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

DECISION OF THE TRADE WASTE COMMISSION DENYING THE APPLICATIONS OF ACWELL PRIVATE SANITATION SERVICE, INC. AND RMR CARTING CO., INC. FOR LICENSES TO OPERATE AS TRADE WASTE BUSINESSES

Acwell Private Sanitation Service, Inc. ("Acwell") and RMR Carting Co., Inc. ("RMR"), two related companies (collectively, the "Applicants"), each have applied to the New York City Trade Waste Commission (the "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"), § 16-508. 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 that it determines, in the exercise of its discretion, lacks good character, honesty, and integrity. See Admin. Code §16-509(a). The law 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 applicant's failure to provide truthful information to the Commission in connection with the license application. Based upon the record as to these Applicants and for the reasons set forth below, the Commission finds that both Acwell and RMR lack good character, honesty, and integrity, and denies their license applications. The principals of both Applicants repeatedly provided false and materially

misleading testimony under oath to the Commission in connection with their license applications. The false and deceptive sworn statements pertained not only to the Applicants' operations, but also to knowledge of and participation in the mob-run cartel that long dominated the City's commercial carting industry.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past forty years, and until only recently, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit 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 testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council found:

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

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

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

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

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

(6) "that organized crime's corrupting influence has resulted in numerous crimes and wrongful acts, including physical violence, threats of violence, and property damage to both customers and competing carting firms";

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

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

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

Local Law 42, § 1.

The criminal cartel operated through the industry's four leading New York City trade associations, the Association of Trade Waste Removers of Greater New York ("GNYTW"), the Greater New York Waste Paper Association ("WPA"), the Kings County Trade Waste Association

("KCTW"), and the Queens County Trade Waste Association ("QCTW"), all of which 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 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.

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 corporations associated with the Genovese and Gambino organized crime families (including the brother and nephew of Genovese boss Vincent "Chin" Gigante), included charges of racketeering, extortion, arson, and bribery. 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 a competitor from bidding on a "Vibro-owned" building, 200 Madison Avenue in Manhattan.

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of what was once one of New York City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay $7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a $10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the New York City carting industry.

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 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 New York City 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 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.

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 New York City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay $6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the 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 $3\frac{1}{3}$ to ten years, respectively. All four defendants agreed to be permanently barred from the New York City carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to a Class E environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli 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 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 New York City 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 have followed.

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 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, 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 "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." 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 remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(1). Acwell, owned by Richard Ribellino, holds a DCA license and timely filed an application for a license from the Commission. RMR, owned by Ribellino's son, does not hold a DCA license; on March 11, 1997, the Commission issued to RMR a temporary permission to operate without a license (see id. § 14(iii)(c)), which expired on June 30, 1999, and has not been renewed. RMR, therefore, can no longer lawfully operate.

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

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

(ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or

perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

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

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

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

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

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

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

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

(x) failure to pay any tax, fine, penalty, [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

Acwell and RMR filed with the Commission applications for trade waste removal licenses on August 29, 1996 and October 7, 1997, respectively. The Commission's staff conducted an investigation of both Applicants and, on July 15, 1999, issued a 24-page recommendation to the Commission that both license applications be denied. On August 13 and 23, 1999, the Applicants submitted written responses to the staff recommendation. See Affidavit of Richard Ribellino, Sr., sworn to August 12, 1999 ("Acwell Aff."); Affidavit of Richard Ribellino, Jr., sworn to August 12, 1999 ("RMR Aff."); Affidavit of Jonathan J. Faust, sworn to August 23, 1999 ("Faust Aff."); Supplemental Affidavit of Richard Ribelllino, Sr., sworn to August 23, 1999 ("Acwell Supp. Aff."); Supplemental Affidavit of Richard Ribellino, Jr., sworn to August 23, 1999 ("RMR Supp. Aff."); Affidavit of Carmine Evangelista, C.P.A., sworn to August 23, 1999 ("Evangelista Aff."). The Commission has considered both the staff's recommendation and the Applicants' response.[1]

[1] The Applicants, citing among other things a family illness and their counsel's schedule, have asserted that they have not been afforded sufficient time to respond to the staff's recommendation. See, e.g., Acwell Aff. ¶ 53; RMR Aff. ¶ 50; Faust Aff., passim; Acwell Supp. Aff. ¶¶ 1-3; RMR Supp. Aff. ¶¶ 1-3. Pursuant to the Commission's rules, the Applicants had ten business days, or until July 29, 1999, to submit their response. See 17 RCNY § 2-08(a). The Commission granted the Applicants two extensions of time to respond to the recommendation; as a result, they had nearly six weeks to do so. As demonstrated by the breadth of the response (comprising 52 pages of affidavits, not including exhibits), no further extension was warranted.

We note that one of the Applicants' purported grounds for a further extension was particularly disingenuous. The staff's recommendation was served on the Applicants on July 15. In their initial response on August 13, the Applicants complained – four weeks after the fact – that the recommendation had not been accompanied by copies of the record materials on which it was based. See Acwell Aff. ¶ 3; RMR Aff. ¶ 15. The Applicants at that time were represented by two law firms, both of which appear frequently before the Commission and thus were presumably aware of its practice of making such record evidence available for review upon request. Neither firm made such a request before the Applicants submitted their response. Nonetheless, upon receipt of the response, the staff hand-delivered copies of

For the reasons set forth below, the Commission finds that the Applicants lack good character, honesty, and integrity, primarily because their principals provided false and misleading testimony under oath in connection with their license applications. Accordingly, the Commission denies these applications.

