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

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE APPLICATION OF RAPID DEMOLITION CONTAINER SERVICES CORP. A LICENSE TO OPERATE AS TRADE WASTE BUSINESSES

Rapid Demolition Container Services Corp., ("RDCS") applied to the New York City Business Integrity Commission for a license to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a), 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 Applicant, the Commission finds that RDCS lacks good character, honesty, and integrity and denies its license application for the following independent reasons:

(i) The Applicant provided false, incomplete and misleading information in its License Application.

(ii) The Applicant's affiliate, Rapid Demolition Co. Inc. is barred from conducting business with the City of New York and the State of New York for five years.

(iii) The Applicant's affiliate, Rapid Demolition Co. Inc. owes over $80,000 to the New York State Tax Commission.

(iv) The Applicant's affiliate, Rapid Demolition Co. Inc. employed Philip Schwab, a convicted felon, as a superintendent.

(v) The Applicant provided false and misleading information through its principal's testimony and other submissions to the Commission.

(vi) The Applicant failed to update the Commission with material changes to its application.

(vii) The Applicant engaged in long-term unlicensed or unregistered activity.

(viii) The Applicant has obstructed the Commission's investigation by failing to provide documents required by the Commission pursuant to a licensing investigation and by failing to cooperate with the Commission at a licensing deposition.

I. BACKGROUND

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. Beginning in the late 1950's, and until only recently, the commercial carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of

racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life":

> 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 evidence presented at 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 . . . effectively 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 were 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[d] in illegal ways" by "enforc[ing] the cartel's anticompetitive dominance of the waste collection industry." SRI, 107 F.3d at 999.

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted on enterprise corruption, criminal antitrust, and related charges as a result of a five-year investigation into the industry by the Manhattan District Attorney's Office and the New York Police Department. See People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). The defendants 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. In essence, the carting industry's modus operandi, the cartel, was indicted as a criminal enterprise.

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 indictments, against thirteen individuals and eight companies, were (like their 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 companies 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. See United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.). 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 jury verdicts. 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 another carter from bidding on waste removal services for a "Vibro-owned" building in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of one of the 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 City's carting industry.

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. In addition, 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 City's carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors from entering the market through threats and economic retaliation. 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 City's carting industry.

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, as well as their affiliated carting companies, 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 Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual 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 City's 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.

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, another lead defendant in the state prosecution and the former owner of the 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 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 3⅓ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an 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 Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract 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.

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 soldier Joseph Francolino and one of his carting companies, 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. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined $200,000.

On January 21, 1998, Patrick Pecoraro pleaded guilty to attempted enterprise corruption and agreed to serve a prison sentence of one to three years, to pay a $1 million fine, and to be barred permanently from the City's carting industry. On the same day, the QCTW pleaded guilty to a criminal antitrust violation and agreed to forfeit all of its assets. Numerous other guilty pleas followed. On December 21, 1999, all of the guilty verdicts were affirmed on appeal. See People v. GNYTW, 701 N.Y.S.2d 12 (1st Dep't 1999).

In sum, it is 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. These criminal convictions confirm 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 of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry immediately 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, 940 F. Supp. 656 (S.D.N.Y. 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 "[i]t 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 [C]ommission." 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, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a).

As the United States Court of Appeals has definitively ruled, an applicant for a carting 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, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

RDCS filed with the Commission an application for a trade waste removal license on April 17, 2002. The Commission's staff has conducted an investigation of the Applicant. On July 9, 2003, the staff issued a 26-page recommendation that the application be denied. The staff delivered a copy of the recommendation to the Applicant by hand the same day. Pursuant to the Commission's rules, the Applicant had 10 business days to submit a written response. See Chapter 17 of the Rules of the City of New York, Section 2-08(a). Also on July 9, 2003, the Applicant's attorney, Gerald McMahon contacted the Commission staff and requested a copy of the transcript from the deposition of Francine Najjar. The Commission's staff complied with McMahon's request and provided a copy of the deposition transcript on the very same day. See July 9, 2003 letter from the Commission's staff to Gerald McMahon. Then, on July 16, 2003, Joseph Giaimo, who purported to be the Applicant's new attorney, contacted the Commission's staff. At this time, Mr. Giaimo requested that the Commission provide him with a copy of the transcript from the deposition of Francine Najjar.[1] The Commission's staff complied with Giaimo's request and provided a copy of the deposition transcript on the very same day.[2] Giaimo also requested an extension of time to respond to the staff's

[1] Although the Commission's staff informed Mr. Giaimo that the deposition transcript had already been provided to the Applicant's prior attorney, Mr. Giaimo requested and received another copy. See July 16, 2003 letter from David Mandell, Special Counsel to Joseph Giaimo, Esq.

[2] In subsequent discussions between Giaimo and the staff, Giaimo requested, and the staff provided several other *public* documents. In fact, the staff promptly provided every document requested by Giaimo to him.

recommendation. The Commission's staff denied Giaimo's request. By letter dated July 17, 2003, Giaimo renewed his request for an extension of time to respond to the staff's recommendation. See July 17, 2003 letter from Joseph Giaimo to the Commission's staff. On July 17, 2003, the staff orally denied Giaimo's request for an extension of time to respond, and on July 18, 2003, the staff denied Giaimo's request in writing.[3] See July 18, 2003 letter from the Commission's staff to Joseph Giaimo. On July 23, 2003, the Applicant submitted opposition papers, consisting of a 5-page affidavit signed by Joseph Najjar[4], a 17-page affidavit signed by Francine Najjar, ("Response") and numerous exhibits in response to the staff's recommendation.[5] The Commission has carefully considered both the staff's recommendation and the Applicant's response. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application.

