



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

DECISION OF THE BUSINESS INTEGRITY COMMISSION TO DENY THE APPLICATION OF J.B. CARTING CORP. FOR A LICENSE TO OPERATE AS A TRADE WASTE BUSINESS

J.B. Carting Corp. (“J.B. Carting” or “Applicant”) applied to the New York City Business Integrity Commission, formerly the Trade Waste Commission (“Commission”) for a license 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), 16-508. Local Law 42, which created the Commission to license and regulate the commercial carting industry in New York City, was enacted to address pervasive organized crime and other corruption in the industry, to protect businesses using private carting services, and to increase competition in the industry and thereby reduce prices.

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, and certain associations with organized crime figures. Based upon the record of J.B. Carting, the Commission finds that this Applicant lacks good character, honesty, and integrity and denies its license application for the following independent reasons:

- (1) An undisclosed principal of the Applicant, Anthony Piccolo, has been convicted for a recent series of criminal acts relating directly to the Applicant’s fitness for licensure in the commercial carting industry;
- (2) The Applicant failed to provide truthful information through written submissions to the Commission and through the Applicant’s sole disclosed principal, Thomas Sieja’s testimony;

- (3) Thomas Sieja has committed racketeering activity in connection with the trade waste industry.

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 described that cartel as "a 'black hole' in New York City's economic life":

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

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

Extensive evidence presented at lengthy City Council hearings addressing the corruption that historically 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 confirmed the wisdom of the enactment of Local Law 42, and of the creation of the Trade Waste Commission and its successors in order to address this pervasive problem and to ensure that the cartel be eliminated and not allowed to return.

B. Local Law 42

Upon the enactment of Local Law 42, the Commission assumed regulatory authority from the Department of Consumer Affairs for the licensing of businesses that remove, collect, or dispose of trade waste. See Admin. Code § 16-503. The carting industry immediately challenged the new law, but the courts have consistently upheld Local Law 42 against repeated facial and as-applied constitutional challenges by New York City carters. See, e.g., Sanitation & Recycling Industry, Inc. v. City of New York, 928 F. Supp. 407 (S.D.N.Y. 1996), aff'd, 107 F.3d 985 (2d Cir. 1997); Universal

Sanitation Corp. v. Trade Waste Comm'n, 940 F. Supp. 656 (S.D.N.Y. 1996); Vigliotti Bros. Carting Co. v. Trade Waste Comm'n, No. 115993/96 (Sup. Ct. N.Y. Cty. Dec. 4, 1996); Fava v. City of New York, No. CV-97-0179 (E.D.N.Y. May 12, 1997); Imperial Sanitation Corp. v. City of New York, No. 97 CV 682 (E.D.N.Y. June 23, 1997); PJC Sanitation Services, Inc. v. City of New York, No. 97-CV-364 (E.D.N.Y. July 7, 1997).

Local Law 42 provides that “[i]t shall be unlawful for any person to operate a business for the purpose of the collection of trade waste . . . without having first obtained a license therefor from the [C]ommission.” Admin. Code §16-505(a). After providing a license applicant with notice and an opportunity to be heard, the Commission may “refuse to issue a license to an applicant who lacks good character, honesty and integrity.” Id. §16-509(a).

As the United States Court of Appeals has definitively ruled, an applicant for a 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

The Commission's staff has conducted an investigation of the Applicant, which included the deposition of its only disclosed principal, Thomas Seija. On September 27, 2004, the staff issued a 16-page recommendation that J.B. Carting's license application be denied. On September 28, 2004, the staff's recommendation and notice of the Applicant's 10 day period to respond to said recommendation was attempted to be delivered by hand to at the Applicant's office and Thomas Seija's residence at 1513 East 66th Street, Brooklyn, New York 11234.¹ See Affidavit of Service of Detective John

¹ An applicant for a license, such as J.B. Carting "shall notify the Commission within ten calendar days of any material change... in the information submitted in an application or disclosure form submitted." See 17 RCNY § 2-05(a)(2). The Applicant's business address and the principal's home address are material

Stebe of the New York City Police Department dated October 4, 2004. J.B. Carting 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 J.B. Carting lacks good character, honesty, and integrity, and denies its license application.

