



The City of New York
BUSINESS INTEGRITY COMMISSION
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING
THE LICENSE RENEWAL APPLICATION OF FLAG CONTAINER
SERVICES INC. AND DENYING THE REGISTRATION RENEWAL
APPLICATION OF FORMICA CONSTRUCTION INC.
TO OPERATE AS TRADE WASTE BUSINESSES**

I. Introduction

On August 16, 2017, Flag Container Services Inc. (“Flag”) (BIC #119) submitted an application to the New York City Business Integrity Commission for a renewal of its trade waste license. On June 14, 2018, Formica Construction, Inc. (“Formica Construction”) (BIC #4359) submitted a renewal application to the Commission for an exemption from the licensing requirements and a registration to operate a trade waste business “solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation” – a type of waste commonly known as construction and demolition debris, or “C&D.” Flag and Formica are collectively referred to hereinafter as the “Applicants.” The Commission is authorized to review and make determinations regarding the renewal of license and exemption applications. *See* Title 16-A of the New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 16-505(a).

On April 1, 2019, the Commission’s staff served the Applicants with a Notice to the Applicants of the Grounds to Deny the License Renewal Application of Flag Container Services Inc. and the Registration Renewal Application of Formica Construction Inc. to Operate as Trade Waste Businesses (the “Notice”). The Applicants were given 10 business days to respond. *See* Title 17 Rules of the City of New York (“RCNY”) § 2-08(a). In a letter dated April 9, 2019, the Applicants’ attorney requested an extension of time to May 9, 2019, to submit a response, which the Commission’s staff granted.¹ *See* April 9, 2019 letter from the Applicants’ attorney. Then, in a letter dated April 29, 2019, the Applicants’ attorney made a second request for an extension of time to respond, to May 23, 2019, which the Commission’s staff granted. *See* April 30, 2019 letter from Jonathan Jacobs. On May 23, 2019, the Applicants submitted their response, which consisted of a five-page affirmation by attorney John Z. Marangos, a three-page affidavit from Peter Franchini, a two-page affidavit from William Formica Jr., and Exhibits A-K. *See* Applicants’ response, dated May 22, 2019 (the “Applicants’ Response”).

The Commission has completed its review of the license and registration renewal applications, having carefully considered both the Notice and the Applicants’ Response. Based on the record herein, the Commission denies Flag’s license renewal application and Formica’s

¹ Both Applicants have been represented by the same attorney throughout these proceedings.

registration renewal application because the Applicants lack good character, honesty, and integrity based on the following four independently-sufficient grounds:

1. **One of the Applicants' principals is presently under indictment for numerous criminal acts relating to the murder of an individual and drug sales;**
2. **The Applicants have admitted liability in criminal, civil, and administrative matters that demonstrate a lack of good character, honesty, and integrity;**
3. **With respect to Formica, the applicant failed to provide truthful and accurate information to the Commission, including failing to disclose a principal; and**
4. **The Applicants have engaged in a pattern of unsafe practices at their job sites, resulting in two fatalities within the last 10 years, which reflects a lack of good character, honesty and integrity.**

II. Statutory Background and Framework

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates, known as trade waste. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. *See, e.g., United States v. Int'l Brotherhood of Teamsters (Adelstein)*, 998 F.2d 120 (2d Cir. 1993); *People v. Ass'n of Trade Waste Removers of Greater New York Inc.*, Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); *United States v. Mario Gigante*, No. 96 Cr. 466 (S.D.N.Y.); *People v. Ass'n of Trade Waste Removers of Greater New York*, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically has also been the subject of significant successful racketeering prosecutions. *See United States v. Paccione*, 949 F.2d 1183, 1186-88 (2d Cir. 1991), *cert. denied*, 505 U.S. 1220 (1992); *United States v. Cafra*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri*, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. Admin. Code § 16-505(a). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," also known as construction and demolition debris, must apply to the Commission for an exemption from the licensing requirement. *Id.* If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a Class 2 registration. *Id.* at § 16-505(a)-

(b). Before issuing a registration, the Commission must evaluate the “good character, honesty and integrity of the applicant.” *Id.* at § 16-508(b); *see also id.* at § 16-504(a). An “applicant” for a license or registration means both the business entity and each principal of the business. *Id.* at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in determining whether to grant an application for a license or registration:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the correction law, would provide a basis under such law for the refusal of such license;
4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;
5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 *et seq.*) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;
6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;
7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this

chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

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

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

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

Id. at § 16-509(a)(i)-(x). *See also id.* at § 16-504(a).

