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

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE RENEWAL APPLICATION OF WALDORF HOLDING CORP. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

Waldorf Holding Corp., d/b/a Waldorf Carting ("Waldorf" or the "Applicant"), has applied to the New York City Business Integrity Commission, formerly the Trade Waste Commission (the "Commission"), for renewal of the license to operate as a trade waste business previously issued to Waldorf pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §§ 16-505(a), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices. Pursuant to a Licensing Order issued by the Commission, and subject to various conditions, including the appointment of a monitor, the original license was granted to Waldorf effective February 1, 2000 for a two-year period ending January 31, 2002. Thereafter, prior to the expiration of the original license, Waldorf submitted its first license renewal application to the Commission, which then issued a License Renewal Order permitting Waldorf to continue operating for an additional two-year period expiring January 31, 2004, subject to an extension of the monitorship and all other conditions set forth in the original Licensing Order which were not otherwise modified. Recently, Waldorf submitted a second license renewal application seeking to renew the license for another two-year term ending January 31, 2006.

Local Law 42 authorizes the Commission to refuse to issue a license to any applicant that it determines, in the exercise of its discretion, lacks good character, honesty and integrity. See Admin. Code § 16-509(a). The statute identifies a number of factors that, among others, the Commission may consider in making its determination. See id. § 16-509(a)(i)-(x). Based on Waldorf's record, the Commission denies its license renewal application on the ground that the Applicant lacks good character, honesty and integrity based on the following independently sufficient reasons:

(1) Waldorf and its principals participated in a fraudulent scheme involving the use of false employee identities and false Social Security numbers to avoid paying employee wages and benefits. Waldorf's president, Michael Marrone, Jr., admitted to signing endorsements on payroll checks in names other than his own.

(2) Waldorf and its principals, by participating in a fraudulent scheme to avoid paying employee wages and benefits, thereby also engaged in an unfair and anti-competitive trade practice.

(3) Waldorf and its principals falsified business records, or caused or participated in the falsification of such records, in furtherance of a fraudulent scheme to avoid paying employee wages and benefits.

(4) Waldorf and its principals falsified business records, or caused or participated in the falsification of such records, to create the appearance that expenses for landscaping and other work performed at the residences of two Waldorf principals were legitimate Waldorf business expenses. Waldorf's president, Michael Marrone, Jr., provided false or misleading information concerning such matters to the Monitor appointed by the Commission.

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. Beginning in the late 1950's, and until only recently, the commercial carting industry in the City was operated as an organized crime-controlled cartel engaging in a pervasive pattern of racketeering and anticompetitive practices. The United States Court of Appeals for the Second Circuit has described that cartel as "a 'black hole' in New York City's economic life":

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

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

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

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

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

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

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

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

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

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

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

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

Local Law 42, § 1.

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

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

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

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

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

On January 28, 1997, Vincent Vigliotti became the fourth individual defendant to plead guilty to carting industry corruption charges. Two carting companies and a transfer station run by Vigliotti's family under his auspices pleaded guilty to criminal antitrust violations. In his allocution, Vigliotti confirmed Ponte's admissions as to the scope of the criminal antitrust conspiracy in the carting industry, illustrated by trade association-enforced compensation payments for lost customers and concerted efforts to deter competitors from entering the market through threats and economic retaliation. Vigliotti agreed to serve a prison term of one to three years, to pay $2.1 million in fines, restitution, and civil forfeitures, and to be permanently barred from the New York City carting industry.

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

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

On July 21, 1997, Philip Barretti, another lead defendant in the state prosecution and the former owner of New York City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay $6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and $3^1/_3$ to ten years, respectively. All four defendants agreed to be permanently barred from the New York City carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to a Class E environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

In the federal case, on September 30, 1997, Thomas Milo, a Gambino family associate, and his company, Suburban Carting, among others, pleaded guilty to federal charges of conspiracy to defraud the United States and to make and file false and fraudulent tax returns, and, respectively, to defraud Westchester County in connection with a transfer station contract and to violate the Taft-Hartley Act by making unlawful payments to a union official. In their allocutions, Suburban and Milo admitted that one objective of the conspiracy was to conceal the distribution of cartel "property rights" profits by engaging in sham transactions.

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

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

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

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs (the "DCA") for the licensing of businesses that remove, collect, or dispose of trade waste. See Admin. Code §16-503. The carting industry immediately challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial

and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, 940 F. Supp. 656 (S.D.N.Y. 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that "[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste... without having first obtained a license therefor from the [C]ommission." Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may "refuse to issue a license to an applicant who lacks good character, honesty and integrity." Id. §16-509(a). As the United States Court of Appeals has definitively ruled, an applicant for a trade waste removal license under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997). In determining whether to issue a license to an applicant, the Commission may consider, among other things, the following matters, if applicable:

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

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

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

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

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

may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

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

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

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

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

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

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

On or about January 29, 2004, Waldorf filed with the Commission a Renewal Application for License or Registration as a Trade Waste Business (the "license renewal application") to renew its trade waste removal license. The Commission's staff has conducted an investigation of the Applicant. On March 4, 2004, the staff issued a 17-page recommendation that the application be denied. On March 31, 2004, the Applicant submitted a written response, consisting of a 25-page letter, with attached exhibits lettered A through J, in opposition to the recommendation. The Commission has considered both the staff's recommendation and the Applicant's response. For the independently sufficient reasons set forth below, the Commission finds that the Applicant lacks good character, honesty and integrity and, based on such finding, denies the license renewal application.

A. Applicant Background

1. The Applicant's License History

Waldorf's license history is closely linked to the history of its predecessor-in-interest, Waldorf Carting Corporation ("Old Waldorf").

