy of the summaries or the description of that testimony in the Staff recommendation.

informed that the Staff was aware of the Patano companies' purchase of stops from the Savino companies. Both John and Michael Patano continued to insist that no stops were purchased and that the $130,000 payment from John Patano to Allegro Enterprises was a "loan."[131]

However, in attempting to fashion their testimony to fit the evidence before the Commission, both witnesses admitted facts that further support the conclusion that the Patano companies bought stops from the Savino companies. For example, Michael Patano testified:

- In late 1995 or early 1996, John Patano showed Michael Patano a document (dated late 1995) regarding the transaction between the Patano companies and the Savino companies that stated that, if the Savino companies "didn't pay," the agreement would be "changed over" so that it would be a stop sale, and the Savino companies would "turn some of these stops over." The document identified the stops as follows: College of Insurance, Laguardia Hospital, 150 West 28th Street, and 130 West 25th Street. The document may actually have said that it was a sale of stops.

- When asked about the stop at 130 West 25th Street, Michael Patano said: "We were supposed to buy it, we didn't buy it, [Frank Savino] wanted to give it, as far as paying us for the loan."

- The Patano companies collected waste at the stop on 28th Street a couple of times.

- In 1996, Michael Patano dropped off a 30 cubic yard box at Laguardia Hospital because Frank Savino "couldn't handle it." Michael Patano found out that the hospital did not want to deal with the Patano companies for insurance and other reasons. The Patano companies never actually picked up waste from the hospital, and the stop was "crossed off the list."

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[131] For the reasons stated above, the Patano companies' attempt to characterize that stop sale deposit as a "loan" is unavailing. But even if John Patano had in fact made a $130,000 loan to Allegro Enterprises, it would be appropriate to deny the Patano companies' license applications on the ground that a principal of the Patano companies, John Patano, filed a false disclosure form by failing to identify Allegro Enterprises as a debtor on Schedule G, "Loans Owed to Principal." See Principal Disclosure Form of John Patano at 16-17, annexed to Patano Brothers' License Application.

- Michael Patano first stated that the Patano companies serviced the College of Insurance for one week. When asked whether he in fact serviced that stop for at least one year, Michael Patano asserted that Patano Brothers had serviced the stop for two months at the most. He claimed that the Patano companies collected waste from that location about 20 times beginning in 1995 or 1996 as a favor for Frank Savino. He then admitted that the Patano companies might have also collected waste from the College of Insurance a couple of times in 1997 to help out Frank Savino.

- Michael Patano discussed the College of Insurance stop with John Patano a few times about a year ago.

- Michael Patano received keys for the stops at 150 West 28th Street (between 6th and 7th Avenues) and 130 West 25th Street.

- Michael Patano met with Frank Savino in Manhattan a couple of months before they met on Second Avenue and discussed the stop on 28th Street and Laguardia Hospital.

- In October 1996, Michael Patano and John Patano went to the Savino companies' office in Hoboken to collect money. The Patanos ate lunch with Frank Savino at a steakhouse in Hoboken. Before going out to lunch, the Patanos discussed how the customer billing would be transferred over from the Savino companies to the Patano companies with respect to the 28th Street stop with a woman employed by the Savino companies who was in her 40's.

- Michael Patano believes that Vincent Vigliotti, Sr. knew about the transaction with the Savino companies because when John Patano first called Michael Patano from his Florida condominium to tell him about the transaction, he could hear people in the background. Michael Patano later found out that Vigliotti was one of the people there.

- After the first day of John Patano's deposition, John Patano told Michael Patano that the Commission staff had asked him about Frank Savino; John Patano and Michael Patano then discussed the "loan."