The Commission also may refuse to issue a license or registration to any applicant who has “knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for a license.” *Id.* at § 16-509(b). *See also* 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial); *Elite Demolition Contracting Corp. v. The City of New York*, 4 N.Y.S.3d 196, 125 A.D.3d 576 (1st Dep’t 2015); *Breeze Carting Corp. v. The City of New York*, 52 A.D.3d 424 (1st Dep’t 2008); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”); *leave denied* 2 N.Y.3d 705 (N.Y. 2004). In addition, the Commission may refuse to issue a license or registration to an applicant that “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” *Id.* at § 16-509(c); *see also id.* at § 16-504(a). Finally, the Commission may refuse to issue a license or registration to any applicant when the applicant or its principals have previously had a license or registration revoked. *Id.* at § 16-509(d); *see also id.* at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) has no entitlement to and no property interest in a license or registration and the Commission is vested with broad discretion to grant or deny a license or registration application. *Sanitation & Recycling Indus., Inc.*, 107 F.3d 985, 995 (2d Cir. 1997); *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).

III. Statement of Facts

1. Background and Common Ownership

On August 30, 1996, Flag applied to the Commission for a trade waste license. *See* Application for a License as a Trade Waste Business (the “Flag License Application”). In its application, Flag disclosed four principals: William Formica Sr. (“Formica Sr.”); William Formica Jr. (“Formica Jr.”); Peter Franchini; and Kenneth Formica. *Id.* On August 6, 2001, and August 13, 2003, Flag submitted renewal applications for its license, disclosing the same principals. *See* 2001 and 2003 License Renewal Applications. On June 17, 2005, Flag submitted another license renewal application, and disclosed principals Formica Jr., Peter Franchini, Kenneth Formica, and the Estate of Formica Sr. *See* 2005 License Renewal Application. On July 17, 2007, June 26, 2009, June 10, 2011, June 26, 2013, and August 5, 2015, Flag submitted license renewal applications disclosing the Estate of Formica Sr., Franchini, Andrea Formica (as Trustee for Kenneth Formica), and Formica Jr. as its principals. *See* 2007, 2009, 2011, 2013, and 2015 License Renewal Applications. On the instant renewal application, submitted August 16, 2017, Flag disclosed Rosemarie Formica (as Trustee for Estate of Formica, Sr.), Peter Franchini, Andrea Formica (as Trustee for Kenneth Formica), and Formica Jr. as its principals. *See* 2017 License Renewal Application. Thus, Formica Jr. has been disclosed as a principal of Flag (its Treasurer) since the company’s original 1996 application.

The Applicants’ Response states that as of February 1, 2019, Formica Jr. resigned as Treasurer and transferred his ownership interest in Flag to a trust. *See* Applicants’ Response at 1, Exhibit D. However, the Escrow Agreement included in Exhibit D of the Applicants’ Response indicates that Formica Jr.’s shares of Flag are actually being held in escrow by Flag’s attorney “pending the approval of the Business Integrity Commission to said transfer.” *See id.* The Commission never approved such a transfer.

On March 26, 2012, Formica Construction applied to the Commission for an exemption from the licensing requirement for the removal of C&D material. *See* Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris (the “Formica Construction Registration Application”). In its application, Formica Construction disclosed three principals, each owning a third of the company: Formica Jr., Rosemarie Formica, and Andrea Formica. *Id.* These three principals are also disclosed on Schedule C as principals of Flag. *Id.* Formica Construction disclosed Kenneth Formica as a past principal of Formica Construction, who divested his interest in 2009.² *Id.* Kenneth Formica was never disclosed to the Commission as a current principal of Formica Construction, *i.e.*, a principal at the time Formica Construction first applied to the Commission for a registration or thereafter. *See id.*; Formica Construction Registration Renewal Applications.

As demonstrated above, Flag and Formica Construction are related entities: prior to February 1, 2019, all of Formica Construction’s principals were also disclosed owners and

² In response to question 26, the company disclosed Kenneth Formica’s 2007 conviction. The question asks for criminal convictions of the business as well as current and past principals. *Id.* Both Kenneth Formica and Formica Sr., are disclosed as past principals on Schedule B of the application. *Id.* Kenneth Formica’s disclosed date of departure is “Jan 2009.” *Id.*

principals of Flag, including Formica Jr. Even now, Formica Jr. has not fully divested his ownership interest in Flag as his shares of the company are being held in escrow.³ Additionally, both companies are located at the same address: 11 Ferry Street, Staten Island, NY 10302.

