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

DECISION OF THE TRADE WASTE COMMISSION DENYING THE APPLICATION OF V.A. SANITATION, INC. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

By application submitted August 29, 1996, V.A. Sanitation, Inc. ("V.A." or the "applicant") applied to the New York City Trade Waste Commission for a license to operate as a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-508. Local Law 42, which created the Commission to license and regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

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

(1) the applicant and its former principal, Frank Allocca, recently pleaded guilty to racketeering and related crimes--to wit: attempted enterprise corruption, a Class C felony, in violation of the New York State antiracketeering statute; and combination in restraint of trade and competition, in violation of the New York State antitrust provisions contained in the Donnelly Act -- all in connection with their participation in the organized crime-dominated cartel that controlled the carting industry in New York City until the mid-1990's; and

(2) the applicant, through its former principal, has knowingly associated with members of organized crime.

I. BACKGROUND

A. The New York City Carting Industry

Virtually all of the 250,000 commercial business establishments in New York City contract with private carting companies to remove and dispose of their refuse. Historically, those services have been provided by several hundred companies. For the past forty years, and until only recently, the private carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit recently described that cartel as "a 'black hole' in New York City's economic life":

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

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

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

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

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

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

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

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

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

(7) "that recent indictments have disclosed the pervasive nature of the problem, the structure of the cartel, and the corruption it

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 have been controlled by organized crime figures for many years. See, e.g., Local Law 42, §1; United States v. International Brotherhood of Teamsters (Adelstein), 998 F.2d 120 (2d Cir. 1993). As the Second Circuit found, regardless of whatever limited legitimate purposes these trade associations might have served, they "also operate in illegal ways" by "enforc[ing] the cartel's anticompetitive dominance of the waste collection industry." SRI, 107 F.3d at 999.

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

Id. (emphasis added).

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

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

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

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

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

In November 1996, the Manhattan District Attorney announced a third round of indictments in his continuing investigation of the industry, bringing the total number of defendants in the state prosecution to thirty-four individuals, thirty-four companies, and four trade waste associations.

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

On January 27, 1997, Angelo Ponte, a lead defendant and the owner of what was once one of New York City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay $7.5 million in fines, restitution, and civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a $10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the New York City carting industry. See People v. Angelo Ponte, V. Ponte & Sons, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Jan. 27, 1997) (copy attached as Exhibit 1).

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

deter competitors from entering the market through threats and economic retaliation. Vigliotti agreed to serve a prison term of one to three years, to pay $2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the New York City carting industry. See People v. Vincent Vigliotti, Sr., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Jan. 28, 1997) (copy attached as Exhibit 2).

On February 13, 1997, the KCTW pleaded guilty to criminal restraint of trade and agreed to pay a $1 million fine, and four individuals who were officers of or otherwise closely associated with the KCTW pleaded guilty to corruption charges. The Brooklyn carters who were the KCTW's principal representatives--president Frank Allocca (the former principal of V.A., the applicant here) and vice-president Daniel Todisco--pleaded guilty to attempted enterprise corruption, as did another Brooklyn carter, Dominick Vulpis. Brooklyn carter and KCTW secretary Raymond Polidori pleaded guilty to restraint of trade. These defendants agreed to pay fines ranging from $250,000 to $750,000 and to serve sentences ranging from probation to 4½ years in prison. The same day, Manhattan carters Henry Tamily and Joseph Virzi pleaded guilty to attempted enterprise corruption. All six defendants and the carting companies they controlled confirmed the existence of the criminal cartel and admitted to specific instances of their participation in it. See People v. Frank Allocca, Daniel Todisco, Dominick Vulpis, VA Sanitation Inc., Lyn-Val Associates, Inc., Litod Paper Stock Corp., Silk, Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.), Tr. of Plea (Feb. 13, 1997) (copy attached as Exhibit 3).

Still more guilty pleas followed. On February 24, 1997, Michael D'Ambrosio, Robros Recycling Corp., and Vaparo, Inc. all pleaded guilty in allocutions before New York Supreme Court Justice Leslie Crocker-Snyder.

In sum, it is now far too late in the day for anyone to question the existence of a powerful criminal cartel in the New York City carting industry. Local Law 42 was enacted, and the Commission was created, to address this pervasive problem.

