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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 APPLICATION OF TOCCI BROS. INC. FOR A LICENSE TO
OPERATE AS A TRADE WASTE BUSINESS**

I. INTRODUCTION

By application submitted August 29, 1996, Tocci Bros. Inc. ("Tocci" or the "applicant") applied to the New York City Trade Waste 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 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). Based upon the record as to Tocci, the Commission concludes, for each of the following independent reasons, that the applicant lacks good character, honesty, and integrity and, thus, denies this license application:

(1) the applicant actively participated in the criminal cartel's customer-allocation, or "property rights," system by making illegal compensation payments to other carters;

(2) the applicant filed false and misleading documents in connection with its license application;

(3) the applicant falsified its business records; and

(4) one of the applicants' principals was convicted in 1994 of criminal possession of stolen property, a crime arising out of activities in the carting industry and bearing a direct relation to the purposes for which the applicant seeks a license.

II. 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, several hundred companies have provided those services. For the past forty years, and until only recently, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit recently described that cartel as "a 'black hole' in New York City's economic life":

Like those dense stars found in the firmament, the cartel can not be seen and its existence can only be shown by its effect on the conduct of those falling within its ambit. Because of its strong gravitational field, no light escapes very far from a "black hole" before it is dragged back . . . [T]he record before us reveals that from the cartel's domination of the carting industry, no carter escapes.

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

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched 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

further through the activities of individual carters and trade associations”;

- (8) “that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct”; and
- (9) “that a situation in which New York City businesses, both large and small, must pay a ‘mob tax’ in order to provide for removal of trade waste is harmful to the growth and prosperity of the local economy.”

Local Law 42, §1.

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

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

Id. (emphasis added).

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

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

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

In June 1995, all four of the trade associations, together with seventeen individuals and twenty-three carting companies, were indicted as a result of a five-year investigation into the industry by the Manhattan District Attorney's office and the New York Police Department. (A copy of the indictment is attached as Exhibit 1.) Those indicted included capos and soldiers in the Genovese and Gambino organized crime families who acted as "business agents" for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. The evidence amassed at the City Council hearings giving rise to Local Law 42 comported with the charges in the indictment: evidence of enterprise corruption, attempted murder, arson, criminal antitrust violations, coercion, extortion, and numerous other crimes.

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

third round of indictments in his continuing investigation of the industry, bringing the total number of defendants in the state prosecution to thirty-four individuals, thirty-four companies, and four trade waste associations.

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

On January 27, 1997, Angelo Ponte, a lead defendant and the owner of what was once one of New York City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay \$7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a \$10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the New York City carting industry. See People v. Angelo Ponte, et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Jan. 27, 1997) (copy attached as Exhibit 2).

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

market. Vigliotti agreed to serve a prison term of one to three years, to pay \$2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the New York City carting industry. See People v. Vincent Vigliotti, Sr. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Jan. 28, 1997) (copy attached as Exhibit 3).

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a \$1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did another Brooklyn carter, Dominick Vulpis. Brooklyn carter and KCTW secretary Raymond Polidori pleaded guilty to restraint of trade. These defendants agreed to pay fines ranging from \$250,000 to \$750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the New York City carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it. See People v. Frank Allocca, et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Feb. 13, 1997) (copy attached as Exhibit 4).

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

On July 21, 1997, Philip Barretti, Sr., another lead defendant and the former owner of New York City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay \$6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the Greater New York Waste Paper Association -- of which the applicant was a member for approximately ten years -- 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 1/3 to ten years, respectively. All four defendants agreed to be barred permanently from the New York City carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to a Class E environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade. See people v. Philip Barretti, Sr. et al., Indictment No. 5614195 (Sup. Ct. N.Y. Cty.), Tr. of Plea (July 21, 1997) (copy attached as Exhibit 5).

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, both pleaded guilty to federal charges of conspiracy to commit tax fraud and, respectively, to bribing a labor official and defrauding Westchester County in connection with a transfer station contract. In their allocutions, Suburban and Milo admitted that one objective of the tax conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

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

In sum, it is now far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Its existence has been proven beyond a reasonable doubt. The

proof at trial also established conclusively that the cartel which controlled the carting industry for decades through a rigorously enforced customer-allocation system was itself controlled by organized crime, whose presence in the industry was so pervasive and entrenched -- extending to and emanating from all of the industry's trade associations, which counted among their collective membership virtually every carter -- that it could not have escaped the notice of any carter. The jury verdict confirms the judgment of the Mayor and the City Council in enacting Local Law 42, and creating the Commission, to address this pervasive problem.

