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

DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING THE APPLICATION OF D&E TOP SOIL & TRUCKING, INC. A CLASS 2 REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS.

D&E Top Soil & Trucking, Inc. ("D&E" or the "Applicant") submitted an application to the New York City Business Integrity Commission ("Commission"), for an exemption from licensing requirements and a registration to operate a trade waste business pursuant to Local Law 42 of 1996. See Title 16-A of the New York City Administrative Code ("Admin. Code"), § 16-505(a). Local Law 42, which created the Commission to regulate the trade waste removal industry in New York City, was enacted to address pervasive organized crime and other corruption in the commercial carting industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

D&E has applied to the Commission for an exemption from licensing requirements and for a registration enabling it 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." Admin. Code § 16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for exemptions. See id. If, upon review and investigation of the exemption application, the Commission grants the applicant an exemption from licensing requirements applicable to businesses that remove other types of waste, the applicant will be issued a registration. See id.

In determining whether to grant an exemption from licensing requirements and a registration to operate a construction and demolition debris removal business, the Commission considers the same types of factors that are pertinent to the Commission's determination whether to issue a license to a business seeking to remove other types of waste. See e.g., Admin Code § 16-504(a) (empowering Commission to issue and establish standards for issuance, suspension, and revocation of licenses and registrations); compare Title 17, Rules of the City of New York ("RCNY") §§ 1-06 & 2-02 (specifying information required to be submitted by license applicant) with id. §§ 1-06 & 2-03(b) (specifying information required to be submitted by registration applicant); see also Admin. Code §16-513(a)(i) (authorizing suspension or revocation of license or

registration for violation of Local Law 42 or any rule promulgated pursuant thereto). Central to the Commission's investigation and determination of an exemption application is whether the applicant has business integrity. See 17 RCNY § 1-09 (prohibiting numerous types of conduct reflecting lack of business integrity, including violations of law, knowing association with organized crime figures, false or misleading statements to the Commission, and deceptive trade practices); Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008).

Based upon the record as to the Applicant, the Commission denies its registration application on the ground that this Applicant lacks good character, honesty, and integrity for the following independent reasons:

A. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration because the Applicant's sole principal, Donald Habe, has a serious criminal record that spans three decades.

B. The Applicant failed to provide information and provided false and misleading information to the Commission.

I. BACKGROUND

A. The New York City Carting Industry

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

Extensive testimonial and documentary evidence adduced during lengthy City Council hearings addressing the corruption that historically has plagued this industry revealed the nature of the cartel: an entrenched anti-competitive conspiracy carried out through customer-allocation agreements among carters, who sold to one another the exclusive right to service customers, and enforced by organized crime-connected racketeers, who mediated disputes among carters. See generally Peter Reuter, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation (RAND Corp. 1987). After hearing the evidence, the City Council made numerous factual findings concerning organized crime's longstanding and corrupting influence over the City's carting industry and its effects, including the anticompetitive cartel, exorbitant carting rates, and rampant customer overcharging. More generally, the Council found

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

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

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

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

Another illegal waste disposal scheme also prominently featured haulers of construction and demolition debris. This scheme involved certain "cover" programs instituted by the City of New York at Fresh Kills, under which the City obtained materials needed to cover the garbage and other waste dumped at the landfill. Under the "free cover" program, transfer stations and carting companies could dispose of "clean

fill" (i.e., soil uncontaminated by debris) at Fresh Kills free of charge. Under the "paid cover" program, the City contracted with and paid carting companies to bring clean fill to Fresh Kills. Numerous transfer stations and carters, however, abetted by corrupt City sanitation workers, dumped non-qualifying materials (including c & d) at Fresh Kills under the guise of clean fill. This was done by "cocktailing" the refuse: Refuse was placed beneath, and hidden by, a layer of dirt on top of a truckload. When the trucks arrived at Fresh Kills, they appeared to contain nothing but clean fill, which could be dumped free of charge.

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

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

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs ("DCA") for the licensing and registration of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. "Trade waste" is broadly defined and specifically includes "construction and demolition debris." Id. § 16-501(f)(1). The carting industry quickly challenged the new law, but the courts have consistently upheld Local Law 42 against repeated constitutional challenges (both facial and as applied) by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. City. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997). The United States Court of Appeals has definitively ruled that an applicant for a trade waste removal license

under Local Law 42 has no entitlement to and no property interest in a license, and the Commission is vested with broad discretion to grant or deny a license application. SRI, 107 F.3d at 995; see also Daxor Corp. v. New York Dep't of Health, 90 N.Y.2d 89, 98-100, 681 N.E.2d 356, 659 N.Y.S.2d 189 (1997); Attonito, 3 A.D.3d 415.

