



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 V. GAROFALO CARTING, INC. ALSO KNOWN AS GAROFALO & SONS FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

V. Garofalo Carting, Inc., also known as Garofalo & Sons (“Garofalo Carting” or the “Applicant”), has applied to the New York City Business Integrity Commission (the “Commission”) for a registration to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code (“Admin. Code”), §16-505(a). Local Law 42, which created the Commission to 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.

Garofalo Carting applied to the Commission for a registration enabling it to operate as a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” – a type of waste commonly known as construction and demolition debris, or “C & D.” See Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See *Id.* If, upon review and investigation of the application, the Commission grants the applicant a registration, the applicant becomes “exempt” from the licensing requirement applicable to businesses that remove other types of waste. See *Id.*

In determining whether to grant a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission’s determination whether to issue a license to a business seeking to remove other types of waste. See, e.g., Admin. Code § 16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York (“RCNY”) §§ 1-06 & 2-02 (specifying information required to be submitted by license applicant) with *Id.* §§ 1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission’s investigation and determination of a registration application is whether the applicant has business

integrity. See 17 RCNY § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); compare Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking “good character, honesty and integrity”).

Based upon the record as to the Applicant, the Commission, for the following independently sufficient reasons, denies Garofalo Carting’s registration application:

- A. The Applicant failed to demonstrate eligibility for the registration it seeks in that:
  - (i) The Applicant and its principals have been found liable in civil and administrative actions for actions that bear a direct relationship to the operation of a trade waste business.
  - (ii) The Applicant and its principals have been convicted of crimes that are related to the trade waste industry.
- B. The Applicant knowingly failed to provide information to the Commission in connection with the application.

## I. BACKGROUND

### A. The New York City Carting Industry

Virtually all of the more than 200,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past four decades, and until only a few years ago, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as “a ‘black hole’ in New York City’s economic life.” Sanitation & Recycling Industry, Inc. v. City of New York, 107 F.3d 985, 989 (2d Cir. 1997) (“SRF”).

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 made numerous factual findings concerning organized crime’s longstanding and corrupting influence over the City’s carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found “that

unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in fraudulent conduct.” Local Law 42, § 1.

The City Council’s findings of extensive corruption in the commercial carting industry have been validated by the successful prosecution of many of the leading figures and companies in the industry. In 1995 and 1996, the Manhattan District Attorney obtained racketeering indictments against more than sixty individuals and firms connected to the City’s waste removal industry, including powerful mob figures such as Genovese organized crime family capo Alphonse Malangone and Gambino soldier Joseph Francolino. Simply put, the industry’s entire modus operandi, the cartel, was indicted as a criminal enterprise. Since then, all of the defendants have either pleaded or been found guilty of felonies; many have been sentenced to lengthy prison terms, and many millions of dollars in fines and forfeitures have been imposed.

The Commission’s regulatory and law-enforcement investigations have confirmed that organized crime has long infiltrated the construction and demolition debris removal sector of the carting industry as well as the garbage hauling sector that was the focus of the Manhattan District Attorney’s prosecution. In light of the close nexus between the C & D sector of the carting industry and the construction industry, mob influence in the former should come as no surprise. The construction industry in New York City has been corrupted by organized crime for decades. See, e.g., James B. Jacobs, Gotham Unbound: How New York City Was Liberated from the Grip of Organized Crime 96-115 (1999) (detailing La Cosa Nostra’s influence and criminal activity in the concrete, masonry, drywall, carpentry, painting, trucking, and other sectors of the City’s construction industry).

Moreover, the C & D sector of the carting industry has been a subject of significant federal prosecutions. In 1990, Anthony Vulpis, an associate of both the Gambino and the Genovese organized crime families, Angelo Paccione, and six waste hauling companies owned or controlled by them were convicted of multiple counts of racketeering and mail fraud in connection with their operation of a massive illegal landfill on Staten Island. See United States v. Paccione, 949 F.2d 1183, 1186-88 (2d Cir. 1991), cert. denied, 505 U.S. 1220 (1992). Many C & D haulers dumped their loads at this illegal landfill, which accumulated 550,000 cubic yards of refuse over a mere four-month period in 1988; during that period, “the City experienced a sharp decline in the tonnage of construction waste deposited” at its Fresh Kills landfill, as well as “a concomitant decline in revenue” from the fees that would have been charged for dumping at a legal landfill. 949 F.2d at 1188. The trial judge described this scheme as “one of the largest and most serious frauds involving environmental crimes ever prosecuted in the United States.” United States v. Paccione, 751 F. Supp. 368, 371 (S.D.N.Y. 1990).