III. GROUNDS FOR LICENSE DENIAL

A. The Applicant Provided False, Incomplete and Misleading Information in its License Application.

RDCS was incorporated on March 27, 2002, and submitted its license application to the Commission on April 17, 2002. See RDCS License Application ("Lic. App.") at 1, 3. Although Francine Najjar is listed as the president and sole principal of RDCS, the evidence before the Commission establishes the fact that her husband, Joseph Najjar is an undisclosed

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[3] Both 17 RCNY Section 2-08(a) and the staff's recommendation explicitly state that the Applicant has ten business days to submit any assertions of fact "under oath" and to submit any documentation that it wishes the Commission to consider in response to the staff's recommendation. See 17 RCNY Section 2-08(a); see also Recommendation at 26. Furthermore, the July 9, 2003 letter (provided with the staff's recommendation) from the Chairman of the Commission to the Applicant advises the Applicant that "under the Commission's rules, Rapid has ten business days to submit a written response to the recommendation... Any such response... should be delivered to the Commission's offices by no later than 5:00 p.m. on July 23, 2003." See July 9, 2003 letter from José Maldonado, Chairman of the Business Integrity Commission to Francine Najjar, President of RDCS. Finally, the staff's July 18, 2003 letter to Giaimo reminds Giaimo of the deadline for a response established by 17 RCNY Section 2-08(a).

[4] The Affidavit signed by Joseph Najjar is replete with self-serving statements that he "is not and have never been a principal of RDCS," and that he "never performed any work for the applicant." See Joseph Najjar Affidavit in Response to Executive Staff's Recommendation at 1-2. Furthermore, Joseph Najjar never testified before the Commission, as he stated in paragraph 3, page 1 of the affidavit he certified as true. As described herein, the Commission does not find Joseph Najjar's assertions about his role in RDCS to be credible.

[5] Despite the terms of 17 RCNY Section 2-08(a) providing ten business days to respond, Francine Najjar desperately states in her Affidavit in Response to Executive Staff's Recommendation ("Response") that "the Commission may deny my application because it has refused to extend my attorney's time to more properly respond hereto..." See Response at 16. To the contrary, the Applicant was clearly afforded the statutory time to respond.

principal of the Applicant. See Id.[6] Similarly, although RDCS did not disclose its close affiliation with any other business, the evidence before the Commission establishes that Rapid Demolition Co. Inc. ("RDC") and RDCS are plainly related given their locations, business practices, and the familial relationship of their principals.[7]

It is clear that Joseph Najjar, the husband of Francine Najjar, has played a prominent role in both RCDS and RDC. However, in a poor attempt to minimize Joseph's role in the Applicant business, Francine attempted to portray Joseph as a passive adviser or resource whom she occasionally called upon for counsel and advice. Although Francine admitted that "when he's out we try to help each other out," she insisted that Joseph has never performed any work for RDCS. See Transcript of Deposition of Francine Najjar ("Najjar Tr.") at 19. Unbelievably, according to Francine, Joseph only "guides me a little and gives me some advice." Id.[8] According to Francine, Joseph's role in RDCS is so minimal, that he never even answers RDCS' telephone. See Id.[9]

Among other things, evidence of Joseph's control over both RDC and RDCS is illustrated by the contents of a letter from Joseph to Sheepshead Bay Brokerage, dated June 26, 2002.[10] In the letter, Joseph states that:

> "This letter is to advise you that in the past few months **Rapid Demolition Co., Inc.** opened a container service called **Rapid Demolition Container Services**, and is now in the process of retiring the 1985 Mack and the 1985 Autocar. We will be

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[6] Local Law 42 sets forth a broad definition of a principal. This term includes individuals with an ownership interest, as well as "all other persons participating directly or indirectly in the control of such business entity." See Admin. Code § 16-501(d). Furthermore, Joseph Najjar, as the husband of the majority stockholder Francis Najjar,, would be deemed by Local Law 42 to be a principal of RDCS even if he did not participate in the control of RDCS. See 16 NYC Code §1-01.

[7] Although Francine went great lengths to assure that the Commission did not link RDCS to RDC, in colloquy during her deposition, RDCS' attorney remarked that "... I conducted my own investigation [into the connection between RDC and RDCS]" and determined that "she [Francine] had nothing to do with that [the wrongdoing of RDC] and Joseph Najjar has nothing to do with this..." Since Francine's attorney never talked to her about RDCS' connection to RDC "because [he] did not see fit," and although Francine had no knowledge of her attorney discussing these matters with her husband, it is unclear to the Commission why RDCS' attorney would conduct such an investigation without his client's knowledge.

[8] When asked what kind of advice Joseph gives her, Francine claimed "'you can do it' Encouragement advice, if I have a question about just general things." See Najjar Tr. at 19.

[9] This assertion is curious since Francine also testified that RDCS' telephone is also the home telephone for the Najjars.

[10] Joseph and Francine Najjar seemingly have a practice of not including their signatures on written letters. For instance, Francine appeared at her deposition and provided an unsigned letter to the Commission as an exhibit.

utilizing our new trucks, which are a 2002 Kenworth and a 2003 Mack full time.

The drivers of the new vehicles are as follows:

Joseph Najjar
Sean Cascone
Ted King will drive the van

At some point next week, we will be submitting to you plate surrenders for the two retired vehicles. We apologize for any inconvenience that this change in company names may have caused you or the insurance company.

We thank you for your prompt attention and cooperation in rectifying any confusion with the company name."

This letter is irrefutable evidence of the close connection between RDC and RDCS, and sheds light on the role that Joseph plays in each. Among other things, Joseph not only admits that RDCS is essentially a subsidiary of RDC, he also admits that he drives RDCS vehicles- in stark contrast to the submissions of RDCS and the testimony under oath of Francine. See infra. Furthermore, the letter itself, written by Joseph, is a strong admission that Joseph is directly or indirectly in control of the Applicant.[11]

Other evidence that establishes the connection between Joseph Najjar, RDC and the Applicant include the fact that RDC and RDCS presently share the same office address at 139 82nd Street, Brooklyn, New York.[12] See Najjar Tr. at 10, 17. Joseph Najjar and Francine Najjar's house is also located at 139 82 Street, Brooklyn, New York. See Id. at 5-6.[13] Before

[11] The letter also establishes the fact that RDC violated 16 Admin. Code § 16-508 and 17 RCNY § 2-05 (2) by not disclosing a list of the names and addresses of all principals, a list of the names and job titles of all employees and prospective employees, and a list of all vehicles to be used by the Applicant business. See infra. Such an omission is another independent ground to deny this license application.