A. Acwell Private Sanitation Service, Inc.

1. Acwell's President Testified Falsely about Numerous Carting Industry Matters, Including Knowledge of and Participation in the Cartel's Property Rights System and Organized Crime's Control over the Industry

Richard Ribellino is Acwell's sole shareholder and has been its president since 1980. According to its license application, Acwell was a member of the Manhattan-based local industry trade association, the GNYTW, for sixteen years, from approximately 1979 to 1995. Lic. App. at 6. Ribellino attended GNYTW meetings on behalf of Acwell and represented Acwell at the association over the entire period of its membership. Id. at 7. In a deposition conducted by the staff, Ribellino stated that he learned about the June 1995 indictment of the GNYTW and others from the newspaper and that Acwell resigned from the GNYTW "as soon as we heard that they were indicted." 5/28/97 Dep. Tr. at 19. He further testified as follows (id. at 20-21):

Q: How soon after you first learned of the indictments did you resign?

A: Immediately. I stopped paying the dues that month. From that month on, I never paid the dues.

Q: Did you make any payments at all to the Association?

A: After that date?

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record materials to their counsel, and the Applicants were given an additional week to supplement their response, which they did (through a third law firm). Although the staff had intended, as a courtesy, to include copies of record materials with its recommendation, the Applicants' assertion that the staff's later provision of those materials was untimely, and thus prejudicial, is specious. If the Applicants in fact had believed that they were prejudiced by not having received copies of record materials, they would not have waited four weeks to raise the matter. They appear to have raised the matter at all only to manufacture an issue for judicial review in the event of denial of their license applications.

Q: Yes.

A: No.

Q: Did you make any payments for legal fees or assessments?

A: After that date?

Q: After that date.

A: No. No payment at all.

This testimony is simply false. Acwell's own records demonstrate that the company continued to make payments to the GNYTW long after its June 1995 indictment. Acwell's records reflect the following: In July, September, and October 1995, Acwell issued checks (nos. 7116, 7314, and 7371) payable to the GNYTW in the amount of $690.00 each. In December 1995, Acwell issued a check (no. 7474) payable to the GNYTW in the amount of $5,905.03. In February 1996, Acwell issued a check (no. 7648) payable to the GNYTW in the amount of $345.00. In March 1996, nine months after the GNYTW was indicted, Acwell issued a check (no. 7788) payable to the GNYTW in the amount of $1,035.00.

Acwell asserts that some of these checks were not in fact issued or were voided and never paid, but concedes that two of them (nos. 7116 and 7371) were endorsed and deposited by the GNYTW, and cleared. See Evangelista Aff. ¶ 5. Acwell further admits that, up until the Spring of 1996, it was receiving invoices from the GNYTW and issuing checks to pay them. See id.; Acwell Supp. Aff. ¶¶ 7, 9. In this regard, Acwell does not state when it voided the later-issued checks. In any event, the company's bookkeeping vagaries aside, the salient point is that, contrary to Ribellino's testimony, Acwell continued to send money to the GNYTW for many months after Ribellino learned of the trade association's indictment on enterprise corruption charges.[2]

Ribellino claimed that Acwell joined the GNYTW only to learn "what was going on with the Department of Consumer Affairs and the union." 5/28/97 Dep. Tr. at 17-18. Ribellino testified that he had never heard – even

[2] Acwell contends that its intention was to terminate its GNYTW membership as of June 28, 1995. See Acwell Supp. Aff. ¶ 7 & Ex. B. However, Acwell has not furnished the Commission with any contemporaneous written notification to that effect from Acwell to the GNYTW.

as a rumor – that joining the local trade association was a means of protecting customer routes from competitors. Id. He denied knowing that the associations enforced a system of allocating customers among members and claimed never to have even heard of any instance where a carter sought to have a dispute resolved through the association. Id. at 18, 84. He denied knowing or hearing that the GNYTW played any role in resolving disputes between carters. Id. at 23-24. Ribellino further claimed never to have heard that the trade associations were controlled by organized crime. Id. at 22.

Ribellino also claimed that he had never heard of the cartel rule whereby carters paid compensation to one another for the loss of customers, or "stops." 5/28/97 Dep. Tr. at 24. Although he testified that other carters routinely solicited Acwell's stops and that Acwell solicited the stops of other carters, Ribellino was unable to identify any of those carters or stops, and claimed that Acwell never had a dispute with another carter over a customer. Id. at 24, 26-27. Questioned about his knowledge of the "property rights" system, which for many years has been the subject of reporting in the media and was at the heart of the Manhattan District Attorney's case against the cartel, Ribellino replied vaguely he might have recently heard "something to that effect maybe in some of the papers." Id. at 18-19. More particularly, Ribellino stated that the GNYTW never presided over any dispute in which Acwell was involved and that Acwell had never paid money as compensation to another carter for the loss of a stop to Acwell. Id. at 28, 82.

Ribellino's professed ignorance of the carting industry cartel's rules, the trade association's pivotal role in enforcing those rules, and organized crime's control over the trade associations is overwhelmingly refuted by multiple sources of authority, including the City Council, the courts, confidential informants, Ribellino's fellow carters, Philip Barretti's business records, and Ribellino's own son.

To begin, as the Second Circuit observed, "[t]he hearings on [Local Law 42] revealed [that] the associations enforced the cartel's anticompetitive dominance of the waste collecting industry" – an industry in which, as stated in an authoritative 1986 New York State Assembly report, "no carting firm in New York City 'can operate without the approval of organized crime.'" SRI, 107 F.3d at 999. The "defining aim" of the local trade associations, "obvious to all involved," was "to further an illegal anticompetitive scheme." Id. Due to the pervasive scope of the mob-run cartel, "even th[o]se carters not accused of wrongdoing" in the Manhattan District Attorney's prosecution were "aware of . . . the . . . association rules regarding property rights in their customers' locations." Id. "The

association members [such as Acwell] – comprising the vast majority of carters – recognize[d] 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" by joining and remaining in it. Id. The City Council's findings and the Second Circuit's conclusions were confirmed by the jury in the criminal prosecution, which was aimed broadly and directly at the property-rights system itself. The guilty verdicts on the sweeping enterprise corruption charges underscored that the carting cartel's rules were so pervasive, entrenched, and rigorously enforced that no carter could credibly claim not to have known about them. Ribellino's categorical denials that he possessed even an inkling, let alone any knowledge, of any aspect of the cartel's workings cannot be credited.