B. Local Law 42

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

Local Law 42 provides that "it shall be unlawful for any person to operate a business for the purpose of the collection of trade waste...without having first obtained a license therefor from the Commission," which license "shall be valid for a period of two years." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). Similarly, after providing a licensee with notice and an opportunity to be heard, the Commission may revoke or suspend a license or registration. Id. §16-513(a). Although Local Law 42 became effective immediately, trade waste removal licenses previously issued by the DCA remain valid pending decision by the Commission on the license application. See Local Law 42, §14(iii)(1).

As the United States Court of Appeals has definitively ruled, an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995.[1]

[1] Despite this explicit holding, V.A. contends that it has the right to an evidentiary hearing in connection with its license application because Local Law 42 requires that a license applicant be given "notice and an opportunity to be heard" before its application is denied. Admin. Code §16-509(a); see V.A. Mem. at 7-13. An opportunity to be heard, however, is not the same as an evidentiary hearing. See, e.g., Daxor Corp.

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 the 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 for a racketeering

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v. New York Dep't of Health, No. 97-1, N.Y.L.J., June 6, 1997, at 27 n.3 (N.Y. Ct. App. June 5, 1997) (citing Mathews v. Eldridge, 424 U.S. 319, 335 (1976)). The Commission has defined the content of the opportunity to be heard afforded to license applicants by Local Law 42, and it does not include the right to an evidentiary hearing. See 17 RCNY §2-08(a). Where, as here, the federal constitutional right to due process is not implicated, see SRI, 107 F.3d at 995, V.A. can insist only that the Commission follow its own rules. The Commission has done so, and V.A. does not claim otherwise. Moreover, an evidentiary hearing would serve no purpose here inasmuch as V.A. does not dispute the principal (and independently sufficient) factual bases for the Commission's decision, i.e., V.A.'s and Frank Allocca's guilty pleas and organized crime associations. Indeed, V.A. does not even state what it would attempt to prove at an evidentiary hearing, nor how it purportedly was prejudiced by the Commission's refusal to allow it additional time (beyond the period set forth in the Commission's rules) to submit a written response to the staff's recommendation.

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, 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 16-1520 of this chapter;

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

Admin. Code §16-509(a)(i)-(x).

II. DISCUSSION

Applying the above criteria, among others, and for the reasons explained below, the Commission concludes that V.A. lacks good character, honesty and integrity and, accordingly, in the exercise of its discretion, the Commission denies this license application.[2]

On August 29, 1996, V.A. Sanitation, Inc. submitted to the Commission an application to operate as a trade waste removal business. See License Application, certified by Francis X. Allocca on August 23, 1996 ("Lic. App."). According to the application, V.A. was a member of the KCTW from 1980 through at least January 1995, and was represented there by V.A.'s founder and then-president, Frank Allocca. Lic. App. at 21-22. Allocca served as president of the KCTW from 1989 to June 1996 and, therefore, according to the applicant, V.A. was exempt from association dues. Id. at 27. As noted above, V.A., Allocca, and the KCTW, among numerous other defendants, were indicted in June 1995 in connection with the Manhattan District Attorney's prosecution of the organized crime-dominated cartel that has controlled and corrupted New York City's trade waste industry for decades. See Lic. App. at 29; People v. Ass'n of Trade Waste Removers of Greater New York Inc., et al., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.). Those charges, including enterprise corruption, grand larceny, coercion, and Donnelly Act violations, were pending when V.A. submitted its license application. See Lic. App. at 29. As discussed below,