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain “cover” programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the “free cover” program, transfer stations and carting companies could dispose of “clean fill” (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the “paid cover” program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however,

abetted by corrupt City sanitation workers, dumped non-qualifying materials (including C & D) at Fresh Kills under the guise of clean fill. This was done by “cocktailing” the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

In 1994, twenty-eight individuals, including numerous owners of transfer stations and carting and trucking companies, were indicted in connection with this scheme, which deprived the City of approximately \$10 million in disposal fees. The indictments charged that from January 1988 through April 1992, the defendants participated in a racketeering conspiracy and engaged in bribery and mail fraud in connection with the operation of the City’s “cover” programs. The various hauling companies, from Brooklyn, Queens, and Staten Island, were charged with paying hundreds of thousands of dollars in bribes to Department of Sanitation employees to allow them to dump non-qualifying materials at Fresh Kills without paying the City’s tipping fees. See United States v. Cafra, et al., No. 94 Cr. 380 (S.D.N.Y.); United States v. Barbieri, et al., No. 94 Cr. 518 (S.D.N.Y.); see also United States v. Caccio, et al., Nos. 94 Cr. 357,358, 359, 367 (four felony informations). Twenty-seven defendants pleaded guilty in 1994 and 1995, and the remaining defendant was found guilty in 1996 after trial.

In sum, the need to root organized crime and other forms of corruption out of the City’s waste removal industry applies with equal force to the garbage hauling and the C & D sectors of the industry. Local Law 42 recognizes this fact in requiring C & D haulers to obtain registrations from the Commission in order to operate in the City. See Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1<sup>st</sup> Dept. 2004).

## **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. “Trade waste is broadly defined and specifically includes “construction and demolition debris.” Id. § 16-501(f)(1). 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). The United States Court of Appeals has definitively ruled that 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).

Local Law 42 specifically permits the Commission to refuse to issue a registration to an applicant “who has knowingly failed to provide the information and/or documentation required by the commission pursuant to [Title 16 of the Administrative Code or any rules promulgated thereto]” or “who has otherwise failed to demonstrate eligibility for such license.” Admin. Code §16-509(b). Applicants who knowingly fail to provide information required by the Commission (whether they fail to provide the information altogether or they provide false and misleading information) fall under the first prong. In Attonito v. Maldonado, 3 A.D.3d 415 (1<sup>st</sup> Dept. 2004); *leave denied*, 2 N.Y.3d 705 (2004), the Appellate Division affirmed the authority of the Commission to “review” exemption applications, to fully investigate any matter within its jurisdiction and to deny such applications in those cases “where the applicant fails to provide the necessary information, or knowingly provides false information.” It further affirmed the authority of the Commission to investigate the accuracy of the information provided in an application. Id.

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission’s authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant’s good character, honesty and integrity. Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

1. failure by such applicant to provide truthful information in connection with the application;
2. 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;
3. 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;
4. 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;
5. 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;

6. 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;
7. 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;
8. 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;
9. 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;
10. 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). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

## II. DISCUSSION

The Applicant filed an application for exemption from licensing requirements and a registration to haul construction and demolition debris. The staff has conducted an investigation of the Applicant and its principals, and in connection with that investigation the staff deposed Mario Garofalo on May 10, 2005. On August 10, 2006, the staff issued a fifteen-page recommendation that Garofalo Carting's application be denied. The Applicant was served with the Commission's recommendation on that date and had ten business days to submit a response pursuant to Section 2-08(a) of Title 17 of the Rules of the City of New York. The cover letter served with the Commission's recommendation directed that any factual assertions in the Applicant's response must be made under oath. See Letter dated August 10, 2005. On August

15, 2006, the Applicant submitted its response, which consisted of an unverified three-page letter from the Applicant's attorney ("Response").

The original application disclosed its only principal to be Mary Garofalo. See Original Application at 9. When the Commission's staff attempted to schedule a deposition of Mary Garofalo, the Applicant disclosed that Mario Garofalo is also a principal of the company.<sup>1</sup> On or about May 4, 2005, the Applicant amended its application accordingly, but only after the Commission's staff directed it to do so (the "Amended Application").<sup>2</sup> See April 22, 2005 letter from the Commission to Edward L. Wolf, Esq.; see Amended Application at 9. Former principals of the Applicant include Angelina Garofalo (Mario and Ralph Garofalo's grandmother) and Vincent Garofalo (Mario and Ralph Garofalo's father). Mary Garofalo is Mario and Ralph Garofalo's aunt.

The Commission has carefully considered both the staff's recommendation and the Applicant's response.<sup>3</sup> For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and denies its application.

For almost thirty years, this Applicant and its principals have compiled a substantial record, among other factors, on which to base this decision to deny its registration application.

1. Civil, Administrative and Criminal Actions Related to the Pilgrim State Psychiatric Center Property

Beginning in 1978, New York State authorities have attempted to prevent the Applicant from conducting illegal waste activities at the State owned Pilgrim State Psychiatric Center Property ("Pilgrim Property") and at the Applicant's adjoining Brentwood property.

a. The May 1986 Consent Order

In 1978, the New York Department of Environmental Conservation ("DEC") advised the Applicant that it was illegally dumping debris and excavation material on the Pilgrim Property, which is located next to the Applicant's property. The DEC also advised the Applicant that it

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<sup>1</sup> Mario Garofalo's brother, Ralph Garofalo, was also a principal of the Applicant. According to Mario Garofalo, Ralph Garofalo retired from the Applicant company "five to seven years ago."

