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 T & S TRUCKING CO. INC. FOR A REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS

T & S Trucking Co. Inc. ("T & S" or the "Applicant") has applied to the New York City Business Integrity Commission ("Commission"), formerly named the New York City Trade Waste Commission, pursuant to Local Law 42 of 1996, for renewal of its exemption from licensing requirements and a registration to operate a trade waste business. See Title 16-A of the New York City Administrative Code ("Admin. Code"), §16-505(a). Local Law 42 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.

T & S applied to the Commission for an exemption from the licensing requirements and 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." See Admin. Code §16-505(a). Local Law 42 authorizes the Commission to review and determine such applications for registration. See id. If, upon review and investigation of the application, the Commission grants the applicant a registration, the applicant becomes "exempt" from the licensing requirement applicable to businesses that remove other types of waste. See id.

In determining whether to grant 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); Breeze Carting Corp. v. The City of New York, 52

A.D.3d 424, 860 N.Y.S.2d 103 (1st Dept. 2008). Central to the Commission's investigation and determination of a registration 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); compare Admin. Code § 16-509(a) (authorizing Commission to refuse to issue licenses to applicants lacking "good character, honesty and integrity"). Local Law 42 makes clear that the Commission is not limited to consideration of the enumerated factors; the list is meant to be illustrative and not exhaustive.

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

A. The Applicant's sole owner and principal, Tonino Solimine, is the subject of a pending indictment that charged him, and others, with the crimes of embezzlement of interstate and foreign shipments of heating oil and conspiracy to launder money.

B. The Applicant knowingly failed to provide truthful 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 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 over the past decade. 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.

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 facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal Sanitation Corp. v. Trade Waste Comm'n, No. 96 Civ. 6581 (S.D.N.Y. Oct. 16, 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); 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).

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. HISTORY OF THE APPLICANT

The Applicant was incorporated on January 10, 1986, See New York State Department of State, Division of Corporation record for T & S Trucking Co. Inc. and maintains an office located at 53 2nd Avenue in Brooklyn, New York. The principal, Tonino Solimine ("Solimine"), is the Chief Executive Officer ("CEO") and sole shareholder of T & S. T & S is a transporter of oil products in the New York City metropolitan area. Heating oil transporters deliver heating oil from wholesale storage facilities known as "terminals" or "racks" to residential and commercial customers for heating oil retailers. The transporters use tanker trucks to deliver the heating oil to the retailers' customers and typically charge the retailers a delivery fee based upon a price-per-gallon of the heating oil. Heating oil transporters are not authorized to directly purchase heating oil from wholesalers or to sell heating oil to residential or commercial customers. In 1998, T & S entered the trade waste industry because Solimine would "lose drivers to other companies" when the heating oil business traditionally slowed down during the summer months.[1] T & S specifically operates in the construction and demolition field.

On August 30, 1996, the Applicant applied to the Commission for a registration to operate a trade waste business. See T & S's Application for Exemption from Licensing Requirement for Removal of Construction and Demolition Debris. On or about August 21, 2002, the Commission granted the Applicant a trade waste registration. See T & S's Registration Order. T & S's registration was effective for two years and expired on July 31, 2004. See id. On July 26, 2004, the Applicant filed an application to renew its registration with the Commission. See T & S's 2004 Renewal Application for License or Registration as a Trade Waste Business. On December 27, 2004, the Commission granted the First Renewal Application, and the Applicant's registration was renewed for a period of two years. See T & S's 2004 Registration Renewal Order. On June 16, 2006, T & S again applied to the Commission for a renewal of its registration. See T & S's 2006 Renewal Application for License or Registration as a Trade Waste Business, ("Second Renewal Application"). On July 31, 2006, the Commission granted the Second Renewal Application, and again renewed the Applicant's registration for two years. See T & S's 2006 Registration Renewal Order ("Second Renewal Order"). On June 17, 2008, T & S applied to the Commission for a third renewal of its registration. See T & S's 2008 Renewal Application for License or Registration as a Trade Waste Business, ("Third Renewal Application").

[1] See, Deposition of Tonino Solimine dated December 21, 2009 pgs 19-20.