Similarly, John Patano testified:

- John Patano believes that Vincent Vigliotti, Sr. knew about John Patano's transaction with Frank Savino because "he just happened to be there." He added: "He happened to know about it, that's all I know." And then: "I don't know, maybe he was doing the same thing with him."
- About a week after John Patano provided Frank Savino with the $130,000 check, John Patano said to Michael Patano: "I loaned Frank Savino $130,000. He promised me that, if he didn't pay it back, I could take it back in work." And he added: "Michael, don't bother with Savino's hospital in Flushing, I don't want that one, if it does come to the time that we're going to take work off them."

- Even though the Patano companies did not have the proper equipment to collect waste at Laguardia Hospital in Flushing, Queens, Michael Patano collected waste from that stop for a couple of days and then stopped because of their inadequate equipment.

- Frank Savino mentioned carting stops on 25th Street and on 28th Street in Manhattan in a conversation with John Patano.

- Frank Savino spoke to Michael Patano about providing keys for some of the stops.
- John Patano once met "Vinnie," an employee of the Savino companies, who identified himself as being "with Frankie."

These admissions, which are in many respects inconsistent with the prior testimony of John and Michael Patano, and in many respects inconsistent with each other's testimony on November 20, 1997, corroborate the evidence that the Patano companies purchased stops from the Savino companies. The evidence plainly warrants the denial of the Patano companies' license applications.

IV. THE APPLICANTS' RESPONSE TO THE STAFF RECOMMENDATION IS UNPERSUASIVE

In their response to the Staff recommendation that their applications be denied, the applicants argue that: (1) their principals are not criminals and have serviced their customers "with distinction"; (2) the criminal activities of the cartel are not relevant to the issue of whether the Patano companies should be licensed; (3) the Commission should not deny the license applications of the Patano companies based upon John Patano's association with Vincent Vigliotti, Sr.; (4) the Patano companies did not purchase any stops from the Savino companies; (5) John Patano and Michael Patano did not perjure themselves; (6) the Patano companies were not afforded an opportunity to be heard with respect to whether their applications should be denied; (7) the denial of the Patano companies' license applications would be punitive; and (8) the Commission should not act on the license applications of the Patano companies until they sell their assets. See Response to Recommendation of Denial of License Application, dated December 12, 1997, passim.

As a threshold matter, the applicants' response consists of an unsworn memorandum from their counsel. The applicants failed to comply with the direction in the Staff recommendation that "[a]ny submission of a factual nature must be sworn to under oath by a person with personal knowledge of the facts asserted." Recommendation at 42. It is not likely that this was inadvertent: The applicants' counsel, Gerald Padian, submitted a response to a Staff license denial recommendation concerning a different carting company on the same day he submitted the Patano companies' response. In the other matter, the response was verified by a principal of the applicant. It is reasonable to infer that at least some of the factual assertions contained in the Patano companies' response cannot be verified without exposing the putative affiant to a charge of perjury. The unsworn factual assertions in the response that pertain to the merits of the grounds for license denial identified in the Staff recommendation are, thus, entitled to no weight.

In any event, the responses are unavailing. We address each in turn.

A. Character of the Applicants' Principals

The applicants assert that this matter does not involve "a criminal enterprise or organized crime figures" and that their principals did not serve "on any of the indicted trade waste association boards" and were not "involved in any of the crimes connected with such boards." Response at 1. Indeed, they claim to have serviced their customers "with distinction." Id. at 3. Even if true, these assertions are irrelevant.

An applicant whose principals are neither organized crime figures nor criminals may nonetheless be denied a license by the Commission. Local Law 42 directs the Commission to determine whether applicants have or lack "good character, honesty and integrity." In making that determination, the Commission is specifically directed to consider, among other things, whether the applicant (through any of its principals) associated with a person that the applicant knew or should have known has been identified by law enforcement as a member or associate of organized crime or has been convicted of racketeering activity. The Commission is also required to consider whether the applicant provided truthful information in connection with its license application.

