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 SUBURBAN CARTING CORP. AND PRIME CARTING, INC. FOR LICENSES TO OPERATE AS TRADE WASTE BUSINESSES

By applications submitted August 30, 1996, Suburban Carting Corp. and Prime Carting, Inc. ("Suburban" and "Prime," respectively, or the "applicants," collectively) 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 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 deny 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 among those which 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 criminal convictions or pending criminal charges, certain civil or administrative findings of liability, and certain associations with organized crime figures. In addition, the Commission is authorized to

deny a license to any applicant who knowingly fails to provide information required by the Commission. See id. § 16-509(b).

Based upon the record as to these applicants, the Commission concludes that Suburban and Prime -- which the evidence shows are controlled by the same principal, Thomas Milo -- lack good character, honesty, and integrity for the following reasons:

1) Suburban and Thomas Milo, who is a principal of both applicants, recently pleaded guilty to federal criminal charges of conspiracy to defraud the United States, to make and file false and fraudulent tax returns, to commit mail fraud in connection with a Westchester County transfer station contract, and to violate the Taft-Hartley Act, offenses which, considering the factors set forth in New York Correction Law § 753, render Suburban and Prime unfit for licensing;

2) Suburban and Thomas Milo each committed racketeering acts, inasmuch as Suburban pleaded guilty to conspiracy to violate the Taft-Hartley Act by making unlawful payments to a union official and admitted that Thomas Milo made those payments, and Milo pleaded guilty to conspiracy to commit mail fraud;

3) the applicants, through their principals, Thomas Milo, primarily, as well as Kitellen Milo and Joseph Fiorillo, Jr., knowingly associated with members or associates of an organized crime group;

4) two of Prime's principals, Kitellen Milo and Thomas Milo, are also principals of other trade waste businesses that are or would be ineligible for licenses due to their guilty pleas to criminal charges relating to the carting industry;

5) Suburban and Thomas Milo failed to pay income tax for which they have admitted liability by pleading guilty to federal criminal charges of tax fraud conspiracy; and

6) the applicants failed to provide truthful information in connection with their license applications.

The foregoing grounds individually and collectively warrant denial of licenses to these applicants for lack of good character, honesty, and integrity. In addition, the Commission denies these applicants licenses because Thomas Milo twice knowingly failed to provide requested information to the Commission in connection with their applications.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, several hundred companies have provided those services. 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

anticompetitive 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 four 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). One of the applicants here, Suburban, belonged to the QCTW, paying $515 per month in dues. Suburban License Application ("Lic. App.") at 6, 11.

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 the New York 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 companies they controlled. 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 industry still rife with corruption and organized crime influence.

The federal indictment, against seven individuals, including the brother and nephew of Genovese boss Vincent "Chin" Gigante, and fourteen corporations associated with the Genovese and Gambino organized crime families, included charges of racketeering, extortion, arson, and bribery. See generally United States v. Mario Gigante, et al., No. 96 Cr. 466 (JSR) (S.D.N.Y.). The Gigante defendants included Suburban and Thomas Milo,

who owns 100% of Suburban and is a principal of both applicants. Suburban and the other defendant trade waste companies owned by Milo are reportedly worth approximately $100 million. Press Release, United States Attorney's Office, Southern District of New York, dated June 24, 1996, at 4.

Either directly or through Suburban, Milo is the sole owner of, or has a substantial interest in, eight of the other thirteen Gigante defendant trade waste companies: Acorn Equipment Leasing Corp., Al Turi Landfill, Inc., Chestnut Equipment Leasing Corp., DMF Excavating Corp., Enviro Express, Inc., Mamaroneck Truck Repair, Inc., Recycling Industries Corp., and Trottown Transfer, Inc. See Suburban Lic. App., Schedule D; Suburban Disclosure Form for a Principal of a Trade Waste Business ("Disc. Form") (Milo, T.), Schedules A, B. His wife, Kitellen Milo, who is a principal of Prime, owns a substantial interest in yet another defendant company, All–Waste Systems, Inc. Prime Disc. Form (Milo, K.), Schedule A.

In November 1996, the Manhattan District Attorney announced a third round of indictments in his continuing investigation of the carting 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.

On January 27, 1997, Angelo Ponte, a lead state 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 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).

On January 28, 1997, Vincent Vigliotti 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 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).

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a $1 million fine, and four individuals that 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).

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 guilty to criminal antitrust violations.

On July 21, 1997, Philip Barretti, Sr., another lead defendant in the state case and the former owner of New York City's second largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay $6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption and agreed to prison sentences of four to twelve and 31/3 to ten years, respectively. All four defendants agreed to be barred permanently 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 carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, on September 30, 1997, Thomas Milo, a principal of both applicants here and an associate of the Genovese crime family, pleaded guilty to conspiracy to defraud the United States, to make and file false and fraudulent tax returns, and to defraud Westchester County in connection with a transfer station contract. Suburban, one of the applicants here, pleaded guilty to conspiracy to defraud the United States, to make and file false and fraudulent tax returns, and to violate the Taft-Hartley Act by making unlawful payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions. See United States v. Suburban Carting Corp., S10 No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997, at 6; United States v. Thomas Milo, S2 No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997, at 15. Seven of Milo's other companies, Al Turi Landfill, Inc., Chestnut Equipment Leasing Corp., DMF Excavating Corp., Enviro Express, Inc., Mamaroneck Truck Repair, Inc., Recycling Industries Corp., and Trottown Transfer, Inc., also pleaded guilty to tax fraud conspiracy. See United States v. Al Turi Landfill, Inc., S5 No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997; United States v. Suburban Carting Corp., et al.,

No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997; United States v. Enviro Express, Inc., No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997. The other Milo-owned defendant, Acorn Equipment Leasing Corp., pleaded guilty to subscribing a false tax return. United States v. Acorn Equipment Leasing Corp., S1 No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997. Kitellen Milo's company, All-Waste Systems, Inc., pleaded guilty to defrauding the Town of Windsor in a recycling contract bid-rigging scheme. United States v. All-Waste Systems, Inc., S6 No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing state prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. At the conclusion of the trial, the remaining defendants were the GNYTW, Gambino capo Joseph Francolino, a carting company owned by 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 six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined $900,000, and the GNYTW was fined $9 million.