The Applicants' Response asserts that Flag and Formica are entirely separate entities because the removal of Formica Jr. from ownership and management of Flag means that the Applicants no longer share any principals. *See Applicants' Response* at 1. However, this change in ownership occurred on February 1, 2019 – after the conduct that gave rise to the grounds for denial of the applications. The Applicants' Response does not dispute that prior to February 1, 2019, the ownership structure at both companies was such that all of Formica's principals were also principals of Flag. Moreover, the Commission has no reason to believe that Formica Jr.'s supposed "resignation and transfer" of shares will, in and of themselves, ensure that he is no longer involved in the operations of Flag.⁴

Similarly to Flag's unpersuasive argument that Formica Jr.'s resignation from Flag moots the grounds for denial of Flag's renewal application, Formica Construction claims the denial grounds relating to Formica Construction are moot because Formica Construction claims to have "withdrawn" its application. Importantly, the Commission did not grant Formica's request to withdraw its application – it is common practice for the Commission not to grant a withdrawal request when the request is in reaction to a denial recommendation.

2. *Pending Indictment of Formica, Jr.*

On January 24, 2019, a Richmond County grand jury voted to indict Formica Jr., along with another individual, for numerous crimes relating to the murder of an individual in Staten Island, New York, and other crimes. *See People of the State of New York vs. Angelo Nesimi and William Formica, Indictment No. 40/2019*. The indictment accuses Formica Jr. of:

- Tampering with physical evidence, in violation of Penal Law § 215.40-2, because between December 21, 2018 and December 29, 2018, Formica Jr. and his co-defendant removed physical evidence from 86B North Mada Avenue in Staten Island,⁵ and disposed of it in garbage dumpsters and at a waste transfer station while believing that the physical evidence was about to be produced and used in a prospective official proceeding;
- Hindering prosecution in the first and second degrees, in violation of Penal Law §§ 205.60 and 205.65, as Formica Jr. rendered criminal assistance to his co-defendant, who had committed murder in the second degree and manslaughter in the first degree (Class A and B felonies, respectively);

³ Even if the Commission were to find that Formica Jr. divested his interest in the company, this supposed divestiture took place subsequent to his actions, which are, in part, the basis for this Denial Decision.

⁴ Although the Applicants' Response provided a list of people "who if contacted would confirm that Peter Franchini is the only person who makes decisions on a daily basis and deals with clients and administrative entities," none of these individuals provided the Commission with affidavits that say as much. *See Applicants' Response* at 2, Exhibit K. Furthermore, the Applicants did not provide the Commission with any information regarding how these individuals supposedly made such a determination.

⁵ Though noted in the indictment that Formica, Jr., is the owner of 86B North Mada Avenue, it appears the property belongs to the testamentary trust of Formica, Sr. *See Property Report*.

- Criminal nuisance in the first degree, in violation of Penal Law § 240.46, because Formica Jr. knowingly maintained a premises at 86B North Mada Avenue in Staten Island where persons gathered for the purposes of engaging in the unlawful sale of controlled substances; and
- Criminal possession of a controlled substance in the fifth degree, in violation of Penal Law § 220.06-5, because on January 8, 2019, Formica Jr. possessed more than 500 milligrams of cocaine.

The prosecution alleges that between the night of December 20th and the morning of December 21, 2018, Nesimi, who was Formica Jr.'s tenant, killed an individual at 86B North Mada Avenue. *See The New York Times*, "Two Old Friends Reunite, Then One Is Murdered, Prosecutors Say."⁶ Formica Jr. allegedly helped to strip the apartment after the murder and dump potential evidence at a waste transfer station that he owns. *Id.* (stating that Formica Jr. was enlisted "to raze the apartment's refrigerator, carpet, flooring, moldings, sinks, mirrors and towels. The items were dumped at a site owned by Mr. Formica, where his construction company operated.").

Formica, Jr. was arrested on January 28, 2019. *See* Arrest Notification of Formica Jr. By letter dated February 5, 2019, on Flag Container Services letterhead, Flag notified the Commission of the pending charges against Formica Jr. and added that Formica Jr. "will not engage in any operational control of Flag Container Services Inc. during the pendency of this criminal proceeding."⁷ *See* letter from Flag dated February 5, 2019. This letter is silent as to Formica Construction. Thus, it is undisputed that Formica Jr. remains a principal of Formica Construction. More than two months later, in a letter from Formica Construction's attorney dated April 9, 2019, Formica Construction requested to withdraw its registration renewal application. *See* letter from John Marangos dated April 9, 2019. The Commission did not grant this request.