Acwell asserts that the unanimous view of three branches of government – that the New York City commercial carting industry was so plainly and pervasively a mob-run cartel that no one participating in the industry could have failed to notice – has no bearing on the issue of Ribellino's "subjective knowledge." Acwell Aff. ¶ 30; see also Acwell Supp. Aff. ¶ 22. To the contrary, this informed and uniform view of the facts, together with the more particularized evidence recounted below, directly undermines Ribellino's contention that he knew nothing of the corruption swirling around him. Indeed, faced with the evidence marshaled in the staff's recommendation, Acwell has backpedaled from Ribellino's prior protestations of ignorance. For instance, Acwell no longer asserts that Ribellino was "unaware" of "various anti-competitive activities" – only that he never "participated" in them. Acwell Aff. ¶ 32. (However, as shown below, even that limited statement is false.)

Ribellino's deposition testimony before the staff also cannot be reconciled with the sworn statements of reliable confidential sources with many years of personal experience in New York City's commercial carting industry. Those sources confirm that the cartel's anticompetitive rules and practices were enforced by the trade associations. See Affidavit of Confidential Informant ("CI") #15407, sworn to January 16, 1997, ¶ 3; see also Affidavit of CI #15613, sworn to February 6, 1997, ¶ 4. Those rules were "known to *all* the [association] member carters." Id. (emphasis added). Indeed, the *primary* function of the trade associations, according to these sources, was to enforce rules designed to protect the "rights" of member carters to service their allocated stops without interference from other carters. Id. It was "understood" by association members that carters in New York City "respected" one another's customers and did not "take the work of other carters." Aff. of CI #15613, ¶ 4; Aff. of CI #15407, ¶ 5. It was also

common knowledge among member carters that the boards of directors of each of the associations mediated disputes between carters over stops. Aff. of CI #15613, ¶ 9; Aff. of CI #15407, ¶ 9.

Ribellino's assertion (5/28/97 Dep. Tr. at 22) that he never heard that the trade associations were controlled by organized crime is also fatally undercut by source information. It was "common knowledge" among member carters that the trade associations were controlled by organized crime. Aff. of CI #15407, ¶¶ 10-11; Aff. of CI #15613, ¶¶ 3, 10-11. It was also well known that each association's "business agent" held that position because he had connections to organized crime. Id. At large, general meetings relating to union contract negotiations, the associations' business agents sat on the dais, and it was well known among carters that those individuals were either members of organized crime or closely connected to members of organized crime. Id. Indeed, the consensus among carters was that the industry's formal labor negotiations were a sham, and that the "true deal" was made by the "wise guys." Aff. of CI #15407, ¶ 4.

Acwell's response to this evidence from well placed, reliable sources is that it has not had the opportunity to confront and cross-examine them at an evidentiary hearing. See Acwell Aff. ¶ 31; see also id. ¶ 4; Acwell Supp. Aff. ¶ 27. Of course, the Commission declines to identify its confidential sources, particularly to anyone from the very industry from which they fear retribution for providing information to law enforcement. In any event, it is well settled that Acwell has no right to an evidentiary hearing. As noted above, the Second Circuit already has held that an applicant for a carting license from the Commission has no entitlement to such a license and, therefore, no constitutionally protected property interest in such a license. SRI, 107 F.3d at 995. In the absence of such a property interest, the applicant has no constitutional right to a hearing on its application. See Litod Paper Stock Co. v. City of New York, No. 11054/97-001 (Sup. Ct. N.Y. Cty. June 19, 1997), slip op. at 3 (citing SRI). Remarkably, Acwell does not even refer to the SRI decision.

Local Law 42 affords a license applicant the right to "notice and the opportunity to be heard" before the Commission may deny its application. Admin. Code § 16-509(a). Acwell received the requisite notice and was given (and availed itself of) the opportunity to make a written submission in response to the staff's license denial recommendation. The Commission already has defined the content of the opportunity to be heard afforded to license applicants by Local Law 42, and it does not include the right to an evidentiary hearing. See 17 RCNY § 2-08(a). Where, as here, the federal

constitutional right to due process is not implicated, see SRI, 107 F.3d at 995, Acwell can insist only that the Commission follow its own rules. The Commission has done so, and Acwell does not claim otherwise. Moreover, in the Commission's judgment, an evidentiary hearing is not warranted here.

Ribellino's deposition testimony during the staff's investigation is refuted by not only the sworn statements of confidential sources but also the sworn testimony of fellow carters before the Commission. For example, Dominick Incantalupo, the president of Chelsea Sanitation Service Inc. and M&M Sanitation Corp. and Ribellino's business partner and contemporary, testified that the GNYTW's board resolved disputes between carters; that it was understood in the industry that carters "didn't solicit each other's stops"; that carters compensated one another for the taking of stops or traded stops of equal value; and that "everybody knew what the rules were." 5/7/99 Dep. Tr. at 55-57, 66-67, 83, 157, 168-69, 238. Incantalupo also confirmed the existence of the cartel rules whereby the stops of "outlaw" carters, who did not belong to an association, could be solicited by other carters, and "newcomer" carters purchasing routes would pay "two points" (i.e., 2% of the purchase price) to the GNYTW's "business agents," organized crime figures James Failla and, later, Joseph Francolino. Id. at 113, 116-17. Incantalupo knew that the "rules" were determined and applied by the business agents, to whom aggrieved carters could appeal from the board's decisions on carter disputes. Id. at 80, 82, 101-02, 127. Long before the industry-wide indictments in 1995, according to Incantalupo, the word "from the street" was that Failla was associated with organized crime, and Incantalupo knew that organized crime was "in the carting industry." Id. at 127, 165, 251. Accord October 20, 1998 deposition testimony of John Glauda, president of Action Carting Environmental Service (dispute resolution; compensation and stop-trading; two-percent rule; "outlaws"; respect for property rights of other carters; knowledge "on the street" that Francolino and the GNYTW were connected to organized crime). It is simply inconceivable that while carters like Incantalupo, alongside of whom Ribellino worked in the streets for decades (see 5/28/97 Dep. Tr. at 31-32), were well aware of the rules governing the property-rights system and organized crime's control over the industry, Ribellino never even heard rumors about those matters.