<sup>2</sup> Although the evidence (including but not limited to Mario Garofalo's deposition testimony and the amended application) establishes that Mario Garofalo is and was a principal of the Applicant, the Response falsely states, without providing any evidence, that "Mario Garofalo has never been a principal... of the Applicant." See Response at 1; see also Mario Garofalo Deposition Transcript at 13-17, 20; amended application at 9. Local Law 42 sets forth a broad definition of a principal. This term includes individuals with an ownership interest, as well as "all other persons participating directly or indirectly in the control of such business entity." See Admin. Code § 16-501(d).

<sup>3</sup> Although both 17 RCNY Section 2-08(a) and the staff's recommendation state that any assertions of fact submitted in the Applicant's response must be made under oath, the Applicant's response failed to attach a sworn affidavit from its principal. See 17 RCNY Section 2-08(a); see also Commission's Recommendation at 15 (allowing the Applicant 10 business days to submit any assertions of fact "under oath" and any documentation that it wishes the Commission to consider).

was operating an illegal transfer station on its own property. In 1985 and 1986, the DEC inspected the Pilgrim Property and observed the illegal dumping activities of the Applicant to be ongoing. On May 22, 1986, the DEC and Vincent and Angelina Garofalo entered into an administrative consent order that required the Garofalos: (1) to pay civil penalties of \$5,000; (2) to refrain from operating a solid waste management facility until they obtained a DEC permit; (3) to cease all unpermitted transfers of solid waste; and (4) to remove all solid waste from the Pilgrim Property. See May 22, 1986 Department of Environmental Conservation Order on Consent, File No. 1-1397. The Response does not dispute the facts that led to this consent order. See infra.

b. The 1987 Criminal Case

A criminal case followed in December 1987, which resulted in the Applicant business pleading guilty in District Court, Suffolk County to two misdemeanor counts of operating a solid waste management facility without a permit on the Pilgrim Property. As a result, the Applicant was fined \$4,000 and was sentenced to a conditional discharge that required it, among other things, to complete a clean up of the Pilgrim Property before December 1998. See People v. V. Garofalo Carting, Inc., District Court of Suffolk County, First District, Docket No. 3013-87 (Block, J.). The Response does not specifically address this criminal case.

c. The January 1991 Temporary Restraining Order

Despite the conditions of the Applicant's conditional discharge, the State of New York alleged that the Applicant continued to operate and expanded the illegal transfer station. Based on the above facts, on January 31, 1991, an Order to Show Cause containing a Temporary Restraining Order was signed that enjoined the Applicant from (1) operating a solid waste management facility on the Pilgrim Property; (2) operating a sand mine on the Pilgrim Property; (3) accepting, delivering or depositing any other solid waste at the Pilgrim Property; and (4) trespassing on the Pilgrim Property. See Order to Show Cause, Justice James F.X. Doyle, Index No. 91-1682.

On March 15, 1991, the State of New York filed a motion to hold the Applicant in contempt of court for violating the 1991 Temporary Restraining Order by continuing to illegally operate a solid waste management facility and by illegally disposing of construction and demolition materials on the Pilgrim Property. On January 30, 1992, the Court granted the State of New York's application for a preliminary injunction enjoining the Applicant from (1) operating a solid waste management facility, including a construction and demolition disposal site or transfer station until the Applicant obtained all required permits and complied with applicable law; and (2) trespassing upon property owned by the State of New York. See Order, Justice Jack Cannavo, Index No. 91/1682. The Response does not specifically address this matter.



d. The 1991 Criminal Case

Simultaneous to the civil proceeding, on November 25, 1991, Mario Garofalo, Ralph Garofalo, employee Christopher Henry, the Applicant, and sister company R & M Sanitation Leasing Corp.<sup>4</sup> were charged with seven counts of criminal mischief and grand larceny for their illegal disposal of regulated medical waste at and theft of sand from the Pilgrim Property between December 1987 and October 1991. On June 10, 1993, Mario Garofalo and Ralph Garofalo each pleaded guilty to grand larceny in the second degree, a class C felony, and to criminal mischief in the second degree, a class D felony. Each was sentenced to one and one half to four and one half years in prison.<sup>5</sup> R & M Sanitation Leasing Corp. received a conditional discharge for the same offenses. The charges against the Applicant remained pending until a consent order could be executed in the parallel civil litigation. See May 9, 2001 Memorandum of Law in Support of the State of New York's Motion to Hold Defendants in Contempt of Court, Index No. 91-1682. The Response all but concedes these facts while offering the excuse that "the site had been a disposal area by the hospital for regulated medical waste for over 40 years." See Response at 2. The Commission does not find this excuse persuasive. The disposition of this criminal case, which resulted in felony convictions and incarceration, speaks volumes about the seriousness of the charges. See infra.

e. The 1995 Consent Judgment

On July 27, 1995, the Applicant, R & M Sanitation Leasing Corp., Angelina Garofalo and the Estate of Vincent Garofalo signed a Stipulation and Consent Judgment that settled the accompanying civil litigation brought by the State in exchange for the dismissal of all the remaining criminal charges then pending against the Applicant. See July 27, 1995 Stipulation and Consent Judgment. Justice Cannavo approved of the Consent Judgment on August 3, 1995. See id.