3. *Criminal and Safety Issues 2007 - 2014*

This is not the first time one of the Applicants' principals have had criminal legal issues. In 2005, Kenneth Formica was indicted on charges related to the death of a construction worker in 2003 resulting from a trench collapse at a Formica Construction job site in Staten Island. *See People of the State of New York v. Kenneth Formica*, 833 N.Y.S.2d 353 (Richmond Cty. 2007). At the time, Kenneth Formica was supervising the job site, where he dug a 15-foot-deep trench and instructed his employees, John Paci and Lorenzo Pavia, to descend into it. *Id.* The trench collapsed, killing Pavia and injuring Paci. *Id.* In February 2007, Kenneth Formica pleaded guilty to criminally negligent homicide for the death of Pavia and was sentenced to four months of weekends-only incarceration. *See In Re: Formica Construction Inc., et al. v. Jonathan Mintz*, 65 A.D.3d 686 (2d Dep't 2009) (Kenneth Formica "pleaded guilty to criminally negligent homicide after a trench excavated by him collapsed upon and killed a worker who was in the trench at

⁶ Available <https://www.nytimes.com/2019/01/28/nyregion/michael-stewart-angelo-nesimi.html>.

⁷ In the affidavit signed by Formica Jr., and attached as an exhibit to the response, Formica Jr. states that he has "never had any day to day responsibility regarding Flag Container." *See* Applicants' Response, Formica Jr. affidavit. This statement contradicts the assertion made in the letter from Flag dated February 5, 2019, that Formica Jr. will cease "operational control" of Flag during the pendency of criminal proceedings. *See* letter from Flag dated February 5, 2019.

Formica's direction" and served "his sentence of 16 weekends in jail"). He was also ordered to pay a fine of \$5,000. *See* Criminal History Record Search Report for Kenneth Formica. *See also* Decision & Order, *Formica Construction Inc., et. al vs. Jonathan Mintz, Commissioner, New York City Department of Consumer Affairs* (Index No. 80357/2007, Richmond Cty. 2007) ("Decision & Order").

In addition to the criminal charges that resulted from the fatality, the Occupational Health and Safety Administration ("OSHA") issued 13 violations (including 12 categorized as "serious") totaling \$13,975 to Formica Construction. *See* OSHA Violation Activity 306738105, issued June 10, 2004. The violations were for violation of OSHA requirements for protective systems, general safety and health provisions, safety training and education, eye and face protection, wiring design and protection, and specific excavation requirements, among others. *Id.*; *see also* OSHA § 1926.

As part of Flag's 2007 License Renewal Application, the company submitted an affidavit evidencing the resignation of Kenneth Formica as officer and director as of July 12, 2007. *See* 2007 License Renewal Application at p.42. Kenneth Formica had transferred his shares and interest in Flag to a trust for his children as beneficiaries with his spouse serving as sole Trustee, but neither she nor his children were to be involved in the operations of Flag Container. *Id.* at 43-47.

Like Formica Construction, in November 2014, Flag had a worker fatality. On November 12, 2014, Flag employee Robert Meehan was killed when a 10-foot dumpster fell onto him. *See* "Suit alleges Country Club negligence in gruesome dumpster tragedy," *Staten Island Advance*,⁸ ("While Meehan's employer, Flag Container Services, is not named in [a lawsuit], the Occupational Safety and Health Administration has fined the company for multiple serious safety violations following its own investigation of the fatal accident.") Flag received four OSHA violations, three of which were categorized as serious, and ultimately paid \$12,400 in fines. *See* OSHA Violation Activity 1008753.015, issued May 8, 2015. In the Response, the Applicant acknowledged that it paid \$12,400 in fines to resolve the OSHA violations but claims that "no adjudication of any liability has been had as of this date." *See* Response at 3.

The Applicants' Response makes clear that the Applicants refuse to take any responsibility for Meehan's death, including Flag's failure to disclose Meehan to the Commission as one of its employees. *Id.* The Applicants' explanation for why Meehan was never disclosed as an employee to the Commission barely merits a response from the Commission: the Applicants claim with no supporting evidence that Meehan was not disclosed because he intended to resign from Flag. *Id.* And, even if true, an employee's intention to resign does not absolve an applicant from disclosing that employee to the Commission.

Shortly thereafter, on November 28, 2014, Formica Construction was involved in another workplace fatality. *See The New York Times*, "Construction Worker Dies After Ceiling Collapse at Staten Island Car Dealership."⁹ While Formica Construction was providing demolition services at a car dealership located at 266 West Service Road on Staten Island, Formica Construction

⁸ Available https://www.silive.com/news/2016/01/richmond_county_cc_sued_over_s.html.