[12] Although the Commission's investigation revealed that the Applicant used various other addresses in addition to the 139 82nd Street address, the applicant never provided the Commission with a different principal office address, a different mailing address, or a different garage address. See infra. Such an omission is another independent ground to deny this license application. For the first time, in its response, the Applicant admits "of course the Applicant used the same address at 13th Street" as RDC "because it was an absolute convenience." See Response at 4. Yet nowhere in any of the Applicant's prior disclosures to the Commission, including Francine's testimony did the Applicant make such an admission.

[13] Francine Najjar testified that RDCS' and RSC's offices are located in different rooms of the house. This testimony, which strains credulity, does nothing to suggest that the businesses are separate and unconnected. Instead, the testimony simply highlights the lengths that the Applicant will go to mislead the Commission.

moving its office to the Najjar's residence in approximately November, 2002, RDC maintained an office at 2550 W. 13th Street, Brooklyn, New York. See Id. at 9-10. Not coincidentally, the Applicant provided its customers with invoices which list the same 2550 W. 13th Street address.[14] Thus, it is clear despite Francine's assertions and the Applicant's submissions, that based on the evidence, the Applicant and RDC have always shared office space and have moved together from office to office.[15]

In addition to sharing offices and principals, further proof that the Applicant and RDC are inextricably linked is established by the fact that both companies use and have used the same telephone numbers. At her deposition, Francine stated that RDCS uses telephone number (718) 836-5905 to conduct its business. See Id. at 11.[16] Francine was clear when she stated under oath that RDC uses telephone number (718) 745-3366 to conduct its business, and that RDC and RDCS use separate telephone numbers. See Id. at 11-12. However, in direct conflict with Francine's testimony and RDCS' license application, RDCS' invoices list not only the same address as RDC, (2550 W. 13th Street, Brooklyn NY) *see supra*, but the same telephone number as well ((718) 745-3366). Furthermore, the New York City telephone directory lists (718) 745-3366 as RDCS' telephone number. The interchangeability of telephone numbers is further evidence of the close relationship of RDC and RDCS.[17]

More telling, perhaps, on the issues of the overlapping operations of these companies and Joseph Najjar's role is the paper trail by Joseph and Francine concerning many facets of the Applicant business. In addition to

[14] The fact that the Applicant failed to disclose the 2550 W. 13th Street address to the Commission as required is discussed below. Although Francine testified that RDC formerly worked out of 2550 W. 13th Street, she failed to mention that RDCS operated there too. Not only did the applicant never disclose this address to the Commission in writing, Francine failed to mention this address at her deposition under oath. Such an omission is plainly material, and is further evidence of Francine's misleading testimony and submissions to the Commission. See infra.

[15] In fact, the applicant affirmatively stated that it did not "share any office space, staff or equipment with any other business or organization" on the license application that Francine certified as true. See Lic. App. at 5, question 10.

[16] This is also the Najjar's home telephone number. See Lic. App. at 23; see also Najjar Tr. at 11. Interestingly, although Francine acknowledged that she sometimes helps her husband by answering the telephone for RDC, in a further effort to conceal Joseph's involvement, she stated that Joseph never answers the RDCS telephone. Because RDCS' telephone number is also Joseph Najjar's home telephone number, the Commission should find this proposition difficult, if not impossible, to believe. Contrary to all of the other information provided by the Applicant, the Applicant's response now states for the first time that (718) 746-3366 is the Najjar's home telephone number. In its response, however, the Applicant decided to ignore all of the evidence that establishes the fact that the Applicant shares RDC's telephone number (718) 745-3366. See Response at 4.

[17] The interchangeability of RDC and RDCS is also demonstrated by the fact that many of the applicant's customers first contact RDC, and then are "transferred over" to the applicant.

writing the above-mentioned June 26, 2002 letter to Sheepshead Bay Brokerage on behalf of the Applicant, Joseph Najjar filled out the license application for RDCS and the principal disclosure form for Francine Najjar (that Francine later signed). See Najjar Tr. at 44-46.

Not coincidentally, Joseph's name appears throughout a bevy of documents concerning the operations of the Applicant. Although Francine stated that she used her personal savings for unknown down payments on two new trucks, the invoices establish that Francine was not alone in these purchases. See Id. at 14-16. For instance, an invoice establishes that RDC traded in a truck in exchange for a new RDCS truck. The invoice states "trade in allowance between... and Joe at Rapid Demo." Although at her deposition, Francine could not even estimate the amount of the down-payment/deposit for this vehicle, the invoice establishes that a cash deposit of $5,000 was submitted and that the value of the trade-in truck was $17,000. Furthermore, Joseph, the man whom Francine described as totally unconnected to RDCS except for "advice and encouragement," signed as a "co-buyer" for this truck. Even more telling about Joseph's role in RDCS is the fact that he, not Francine, is listed as the buyer's "contact" on the truck's invoice. The invoice also has the telephone number "745-3366"- sometimes RDC's telephone number, sometimes RDC's telephone number- listed next to "Joe's" name. See undated invoice for 2002 Kenworth T-800 truck. Another truck invoice, dated May 3, 2002, is for RDCS' purchase of a 2003 Mack CV713 truck for a total price of $110,831.25. Again, Francine's understanding of the details of this transaction was hazy at best. Also, a "lease agreement" for unspecified equipment, dated October 18, 2002, states that the Applicant's telephone number is "718-745-3366." Finally, both Francine Najjar and Joseph Najjar signed this lease agreement as "guarantors."

Joseph's role within the Applicant company is also revealed by an examination of the Applicant's cancelled checks and an examination of the Applicant's general ledger. Indeed, many of the Applicant's checks were written in the same handwriting as the Applicant's application, and were signed by Francine.[18] An examination of these checks reveals that some of the signatures, although in Francine's name, are in markedly different handwriting than the rest of Francine's signatures. On at least one check, Joseph Najjar signed a Rapid Demolition Container Services Inc. check. This, in and of itself, is uncontroverted proof that Joseph exercises control over the Applicant. Other documents prove that Joseph is in control of

[18] At her deposition, Francine admitted that RDCS' License Application was filled out by Joseph.