On or about August 30, 1996, Old Waldorf filed with the Commission an Application for License as a Trade Waste Business (the "Old Waldorf license application") in connection with the carting business which it operated in New York City. In reviewing Old Waldorf's application, the Commission's staff raised concerns about the involvement of Old Waldorf and its president and majority shareholder, Michael Anthony Marrone ("Michael Marrone, Sr."), in the Association of Trade Waste Removers of Greater New York, commonly known as the Greater New York Trade Waste Association (the "GNYTW"), an organization that was an integral part of the criminal cartel that controlled the carting industry in New York City for decades.[1] In light of his significant participation in the GNYTW, the Commission required that Michael Marrone, Sr. divest all interest in Old Waldorf's carting business and agree to permanent debarment from the New York City carting industry as conditions of licensing.[2] This led to the transfer of Old Waldorf and its business to Waldorf, whose principals, Michael G. Marrone ("Michael Marrone, Jr."), James G. Marrone ("James Marrone") and Joseph G. Marrone ("Joseph Marrone"), are all sons of Michael Marrone, Sr. In effect, control of the business was passed from the father to the sons through the transfer to Waldorf, which initially functioned as a holding company while Old Waldorf continued as the operating company and Waldorf's wholly-owned subsidiary for a period of time.[3]

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[1]See the background section above concerning the New York City carting industry for a more complete discussion about the cartel and the criminal proceedings that resulted in the conviction of the GNYTW and various other cartel elements for enterprise corruption and assorted other crimes. Old Waldorf was a member of the GNYTW from 1975 to 1996. Michael Marrone, Sr. was on the GNYTW's board of directors from about 1987 (or 1988) to 1996. He became vice president of the association in 1990 and was its president by the beginning of 1991, serving continuously in that last capacity until he resigned in May of 1996. See April 8 and September 8, 1999 depositions of Michael Marrone, Sr.; Old Waldorf license application, Part II, responses to questions 1(a), (b) and (c); and Waldorf license application, responses to same questions.

[2]Additionally, Michael Marrone, Sr. was charged by the Commission with failing to provide truthful information in connection with the Commission's investigation of Old Waldorf's license application. In sworn depositions conducted on April 8 and September 8, 1999, he gave false or misleading testimony about the role of the GNYTW in enforcing the property rights system which was a key feature of the cartel. Settlement of the violation, by payment of a $10,000 fine, was one of the conditions for approving the sale application. See condition 12 of the Conditional Permission to Proceed with Sale Transaction issued by the Commission on February 9, 2000.

[3]Prior to the transfer, Michael Marrone, Sr. held a 71½ % interest in Old Waldorf and his sister, Ernestine Wright, held the remaining 28½ %. See Old Waldorf license application, Schedule A. Both of these interests were divested as a result of the transfer. Michael Marrone, Jr., James Marrone and Joseph Marrone all worked for Old Waldorf for a number of years before the business was transferred to Waldorf. At the time Old Waldorf's license application was filed with the Commission, they all held executive or managerial level positions with the company. See id.; see also Waldorf license application, Schedule B. Old Waldorf was later merged into Waldorf during the company's fiscal year ended September 30, 2001, thereby eliminating the old operating corporation and changing

Accordingly, on or about November 12, 1999, an Application for Permission to Proceed with Asset or Business Sale Transaction (the "sale application") was filed with the Commission to allow all of the issued and outstanding shares of stock of Old Waldorf to be transferred to Waldorf. At or about the same time, Waldorf filed with the Commission an Application for License as a Trade Waste Business (the "Waldorf license application") seeking to be licensed in its own right as Old Waldorf's successor-in-interest. Subject to various conditions, on February 9, 2000, the Commission issued a Conditional Permission to Proceed with Sale Transaction (the "Conditional Permission"), approving the sale application, and a Licensing Order, dated the same date (the "Licensing Order"), granting a license to Waldorf for a two-year period ending January 31, 2002. In consideration of these approvals, an affidavit was also executed by Michael Marrone, Sr. on February 8, 2000 and submitted to the Commission, pursuant to which Mr. Marrone agreed to a lifetime debarment from participation in the New York City carting industry. To ensure compliance with all of the conditions of Waldorf's license, including the debarment of Michael Marrone, Sr., at least as it applied to Waldorf, the Licensing Order required that a monitor be appointed to oversee the operation of Waldorf's business during the license period.[4]

Thereafter, on or about January 30, 2001, Waldorf submitted to the Commission its first Renewal Application for License or Registration as a Trade Waste Business (the "first license renewal application"). In a License Renewal Order dated April 23, 2003, the Commission approved the first license renewal application subject to all of the conditions set forth in the original Licensing Order, and also subject to an extension of the monitorship for an additional one-year term commencing on April 6, 2002. The monitorship was subsequently extended for additional periods.[5] These extensions of the monitoring requirement resulted from a number of serious, ongoing concerns raised by the Monitor while overseeing and investigating the activities of Waldorf and its principals.

On or about January 29, 2004, Waldorf filed with the Commission the license renewal application that is the subject of this recommendation.

2. The Monitor

The Commission selected the law firm of Getnick & Getnick as Waldorf's monitor (the "Monitor"). Under the Licensing Order, the Monitor is given broad power and discretion to ensure that Waldorf operates lawfully in all respects and complies with all provisions of the Licensing

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Waldorf's status from holding company to direct owner and operator of the business. See Waldorf's Audited Financial Statement for 2001, Note 1.

[4]See Licensing Order, condition 15.

[5]By Order dated April 3, 2003, the Commission extended the monitorship for an additional thirty days commencing April 6, 2003. Thereafter, at a meeting held at the Commission's offices on May 15, 2003, Waldorf, its principals and counsel were advised that the monitorship would be extended further pending review of certain compliance issues.

Order, and that the continued licensing of Waldorf is consistent with the purposes of Local Law 42 of 1996, including the elimination of corruption and organized-crime influence and the promotion of competition in New York City's commercial waste industry.[6]

During the course of the monitorship, Waldorf's business practices were a major area of concern and inquiry. Indeed, the Monitor's findings in this area reveal that Waldorf is part of a corrupt organization of companies engaged in unscrupulous business practices. These findings have led to a criminal investigation by state and federal law enforcement agencies. All of these matters are discussed further below.