Other aspects of Ribellino's testimony are equally hard to credit. Ribellino denied knowing that his business partner, Dominick Incantalupo, whom he has known "all his life," ever served as a member of the

GNYTW's board of directors. 5/28/97 Dep. Tr. at 31-33.[3] Incantalupo in fact was a member of the GNYTW board from 1988 to 1996 and the GNYTW treasurer from 1988 to 1989. See Application for License as a Trade Waste Business of M&M Sanitation Corp., at 119. Asked whether he knew the names of anyone who was a principal, board member or representative of the GNYTW, Ribellino was vague and equivocal, admitting only that he knew the names "James Failla" and "Joe Francolino," and that he thought "they held that position" and "they were both with some association." 5/28/97 Dep. Tr. at 7-8. In the early 1990's, when Acwell was a GNYTW member, Failla was incarcerated for murder, and Francolino succeeded him as the association's business agent and de facto head. Given the notoriety of these individuals, a Gambino capo and soldier, respectively, and the length of time Ribellino has been in the industry (since 1970, see id. at 45), Ribellino's professed uncertainty about them seems feigned and deceptive. Indeed, Ribellino first met Failla when he (Ribellino) joined the GNYTW, saw him there often and on the dais addressing general meetings, and knew that the association's private office belonged to Failla. See id. at 8-9, 11-14, 62. Ribellino knew that Francolino succeeded to Failla's position at the GNYTW and, ultimately, conceded that Failla was the GNYTW's "business agent." Id. at 12, 59. "Everyone," according to the Commission's sources, knew that James "Jimmy Brown" Failla was a "wise guy." Aff. of CI #15407, ¶ 4.

The staff's investigation of Acwell uncovered specific evidence that, far from being ignorant of the "system," Ribellino actively participated in it. One reliable confidential source described a dispute that Ribellino had with another carter over Ribellino's refusal to compensate that carter for a stop according to the usual cartel "rules." See Affidavit of Det. Anthony Farneti, sworn to July 15, 1999, ¶ 6. The source recounted that the two carters' efforts to work out the dispute themselves failed. Id. The source also described the subsequent appearance by Ribellino and the other carter before the board of the local trade association, where the dispute was quickly and authoritatively resolved in accordance with the practices of the industry at the time and the rules of the mob-controlled cartel. Id. This account directly refutes Ribellino's sworn professions of ignorance of the workings of the

[3] Acwell, now aware that Incantalupo was candid in his testimony concerning the cartel's rules and organized crime's presence in the industry, attempts to distance Ribellino from him – taking issue, for instance, with the description of Incantalupo as Ribellino's "business partner." Acwell Aff. ¶¶ 35-36. That term, however, is entirely appropriate to describe joint owners of a building leased for commercial purposes. Moreover, the notion that Ribellino and Incantalupo merely "exchange pleasantries" (id. ¶ 37) cannot be squared with Ribellino's prior testimony that he has known Incantalupo all his life and worked alongside him for decades.

property-rights system and the trade associations' pivotal role in enforcing the cartel's rules.

Acwell's response to this evidence is telling. After having testified before the staff that Acwell never had a dispute with another carter over a customer, Ribellino now concedes otherwise. Apparently there were enough such disputes that Ribellino now can profess not to know which one the confidential source was describing. See Acwell Aff. ¶¶ 39, 41. Further, Ribellino does not deny that he took a dispute with another carter over a customer to a trade association – only that the association "resolved" the dispute. See id. Acwell's hair-splitting strongly suggests that the source's account is substantially accurate. Indeed, Acwell's further assertion that the dispute referred to might have been a mere "traffic incident" (Acwell Supp. Aff. ¶ 21) is indicative of the absurd lengths to which these Applicants will go to sow doubt where none exists.[4]

Evidence obtained by the Manhattan District Attorney's Office in the course of its investigation of Barretti Carting Corp., formerly one of New York's largest carting companies, further demonstrates that, contrary to Ribellino's testimony, Acwell was involved in disputes and negotiations with that company over at least four Manhattan stops. The owner of Barretti Carting, Philip Barretti, pleaded guilty in 1997 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. Barretti Carting also pleaded guilty. Among the documents seized in 1995 from Barretti Carting pursuant to search warrants was a computer printout entitled "Vacant Property List," which listed Barretti customers, locations, and "customer notes." The "customer notes," as well as handwritten annotations to them, describe the status of each stop. In some instances, locations are described only as "vacant" or "empty." Other notations, however, strongly suggest that the list was used to monitor the status of Barretti's disputes with other carters over those stops. For example, the list contains notes such as "refused to pay-we pulled sticker," "made peace," and "settled."

[4] Acwell contends that it should be permitted to cross-examine the confidential source before the source's "unsworn hearsay" should be considered by the Commission. Acwell Aff. ¶ 40. This makes no sense. Hearsay evidence by its nature is not subject to cross-examination. Moreover, hearsay is admissible in administrative proceedings in which evidentiary hearings are held, and may even provide the sole basis for an administrative determination. See, e.g., O'Hara v. Brown, 193 A.D.2d 564, 565 (1st Dep't 1993) (per curiam); Hirsch v. Corbisiero, 155 A.D.2d 325 (1st Dep't 1989) (per curiam). Where, as here, an evidentiary hearing is not even required, it is difficult to imagine what evidence would not be hearsay.