In indicting Anthony Piccolo, Tony-Lynn Piccolo-Hyzdu, Phillip Fasulo, Bennett Ragusa, and others on March 12, 2003, a Queens County Grand Jury determined that there was probable cause to believe that a "criminal enterprise" operated and was conducted under various names, including J.B. Carting Corp. with the cooperation of J.B. Carting's sole principal, Thomas Sieja ("Sieja"). In connection to this criminal scheme, on September 23, 2003, Anthony Piccolo and Toni Piccolo pleaded guilty to enterprise corruption charges. On January 5, 2004, Queens Supreme Court Justice Roger Rosengarten sentenced Toni Piccolo to six months in prison, five years of probation, and forfeiture of any ownership rights she may have had in assets in forfeiture. On January 12, 2004, Justice Rosengarten sentenced Anthony Piccolo to two and three-quarters years to eight and one-quarter years in prison and directed him to pay over \$500,000 in cash and assets in forfeiture. Then, on June 16, 2003, Bennett Ragusa appeared before Judge Roger Rosengarten of the Queens County Supreme Court and pleaded guilty to the crimes of falsifying business records in the first degree, a class E felony, and pleaded guilty to the crime of making a false written statement, a class A misdemeanor. He was sentenced to a conditional discharge, and was directed to pay over \$70,000 in cash and assets in forfeiture. In light of this criminal case, it is first necessary to discuss the denial of the Piccolo Companies' license applications, the background of the criminal case brought against the individuals involved in the criminal enterprise, and the history of J.B. Carting Corp.

A. The Denial of the Piccolo Companies' License Applications

By decision dated December 27, 2001, the Commission denied the license applications of sister companies Park Rubbish Removal Inc. ("Park") and Dynamic Rubbish Removal Inc. ("Dynamic") (collectively the "Piccolo companies"). Park and Dynamic were owned and operated by Anthony Piccolo ("Tony" or "Anthony") and his daughter Toni Lynn Piccolo-Hyzdu, ("Toni") with the assistance of Phillip Fasulo ("Fasulo" or "Phil") and others. The Commission for the following reasons denied the Piccolo companies' license applications:

- (1) The Piccolo companies, through their principal, Anthony Piccolo, improperly joined with other carting companies to target a company under federal trusteeship, and in doing so, engaged in both predatory pricing and efforts to prevent independent companies from entering the New York City market;

changes. See 17 RCNY §1-01. The Applicant has never notified the Commission about a change in business address or about a change in the principal's home address.

- (2) Anthony Piccolo was on the Board of the Kings County Trade Waste Association and knowingly failed to provide information and provided false information regarding his service on the Board;
- (3) The Piccolo companies failed to provide truthful information to the Commission in connection with their license applications; and
- (4) The Piccolo companies obstructed the Commission's investigations by repeatedly and knowingly failing to provide documents.

See Decision of the Trade Waste Commission to Deny the Applications of Park Rubbish Removal, Inc. and Dynamic Rubbish Removal, Inc. for Licenses to Operate as Trade Waste Businesses.

B. Background of the Recent Criminal Case

Shortly after the Piccolo companies were denied trade waste licenses, the New York City Police Department, the Queens County District Attorney's Office and the Commission began to conduct an investigation into the illegal activities of several people and business entities, arising out of an extortion scheme in the garbage carting industry that ultimately led to organized crime.² See May 13, 2002 affidavit of Assistant District Attorney Catherine Kane in Support of an Amendment to Eavesdropping Warrant 060206 and Progress Report at 4. Among other things, the investigation established that sometime after their companies' license applications were denied, Anthony Piccolo, Toni Lynn Piccolo-Hyzdu, Phillip Fasulo, and others, silently moved their assets and took control of a once-licensed carting company called J.B. & Sons Carting Co. ("J.B. & Sons"), "owned" by Thomas Sieja and Andrew Battaglia.³

J.B. & Sons was granted a trade waste license that expired on August 31, 1999. Thereafter, on August 29, 2002, detectives assigned to the Commission observed a J.B. & Sons garbage truck engaging in unlicensed trade waste removal activity. The driver (Harold Reister) of the J.B. & Sons truck was arrested for unlicensed activity and the J.B. & Sons truck was seized for the illegal activity.⁴ J.B. & Sons' disclosed owner, Thomas Sieja, and J.B. & Sons' secret owners and operators, including Anthony Piccolo, Toni Piccolo-Hyzdu, Phillip Fasulo and others were thus made aware that J.B. & Sons could not continue to operate in New York City without a trade waste license.