3. Waldorf, Its Business and Related Entities

Waldorf, a New York corporation, is owned equally by its three principals. Michael Marrone, Jr. is the company's president, Joseph Marrone is its vice president, and James Marrone is the secretary and treasurer.[7] Waldorf is actually part of an organization of companies which are all controlled by the Marrone brothers (the "Waldorf Group"). The Waldorf Group's various business interests include interior demolition work and, to a lesser degree, commercial waste removal. Waldorf bids for demolition jobs and subcontracts the demolition work to one of its affiliates, Calvin Maintenance, Inc. ("Calvin"), which then effectively passes all of its operating expenses on to Waldorf through its billing for the subcontracted work. James Marrone and Joseph Marrone each own fifty percent (50%) of Calvin.[8] For its part, Waldorf removes all of the debris generated by Calvin's demolition work. Additionally, Waldorf has a number of customers for which it provides rubbish removal services on a regular basis. Most of the combined revenue of Waldorf and Calvin comes from the interior demolition business.[9]

Demolition work and waste hauling are split into two businesses operated by two separate corporate entities, Waldorf and Calvin, within the Waldorf Group primarily to facilitate the payment

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[6]See Licensing Order, condition 15. The Monitor engaged the services of an investigative agency, Hawthorne Investigations & Security, and an accounting firm, BDO Seidman, LLP, to assist in fulfilling its monitoring duties. The Monitor reported its progress to the Commission and its staff through various means, including written reports, meetings and informal discussions.

[7]See Waldorf license application, Schedule A.

[8]The head foremen on Calvin's demolition jobs are Diego (a/k/a Danny) and Salvatore (a/k/a Sal) Tantillo. The Tantillo brothers appear to play a major role in the business affairs of the Waldorf Group. Their father, Antonio (a/k/a Tony) Tantillo was previously in charge of a paper recycling facility operated by another Waldorf affiliate, Interboro Paper Recycling, LLC, at Waldorf's Mount Vernon premises under a license issued by Westchester County. According to information provided to the Monitor by Michael Marrone, Jr., the paper recycling business was closed because it was not profitable. Tony Tantillo reportedly returned to his former position as a foreman overseeing some of Calvin's bigger demolition job sites.

[9]The Monitor's most recent estimate is 85%. The remaining 15% of their revenue comes from waste removal.

of employee benefits to two unions.[10] Calvin's demolition workers belong to Local 79 of the Mason Tenders' District Council of Greater New York, an affiliate of the Laborers International Union of North America ("Local 79"). Waldorf's drivers are members of Private Sanitation Union Local 813, an affiliate of the International Brotherhood of Teamsters, AFL-CIO ("Local 813").[11]

Another Waldorf affiliate controlled by the Marrone brothers is Complete Custodial Services, Inc. ("CCS"). According to the Marrones, CCS was established to deal with non-union employees who perform jobs which are not covered by the Local 79 contract, such as moving furniture and cleaning.[12] As with Calvin, CCS bills all of its operating expenses to Waldorf.[13]

Additionally, as discussed later in this Decision, Waldorf also controls two other business entities, Five Star Mechanical & Demolition, Inc. ("Five Star") and Safe Office Moving & Renovation, Inc. ("Safe Office"). Ostensibly, Five Star repairs trucks for the Waldorf Group and Safe Office does work similar to that of CCS.[14]

4. The Pending Criminal Investigation

Based on information obtained by the Monitor while overseeing the business activities of Waldorf and its principals, a criminal investigation into those activities was initiated by the Organized Crime Investigation Division of the New York City Police Department ("OCID"). Two search warrants were obtained in connection with the investigation, one to search Waldorf's business premises located in Mount Vernon, New York (the "New York search warrant"), the other to search the New Jersey home of Michael Marrone, Jr. (the "New Jersey search warrant").[15]

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[10]This was the explanation provided to the Monitor by Michael Marrone, Jr.

[11]Waldorf also employs a clerical staff and mechanics.

[12]Michael Marrone, Jr. and his brother, James, both gave this explanation to the Monitor.

[13]The Marrones also control 240 Washington Street, LLC, a real estate company which owns the property where Waldorf's current business premises are located. Each of the three Marrone brothers holds a 30% equity interest in this entity. The remaining 10% was reportedly sold to Danny and Sal Tantillo (5% each) to induce them to continue working for Calvin because they are considered to be valuable employees. According to Michael Marrone, Jr., the Tantillos had negotiated with the Marrones to purchase a share in Waldorf itself, but they were not able to come to terms. Another real estate company, 95 Bruckner Associates, owned the property at 95 Bruckner Boulevard in the Bronx where Waldorf's business was located prior to moving to Mount Vernon in November of 2000. The Marrone brothers each owned a one-third interest in this company as well.

[14]For the most part, this multiple company business model involving Calvin, CCS, Five Star, Safe Office and the other entities mentioned, existed prior to Waldorf and the Marrone brothers taking over the business from Old Waldorf and the elder Marrone. The exception is 240 Washington Street, LLC, which did not come into existence until the Mount Vernon property was acquired.

[15]See Search Warrant issued July 29, 2003 by Justice William M. Harrington of the Criminal Court of the City of New York, County of New York; and Search Warrant issued July 31, 2003 by Judge William C. Meehan of the Superior Court of the State of New Jersey, County of Bergen. The applications for both warrants were sealed by

On the morning of August 1, 2003, OCID detectives, accompanied by representatives of the Internal Revenue Service and the Commission (collectively, the "Joint Gotham Task Force"), executed the New York search warrant. At or about the same time, investigators assigned to the New Jersey State Police, joined by representatives of the Office of the New Jersey State Attorney General and the Joint Gotham Task Force, executed the New Jersey search warrant. These actions resulted in the seizure of various books and records, including computer data files and the hardware containing such files (computers, computer diskettes and the like), relating to the business conducted by the Waldorf Group.

B. Grounds for Disapproval of License Renewal Application

1. Waldorf and its principals participated in a fraudulent scheme involving the use of false identities and false Social Security numbers to avoid paying employee wages and benefits. Waldorf's president, Michael Marrone, Jr., admitted to signing endorsements on payroll checks in names other than his own.

During the course of the monitorship, the Monitor obtained information that raised serious questions about the manner in which Waldorf and its principals conducted business.[16] The Monitor discovered, for example, that many of Calvin's workers have false Social Security numbers. Other areas of concern were the failure to pay overtime wages and the practice of paying workers in cash.

On December 2, 2003, subsequent to the execution of the search warrants, a meeting was held at the Office of the Manhattan District Attorney in connection with the ongoing criminal investigation of the Waldorf Group. In attendance were representatives of the District Attorney's Office, the New York City Police Department and the Business Integrity Commission, as well as Waldorf's counsel, Gerald Walpin of the firm of KMZ Rosenman, who was also acting as personal counsel for each of the three Marrone brothers. At the meeting, Mr. Walpin made certain statements on behalf of his clients concerning the matters under investigation.