[2] On August 9, 1996, the Commission denied V.A.'s application for a waiver of the provision in section 11 (iii) of Local Law 42 that "any contract entered into by a trade waste removal business...that has not received a license from the New York City Trade Waste Commission...shall be terminable on thirty days written notice." The Commission denied V.A.'s waiver application, among other reasons, because: (1) V.A. had been indicted in connection with the Manhattan District Attorney's prosecution of the organized crime-dominated, anticompetitive carting cartel; (2) V.A.'s former (until June 1995) principal and president, Frank Allocca, had also been indicted in that criminal case; (3) V.A. belonged to and illicitly benefited from its membership in an indicted trade association, the KCTW, which the Manhattan District Attorney had charged was used to enforce illegal customer-allocation and price-fixing schemes; (4) Frank Allocca actively participated in KCTW affairs as president of that association from 1989 to June 1996; (5) Allocca is an associate in the Genovese organized crime family who has associated with numerous organized crime figures in connection with the carting industry; (6) a New York State judge already had found a "substantial probability" that the Manhattan District Attorney would prevail on the criminal charges and ordered the assets of V.A. and other carters seized and placed in receivership; and (7) V.A. engaged in abusive contracting practices, including using standard contracts that featured "evergreen" clauses. See Commission's Decision Denying Waiver Application of V.A. Sanitation Inc., dated August 9, 1996. Since the Commission rendered that determination, V.A., Allocca, and the KCTW all have pleaded guilty to corruption charges, as discussed herein.

the applicant and its principal have since entered into a plea agreement (copy attached as Exhibit 4) in satisfaction of the charges.

On May 21, 1997, the Commission's staff issued a recommendation that V.A.'s application for a trade waste removal license be denied, and a copy of that recommendation was served on V.A. that day. Pursuant to the Commission's rules, V.A. had ten business days in which to submit a written response. See 17 RCNY § 2-08(a). In response, V.A. submitted a 14-page affidavit from Francis X. Allocca (with eleven exhibits) and a 15-page memorandum from its attorneys, Rosenman & Colin LLP. In rendering this decision, the Commission has considered, among other things, all of the materials submitted by V.A. in connection with its license application.

A. The Applicant's Criminal Convictions

1. Attempted Enterprise Corruption

As noted above, V.A. and its founder and former principal, Frank Allocca, were indicted in June 1995 for Enterprise Corruption in connection with their roles in the organized crime-controlled cartel in the New York City carting industry. In February 1997, Allocca pleaded guilty to Attempted Enterprise Corruption, a Class C felony. In his plea allocution, Allocca admitted that:

> Carters in the City of New York, including [Allocca and V.A.], operated by means of a "property rights" system, the purpose of which was to prevent meaningful competition in the carting industry. This system was enforced by a group known as the "cartel" composed of carters and their trade associations, including [Allocca and V.A.] . . .

Exhibit 3 at 7-8. Allocca further admitted that he and V.A.,

> having knowledge of the existence of a criminal enterprise, the cartel, and of the nature of its activities, and being employed by and associated with the cartel, intentionally conducted and

> participated in the affairs of the cartel by participating in a pattern of criminal activity.

Id. at 14. Allocca further admitted that he and others, including the applicant:

> banded together in the cartel in order to restrain competition in the private carting industry throughout the City of New York, and to keep carters' prices and profits artificially high to [sic] through implementation of the property rights system. This system was enforced by the carters' trade associations through a number of methods, including price fixing, customer allocation and concerted economic retaliation against carters who broke the cartel's rules.

Id. at 16. Finally, Allocca admitted that he and V.A., "using the association structure, participated in a pattern of criminal activity with intent to participate in and advance the interests of the cartel." Id. at 16-17.

2. Combination in Restraint of Trade and Competition

Also in February 1997, V.A. and Allocca each pleaded guilty to Combination in Restraint of Trade and Competition, a Class E felony, in violation of sections 340 and 341 of the New York General Business Law. See Exhibit 3 at 8-9, 39-41. In his plea allocution, Allocca, individually and on behalf on V.A., admitted (in addition to the admissions recounted above) that he knowingly and intentionally "restrain[ed] competition for customers in the private carting industry throughout the City of New York by means of price fixing and customer allocation." Id. at 9. Specifically, Allocca admitted that, after a rival carter solicited and began to serve certain locations in the City that previously had been serviced by the defendants, he and other defendant members of the cartel demanded that the rival carter "compensate" the defendants by paying them specified amounts, totaling $512,000. See id. at 10-13.

In making licensing determinations, the Commission is expressly authorized to 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 id. §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 these 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 V.A. and Allocca are so recent, so serious, and so closely related to both the purposes for which the applicant seeks a license, and the duties and responsibilities associated with such licensure, as to compel the conclusion that V.A. and Allocca lack good

character, honesty, and integrity and therefore, that V.A.'s license application should be denied.

