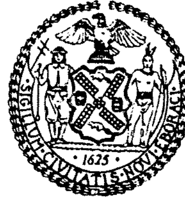
FINAL DECISION



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

DECISION OF THE TRADE WASTE COMMISSION DENYING THE APPLICATION OF ROTONDO CONTRACTING CORP. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

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

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

(1) Franco Rotondo Jr., a principal of the Applicant, was and is a principal in several trade waste businesses which have been found

liable in civil and administrative proceedings that directly relate to the Applicant's fitness for a trade waste removal license;

(2) The Applicant submitted materially false, conflicting and misleading information, including deposition testimony to the Commission;

(3) Franco Rotondo Sr., an undisclosed principal of the Applicant, was convicted of attempted coercion in connection with bid-rigging charges involving the trade waste industry and is a defendant in a federal RICO case[1];

(4) The Applicant has failed to pay outstanding taxes, fines and penalties related to its business and for which liability has been found;

(5) The Applicant has not cooperated with the Commission in that the Applicant has repeatedly and knowingly failed to provide documents required by the Commission pursuant to a licensing investigation.

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":

[1] Franco Rotondo's company, Wayside Carting, Inc. was also a defendant in this federal civil RICO case. However, a default judgment was entered against Wayside, as Wayside failed to file a notice of appearance in the case.

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

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

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

> (1) "that the carting industry has been corruptly influenced by organized crime for more than four decades";
>
> (2) "that organized crime's corrupting influence over the industry has fostered and sustained a cartel in which carters do not compete for customers";
>
> (3) that to ensure carting companies' continuing unlawful advantages, "customers are compelled to enter into long-term contracts with onerous terms, including 'evergreen' clauses";
>
> (4) "that the anti-competitive effects of this cartel have resulted, with few exceptions, in the maximum [legal] rates . . . effectively being the only rate available to businesses";
>
> (5) "that businesses often pay substantially higher amounts than allowed under the maximum rate because carters

improperly charge or overcharge for more waste than they actually remove";

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

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

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

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

Local Law 42, § 1.

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

In June 1995, all four trade associations, together with seventeen individuals and twenty-three carting companies, were indicted on enterprise corruption, criminal antitrust, and related charges as a result of a five-year

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

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

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

On January 27, 1997, Angelo Ponte, a lead defendant in the state prosecution and the owner of one of the City's largest carting companies, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of two to six years and to pay $7.5 million in fines, restitution, and

civil forfeitures. In his allocution, Ponte acknowledged the existence of a "property rights" system in the New York City carting industry, enforced by a cartel comprised of carters and their trade associations through customer allocation schemes, price fixing, bid rigging, and economic retaliation, for the purpose of restraining competition and driving up carting prices and carting company profits. His son, Vincent J. Ponte, pleaded guilty to paying a $10,000 bribe to obtain a carting contract to service an office building. Both defendants agreed to be permanently barred from the City's carting industry.

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

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

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

On July 21, 1997, Philip Barretti, another lead defendant in the state prosecution and the former owner of the City's largest carting company, pleaded guilty to two counts of attempted enterprise corruption and agreed to a prison sentence of 4½ to 13½ years and to pay $6 million in fines, restitution, and civil forfeitures. Frank Giovinco, former head of the WPA, pleaded guilty to attempted enterprise corruption and agreed to a prison sentence of 3½ to 10½ years. Carters Paul Mongelli and Louis Mongelli also pleaded guilty to attempted enterprise corruption, and agreed to prison sentences of four to twelve and 3⅓ to ten years, respectively. All four defendants agreed to be permanently barred from the City's carting industry. On the same day, Philip Barretti, Jr. and Mark Barretti pleaded guilty to an environmental felony and commercial bribery, respectively, and agreed to be sentenced to five years probation. The Barretti and Mongelli carting companies also pleaded guilty at the same time. A few days later, the WPA pleaded guilty to criminal restraint of trade.

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

The pleas of guilty to reduced charges by the state defendants took place in the context of an ongoing prosecution of the entire enterprise corruption conspiracy, in which testimony had begun in March 1997. The remaining defendants were the GNYTW, Gambino soldier Joseph Francolino and one of his carting companies, Genovese capo Alphonse Malangone, and two carting companies controlled by defendant Patrick Pecoraro (whose case, together with the case against the QCTW, had been

severed due to the death of their attorney during the trial). On October 21, 1997, the jury returned guilty verdicts on enterprise corruption charges – the most serious charges in the indictment – against all six of the remaining defendants, as well as guilty verdicts on a host of other criminal charges. On November 18, 1997, Francolino was sentenced to a prison term of ten to thirty years and fined $900,000, and the GNYTW was fined $9 million. On January 12, 1998, Malangone was sentenced to a prison term of five to fifteen years and fined $200,000.

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

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

B. Local Law 42

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

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

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

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

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

(ii) a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for

which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;

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

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

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

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

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

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

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

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

Admin. Code § 16-509(a)(i)-(x).

II. DISCUSSION

Rotondo Contracting filed an application for a trade waste removal license with the Commission on August 29, 1996. The Commission's staff has conducted an investigation of the Applicant, which included the deposition of its principal, Franco Rotondo, Jr. On December 5, 2001, the staff issued a 38-page recommendation that Rotondo Contracting's license application be denied. On December 5, 2001, the staff's recommendation and notice of their 10 day period to respond to said recommendation was delivered by hand to Rose Abale, a representative of the Applicant at the Applicant's office at 186 Broadway, Huntington Station, New York 11746. See Affidavit of Service of Detective Daniel Galella of the New York City Police Department dated December 5, 2001. Rotondo Contracting did not submit a response to the staff's recommendation, nor did any other principal of the Applicant business. The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth below, the Commission finds that Rotondo Contracting lacks good character, honesty, and integrity, and denies its license application.

Rotondo Contracting, the Applicant, was incorporated in 1994, with Franco Rotondo, Jr. ("Franco Jr.") as its sole owner. See Transcript of Deposition of Franco Rotondo, Jr. on August 17, 2001 ("Rotondo Tr.") at 11; See also Rotondo Contracting Corp. License Application ("Lic. App.") at 3. Franco Jr. testified that he also owned Statewide Recycling Center of New York, Inc. ("Statewide") from 1993 to 1997,[2] and Bayside Carting ("Bayside") from 1996 to 2000, and that he worked for Wayside Carting, Inc., ("Wayside") a company owned by his parents Franco Rotondo, Sr. ("Franco Sr.") and Josephine Rotondo ("Josephine"). See Rotondo Tr. at 22. Franco Jr. also testified that his brother Daniel Rotondo owned Rotondo Brothers Waste Removal Corp. ("Rotondo Brothers"). See Rotondo Tr. at 18.