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court order and the criminal investigation is currently pending. Therefore, the evidence supporting the warrants is not available for consideration by the Commission at this time. The New Jersey search warrant recites that it was issued based on a finding of probable cause to believe that Michael Marrone, Jr.'s home contained evidence of the commission of a variety of serious crimes under New York law, all of which are specified in the warrant. The specified crimes are money laundering, falsifying business records, forgery, criminal possession of a forged instrument, combination in restraint of trade, filing false returns or reports for corporate taxes (New York City and New York State), offering a false instrument for filing, and conspiracy to commit these crimes. Many of these crimes are felonies.

[16]Many of these issues are the subject of the pending criminal investigation. The sources of the Monitor's information included interviews with Waldorf's principals and current and former employees, reviews of available books and records and of public records, and direct observations by the Monitor's personnel.

According to Mr. Walpin, Calvin pays its laborers directly by payroll check for their regular work hours,[17] but a different procedure would be followed when Calvin employees worked in excess of those hours. Calvin employees who worked more than their regular hours would be treated as employees of one of Waldorf's non-union "vendors." Mr. Walpin confirmed that Five Star and Safe Office acted as vendors (CCS, which was ostensibly set up for the same business purpose as Safe Office, was not identified as a vendor by Waldorf's counsel). The vendor would generate invoices and issue separate payroll checks for the work performed.[18] However, instead of being issued directly to the employees who perform the additional work, the checks were made payable to fictitious names using false Social Security numbers. These false identities, so the explanation goes, supposedly corresponded to the real employees who did the work. Next, the checks would be taken to the bank, where they would be cashed, and then the money would be distributed to the workers in the amounts due to each.[19] Required governmental withholdings, such as payroll taxes, would be deducted from these checks. However, the wages purportedly paid in this manner would be figured at lower, non-union hourly rates, and no fringe benefit payment would be made to the employees' union, Local 79.

The Marrones thus admitted, through their counsel, that they engaged in a practice of using false names and false Social Security numbers for Calvin laborers for the purpose of avoiding payment of wages at prevailing rates to employees, as well as corresponding fringe benefit payments to the employees' union, required under applicable law and by union contract.[20] To put it simply,

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[17]Under the applicable collective bargaining agreement, a Calvin worker's regular work hours may consist of seven or eight hours per day, not to exceed forty hours per week. See Article V, Section 1, of Trade Agreement between the Mason Tenders' District Council of Greater New York and the Interior Demolition Contractors Association, as amended and extended through June 30, 2004 ("Local 79 Contract"). The Interior Demolition Contractors Association is a trade association which represents member companies, including Calvin/Waldorf, in collective bargaining.

[18]The checks would be issued through ADP, an independent payroll processing service.

[19]Sterling National Bank is used for this purpose. It happens that Waldorf, Calvin, CCS, Five Star and Safe Office all have accounts with this bank. Whether Mr. Walpin did or did not identify who cashes these payroll checks at the December 2, 203 meeting (in the Applicant's Response, it is claimed he did - Resp. at 10, n. 14), such an identification was made later at the March 2, 2004 meeting, which was also held at the Manhattan District Attorney's Office (discussed later in this Decision)

[20]See Local 79 Contract, Article V, Section 2; Section 7 of the Fair Labor Standards Act of 1938 (29 USCA § 207); and New York State Labor Law § 160.

Article V, Section 2, of the Local 79 Contract provides as follows:

> All hours worked in excess of eight hours shall be paid at the rate of time and one half. All fringe benefit contributions shall be paid on the basis of hours worked.

Under these provisions, overtime work should be included with work performed during regular hours to compute required fringe benefit contributions payable by an employer, so an unscrupulous employer who shortchanges workers on overtime pay also benefits from a corresponding reduction in fringe benefit contributions.

the payroll procedure which Waldorf's counsel described is an elaborate and fraudulent scheme. Moreover, the use of false Social Security numbers as described by Mr. Walpin likely constitutes a crime under federal law.[21]

The Waldorf/Calvin payroll scheme resulted in substantial savings in labor costs in two ways. First, instead of overtime wages at rates required under the Local 79 Contract and by federal and state law, Calvin employees were paid regular, non-overtime wages at lower, non-union rates through the Marrone-controlled companies, Five Star and Safe Office. Second, there is a corresponding reduction in fringe benefit payments to Local 79, since such payments are based on total hours worked, including regular time and overtime.[22] The Marrones estimated the cost savings realized from their scheme to be about $400,000, but the actual amount has not yet been determined.

The various business entities involved in the Waldorf/Calvin payroll fraud create the illusion that they actually function, at different times, as separate subcontractors or vendors to Waldorf and as employers to portions of the Waldorf Group labor force. In reality, these entities are all controlled in one way or another by the Marrone brothers and are used by them as part of a corporate "shell game," a purpose of which is to avoid paying legally-required wages and fringe benefit contributions. Although the Marrones structured them so they would appear to be independent companies, Five Star and Safe Office are actually nothing more than two more interchangeable pieces in the Waldorf

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Such savings on fringe benefits are one aspect of the scheme described by Mr. Walpin.

The Fair Labor Standards Act of 1938 ("FLSA"), a federal statute with broad application to many private and public sector workers, including Calvin's laborers and other Waldorf Group workers, sets forth minimum wage and maximum hour restrictions. Under Section 7(a)(1) of the FLSA (29 USCA § 207(a)(1)), an employer is prohibited from employing any employee covered by the statue for a workweek longer than forty hours unless the employee receives compensation for the overtime work at a rate not less than one and one-half times the employee's regular pay rate. The overtime rate required by the Local 79 Contract is consistent with the FLSA standard.

Under the FLSA and the terms of the Local 79 Contract, Calvin's laborers are entitled to be paid at the rate of one and one-half times their regular pay rate for overtime work, which is generally any work in excess of eight hours per day under Labor Law § 160, or forty hours per week under Section 7(a)(1) of the FLSA (29 USCA § 207(a)(1)).

[21] See 42 USCA § 408(a)(7)(B), which states, in pertinent part:

> Whoever . . . for the purpose of obtaining anything of value from any other person, or for any other purpose . . . with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person . . . shall be guilty of a felony and upon conviction thereof shall be fined . . . or imprisoned for not more than five years, or both.