Given these statutory directives, these applications must be denied. John Patano knowingly associated with an organized crime associate and convicted racketeer. The Patano companies engaged in illegal cartel activities in connection with a stop sale involving the Savino companies – a transaction that puts the lie to the applicants' bald assertion that this matter does not involve a criminal enterprise. John Patano and Michael Patano perjured themselves when questioned about that transaction. These companies clearly lack "good character, honesty and integrity." The kind of conduct in which they have engaged is of precisely the type that Local Law 42 was intended to root out.

B. Criminal Activities of the Cartel

The applicants "acknowledge the existence of [a] powerful criminal cartel in the New York City carting industry." Response at 4. They contend, however, that evidence establishing the existence of the cartel and the manner in which it

operated should not be considered by the Commission because it does not "relate directly to either the Patano Companies or their principals," and that the description of such evidence in the Staff recommendation "unduly taint[ed] the Patano Companies." Id.

A discussion of the cartel appears in the Staff recommendation and this decision to provide the background needed to understand the purposes behind and nature of the misconduct of the Patano companies. Under the cartel system, the Mafia oversaw the allocation of virtually all of the customer locations in New York City among the many carting companies participating in the cartel. Territorial disputes were resolved by the organized crime figures involved in the industry. It was thus in the interest of the ambitious carter to cultivate relationships with such organized crime figures. In addition, route sales played an important role in the cartel because, ordinarily, a cartel member could effectively expand its business only by purchasing stops or routes from other carters.

The conduct of the Patano companies must be viewed in this light. It is a more than fair inference that John Patano's relationship with Vigliotti was influenced by Vigliotti's power in the Mafia-controlled cartel. The purchase of three or four stops from the Savino companies (accomplished at a time when Vigliotti was also buying Savino stops) was classic cartel activity. The Patano companies are not being held accountable for the activities of the cartel in some purely abstract sense. Rather, evidence about the cartel is appropriately considered in evaluating the purpose and significance of the applicants' own conduct.

C. John Patano's Association with Vincent Vigliotti, Sr.

The applicants claim that the Commission should not consider John Patano's association with Vincent Vigliotti, Sr. in its evaluation of the license applications of the Patano companies because, according to the applicants' unsworn version of events, Patano's relationship with Vigliotti was "social in nature" and derived from the fact that "their wives were friends." Response at 5. Without the benefit of any citation, the applicants assert that to deny their license applications because of "such incidental and innocuous social contact" would raise "constitutional questions as to Mr. Patano's associational rights." Id. This position ignores both law and fact.

First, John Patano's relationship with Vigliotti was not merely social, and was not limited to accompanying his wife when she visited Vigliotti's wife. Patano had a business relationship with Vigliotti. The Patano companies used the Vigliotti companies' transfer station to dispose of waste. John Patano also made the payment of $130,000 to the Savino companies at about the same time that the Vigliotti companies were giving the Savino companies route sale deposits. It is unlikely that the relationship between Patano and Vigliotti and their contemporaneous transactions with the Savino companies are coincidental. Moreover, when Patano and Vigliotti "socialized," they would discuss carting industry matters. Patano's relationship with Vigliotti also went beyond the fact that their wives were friends. Indeed, on one of the two occasions when Patano admittedly met with Vigliotti after Vigliotti pleaded guilty, the two men had coffee with one another (without their wives) after meeting on the street near Vigliotti's transfer station in the Bronx.

In any event, Patano's associations with Vigliotti were not protected by any constitutional right. The Constitution is not offended when a carting company is denied a license based on its principal's knowing association with an organized crime figure or person convicted of racketeering activity where the association had "a connection to the carting business." SRI, 107 F.3d at 998. There can be little doubt that Patano's association with Vigliotti had such a connection given that they did business together and discussed industry matters when they met.[132]

D. Purchase of Stops from the Savino Companies

The applicants also contend that the evidence supports the testimony of John and Michael Patano that they did not purchase stops from the Savino companies because (1) "the Savino Companies continued to bill the customers, handle customer complaints, and even make payments to building superintendents"; and (2) "the Patano Companies do not [currently] service [the] three stops" in question. Response at 5-6. They assert that if "a sale had in fact