⁹ Available <https://www.nytimes.com/2014/11/29/nyregion/construction-worker-dies-after-roof-collapse-at-staten-island-car-dealership.html>.

employee Delfino Jesus Velazques was killed when a ceiling collapsed. *Id.* At the time, Formica Construction did not have a valid permit to operate on the premises. *See* New York City Department of Buildings (“DOB”) Complaint 5113391 (“Unpermitted interior demolition caused the mezzanine level to partially collapse to grade”).

Before Velazques was killed, Formica Construction was cited by the DOB for two violations on March 25, 2013 – approximately a year-and-a-half prior to Velazques’s death. The violations were for improper storage of combustible material and equipment that may present future hazards and for the job site fencing not being properly constructed, and were categorized as Class 1 and Class 2, respectively – meaning the severity was “Immediately Hazardous” and “Major.” *See* ECB Summons 34996573L and 34996572J. Formica Construction paid a total of \$1,600 to resolve the two violations. *Id.* Notwithstanding his reputed departure from Formica Construction’s business, Kenneth Formica was the first company representative to comment publicly on the matter, stating that Formica Construction was simply “cleaning the building.” *See Staten Island Advance*, “Formica Construction denies wrongdoing in worker’s death, won’t settle OSHA fines.”

OSHA opened an investigation into Formica Construction in relation to the November 28, 2014 incident. *See* OSHA Violation Activity 1010923.015, issued May 21, 2015. Formica Construction was ultimately issued five violations for a total of \$109,000, two of which were categorized as serious. *Id.* These violations were for general safety, health provisions, and safety training and education. *Id.*

The individuals who were harmed while employed by Formica Construction – John Paci, Lorenzo Pavia, and Jesus Velazquez – were never disclosed to the Commission as employees, as required by the Commission’s rules. *See* Formica Registration Application and Formica Registration Renewal Applications. Similarly, Robert Meehan was never disclosed as an employee of Flag prior to his death. *See* Flag License Application and Flag License Renewal Applications. The Applicants’ response did not dispute any of the above-cited facts regarding the Applicants’ criminal and safety issues. *See* Applicants’ Response.

4. Additional Administrative and Regulatory Issues

Both Flag and Formica Construction have received numerous fines, penalties, and summonses from regulators and administrative agencies besides OSHA. Further, Formica Construction has on at least one occasion provided false information to the Department of Consumer Affairs (“DCA”), now known as the Department of Consumer and Worker Protection.

DCA previously licensed Formica Construction as a Home Improvement Contractor (“HIC”). *See* DCA printout. On June 7, 2007, Formica Construction submitted to DCA an application for renewal of its HIC license. On July 18, 2007, DCA denied Formica Construction’s application to renew its HIC license on the ground that Kenneth Formica had a recent criminal conviction that was related to the activities for which Formica sought a license. *See* Decision and Order. After appealing DCA’s decision through an Article 78 petition, the New York State Supreme Court, Appellate Division, Second Department, remitted the matter back to DCA. *See Formica Constr., Inc. v. Mintz*, 65 A.D.3d 686 (2009).

On September 10, 2009, Formica submitted to DCA a new application for an HIC license. On October 20, 2010, DCA issued a Consent Judgment and Order (“CJO”) revoking Formica’s HIC license. *See* CJO. In the CJO, DCA found that Formica Construction made a false statement as to a material matter in its September 10, 2009 application and that Kenneth Formica allowed a signed statement to be falsified in support of that application, in violation of the NYC Administrative Code and the Rules of the City of New York. *Id.* As a result, DCA permanently prohibited Kenneth Formica from serving as an officer, manager, or owner of Formica Construction and any other business licensed by DCA. Further, Kenneth Formica was permanently barred from holding any other license issued by DCA. *See* CJO at p.2.

Additionally, Kenneth Formica, Formica Jr., and Formica Construction were issued violations by DOB in March 2018 for failing to complete a boiler inspection report. They now owe \$3,125 to DOB for that violation. *See* ECB Summons 032093385Y. DOB also issued a violation to Formica Construction in September 2018 for failing to institute or maintain safety equipment, specifically guardrails, and now owes DOB \$2,500 for that violation. *See* ECB Summons 035351798K. Similarly, Formica Jr. was issued a DOB violation in September 2018, for failing to perform duties as a construction superintendent. *See* ECB Summons 035351796R. He now owes DOB \$10,000 for that violation. *Id.* The Applicants did not dispute these facts.