B. Local Law 42

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

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

§14(iii)(1). Tocci holds a DCA license and timely filed an application for a license from the Commission.

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

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

- (i) failure by such applicant to provide truthful information in connection with the application;
- (ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
- (iii) conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
- (iv) a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
- (v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering

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

- (vi) association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
- (vii) having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;
- (viii) current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;
- (ix) the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;
- (x) failure to pay any tax, fine, penalty, fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Admin. Code §16-509(a)(i)-(x).

III. DISCUSSION

On August 29, 1996, Tocci Bros. Inc. submitted to the Commission an application to operate as a trade waste removal business. See License Application, certified by Paul Tocci and Carl Tocci on August 28, 1996 ("Lic. App.").¹ On November 20, 1997, the Commission's staff issued a 21-page recommendation that Tocci's license application be denied because the staff's investigation yielded evidence that (1) the applicant actively participated in the carting industry's criminal cartel by making compensation payments to other carters; (2) the applicant made numerous materially false statements in connection with its license application; (3) the applicant falsified its business records; and (4) one of the applicant's principals was recently convicted of a crime related to the industry in which it now seeks a license. Pursuant to 17 RCNY §2-08(a), Tocci had until December 5, 1997 to submit to the Commission in writing any information it wished to have considered in connection with its license application. The Commission granted the applicant's request for additional time to respond to the recommendation and, on December 12, 1997, the applicant submitted its certified response.

The Commission has carefully considered the staff's recommendation, Tocci's response, and the record as a whole. Based upon that review, and applying the criteria set forth in Administrative Code §16-509(a), among others, the Commission concludes for the independently sufficient reasons discussed below, that Tocci lacks good character, honesty and integrity and, accordingly, in the exercise of its discretion, denies this license application.

¹ On September 27, 1996, the Commission denied Tocci's application for a waiver of the provision in section 11 (iii) of Local Law 42 that "any contract entered into by a trade waste removal business ... that has not received a license from the New York City Trade Waste Commission ... shall be terminable on thirty days written notice." The Commission denied the waiver application on the grounds, among others, that (1) the applicant's former principal, Dominick Tocci, was convicted in 1994 for criminal possession of stolen property; (2) the applicant made materially false statements in its waiver application submissions; (3) the applicant belonged to and benefited from its membership in an indicted trade association; (4) the applicant had been found guilty by the New York City Environmental Control Board of illegal dumping, and fined for that unlawful discharge and for failure to report it; and (5) the applicant's contracts evidenced the unequal bargaining power and abusive contracting practices that Local Law 42 was designed to address.

A. The Applicant Actively Participated in the Criminal Cartel's Property Rights System by Making Illegal Compensation Payments to Other Carters

The linchpin of the New York City carting industry's criminal cartel is the "property rights" system, a customer-allocation scheme under which carters, instead of competing with each other for customers, compensate one another for the transfer of customers, or "stops," thereby acquiring the exclusive right to service those stops. Such compensation payments among putative competitors, which effectuate an industry-wide agreement to restrain trade, are illegal. Indeed, they were part of the foundation of illegal acts on which the recent successful prosecution of carting industry figures for enterprise corruption was constructed. Substantial evidence obtained by the Commission staff in the course of its investigation of this applicant, including the sworn testimony of the applicant's president and corporate secretary, amply supports the conclusion that this applicant actively participated in the criminal cartel's property rights system by making illegal compensation payments to other carters to retain the right to service certain locations.

(1) Payments to Carl Bivona

On October 8, 1997, the applicant's president and corporate secretary, Paul Tocci, testified under oath before the Commission staff. Tocci's sworn testimony reveals that, in or about 1992 or 1993, the applicant made regular compensation payments totaling "tens of thousands of dollars" to Carl Bivona, another New York City carter, after Bivona found out that the applicant was servicing a Jay Street location in Brooklyn that Bivona previously had serviced. Tocci testified that, after negotiating with Bivona, the applicant made payments in amounts ranging from \$5,000 to \$7,000 each. Deposition Transcript ("Tr.") at 95; 108; 112; 115.² These

² Relevant portions of Paul Tocci's deposition transcript are attached as Exhibit 6, and were provided to the applicant with the staff's recommendation. The applicant's repeated intimations in its response that it was denied a full and fair opportunity to review the entirety of that transcript are disingenuous, at best. First, the applicant's prior counsel, Rosenman and Colin, LLP, which represented Mr. Tocci at his deposition, was made aware on numerous occasions (beginning in 1996) that deposition transcripts relied upon by the staff in recommending a license denial would be made available to the affected carter once the recommendation had been issued. Furthermore, when the applicant's present counsel, Gerald Padian, requested an extension of time to prepare a response to the staff's recommendation, he did not request the

illegal payments establish unequivocally that the applicant knew of and participated in the cartel.