² One of the targets of the investigation was Genaro "Gerry" Bruno. Law enforcement sources classify Bruno as an associate of the Gambino Organized Crime Family. See Queens County District Attorney Press Release. In connection with the criminal scheme, Bruno was hired personally to threaten individuals with physical violence when they refused to make extortion payments.

³ J.B. & Sons was issued a trade waste license by the Commission with an effective date of September 1, 1997. When J.B. & Sons failed to submit a license renewal application to the Commission by August 31, 1999, its license expired.

⁴ This particular truck was registered to Dynamic Carting, one of the Piccolo companies that were denied licensure. See September 9, 2002 Affidavit of Detective Al Schwartz in support of the amendment of eavesdropping warrant EW #060206.A7.

By the time that J.B. & Sons was caught operating without a license, the Piccolos and their co-conspirators had already started to plot and commit various crimes designed both to disguise their illegal ownership and control of J.B. & Sons, as well as to conceal the illegal operations and business practices of J.B. & Sons. Included in this plot was the filing of false and forged license applications with the Commission. On October 2, 2002, a new company, J.B. Carting Corp., "fronted" by Thomas Sieja, submitted a fraudulent license application to the Commission.⁵ This application is addressed herein.

Throughout the course of the investigation, several telephone conversations were intercepted and recorded which established that Anthony Piccolo and his coconspirators acquired a hidden interest in J.B. & Sons, attempted to fraudulently obtain a license for J.B. Carting, and conceived a "back-up" plan in case the Commission denied the application of J.B. Carting. The "back-up" plan was to secretly acquire another carting company, Rags Contracting Corp., and to use Rags Contracting Corp. to further the criminal enterprise. As described below, numerous crimes were committed when the "back-up" plan was carried out.

C. The Facts That Establish Thomas Sieja's Criminal Activity

As described above, when the Piccolo companies were denied the licenses, the Piccolos and their coconspirators first silently moved their carting assets to and took control of Sieja's company, J.B. & Sons, and later formed J.B. Carting. In accordance with their criminal scheme, a new application on behalf of J.B. Carting was filed with the Commission. Sieja was disclosed in this application as the sole principal of the Applicant. In reality, Sieja was an employee or "front" for the Piccolo's. Then, while the J.B. Carting application was pending with the Commission, Anthony Piccolo plotted to secretly purchase or take over another carting company, Rags Contracting Corp. and to keep its disclosed principal, Bennett Ragusa as an employee or a "front."

Sieja submitted the fraudulent J.B. Carting license application to the Commission on October 2, 2002. This application omitted any mention of the Piccolo's, Fasulo, or any others as being principals or employees of the company.⁶ Sieja certified under oath that the information in this application was true. See License Application at 69; see also Deposition Transcript of Thomas Sieja ("Dep. Tr.") at 28. In the subsequent months, several intercepted and recorded telephone conversations by participants revealed the extent of the scheme to commit the crimes of perjury, falsifying business records, the filing of false business records, combination in restraint of trade and other crimes in order to obtain a fraudulent trade waste license for the corrupt enterprise under the name of "J.B. Carting Corp." These conversations also reveal the extent of Sieja's participation in the criminal scheme.

⁵ Thomas Sieja is disclosed as the only principal of J.B. Carting. In reality, all of the evidence establishes that Tony Piccolo, Toni-Lynn Piccolo, Philip Fasulo and others were in control of J.B. Carting and thus were principals of the company under Local Law 42.

⁶ In fact, besides being the disclosed principal, Sieja disclosed himself as the only employee and stated that JB "will hire drivers-helpers on an as needed basis." See J.B. Carting License Application at 51.

For instance, on October 23, 2002, Fasulo contacted a person named William "Billy" Oberg by telephone. This conversation was intercepted and recorded. In the conversation, Fasulo summarized the problems associated with the take-over of J.B. & Sons/J.B. Carting and explained the back-up plan to take-over Rags:

Phil: I got the guy from J.B. [Thomas Sieja], you know when we, when we uh, when we bought J.B..