Barretti Carting's Vacant Property List contains specific notes about and references to Acwell. For example, the entry for Michele Café, at 343 Second Avenue, a location that Acwell serviced, reads "settled – ask SR." The entry for My Favorite Muffin, 11 John Street, reads "Acwell P/U as of 1-1-91" and "settled – ask SR." Acwell entered into a contract with the customer at this location on January 18, 1994, although sources there told Commission investigators that Acwell had serviced the business since its inception at least six years earlier. Commission investigators confirmed that Acwell continued to service this stop at least through February 1998. For San Sebastian, at 260 Broadway, the Barretti notations include "vacant as of 2-5-92," "Acwell [sic] Sanitation 11-1-94," "2 new customers there," "Acqwell [sic] San.," "go get new customers 2-15-95," and "ask SR if settled." This location eventually became a restaurant, American Renaissance, with which Acwell entered into a contract on September 14, 1994. For the Obsession Boutique, at 9 John Street, the Barretti notations read: "Ackwell [sic] have 47 Broadway Pizza Hut," "Acwell," and "settled – ask SR."

Ribellino denied that anyone from Barretti Carting ever demanded compensation for the loss to Acwell of any of its stops. 2/11/98 Dep. Tr. at 108-09. Asked whether Acwell serviced any locations previously serviced by Barretti, Ribellino admitted that it was possible. Id. at 109. The great volume of evidence about the workings of the property-rights system conclusively establishes that a carter could not simply "take" the work of another carter without certain inevitable consequences – particularly where the other carter was as powerful and closely connected to the cartel as Barretti. If Acwell "took" a stop from Barretti, Barretti would expect to be compensated either with money or with a stop of comparable value. See, e.g., Search Warrant Affidavit of Det. Joseph Lentini, sworn to June 5, 1995, ¶ 3; Aff. of CI #15407, ¶¶ 6-7; Aff. of CI #15613, ¶¶ 5-7. The references on the Vacant Property List to stops that were "settled" strongly indicates that there was disagreement between Barretti and Acwell over whose "claim" to those stops was superior and that the disputes were at some point resolved. In light of this evidence, Ribellino's testimony that Acwell never had a dispute with another carter over a stop, and that Barretti did not seek compensation from Acwell in accordance with the established "rules" known to and respected by all trade association members, cannot be credited.

In response to this evidence, Acwell does not deny that it had any disputes with Barretti Carting concerning these stops, nor that Barretti sought compensation from Acwell, nor that the disputes were resolved.

Acwell does deny that any compensation in fact was given. See Acwell Aff. ¶ 44; Acwell Supp. Aff. ¶ 12. This limited denial does not address other possible outcomes, such as whether the disputes were resolved in favor of Acwell or not pursued by Barretti (who was indicted in June 1995). In any event, however, the fundamental point made by these entries in the Vacant Property List, and not contradicted by Acwell, is that Acwell had disputes with Barretti Carting over customer stops – a fact denied by Ribellino in his deposition.

Finally, Ribellino's rote denials that he had ever so much as heard of the cartel rules enforced by the trade associations are fatally undercut by his own son's admissions. In a conversation recorded on September 25, 1997, in the course of the Commission's investigation of Acwell, Ribellino's son, Richard Ribellino, Jr. (known as "Richie"), sought to persuade a customer to switch to Acwell. The customer stated that he had used his current carter for more than twelve years, even though he "could have chosen anybody [he] wanted to." Richie replied:

> Never happened. Nobody would have picked this up. They would have told you to eat the garbage . . . I'm saying what they would have told you twelve years ago. Okay because this was his spot twelve years ago. Now you are a new generation, new time.

In other words, under the property-rights system, carters would sooner tell a customer to eat the garbage than violate the rules by taking another carter's stop. Richie's trenchant comments leave no doubt that he knew that carters retained rights to their stops and that other carters respected those rights.[5] It is inconceivable that Ribellino's twenty-year-old son understood these decades-old industry rules and practices but that Ribellino did not.

It has been repeatedly demonstrated and confirmed, in legislative hearings, judicial decisions, criminal prosecutions, and the Commission's own investigations, that for decades the City's commercial carting industry operated as an organized crime-controlled cartel, that the cartel's property-rights rules were enforced by mob-controlled trade associations, and that the cartel's rules and the mob's control were so pervasive and entrenched that

[5] Acwell dismisses Richie's telling remarks as "a bit of hyperbole." Acwell Aff. ¶ 45. The issue, of course, is not whether a carter in fact would have told a customer to eat garbage but, rather, whether a carter would have taken another carter's stop. During the cartel era, the latter was such a remote possibility that the former was more likely.

they could not possibly have escaped the notice of any industry participant and association member. Acwell, with Ribellino at the helm, operated in the industry and was a member of the GNYTW during the heyday of the cartel. Those facts alone would amply support the conclusion that Ribellino was well aware of organized crime's and the trade associations' central role in supporting and preserving the cartel. But there is even more here: Ribellino's resort to a local trade association to resolve a dispute with another carter about a customer stop; Barretti's business records documenting additional property-rights disputes involving Acwell and their resolution; and Ribellino's own son's candid admissions about how the cartel game was played. In light of all of this evidence, one cannot conclude that Ribellino's professed ignorance of the essential features of the corrupt industry in which Acwell has long been a participant was simply a confused mistake. One can only conclude that it was a series of deliberate lies, under oath, in the course of an investigation the sole purpose of which was to determine Acwell's fitness for licensure in the carting industry.

2. Richie Ribellino Testified Falsely about the Scope and Extent of His Employment by Acwell

The staff's investigation revealed that Richie Ribellino has been extensively involved in collections, solicitations, and other forms of customer contact for Acwell. During his deposition on October 22, 1997, however, he sought to downplay his significant role at Acwell. As demonstrated below, his testimony on this issue, taken as a whole, was false, evasive, and misleading.