A. Franco Rotondo Jr., A Principal of the Applicant, Was A Principal in Several Waste Related Businesses Which Have Been Found Liable in Civil and Administrative Proceedings That Directly Relate to His Fitness for A Trade Waste Removal License.

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 is an adequate independent basis for license denial. See Admin. Code §16-509(a)(iv). Franco Jr. and his related waste companies have a long history of being found liable for violations in civil and administrative proceedings.

On April 12, 1993, Franco Jr., his parents Franco Sr. and Josephine, his brother Daniel Rotondo, another family member Karen Gregorovic Rotondo, Wayside, Bayside, Statewide, and Rotondo Brothers executed an Order on Consent with the NYS DEC wherein Franco Sr. and Josephine divested themselves from any solid waste business governed by the New York State Environmental Conservation Law, ("ECL") Article 23 and associated regulations. See In the Matter of Violations of Articles 27 and 71 of the New York State Environmental Conservation Law and Part 360 of the NYRCC by Statewide Recycling Center of New York, Inc. and Franco Rotondo Jr., Notice of Hearing, Pre-Hearing Conference and Complaint, File No. 1-5981-97-1, Exhibit A, Order on Consent, April 19, 1993 ("NYS DEC

[2] Statewide Recycling Center of New York, Inc. has also been known as Statewide Carting Inc. and Statewide Recycling Inc. Statewide was denied its permit to operate as a solid waste transfer station by the New York State Department of Environmental Conservation ("NYS DEC") in September 1997.

April 19, 1993 Order on Consent"). The parties also agreed to pay a $100,000 fine. This action was taken by the NYS DEC against the Rotondos and their companies for violations of New York State solid waste laws and regulations, including operating a transfer station without a permit, inadequate drainage, and violations of recordkeeping requirements.

As a result of the April 19, 1993 Order on Consent, Franco Sr. and Josephine allegedly transferred their interests in waste-related businesses to their sons, Franco Jr. and Daniel Rotondo. Franco Jr. became the owner of Statewide and Bayside, and Daniel Rotondo became the owner of Rotondo Brothers. Statewide was thereafter issued a permit to operate as a transfer station by the NYS DEC. The permit was effective from May 23, 1994 to May 22, 1995. On several occasions that permit was subsequently extended. Each of the permits required Statewide and Franco Jr. to comply with the terms and conditions of the NYS DEC April 19, 1993 Order on Consent. Statewide filed its transfer station permit renewal application on November 26, 1996.

While Statewide's transfer station permit renewal application was pending, the NYS DEC documented numerous violations of the ECL and regulations committed by Statewide and Franco Jr. These violations included the failure to provide audited annual financial reports to the NYS DEC, the failure to maintain the facility in a manner which prevented litter, dust, and other potential nuisances, the storage of construction and demolition debris uncovered at the facility for a period in excess of 30 days, the storage of construction and demolition debris at a height in excess of its permitted capacity, the failure to timely correct violations of the transfer station permit despite repeated requests by the NYS DEC, and other documented violations. On April 17, 1997 Franco Jr. and Statewide executed an Order on Consent with the NYS DEC to settle the violations and agreed to pay a fine of $5,000 for any violation of the Order on Consent and $1,000 for each day the violation continued. The Order on Consent also incorporated the April 19, 1993 Order on Consent which required the divestiture of Franco Sr. and Josephine Rotondo from the waste-related industry. See In the Matter of Violations of Articles 27 and 71 of the New York State Environmental Conservation Law and Part 360 of the NYCRR by Statewide Recycling Center of New York, Inc. and Franco Rotondo Jr., Notice of Hearing, Pre-Hearing Conference and Complaint, File No. 1-5981-97-1, Exhibit E, Order of Consent, April 21, 1997 ("NYS DEC April 21, 1997 Order on Consent").

On September 5, 1997, the NYS DEC denied Statewide's application for a renewal of its transfer station permit, which expired on May 1, 1997. The denial was based upon the numerous violations of the ECL and regulations contained in 6 NYCRR Part 360, of the April 21, 1997 Order on Consent, and violations of the permit requirements such as storage capacity. See In the Matter of Violations of Articles 27 and 71 of the New York State Environmental Conservation Law and Part 360 of the NYCRR, Default Order, File No. 1-5981-97-07, January 27, 1998, paragraph 16 ("January 27, 1998 NYS DEC Default Order").

On November 3, 1997, NYS DEC issued a Notice of Hearing, Pre-Hearing Conference and Complaint against Statewide and Franco Jr. for numerous violations of the ECL and regulations contained in 6 NYCRR Part 360. The violations enumerated in this Notice of Hearing were similar to the violations that were the subject of the April 21, 1997 Order on Consent and other newly documented offenses. Statewide and Franco Jr. then requested a hearing on the NYS DEC's decision to deny its transfer station renewal application.

On November 20, 1997, the NYS DEC Administrative Law Judge ("ALJ") Helene Goldberger consolidated the hearing on the permit application denial and the Notice of Hearing and Complaint dated November 3, 1997. See In the Matter of Violations of Articles 27 and 71 of the New York State Environmental Conservation Law and Part 360 of the NYCRR by Statewide Recycling Center of New York, Inc. and Franco Rotondo Jr., Notice of Hearing, Pre-Hearing Conference and Complaint, File No. 1-5981-97-1 ("November 3, 1997 Notice of Hearing and Complaint"). Statewide and Franco Jr. failed to file an answer in response to the November 3, 1997 Notice of Hearing and Complaint. The NYS DEC then moved for a default judgment against Statewide and Franco Jr. After being found in default, ALJ Goldberger determined that Statewide and Franco Jr. violated the ECL, their permit requirements, and the various above-cited Orders on Consent related to the operation of the facility for which Statewide and Franco Jr. sought a permit. ALJ Goldberger noted that Statewide and Franco Jr. repeatedly violated the ECL and Part 360 of the NYCRR, to wit: failure to maintain the facility in a manner which prevents litter, dust, odor and other potential nuisances, storing construction and demolition debris at the facility for longer than 30 days, exceeding its storage permit capacity, failure to submit annual audited financial statements as required by the April 19, 1993 Order on Consent, having tipping loads outside the facility's building, and

other violations. Thus, ALJ Goldberger recommended that the NYS DEC Commissioner grant a default judgment against Statewide and Franco Jr. as well as deny its permit application. See Decision of ALJ Helene Goldberger contained in January 27, 1998 NYS DEC Default Order.