RDCS. For instance, listed in the Applicant's general ledger is a draw account for "Joseph Najjar," not Francine. Such access to finances is only fitting for a principal of a company.

The Applicant's response to the staff's recommendation barely merits a reply on this point. Nowhere does it address the factual basis for the staff's conclusion that the Applicant provided false, incomplete and misleading information to the Commission concerning Joseph Najjar's status as a principal of RDCS, and RDC and RDCS' close affiliation. The Applicant's response all but concedes this point. See Affidavit in Response to Executive Staff's Recommendation ("Response") at 3-5. (admitting connection between RDC and RDCS, and admitting Joseph Najjar's involvement with both companies.) The Response then pretends that there is nothing in the record that suggests that Joseph Najjar is an undisclosed principal of the Applicant, and that there is obviously a close connection between RDC and RDCS because "obviously there is a close connection between [Francine] and [Joseph] and more obviously... is the fact that many of RDC's former accounts will become accounts for the applicant." See Response at 3.

Against this clear and convincing evidence then, there is before the Commission only the groundless denial by Francine that her husband has never been a principal of RDCS and her assertion that he was only a principal of RDC. See Response at 2-3. Instead, at her deposition, Francine sought to portray Joseph as a passive advisor or resource whom she occasionally called upon for encouragement and advice. See Najjar Tr. at 19.

We do not think the record supports these assertions. In addition to filling out RDCS' license application and principal disclosure form, Joseph Najjar drafted letters on behalf of RDCS. Among other things, he admitted in a letter that he would be driving trucks for RDCS and that RDCS was essentially a subsidiary of RDC. See June 26, 2002 letter from Joseph Najjar to Sheepshead Bay Brokerage. Joseph Najjar signed as a "co-buyer" of a truck used by RDCS and is listed as RDCS' "contact" on the invoice for the truck. Furthermore, evidence establishes that Joseph Najjar wrote checks on behalf of RDCS and RDCS' ledger even contains a draw account for "Joseph Najjar." Amazingly, Francine does not even have a draw account established in RDCS' ledger. The record thus abundantly establishes that Joseph Najjar participates directly in the control of RDCS and is therefore a principal, that RDCS and RDC are closely affiliated

companies, and that the Applicant provided false, incomplete and misleading testimony about these subjects. See 16 NYC Code Section 1-01 (definition of principal). Based on this independent ground, the Commission denies RDCS's application.[19]

B. The Applicant's Affiliate, Rapid Demolition Co. Inc. Is Barred From Conducting Business With The City of New York and the State of New York For Five Years.

In November, 2002, Joseph Najjar signed a Stipulation of Settlement ("Stipulation") on behalf of RDC with the Office of the New York City Comptroller.[20] In the Stipulation, Joseph admitted that "Rapid failed to pay prevailing wages and supplements to four of its employees...," that "the failure of Rapid to pay prevailing wages and supplements... was a willful violation ...," that "this Stipulation of Settlement deals with multiple willful violations by Rapid...," that "Rapid, its successor, or any substantially-owned affiliated entity of Rapid, any of the partners of Rapid if Rapid is a partnership, any officer of Rapid who knowingly participated in this violation...or any successor is barred from submitting a bid on, or be awarded, any public work contract or subcontract, within the State, any municipal corporation or public body for a period of five years...," and that "Joseph Najjar as president of Rapid, did knowingly participate in both willful violations."

In its response, the Applicant does not even attempt to contest any of the evidence on this point, claiming it to be inapplicable to RDCS. See Response at 6. It is anything but inapplicable. The Applicant claims that Joseph Najjar's debarment and admissions in connection thereto should have no bearing on its application. The record abundantly establishes the close

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[19] The Applicant's response even makes the groundless accusation that the staff's recommendation violated Francine's "right to equal protection under the law under the 14th Amendment of the United States Constitution and the New York State Constitution and violates [her] rights under Title VII and the state Human Rights Law not to be discriminated against on account of [her] gender..." See Response at 5 and 16-17. This is an absurd and desperate accusation given that the totality of the evidence establishes Joseph Najjar's role as a principal in the company. Nevertheless, the Commission notes that it has granted numerous license applications to female owned and female operated business.

[20] In connection with a scaffolding collapse under a Department of Sanitation contract awarded to Rapid, the New York City Department of Investigation ("DOI") issued a report describing RDC's irresponsible record. DOI found that RDC had a long history of unsafe demolition practices, that RDC failed to follow Department of Buildings ("DOB") approved demolition plans and that it ignored Building Code requirements. The DOI report also indicated that the DOB issued 21 safety violations to RDC, that RDC ignored a Stop Work Order issued after a scaffolding collapse and continued demolition of a building in an unsafe manner, that RDC's key supervisor, Philip Schwab, has criminal convictions directly related to his work in demolition and is the subject of numerous allegations of fraud and misconduct.

connection between RDC and RDCS, and Joseph Najjar's status as a principal of RDCS.

The evidence is clear and uncontested that the admissions and the consequent debarment from city and state projects of the Applicant's affiliate and one of the Applicant's undisclosed principals bear a direct relationship to the fitness of this Applicant to conduct a trade waste business. Based on this independent ground, the Commission denies RDCS's application.

C. The Applicant's Affiliate, Rapid Demolition Co. Inc. Owes Over $80,000 To The New York State Tax Commission.

On February 25, 1999, the New York State Tax Commission filed a state tax lien in the amount of $80,278.78 against RDC in Supreme Court, New York County. It is apparent that the Applicant's affiliate failed to pay its debts related to its business in a timely fashion, if they were paid in full at all.