During his deposition, Richie Ribellino testified that Paperman Supply Co. ("Paperman"), his father's restaurant supply business, was his "main job." See, e.g., 10/22/97 Dep. Tr. at 13, 16-17, 19-20, 30, 33-34, 36, 38, 39, 40, 48-49, 57. He stated that he was paid only by Paperman, not by Acwell. Id. at 18, 20. He testified that his standard workweek for Paperman consisted of fifty hours, and that he had worked such a schedule for at least the past two years. Id. at 14-15, 37. As to Acwell, he stated that he does "a little bit of collections here and there for [his father], to help him out . . . once in a blue moon," and that "once in a while I'll go and help them out and do a collection," but never more than once a week. See, e.g., id. at 13, 17, 19, 20, 21, 30, 33-36, 39, 40, 48-49, 57, 61. He testified that the occasional services he performs for Acwell "[u]sually take between a half hour and an hour maybe of my time. Like I says, a lot of time I do it during my lunch or, like, you know, times like that." Id. at 21. Finally, he stated that

he first performed services for Acwell in 1997 or perhaps 1996. See id. at 76.

Richie Ribellino's income tax returns tell a different story. In 1994, for example, his reported earned income was $27,453, the vast majority of which -- $25,000 -- was from Acwell. Similarly, for 1995, the returns indicate that he earned $20,000 working for Acwell and a mere $1,289 from Paperman.

The Applicants' response to these facts is noteworthy: "The income [Richie Ribellino] received from Acwell in [1994 and 1995] is not indicative of, or commensurate with, the work [he] performed there." RMR Aff. ¶ 19. Rather, Richie's father took $45,000 in income ordinarily payable to him from Acwell and attributed it to his son, whose tax bracket was presumably lower. See id. We need not opine on the legality of this maneuver, which the Applicants characterize as "perfectly legitimate tax planning." Id. It is enough to note that, if the Applicants' account is in fact true – and, therefore, in 1995, Richie Ribellino worked far more for Paperman than for Acwell and, indeed, for about half of the year worked a fifty-hour week for Paperman – then he surely earned far more from Paperman than the $1,289 that he reported on his income tax return.

In any event, it is clear that Richie Ribellino has devoted a much greater portion of his time to collections for Acwell than he claims. For example, although he was evasive during questioning about how many collections he had performed during the prior week, he eventually responded that "I would say maybe it was like – maybe it was like eight, I'd say tops. Let's just stick with eight." 10/22/97 Dep. Tr. at 24. Only one of those stops was in Brooklyn, where Paperman's premises are located; the remaining customers were in Manhattan. Id. at 25. It is difficult to see how he could have collected money from eight different locations in two boroughs in the mere "half hour, 45 minutes" that he claims it took. Id. Indeed, his father testified in a November 18, 1997 deposition that his son performs Acwell's "weekly collections" on Wednesdays and Thursdays each week. Inasmuch as Acwell services approximately 450-500 customers, it is inconceivable that Richie Ribellino could have taken only an hour or so per week to accomplish that task.

Throughout his deposition, Richie Ribellino attempted to convey the impression that he had little knowledge of, much less a significant role in, Acwell's operations. He professed ignorance whether Acwell had gained or lost any customers or had any disputes with customers or other carters in the

past six months. See 10/22/97 Dep. Tr. at 47. He claimed not to know who Acwell's principal competitors were. Id. He claimed that he does not even "deal with [Acwell's] customers." Id. at 62. He refused even to estimate the extent, if any, of his customer solicitation efforts for Acwell. Id. at 29-33.

This testimony was false and deceptive, as evidenced by Richie Ribellino's own, unguarded words recorded a few weeks before his deposition. In a September 25, 1997 conversation with a customer for which Acwell was competing with another carter, Richie revealed a relationship with Acwell that differs dramatically from what he sought to portray during his deposition. His statements included the following:

> I went through a big deal with this stop, I paid a driver big money to fucking come out of his route to show you . . . It has taken me six nights up the street . . . This guy just switched today, this guy switched yesterday, these people are switching.
>
> I took [your] sticker off because it is my place now. I am picking it up and my sticker has to be on there by law.
>
> . . . I am every night out here.
>
> . . . I will sit here all day and I will put my sticker and sit here all day.
>
> Never have I ever not did a favor for my customers; everyone has my beeper number. I give all my customers my beeper number 'cause they want to get in touch with me, which they do . . . [t]hey see the type of business we run.
>
> I like to have a nice relationship with my customers. . . I came by the other day - you were not here - just to see how everything's going. I stopped by . . .
>
> Every day, every day I'm here; what do you want me to do? Want me to stay in front? I mean really I was right here last week.
>
> . . . I did a lot to get this place; I gave my drivers money; I had a bunch of hassles . . .

> He [Joro Carting, a competitor] touched my stuff and put his over it; it belongs to me over here. I'm by law supposed to put a sticker. I have to have a sticker if I'm picking up. . . my sticker has to be up if I am servicing the account that is by law, every commercial business here has a sticker showing who they're using . . .
>
> Joro, I have problems with him all over, and he knows it. . . . I'm going to go to Jersey and start banging him because he's interfering with me.[6]

These statements make clear that, contrary to his sworn testimony, Richie Ribellino has devoted a significant portion of his time to Acwell's customers. Nor can these statements be dismissed, as the Applicants would have it, as mere "salesman puffery." RMR Aff. ¶ 17. The truth is that Richie Ribellino actively solicited customers for Acwell, knew that Acwell had recently acquired new customers, knew that it was customary and legally required for carters to display their stickers on customer locations, knew who Acwell's competitors were, and was involved in numerous disputes with at least one of them.[7]

Richie Ribellino's customer contacts have been not only far more extensive than he admitted during his deposition but also on occasion abusive, threatening, and violent. In June 1997, the Commission staff received a complaint about Richie from a customer who was being serviced by Joro Carting. According to the complainant, Richie was coming into her store once or twice each day over a three-week period to persuade her to switch to Acwell, and to collect on a disputed bill for Acwell's one-time removal from the store of some construction debris. Richie spoke and cursed loudly in front of her customers, and the complainant felt so intimidated by him that she considered seeking an order of protection. On June 30, 1997, Richie went to her store and stated, "Okay, this is it. Are you going to give me the $600 or not? No. Okay, that's your decision. We'll see." That evening, the complainant observed Richie periodically driving

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[6] In his deposition a few weeks later, Richie Ribellino denied knowing the name Joro, except to state that "[w]hen you say Joro, it like clicks, like I've seen it. I'm not a hundred percent, but I think I seen them trucks." 10/22/97 Dep. Tr. at 60. He denied that there was any other basis for his recognition of that name and denied knowing whether Acwell serviced any customer previously serviced by Joro or whether Acwell had lost any business to Joro. Id. at 61-62. This testimony plainly was false and deceptive.