On July 12, 2007, Solimine and T & S office manager, Eston Clare ("Clare"), were indicted in the Federal District Court for the Eastern District of New York and charged with Embezzlement of Interstate and Foreign Shipments of Heating Oil in violation of Title 18, United States Code, Sections 659, 2 and 3551 et seq. and Conspiracy To Launder Money in violation of Title 18, United States Code, Sections 659, 1956(a)(1)(A)(i), 1956(1)(B)(i), 1956(h) and 3551 et seq.[2] See United States v Solimine, et. al., Cr. 07-567("Indictment"). On August 1, 2007, Solimine was released on $20 million bail.

According to the Indictment, the embezzlement scheme worked as follows: truck drivers employed by T & S would obtain the heating oil from wholesaler storage facilities and deliver the oil to the retailers' customers. Instead of delivering the full amount of heating oil that was ordered by the customer, the drivers would "short" or "skim" oil from the delivery by holding back a portion of the heating oil.[3] The drivers would then bill the retailers' customers for a full delivery. After skimming the heating oil, Solimine and Clare notified the retailers that full deliveries had been made to the customers and then submitted invoices to the retailers for the full amount of heating oil that was purportedly delivered. They subsequently received payment from the retailers. Solimine and Clare would then offer the stolen heating oil for sale to other retailers at below market prices, primarily for cash payments. Solimine and Clare received approximately $25 million between January 1, 2000 and July 7, 2007, from the sale of millions of gallons of this embezzled heating oil.[4]

Based on the Indictment, the Commission requested a deposition of Tonino Solimine in conjunction with the Third Renewal Application. On May 11, 2009, a letter was sent to Solimine stating that he was to appear for a deposition at the Commission's offices on June 24, 2009. The Commission also requested Solimine to provide all documents related to the indictment, all records of the employment history of Eston Clare and both personal and corporate tax filings for 2006, 2007 and 2008. These documents were to be supplied prior to the deposition date. In a letter dated June 17, 2009, Solimine's attorney, Robert LaRusso ("LaRusso"), requested an adjournment of the production of the documents to August 14, 2009 and the deposition to September 11, 2009, so as "to conclude discussions with the U.S. Attorney's Office in regard to pending criminal charges against [Solimine]." See LaRusso letter dated June 17, 2009. In a second letter, also dated June

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[2] Leonard Baldari, Jr., owner of Mystic Tank Lines Corp. ("Mystic Oil"), and Michael David Hiller, treasurer of Mystic Oil, were also charged in this embezzlement and money laundering scheme in a separate indictment by the U.S. Attorney for the Eastern District of New York. See, Department of Justice, EDNY, press release dated July 19, 2007.

[3] There are a variety of ways to "short" or "skim" oil. In the case of T & S, the delivery truck meters were rigged to shortchange customers by allowing the air that flows through the meters to combine with the heating oil to inflate the amount of oil supposedly delivered to customers.

[4] Baldari and Hiller from Mystic Oil were charged with stealing oil beginning as early as 1990 and netting approximately $50 million from the sale of the stolen oil. See, Department of Justice, EDNY press release, dated July 19, 2007.

17, 2009[5], LaRusso requested a further postponement of the deposition because a "substantial question" had arisen in connection with Solimine's pending criminal charges and as such, there would be a delay in "concluding discussions with the US Attorney's Office." See second LaRusso letter dated June 17, 2010. LaRusso further explained that the parties had "until September 18, 2009 to resolve the issue and conclude the plea discussions." Id. He requested until August 24, 2009 to arrange a new schedule for the production of the documents and the deposition. Over the next several weeks, LaRusso repeatedly called the Commission's offices with requests for adjournments of the deposition, all of which were granted. The Commission then sent another letter to Solimine, dated October 26, 2009, setting the deposition for November 11, 2009. LaRusso responded on October 29, 2009, via letter, acknowledging the agreement between the Commission and Solimine that the deposition would take place on December 2, 2009, marked as "final." The deposition was finally conducted on December 21, 2009 at the Commission's offices.