On January 27, 1998, NYS DEC Commissioner John Cahill issued a default order which found that Statewide and Franco Jr., by not appearing, waived their rights to a hearing on the violations contained in the November 3, 1997 Notice of Hearing and Complaint and therefore were found liable. Additionally, Commissioner Cahill deemed their request for a hearing on the decision to deny their transfer station permit application withdrawn. Furthermore, the NYS DEC Commissioner imposed a fine of $270,450 against Statewide and Franco Jr., and ordered them to cease and desist from any and all current and future violations of the ECL and Part 360 of the NYCRR, and to remediate the site within 60 days of the order. See January 27, 1998 NYS DEC Default Order.

The evidence clearly demonstrates that the Applicant's principal, Franco Jr., repeatedly and willfully violated the NYS ECL laws and regulations pertaining to the operation of a transfer station. This repeated conduct resulted in the denial of Statewide's transfer station permit application by the NYS DEC. Furthermore, Franco Jr. and Statewide were fined $270,450 dollars for their repeated and continuous violations of the law.

In another civil case, in May 1998, the United States Department of Labor's Wages and Hour Division brought a lawsuit against the Applicant Rotondo Contracting, Bayside, Statewide, Franco Jr., Franco Sr., Josephine, Donna Rotondo, Quirino Rotondo, and Daniel Rotondo and charged them with willful violation of the overtime pay and recordkeeping provisions of the Fair Labor Standards Act since January 1, 1995 by failing to pay overtime compensation to 63 employees. In this lawsuit, the United States Department of Labor stated that Franco Jr.'s parents, Franco Sr. and Josephine, are in active control and management of the defendant companies – the Applicant, Bayside, and Statewide. See "Huntington Station, New York Garbage Hauling Companies Ordered to Pay $800,000 in Overtime and Civil Money Penalties Under the Fair Labor Standards Act," United States Department of Labor March 27, 2000 Press Release ("U.S. Department of Labor Press Release"). Under a judgment issued by the United States District Court, Eastern District of New York, Franco Jr.,

Franco Sr., Josephine, Rotondo Contracting, Bayside and Statewide agreed to pay $747,300 in overtime compensation and $52,700 in civil money penalties to 63 employees. In this judgment, the charges against Donna Rotondo, Quirino Rotondo, and Daniel Rotondo were dismissed. See Herman v. Rotondo Contracting Corp. et al, No. CV--98-3360 (E.D.N.Y. March 15, 2000). As discussed below, the Applicant, its principal, Franco Jr., and the other defendants in this lawsuit have yet to pay the monies owed pursuant to this judgment.

It is interesting to note that in 1998 the United States Department of Labor obtained evidence that both Franco Sr. and Josephine were in active control and management of the Applicant business, Bayside, and Statewide, and committed violations of the Fair Labor Standards Act dating back to January 1, 1995. Furthermore, the federal judge on the case did not dismiss the charges against Franco Sr. and Josephine, individually. The fact that Franco Sr. and Josephine were in active control and management of waste-related companies demonstrate that they willfully violated the NYS DEC April 19, 1993 Order on Consent. Franco Sr. and Josephine's behavior is not surprising in light of the fact that in 1986, Franco Sr. purportedly divested himself of any interest in Wayside, yet was later found to be in control of the company and a de facto owner. [3]

The Applicant's principal, Franco Jr., has been found to have repeatedly violated the ECL, NYS DEC rules and regulations as well as the various NYS DEC Orders on Consent in connection with the operation of

[3] Wayside Carting was a company owned by Franco Sr. In 1986, Franco Sr. pleaded guilty to attempted coercion in Suffolk County. As a result of his conviction, certain municipalities on Long Island refused to continue to do business with Wayside, namely, enter into contracts with Wayside to provide waste removal services. This was a serious loss because the municipalities accounted for approximately fifty percent of Wayside's revenue. In order to retain the businesses with the municipalities, Franco Sr. resigned as an officer and director of Wayside, effective October 22, 1986. Josephine Rotondo was appointed as president of the corporation and was listed as a signatory on a corporate bank account. Apparently, documents were filed with certain municipalities on Long Island reporting the purported changes in Wayside's ownership. However, Franco Sr. continued to operate Wayside's business as a general manager, hiring and firing employees, managing and supervising the day-to-day work of the corporation, overseeing the corporation's finances and generally controlling all of the business and financial affairs of Wayside. Franco Sr. began signing Josephine Rotondo's signature to any document that he believed required the signature of a corporate officer. He continued to sign corporate checks. Thus, Franco Sr. continued to control and run Wayside, and lied and misled the Long Island municipalities. See September 23, 1993 Determination of Administrative Law Judge Jean Corigliano, State of New York Division of Tax Appeals in the In the Matter of the Petition of Wayside Carting Inc., Franco Rotondo and Josephine Rotondo, DTA No. 808818 at 7-8. (In this proceeding, Wayside petitioned for the a reconsideration of sales taxes owed to New York State. In her findings, the Administrative Law Judge found that Franco Sr. de facto owned the company despite his misrepresentations that Josephine Rotondo owned the company.)

Statewide, a transfer station. His willful disregard resulted in the denial of Statewide's transfer station permit application, and a fine of $270,450, which remains outstanding. Furthermore, Franco Jr. and Rotondo Contracting were found liable for violating the Fair Labor Standards Act which resulted in penalties in the amount of $800,000 imposed against them and the other defendants in the case. Based on these independently sufficient factors, the Commission denies Rotondo Contracting's application for trade waste license.

B. The Applicant Submitted Materially False, Conflicting and Misleading Information, Including Deposition Testimony to the Commission.

Failure by a license applicant to provide truthful information in connection with its license application is an adequate independent basis for license denial. See Admin. Code § 16-509(a)(i). The Applicant and its principal, Franco Jr., have made several false, misleading and conflicting submissions to the Commission, including the nondisclosure of Franco Sr. and Josephine as principals.

First, despite numerous opportunities to correct the record, the Applicant denied that it or any of its affiliated entities were the subjects of administrative or civil charges:

Question 5(c) of the License Application, which the Applicant submitted in 1996, asks:

> "During the past five years has the Applicant business or any past principal of the Applicant business been the subject or target of any investigation regarding an alleged violation of any other federal, state or local statute?" See Lic. App. at 14.

The Applicant answered "No." This is untrue. As discussed above, in 1993, the Applicant and Franco Jr. were the subjects or targets of numerous investigations by the NYS DEC for violations of the ECL and Part 360 of the NYCRR.

In addition, Question 5(h) of the License Application asks:

> "During the past five years has the Applicant business or any past principal of the Applicant business entered into a consent decree, administrative order on consent or similar agreement or been the subject of a default decree, related to the trade waste industry not already noted in answer to Part III questions 3 or 4?" See Lic. App. at 14.