[132] The Court of Appeals for the Second Circuit has explained that when a person who is active in an industry that has been corrupted by organized crime knowingly associates with an organized crime figure, the fact-finder may infer the "danger of improper influence" and thereby conclude that the association was "improper." United States v. Local 1804-1, Int'l Longshoremen's Ass'n (Ciccone), 44 F.3d 1091, 1097 n.2 (2d Cir. 1995) (cited in SRI, 107 F.3d at 998). While the facts here warrant such an inference, we need not rest our decision on that ground given the direct evidence that Patano and Vigliotti were involved in business transactions and discussed industry matters when they met.

been consummated, the Patano Companies would be servicing these stops, billing them and handling the customer complaints." Id. at 6.

These contentions miss the mark. The Savino companies were billing the customers sold to the Patano companies because the Patano companies still owed money to the Savino companies on the sale. The Patano companies eventually stopped servicing the customers because the Savino companies reneged on the deal.[133] The sale was structured such that the Savino companies were to bill the customers in question for eighteen months after the initial downpayment had been made. Witnesses also testified that the participants in the sale transaction anticipated that the Patano companies would not bill the customers directly until their obligations to the Savino companies were satisfied.[134] Common sense dictates that since the Savino companies were still billing the customers, the customers would continue to believe that the Savino companies were servicing them. The customers, naturally, called the Savino companies to register complaints. The Savino companies handled the complaints to ensure that the unapproved stop sale would not be revealed. Similarly, the Savino companies continued their payments to the building superintendents, who were agents of the customers, in order to conceal the fact that the stops had been sold to another company.

The fact that the Patano companies do not currently service the stops is also consistent with the testimony that the stops were first sold and then taken back by the Savino companies. In the wake of the June 1995 indictments of the Vigliotti companies, the Savino companies reneged on the Patano and Vigliotti route sales. Because the route-sale transactions were being "undone," the deposit money began to be returned to the purchasers. As stated above, between April 30 and May 30, 1997, Allegro Enterprises issued four $1,500 checks to John Patano, totaling $6,000.[135] The payments were described on the check stubs of the Savino companies as "route deposit refund[s]." If there had been no sale, there

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[133] Mailloux Dep. #1 at 72, 74-75, 96.

[134] Catanese Dep. #1 at 102-03; Catanese Dep. #2 at 24-25.

[135] John Patano identified six $1,500 checks made payable to John Patano from Allegro Enterprises, Inc., as loan repayments that were made from April through June 1997. JP Dep.#2 at 27-28.

would have been no need for Frank Savino to begin to return this "loan" money, or for Allegro to have classified the payment as a "route deposit refund."[136]

E. Testimony of John Patano and Michael Patano

The applicants also assert that John and Michael Patano did not perjure themselves. First, they note that if there in fact were no consummated stop sales, there would be no perjury. Response at 6. Second, they assert that "the manner in which the [Commission] conducts depositions of principals of carting companies raises due process questions, in addition to placing in doubt the evidentiary value of such 'depositions.'" Id.

John and Michael Patano perjured themselves irrespective of whether the Patano companies purchased stops from the Savino companies. Both individuals lied throughout the course of their depositions about matters tangential to the stop sales. Furthermore, even if the facts as stated by the Patanos were true, it would be appropriate to deny the Patano companies' license applications on the ground that a principal of the Patano companies, John Patano, filed a false disclosure form.

John Patano also testified falsely about matters that are not directly related to the subject of the sale. They include his never having had any contact with Frank Savino,[137] never having had any business dealings with Allegro Enterprises,[138] never having "had" the College of Insurance stop, not knowing where the College of Insurance is, and claiming to be "absolutely certain" that he did not know anything about the stop.[139]

Michael Patano testified falsely about matters that are not directly related to the subject of the sale. They include his fabrication about Angelo Riggio having attended the College of Insurance at night in 1994. Michael Patano claimed that Riggio had asked him to collect waste there free of charge, after two holiday parties that were held at the school. He also claimed that he had placed the

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[136] Schertz Dep. at 77-85.