In sum, it is now far too late in the day for anyone to question the existence of a powerful criminal cartel that has controlled the New York City carting industry for decades. Its existence has been proven beyond a reasonable doubt. The proof at the state trial also established conclusively that this cartel, which rigorously enforced the 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). Both applicants here previously held DCA licenses.

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 exercising its discretion to determine 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 . . . ;
>
> (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

A. The Criminal Convictions of Suburban and Thomas Milo

1. The Gigante Indictment

As noted above, in June 1996, Suburban and its president, Thomas Milo, among others, were indicted in the Southern District of New York. See United States v. Mario Gigante, et al., No. 96 Cr. 466 (JSR)

(S.D.N.Y.). The Gigante indictment alleged that the defendants, including Suburban and Milo, constituted a racketeering "enterprise" whose principal purpose was to perpetuate the illegal "property rights" system described above. See Indictment at 3, 6. With respect to Milo and Suburban specifically, the indictment further alleged that Milo, Suburban, and Milo's other trade waste companies are affiliated with the Genovese and Gambino organized crime families, which have been the primary enforcers of the "property rights" system. Id. at 2. Suburban and Milo were charged with racketeering conspiracy, extortion conspiracy, witness tampering, antitrust combination and conspiracy, and various tax violations. Id. (Counts 1-4, 10-12). Milo was also separately charged with extortion, witness bribery, and filing false tax returns. Id. (Counts 7-9, 18-36, 43).

The racketeering conspiracy count alleged that Suburban and Milo committed nine acts of racketeering, including: (1) that, from the 1960's forward, Suburban and Milo conspired to commit extortion; (2) that, from the 1970's through the 1980's, Milo made illegal payments to a union official; (3) that, from 1981 to 1988, Suburban and Milo extorted certain carters in connection with a Westchester County transfer station contract; (4) that Milo extorted two trade waste companies and two individuals; (5) that Milo bribed a witness; and (6) that Milo and Suburban tampered with a witness. Id. (Racketeering Acts 1, 8, 10, 14-18, 23, 25). These charges in the Gigante indictment were pending when Suburban and Prime submitted their license applications to the Commission in August 1996.

2. The Guilty Pleas

In September 1997, both Milo and Suburban pleaded guilty to superseding informations charging them with conspiracy to defraud the United States and to make and file false and fraudulent tax returns. See United States v. Thomas Milo, S2 No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997; United States v. Suburban Carting Corp., S10 No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997. Suburban also pleaded guilty to conspiracy to violate the Taft-Hartley Act by making unlawful payments to a union official, and Milo also pleaded guilty to conspiracy to commit mail fraud in connection with a Westchester County transfer station contract. See id. In their allocutions,

Suburban and Milo admitted that one of the objectives of the conspiracy was to conceal the distribution of profits from the "property rights" system by engaging in sham transactions. See id.; Superseding Informations, United States v. Thomas Milo, S2 No. 96 Cr. 466 (JSR) (S.D.N.Y) at 2-3 ¶ 2; United States v. Suburban Carting Corp., et al., S10 No. 96 Cr. 466 (JSR) (S.D.N.Y.) at 2-3 ¶ 2.

At Suburban's allocution, the prosecution set forth the proof it was prepared to offer, which would show that Suburban was a member of the illegal cartel:

> [The prosecution would] prove that between 1960 and mid-1993 various waste carting companies located in some of the northern counties outside of New York City participated in a scheme known as the "property rights" system. Under that system, waste carting companies would assert, without any legal justification, that a waste carting company had a permanent right to service a particular stop or location where they picked up garbage or where they brought garbage to transfer stations. Suburban . . . was a member of that property rights system and, pursuant to [it], Suburban . . . and other companies shared proceeds that they received from some of these stops they served and some of the contracts that they had with public and private entities. Pursuant to that property rights system, Suburban Carting guaranteed a loan that another corporation received from a bank in order to make payments to a big company controlled by Louis Mongelli, who owned several other waste carting companies in Westchester and Orange County. In addition, . . . the government would be prepared to prove that corporate officers and representatives of Suburban Carting between at least the mid-1970's to the mid-1980's made payments to labor officials associated with IBT local 813.

United States v. Suburban Carting Corp., et al., No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997, at 14.

At his allocution, Milo stated:

> In between 1981 and 1987, I was aware that Louis Mongelli, through his company, ISA New Jersey, had obtained extensions to the Westchester County transfer station contract. Pursuant to an agreement with Mongelli and unbeknownst and undisclosed to Westchester County, Mongelli and I agreed that Mongelli would share with me and certain of my companies the profits Mongelli was making on that contract. Pursuant to this agreement, between 1981 and 1987, Mongelli made significant payments to me and certain of my companies, including Mamaroneck Truck Repair. The payments were disguised through the issuance of false and fictitious invoices. Invoices went through the mail. And I agreed with others to use these invoices in the preparation of various corporate tax returns.

United States v. Thomas Milo, S2 No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997, at 12-13.

Nine other Milo-controlled Gigante defendants also entered guilty pleas, eight of them to tax fraud conspiracy. Together the Gigante defendants agreed to pay a total of $17 million in restitution, fines, and forfeitures to the Internal Revenue Service and Westchester County. Milo and his companies will pay the lion's share of this sum. Milo, personally, will pay $3,166,666 and Suburban will pay $6,507,973, plus tax deficiencies for which they admitted liability. See Plea Agreements of Suburban and Thomas Milo, dated Sept. 26, 1997.

B. The Applications

On August 30, 1996, Suburban and Prime submitted applications to the Commission for licenses to operate as trade waste businesses. See Lic. Apps., each certified by Carmine Mascia, Treasurer, on August 30, 1996.[1]

[1] The instructions on the license application explicitly require that every principal of the applicant must certify the truthfulness of the statements in the application. These applicants failed to comply with this requirement. For both applications, only Carmine Mascia submitted a certification, even though both applicants indisputably have other principals. This omission alone provides a basis for the Commission to deny the applications. See Admin. Code § 16-508(a) ("An applicant . . . shall submit an application in the form and containing the information prescribed by the Commission.").

As explained below, the close relationships between the two companies and among their principals warrant joint consideration of their applications.