Paul Tocci initially refused during his deposition to acknowledge that he understood the basis for Bivona's demand to be compensated for the Jay Street stop. Tr. at 104. However, he ultimately conceded that he was aware of the existence of the property rights system, admitting that he learned about it "through being around the industry, from my father, hearing what went on over the years." Id. at 105.³ Tocci also admitted that, at least as early as six or seven years ago, he heard "through the industry" that the Greater New York Waste Paper Association, to which the applicant belonged, mediated disputes between carters. Id. at 145. Indeed, Tocci personally observed association representatives, including the recently convicted head of the WPA, Frank Giovinco, "go into a side room," where Tocci understood them to be mediating disputes between carters. Id. at 146-49. In this regard, Tocci testified that, soon after the applicant purchased a route from Star Wastepaper in 1988, a dispute with another carter, M & G, ensued over a customer who had relocated from a stop on that route to a location not on that route. Id. at 152. According to Tocci, after the applicant declined to surrender the customer, M & G took the dispute to the WPA. The "association," specifically, Frank Giovinco, with whom Paul Tocci spoke in person, thereafter contacted Tocci and directed him to relinquish the customer to M & G. Id. at 155. Tocci agreed and gave up the stop. Id.

entire transcript of Mr. Tocci's deposition or any portion thereof. Finally, when Mr. Padian met with Deputy Commissioner Vignola and Deputy Commissioner Millman on December 11, 1997, they reaffirmed that he could review the entire deposition transcript on that or the following day. Mr. Padian declined that offer, stating that the part of the deposition transcript not relied upon in the recommendation "would not be a factor," and that he would focus instead on other matters. Mr. Padian then indicated, however, that he might nonetheless raise the so-called issue of the transcripts' availability. In letters dated December 16 and 17, 1997, the Commission staff reiterated that Mr. Padian could review the entire deposition transcript and designate additional portions for Commission review. Mr. Padian elected not to avail himself of these opportunities.

³ The applicant claims that Tocci did not initially resist to acknowledging that he understood the basis for Bivona's demand, and that he answered the questions posed honestly and fully. Response at 8. On the contrary, Tocci sought over approximately fifteen pages of testimony to avoid his ultimate concession that he was aware of "the system." Tocci's attempt throughout his deposition to present himself as a naive victim, a refrain repeated in the applicant's response, is not convincing. Moreover, the applicant's claim that it "objected to and resisted" the customer allocation scheme is not supported by any of the record evidence. See Response at 11.

Tocci's initial refusal to acknowledge that he understood the basis for Bivona's demand to be compensated also flies in the face of forty years of cartel operation in the New York City carting industry.⁴ Tocci was a member of a (now convicted) trade association "whose defining aim, obvious to all involved, [was] to further an illegal anticompetitive scheme." SRI, 107 F.3d at 999. As noted above, the United States Court of Appeals has already dismissed rote denials by carters such as Tocci of knowledge of the role their trade associations played in enforcing the cartel's criminal "property rights" system:

The association members--comprising the vast majority of carters--recognize the trade associations as the fora to resolve disputes regarding customers. It is that complicity which evinces a carter's intent to further the trade association's illegal purposes.

Id.

(2) Payments to Dominick Vulpis

Paul Tocci's testimony, together with financial records the applicant produced to the Commission, demonstrates that the applicant also made cartel payments to another carter, Dominick Vulpis, who, as noted above, pleaded guilty to attempted enterprise corruption in February 1997. Tocci admitted that, in or about 1994, Vulpis demanded to be compensated for the loss to Tocci of a stop at 25 Chapel Street in Brooklyn. Tr. at 162-66. As a result, the parties negotiated a total payment amount of \$20,000. Id. at 166. Tocci testified that the applicant thereafter received falsified invoices for