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

Applicants who fail to demonstrate good character, honesty and integrity using the criteria by which license applicants are judged fall under the second prong of §16-509(b). While the Appellate Division in Attonito did not directly address the second prong, by affirming the Commission's authority to investigate matters within the trade waste industry, it necessarily follows that the Commission need not ignore the results of its investigation that bear on an applicant's good character, honesty and integrity. Id.; accord Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008) (Commission denial not arbitrary and capricious where based on a criminal conviction, identification as an organized crime associate, and false and misleading statements). Accordingly, the Commission evaluates whether applicants meet the fitness standard using the same criteria upon which license applicants may be denied, including:

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

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

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

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

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

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

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

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

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

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

Admin. Code § 16-509(a)(i)-(x). While the presence of one of the above factors in the record of a registration applicant would not necessarily require a denial as a matter of law, the Commission may consider such evidence as a factor in determining overall eligibility.

II. THE APPLICANT

On May 12, 2008, D&E filed an application for an exemption from licensing and a trade waste registration for removal of construction and demolition debris (the "Registration Application"). The sole principal disclosed on the application is Donald R. Habe ("Habe"). See Registration Application at 9. The staff has conducted an investigation of the Applicant and its principal.

On December 9, 2009, the staff issued an 11-page recommendation that the application be denied. The Applicant was served with the recommendation on or about December 10, 2009 and was granted ten business days to respond (December 24, 2009). See 17 RCNY§2-08(a). The Applicant failed to submit a response to the staff's recommendation.

The Commission has carefully considered the staff's recommendation and for the independently sufficient reasons set forth below, the Commission finds that D&E lacks good character, honesty, and integrity, and denies its registration application.

III. GROUNDS FOR DENIAL

A. The Applicant has failed to demonstrate eligibility for a trade waste exemption from licensing and a trade waste registration because the Applicant's sole principal, Donald Habe, has a serious criminal record that spans three decades.

The Commission may refuse to issue a registration to an applicant that lacks "good character, honesty and integrity." See Admin. Code §16-509(a) (applying the same fitness standard to license applicants). In denying an application, the Commission may consider the conviction of an 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 to issue such a license. See Admin. Code § 16-509(a)(iii). The principal of the Applicant, Donald Habe, has a serious criminal record that spans three decades. Such a record should preclude him from being registered by the Commission.

On May 20, 1981, Donald Habe and several codefendants were indicted by a federal grand jury in the Eastern District of New York. See United States v. DeSena, Habe, et al, CR 81 310. On August 21, 1981, a Superseding Indictment was unsealed. See United States v. DeSena, Habe, et al, CR 81 310(S) ("Superseding Indictment"). On or about July 17, 1980, Habe conspired with others to receive approximately 36 barrels containing approximately 6100 pounds of silver residue and silver flakes (valued at approximately $669,000) that were stolen from a freight warehouse at John F. Kennedy International Airport. See Superseding Indictment at 2-4. Habe or his business partner received $15,000 for the use of their facility as a drop off site for the stolen material. See December 8, 1981 Sentencing Minutes, United States v. Habe at 18. Habe and a codefendant then transported the silver residue and silver flakes from Habe's warehouse

to a warehouse in New Jersey. See Superseding Indictment at 2. In addition, trial testimony by a cooperating witness indicated that over a period of several years prior to July, 1980, Habe's warehouse was used as a "drop site" for the storage of a number of stolen shipments of cargo. See September 15, 1981 testimony of James McBride, United States v. Habe, et. al.; see also August 3, 1981 letter from Kenneth I. Wirfel, Assistant United States Attorney, to Guy L. Heinemann, Esq., et. al.

After trial, a federal jury found Habe guilty of conspiracy to steal goods from a foreign shipment (18 U.S.C. §371) and of possession of goods stolen from a foreign shipment (18 U.S.C. §659). See March 29, 1982 Memorandum of Decision and Order, United States v. Habe, CR 81 310(S). On December 8, 1981, Habe was sentenced to three years imprisonment for each of the two counts to run concurrently, and was ordered to pay a total fine of $4,000.[1] See December 8, 1981 Sentencing Minutes, United States v. Habe at 22; see also Judgment and Probation / Commitment Order. In a post trial Decision and Order, United States District Judge Mark A. Costantino stated that "during his trial, it became quite apparent that Mr. Habe was a knowing and willful participant in this scheme who intentionally placed his interests above those of society." See March 29, 1982 Memorandum of Decision and Order, United States v. Habe, CR 81 310(S).