Obviously, the fact that the "other person" is as fictitious as the Social Security number should not make any difference in the application of the statute.

[22] See Local 79 Contract, Article V, Section 2.

Group shell game, engaging not in arm's-length transactions with one another but rather in a carefully coordinated scheme to conceal Waldorf's evasion of its legal obligations.[23]

Pursuant to this scheme, large sums of money were paid by Waldorf to Five Star and Safe Office. Based on an analysis of Waldorf's books and records, particularly invoices and other records of accounts payable, the Monitor determined that a combined total of more than $2 million was paid by Waldorf to Five Star and Safe Office between February 2, 1998 and September 27, 2001 purportedly for services rendered.[24] On their face, Waldorf's business records give the appearance of a substantial amount of business activity with Five Star and Safe Office. The reality is that this seemingly legitimate activity among companies that appear to be functioning independently of each other is integral to the Marrones' payroll fraud as it serves to mask the illegal conduct.

Further details about the nature and scope of the Waldorf/Calvin payroll fraud came to light subsequent to the December 2, 2003 meeting at the Manhattan District Attorney's Office. On March 2, 2004, another meeting was held at the DA's Office concerning the pending criminal investigation. Present at the meeting were representatives of the District Attorney's Office, the New York City Police Department and the Business Integrity Commission, and also Michael Marrone, Jr. and his attorney, Mr. Walpin.[25] Michael Marrone, Jr. essentially reiterated Mr. Walpin's prior explanation of the Waldorf/Calvin fraudulent payroll practices. He also added more details about those practices.

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[23]According to information obtained by the Monitor from the New York State Department of State, Division of Corporations, Five Star and Safe Office were both incorporated in New York in 1998. Diego (Danny) Tantillo is listed as the chairman and chief executive officer for both corporations with an address at 2227 79th Street, Brooklyn, New York, which happens to be the Tantillo brothers' former residence and the home of their parents. Yet, when the Monitor interviewed Danny and Sal Tantillo and questioned them about their possible involvement in any business activities beyond Waldorf and Calvin, neither one acknowledged any connection with Five Star or Safe Office.

The Applicant's Response here is contradictory. First, the Applicant argues that what the Tantillos said or did not say when they were questioned by the Monitor was "their decision and cannot implicate Waldorf or its principals" (Resp. at 7, n. 7). The Applicant even feigns puzzlement that the Tantillos would conceal a connection with Five Star and Safe Office since Danny Tantillo is listed as a principal of both companies (Id.). Then, on the very next page in the Response, the Applicant admits that Five Star and Safe Office are controlled by Waldorf and the Marrones and were "structured" to appear independent and avoid union inquiry (Resp. at 8, n. 9), making it obvious that Danny Tantillo, at least, must have been aware of the pretense and cooperated with the Marrones in maintaining it, and also that the Applicant's earlier argument was merely a continuation of the deception. See also n. 26, infra. In any event, it is clear that these two companies are merely Marrone alter egos used by the Marrones to further their payroll fraud.

[24]See Exhibit 6 of Monitor's Report to the Business Integrity Commission, dated April 23, 2003, consisting of schedules of payments made to Five Star and Safe Office on invoices from those two companies. The schedules were prepared by the Monitor. Specifically, the schedules show that between February 2, 1998 and September 27, 2001, Waldorf paid approximately $832,917.28 to Five Star, and between September 28, 1998 and May 31, 2001, it paid approximately $1,293,350.00 to Safe Office, making a total of approximately $2,126,267.28 paid to both entities during the period in question.

[25]James Marrone and Joseph Marrone were not present.

Mr. Marrone admitted that he and his brothers devised the scheme, claiming that they needed to resort to such measures to make Calvin more competitive with other demolition companies which do not hire any union members. However, the desire to gain a competitive edge is obviously not an acceptable reason for fraud. He also acknowledged that he and his brothers are the true owners of Five Star and Safe Office.[26] Additionally, for the first time, Mr. Marrone admitted knowing that the endorsements needed to cash the company payroll checks issued to fictitious payees were not signed by the payee, and that he himself had "most likely" signed some of the endorsements.[27] Mr. Marrone attempted to justify these actions, but his explanations do not excuse his or the Applicants' conduct. For instance, Mr. Marrone stated that he wanted to pay workers in cash because he did not want the false data on the checks, that is, the fictitious names and Social Security numbers, "floating around out there." However, the fictitious names and Social Security numbers were created in the first place to facilitate the fraudulent payroll scheme, and generating and cashing falsified payroll checks was a key component of the scheme to avoid paying legally-required wages to workers and fringe benefit contributions to Local 79.

The extensive, systematic wage and benefit fraud in which the Marrones and Waldorf have admittedly participated constitutes serious misconduct. It alone provides ample basis for denying a renewal of Waldorf's license. Viewed in its entirety, the evidence establishes that the Marrone-controlled Waldorf Group, comprised of Waldorf and its affiliates, also including Five Star and Safe Office, collectively constitute a corrupt enterprise, an admitted purpose of which is to prey on the laborers it employs.[28] Although the Commission's authority extends to a relatively small portion of the Waldorf Group's overall business operations, judicious exercise of that authority will at least serve to ensure that the New York City carting industry does not emulate Waldorf's deceptive practices.

In its Response, the Applicant raises two main arguments concerning the first ground for denial. First, the Applicant claims that its admitted wrongdoing is beyond the scope of Local Law 42 (Resp.[29] at 1-2). Second, the Applicant argues that denial of its license renewal application is not warranted and is too harsh a consequence for its actions (Resp. at 2-3).

In an effort to show that its misconduct is not prohibited by Local Law 42, the Applicant selectively quotes portions of the legislative findings set forth in Section 1 of the statute and gives a very narrow, and incorrect, interpretation of the excerpted findings. Clearly, the New York City

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[26]According to Mr. Marrone, the Tantillo brothers were made the nominal owners of these shell companies merely to give substance to the appearance that Calvin had no connection to these companies.

[27]He indicated that Calvin's head foremen, the Tantillo brothers, would normally forge the endorsements on Five Star/Safe Office payroll checks, and that he would forge these signatures if the Tantillos were not available to do it.

[28]Other purposes may come to light as a result of the pending criminal investigation.

[29]References to the prefix "Resp." are to the respective pages of the Applicant's response.