[137] JP Dep. #1 at 149.

[138] Id. at 148-49.

[139] Id. at 163, 168-69.

College of Insurance on the Patano Brothers' discontinued customers list as a reminder to him that he should attempt to solicit the account.[140]

The manner in which the Commission conducts depositions has no bearing upon whether the Patanos committed perjury.[141] The only relevant question is whether the Patanos lied under oath. The Patanos were represented by counsel at each and every deposition; both stated that they understood that it was a crime to lie under oath, yet failed to tell the truth on numerous occasions.

The Patanos had various means of providing truthful evidence. John Patano was deposed on three separate days, and Michael Patano was deposed on two separate days. The Patanos could have taken these opportunities to testify truthfully. In addition to having given truthful testimony, they could have submitted affidavits by others in support of their positions. For example, they could have asked their drivers, or other persons with knowledge of their routes, to submit affidavits about servicing various stops. However, they failed to do this. Instead, they mentioned the names of people who they claimed could corroborate their stories. When the Commission staff interviewed these persons, such as Angelo Riggio, it found that the Patanos' stories were not corroborated.

Even if the Patanos had been truthful at their depositions, there is another related ground for denying licenses to the applicants in this case. If John Patano had in fact made a $130,000 "loan" to Allegro Enterprises, it would be appropriate to deny the Patano companies' license applications on the ground that a principal of the Patano companies, John Patano, filed a false disclosure form by failing to identify Allegro Enterprises as a debtor on Schedule G, "Loans Owed to Principal." See Disclosure Statement of John Patano at 16-17, annexed to Patano Brothers' License Application.

F. Opportunity to Be Heard

The Patano companies maintain that they are entitled under Local Law 42 to (1) "an evidentiary hearing"; (2) an "opportunity to examine the Commission's

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[140] MP Dep. at 42-47.

[141] The applicants' response takes issue with the "manner" in which the Commission conducts depositions; however, it fails to identify any aspect of any of the depositions as improper, or to explain the way in which the applicants were denied due process. Therefore, even if the manner in which the Commission takes depositions were relevant, the applicants' concerns cannot be specifically addressed.

evidence, including a [sic] complete deposition transcripts"; and (3) "subpoena witnesses to testify on its [sic] behalf." Response at 6-7. They also assert that the Commission "'rubber stamps' the Staff's recommendations," and that the recommendations are "often based on flawed evidence and erroneous facts." Id. at 8. Finally, they claim that they have a property interest in obtaining a license from the Commission. Id. at 8-10.

The Court of Appeals for the Second Circuit has held that license applicants, like the Patano companies, have no constitutionally protected property interest in obtaining a license from the Commission and are not constitutionally entitled to "due process" before their applications are denied. SRI, 107 F.3d at 995. Local Law 42 states that before denying a license application based on an applicant's lack of "good character, honesty and integrity," the applicant must be afforded "notice and the opportunity to be heard." Admin. Code §16-509(a). These applicants have clearly had ample notice and opportunities to be heard.

Although the Commission staff was not required to do so, on November 20, 1997, it offered the Patanos an additional opportunity to tell the truth. On that occasion John Patano and Michael Patano were told, in the presence of counsel, that the Executive Staff believed that they had lied at their prior depositions. Rather than responding truthfully, both John Patano and Michael Patano continued to maintain that no stops were purchased, and that the $130,000 payment from John Patano to Allegro Enterprises was a loan.