The Consent Judgment enjoined the Applicant, R & M Sanitation Leasing Corp., Angelina Garofalo and the Estate of Vincent Garofalo, and any of their officers, agents, employees or successors, from: (1) operating a solid waste management facility on the Pilgrim Property; (2) delivering, leaving, transferring to or disposing any solid waste, including construction and demolition material at the Pilgrim Property unless specifically approved by the State of New York in conjunction with remediation at the Pilgrim Property; (3) operating a sand mine facility at the Pilgrim Property; (4) operating any solid waste management facility, including any construction and demolition disposal operation and transfer station at the Applicant's property unless it obtained all necessary permits; and (5) trespassing on the Pilgrim Property. See 1995 Consent Judgment. The 1995 Consent Judgment also required the Applicant, R & M Sanitation Leasing Corp., Angelina Garofalo and the Estate of Vincent

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<sup>4</sup> Mario Garofalo and Ralph Garofalo were officers and/or shareholders of R & M Sanitation Leasing Corp.

<sup>5</sup> Ralph Garofalo and Mario Garofalo served portions of their prison sentences and were eventually released on parole.

Garofalo to submit to DEC a performance bond by a surety company or financial institution in the amount of \$2,500,000. See id.

In June 1996, the State of New York again moved to hold the Applicant, R & M Sanitation Leasing Corp., Angelina Garofalo and the Estate of Vincent Garofalo in contempt of court for violating the 1995 Consent Judgment. Specifically, the State alleged that the Applicant, R & M Sanitation Leasing Corp., Angelina Garofalo and the Estate of Vincent Garofalo persisted in using their property as a solid waste management facility. In addition, the State alleged that they failed to post a performance bond to ensure the proper closure of the Pilgrim Property and post closure monitoring. See Order to Show Cause to Hold Defendants in Contempt, Justice Jack J. Cannavo, Index No. 91-1682.

As a result, on June 26, 1996, Justice Cannavo issued an Order to Show Cause containing another Temporary Restraining Order, which, among other things, enjoined the Applicant from engaging in any solid waste management activities. See id.

On November 12, 1996, the State moved for a third time for an order holding the Applicant, R & M Sanitation Leasing Corp., Angelina Garofalo and the Estate of Vincent Garofalo in contempt of court for their continued violations of the 1995 Consent Judgment and other Orders of the Court, including the June 1996 Temporary Restraining Order. Once again, Justice Cannavo issued another Temporary Restraining Order enjoining the Applicant, R & M Sanitation Leasing Corp., Angelina Garofalo and the Estate of Vincent Garofalo from operating a solid waste management facility. See Order to Show Cause to Hold Defendants in Contempt, Justice Jack J. Cannavo, Index No. 91-1682. Without providing any proof, the Response states that the Applicant's failure to produce a bond "was caused by the insolvency of the insurance company and their eventual takeover by the New York State Liquidation Bureau," that the "bond was excessive in its amount as the remediation required much less money," that "remediation was completed in its entirety," that "the original bond was reduced to \$75,000," and that "the \$28,000 minimum balance for post closure monitoring has been reduced to \$6,500 and will be eliminated entirely." See Response at 2. However, the Response does not contest the fact that numerous motions were made and numerous orders were issued in an attempt to compel the Applicant to abide by the law. See infra.

f. December 9, 1996 Order Holding the Applicant In Contempt.

On December 9, 1996, Justice Cannavo issued an Order and Judgment finding the Applicant, R & M Sanitation Leasing Corp., Angelina Garofalo and the Estate of Vincent Garofalo in contempt of the 1995 Consent Judgment, the June 1996 Temporary Restraining Order, and the November 1996 Temporary Restraining Order for their continued illegal operation of a solid waste management facility, including a transfer station and construction and demolition processing operation at the Applicant's property. The Order directed the Applicant to pay a statutory fine of \$250 pursuant to Judiciary Law Section 773 and ordered that

to compel the defendants to comply with the 1995 Consent Judgment, in the event that the defendants violate said judgment, the defendants will pay a minimum of

five thousand dollars in liquidated costs and expenses, including attorney's fees, for each and every future violation of this Court's 1995 Consent Judgment.

See Order and Judgment, Justice Jack J. Cannavo, Index No. 91-1682.