Further, Raritan Baykeeper Inc. d/b/a NY/NJ Baykeeper filed a civil suit on August 19, 2016, against Flag and Formica Construction regarding a violation of the Federal Water Pollution Control Act, or the Clean Water Act (“CWA”). *See Raritan Baykeeper vs. Flag et. al*, 2016 WL 10402524 (E.D.N.Y.). Per the complaint, Flag and Formica Construction “discharge[d] polluted stormwater runoff from their material recycling facility . . . without authorization . . . and have failed to obtain coverage under and comply with the conditions of an individual National Pollutant Discharge Elimination System (“NPDES”) permit.” *Id.* The suit also alleges that Kenneth Formica, ostensibly not a principal at Flag since 2007, “is an executive at Ferry Street Enterprises, Inc., and Formica Construction, Inc.”¹⁰ *Id.* The parties agreed to settle the matter and entered into a jointly-signed consent decree. *See* consent decree, dated June 15, 2017 (“consent decree”). As part of the consent decree, Flag and Formica Construction agreed to remit \$15,000 in attorney’s fees and to implement all required safety precautions and acquire necessary permits. *Id.*

The consent decree, as well as other documentation, establish that Kenneth Formica has a greater level of involvement in the operations of Formica Construction than indicated on the company’s applications. At the bottom of page one of the consent decree, Kenneth Formica acknowledged that “Defendant Kenneth Formica is an executive at Ferry Street Enterprises, Inc., and Formica Construction, Inc.” *Id.* Yet Kenneth Formica has never been disclosed to the Commission as a current principal of Formica Construction. *See supra* at 6. In fact, he is prohibited from being a principal, per the 2010 CJO. *See supra* at 8. The term principal is defined in 17 RCNY § 1-01 and states in pertinent part that a principal of a corporation is “every officer and director...and with respect to all business entities, all other persons participating directly or indirectly in the control of such business entity.” An “executive,” as Kenneth Formica is labeled

¹⁰ Per the New York State Department of State, Ferry Street Enterprises’ Chief Executive Officer is Peter Franchini, and its Principal Executive Officer is Kenneth Formica. The business filed with the Department of State on July 17, 1987, and is located at 11 Ferry Street. *See* New York State Department of State Record of Ferry Street Enterprises, Inc. This is of course the same address as Flag and Formica Construction. *See supra* at 6.

in the consent decree, doubtlessly qualifies as a principal under this definition. Kenneth Formica also has financial authority over Formica Construction. When Formica Construction opened a new account with Empire State Bank in 2017, two individuals signed for the account, indicating their respective titles: William J. Formica, Vice President; and Kenneth L. Formica, President. *See* Empire State Bank Account Documents.

The Applicants' Response disputes: (1) that Kenneth Formica is an undisclosed principal of Formica; and (2) that Kenneth Formica made a false statement in Formica's September 10, 2009 DCA application. *Id.* at 1, 3-4. The evidence offered by the Applicants to show that Kenneth Formica is not an undisclosed principal of Formica consists only of several self-serving statements and Flag's tax returns. *Id.* Neither of the self-serving statements (which do not include a statement from Kenneth Formica) reasonably explain the language in the consent decree; and neither explains why bank records establish that Kenneth Formica presented himself as "president" of Formica. As to the assertion that Kenneth Formica did not make a false statement in the September 10, 2009 DCA application but was merely confused, that claim is meritless. Kenneth Formica signed the CJO in which he admitted to allowing a false statement to be filed in support of Formica's application.

IV. BASIS FOR DENIAL

1. One of the Applicants' principals is presently under indictment for numerous criminal acts relating to the murder of an individual and drug sales.

The Commission is empowered to deny a license and/or a registration to haul trade waste when there exists a pending indictment or criminal action against such applicant for a crime which would provide a basis for the refusal of such license or registration. *See* Admin. Code §§ 16-509(a)(ii) and (b).¹¹ Here, Formica Jr. was a disclosed principal for both Flag and Formica Construction at the time of his indictment. Further, the crimes of which he is accused demonstrate a complete lack of good character, honesty, and integrity. Formica Jr. is accused of tampering with physical evidence, hindering prosecution, criminal nuisance, and criminal possession of a controlled substance, all in relation to a homicide investigation. As alleged in the indictment, he removed physical evidence from an apartment he or his family owns and dumped it at Flag's own waste transfer station. *See People of the State of New York vs. Angelo Nesimi and William Formica, Indictment No. 40/2019.* Though Formica Jr. recently resigned as Treasurer of Flag, he was a principal of both Applicants at the time of the alleged crimes. The Applicants' assertion that "Peter Franchini is the only officer and decision maker" of Flag because he executed the consent decree on behalf of the company is not convincing. *See* Applicants' Response at p.4. The Commission does not dispute that Peter Franchini is a principal of Flag but he was not the only principal at the time of these alleged crimes. Moreover, the Applicants' history of claiming that a