Prime and Suburban have four overlapping principals: Thomas Milo, Carmine Mascia, Joseph Fiorillo, Jr., and Louis Cherico. See Lic. Apps., Schedule A. Thomas Milo, who is one of Suburban's eight principals and owns 100% of the company, and Kitellen Milo, who is one of Prime's seven identified principals and owns 40% of the company, are married. See id. Suburban and Prime share "garage space and clerical back-office support." Id. at 4. Their finances are intertwined as well. Kitellen Milo has loaned Suburban $686,134 "with no terms" "at various times." Prime Lic. App., Disc. Form (Milo, K.), Schedule G, at 15. Kitellen Milo also owns stock in other Milo-connected trade waste companies, including 75% of All-Waste Systems, Inc., see Prime Lic. App., Schedule A, at 8-9, which recently pleaded guilty to mail fraud in a bid-rigging scheme, see United States v. All-Waste Systems, Inc., S6 No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997.[2]

During the course of the licensing process, by letter dated May 9, 1997, the Commission requested Thomas Milo to furnish certain documents related to Suburban's application and to appear for a deposition before the staff on May 20, 1997. On that date, Milo, through his attorney, refused to furnish the documents or appear for the deposition. See Letter from Gregory Young, Esq., dated May 20, 1997. By letter dated November 10, 1997, the Commission requested that Thomas Milo testify in connection with the applications of both Suburban and Prime on December 1, 1997. Milo again refused to appear. Milo's attorney stated that, if the Commission subpoenaed Milo, his client would assert his Fifth Amendment privilege against self-incrimination. Letter from Louis E. Cherico, Esq., dated Dec. 3, 1997. Two of Prime's identified principals, Kitellen Milo and Joseph Fiorillo, Jr., appeared before the Commission's staff for depositions on December 1 and 2, 1997, respectively.

[2] Kitellen Milo also loaned All-Waste $2,197,000. Prime Lic. App., Disc. Form (Milo, K.), Schedule G, at 15. Kitellen Milo does not have an employment history that would explain her having accumulated such large sums to loan to Thomas Milo-connected companies. See Transcript of Deposition of Kitellen Milo, taken on Dec. 1, 1997 ("KM Dep."), at 9, 12, 31-33, 100. Also, as she testified in her deposition, she is not financially independent. See id. at 12. In the absence of any identified source for these funds, it is a fair inference that Thomas Milo made the loans, using his wife as his nominee.

C. The Staff's License Denial Recommendation

On December 9, 1997, the Commission's staff issued a 33-page recommendation that both applicants be denied licenses due to their lack of good character, honesty, and integrity for the following reasons: (1) Suburban and Thomas Milo, who is a principal of both applicants, pleaded guilty to federal criminal charges; (2) Suburban and Thomas Milo engaged in racketeering activity; (3) the applicants, through their principals Thomas Milo, Kitellen Milo, and Joseph Fiorillo, Jr., knowingly associated with members of an organized crime group; (4) two of Prime's principals, Kitellen Milo and Thomas Milo, are also principals of other trade waste businesses that would be ineligible for licenses due to their guilty pleas to criminal charges related to the carting industry; (5) Suburban and Thomas Milo failed to pay income tax for which they have admitted liability; and (6) the applicants failed to provide truthful information in connection with their license applications. In addition, the staff recommended denial because Thomas Milo twice knowingly failed to provide requested information to the Commission in connection with these applications.

Pursuant to 17 RCNY § 2-08(a), the applicants had until December 23, 1997 to respond to the staff's recommendation. On that day, the Commission received by fax letters dated December 16, 1997 from Louis E. Cherico, Esq. One letter purported to withdraw Suburban's license application because the company is "in the process of restructuring it's [sic] corporate management" in that Thomas Milo would "be divesting himself of all control of the company." The second letter purported to withdraw Prime's license application, asserting that one or more of Prime's principals "plan to sell their interest in the corporation and resign as officers or directors." The letters stated that the applicants would reapply for licenses in the future.

The Commission has carefully considered the staff's recommendation, the applicants' letter responses, and the record as a whole in rendering its decision on these license applications.[3]

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[3] The Commission rejects the applicants' purported withdrawal of their license applications as a transparent attempt to evade review of the merits of these applications and frustrate the purposes of Local Law 42. Having seen the handwriting on the wall upon issuance of the staff's recommendation, the applicants obviously are seeking to postpone the day of reckoning on the issue of their fitness as potential licensees. This they cannot do. Having invoked the Commission's processes, the applicants are not free to terminate them at their convenience and then invoke them again at a later date. Indeed, in assessing any

III. DISCUSSION

Applying the criteria of Local Law 42, and for the reasons explained below, the Commission denies these license applications because (1) Suburban and Prime lack good character, honesty, and integrity for a number of independently sufficient reasons, and (2) the applicants failed to provide the Commission with required information. See Admin. Code § 16-509(a), (b).

A. The Applicants Lack Good Character, Honesty, and Integrity

The following factors, discussed below, individually and collectively warrant the conclusion that the applicants lack good character, honesty, and integrity.

Preliminarily, the Commission finds that Thomas Milo, an identified principal of Suburban, is an unidentified principal of Prime. Therefore, Milo's criminal conviction and organized crime associations, discussed below, are attributable to Prime as well as Suburban.

Prime's DCA file and the testimony of Kitellen Milo and Joseph Fiorillo, Jr., who are identified principals of Prime, compel the conclusion that Thomas Milo is a principal of Prime. The evidence demonstrates that Kitellen Milo acts as a "front" to conceal Thomas Milo's ownership and control of Prime.

First, Thomas Milo paid for the stock in Prime purportedly owned by Kitellen Milo. Prime's DCA file contains four agreements, each dated March 1, 1993, demonstrating that Ms. Milo acquired her 40% interest in Prime by purchasing 10% of the company's stock from each of four principals: Joseph Fiorillo, Jr., Louis Cherico, Anna Priskie, and Carmine Dominicus. Prime DCA File, License No. 483182, "Stock Sale and Loan Repayment Agreement" (four documents); see also "Request for Approval of Transaction/Commercial Refuse Removal" (four documents), each dated

later-filed license application by Suburban or Prime, however then organized and constituted, the Commission would consider – and consider dispositive – all of the adverse facts to which these applicants have chosen not to respond. See Admin. Code § 16-509(vii).

April 9, 1994; Prime Lic. App., Schedule A. The purchase price for each 10% interest was $5,000. See id.

At her deposition, Kitellen Milo testified that she did not recall from whom she purchased the stock, but stated, "I know I wrote checks for $20,000, four separate checks of $5,000 each." KM Dep. at 9-10. She reiterated in her testimony that *she* wrote the checks, adding that she gave them to Louis Cherico, her husband's attorney. Id. She further testified that she wrote the checks on a personal, joint account held by herself and her husband, Thomas Milo. Id. at 10-11.