⁴ In its response, the applicant contends that it is unduly "tainted" and "prejudiced" by the recitation of this industry's sordid forty-year history, which culminated in the indictment and conviction of numerous carters and trade associations, including the trade association to which this applicant belonged. Were the Commission to ignore such facts, it would be ignoring the legislative history giving rise to Local Law 42, which detailed a criminal cartel whose very existence, as noted by the United States Court of Appeals, "can only be shown by its effect on the conduct of those falling within its ambit." SRI, 107 F.3d at 989. Moreover, the applicant's effort to distance itself from the cartel on the ground that it is a "waste paper" business is unavailing, inasmuch as the Greater New York Waste Paper Association, to which the applicant belonged, pleaded guilty to criminal restraint of trade. The WPA's former head, Frank Giovinco, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Several other companies that haul waste paper, including V. Ponte & Sons and Rutigliano Paper Stock, have been convicted or indicted for their roles in the New York City waste paper removal industry's criminal scheme cartel.

“consulting” services from “Lyn-Val Associates,” a company controlled by Vulpis. Id. at 169. The applicant’s financial records and six cancelled checks totaling \$20,000, payable to and endorsed by Lyn-Val between January and June 1995, disclose that Tocci falsely charged the payments, which ranged from \$3,000 to \$5,000, to a so-called “subcontracting” account.

Tocci does not pretend that its compensation payments to other carters constituted legitimate business transactions. Indeed, because (as discussed below) the applicant falsified its business records to disguise the payments and then lied to the Commission about them in its license application, it could not so pretend. Tocci’s guilty knowledge of the illegal nature of its participation in these transactions was confirmed at the outset of Paul Tocci’s deposition, when he first falsely denied understanding the basis for Bivona’s and Vulpis’s demands for compensation payments. Instead, it is clear from the record that this applicant knew of and played by the cartel’s rules, enforced by its trade association, just as did numerous indicted and convicted carter defendants in the Manhattan District Attorney’s case.

The applicant now contends that it was “forced” to pay Bivona and Vulpis because Paul believed that “both men posed a danger to himself and his company.” Response at 5-6. These claims -- devoid of any specific supporting facts describing relevant meetings, conversations, or other contacts -- are meritless. First, Paul Tocci’s initial attempt to stonewall the staff in his deposition by falsely professing ignorance of the cartel rules that resulted in Tocci’s payoffs to other carters renders unworthy of belief Tocci’s claim, both in his deposition and in the applicant’s response, that those payments were “extortion” payments. Viewed in perspective, this “extortion” claim is merely another disingenuous version of Tocci’s “run it up the flagpole and see who’ll salute” approach to dealing with the Commission. As the Commission observed when it denied Tocci’s waiver application, its background and contracting practices reflected its participation in and benefit from the cartel. Tocci is thus poorly situated to assert now that it was a victim of the very same cartel whose rules permitted it to retain its substantial customer base and to reap the benefits of cartel-inflated prices. In any event, even assuming (based on no evidence) that these illegal payments could be viewed as having been extorted when made,

no justification exists for the applicant's failure to disclose them in its waiver or license applications or, for that matter, at any point prior to Paul Tocci's deposition. Even if the payments themselves could somehow be explained as the product of allegedly legitimate fear on the part of this applicant, a proposition for which the applicant provides not a shred of evidentiary support, its subsequent false statements, discussed below, well after the cartel had been exposed and its key players had been indicted, cannot.

Also unavailing is the applicant's contention that the conclusion that it compensated Bivona and Vulpis for "stops" is refuted because the disputed locations were vacant before Tocci began to service them. The property rights the applicant acquired from Bivona and Vulpis were the rights to service specific *locations*, and it is those rights, which carters retained irrespective of customer changes, that yielded benefits that this applicant obviously valued in the tens of thousands of dollars. Finally, the applicant claims that the fact that it did not itself take the Bivona and Vulpis disputes to the WPA, proves that it was not a cartel participant. This contention, too, lacks merit. The applicant demonstrated its knowledge of and participation in the cartel by making unlawful compensation payments to its putative competitors, lying about those payments to the Commission, falsifying its records to conceal the payments, and reaping the illicit rewards that flowed from the absence fair market conditions. The applicant's bald assertion that it, rather than its customers, was victimized by the cartel, defies credulity. A far more likely explanation for the applicant's decision not to take these disputes to the WPA is that Tocci understood that, under the cartel rules it knew and followed, it would not prevail.

The applicant's active complicity in the cartel's anticompetitive practices demonstrates that it lacks the good character, honesty, and integrity required of licensees. Therefore, this license application is denied.