Council's findings were included in Section 1 to explain the purpose for Local Law 42 in light of the circumstances which led to its enactment, not as a limitation on the future application of the statute. The City Council's broad, comprehensive purpose in enacting the statute is fully expressed in the last two paragraphs of Section 1, as follows:

> The Council therefore finds and declares that in order to provide for the more efficient and lawful conduct of businesses in the carting industry and to protect the public interest, it is necessary to establish a New York city trade waste commission that shall be responsible for the licensing and regulation of businesses in the carting industry.
>
> Enactment of this chapter is intended to *enhance* the city's ability to address organized crime corruption, to protect businesses who utilize private carting services, and to increase competition in the carting industry with the aim of reducing consumer prices. [Emphasis added.]

Local Law 42, Section 1. Contrary to the Applicant's interpretation, the City Council's intention to "enhance" the City's ability to address the particular concerns stated in the second quoted paragraph does not imply that the City should be restricted in providing for the more general objectives expressed by the City Council in the first quoted paragraph. Although organized crime has historically been a serious threat to the integrity of the industry, it cannot be seriously said that Local Law 42 was enacted for the sole purpose of addressing the problems associated with that threat and no others. The following excerpt from the legislative findings reveals that the City Council was also concerned about a variety of illegal industry practices, including ones involving fraud:

> .... The council further finds that despite the efforts of city agencies to regulate the industry under existing laws and regulations, private carting companies have continued to engage in various illegal and anti-competitive practices. The council further finds that unscrupulous businesses in the industry have taken advantage of the absence of an effective regulatory scheme to engage in *fraudulent conduct* .... [Emphasis added.]

Local Law 42, Section 1.

Consistent with the stated legislative purpose, the statute is far broader than the Applicant contends. A plain reading of the entire statute confirms that it provides a complete system for the ongoing regulation of the City's carting industry, including provisions for licensing, enforcement, rule making and so forth. See Admin. Code § 16-501 et seq. Despite the Applicant's assertions, the statute is not static or one-dimensional. Moreover, the Commission's statutory authority to deny licensure upon a finding that the applicant lacks good character, honesty and integrity obviously includes the power inquire into any conduct that bears on the issue. The misconduct at issue here certainly falls within the ambit of such an inquiry.

The Applicant provides in its Response a lengthy explanation of the reasons why Waldorf formed Five Star, Safe Office and CCS, concluding that they were all "formed for legitimate purposes" and that "Waldorf's initial intent was to act lawfully in all respects, while legitimately exploiting 'gaps'" in the union contract (Resp. at 6-8). Continuing the explanation, the Applicant states, "[s]ubsequently, in the face of extreme competitive pressure, Waldorf improperly expanded its use of Safe Office and Five Star" and "began using the companies to perform overtime work" covered by the union contract without paying union overtime rates or making required benefit contributions (Resp. at 8). However, the Applicant does not acknowledge that CCS was used in this fashion also. The true picture, though, looks quite different.

According to the Weller memorandum concerning the April 26, 1999 labor-management meeting discussed in the Response (Resp. at 7-8), John Virga, Director of the Mason Tenders' District Council Trust Funds, "strongly recommended setting up a different company with different employees to perform [non-collectively bargained] work" (Resp. Ex. A). Although a different company, CCS, was formed shortly after the meeting in response to the recommendation (Resp. Ex. B), it did not have different employees as recommended, but was merely used as an alternate employer for the same pool of workers within the Waldorf Group. The Applicant itself acknowledges that CCS was used as a vehicle for union workers to perform non-union tasks (Resp. at 7). Consequently, the legitimacy of CCS is questionable at best.

In the case of Safe Office and Five Star, the Applicant admits that these companies were used for improper purposes, so whether they were sham companies at the outset of their existence or were corrupted at some later point is ultimately irrelevant. The Applicant admits in its Response that "Safe Office and Five Star were structured to appear independent of Waldorf when, in fact, they were controlled by Waldorf" and that this was done to avoid union "questions concerning the amount of non-union labor used by Waldorf" (Resp. at 8, n. 9). Consistent with this stated intent to avoid union inquiries concerning the activities of Safe Office and Five Star, the Applicant also admits that Safe Office and Five Star payroll checks were not distributed to employees and that, instead, the employees were paid in cash to minimize the risk of the union learning of the payroll scheme (Resp. at 9-10). Indeed, the Applicant's "savings calculations," discussed in more detail below, use the total payrolls of Safe Office and Five Star from the commencement of their operations in 1998 as a starting point for calculating the savings in labor costs realized by Waldorf through its fraudulent payroll scheme. Tellingly, while the Applicant states that it formed and subcontracted work to CCS "at the behest of Local 79" (Resp. at 7), it does not make a similar claim with respect to Safe Office and Five Star. In sum, although the Applicant admits that these entities were used in the payroll scheme only starting at some unspecified point subsequent to their formation, it is likely that they were formed only to further that scheme and were never legitimate companies. In any event, these companies engaged in deceptive practices that cannot be condoned by the Commission.

The so-called "savings calculations" included in the Applicant's Response (Resp. at 22-25) are a clever exercise in whittling down numbers (specifically, Safe Office and Five Star payroll totals for several years starting with 1998) to fit the Applicant's estimate of $400,000 in labor cost savings realized by Waldorf through its fraudulent payroll scheme (according to the Applicant's calculations,

the actual figure is closer to $390,000). Nevertheless, the validity of the Applicant's arithmetic is questionable. Additionally, a close examination of the computations indicates that there is probably more to be learned about the extent of Waldorf's unlawful business practices than it would have the Commission believe. For example, the second "adjustment" in the Applicant's computation (there are ten such adjustments, numbered accordingly), brings to light what appears to be another variation of the payroll fraud which was not known to the Commission's staff previously. It was certainly not part of any prior disclosure by the Applicant (on this point, also see the discussion below concerning the Applicant's exaggerated claim about volunteered disclosure). Essentially, this particular calculation takes into account wages for overtime work ostensibly performed for Five Star by non-union mechanics on Waldorf's payroll. According to the information included with the calculation, these workers were paid at the lower Five Star wage rate resulting in a benefit to Waldorf in the form of labor cost savings of $11.47 per hour. The aggregate total of this particular benefit to Waldorf is tallied at $143,146 under the third adjustment. It is therefore apparent that the fraudulent payroll scheme also involved workers on Waldorf's payroll, not just those on Calvin's payroll as originally alleged in the Recommendation.