¹¹ The Commission has the discretion to defer consideration of an application until a decision has been reached on a pending indictment. *See* Admin. Code § 16-509(b)(ii). A plea of not guilty without more is an insufficient reason to defer consideration of an indictment; doing so would mandate deferral in every case involving a pending indictment and is inconsistent with the statutory provision specifically authorizing the Commission to deny a license application based upon a pending indictment. *See* Admin. Code § 16-509(b)(ii). Given the long history of corruption in this industry, the Commission is not required to wait extended periods of time, often years, for a resolution of an indictment. Given the serious nature of the criminal charges in this case and the connection to the trade waste industry, the staff recommends that the Commission decline to exercise such discretion in this case.

principal is no longer involved in the operation of the companies is far from reassuring: Kenneth Formica, who by the terms of a DCA CJO signed in 2010 was expressly prohibited from being an executive in Formica Construction, was named as an executive of the company in a federal consent decree and signed as the “president” of Formica in bank records as recently as 2017.

As the Commission may deny a license and/or a registration application due to a pending indictment or criminal action that would provide a basis for the refusal of such registration, *see* Admin Code § 16-509(a)(ii), the Commission must evaluate the crimes charged in light of the factors set forth in § 753 of the Correction Law, which would provide a basis under that statute for refusing to issue a license or registration. *See* Admin. Code § 16-509(a)(iii). 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, and despite the above-stated public policy of the state, the crimes charged against Formica Jr. are so serious, and so closely related to the purposes for which the license and registration are sought, that they should preclude the granting of a trade waste license and trade waste registration to these Applicants. Moreover, the charges are directly connected to the trade waste industry, as a dumpster, a truck, and the Flag transfer station were allegedly used to commit the crime. The Commission has a legitimate interest in protecting the safety and welfare

of the general public, which could be compromised by permitting the Applicants to continue operating in the trade waste industry.

The charges against Formica Jr. are antithetical to the very purpose of Local Law 42, which is to root out organized crime and other corruption from the carting industry. Moreover, the crimes charged relate directly to the trade waste industry, the industry in which the Applicants are seeking to operate, and go to the crux of the Applicants' character, honesty, and integrity. Formica Jr. allegedly helped to strip the apartment after the murder and dump potential evidence from the apartment at the transfer station he owns. The criminal offenses are alleged to have occurred within the last six months, in December 2018. As charged, Formica Jr. was in his late 50s – plainly old enough to know what the law required, how to obey it, and to recognize that the scheme in which he was involved was illegal. The Applicants' Response provided no information regarding Formica Jr.'s rehabilitation or good conduct.

Formica Jr.'s crimes as charged were the result of a series of conscious decisions to violate the law and are a disturbing reminder of the cynical disregard for the law that corrupted the City's waste removal industry in the past. Formica Jr. has shown himself to be unworthy of licensure or registration in that industry. The charges against Formica Jr. provide substantial evidence that both he and the Applicants lack good character, honesty, and integrity. The Applicants' Response did not provide any compelling arguments on this point. Accordingly, the Commission denies the Flag and Formica Construction applications on this independently-sufficient ground.

2. The Applicants have admitted liability in criminal, civil, and administrative matters that demonstrate a lack of good character, honesty, and integrity.

Flag and Formica Construction have consistently and repeatedly received administrative or civil violations from city and federal regulators for various forms of unsafe behavior and other misconduct. In addition, Kenneth Formica was found guilty of criminally negligent homicide for the death of one of Formica's employees. The companies also were named defendants in a federal lawsuit for violations of the clean water act.

Additionally, the companies have received numerous administrative violations from OSHA regarding their subpar safety standards, as well as violations from DOB. Formica also presented false information to DCA. Viewed as a whole, it is clear that these violations have not changed the conduct of either Flag or Formica Construction.

The repeated findings of liability in criminal, civil, and administrative actions against the Applicants demonstrates that the Applicants lack good character, honesty, and integrity. The Applicant's Response did not dispute the facts relied on with respect to this point. Accordingly, the Commission denies both applications on this independently-sufficient basis.

3. With respect to Formica, the applicant failed to provide truthful information to the Commission, including failing to disclose a principal.