The Applicant answered "No." This answer is untrue as the Applicant's principal signed a NYS DEC Order on Consent related to the waste industry on April 12, 1993. See NYS DEC April 19, 1993 Order on Consent.

Likewise, Question 10(h) of Franco Jr.'s Principal Disclosure form, which was submitted in 1996, asks:

> "During the past ten years have you entered into a judicial consent decree, administrative order on consent or similar agreement or been the subject of a default decree, related to the trade waste industry and not listed in answer to questions 8 or 9?" See Franco Jr. Disclosure Form at 4.

The Applicant answered "No." This again is untrue. As discussed in detail above, in 1993, Franco Jr. and his company, Statewide, entered into a NYS DEC Order on Consent, and later were the subjects of a default order related to the waste industry. See January 27, 1998 NYS DEC Default Order.

Also, question 42 on the 1998 and 2001 Questionnaires filled out by Franco Jr., which were sworn and notarized, asks:

> "Has any company with which you have been affiliated ever been the subject of administrative charges brought by a government agency?" See Franco Jr. 1998 and 2001 Questionnaires at 9.

The Applicant answered "No." This is untrue. As discussed above, Franco Jr., the Applicant business, and other waste-related companies owned by Franco Jr. and other members of the Rotondo family have been the subject of numerous administrative charges brought by several different government agencies.

There can be no confusion, as the Applicant and its only disclosed principal falsely answered "no" to all of the above questions. Based upon the record in this matter, these responses were clearly false. As explained above, Franco Jr., individually, and his related waste companies have been the subjects of various administrative and civil charges, have entered into consent decrees and have been the targets of several government investigations. Indeed, the Applicant business itself was the subject of a federal government investigation, which resulted in civil charges brought against it, along with other defendants, by the United States Department of Labor.

Second, Franco Jr. submitted materially false, conflicting and misleading information to the Commission about other businesses that he has been involved with. On Schedule A of Franco Jr.'s Disclosure Form, Franco Jr. states that he has been the owner of Bayside Carting Inc. since it's "inception." See Franco Jr. Disclosure Form at 8. At his deposition, Franco Jr. testified that he owned Bayside from 1996 to 2000. See Rotondo Tr. at 22. According to Franco Jr., in 1996, he invested $14,000, "bought a truck," "solicited customers" and "built a route" to start Bayside from "scratch." Id. However, Franco Jr. could not remember where he obtained the $14,000 from. Id. Two years ago Franco Jr. sold Bayside for $400,000 because he "just didn't want to do it anymore. It's too much for me." Id. Thus, according to Franco Jr., Bayside began with a $14,000 investment and was sold for $400,000 just four years later. In fact, Bayside Carting was one of the Rotondo family of companies which existed well before 1996. Franco Jr. admitted as much in a letter dated May 4, 2000 from Franco Jr. to Bayside's customers:

> "My company, Bayside Carting, Inc. has been providing quality waste removal and recycling services to hundreds of businesses for the past 23 years. My family and I have always strived to give the best service, ..."

See May 4, 2000 letter signed by Franco Jr.

At his deposition, Franco Jr. was given an opportunity to explain the discrepancy between the contents of the above letter and his prior submissions and testimony before the Commission:

Q.: My question is how long was Bayside Carting in business?

A.: [No answer]

Q.: You testified earlier that you started it after high school?

A.: Right.

Q.: Was it in business prior to that? Was Bayside Carting- -

A.: No.

Q.: What do you mean when you say it was in business for "23 years?"

A.: That's - - maybe I'm collectively using the - - that amount of years as more experience than, than actually being, being in, in the business. I would say - -I mean, it's just a saying type of thing, to be honest with you.

Q.: So it wasn't 23 years?

A.: No.

See Rotondo Tr. at 61-62.

Franco Jr. was faced with a quandary here. He could either admit that he lied to his customers, or admit that he was in the process of lying to the Commission, as Bayside was indeed owned by his family. He decided to testify, albeit in a roundabout way, that he lied to his customers. In doing so, Franco Jr. lied under oath to the Commission regarding the start up of the company in an effort to distance himself from his father. If Franco Jr. admitted that Bayside was in business for twenty-three years, he would admit his family's role in the business.[4]

Q.: When you say your "family and I have strived," who are you talking about?

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[4] Since Rotondo was twenty-nine years old when the letter was written, it is highly unlikely that he was in business for twenty-three years.

A.: Well, me, and my brothers.[5]

See Rotondo Tr. at 62.

Franco Jr. clearly lied about his ownership of Bayside and how long Bayside has been in existence when he testified that he owned Bayside from its "inception" which was in 1996. As discussed above, documents from the NYS DEC as well as the civil lawsuit brought by the United States Department of Labor established that Bayside was in existence prior to 1996. For instance, Bayside was a party who executed the Order on Consent on April 12, 1993 with the NYS DEC. See NYS DEC April 19, 1993 Order on Consent. Because the NYS DEC April 19, 1993 Order on Consent required Franco Sr. and Josephine to divest their interests in waste related companies, Bayside was placed in Franco Jr.'s name. Additionally, in 1998, the United States Department of Labor charged Bayside, and other defendants, with violating the Fair Labor Standards Act as early as 1995, for which Bayside, along with the other defendants, agreed to pay overtime compensation and civil penalties.

Third, in addition to the License Application and the sole Principal Disclosure form submitted, Franco Jr. testified that he is the sole principal of the Applicant company and that he is the only person authorized to make any major decisions for the Applicant. At his deposition, he insisted that his parents never had any involvement in the Applicant company or any of his other companies. Id. at 14. However, he demonstrated only scant familiarity with many aspects of the business other that driving a truck. For instance, Franco Jr. could only name two contractors with whom the Applicant does business with. He vaguely testified about how he obtains customers by looking for "construction job[s] or a construction site... stop in, ask them if they [are] interested in a roll off..." Id at 16. Also, he was not sure about the duties of his brother Quirino:

Q.: Does he have any other responsibilities besides driving the truck?

A.: Maybe some day to day operations.

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[5] Franco Jr. refused to state the obvious: That his parents had control of Bayside for many years prior to them transferring the business to him. Franco Jr.'s brothers are Daniel, age 34 and Quirino, age 25.

Q.: When you say "day to day operations," what do you mean?

A.: Like dispatch, something like that.

See Rotondo Tr. at 12.

As noted below, Franco Jr.'s own words demonstrate his true lack of knowledge about the Applicant business. At his deposition, Franco Jr. was asked if there are any tax liens against the Applicant. Franco Jr. responded:

> "I'm not sure. I'm a nuts and bolts type of guy."

Id. at 28.