[7] The Applicants assert that Richie Ribellino had no motive to minimize his involvement in Acwell. See RMR Aff. ¶ 13. To the contrary, ample motive is furnished by the prospect that the license application of Acwell, a cartel participant, would be denied and that Richie's involvement in Acwell would jeopardize RMR's application.

past her store in a white BMW and left her place of business at approximately 11:00 p.m.[8] Upon returning to the premises the following morning, the complainant discovered that her two front windows had been smashed. In the presence of police detectives, the complainant telephoned Acwell and spoke with Richard Ribellino who, while not conceding that his son was involved in the incident, assured her that she would have no further contact from Richie. In the ensuing nine months, she did not. However, in April 1998, the same complainant contacted the Commission and stated that Richie was again harassing her. Finally, the complainant's friend paid Richie $250 towards the amount allegedly owed and told him to "leave her alone." Thereafter, the complainant had no further contact from Acwell.[9]

This customer's experience is consistent with other complaints the Commission's inspectors received during the investigation of these Applicants. A number of customers interviewed by the inspectors described Richie Ribellino's behavior towards them as threatening, intimidating, and obnoxious. For example, Richie's sales pitch to one customer was that her current carter was "a piece of shit." Another customer, after being solicited by Richie, believed that his message was that her business "was going to suffer" if she did not select Acwell; she felt threatened and intimidated by him. A third customer reported that Richie lied to her about neighboring customers' having switched to Acwell. A fourth customer was told by Richie that he "has to switch" to Acwell. A fifth customer reported that Richie lied to her about her current carter's having gone out of business. A sixth customer, after switching from Acwell to Joro, was paid a visit by Richie that he found so physically "intimidating" that he enlisted the help of a neighbor to try to calm Richie down. These incidents form a disturbing pattern of customer abuse and intimidation by Acwell, through Richie Ribellino.[10]

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[8] Acwell's license application discloses that a white 1992 BMW is registered to Acwell. Lic. App. at 49. Richie testified during his deposition that he sometimes drives a white BMW. 10/22/97 Dep. Tr. at 126.

[9] The Applicants' response to this account is that Richie Ribellino was at all times "polite, professional and courteous." RMR Aff. ¶ 39. He further denies any role in breaking the customer's windows and speculates that rowdy bar patrons were to blame. Id. ¶ 41. We need not determine whether Richie or someone acting at his behest broke the windows. In all other respects, we credit the customer's account of events over Richie's; unlike him, the customer had no motive to lie or to distort the facts..

[10] The Applicants complain that they cannot fully respond to these customer complaints because they have not been provided with identifying information. See RMR Aff. ¶¶ 44-46; RMR Supp. Aff. ¶ 9. However, these customers provided information to the Commission's inspectors based upon assurances that their identities would not be made known to Acwell and Richie Ribellino. In the event that the Applicants seek judicial review of this decision, they may request in camera review of the memoranda detailing these complaints.

The Applicants also provided misleading information regarding Richie Ribellino's 1994 arrest and indictment for assault, criminal mischief, and criminal possession of a weapon. During his deposition, he initially denied but then admitted that he had been arrested. He explained the discrepancy by stating that he was under the impression that the Commission was not interested in "traffic information." 10/22/97 Dep. Tr. at 67-68. Richie testified that he had been arrested only "[f]or [an] auto accident." Id. Richard Ribellino, when questioned about legal expenses Acwell incurred in connection with the incident, testified only that his son was involved in "an accident" and that litigation arose from it. 2/11/98 Dep. Tr. at 62-63. The staff requested that related court documents be provided. On March 6, 1998, Acwell advised that the documents would be supplied as soon as they were obtained from former counsel. By June 1999, the documents still had not been provided. In a telephone call to Acwell's counsel, the staff again requested documents relating to the traffic accident and ensuing legal proceedings, noting that the Commission's investigation had revealed that Richie also had been charged with unlawful possession of a weapon in connection with the incident. Counsel replied that the "weapon" was the automobile Richie had been operating. Acwell finally supplied the requested documents on June 24, 1999. The documents revealed that after the traffic accident, a taser, or "stun gun," had been discovered in Richie's car. The Applicants' incomplete and piecemeal disclosures on this subject are consistent with the generally misleading tenor of the deposition testimony as a whole.[11]

* * *

In sum, both Acwell's president and his son provided false, evasive, and misleading testimony in connection with its license application. Accordingly, the Commission concludes that Acwell lacks good character, honesty, and integrity and denies its license application.[12]

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[11] In addition to their predictable contention that Richie Ribellino did not intend to mislead the Commission (see RMR Aff. ¶ 30; RMR Supp. Aff. ¶ 7), the Applicants assert that the Commission should not – indeed, may not – consider his criminal record as a "youthful offender" in connection with RMR's license application. See RMR Aff. ¶¶ 29, 32-33. The Commission is not doing so. The issue is not Richie Ribellino's criminal record but, rather, what he did and did not disclose to the staff about the underlying events. In any event, moreover, even if those disclosures were not problematic, the Commission would reach the same determination on these license applications.

[12] Acwell has submitted a number of letters from customers opining that the company's service is good and its prices fair. These materials are wholly inapposite to the grounds set forth in this decision for denial of Acwell's license application.