After his release from federal prison, Habe continued to commit crimes over an extended period of time. On March 17, 1987, Habe was arrested and charged with reckless endangerment in the second degree, unauthorized use of a motor vehicle in the third degree, and criminal possession of stolen property in the third degree. A police officer observed Habe drive a stolen vehicle erratically and "run several red lights at excessive speed." When the police officer attempted to pursue Habe, Habe drove down a one way street, traveling in the wrong direction, which caused on-coming traffic to swerve to the left and right to avoid colliding with Habe. See Complaint. On September 21, 1987, Habe pled guilty to attempted criminal possession of stolen property in the third degree (N.Y. Penal Law §§ 110, 165.50). See Certificate of Disposition, People v. Habe, 02025-87. On September 21, 1987, Habe was sentenced to one to three years in prison.[2] Id.

On May 18, 1988, Habe was arrested and charged with criminal possession of stolen property in the third degree, unauthorized use of a vehicle in the third degree, and grand larceny in the fourth degree. In this case, Habe and a codefendant stole a van. See Complaint. On November 17, 1988, Habe pled guilty to criminal possession of stolen property in the third degree (N.Y. Penal Law § 165.50), unauthorized use of a vehicle in the third degree (N.Y. Penal Law § 165.05), and grand larceny in the third degree (N.Y. Penal Law § 155.35). See Certificate of Disposition, People v. Habe, 03092-88. On February 21, 1989, Habe was sentenced to twenty-one to sixty-three months in prison. Id.

---

[1] During sentencing, the prosecutor noted that "there is solid direct evidence, as related in the pre-sentence report that relates to Mr. Habe, that implicates Mr. Habe... in other crimes of this nature." See December 8, 1981 Sentencing Minutes, United States v. Habe at 16.

[2] On November 22, 1988, Habe was re-sentenced to one to three years in prison. See Certificate of Disposition, People v. Habe, 02025-87.

On August 3, 1988, Habe was arrested and charged with grand larceny in the third degree, burglary in the third degree, and criminal possession of stolen property. In this case, Habe and a codefendant stole "eleven cartons of Eastern Airlines cargo valued in excess of $3000.00." See Complaint. The cartons of cargo were stolen from an Eastern Airlines hangar at John F. Kennedy International Airport. See Id. On February 17, 1989, Habe pled guilty to grand larceny in the third degree (N.Y. Penal Law § 155.35) and was sentenced to sixteen months to four years in prison. See Certificate of Disposition, People v. Habe, 04261-88.

On October 5, 1998, Habe was arrested and charged with criminal possession of a controlled substance in the seventh degree. On October 6, 1998, Habe pled guilty to criminal possession of a controlled substance in the seventh degree (N.Y. Penal Law § 220.03), and was sentenced to time served. See Certificate of Disposition. People v. Habe, 98X063874.

On November 2, 1998, Habe was arrested and charged with operating a motor vehicle under the influence and aggravated unlicensed operation of a motor vehicle in the third degree (N.Y. Vehicle and Traffic Law §§ 1192.3 and 511.1). On November 6, 1998, Habe pled guilty to the charges and was sentenced to a one year conditional discharge, a two hundred dollar fine or six months in prison, and his driver's license was revoked. See Donald Habe Criminal History Record Search printout.

On April 5, 1999, Habe was arrested and charged with theft of services and criminal trespass in the third degree. On April 6, 1999, Habe pled guilty to theft of services (N.Y. Penal Law § 165.15). He was sentenced to time served in prison. See Donald Habe Criminal History Record Search printout.

On September 8, 1999, Habe was arrested and charged with criminal possession of stolen property in the third degree. On November 17, 1999, he pled guilty to criminal possession of stolen property in the fifth degree (N.Y. Penal Law § 165.40) and was sentenced to one year in jail. See Donald Habe Criminal History Record Search printout.

On February 25, 2003, Habe was arrested and charged with operation of a motor vehicle by an unlicensed driver and aggravated unlicensed operation of a motor vehicle in the third degree. On February 25, 2003, he pled guilty to aggravated unlicensed operation of a motor vehicle in the third degree (N.Y. Vehicle and Traffic Law § 511.1) and was sentenced to two hundred dollar fine. On June 5, 2009, Habe was re-sentenced to twenty days in jail. See Donald Habe Criminal History Record Search printout.