The fact that Franco Jr. has so little knowledge of "his" company also indicates that others – namely, his father and mother – run the Applicant business, and that Rotondo Contracting is simply another company in his family's carting company conglomerate.[6] It makes much more sense that he was telling the truth when he said he is a "nuts and bolts type of guy." The only credible conclusion that can be drawn from this is that Franco Rotondo Jr. does not manage or control the day-to-day operations of the Applicant.

Fourth, at his deposition, Franco Jr. did not provide truthful information about Wayside. He testified that his father owned Wayside, that Wayside was never connected to the Applicant company, and that Wayside went out of business in 1993. He was asked why Wayside went out of business:

> "It went out of business because we had all residential routes, and there were private residential routes. And then the town decided to put them up for bid. They were like made part of a district. So we lost all the routes."

Id. at 13.

All of Franco Jr.'s testimony about Wayside was false and misleading. Franco Jr. failed to disclose that in 1993, the NYS DEC ordered the

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[6] The United States Department of Labor asserted in its lawsuit that Franco Jr. and Josephine were in active control and management of the Applicant business, and the judgment of the United Stated District Court, Eastern District held them individually liable for violations of the Fair Labor Standards Act.

company to pay a $100,000 penalty for violation of solid waste laws, which included operating without a transfer station permit, providing inadequate drainage and violating record keeping requirements. The company was forced to seek a permit under a single name, Statewide, instead of its four different names- Wayside Carting Inc., Bayside Carting Inc., Rotondo Brothers Corp., and Statewide Carting Inc. The then-owners, Franco Sr. and Josephine Rotondo were ordered to give up their interests in the waste industry, which they handed over to their son, Franco Jr., who was then 22 years old. If this transfer happened at all, Franco Jr.'s father remained in control of the company. The Rotondos decided to name the "new" company Statewide Recycling Inc. Later, the name was changed to Statewide Recycling Center of New York Inc.

Simply stated, Franco Jr. attempted to conceal the fact that Wayside, a company owned by his parents and in which he was involved with, was forced to go out of business by the NYS DEC, and that the business was officially merged with several other Rotondo family businesses, including the Applicant as part of a settlement with the NYS DEC. When confronted with the truth, Franco Jr. claimed ignorance about the fact that his parents signed a consent order which bars them from the waste industry and that he obtained his ownership interest in the Applicant company because of his parents difficulties with the law.

Q.: Do you know if your mother, and your father or brothers where ever barred from the trade waste industry on Long Island?

A.: I don't know. Not that I'm aware of. Could be my father before me.

Q.: When you say "Could be," why do you say that?

A.: Just possible, that's all. I'm not ruling it out.

Q.: Do you know why it would be possible?

A.: I can't, I can't answer either. I can't say no; I can't say yes.

See Rotondo Tr. at 65, 66.

Despite the fact that Franco Sr. and Josephine have signed a consent order concerning Statewide, Franco Jr. asserted under oath that his parents never worked for the company. See Rotondo Tr. at 20. Franco Jr. then admitted, albeit in an indirect manner, that Franco Sr. does assist in the operations of the business. Franco Jr. was asked:

> Q.: Do your parents ever help you out with the business if you have a problem?
>
> A.: Not really. Kind of on my own. Sometimes I go to my dad for advice, but on other than, you know, that's like a father/son type of thing he's actually helping me out.
>
> Q.: What kind of advice concerning the business?
>
> A.: You know, just advice in general. You know, like stuff that you would just talk to your dad about.
>
> Q.: I'm just asking concerning the business. As far as running the business.
>
> A.: My business is a big part of my life, you know, so I don't really have a social life. So I don't really have anything to talk about when we get together. We sometimes talk about business.

Id. at 61.

Fifth, Wayside was not the only business the Applicant submitted false and misleading information about. The license application states that Franco Jr. has been the owner of Statewide "since inception." See Lic. App. at 26. At his deposition, Franco Jr. was directly asked about Statewide. His responses to numerous questions about the ownership structure and history of the business were not credible:

> Q.: How did you acquire that business?
>
> A.: I made it. I built it.
>
> Q.: You started it from scratch?
>
> A.: Yes.

See Rotondo Tr. at 19.

Franco Jr. claims that to start the business in 1993, he invested $50,000. Id. He had acquired this money from the Applicant business.[7] Rotondo testified that "it's possible. I don't remember" if his brothers worked for Statewide. See Rotondo Tr. at 20.

> Q.: Did you parents ever work for that company?
>
> A.: No.

Id.

Franco Jr. gave a lengthy, yet frivolous explanation for why Statewide went out of business:

> Because our - - there was a special license from the town that the town - - this instituted after the town - - it's a long story. I don't know if you're going to catch, catch all of it. But two years after we started the operation, the town that we're in instituted a new license that it was like a variance license, and the area where my transfer station was in, actually, meet the criteria of the new variance license.
>
> And it was, you know, some litigation, and some - -we tried changing variance code to meet, to meet our, to meet our needs. Being that we were the only transfer station in the town, it's just financially - - it was too much of a burden for me to continue on. So - --.

See Rotondo Tr. at 24.

Even in the face of direct questions, Franco Jr. never admitted the true problems of Statewide:

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[7] However, Franco Jr. had earlier testified that the Applicant business started in 1994.

Q.: Was Statewide Recycling Center ever shut down by the Department of Environmental Conservation?

A.: There was summonses that were given by them. But the ultimate reason for us closing was because we weren't able to obtain the necessary variance for the town ordinance.

Franco Jr. admitted that Statewide operated without a permit:

Q.: Did Statewide Recycling ever operate without a permit?

A.: I'm going to say no - - I mean, I'm sure that they have said yes.

Id. at 56.

Yet Franco Jr. attempted to explain away the fact that Statewide operated illegally without a permit:

"And on occasion we had filed like a month late, and our permit had, had run over. Our permit had run over even though we weren't denied the license or anything like that. The permit had run over the expiration date, but the new permit was issued. So I guess, at the time they technically- - they would, they would consider that operating without a license."

Q.: Was Statewide Recycling Center fined for operating without a permit?

A.: There were some fines.

Q.: Do you remember how much the fines were?

A.: No.

Q.: Do you have an estimate of how much the fines were?

A.: I don't remember. It was a while back.

See Id. at 57, 58.

Unbelievably, Franco Jr. could not remember that he and his company were assessed a penalty of $270,450 just three years ago in 1998.

Sixth, in both the 1998 and 2001 Questionnaires that Franco Jr. filled out, question 28 asks:

> "Have you ever been denied a license or permit or certification by any governmental agency?"