Throughout the Response, the Applicant halfheartedly admits its wrongdoing and offers various arguments to justify or mitigate its actions and so avoid responsibility for them altogether or minimize the consequences. The Applicant insists that it engaged in its intricate payroll scheme, which it describes in some detail, for the benefit of its employees (Resp. at 8-11). The Applicant's explanation is that it deceived and cheated the union, Local 79, falsified payroll checks and business records, participated in a complicated and illegal process for handling, endorsing and cashing the phony payroll checks, all so that its workers could have extra work and income (id.). However, while expressing its benevolence for its employees, the Applicant's also tries to shift much of the blame for its unlawful business practices to them. In acknowledging the improprieties involving Safe Office and Five Star in furtherance of the payroll scheme, the Applicant claims that workers who joined the company from other unionized companies introduced it to these illegal practices (Resp. at 8). The Applicant also blames its employees for its false record keeping, alleging that they provided the false names and Social Security numbers used by the Applicant in the payroll scam. Even if there is some truth to these strained explanations, these practices cannot be condoned. A business cannot present itself to the world as unionized while surreptitiously and deceptively ignoring its obligations under the collective bargaining agreement. To allow such conduct would make a mockery of the Commission's statutory mission to ensure that licensees conduct themselves in a way that is consistent with the standard of honesty and integrity.

Also devoid of merit is the Applicant's claim that workers were not harmed by its fraudulent payroll scheme (Resp. at 2, 10-12). Any savings in labor costs and increased profitability realized by the Waldorf Group through the scheme obviously occurred at the expense of employees and Local 79. According to the Applicant, the employees agreed to participate in its illegal arrangements (Resp. at 11). However, this ignores the economic reality that they had little choice but to acquiesce in their own victimization. If they wanted extra work and pay, they had to accept the Marrones' terms or the work would have gone to others willing to accept those terms. As stated by the Applicant in its Response, workers "received more take-home pay than if Waldorf had been forced

to pay overtime rates, because Waldorf would simply have hired other workers for this additional time, at the lower straight-time rate" (id.). In remarking that "the industry labor force is composed primarily of transient, non-citizens" (id.), the Applicant betrays a keen awareness of the susceptibility of these workers to its predatory employment practices.

The Applicant contends that it should be allowed to continue to be licensed as a carter in New York City for the sake of its employees who rely on the company for their livelihood (Resp. at 2, 15). While the economic impact on innocent employees who may lose their jobs in the event of an adverse determination is a factor to be considered by the Commission, this concern is outweighed here by the serious nature and scope of the Applicant's wrongdoing. Considering that a key component of the Applicant's illegal conduct involved systematically depriving employees of wages and benefits, the concern expressed in the Applicant's Response for their welfare rings hollow. Additionally, the Applicant's claim that 300 employees will be put out of work if Waldorf's New York City carting business is closed (Resp. at 2, 15) appears to be exaggerated. As stated previously, most of the combined revenue of Waldorf and Calvin comes from Calvin's interior demolition business (see n. 9 and related text, supra). Consistent with the relative amount of business and revenue generated by the two companies, information provided by the Monitor indicates that most of the workers, sometimes hundreds at any given time, might be on Calvin's payroll, but normally far fewer employees are carried on Waldorf's payroll. Ultimately, Waldorf's competitors can be expected to pick up the work that Waldorf loses and to hire additional workers - possibly including Waldorf employees - to perform that work.

In another unconvincing attempt at mitigation, the Applicant points to its cooperation, which it claims took the form of substantial volunteered disclosure after execution of the search warrants (Resp. at 3-4). It is obvious, however, that cooperation under such adverse circumstances is not entirely volitional but the product of tactical necessity. Also, the extent of the Applicant's cooperation is vastly overstated. Relatively few documents and bits of information were provided by Waldorf through its counsel in the aftermath of the warrant executions. The bulk of the material obtained by the Commission and other government authorities from Waldorf was actually seized pursuant to the warrants. Interestingly, the Applicant does not claim that "full" disclosure was provided. Also, as reflected in the Response, the explanations that the Applicant has provided in the wake of the search warrant executions have been far from the complete and unadorned truth.

The Applicant's remaining arguments are equally unpersuasive. For instance, the Applicant asserts that it provides good service to its customers (Resp. at 17-18). Such mitigation, even if true, is clearly overshadowed by the seriousness of the Applicant's misconduct. As discussed in more detail below, the possibility that its illegal business practices allow the Applicant to compete more effectively and provide better prices to its customers provides no justification for its conduct.

Ironically, the Applicant applauds the Monitor for doing a good job in uncovering its wrongdoing and suggests that, instead of denying renewal of the license, the Commission should consider granting the renewal subject to continued monitoring for a period of time (Resp. at 20). The record actually supports quite a different conclusion from the one proposed by the Applicant. The fact that the Applicant engaged in its illegal activity while being closely scrutinized by the Monitor demonstrates a brazen disregard for the legal requirements applicable to the business dealings of Waldorf and its principals. The Commission granted the Applicant's original license subject to monitoring to allow the Marrones the opportunity to show that they could operate their father's business in a lawful manner. The alternative would have been an outright denial of Old Waldorf's license application, which would have ended the Marrone family's carting business in New York City. Moreover, the monitorship, which originally had a two-year term, was extended several times (see n. 5 and related text, supra). Therefore, Waldorf and the Marrones had an ample chance to break from Old Waldorf's tainted past and make a fresh start, but that opportunity has been squandered. The Applicant's illegal payroll scheme apparently began during the days of Old Waldorf when the Marrone brothers held executive or managerial level positions in their father's company (see n. 3, supra). Therefore, the scheme already existed at the time the Applicant's original license was issued and monitoring commenced, and then it continued through at least part of the extended monitoring period. It was also during the period of extended monitoring that Waldorf/Calvin business records were falsified so that personal expenses, in the form of landscaping work performed at the homes of Michael and James Marrone, were improperly treated as company business expenses. That matter is another separate basis for denial and is discussed below. Consequently, even with further monitoring, there is no reason to expect that the Applicant will reform its behavior if granted a license renewal.