Solimine appeared with his attorney, Nicholas Kaizer, for the deposition to answer questions relating to his Third Renewal Application. Solimine stated that he was currently working for Sea Trucking ("Sea") as a "[d]ispatcher , [doing] [o]ffice work and [going] out and find[ing] work." See Deposition of Tonino Solimine and T & S dated 12/21/09 p.7, ln. 2-3. Solimine revealed that T & S was "not doing much business at all." Id at, p.7, ln. 6-7. Instead, T & S, which had "the overweight permits and integrity plates," was leasing trucks to Sea. id at p.7, ln. 7-8, p.21, ln.2-8. Solimine stated that the reason for the leasing agreement was that "the government didn't want [T & S] to be in business." Id at p. 21, ln. 17-18. As part of the lease agreement, all the trucks were registered under T & S and Sea would pay for expenses: e.g. fuel, tires, truck payments, payroll Id at ln. 9-10, 20-23. Solimine also revealed that T & S did not currently have any accounts or customers. Rather, Sea Trucking now "has the accounts [like] Rep. Co., Bay Ridge [and] Santilli Cycling." id at p.10, ln. 18-24.

Solimine explained that his responsibilities at T & S included "[running] the shop...trying to get business, [and] collect[ing] money." id at p.15, ln. 2-7, p.28, ln.18-24. He said that he did not draw a salary from T & S, but he did get paid $2,500 per week by Sea, id at p.15, ln.19- 25, p.28, ln.25, p. 29, ln.2-4, and that his wife also was paid about $2,500 or $2,700 per week from Sea of. Id at p.16, ln.4- 5, p.29, ln. 5-9. Solimine said that T & S owns one old truck outright and has "about five new ones that are still on the lease." Id at p.17, ln.6-15). Solimine admitted he changed the markings on the trucks from T & S to Sea and that "[he] got stopped in Rockaway" and "there was a letter sent"[6] for his having changed the markings. As a result, Solimine put T & S on the side of the truck he used "in the city." Id at p.18, ln. 6-19. He went on to say that of all his trucks, about five work jobs strictly as T & S and the rest have Sea Trucking printed on them. Id at p.18, ln. 20-25, p.19, ln. 2-3.

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[5] It appears that the date on this letter was an error and should have been dated August 14, 2009 which would coincide with the facsimile cover sheet that was attached when it was faxed to the Commission's offices on August 14, 2009. See, LaRusso facsimile cover sheet dated August 14, 2009.

[6] In fact **three** of Solimine's trucks had been issued a total of five BIC violations on October 16, 2009, for having improper vehicle markings and unregistered vehicles, when they were stopped opposite 125-15 Beach Channel Drive in Rockaway. See TW #4919, #4941, #4942, #4957 and #4958.

Solimine stated that he and his wife, Helen, are the principals of Sea and the stock ownership is broken down so Helen owns 10% and Solimine owns the remaining 90%. Id at p.24, ln. 20-25, p. 25, ln.2. Sea was incorporated in 1998 so that Solimine's wife could try and "get [his] work." Id at p. 25, ln. 8-9, p.28, ln. 14-17. There are about 15 to 17 employees that work for Sea. Id at p. 26, ln.3-7. Solimine explained that his wife did not know much about trade waste or carting but that she was learning more as she spends more time at Sea. Id at p. 30, ln. 21-25, p. 31, ln. 2-3. Sea is a union company and all of the drivers belong to Local 282. Id at p. 31, ln. 6-17. Solimine revealed that Sea was working on several "jobs" in New York City: "Seven Line", "69th and York/First" and "Far Rockaway." Id at p. 11, ln. 20-25, p.12, Ln. 2-6, p. 32, Ln. 13-25. He also explained that Sea joined the Metropolitan Trucking Association ("MTA") "when they started" Id at p. 33, ln. 10-17, and its truck drivers are members of Local 282. Id at p.31, ln. 11-13. Solimine said that T & S never joined the MTA because it was not a union company. He went on to explain that Sea joined because one of the main benefits of belonging to the MTA was that they will provide a lawyer when there is "a problem with the union." Id at p. 36, ln. 4-10, 23-25, p.37, ln. 2-6. Solimine then admitted that in 2007, he and his wife, along with T & S and Sea, were named defendants in a civil lawsuit that was filed in the Eastern District of New York by the Health and Welfare Fund of Local 282. He said that the case was still pending and that "[282 hasn't] provided any evidence stating the accusations that they made." Id at p. 37, ln. 24-25, p.38, ln. 2-15.