Franco Jr. answered "no" on his August 17, 2001 Questionnaire and answered "yes" on his September 24, 1998 Questionnaire. See 2001 Questionnaire at 7; See also 1998 Questionnaire at 7. When he was asked about his 1998 answer, Franco Jr. replied:

> "I don't remember, to be honest with you. If it was - - it wasn't - - maybe it was like - - I don't even know. I couldn't even tell you... It was like a hunting license or something. I don't even know what my mind was on back there."

Franco Jr.'s testimony about Statewide is false. As described above, Statewide went out of business due to the fact that the NYS DEC denied Statewide's permit renewal application. Furthermore, the company was fined $270,450 for numerous violations. Franco Jr.'s pattern of deception continued. In the 2001 Questionnaire filled out by Franco Jr. in August, 2001, question 22 asks:

> "Does/did any member of your family (including relatives by marriage) or any friend of your family, work in or have any connection with the waste hauling or waste disposal business, such as carting companies, transfer stations, recycling centers, paper dealers, scrap metal dealers, back hauling, and landfill operations?" See 2001 Questionnaire at 6.

In a further attempt to conceal his family's involvement in the industry, Franco Jr. falsely answered "no" to the above question. Franco Jr.'s family members – father Franco Sr., mother Josephine, brothers Daniel and Quirino, Donna Rotondo, and Karen Rotondo owned and operated various waste-related companies at one time or another.

Furthermore, the Applicant failed to disclose its employees on the License Application. At his deposition, Franco Jr. stated for the first time that Maria Dellavedova was employed by the Applicant as a secretary and that her duties include "doing the books."

On the 1998 and 2001 Questionnaires, the deception continued, as Franco Sr. and Josephine's history in the waste industry and involvement with the Applicant were not disclosed. Instead, Franco Sr. was only listed as "retired." See 1998 and 2001 Questionnaires at 5. On his Questionnaires, Franco Jr. was deceptive when he failed to disclose his parents' prior and current employment information. As noted above, it is clear that Franco Sr. and Josephine have been principals in waste related companies – Wayside, Bayside, Statewide, and Rotondo Brothers. Further, the United States Department of Labor established that Franco Sr. and Josephine were in active control and management of the Applicant Rotondo Contracting, Bayside, and Statewide.

Also, Franco Jr. on his Principal Disclosure form listed his brother, Dan Rotondo, as a mechanic and his brother, Rino Rotondo (aka Quirino), as a manager for the Applicant. However, the License Application does not list Dan Rotondo and Rino Rotondo as employees or principals of the business. Furthermore, Franco Jr.'s Disclosure Form denies that any member of his family works for or has worked in a trade waste business, which is patently false.

The Applicant and it's principal's failure to provide truthful information on its License Application, Principal Disclosure form, 1998 and 2001 Questionnaires, and at the deposition are additional evidence that the Applicant lacks good character, honesty, and integrity, and the Commission denies its application for a trade waste license for this independently sufficient reason.

C. Franco Rotondo Sr., An Undisclosed Principal of the Applicant Was Convicted of Attempted Coercion in Connection with Bid-rigging Charges Involving the Trade Waste Industry and is a Defendant in a Federal Civil RICO Case.

The failure of the Applicant to disclose on its license application any connection or affiliation with Franco Sr. is separately significant in light of

his criminal record and participation in an organized crime controlled cartel in the waste industry on Long Island. In 1989, the United States Attorney for the Eastern District of New York brought a civil RICO action against Franco Sr., Wayside, the company owned by Franco Sr. and Josephine, the Lucchese Organized Crime Family, the Gambino Organized Crime Family, and 108 other defendants who were involved in the waste industry operating on Long Island. The defendants in this federal civil RICO action were charged with acts of racketeering, including bribery, extortion, coercion and grand larceny. The federal government alleged that, for several decades, the solid waste disposal industry in the New York counties of Nassau and Suffolk had been controlled by the organized crime families of La Cosa Nostra. The complaint further alleged that this control of the waste industry by organized crime eliminated competition and cost residents and businesses in those counties millions of dollars. The federal government asserted that the carting industry through the cartel controlled an illegal customer allocation scheme, which is akin to the property rights system. Furthermore, the cartel rigged bids on public carting contracts. Any attempts by non-cartel members to compete for existing customers or to submit competitive bids were met with threats of violence or economic harm.

Specifically as to Franco Sr. and Wayside, the federal government alleged that they conspired and attempted to prevent or prevented successful competition by non-cartel members, Jerry and Robert Kubecka, with the carting cartel in that they, and other defendants, compelled the Kubeckas to (1) surrender certain garbage stops in Nassau and Suffolk counties to certain defendants, (2) refrain from bidding on a public disposal contract, (3) take part in a bid-rigging scheme, (4) surrender garbage stops at the Cold Spring Harbor School District, and (5) not solicit certain garbage disposal contracts. See United States of America v. The Lucchese Organized Crime Family of La Cosa Nostra et al, Complaint, CV—89-1848 (E.D.N.Y. 1989); United States v. Private Sanitation Industry Association of Nassau/Suffolk, Inc., 793 F. Supp. 1114 (E.D.N.Y. 1992).

Wayside failed to appear or file a notice of appearance. Thus, on September 30, 1993, United States District Judge Leo Glasser issued an Order of Default Judgement against Wayside and enjoined Wayside's successors, assigns and all persons acting on its behalf from violating, aiding or abetting the violation of or conspiring to violate any provisions of the RICO Act; from associating with any individual defendant in the civil RICO action for any commercial purpose; from associating with any corporate

defendants in the civil RICO action for any business purpose; and other activities in the industry. See United States v. Private Sanitation Industry Association of Nassau/Suffolk, Inc., Order of Default Judgment, CV—89-1848 (E.D.N.Y., September 30, 1993, J. Leo Glasser).[8]

Based on the same corpus of facts, the Suffolk County District Attorney's Office, in 1983, brought a criminal case against Wayside and Franco Sr. in New York State Indictment No. 2626-83. Thereupon, Wayside pled guilty to attempted coercion in the second degree (Class B misdemeanor) on October 17, 1986 and Franco Sr. pled guilty to attempted coercion in the first degree (Class E felony) on October 17, 1986. See United States of America v. The Lucchese Organized Crime Family of La Cosa Nostra et al, Complaint, CV—89-1848 (E.D.N.Y. 1989), pgs. 48-53.

Subsequently, the New York State Attorney General's Office brought a civil suit against Franco Sr. and Wayside. In 1989, they settled and agreed to pay $209,000. See "17 Haulers to Pay Up; Garbage Firms to Reimburse $3M in Cash, Services," Newsday, June 2, 1989, pg 5; see also "Feds vs. LI Carters; Suit Seeks Sale of Firms U.S. Says are Mob-Dominated," Newsday, June 8, 1989, pg 3.

