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

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF U.S.A. RECYCLING INC. FOR RENEWAL OF ITS LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

U.S.A. Recycling Inc. ("USA" or "Applicant") has applied to the New York City Business Integrity Commission (formerly known as the Trade Waste Commission)("Commission") for renewal of its license to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §§16-505(a), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

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

(1) The Applicant's President and Sole Owner is the Subject of a Pending Federal Indictment Charging Him with the Crimes of Conspiracy, Mail Fraud and Embezzlement.

(2) The Applicant Provided False and Misleading Information in Connection with its License Renewal Application.

(3) The Applicant Failed to Notify the Commission of the Arrest of the Applicant's Sole Principal.

I. BACKGROUND

A. The New York City Carting Industry[1]

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. Beginning in the late 1950's, and until only recently, the commercial carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life":

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

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

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anticompetitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council found:

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

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[1] The Applicant objects to the staff's inclusion of this background history in its denial recommendation as irrelevant. See Letter from Murray Richman, Esq. ("Response") at 1. The Commission disagrees. New York City's waste hauling industry was systematically corrupted by organized crime for decades. In response, Local Law 42 mandated that all applicants meet a fitness standard of good character, honesty and integrity. See Admin. Code §16-509. As numerous courts have recognized, the history of entrenched corruption that led to the passage of Local Law 42 and the creation of the Trade Waste Commission sheds light on how this agency should exercise its regulatory authority. See Matter of DeCostole Carting, Inc. v. Business Integrity Commission, 2 A.D.3d 225 (1st Dept. 2003); Matter of John J. Sindone v. City of New York, 2 A.D.3d 125 (1st Dept. 2003); Matter of Hollywood Carting Corp. v. City of New York, 288 A.D.2d 71 (1st Dept. 2001).

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

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

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

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

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

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

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

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

Local Law 42, § 1.

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

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted on enterprise corruption, criminal antitrust, and related charges as a result of a five-year investigation into the industry by the Manhattan District Attorney's Office and the New York Police Department. See People v. Ass'n of Trade Waste Removers of Greater New York Inc. et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). The defendants included capos and soldiers in the Genovese and Gambino organized crime families who acted as "business agents" for the four trade associations, as well as carters closely associated with organized crime and the companies they operated. In essence, the carting industry's modus operandi, the cartel, was indicted as a criminal enterprise.

More carting industry indictments followed. In June 1996, both the Manhattan District Attorney and the United States Attorney for the Southern District of New York obtained major indictments of New York metropolitan area carters. The state indictments, against thirteen individuals and eight companies, were (like their 1995 counterpart) based upon undercover operations, including electronic surveillance intercepts, which revealed a trade waste removal industry still rife with corruption and organized crime influence. The federal indictment, against seven individuals and fourteen companies associated with the Genovese and Gambino organized crime families (including the brother and nephew of Genovese boss Vincent "Chin" Gigante), included charges of racketeering, extortion, arson, and bribery. See United States v. Mario Gigante et al., No. 96 Cr. 466 (S.D.N.Y.). In November 1996, the Manhattan District Attorney announced a third round of indictments in his continuing investigation of the industry, bringing the total number of defendants in the state prosecution to thirty-four individuals, thirty-four companies, and four trade waste associations.

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

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

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. In addition, two carting companies

and a transfer station run by Vigliotti's family under his auspices pleaded guilty to criminal antitrust violations. In his allocution, Vigliotti confirmed Ponte's admissions as to the scope of the criminal antitrust conspiracy in the City's carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors from entering the market through threats and economic retaliation. Vigliotti agreed to serve a prison term of one to three years, to pay $2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the City's carting industry.

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a $1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW, as well as their affiliated carting companies, pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives -- president Frank Allocca and vice-president Daniel Todisco -- pleaded guilty to attempted enterprise corruption, as did Brooklyn carter Dominick Vulpis; each of their defendant companies pleaded guilty to criminal restraint of trade. Brooklyn carter and KCTW secretary Raymond Polidori also pleaded guilty to criminal restraint of trade, as did two related companies controlled by Polidori. These individual defendants agreed to pay fines ranging from $250,000 to $750,000, to serve sentences ranging from probation to 4½ years in prison, and to be permanently barred from the City's carting industry. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption and agreed to similar sentences, fines, and prohibitions. All six defendants confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it.

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

On July 21, 1997, Philip Barretti, another lead defendant in the state prosecution and the former owner of the City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay $6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and $3\frac{1}{3}$ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract and to violate the Taft-Hartley Act by making unlawful

payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined $900,000, and the GNYTW was fined $9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined $200,000.

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

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

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry immediately challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, 940 F. Supp. 656 (S.D.N.Y. 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty.

Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Although Local Law 42 became effective immediately, carting licenses previously issued by the DCA remained valid pending decision by the Commission on timely filed license applications. See Local Law 42, §14(iii)(a).

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

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

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

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

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

(v) commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced

and Corrupt Organizations statute (18 U.S.C. § 1961 et seq.) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

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

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

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

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

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

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

USA was issued a trade waste license on March 24, 2004, with an effective date of March 1, 2004. The license was due to expire on February 28, 2006. See Admin. Code §16-506(a)(licenses are valid for a period of two years). On January 13, 2006, USA filed with the Commission an application for renewal of its trade waste license. See License Renewal Application. The sole principal and owner of USA is Joseph Moray ("Moray"). Id. at 6.

The staff has conducted an investigation of the Applicant and its principal. On January 27, 2006, the staff issued a 12-page recommendation that the application be denied. See Executive Staff's Recommendation to the Business Integrity Commission to

Deny the Application of U.S.A. Recycling Inc. for Renewal of its License to Operate as a Trade Waste Business ("Recommendation"). The Applicant's sole principal was personally served with the recommendation on January 31, 2006 and was granted ten business days to respond (February 14, 2006). See 17 RCNY §2-08(a). On February 13, 2006, the Applicant's attorney requested additional time and was granted an extension until February 21, 2006. The Applicant failed to submit a response (or another request for additional time) by that deadline. Nevertheless, on February 23, 2006, the Commission received a 2-page letter from the Applicant's attorney.[2] See Letter from Murray Richman, Esq. ("Response").

The Commission has carefully considered both the staff's recommendation and the Applicant's failure to submit a timely response. The Applicant's untimely response need not be considered by the Commission, thereby leaving the evidence against the Applicant uncontested. Regardless, despite the tardiness of the response, the Commission has considered the arguments raised by the Applicant and has found them to be unpersuasive. For the reasons stated below, the Commission finds that the Applicant lacks good character, honesty, and integrity and denies its license renewal application.

A. The Applicant's President and Sole Owner is the Subject of a Pending Federal Indictment Charging Him with the Crimes of Conspiracy, Mail Fraud and Embezzlement.

On March 2, 2005, an indictment was filed in the United States District Court in the Southern District of New York charging Moray[3] with the crimes of conspiracy to

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[2] In his response, Counsel claimed his trial schedule and the Commission's time constraints prevented him from submitting a thorough response. See Response at 2. The Commission notes that Counsel was provided ample opportunity to submit a response, given that he requested and was readily granted an extra week beyond the statutory time period required by Local Law 42. Furthermore, Counsel never sought a second adjournment and did not offer a legitimate explanation for failing to do so. In any event, the Applicant's suggestion that it could have provided a more thorough response is entirely speculative. Id. The Applicant's response offered either legal defenses or attempts to excuse the conduct cited in the recommendation; there is no indication that the Applicant would have submitted a factual defense to the charges in the pending indictment had more time been requested and obtained.

[3] The indictment charged thirty-two (32) defendants, including Moray. Most of the defendants were members or associates of the Gambino Organized Crime Family. Four of the defendants were specifically charged in the same four crimes as Moray: co-defendants Gregory DePalma, Robert Vaccaro, Robert Vaccaro, Jr. and James Vetrano. See Moray Indictment at 92-97 (Counts 46-49). Gregory DePalma was identified in the indictment as a soldier and acting capo in the Gambino Organized Crime Family. See Moray Indictment at 10. "In January 1999, Gregory DePalma was convicted of Federal racketeering charges in the United States District Court for the Southern District of New York. Following his release from prison in or about February 2003, DePalma retained his position as Acting Capo in the Gambino Organized Crime Family, the position he had held before his earlier racketeering conviction. As Acting Capo, DePalma supervised and profited from the illegal activities of the Soldiers and associates in his crew. Among DePalma's criminal activities were participation in extortions, loansharking, an assault with a deadly weapon, the interstate transportation and receipt of stolen and counterfeit property, labor racketeering, insurance fraud, and the operation of illegal gambling businesses." Id. The indictment identifies a meeting between Moray, DePalma and Vetrano on May 21, 2003 as an overt act in furtherance of the conspiracy. Id. at 93, 95.

embezzle from a union benefit plan, mail fraud, conspiracy to commit mail fraud and embezzlement from a public employee benefit plan in violation of 18 USC §§2, 371, 1341 and 664.[4] See Indictment, United States v. Squitieri, Moray, et. al., 05 CR 228 (SDNY)(AKH)("Moray Indictment").[5] Such crimes are racketeering activities within the scope of 18 USC §1961. Moray and several of his codefendants have been identified by the United States Attorney's Office (SDNY) as a "trusted associates of the Gambino family." See United States Attorney (SDNY) Press Release, dated March 9, 2005 ("Moray Press Release").