When asked about his knowledge of individuals in the trade waste business that might belong to or have ties to organized crime, Solimine's attorney objected to the question and directed Solimine not to answer based upon his Fifth Amendment privilege. Id at p.37, ln. 7-20. Solimine again invoked his Fifth Amendment privilege when he was asked about the 2007 Eastern District of New York indictment that charged him and Clare with embezzlement and money laundering. id at p. 45, ln. 2-13. The deposition then came to a close.

The Commission has carefully considered the staff's Recommendation. For the reasons set forth below, the Commission finds that the Applicant lacks good character, honesty, and integrity, and has failed to demonstrate eligibility for a registration. Therefore, the Commission denies T & S Trucking Company, Inc.'s Registration Application.

III. GROUNDS FOR DENIAL

A. The Applicant's sole owner and principal Tonino Solimine is the subject of a pending indictment that charged him, and others, with the crimes of embezzlement of interstate and foreign shipments of heating oil and conspiracy to launder money.

The Commission may deny a registration application based on the "pending indictment or criminal action against such applicant or person for a crime which under this subdivision would provide a basis for the refusal of such [registration]." See Admin.

Code §16-509(a)(ii).[7] Additionally, under §16-509(a)(iii), the Commission may deny a registration application for any "conviction of such applicant for a crime which, considering the factors set forth in §753 of the Correction Law, would provide a basis under such law for the refusal of such license."

On July 12, 2007, Solimine and Clare were indicted by a federal grand jury in the Eastern District of New York. See Press Release, July 19, 2007, United States Attorney, Eastern District of New York ("Press Release"); United States v. Tonino Solimine and Eston Clare, Cr. 07-567("Indictment"). The defendants were charged in a two count indictment with embezzlement of heating oil shipments and money laundering.

The indictment charged that Solimine and Clare acted together, and with others, to steal heating oil which constituted an interstate and foreign shipment of property and conspired to conduct financial transactions that affected interstate commerce with the proceeds of the stolen oil. See Indictment at p.5-6. In essence, Solimine and Clare were charged with embezzling heating oil that T & S obtained from terminals for delivery to customers of heating oil retailers in New York City and Long Island. Id. at p.3 It is alleged that T & S's drivers would "short" or "skim" heating oil from the delivery to customers but inform the customers that a full delivery was made and give them an invoice to that effect. Id. at p. 3-4. Solimine and Clare, and others, then notified the retailers that full deliveries had been made to their customers and they in turn received payments from the retailers for the full amount of heating oil that was purportedly delivered. Id. at p.4. Solimine and Clare were also charged with selling the accumulated embezzled heating oil to other retailers at below market prices, primarily for cash payments. Id. It is alleged that between January 2000 and July 2007, they sold millions of gallons of embezzled heating oil for an aggregate amount of approximately $25 million. Id. The cash was then used for personal expenses or to fund the operation of T & S. Id. at p.4-5.

As the Commission may deny a registration application due to a pending indictment or criminal action that would provide a basis for the refusal of such registration, See Admin Code §16-509(a)(ii), the Commission must evaluate the crimes charged in light of the factors set forth in §753 of the Correction Law, which would provide a basis under that statute for refusing to issue a license. See Admin. Code §16-509(a)(iii); see also id. §16-501(a). Those factors are:

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

(a) The public policy of this state, as expressed in [the Correction Law], to encourage the licensure . . . of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license . . . sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties and responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law §753 (1).

Applying these factors, one can clearly see that the nature of the crimes charged against Solimine are so egregious and relate to both the purpose for which registration is sought and the duties and responsibilities associated with such registration, that they should preclude the granting of a trade waste removal registration to this Applicant. The charges directly correlate to the Applicant's honesty, integrity and good character.