In response, the Applicant claims to have attached as Exhibit "A" a stipulation of settlement between the New York State Insurance Fund and RDC.[21] This is erroneous. Instead, the Applicant attached as Exhibit "A" a copy of a stipulation of settlement before the Comptroller of the City of New York regarding the failure of RDC to pay prevailing wages and supplements to its employees. See Response at Exhibit "A." Thus, the Applicant's response provides no proof that this lien nor any other liens have been paid and satisfied.[22]

The failure of the Applicant's affiliate to pay all outstanding fines and penalties, and the blatant disregard for judgments and liens entered against the Applicant's affiliate businesses directly relate to the Applicant's lack of fitness for a trade waste removal license. Based on this independent ground, the Commission denies RDCS's application.

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[21] Also attached to the response as Exhibit "B" is a letter from the New York State Department of Taxation and Finance to Joseph Najjar and Francine Najjar regarding *personal* income taxes. Since no mention of *personal* income taxes was discussed in the staff's recommendation, Exhibit "B" is irrelevant, and we will not discuss the same here.

[22] Indeed, a more recent search for judgments and liens establishes that the New York State Tax Commission did indeed file a state tax lien against RDC on February 25, 1999 under docket number 001172022 in the amount of $80,278. More recently, on March 6, 2003, the New York State Commissioner of Labor filed a judgment against RDC under docket number 001910910 in the amount of $6,070, and on June 24, 2003, filed a judgment against RDC under docket number 001945750 in the amount of $17,040. See results of judgment and lien search performed on July 23, 2003.

D. The Applicant's Affiliate, Rapid Demolition Co. Inc. Employed Philip Schwab, a Convicted Felon, as a Superintendent.

Phillip Schwab is a superintendent for RDC, and has worked for RDC for approximately 15 years. Schwab was convicted in the United States District Court for the Eastern District of New York of bribing and offering to bribe a public official in violation of 18 U.S.C. Section 201(b)(1)(A). In affirming Schwab's conviction, the Second Circuit Court of Appeals found:

> "The evidence overwhelmingly established that Schwab paid $25,000 to a compliance officer of the United States Environmental Protection Agency and offered to pay him an additional $25,000. Schwab paid the money to the EPA officer to overlook the fact that Schwab's demolition company had not complied with regulations governing asbestos removal. The evidence included tape recordings of conversations between Schwab and the EPA officer." United States v. Schwab, 886 F.2d 509, 510 (2d Cir. 1989).

In a subsequent conviction, on April 12, 2000, Schwab pleaded guilty in the United States District Court for the Eastern District of New York for failure to collect and pay payroll taxes in violation of 26 U.S.C. Section 7215. On August 4, 2000, Schwab was sentenced to 3 months incarceration, one year supervised release, $55,142 restitution and a $5,000 fine.[23]

The Applicant's response on this point is contradictory in and of itself and as such, again barely merits a reply. In the response, Francine states that "neither [Joseph Najjar] nor Philip Schwab who briefly worked for [Joseph

[23] Moreover, a Lexis/Nexis search indicates that Phillip Schwab and his demolition companies are frequently associated with news reports of fraud and misconduct. For instance, a September 27, 1987 St. Petersburg Times article reported about a half-billion dollar bankruptcy proceeding involving numerous demolition companies owned and operated by Schwab. In these proceedings, customers, lenders and others accused Schwab of defrauding them of millions of dollars. The article further reports that, as a consequence, various federal prosecutors around the country were investigating allegations against Schwab of fraud, illegal dumping of hazardous and toxic wastes and racketeering. Also, an August 30, 1992 Newsday article reported that Schwab was the "driving force" behind Berlin Wrecking Company, which was alleged to have illegally dumped tons of hazardous waste in Long Island City, New York. Two Berlin officials pleaded guilty to charges in connection with the asbestos case. However, the Queens District Attorney eventually dismissed the case against Schwab. Furthermore, on May 21, 1997, the Ft. Lauderdale Sun-Sentinel reported that Thomas Schwab, Phillip Schwab's brother, was charged by federal prosecutors with using Cayuhoga Wrecking, a company co-owned by Phillip Schwab, to disguise $772,000 in illegal drug sale proceeds. Then, on September 20, 1999, The Palm Beach Post reported that Phil Schwab was being sued for defrauding a title insurance company out of more than $1 million. Schwab's attorney, who assisted Schwab in the fraud, was subsequently disbarred.

Najjar] have anything to do with me." See Response at 8. Yet the response also states that "obviously there is a close connection between [Francine] and [Joseph] and more obviously... is the fact that many of RDC's former accounts will become accounts for the applicant..." See Response at 3. Nevertheless, the Applicant does not dispute Philip Schwab's position with RDC, nor does it dispute Philip Schwab's criminal record.

The fact that the Applicant's affiliate employed a convicted felon provides grounds to conclude that the Applicant lacks fitness for a trade waste removal license. Based on this independent ground, the Commission denies RDCS's application.

E. The Applicant Provided False and Misleading Information Through Its Principal's Testimony and Other Submissions to the Commission.

The Commission is authorized to deny the license application of a company that fails to provide truthful information in connection with the application. See Admin. Code § 16-509(a)(i). Attached to RDCS' license application was a sworn, notarized certification signed by Francine Najjar, President of RDCS, attesting that she had "read and understood the questions in the attached application and its attachments, which consist[ed] of 79 pages" and that "to the best of [her] knowledge the information given in response to each question and in the attachments is full, complete and truthful." See Lic. App. Also, at her deposition, Francine stated that all of the information in the application was true and correct. See Najjar Tr. at 45-46. As discussed below, it is clear that the Applicant provided false and misleading information to the Commission through its omissions and through its written submissions and testimony under oath.

1. The Applicant Failed to Disclose Joseph Najjar as a Principal.

The failure of the Applicant to disclose on its license application any connection or affiliation with Joseph Najjar is significant in light of Joseph Najjar's record in the New York City construction and demolition industry. As explained above, Joseph Najjar is a principal of RDCS; indeed, he was the driving force behind its creation. Yet, his name does not appear anywhere in the license application of RDCS- not as a principal, nor as an employee, nor as the holder of a beneficial interest in the company. This omission was plainly material: Had RDCS disclosed that Joseph Najjar as a principal, its license application would have been subject on its face to

denial due to his recent history in the New York City construction and demolition industry.[24] Based upon this sequence of events and the testimony of Francine Najjar, the Commission concludes that Joseph Najjar caused RDCS to be incorporporated, and placed formal ownership of this company in his wife's name[25], so that he may continue to carry on business through nominees and surrogates in what he apparently considers the likely event that the Commission would deny a license application that contained his name.