V.A. asserts that the Commission should not take Frank Allocca's guilty plea to attempted enterprise corruption into account in determining whether V.A., the carting company he founded in 1971 and ran at least until he was indicted in June 1995, should be granted a license. See V.A. Mem. at 3-7; Affidavit of Francis X. Allocca, sworn to June 4, 1997, ¶¶ 6, 22. To do so, argues V.A., would invade the province of the gods, who are exclusively authorized "to visit the sins of the father upon the son," i.e., Allocca's son Francis who, together with his wife, acquired V.A. from his parents in the strikingly coincidental month of June 1995. See V.A. Mem. at 3; Allocca Aff. ¶ 2. The argument is baseless.

First, V.A. wholly ignores the provisions of Local Law 42 which plainly authorize the Commission to consider Frank Allocca's criminal history in connection with V.A.'s license application. An "applicant" for a license, such as V.A., is defined to include both the business entity "and each principal thereof." Admin. Code §16-501(a). A "principal" is defined to include corporate officers, directors, and at least 10% stockholders. Id. §16-501(d). Under this definition, Frank Allocca, who from 1971 to June 1995 was the president, a director, and at least a 50% stockholder of V.A., plainly was a "principal" of the company during that period. Moreover, as a means of preventing criminals from insulating their companies from accountability, "principal" is further defined to include persons who transfer their carting company stock to their children but retain an interest in the company. See id. §16-501(d)(1)(iii); SRI, 107 F.3d at 1000. Thus, Allocca's transfer of his stock in V.A. to his son in June 1995 in exchange for a promissory note from V.A. did not negate his status as a principal in the company.

Second, V.A. turns a blind eye to its *own* guilty plea to a criminal antitrust felony for, in V.A.'s words, "participating in an organized crime-controlled cartel." V.A. Mem. at 6. Contrary to V.A.'s assertion, it does not "elevate form over substance" (id.) for the Commission to take the corporation's criminal record into account in determining whether to issue the corporation a license. V.A. notes that corporations can act only through representatives such as officers and directors; that truism, however, does not

advance V.A.'s argument. It is well settled in our jurisprudence that corporations, although "legal fictions," can incur criminal and other forms of liability. When they do, as V.A. has here, one cannot escape the consequences by arguing that corporations are inanimate.

Third, V.A.'s contention, that it would be unfair to the "new" owners of the company (Francis Allocca and his wife) to deny V.A. a license based on prior criminal activity by Frank Allocca and V.A. itself, is meritless. To begin, it is not difficult to see what happened here. With the father's indictment imminent, the Allocca family tried to shelter its assets; the son and the daughter-in-law "bought" the company for *no money down* and with the purchase price of $592,518.00 payable over fifteen years, presumably out of the income stream from the business. Thus, Frank Allocca would continue to receive money from V.A.'s operations just as if he had never "sold" the company. As to his son Francis, V.A.'s depiction of him as an innocent strains credulity. Francis Allocca has worked for V.A. since 1972 and has been involved in numerous aspects of the company's business, including collections. Allocca Aff. ¶ 7. His meticulously crafted affidavit takes care not to assert that he was unaware of V.A.'s "participati[on] in an organized crime-controlled cartel" (V.A. Mem. at 6), particularly inasmuch as his father was (as detailed below) the president of a crooked trade association who answered to a Genovese capo. Contrary to V.A.'s apparent belief, that an applicant's current principals have not been indicted gives rise to no inference of entitlement to a license, specially when the applicant itself has recently pleaded guilty to criminal antitrust violations.

Fourth, V.A. makes much of the fact that, while operating under a court-imposed receivership for the past two years, it apparently has not run afoul of the law. See Allocca Aff. ¶¶ 23-29. It is barely noteworthy that an indicted company under receivership and facing civil forfeiture proceedings could manage to conduct itself properly during the pendency of the criminal and civil cases against it. Moreover, the level of monitoring experienced by V.A. appears to have been rather modest; for example, during the final five months of the receivership, the receiver devoted a total of 22.4 hours to his task, i.e., an average of slightly more than an hour per week. See id. Exhibit J. In any event, the Commission considers the period of time *predating* V.A.'s receivership to be far more relevant to its fitness for a license.