In determining whether an applicant possesses the good character, honesty and integrity required to operate a trade waste business, the Commission may consider the criminal proceedings pending against the Applicant (or its principal) for crimes that are directly related to the Applicant's fitness for participation in the industry. See Admin.

Robert Vaccaro was identified in the indictment as a Soldier in the Gambino Organized Crime Family. "In or about August 2003, the Gambino Family Administration placed Vaccaro in DePalma's crew. Thereafter, among other things, Vaccaro delivered messages between the Gambino Family Administration and DePalma. Among Vaccaro's criminal activities were participation in extortions, loansharking, an assault with a deadly weapon, interstate transportation and receipt of stolen property, labor racketeering, and the operation of illegal gambling businesses." Id. at 11.

Robert Vaccaro, Jr. was identified in the indictment as an associate in the Gambino Organized Crime Family and the son of Gambino Soldier Robert Vaccaro. Among Vaccaro Jr.'s criminal activities were labor racketeering and interstate transportation and receipt of stolen property. Id. at 12-13.

[4] According to 18 U.S.C. §2, "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

According to 18 U.S.C. §1341, "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both."

According to 18 U.S.C. §371, "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both." See 18 U.S.C. §371.

According to 18 U.S.C. §664, "Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or to the use of another, any of the moneys, funds, securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, or of any fund connected therewith, shall be fined under this title, or imprisoned not more than five years, or both."

[5] Moray was arrested and the indictment against him was unsealed on March 8, 2005. See SDNY Docket Report, United States v. Squitieri, Moray, et. al., 05 CR 228 (SDNY)(AKH)("Docket Report").

Code §16-509(a)(ii).[6] Furthermore, the application may be denied for "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." See Admin. Code 16-509(a)(vi). The pending criminal charges for conspiracy, mail fraud and embezzlement bear directly on the Applicant's fitness to participate and operate in the carting industry, especially given the public identification of the Applicant's principal and several of his codefendants as members and associates of organized crime.

The Commission is not required to consider the Applicant's untimely response, thereby leaving the evidence against it unrebutted. Furthermore, the Commission rejects the Applicant's response for being submitted in improper form; the denial recommendation clearly specifies that any "assertions of fact submitted to the Commission must be made under oath." See Recommendation at 12; Cover Letter to Recommendation dated January 31, 2006.

In any event, the Applicant fails to offer a substantive or factual defense to the pending indictment, merely relying on his plea of not guilty and the "presumption of innocence." See Response at 2. The Commission notes that the presumption of innocence is a legal concept that applies only to criminal trials and not to administrative proceedings before the Commission. Local Law 42 specifically provided that an indictment – a finding of probable cause by a grand jury that a crime had been committed and not a finding of guilt beyond a reasonable doubt - can serve as the basis of a license denial. See Admin. Code §16-509(a)(ii).

Accordingly, the Commission denies USA's license renewal application on this independently sufficient ground.

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[6] The Commission has the discretion to defer consideration of an application until a decision has been reached on a pending indictment. See Admin. Code §16-509(a)(ii). The Applicant asks the Commission to invoke its discretion on the Applicant's behalf due to Moray's plea of not guilty. See Response at 2. A plea of not guilty without more is an insufficient reason to defer consideration of an indictment; doing so would mandate deferral in every case involving a pending indictment and is inconsistent with the statutory provision specifically authorizing the Commission to deny a license application based upon a pending indictment. See Admin. Code §16-509(a)(ii). Given the long history of corruption in this industry, the Commission is not required to wait extended periods of time, often years, for a resolution of an indictment. Given the serious nature of the criminal charges in this case (see *supra* at 9-11), the Applicant's false submission to the Commission (see *infra* at 12-13), and the Applicant's failure to offer a timely or substantive response to the staff's recommendation, the Commission declines to exercise such discretion in this case.

B. The Applicant Provided False and Misleading Information in Connection with its License Renewal Application.

On January 13, 2006, USA filed a Renewal Application for a License as a Trade Waste Business ("License Renewal Application") and its principal, Joseph Moray, signed a sworn certification swearing to the truth of the contents of the application. See License Renewal Application at 9.

Moray failed to disclose the fact that he was arrested for the felony crimes of conspiracy, mail fraud and embezzlement. Failure by a license applicant to provide truthful information in connection with its license application is an adequate independent basis upon which the Commission may rely in denying the application. Admin. Code §16-509(a)(i).

> Question 6 of the License Renewal Application asks: "Have you or any of your principals, employees or affiliates been convicted of any criminal offense in any jurisdiction or been the subject of any criminal charges in any jurisdiction?" Moray answered the question, "No." See License Renewal Application at 2.
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> Question 10 of the License Renewal Application asks: "Have you or any of your principals, employees, affiliates, or representatives knowingly associated in any manner with any member or associate of organized crime?" Moray answered the question, "No." See License Renewal Application at 4.
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> Schedule D – Updated Answers of the License Renewal Application asks: "Set forth below all previously unprovided information necessary to update your initial application for a trade waste removal license or registration." Moray answered the question, "Nothing additional to report." See License Renewal Application at 8.