On May 9, 2001, the State moved for an order holding the Applicant in civil and criminal contempt for violating the Court's December 9, 1996 Order and Judgment by continuing to operate a solid waste management facility, failing to submit an approvable closure and post-closure plan, and failing to maintain a performance bond in the amount of \$2.5 million. On May 2, 2002, by stipulation so ordered by Judge Whelan, and in settlement of the contempt application then pending, the Applicant agreed to pay \$100,000 in penalties, to post a \$75,000 post closure monitoring bond, to close the Pilgrim Property, and to maintain an account with a \$28,000 minimum balance to pay for an environmental monitor. See So Ordered Stipulation, Justice Thomas F. Whelan, Index No. 91-1682.

On October 23, 2003, Judge John J. Dunn issued a decision on the State's motion to hold the Applicant in contempt for violating the August 3, 1995 Consent Judgment and the May 2, 2002 stipulation by directing the Applicant to pay \$10,000 in liquidated costs and expenses for "clearly violat[ing] its obligations to maintain the required [\$28,000] minimum balance in the account and to timely post the [\$75,000 post closure monitoring] bond." See Order, Justice John J. Dunn, Index No. 91-1682.

The Response admits that the Applicant "failed to produce [the performance] bond," and offers the excuse that the Applicant's breach of the 1995 Consent Judgment "was caused by the insolvency of the insurance company," although it does not provide any evidence to support this assertion. See Response at 2. The Response also claims, without providing any evidence, that "every agreement dealing with the work to be performed, the fines that were paid, and the judgments entered into have been satisfied."<sup>6</sup> See Response at 2. However, even if the Commission believes the assertion that these matters have been resolved, the Response does not address the countless motions, contempt proceedings, and orders that attempted to compel the Applicant to abide by the law.<sup>7</sup>

## 2. The 2000 Criminal Case

By Criminal Information dated September 26, 2000, the Applicant was charged with numerous crimes stemming from its loading of non-residential construction and demolition debris into garbage trucks designated for the Applicant's collection of municipal solid waste pursuant to contracts with the towns of Smithtown, Huntington, Islip and Brookhaven. By blending the nonresidential construction and demolition debris with municipal solid waste, the Applicant illegally obtained free services at town dumps. The charges included scheme to defraud in the first degree, willful failure to pay prevailing wages, and five counts of construction or operation of a solid waste facility without a permit on various dates between May

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<sup>6</sup> The Response admits that post closure monitoring is still ongoing twenty-eight years later. See Response at 2.

<sup>7</sup> Instead, the Response attributes the Applicant's behavior to "stupidity and poor management." See Response at 2.

24, 1999 and December 8, 1999. See People vs. Garofalo Carting Inc., Superior Court Information No. S-2120-2000 (County Court, Suffolk County).

As a result, in a September 27, 2000 allocution, the Applicant pleaded guilty to five counts of Construction or Operation of a Solid Waste Facility Without a Permit, a misdemeanor. Ralph Garofalo pleaded guilty to one count of scheme to defraud in the first degree, a class E felony, and one count of willful failure to pay prevailing wages and supplements, a misdemeanor. He was sentenced to one and one half to three years in prison and was fined \$500. Amaya Martinez, an employee of the Applicant, also pleaded guilty to one count of scheme to defraud in the second degree, a misdemeanor. In addition, both Ralph and the Applicant agreed to pay \$300,000 in restitution to workers as part of a settlement with the United States Department of Labor and the Applicant was fined \$25,000 for operating the waste facility. See September 27, 2000 Transcript of Allocution. Again, without providing any proof, the Response only states that this criminal matter “was based on improper payroll records rather than a deliberate attempt to violate the rights of their employees.” See Response at 3. The Commission could not find any such reference in the September 27, 2000 Transcript of Allocution and find this excuse not to be credible.

3. Unlicensed and Unregistered Trade Waste Removal Activity in New York City

a. The 2002 Administrative Action

On February 19, 2002, the Commission charged the Applicant with four days of unlicensed and unregistered trade waste removal activity. See Notice of Hearing Violation No. 00000077. On March 4, 2002, a hearing was held before the Department of Consumer Affairs (“DCA”). The Applicant failed to appear at the hearing and an inquest was held. On October 28, 2003, DCA Administrative Law Judge Bruce Dennis issued a Decision and Order that found the Applicant guilty of unlicensed and unregistered trade waste removal activity and ordered the Applicant to pay a fine of \$20,500. See October 28, 2003 Decision and Order.