On May 30, 2003, Habe was arrested and charged with criminal possession of a controlled substance in the seventh degree (N.Y. Penal Law § 220.03). On June 5, 2003, he pled guilty to the charge. He was sentenced to twenty days in prison and his driver's license was suspended for six months.

On February 26, 2005, Habe was arrested and charged with aggravated unlicensed operation of a motor vehicle, ten separate violations for operating a motor vehicle in

violation of safety rules, operating a vehicle without proper permits, operating a trailer without registration plates, operating a motor vehicle without an inspection certificate, and two equipment violations. See Transcript of Record, People v. Habe, 2005NA004708. No disposition is reported for these charges.

Section 753 of the Corrections Law sets forth certain factors to be considered before a criminal conviction can be used as the basis of denying a company a registration. Those factors include: the relationship between the crime and the specific duties related to the license sought; whether the criminal offense will affect the individual's fitness or ability to perform the duties; the time which has elapsed since the occurrence of the offense; the age of the person at the time of the offense; the seriousness of the offense; any information by the person regarding his rehabilitation and good conduct; the legitimate interest of the public agency in protecting property and the safety and welfare of the public and whether the person received a certificate of relief from civil disabilities, which creates a presumption of rehabilitation. N.Y. Correct. Law 753(1), (2).

As described above, Habe has had repeated contacts with the criminal justice system over the course of three decades. Many of the convictions, particularly those related to the theft from the airport facilities, are extremely serious in nature and demonstrate a coordinated and lengthy scheme to commit crimes. Furthermore, several of the offenses involve the illegal and dangerous use of motor vehicles- a duty related to the registration sought by the Applicant. Habe's record establishes that he is a person who does not respect the law and will take every opportunity to violate the law. Habe's crimes occurred both when he was younger, 31, and recently, 53. Notably, the fact that Habe has committed crimes throughout most of his life demonstrates that he has never been rehabilitated. The Commission has a significant and legitimate interest in protecting the safety of the public from an individual who repeatedly commits crimes. Serious crimes of this nature reflect adversely on the Applicant's good character, honesty and integrity and render Habe unworthy of registration. The Applicant did not dispute this point, leaving this ground uncontested. Accordingly, Commission denies the Applicant's registration application based on this independent ground.

B. The Applicant failed to provide information and provided false and misleading information to the Commission.

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a ground for denial of the application. See Admin. Code §16-509(b); Attonito v. Maldonado, 3 A.D.3d 415 (1st Dept. 2004); *leave denied* 2 N.Y.3d 705 (2004); Breeze Carting Corp. v. The City of New York, 52 A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008).

Question 26 of the application asks the applicant to disclose all felony and misdemeanor convictions of any current principal of the company. See registration application at 5 ("Has the applicant business, or any current principal of the applicant business ever been convicted of any misdemeanor or felony in any jurisdiction?"). The Applicant falsely answered "no." See Id. The Applicant's answer to Question 26 on the

registration application is false and misleading because as discussed above, Donald Habe was convicted of numerous misdemeanors and felonies.

Habe certified that the information contained in the Registration Application was accurate and truthful. See Registration Application at 16. At his deposition on August 12, 2008, Habe testified that although he signed the certification page of the Registration Application, he did not personally complete the Registration Application. See August 12, 2008 Deposition Transcript of Donald Habe ("Habe Tr.") at 17-18. Furthermore, Habe testified that he read "a little bit," but "not much" of the completed Registration Application before it was filed with the Commission. See Habe Tr. at 18. Habe reasoned that he was "just kind of busy" and did not have time to review the Registration Application before it was filed with the Commission. See Habe Tr. at 18-19. Accordingly, the Commission cannot place any confidence in D&E's application and finds it unreliable.

The failure of the Applicant to provide truthful and non-misleading information to the Commission and Habe's cavalier indifference to the accuracy and truthfulness of the information he provides the Commission is evidence that the Applicant lacks good character, honesty and integrity. The Applicant did not dispute this point, leaving this ground uncontested. Based on this independently sufficient ground, this application is denied.

IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant that it determines lacks good character, honesty, and integrity. The evidence recounted above demonstrates convincingly that D&E falls far short of that standard. Based upon the above independently sufficient reasons, the Commission denies D&E's exemption application and registration.

This exemption/registration denial is effective immediately. D&E Top Soil and Trucking, Inc. may not operate as a trade waste business in the City of New York.

Dated: March 18, 2010

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Commissioner/Chair

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation

Andrew Eiler, Director of Legislative Affairs (designee)
Department of Consumer Affairs

Deborah Buyer, General Counsel (designee)
Department of Business Services

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