**B. The Applicant Filed False and Misleading Documents
in Connection with Its License Application**

The Commission also denies this license application on the independent ground that Tocci submitted false and misleading documents in connection with its license application. See Admin. Code §16-509(a)(i).

Paul Tocci's deposition testimony and other evidence establish that on its license application and related disclosure forms, the applicant (1) falsely denied that it lost or acquired any route or "stop" during the period of its trade association membership; (2) falsely denied that it ever had disputes with other carters over the loss of a stop; (3) falsely denied that a trade association or anyone holding a position in the association played a role in resolving any dispute involving the applicant over the loss of a stop; and (4) falsely denied that it had ever associated with any person who it knew or should have known was a member or associate of organized crime. Each of these false and misleading statements, among others discussed below, independently demonstrates that this applicant lacks good character, honesty, and integrity and that its license application should be denied.

(1) False Statements Relating to the Loss or Acquisition of Stops

According to its license application, Tocci was a member of the Greater New York Waste Paper Association from 1986 until November 30, 1995. Lic. App. at 70. Paul Tocci's father, Dominick, represented the applicant at the WPA through 1994, whereupon Paul Tocci represented the company. *Id.* at 70-71. The application required Tocci to disclose whether, during the period of its membership, it sold, purchased, or otherwise acquired or lost any route or "stop" and, if so, what role its trade association or anyone holding a position in the association played in that acquisition or loss. *Id.* at 71-72 (Questions 2a-2g). In response to these inquiries, the applicant identified only its purchase of a route from Star Wastepaper in 1988. *Id.* at 71-72 (Question 2a). The applicant's failure to identify its later relinquishment of a stop to M & G Carting and its purchase of stops in the mid-1990's from Bivona and Vulpis constitutes a series of materially false and misleading statements.

(2) False Statements Relating to Disputes with Other Carters

The applicant also was required to disclose in its application whether, during the period of its membership in the WPA, it ever had a dispute with another trade waste business, including any dispute involving the servicing of a customer, customer location, or "stop." Lic. App. at 73 (Question 3). The application further required the applicant to describe the resolution of

any such dispute, and the role the association or any person played in negotiating or resolving that dispute. *Id.* at 102-03 (Questions 3d, 3e, 3g). The applicant responded to each of these questions by entering “N/A” in the space provided.

Contrary to these representations, the applicant was involved in disputes about customer stops with at least three other trade waste businesses – Bivona, Vulpis, and M & G, as detailed above. Paul Tocci’s testimony reveals that the WPA and its business agent, Frank Giovinco, played a pivotal role in resolving at least one of those disputes, the dispute involving M & G’s claim to a stop. Thus, the applicant’s “N/A” responses to these questions, too, constitute a series of materially false and misleading statements.⁵

(3) False Statements Relating to the WPA’s Intervention

Tocci also misrepresented in its license application whether any indicted trade association ever played a role in resolving any dispute between Tocci and another carter. As noted above, Paul Tocci testified on October 8, 1997, that both the “Association” (*i.e.*, the WPA) and Frank Giovinco, the head of the WPA, intervened in connection with M & G’s claimed loss of a stop, and that the applicant complied with Giovinco’s direction that it cease to service that stop. *Tr.* at 154-57. In its license application, Tocci identified Giovinco as the WPA’s “business agent” and, thus, knew that Giovinco was an individual who held a position with the WPA. *Lic. App.* at 111. The applicant’s failure to disclose in response to Question 2e of the application the role that the WPA and Giovinco played in

⁵ The applicant’s purported explanation for having omitted this material information about its property-rights disputes with Bivona, Vulpis, and M & G is that “[t]he questions on the license application were clearly directed towards resolutions of disputes submitted to the [WPA].” *Response* at 12. The applicant’s assertion is flatly contradicted by the express wording of the questions, which merely identified the relevant *time frame* as period of the applicant’s trade association membership. In any event, the applicant read the questions broadly enough to deem its partial route purchase from Star Waste Paper worthy of inclusion and, unless the applicant has again failed to disclose material information to the Commission, the WPA played no role in that transaction. Thus, the applicant’s disclosure of that purchase belies its claim that the license application sought only information concerning the loss or acquisition of stops in which the trade association was implicated. Finally, Paul Tocci conceded in his deposition that “the Association” contacted him regarding the M & G dispute. *Tr.* at 154-55. Consequently, even the applicant’s strained reading of the questions would have required it to disclose the M & G dispute in its application.