Billy: Yeah.

Phil: The fucking guy [Thomas Sieja], if you look up stupid in the dictionary, this motherfucker is there. Believe me when I tell you, his picture's there. He's the most stupidest mother fucker in the world. His job was to do nothing. This mother-fucker never renewed his license the right way. You believe that? You know how hard it is to get a Trade Waste License, this mother fucker never renewed his license.

Phil: He [Thomas Sieja] never renewed the fucking license.

Billy: What a dick.

Phil: Yup, fucking asshole.

Billy: Unbelievable. So what's it called Rags now?

Phil: Yeah I got, I'm working with this guy Rags now.

See November 15, 2002 Affidavit of Detective Al Schwartz in support of the extension of eavesdropping warrant at 46. This conversation confirms the fact that J.B. & Sons failed to renew its license and that the Piccolo assets and Piccolo's control have been silently transferred from J.B. & Sons to Rags Contracting Corp. in the meantime.

On October 28, 2002, Thomas Sieja appeared at the offices of the Commission and gave testimony under oath in relation to J.B. Carting's license application. Shortly after his deposition, Sieja contacted Anthony Piccolo by telephone to inform him what occurred in intricate detail at the deposition. This conversation is direct evidence of Sieja's involvement in the conspiracy to commit perjury and to file false business records and trade waste license applications with the Commission, as well as Anthony Piccolo's involvement with the Applicant business. See infra. For example, Sieja informed Anthony Piccolo that he testified under oath that Fasulo did not work for J.B. & Sons/J.B. Carting, that Sieja has not even seen Anthony Piccolo since the 1980's, that J.B. & Sons/J.B. Carting is not presently doing any waste removal work, that Harold Reister, a J.B. & Sons/J.B. Carting driver worked for Sieja, not Fasulo and Toni-Lynn Piccolo. See

November 15, 2002 Affidavit of Detective Al Schwartz in support of the extension of eavesdropping warrant at 32-38. All of Sieja's testimony to the Commission about the same was false.

D. Anthony Piccolo Is An Undisclosed Principal of J.B. Carting Corp.

Although Sieja identified himself as the only principal of J.B. Carting on the license application and at his deposition, the evidence establishes that Anthony Piccolo was the true principal of J.B. Carting as that term is defined in Local Law 42. The law defines "principal" to include any person "participating directly or indirectly in the control" of the business entity. See Admin. Code §16-501(d). Anthony Piccolo's role in J.B. Carting's business plainly fits that description.

In handing down the indictment against Anthony Piccolo, the grand jury found that Anthony Piccolo controlled J.B. Carting through the directions he gave to Toni Piccolo-Hyzdu, Phil Fasulo and others. Indeed, in indicting Anthony Piccolo for enterprise corruption, money laundering in the second degree, grand larceny in the second degree, attempted grand larceny in the second degree, coercion in the first degree, attempted coercion in the first degree, commercial bribing in the first degree, grand larceny in the third degree, falsifying business records in the first degree, offering a false instrument for filing in the first degree, perjury in the first degree, insurance fraud in the third degree, restraint of trade, and conspiracy in the sixth degree, the grand jury found probable cause to believe that he was the person who secretly owned J.B. Carting. See Indictment No. 12/2003 People v. Piccolo, et. al. The totality of this evidence amply supports the conclusion that Anthony Piccolo participated directly or indirectly in the control of J.B. Carting and thus was an undisclosed principal of J.B. Carting.⁷

III. GROUNDS FOR LICENSE DENIAL

- 1. An undisclosed principal of the Applicant, Anthony Piccolo, has been convicted for a recent series of criminal acts relating directly to the Applicant's fitness for licensure in the commercial carting industry**

As described above, Anthony Piccolo is an undisclosed principal of the Applicant. In his capacity as a hidden principal of the Applicant, Anthony Piccolo committed numerous criminal acts and coordinated the criminal acts of others. These actions resulted in a Queens County Grand Jury's indictment of Anthony Piccolo and others for numerous crimes.