On November 11, 2003, the Applicant moved to vacate the DCA Decision and Order. On April 13, 2004, DCA granted that motion and scheduled a new hearing so that the case could be decided on its merits. Prior to the rescheduled hearing, the matter was settled. Terms of the settlement included a \$4,000 fine and the Applicant’s agreement to file a completed license or registration application with the Commission before June 1, 2004. See May 14, 2004 Stipulation of Settlement. On May 19, 2004, the Commission received an executed Stipulation of Settlement and a check in the amount of \$4,000. The Applicant’s attorney also provided a letter that stated that “my client is in the process of completing the trade waste license application and we will forward that to you under separate cover.” See May 18, 2004 letter from Edward L. Wolf, Esq. to David Mandell. The Response does not specifically address this matter.

b. The 2004 Criminal Case

Despite agreeing to submit a license or registration application to the Commission on or before a date certain, and despite knowing that it was required to be licensed or registered by the

Commission to remove trade waste, the Applicant continued to operate in New York City without a license or registration and without even submitting a license or registration application. On December 3, 2004, Mario Garofalo was arrested by New York City Police Department Detectives and charged with unlicensed and unregistered trade waste activity, an unclassified misdemeanor. The Applicant's truck that was used to violate Local Law 42 was consequently impounded. Garofalo pleaded guilty to violating Local Law 42, an unclassified misdemeanor, and was sentenced to a \$500 fine. See Rap Sheet of Mario Garofalo. The accompanying administrative violation was settled for \$5,000 and the Applicant agreed for the second time, approximately seven months after it breached its initial agreement with the Commission, to submit a completed license or registration application. See Notice of Hearing Violation No. TW-1004; see December 10, 2004 Stipulation of Settlement. Unlike the Applicant's earlier agreement to file an application, this agreement was in exchange for the Commission's authorization to release the seized vehicle used to further this crime. The instant application was filed in December 2004 as part of the Applicant's effort to have its vehicle returned. The Response does not specifically address this case.

### **III. Grounds for Denial**

#### **A. The Applicant Failed to Demonstrate Eligibility for the Registration it Seeks in that:**

##### **1. The Applicant and its principals have been found liable in civil and administrative actions for actions that bear a direct relationship to the operation of a trade waste business.**

In determining whether an applicant business possesses good character, honesty, and integrity, the Commission may consider 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 registration is sought. See Admin. Code §§ 16-509(a)(iv), 16-513(a)(i).

As stated above, the Applicant's lengthy record establishes that the Applicant has been found liable in numerous civil and administrative actions that bear a direct relationship to the trade waste industry. The Response admits that the recommendation "correctly listed" what it deemed to be "environmental violations [that] were committed by both the corporation and on several occasions by either Mario Garofalo or Ralph Garofalo." See Response at 1. In addition to offering an unsupported excuse for violating the 1995 Consent Judgment (*see supra*), the Response simply states, without providing any proof, that "each fine was paid in full and that the corporation eventually completed the terms of any Stipulation of Consent Judgment [sic] they entered into." See id. Notably, the Response did not address the State's repeated assertions that the Applicant continued to illegally operate a solid waste management facility. Nor did the Response even mention the fact that the Applicant and its principals were held in contempt for continued violations of the 1995 Consent Order and several Temporary Restraining Orders. Nevertheless, the Applicant acknowledged its almost thirty-year history of being found liable in civil and administrative actions that are related to the trade waste industry. The Commission

does not find the Applicant's excuse and reasoning compelling enough to disregard this long history.

In compiling this record, the Applicant engaged in a pattern of unlawful activities, all related to the trade waste industry, including waste removal activity in New York City without the required trade waste removal license or registration. Furthermore, the Applicant has demonstrated a casual disregard for regulatory compliance and continued to engage in unlawful activities; it continued to remove waste in New York City even after being notified by a Commission (in the form of an Administrative violation) that it did not have the requisite license or registration to engage in such activity. These factors demonstrate the Applicant's lack of good character, honesty, and integrity and constitute a sufficient independent ground for denying the Applicant's registration application. For this independently sufficient ground, this application is denied.

**2. The Applicant and its principals have been convicted of crimes that are related to the trade waste industry.**

As described above, the Applicant and its principals have lengthy criminal records that are related to the trade waste industry. In determining whether an applicant possesses good character, honesty, and integrity, the Commission may consider prior convictions of the Applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also Admin. Code §16-501(a). Those factors are:

- (a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license . . . sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

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

N.Y. Correct. Law §753 (1).

Applying the above factors, the Commission finds that, notwithstanding the public policy of the State of New York to encourage licensure of persons convicted of crimes, the crimes committed by the Applicant, Ralph and Mario Garofalo, and the Applicant's employees are antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption from the trade waste industry. The convictions are recent and are for activity directly related to the waste industry. In addition, there is ample proof of the Applicant's blatant disregard for the law and the Commission's regulations. Finally, the public interest in eliminating the entrenched corruption that has plagued the New York City carting industry for decades is clear. Public confidence in the integrity of the carting industry would be undermined if those proven to have repeatedly ignored the law received licenses or registrations from the Commission whose governing law and regulations they have persistently violated.

The Response offers the excuse that Mario and Ralph Garofalo's 1991 felony convictions "dealt only with the illegal transfer of sand on the Pilgrim site," and that the recommendation "failed to disclose that the site had been a disposal area by the hospital for regulated medical waste for over 40 years." See Response at 2. The Response also concedes that this criminal conduct is not "admirable," but argues that the Applicant's principals have "paid a heavy price" by serving their sentences. See Response at 2. Nevertheless, as stated above, both Mario and Ralph were each convicted of a felony that was related to the trade waste industry. The Commission does not find the excuse or the argument in the Response compelling. The Applicant, through its principals, committed serious crimes by illegally disposing of regulated medical waste on state property and by stealing sand from state property.