its loss of a stop to another carter constitutes an additional materially false and misleading representation.⁶

(4) False Statements Relating to Knowing Association with an Organized Crime Figure

The license application and principal disclosure forms also required the applicant to disclose whether it had ever associated with any person that it knew or should have known was a member or associate of organized crime. Lic. App. at 109, 111 (Question 6j); Principal Disclosure Form of Paul Tocci, at 6 (Question 11j). In certified statements submitted in connection with its license application, the applicant and its president, Paul Tocci, stated:

At the time of my limited membership in the Greater New York Waste Paper Association, I had contact with Mr. Frank Giovinco, in his capacity as business agent of the Greater New York Waste Paper Association, as well as other trade association business agents and principals. At that time, I did not know, nor was there any indication that should have created an awareness on my part that Mr. Giovinco was identifiable as a member of organized crime. It is only now, after such contact, that I have heard of his alleged membership through knowledge of his indictment. The applicant's and its principals' dealings with Mr. Giovinco were limited to collective bargaining.

In his deposition before the Commission staff on October 8, 1997, Paul Tocci testified that, at least as early as approximately one year after Giovinco joined the WPA as a business agent, he heard that Giovinco was

⁶ The applicant seeks to justify these omissions on the ground that "[n]o 'dispute' was ever 'resolved' by the 'Association.' The business agent of an 'Association' merely dictated terms to [Tocci]." Response at 13. The applicant also contends that because it did not actually meet with Giovinco in a "side room" at the WPA, it did not participate in the WPA dispute resolution "process." *Id.* that has been described as taking a dispute resolution that warranted disclosure. The Commission rejects these frivolous contentions. Tocci acknowledged that the "Association," through its business agent, Frank Giovinco, contacted him regarding the M & G stop. Tr. at 154-55. Thus, he clearly regarded Giovinco as the Association's representative. The Commission is not in the least persuaded that Tocci "was not trying to mislead or hide anything," and that "[a]s soon as he recalled the incident with M & G during his deposition, he testified about it completely and openly." Response at 14.

associated with organized crime. Tr. at 158. Giovinco became the "business agent" for the WPA at least as early as 1992, according to information developed as a result of the Manhattan District Attorney's investigation. Tocci also testified to having heard as early as "maybe five years ago" that the WPA was controlled by organized crime. Id. at 150. Thus, the applicant's and Paul Tocci's statements that, during the period of its membership, it "did not know, nor was there any indication that should have created an awareness" that Giovinco was a member of organized crime, are false.

Similarly unpersuasive is Tocci's latest claim that, even though he had "heard" that Giovinco was involved in organized crime, such "[r]umors and innuendo[e]s [did] not make it true," and that he did not know of Giovinco's "actual membership" in the Mafia. Response at 14. Tocci admits that it "was under the impression that organized crime was involved in the Association" and had heard that Giovinco was associated with organized crime, yet seeks to dismiss this information as immaterial. Tr. at 158. At the same time, however, Tocci seeks to justify its illegal compensation payments to Bivona and Vulpis on the basis of just such "rumors." Response at 5-6, 8. Tocci cannot have it both ways. If mere innuendo allegedly induced Tocci to make illegal cartel payments, it was sufficient for the applicant to have understood that Giovinco was associated with organized crime. This is particularly true given Paul Tocci's specific admissions that (1) he was under the impression that organized crime was involved in the WPA; (2) Giovinco was the WPA's business agent; (3) he had several contacts with Giovinco to resolve a dispute with another carter; and (4) he had heard specifically that Giovinco himself was linked to organized crime. Thus, the applicant's claim that there was no "indication that should have created an awareness on [its] part that Mr. Giovinco was identifiable as a member of organized crime" is meritless. Clearly, Tocci knew, or at the very least had reason to know, long before Giovinco's indictment in 1995, that Giovinco was associated with organized crime.