As a result, on September 22, 2003, Anthony Piccolo pleaded guilty to enterprise corruption charges in Queens County Supreme Court before Justice Roger N. Rosengarten. On January 5, 2004, he was sentenced to a term of two and three-quarters years to eight and one-quarter years in prison and was required to pay over \$500,000 in

⁷ The deliberate failure to disclose the identity of a principal of the Applicant is an independent ground to deny this Application.

cash and assets in forfeiture. Toni-Lynn Piccolo was sentenced to a term of six months in jail and five years' probation.

In pleading guilty, Anthony Piccolo admitted that he was the true "principal" or "boss" of a "company that secretly obtained the use of trade waste licenses of other companies—under which Anthony Piccolo ran his criminal enterprise, an unlicensed and unregulated private carting company. He further admitted that he directed his subordinates to collect illicit proceeds of extortion, orchestrated the commercial bribery of one of his customer's employees in a larcenous scheme and engaged in the crime of money laundering by secreting through a variety of transactions the ill-gotten gains made through his unlicensed carting company. Toni-Lynn Piccolo admitted that she engaged in the money laundering proceeds of her father's company, participated in the scheme to commit grand larceny against Brookdale Hospital, and acted in concert [with Thomas Sieja and others] to commit perjury before the Business Integrity Commission in an attempt to attain a phony license for the criminal carting enterprise." See Queens County District Attorney Press Release.

The Commission finds that Anthony Piccolo committed a series of criminal acts in his attempts to secretly maintain his holdings in the New York City commercial carting industry under the guise of J.B. Carting. Thomas Sieja facilitated and participated in this criminal scheme. This illicit behavior compels the conclusion that the Applicant lacks good character, honesty and integrity. Accordingly, the Commission denies J.B. Carting's application based on this independently sufficient ground.

2. The Applicant failed to provide truthful information through written submissions to the Commission and through Thomas Sieja's testimony under oath before the Commission

Failure by a license applicant to provide truthful information in connection with its license application is an adequate independent basis upon which the Commission may rely in denying the application. See Admin. Code §16-509(a)(i).

In the certified license application submitted by J.B. Carting, Thomas Sieja is listed as the only principal of the company. In addition, at his deposition under oath, Sieja testified that he was the only principal of J.B. Carting. Among other things, Sieja failed to disclose to the Commission the fact that he was not the only principal of J.B. Carting, if one at all. Furthermore, Sieja testified falsely under oath before the Commission on October 28, 2002 when he stated that he last saw and spoke with Anthony Piccolo in the 1980's:

Q: Could you describe your relationship with [Anthony Piccolo]?

A: Yeah. I know him, basically, hello, goodbye, how you doing.

MR. PADIAN: Platonic.

See Sieja Dep. Tr. at 48.

Q: When was the last time you saw Anthony Piccolo?

A: I don't know.

Q: Was it months ago?

A: Back in the 80's.

Q: Okay.

A: I haven't seen him.

Q: When was the last time you spoke to Anthony Piccolo?

A: Back in the 80's. I guess that was about the last time I have seen him.

See Sieja Dep. Tr. at 59-60. Sieja's testimony is false. Indeed, Sieja has met, has spoken with, has done business with, and has conspired to commit crimes with Anthony Piccolo. See November 15, 2002 Affidavit of Detective Al Schwartz in support of the extension of eavesdropping warrant at 28-49. Based on the evidence, Anthony Piccolo is a principal of J.B. Carting. The identity of a carting company's principals is obviously of material significance to the Commission, and J.B. Carting's and Sieja's criminal misrepresentations on the subject warrant denial of this license application – particularly since J.B. Carting's undisclosed principal, Anthony Piccolo, has been convicted for several crimes connected to the trade waste industry and whose applications for trade waste licenses have been denied by the Commission.

In addition, as described above, J.B. Carting submitted false and misleading documents to the Commission, including a license application, a customer list, and forged bills of sale for garbage trucks and containers. See September 9, 2002 Affidavit of Detective Al Schwartz in Support of Eavesdropping Warrant at 30. The license application failed to disclose the fact that Anthony Piccolo and others were principals of J.B.. The customer list submitted to the Commission was incomplete and inaccurate.