The Patano companies received the requisite notice, and were given (and availed themselves of) the opportunity to make a written submission in response to the staff's license denial recommendation.[142] An evidentiary hearing is not required. See, e.g., 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) (citing Mathews v. Eldridge, 424 U.S. 319, 335 (1976)). The Commission already has defined the content of the opportunity to be heard afforded to license applicants by Local Law 42, and it does not include the right to an evidentiary hearing. See 17 RCNY §2-08(a). Where, as here, the federal constitutional right to due process is not implicated, see SRI, 107 F.3d at 995, the Patano companies can insist only that the Commission follow its own rules. The Commission has done so, and the Patano companies do not claim otherwise. Indeed, at the Patano companies' request, the

[142] Additional notice was given when the Patanos were told about the (then proposed) Staff license denial recommendation at the November 20, 1997 depositions.

Chair of the Commission and two of its Deputy Commissioners met with a Patano companies representative in connection with its license application. See 17 RCNY §2-08(a). In the Commission's judgment, an evidentiary hearing is not necessary here; we note that the Patano companies have not made an offer of proof regarding what evidence they would have presented at a hearing.

The applicants also assert that they did not have an opportunity to examine the Commission's evidence, specifically, complete deposition transcripts. This allegation is simply false. On the day that the staff issued the Patano recommendation (November 21, 1997), Deputy Commissioner Claude Millman contacted Chris Anton, a lawyer at the law office of Louis Brevetti, then counsel to Patano, to notify him that the Staff had issued a recommendation concerning the Patano applications. He told Mr. Anton that if he needed any documents, transcripts, or other record materials from the Commission during the time that he had to respond to the recommendation, he should contact Mr. Millman. Thereafter, Special Counsel Julie Lubin of the TWC sent Mr. Brevetti tape recordings of the second sessions of the depositions of John Patano and Michael Patano, together with staff memoranda summarizing the testimony. Mr. Brevetti was informed that the Commission might rely on those memoranda in acting on the Patano applications.

On December 11, 1997, Deputy Commissioner Chad Vignola and Deputy Commissioner Claude Millman met with Gerald Padian, the current attorney for the applicants, at the TWC offices at Mr. Padian's request. Mr. Vignola informed Mr. Padian at that time that carters and their counsel are free to read depositions cited in license denial recommendations once the recommendation is issued. He told Mr. Padian that he could review the Patano (Patano, Queensbridge, York) depositions immediately that evening, or at any time on December 12, 1997. Mr. Padian declined the offer, stating that the deposition portions that were not attached to the Staff recommendation "would not be a factor" and that he would focus on other matters. He indicated, however, that he might nonetheless raise the issue of the depositions' availability.[143]

By fax dated December 16, 1997, Deputy Commissioner Vignola again invited Mr. Padian to examine the deposition transcripts. By fax dated December 16, 1997, Mr. Padian responded that he had not received Mr. Vignola's fax until

[143] Memorandum from Deputy Commissioner Claude Millman to Chair Edward T. Ferguson III, regarding License Applications of Patano, Queensbridge, York and Tocci, dated December 11, 1997.

after 6:00 p.m. on that day. Later that evening, by fax dated December 16, 1997, Deputy Commissioner Millman invited Mr. Padian to examine the deposition transcripts that night or the following day, December 17, 1997. Mr. Padian did not avail himself of any of these opportunities to examine the deposition transcripts.[144]

G. Alleged Punishment

The applicants also complain that the denial of their license applications "would be unduly punitive." Response at 1. Of course, the Commission's purpose in denying licenses to these applicants is not to punish them or any of their principals but, rather, to enforce the mandate of Local Law 42 that companies that have violated the law and lied to the Commission as these applicants repeatedly have are not fit for licensure in this industry.

H. Potential Asset Sale

Finally, the applicants request that the Commission not act on the license applications of the Patano companies until they have sold their business. Indeed, this is their principal "objection" to the Staff recommendation. At this time, however, there is only one type of application before the Commission concerning the Patano companies: their license applications.[145] Given that the Commission's investigation of these applicants is complete, it has found that the applicants lack "good character, honesty and integrity," and no sale application has been submitted to the Commission, the applications will be denied at this time.