Moreover, as noted above, Paul Tocci also testified that he had several contacts with Frank Giovinco concerning M & G's dispute with the applicant over a stop. Consequently, the applicant's and Paul Tocci's statement in the license application that "[t]he applicant's and its principals' dealings with Mr. Giovinco were limited to collective bargaining" also is

false. Tocci claims he “was not trying to mislead or hide anything,” and pretends that he simply forgot about his contacts with Giovinco concerning M & G. Response at 14. Tocci’s claim that he recalled the incident only during his deposition is simply not credible.⁷

C. The Applicant Falsified Its Business Records

As discussed above, the applicant made at least six separate sham “consulting” payments to “Lyn-Val Associates” to compensate Dominick Vulpis, another carter, for his loss to the applicant of a stop located at 25 Chapel Street in Brooklyn. See Tr. at 162-66. Vulpis and Tocci negotiated a total payment amount of \$20,000. Id. at 166. Paul Tocci testified that Vulpis told him and his father that he would bill the applicant for “recycling,” but that the applicant thereafter received invoices for “consulting” services from Lyn-Val. Id. at 169. Both characterizations of this sale of a customer were false. Indeed, Tocci concedes that Lyn-Val provided it no consulting services. Id. In any event, the applicant chose a third, equally false means of concealing this illegal transaction in its business records: charging the payments to its “subcontracting” account. Obviously, Lyn-Val, which is not a carting company, had no subcontracting relationship with the applicant, and Paul Tocci admitted in his testimony that the payments to Lyn-Val were not related to any subcontracting arrangement. See id. By recording those payments as “subcontracting” expenses, the applicant falsified its business records.⁸ This deception further supports denial of this license application. Finally, in response to Question 6b on its license application, the applicant denied that it ever falsified its

⁷ The applicant contends that Mr. Tocci’s deposition was conducted in an abusive and unfair manner and that, had the deposition been continued, Tocci and his counsel could have corrected certain (unidentified) “misunderstandings.” However, it is clear from the deposition transcript that Tocci’s attorney not only was provided, but also took, numerous opportunities to clarify the staff’s questions and Tocci’s answers, to object to the form of questions, and to ascertain that Tocci understood the questions posed, that his answers were complete, and that his testimony was supplemented whenever counsel and the witness deemed it appropriate conferring. See, e.g., Tr. at 14, 16, 17, 28, 31, 36, 42, 44, 46, 48, 51, 52, 66, 68, 75, 80, 98, 102, 103-05, 116-21, 153, 160, 166, 180. Furthermore, the applicant has been afforded a further opportunity to correct any alleged “misunderstandings” in its response to the staff’s recommended decision. The applicant has not done so, instead contenting itself with assertions that Mr. Tocci answered the questions posed to him not only honestly, but also “fully” and “completely.” Response at 8, 14.

⁸ The applicant has no response to this falsification other than a facetious statement that it had no “extortion” account to which to charge these cartel payments. Response at 16.

business records. This materially false statement provides an additional basis for denial.

D. The Applicant's Principal Has Been Convicted of a Crime Relating to the Carting Industry

Dominick Tocci, a former principal (until at least early 1994) of the applicant, was convicted on May 5, 1994 of criminal possession of stolen property. The basis for the conviction was Tocci's unlawful possession of 55 bins bearing the markings "PROPERTY OF NEW YORK CITY DEPARTMENT OF SANITATION" and "OFFICE PAPER RECYCLING PROGRAM." The containers were recovered from Tocci's business premises during the execution of a search warrant. These facts formed the basis, in part, of the Commission's September 27, 1996 denial of Tocci's application for a waiver, and provide sufficient grounds for the denial of its license application as well. See Admin. Code §16-509(a)(iii).

In opposing denial of its waiver application, the applicant argued that no relationship existed between that conviction and Tocci's business practices. The Commission concluded otherwise and does so again here. Because the stolen property Tocci possessed was recycling bins owned by the Department of Sanitation, the conviction clearly is related to the business for which the applicant now seeks a license. Consequently, the Commission is expressly authorized, consistent with N.Y. Correction Law §753(b)-(c), to consider that conviction in determining whether Tocci lacks good character, honesty and integrity and, thus, should not be issued a license. See Admin. Code §16-509(a)(iii).

The applicant has attempted to distance itself from Dominick Tocci by claiming in its license application that he retained his interest in the applicant company only until January 12, 1994. It is clear from the record, however, that Dominick Tocci, Paul Tocci's father, continued until well after that date to play an active role in the company's affairs. Dominick Tocci played the primary role in the applicant's negotiations with Dominick Vulpis regarding the payments the applicant made to Lyn-Val Associates to compensate Vulpis for the loss to Tocci of a carting stop. Dominick Tocci was present on both occasions when Vulpis visited the applicant's premises. He also discussed with his son whether to make the payments. Tr. at 162-