During the approximately seven-year participation in the criminal schemes commencing in 2000, Solimine was plainly wise enough to know what the law required, how to obey it, and to recognize that the schemes in which he was involved were illegal. Solimine's crimes, as charged, were the result of a series of conscious decisions to violate the law and are a disturbing reminder of the cynical disregard for the law that had corrupted the City's waste removal industry in the past. The carting industry has historically been plagued by individuals and companies that have illegally manipulated the prices given to consumers in an attempt to defraud those same customers. The Applicant, and more specifically Tonino Solimine, is charged with committing crimes which exactly mirror these very actions for which this Commission was established to eliminate from the trade waste industry. Solimine has shown himself to be unworthy of registration in that same industry. The charges against Solimine provide substantial evidence that both Solimine and the Applicant

lack good character, honesty, and integrity. Based on this independent ground, T & S's renewal application is hereby denied.

B. The Applicant Knowingly Failed to Provide Truthful Information to the Commission.

For those who wish to apply for a license or registration issued by the Business Integrity Commission, notice of the Commission's authority and goals can be found on its website and within the New York City Administrative Code sections that deal directly with trade waste removal. See Title 16-A of the NYC Admin. Code §16-504. In the same vein, one is put on notice as to the consequences of failing to comply with the regulations and standards of the Commission by also looking at Title 16-A of the Administrative Code, See §§16-507(c)(i)(ii), 16-508(b)(c), 16-509, 16-510, as well as in the applications for licensing and registrations.[8]

The Commission directed Solimine to appear at a deposition to discuss the daily business operations of T & S and the federal indictment pending against him and Clare. During the deposition, Solimine was asked if he had any knowledge of or personal experience with organized crime or individuals tied to organized crime, while working in the trade waste industry. Solimine refused to answer the Commission's question by invoking his Fifth Amendment privilege against self incrimination. See Solimine deposition p. 37, ln. 9-20. The importance of asking this question during the deposition is quite evident. It goes to the very essence of the Commission's mission, to root out organized crime and other forms of corruption and criminal activity from the trade waste industry. The Applicant's refusal to answer material and relevant questions in connection to the Applicant's renewal application is sufficient cause for denial of that application. See Local Law 42; Admin. Code §16-509(b); Attonito v. Maldonado, 3 AD 3d 415(1st Dept. 2004); *leave denied*, 2 NY 3d 705(2004).

The same argument holds true for Solimine's failing to respond to the Commission's question regarding his pending 2007 indictment. As noted earlier, the pending indictment and charges contained therein, bare directly on the applicant's honesty, integrity and good character. The Commission may use this failure to provide truthful information to evaluate whether the Applicant meets the fitness standard for receiving a license or registration. See Admin. Code §16-509(a)(i).

It is clear that the Applicant failed to provide truthful information to the Commission, relating to his knowledge of organized crime in the trade waste industry and failed to provide truthful information regarding his pending 2007 embezzlement and money

[8] The certification page of each application and renewal application contain the following warnings. "Any material false statement or **omission** made in connection with this renewal application is sufficient cause for revocation of a trade waste license or registration or denial of a trade waste renewal application and may subject the person and/or entity making the false statement or omission to criminal charges."

laundering indictment. Based upon this independent ground, T & S's renewal application is hereby 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 T & S Trucking Company, Inc. falls short of that standard. For the reasons discussed above, the Commission hereby denies the Registration Application of T & S Trucking Company, Inc. The staff recommendation of 'denial' was properly served by Lieutenant Thomas O'Brien on the legal representative for the applicant, Nicholas Kaizer, Esq., as well as on the main office of T&S Trucking Company, Inc. on November 22, 2010. The applicant was afforded ten (10) business days to submit a written response to the aforementioned recommendation and that period expired on November 8, 2010 and no written response to the recommendation was ever submitted to the Commission.

This exemption/registration denial decision is effective immediately. The Applicant shall not service any customers or otherwise operate a trade waste removal business in the City of New York.

Dated: November 22, 2010

THE BUSINESS INTEGRITY COMMISSION

Michael J. Mansfield
Chairman

John Doherty, Commissioner
Department of Sanitation

Rose Gill Hearn, Commissioner
Department of Investigation
Robert A. Giglio
Deputy Commissioner

Andrew Eiler, Dir. of Legislative Affairs (designee)
Department of Consumer Affairs
Janet Lim, Asst General Counsel

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

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