The response does nothing to address this point, and provides no proof to the contrary except to make the self-serving statement that Joseph Najjar is not a principal of the Applicant. See Response at 8. Local Law 42 prescribes a broad definition of "principal" in order to foreclose precisely this type of maneuver. Accordingly, the Commission finds that RDCS failed to disclose Joseph Najjar as a principal. Based on this independent ground, the Commission denies RDCS's application.

2. The Applicant Failed to Disclose Its Relationship to Rapid Demolition Company Inc., Its Affiliated business.

The failure of the Applicant to disclose on its license application any connection or affiliation to RDC is significant in light of its record in the New York City construction and demolition industry. As demonstrated above, RDC is affiliated with RDCS; indeed, RDC may be considered a predecessor business to RDCS. Yet RDC's name does not appear anywhere on RDCS' license application. See Lic. App.

In Rapid's license application, Part I, Question 1 asks for the "Applicant business's addresses," and "Applicant business's telephone number(s) (including all cellular, fax and beeper phone number(s))." In response, the Applicant only listed the principal office address of "139 82 St., Brooklyn, NY 11209," and the telephone number "718 8365905." See Lic. App. at 1.

Based on the evidence, the Applicant's answers to Part I, Question 1 were false and/or incomplete. As stated above, the Applicant has maintained

[24] Francine Najjar, the wife of Joseph Najjar, was a knowing participant in the subterfuge. She certified that the information contained in the application was true. As shown above, the application was not truthful in that it did not disclose Joseph Najjar's status as a principal in RDCS.

[25] Joseph Najjar also transferred ownership of the Najjar family house solely to Francine's name, the family yacht to Francine's name and the family vehicles to Francine's name. The Response does not address these facts.

other addresses and telephone numbers that were not listed on the application.

Also, in the license application, Part I, Question 10 asks, "Does the Applicant Business share any office space, staff or equipment (including but not limited to telephone lines) with any other business or organization?" In response, the Applicant stated "No." See Lic. App. at 5.

Based on the evidence, the Applicant's answer to Part I, Question 10 was false. As explained above, the Applicant has shared office space, telephones, and indeed principals with RDC. The Applicant's response has not disputed this finding. Based on this independent ground, the Commission denies RDCS's application.

3. The Applicant's President Provided False and Misleading Testimony at Her Deposition Before the Commission and Provided False and Misleading Information In a Sworn Deposition Questionnaire.

On December 20, 2002, Francine Najjar gave sworn deposition testimony at the Commission and filled out a sworn questionnaire in connection with the deposition. At her deposition in connection with this application, the President of RDCS, Francine Najjar, testified falsely and misleadingly on a number of material issues. Her testimony was contradicted by documentary evidence, including the license application and business records, and by common sense. The inescapable conclusions are that Francine Najjar is unaware of many of the most basic aspects of the history, operations, and ownership of the Applicant company, that someone else is running the company, and that she came into her deposition fully prepared to give false testimony. None of these conclusions reflect well on the good character, honesty and integrity of this Applicant and the Commission denies the application on this additional independent ground as well.

In her deposition questionnaire, and again in her deposition testimony, it was abundantly clear that Francine was fully prepared to offer false information to the Commission about a variety of topics. For instance, Francine Najjar was arrested on two separate occasions. The first time she was arrested in New Jersey and charged with possession/use of marijuana/hash. The second time she was arrested in New York and charged with driving while intoxicated. Although Francine was arrested on two

separate occasions, in the deposition questionnaire which Francine certified as true, Francine was asked the following questions and submitted the following answers:

> Question 32: Have you ever been charged with any criminal violations? Include misdemeanor charges, felony charges, and all non-traffic violations (including DWI).
>
> A: Yes. One time.
>
> Question 33: Have you ever been arrested? Include misdemeanor charges, felony charges, and all non-traffic violations (including DWI).
>
> A: Yes. One time.

See Questionnaire at 8. Similarly, at her deposition, Francine was asked the following questions and responded with the following answers:

> Q: Question 33: "Have you ever been arrested including misdemeanor charges, felony charges, all non-traffic violations including DWI?" You answered "one time." That's the same thing?
>
> A: Yes, same thing.
>
> Q: Were you ever arrested any other times besides that?
>
> A: No.
>
> ***
>
> Q: Where you ever arrested in Flemington, New Jersey?
>
> A: I want to speak to my lawyer for a second.
>
> (Recess taken)
>
> A: I was in the car but I was a passenger so I wasn't the person that was driving. So I went to the- - they didn't cuff me or anything. I went to the precinct and then it was dismissed,

nothing—You know, that wasn't even supposed—that was supposed to be—I had no involvement or anything.

See Najjar Tr. at 37-40. In response to Francine's rambling, mostly unresponsive answer, she was asked if she was arrested again:

Q: Where you arrested as a result of that incident?

A: You know, I'm not even sure. They- - I don't remember.

See Id. at 41. Thus, it is clear that Francine initially lied under oath about her arrest record. Then, only after it became clear to Francine that the Commission knew about her complete arrest record, and after a consultation with her attorney, Francine sought to mislead the Commission with a mostly unresponsive answer by admitting that she was "a passenger in a car" who "wasn't driving." Finally, Francine stated that she does not "remember" being arrested in Flemington, New Jersey in 1996.