2. Waldorf and its principals, by participating in a fraudulent scheme to avoid paying employee wages and benefits, thereby also engaged in an unfair and anti-competitive trade practice.

The business practices described by Mr. Walpin, involving a scheme to reduce labor costs and increase profitability by depriving employees of the wages and corresponding benefits to which they are legally entitled, give Waldorf and its affiliates an unfair advantage over competitors who do not use such illegal methods to reduce operating expenses and increase profits. Such conduct exemplifies the type of unfair and anti-competitive trade practices that Local Law 42 was designed to eliminate from the New York City carting industry. By participating in such practices, Waldorf and its principals have demonstrated that they lack good character, honesty and integrity.

The Applicant acknowledges in its response that its conduct was wrong, but insists that it was not "unfair" or "anti-competitive" (Resp. at 13). In attempting to justify this position, the Applicant relies again on its interpretation of the purpose of Local Law 42 (id.), which, as discussed above, is overly narrow and clearly incorrect. The Applicant asserts that it merely adopted the practices of competitors "in order to compete in the industry on the same terms as others" (id.). However, even if true, this is not a justification for the Applicant's illegal actions. The Applicant also makes the claim that its conduct allowed it to "offer a lower price and thus enhance, not limit, competition in

the industry" and suggests that this is somehow consistent with the purposes of Local Law 42 (Resp. at 12-13). Such arguments serve only to distort the concept of fair competition and are certainly not consistent with the letter or spirit of Local Law 42. Through its payroll scheme, the Applicant obviously gained an economic edge over competitors who did not use such tactics. To suggest, as the Applicant does, that industry participants must conform their business practices to such unscrupulous standards if they want their businesses to be economically viable reflects a perverse view of the business world that cannot be condoned. This is the kind of business philosophy that fosters a crime-ridden marketplace, such as the one that existed prior to the enactment of the statute. Using the Applicant's reasoning, any business practice, whether or not legal or ethical, could be rationalized if it is employed by competitors or if it arguably promotes price competition. The Applicant's arguments must be rejected.

3. **Waldorf and its principals falsified business records, or caused or participated in the falsification of such records, in furtherance of a fraudulent scheme to avoid paying employee wages and benefits.**

Part of the fraudulent payroll scheme in which Waldorf and its principals have admittedly participated involves the generation of falsified invoices and payroll checks. The falsification of business records to obtain financial gain by avoiding legal obligations to employees and their union is a serious matter, especially when employed as part of a large, orchestrated business fraud such as the one in which Waldorf and its principals have admittedly engaged. Their participation in such conduct constitutes additional, independent proof that Waldorf and its principals lack good character, honesty and integrity.

In its response, the Applicant concedes the falsification of its business records, but once again argues that this type of misconduct does not come within the purview of Local Law 42 (Resp. at 14). The flaws in this argument have already been discussed. There can be no doubt that conduct involving the falsification of business records is relevant to the question of whether a licensee or a licensee's principal lacks good character, honesty and integrity.

4. **Waldorf and its principals falsified business records, or caused or participated in the falsification of such records, to create the appearance that expenses for landscaping and other work performed at the residences of two Waldorf principals were Waldorf business expenses. Waldorf's president, Michael Marrone, Jr., provided false or misleading information concerning such matters to the Monitor appointed by the Commission.**

During an audit performed by the Monitor at Waldorf's Mount Vernon office, fifteen invoices from a company known as Arapahoe Inc. ("Arapahoe") of Allendale, New Jersey came to light. The invoices indicate that Calvin was billed for services described as snow removal, sprinkler

repair, maintenance and spring cleanup.[30] When asked by the auditor about these invoices, Michael Marrone, Jr. falsely stated that they were for snow removal and sprinkler repair work performed at Waldorf's business offices in Mount Vernon.

At the March 2, 2004 meeting at the Manhattan District Attorney's Office, Michael Marrone, Jr. admitted that he instructed the landscaper, Arapahoe, to falsely invoice Calvin for work actually performed on his home, as well as the home of his brother, James.

The phony invoices generated by Arapahoe at the direction of Michael Marrone, Jr. became part of the business expense records of Calvin and Waldorf. Therefore, Waldorf and its principals, primarily Michael Marrone, Jr., caused false business expense records to be created which were then maintained by Waldorf/Calvin as part of their regular business records. Additionally, confirming the obvious, Mr. Marrone admitted at the DA's Office meeting on March 2nd that the expenses reflected on the phony Arapahoe invoices were included as business expense deductions on Calvin's income tax returns. All of these actions constitute further independent evidence that the Applicant lacks good character, honesty and integrity.

The Applicant admits in its response that these personal expenses were improperly treated as company business expenses (Resp. at 14). Its attempts at mitigation are not compelling. In light of the Marrones' deliberate actions in falsifying business records as part of a tax dodge, it is of little significance that they may have reimbursed their own company for these expenses after they were caught, or that the total tax benefit resulting from this particular scheme was less than a given sum ($10,000 is the benchmark used by the Applicant in its argument) (id.). Also, it is irrelevant whether, as the Applicant claims, the Marrone brothers could have drawn tax-paid company funds to pay for the work on their homes without incurring individual income tax liability on the money (id.). This type of argument is obviously meant to divert attention from the real issue. As Michael Marrone, Jr. admitted at the March 2nd meeting, any tax benefits derived from the false business expenses in question came from using those expenses as tax deductions, that were also false, which resulted in reducing the company's taxable income and, in turn, its tax liability. Again, it is absurd to suggest that the Commission lacks authority under Local Law 42 to consider such illegal behavior in evaluating the Applicant's fitness to continue to hold a license.

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[30]The invoices are dated from July 22, 2002 through May 1, 2003 and reflect charges totaling $20,183.95, approximately.

III. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty and integrity. The evidence detailed above amply supports such a determination regarding the Applicant. Accordingly, for the independently sufficient reasons discussed above, the Commission denies the Applicant's license renewal application.

This decision is effective immediately.

Dated: February 10, 2005

THE BUSINESS INTEGRITY COMMISSION

Thomas McCormack
Chair

John Doherty, Commissioner
Department of Sanitation

Gretchen Dykstra, Commissioner
Department of Consumer Affairs

Rose Gill Hearn, Commissioner
Department of Investigation

Robert Walsh, Commissioner
Department of Business Services

Raymond Kelly, Commissioner
New York City Police Department