The only credible conclusion that can be drawn from the totality of the evidence is that Franco Jr. purposely failed to disclose Franco Sr. as a principal of the Applicant business, and did not disclose any involvement that Franco Sr. has with the Applicant. Franco Jr. was likely motivated by the fact that if Franco Sr. was disclosed as a principal, the license application would be reviewed with even greater scrutiny by the Commission. By this obvious omission and deception, he had hoped that the Commission would not make inquiries about his father's, his family's, or his own involvement with the organized crime cartel that controlled the carting industry on Long Island.

Even though the Commission is not required to consider the prior convictions of Franco Sr. because he is an undisclosed principal, the Commission will do so nonetheless. In making licensing determinations, the Commission is expressly authorized to consider prior convictions of the

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[8] According to the United States Attorney's Office, Eastern District of New York, default judgements cannot be issued against individual defendants, only against corporate defendants. Even though Franco Sr. has not appeared or filed a notice of appearance in the federal civil RICO case, the case is still proceeding against him and he has not complied with any discovery requests made by the federal government.

Applicant (or any of its principals) for crimes which, in light of the factors set forth in section 753 of the Correction Law, would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also id. §16-501(a). Those factors are:

> (a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.
>
> (b) The specific duties and responsibilities necessarily related to the license . . . sought.
>
> (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.
>
> (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
>
> (e) The age of the person at the time of occurrence of the criminal offense or offenses.
>
> (f) The seriousness of the offense or offenses.
>
> (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
>
> (h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.
>
> N.Y. Correct. Law §753 (1).

Even applying the above factors, the Commission finds that, notwithstanding the public policy of the State of New York to encourage licensure of persons convicted of crimes, the crime committed by Franco Sr. is sufficiently serious, and is so closely related to both the purposes for which licensure is sought here and the duties and responsibilities associated with licensure, that it precludes the grant of a trade waste removal license to

Rotondo Contracting. Franco Sr.'s guilty plea to the attempted coercion of other non-cartel carters and his active participation in the organized crime cartel operating on Long Island compel the conclusion that the Applicant lacks good character, honesty, and integrity. Based on the foregoing independently sufficient reason, the Commission denies the license application of Rotondo Contracting.

D. The Applicant Has Failed to Pay Outstanding Taxes, Fines and Penalties Related to Its Business and for Which Findings and Admissions of Liability Have Been Found.

As discussed above, Franco Jr., the Applicant company, Franco Sr., Josephine Rotondo, Bayside, and Statewide agreed to pay at total of $800,000 for overtime compensation to their employees and civil penalties to settle violations of the Fair Labor Standards Act. This monetary amount was to be paid on or before September 15, 2000. On March 1, 2000, the defendants paid $25,000 and no payments were made thereafter. Therefore, the defendants were in contempt of the Court's March 15, 2000 Final Judgment. On October 11, 2000, a conference was held by the Court to address the defendants' failure to comply with the Court's Final Judgement, and at that time the Court approved the Secretary of Labor's request that the Court appoint a receiver in the event that the full payment of $775,000 was not made on or before October 31, 2000. On November 20, 2000, the defendants failed to make any further payments and were still in contempt. Thus, on November 29, 2000, Judge Wexler froze the defendants' assets, appointed a receiver to liquidate the defendants' remaining assets,[9] and ordered that the defendants' books and records be turned over to the receiver. See Herman v. Rotondo Contracting Corp. et al., CV--98-3360 (E.D.N.Y. Proposed Order, November 29, 2000).[10]

In addition, to date, Franco Jr. and Statewide has not paid the $270,450 owed to the NYS DEC, for violations of the ECL and rules and regulations as discussed above. In April 1998, the NYS DEC referred the

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[9] On the morning of December 20, 2001, the Commission staff was informed by an attorney with the United States Department of Labor that in early January 2002, the Applicant Rotondo Contracting will be sold at auction by the federal government.

[10] It is interesting to note that Franco Jr. attempted to hinder and circumvent Judge Wexler's March 15, 2000 Final Judgement in that in July 2001, the Applicant sought file for Chapter 11 Bankruptcy protection. This petition was to be dismissed.

case to the New York State Attorney's Office to seek payment of the outstanding fine amount and compliance of the January 27, 1998 NYS DEC Default Order which required cleanup of the transfer station site. See NYS DEC letter to Attorney General Dennis Vacco.

The Applicant has also failed to pay its taxes. On the License Application, Part IV, question 6 asks:

> Have the Applicant business and all principals of the Applicant business filed all required tax returns related to the Applicant business? See Lic. App. at 19.

Also, question 7 of the License Application asks:

> Have the Applicant businesses and all principals of the Applicant business paid all required taxes related to the Applicant business, including, but not limited to income, and business, unincorporated business, sales, commercial rent, property taxes on New York City realty and unemployment insurance returns for the three years providing the date this application is submitted? Id. at 20.

The answer to both questions on the License Application is "no." The Applicant states that:

> "all tax files have since been made. At this point we are working with our CPA and IRS/New York State Tax Department to determine how much is owed at this point in time, and payment arrangements to bring us current. IRS/ New York State Tax Department must adjust actual amount owed, compared to the levied assessments." Id.

Furthermore, Franco Jr. testified that this matter was resolved "a long time ago." See Rotondo Tr. at 34.

Also in its License Application, the Applicant admitted that the following tax liens had been docketed against it:

July 11, 1996	$80,905.35
July 12, 1996	$271,872.99
July 18, 1996	$22,258.76

See Lic. App. at 36.

In addition, the License Application states that on August 7, 1996, $55,019.48 was owed to the Internal Revenue Service. The Applicant claims that payment is "being made." Id. at 37.

In regard to his tax liabilities, Franco Jr. testified at his deposition that "I'm sure that's resolved by now." See Rotondo Tr. at 32.[11] Part D of Question Six of the License Application asks for "the reasons for the late or not filing." The answer in the license application states "CPA hired for that period did not perform duties as required." See Lic. App. at 20. At his deposition, Rotondo explained "We hired a CPA, and he didn't do his job, and I ended up switching accountants." See Rotondo Tr. at 32. Franco Jr. testified that the tax liens were resolved for $100,000 over a period of time. "It's all paid." Id. at 35.[12]

Q.: Schedule Q of the application, tax liens, you've disclosed that on July 11, 1996, the IRS entered a lien for $80,905.35?

A.: Uh-huh.

Q.: Do you know if that is resolved?

A.: All this stuff was resolved for, I think, it was $100,000 over a period of a certain time. It was paid out by the company.[13]

Q.: It's all paid?

A.: Yeah.

Q.: Just so the record is complete, you've also disclosed, July 18 of 1996, there was a lien entered by the IRS for $22,258.76; and on July 12 of 1996, there was a lien entered by the IRS in the amount of $271,872.99. Are all of them resolved?