B. RMR Carting Co., Inc.

The Commission also denies RMR's license application. As discussed above, Richie Ribellino, RMR's president and sole shareholder, testified falsely and deceptively under oath before the Commission in connection with Acwell's and RMR's license applications. In addition, Richie Ribelllino's pattern of abuse of Acwell customers makes clear that his company is unfit for licensure in the carting industry.

Moreover, Richie Ribellino's deposition testimony establishes that RMR has no business premises, no assets, no capital, no business plan, no equipment, and no employee with knowledge of either general business practices or the management and administration of a carting company. See 10/22/97 Dep. Tr. at 6-7, 12-13, 79-92. At the time of his deposition, Richie had done virtually nothing to prepare himself to operate a carting company, other than to ask his father "sometimes some questions and stuff . . . You know, things like that. You know, about the trucks and stuff. Questions like that. . . Or, you know, about like, you know, running everything. You know, with the trucks, you know, how to do the routes and stuff like that." Id. at 85. Indeed, despite the fact that RMR held a temporary permission to operate for more than two years, it apparently never commenced operations. Thus, RMR is in all likelihood merely an alter ego of Acwell, formed for no other purpose than to hedge against the odds that Acwell's license application would be denied. However, even if there were no relationship between Acwell and RMR, the Commission would still deny RMR's license application based upon Richie Ribellino's demonstrated lack of good character, honesty, and integrity.

III. 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. Here, both Acwell's and RMR's principals repeatedly provided false, misleading, and evasive testimony under oath that was so pervasive that it must have been deliberate. In addition, Richie Ribellino's pattern of customer abuse provides another independent ground for denial of these applications. Moreover, the Commission concludes based upon the record before it that RMR is merely a potential stand-in for Acwell. Accordingly, the Commission denies both license applications.

This license denial decision is effective fourteen days from the date hereof. In order that Acwell's customers may make other carting

arrangements without an interruption in service, Acwell is directed (i) to continue servicing its customers for the next fourteen days in accordance with its existing contractual arrangements, and (ii) to send a copy of the attached notice to each of its customers by first-class U.S. mail by no later than August 31, 1999. Acwell shall not service any customers, or otherwise operate as a trade waste removal business in New York City, after the expiration of the fourteen-day period.[13]

Dated: August 27, 1999

THE TRADE WASTE COMMISSION

Edward T. Ferguson, III
Chair

Kevin P. Farrell
Sanitation Commissioner

Edward J. Kuriansky
Investigation Commissioner

Jules Polonetsky
Consumer Affairs Commissioner

Deborah R. Weeks
Acting Business Services Commissioner

[13] On July 14, 1999, Acwell and IESI NY Corp. applied to the Commission for approval of the proposed sale of all of Acwell's assets to IESI. On August 12, that application was amended to cover only Acwell's trucks and containers. The application remains pending before the Commission.

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

August 27, 1999

NOTICE TO CUSTOMERS OF ACWELL PRIVATE SANITATION SERVICE INC. REGARDING TERMINATION OF CARTING SERVICE

Dear Carting Customer:

The New York City Trade Waste Commission, which regulates private carting companies in the City, has denied the application of Acwell Private Sanitation Service Inc. ("Acwell") for a license to collect trade waste. **As of September 11, 1999, Acwell will no longer be legally permitted to collect waste from businesses in New York City. If Acwell is collecting your waste, you will have to select another carting company to provide you with that service by September 11, 1999.**

The Commission has directed Acwell to continue providing service to its customers through September 10, 1999. **If your service is interrupted before September 11, call the Commission at 212-676-6275.**

There are approximately 250 carting companies that are legally permitted to collect waste from businesses in New York City. There are several ways that you can find out which ones are willing to service customers in your neighborhood:

- **Find out which company is servicing your neighbor**. A carting company cannot, without a business justification satisfactory to the Commission, refuse to service you if it already has another customer that is located within 10 blocks of your business. You can find out which carting companies service your area by looking at the **carting stickers** that many businesses display on their store-fronts.

- **Consult public directories, such as the Yellow Pages.**

- **Call the Commission at 212-676-6275.**

To assist you further, we have given all 200 plus carting companies in New York City a list of all of Acwell's customers, including yourself.

The carting industry is changing for the better and **prices have been falling over the past three years**. Customers that shop around have been able to cut their carting bills by a third, and often by a half or more. You should use this opportunity to get the best rates and service by **soliciting bids from at least four carting companies** before signing a carting contract.

You have many rights under Local Law 42 of 1996, which Mayor Rudolph W. Giuliani signed in 1996 to address the corruption and anticompetitive practices that have long plagued the commercial waste industry in New York City, including:

- The right to be offered a contract by your carting company. A **form carting contract** that has been approved by the Commission may be obtained by calling the Commission at (212) 676-6208.

- The right to be charged a reasonable rate for waste removal services. The City sets the maximum rates that carting companies can charge. The City last year reduced the maximum rates for the removal of trade waste to **$12.20 per loose cubic yard** and $30.19 per pre-compacted cubic yard. Most businesses dispose of loose waste; only businesses that have trash-compactors dispose of pre-compacted waste. Under the new rule, businesses that dispose of loose trash in bags filled to 80% of capacity (as many businesses do) may not be legally charged more than:

  $2.66 for each **55** gallon bag of trash
  $2.42 for each **50** gallon bag of trash
  $2.17 for each **45** gallon bag of trash
  $1.93 for each **40** gallon bag of trash
  $1.59 for each **33** gallon bag of trash
  $1.45 for each **30** gallon bag of trash

- These rates are only **maximum** rates. Customers are encouraged to "shop around" and get bids from four or more carting companies to find a good price. Businesses should be able to get rates below $10.00 per loose cubic yard and $25.00 per pre-compacted cubic yard. You may also want to insist upon the right to terminate your contract with the carter on thirty days' notice. (There is no requirement that you give the same right to the carting company.)

If you have any questions or complaints about commercial waste hauling in New York City, call the Commission at 212-676-6275.

Edward T. Ferguson, III
Chair and Executive Director