Before the receivership was imposed, V.A.'s conduct was far from exemplary; it was, in fact, admittedly criminal.

In sum, V.A. and Allocca by their own admission participated in the criminal cartel that corrupted the carting industry in New York City for decades. They are, quite simply, unworthy of licensure in that same industry again. Accordingly, in an exercise of its discretion, and in the legitimate interest of protecting the property, safety, and welfare of the general public, the Commission denies this license application.

B. Commission of Racketeering Activity

Local Law 42 expressly authorizes the Commission to consider a license applicant's commission of a racketeering activity in determining whether the applicant lacks good character, honesty, and integrity and, therefore, should be refused a license. See Admin. Code §16-509(a)(v). The guilty plea of its former principal, Frank Allocca, to attempted enterprise corruption compels the conclusion that V.A., through Allocca, engaged in racketeering activity. Thus, the Commission refuses to issue a license to V.A. on this ground as well.

V.A. asserts that, despite its admitted racketeering activity, it should be permitted to pursue an eleventh-hour sale of its assets rather than have the Commission act on its license application. See Allocca Aff. ¶¶ 15-20. The Commission rejects this cynical attempt to manipulate its procedures.

After the first wave of indictments was announced in June 1995, a number of the indicted companies and their principals made the judgment that it would be more prudent to exit the New York City carting market than to attempt to remain in it during what was likely to be an era of intense regulatory scrutiny. Thus, several indicted companies sold their assets to new market entrants who were not averse to the new regulatory climate. Soon after it was formed, the Commission, recognizing among other things the benefit (on balance) to be derived, during the early stages of a newly competitive market, from the expeditious departure of indicted companies and the timely arrival of new market entrants, encouraged these sales by announcing that it would consider applications for Commission approval of such transactions before acting on the putative seller's license application.

V.A., however, did not follow that course. Instead, Frank Allocca, facing indictment, effected a paper transfer of the company to his son. V.A. filed a license application with the Commission on August 29, 1996. At no time during the next nine months did V.A. file a sale application with the Commission. Instead, V.A. and Allocca pleaded guilty on February 13, 1997 and were sentenced on May 2, 1997. On May 21, 1997, the Commission's staff issued a recommendation that V.A.'s license application be denied. V.A. filed a response on June 5, 1997. On June 6, 1997, V.A., for the first time, filed a sale application with the Commission.

Four weeks earlier, however, on May 9, 1997, the Commission had announced that it would no longer automatically hold in abeyance action on a license application in favor of a pending sale application. In the Commission's view, it was no longer necessary to strongly encourage the exit of indicted companies through acquisition inasmuch as new market entrants were firmly established and genuine competition was taking hold. As a matter of policy, there is a public benefit in encouraging growth in legitimate carting companies' customer bases through head-to-head competition rather than through asset sales that economically benefit corrupt carters and their companies. Moreover, the Commission was concerned about manipulation of its procedures by license applicants who would wait to assess the staff's licensing recommendation before pursuing the sale option. That, of course, is precisely what V.A. has done here.

The Commission, in the exercise of its discretion, declines to hold in abeyance action on V.A.'s license application pending review of its recent sale application. As an admitted felon and participant in an organized crime-controlled cartel, V.A. has no entitlement whatsoever to reap the rewards of its criminality represented by the proceeds of its sale. V.A.'s "goodwill" (its customer base) is in essence the legacy of decades of unlawful corruption of the marketplace. V.A. had ample opportunity to exit the market at an earlier time, when other concerns counseled in favor of the Commission's encouraging expeditious departures. That time has passed, and the Commission will not acquiesce in any further enrichment of this wrongdoer.

Finally, V.A. claims that the Commission is "estopped" from denying its license application because its plea agreement with the Manhattan District Attorney's office acknowledged that V.A. "may be sold." See V.A. Mem. at 14; Allocca Aff. ¶ 18. The claim is a spurious *non sequitur*.[3] The fact that V.A.'s plea agreement does not, of itself, bar V.A. from selling its assets is irrelevant to the Commission's authority to refuse to approve such a sale (see 17 RCNY §5-05(b)(ii)), much less its authority to refuse to issue licenses. See Admin. Code §16-509(a).