A.: I believe so, yes.[14]

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[11] However, Franco Jr. could not provide proof or documentation that all outstanding taxes were "resolved."

[12] However, Franco Jr. could not provide proof that "it's all paid."

[13] However, Franco Jr. could not provide proof that "it was paid out by the company."

Q.: Also, on schedule R there are other monies owed to tax authorities. August 7 of 1996, the tax authority of the IRS, the amount is $55,019.47. Has that been resolved, as well?

A.: Yeah.

Q.: Did you resolve all those together, at the same time?

A.: Not really. But they all got resolved.

See Rotondo Tr. at 35-36.[15]

However, as discussed below, the Applicant could not provide the Commission with any documentation that corroborates Franco Jr.'s testimony that all taxes owed were "resolved."

Additionally, the Commission ascertained that the New York State Department of Taxation and Finance have filed the following tax warrants against Franco Rotondo Jr. in the Suffolk County Clerk's Office[16]:

Warrant ID	Docket Date	Amount
E-010639490-W002-9	5/5/2000	$4,411.43
E-010639490-W001-5	2/2/2000	$22,902.55
E-014129176-W014-1	5/4/2000	$79,084.52
E-014129176-W002-6	7/6/1998	$113,838.74

See New York State Department of Taxation and Finance letter dated December 14, 2001.

It is apparent that the Applicant has failed to pay several taxes, fines and penalties related to the Applicant's business. Although requested by the Commission, no independent proof of payment was delivered to the Commission from the Applicant. In making licensing determinations, the Commission is expressly authorized to consider the Applicant's "failure to pay any tax, fine, penalty,... related to the Applicant's business for which

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[14] However, Franco Jr. could not provide any documentation to corroborate his testimony.

[15] However, despite Franco Jr.'s testimony to the contrary, a search of tax liens performed on December 4, 2001 revealed that there are New York State tax liens filed against the Applicant in the amount of $107,583.

[16] See New York State Department of Taxation and Finance letter dated December 14, 2001.

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." See Admin. Code §16-509(x). As chronicled above, this Applicant has failed to pay numerous taxes, fines, penalties and fees in a timely fashion, if they were paid at all. Although requested by the Commission, no independent proof of payment was delivered to the Commission by the Applicant. The failure of the Applicant to pay all outstanding fines and penalties, and the blatant disregard for judgments entered against the Applicant and its principal directly relate to the Applicant's lack of fitness for a trade waste removal license. Accordingly, the Commission denies Rotondo Contracting's application for a trade waste license on this independent ground as well.

E. The Applicant Has Repeatedly and Knowingly Failed to Provide Documents Required by the Commission Pursuant to a Licensing Investigation.

At his deposition, Franco Jr. made various statements concerning the outstanding tax liabilities of himself and the Applicant. In 1996, several tax liens were docketed against the Applicant in an amount exceeding $500,000. When asked during his August, 2001 deposition whether those liens had been satisfied, Rotondo responded that the tax liens had been resolved for $100,000 paid over time. Asked again, he repeated that the tax matters were resolved "a long time ago." See Rotondo Tr. at 34. Subsequently, on August 31, 2001, the Commission sent the Applicant a letter requesting documentation for Rotondo's statements that all outstanding tax liabilities of the Applicant have been paid.[17] To date, the Applicant has failed to respond. Follow-up telephone calls by the Commission also have not been answered and the Commission's investigation into these matters has therefore been obstructed by the Applicant.

The Commission is expressly authorized "[t]o investigate any matter within the jurisdiction conferred by [Local Law 42] and [has] full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation." Admin. Code § 16-504(c). Furthermore,

[17] The Commission sent the letter via certified mail, return receipt requested, so there can be no question that the Applicant received the letter.

the Commission may refuse to grant a license if an Applicant "has knowingly failed to provide the information and/or documentation required by the commission . . . ." Admin. Code. § 16-509(b). Throughout the licensing process, the Applicant has knowingly failed to provide information to the Commission. Therefore, the Applicant's willful lack of cooperation as well as its failure to provide requested documents to the Commission is an independent reason that the Applicant lacks the requisite good character, honesty and integrity to be granted a trade waste license. Based on the foregoing reasons, the Commission denies Rotondo Contracting's application for a trade waste license.

II. CONCLUSION

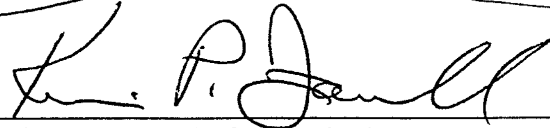
The Commission is vested with broad discretion to refuse to issue a license to any Applicant that it determines lacks good character, honesty and integrity. Here, Franco Rotondo, Jr. was and is a principal in several trade waste businesses which have been found liable in civil and administrative proceedings. Franco Rotondo, Sr. is a hidden principal in the Applicant company and has an adverse history in the waste industry. The Applicant has failed to provide truthful information to the Commission on its License Application, Principal Disclosure form, on the 1998 and 2001 Questionnaires, and in Franco Rotondo, Jr.'s deposition. The Applicant has failed to pay taxes, fines and penalties, and the Applicant has failed to provide proof or documentation to the Commission to show otherwise. Finally, the Applicant failed to provide and ignored the Commission's request for documents. Accordingly, based on the actions of the applicant and both its disclosed and undisclosed principals, the Commission finds that Rotondo Contracting lacks good character, honesty, and integrity, and denies its license application.

This license denial decision is effective fourteen days from the date hereof. In order that Rotondo Contracting's customers may make other carting arrangements without an interruption of service, the Applicant is directed (i) to continue servicing its customers for the next fourteen days in accordance with their existing contractual arrangements, unless advised to the contrary by those customers, and (ii) to send a copy of the attached notice to each of its customers by first-class U.S. Mail by no later than December 26, 2001. The Applicant shall not service any customers, or otherwise operate as a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

Dated: December 27, 2001

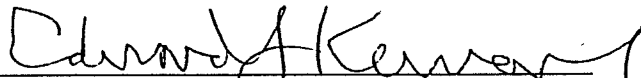
THE TRADE WASTE COMMISSION

Raymond V. Casey
Chairman

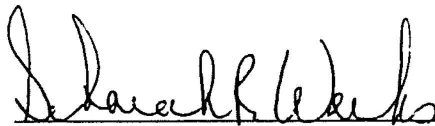


Kevin P. Farrell, Commissioner
Department of Sanitation

Jane Hoffman, Commissioner
Department of Consumer Affairs



Edward J. Kuriansky, Commissioner
Department of Investigation



Deborah R. Weeks, Commissioner
Department of Business Services