Ms. Milo's version of the stock purchase is contradicted by documentation in Prime's DCA file. The file contains four checks, each dated April 13, 1993, and payable to the order of the four principals identified above in the amount of $5,000 each. But Thomas Milo, not Kitellen Milo, signed these checks, and they were drawn on Thomas Milo's individual account, not a joint account. Only Thomas Milo's name is printed on the checks, and only his signature appears as the maker, along with the hand-written notation, "Payment Prime Stock." The DCA file also contains thirteen monthly bank statements for a checking account corroborating the checks written by Thomas Milo. One of these statements, covering the period March 26, 1993 through April 24, 1993, reflects four $5,000 debits, for a total of $20,000, on the account. This statement shows Thomas Milo as the sole owner of the account. Notwithstanding Kitellen Milo's purported 40% ownership interest in Prime, the cancelled checks and bank statement clearly establish that Thomas Milo actually purchased the stock.

The second reason supporting the conclusion that Thomas Milo is a principal of Prime is that all seven of Prime's identified principals are in some way related to, or employed by, him: Kitellen Milo, the largest nominal stockholder, is his wife; Anna Priskie is his daughter (from a previous marriage); Carmine Mascia is the treasurer for both applicants and other Milo-owned companies; Joseph Fiorillo, Jr. is vice-president of Suburban and runs the day-to-day operations of Suburban and other Milo-owned companies; Louis Cherico is a principal of both applicants and Thomas Milo's attorney; Carmine Dominicus is Thomas Milo's son-in-law and a Suburban employee; and Louis DiFrancesco is a Suburban employee. See KM Dep. at 9, 14-15, 23-24; Lic. Apps., Schedules A, F.

In addition to these principals' familial and business ties to Thomas Milo, the testimony of his wife and Joseph Fiorillo, Jr. strongly supports the conclusion that Milo controls Prime through the use of nominees, including his wife. Particularly persuasive is their testimony regarding the manner in which they became principals of Prime: Ms. Milo's uninformed, blind execution of business transactions at her husband's direction, and Fiorillo's similarly formalistic role as a principal, director, or executive officer of Milo-owned companies.

At her deposition, Kitellen Milo acknowledged that she is a "passive investor" who knows nothing about Prime's finances, corporate structure, policies, or operations. See generally KM Dep. at 15-29, 44-45. She knew virtually nothing about her interests in other trade waste companies, readily stating that these matters were "all under [her] husband's control." Id. at 18. When asked about her reasons for purchasing her interest in All-Waste, for example, she responded, "I'm not quite sure. My husband just hands me papers to sign. I don't . . . know what half of the things are. I don't know if I invested or they were a gift or anything. I just sign papers that he asks me to sign." Id. at 18.

Nevertheless, Ms. Milo testified that it was somehow her idea to purchase Prime stock, on the advice of Louis Cherico, her husband's attorney. Id. at 11-12. She assertedly confided in Mr. Cherico that she was concerned about her financial future and wondered "whe[re] my next dollar comes from because my husband basically arranges most of the things for me." Id. at 12. She testified that she sought and received her husband's permission for the purchase. Id. at 13.

Ms. Milo's testimony revealed that she knew nothing about Prime's financial condition at the time she became its largest shareholder and has since remained ignorant. See generally id. at 26-27, 44-45. Even crediting her testimony that she blindly trusted the judgment of Mr. Cherico regarding her investment, Prime's application and, in particular, the testimony of Joseph Fiorillo reveal that Prime was certainly not the type of company one would invest in to achieve Ms. Milo's goal of financial security. Prime's unimpressive prospects as an investment render suspect Ms. Milo's testimony as to her reasons for purchasing stock in Prime. It is particularly anomalous in this regard that Ms. Milo purported to distinguish her investment in Prime from all of her other investments, as to which she

essentially conceded in her deposition that she acts as no more than a nominee for her husband.

Prime is a one-truck, two-employee company with a relatively small operating budget and a negligible earnings history. See Transcript of Deposition of Joseph Fiorillo, Jr., taken on Dec. 2, 1997 ("JF Dep."), at 34, 56; Prime Lic. App., Addendum, Tax Form 1120 (1995). According to Fiorillo, who has been a principal since Prime's incorporation in 1990, the company has never paid any dividends. See JF Dep. at 55-57. Fiorillo testified that he sold half of his stock to Kitellen Milo because "the company was doing very poorly . . . " Id. at 54. When asked whether he relied upon his investment in Prime for financial security or retirement purposes, he laughed and testified, "God help us, no." Id. at 56.

Fiorillo's testimony further undermined Ms. Milo's characterization of her investment in Prime as her own, rather than her husband's, decision. Fiorillo testified that he originally decided to purchase Prime stock because Thomas Milo said it was for sale and asked whether "the group of us, . . . if we'd be interested in purchasing the company." Id. at 57. Even without Thomas Milo's checks, this strongly suggests that purchasing Prime was Thomas Milo's idea, which his attorney, Louis Cherico, implemented through surrogate buyers such as Milo's wife, Kitellen Milo, and his employee, Fiorillo.

A third reason to conclude that Thomas Milo is a principal of Prime is that the company's operations and management are so closely intertwined with Suburban's. Prime cannot be distinguished from Suburban and other Milo-owned companies operating at 524 Waverly Avenue in Mamaroneck, New York.[4] Joseph Fiorillo's testimony established that he and other Suburban employees manage Prime's operations and administration. See generally id. at 171-174. As stated previously, the applicants share

[4] In addition to Prime, Suburban shares "garage space and clerical back-office support" with the following companies: Acorn Equipment Leasing Corp., Advanced Recycling Corp., Advanced Waste Systems, Inc. (CT), Advanced Waste Systems, Inc. (MA), Al Turi Landfill, Inc., Automated Waste Disposal, Inc., C.C. Boyce & Sons, Inc., Chestnut Equipment Leasing Corp., Diversified Waste Disposal, Inc., Dowling Industries, Inc., Eco Fuel, Inc., Enviro Express, Inc., Enviro Recycling Corp., Environmental Systems, Inc., F&H Sanitation, Inc., Greensphere, Inc., JAT Truck Repair Service, Inc., Mamaroneck Truck Repair, Inc., NY-CONN Waste Recycling, Inc., Recycling Industries Corp., Recycling Technologies, Inc., Royal Flush, Inc., Sani-Clean, Inc., Superior Leasing, Inc., and Trottown Transfer, Inc. Suburban Lic. App., at 4-4A. Six of these companies, Acorn Equipment Leasing Corp., Al Turi Landfill, Inc., Chestnut Equipment Leasing Corp., Enviro Express, Inc., Recycling Industries Corp., and Trottown Transfer, Inc., were Gigante defendants which pleaded guilty to criminal charges as discussed above.