The Applicant's and the Applicant's principals guilty pleas to crimes involving the waste industry, even after being granted certificates of relief from civil disability compel the conclusion that the Applicant lacks good character, honesty, and integrity.<sup>8</sup> Accordingly, the Commission denies the Applicant's registration application based on this independent ground.

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<sup>8</sup> Although the Applicant has provided the Commission with Certificates of Relief from Civil Disabilities from its September 27, 2000 guilty plea and from Mario Garofalo's June 10, 1993 guilty plea, the Commission notes that Criminal Court judges may not always have the complete history of a defendant before them when called upon to grant such certificates, nor do they have the same interests as the Commission in preserving the regulatory integrity of the carting industry. Furthermore, a certificate merely creates a *presumption* of rehabilitation, not a mandatory blanket of immunity. The presumption may be overcome in the exercise of the Commission's discretion, which is guided by the factors above. Matter of Bonacorsa v. VanLindt, 71 N.Y.2d 605 (1988). The Applicant, its principals and employees were convicted of crimes relating to the trade waste industry both before and after the June 10, 1993 and September 27, 2000 convictions. This pattern of criminal conduct relating specifically to the same industry in which the Applicant desires a registration and continuing after certificates were issued reveals that the Applicant was not rehabilitated, despite any presumption in its favor.

**B. The Applicant knowingly failed to provide information to the Commission in connection with the application.**

The Commission may refuse to issue a registration to an applicant who has knowingly failed to provide information to the Commission. See Admin. Code §16-509(b).

Question 15 of the original application and the amended application asks:

During the past ten years, has the applicant business or any principal of the applicant business been convicted of any misdemeanor or felony in any jurisdiction? If "yes," provide the details below.

The Applicant answered, "Yes," and stated "multiple municipal violations, no felony convictions." See Original Application at 6; see Amended Application at 6. The Applicant did not provide the Commission with any of the requested details, including the "Principal/Business Name," "Date of Arrest," "Date of Conviction," "Court and Jurisdiction," and "Indictment / Docket or Index No." See id. As described above, the Applicant's answer to Question 15 fails to provide required information and is false and misleading because the answer did not disclose the Applicant's guilty plea to a misdemeanor in 2000, Ralph Garofalo's guilty plea to a felony and a misdemeanor in 2000, and Mario Garofalo's guilty plea to a misdemeanor in 2004. See Admin. Code §16-509(b); Attonito v. Maldonado, 3 A.D.3d 415, 771 N.Y.S.2d 97 (1<sup>st</sup> Dept. 2004). Clearly, the Applicant and its principals have been convicted of several misdemeanors and a felony.

On May 10, 2005, Mario Garofalo was deposed under oath by the Commission staff. Before testifying, Mario Garofalo completed a questionnaire that he certified as true. Question 32 of the questionnaire asks:

Have you ever been charged with any criminal violations? Include misdemeanor charges, felony charges, and all non-traffic violations (including DWI).

Mario Garofalo answered, "Yes," and stated "Several / Environmental Violations" when the questionnaire asked "How many times." See Questionnaire at 8. As discussed above, Mario Garofalo's answer to question 32 of the questionnaire fails to provide required information and is false and misleading, as he has been personally charged with felonies and a misdemeanor. On November 25, 1991, Mario Garofalo was charged with grand larceny in the first degree, grand larceny in the second degree, criminal mischief in the second degree, all felonies, and unlawful release of regulated medical waste in the second degree, a misdemeanor. Then, on December 3, 2004, Mario Garofalo was charged with a violation of Local Law 42, a misdemeanor.

In addition, Question 33 of the questionnaire asks:

Have you ever been arrested? Include misdemeanor charges, felony charges, and all non-traffic violations (including DWI).



Mario Garofalo answered, "Yes," and stated "1" time. See questionnaire at 8. Again, as discussed above, this answer fails to provide required information and is clearly false, as Mario Garofalo has been arrested more than one time.

At his deposition on May 10, 2005, Mario was given another opportunity to provide the Commission with complete and truthful required information when he was asked about his response to question 32 of the questionnaire:

Q: Question 32: "Have you ever been charged with any criminal violations, including misdemeanor charges, felony charges and all non-traffic violations, including DWI?" And you answered that question yes and stated: "Several environmental violations." Can you tell me about the first time that you were charged with a criminal violation?

Mr. Wolf: Just for the record, there is only one and that would be the felony. The environmental violations were a pattern that continued for a period of time in the '90s.<sup>9</sup>

See Mario Garofalo Deposition Transcript at 28. When questioned, Mario Garofalo, with his attorney's assistance, then testified about his version of the November 25, 1991 criminal charges, which was that the charges were related to "environmental issues." See id. However, contrary to his attorney's proclamation, Mario Garofalo was the subject of additional criminal charges besides this one felony. For example, Mario Garofalo was arrested and convicted for an unclassified misdemeanor in 2004. Thus, Mario Garofalo's testimony in relation to question 32 of the questionnaire again fails to provide required information and is false and misleading.