Kenneth Formica has never been disclosed as a principal of Formica Construction to the Commission, despite his admission in both a federal filing and to a financial institution that he is president and/or an executive of Formica Construction. Kenneth Formica had a motive to keep

his name off of Formica Construction's applications: apparently, Kenneth Formica believed he could not be disclosed to the Commission as a principal on Formica Construction's applications because he was "permanently prohibited from serving as an officer, manager or owner of" Formica Construction, per the terms of the CJO. *See* CJO at 2. His continued involvement in Formica Construction, well after the October 2010 CJO, and the false and misleading applications filed with the Commission demonstrate that Formica Construction and Kenneth Formica have violated a DCA order and establishes that the Applicants lack good character, honesty and integrity.

In 2007, Flag stated that Kenneth Formica had divested his interest in that company; and in 2012, on Formica's original application, Flag disclosed Kenneth Formica only as a former principal whose end date was January 2009. Yet in 2017, Formica Construction signed a consent decree admitting that Kenneth Formica was an executive of the company. *See* consent decree. Further, Kenneth Formica is listed as the president of Formica Construction on banking documents. Although the Commission's rules required the Applicants to notify the Commission within 10 business days of the addition of a principal to the business, Formica Construction made no such notification to the Commission that Kenneth Formica had ever resumed responsibilities as a principal. *See* 17 RCNY § 2-05(b)(1)(i).

In addition, several Flag and Formica Construction employees have been hurt or killed at job sites in recent years. None of those employees were ever disclosed to the Commission, as required. And, as noted above, this is not the first time Formica Construction has filed false information with a City agency. In 2009, the company made a false statement as to a material matter in its DCA application for an HIC license.

The failure of the Applicants to provide truthful and non-misleading information on their applications to the Commission establishes that the Applicants lack good character, honesty, and integrity. The Applicant's Response on this point is unpersuasive. Accordingly, the Commission denies the Applications on this independently-sufficient ground. *See* Admin. Code §§. 16-509(a)(i); 16-509(b).

4. The Applicants have engaged in a pattern of unsafe practices at their job sites, resulting in two fatalities within the last 10 years, which reflects a lack of good character, honesty and integrity.

The Commission may consider, but is not limited to the factors listed in Sections 16-509(a) of the Administrative Code to determine if an applicant lacks good character, honesty and integrity. The facts set forth above demonstrate that Flag and Formica Construction have repeatedly engaged in unsafe business practices – with tragic consequences. On November 12, 2014, Flag employee Robert Meehan was killed after a 10-foot dumpster fell onto him. Just over two weeks later, on November 28, 2014, a Formica Construction employee, Delfino Jesus Velazques, was killed due to a ceiling collapse. This history and pattern of unsafe operation demonstrates a clear lack of good character, honesty, and integrity, particularly when paired with all of the other conduct of the Applicants, as set forth above.

The Applicants' Response does little to address the many safety issues raised in the Notice. In fact, it does not dispute any of the criminal and safety history of Kenneth Formica and Formica Construction. As to the November 12, 2014 worker fatality involving Flag employee Robert

Meehan, the Applicants' Response argues that no wrongdoing could be imputed to Flag because "no adjudication of any liability has been had as of this date." *Id.* at 3. This argument ignores the totality of the Applicants' safety record and history of worker fatalities. Accordingly, the Commission denies the Applications on this independently-sufficient basis. *See* Admin. Code § 16-509(a).

V. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or refuse to grant an exemption from the license requirement and issue a registration in lieu of a license to any applicant that it determines lacks good character, honesty and integrity. The conduct of the Applicants as set forth above demonstrates that they lack good character, honesty and integrity. Accordingly, based on each of the four independently-sufficient grounds detailed above, the Commission denies the License Renewal Application of Flag and the Registration Renewal Application of Formica Construction.

This joint license and registration denial decision is effective 14 days from the date hereof. In order that the Applicant's customers may make other carting arrangements without an interruption in service, the Applicant is directed (i) to continue servicing its customers for the next 14 days in accordance with the existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to send a notice before the close of business on June 14, 2019 by first-class U.S. mail to each of its customers to notify its customers that it will discontinue trade waste removal service on June 26, 2019. The Applicants shall not service any customers, or otherwise operate as trade waste removal businesses in the City of New York, after the expiration of the 14-day period.

Dated: June 12, 2019

THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



Noah D. Genel
Commissioner and Chair



Steven Costas, Acting Commissioner
Department of Sanitation (designee)



Lorelei Salas, Commissioner
Department of Consumer and Worker Protection



Margaret Garnett, Commissioner
Department of Investigation



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



Dominick D'Orazio, Deputy Inspector
New York City Police Department (designee)