principals, a physical plant, and clerical staff. This information provided in the applications, coupled with Fiorillo's testimony regarding Prime's operations, makes it clear that Prime is part of Thomas Milo's carting empire.[5] In this connection, Milo's refusal to appear before the Commission's staff for a deposition and his *de facto* invocation of his Fifth Amendment privilege against compelled self-incrimination warrant drawing an adverse inference against the applicants here, namely that Thomas Milo is a principal of Prime as well as of Suburban.[6] For all of the foregoing reasons, the Commission concludes that Thomas Milo is a principal of Prime.[7]

1. Suburban's and Milo's Criminal Convictions

Suburban and Thomas Milo, who is a principal of both Suburban and Prime, as well as several other trade waste companies Milo controls, pleaded guilty in the Gigante racketeering case to crimes which require a finding that these applicants lack good character, honesty, and integrity.

In making licensing determinations, the Commission is expressly authorized to consider prior convictions of the applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code § 16-509(a)(iii); see also id. § 16-501(a). Those factors are:

> (a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.

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[5] Joseph Fiorillo asserted that Prime operates out of a garage in Mount Vernon. JF Dep. at 32-33. This testimony contradicts Prime's and Suburban's applications, which list the Mamaroneck address as the location of their garage and state that the companies share "garage space and back office clerical support." Lic. Apps. at 4.

[6] Ample legal authority supports drawing an adverse inference from a Fifth Amendment invocation under these circumstances. See Baxter v. Palmigiano, 425 U.S. 308, 317-18 (1976); Brink's, Inc. v. City of New York, 717 F. 2d 700, 708-10 (2d Cir. 1983); see also LiButti v. United States, 107 F.3d 110, 123-24 (2d Cir. 1997).

[7] The Commission will not countenance efforts, such as those undertaken by Thomas Milo here, to circumvent the law, including Local Law 42, by concealing ownership or control of carting companies through the use of nominees such as spouses and other relatives or employees. If the Commission permitted such schemes to succeed, the goals of Local Law 42 would be seriously undermined.

(b) The specific duties and responsibilities necessarily related to the license . . . sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law § 753 (1).

Applying these factors, the Commission finds that, notwithstanding the public policy of the State of New York to encourage licensure of persons convicted of crimes, the crimes committed by Suburban and its president, Thomas Milo, are antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption from the trade waste industry. Suburban's and Milo's guilty pleas, which included admissions that they participated in the organized crime-enforced "property rights" system in the New York metropolitan area, compel the conclusion that Milo and the applicants lack good character, honesty, and integrity. They are, quite simply, unworthy of licensure in the carting industry again.

2. Commission of Racketeering Acts

The applicants also are denied licenses because Suburban and Thomas Milo committed numerous racketeering acts, including violations of the Taft-Hartley Act (bribery of a union official), mail fraud, and extortion. See Admin. Code § 16-509(a)(v). These acts are established by the Gigante indictment, Suburban's and Milo's plea allocutions, Milo's refusal to testify before the Commission, and information in the public record.

The Gigante indictment charged Suburban and Thomas Milo specifically with racketeering acts that included extortion and Taft-Hartley violations. See Indictment, Count 1 (Racketeering Acts 1, 8, 10, 14-18, 23, 25). Suburban pleaded guilty to committing a racketeering act, to wit, conspiring to bribe a union official. Superseding Information, S10 No. 96 Cr. 466 (JSR) (S.D.N.Y.), at 2. Suburban also admitted that Thomas Milo made payments in the 1970's and 1980's to a representative of International Brotherhood of Teamsters Local 813, in furtherance of the conspiracy to which they both admitted guilt. Id. In addition, Milo's tax violations and falsification of business records establish several mail fraud violations. See United States v. Thomas Milo, S2 No. 96 Cr. 466 (JSR) (S.D.N.Y.). Finally, Milo's refusal to testify and *de facto* Fifth Amendment invocation support an adverse inference against Suburban and Prime, i.e., that the applicants are controlled by Milo, a convicted racketeer. The foregoing racketeering activity of Suburban and Milo provides an additional ground for denial of these license applications. See N.Y. Penal Law § 460.10(1)(6).

3. Association with a Member or Associate of an Organized Crime Group

Suburban's and Thomas Milo's guilty pleas, as well as other public sources of information, establish that Milo knowingly associated with organized crime figures. The depositions of Kitellen Milo and Joseph Fiorillo, Jr. strongly support the conclusion that they, too, associated with individuals who they knew or, certainly, should have known were organized crime figures.

In determining an applicant's fitness for a license, the Commission is authorized to consider the applicant's (including any of its principals') association with any member or associate of an organized crime group, as

identified by a federal, state, or city law enforcement or investigative agency, where the applicant knew or should have known that the person was associated with organized crime. See Admin. Code § 16-509(a)(vi). In rejecting a constitutional challenge to this provision, the Second Circuit confirmed that a carter's "knowing associations, having a connection to the carting business," with organized crime figures may properly be considered by the Commission in its licensing determinations, in order to further its "compelling interest in combating crime, corruption and racketeering—evils that eat away at the body politic." SRI, 107 F.3d at 998.

In pleading guilty to superseding informations, Suburban and Milo admitted to their association with, and participation in, "the cartel," the organized crime-enforced "property rights" system in the New York carting industry. See Superseding Informations at 2-3. Their guilty pleas confirm the accuracy of the evidence set forth a decade ago in an authoritative New York State legislative report on organized crime's involvement in the carting industry. See New York State Assembly, Environmental Conservation Committee, Organized Crime's Involvement in the Waste Hauling Industry (1986) (the "Hinchey Report"). The Second Circuit recently cited the Hinchey Report as part of the large body of evidence establishing that organized crime controls the trade waste industry in the New York metropolitan area. See SRI, 107 F.3d at 999.