The response claims that Najjar "clearly" has no criminal record. See Response at 9. However, question 33 of the questionnaire and the corresponding deposition inquiries do not ask about criminal records. Rather, question 33 of the questionnaire and the corresponding deposition questions inquire about arrests. It is clear that Francine initially answered these questions deceptively, yet upon further questions, *and after* conferring with her attorney, decided to change her answers. In doing so, her intent to provide false and misleading testimony about the topic was clear.[26]

Francine also provided the Commission with false and misleading testimony about RDCS. As explained above, Francine testified that she was and has been the only principal of RDCS. Despite every opportunity to do so, Francine never testified that Schedule A needed to be updated to include her husband, Joseph Najjar, nor did she testify that Joseph Najjar should have been listed as an employee or as a driver. Francine Najjar also affirmatively *recertified* during her testimony that the license application was truthful and accurate. However, numerous pieces of evidence prove that Francine provided false and misleading testimony about the principals and the control of RDCS at her deposition. Just as the documents and testimony detailed above demonstrate that the Applicant filed a false application, they

[26] Contrary to the response, Francine's arrest record is not a basis for denial of this application. To the contrary, Francine's false and misleading testimony is a basis for the denial of this application.

also prove that Francine's testimony about the same was false and misleading. See supra.

The only logical conclusion that can be drawn from the totality of the evidence is that Francine purposely failed to disclose Joseph as a principal of the Applicant business, and did not disclose any involvement that Joseph has with the Applicant company. Francine was likely motivated by the fact that if Joseph were disclosed as a principal, the Commission would review the license application with even greater scrutiny. By this obvious omission and deception, she had hoped that the Commission would not make inquiries about her husband's involvement in RDCS and the connection between the Applicant and RDC. Based on this independent ground, the Commission denies RDCS' application.

F. The Applicant Failed to Update the Commission With Material Changes to its Application.

In the license application, Part I, Question 13 asks, "How many individuals (not including principals of the Applicant business) does the Applicant business currently employ?" In response, the Applicant stated "0." See Lic. App. at 6. Also, Part I, Question 15 asks "List the names, residence addresses, phone numbers, dates of birth, positions, planned work hours per day and social security numbers of all employees Applicant business presently believes will be employed by the Applicant business in its business on Schedule F..." The Applicant did not list any employees on Schedule F. See Lic. App. at 6, 30. Additionally, Part I, Question 18 asks "For each employee/principal who will operate a vehicle during the conduct of the Applicant's business, provide the operator's name, driver's license number(s), class(es) and expiration date(s) on Schedule I. The Applicant responded "N/A" on Schedule I. See Lic. App. at 7, 32.

Based on the evidence, the Commission should find that the Applicant's answers to Part I, Question 13, Part I, Question 15, and Part I, Question 18 were false. In his letter dated June 26, 2002, Joseph Najjar states that he, Sean Cascone and Ted King are "the drivers of the new vehicles..." for RDCS. Furthermore, at her deposition on December 20, 2002, Francine Najjar testified that the Applicant employed two individuals as drivers, Sean Cascone, and Scott Lomauro. Although the Applicant has the duty to advise the Commission of any material changes in its application within ten days, the Applicant first advised the Commission orally that it employed two individuals on December, 20, 2002. See 17 Rules of the City

of New York ("RCNY") Section 2-05.[27] Only after the Commission requested that the Applicant provide it with all required information in writing about these employees, did the Applicant properly advise the Commission.[28]

The response to this point has no basis in fact or reality. In the response, the Applicant maintains that the "applicant has no employees in the trade waste business," and that the only business conducted by the applicant is the C&D [construction and demolition] business..." See Response at 10. In complete contradiction, at her deposition, Francine admitted that although her "employees" are not taking a salary "yet," the "two drivers ... have an understanding that... they will be employed [by RDCS]." See Najjar Tr. at 19-20. Either the two drivers are employed by RDCS, or the Applicant obviously believes they *will be* employed by RDCS.[29]

In the license application, Part I, Question 16 asks "List vehicle identification numbers, registration numbers and license numbers for all vehicles to be used during the conduct of Applicant's business on Schedule G and attach a copy of the registration for each vehicle." In response, the Applicant stated "new business- purchase upon approval" on Schedule G. See Lic. App. at 6, 31.

Based on the evidence, the Commission should find that the Applicant's answer to Part I, Question 16 was false. Not only did the Applicant fail to provide the Commission with the fact that it acquired vehicles to be used during the conduct of the Applicant's business, the Applicant also falsely certified that it would "purchase vehicles upon approval"- presumably its license application. Joseph Najjar's letter dated June 26, 2002 refers to the use of a "1985 Mack," a "1985 Autocar," and a "van." New York State Department of Motor Vehicles records indicate that the Rapid companies also utilize a 2003 Kenworth dump truck, a 2003 Mack dump truck, a 1990 Ford van, a 2002 Kenworth dump truck, and a 1991 International truck. Although the Applicant has the duty to advise the Commission of any material changes in its application within ten days, here the Applicant first advised the Commission orally on December 20, 2002

[27] This disclosure was made in response to a question at Francine Najjar's deposition.

[28] However, the Applicant's response about employee information was incomplete. See Applicant's January 3, 2003 submission.

[29] Part I, Question 15 of the License Application clearly asks for information about all employees the Applicant business presently believes *will be* employed by the Applicant business. See Lic. App. at 6, 30.

that it acquired two trucks.[30] See 17 RCNY Section 2-05. The Applicant's response does not dispute the fact that the Applicant flouted the law when it failed to advise the Commission of the above material changes within ten days.

The Applicant's failure to update its application on so many material changes is another example of this Applicant's contempt for Local Law 42. Based on this independent ground, the Commission denies RDCS's application.

G. The Applicant Engaged In Long-term Unlicensed or Unregistered Activity.

As noted above, RDC was incorporated on March 27, 2002, and applied to the Commission for a trade waste license on April 17, 2002. The company and its predecessor never held a Department of Consumer Affairs carting license and has never been legally authorized to operate in the City of New York. Nonetheless, the company's president testified on December 20, 2002 that RDCS has been operating for "a couple of months." See Najjar Tr. at 18-19. Francine Najjar also testified that RDCS had two employees, owned two trucks, and had numerous regular customers and many more one-time customers.