C. Association with a Member or Associate of an Organized Crime Group

In rendering its decision on an applicant's fitness for a trade waste license, the Commission is further authorized by statute to consider the applicant's association with any member or associate of an organized crime group, as identified by a federal, state or city law enforcement or investigative agency, where the applicant knew or should have known that the person was associated with organized crime. See Admin. Code §16-509(a)(vi). In rejecting a constitutional challenge to this provision by certain carters and their trade association, the Second Circuit confirmed that a carter's "knowing associations, having a connection to the carting business," with organized crime figures may properly be considered by the Commission in its licensing determinations, in order to further its "compelling interest in combating crime, corruption and racketeering--evils that eat away at the body politic." SRI, 107 F.3d at 998.

In pleading guilty to attempted enterprise corruption and to criminal antitrust violations, V.A. and Allocca admitted their association with and participation in "the cartel," a criminal enterprise that enforced the carting industry's illegal "property rights" system. See Exhibit 3 at 7-8. As noted above, the Manhattan District Attorney's five-year investigation of the New York City carting industry uncovered compelling evidence that the cartel operated under the auspices and for the benefit of La Cosa Nostra, specifically the Genovese and Gambino organized crime families. Allocca

[3] V.A.'s assertion, that "the new owners agreed to purchase V.A. from Frank Allocca based, inter alia, on the unequivocal representation from New York City that it would permit them to sell V.A. if the time ever came to do so" (V.A. Mem. at 14), is patently false. According to V.A. itself, Frank Allocca handed over the company to his son and daughter-in-law in June 1995, twenty months before he entered into a plea agreement with the District Attorney's office.

was the president of the KCTW from 1989 to 1996. But the real power behind the KCTW during that period was Genovese capo Alphonse "Ally Shades" Malangone. See Affidavit of Detective Joseph Lentini in Support of Applications for Search Warrants, sworn to June 1995 (copy attached as Exhibit 5), ¶ 104 (Malangone "runs Brooklyn" and describes himself as "the KCTW's 'administrator'"). Allocca answered to Malangone. See id. ¶¶ 61 (Allocca a "front man" for Malangone), 105 (Allocca chided by Malangone for getting involved in a dispute involving Manhattan carters). Allocca routinely collected "compensation" payoffs from carting companies who broke the cartel's rules by successfully competing for customers. See id. ¶¶ 77, 83, 89, 96-97, 112, 121, 159. Indeed, Allocca collected a percentage of the money carting companies paid to settle disputes over ownership of customer locations and funneled part of these payoffs to Genovese boss "Chin" Gigante. Id. ¶ 82. As a bagman for the mob, Allocca was repeatedly observed in the company of members and associates of organized crime. See, e.g., id. ¶¶ 76 (meeting with Gambino soldier James "Jimmy Brown" Failla), 119-21 (meeting with Malangone).

In sum, Allocca and V.A. were not passive members of the KCTW but, rather, active participants in the criminal activities of which that association has since been convicted. Allocca and V.A. actively represented the interests of co-defendant and Genovese capo Malangone, the "business agent" for the KCTW. The totality of circumstances present here not only amply supports the conclusion that Allocca knew that Malangone was an organized crime figure but also compels the conclusion that Allocca himself is an associate of the Genovese organized crime family. Accordingly, the Commission finds that V.A. and Allocca knowingly associated with organized crime figures and denies the license application on this ground as well.

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. Based upon V.A.'s criminal convictions, racketeering activities, and knowing association with organized crime figures, all of which the Commission is expressly authorized to consider under Local Law 42, the Commission denies this license application.

This license denial decision is effective fourteen days from the date hereof. In order that V.A.'s customers may make other carting arrangements without an interruption in service, V.A. is directed (i) to continue servicing its customers for the next fourteen days in accordance with its existing contractual arrangements, and (ii) to send a copy of the attached notice to each of its customers by first-class U.S. mail by no later than June 16, 1997. V.A. shall not service any customers, or otherwise operate as a trade waste removal business in New York City, after the expiration of the fourteen-day period.

Dated: New York, New York
June 13, 1997

THE TRADE WASTE COMMISSION

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Chairman

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John J. Doherty
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