At his deposition, Mario Garofalo was also asked about question 15 of the amended application, and continued to insist on the accuracy of these answers on the application:

Q: "During the past ten years, has the applicant business or any principal of the applicant business been convicted of any misdemeanor or felony in any jurisdiction?" And you answered, "Yes," and stated, "Multiple municipal violations. No felony convictions." In light of what we discussed, would you say that that's still accurate?

A: Yes.

See Mario Garofalo Deposition Transcript at 43-44.<sup>10</sup>

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<sup>9</sup> On several instances throughout Mario Garofalo's deposition, the Applicant's attorney, Edward Wolf ("Wolf"), interrupted to testify on behalf of his client. At one point, Wolf actually stated "I have been the company attorney for quite a few years, so there are things that I know that he doesn't." See Mario Garofalo Deposition Transcript at 23.

Although question 15 of the application and the subsequent deposition inquiry asked about convictions against the applicant business and any principal, Mario Garofalo persisted in answering incompletely and incorrectly:

Q:               What about misdemeanor convictions for the company? Who were those labor violations against?

A:               Not against Mario.

See Mario Garofalo Deposition Transcript at 44.

When asked specifically about misdemeanor convictions against the applicant business, the Applicant's attorney interjected, and stated that he thought the company was granted a certificate of relief for any convictions within the last ten years:

Mr. Wolf:       That's probably within ten years. And I think the corporation did, but we got a certificate of relief from civil disability.

Mr. Mandell: I think you are going to have to amend this, though.

Mr. Wolf:       Yes. I appreciate that.<sup>11</sup>

See Mario Garofalo Deposition Transcript at 44. Once more, Mario Garofalo failed to provide the Commission with required information that is complete and truthful. As discussed above in detail, in the ten years preceding the submission of the application, the applicant and its principals had been convicted of several felonies and misdemeanors.

The Response barely merits a reply on this point. The Response nonsensically claims that the failure to disclose this required information to the Commission was not "a deliberate attempt to avoid answering questions, but because of the quantity of violations that they pled guilty to over the many years... these statements were not intended to mislead but were merely stating the facts as they existed." See Response at 2. However, it is clear that the Applicant knowingly failed to provide truthful information to the Commission despite being represented by counsel and despite being given numerous opportunities to correct the record.<sup>12</sup>

The failure of the Applicant to provide truthful information to the Commission constitutes an additional independent basis for the conclusion that the Applicant lacks good

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<sup>10</sup> Since, during this deposition, Mario updated or corrected answers to other questions in the amended application, he certainly was aware he could correct answers to these questions. See Mario Garofalo Deposition Transcript at 44-45.

<sup>11</sup> The Applicant never did amend its application to reflect the true answer to Question 15.

<sup>12</sup> The Commission notes that the Response does not even try to cure the defect and provide the Commission with truthful and complete information that is required.

character, honesty and integrity. See Admin. Code §16-509(b). This registration application is denied based on this independent ground.

#### IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates that Garofalo Carting falls far short of that standard.

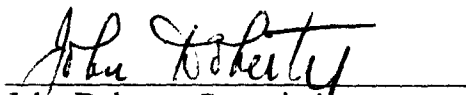
Based upon the above independently sufficient reasons, the Commission denies Garofalo Carting's exemption application and registration. This registration denial is effective immediately. Garofalo Carting may not operate as a trade waste business in the City of New York.

Dated: October 24, 2006

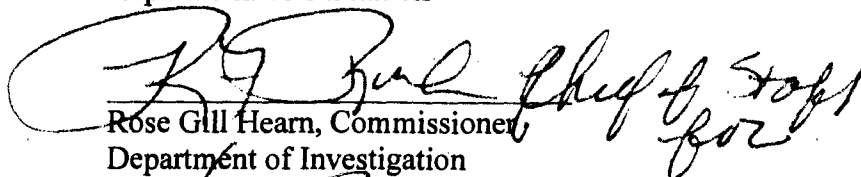
#### THE BUSINESS INTEGRITY COMMISSION



Thomas McCormack  
Chair



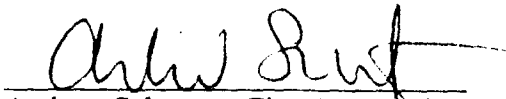
John Doherty, Commissioner  
Department of Sanitation



Rose Gill Hearn, Commissioner  
Department of Investigation



Jonathan Mintz, Commissioner  
Department of Consumer Affairs



Andrew Schwartz, First Deputy Commissioner (designee)  
Department of Small Business Services



Brian O'Neill, Deputy Inspector (designee)  
New York City Police Department