The failure of the Applicant to provide truthful information to the Commission constitutes an additional independent basis for the conclusion that the Applicant lacks good character, honesty and integrity. For this independently sufficient ground, this license application is denied. See Admin. Code §16-509(a)(i).

3. Thomas Sieja has committed racketeering activity in connection with the trade waste industry

Indeed, Sieja's role in this criminal scheme was serious enough to constitute "racketeering activity" within the meaning of Local Law 42.⁸ Where the Commission finds that an applicant has committed a racketeering activity as defined in the statute, licensure may be denied. Admin. Code § 16-509(v). Violations of the Donnelly Act (the state antitrust statute modeled on section 1 of the Sherman Act, 15 U.S.C. §1), see N.Y. Penal Law §460.10(1)(b),⁹ falsifying business records in the first degree, offering a false instrument for filing in the first degree and perjury in the first degree are each predicate felonies for enterprise corruption prosecutions under the Organized Crime Control Act. See N.Y. Penal Law §460.10(1)(a) (listing, inter alia, Penal Law §175.10, Penal Law §175.35, and Penal Law §210.15). As such, Sieja's and Anthony Piccolo's participation in this criminal scheme constitute "racketeering activity" under Local Law 42. See Admin. Code §16-509(a)(v) (referring, inter alia, to predicate felonies listed in Penal Law §460.10(a)). The commission of a racketeering activity is another ground by which the Commission may deny a license application. Accordingly, J.B. Carting's license application is denied based on this independent ground as well.

IV. CONCLUSION

The Commission is vested with broad discretion to refuse to issue a license to any applicant that it determines lacks good character, honesty and integrity. The evidence recounted above demonstrates convincingly that J.B. Carting falls far short of that standard. For the independently sufficient reasons discussed above, the Commission hereby denies J.B. Carting's license application.

This license denial decision is effective fourteen days from the date hereof. The Applicant shall not service any customers, or otherwise operate a trade waste removal business in the City of New York, after the expiration of the fourteen-day period.

⁸ Admin. Code § 16-509(v) allows the Commission to consider "the commission of a racketeering activity..." in refusing to issue a license to an applicant. A conviction for racketeering activity is not required.

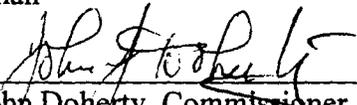
⁹ The Donnelly Act declares "[e]very contract, agreement, arrangement or combination whereby . . . competition or the free exercise of any activity in the conduct of any business, trade or commerce in or the furnishing of any service in this state is or may be restrained . . . to be against public policy, illegal and void," and provides that anyone who "shall make or attempt to make or enter into any such contract, agreement, arrangement or combination or who within this state shall do any act pursuant thereto, or in, toward or for the consummation thereof . . . is guilty of a class E felony." N.Y. Gen. Bus. Law §§340(1), 341. Certain such arrangements are per se unlawful, without regard to motive or justification; these include price fixing, customer allocation, and bid rigging.

Dated: February 10, 2005

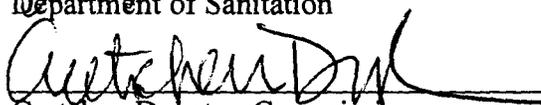
THE BUSINESS INTEGRITY COMMISSION



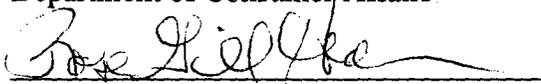
Thomas McCormack
Chair



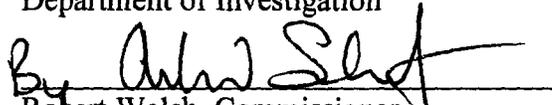
John Doherty, Commissioner
Department of Sanitation



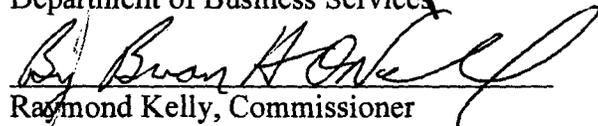
Gretchen Dykstra, Commissioner
Department of Consumer Affairs



Rose Gill Hearn, Commissioner
Department of Investigation



Robert Walsh, Commissioner
Department of Business Services



Raymond Kelly, Commissioner
New York City Police Department