By letter dated December 20, 2002, the Commission directed RDCS to cease and desist its unlicensed and unregistered carting activity. This letter, which was sent both to RDCS, and to its attorney states:

> "Rapid Demolition Container Services Inc. is not (and has never been) legally permitted to remove, collect or dispose of trade waste in New York City. To avoid any possibility of ambiguity, Rapid Demolition Container Services Inc. is hereby directed to **immediately cease and desist** from any such activity in New York City until it has obtained a license from the Commission. If Rapid Demolition Container Services continues to haul such waste without a license, the Commission may bring civil and criminal sanctions against Rapid Demolition Container Services Inc. and/or Francine Najjar. Furthermore, such activity could be considered in evaluating the application of Rapid Demolition Container Services Inc."

[30] The Applicant did not inform the Commission about the use of these vehicles for nearly six months.

See December 20, 2002 letter from the Commission's staff to RDCS and to Gerald McMahon, Esq. Despite the Commission's directive and warnings, the Applicant's own business records and dumping records prove additional unlicensed/unregistered activity.[31]

Despite Francine's testimony and documentary evidence, the Applicant's response incredibly denies that it ever operated a trade waste removal business. However, Local Law defines "trade waste" as

> "all putrescible and non-putrescible materials or substances, ... that are disregarded or rejected... including but not limited to garbage, refuse, street sweepings, rubbish, tires, ashes, contained gaseous material, incinerator residue, **construction and demolition debris** [emphasis added]..."

See Admin. Code §16-501(f). Furthermore, Admin. Code §16-505(a) states that any person or company engaged in the removal or disposal of trade waste is required to obtain the appropriate license or registration from the Commission. Based on all of the evidence above, it is clear that the Applicant operated a trade waste removal business without first obtaining the appropriate license or registration from the Commission.

The Commission is authorized to deny the license application of a company that has engaged in unlicensed or unregistered carting activity in the City of New York. See Admin. Code §§ 16-505(a), 16-509(c)(ii), 16-513(a)(i). RDCS plainly engaged in such activity. Under the circumstances, RDCS' unlicensed carting merits denial of RDCS' license application. The Applicant's response on this finding is baseless. Based on this independent ground, the Commission denies RDCS's application.

[31] Francine Najjar testified that RDCS "presently dumps its waste" at the following transfer stations within New York City: "Citywide, Pebble Lane and Atlas." See Najjar Tr. at 43. Such an admission is a per se violation of Local Law 42.

H. The Applicant Has Obstructed the Commission's Investigation by Failing to Provide Documents Required by the Commission Pursuant to a Licensing Investigation and By Failing to Cooperate With the Commission at a Licensing Deposition.

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 if an Applicant "has knowingly failed to provide the information and/or documentation required by the commission. . . ." Admin. Code. §16-509(b). The Applicants' failure to provide complete documents requested by the Commission constitutes another independent basis on which the Commission denies the application.

At her deposition on December 20, 2002, Francine Najjar testified that RDCS rents property on Stillwell Avenue to store its trucks and equipment. See Najjar Tr. at 13, 16-17.[32] Although she stated under oath that there is a written lease for the use of the property on Stillwell Avenue, the Applicant failed to produce a copy of the same upon the Commission's request. In complete contradiction to Francine's testimony, in its response to the Commission's request for a copy of this lease, the Applicant responded that "there is no contract..."[33]

Again, the Applicant's response defies Francine's own testimony under oath. Although Francine clearly stated that there is a written lease for the use of the property on Stillwell Avenue, the response states that "the truth is, that there is no lease." See Response at 16. Now, for the very first time, the Applicant states, in its response, that "there is a month to month oral agreement..."[34] See Response at 16.

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[32] The fact that Francine did not know the address of the property, the amount of monthly rent, nor the name of the landlord is evidence of how little she truly knows about the applicant business.

[33] The Applicant's response did not say that such a lease did not exist, rather, the response stated that "there is no contract." Nevertheless, one would expect a principal and president of a company to know if there was a written lease or not.

[34] Since counsel represented Francine throughout the application process, she cannot now credibly claim that she does not understand the definition of the word contract.

At her deposition, Francine was asked numerous questions about RDC and its involvement in illicit activities. Although Francine acknowledged that she worked for RDC for several years and that she discussed allegations of wrongdoing against RDC with her husband, she refused to cooperate with the Commission's investigation when she was asked about RDC's illicit activities. See Najjar Tr. at 8, 48. For instance, Francine knew that several newspaper articles had been written about RDC. Although she claimed that she never read the articles herself, she admitted that she discussed the articles with her husband. See Id. Yet, at her deposition, Francine refused to review the newspaper articles and discuss their subject matter:

> "I would really rather not. I'm not interested in what newspapers have to say. They always lie about things. I'm not interested in what newspapers have to say."

See Najjar Tr. at 49. Francine's refusal to review and discuss newspaper articles about a company that is an affiliate of the Applicant and in which she was an employee is evidence of her non-cooperation with the Commission'' staff.[35]

In its response, the Applicant does not even attempt to contest any of the evidence on this point. Based on this independent ground, the Commission denies RDCS's application.

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[35] Francine's attorney inadvertently described the relevance of the Commission's inquiries when he stated,

> "But obviously the Business Integrity Commission knows what it knows and the Department of Investigation knows what they know about Rapid Demolition and Joseph Najjar. You heard what her connection was with that business if that business has had any problems or her husband is in this business or something, then it would be a relevant inquiry..."

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. The evidence recounted above demonstrates convincingly that National falls far short of that standard. For the independently sufficient reasons discussed above, the Commission hereby denies RDCS's license application.

This license denial decision is effective fourteen days from the date hereof. In order that the Applicant's 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, unless advised to the contrary by those customers, and (ii) to immediately notify each of their customers of such by first-class U.S. mail. The Applicant shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: July 29, 2003

THE BUSINESS INTEGRITY COMMISSION

José Maldonado
Chairman

John Doherty, Commissioner
Department of Sanitation

Gretchen Dykstra, Commissioner
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation

Robert Walsh, Commissioner
Department of Business Services

Raymond Kelly, Commissioner
New York City Police Department