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[144] Furthermore, Mr. Padian was or should have been already aware that it is the Commission's practice to afford applicants the opportunity to review deposition transcripts relied upon in a Staff recommendation. Mr. Vignola represented in court (before Rosenman & Colin LLP representatives) on November 21, 1996, at oral argument in connection with litigation regarding the license denial of Grasso Public Carting, Inc. ("Grasso"), that deposition transcripts would be made available if they were relied upon in any way in a Staff recommendation. Well before the issuance of Staff recommendations regarding the Patano companies, Mr. Padian replaced Rosenman as counsel to Grasso (and presumably has the Grasso oral argument transcript). Id.

[145] Yesterday afternoon, the Patano companies submitted what purported to be an application for their sale to IESI NY Corporation ("IESI"). The application on its face was incomplete, lacking, among other things, certifications from any of the ostensible purchaser's principals and any sale agreement, executed or otherwise. This "application" apparently was submitted without IESI's knowledge or consent. Although IESI has engaged in preliminary discussions with the Patano companies, IESI has not entered into a purchase agreement with the Patano companies and, in fact, was not informed by the Patano companies of the pending recommendation to deny their license applications. Under these circumstances, it is clear that no sale application exists for the Commission's consideration.

The applicants represent that they have signed a letter of intent to sell their assets to IESI NY Corporation ("IESI"), a company licensed by the Commission, that they "will submit a contract to the [Commission] next week," and that the "sale may be consummated before the end of the month." Response at 2, 10. They claim that a sale will benefit the City by establishing IESI "as [a] competitor of the large public companies in New York City," and that if the Commission denies the license applications of the Patano companies before their contracts can be assigned to IESI, "the marketplace will be thrown into chaos with many of [the Patano companies'] customers suffering as a result." Id. at 3, 10.

The Commission declines to defer action on these license applications based on the Patano companies' hope that IESI may soon submit a sale application. It has never been the Commission's practice to defer a decision on a license application where no sale application is pending, and there appears to be no sound reason to adopt such a practice now.

Between August 26, 1996 and May 9, 1997, it was the Commission's practice to defer action on a license application if the applicant also had filed a sale application. On May 9, 1997, the Commission announced that it would decide on a case-by-case basis whether to defer action on a company's license application in favor of consideration of a pending sale application involving the company. There is pending litigation concerning whether the Commission was entitled to change its practice on May 9, 1997 without first engaging in formal rule-making.

In any event, however, there is no reason to defer action on the license applications of the Patano companies at this time because there is no sale application before the Commission concerning the Patano companies. The pre-May 9, 1997 practice involved deferring action on license applications where a contract of sale had already been signed and a sale application was pending before the Commission. The Commission has never deferred a license denial based on the existence of a mere non-binding letter of intent. Similarly, under its current practice, the Commission considers case-by-case whether to defer action on a license application when a sale application is pending. Here, there is not even a contract of sale, let alone a sale application before the Commission.[146]

[146] The letter of intent between the Patano companies and IESI by its terms is not "a legally binding agreement"; it is merely the expression of a desire by the parties to close a transaction "on or before February 28, 1998." The fact that a carting company signs a letter of intent to sell its assets to a would-be purchaser does not mean that a contract will be signed, that a sale application will be submitted to the Commission, or that a sale will be consummated. In

The applicants' assertion that the Commission "is without lawful power to review and/or deny any [route] sale by the Patano Companies," Response at 2 n.1, does not support their request that the Commission defer action on their license applications pending their consummation of a route sale. Indeed, the argument is inconsistent with their request for a deferment. If, as the applicants claim, the Commission could not review route sales and, instead, was limited to issuing licensing decisions, it would be unnecessary for the Commission to determine what type of application to act on first: It would simply decide each license application when it was ready to do so. Thus, if the only applications that the Commission will ever have to evaluate concerning the Patano companies are the license applications that are now ripe for denial, those license applications should be acted on – and denied – now because, if the Patano companies are to be believed, any sale of their route will be beyond the Commission's jurisdiction.