The Hinchey Report devotes an entire chapter to Thomas Milo's extensive organized crime connections and concludes: "[Milo] has been linked to organized crime by local and State law enforcement officials, and he has been involved heavily in a complex web of relationships with a substantial cast of notorious bad actors . . ." Hinchey Report at 51. The report specifically links Milo and his former partner, Alfred DeMarco, to the Genovese crime family and Matthew "Matty the Horse" Ianniello, a Genovese capo. See id. at 53-54.

The United States Attorney for the Southern District of New York has also identified Milo's links to organized crime. According to that office, Milo's nominal business partner, Louis Corso, is reputedly a Genovese associate. See Press Release, United States Attorney's Office, Southern District of New York, dated June 24, 1996, at 4. The United States Attorney has also asserted that Milo has knowingly associated with Benny Villani, who is affiliated with Liborio "Barney" Bellomo, previously identified as the acting boss of the Genovese crime family. Id. at 5. In his Gigante guilty

plea, Milo admitted meeting with Villani from 1987 through 1991. See Superseding Information, S2 No. 96 Cr. 466 (JSR) (S.D.N.Y.).

The disclosure form that accompanies the license application asks each principal of the applicant business whether he or she has "associated with any person that you knew, or should have known was a member or associate of an organized crime group?" Disc. Form at 6. Thomas Milo answered "yes" to this question, listing Mario Gigante, Salvatore Gigante, Matthew Ianniello, and "Barney" (surname unknown). Suburban Lic. App., Disc. Form (Milo, T.) at 6. He indicated the "[d]ate of occurrence" of these associations was "various" and that these individuals were "friends of my late father." Id. at 6-7. Milo stated that, although these individuals "have been reported by the newspapers as being connected with organized crime, I have no knowledge of the truth of such allegations." Id.

Kitellen Milo answered "no" in response to the "knowing association" question. Prime Lic. App., Disc. Form (Milo, K.), at 6. At her deposition, however, she identified several organized crime figures with whom she and her husband had associated. Indeed, Kitellen Milo's and Joseph Fiorillo's depositions both revealed that their associations, too, fall within the ambit of the Second Circuit's decision in SRI. See 107 F.3d at 998.

Joseph Fiorillo, Jr. responded "yes" to the "knowing association" question, listing Mario Gigante, Salvatore Gigante, Barney (surname unknown), Thomas Milo, and Nicholas Milo (Thomas Milo's brother). Prime Lic. App., Disc. Form (Fiorillo, J., Jr.), at 6. Fiorillo stated that the associations occurred from 1986 to 1996. Id. He stated that he had read in newspaper articles that these individuals were linked to organized crime, but had no personal knowledge about the media's representations. Id. Fiorillo also stated that he gave testimony before the grand jury in the Gigante case, for which he received immunity from prosecution. Id. at 4. At his deposition, however, he refused to answer any questions about his Gigante testimony. JF Dep. at 82-88. This refusal supports an adverse inference against Suburban and Prime, i.e., that Fiorillo, a principal of both applicants, has associated with organized crime figures.

Among the individuals Kitellen Milo identified at her deposition was "Buckalo," who she said was a personal friend of her husband for eight to ten years from approximately 1971 to 1980. She and Thomas Milo had dinner with him once a week at a restaurant in the Bronx. She claimed not to know

what "Buckalo" did for a living, adding that she used to bring a book to the dinners while he and her husband discussed "business." Sometimes, she even sat at a different table. KM Dep. at 75-78. Antonio "Buckalo" Ferro was identified by government officials as a high-ranking member of the Genovese organized crime family more than a decade ago. First Signed Statement of Vincent "Fish" Cafaro, dated Oct. 2, 1986; see also "25 Years after Valachi: Hearings Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs" (the "Valachi Hearings"), United States Senate (1988) at 224 (testimony of Vincent Cafaro); United States v. Local 1804-1, International Longshoremen's Ass'n, No. 90 Civ. 0963 (JSM) (S.D.N.Y.), Trial Tr. at 1030.

Kitellen Milo identified Alfred DeMarco as her husband's former business partner. She testified that she had not seen him recently, however. Her husband stopped doing business with DeMarco, but she did not know why. KM Dep. at 50-51. As noted earlier, DeMarco and Thomas Milo were identified in the Hinchey Report as organized crime associates prominent in the New York trade waste industry.

Mario Gigante was identified by Kitellen Milo as someone she met once or twice, most recently a couple of weeks before her deposition when he came to her house to talk to her husband. She knew that Gigante had been indicted with her husband, but she claimed not to know the charges against either of them. Id. at 82-86.

Joseph Fiorillo acknowledged having contact with Mario Gigante at the offices of Thomas Milo's criminal defense attorneys, which are located across the street from Suburban's offices, while the Gigante case was "evolving." He also saw Gigante "now and again" at Suburban's offices. Fiorillo claimed he did not know about the charges against Mario Gigante and, apart from the federal case, had never read or heard allegations about his organized crime connections. Fiorillo testified that he did a few "paper deals" with Salvatore Gigante, another Gigante defendant, and saw him, too, at Milo's attorneys' offices after the indictments in the Gigante case. JF Dep. at 106-116.

Although the Gigante case confirmed Mario Gigante and Salvatore Gigante as key participants in the illegal trade waste cartel that had a stranglehold on the industry, Mario Gigante already had been identified as an organized crime figure more than ten years ago. See Hinchey Report at 52;

Valachi Hearings at 770, 791; see also First Signed Statement of Vincent "Fish" Cafaro, dated Oct. 2, 1986. Moreover, both Kitellen Milo's and Joseph Fiorillo's testimony establish that Thomas Milo was visited at home by Mario Gigante and Salvatore Gigante after their indictments.

Kitellen Milo also had contact with Matthew "Matty the Horse" Ianniello. She testified that she had dinner at his restaurant, SPQR, in New York City with her husband approximately fifteen to eighteen years ago. The occasion was the San Gennaro feast. She knew that Ianniello had gone to jail for a while, but she did not know why. She thought that she was at his restaurant a second time for an engagement party approximately twelve years ago, during Ianniello's incarceration, perhaps for his daughter's or stepdaughter's engagement. KM Dep. at 88-92.

Fiorillo also had contact with Matthew Ianniello. Fiorillo testified that he believed Ianniello is currently a partner with Fiorillo's father in a company called "FICA." When Fiorillo was working for his father, Joseph Fiorillo, Sr., in the 1970's, he met Ianniello on many occasions, although he disavowed any involvement in his father's business discussions with Ianniello. Joseph Fiorillo, Jr. met Ianniello five or six months before his deposition to discuss a Superfund site. Fiorillo acknowledged that he had read in the media that Ianniello had organized crime ties. JF Dep. at 116-121.