66. Furthermore, it was Dominick Tocci who “negotiated” the final sum to be paid to Vulpis. Id. at 166. Paul Tocci’s testimony also establishes that Dominick Tocci’s negotiations on behalf of the applicant took place long after he nominally relinquished his interest in the company. The applicant made its first payment to Lyn-Val Associates by check dated January 19, 1995, in the amount of \$5,000. Paul Tocci testified that Tocci’s first payment to Lyn-Val occurred “promptly” after the parties reached a settlement. Id. It is thus clear that Dominick Tocci’s negotiations with Vulpis on behalf of the applicant necessarily took place no earlier than late 1994, nearly a year after he allegedly ceased to be a principal of the applicant.⁹

In short, the applicant’s contention in its response that “the only connection between the conviction and [Tocci]” is that Dominck Tocci is the applicant’s current officers’ father is incorrect. Response at 17. Dominick Tocci’s criminal conviction constitutes an independent ground for denying this license application. See Admin. Code §16-509(a)(iii).

E. The Applicant Is Not Entitled to an Evidentiary Hearing

The applicant contends that it is entitled to a an evidentiary hearing, and that to deny Tocci a license without such a hearing would deprives the applicant of rights conferred by Local Law 42. See Response at 17-21. This argument is baseless. The statute provides that the Commission may refuse to issue a license to after “notice and an opportunity to be heard,” but confers no right to an evidentiary hearing. Admin. Code §16-509(a). Further, 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). Absent any cognizable property right, the applicant has no due-process right to hearing. Daxor, 90 N.Y. 2d 89, 99. The applicant has been afforded notice and, through its response to the staff’s recommendation, an opportunity to be heard.

⁹ It also is noteworthy that the license application states that Paul Tocci did not replace his father as the applicant’s representative at the WPA until 1995. Lic. App. at 71.

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. Based upon Tocci's demonstrated complicity in the cartel's anti-competitive practices through illegal payoffs, its many materially false and misleading statements in documents filed with the Commission, its falsification of business records, and its principal's conviction of a crime relating to the carting industry, all of which the Commission is authorized to consider under Local Law 42, the Commission denies this license application.

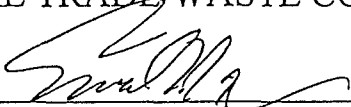
Tocci has asked the Commission not to enforce any decision denying its license application until Tocci has concluded a sale of its business. No sale application involving Tocci is pending before the Commission, and there is no evidence that Tocci has entered into a sale agreement with any potential purchaser.¹⁰ The Commission rejects Tocci's open-ended delay in the enforcement of this license denial.

¹⁰ At 4:00 p.m. on December 18, 1997, Tocci submitted what purported to be an application for its sale to IESI NY Corporation ("IESI"). The application on its face was incomplete, lacking among other things, certifications from any of the purchaser's principals and any sale agreement, executed or otherwise. IESI confirmed to the Commission that this "application" was submitted without its knowledge or consent. Although IESI has engaged in preliminary discussions with Tocci, IESI has not entered into a purchase agreement with Tocci and, in fact, was not informed by Tocci of the pending recommendation to deny Tocci's license application. Under these circumstances, it is clear that no sale application exists for the Commission's consideration.

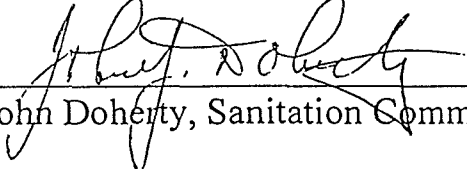
This license denial decision is effective fourteen days from the date hereof. In order that Tocci's customers may make other carting arrangements without an interruption in service, Tocci is directed (i) to continue servicing its customers for the next fourteen days in accordance with its existing contractual 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 December 26, 1997. Tocci 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.

Dated: New York, New York
December 19, 1997

THE TRADE WASTE COMMISSION

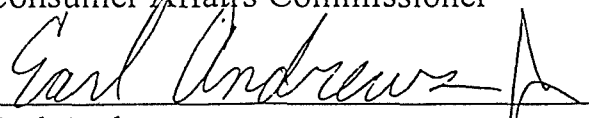


Edward Ferguson, Chair

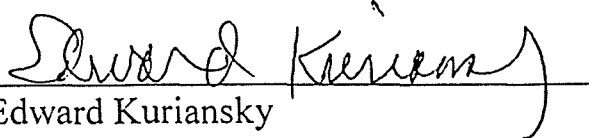


John Doherty, Sanitation Commissioner

José Maldonado,
Consumer Affairs Commissioner



Earl Andrews
Business Services Commissioner



Edward Kuriansky
Investigation Commissioner