In any event, the assertion that the Commission lacks authority to review proposed carting company sale transactions is frivolous. Local Law 42 not only prohibits carting licenses (which represent the right to pick up customers' garbage) from being transferred among carters, see Admin. Code §16-505(c), but also gives the Commission the power to "promulgate rules as [it] may deem necessary and appropriate to effect the purposes and provisions" of the statute. Id. §16-504(i). Among those purposes are the protection of customers, the enhancement of competition, and the reduction of prices. See Local Law 42, §1. Accordingly, in October 1996, the Commission promulgated a rule requiring proposed sale transactions to be submitted to it for review and declaring that the Commission "may issue any order with respect to the transaction consistent with the purposes of Local Law 42." 17 RCNY § 5-05(b)(ii). Interestingly, before it was promulgated, that rule was proposed by the Commission on notice to the industry, and no one objected to it. Indeed, it is beyond any serious dispute that the Commission's ability to review proposed sale transactions is a necessary incident of its licensing authority. Thus, the only question here is whether the Commission should defer action on a license application when the applicant merely informs the Commission of its intention or plan to sell its business. We see no reason to adopt such a practice, either generally or in this case.

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the Commission's experience, in at least a dozen cases, no contract of sale was signed by the parties by even six months after the execution of a letter of intent. In at least two cases, proposed sales collapsed even after the submission of a sale application.

Indeed, even if an application for a Patano companies/IESI sale transaction were pending before the Commission, the Commission would not be persuaded to defer the licensing decision and approve the sale based on the arguments advanced by the Patano companies. Contrary to the applicants' assertion, a sale will not benefit the customers of the Patano companies. Studies conducted by the Commission staff indicate that the bills of affected customers drop by approximately 50% following a license denial. Carting prices following a route sale drop by at most 30% on average. Thus, it is not accurate to assert that the customers of the Patano companies, whose license applications are ripe for denial, would benefit from a sale to IESI at some unknown future date. Indeed, it appears that New York City businesses would pay approximately $1 million per year in unnecessary carting costs if these license denials were deferred pending a sale.

Second, a sale of the Patano companies' routes to IESI is not critical to that company's effort to obtain a foothold in the New York City carting market. IESI NY has already applied to purchase the routes of many companies; if a significant number of those sales are approved and consummated, IESI will be a strong competitor in the market.

Finally, the denial of the Patano companies' license applications will not result in any "chaos." The Commission's rules state that no carting company can terminate service to a customer without providing the customer with 14 days written notice of termination. As with prior license denials, the Commission will direct the Patano companies to comply with this rule by servicing their customers for 14 days unless the customer says otherwise. The Commission will inform the customers of its decision and provide them with information concerning how to find a new carter. It will also distribute the Patano companies' customer lists to all licensees and license applicants to ensure that there is no disruption in service and that competition for those customers is maximized. Surveys conducted by the Commission reveal that, when this approach is used, interruptions in service are extraordinarily rare and last but one or two days. Experience suggests that it is not the license denial process that is disruptive or confusing to New York City carting customers, but the litigation that sometimes flows from that process.

V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty and integrity. Based upon the foregoing independent grounds, including John Patano's knowing association with an organized crime associate and convicted racketeer, the Patano companies' illegal purchase of stops, and the perjurious testimony of John and Michael Patano, all of which the Commission is expressly authorized to consider under Local Law 42, the Commission denies these license applications.

These license denial decisions are effective fourteen days from the date hereof. In order that the Patano companies' customers may make other carting arrangements without an interruption in service, the Patano companies are directed (i) to continue servicing their customers for the next fourteen days in accordance with their existing contractual arrangements, and (ii) to send a copy of the attached notice to each of their customers by first-class U.S. mail by no later than December 26, 1997. The Patano companies shall not service any customers, or otherwise operate any trade waste removal business in New York City, after the expiration of the fourteen-day period.

Dated: New York, New York
December 19, 1997

THE TRADE WASTE COMMISSION

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