Matthew "Matty the Horse" Ianniello has been identified numerous times during the past decade as a member of the Genovese crime family who has interests in the garbage industry. See Hinchey Report at 53; Valachi Hearings at 243 (testimony of Vincent Cafaro), 751, 792; First Signed Statement of Vincent "Fish" Cafaro, dated Oct. 2, 1986; Deposition of Aladena "Jimmy the Weasel" Fratianno, in United States v. International Brotherhood of Teamsters, No. 88 Civ. 4486 (DNE) (S.D.N.Y.), Tr. at 151; United States v. International Brotherhood of Teamsters, 998 F.2d 120 (2d Cir. 1993) (statement of cooperating witness Harold Kaufman) (Exhibit AZ in record on appeal at A924).

When Fiorillo was asked whether he was concerned that his father was doing business with an alleged organized crime figure, he responded that it did not bother him because it was his father's business, not his own. JF Dep. at 121. Fiorillo evinced an equally blasé attitude when questioned about his role as principal, director, and/or executive officer in trade waste companies

owned by Thomas Milo. Fiorillo testified that he did not know how he obtained various positions with Milo-owned companies or how Milo acquired those companies. Fiorillo acknowledged that he has a fiduciary duty in the positions he holds, but he did not know how many positions he holds with Milo-owned companies, what they all are, or how he came to occupy them. Nor did he care to find out. See JF Dep. at 40-49.[6] Fiorillo's cavalier attitude about his fiduciary responsibilities and lack of concern about his father's dealings with organized crime reflect poorly on the fitness of these applicants.

Fiorillo also testified that he had contact with Joseph Zingaro when Suburban used some of Zingaro's equipment. Zingaro visited Suburban in connection with that activity "a while ago," before he died approximately four or five years ago. Fiorillo testified that he thought Zingaro's company was "Route 55," which was a defendant in the Gigante case. JF Dep. at 151-152. Joseph Zingaro, too, has been identified by law enforcement for more than a decade as a Mafia member; he is a capo in the Gambino organized crime family. See Valachi Hearings at 770, 788; 25th Signed Statement of Vincent "Fish" Cafaro, dated March 17, 1987.

Joseph Fiorillo also testified that he had contact with Liborio "Barney" Bellomo three or four years ago when Bellomo was supposedly brokering paper. He met Bellomo at Suburban's transfer station in Mamaroneck. He met him on another occasion when Fiorillo purchased fuel for Suburban from Sabrizi Fuel, a company that Bellomo represented. Fiorillo acknowledged reading allegations about Bellomo's organized crime ties approximately six months to one year ago. Fiorillo also testified that he saw Bellomo with Thomas Milo at Suburban's offices approximately two to three years ago. JF Dep. at 93-99.

As noted earlier, Liborio "Barney" Bellomo has been identified as the "acting boss of the Genovese crime family." Daily News at 12-13 (Dec. 12, 1993). His organized crime status was identified more than a decade ago and has been confirmed by Alphonse D'Arco, Vincent Cafaro, and Salvatore Gravano, all admitted members of organized crime families who later

[6] Fiorillo's disturbing attitude about criminality and legal obligation was evident as well when he recounted one of his arrests in the mid-1970's. Fiorillo attempted to enter a landfill in a garbage truck, but a blockade of citizens and police confronted him with an injunction. The police told Fiorillo he would be arrested if he dumped his truck. Fiorillo testified that he was more concerned about dumping his truck, and did so two or three times, despite police efforts to prevent him, before he was arrested. JF Dep. at 64-71.

became cooperating witnesses. See Valachi Hearings at 751; First, Fourth, and Sixth Signed Statements of Vincent "Fish" Cafaro, dated Oct. 2, 1986, Oct. 23, 1986, and Nov. 11, 1986, respectively; United States v. John Gotti, No. 90 Cr. 1051 (ILG) (E.D.N.Y.), Tr. at 4373 (testimony of Salvatore Gravano); United States v. Vittorio Amuso, Cr-D90-466 (F-1) (EHN) (E.D.N.Y.), Tr. at 2844; United States v. Int'l Longshoremen's Ass'n, No. 90 Civ. 0963 (JSM) (S.D.N.Y.), Tr. at 1029.

Fiorillo also admitted to contact with James Ida. Fiorillo testified that he met Ida one or more times at Matthew Ianniello's office when Fiorillo was working for his father. Fiorillo read in the media that Ida had been convicted of a crime, but could not recall the details. JF Dep. at 142-143. James Ida has been identified as a high-ranking member of the Genovese crime family by Alphonse D'Arco and Vincent Cafaro, former organized crime members who became cooperating witnesses for the federal government. United States v. Vittorio Amuso, Cr-D90-466 (F-1) (EHN) (E.D.N.Y.), Tr. at 2775 (testimony of Alphonse D'Arco, former acting boss of the Luchese family); First Signed Statement of Vincent "Fish" Cafaro, dated Oct. 2, 1986.

Although Kitellen Milo described as "social functions" the occasions on which she met organized crime figures, her testimony showed that they were related to her husband's business affairs. See, e.g., KM Dep. at 45-57, 80-81. The depositions of Kitellen Milo and Joseph Fiorillo establish that they and Thomas Milo had business-related contacts with various individuals in the trade waste industry who have long been identified by law enforcement and in the media as organized crime figures. These contacts, which occurred over many years, compel the conclusion that these three principals of the applicants knowingly associated with organized crime figures.

Kitellen Milo's and Joseph Fiorillo's testimony disavowing knowledge about the organized crime ties of various individuals, their own investments and roles in the corporate structure of Milo-owned companies, and the influence of organized crime in the trade waste industry is not credible. Even if the Commission were to credit their testimony, Ms. Milo and Mr. Fiorillo should have known that these individuals were organized crime figures, and the Commission will not countenance their strained "see-no-evil, hear-no-evil" efforts to avoid acquiring such knowledge. Their comportment reveals that they completely lack the anticorruption diligence

required of principals of future licensees in the new, organized crime-free era of the trade waste industry envisioned by Local Law 42.

In addition to the direct evidence, the Commission draws an adverse inference from Thomas Milo's refusal to appear to testify before the Commission regarding the applicants. His *de facto* invocation of his Fifth Amendment privilege regarding his and other principals' knowing associations with organized crime figures in the trade waste industry lends support to the conclusion that such associations occurred.