Based upon the record in this matter, these responses were clearly false. According to the Indictment, Moray was charged (before the filing of the renewal application) with the felony federal crimes of conspiracy, mail fraud and embezzlement and was publicly identified as an associate of organized crime (who conspired with co-defendants who were publicly identified as members of organized crime), yet he failed to disclose the charges and his associations with members and associates of organized crime to the Commission and affirmatively lied about the charges and his organized crime associations in his renewal application. See Moray Indictment; Moray Press Release.

The Commission is not required to consider the Applicant's untimely response, thereby leaving the evidence against it unrebutted. Furthermore, the Commission rejects the Applicant's response for being submitted in improper form; the denial recommendation clearly specifies that any "assertions of fact submitted to the

Commission must be made under oath." See Recommendation at 12; Cover Letter to Recommendation dated January 31, 2006.

Even if the Commission were to consider the Applicant's response, the arguments are rejected. Counsel claims that Moray "did not fully understand question #6 of the application" because the first clause of the question asked if the principal was "convicted." See Response at 1. Apparently, Moray either ignored or intentionally disregarded the remainder of the question that asked if the principal was the "subject" of any criminal charges. See License Renewal Application at 2. The Commission finds that the wording of the question is not confusing or misleading and rejects Counsel's suggestion that non-lawyers would have trouble understanding the question. See Response at 1.

Counsel further claims that Moray did not intend to be deceptive, given that his arrest was made public. Id. However, the fact that the prosecutor's office issued a press release in this matter does not necessarily mean that the indictment was brought to the attention of the Commission; the Commission still expects truthful disclosures from those it regulates. Furthermore, Moray's purported claim that he misunderstood question #6 and that the omission was not deceptive is belied by his failure to disclose the arrest under the catchall question asking for any changes in Schedule D and his statement that he had "nothing additional to report." See License Renewal Application at 8. The Applicant's response does not address the misleading nature of Moray's answer provided in Schedule D, thereby leaving the evidence unrebutted.

Regarding Moray's answer to Question #10, Counsel again claims that Moray deserves the protection of the presumption of innocence. This argument is rejected for the same reasons as stated above. See *supra* at 11. Moray failed to provide any substantive facts disputing his identification as an associate of organized crime or disputing his associations with his co-defendants who were identified as members of organized crime.

Accordingly, the Commission finds that the failure of the Applicant to provide truthful information to the Commission constitutes an additional independent basis that the Applicant lacks good character, honesty and integrity and denies its license application. See Admin. Code §16-509(a)(i).

C. The Applicant Failed to Notify the Commission of the Arrest of the Applicant's Sole Principal.

An applicant for a license to remove waste has the affirmative duty to notify the Commission, within ten (10) calendar days, of the arrest or criminal conviction of any principal[7] of the business subsequent to the submission of the application. See 16 RCNY §2-05(a)(1), Admin. Code §16-508(c). USA failed to notify the Commission regarding

[7] The "principal" of a corporation includes "every officer and director and every stockholder holding ten percent or more of the outstanding shares of the corporation." See Admin. Code §16-501(d).

Moray's arrest. The Applicant has failed to submit a timely response, thereby leaving the evidence against it unrebutted. Moreover, even the response ultimately submitted by the Applicant failed to offer a defense to this independent ground, further leaving the evidence against it unrebutted. The Applicant's failure to comply with §2-05(a)(1) constitutes an adequate and independent ground for denial of its license renewal application.

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. The evidence recounted above demonstrates convincingly that USA falls far short of that standard.

It is of grave concern to the Commission that the Applicant was indicted for extremely serious crimes involving organized crime corruption and that the Applicant compounded this problem by failing to notify the Commission of his arrest and indictment and by filing a false application with the Commission. Despite being notified of the staff's recommendation, the Applicant chose not to submit a timely, proper or substantive response, thereby leaving the evidence against it unrebutted. Moreover, the arguments ultimately submitted in response were unpersuasive. For the independently sufficient reasons discussed above, the Commission denies USA's license renewal application.

This license denial is effective immediately. U.S.A. Recycling Inc. may not operate as a trade waste business in the City of New York.

Dated: March 14, 2006

THE BUSINESS INTEGRITY COMMISSION

Thomas McCormack
Chair

John Doherty, Commissioner
Department of Sanitation

Jonathan Mintz, Acting Commissioner
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation

Robert Walsh, Commissioner
Department of Business Services

Raymond Kelly, Commissioner
New York City Police Department