The business-related associations of Thomas Milo, Joseph Fiorillo, Jr., and Kitellen Milo with individuals they knew or should have known to be organized crime figures, coupled with Suburban's membership in the QCTW, compel the conclusion that these principals were part of -- and, in Thomas Milo's case, an integral part of – organized crime's corruption of the trade waste industry. For this reason as well, the Commission concludes that the applicants lack good character, honesty, and integrity.

4. Prime Shares Principals with Ineligible Trade Waste Businesses

Although Prime was not a named defendant in the Gigante indictment, Prime's fitness for a license is compromised by that case because Prime and one of the Gigante defendants, All-Waste Systems, Inc., have a common principal: Kitellen Milo. The Gigante indictment charged All-Waste with extortion, RICO conspiracy, antitrust conspiracy, and tax fraud conspiracy. Kitellen Milo, the largest shareholder of All-Waste, consented to the company's plea of guilty to conspiracy to commit mail fraud in a bid-rigging scheme for a town recycling contract. See United States v. All-Waste Systems, Inc., S6 No. 96 Cr. 466 (JSR) (S.D.N.Y.), Tr. of Plea, Sept. 30, 1997, at 10-11.[9] It is apparent from All-Waste's guilty plea that it lacks good character, honesty, and integrity and, therefore, is ineligible for a trade waste license. See Admin. Code § 16-509(a)(iii). Kitellen Milo is the primary shareholder of Prime and All-Waste. The fact that Kitellen Milo is a principal of both Prime and All-Waste, a trade waste business that is ineligible for a license, manifests Prime's lack of good character, honesty, and integrity. See Admin. Code § 16-509(a)(vii). Prime's unsuitability for

[9] All-Waste is otherwise owned by Joseph Milo,see All-Waste, Tr. of Plea, dated Sept. 30, 1997, at 2, who is Thomas Milo's brother, KM Dep. at 36.

licensure is further manifested by the fact that another of its principals (as shown above), Thomas Milo, is also a principal of Suburban, another Milo-connected company that pleaded guilty in the Gigante case.

5. Suburban and Milo Knowingly Failed to Pay Income Tax

As noted above, Suburban and Milo each pleaded guilty to tax fraud conspiracy in the Gigante case. In their plea agreements, they each admitted to liability for tax deficiencies for one or more tax years. See Plea Agreement of Suburban, dated Sept. 26, 1997, at 7-8, Ex. D; Plea Agreement of Thomas Milo, dated Sept. 26, 1997, at 6-7, Ex. A. For this reason also, the Commission concludes that Suburban and Prime lack good character, honesty, and integrity. See Admin. Code § 16-509(a)(x).

6. The Applicants' Failure to Provide Truthful Information

Each principal of a license applicant must certify that the information contained in the license application is truthful. Admin. Code § 16-509(a)(i). Part III, Question 6, of the Commission's application form asks, "Has the applicant business or any of its past principals ever:

> a. filed with a government agency or submitted to a government employee a written instrument which the Applicant or any of its principals knew contained a false statement or false information?
>
> b. falsified business records?
>
> c. given, or offered to give, money or any other benefit to a labor official with intent to influence that labor official with respect to any of his or her official acts, duties or decisions as a labor official?
>
> d. given any money or thing of value to a labor union or labor official or representative that was not expressly

permitted by section (c) of the Taft-Hartley Act, 29 U.S.C. Section 186?

e. given, or offered to give, money or any other benefit to a public servant with intent to influence that public servant with respect to any of his or her official acts, duties or decisions?

f. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?

g. agreed with another trade waste business not to compete in the conduct and furnishing of trade waste service?

h. agreed with another trade waste business to divide or allocate customers or to respect an existing division or allocation of customers by geography, territory or otherwise?

i. discussed with another private carter the prices to be submitted to bid on a trade waste contract?

j. associated with any person that you knew, or should have known was a member or associate of an organized crime group?

The applicants checked "no" in response to each of these questions. Lic. Apps. at 15-16. Based upon the record in this matter, particularly Suburban's and Milo's plea allocutions, as well as other publicly available information, the applicants' responses to Questions 6(a)-(d), 6(f)-(h) and 6(j) were clearly false. Therefore, the applicants failed to provide truthful information on their license applications. In addition, Prime failed to disclose Thomas Milo as a principal. Indeed, Kitellen Milo denied that her husband was a principal and claimed to have purchased the company as an investment. As shown above, these claims are false and contradicted by contemporaneous documentation. The applicants' failure to provide truthful information to the Commission constitutes an additional basis for the

conclusion that they lack good character, honesty, and integrity and for denial of their license applications. See Admin. Code § 16-509(a)(i).

B. The Applicants Failed to Provide Information Required by the Commission

The Commission has the power "[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation." Admin. Code § 16-504(c). The Commission may refuse to grant a license to an applicant that "has knowingly failed to provide the information and/or documentation required by the commission . . . ." Admin. Code § 16-509(b). The refusal of Thomas Milo on one occasion to provide requested documents to the Commission and on two occasions to provide sworn testimony to the Commission in connection with the license applications of Suburban and Prime constitutes another independent ground on which the Commission denies these applications.

IV. 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. Suburban's and Thomas Milo's criminal convictions, their racketeering activity, their failure to pay taxes for which they have admitted liability, the applicants' principals' knowing association with organized crime figures, Prime's sharing principals with ineligible trade waste businesses, and the applicants' failure to provide truthful information on their license applications, each provide an independent ground on which the Commission concludes that the applicants lack good character, honesty, and integrity. In addition, Thomas Milo's refusal to provide requested information to the Commission regarding these applicants provides yet another independent basis for denial of these license applications.

This license denial decision is effective fourteen days from the date hereof. In order that the applicants' customers may make other carting arrangements without an interruption in service, the applicants 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 January 12, 1998. The applicants shall not service any customers, or otherwise operate as trade waste removal businesses in New York City, after the expiration of the fourteen-day period.

Dated: New York, New York
January 9, 1998

THE TRADE WASTE COMMISSION

Edward T. Ferguson, III, Chair

John J. Doherty, Sanitation Commissioner

Jules Polonetsky, Consumer Affairs Commissioner

Earl Andrews, Jr., Business Services Commissioner

Edward Kuriansky, Investigation Commissioner